

THE FOUNDERS' CONSTITUTION

Law 131 - 003

Spring 2009

Professor Jeremy Rabkin

Texts:

The Federalist Papers, edited by Clinton Rossiter and Charles Kesler

The Anti-Federalist, edited by Herbert Storing, selected by Murray Dry

The Pacificus-Helvidius Debates, edited by Morton Frisch

Creating the Bill of Rights: The Documentary Record, edited by Helen Veit, et al.

Additional readings:

<http://www.law.gmu.edu/founders/readings>

"Debates" = "Notes of Debates in the Federal Convention of 1787 by James Madison",

Available online at: <http://teachingamericanhistory.org/convention/debate>

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Hours: Wed, 2:30 – 4:30, or by appointment

Week 1: Introduction

Declaration of Independence (in *Fed Pprs* appendix)

Articles of Confederation (in *Fed Pprs* appendix)

Week 2: The Setting - State Government in the Revolutionary Era

Virginia Constitution (1776); Pennsylvania Constitution (1776)

Massachusetts Constitution (1780); Northwest Ordinance

Paine, *Common Sense* (“Origin of Gov in General” and “Present State of Am”)

Week 3: The Initiative at Philadelphia

Resolution of Congress, Feb 21, 1787 (in *Fed Pprs* appendix as “Call for Fed Conv”)

Debates: May 29 (Virginia Plan); June 15 (N.Jersey Plan); June 18 (Hamilton Plan)

The Federalist #2, #38, #40

Week 4: Where is Sovereignty?

Debates: June 19, 20, 21

The Federalist #4, #6, #15, #16, #17, #22, #23

The Antifederalist: “Brutus” I (pp. 108-17); “Agrippa” I-III (“pp. 229-34)

Patrick Henry, Speeches of June 4-5 (pp. 295-315)

Week 5: Can there be a continental republic?

The Federalist #9, #10, #14, #27, #42, #43

The Antifederalist: “Federal Farmer” I, XVII (pp. 32-39, 87-95); Agrippa IV – VII (pp. 234 – 42)

Week 6: Who will command the force?

Debates: Aug 18, Aug 23

The Federalist #8, #11, #29, #41, #74, #75

The Antifederalist: “Brutus” VII-IX (pp. 150-58); “Fed. Farmer” VII (pp. 73-79);

“Impartial Examiner” Feb. 27 (pp. 283-86); Penn. Min’ty (pp. 219-221)

Week 7: Who has predominate claim on revenue?

Debates: Aug 21

The Federalist #12, #21, #30, #31, #33, #34

The Antifederalist: "Brutus" V-VII (pp. 133-50); Patrick Henry, Speech of June 7, (pp. 321-22);

Melanchton Smith, Speech of June 27 (pp. 352-56)

Week 8: What is fair representation?

Debates: June 25, June 26, June 29

The Federalist #27, #35, #55, #58, #62, #63

The Antifederalist: Melanchton Smith, June 20, 21, 27 (pp. 332-44, 352-56)

"Brutus" IV (pp. 127-32); Patrick Henry, Speech of June 9 (pp. 315-21)

Week 9: Equality and Slavery. Principle and Compromise

Debates: July 2, July 5, July 9, Aug 8, Aug 22

The Federalist #37, #39, #49, #51, #54, #85

The Anti-federalist: Brutus III (pp. 122-27)

Week 9: Why and when should powers be separated?

Debates: July, 17 July 21

The Federalist #47, #48, #51, #64, #65, #66,

The Anti-Federalist: Penn. Min'ty (pp. 217-219); "Brutus" XVI (pp. 187-91)

Week 10: How strong an executive?

Debates: July 19, July 24

The Federalist: #68, #69, #70, #71, #72, #73

Federal Farmer XIII-XIV; Cato, Nov. 8 1787; Old Whig, Dec 11, 1787

Week 12: How big a role for federal courts?

Debates: July 21, Aug. 27

The Federalist #78, #80, #81

The Antifederalist: "Fed. Farmer" IV (pp. 54-60); "Brutus" XI-XIII, XIV-XV (pp. 162-70, 176-87)

Week 13: What is required in a bill of rights?

The Federalist #84, #85

Madison, "Memorial and Remonstrance"

Jefferson, "Bill for Establishing Religious Liberty"

Creating the Bill of Rights:

Proposed Amendments from Madison and states (pp. 11 - 28)

Debates: 8 June (pp. 69 -95), 21 July (pp. 97 -103)

13 Aug, amends in the first Congress (pp. 112-128)

19 Aug, instructing representatives, religion (pp. 153-79)

22 Aug., trail rules, direct taxes (pp. 192-93)

12 Amendments sent to states (pp. 47-49)

Jefferson to Madison, 15 March 1789 (pp. 218-220)

Week 14: How the Founders argued about the Constitution

Pacificus I, IV, VII; *Helvidius* I - V

Debate in the First Congress Over Removal Power (June 16, 17 1789)

Madison, Veto on Bill to Incorporate Episcopal Church

Controversy over the Alien and Sedition Acts of 1789:

Virginia Resolution: text and record of debate in Va. Legislature

Counter-resolutions of New York, Delaware, Rhode Island, Massachusetts