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.

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.)


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


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


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

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


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

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

