

**THE FOUNDERS' CONSTITUTION**  
**George Mason University School of Law**  
**Joyce Lee Malcolm**

**Office:** 418 Hazel Hall      **Office Hour:** Thursday, 2:00 - 3:00pm and by appointment

**Required Books**

Madison's *Notes of Debates in the Federal Convention of 1787*, online at <http://teachingamericanhistory.org/convention/debates/>

[There will be numerous references below to Madison, *Notes* below. Please refer to this site.]

*The Anti-Federalist: Writings by the Opponents of the Constitution*, edited by Herbert J. Storing and selected by Murray Dry from *The Complete Anti-Federalist* (University of Chicago Press, 1985)

*The Federalist*, Gideon Edition, George W. Carey & James McClellan, eds. (Liberty Fund, 2001)

*Creating the Bill of Rights: The Documentary Record from the First Federal Congress*, Helen E. Veit et al., eds. (Johns Hopkins University Press, 1991)

Kermit Hall, ed., *Major Problems in American Constitutional History, Vol. 1, Colonial Era through Reconstruction* (Heath)

**Recommended (for those who want more background information)**

Edmund Morgan, *The Birth of the Republic*, 3rd ed. (University of Chicago Press)

**Readings from other sources are available on TWEN.**

*The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders.*

Justice Benjamin Cardozo

The Founders' Constitution course will explore those general principles Cardozo is referring to. We will investigate the views, hopes and misgivings of the American Founders in order to understand the Constitution they bequeathed us which is, as Benjamin Franklin put it, "a republic if you can keep it."

**Requirements: Reading** is assigned for each class and should be read in advance in preparation for discussion. **Grading** will be based on a final examination (85%) and class participation (15%). This course will be registered with **TWEN**. **Please sign up.**

## **READINGS**

### **January 8 - The Claimed Rights of Englishmen and the Common Law**

Magna Carta - <http://www.law.gmu.edu/assets/files/academics/founders/MagnaCarta.pdf>  
 Petition of Right – <http://www.law.gmu.edu/assets/files/academics/founders/petitionofright.pdf>  
 English Bill of Rights -  
[http://www.law.gmu.edu/assets/files/academics/founders/English\\_BillofRights.pdf](http://www.law.gmu.edu/assets/files/academics/founders/English_BillofRights.pdf)  
 Excerpts from William Blackstone, *Commentaries on the Laws of England*, vol. 1,  
 pp. 63-92 - See Document “Blackstone 63-92” on **TWEN**  
 pp. 117-141 - See Document “Blackstone 117-141” on **TWEN**  
 pp. 156-161 - See Document “Blackstone 156-161” on **TWEN**  
 The Mutiny Act, 1689 – See Document “Mutiny Act” on **TWEN**

### **January 15 - Colonial Cases in Point**

Blackstone on Reception – See Document “Blackstone Reception” on **TWEN**  
 Hall, *Major Problems*, pp. 28-42  
*Rex v. Zenger*, 1735 – See Document “Rex v. Zenger” on **TWEN**  
 James Otis, *Writs of Assistance Case, 1761*, Hall, pp. 67-69  
 Paine, “Common Sense,” Hall, pp. 71-75

### **January 29 - The American Revolution and New State Governments**

Virginia Declaration of Rights -  
<http://www.law.gmu.edu/assets/files/academics/founders/VirginiaDeclaration.pdf>  
 Jefferson, Draft of the Declaration of Independence, begins p. 199 –  
<http://www.law.gmu.edu/assets/files/academics/founders/Jefferson-DraftDeclaration.pdf>  
 Declaration of Independence, Hall, pp. 75-78  
 Pennsylvania Constitution (1776), Hall, pp. 78-86  
 Massachusetts Constitution (1780), Hall, pp. 87-90  
 Virginia Constitution (1776) –  
<http://www.law.gmu.edu/assets/files/academics/founders/VA-Constitution.pdf>  
 Articles of Confederation, in Gideon Edition, *The Federalist*, pp. 500-509

### **February 5 - The Articles of Confederation and Constitutional Convention**

Virginia Resolution Proposing the Annapolis Convention, Gideon, p. 510  
 Proceedings of the Annapolis Convention, Gideon, pp. 511-515  
 Continental Congress calls for Convention to meet, Gideon, pp. 518-519  
 The Virginia Plan, May 29, 1787, Hall, pp. 122-123  
 The New Jersey Plan, June 15, 1787, Hall, pp. 124-125  
 The Hamilton Plan, June 18, 1787, Hall, pp. 125-127

### **February 12 - The Union and the States**

Madison, *Notes*, June 20, pp. 154-170, pp. 181-192; June 29, pp. 211-219; July 2, pp. 231-237  
*Anti-Federalist*, Patrick Henry, Speeches of June 4-5, pp. 295-315

### **February 19 - Debates on the Federal Legislature**

Madison, *Notes of Debates in the Federal Convention of 1787*, July 2, pp. 231-245; July 6, 245-260; July 10, 260-266; July 11, 266-276; July 5, pp. 297-298; July 17, pp. 304-305  
 South Carolina Slave Code, 1740 – See Document “Slave Code” on **TWEN**

### **February 26 - Debates on the Executive and Judiciary**

Madison, *Notes*, On the Executive: July 17, pp. 306-313; July 19, pp. 322-336; July 24, pp. 356-363; July 25, pp. 363-370; On the Judiciary: July 17, pp. 304-305; July 18, pp. 314-319; July 21, pp. 336-346, p. 393 XI

### **March 5 - The Federalist and Anti-Federalist Debates: Confederation or Union?**

The Constitution

*Anti-Federalist*, Brutus I, pp. 108-117

*Federalist*, 3, 4, 7, 9, 10, 14, 15

### **March 12 - SPRING BREAK**

### **March 19 - The Federalist and Anti-Federalist Debates—Revenue/Separation of Powers**

*Anti-Federalist*, Pennsylvania Minority, pp. 217-219; Brutus XVI, pp. 187-191

*Federalist*, 12, 13, 30, 47, 48, 49, 65, 78, 80, 81

### **March 26 - The Federalist and Anti-Federalist Debates—Representation**

*Anti-Federalist*, Melancton Smith, Speeches, June 20, 21, 27, pp. 332-344, 352-356;

Brutus III-IV, pp. 122-132

*Federalist*, 27, 39, 52, 53, 54, 55, 57

### **April 2 - The Federalist and Anti-Federalist Debates—Military Power**

*Anti-Federalist*, Brutus VIII-IX, pp. 150-158

*Federalist*, 8, 23, 24, 25, 29, 64

### **April 9 - The First Amendments**

Madison, “Memorial and Remonstrance,” –

<http://www.law.gmu.edu/assets/files/academics/founders/Madison%27sMemorial.pdf>

*Federalist*, 84

Veit, Bowling, Bickford, eds., *Creating the Bill of Rights*, Jefferson to Madison, March 15, 1789, pp. 217-220; June 8, pp. 69-95; July 21, pp. 96-97; Aug. 13, pp. 104-107; Aug. 19, pp. 153-156; Aug. 17, pp. 179-182; Aug. 22, pp. 192-193

**April 16 - The Founders Interpret the Constitution**

*Federalist*, 85

Debate in the First Congress over the Removal Power, June 8, 16, 17, 1789 –

<http://www.law.gmu.edu/assets/files/academics/founders/RemovalPower.pdf>

Madison, Veto Message regarding Bill to Incorporate Episcopal Church, February 21, 1811 –

<http://www.law.gmu.edu/assets/files/academics/founders/madison-veto.pdf>

Controversy over the Alien and Sedition Acts of 1798:

Virginia Resolution –

<http://www.law.gmu.edu/assets/files/academics/founders/VirginiaResolution1798.pdf>

Virginia Debate –

<http://www.law.gmu.edu/assets/files/academics/founders/VirginiaDebates1798.pdf>

Counter-resolutions of NY, Del., RI, Mass. –

<http://www.law.gmu.edu/assets/files/academics/founders/CounterResolutionsNY.pdf>

**April 23 Review**

**Reading: TBA**