

University of Montana

## ScholarWorks at University of Montana

---

Syllabi

Course Syllabi

---

Fall 9-1-2014

### PSCI 354.01: Contemporary Issues in Political Theory

Patrick Peel

University of Montana - Missoula, [patrick.peel@umontana.edu](mailto:patrick.peel@umontana.edu)

Follow this and additional works at: <https://scholarworks.umt.edu/syllabi>

**Let us know how access to this document benefits you.**

---

#### Recommended Citation

Peel, Patrick, "PSCI 354.01: Contemporary Issues in Political Theory" (2014). *Syllabi*. 5836.

<https://scholarworks.umt.edu/syllabi/5836>

This Syllabus is brought to you for free and open access by the Course Syllabi at ScholarWorks at University of Montana. It has been accepted for inclusion in Syllabi by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact [scholarworks@mso.umt.edu](mailto:scholarworks@mso.umt.edu).

**University of Montana**  
**Department of Political Science**

**PSCI 354**  
**Contemporary Issues in Political Theory:**  
**Constitutionalism**  
**Autumn 2014**

Patrick Peel  
Office: LA 147  
patrick.peel@umontana.edu  
Office Hours: 11-12 pm M, W; by appointment

M, W, F 10:10-11 am  
Classroom: LA 337

This course will examine the nature of constitutionalism, including its role in political life and in the legal order. We will be looking at our subject from a normative and conceptual point of view, but we will also be addressing historical and causal issues. Further, our inquiry will lead us to consider the major competing political theories, as they supply the aims and principles that support constitutional regimes. The course will begin by briefly tracing the evolution of the constitutional systems of the classical and early modern world to modern paradigms. From there, we will seek to understand the difference between constitutions and other laws, to explore the relationship between written and unwritten constitutions, and investigate the problems associated with constitutional design, along with the impact of constitutional regimes on societal stability, diversity, and democratic legitimacy. Finally, the course concludes by investigating whether constitutionalism, despite its near universal acceptance, can respond meaningfully to the challenges of 21<sup>st</sup> century political life. While this course draws heavily on the American experience with constitutionalism, we will also look to the experience of other countries to flesh out our conceptual, historical, and causal investigations.

The course is designed to help you develop the following skills:

- Learn to read sources for content and argument
- Learn to think holistically – i.e. strengthen the capacity to synthesize and interpret large amounts of information, so as to “see” various connections and thus the implications of the material under consideration
- Develop the capacity to write effective “argumentative essays” through in class and out of class writing assignments – i.e. strengthen your capacity to put forth reasons for your claims, and through the process of “giving good reasons” figure out what you believe and think
- Learn to distinguish between “noise” and “signals.” That is, strengthen the capacity to discover what ends and purposes you think are truly relevant and distinguish them from those that are not
- Strengthen the ability to engage in constructive critical public argument through class participation and discussion

**Readings**

There is, unfortunately, no edited volume of essays that will allow us to address the range of issues this course seeks to investigate. Thus, much of the course’s readings will be available online. However, we will be using three books for the course, and those books may be purchased at the University Bookstore. In addition, Anthony Weston’s *A Rulebook for Arguments*, while

not required, is highly recommended as a reference for how to write college level argumentative essays – it may also be found at the University Bookstore. In addition, while this is not a course in “comparative constitutional law,” students may find helpful two books, *The Oxford Handbook of Comparative Constitutional Law*, eds., Michael Rosenfeld and András Sajó (2012) and Mark Tushnet, Thomas Fleiner and Cheryl Saunders, *Routledge Handbook on Constitutional Law* (2013), both of which are on reserve at the library. I have also placed on reserve Robert L. Maddex, ed. *Constitutions of the World* (2008), as a reference to be used for in class presentations.

**Required Reading:**

1. Bruce Ackerman, *We the People: Foundations* (Harvard: 1991)
2. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: 2007)
3. Zachary Elkins, Tom Ginsburg, and James Melton, *The Endurance of National Constitutions* (Cambridge: 2009)

**Recommended Texts:**

4. Anthony Weston, *A Rule Book for Arguments* (Hackett: 2008)

**Procedures and Requirements**

Grading and Assignments:

This course has 6 requirements, which include the following:

1. Faithful attendance to class and active participation during the discussions (25% of the final grade; see “Participation” below)
2. Presentation (10%; see “Presentation” below)
3. First Essay: 5-6 page paper (**Sept. 26:** 15%; see “Essay” below)
4. Midterm: 50 minute in class examination (**Oct. 17:** 15%; see “In Class Writing Assignments” below)
5. Second Essay: 5-6 page paper (**Nov. 7:** 15%; see “Essay” below)
6. Final Exam: (**Dec. 12:** 20%; see “in Class Writing Assignments” below)

***In order to pass the class, you must complete all of the assignments.***

Participation:

This will be a discussion class. *Attendance and participation are thus required.* The course’s participation grade is weighted accordingly at 25%.

Each class, members of the course will be required to start our discussion by responding to one or more of the prep questions for the day. After the completion of these responses, we will open the floor to the rest of the class so that we can hear people’s agreements and disagreements with the ideas and arguments advanced by members of the course.

Students are required to sign up to begin discussion 3 times during the term (and thus required to submit 3 written paragraphs during the term; see below). Once a student signs up, they are committed to starting discussion on that day; *these cannot be rescheduled do to the difficulty that would result in coordinating everyone's responsibilities for the course.*

On the day you are scheduled to begin discussion, please also turn in one paragraph responding to the question you have chosen.

More generally, each participant in the class is required to come to class with that day's readings completed, and carefully thought about, with questions to ask and ideas and thoughts to share. That is to say, in class it is your job to put your ideas forward for your classmates to endorse, challenge, and transform. *This is an obligation of every class participant, regardless of whether you have signed up to begin discussion or not.*

Your regular, thoughtful participation will be critical to determining the success of our course together, and the grade you receive in it. **Put otherwise: If a student does not participate substantially, he or she will fail the course.**

Classroom Policy:

Because this is a discussion class, except on the days that we work with the Constitute webpage, electronic devices – cell phones and computers – are not permitted in the course. The success of this course depends on the development of a constructive dialogue among its participants. There is simply no way that can happen if people are focused on their computer screens, rather than the human beings they are talking with.

Presentation:

One of the best ways to study political theory is to work back and forth between empirical realities and theoretically rich concepts, altering one's concepts in the light of empirical observations, and interpreting the empirical world in the context of one's theoretical commitments. Thus, the theoretical investigation of constitutionalism is advanced through the study of actual constitutional practice. To that end, we will make use of a new database of the world's constitutions, Constitute: <https://www.constituteproject.org/> The source data for that site comes from The Comparative Constitutions Project, and you may also wish to consult that page for more information: <http://comparativeconstitutionsproject.org/> Furthermore, that database forms the foundation for Elkins et al, *The Endurance of National Constitutions*, which we will be reading.

During the term, you will be asked to sign-up with one of your colleagues to present research using that database and other online and scholarly sources, including Maddex's *Constitutions of the World* and Elkins et al, *The Endurance of National Constitutions*.

*Your joint presentation should last approximately 15 minutes; each individual should print out and distribute to the class an outline of their remarks.*

*Further, by Wednesday on the week you are presenting, each person is required to email the class 1 newspaper article or scholarly paper touching on the constitutional issue for the region or country you are concerned with.*

*Finally, the presentation is required to address the substantive and/or theoretical issue we have been concerned with that week, and which is listed in the heading for the day of the presentation.*

*Whether the group presentation focuses on a single country or a geographical region is up to each group to decide for themselves.*

Whether regional or country specific, the aim of the project and presentation is to use theoretical concepts we have introduced in the course to better understand constitutional practice around the world. Further, my hope is that members of the group will share information with each other, enriching both their own and our classes' understanding of the subject they are investigating. *Put simply: Explore the world, learn something, and share it with your team member and class!*

*In Class Writing Assignments:*

The course requires two in class written examinations.

- The mid-term examination will take place on Oct 17. It will last 50 minutes and cover the material from the course thus far. The test requires you to write an essay on some given topic or theme from the course, which will be presented to you at the time of the exam. The test will be open-book, and is designed to help you learn to master the bluebook format. (For strategies on how to succeed when it comes to in class examinations, please see on my write-up on Moodle, "Getting A's on Bluebooks.") The test is worth 15% of your grade.
- The final examination also will be open-book, and will follow a similar format. It will take place on Dec. 12 from 8 to 10 am. It is worth 20% of your grade.

*One of the aims of this course is to help you learn to write effective "argumentative essays" and to develop the capacity to engage in constructive thoughtful public performances. The purpose of both these assignments is to help develop that skill.*

*Essays:*

The course requires 2 out of class writing assignments.

- Your first paper is due Sept. 26 and is to be between 5 to 6 pages long. That essay should be "an argumentative essay."

Prior to the first paper's due date you will sign up to meet with me to discuss the topic of your paper and how you generally intend to proceed. These meetings will take place during my office hours and the Monday and Wednesday during our regular class time prior to Sept. 26.

First Paper Project: With the help of Constitute, the Comparative Constitutions Project, Maddex's Constitutions of the World, *The Oxford Handbook of Comparative Constitutional Law*, and Elkins et al, *The Endurance of National Constitutions*, investigate a geographical region (say Eastern Europe, Africa, or the Middle East), a specific country, or a specific set of constitutional provisions. Your paper should include the following:

1. A brief (less than one page) write up on the origin and related historical background of the constitution(s) you are investigating. That write up should be single spaced, and be attached to the body of your paper. *It does not count toward the 5 to 6 page paper requirement.*
2. Your paper (5 to 6 pages) should seek to analyze the constitution,

constitutions, or provisions you are studying from the point of view of at least one or more of the following concepts we have introduced in the course thus far: flexible vs. rigid, constitutions vs. laws, aspects of “modern constitutionalism,” political constitutionalism, and/or legal constitutionalism.

That is, the paper is not simply to be a book report about some constitutional provision or the other – rather, you should use the theoretical concepts we have been studying to “read/interpret” and “analyze” the texts you are studying. As such it requires that you first explicate the concept in which you are interested, and then use that concept to interpret the constitution(s) of concern to you.

- Your second paper is due Nov. 7 and is to be between 5 to 6 pages long. That essay should be “an argumentative essay.”

Second Paper Project: Please choose between one of three topics:

1. Critically analyze the human capabilities, republican, or liberal approach to constitutionalism. You may either do a “deep dive” into one of these philosophical approaches, or you may compare and contrast two of the approaches.
2. In what way do Holmes and Waldron agree or disagree about the nature of constitutional precommitments?
3. Critically and sophisticatedly analyze the case for and/or against judicial review.

As “argumentative essays,” both your essays for this course are an opportunity for you to put forth some novel point of view about the material and your reasons for thinking you are right about the material – so again, stay away from writing a book report. Rather, what we want are claims, supported by good reasons, and solid argument.

Two books that are particularly helpful for learning how to write college level argumentative essays are: Anthony Weston, *A Rule Book for Arguments* and William Strunk Jr. and E.B. White, *The Elements of Style*. Consulting these books should give you a sense of what constitutes strong college level writing.

#### Sources for Papers:

First Essay: Your first paper project may use Internet sources, but should also make use of the *Oxford Handbook of Comparative Constitutional Law*, *The Endurance of National Constitutions*, *Constitute* and or The Comparative Constitutions Project website. If you use internet sources, please make sure to cite them properly, so that your reader can easily locate them.

Second Essay: This essay should be written using the sources from the course – that is the texts we have read. You may supplement your theoretical argument with empirical examples, if you wish. Just remember, however, that the aim of this assignment is to engage with one line of theoretical scholarship as it relates to constitutionalism.

#### Late Paper Policy:

You will note from the syllabus that we have workshops scheduled on the week your essay is due. For this reason, late papers will be marked down a grade every day they are late.

#### Writing Help:

The Writing Center is located in LA 144. To make an appointment with a writing advisor, call 406-243-2266, email growl@mso.umt.edu, or stop by LA 144.

*Academic Dishonesty:*

Students in this course are expected to follow the University's standards of academic integrity and honesty. If you are caught cheating or plagiarizing, you may receive a failing grade for the assignment and/or class and may be reported to the University. Students are responsible for understanding what constitutes plagiarism. The Code is available for review online at <http://www.umt.edu/SA/VPSA/index.cfm/page/1321>

*Writing the 400 Requirement:*

Meeting this requirement entails revising and expanding in consultation with me one of the essays from the course into a 10-12 page paper. Substantive and grammatical revisions will be expected. Students completing this requirement must include their original essay with the revised essay.

*Accessibility:*

The University of Montana assures equal access to instruction by supporting collaboration between students with disabilities, instructors, and Disability Services for Students. If you have a disability that requires an accommodation, contact me at the beginning of the semester so that proper accommodations can be provided. Please contact Disability Services for Students if you have questions, or call Disability Services for Students (DSS) for voice/text at 406-243-2243. You may also fax the Lommasson Center 154 for more information at 406-243-5330.

**Course Topics and Readings:**

*Reading assignments are to be completed before the class meeting for which they are listed. Bring to class the assigned books, print-outs of online assignments, and/or your reading notes, and this syllabus.*

**Week One: Introduction, Classical and Early Modern Constitutionalism**

**1. Mon., Aug. 25: Introduction: Why Study Constitutionalism?**

***\*The Square, Trailer***

***\*The Connection of Constitutionalism, Democratization, and Economic Development?***

Video: Stanley Katz (Princeton University), Gun Barrel Democracy:  
Democratic Constitutionalism after Occupation (2012)

***\*The American Constitution in Need of Reform?***

\*Jeffrey Toobin, "Our Broken Constitution," *The New Yorker*, Dec. 9, 2013

***\*International Constitutional Norms?***

\*Audio: Tom Ginsburg, "An International Court for Constitutional Law," University of Chicago (2013): <http://www.law.uchicago.edu/audio/ginsburg050813>

***\*Drafting Constitutions: Constitute***

\* The Economist, "Drafting Constitutions: Countries Change Their Constitutions Often. There's an App for that" (2013)

<https://www.constituteproject.org/#/>

**2. Wed., Aug. 27: The Classical World**

\**Please read through the course syllabus and come prepared to discuss it*

\*Polybius (c 200 – 118 BC), *The Rise of the Roman Empire*, Book VI

**3. Fri., Aug. 29: Enlightenment Constitutionalism**

\*Baron de Montesquieu, “On the Laws that Form Political Liberty in its Relation with the Constitution,” *The Spirit of the Laws* (1748)

\*Thomas Paine, “Of Constitutions,” *The Rights of Man* (1792)

\*Immanuel Kant, *The Idea for a Universal History with a Cosmopolitan Intend* (1785)

**Recommended:**

\* Video: Gordon Wood, American Constitutionalism (2009)

<http://www.youtube.com/watch?v=BMPVb66m4go>

**Week Two: Modern Constitutionalism**

**1. Mon., Sept. 1: No Class Labor Day**

**2. Wed., Sept. 3: Flexible and Rigid Constitutions**

\*James Bryce, “Flexible and Rigid Constitutions,” *Studies in History and Jurisprudence* (1901), pp. 124-36, 139-52, 158-64, 167-74, 184-98

**3. Fri., Sept. 5: Constitutions vs. Laws**

\*Hans Kelsen, *General Theory of Law and State* (Harvard: 1945), pp. 110-36

**Week Three: Modern Constitutionalism and the Political Constitution**

**1. Mon., Sept. 8: Modern Constitutionalism, The Basics**

\*Charles McIlwain, “Some Modern Definitions of Constitutionalism,” *Constitutionalism: Ancient and Modern* (1940)

\*Leslie Green, “A Democratic Constitution: The Basics” [Talk Delivered at University College London] (2012)

**Recommended:**

\*Keith E. Whittington, “Constitutionalism,” *Oxford Handbook of Law and Politics* (2010)

**2. Wed., Sept 10: Political Constitutionalism**

\*Edward S. Corwin “The Constitution as an Instrument and as Symbol” *The American Political Science Review* (1936)

\*Akhil Reed Amar, “America’s Symbolic Constitution,” *America’s Unwritten Constitution* (2012)

**Recommended:**

\*Gordon Wood, “No Thanks for the Memories,” *The New York Review of Books* (2011)

**3. Fri. Sept. 12: Constitute: The Political, Symbolic, and Heritage Constitutions**

\*Robert Maddex, “Introduction,” *Constitutions of the World*, pp. ix-xvi

\*Ibid., “Constitutions at a Glance,” *Constitutions of the World*, pp. xvii-xxiv

\*Zachary Elkins, et al., *The Endurance of National Constitutions*, ch. 1-2, pp. 1-35

## **Week Four: The Legal Constitution and Classical Liberalism**

### **1. Mon., Sept. 15: Legal Constraints**

- \*Charles McIlwain, "Modern Constitutionalism and Its Problems," *Constitutionalism: Ancient and Modern* (1940)
- \*Marbury v. Madison

#### **Recommended:**

- \*Edward S. Corwin, "The 'Higher Law' Background of American Constitutional Law," *Harvard Law Review* (1928)

### **2. Wed., Sept 17: Classical Liberalism, Liberties, and a Free Civilization**

- \*Friedrich Hayek, *The Constitution of Liberty*, ch. 1 and 2, pp. 11-38

#### **Recommended:**

- \*The Life and Thought of Friedrich Hayek  
[http://www.youtube.com/watch?v=gU8rQnKN\\_uo](http://www.youtube.com/watch?v=gU8rQnKN_uo)

### **3. Fri., Sept. 19: Freedom and the Law**

- \*Friedrich Hayek, *The Constitution of Liberty*, ch. 9, 10, 11, pp. 133-176

#### **Recommended:**

- \*Richard Epstein, *The Classical Liberal Constitution: The Uncertain Quest for Limited Government* (2014), pp. ix-44
- \*Video: Forum at the Cato Institute on *The Classical Liberal Constitution* (2014)  
<http://www.cato.org/events/classical-liberal-constitution-uncertain-quest-limited-government>
- \*Cass Sunstein, "The Man Who Made Libertarians Wrong About the Constitution," *New Republic*, May 18 2014

## **Week Five: FIRST SHORT PAPER DUE (5-6 PAGES)**

### **1. Mon., Sept. 22: Meetings**

### **2. Wed., Sept. 24: Meetings**

### **3. Fri., Sept. 26: Paper Due**

## **Week Six: The Legal Constitution, Egalitarianism, and Rights**

### **1. Mon., Sept. 29: Liberalism, *Redux***

- \*Thomas Nagel, "Rawls and Liberalism," *The Cambridge Companion to Rawls*
- \*Ronald Dworkin, "Liberalism," *Public and Private Morality*, ed. Stuart Hampshire

#### **Recommended:**

- \*The Case for Liberalism: An Exchange, Michael Sandel, reply by Thomas Nagel, *New York Review of Books* (2006)
- \*Joshua Cohen, comment from "Liberals and Libertarians: Kissing Cousins or Distant Relatives?" event sponsored by Stanford University's Program in Ethics in Society and Cato Institute, Jan. 2009

### **2. Wed., Oct 1: Taking Rights Seriously?**

- \*Ronald Dworkin, *Taking Rights Seriously* (1977), pp. vii-xv
- \*Ibid., “The Model of Rules” (1967)

**Recommended:**

- \*Ronald Dworkin, “Is There Truth in Interpretation? Law, Literature, and History,” Frederic R. and Molly S. Kellogg Lecture, Library of Congress (2009) (watch the intro, too, which includes Frederic Kellogg’s introduction of Dworkin)  
<http://www.youtube.com/watch?v=742JyiqLhuk> [M]

**3. Fri., Oct. 3: Constitute: The Legal Constitution, Negative and Positive Rights, Freedom and Equality**

- \*Zachary Elkins, et al., *The Endurance of National Constitutions*, ch. 3, pp. 36-64

**Week Seven: Human Capabilities and Republicanism**

**1. Mon., Oct. 6: Justice and Creating Capabilities**

- \*Video: Amartya Sen on Justice and Injustice (2011) (11 mins):  
<http://www.youtube.com/watch?v=IRERJY4zTM>
- \*List of Human Capabilities
- \*Video: Martha Nussbaum, “Creating Capabilities: The Human Development Approach,” University of Chicago Law School (2010) (36 mins. (without the question and answer period)): <http://www.youtube.com/watch?v=sYfFGDhbHUK>
- \*Martha Nussbaum, “Constitutions and Capabilities: ‘Perception’ against Lofty Formalism,” *Harvard Law Review* (2006), pp. 1-24

**Recommended:**

- \*Amartya Sen, “Introduction: An Approach to Justice,” *The Idea of Justice* (2009)
- \* Martha Nussbaum, “Fundamental Entitlements,” *Creating Capabilities* (2011)
- \*Martha Nussbaum, “Capabilities and Contemporary Issues,” *Creating Capabilities* (2011)

**2. Wed., Oct. 8: Constitutions and Capabilities**

- \*Video: Martha Nussbaum and Diane Wood, “Constitutions and Capabilities,” University of Chicago Law School (2009):  
<http://www.youtube.com/watch?v=RZJPDjgkHhc>
- \*Martha Nussbaum, “Constitutions and Capabilities: ‘Perception’ against Lofty Formalism,” *Harvard Law Review* (2006), pp. 24-73

**Recommended:**

- \*Explore further the conference: “Creating Capabilities: Sources and Consequences for Law and Social Policy,” University of Chicago (2010):  
<http://www.law.uchicago.edu/creatingcapabilities>

**3. Fri., Oct 10: The Republican Revival**

- \*Quentin Skinner, “A Third Concept of Liberty,” *The London Review of Books* (2002)
- \*John Finn, “The Civic Constitution,” *Constitutional Politics*

**Recommended:**

- \*Philip Pettit, *Republicanism: A Theory of Freedom and Government* (1997), pp. 17-50, 172-205

## **Week Eight: MIDTERM**

1. Mon., Oct. 13: Review

2. Wed., Oct. 15: No Class

3. Fri., Oct 17: 50 Minute In Class Midterm

## **Week Nine: Democracy and Sovereignty**

1. Mon., Oct 20: We the People

\*Bruce Ackerman *We the People: Foundations* (1991), Ch. 1-2

2. Wed., Oct 22: We the People

\*Bruce Ackerman *We the People: Foundations* (1991), Ch. 7-8

3. Fri., Oct. 24: Deliberating Democrats

\*Jürgen Habermas, "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" (2001)

\*Bruce Ackerman *We the People: Foundations* (1991), Ch. 11

## **Week Ten: Precommitments, Coordination, and Contract**

1. Mon., Oct. 27: Precommitments

\*Stephen Holmes, "Precommitment and the Paradox of Democracy," *Constitutionalism and Democracy* (1988)

\*Jeremy Waldron, "Precommitment and Disagreement," *Constitutionalism: Philosophical Foundations* (1998)

2. Wed., Oct. 29: Social Contract or Coordination?

\*Russell Hardin, "Liberalism, Constitutionalism, and Democracy," *Chinese Public Affairs Quarterly* (2005)

\*Ibid, "Constitutionalism: Contract or Coordination," *Liberalism, Constitutionalism, and Democracy* (2003)

3. Fri., Oct 31: Constitute: Precommitments and Coordination

\*Zachary Elkins, et al., *The Endurance of National Constitutions*, ch. 4, pp. 65-92

## **Week Eleven: SECOND SHORT PAPER (5-6 PAGES)**

1. Mon., Nov. 3: Workshop

2. Wed., Nov. 5: Workshop

3. Fri., Nov. 7: Paper Due

## **Week Twelve: Judicial Review and Judicial Supremacy**

1. Mon., Nov. 10: No Class

2. Wed., Nov. 12: Judicial Review and Judicial Supremacy

\**Cooper v. Aaron* [The Little Rock School Desegregation Decision] (1958)

\*Larry Alexander and Frederick Schauer, "On Extrajudicial Constitutional Interpretation," *Harvard Law Review* (1997)

**Recommended:**

- \*J.B. Thayer “The Origin and Scope of the American Doctrine of Constitutional Law,” *Harvard Law Review* (1893)
- \*Robert Dahl “Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,” *Journal of Public Law* (1957)
- \*Gordon S. Wood, “The Origins of Judicial Review,” *Suffolk University Law Review* (1988)
- \*Mary Sarah Bilder, “Idea or Practice: A Brief Historiography of Judicial Review,” *Journal of Policy History* (2008)

**3. Fri., Nov. 14: Constitute: Judicial Review & Judicial Supremacy**

- \*Zachary Elkins, et al., *The Endurance of National Constitutions*, ch. 5, pp. 93-121

**Week Thirteen: Popular Constitutionalism**

**1. Mon., Nov. 17: Departmentalism**

- \*Walter F. Murphy, “Who Shall Interpret? The Quest for an Ultimate Constitutional Interpreter” *Review of Politics* (1986)
- \*Keith E. Whittington, “The Construction of Constitutional Regimes,” *Political Foundations of Judicial Supremacy* (2009)

**2. Wed., Nov. 19: The Case Against Judicial Review**

- \*Jeremy Waldron, “The Core of the Case Against Judicial Review,” *The Yale Law Journal* (2006)

**Recommended:**

- \*Larry Kramer, “Judicial Supremacy and the End of Restraint,” *California Law Review* (2012)
- \*Corey Brettschneider, “Popular Constitutionalism and the Case for Judicial Review,” *Political Theory* (2006)
- \*Video: Conference on Popular Constitutionalism and the 2012 Election. Panel: Whose Constitution? The People, Political Movements, and the Courts: Elizabeth Price Foley and Mark Tushnet (skip the Goldstein material):  
[http://www.youtube.com/watch?v=YB\\_z2HVNGPg](http://www.youtube.com/watch?v=YB_z2HVNGPg)

**3. Fri., Nov. 21: Departmentalism and Popular Constitutionalism**

- \*Zachary Elkins, et al., *The Endurance of National Constitutions*, pp. 207-214

**Week Fourteen: Maintenance and Change**

**1. Mon., Nov. 24: Normal Politics & Higher Law-Making**

- \*Bruce Ackerman, *We the People* (1991), Ch. 9-10

**THANKSGIVING BREAK: 26<sup>TH</sup> THROUGH 28<sup>TH</sup>**

**Week Fifteen: Challenges to Modernist Constitutionalism**

**1. Mon., Dec. 1: The Politics of Recognition**

- \*Charles Taylor, “The Politics of Recognition,” *Philosophical Arguments* (1997)

**2. Wed., Dec. 3: Constitutional Recognition and the Languages of Constitutionalism**

\*James Tully, "Demands for Constitutional Recognition," *Strange Multiplicity: Constitutionalism in an Age of Diversity*

\*Ibid., "Two Languages of Contemporary Constitutionalism and Three Schools of Modern Constitutionalism," *Strange Multiplicity: Constitutionalism in an Age of Diversity*

**3. Fri., Dec 5: Uniformity & Diversity in Constitutionalism**

\*James Tully, "The Historical Foundation of Modern Constitutionalism: The Empire of Uniformity," *Strange Multiplicity: Constitutionalism in an Age of Diversity*

\*Ibid., "The Historical Formation of Common Constitutionalism: The Rediscovery of Cultural Diversity," *Strange Multiplicity: Constitutionalism in an Age of Diversity*

**FINAL EXAM: December 12, 8 to 10 am**