POL 192b: Constitutional Theory and Design

Fall 2015
Room: tbd
W 2:00 – 4:50PM

Professor Jeffrey A. Lenowitz
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Olin-Sang 206
Office Hours: tbd

Course Description:

We often hear about constitutions. Schoolchildren are frequently taught to revere both their constitution and its authors. Politicians regularly criticize each other for violating them. Conventions and assemblies around the world are currently trying to make new constitutions. Citizens take to the streets to demand constitutional revision and replacement. And, recently, Google decided to launch a digital archive of them. But, what exactly is a constitution? Why should it matter if they are violated? Is there anything really special about those who create them? What purpose do constitutions serve? How are they different or more sacred than ordinary law?

This course, which lies at the intersection of political theory, law, comparative politics, and institutional design, focuses on such questions. Specifically, the course divides into three parts. First, we will look at the theory and functions of constitutions. Second, we will examine the diverse array of procedures used to create new constitution, investigate whether these procedures matter, and take a look at a few cases of constitution-making. Third and finally, we will investigate the revision, enforcement, and interpretation of constitutions once they come into effect. This means looking at both amendment procedures and the nature and function of judicial review.

Prerequisites:

This seminar is designed for advanced undergraduates and graduate students. The readings are challenging and numerous, the subject matter complex, and students will engage with ideas and arguments drawn from the history of political thought, political philosophy, constitutional law, American politics, rational choice theory, comparative constitutionalism, and contemporary political theory. As such, students should have a foundation in political theory, political science, or constitutional law, meaning that they have taken two courses in these areas. Students who do not have this base but still wish to take the course may email me and we can discuss the possibility of an exception.

Requirements and Grading:

Students are expected to complete all assigned readings in accordance with the class schedule and to be prepared to discuss them in depth. This course combines lectures with
vigorous discussion, neither of which will be useful unless all material is read ahead of time. Attendance is mandatory unless accompanied by a legitimate explanation.

Undergraduate Students:

- Seminar Participation, 15%
- Final Exam, 30%
- In-class Presentation, 20%
- 2 Short papers (1250 -1500 words), 35%
  o First Paper due at noon, Friday, October 16.
  o Second Paper due at noon, Friday, December 4.

Graduate Students:

- Seminar Participation, 30%
- Term paper (20-25 pages), 70%

**Please note that if you are a student with a documented disability on record at Brandeis University and wish to have a reasonable accommodation made for you in this class, please see me immediately.

**Academic Integrity:**

All students are expected to be familiar with and to follow the University’s policies on academic integrity (see [http://www.brandeis.edu/studentlife/sdc/ai](http://www.brandeis.edu/studentlife/sdc/ai)). Faculty may refer any suspected instances of alleged dishonesty to the Office of Student Development and Conduct. Instances of academic dishonesty may result in sanctions including but not limited to, failing grades being issued, educational programs, and other consequences.

**Technology Policy:**

Keep all phones and computers away for the duration of the class. Computers can, however, be used to assist in class presentations.

**Late Assignment Policy:**

Late assignments will be downgraded a half letter grade per day, including weekends. For example, a B paper due on Friday but handed in on Monday will receive a C. Papers submitted more than four days after the due date will not be accepted.
Class Schedule:

Part 1: The Theory and Purpose of Constitutions

Session 1: Introduction (September 2)


Session 2: What is and Why a Constitution? (September 9)

- Dieter Grimm. “Types of Constitutions.”


Session 3: Is it a Precommitment Device? (September 16)


Session 4: Is it an Equilibrium point? (September 30)


Part II: Constitution-making

Session 5: Who Can Make a Constitution? (October 7)


**Session 6: How to Make a Constitution I (October 14)**


**Session 7: How to Make a Constitution II (October 21)**


- **First Paper Due – In Class**

**Session 8: Constitution-Making in South Africa (October 28)**


**Session 9: Constitution-Making in America (November 4)**

- Ackerman. We the People: Transformations. P. 32-68

**Part 3: Amending, Enforcing, and Interpreting Constitutions**

**Session 10: Changing and Amending Constitutions I (November 11)**


**Session 11: Changing and Amending Constitutions II (November 18)**


**Session 12: Interpretation and Judicial Review I (December 2)**


**Session 13: Interpretation and Judicial Review II (December 9)**
