

Department of Politics

325. Anglo-American Constitutional Thought

December 2008

Dr. Robert W. Sutherland, Instructor



NOTE: A [PDF file](#) will be created soon for your convenience, but it IS NOT definitive, so please check the online version frequently. Changes in reading assignments will not, however, be made 24 hours immediately preceding class meetings.

INSTRUCTOR: Robert Sutherland, 308 South, Ext. 4226. [E-mail Link](#): the quickest and most reliable method of contacting me. I rarely check voice mail.

CLASS MEETINGS: See [Assignments](#) below

TEXTS: Hobbes, *Leviathan*, Hooker, *Laws of . . . Polity*, Locke, *Two Treatises of Government*, *American Political Writings*, 2 vols; *Benjamin Franklin's Autobiography*

GRADES:

1. **PAPER**--30%, topic to be announced.
2. **EXAMS**--15% midterm; 30% final.
3. **PRESENTATION**--25%, see [p. 2 for details](#).

Poor preparation for class or frequent absence may lead to unannounced quizzes and an adjustment in the percentage of the final grade determined by the exam and paper. Both the final exam and the final paper remain with me for future reference in revising and improving the course. They can be picked up at my office immediately after Politics 325 is offered again. Portions of the Catalogue on adding and dropping courses and portions of the Compass on dishonesty in academic work are incorporated here by reference. A discount of 5% per hour will be applied to the grades of late papers, except for documented emergencies. The grading scale for the course is A = 1750-2000, A- = 1650-1749, B+ = 1550-1649, B = 1450-1549, B- = 1350-1449, C+ = 1250-1349, C = 1150-1249, C- = 1050-1149, D+ = 950-1049, D = 850-949, D- = 750-849, F = 000-749. The number of points possible on any given exam or paper is the product of 20 points times the importance of it measured in percent of the final course grade. For letter grade equivalents, multiply the percentage times: 18 = A, 17 = A-, 16 = B+, 15 = B, 14 = B-, 13 = C+, 12 = C, 11 = C-, 10 = D+, 9 = D, 8 = D-.

SYNOPSIS:

I. Introduction: Limited vs. Unlimited Government and the Rule of Law

II. Week I: Hobbes and the Logic of Unlimited Government

1. in educational and moral terms
2. in constitutional terms

III. Week I-II: Hooker and the Logic of Limited Government

1. in educational and moral terms
2. in constitutional terms

IV. Week II-IV: Locke and Anglo-American Constitutional Thought

1. Locke
2. Franklin
3. American political writings

ASSIGNMENTS--To be done before class on the day indicated:

Week I***Day 2--9:30:** *Leviathan*, 28-37, 42-49, 54-55, 80-85, 98-125, 129-144, 159-164

2: *Leviathan*, pp. 198-260

Week I***Day 3--No Class**

Week II***Day 1--1:30:** *Laws of . . . Polity*, Ch. 6-7

Week II***Day 2--1:30** *Laws of . . . Polity*, Ch. 8-9

Week II***Day 3--1:30:** *Laws of . . . Polity*, Ch. 10

Week II***Day 4--1:30:** *Two Treatises*, Preface & Secs. 1-51

Week II***Day 5--9:00: MIDTERM EXAM**

Week III***Day 1--1:30:** *Two Treatises*, Secs. 52-158

Week III***Day 2--1:30:** *Two Treatises*, Secs. 159-243; *American Political Writings*, pp. 3-18, 62-66, 109-136, 231-9

Week III***Day 3--1:30** *APW*, pp. 137-157, 340-367, 638-655

Week III*Day 4--1:30:** *American Political Writings*, pp. 699-704, 884-899; [*Federalist #10*](#)

Week III*Day 5--9:30:** *APW*, pp. 936-949, 1042-54 *Benjamin Franklin's Autobiography*, 1-76

Week IV*Day 1--1:30:** APW, pp. 1299-1348 *Benjamin Franklin's Autobiography*, 76-146

Week IV*Day 2--1:30:** Preparation Day, *NO CLASS*

Week IV*Day 3--1:30:** Oral Presentations:

Week IV**Day 4--9:00:** FINAL EXAM

Week IV**Day 5--Noon:** Final Paper Due. Hardcopy Only!!

INDIVIDUAL PRESENTATION: INSTRUCTIONS, SCHEDULE, & SUBJECT:

INSTRUCTIONS: Some class time will be reserved for oral work during each regular class meeting in weeks III-IV. Each student will be responsible for one formal presentation during the term and several informal discussions of key concepts and terms in the reading assignments. Grades on oral work are determined by performance in content and style. Strength in content depends on a clear presentation of main ideas, careful subordination of explanation and examples, and close attention to logical transition. Elements of style include skill in referring to notes (**do not read a prepared text**), in managing the time available (**consult the instructor**), in oral expression (**watch rate of speed in speaking**), in eye contact, and in variety of emphasis. The content and scheduling of presentations depends heavily on student initiative. The instructor will, however, urge you to focus on contemporary constitutional thought in a wide variety of terms and forms.

Presentation Subjects: A few suggestions

Historical:

- **English Civil War and Constitutional Development**
- **The Glorious Revolution and Constitutional Development**
- **Montesquieu and his impact on the American Constitution**
- **Hume and his impact on the Federalist Papers**
- **Burke and American Constitutional Development**
- **Rousseau and American Constitutional Development**

Cultural:

- **Fiction:** Constitutional thought and B.F. Skinner's *Walden Two*, A. Huxley's *Brave New World*, *Lord of the Flies* and the State of Nature in Hobbes and Locke
- **Film:** *Star Trek* and Constitutional Thought; the States of Nature and Civil Society in a wide variety of film

International:

- **Constitutionalism and the International Criminal Court**
- **The Post-Communist Russian Constitution, esp. the role of the Russian President**
- **Constitutional thought and development in selected Latin American, African, and eastern European countries**
- **Islam and Constitutional Thought**
- **Constitutional development and Political Corruption**

American:

- **Property Rights and Eminent Domain**
- **Federalism and its Revival**
- **Right to Privacy and Anglo-American Constitutional Thought**
- **A 21st Century Constitutional Convention**

CRITERIA FOR EVALUATION OF PAPERS:

An "A" paper has the following elements:

1. Good, clear, complete discussion of major parts of the topic
2. A penetrating thesis statement connecting the parts to each other,
3. Accurate, skillful use of argument and evidence in supporting the thesis,
4. A strong conclusion anchored in a tightly drawn organization of thesis, argument, and evidence, plus
5. No more than one error per page of the sort outlined in *English Simplified*.

A "B" paper has the following:

1. Adequate on the parts, using familiar phrases from the class discussion & the readings,
2. Clear thesis but more weakly stated than in an "A" paper,
3. Argument and evidence systematically offered but not finely gauged to the difficulty or complexity of the issue; transitions become increasingly tentative,
4. Broad, general conclusion based on adequate organization with no more than two errors per page

A "C" paper has:

1. Incomplete discussion with weak thesis followed by loosely related arguments or evidence to which objections are obvious, missing transitions,
2. Brief conclusion, sketchy organization, no more than three errors per page

A "D" paper:

Garbled, inaccurate discussion, no thesis, little evidence or argument, abuse of quotations, assertion in place of conclusion, gaps in organization, a multitude of errors.

An "F" paper:

See the *Compass* on plagiarism

KEY TERMS AND PHRASES IN THE *LEVIATHAN*

Chaps. 3-4: Mental vs. verbal discourse, the kinds (even sub-kinds) of each, the uses, even the special uses (and abuses) of the latter; true & false speech, importance of geometry

5-6: Right reason, its use; error & absurdity, causes of the latter; science vs. prudence, the signs of science.

11: Felicity, as conceived by "old moral philosophers" vs. Hobbes's conception; contention, its sources; vs. obedience, its sources; associations of love and hate, of praise and ambition; confidence in others, its sources, & custom, its sources

13: Human equality and the "causes of quarrel" or war.

14-15: Nineteen laws of Nature, the "science of these laws," & moral philosophy.

17: Security, what it means and where it is and is not to be found, a commonwealth, the Leviathan **18:** Instituting a commonwealth and the consequences which follow from it

- 19:** Kinds of institution: monarchy, aristocracy, & democracy, how related to tyranny, oligarchy, & anarchy; the advantages of a monarchy over assemblies large or small
- 21:** Liberty, necessity, covenants and laws, sovereign power and the liberties of subjects
- 26:** Law written, how related to the sovereign, to custom & usage, to laws of nature and unwritten laws; interpretation, its purpose, its agency (i.e. who does it and within what limits, the role of precedent, etc.), natural vs. positive law; divine positive law
- 27:** Sin vs. crime; crime, its source, its cause, esp. false principles and how they are promoted by varied agencies and why; fear as a cause; comparison of crimes plus circumstances extenuating and aggravating;
- 28:** Punishment, what it is and is not; kinds of punishment; reward
- 29:** Dissolution of the commonwealth, by want of absolute power in private judgments, whether by erroneous conscience or pretense of inspiration; in dividing sovereign power and its consequences, esp. related to mixed government, public funds, and rivals for sovereign power in people and places
- 30:** Sovereign representative, purpose and duties, esp. in teaching; two objections to teaching & responses to yeach; what is to be taught, role of the universities; in taxation and public welfare, in legislation, esp. what a good law is.

STUDY GUIDE for LAWS, Book I . Chapters 1 - 10

- 6a.** What purposes inform Chapter Six? For Hooker's retrospective account of an important purpose, see the first relative clause in the first sentence of Chapter Ten.
- 6b.** What hierarchy exists in nature and what is the place of humankind in it?
- 6c.** What is the purpose of the art of learning and how is it accomplished? What role is assigned to common sense?
- 6d.** What does Hooker think of his own age? Key terms: natural reason (also natural knowledge & natural discourse, natural wit, natural understanding); sensible knowledge
- 7a.** What purposes inform Chapter 7? See the relative clauses following the one cited above.
- 7b.** How is reason stirred into action?
- 7c.** What is the relationship between choice and will and what position in nature is reflected in them?
- 7d.** What are the "two principal fountains of human action" and how are they related to appetite and affections.
- 7e.** What is "right reason" and what two considerations demonstrate its operation?
- 7f.** What two circumstances account for the "choice of evil"? Be specific about what Hooker means by the "prejudice of sensible experience."
- 7g.** Connect the "painfulness of knowledge" to its benefits, its promise, and its poverty. Key terms: things unsensible, choice, will, appetite, affections, voluntary operations, right reason
- 8a.** What part of Ch. 7 forms the basis for 8 and how is 8 related to the purpose to be fulfilled in 6 & 7?
- 8b.** What two ways are there of discerning goodness and which is the one Hooker follows?
- 8c.** What token is discussed here and how is it related to the cause of goodness?
- 8d.** What is law and how does it apply to the hierarchy of nature?
- 8e.** What are the two self-evident principles of reason?
- 8f.** What levels of knowledge are active in the "law of nature" (see also "law of reason or human nature")?
- 8g.** What is the "law of nature" and how is it related to the rule of comparison and the hierarchy of nature?
- 8h.** What are the two "grand mandates" imposed by the law of nature?
- 8i.** What three kind of "sentences" does reason offer?
- 8j.** What three "marks" distinguish the law of nature?
- 8k.** What effect does custom have upon the law of nature?
- 9a.** What distinctions apply to reward and benefit and to hurt and punishment.
- 9b.** What does keeping mean or what exceptions apply to the above distinctions?
- 10a.** What are the two foundations of public societies?

- 10b. How are laws politic perfected?
- 10c. When are people happy?
- 10d. What impediments obstruct the pursuit of happiness?
- 10e. What is the purpose of government?
- 10f. What is essential to it? What is inessential?
- 10g. Distinguish between rule of a person and the rule of law. What three advantages support the latter?
- 10h. Why do the laws vary?
- 10i. What distinguishes human law or mixed law from "merely human law"? What other term corresponds to the latter?
- 10j. What is the law of nations?
- 10k. What distinguishes primary from secondary laws?

STUDY GUIDE FOR THE *SECOND TREATISE*

141-151: Filmer's "short Model" or "System of Politics;" the "old way" Governments are made; examples of Filmer's carelessness in supporting his "System," esp. his dependence upon "Fatherhood" and "Fatherly Authority;" logical errors in Filmer's work, organization of Locke's reply to Filmer in the First *Treatises*.

267-284: How the two treatises are linked, the main issue defined by Locke as the subject of the second; political power. State of nature and its relationship to Hooker's *Laws*; natural equality and authority conferred by the law of nature in responding to transgression; "inconveniences" in the state of nature and the origins of civil government; purpose served by the closing quotation from the *Laws*. State of war; the purpose of freedom; the difference between the state of war and the state of nature plus the relationship of each to civil government. How slavery is related to the previous terms.

285-302: Origins of property and an objection to Locke's account, the advantages of Locke's account in recognizing and rewarding those who work hard; the problem of common land, of measuring and transferring wealth and value, the invention and use of money.

303-318: Paternal power and the mistake associated with such a term; freedom, equality, and law; the power parents have over their children in the light of these terms; in what senses the authority of parents constitutes a kind of government; the duties of children and of parents; what conclusion can be drawn and applied to Filmer's argument, previously discussed.

318-349: How a "Politick Society" differs from a "conjugal" one, origins of the former considered as a prelude to discussing the danger of absolute power. How "Political Societies" begin. Two objections to the account given and replies to each. "Express Consent" distinguished from "tacit Consent"-- the implications and limitations of tacit consent.

350-380: Preservation of property as the "great and chief end" of political society. What property means and the ways in which it is preserved by government. The original "right and rise" of "Legislative and Executive Power." What a commonwealth is, however formed. What the legislative power is and the four limitations by which it is circumscribed. Separation of legislative and executive power. Executive power related to federative power. Legislative supremacy and executive power, detailing joint operations. Prerogative defined and limited.

380-428: Key terms reviewed preliminary to a discussion of conquest, usurpation, tyranny, and the dissolution of government. Conquest considered in the light of understanding how important consent is in a political society. Power of the conqueror over those that conquered with him. Power of the conqueror(s) over the subdued, their property, and their relations. Tyranny and usurpation distinguished. The right of revolt against tyranny asserted and circumscribed according to whether a person rules or the law does, whether there is a right of appeal, and whether coordinated resistance is easy or difficult. How governments are dissolved, with specific reference to the dissolution of parliamentary governments. "Trust," why it is key to understanding the issue, despite objections from those who fear instability and those who fear rebellion. Specific replies to the latter. Right of resistance confirmed by reference to other authorities.

KEY CONCEPTS IN MADISON'S *TENTH FEDERALIST*

FACTION: its causes, definition, & consequences. Its cure by removing causes & by controlling effects, in a minority, in a majority. Majority factions: how prevented, how rendered ineffective. Republic: why superior to a democracy: representation--its advantages enhanced by federalism and the separation of powers & size of republics--effects on forming a majority.

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