

History 315
United States Constitutional History to 1865 - Spring, 1999

Timothy S. Huebner

Office: 305 Clough Hall

Office Hours: Monday and Wednesday, 1-3 p.m., or by appointment

Phone: 843-3653 (direct line/voice mail), 843-3662 (department)

E-Mail: HUEBNER

Course Description and Objectives:

This course examines the development of American constitutionalism from the seventeenth century through the Civil War era. We will pay particular attention to the revolutionary ideology of eighteenth century America, the creation of a constitution and a republic, the rise of judicial review in the early nineteenth century, and the new nation's attempts to deal with such key constitutional issues as federalism, the separation of powers, the government's role in the national economy, and the future of slavery in the expanding republic. In contrast to a constitutional law course, this class is more concerned with how American constitutionalism both shaped and responded to larger political and social developments, and less concerned with the evolution of constitutional doctrine in and of itself.

This course is a seminar. That means that each student must complete the assigned readings and come to class prepared to discuss them. This is not a lecture class, and class participation is key to the seminar's (and your) survival.

After completing this course, students should have a broad understanding of the history of American constitutionalism to 1865, as well as improved oral, written, and critical thinking skills.

Readings:

Melvin I. Urofsky, A March of Liberty: A Constitutional History of the United States, vol. 1 to 1877, 1988 (referred to below as "Urofsky").

Melvin I. Urofsky, ed., Documents of American Constitutional and Legal History, vol. 1, From Settlement through Reconstruction, 1989 (referred to below as "Documents")

Forrest MacDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution, 1985.

Stanley I. Kutler, Privilege and Creative Destruction: The Charles River Bridge Case, 1971.

Don E. Fehrenbacher, Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective, 1981.

Supplementary Course Packet, available through the Department of History, 308 Clough Hall.

Assignments and Grading Policies:

Attendance is mandatory; if you must miss class because of illness, please notify me immediately, either by phone or by e-mail. Final grades will reflect attendance. You may assume that your final grade in this class will be no higher than the percentage of classes you attend. Final grades will be determined as follows:

Book review/Oral presentation (3-4 pp.) - 15%

Mid-term examination - 20%

Final examination -20%

Research paper (15-20 pp.) - 25%

Seminar participation -20%

Detailed explanations of all these assignments will follow. Copies of this syllabus as well as all handouts and assignment sheets, will be available on the Academic Volume in the file marked "Huebner."

Make-up examinations will not be given without a verifiable medical excuse. All excuses are subject to the approval of the instructor. Late research papers will be accepted one **day** (not one class period) after the due date, with a one letter-grade penalty. Papers will not be accepted more than one day after the due date. All work, unless otherwise indicated, is pledged under the Rhodes College Honor Code.

Topics and Reading Assignments:

1. The Origins of American Constitutionalism

Jan. 14 - Introduction to course

Jan. 19 - Constitutionalism in England and the Colonies

(McDonald, 1-8, 57-96; Documents, 3-4, 10-14, 16-21;"English Declaration of Rights")

Jan. 21 - Revolutionary Ideology and State Constitutions

(McDonald, 97-142; Documents, 35-40, 42-44, 49-54, 59-66)

Discussion Questions:

What was going on in England during the seventeenth century, and what did that have to do with the development of constitutionalism in America? What “systems” of political theory and political economy influenced the Founders? What sorts of precedents regarding government and constitutionalism were set during the colonial era? How did writers like Paine and Jefferson justify separation from England and repudiation of the monarchy? What do state constitutions written during the revolutionary period reveal about the aims of the war for independence?

2. Creating a Nation

Jan. 26 - The Critical Period

(McDonald, 143-183; Documents, 69-76)

Jan. 28 - Creating a Republican Government
(McDonald, 185-224; Documents, 89-96)

*Feb. 2 - Debate over Ratification
(McDonald, 225-260; Documents, 97-125)

**Feb. 4 - The Framers and their Intentions
(McDonald, 261-293; Rossiter, "The Constitution Was Created by the Genius of the Framers"; Marshall, "The Constitution's Bicentennial")

Report Reading:

Jackson Turner Main, The Antifederalists: Critics of the Constitution, 1781-1788.

Charles Beard, An Economic Interpretation of the Constitution of the United States.

Melvin Bradford, Original Intentions: On the Making and Ratification of the United States Constitution.

Discussion Questions:

What were the "lessons" learned by the Founders from 1776-1787? Why was the period under which the U.S. government served under the Articles of Confederation known as the "critical period?" What was so critical about it? Were the Articles really beyond repair, or was that just a clever argument made by those who had wanted a stronger national government all along? Why was Madison such a key figure in the Constitutional Convention? What are we to make of the Framers' achievement? Was this merely a document written by a few elite white males, or did it really represent the will of "the people?" Were the Founders' economic interests the real basis for this Constitution, or were other ideological factors at work? Should we celebrate the birth of the Constitution? How far reaching did the Founders intend this government to be? Did they foresee today's modern state, or was their vision a conservative one that emphasized limiting the powers of government?

3. Politics and Constitutionalism in the Early Republic

*Feb. 9 - Competing Visions
(Documents, 132-149)

Feb. 11 - The Early Supreme Court
(Urofsky, 130-152; Documents, 129-132, 150-157, 192-194)

*Feb. 16 - Jefferson and the Constitution
(Urofsky, 170-197; "Sedition Act of 1798"; Documents, 158-163, 171-174, 185-187, 198-201)

Report Reading:

Thomas P. Slaughter, The Whiskey Rebellion: Frontier Epilogue to the American Revolution.
Richard Ellis, The Jeffersonian Crisis: Court and Politics in the Young Republic.

Discussion Questions:

In what ways did Hamilton and Jefferson represent competing visions for the new nation and of the new Constitution? Could their differences best be understood as simply "loose constructionism v. broad constructionism?" Why was the national bank issue in particular such a hotly contested question? What was the role of the early Supreme Court--before the days of John Marshall? What types of issues did it confront? Did the early Court claim the power of judicial review? Was the Court more inclined to side with the national government, or the states? Why was the election of 1800 so significant? How did Jefferson's view of the Constitution change from the 1790s to the 1800s? Did he remain in favor of strict construction? What about his view of federalism? In the final analysis, was Jefferson a champion of state sovereignty or not? How did Jefferson attempt to make an imprint upon the judiciary?

4. John Marshall and Judicial Nationalism

*Feb. 18 - Judicial Review
(Documents, 175-185, 201-206)

*Feb. 23 - Nationalism and Sovereignty
(Urofsy, 198-222 "Martin v. Hunter's Lessee," Roane, "Hunter v. Martin")

*Feb. 25 - Economic Nationalism
(Urofsy, 223-243; Documents, 214-235)

Mar. 2 - Judicial Nationalism and the Specter of Sectionalism
(Documents, 243-255, 366-369)

Mar. 4 - MID-TERM EXAMINATION

(SPRING BREAK: MARCH 8-12)

Report Reading:

Robert L. Clinton, Marbury v. Madison and Judicial Review.
R. Kent Newmyer, Supreme Court Justice Joseph Story: Statesman of the Old Republic.
Charles Hobson, The Great Chief Justice: John Marshall and the Rule of Law.

Discussion Questions:

What kind of a chief justice was John Marshall? Was Marbury v. Madison really important, or has its significance been exaggerated? What about some of Marshall's lesser known pronouncements--Fletcher, McCulloch, Dartmouth College, Gibbons--weren't they much more important than Marbury? Was Marshall what we would today refer to as a "judicial activist," or were his decisions really more conservative and defensive? What was at the core of Marshall's jurisprudence--crass capitalism? commitment to the rule of law? a strong national government? What about Joseph Story? What was his role on the Marshall Court? Was his attempt to use

"popular sovereignty" in Martin v. Hunter's Lessee a sleight of the hand--a trick by a clever constitutional theorist to expand national power? What of the opposition to Marshall and Story? Were opponents like Roane and Taylor merely attempting to protect slaveholding interests, or did their arguments have constitutional validity? Why was the Missouri Crisis so significant?

5. The Age of Jackson

*Mar. 16 - Calhoun and Nullification
(Urofsky, 267-286; Documents, 370-379; Huebner, "Divided Loyalties")

*Mar. 18 - Indian Removal and the Cherokee Cases
(Documents, 255-261; State v. Foreman)

*Mar. 23 - The Bank War and Internal Improvements
(Documents, 235-243, 296-299; Webster, "Defends the BUS")

Mar. 25 - The Taney Court and Economic Development
(Urofsky, 318-335; Documents, 299-309; Kutler, ix-53)

Mar. 30 - The Taney Court and Economic Development
(Kutler, 54-179; Documents, 345-348)

Apr. 1 - Easter Recess

Report Reading:

William Freehling, Prelude to Civil War: The Nullification Crisis.

Jill Norgren, The Cherokee Cases: The Confrontation of Law and Politics.

Harry Watson, Liberty and Power: The Politics of Jacksonian America.

Discussion Questions:

What was the doctrine of nullification? Was it a constitutional theory, or simply a mechanism for protecting the interests of slaveholders? Why didn't the other southern states join South Carolina in its crusade against the national government? What do the Cherokee Cases tell us about the Marshall Court's understanding of federalism, the rule of law, and the rights of Native Americans? Why did the National Bank continue to be such a pressing question during the 1830s? Why was Jackson so fiercely opposed to the Bank? Was it really unconstitutional? What about his arguments regarding internal improvements? How compelling were Webster's arguments on these issues? If Jackson did not favor a national role in economic regulation, what was his view of such issues? What was the significance of the Charles River Bridge decision? Did the Taney Court promote economic development, or did it undermine the rights of property owners?

6. Slavery, Sectionalism, and the Constitution

*Apr. 6 - Slavery in the Constitutional Order
(Fehrenbacher, 3-101; Documents, 384-392, 416-419)

*Apr. 8 - Antislavery Constitutionalism
(Documents, 363-365, 380-383, 420-422; Foner, "Salmon P. Chase")

Apr. 13 - Dred Scott and its Aftermath
(Fehrenbacher, 102-308; Documents, 423-429, 434-439)

Report Reading:

Don E. Fehrenbacher, Constitutions and Constitutionalism in the Slaveholding South.

William Wiecek, Sources of Antislavery Constitutionalism in America.

Discussion Questions:

What did the Constitution say about slavery? Were the Framers clearly in support of this peculiar institution, or did they have their doubts? What about antislavery constitutionalism? Was there any basis for an antislavery position in the U.S. constitutional tradition? What was the relationship between slavery and federalism? Were pro-slavery theorists nationalists or sectionalists? Why was the Dred Scott decision so important? What effects did it have on the political system in the years before the Civil War? What were the implications of Dred Scott for judicial power?

7. The Civil War as a Constitutional Crisis

**Apr. 15 - Secession and the Confederacy
(Urofsky, 393-421; Documents, 445-454)

Apr. 20 - War and the Constitution
(Documents, 454-460, 462-468, 482-488, 503-508, 520-527)

Apr. 22 - Emancipation and Civil Rights
(Urofsky, 423-446; Documents, 460-462, 472-479, 489-503)

*Apr. 27 -Impeachment
(Documents, 508-512)

Apr. 29 - Summary and Conclusions
(Fourteenth Amendment)

Report Reading:

Paul Escott, After Secession: Jefferson Davis and the Failure of Confederate Nationalism.
Marshall DeRosa, The Confederate Constitution of 1861: An Inquiry into American Constitutionalism.

Michael Les Benedict, Impeachment and Trial of Andrew Johnson.

Discussion Questions:

How was the American Civil War a "constitutional crisis?" What was the constitutional basis of the secessionist argument? What were the distinguishing features of the Confederate Constitution? Was it an American document or a "Southern" document? What constitutional pressures emerged during wartime? How did Lincoln handle these various constitutional issues? Was he a dictator, or did he exercise his power in accordance with the Constitution? What about emancipation as a constitutional issue? Was there any constitutional basis for Lincoln's Emancipation Proclamation? How did Lincoln conceive of Reconstruction? What were his primarily goals for the post-war nation? What about the impeachment of Andrew Johnson? Was it merely politically motivated, or did substantive constitutional issues demand his impeachment? What happened to federalism through all of this? Was the position of the national government stronger after the war?

FINAL EXAMINATION: TUESDAY, MAY 4, 1999, 8:30-11:00 A.M.