

Government 30  
American Government

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Lecture 2

Monday, February 6, 2006

Introduction to American  
Constitutionalism

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Announcements

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1. Coop has copies of Kernell and Jacobson and Kernell and Smith bundled. This is to save money. If you want to purchase separately – or want to avoid the K&J text – you can do so online.
2. We've added David McCullough's *John Adams*; stay tuned for specific assignments. Quite cheap; also lots of fun.
3. Office hours are Thursdays, 1-4pm, CGIS Café.

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Lecture 2:  
Introduction to American Constitutionalism

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The Texts of American Constitutionalism

- Declaration of Independence
- Articles of Confederation and Perpetual Union
- Constitution
- *Federalist Papers*
- *Montesquieu, Spirit of the Laws*
- Locke, *Two Treatises*
- Blackstone, *Commentaries*; Harrington, *Commonwealth of Oceana*

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## I. What is American constitutionalism?

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SUM: American constitutionalism is *textual government*.

1. *Enabled*, well-founded government
2. *Limited* government: the constraints of the text.
3. **Written government**
  - (a) a *Protestant* aspect to our constitutionalism;
  - (b) but also a *Catholic* aspect

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## II. The unique nature of American constitutionalism.

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### A. Am Revo a revolt against executive power.

Start w/ the Declaration of Independence (1776).  
What is its chief message? Not “unalienable rights,”  
not “life, liberty and pursuit of happiness.”

What is that message?

**George III sucks**

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## The Problem with George III

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“The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states.”

“He has obstructed the administration of justice....”

“He has erected a multitude of new offices....”

“He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of the people.”

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## The Problem with George III (cont.)

He is blamed

- for “quartering large bodies of troops among us...”
- for “imposing taxes upon us w/o our consent”
- for “depriving us, in many cases, of the benefits of trial by jury.”

Notice correspondence with const provisions (House launches revenue measures; 6th Am guarantees trial by jury; 3rd Amendment prevents arbitrary troop quarterings)

What are these grievances about? **Unalienable rights.** So the first thing a Constitution will do is to **limit executive power.**

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## B. The Articles of Confederation (1781-1787)

1. A “friendship” of states, a minimal union.
2. Feeble central government. No taxation power, no national military, no authority to regulate government.
3. Shay’s Rebellion (winter 1786-87) -- revolt of western Mass. farmers against state courts. Mass govt appeals to Congress for help.

Lesson: need a strong central army and a strong central executive, despite the revolution.

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## The Problem of Repressive Majorities

4. Repression from States and their constitutions:

- Massachusetts (1780): elitist
- Pennsylvania: tyranny of the majority. Disenfranchisement of Quakers, persecution of conscientious objectors to War, dissolution of and interference with state courts.

Lesson: you can have *tyranny of the majority* and a tyranny of the elite.

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### III. The Constitution: A Revolt against Hyper-federalism?

A. The Constitution is a *two-dimensional contract*.

(1) a compact across states (e.g., bicameralism & the Great Compromise btw VA & NJ Plans)

(2) a compact across different levels of government

B. It **enables** the federal government vis-à-vis the states:

- Congress' powers: Art I, Section 8.
- President's powers: Art II, Section 2.
- Judiciary's powers: Art III, Section 2.

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### The Constitution of 1787

C. It also **constrains** (even w/o Bill of Rights)

- no bill of attainder or ex post facto law (Art I, S 9)
- no econ discrimination among states (Art I, S 9)
- no religious test (Art VI)
- no taxation unless the majoritarian part of Congress starts it (Art I, S 7)
- w/ Bill of Rights – trial by jury, no quartering.
- One other notable constraint on states: All debts valid (Art VI, S 1).

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### The *Federalist*

A political selling job, particularly to the smallest states (DE, NJ, NY). Published in parts under "Publius."

**Hamilton**, not Madison, is the real soldier here.

#1 (Hamilton): The utility of the union for "political prosperity."

- Hamilton motivated by "an enlightened zeal for the energy and efficiency of government."
- "vigor of government is essential to security of liberty."

#2 (Jay): Look at the country. Union is natural and right for America.

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## The Problem of Faction

#6 (Hamilton): Real threat to liberty comes from within, from domestic faction (Rossiter ed., pp. 24-5).

#9/#10 (Hamilton, Madison): FACTION IS THE ENEMY. HOW TO AMELIORATE FACTION.

What is a faction? "By faction I understand a number of *citizens*, whether amounting to a *majority* or minority of the whole, who are united and actuated by some *common impulse of passion*, or of *interest*, adverse to the *rights* of other citizens, or to the *permanent and aggregate interests of the community*" (Madison, *Federalist* #10: p. 46).

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## Return to Question from Lecture 1

How many times does the word "democracy" appear in the U.S. Constitution?

What the Constitution does say (Article IV, Section 4): "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion...."

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## Read *Federalist* through lens of "small-r" republicanism

Constitution and Federalist movement was explicitly and unapologetically anti-democratic.

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## Hamilton, *Federalist* #1

I propose, in a series of papers, to discuss the following particulars: -- The utility of the UNION to your political prosperity – the insufficiency of the present confederation to preserve that Union – the necessity of a government at least as energetic with the one proposed, to the attainment of this object – The conformity of the proposed Constitution to the true principles of **republican government** – Its analogy to your own State constitution – and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.

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## So, What is a Republic? Hamilton, *Federalist* #9

The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.” (Rossiter ed., p. 40)

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## Democracy v. Republic Madison, *Federalist* #10

Madison contrasts two forms of government, democracy and republic.

“a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person”

Madison: pure democracy “can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual.”

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## So What's Wrong with Democracy? Madison, *Federalist* #10

"Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths."

"Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions."

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## What is a Republic? Madison, *Federalist* #10

"The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended."

"The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations." [Rossiter ed, p. 50]

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