CONSTITUTIONAL LAW I: THE FOUNDING
George Mason University School of Law
Joyce Lee Malcolm

Office: 418 Hazel Hall; Office Hours: Thursday, 1:00-2:00pm and by appointment

Required Books:

Madison’s Notes of Debates in the Federal Convention of 1787 (Ohio University Press, 1985)

The Anti-Federalist: Writings by the Opponents of the Constitution, ed. Herbert J. Storing (University of Chicago Press, 1985)

The Federalist Papers, ed. Clinton Rossiter (Signet Classics, 2003)

NOTE: Print Packet: Additional course materials – to be purchased from Print Shop

Recommended (for those who want more historical background information) - Edmund Morgan, The Birth of the Republic, 3rd ed. (University of Chicago Press)

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

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Constitutional Law I: The Founding will explore those general principles to which Cardozo refers. We will investigate the views, hopes and misgivings of the American Founders in order to understand the Constitution they bequeathed to us, "a republic," Franklin explained with his famous challenge, “if you can keep it.” In the process we will consider the modern controversies that have arisen from differing understandings of this briefest and oldest of national constitutions.

Requirements: This course will be registered with TWEN. Please sign up.

Reading is assigned for each class and should be read in advance. Readings marked TWEN will be available on TWEN in the left panel of the course page. Click on Course Materials. Selections marked “Readings” will be available on the following website – http://www.law.gmu.edu/founders/reading

Grading will be based on a final examination (85%) and class participation (15%).
ASSIGNMENTS

January 12 - The Common Law and the Rights Englishmen Claimed
Magna Carta, “Readings”
Petition of Right, “Readings”
English Bill of Rights, “Readings”
The Mutiny Act, 1689, TWEN

January 19 - Colonial Cases in Point
Blackstone on Reception, TWEN
Virginia Charter, 1606, online;
Articles, Laws and Orders, Virginia 1610, see link below;
http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=694&Itemid=27ck
Rex v. Zenger, 1735, TWEN
James Otis, Writs of Assistance Case, 1761, Print packet
South Carolina Slave Code, 1740, TWEN

January 26 - The American Revolution and New State Governments
Somerset v. Stewart, Court of King’s Bench, 1772, Print packet
Thomas Paine, “Common Sense,” Print packet
Virginia Declaration of Rights, “Readings”
Virginia Constitution (1776) “Readings”
Declaration of Independence, Federalist Papers, pp. 528-532
Pennsylvania Constitution (1776), Print packet
Massachusetts Constitution (1780), Print packet

February 2 - The Articles of Confederation and the Constitutional Convention
Articles of Confederation, The Federalist Papers, pp. 533-541
Proceedings of the Annapolis Convention, Print packet
Continental Congress calls for Convention to meet, Print packet
The Virginia Plan, May 29, 1787, Print packet
The New Jersey Plan, June 15, 1787, Print packet
The Hamilton Plan, June 18, 1787, Print packet

February 9 - Confederation or Union?
Madison, Notes, June 20, pp. 154 - 162; June 29, pp. 211-217;
Federalist, 3, 7 pp. 54- top 58; 10
Anti-Federalist, Brutus I, pp. 108-117
Check: info about “The Delegates” on
http://teachingamericanhistory.org/convention/delegates/bigpicture.html
February 16 - Debates on the Federal Legislature

February 23  Debates on the Executive and Judiciary
Madison, *Notes:
On the Executive: July 17, pp. 306-top 311; July 19, pp. 322-329; July 25, pp. 363- top 370

March 1 - The Federalist and Anti-Federalist Debates—Revenue and Separation of Powers
*Anti-Federalist*, Brutus XVI, pp. 187-191
*Federalist*, 12, 13, 47, 64, 78, 80

March 8 - The Federalist and Anti-Federalist Debates—Representation
*Anti-Federalist*, Melancton Smith, Speeches of June 20, 21, 27, pp. 332-344, 352-356; Brutus III-IV, pp. 122-132
*Federalist*, 39, 54, 55, 57

**SPRING BREAK**

March 22 - The Federalist and Anti-Federalist Debates—Military Power
*Anti-Federalist*, Brutus VIII-IX, pp. 150-158
*Federalist*, 8, 23, 24, 25, 29

March 29 - The Ratification Debates and Process
*Anti-Federalist*, Pennsylvania Minority, pp. 202-221
Pick TWO state convention debates to read: See Jonathan Elliot, *The Debates in the Several State Conventions* (online)

April 5 - Is a Bill of Rights Necessary? The First Amendments
Madison, “Memorial and Remonstrance”, *TWEN*
*Federalist*, 84, pp. 509-520
Debates in Convention, *Print packet*, pp. 144-156
Lists of amendments proposed by states: [http://www.constitution.org/dhbr.htm](http://www.constitution.org/dhbr.htm)

April 12 - The Founders Interpret the Constitution
*Federalist* 85
The First Congress Debates the Removal Power, June 16, 1789, pp. 455-464 of Congressional Record, “Readings”
Madison, Veto Message regarding Bill to Incorporate Episcopal Church, February 21, 1811, “Readings”
Controversy over the Alien and Sedition Acts of 1798 -- Virginia Resolution and Debate, Counter-resolutions of Del. RI, NH, Reply of NY and Massachusetts, “Readings”
April 19 - Problems: Slavery and Secession// Is the Bill of Rights Deficient?

*Prigg v. Pennsylvania*, 1842, Print packet

Dred Scott, Print packet

Positive & Negative Rights – select one of the following to read:

- C. Sunstein, “Against Positive Rights”;
- W. Osiatynski, “Social and Economic Rights in a New Constitution for Poland”;
- F. Cross, “The Error of Positive Rights”, Handout