

The Origins of Constitutions

HITO 174

Winter 2006

Syllabus

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Class Hours: Wed. 3-6
HSS 6008
Office Hour: Wed. 11-12 & by
appointment

The Subject of the Course

It is a commonplace among historians of the U.S. Constitution that its fundamental ideas came principally from seventeenth-century writers whose works influenced the founding fathers. Thomas Hobbes, John Locke, Hugo Grotius, Samuel Pufendorf, and others enunciated the ideas embodied in the Constitution. Meanwhile, the Declaration of the Rights of Man and Citizen of 1789, the first document of the French Revolution, could be traced to the Enlightenment *philosophes* of the eighteenth century, while the ideas and institutions established in the French Constitution of 1791 came from both those thinkers and the U.S. Constitution. It is perhaps true that the founding fathers and the French revolutionaries of 1789 took their ideas from these sources, but where did the seventeenth- and eighteenth-century thinkers get their ideas? And, where did the actual institutions set up in these constitutions come from? This course aims to find out.

We will look principally at the history of the ideas and institutions of government as they developed from the twelfth to the seventeenth centuries. We'll find that the ideas of limited political authority, a government of law rather than men, and inalienable rights originated in the commentaries and treatises of medieval European lawyers. We'll see that the institutions of constitutional government—representative assemblies, an independent judiciary, and the balance of power between the executive and legislative institutions—developed in the same period. We will consider the works of writers from across Europe, but we'll focus on England, where European ideas of government were best and most durably realized.

We'll start by reading the eighteenth-century constitutions that, by their very existence, raise the questions the course seeks to answer. Constitutional government can be said to have originated in those documents, though the components of the system had existed for centuries. After we read the constitutions, we'll consider the fundamental ideas of government that form the roots of European and American political organization. These ideas are best studied through texts from the Bible, the Germanic tradition, Roman law, and medieval theology. After that, we'll get to work on the specific ideas and institutions that ended up as part of the eighteenth-century constitutions.

The Method of the Course

As a colloquium this course is a collaborative enterprise. We will spend class sessions discussing the assigned readings. We will also have a debate between certain members of the class in every seminar. I have created a textbook with texts and explanations that attempt to put the texts in their historical context. Each chapter corresponds to a class period. You must come prepared to discuss the texts in the chapter for the day. You will find that the reading for each class is relatively brief, but you will have to read it carefully and critically. Reading critically means questioning the text. What does it say? What does it not say? Who wrote it and why? How many ways might it be read? What inferences can be drawn from the text? What consequences for politics, society, or the individual flow from the text? The discussion of questions such as these will be the principal activity of every class. The debates will help us focus on the core questions.

All of the readings for the course—i.e. for class discussions and exams—are in the Reader, and I've tried to explain the background of the texts, so that you know what you are reading. You can find more information in a variety of sources. Here are some suggestions:

Robert Hoyt and Stanley Chodorow, *Europe in the Middle Ages*, 3rd edn. (New York, Harcourt Brace Jovanovich 1976)

Eugene F. Rice Jr. and Anthony Grafton, *The Foundations of Early Modern Europe, 1460-1559*, 2nd edn. (New York, W.W. Norton 1994).

Richard S. Dunn, *The Age of Religious Wars, 1559-1689* (New York, W.W. Norton 1970).

Leonard Krieger, *Kings and Philosophers, 1689-1789* (New York, W.W. Norton 1970).

Isser Woloch, *Eighteenth-Century Europe, Tradition and Progress, 1715-1789* (New York, W.W. Norton 1970).

Frank Stenton, *Anglo-Saxon England c. 550-1087*, 2nd edn. (Oxford, Oxford UP 1947).

Austin L. Poole, *From Domesday Book to Magna Carta 1087-1216*, 2nd edn. (Oxford, Oxford UP 1955).

Frederick Maurice Powicke, *The Thirteenth Century 1216-1307*, 2nd edn. (Oxford, Oxford UP 1962).

May McKisack, *The Fourteenth Century 1307-99* (Oxford, Oxford UP 1959).

E.F. Jacob, *The Fifteenth Century 1399-1485* (Oxford, Oxford UP 1961).

J.D. Mackie, *The Earlier Tudors 1485-1558* (Oxford, Oxford UP 1966).

J.B. Black, *The Reign of Elizabeth 1558-1603*, 2nd edn. (Oxford, Oxford UP 1959).

Godfrey Davies, *The Early Stuarts 1603-1660*, 2nd edn. (Oxford, Oxford UP 1959).

There are many other works you can consult, and I will hand out a bibliography to help you. You should also use the dictionaries and encyclopedias in the reference collection of the library. The librarians can help you find the right sources.

Communications

The best way to communicate with me is by email rather than telephone. I will be in my office during my office hour, but I'm not often there during other times. My office phone does not have a message service. I will try to answer email quickly—though not instantaneously. If you drop me a note at 2AM, don't expect an answer until the next morning.

Office Hour: I have set up an official office hour, Wednesday, 11-12. I'll be happy to make an appointment to see you at another time during the week, especially Wednesday between 1 and 3. Set up an appointment by email.

Occasionally, I will communicate with the class to make an announcement or inform you of something you should know. I will use email for those communications.

Course Etiquette

There are no special rules for debate and discussion in class. We will be critical of one another's ideas. Don't take criticism personally. No one has a good idea every time. Being criticized in class discussion has nothing to do with your grade. The class will work best if we go after one another's ideas and ways of expressing ideas.

Because the course is a discussion course, it is important that everyone be in class. If you cannot make it, please email me ahead of time.

Grading

I will base your course grade principally on a research paper of 10-15 pages. I will also assess your participation in class and use that assessment as a fudge-factor in giving you a final grade for the course. By its nature assessing your class performance is an inexact science. I am not going to count your comments or try to grade each one. I am going to get to know you in class and make a judgment about your preparation and ability to

contribute to the class discussion. The fudge-factor will play a role in grading only when the grade on the paper is on the margin (C+/B- or B+/A-). However, if you miss a significant number of classes, I may consider that you have not really taken the course. The course is a group project. It requires participation of the whole group.

Paper

Choose a topic, formulate a question, and answer the question. That is the basic process for writing a research topic. Writing a good paper is not a magic trick and does not require inspiration or an epiphany. If you come up with a good question, the task is just to do the work necessary to construct an argument based on evidence that answers the question. You may find a topic in one of the chapters in the Reader, though you will read a good deal of material beyond what is in the textbook. The chapters skim the surface of the historical and legal issues they raise or illuminate.

The paper assignment will be more highly structured than is normal in upper-division courses. I have done it this way because I want to insure that you have a firm grasp on the method of writing a research paper and to give you the best chance to write a good paper. I will work with each of you as you develop your papers, especially in the initial stages when you are choosing a topic and formulating a question.

Here are the rules for the paper:

1. Research question: Due by email in by the end of Week 3 (1/27). You will need to get my approval of the question. A good research question is one that could be answered in more than one way. The formulation of a good question is the key both to writing a good paper and to making the task easy for you.
2. Prospectus: Due by email by the end of Week 6 (2/17). A prospectus is a short summary (1-2 pages) that says what the paper is about, what the question is, what the possible answers to the question could be, what arguments could be made for those answers, and what evidence the writer proposes to use to show that one of the possible answers is the best one. Think of the prospectus as an attempt to persuade me to give you a grant to write the paper. Persuade me that you are on to something interesting and important and that you will be able to carry out the work.
3. Draft: Due in class in Week 9 (3/8). You must hand in **three copies** of a draft. I will form peer review groups to read the drafts. I will not grade the drafts, but I will read them to see if you have fallen into an abyss and need rescue.
4. Final Paper: Due in class in Week 10 (3/15). **Late papers will be marked down one-third grade per day.**

The paper should be 10-15 pages in length and should be properly footnoted. It should include a bibliography of works cited. Use the *Chicago Manual of Style* as your guide to the style of the footnotes, citations, and bibliography.

Schedule of Topics and Readings

1/11: Introduction: On Constitutions and Reading Texts

1/18: Eighteenth-Century Constitutions and their Philosophical Background

Debate: Constitutions are the product of philosophy vs. Constitutions are a product of fundamental ideas of leadership

Reading: Reader, ch. 1-2

1/25: NO CLASS. Chodorow out of town. [**Research Question Due by end of week**]

2/1: Political Authority or Political Authorities

Debate: Political authority is necessarily unified and secular vs. Multiple political authority is necessary for constitutionalism

Reading: Reader, ch. 3

2/8: Theorizing Authority

Debate: The prince makes and law and is necessarily above it vs. The prince makes the law and is necessarily subject to it

Reading: Reader, ch. 4-5

2/15: NO CLASS. Chodorow out of town. [**Prospectus Due by end of week**]

2/22: Courts and the Community of Law

Debate: Courts must be independent in a constitutional system vs. Courts are an extension of legislative authority and thus an extension of the monarchy

Reading: Reader, ch. 6

3/1: Representative Government

Debate: Assemblies are judicial bodies vs. Assemblies are legislative bodies

Reading: Reader, ch. 7

3/8: Rights [**Draft Due**]

Debate: A theory of individual rights is necessary for a constitutional system vs. A theory of rights is merely an appendix to a constitutional system

Reading: Reader, ch. 8

3/15: Federalism [**Paper Due**]

Debate: Federalism is a necessary component of constitutional government vs. Federalism is a peculiarity of American constitutionalism

Reading: Reader, ch. 9