Spring 1989

American Constitutional History Syllabus with Selected Bibliography

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American Constitutional History
Syllabus with Selected Bibliography

Steven Alan Samson
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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.
Kutler, Stanley. Supreme Court and the Constitution, 3rd ed.

Study Packet:
Bancroft, George. A Plea for the Constitution. [15]
Corwin, Edward S. "The Postwar Constitution." [17]
Kirk, Russell (1). "Church and State in Conflict." [19]
Massachusetts Bay. "Oath of a Free Man." [8]
Meese, Edwin III. "Toward a Jurisprudence of Original Intention." [18]
Moes, Gary. "The Neutral Church." [21]
Rushdoony, Rousas (1). Institutes of Biblical Law.
"Introduction." [2]
(2). "The Society of Satan." [1]
Swanson, Mary-Elaine. "How Supreme Is the Supreme Court?" [12]

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
* Kirk, Russell (2). Roots of American Order.
Rushdoony, Rousas (3). This Independent Republic, chs. 1-2, 13.
* Samson, Steven. Crossed Swords: Entanglements Between Church and State in America.
(3). "Religious Freedom: The War Between Two Faiths."
* Wright, Benjamin F., Jr. "Early History of Written Constitutions in America."

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.

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.
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.
Optional: Wright; Riker.

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.

B. Dual Federalism (Thursday, March 2)


C. Slavery (Tuesday, March 7)

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)


B. Entrepreneurial Liberty (Tuesday, March 28)

Required: Kelly, ch. 20; Kutler, pp. 277-90, 304-08; Davis v. Beason.

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)


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

Required: Kelly, ch. 25-26; Kutler, pp. 511-24, 703-07; Corwin.

C. Collective Security (Tuesday, April 18)

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)

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; Moesi Lee; Arkes; Brubaker.

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

AMERICAN CONSTITUTIONAL HISTORY: SELECTED BIBLIOGRAPHY


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.