



We the People
THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act approved by the United States Congress.



National Academy for Civics and Government 2010
POLITICAL AND CONSTITUTIONAL THEORY FOR CITIZENS

A We the People Summer Institute
Of the National Endowment for the Humanities
Offered by the Center for Civic Education

Loyola Marymount University, Los Angeles, California
July 10–31, 2010

WILL HARRIS
The Center for the Constitution, James Madison's Montpelier
and
University of Pennsylvania

Academic Director of the National Academy/ Summer Institute

COURSE OUTLINE

DRAFT

Readings (to be completed before arriving at the Summer Institute/National Academy):

The Declaration of Independence. [*Please read this as if you have never read it before -- slowly, back and forth, sideways if possible. Try to make the text seem strange. Then read it as if you were its author, revising where you would. Read it again, as an editor. Change your roles with the text, thinking about what printed, published, archived texts allow you to do. But also, thinking about *this* text, as it permanently is, given what happens when you might try to change it.*]

The "Preamble" of the United States Constitution. [Please read as you have never read it before.]

The Federalist, Nos. 1-2; 14-15; 37, 39. [Please read these as pairs, *very carefully*.]

Aristotle, *Politics*: Book I, Chaps. 1 and 2 (pp. 7-12); Book III, Chaps. 1-18 (pp. 84-132; Book IV, Chaps. 1-16 (pp. 133-177); Book VII, Chaps. 1-3, 13-15 (pp. 251-260, 279-289).

Cicero, *The Republic*, Book 6, "The Dream of Scipio" (pp. 85-94).

ARRIVAL

Sat., July 10

Readings (to be completed by Sunday):

Marbury v. Madison and *McCulloch v. Maryland*, pp. 298-306 and 530-543 in Walter F. Murphy, James E. Fleming, and Sotirios A. Barber (eds.), *American Constitutional Interpretation*.

I. POLITICAL THEORY: *The Nature of Political Order*

Readings (to be completed on Sunday, Monday, Tuesday, Wednesday, and Thursday of the first week):

Thomas Hobbes, *Leviathan*: Dedication (p. 3); The First Part, Introduction and Chaps. 1-5, 7-10, 13-17 (pp. 7-33, 42-65, 82-115); The Second Part, Chaps. 17 and 21 (pp. 111-115 and 139-148).

John Locke, *Two Treatises of Government*: "The Second Treatise of Government: An Essay Concerning the True Original, Extent, and End of Civil Government," Chaps. 1-4; Chap. 5, secs. 23-37, 49-51; Chap. 7, secs. 77, 87-94; Chap. 8, secs. 95-102, 112-122; Chaps. 9-11; Chap. 12, secs. 143-148; Chap. 13, secs. 149-158; Chap. 14, secs. 159-168; Chap. 15, secs. 169-174; Chap. 18, secs. 199-210; Chap. 19, secs. 211-232, 240-243.

Tullius Cicero, *The Republic* and *The Laws* (selections).

The King James Bible (Authorized Version), *Deuteronomy*.

Charles H. McIlwain, *Constitutionalism: Ancient and Modern*.

Lectures:

[1] Sun., July 11

Welcome

Opening Lecture: "Reading Theoretical Texts"

[2] Mon., July 12

Introduction

"The Intellectual Map of the Summer Institute"

"The Concept of Politics"

[3] Tues., July 13

"The Consonance of the Natural Order and Political Order"

[4] Wed., July 14

"The Connection between Political Order and Human Intellect"

[5] Thurs., July 15

"Making Distinctions: Civic and Private Life; Politics and Government"

[6] Fri., July 16

"The Roots of Government by the People in the Classics of Political Theory"

II. CONSTITUTIONAL THEORY: *The Design of a Good Polity*

Readings (to be completed on Saturday, Sunday, Monday, Tuesday, and Wednesday of the second week)

Thomas Kuhn, *The Structure of Scientific Revolution*: Introduction and Chaps. 3, 5, 7, 8, 9, 10, 11.

Gordon Wood, *The Creation of the American Republic: 1776–1787*: Chap. XV.

The Federalist, Nos. 1–15, 18, 23, 25, 31, 37, 39–41, 47, 49–51, 78, 84–85.

The Antifederalists (ed., Cecelia M. Kenyon): Centinel (pp. 1–26); Montezuma (pp. 61–68); DeWitt (pp. 102–110, sec. III); Republican Federalist (pp. 111–116, sec. II); Agrippa (pp. 131–134, 138–160, secs. IV, XIII, XVII, XVIII); Luther Martin, pp. 161–176.

Edward Corwin, "The Higher-Law Background of American Constitutional Law."

The Constitution of the United States

Lectures:

[7] Mon., July 19

"Constitutionalism as an Independent Theory of Political Order"

[8] Tues., July 20

The Relationship between the Declaration and the Constitution"

"Constituting Polity by Definition, Limitation, Constraint, and/or Purpose"

[9] Wed., July 21

"The Federalist and Antifederalist Conceptions of a 'Constitution' as a Means of Ordering Politics: Modeling versus Defining"

"Pivotal Shifts in the Logic of American Constitution-Making: Power, Scale, and Virtue"

[10] Thurs., July 22

"Making versus Reflecting: The Two Paradigms of Political Order"

"People, Polity, Government: Covenant, Constitution, Contract"

III. DEMOCRATIC THEORY: *The Character of Popular Self-Government*

Readings (to be completed on Thursday and Saturday of the second week, and on Sunday and Monday of the third week):

John Hart Ely, *Democracy and Distrust*, Chaps. 1-2, 4-5.

Res Publica: An International Framework for Education in Democracy (current draft of the Seven-Part Version.)

National Standards for Civics and Government, Part V of the Grade 10-12 standard.

Murphy, Fleming, and Barber, *American Constitutional Interpretation: Trop v. Dulles; Lochner v. New York; West Coast Hotel v. Parrish; Home Building & Loan Association v. Blaisdell*; James Bradley Thayer, "Origins of the American Doctrine of Judicial Review"; *United States v. Carolene Products*.

Lectures:

[11] Fri., July 23

"Representation as the Modeling of the People in Governmental Form"

"Liberty and Security."

[12] Mon., July 26

"American Constitutional (Federalist-Antifederalist) Democracy"

[13] Tues., July 27

"Constitutional Citizenship: Authorizing and Interpreting the Fundamental Principles of a Democratic Polity"

IV. INTERPRETIVE THEORY: *The Inquiry into Constitutional Meaning*

Readings (to be completed on Tuesday, Wednesday, and Thursday of the third week):

Edward Corwin, "The Constitution as Instrument and Symbol."

Sanford Levinson, *Constitutional Faith*, Chaps. 1, 3-4.

William F. Harris II, *The Interpretable Constitution*, Preface and Chap. 3.

Murphy, Fleming, and Barber, *American Constitutional Interpretation: Calder v. Bull; Griswold v. Connecticut; Poe v. Ullman* (John Marshall Harlan's and William O. Douglas's dissenting opinions); *Rochin v. California; Wisconsin v. Yoder; Oregon v. Smith; Minersville School District v. Gobitis; West Virginia v. Barnette*; Senate Debates of 1801-02; *Eakin v. Raub*.

Lectures:

[14] Wed., July 28

"The Democratic Character of American Constitutional Interpretation"

[15] Thurs., July 29

"Systematic Interpretation as a Reflection of a Comprehensive Constitution"

CONCLUSION

Lecture:

[16] Fri., July 30

"Interpretation at the Juncture of Constitutional Knowing and Making"
"Educating Citizens and Founders"

DEPARTURE

Sat., July 31