

## **Political Science 394: Advanced Topics in Constitutional Politics**

Patrick Schmidt  
Spring 2022, MWF 1:10 – 2:10 p.m.  
Location: Carnegie 305  
Office Hours: Tuesday 10 – 11:30 a.m., Thursday,  
3 to 4:30 p.m., and by appointment

schmidtp@macalester.edu  
Office: 207-C Carnegie Hall  
Tel: 651.696.6147

### **Course Description**

In the United States, everyone puts a lot of emphasis on the decisions of the U.S. Supreme Court. To be sure, any understanding of constitutional politics requires being able to read those decisions within the long-term evolution of doctrines. To stop there, however, misses...pretty much everything. Even as one starts to read about constitutional doctrine, the additional layers start to emerge. Some of these are the constitutional philosophies and higher-order concepts of law. Many layers lay outside “the Court” and courts in general, first in the impact of decisions, questions of enforcement and compliance, and conflicts between institutions. That’s why the course title is “constitutional politics” rather than “constitutional law”. Then, as we beg the questions and tap into deeper analyses, we start to ask even broader questions, such as “what is a constitution anyway?” and “how do constitutions relate to other forms of political and social change?”

This course will reach into that grab-bag of questions and pull the threads at the bottom. The inspiration for this course is a graduate seminar to which I was invited when I was an undergraduate, and the skillset I was introduced to there comes into practice with every book group I attend: how to read something new—including the unfamiliar—ask questions, listen deeply to others, and build ideas collaboratively.

### **Readings**

At the start of the semester, I have assigned only one book for which you may want to secure a physical copy:

Bruce Ackerman, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* (Harvard University Press, 2019).

Most material will be supplied to you via Moodle. On several days, the syllabus indicates a “book crunch”. As will be explained in depth later, this involves sitting down with a book, setting a timer to 60 or 90 minutes, and doing what you can to understand the book—not in every detail, but in the argument, arc, types of evidence, and highlights. Most of these books are available through the campus subscription to Cambridge University Press (Cambridge Core), available through the library’s Databases page.

We will be adding and subtracting readings during the course of the semester.

### **Course Requirements and Grades**

As a seminar, your work consists of two things: being a contributor to the on-going dialogue and pursuing your curiosity into the content. These are expressed as two things:

Three class period introductions (30%). On three occasions, your role will be to begin the class with a pre-written reflection, which will be read with any extemporized content you wish to add. These should do four things: contextualize the reading, make connections, critique, and ask questions. This introduction should last 6 to 8 minutes, and you and I will then share leadership / moderator duties for the hour.

Seminar Paper (70%). During the semester, you will complete a seminar paper. The specific expectations of the paper will be set out later, but it should be imagined as a platform for a longer work, such as a capstone or future article-length writing project. This gives you numerous possibilities, such as a critical review of an academic literature, or a pilot run at an empirical project. The target length will be approximately 20 pages, plus references (whether footnotes or bibliography).

**Incompletes:** I have am often happy to arrange course completion agreements with students, so that they can use the “I” / Incomplete grade to relieve some pressure during the semester. Note: the college requires that a course completion agreement be on file by the last day of classes, before the finals period. I cannot change that.

**Plagiarism and Academic Dishonesty:** Normatively: it’s bad. Pragmatically: it’s foolish. Prescriptively: don’t do it.

**Disabilities and Learning Accommodations:** Students needing academic accommodations for a documented disability first contact the Office of Student Affairs to schedule a meeting with the Disability Student Services Coordinator to verify the disability and establish eligibility for accommodations. Then you should schedule an appointment with me to make appropriate arrangements. I embrace the opportunity to support you in your ambitions.

**Religious Observance:** Absences for religious observations are warmly understood. Please just communicate with me about it.

**Course Outline:**

**Week 1: Beginning**

Day	Topics, Readings, and Assignments
Friday, January 21	Introductions

Unit 1: Within Constitutional Law: Reasoning, Ideas, and Ideology

**Week 2: The Constitution and Its Court?**

Day	Topics, Readings, and Assignments
Monday, Jan 24	Reading: Pamela Karlan, “The New Countermajoritarian Difficulty” (2021)
Wednesday, Jan 26	Reading: Franita Tolson, “Countering the Real Countermajoritarian Difficulty” (2021); William Baude, “The Real Enemies of Democracy” (2021). The class will be divided in half; you will read only one of these two.
Friday, Jan 28	Reading: Tara Leigh Grove, “Sacrificing Legitimacy in a Hierarchical Judiciary” (2021)

**Week 3: Understanding Originalism**

Day	Topics, Readings, and Assignments
-----	-----------------------------------

<b>Monday, Jan 31</b>	Reading: Lawrence B. Solum, “Originalism and the Invisible Constitution” (2018)
<b>Wednesday, Feb 2</b>	Reading: Eric Segall, “The New Originalists” (2018)
<b>Friday, Feb 4</b>	Reading: Calvin Terbeek, “Clocks Must Always Be Turned Back: <i>Brown v. Board of Education</i> and the Racial Origins of Constitutional Originalism” (2021)

**Week 4: Saving Originalism?**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, Feb 7</b>	Reading: Christina Mulligan, “Diverse Originalism” (2018)
<b>Wednesday, Feb 9</b>	Reading: Stephen E. Sachs, “Originalism: Standard and Procedure” (2022)
<b>Friday, Feb 11</b>	Reading: Neil Devins and Lawrence Baum, <i>The Company They Keep</i> , Chs. 1 (read for argument) & 4

**Unit 2: The Politics In and Around Constitutional Law: Interests, Institutions, and Actors**

**Week 5: Political Science Tackles Judging and Legal Doctrine**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, Feb 14</b>	Adam N. Glynn and Maya Sen, “Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women’s Issues?” (2015), or a Book Crunch of: Ryan Black, et. al. <i>The Conscientious Justice</i> (2019)
<b>Wednesday, Feb 16</b>	Jeffrey R. Lax, “The New Judicial Politics of Legal Doctrine” (2011)
<b>Friday, Feb 18</b>	Tom S. Clark, <i>The Supreme Court: An Analytical History of Constitutional Decision Making</i> (2019), Chs. 2 and 8

**Week 6: Arguments and Opinions**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, Feb 21</b>	Book Crunch: Ryan C. Black, et. al. <i>U.S. Supreme Court Opinions and Their Audiences</i> (2016)
<b>Wednesday, Feb 23</b>	Reading: Nicholas Scurich: “Styles of Argumentation in Judicial Opinions” (2018)
<b>Friday, Feb 25</b>	Reading: Tonja Jacobi and Dylan Schweers, “Justice, Interrupted” (2017)

**Week 7: Opposition and Struggle**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, Feb 28</b>	Book Crunch: Paul M. Collins, Jr. and Matthew Eshbaugh-Sola, <i>The President and the Supreme Court</i> (2019)
<b>Wednesday, March 2</b>	Pi Sigma Alpha Conference, Weyerhaeuser Boardroom
<b>Friday, March 4</b>	Book Crunch: Brandon L. Bartels and Christopher D. Johnston, <i>Curbing the Court</i> (2020)

**Week 8: Unexamined Elements**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, March 7</b>	Reading: Tom Gerald Daly and Brian Christopher Jones, “Parties Versus

	Democracy” (2020) Optional Skim: Tarunabh Khaitain, “Balancing Accountability and Effectiveness” (2021) or Khaitain, “Political Parties in Constitutional Theory” (2020)
<b>Wednesday, March 9</b>	Reading: Ran Hirschl, “Cities in National Constitutions” (2020)
<b>Friday, March 11</b>	Flex Day

**March 12 – 20: Spring Break – No Classes**

Unit 3: Comparative Constitutional Politics

**Week 9: Bruce Ackerman’s Revolutionary Constitutions**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, March 21</b>	Reading: Ackerman, Introduction and Chs. 1 – 2
<b>Wednesday, March 23</b>	Reading: Ackerman, Chs. 3 – 4
<b>Friday, March 25</b>	Reading: Ackerman, Chs. 5 – 6

**Week 10: Bruce Ackerman’s Revolutionary Constitutions (cont.)**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, March 28</b>	Reading: Ackerman, Chs. 7 – 8
<b>Wednesday, March 30</b>	Reading: Ackerman, Chs. 9 – 11
<b>Friday, April 1</b>	Reading: Ackerman, Chs. 12 – 13

**Week 11: Three Critiques of Ackerman, from Revolutionary Constitutionalism: Law, Legitimacy, Power; Richard Albert, ed.**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, April 4</b>	Reading: Alon Harel, “A Defence of Non-Representational Constitutionalism”
<b>Wednesday, April 6</b>	Reading: Aziz Rana, “Constitutionalism and the Predicament of Postcolonial Independence”
<b>Friday, April 8</b>	Reading: Mitchel Lasser, “Constituting the Judiciary, Constituting Europe”

**Week 12: Constitutional Decline and Design**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, April 11</b>	Reading: Miguel Schor, “Trumpism and the Continuing Challenges to Three Political-Constitutionalists-Orthodoxies” (2020)
<b>Wednesday, April 13</b>	Reading: Tom Gerald Daly, “Designing the Democracy-Defending Citizen” (2020)
<b>Friday, April 15</b>	Reading: Stephen Skowronek and Karen Orren, “The Adaptability Paradox” (2020)

**Week 13: Co-Created or Emergent Content**

<b>Monday, April 18</b>	
-------------------------	--

<b>Wednesday, April 20</b>	
<b>Friday, April 22</b>	

**Week 14**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, April 25</b>	Presentations
<b>Wednesday, April 27</b>	Presentations
<b>Friday, April 29</b>	Presentations

**Week 15**

<b>Day</b>	<b>Topics, Readings, and Assignments</b>
<b>Monday, May 2</b>	Conclusions

**Final versions of seminar papers will get uploaded sometime around this time. The “final exam” time for this course is Saturday, May 7 at 8:00 – 10:00 a.m., and that is the latest I should see it, but of course you may do so at any earlier point.**