

Constitutional Change

LAW 6936
2 Credit Seminar
Spring 2024

JONATHAN L. MARSHFIELD

University of Florida Levin College of Law

marshfield@law.ufl.edu | 352-273-0940

Class Meeting: Mondays 1:15-3:15PM (Room 355A)

Office Hours: Wednesday 11AM-1PM (Room 301)

COURSE DESCRIPTION

This seminar examines the basic theoretical, legal, and political issues underlying constitutional change. It surveys the formal structure of constitutional amendment rules, explores how constitutions change informally, tackles the complex interaction of formal and informal processes of change, and engages with ideas for reform to amendment rules. Readings will include material covering the United States Constitution, state constitutions, and foreign constitutions.

COURSE OBJECTIVES

By the end of the semester, students will have a working understanding of the key objectives underlying the processes and rules that regulate constitutional change, the basic variations in the structure of constitutional amendment rules around the world, and the interplay between rule structure and normative objectives in the design of amendment processes. Students will ultimately obtain the theoretical background and empirical knowledge necessary to assess and critique the structure and function of constitutional amendment rules and constitutional design more generally.

COURSE METHODOLOGY

This course will be primarily theoretical and comparative in nature. However, we will study the amendment processes established by Article V to the United States Constitution as a lens through which to engage with deeper normative issues and broader comparative problems. Thus, the first half of the substance of the class will be dedicated to the study of Article V, and the second half will focus on comparative and theoretical sources (including material addressing amendment under state constitutions in the United States). The first eight weeks of the semester will involve assigned reading designed to expose students to the state of the field. The remaining five weeks of the semester will be dedicated to student paper presentations.

CLASS TIME, LOCATION, & SCHEDULE

We will meet at 1:15-3:15PM on Mondays in Room 355A. A more detailed schedule of the reading for the semester is below. Students are required to complete the assigned readings before class and be prepared to discuss the material in class.

OFFICE HOURS

My office is located at Room 301. For this semester, my office hours are Wednesdays 11AM-1PM. I am happy to meet with you outside of those hours if scheduling permits. Please email me to schedule a time outside of my posted office hours. Outside of class, e-mail should be your first choice in getting in touch with me. I will be in my office (Room 301) during scheduled office hours, but I am also happy to meet via Zoom during office hours if you prefer.

ATTENDANCE POLICY & OUT OF CLASS STUDY

Attendance is mandatory and an essential part of the course. In accordance with ABA guidance, you are allowed a total of two absences from class, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family issues, and the like). UF Law respects students' [observance of religious holidays](#), but you must notify me in advance of those religious observance-related absences. To respect your privacy, I do not otherwise differentiate between "excused" or "unexcused" absences. As a result, there is no need to tell me why you will be or were absent from class, so long as you have two or fewer absences total. More than two absences could result in preventing you from submitting your final paper and failing the course.

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Regarding out of class work, ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each class is approximately two hours in length, requiring at least 4 hours of preparation outside of class including reading the assigned materials, writing critical analyses, completing written assignments and quizzes and preparing for the final examination.

ASSESSMENT & GRADES

This is a two-credit seminar with a writing requirement. Your grade will be determined as follows:

Class Participation	5%
Paper Presentation & Draft	5%
Final Paper	90%

Your final paper must answer this question:

If the year were 1787, and you were advising a delegate to the Constitutional Convention in Philadelphia, what advice would you give the delegate regarding the design of Article V.¹ Provide specific recommendations for how you think the amendment process should be designed as well as general and theoretical support for your recommendations. You should structure your response around themes and materials that we cover in class, but you should also conduct some independent research to support your ideas.

¹ This question is a modified version of the question used by Professor Richard Albert, in his Advanced Seminar on Constitutional Amendment.

Your final paper must be between 8,000 and 15,000 words (including footnotes). It is due by 11:59PM on the last day of the exam period (Thursday, May 9.) It must be double-spaced, twelve-point Times New Roman font, and in WORD format. You will submit your final paper via Canvas. Your paper must conform with the latest edition of the Bluebook for citation and formatting purposes. Please follow the “academic” formatting conventions, i.e., the white pages. Your final papers must be entirely your own work. Collaboration, copying, or the use of generate AI is prohibited and an ethical violation. You must provide citations to all sources from which you draw content and substance.

Beginning in Week 9 of the semester, class time will be dedicated to presentation of student papers. These presentations will require students to present a draft of a significant portion of their final paper and clearly present their argument to the class. Class participants are required to read all drafts in advance of the presentations and provide constructive feedback during class.

The law school grading policy is available [here](#). The law school policy on exam delays and accommodations can be found [here](#). Students receive grade points according to the following scale:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.0	C (Satisfactory)	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D (Poor)	1.0
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

ACCOMMODATIONS:

This class will be accessible to all members of our law school community. Students requesting accommodations for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with me so we can discuss their access needs as early as possible in the semester.

PREFERRED NAME AND PRONOUNS:

Many of you may have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. I would like to refer to you by your preferred pronoun and last name. As such, if your preferred

name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise before the first day of class.²

RECORDING OF CLASS:

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

DISCOURSE, INCLUSION, AND THE CLASSROOM:

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions;
- speak honestly, thoughtfully, and respectfully;
- listen carefully and respectfully;
- reserve the right to change our mind and allow for others to do the same;
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

STUDENT COURSE EVALUATIONS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via ufl.blucera.com/ufl/. Summaries of course evaluation results are available to students [here](#).

² You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as “Ally” instead of “Allison.” To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

UF HONOR CODE:

Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to understand and comply with the UF Student Honor Code, available [here](#), and the Law School's application of it, information available [here](#).

CLASS SCHEDULE

NOTE – I may adjust this schedule depending on our progress in class and/or developments in the law.

All assigned readings are posted on Canvas.

Week 1	Topics: Course Overview & Intro. to Article V
	Reading: • Article V of U.S. Const. • Sanford Levinson, Political Implications of Amending Clauses. • Akil Amar, Popular Sovereignty and Amendment (abridged) • John Vile, The Constitutional Amending Process in American Political Thought (excerpted)
Week 2	Topics: Article V in Practice
	Reading: • Dillon v. Gloss & Coleman v. Miller • Michael Stokes Paulsen, A General Theory of Article V (excerpts) • Allison L. Held, et al., The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States (excerpt). • Michael Stokes Paulsen, How to Count to Thirty-Four • Rosalind Dixon, Partial Constitutional Amendments (excerpt)
Week 3	Topics: Article V's Dysfunction and Processes of Informal Amendment
	Reading: • Richard Albert, Constitutional Disuse or Desuetude: The Case of Article V (excerpt) • Bruce Ackerman, The Holmes Lectures: The Living Constitution • William N. Eskridge, Jr., & John Ferejohn, Superstatutes (excerpt) • Richard Albert, How Unwritten Constitutional Norms Change Written Constitutions (excerpt) • David A. Strauss, The Irrelevance of Constitutional Amendments (excerpt) • Jonathan L. Marshfield, Respecting the Mystery of Constitutional Change
Week 4	Topics: Constitutional Change in the States
	Reading: • G. Alan Tarr & Robert F. Williams, Getting from Here to There: Twenty-First Century Mechanisms and Opportunities in State Constitutional Reform • John Dinan, Governing by Amendment in the American States • Jonathan L. Marshfield, Popular Regulation?
Week 5	Topics: Constitutional Change Around the World
	Reading: • Bjorn Rasch & Roger Congleton, Amendment Procedures and Constitutional Stability • Richard Albert, The Structure of Constitutional Amendment Rules

	• Mila Versteeg & Emily Zackin, American Constitutional Exceptionalism Revisited
Week 6	Topics: Problems of Amendment Frequency
	Reading: • Ginsburg, et al., Constitutional Endurance • Ginsburg, et al., Does the Constitutional Amendment Rule Matter at All? • Jonathan L. Marshfield, The Amendment Effect • Mila Versteeg & Emily Zackin, Constitutions Un-Entrenched
Week 7	Topics: The Many Functions of Amendment Rules
	Reading: • Richard Albert, The Expressive Function of Constitutional Amendment Rules • Jonathan L. Marshfield, Amendment Creep (excerpt)
Week 8	Topics: Unconstitutional Constitutional Amendments
	Reading: • Strauss v. Horton • Richard Albert, Constitutional Amendment and Dismemberment • Yaniv Roznai, Unconstitutional Constitutional Amendments • Jonathan L. Marshfield, Forgotten Limits on the Power to Amend State Constitutions
Weeks 9-13 are dedicated to reviewing and presenting seminar papers	