

Syllabus

The Constitution out of the Sources of the American Revolution

REQUIRED TEXTS:

- Constitution of the United States of America
- John Philip Reid, *Constitutional History of the American Revolution*, abridged ed. (1995)
- Donald Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (1998)
- Barry Alan Shain, ed., *The Declaration of Independence in Historical Context* (2014)

Note: the Lutz and Shain texts are available at the [Online Library of Liberty](#).

COURSE DESCRIPTION

The American Constitution is arguably the most influential political document ever produced by a human society and has served as inspiration since its ratification for liberation movements around the world. It has been the foundation for one of the longest-lived republics in human history. What is it and what did it mean to those who first debated, adopted, and amended it? The past, it has been said, is a foreign country, and the language of the Constitution, while superficially familiar, is in many ways a strange tongue. Concepts and categories such as *freedom*, *rights*, *liberties*, *privileges*, *immunities* – even the very idea of a constitution – had distinct, historical meanings in eighteenth-century America. We will be looking at a variety of texts as we attempt to recover the origins of the American constitutional tradition and understand what motivated early Americans, who had long insisted they were obedient British subjects, to fight a revolutionary war for it. In the process we will better understand the legacy of liberty they believed they were bequeathing to their posterity – us.

Each unit of this course will take 2-3 class sessions to cover. Each student is expected to have done the reading for the whole unit by the time we begin it. On the first day of class, students will volunteer to take leadership of part of the class discussion for one or more days of class. More details on class leadership can be found detailed below in ASSIGNMENTS.

COURSE UNITS:

1. The oft-forgotten background: English legal history

- a. John Philip Reid, *Constitutional History of the American Revolution*, abridged ed. (University of Wisconsin Press, 1995)
- b. David Hackett Fischer, *Liberty and Freedom* (Oxford University Press, 2005), "Introduction," 1-15. (meanings of *freedom*, *liberties*, *privileges*, *immunities*, *rights*)
- c. Richard & John Burn, *A New Law Dictionary*, 2 vols. (London, 1792): vol. 1, 384, s.v. "Franchise" ([online](#)); vol. 2, 79-81, s.v. "Liberties and Franchises" & s.v. "Liberty" ([online](#))
- d. William Blackstone, *Commentaries on the Laws of England*, vol. 1, ch. 1. ("Of the absolute Rights of Individuals") (1765)
- e. Constitution of the United States of America (read it 2-3 times)
- f. Optional: Declaration of Independence (1776) and Articles of Confederation (1781) in Shain, *Historical Context*, 488-493, 649-657

2. Elected Legislatures

- a. Lutz, *Colonial Origins*, "Introductory Essay" (meanings of major terms of Anglophone constitutional vocabulary), selections (colonial charters and early independent legislatures)
- b. James Harrington, *The Commonwealth of Oceana* (1656), 8-42 ("Preliminaries, showing the principles of government") (Bicameralism, Hebraism)
- c. Stamp Act resolves and petitions, in Shain, *Historical Context*, 61-109
- d. First Continental Congress, 1774 American Bill of Rights, in Shain, *Historical Context*, 211-214

3. The Right to Trial by Jury

- a. David Mamet, Introduction to Reginald Rose, *Twelve Angry Men* (New York: Penguin, 2006).
- b. Magna Charta (1215/1225) §29
- c. Charles Rembar, *The Law of the Land: The Evolution of Our Legal System*, 116-171
- d. Lutz, *Colonial Origins of the American Constitution*, selections
- e. Shain, selections

4. Freedom of Conscience

- a. Madison, *Memorial and Remonstrance*
- b. Notes on Debates in Congress, August 1789 (wording of First Amendment), in Gales & Seaton, 1 *Annals of Congress* 729-31, 755, 766 (1834-56)
- c. John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 371 (1996)
- d. Optional Background: Founders' Constitution, "Amendment I (Religion)" ([online](#))

5. Freedom of Speech and of the Press

- a. David S. Bogen, *The Origins of Freedom of Speech and Press*, 42 MARYLAND L. REV. 429 (1983)
- b. Jud Campbell, *Natural Rights and the First Amendment*, 127 YALE L. J. 246 (2017)

6. Executive Power

- a. Locke, *Second Treatise*, ch. 14 ("Of Prerogative") (1690)
- b. Charles C. Thach, Jr. *The Creation of the Presidency, 1775-1789: A Study in Constitutional History*
- c. Eric Nelson, "Publius on Monarchy," in Jack N. Rakove & Colleen A. Sheehan, eds., *The Cambridge Companion to The Federalist* (2020)

7. Republican Government, Separation of Powers & Popular Sovereignty

- a. Montesquieu, *Spirit of the Laws*, bk. 11, chs. 6-7 (1748)
- b. Tom Paine, *Common Sense* (1776)
- c. John Adams, *Thoughts on Government* (1776)
- d. (optional): Daniel Slate, *Franklin's Talmud: Hebraic Republicanism in the Constitutional Convention and the Debates over Ratification, 1787-1788*, 1 J. AM. CON. HIST. 232 (2023) ([online](#))

ASSIGNMENTS & STUDENT RESPONSIBILITIES

1. **Regular attendance and participation.** You must bring a copy of the relevant text(s) to each class meeting. Each student is expected to have done the reading prior to arriving at class that day. The course is conducted as a seminar, so your presence, prior thought and preparation, and active participation are essential. **20% of grade.**
2. **Weekly précis:** Before the start of class, beginning in the first week, students will submit, via email, a 1-page (single spaced) précis summarizing key points from the unit's reading and raising one or more questions for class discussion. **20% of grade.**
3. **Class leadership:** Each student is responsible for preparing an extended (5 page, double spaced) précis on a single text for one class meeting. Due on date assigned. At that meeting the student will be expected to take an active role in leading the discussion for part of the class period. If more than one student signs up for a given day, you are expected to work out a leadership plan in advance. Leadership assignments made in 2nd meeting of the class. **20% of grade.**
4. **Final paper:** Students will prepare a research paper of length ca. 10-15 pages/2500-4000 words, with engagement of both primary texts and secondary literature. Papers may be (but are not required to be) developed from class leadership sessions. **Due the final day of class. 40% of grade.**
5. **Note:** Students are not permitted to use generative AI tools to prepare assignments; violations will result in failing the course.

RECOMMENDED OPTIONAL (BUT VERY HELPFUL) BACKGROUND TEXTS:

- Philip Kurland & Ralph Lerner, eds., *The Founders' Constitution*, 5 vols. ([online](#))
- Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (1985)
- Bernard Bailyn, *Ideological Origins of the American Revolution* (1967/2017)
- Gordon Wood, *The Creation of the American Republic, 1776-1787* (1969/1998)
- Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (1996)
- Eric Nelson, *The Royalist Revolution* (2014)
- Michael W. McConnell, *The President Who Would Not Be King* (2020)
- Vincent Phillip Muñoz, *Religious Liberty and the American Founding* (2022)

ADDITIONAL RESOURCES

- [ConSource](#) – enormous digital library of early American constitutional materials.

- Library of Congress: [A Century of Lawmaking](#) – including early records such as the Journals of the Continental Congress, Letters of Delegates, Farrands Records of the Federal Convention and Elliot's Debates of the State Ratifying Conventions
- [Internet Archive of eBooks and Texts](#) – you can often find first editions and reprintings of influential sources from the Revolutionary period (e.g., Blackstone, Harrington) here.
- [BYU Law and Corpus Linguistics](#) – a tremendous resource and especially helpful for any students contemplating a paper deploying computational text analysis.