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Office Hours: Monday 12-2 PM or by
appointment.

Seminar on Federalism Spring 2025

Course Description

This seminar will examine a variety of topics in the political economy of constitutional federalism. Issues to be covered include the advantages and disadvantages of political decentralization, competition between state and local governments, the impact of federalism on the status of minority groups, the Founding Fathers' view of federalism, and the role of the judges in enforcing federalism through judicial review. While most of the course focuses on federalism in the United States, some readings also employ a comparative perspective.

Course Time and Location

Monday, 4-6 PM
Room TBA

Reading Materials

Readings can be accessed through the class TWEN site or through links indicated on the syllabus. To avoid problems, I will also e-mail the first week's reading to the class.

Grading and Assignments

Each student is expected to participate actively in class discussion and to write an original research paper on a subject related to the focus of the course. In order to participate effectively, you must be prepared to discuss each week's readings.

There is no set length for the final paper, but about 20-40 pages will be appropriate in most cases. Each student is also expected to make a presentation to the class based on his or her research for the paper. Grades will be based on a combination of the paper, presentation, and class participation. Class participation will be assessed on a combination of quantity and quality. A small seminar like this one cannot function effectively without active student participation.

The final semester grade will be determined as follows:

Final Paper: 40%

Paper Proposal (due around the middle of the semester at a time to be announced): 10%

Class Participation: 25%

Paper Presentation: 25%

Permission to Record Classes

I hereby formally permit students to use any video or audio equipment of their choice to record classes, so long as the resulting video or audio is not reproduced for commercial purposes or financial gain.

Contingency Plans

In the event that either state or university guidelines prevent this class from meeting in-person, it will be held online utilizing Zoom or other similar platform. Should this prove necessary, I will inform the class of relevant procedures online. But, to the extent possible, we will observe the same rules and procedures as during in-person sessions.

Should classes be cancelled because of a snowstorm or other natural disaster, the professor – in consultation with students – will determine whether makeups will be in-person or remote.

January 27

Introduction – Federalism and the Founders

Alexander Hamilton, Federalist 9 TWEN

James Madison, Federalist 10, 39, 45 TWEN

Essays of Brutus I-II, in Herbert Storing, ed., *The Anti-Federalist* (1981), pp. 108-22 TWEN

Patrick Henry, Speeches in the Virginia Ratifying Convention, in Herbert Storing, ed., *The Anti-Federalist* (1981), pp. 293-97, 315-25. TWEN

February 3

The Tiebout Model and Interstate Competition

Charles Tiebout, “A Pure Theory of Local Expenditures,” *Journal of Political Economy*, 1956, reprinted in William Fischel, ed., *The Tiebout Model at Fifty*, (2006), pp. xi-xxi TWEN

Wallace E. Oates, “The Many Faces of the Tiebout Model, in Fischel, ed., *Tiebout Model*, pp. 21-45. TWEN

Ilya Somin, “Foot Voting, Federalism, and Political Freedom,” in *Nomos: Federalism and Subsidiarity*, (James Fleming and Jacob Levy, eds., 2014), 83-119 (text ends at 109). TWEN

David Schleicher, “Stuck! The Law and Economics of Residential Stagnation,” *Yale Law Journal* (2017), 81-131 TWEN, available at, [https://www.westlaw.com/Document/If8a8bc8ebbb211e79bef99c0ee06c731/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/If8a8bc8ebbb211e79bef99c0ee06c731/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

February 10

Federalism, Markets, and Collective Action

Barry Weingast, “The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development.” *Journal of Law, Economics, and Organization* (1995), pp. 1-31. TWEN

Jonathan Rodden & Susan Rose-Ackerman, “Does Federalism Preserve Markets?” *Virginia Law Review*, (1997), pp. 1521-72 TWEN, available at, [https://www.westlaw.com/Document/I5ca77be14b1811dba16d88fb847e95e5/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I5ca77be14b1811dba16d88fb847e95e5/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Robert D. Cooter and Neil S. Siegel, “Collective Action Federalism: A General Theory of Article I, Section 8,” *Stanford Law Review* (2010), 115-120, 135-159, 170-83 TWEN, available at, [https://www.westlaw.com/Document/Ib58f5d0c29f611e08b05fdf15589d8e8/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Ib58f5d0c29f611e08b05fdf15589d8e8/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

February 17

Federalism and Minority Rights

Douglas Laycock, “Protecting Liberty in a Federal System: The US Experience,” in Fedtke & Markesinis, eds., *Patterns of Regionalism and Federalism* (2006), pp. 119-47 TWEN

William Riker, *Federalism* (1964), pp. 137-55 TWEN

Heather Gerken, “A New Progressive Federalism,” *Democracy* (2012), available at <http://www.democracyjournal.org/24/a-new-progressive-federalism.php?page=all>

Ilya Somin, “Fight Over Sanctuary Cities is Also a Fight Over Federalism,” *The Hill*, Apr. 7, 2018, available at <https://thehill.com/opinion/immigration/381998-fight-over-sanctuary-cities-is-also-a-fight-over-federalism>

Daniel Morales, “An Immigration Law for Abolitionists (and Reactionaries),” *UC Irvine Law Review* (2023), 1293-1320, 1340-54 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4652667

February 24

Federalism and Judicial Review

Herbert Wechsler, “The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government,” *Columbia Law Review* (1954), pp. 543-61 TWEN, available at, [https://www.westlaw.com/Document/I2befe294b63b11dd93e8a76b30106ace/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I2befe294b63b11dd93e8a76b30106ace/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Lynn Baker & Ernest Young, “Federalism and the Double Standard of Judicial Review,” *Duke Law Journal* (2001), pp. 75-133 TWEN, available at, [https://www.westlaw.com/Document/Ic965c6b136e611db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Ic965c6b136e611db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Ilya Somin, “The Impact of Judicial Review on American Federalism: Promoting Centralization More than State Autonomy,” in *Courts in Federal Countries: Federalists or Unitarists?* (Nicholas Aroney and John Kincaid, eds., University of Toronto Press, 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2311400

March

Fiscal Federalism

Wallace E. Oates, “An Essay on Fiscal Federalism,” *Journal of Economic Literature* (1999), pp. 1120-49. TWEN

Roderick Hills, “The Political Economy of Cooperative Federalism,” *Michigan Law Review* (1998), pp. 814-22, 855-901 TWEN, available at, [https://www.westlaw.com/Document/Id09331c136f011db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Id09331c136f011db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Jonathan Rodden, “Reviving Leviathan: Fiscal Federalism and the Growth of Government,” *International Organization* (2003), pp. 695-729 TWEN

March 17

Federalism, the Environment, and Public Health

Jonathan H. Adler, “Judicial Federalism and the Future of Federal Environmental Regulation,” *Iowa Law Review* (2005), pp. 379-87, 452-74 TWEN, available at, [https://www.westlaw.com/Document/Ibab2f8a136ea11db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Ibab2f8a136ea11db8382aef8d8e33c97/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Richard Revesz, “Rehabilitating Interstate Competition: Rethinking the Race to the Bottom Rationale for Federal Environmental Regulation,” *NYU Law Review* (1992), pp. 1210-47. TWEN, available at, [https://www.westlaw.com/Document/I9fe75971472611db876784559e94f880/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I9fe75971472611db876784559e94f880/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Neal D. Woods, “An Environmental Race to the Bottom?” 51 *Publius* 238 (2021), pp. 238-61. TWEN, available at https://wrlc-gm.primo.exlibrisgroup.com/permalink/01WRLC_GML/19u1omk/cdi_crossref_primary_10_1093_publius_pjaa031

William Magnuson, “The Race to the Middle,” *Notre Dame Law Review* (2020), available at [https://www.westlaw.com/Document/I2398f7b76efd11ea80afece799150095/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I2398f7b76efd11ea80afece799150095/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Michael Livermore, “The Perils of Experimentation,” *Yale Law Journal* (2017), 638-45, 676-703 TWEN, available at, [https://www.westlaw.com/Document/I36707016ed0011e698dc8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I36707016ed0011e698dc8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Nicole Huberfeld, Sarah H. Gordon, and David K. Jones, “Federalism Complicates the Response to the COVID-19 Health and Economic Crisis: What Can Be Done?,” *Journal of Health Politics, Policy and Law* (Dec. 2020), available at <https://read.dukeupress.edu/jhpl/article/45/6/951/165290/Federalism-Complicates-the-Response-to-the-COVID>

Stephen Macedo and Frances Lee, *In Covid’s Wake: How Our Politics Failed US* (forthcoming 2025), ch. 5, pp. 124-63 TWEN

March 24

Comparative Federalism

Brian Galligan, “Comparative Federalism,” in R.A.W. Rhodes, ed., *Handbook of Political Science*, (2006), pp. 261-80. TWEN

Mark Rozell and Clyde Wilcox, “American Federalism in Comparative Perspective” (2019) TWEN

Barry Weingast, "Second Generation Fiscal Federalism: Implications for Decentralized Democratic Governance and Economic Development" (2014), TWEN (update)
<https://www.sciencedirect.com/science/article/abs/pii/S0305750X13000090>

Donald L. Horowitz, "The Many Uses of Federalism," *Drake Law Review* (2007), pp. 953-66
TWEN, available at,
[https://www.westlaw.com/Document/I7fcbc397795a11dca51ecfdfa1ed2cd3/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I7fcbc397795a11dca51ecfdfa1ed2cd3/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Daniel Treisman, "Ethnic Conflict and Secession," in Treisman, *The Architecture of Government: Rethinking Political Decentralization* (2007), pp. 236-46 TWEN

March 31 Federalism and Secession

Larry Anderson, "Exploring the Paradox of Autonomy: Federalism and Secession in North America," *Regional and Federal Studies* (2004), pp. 89-112 TWEN

James H. Read and Neal Allen, "Living, Dead, and Undead: Nullification Past and Present," in Sanford Levinson, ed., *Nullification and Secession in Modern Constitutional Thought* (2016), pp. 91-124 TWEN

Christopher Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy and Public Affairs* (1995), pp. 142-71 TWEN

Allen Buchanan, "Theories of Secession," *Philosophy and Public Affairs* (1997), pp. 31-61 TWEN

April 7 Federalism and Local Government

Daniel Weinstock, "Cities and Federalism," in *Nomos: Federalism and Subsidiarity*, (James Fleming and Jacob Levy, eds., 2014), 259-290 TWEN

Heather K. Gerken, "Federalism All the Way Down," *Harvard Law Review* (2010), pp. 6-25, 44-65, available at
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4835&context=fss_papers

National League of Cities, "Principles of Home Rule for the 21st Century," (2020), available at
<https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf>, pp. 4-38

David Schleicher, “Constitutional Law for NIMBYs: A Review of ‘Principles of Home Rule for the 21st Century’ by The National League of Cities,” *Ohio State Law Journal* (2020), TWEN, available at,

[https://www.westlaw.com/Document/laecab8fe6a9311ebbea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/laecab8fe6a9311ebbea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Jonathan Chait, “Why the Worst Governments in America Are Local Governments,” *New York Magazine*, September 7, 2014, available at

<http://nymag.com/daily/intelligencer/2014/09/ferguson-worst-governments.html>

April 14

New Frontiers in Federalism

Bruno S. Frey, “A New Concept of European Federalism,” LEQS Paper no. 3 (2009), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550908

Margaret MacMillan, “The Big Idea: Is World Government Possible?,” *Guardian*, Nov. 22, 2021, available at <https://www.theguardian.com/books/2021/nov/22/the-big-idea-is-world-government-possible>

Campbell Craig, “The Resurgent Idea of World Government,” *Ethics and International Affairs* (2008), available at https://ciaotest.cc.columbia.edu/journals/cceia/v22i2/f_0007579_6441.pdf

Ilya Somin, “A Cosmopolitan Case Against World Government,” Cato Institute (2024), available at <https://www.cato.org/publications/cosmopolitan-case-against-world-government#>

Ian A. Crawford, “Interplanetary Federalism: Maximising the Chances of Extraterrestrial Peace, Diversity and Liberty,” in Charles Cockrell, ed., *The Meaning of Liberty Beyond Earth* (2015), available at

http://www.homepages.ucl.ac.uk/~ucfbiac/Interplanetary_federalism_preprint_version.pdf

April 21

Student Presentations

April 24 (Thursday observing Monday schedule)

Student Presentations