

CGCL 6100: Foundations of American Constitutionalism

Summer 2025 (June 17 – June 27)

Meeting time: 10:00 AM – 2:50 PM (Lunch break: 12:05 – 12:45 PM)

Location: CB 301

Professor: Troy E. Smith

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COURSE OVERVIEW

As a constitutional republic, the U.S. Constitution is the nation's foundational and fundamental law that orders much of the American political system. What the Constitution allows and prohibits is sometimes the subject of intense debate. In such situations, politicians and citizens may appeal to what "the Framers intended". Understanding the Framers' intent, even when they disagreed, requires an understanding of the history and philosophies that influenced their ideas and an awareness of the debates and discussions behind the Constitution. This will help us better understand the various institutions and elements created by and found in the Constitution, how America has developed, and what is happening in U.S. politics now. Specific subjects will include the advantages and limitations of large republics, representation, Congress, the presidency, slavery, and federalism.

LEARNING OBJECTIVES

By the end of the semester, students should have accomplished the following:

- (1) Learn the primary philosophies that influenced the creation of the American Constitution and be able to identify which philosophy a specific reading draws upon;
- (2) Understand the primary Convention and Ratification debates – pro and con;
- (3) Learn how to closely read a text to identify the primary claim(s) and supporting reasons, and to evaluate the quality of arguments – (i.e., do the reasons support the claim?);
- (4) Induce the implications of the argument.

POLICIES

ACADEMIC INTEGRITY:

Any work submitted by a student is done under the implied claim that the person who submits the work is its author in whole and in all parts. Students are expected to be familiar with and adhere to the university's regulations concerning academic honesty. A copy of those policies is provided at the links after these paragraphs. Read them. Violation of these guidelines will result in a severe penalty that may include a failing grade in the course and referral to the appropriate university judicial authority.

Penalties will be imposed for *inadvertent* as well as deliberate plagiarism. Since inadvertent plagiarism is not fully intentional, you need to be aware of what it is. It is easy to cut-and-paste

material from the Internet, summarizing a source's logic, evidence, reasoning or language. When you do this, you are obliged to acknowledge *in the main body of the paper* that you are doing so, and not merely with a within-text citation. You need to say something like "Smith says that..." even when you paraphrase. Putting in a citation at the end of a series of directly paraphrased sentences is NOT adequate. The same thing goes for following the order of another person's argument and evidence. Summarizing another person must be acknowledged, and close paraphrasing should be rare. When you paraphrase closely, you probably should be quoting. And merely copying the other person's footnotes is NEVER appropriate because it suggests that you did not verify the original source on your own. When you do want to do a second-degree citation like this, it should read: Jones, p. 133 as cited by Smith, p. 221.

If your paper turns out to be a series of quotes and paraphrases, and if you give all of the proper references using words of acknowledgment as well as within-text citations, then it will not be plagiarized. It will not be considered dishonest. So far, so good – but that is still not enough to make a paper satisfactory. Compiling a series of quotes and paraphrases – even if properly acknowledged – will not be enough to do a passable job. A paper must be made up of and organized around *your* thoughts – your thesis, reasoning and evidence, phrased in your words and serving your paper's end.

If you have any questions about this while writing, it is your responsibility to ask in advance.

Links: ??? – link to the UVU policy

(Note: The above section on Academic Integrity was written by Dr. Michael J. Malbin, and is used here with his permission.)

CHATGPT, AND OTHER AIs:

Because any work submitted by you presumes that you are the author in whole and in all its parts, the use of Large Language Models (LLMs), like ChatGPT and other AI, to write your discussions, responses, summaries, or papers is a violation of the Academic Integrity policy.

An important outcome from attending graduate school is learning how to think and communicate clearly about the topics you are studying. This learning comes from wrestling with the material to make sense of it and explain it *in your own words*. This may be a challenge at the beginning, but, as you apply yourself to the task, it will become easier. Using LLMs to do your work will delay and possibly impair this important learning.

Hence, do NOT use an LLM to write your notes, summaries, discussion comments, discussion responses, or papers. You can use it to generate ideas (though I would do this sparingly and with caution for what it produces), improve your writing (by examining what it changes in your writing to see how you can improve your writing on your own), or to tutor you in the topics (with caution – I find that ChatGPT is wrong about 15% of the time but knowing which 15% is difficult if you are not familiar with the material). The unauthorized use of LLMs will result in significant point deductions and may violate UVU's plagiarism policy.

ATTENDANCE:

Attendance in class, on time, is expected. Students who miss two or more hours of class without an appropriate excuse will be penalized significantly in their final grades. This could range from a full letter on the final grade to failing the course.

LATE PAPERS AND ASSIGNMENTS:

All assignments are due on the date *and at the time* assigned. Excuses will be accepted *only* for an *adequately documented* illness or emergency. Nothing prevents the student with a known scheduling conflict from reading ahead and completing the assignment early. The due dates are on the syllabus. Unexcused assignments will be penalized at the rate of one full letter grade (for example from B+ to C+) for each 24-hours, with the first 24-hours beginning when the assignment was due.

SPECIAL NEEDS:

Reasonable accommodations will be provided for students with documented physical, sensory, systemic, cognitive, learning, and psychiatric disabilities. If you believe you have a disability requiring accommodation in this class, please notify the [??? Director of the Disability Resource Center]. That office will provide the course instructor with verification of your disability, and will recommend appropriate accommodations.

ABSENCE DUE TO RELIGIOUS OBSERVANCE:

Students are excused, without penalty, to be absent because of religious beliefs, and will be provided equivalent opportunities for make-up examinations, study, or work requirements missed because of such absences. Students should notify the instructor *in advance*, and the instructor will work directly with students to accommodate religious observances.

ASSIGNMENTS & GRADING

TEXTS

The Founders' Constitution, Volume One: Major Themes, edited by Philip B. Kurland and Ralph Lerner (Liberty Fund, 2000) (\$12.99 on [Amazon.com](https://www.amazon.com))

Andrew McLaughlin, *Foundations of American Constitutionalism* (\$26.95 on [Amazon.com](https://www.amazon.com)).

Edward J. Larson and Michael P. Winship, eds. *The Constitutional Convention* (Abridgment of James Madison's Notes on the Convention, with supporting narrative.) (New York: Modern Library, 2005) ISBN: 978-0812975178 (\$15.48 on [Amazon.com](https://www.amazon.com))

Hamilton, Madison, and Jay, *The Federalist Papers* (\$7.89 on [Amazon.com](https://www.amazon.com))

Other readings available on Canvas

Recommended: Minogue, *Politics: A Very Short Introduction* (\$11.99 on [Amazon.com](https://www.amazon.com))

Online reference material:

Congressional Research Service (Library of Congress): U.S. Constitution Annotated
Constitution by clause: <https://constitution.congress.gov/constitution/>

Click on the box-with-box (upper right) for the provision explained.

Click on hotlinks for detailed explanations of the current legal interpretation of each clause or phrase, with citations to history and major cases.

Example: step drilling down on Article I:

<https://constitution.congress.gov/browse/article-1/> .

And further down to the Great Compromise:

https://constitution.congress.gov/browse/essay/artI-S1-1-3/ALDE_00001313/

Avalon Project (Yale Law School): https://avalon.law.yale.edu/subject_menus/18th.asp

Center for the Study of the American Constitution (U. of Wisconsin, Dept. of History)

<https://csac.history.wisc.edu/>

Liberty Fund: <https://oll.libertyfund.org/collection/the-american-revolution-and-constitution>

GRADING

Class Participation	35%
Journal & Presentations	30%
Course Exam	35%

CLASS PARTICIPATION (35%)

Your class participation is 35% of your course grade. This includes attendance, participation in class discussions, and an in-class presentation on one of the reading assignments.

Attendance: As mentioned in the “Policies” above, attendance in class, on time, is expected.

Participation: Your class participation is evaluated by quantity rather than quality. This means reading the material before class and developing questions and comments about the readings. UVU expects students to spend two hours preparing for class for every one hour in class – more time may be required for students who lack a background in the subjects or who wish to do excellent work. Given the condensed nature of this course, most of your out-of-class work will need to be done before the course begins. Before each class, you should review your reading notes and be prepared to participate in discussions for that day. Please consult this syllabus for required and recommended readings, and preparation questions to guide your reading.

I may randomly call on a student to summarize a reading or readings for that class session. These brief summaries should identify the readings’ primary claim and supporting reasons. Extra credit is given for accurately assessing the argument’s strength or validity as well as the likely implications if the argument is accepted. You may refer to your journal to aide with this reading summary.

JOURNAL & CLASS PRESENTATION (30%)

You are required to keep a journal (electronic or paper) of your readings and course experience that you will submit at the end of the course (it will be returned to you). Your journal should contain two types of entries: short reading summaries of the assigned readings, and a reflective entry at the end of each day.

The short reading summaries identify the main claim of the reading and its supporting reasons; it may also include the historical roots of that claim, an assessment of the argument, and the likely implications of if the claim is accepted. You should complete most of these before the course begins as you will have little time to do so after the course starts. Note: for examples of how to make these summaries see the document “A Primer: Preparing Reading Presentations & 1-Page Reading Summaries” on Canvas/Files.

The journal’s reflective entries (350 words, minimum) describe what you learned in that day’s classes, i.e., one reflective entry for every day in class. The reflective entries should summarize the main ideas, themes, and connections that were explored that day. I strongly encourage you to also write down the ideas and questions that interested you and which you may want to explore later in a research paper.

In-class Presentation: Each student is responsible for giving a Reading Presentation for one of the assigned readings – a sign-up sheet is available on Canvas/Announcements (please sign-up for one reading). This presentation should take 4-7 minutes and include the following elements: (a) a simple summary of a scholarly work; (b) an evaluation of the quality of the argument (is it valid, sound, strong or weak; has the author sufficiently qualified the argument or forgotten relevant variables?); (c) applying the argument beyond the scholarly work – this could include placing the learning in a larger context (e.g., historical, political), explaining why understanding this material is important, or applying this knowledge to help explain a situation not covered in the reading. For more information on how to complete this assignment, please see the “How to do Reading Presentations & Summaries” in Canvas/Announcements.

COURSE EXAM (35%)

The final exam will be an in-class exam that will consist primarily of a written essay on a selected reading. In the essay, the student needs to do the following: (a) identify the intellectual roots of the reading; (b) identify the primary claim(s) of the reading; (c) identify and analyze the primary supporting reasons supporting the claim; (d) assess the value of the argument and likely implications if the argument is accepted. The exam may also include multiple choice and short-answer questions.

Grading scale: A: 93-100 (4.0); A-: 90-92 (3.67); B+: 87-89 (3.33); B: 83-86 (3.0); B-: 80-82 (2.67); C+: 77-79 (2.33); C: 73-76 (2.0); C-: 70-72 (1.67); D+: 67-69 (1.33); D: 63-66 (1.0); D-: 60-62 (0.67); E: 0-59 (0.0).

Grades of Incomplete will only be awarded for reasons explained in the university’s guidelines. See ???-incomplete grade policy.

CLASS SCHEDULE

All of the readings listed on this syllabus are required reading, unless noted as “Recommended.” Readings with an asterisk (*) are available on Canvas.

June 16: NO CLASS – Juneteenth Holiday

June 17: Constitutionalism in the Ancient & Medieval World

Objective: learn the four primary philosophical/religious influences: covenant theory, natural law, republicanism, and liberalism.

10-10:30 - *Introduction to American Constitutionalism*

Readings:

- (1) Henry Steele Commager, "Introduction", in *Foundations of American Constitutionalism* by Andrew C. McLaughlin, pp. vii-x.
- (2) *Belz, "Constitutionalism and the American Founding" in *Framing and Ratification of the Constitution* ed. by Leonard W. Levy and Dennis J. Mahoney, pp. 333-54 [22]
- (3) *"Fundamental Principles of American Democracy", *Civitas: A Framework for Civic Education* (1991), pp. 14-16.

Reading questions: What are the fundamental principles, institutions, and beliefs that define the American political system?

Recommended:

Yuval Levin, "Constituting Unity" (1 August 2023) and "To Fight Polarization, Look to the Constitution" (11 June 2024).

10:30-12:05 - *Constitutionalism in the Ancient World*

Readings:

- (1) *Ancient Hebrew Republic - Jonathan Sacks, "Deuteronomy: Covenant Society", pp. 4-17.
- (2) *"Aristotle" in Tannenbaum and Schultz, *Inventors of Ideas: An Introduction to Western Political Philosophy*, pp 46-59.
- (3) *"Cicero" in Tannenbaum and Schultz, *Inventors of Ideas: An Introduction to Western Political Philosophy*, pp. 60-9.

Questions: (1) Ontology: How do the various authors understand the nature of nature, (e.g., is there a law of nature? If so, how detailed is that law?)? (2) Human Nature: What is the nature of humans according to the various philosophers/philosophies (e.g., fallen, fixed, blank slate, constructed)? (3) What is the basis of social/political organizations such as cities and nations (e.g., natural or artificial)? (4) Do the authors think humans can know truth? How do the various authors discover truth (i.e., epistemology)? (5) Is their proposed social/political system based on virtue or self-interest or something else? (6) According to the authors, how should government be organized? (7) Justice and law: How do the various authors understand the nature of justice and law, and how do they define justice? (8) What unites or joins a political body (e.g., city or nation) together?

Recommended:

Minogue, *Politics: A Very Short Introduction*, ch. 2 & 3

"Cicero's Natural Law and Political Philosophy",

<https://www.libertarianism.org/columns/ciceros-natural-law-political-philosophy>

Leon Kass, *Exodus*

Petrus Cunaeus, *The Hebrew Republic* (1617) – one of the early scholars on the Hebrew Republic and who suggested it could be a model for modern political reform.

Lea Campos Boralevi, “The Jewish Commonwealth”, in Martin van Gelderen and Quentin Skinner, *Republicanism: A Shared European Heritage*, Cambridge University Press, 2002, p. 258-60

12:05-12:45 Lunch Break

12:45-2:50 - *Constitutionalism in the Medieval World*

Readings:

- (1) *Magna Carta
- (2) (a) Magdeburg Rights - [https://en.wikipedia.org/wiki/Magdeburg_rights#:~:text=Magdeburg%20rights%20\(German%3A%20Magdeburger%20Recht,granted%20by%20the%20local%20ruler;](https://en.wikipedia.org/wiki/Magdeburg_rights#:~:text=Magdeburg%20rights%20(German%3A%20Magdeburger%20Recht,granted%20by%20the%20local%20ruler;https://en.wikipedia.org/wiki/Magdeburg_rights#:~:text=Magdeburg%20rights%20(German%3A%20Magdeburger%20Recht,granted%20by%20the%20local%20ruler;)
(b) Town Rights - [https://en.wikipedia.org/wiki/Town_privileges](https://en.wikipedia.org/wiki/Town_privilegeshttps://en.wikipedia.org/wiki/Town_privileges)
(c) Self-Governance - [https://en.wikipedia.org/wiki/Self-governance](https://en.wikipedia.org/wiki/Self-governancehttps://en.wikipedia.org/wiki/Self-governance)
(d) Scan the Hanseatic League on Wikipedia
- (3) *Althusius in Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism: Heinrich Bullinger and the Covenantal Tradition*, pp. 50-62 [13]
- (4) *Marsilius of Padua in Tannenbaum and Schultz, *Inventors of Ideas: An Introduction to Western Political Philosophy*, pp. 100-104 [3]
- (5)* “Machiavelli” in Tannenbaum and Schultz, *Inventors of Ideas: An Introduction to Western Political Philosophy*, pp. 105-25 [22]

Questions: (1) Ontology: How do the various authors understand the nature of nature, (e.g., is there a law of nature? If so, how detailed is that law?) (2) Human Nature: What is the nature of humans according to the various philosophers/philosophies (e.g., fallen, fixed, blank slate, constructed)? (3) What is the basis of social/political organizations such as cities and nations (e.g., natural or artificial)? (4) Do the authors think humans can know truth? How do the various authors discover truth (i.e., epistemology)? (5) Is their proposed social/political system based on virtue or self-interest or something else? (6) According to the authors, how should government be organized? (7) Justice and law: How do the various authors understand the nature of justice and law, and how do they define justice? (8) What unites or joins a political body (e.g., city or nation) together?

Recommended:

- (1) Minogue, *Politics: A Very Short Introduction*, ch. 2 & 3
- (2) Milton “Areopagitica” (1644) – defense of freedom of speech, against gov’t censorship, for open market of ideas, and “The Tenure of Kings and Magistrates” (1649) – the people have a right to overthrow tyrannical rulers.
- (3) “Epilogue: Diverse Viewpoints on Ancient Constitutions,” in *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law* (1993) - Argues the Saxon constitution has the most influence on the English constitution.

- (4) Colbourne - "Appendix I: The Saxon Myth Dies Hard" in *The Lamp of Experience* - <https://oll.libertyfund.org/titles/colbourn-the-lamp-of-experience> - Argues that Whig historians emphasized the English constitutions roots in Anglo-Saxon (i.e., Germanic tribes) traditions, but these are largely myths. The English constitution is a mixture of many elements besides Saxon, including Flemish, Danish, and Breton. However, the myths have had a few effects: (1) it joined with Darwinism to support German racist theories favoring eugenics; (2) it helped to temper political revolutions in England and America.
- (5) Description of Cicero's philosophy: <https://www.libertarianism.org/columns/ciceros-natural-law-political-philosophy#:~:text=To%20Cicero%2C%20natural%20law%20was,his%20defense%20of%20private%20property.>
- (6) Petrus Cunaeus, *The Hebrew Republic* (1617) – one of the early scholars on the Hebrew Republic and who suggested it could be a model for modern political reform.
- (7) Lea Campos Boralevi, "The Jewish Commonwealth", in Martin van Gelderen and Quintin Skinner, *Republicanism: A Shared European Heritage* (Cambridge University Press, 2002), pp. 258-60.

June 18: Constitutionalism in Modern Europe & Colonial America

10-12:05 - *Constitutionalism in Modern Europe*

Readings:

- (1) Petition of Right (1628) https://archive.csac.history.wisc.edu/2_The_Petition_of_Right.pdf [2]
- (2) *Sir Robert Filmer "The State" [1]
- (3) English Bill of Rights (1688) https://avalon.law.yale.edu/17th_century/england.asp [2]
- (4) Locke, Second Treatise, (1689), (*Founders' Constitution* ch. 2, no. 1; ch. 4, no. 1; ch. 16, no. 3; ch. 17, no. 5; ch. 13, no. 2; ch. 10, no. 3; ch. 3, no. 2) [23]
- (5) Montesquieu (1748) (*Founders' Constitution*, ch. 2, no. 3; ch. 8, no. 1; ch. 17, no. 9; ch. 18, no. 3) [18]
- (6) Blackstone (*Founders' Constitution*, ch. 3, no. 3; ch. 10, no. 6; ch. 16, no. 5) [5]
- (7) Hume "Of the Original Contract" (1752) (*Founders' Constitution*, ch. 2, no. 4) [3]

Questions: (1) Ontology: How do the various authors understand the nature of nature, (e.g., is there a law of nature? If so, how detailed is that law?)? (2) Human Nature: What is the nature of humans according to the various philosophers/philosophies (e.g., fallen, fixed, blank slate, constructed)? (3) What is the basis of social/political organizations such as cities and nations (e.g., natural or artificial)? (4) Do the authors think humans can know truth? How do the various authors discover truth (i.e., epistemology)? (5) Is their proposed social/political system based on virtue or self-interest or something else? (6) According to the authors, how should government be organized? (7) Justice and law: How do the various authors understand the nature of justice and law, and how do they define justice? (8) What unites or joins a political body (e.g., city or nation) together?

Recommendations:

Schworer, "Locke, Lockean Ideas, and the Glorious Revolution", *Journal of the History of Ideas* (1990), <https://www.jstor.org/stable/2709645?origin=crossref>

12:05-12:45 Lunch Break

12:45-2:50 pm: *Colonial America*

Readings:

- (1) McLaughlin, *Foundations of American Constitutionalism*, ch. 1 (religion)
- (2) The Flushing Remonstrance (1657) [2]
- (3) McLaughlin, *Foundations of American Constitutionalism*, ch. 2 (colonial corp.),
- (4) McLaughlin, *Foundations of American Constitutionalism*, ch. 3 (Social compact)

Recommended:

- (1) Bible: Romans 13:1-7; Acts of the Apostles 5:12-42 (esp. verse 29)
- (2) Bruto, "Vindiciae contra Tyrannos" in *Constitutionalism and Resistance in the Sixteenth Century* ed. by J.H. Franklin, pp. 141-61, 180-6.
- (3) Jonathen Mayhew, *A Discourse Concerning Unlimited Submission*

Questions: These chapters explain practical components (in contrast to philosophies) that influenced America and its Constitution. (1) What are the philosophical roots of these practical organizations, e.g., are they based in covenantal, liberal, republican or natural law philosophies? (2) What specifically do later Americans take from these organizations that shapes their Constitution and political practices?

June 19: The 1787 Constitutional Convention (Madison's Notes)

10-12:05 – *Constitutionalism in Colonial America*

Readings:

- (1) Mayflower Compact (1620) (*Founders' Constitution*, ch. 17, no. 1) [1]
- (2) *Charter of Massachusetts Bay (1629) in *Colonial Origins of the American Constitution: A Documentary History* ed. by Donald S. Lutz (1998), pp. 36-8 [2]
- (3) *Fundamental Orders of Connecticut (1639) in *Colonial Origins of the American Constitution: A Documentary History* ed. by Donald S. Lutz (1998), pp. 210-15 [6]
- (4) Winthrop, History of New England (1645) (*Founders' Constitution*, pp. 387-389) [5]
- (5) *Pennsylvania Charter of Liberties and Frame of Government (1682) in *Colonial Origins of the American Constitution: A Documentary History* ed. by Donald S. Lutz (1998), pp. 271-87 [16]
- (6) *James Otis, Against the Writs of Assistance (1761) [2]
- (7) James Otis, The Rights of the British Colonies Asserted and Proved (1764), (*Founders' Constitution*, ch. 2, no.5; ch. 13, no. 4) [2]
- (8) *Dickinson "Letters from a Pennsylvania Farmer" (1768) [1]

Questions: (1) What are the philosophical roots of these practical organizations, e.g., are they based in covenantal, liberal, republican or natural law philosophies? (2) What specifically do later Americans take from these organizations that shapes their Constitution and political practices?

Recommended: Donald S. Lutz, "The First American Constitutions" [13]

12:05-12:45 Lunch Break

12:45-2:50 – *Colonial America: Articles of Confederation, Independence to the Constitutional Convention*

Readings:

- (1) Declaration of Independence (*Founders' Constitution*, ch. 1, no. 5 [2])
- (2) Massachusetts Constitution - give particular attention on the "Preamble" and "Part the First" (*Founders' Constitution*, ch. 1, no 6)
- (3) *Pennsylvania Constitution of 1776, Declaration of Rights [2]
- (4) Articles of Confederation (*Founders' Constitution*, ch. 1, no. 7) [4]
- (5) Northwest Ordinance (1787) (*Founders' Constitution*, ch. 1, no. 8) [3]
- (6) McLaughlin, *Foundations of American Constitutionalism*, ch. 4 "The Constitutional Convention", pp. 86-103 [17]
- (7) Hamilton, "The Farmer Refuted" (2/23/1775) (*Founders' Constitution*, ch. 3, art. 5) [2]

Questions: (1) What are the philosophical and practical ideas that inspire the Articles of Confederation? the Declaration of Independence? (2) What are the problems of governance under the Articles of Confederation that leads some to think a revision of the Articles is necessary?

June 20: Constitutional Convention

10-12:05 – *1776 to 1787*

Readings:

- (1) Report of the Annapolis Convention, Sept. 1786 (*Founders' Constitution*, ch. 6, no. 2) [2]
- (2) Report of Proceedings in Congress, Feb. 21, 1787 (*Founders' Constitution*, ch. 6, no. 6 [1])
- (3) Shays' Rebellion – Wikipedia [9]
- (4) Federalist #3, #15, #21, #22, #23 (problems with democracy, and the Articles of Confederation) [22]

Recommended:

- (1) Beeman, *Plain, Honest Men*, ch.1, "The Crisis" [19]
- (2) Ellis, *Dialogues*, ch.3, "James Madison", pp.173-196 [24]
- (3) Onuf, "The First Federal Constitution: The Articles of Confederation" [16]
- (4) Rakove – The Collapse of the Articles of Confederation [20]
- (5) Jensen – "The Articles of Confederation: A Reinterpretation" (1937) [23]
- (6) Klarman, *The Framers' Coup*, ch.3, "The Constitutional Convention.", only pp. 126-27.
- (7) Farrand, *Records of the Convention* for May 30, Vol. I, pp. 33-38 (Madison) [5]
- (8) Beeman, *Plain, Honest Men*, ch.6, pp. 105-110 (on the May 30 debate) [5]

12:05-12:45 Lunch Break

12:45-2:50 – *The 1787 Constitutional Convention*

- (1) Larson & Winship, pp. 15-17, 179-83, 17-43, 183-6, 43-91, 107-10 (read in this order [90])
- (2) D. Lloyd, “Day-to-Day Summary of the Convention,” at TeachingAmericanHistory.org <https://teachingamericanhistory.org/resource/convention/summary/> [26] This is for skimming and reference. Bring it to class for marking up.
- (3) *Malbin, “Factions and Incentives in Congress”, pp. 91-96 [5]

Recommended:

- (1) Ellis, *Dialogues*, ch.3, “James Madison, pp.196-199 [3]
- (2) Max Farrand, *The Framing of the Constitution of the United States*. (Classic 1913 book.)
- (3) Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (2009). The best of the interpretive, chronological accounts of the convention. 514 pp. Very helpful for consulting the appropriate chapter for a paper.
- (4) Mary Sarah Bilder, *Madison’s Hand: Revising the Constitutional Convention*. A critical (and important but controversial) reinterpretation of the provenance and content of Madison’s Notes.
- (5) Jack Rakove, Review essay: “Madison’s Hand: Revising the Constitutional Convention”.
- (6) William Allen, Review essay critical of Bilder’s book.
- (7) Charles Warren, *The Making of the Constitution*. (>800 pp., 1928) (Classic)
- (8) Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution* (>800 pp., 2016).

June 23: Constitutional Convention (cont’d) & The Constitutional Ratification Debates

10-12:05 – *1787 Constitutional Convention (separation of powers, presidency)*

Readings:

- (1) Larson & Winship, 92-103, 139-44, 148-50 (read in this order) [90]
- (2) Outline of *The Federalist* (Herbert Storing)
- (3) *Federalist* #10 [7]
- (4) *Federalist* #55 and 62 [9]

Recommended:

- (1) William Ewald, “The Committee of Detail”, *Constitutional Commentary* (2012) [88]
- (2) Gibson, *Understanding ...*, ch.2, “Democracy and the Founders’ Con,” only 90-94 [5]
- (3) Lutz, *Popular Consent and Popular Control*, ch.4, *Agency Consent*”, pp.85-110 [25]
- (4) Gibson, all of ch.2 + pp. 289-320 (footnotes for ch.2). [70]

12:05-12:45 Lunch Break

12:45-2:50 - Separation of Powers and the Presidency: Purposes, Election, Powers, and Duties

Readings:

- (1) *Federalist* #48 (separation of powers) [4]
- (2) *Federalist* #49 [4]
- (3) *Federalist* #50 [3]
- (4) *Federalist* #51 [4]

- (5) *Federalist* #70 (Presidency) [7]
- (6) *Federalist* #71 (Presidency) [4]
- (7) Constitution, Article II (Founders' Constitution, ch. 1, no. 9) [1]

Recommended:

- (1) Larson & Winship, pp.23-27 (Jun 4), 92-103 [5], 139-44 (Sep 5), 148-50 (Sep 12) [23]
- (2) Milkis & Nelson, *The American Presidency* 9th ed., ch.3, "Bringing the Presidency to Life: George Washington and John Adams", pp. 73-84.
- (3) Beeman, *Plain, Honest Men*, ch.7, "Imagining the American Presidency" (June 1-5). [20]
- (4) McDonald, *The American Presidency*, ch.7, "The Convention", 160-181 [22]
- (5) Locke – *Second Treatise of Government* (excerpt) [3]
- (6) Montesquieu – *Spirit of the Laws* (excerpt) [6]
- (7) Tulis, *The Rhetorical Presidency*, ch.2 [35]
- (8) Thach – *Creation of the Presidency* – ch.6 –Removal Debate [26]
- (9) Washington – *Proclamation of Neutrality* (1793) [1]
- (10) Ellis, *Founding the American Presidency*, pp.173-79 *Pacificus/Helvidius*, 1793 [7]

June 24: The Constitutional Ratification Debates (cont'd)

10-12:05 - *Ratification and the Bill of Rights*

Readings:

- (1) *Federalist* #1 [4]
- (2) *Federalist* #37 (Rakove and Bilder call this Madison's best) [6]
- (3) State ratification conventions - see <https://teachingamericanhistory.org/search?results%5Bquery%5D=constitutional%20convention&results%5BrefinementList%5D%5Btype.label%5D%5B0%5D=Documents>
- (4) Anti-Federalists (Patrick Henry & Brutus): (*Founders' Constitution* ch. 8, no. 38 (We the People); ch. 11, no. 13 (checks & balances); ch. 8, no. 31 (judiciary); ch. 14, no. 39 (Bill of Rights)) [5]
- (5) *Amendments Proposed by the Anti-Federalists (Ketcham, ed.), pp. 217-226 [10]
- (6) Bill of Rights (*Founders' Constitution*, pp. 34-5)

Recommended:

- (1) Mercy Otis Warren, "Observations on the New Constitution," 1788. About 20 pages long; details Warren's critique of the Constitution and outlines many of her Anti-Federalist predispositions - <https://quod.lib.umich.edu/e/evans/N16431.0001.001/1:2?rgn=div1;view=fulltext>
- (2) Pauline Meier, *Ratification*
- (3) Goldwin, *From Parchment to Power*, pp.15-28, 36-54, 75-184
- (4) M.E. Bradford, *Original Intentions*, chapter on three state ratifying conventions ???
- (5) Storing, *What the Anti-Federalist Were For*

12:05-12:45 Lunch Break

12:45-2:50 - Republicanism, Virtue, Rights, and Interests

Readings:

- (1) *Carol Hamilton, “Why did Jefferson change ‘Property’ to the ‘Pursuit of Happiness?’” [3]
- (2) Federalist #55 [5] Combine w #51: “If men were angels ...” [Note: this was also assigned yesterday.]
- (3) Centinel I (*Founders' Constitution*, ch. 11, no 11) [1]
- (4) G. Washington, “Farewell Address” (1796), (*Founders' Constitution*, p. 684 [1])
- (5) *Steven B. Smith, “Learning from Publius,” *National Affairs*, pp. 92-110, (2013) [19]
- (6) *Wood, *Creation of the American Republic*, pp. 48-70, 412-25, 606-15 (3 files) [48]
NOTE: These selections from Wood’s long book make [or exemplify] the following three-point argument: (1) in first selection, classical virtue is held up as the model that the American revolutionary generation thought necessary for self-government; (2) the second selection sees the 1780s as producing a despair over depending on virtue and therefore over the future of self-government; (3) the third selection is about the Federalists’ substitution of a mutually checking self-interest to replace a dependence on virtue. 1787 thus was seen by Wood as a reaction to and rejection of the thinking he saw as being dominant in 1776.
- (7) *Zuckert – *Natural Rights Republic*, ch.7, pp. 202-10 [9]
NOTE: Zuckert questions Wood’s argument in this selection. The subsequent 33 pages of this book (recommended below) are about Jefferson’s combination of Lockean liberalism with a version of republicanism.

Recommended:

- (1) Gibson, *Understanding the Founding*, ch.4, “Ancients, Moderns, and Americans”, 134-48. [15]
- (2) M. Hall, “Did America Have a Christian Founding?”
- (3) Storing, *What the Anti-Federalists Were For*, ch. 9 “Conclusion” [6]

June 25: The Constitutional Ratification Debates (cont’d)

10-12:05 – *Federalism*

Readings:

- (1) McLaughlin, Ch. 6 "The Foundations of Federalism", *Foundations of American Constitutionalism*, pp. 104-128 [24]
- (2) *Federalist* #17 [4];
- (3) *Federalist* #26 [5]
- (4) *Federalist* #27 [3]
- (5) *Federalist* #28 [4]
- (6) *Federalist* #39 [6]
- (7) Anti-Federalists (*Founders' Constitution*, ch. 12, no. 23 (federalism & representation); ch. 4, no. 14 (confederation); ch. 8, no. 13; ch. 14, no. 26 (federalism); ch. 8, no. 34 (federalism) [7]
- (8) Madison, "On Consolidation" (1791), (*Founders' Constitution*, ch. 8, no. 40) [1]

Recommended:

- (1) *Federalist* #16 (*Founders' Constitution*, ch. 8, no. 22)
- (2) *McCoy and Baker, chapter 5 "Federalism and the U.S. Constitution of 1787" in *Fountainhead of Federalism: Heinrich Bullinger and the Covenantal Tradition*, pp. 80-98.
- (3) *Kincaid and Elazar, "The Declaration of Independence: The Founding Covenant of the American People", Workshop at the Center for the Study of Federalism (1980)
- (4) *Wardle, "Covenant and the U.S. Constitution", *BYU Studies* (1987)
- (5) *Storing, *What the Anti-Federalists Were For*, ch.3-5 [35]

12:05-12:45 Lunch Break

12:45-2:50 - *Slavery - "How Could They Have Done That?" (quote from Gibson)*

Readings:

- (1) *Federalist* #54 [5]
- (2) **Dred Scott v. Sandford* (1857) [4]
- (3) *Lincoln-Douglas debates
- (4) *Abraham Lincoln, "Cooper Union Address" (Feb. 27, 1860), esp. pp. 1-8 [8]
- (5) Michael Zuckert, "Slavery and the Constitution in Madisonian Perspective", *Starting Points* (Nov. 4, 2021) [6] - <https://startingpointsjournal.com/slavery-and-the-constitution-in-madisonian-perspective/> Note: Pay attention to Zuckert's distinction between legitimacy and legality and consider if that distinction applies to the culture wars today.

Recommended:

- (1) Gibson, *Understanding the Founding*, ch.5 "How Could They Have Done That?" + footnotes (pp. 169-230 and 349-66). [62 + footnotes]
- (2) Finkelman, *Slavery and the Founders*, ch.1, "Making a Covenant with Death". [33]
- (3) "Neo-Garrisonian"; sees the Constitution as affirmatively pro-slavery.
- (4) Wilentz – *No Property in Man* – "Introduction" (with excerpt from the Preface) [26]
- (5) Gibson, *Understanding the Founding*, ch.5 "How Could They Have Done That?" + footnotes (pp. 169-230 and 349-66). [62 + footnotes]
- (6) Frederick Douglass – "The American Constitution and the Slave", A Speech in Glasgow, Scotland, 26 March 1860. (esp. see 160ff.) A one-time Garrisonian, Douglass' view of the Constitution had changed by this time.
- (7) Fehrenbacher, *The Slaveholding Republic*, ch.2, "Slavery and the Founding."
- (8) Wilentz – *No Property...*, ch.1, "Slavery, Property, and Emancipation in Revolutionary America". [Covers from mid-18th century to 1787.]
- (9) Jefferson – "Firebell in the Night" letter (1820, 1 month after Missouri Compromise) [2]
- (10) *Danielle Allen – *Our Declaration*, ch.44 – Actions and Words, pp. 140-45 [6]
- (11)
- (12) Ibram X. Kendi – *Stamped from the Beginning*, ch.9, "Created Equal", pp. 104-19 [16]
- (13) New York Times, *The 1619 Project*, particularly the opening pages of the project's lead essay, "The Idea of America" by Nicole Hannah Jones. (Blackboard.)
- (14) Three sets of critiques of the 1619 Project by historians (two signed by multiple historians), with responses from the NY Times. (Blackboard)

- (15) Gibson, *Interpreting the Founding*, ch.7 “From the Bottom Up: Feminine, Forgotten, and Forced Founders.” + notes (pp. 64-85 and 170-77). Useful bibliographic essay on scholarship about women and Native American roles in the Founding. [30]
- (16) S. Hawkins, *et al. Defusing the History Wars: Finding Common Ground in Teaching America’s Story*. While this 68-page report is not directly on our subject, it is interesting to read the results of word searches on “slave” and “founding”.

June 26: 19th c. American Constitutional Development

10-12:05 - 1787 Constitution Ratification Debates (*Federalists and Anti-Federalists*)

Readings:

- (1) Necessary and Proper & Supremacy Clauses: accepted, no debate, Aug. 20 {no reading}
- (2) Should Congress be able to veto state laws?
 - a. *Moss – *Democracy: A Case Study*, 36-39 [4]
 - b. Larson & Winship, p. 33 (June 7), 91 (July 17): italics on both pages [2]
- (3) Should the states be able to reject or nullify a federal law?
 - a. *Alien and Sedition Act
 - b. Virginia and Kentucky Resolutions (*Founders’ Constitution* ch. 8, no. 41 and 42) [4]
- (4) Are there limitations on Congress’s Implied Powers?
 - a. Moss – *Democracy*: “Battle over a Bank”, pp. 45-46, 56-61 [7]
 - b. Jefferson’s Opinion on the Constitutionality of a National Bank (1791) [5]
 - c. Hamilton’s Opinion on the Constitutionality of a National Bank (excerpt) [8]

Recommended:

- (1) Berns – “The Meaning of the Tenth Amendment.”
- (2) Elkins and McKittrick, ch.2 “Finance and Ideology” (only pp. 77-114) [28]
- (3) Elkins and McKittrick, ch.9, “Jefferson and the Yeoman Republic” [14]
- (4) *McCulloch v. Maryland* (1819) [24]

12:05-12:45 Lunch Break

12:45-2:50 – *Key Acts of Congress, Presidential Messages, and Supreme Court Decisions*

Readings:

- (1) Washington, "Farewell Address" (*Founders’ Constitution* ch. 18, no. 29) [5]
- (2) Jefferson, First Inaugural (*Founders’ Constitution* ch. 4, no. 33) [22]
- (3) Lincoln, "Gettysburg Address," *What So Proudly We Hail*
- (4) Lincoln, 2nd Inaugural, *What So Proudly We Hail*
- (5) *Rakove, *Original Meanings*, ch. 1 “The Perils of Originalism”. [20]
- (6) Joel Alicea – “40 Years of Originalism” (1 June 2012) –
<https://www.hoover.org/research/forty-years-originalism>

Recommended:

- (1) Kass and Kass, “Chapter 1: National Identity” *What So Proudly We Hail*

June 27: 20th c. American Constitutional Development

10-12:05 – *The Nomocratic (Procedural) Republic vs. a Telological Nation*

Readings:

- (1) McLaughlin, Ch. 5 "The Courts and the Rights of Judicial Review; The Reign of Law", *Foundations of American Constitutionalism*, pp. 104-128 [24]
- (2) *Michael Sandel, "Conclusion: In Search of a Public Philosophy", *Democracy's Discontent: American in Search of a Public Philosophy* (pp. 317-351) [34]
- (3) *Jeffrey Rosen, "The Constitution in Exile" and "The Unregulated Offensive" (*New York Times*, 17 April 2005)

Recommended:

- (1) "Recommended: M.E. Bradford, *Original Intentions: On the Making and Ratification of the United States Constitution*
- (2) Michael Sandel, *Democracy's Discontents* (2022 edition) "Final chapter"
- (3) Charles Kessler, *Crisis of the Two Constitutions: The Rise, Decline, and Recovery of American Greatness* (2021)
- (4) *John G. Grove, "'Original Intentions' Now", *Modern Age: A Conservative Review* (Fall 2023), pp. 7-15.
- (5) The Crisis of Two Constitutions. Video discussion with Wilfred Codrington III and Charles Kessler - <https://constitutioncenter.org/news-debate/americas-town-hall-programs/the-crisis-of-two-constitutions-the-founders-vs-the-peoples>

12:05-12:45 Lunch Break

12:45-2:50 – Exam – Bring your notes and *The Founders' Constitution* to class. This is an open-note and open-book test.