In December 2000, in a 5-4 decision, the Supreme Court of the United States determined the outcome of a presidential election. The justices drew their authority from the U.S. Constitution. Is the fact that nine justices influenced the outcome of a presidential election consistent with democratic norms? If so, why?

Generally, we think of democracy as standing for the rule of the many. Constitutions and, in particular, the practice of judicial review appear to empower a small group of individuals. Are the ideals of constitutionalism and democracy necessarily in tension with one another? Or do these ideals mesh together? If so, how?

In addition to these issues, this course will examine the following questions:

- What is a constitution?
- Do all democracies have them?
- Does a constitution protect citizens’ rights?

The course will provide students with a theoretical and historical introduction to constitutional and democratic theory. Students will acquire the tools necessary to understand how these important institutions function together and the circumstances in which they can undermine one another.

II Requirements:

- 8 reading responses-about 2 pages (300 to 500 words). These brief essays should not summarize the week’s reading (I have already read the readings), but outline an interesting position and argue for that position. The responses are due by 11:00 pm on the night before the seminar.

- A final paper (around 20 pages).

- A draft of the paper is due before Thanksgiving break Thursday, 11:59 pm November 15th. The draft should be the first 7-10 pgs of the essay. It should include an outline for the rest of the work. You will receive a grade and extensive comments on the interim paper. These will be the bulk of the comments you will receive on the paper.

- Please schedule a meeting with me to discuss your paper topic (the meeting with me must occur before October 1).

- The final draft of the paper is due by 11:59 pm December 10th.
• You will present your paper on the last day of class.

• Work that is handed in late will be penalized by a third of a grade. Another third of a grade will be penalized every 24 hours the paper is late.

• Class participation is expected. All students should come to class fully prepared to be active participants.

• Bring hard copies of all assigned material to class.

• No in-class use of computers, cell phones and so on. No food either.

**GRADING**

• The paper is worth 50 percent of the course grade.
• The draft is worth 20 percent of the course grade.
• The reading responses are worth 20 percent of the course grade.
• Class participation is worth 10 percent of the course grade.

**COURSE TEXTS**

• Most readings will be posted online or sent via email:
• Required course books are available at the Duke University Bookstore:

  o Robert Dahl, *A Preface to Democratic Theory*
  o Bruce Ackerman, *We the People: Volume 1*
  o John Hart Ely, *Democracy and Distrust*
CLASS SCHEDULE

Week 1: Defining the Problem: Democracy and Constitutionalism (Aug 29)

Week 2: Defining Democracy: Popular Sovereignty and Democratic Authority (Sept 5)

- Aristotle, Politics book III chapters 6-11 and book IV chapters 8-9
- Selections from Rousseau, Schumpeter and Gutmann and Thompson

Week 3: Theories of Democratic Value: Instrumental vs Intrinsic Accounts (Sept 12)

- Waldron, Disagreement and Democracy, Cambridge University Press: pp. 88-118

Week 4: What do Constitutions do? (Constrain) (Sept 19)

- The Federalist Papers 47-51, 62

Week 5: What do Constitutions do? (Empower) (Sept 26)

- Constitution of the United States
- The Federalist Papers, 34
Week 6: The Best Check on Democracy: Judicial Review (Oct 3)

- The Federalist Papers, 78

Week 7: Democracy as Constitutionalism (1) (Oct 10)

- Ronald Dworkin, *Law's Empire*, selections

Week 8: Democracy as Constitutionalism (2) (Oct 17)

- Ronald Dworkin, “Foreword” Extreme Speech and Democracy (Ivan Hare & James Weinstein eds., 2009).

Week 9: Democracy as Constitutionalism (3) (Oct 24)


Week 10: Popular Constitutionalism and Constitutional Change (Oct 31)

- Bruce Ackerman *We the People* ch. 1,2, 7, 9-11
Week 11: Constitutionalism in the Service of Democracy (1) (Nov 7)


Week 12: Constitutionalism in the Service of Democracy (2) (Nov 14)


Week 13: Presentation of Papers (Nov 28)