

Constitutions

Lesson 1

My case for this class

- Fundamental political act at center of politics and political science since Solon, Plato
- One of few aspects of politics that we can consciously change
- Constitutional forms have large effects on politics
- Practical skill - how to write a constitution
- Great time to be thinking about these issues - many new constitutions, lots of research

What is a constitution?

Set of rules or norms creating, structuring, and defining limits of government power

Also: basic structure of government, higher law, rules of game

Do all states have a constitution?

- Constitutionalism is limited government
- Is there unlimited government?
 - Absolute monarch
 - Athenian democracy
 - Magna Carta
 - Current states without a written constitution

Must constitution have these features?

- Entrenched = hard to change
 - Can it impose limits if easy to change?
- Written
 - Some states with unwritten constitution, why?
 - Precision and openness to interpretation
 - Why not just “parchment barriers”?
- Separation of powers
 - What if one body makes laws, executes & interprets?

What are main elements of constitution?

- Structures
- Powers
- Mechanisms
- Rights - who do they apply to?
- Other?

What should be left out?

- Things government should do?
 - What does this include?
- Positive rights?
- Duties?
- Secession clauses?

What values should constitution embody?

- Prevent civil war, maintain order
- Avoid tyranny
- Protect fundamental rights
- Democratic fairness
- Encourage consensus
- Create effective government
- Ensure prosperity
- Express society's values
- Encourage deliberation

Is there a conflict between constitutionalism and democracy?

- Constitution removes decisions from democratic decision making
- Jefferson: new constitution every 20 years
 - Future generations are bound without their consent
 - Progress requires frequent change
 - Transformative act of making constitution

Is constitutionalism necessary for democracy?

- Sometimes good to be bound (Ulysses)
- Constitution creates power
- Power to speak and protest sufficient
- Power to amend (how easy? alternatives?)
- Better to solve problems in pieces
- Constitution creates general will
- Public is myopic
- Dangers of constitution making

What are some design principles?

- Should constitution be brief, limited?
- What is case for a longer constitution?
- Should constitution be written in public or private? Who should ratify?
- What should we assume about human nature?
- How universal are institutional designs?
- Can we advise other countries?
- Are there any lessons from history?

Constitutions and cultures

- Pro-cultural constitution
 - Constitution should resonate with culture
 - Produces support and consensus
- Counter-cultural constitution
 - But reason for writing a new constitution is to fix problems
 - American prohibition on quartering soldiers because dislike that element of British rule

How should we act towards constitution?

- Should ordinary people know text?
- Should we teach respect/veneration?
- How to be critical?