

Rational Choice and Constitutional Design: Ideas for Papers (required for the 10pt version of the seminar)

The purpose of the paper is to develop some original research using the tools and concepts developed in class. Your paper should apply *the tools and concepts to a historical or current issue in constitutional reform that you find of interest.*

Style counts--in so far as good reasoning is best revealed by clear well-organized prose. A bit of historical and contemporary literature review will be required for essentially every paper. The richer and more profession is the application of the tools and concepts, the higher the grade will be. (Remember that a model does not have to be complicated to be sophisticated.)

All papers should be typed *one and a half* spaced (at least 12 pt fonts and 1 inch margins) and be twelve to sixteen pages in length, as necessary. Complete references should appear in a bibliography at the end of the paper (including websites and direct references to the class notes) and do not count in the page count. The papers should be sent as pdf or doc files to my email address, congleto@gmu.edu. The papers are due on September 30.

Here are some ideas for papers. You may write on others as well but be sure to "clear" other paper topics with me before starting the paper

1. Origins of the State

Theories of the origin of the state are developed in both modern work and in the work of classic and enlightenment scholars.

Provide an overview of these theories of the state.

Discuss areas in which these scholars agree about the origins of the state, and others in which they disagree.

Many of these theories of the state are relatively benevolent. To what extent do these theories accord with the emergence of modern nation states within Europe?

Can an idealized theory of the origin of the state also be used as a source of ideas for constitutional reform? If so, how?

2. Limits on Leviathan

Hobbes (1651) in effect argues that any government that maintains the peace is better than any government that cannot.

Revisit the *Leviathan*, and provide an argument for making an irrevocable transfer of authority (sovereignty) to the state.

Subsequent authors argued that a state grounded on contract can do more than avoid internal and external war. Why does Hobbes reject this idea, and to what extent is his argument incorrect?

Modern contractarian efforts to develop constitutional designs can be considered to be an effort to improve on Hobbes' pessimistic view of the state as uncontrollable. Explain how contemporary theorists try to "correct" Hobbes' mistake.

Is it possible to invent a very original way of thinking about the logic of constitutional and legal design, that is very mistaken? Why?

3. Classical Research on Political Design:

Plato and Aristotle both engaged in two major works on constitutional design, *The Republic* and *The Laws*, and *The Politics* and *The Athenian Constitution*. This suggests that constitutional design was an important enterprise within the community of Greek scholars during the golden era.

Provide an overview of Plato and Aristotle's analysis of the idea constitutional city state. On what points do they agree, on which do they differ, and on which do they clearly distinguish themselves from the "received wisdom" of their day?

Find at least one other constitutional theorist (city designer) from roughly the same period, and analyze his theory in the same way.

To what extent are these theories different from modern theories of constitutional design based on rational choice models? To what extent are they similar?

Are there instances in which constitutional clearly affected public policy in Greece? How so?

4. The Enlightenment

Provide an overview of Hobbes, Locke, Montesquieu, and Rousseau's theory of the social contract (constitutional law)

On what points do they agree, on which do they differ, and on which do they clearly distinguish themselves from the "received wisdom" of their day?

Find at least one other constitutional theorist from the same period, and analyze his or her theory in the same way.

To what extent are these theories different from modern theories of constitutional design based on rational choice models? To what extent are they similar?

Are their instances in which their theories affected modern constitutional design? How so?

5. The Modern Contractarians

Provide an overview of Rawls, Buchanan, and Mueller's theory of the social contract and constitutional design.

On what points do they agree, on which do they differ, and on which do they clearly distinguish themselves from the "received wisdom" of their day?

Find at least one other constitutional theorist from the same period, and analyze his or her theory in the same way.

To what extent are these theories different from classical theories of constitutional design? To what extent are they similar?

Are their instances in which contemporary theories affected modern constitutional design? How so?

6. Treaties as Social Contracts

Nearly every time that two or more nations sign a contract, the result is a new quasi-constitutional organization--a small and specialized "confederation." If contract theories of the state can be interpreted as positive theories of the state, they imply that treaty organizations should have certain properties:

What types of decision rules would a treaty organization be likely to adopt?

Given your conclusion, what kinds of policies would the treaty organization adopt and implement?

Is this contract theory of the state evident in the EU's various treaties?

Is this contract theory of the state evident in some other treaty organization?

What aspects of the theory are not evident in real world treaty organizations?

Explain how the level of perceived political risk affects the design of treaty organizations.

7. Majority Rule and Minority Interests

It can be argued that the most essential characteristic of a modern democracy is majority rule for selecting public policies. On the other hand, the essential characteristic of a modern constitutional democracy is majority rule, subject to constraints.

Analyze these two propositions, and provide instances of real constitutions that reflect these two somewhat different meanings of the word "democracy."

Use rational choice analysis in combination with contractarian or utilitarian normative theory to evaluate the relative merits of these two institutional arrangements. What characteristics will a constitutional democracy have that is generally preferred to unconstrained democracy?

Majority rule is not inherently stable, nor is it inherently self-sustaining. Extend your argument above to analyze why some forms of constitutional democracies tend to be more stable and more self-sustaining than an unconstrained democracy. Then invent a constitutional form of democracy that would be even less stable and predictable than unconstrained majority rule.

8. It can be argued that modern constitutions are evolutionary products rather than products of design. That is to say, it can be argued that constitutions are reformed one paragraph at a time rather than revised whole cloth.

Contrast the evolutionary and the rational design theories of constitutions.

Given that much of what we learn is the product of experiments rather than deduction, to what extent would evolutionary constitutions be expected to work better than designed constitutions.

Is the tension between evolutionary constitutions and designed constitutions as large as this answer suggests? To what extent can every constitutional reform be regarded as a product of rational thought?

9. Any other topic that lends itself to analysis using the tools and or concepts developed in this course..

- ◆ *(Please clear other topics with me. I will try to give you a sense of whether your idea is sufficient or too much for the purposes of this class and the time that we have left in the semester.)*