

Professor Rappaport
Room: 134
Phone: 260-2329

Constitutional History
Spring 2008

General Syllabus

- I. The Colonial Constitution
- II. The American Revolution
- III. Revolutionary Constitutionalism
- IV. Drafting and Ratifying the Constitution
- V. Establishing the New Government
- VI. The Origins of Judicial Review
- VII. The Protection of Economic Rights and Natural Law
- VIII. Secession and the Civil War
- IX. Reconstruction
- X. The Meaning of the 14th Amendment
- XI. Was the 14th Amendment Constitutional?
- XII. Plessy, Brown, and the Constitutionality of Segregation

REQUIRED MATERIALS:

1. Supplementary materials (SM), available from me.
2. Web materials (Web), available on the web, usually with the hyperlink on the digital version of this syllabus. Web page is <http://home.sandiego.edu/~miker/coursepg.html>

OPTIONAL MATERIALS:

1. Kelly, Harbison & Belz, *The American Constitution: Its Origin and Development* (7th edition) (Volume I) (KHB). This book can be purchased at the bookstore or is available on reserve.

EXAM:

There will be a final exam, which will consist of objective and essay questions. The exam will test on material covered in class and in the assigned readings. The best way to prepare for the exam is to read your class notes and then to review the assignments, with a focus on the issues discussed in class.

PAPER OPTION:

Students may write a paper under extremely limited circumstances. The student must be knowledgeable about the subject of the paper and have developed a topic on their own. A paper topic needs to be approved in the first two weeks.

CLASS PARTICIPATION and ATTENDANCE:

Class participation is important and will count towards the final grade. Volunteers are preferred, but I will also call on students. Students who make a contribution to the class may improve their final grade a full grade (such as from B+ to A-)

Students who are unprepared or absent will be recorded. Students may be required to complete additional assignments if they are often unprepared or absent. Students who are repeatedly absent, especially after being notified there is an attendance problem, may also lose up to a full grade from their final grade.

Please be aware that attendance is essential. The exam will cover material that was discussed in class but was not in the assigned readings.

SEATING CHART:

Please sign the seating chart. Also, please do not change seats once you have signed the seating chart. A student's name must be on the seating chart to take the final.

Detailed Syllabus

I. The Colonial Constitution in the Eighteenth Century

KHB: Chap. 3

II. The American Revolution

KHB: Chap. 4

Web: The Declaratory Act

http://www.yale.edu/lawweb/avalon/amerrev/parliament/declaratory_act_1766.htm

SM: Virginia Stamp Act Resolutions

<http://www.history.org/History/teaching/tchcrvar.cfm>

Web: Locke, "Of Civil Government"

Web: The Declaration of Independence

<http://www.yale.edu/lawweb/avalon/declare.htm>

III. Revolutionary Constitutionalism

A. State Government

Web: The Const. of Virginia 1776

<http://www.yale.edu/lawweb/avalon/states/va05.htm>

KHB: Chap. 5

B. National Government

Web: Articles of Confederation

<http://www.yale.edu/lawweb/avalon/artconf.htm>

IV. Drafting and Ratifying the Constitution

A. Drafting the Constitution

KHB: Chap. 6

Web: The Virginia Plan – <http://www.yale.edu/lawweb/avalon/const/vatextb.htm>

The NJ Plan – <http://www.yale.edu/lawweb/avalon/const/patextb.htm>

Hamilton Plan – <http://www.yale.edu/lawweb/avalon/const/hamtextb.htm>

Web: The US Constitution – without any amendments

[http://www.constitution.org/constit .htm](http://www.constitution.org/constit.htm)

B. Ratifying the Constitution

KHB: Chap 7

Web: Ratification of U.S. Constitution by Massachusetts
<http://www.yale.edu/lawweb/avalon/const/ratma.htm>

C. Justifying and Critiquing the Constitution

Web: The Federalist Papers:

No. 8 – <http://www.yale.edu/lawweb/avalon/federal/fed08.htm>

No. 9 – <http://www.yale.edu/lawweb/avalon/federal/fed09.htm>

Read all but the last three paragraphs of No. 9

No. 10 – <http://www.yale.edu/lawweb/avalon/federal/fed10.htm>

No. 39 – <http://www.yale.edu/lawweb/avalon/federal/fed39.htm>

No. 51 – <http://www.yale.edu/lawweb/avalon/federal/fed51.htm>

No. 73 – <http://www.yale.edu/lawweb/avalon/federal/fed73.htm>

No. 78 – <http://www.yale.edu/lawweb/avalon/federal/fed78.htm>

Web: Brutus XI

<http://www.constitution.org/afp/brutus11.htm>

Brutus XV

<http://www.constitution.org/afp/brutus15.htm>

Elbridge Gerry's Report

<http://www.infoplease.com/t/hist/antifederalist/egerry01.html>

V. Establishing the New Government

KHB: Chap. 8 (required but background).

A. The Bank of the United States

SM: The First Political Parties;
The Bank of the US: A Case Study

B. The Bill of Rights and the Ninth Amendment

Web: The Federalist 84

<http://www.yale.edu/lawweb/avalon/federal/fed84.htm>

Read the first 12 paragraphs (until and including the one beginning
“There remains but one other view of the matter”).

James Wilson, Statehouse Speech

SM: James Madison Speech to the House of Representatives;
Amendments Sent to Senate;

Web: The Bill of Rights: The First Two Proposed Amendments

<http://www.constitution.org/billofr.htm>

Read the first two amendments only.

Read U.S. Const. Art. I, sec 2. (See above).

Read U.S. Const. Amendments 1 - 10
SM: Griswold v. Conn. (Opinion of Justice Goldberg)
Web: Cooper
SM: Ely, The Ninth Amendment;
Barnett, Restoring the Lost Constitution, The Ninth Amendment

C. Removal

SM: Curie, The Department of Foreign Affairs

D. The Power over Foreign Affairs

Pacificas & Helvidius
Ramsey and Prakash
Bradley and Flaherty
Youngstown Sheet and Tube Co. v. Sawyer

E. Sedition Act

SM: Zenger's Case
SM: The Alien and Sedition Acts; Introduction to the Kentucky and Virginia Resolutions; The Role of the State Legislatures in Preserving Liberty.
Web: Draft of the Kentucky Resolution –
<http://www.yale.edu/lawweb/avalon/jeffken.htm>
SM: Massachusetts Resolutions in Reply to Virginia;
Web: Madison's Report of 1799-1800
SM: Levy, The First Amendment: The Free Press Clause
Web: Anderson, The Origins of the Press Clause

VI. The Origins of Judicial Review

SM: Judicial Review of State Legislation and Marbury v. Madison
KHB: Chap. 10 (optional)

VII. The Protection of Economic Rights and Natural Law

SM: The Protection of Property Rights and the Natural Law Tradition;
KHB: 186-193 (optional)

VIII. Secession and the Civil War

A. Secession and Responses

KHB: Page 280-290

Web: Lincoln's First Inaugural

<http://www.yale.edu/lawweb/avalon/presiden/inaug/lincoln1.htm>

SM: Lincoln and the Suspension of Habeas Corpus

B. The Power to Declare War

SM: The Philadelphia Convention

SM: The Prize Cases

SM: John Yoo, Mike Ramsey

IX. Reconstruction

KHB: Chap. 17

SM: The Civil Rights Act of 1866;

The Drafting and Adoption of the 14th Amendment;

The Fourteenth Amendment Limited: The Slaughter House Cases;

X. The Meaning of the 14th Amendment

SM: Corfield v. Coryell

Web: Harrison, Privileges and Immunities

Web: Amar, The Fourteenth Amendment

SM: Barnett, Privileges and Immunities

XI. Was the 14th Amendment Constitutional?

SM: The Unusual Procedural History of the 14th Amendment

Web: Web, Harrison, The Lawfulness of the Reconstruction Amendments

Read: p 1-2, 5-6, 12-26

Skim: p 2-5, 6-12

SM: Amar

XII. Plessy, Brown, and the Constitutionality of Segregation

SM: Plessy, Brown

SM: McConnell

SM: Klarman