

Fall 2004

Instructors: Jon Elster and Pasquale Pasquino

Constitutions

This seminar will focus on the role of constitutions in political life and in the legal order. It will address conceptual, historical, and causal issues. Conceptually, there is a need to distinguish constitutions from other laws, and to explore the relation between written and unwritten constitutions. Historically, we shall trace the evolution of quasi-constitutional systems in Antiquity to the modern paradigms. Causally, we shall discuss the upstream origins of constitutions (the constitution-making process) as well as their downstream consequences.

Students who want to take the course for a quality grade must write a 15 page paper (4000 words) on some topic approved by the Instructors. Students who want to take the course for an R may do so with the approval of the Instructors.

The class shall meet in alternate weeks at Columbia University (Room 717, International Affairs Building) and at New York University (Room 747 Politics department: 726, Broadway). Classes at Columbia meet on Mondays from 2.10 to 4. Classes at NYU meet on Mondays from 3.10 to 5. The first class, on September 13, will meet at Columbia.

Syllabus and readings

Week 1: Introduction

Week 2: Constitutions vs. laws: hierarchy of norms, constituent power and legislator.

Readings: Kelsen (pp. 123-162); Michelman; Eskridge and Ferejohn.

Week 3: Written vs. unwritten constitutions (conventions).

Readings: Dicey; Bryce; Heard; Palmer

Week 4: Why constitutions? Do they matter?

Readings: ??

Week 5. Constitution in Athens and Rome.

Readings: Aristotle, Politics, Book IV, ch. 14 – Hansen – Polybius, Histories, Book vi– Lintott (pp. 16-27; 214-232)

Week 6: The Ancient English Constitution.

Readings: De Lolme; Vile Ch.5.

Week 7: The American Constitutions.

Readings: Hoar; Storing; Vile Ch.6

Week 8 : The American Constitutions (continued).

Readings: Jensen; Elster (1); Eskridge and Levinson.

Week 9: The French Revolution.

Readings: Tackett; Crook; Elster (1)

Week 10: The French Revolution (continued)

Readings: Vile Ch.7;

Week 11: Aspects of later constitutional history.

Readings: Hucko (minus pp.119-46); Elster (2).

Week 12: Constitutions as precommitment devices.

Readings: Holmes; Elster (3).

Week 13: The constitution-making process

Readings: Heckathorn and Maser; Elster (4)

Week 14: Constitutional adjudication

Readings: Ferejohn-Pasquino

Bibliography

(Starred items will be distributed by e-mail.)

Aristotle, The Politics, ed. by E. Barker, Oxford: Oxford University Press, 1995

James Bryce, “Flexible and rigid constitutions”, in James Bryce, Constitutions, New York and London 1905.

Malcolm Crook, Elections in the French Revolution, Cambridge University Press 1996, Ch.2.

A. V. Dicey, Introduction to the Study of the Law of the Constitution, Part III.

Jon Elster (1), “Arguing and bargaining in two constituent assemblies”, http://www.law.upenn.edu/journals/conlaw/issues/vol.2/num2/elster/elster_tf.html

Jon Elster (2), “Rebuilding the boat in the open sea: Constitution-making in Eastern Europe”, Public Administration 71 (1993), 169-217.

Jon Elster (3), “Don’t burn your bridge before you come to it: Ambiguities and complexities of precommitment”, University of Texas Law Review 81 (2003), 1751-88.

Jon Elster (4), “Forces and mechanisms in the constitution-making process”, Duke Law Review 45 (1995), 364-96.

William Eskridge and John Ferejohn, “Super-statutes: the New American constitutionalism” *

William Eskridge and Sanford Levinson, Constitutional Stupidities, Constitutional Tragedies, New York University Press 1998.

John Ferejohn and Pasquale Pasquino, “Constitutional Adjudication: Lessons from Europe”, University of Texas Law Review (forthcoming) *

Andrew Heard, Canadian Constitutional Conventions, Toronto: Oxford University Press 1991.

Douglas Heckathorn and Steven Maser, “Bargaining and constitutional contracts”, American Journal of Political Science 31 (1987), 142-68.

Mogens H. Hansen, “Aristotle’s Alternative to the Sixfold Model of Constitutions” (offprint)

Roger Hoar, Constitutional Conventions,
<http://www.constitution.org/rsh/concon00.htm>

Stephen Holmes, “Precommitment and the paradox of democracy”, in J. Elster and R. Slagstad (eds.), Constitutionalism and Democracy, Cambridge University Press 1988, pp.195-240.

Elmer Hucko. The Democratic Tradition: Four German Constitutions, Oxford: Berg 1987

Merrill Jensen, The Making of the American Constitution, Malabar, FL: Krieger 1958.

Hans Kelsen, General Theory of Law and State, New York, Russell and Russell, 1961

Andrew Lintott, The Constitution of the Roman Republic, Oxford University Press, 1999

J. L. de Lolme, The Constitution of England, London 1807 (reprint Arno Press 1979), Book I, Chs.I-VIII.

Frank Michelman, “What do constitutions do that statutes don’t?” *

Matthew Palmer, “Legislative constitutionalism ascendant? Who interprets an unwritten constitution in New Zealand?” *

Polybius, The Rise of the Roman Empire (Histories), trans. by I. Scott-Kilvert, Penguin Books, 1979

Herbert Storing, The Complete Anti-Federalist, University of Chicago Press, vol. 1.

Timothy Tackett, Becoming a Revolutionary, Princeton University Press 1996, Part II.

M. J. C. Vile, Constitutionalism and the Separation of Powers, Indianapolis: Liberty Fund 1998.