

## **U.S. Constitutional History to 1865**

### **HIUS 152A**

Ken Vandevelde

Fall 2023

### **Description of the Course**

This is a study of the historical development of constitutional thought and practice in the United States from the era of the founding through the Civil War.

### **Goals of the Course**

This course is designed to teach students the following:

- The general organization and content of the text of the U.S. Constitution, the Bill of Rights, and the Civil War Amendments.
- The English legal principles relied upon by the American colonists in rebelling against British rule and drafting the Constitution.
- The general content of the Articles of Confederation.
- The considerations that led to the adoption of the U.S. Constitution to replace of the Articles of Confederation and the adoption of selected amendments to the Constitution, particularly the Bill of Rights and the Civil War Amendments.
- An understanding of the ideas and events that shaped the drafting of the U.S. Constitution and its amendments.
- The principal theories of constitutional interpretation.
- The legal doctrine, as articulated by the U.S. Supreme Court, interpreting and applying selected provisions of the U. S. Constitution and its amendments in the period before 1865.
- The ideas and events that shaped the interpretation of the U.S. Constitution in the period before 1865.

### **Required Text**

Melvin Urofsky & Paul Finkelman, *A March of Liberty, Volume I, From the Founding to 1900*, Third Edition, 2011

### **Exams and Grading Policy**

The grade in this course will be based on two midterm exams and a final exam. Each midterm will count for 20 percent of your grade and the final exam will count for the remaining 60 percent of your grade. Exams will be administered online via Canvas and will be open book, open note exams. Exams will cover the material discussed in lecture as well as any assigned readings to the extent that they address the topics addressed in lecture. You will have a period of days within which to take each exam at a time of your choosing, but the exam will be timed and you must complete it in one timed

session. I anticipate that the first midterm will be made available to you from Thursday, October 26, until Tuesday, October 31. I anticipate that the second midterm will be available to you from Wednesday, November 12, until Monday, November 27.

### **Office Hours and Contact Information**

My office is in Room 729 of the Arts and Humanities Building. I will hold in-person office hours on Mondays from 3 to 5 p.m. and at other times by appointment. If it is not convenient for you to meet me during my office hours, please feel free to contact me by e-mail or by telephone to discuss whatever you wish to discuss or to arrange either an in-person or a Zoom meeting at a different time. My e-mail address is kvandev@ucsd.edu. My cell phone number is 858 414 1602 and you may feel free to call me, but I prefer to correspond by e-mail rather than text messages. (I have a history of forgetting to answer text messages, but I rarely forget to answer e-mail.)

In addition to my Ph.D. in history from UCSD, I have a law degree from Harvard Law School and I practiced law for many years. If you are interested in pursuing a legal career, I would be pleased to discuss law school or legal careers with you.

### **Recording of Classes**

Please be advised that classes will be recorded (barring technical difficulties) and the recordings posted on Canvas.

### **Assignments**

9/29 Introduction

#### **I. Revolution and Constitution**

10/2 English Origins

*Readings: Magna Carta\**

Petition of Right\*

English Bill of Rights\*

10/4 Colonial America I

Readings: Chapter One

10/6 Colonial America II

Readings: Chapter Two

10/9 The American Revolution

Readings: Declaration of Independence, reprinted starting on page A1

Excerpt from John Locke, *Two Treatises on Civil Government\**

Chapter Three

- 10/11 The Articles of Confederation  
Readings: Articles of Confederation, reprinted starting on page A5  
Chapter Four
- 10/13 The Call for a Constitutional Convention  
Readings: Chapter Five
- 10/16 The Constitutional Convention  
Readings: Chapter Six, pp. 106-121
- 10/18 The Constitution  
Readings: The Constitution, Articles I – II, reprinted stating on page A11
- 10/20 The Constitution  
Readings: The Constitution, Articles III - VII
- 10/23 Ratification and the Bill of Rights  
Readings: The Bill of Rights, reprinted starting on page A19  
Chapter Six, pp. 121-130  
Federalist No. 10\*  
Federalist No. 51\*

## **II. The New Government Before the Civil War**

- 10/25 Forming the New Government  
Readings: Chapter Seven
- 10/27 The Americanization of English Law  
Readings: Chapter Eight
- 10/30 Interpreting the Constitution  
Readings: To Be Posted Online
- 11/1 Establishing the Supreme Court  
Readings: Chapter Nine
- 11/3 Adams, Jefferson and the Courts  
Readings: Chapter Ten  
*Marbury v. Madison*\*  
Federalist No. 78\*
- 11/6 The Marshall Court and Federal Power  
Readings: Chapter Eleven  
*McCulloch v. Maryland*\*

- 11/8 The Marshall Court and the Economy  
Readings: Chapter Twelve
- 11/13 Antebellum America  
Readings: Chapter Thirteen
- 11/15 Jacksonian Democracy  
Readings: Chapter Fifteen
- 11/17 Jacksonian Democracy and Economic Development  
Readings: Chapter Fourteen and pp. 357-366

### **III. Slavery, the Civil War and Reconstruction**

- 11/20 Slavery I  
Readings: Chapters Seventeen
- 11/22 Slavery II  
Readings: Chapter Eighteen  
*Dred Scott v. Sandford*\*
- 11/27 The Civil War  
Readings: Chapters Nineteen
- 11/29 The Civil War Amendments  
Readings: Chapter Twenty  
13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments, reprinted starting on page A422
- 12/1 Reconstruction  
Readings: Chapter Twenty-One
- 12/4 Civil Rights at the End of the Civil War  
Readings: Chapter Twenty-Two
- 12/6 Constitutional Law and the Economy at the End of the Civil War  
Readings: Chapter Twenty-Three
- 12/8 Synthesis and Conclusions  
Readings to be posted on Canvas

\* These assignments will be available on line or distributed in hard copy in class.

## Supplemental Readings

If you wish to learn more about U.S. constitutional history, the following are some useful readings:

Bernard Bailyn, *The Ideological Origins of the American Revolution* (Belknap Press Enlarged Edition 1992).

Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (The Free Press 1913). This is a classic and controversial work that has been reissued several times.

Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (Random House 2009).

Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention May to September 1787* (Little Brown 1966).

Alexander Hamilton, James Madison and John Jay, *The Federalist* (This is a collection of articles written by the three authors in support of the ratification of the Constitution. Numerous editions are available.)

Ralph Ketcham, ed., *The Anti-Federalist Papers and the Constitutional Convention Debates* (Mentor Books 1986).

Pauline Maier, *Ratification: The People Debate the Constitution 1787-1788* (Simon and Schuster 2010).

Richard B. Morris, *The Forging of the Union, 1781-1789* (Harper 1987).

Richard B. Morris, *Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution* (New American Library 1985).

Bernard Schwartz, *The Great Rights of Mankind: A History of the American Bill of Rights* (University of Wisconsin, rev. ed. 1992).

David O. Stewart, *The Summer of 1787: The Men Who Invented the Constitution* (Simon and Schuster 2007).

G. Edward White, *The Marshall Court and Cultural Change, 1815-1835 Abridged Edition* (Oxford University Press 1991)

Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (University of North Carolina 1969).