



Corey Brettschneider  
Professor of Political Science, Brown University

Phi Beta Kappa Visiting Scholar 2020-2021

### Public Lecture Topics

#### 1. The Oath and The Office: A Guide To the Constitution For Future Presidents.

Can the president launch a nuclear attack without congressional approval? Is it ever a crime to criticize the president? Can states legally resist a president's executive order? In today's fraught political climate, it often seems as if we must become constitutional law scholars just to understand the news from Washington, let alone make a responsible decision at the polls.

In this lecture on his recent book, *The Oath and the Office*, Brettschneider offers the guidance we need, right now and into the future, whether we are voting for or running to become president of the United States. He explains the powers—and limits—that it places on the presidency. From the document itself and from American history's most famous court cases, we learn why certain powers were granted to the presidency, how the Bill of Rights limits those powers, and what "we the people" can do to influence the nation's highest public office—including, if need be, removing the person in it. Along the way, he discusses the views of James Madison on presidential powers and limits, as well as seminal cases such as *Korematsu v. United States* and *Trump v. Hawaii*. Brettschneider builds the lecture to culminate in a discussion about how to stop a president who disregards the Oath, including a close look at impeachment and the debate over whether a sitting president can be criminally indicted.

#### 2. Hate Speech and Free Speech

How should a liberal democracy respond to hate groups and others that oppose the ideal of free and equal citizenship? The democratic state faces the hard choice of either protecting the rights of hate groups and allowing their views to spread, or banning their views and violating citizens' rights to freedoms of expression, association, and religion. Avoiding the familiar yet problematic responses to these issues, political theorist Corey Brettschneider proposes a new approach called value democracy. The theory of value democracy argues that the state should protect the right to express illiberal beliefs, but the state should also engage in democratic persuasion when it speaks through its various expressive capacities: publicly criticizing, and giving reasons to reject, hate-based or other discriminatory viewpoints.

Distinguishing between two kinds of state action--expressive and coercive--Brettschneider contends that public criticism of viewpoints advocating discrimination based on race, gender, or sexual orientation

should be pursued through the state's expressive capacities as speaker, educator, and spender. When the state uses its expressive capacities to promote the values of free and equal citizenship, it engages in democratic persuasion. By using democratic persuasion, the state can both respect rights and counter hateful or discriminatory viewpoints. Brettschneider extends this analysis from freedom of expression to the freedoms of religion and association, and he shows that value democracy can uphold the protection of these freedoms while promoting equality for all citizens.

#### Classroom Topics

1. For advanced students I can offer an in depth look at recent constitutional controversies involving the presidency . We can discuss the Trump v. Hawaii (the travel ban case, where my amicus brief was cited by the dissent), issues of states v. the federal government, in particularly in relation to the sanctuary cities litigation. These subjects relate to my book, *The Oath and the Office* (WW Norton 2018).
2. I can also do a seminar on democratic theory, focusing on the role of judicial review in democracy. Why can a court strike down laws passed by elected representatives. Should this be allowable in democracy? And how does that question impact how the constitution should be interpreted? I note this is the subject of my first book, *Democratic Rights* (PUP, 2007).
3. A third seminar or class could focus on issues of free speech on campus and in the wider society. How can a university of college both respect freedom of speech and also promote values of equality? The discussion can focus on the University of Chicago principles of free speech adopted by many universities. I defend the principles but argue they are incomplete.
4. A fourth focus could be religious freedom. How are we to understand the role of religious freedom and its possible tension with other civil liberties, including gay rights. I would offer a look at the Religious Freedom Restoration Act.
5. I am currently at work on a project about the civic rights of prisoners, including rights to free speech and to vote. The project is partly comparative looking at the approach of Europe and the United States. It would include an in depth look at the Religious Land Use and Prisons Act and the litigation around it and its implications for a broader array of prisoner rights.