

Spring 1989

American Constitutional History Syllabus with Selected Bibliography

Steven Alan Samson
Liberty University, ssamson@liberty.edu

Follow this and additional works at: https://digitalcommons.liberty.edu/gov_fac_pubs



Part of the [Other Social and Behavioral Sciences Commons](#), [Political Science Commons](#), and the [Public Affairs, Public Policy and Public Administration Commons](#)

Recommended Citation

Samson, Steven Alan, "American Constitutional History Syllabus with Selected Bibliography" (1989). *Faculty Publications and Presentations*. 244.
https://digitalcommons.liberty.edu/gov_fac_pubs/244

This Article is brought to you for free and open access by the Helms School of Government at Scholars Crossing. It has been accepted for inclusion in Faculty Publications and Presentations by an authorized administrator of Scholars Crossing. For more information, please contact scholarlycommunications@liberty.edu.

Helms School of Government

Faculty Publications and Presentations

Liberty University

Year 1989

American Constitutional History
Syllabus with Selected Bibliography

Steven Alan Samson
Liberty University, ssamson@liberty.edu

AMERICAN CONSTITUTIONAL HISTORY

History 400

Spring 1989

Dr. Samson

Description

A study of the origin and development of the Constitution with an emphasis on leading Supreme Court decisions. The course objectives are as follows:

1. To help students develop a conceptual framework for interpreting and evaluating our historical legal tradition.
2. To promote the exercise of critical thinking and research skills.
3. To encourage students to affirm and apply Christian precepts by developing a consciously biblical understanding of history as the outworking of God's eternal purpose.

Requirements

1. Each student is required to write a short (8-12 page) term paper on a topic approved by the professor. The topic must be selected and a brief outline approved by March 14. A preliminary report is due on April 11. The final draft is due on April 25, including a detachable 1-2 page abstract for the class notebook.
2. Term papers must be typewritten, double-spaced, and kept in conformity with standard grammar, spelling, and punctuation. Kate Turabian's Manual for Writers should be consulted.
3. Students will be tested on class lectures and material covered in reading assignments.
4. Each of the three short-answer and essay exams represents a quarter of the grade. The term paper is worth an additional quarter.
5. Regular attendance and participation in class discussions is expected. Students who miss more than twelve hours fail the course.

Reading

Recommended Purchases:

Hamilton, Madison, Jay. The Federalist Papers.
 Kelly, Harbison, Belz. The American Constitution, 6th ed.
 Kutler, Stanley. Supreme Court and the Constitution, 3rd ed.

Study Packet:

Arkes, Hadley. "How to Roll Back Roe," in National Review,
 October 28, 1988. [23]
 Bahnsen, Greg. "Introduction to John Cotton's Abstract." [6]
 Bancroft, George. A Plea for the Constitution. [15]
 Blackstone, William. Commentaries on the Laws of England. [10]
 Brubaker, Stanley C. "Rewriting the Constitution," Commentary,
 December 1988. [24]
 Connecticut. "Fundamental Orders of Connecticut." [7]
 Corwin, Edward S. "The Postwar Constitution." [17]
 Dornan, Robert, and Csaba Vedlik. The Rise of Judicial
 Supremacy, pp. 44-55. [13]
 England. "Magna Carta." [5]
 Kirk, Russell (1). "Church and State in Conflict." [19]
 Lee, Robert W. "Genocide Treaty vs. Constitution," New American,
 November 21, 1988. [22]
 Massachusetts Bay. "Oath of a Free Man." [8]
 Meese, Edwin III. "Toward a Jurisprudence of Original
 Intention." [18]

- Moes, Gary. "The Neutral Church." [21]
 Montgomery, Zach. "Political Poison in the Public School Books." [14]
 Rice, Charles. "The Jaffree Case." [20]
 Riker, William. "Birth of a Nation," in Reason, January 1987. [14]
 Rushdoony, Rousas (1). Institutes of Biblical Law.
 "Introduction." [2]
 _____ (2). "The Society of Satan." [1]
 Schlossberg, Herbert. "Khadi Law and the End of Justice." [11]
 Silving, Helen. "Jurisprudence in the Old Testament." [3]
 _____. "Origins of the Magnae Cartae." [4]
 Swanson, Mary-Elaine. "How Supreme Is the Supreme Court?" [12]
 Titus, Herbert (1). "The Christian Legacy of America's Declaration of Independence." [10]

Cases and Briefs:

- Arver v. United States
 Davis v. Beason
 Hepburn v. Griswold, plus briefs
 Kurland, Philip, and Gerhard Casper. Landmark Briefs and Arguments of the Supreme Court: Arver v. United States
 The Legal Tender Cases (including the Juilliard Case)
 Meyer v. Nebraska
 Rector v. United States

Reserve Desk:

- Bahnsen, Greg. Theonomy in Christian Ethics.
 ✓ Berman, Harold. Law and Revolution.
 ✓ Boettner, Loraine. The Reformed Doctrine of Predestination.
 * Burgess, John. Recent Changes in American Constitutional Law.
 Cord, Robert. "Correcting the Record," National Review
 Eidsmoe, John. Christian Legal Advisor.
 * Kirk, Russell (2). Roots of American Order.
 ✓ Lutz, Donald S. "Origins of American Constitutionalism: The Colonial Heritage." Unpublished Paper.
 * Mason, Alpheus. Free Government in the Making.
 * ✓ Morley, Felix. Freedom and Federalism.
 ✓ Norton, Thomas James. Undermining the Constitution.
 ✓ North, Gary. "Greenback Dollars and Federal Sovereignty," in Hans Sennholz, ed., Gold Is Money.
 ✓ Rushdoony, Rousas (3). This Independent Republic, chs. 1-2, 13.
 * Samson, Steven. Crossed Swords: Entanglements Between Church and State in America.
 ✓ Sparks, John. "The Legal Status of Gold," in Gold Is Money.
 ✓ Titus, Herbert (2). "God, Evolution, Legal Education and Law," Journal of Christian Jurisprudence.
 ✓ _____ (3). "Religious Freedom: The War Between Two Faiths."
 * ✓ Wright, Benjamin F., Jr. "Early History of Written Constitutions in America."

writes: Hebrew Republic
Kurland, Constitutional subject on Public Policy
 Schedule

I. SOURCES OF THE AMERICAN CONSTITUTIONAL TRADITION (January 26-February 7)

A. Biblical Background (Tuesday, January 31)

Required: Rushdoony 1-2; Silving, "Jurisprudence."

Optional: Bahnsen, ch. 16-17; Eidsmoe, ch. 1-3; Samson, ch. 2 ²⁷⁻⁴⁵

B. Middle Ages and Reformation (Thursday, February 2)

Required: Kirk 2, pp. 183-200; Silving, "Origins;" "Magna Carta;" Bahnsen, "Introduction;" "Fundamental Orders of Connecticut;" "Oath of a Free Man."

Optional: Berman, ch. 3; Samson, ch. 3, pp. 111-14; ch. 4; Lutz; Mason, pp. 60-68; Samson, ch. 5, pp. 151-63.

C. Natural Law Tradition (Tuesday, February 7)

Required: Kelly, ch. 1-3; Mason, pp. 22-38 (Locke); Blackstone. ~~Locke~~

Optional: Eidsmoe, chs. 4-5.

II. FORGING A NEW CONSTITUTIONAL SYSTEM (February 9-16)

A. American Political Theology (Thursday, February 9)

Required: Samson, ch. 5, pp. 163-183; Titus 1; Declaration.

Optional: Rushdoony 3; Boettner, pp. 382-99.

B. American Constitutionalism (Tuesday, February 14)

Required: Kelly, ch. 4-5; ~~Wright; Riker~~; Federalist, nos. 9, 10, 15, 22.

C. Federalists and Anti-Federalists (Thursday, February 16)

Required: Kelly, ch. 6-7; Federalist, nos. 39, 44, 47, 51, 78; Mason, pp. 253-67, 277-83.

Optional: Graglia.

III. EARLY CONSTITUTIONAL DEVELOPMENT, 1789-1801 (February 21-23)

A. Bill of Rights and Judicial Review
(Tuesday, February 21)

Required: Kelly, ch. 8-9; Kutler, pp. 3-6, 25-35.

Optional: Samson, ch. 6, pp. 208-19; Cord; Eidsmoe, ch. 7-10.

First Exam (Parts I-II): Thursday, February 23

IV. MARSHALL AND TANEY COURTS, 1801-1864 (February 28-March 7)

A. Constitutional Nationalism (Tuesday, February 28)

Required: Kelly, ch. 10-11; Kutler, pp. 50-62, 72-78, 90-96.

Optional: Samson, ch. 7, pp. 258-73.

B. Dual Federalism (Thursday, March 2)

Required: Kelly, ch. 12-13; Kutler, pp. 114-19.

C. Slavery (Tuesday, March 7)

Required: Kelly, ch. 14-15; Kutler, pp. 150-57.

V. FIRST CONSTITUTIONAL REVOLUTION (March 9-14)

A. War Presidency (Thursday, March 9)

Required: Kelly, ch. 16; Kutler, pp. 164-69; Swanson; Montgomery; Dornan.

B. Congressional Reconstruction (Tuesday, March 14)

Required: Kelly, ch. 17-18; Morley, pp. 59-71; Kutler, pp. 179-82, 200-08, 216-21; Bancroft; Legal Tender Cases. [Discussion will continue on March 16]
Optional: North; Sparks; Samson, ch. 8, pp. 357-61.

VI. INDUSTRIALIZATION AND THE CORPORATE ECONOMY (March 16-28)

A. Industrial Revolution (Thursday, March 16)

Required: Kelly, ch. 19; Kutler, pp. 183-91, 225-41.

B. Entrepreneurial Liberty (Tuesday, March 28)

Required: Kelly, ch. 20; Kutler, pp. 277-90, 304-08; Davis v. Beason.
Optional: Samson, ch. 7, pp. 273-92; Rector v. United States.

VII. SECOND CONSTITUTIONAL REVOLUTION, 1910-1937 (March 30-April 6)

A. The Progressive Movement (Thursday, March 30)

Required: Kelly, ch. 21; Kutler, pp. 321-33, 347-58, 373-77, 382-86; Burgess; Samson, ch. 7, pp. 292-303;

B. Legal Positivism (Tuesday, April 4)

Required: Kelly, ch. 22; Burgess; Schlossberg; Arver v. United States; Kurland (Arver briefs); Meyer v. Nebraska.
Optional: Titus 2; Eidsmoe, ch. 6.

Second Exam (Parts III-VI): Thursday, April 6

VIII. THIRD CONSTITUTIONAL REVOLUTION, 1937- (April 11-18)

A. The New Deal (Tuesday, April 11)

Required: Kelly, ch. 23-24; Kutler, pp. 394-412.
Optional: Norton, ch. 14.

B. Regulations and Civil Liberties (Thursday, April 13)

Required: Kelly, ch. 25-26; Kutler, pp. 511-24, 703-07; Corwin.
Optional: Samson, ch. 8, pp. 309-56.

C. Collective Security (Tuesday, April 18)

Required: Kelly, ch. 27-28; Kutler, pp. 429-35, 708-12.

IX. JUDICIAL ACTIVISM (April 20-May 4)

A. Civil Rights Movement (Thursday, April 20)

Required: Kelly, ch. 29-30; Kutler, pp. 548-52; 572-77.

B. Liberal Constitutionalism (Tuesday, April 25)

Required: Kelly, ch. 31-32; Kutler, pp. 422-25, 493-510, 599-609, 622-35.

C. Contemporary Constitutional Law (Thursday, April 27)

Required: Kelly, ch. 33; Kutler, pp. 533-47, 645-61, 688-702; Meese; Kirk 1; Rice; Moes; Lee; Arkes; Brubaker.

Optional: Titus 3; Eidsmore, ch. 12; *Kutler*

Third Exam (Parts VII-IX): Thursday, May 4

AMERICAN CONSTITUTIONAL HISTORY: SELECTED BIBLIOGRAPHY

Adair, Douglass. The Story of America's Greatest Political Classic: The Federalist Papers, ed. Michael Loyd Chadwick. Salt Lake City, UT: Center for Constitutional Studies, 1980.

Bartholomew, Paul C. Summaries of Leading Cases on the Constitution, 12th ed. Totowa, NJ: Rowman & Allanheld, 1983.

Berger, Raoul. Government by Judiciary: The Transformation of the Fourteenth Amendment. Cambridge, MA: Harvard University Press, 1977.

Berns, Walter. Taking the Constitution Seriously. New York: Simon and Schuster, 1987.

Bobbitt, Philip. Constitutional Fate: Theory of the Constitution. New York: Oxford University Press, 1982.

Bradford, M. E. A Worthy Company: Brief Lives of the Framers of the United States Constitution. Marlborough, NH: Plymouth Rock Foundation, 1982.

Brant, Irving. The Bill of Rights: Its Origin and Meaning. New York: New American Library, 1965.

Conley, Patrick T. Posterity Views the Founding: General Published Works Pertaining to the Creation of the Constitution; A Bibliographic Essay. Madison, WI: Madison House, 1988.

Corwin, Edward S. American Constitutional History: Essays by Edward S. Corwin, ed. Alpheus T. Mason and Gerald Garvey. New York: 1964.

. Court Over Constitution: A Study of Judicial Review as an Instrument of Popular Government. Princeton, NJ: Princeton University Press, 1938.

- . The "Higher Law" Background of American Constitutional Law.
Ithaca, NY: Cornell University Press, 1955.
- Currie, David P. The Constitution of the United States: A Primer for the People, Chicago: University of Chicago Press, 1988.
- Curry, Thomas J. The First Freedoms: Church and State in America to the Passage of the First Amendment. New York: Oxford University Press, 1986.
- Daly, John Charles, moderator. War Powers and the Constitution. Washington, DC: American Enterprise Institute, 1983.
- De Jong, Norman, and Jack Van Der Slik. Separation of Church and State: The Myth Revisited. Jordan Station, ON: Paideia Press, 1985.
- Dietze, Gottfried. The Federalist: A Classic of Federalism and Free Government. Baltimore: Johns Hopkins Press, 1960.
- Dornan, Robert K., and Csaba Vedlik, Jr. Judicial Supremacy: The Supreme Court on Trial. New York: Nordland Publishing International, 1980.
- Dreisach, Daniel L. Real Threat and Mere Shadow: Religious Liberty and the First Amendment. The Rutherford Institute Report, vol. 5. Westchester, IL: Crossway Books, 1987.
- Eidsmoe, John. The Christian Legal Advisor. Milford, MI: Mott Media, 1984.
- . Christianity and the Constitution: The Faith of Our Founding Fathers. Grand Rapids, MI: Baker Book House, 1987.
- Elazar, Daniel J., and John Kincaid, eds. "Covenant, Polity, and Constitutionalism," Publius, 10 (Fall 1980).
- Fitzpatrick, James K. God, Country, and the Supreme Court. Chicago: Regnery Books, 1985.
- Friedrich, C. J. Constitutional Reason of State: The Survival of the Constitutional Order. Providence, RI: Brown University Press, 1957.
- Goldberg, George. Reconsecrating America. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1984.
- Hall, Verna M., and Rosalie J. Slater. The Bible and the Constitution of The United States. San Francisco, CA: Foundation for American Christian Education, 1983.
- Higgins, Thomas J. Judicial Review Unmasked. West Hanover, MA: Christopher Publishing House, 1981.
- Higgs, Robert. Crisis and Leviathan: Critical Episodes in the Growth of American Government. New York: Oxford University Press, 1987.

- Landon, Judson S. The Constitutional History and Government of the United States, 2nd revised ed. Boston: Houghton Mifflin Company, 1905.
- Levy, Leonard W., ed. Essays on the Making of the Constitution, 2nd ed. New York: Oxford University Press, 1987.
- McDonald, Forrest. A Constitutional History of the United States. New York: Franklin Watts, 1982.
- _____. Novus Ordo Seclorum: The Intellectual Origins of the Constitution. Lawrence, KS: University Press of Kansas, 1985.
- McIlwain, Charles Howard. Constitutionalism: Ancient and Modern, revised ed. Ithaca, NY: Cornell University Press, 1947.
- McLaughlin, Andrew C. A Constitutional History of the United States. New York: D. Appleton-Century Company, 1935.
- Madison, James. Notes of Debates in the Federal Convention of 1787 Reported by James Madison. New York: W. W. Norton & Company, 1987 [1966].
- Main, Jackson Turner. The Anti-Federalists: Critics of the Constitution, 1781-1788. Chapel Hill, NC: University of North Carolina Press, 1961.
- Morley, Felix. Freedom and Federalism. Chicago: Henry Regnery Company, 1959.
- Newmyer, R. Kent. The Supreme Court under Marshall and Taney. The American History Series. Arlington Heights, IL: Harlan Davidson, 1968.
- Norton, Thomas James. Undermining the Constitution: A History of Lawless Government. New York: Devin-Adair, 1950.
- Pound, Roscoe. The Development of Constitutional Guarantees of Liberty. New Haven, CT: Yale University Press, 1957.
- Rossiter, Clinton. Constitutional Dictatorship: Crisis Government in Modern Democracies. New York: Harbinger Books, 1963.
- _____. 1787: The Grand Convention. New York: W. W. Norton & Company, 1987 [1966].
- Siegan, Bernard H. Economic Liberties and the Constitution. Chicago: University of Chicago Press, 1980.
- Skousen, W. Cleon. The Making of America: The Substance and Meaning of the Constitution. Washington, DC: National Center for Constitutional Studies, 1985.
- Stansbury, Arthur J. Elementary Catechism on the Constitution of the United States for the Use of the Schools. Camarillo, CA: American Heritage Press, 1987 [1828].
- Swisher, Carl Brent. American Constitutional Development, 2nd ed. New York: Houghton Mifflin Company, 1954.

Urofsky, Melvin I. A March of Liberty: A Constitutional History of the United States. New York: Alfred A. Knopf, 1988.

Vetterli, Richard. The Constitution by a Thread. San Lake City, UT: Paramount Publishers, 1967.

Warren, Charles. The Supreme Court in United States History, revised ed. 2 vols. Boston: Little, Brown, and Company, 1935.

White, G. Edward. The American Judicial Tradition: Profiles of Leading American Judges. New York: Oxford University Press, 1976.

Whitehead, John W. The Second American Revolution. Elgin, IL: David C. Cook Publishing Company, 1982.

_____, and Wendell R. Bird. Home Education and Constitutional Liberties. The Rutherford Institute Report: Volume 2. Westchester, IL: Crossway Books, 1986.

Wolfe, Christopher. The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law. New York: Basic Books, 1986.

Wu, John C. H. Fountain of Justice: A Study in the Natural Law. New York: Sheed and Ward, 1955.

STUDY SHEET FOR THE SECOND EXAM

1. Discuss the development, the critique, and the political character of judicial review in light of three cases: Marbury v. Madison, Eakin v. Raub, and Dred Scott v. Sandford. In each case, evaluate the reasoning of the justices and the constitutional basis for their positions.
2. Identify and discuss some of the major constitutional changes-- permanent or temporary--that occurred as a result of Lincoln's use of executive power during the Civil War and Congress's use of the Military Reconstruction afterwards. Evaluate the political and constitutional significance of the arguments that revolved around Ex parte Milligan, Texas v. White, and the Fourteenth Amendment.
3. Using Justice Stephen Field's dissenting opinion in the final case as a point of reference, evaluate the constitutional issues elaborated in Hepburn v. Griswold, the Legal Tender Cases, and Juilliard v. Greenman. Discuss the political and constitutional significance of the changes in doctrine and reasoning. (See Bancroft, Sparks, and North for clues)
4. Describe developments in the constitutional law of contract by identifying the doctrines and discussing the issues raised in the following cases: Dartmouth College v. Woodward, Charles River Bridge v. Warren Bridge, Hepburn v. Griswold (or any of the other legal tender cases), and Lochner v. New York.