

Institute for Constitutional Studies

**Summer Workshop—The Constitutional Convention
Emory University, School of Law
July 6-11, 2008**

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SYLLABUS

Welcome to the summer ICS workshop, which this year focuses on the Constitutional Convention of 1787. We begin, however, with British background, stretching from 1688 to the time of the American Revolution, in order to understand the cultural, political, and intellectual movements of that era, including the writings of Trenchard & Gordon, Locke and Wilkes, for it is essential to understand British resistance to authority before we move on to American colonial resistance of the 1760s and 1770s. We will consider the governing bodies and political leadership that existed in America before the Revolution, as well as those that came into being once the Revolution started. State constitutions, the activities of the Second Continental Congress, and the first central government under the Articles of Confederation will also be studied before we move on to the Convention in Philadelphia. The participants, the major problems they encountered and resolved (or avoided addressing), and the process of ratification, as well as lingering issues that were addressed in the 1790s, will be our major topics for the week.

The goal of the readings given below is to prepare you for our lectures, discussions, and activities. You'll get more out of everything if you do them before the session that they are indicated for. You'll probably want to bring the books (Bailyn, Bederman, Wood, Adams, Farrand) with you, in case our conversations push you to read further—or re-read for clarity—any sections of those texts. Items indicated for reading online will probably be best printed off and also brought with you for reference during our discussions (a three-ring binder may be your best choice for collecting and keeping these items together).

SUNDAY EVENING

Opening reception for all participants

MONDAY MORNING SESSION (9-12)

Welcome from Dean of Emory University Law School

English Heritage: Monarchy, the Glorious Revolution, and the English Bill of Rights

Readings: Bernard Bailyn, *Ideological Origins of the American Revolution*, ch. 3-6
The English Bill of Rights (1689) < <http://www.yale.edu/lawweb/avalon/england.htm> >

MONDAY AFTERNOON SESSION (2-5)

The Founders and Classical Antiquity

Speaker: Professor David Bederman, Emory University School of Law

Readings: David Bederman, *Classical Foundations of the American Constitution*, ch. 1-3
Carl Richard, *The Founders and the Classics*, introduction, ch. 1 and 7

Optional: Read other chapters in these two books

TUESDAY MORNING SESSION (9-12)

Breakdown of Existing Authority: Colonial Assemblies & Royal Governors

Creation of New Authorities: State Legislatures, the Continental Congress, the Articles of Confederation

Readings: Gordon Wood, *Creation of the American Republic*, ch. 4-6

Willi Paul Adams, *The First American Constitutions*, ch. 1-2

Declaration of Independence: < <http://elsinore.cis.yale.edu/lawweb/avalon/declare.htm> >

The Articles of Confederation: < <http://elsinore.cis.yale.edu/lawweb/avalon/artconf.htm> >

Optional Reading: Edmund Morgan, *Birth of the Republic*

A. J. O'Shaughnessy, *Empire Divided*

Jack Rakove, *The Beginnings of National Politics*

TUESDAY AFTERNOON SESSION (2-5)

State Constitutions: Creation, Innovations, Responsibilities, Legacies

Readings: Willi Paul Adams, *The First American Constitutions*, ch. 3, 5, 9, 14

The Massachusetts Constitutional Experience

< <http://www.mass.gov/courts/sjc/john-adams-b.html> >

The Massachusetts Constitution, 1780

< <http://www.nhinet.org/ccs/docs/ma-1780.htm> >

Pennsylvania State Constitution, 1776

< <http://www.yale.edu/lawweb/avalon/states/pa08.htm> >

Optional Reading: You can examine other versions of the Pennsylvania State Constitution at < www.paconstitution.duq.edu >

George A. Tarr, *Understanding State Constitutions*

WEDNESDAY MORNING SESSION (9-12)

Political Philosophy in the Eighteenth Century

Speaker: Dr. Jamil S. Zainaldin, President, Georgia Humanities Council

Readings: To be announced

WEDNESDAY AFTERNOON SESSION (2-5)

The Constitutional Convention: Membership, Major Controversies, Compromises

Readings: Max Farrand, *The Framing of the Constitution*

The Constitution: < <http://elsinore.cis.yale.edu/lawweb/avalon/usconst.htm> >

Optional: Explore the American Memory site for more on the Convention

< <http://memory.loc.gov/ammem/amlaw/lawhome.html> > or

< <http://memory.loc.gov/ammem/collections/continental/> >

WEDNESDAY EVENING ENTERTAINMENT: Film “1776” [this is purely optional!]

THURSDAY MORNING SESSION (9-12)

Ratification, Anti-Federalists, The Bill of Rights, and “Empire of Reason”

Readings: James Madison, “Vices of the Political System of the U.S.”

< <http://press-pubs.uchicago.edu/founders/documents/v1ch5s16.html> >

Cecilia Kenyon, “Men of Little Faith” *William and Mary Quarterly* 12 (1955): 3-46

The U.S. Bill of Rights

< <http://www.yale.edu/lawweb/avalon/rights1.htm> >

Optional Reading: Bernard Bailyn, ed., *The Debate on the Constitution* (2 vols)

Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828*

Christopher Duncan, *The Anti-Federalists and Early American Political Thought*

Cecilia Kenyon, *The Anti-Federalists*

Herbert Storing, *What the Anti-Federalists Were For*

Morning Break

Beyond the Constitution: Government Elaboration, Criticism, Early Federalism

Readings: The Judiciary Act of 1789

< http://elsinore.cis.yale.edu/lawweb/avalon/statutes/judiciary_act.htm >

Alien & Sedition Laws

< <http://elsinore.cis.yale.edu/lawweb/avalon/alsedact.htm> >

Virginia and Kentucky resolutions

< <http://elsinore.cis.yale.edu/lawweb/avalon/alsedact.htm> >

THURSDAY AFTERNOON SESSION (2-5)

The Early U.S. Supreme Court

Speaker: Professor Maeva Marcus, George Washington U. Law School, ICS Director

Readings: Distributed at the seminar at the beginning of the week: *Chisholm v. Georgia* (2 *Dallas* 429 (1793))

11th and 12th Amendments to the Constitution

< <http://elsinore.cis.yale.edu/lawweb/avalon/usconst.htm> >

FRIDAY MORNING SESSION (9-12)

The Radicalism of the 1770s and 1780s: Too Much or Not Enough?

Readings: Paul Finkelman, *Slavery and the Founders*, ch. 1 and 4

Judith Apter Klinghoffer and Lois Elkis, "The Petticoat Electors: Women's Suffrage in New Jersey" *Journal of the Early Republic*, 12 (Summer, 1992): 159-193

Jan Lewis, "Of Every Age Sex and Condition: The Representation of Women in the Constitution" *Journal of the Early Republic*, 15 (Autumn 1995): 359-387

The New Jersey Constitution of 1780: < <http://www.state.nj.us/njfacts/njdoc10a.htm> >

Optional Reading: Linda Kerber, *Liberty's Daughters*

Mary Beth Norton, *Women and the Revolution*

Morning Break

The International Effects

More commonly studied by political scientists than by historians and other humanists, the long-term influence of the American Revolution and the U.S. Constitution on other parts of the globe is a large topic in its own right. We'll be looking at effects at the end of the eighteenth century and early nineteenth century.

Readings: The French Declaration of the Rights of Man (1789):

< <http://www.yale.edu/lawweb/avalon/rightsof.htm> >

The Constitution of the Confederate States of America (1861):

< <http://www.yale.edu/lawweb/avalon/csa/csa.htm> >

Optional Readings: David Armitage, *The Declaration of Independence: A Global History*

Laurent Dubois, *A Colony of Citizens: Revolution & Slave Emancipation in the French Caribbean, 1787-1804*

FRIDAY AFTERNOON SESSION (2-5)

The Constitution in Action: Supreme Court Cases

Speaker: Professor Polly Price, Emory University Law School

Readings: To be distributed at the seminar at the beginning of the week

Optional Readings: C. P. Magrath, *Yazoo: Law and Politics in the New Republic*

Wrapping Up the Week: Discussion, Future Directions, Evaluation

Focused Background Reading:

These are books that give more detail about specific topics we've addressed, but are beyond the scope of this seminar. You'll discover a lot if you continue exploring the Constitution through these texts.

Lance Banning, *Sacred Fire of Liberty*

Charles Beard, *An Economic Interpretation of the Constitution*

Alan Gibson, *Interpreting the Founding*

Alan Gibson, *Understanding the Founding*

Jack Greene & J. R. Pole, eds., *A Companion to the American Revolution* (2d ed.)

David Hendrickson, *Peace Pact*

Woody Holton, *Unruly Americans and the Origins of the Constitution*

Leonard Levy, any of his many works on the Bill of Rights

Maeva Marcus, ed., *Documentary History of the Supreme Court of the United States*

Maeva Marcus, *Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789*

Jack Rakove, *Original Meanings*

Gordon Wood, *The Radicalism of the American Revolution*

Rosemarie Zagari, *A Woman's Dilemma: Mercy Otis Warren*

General Background Reading:

You'll find that some of these books or articles may be more helpfully tackled after our discussions. They address various topics we may touch upon as the week progresses, but are not directly part of our core readings. Based on your educational background, you may find these more or less helpful, but they are listed here as a resource to be consulted as your time permits. The titles of most books are self-explanatory, but I have added comments if the title needs clarification.

David Armitage, *Ideological Origins of the British Empire* [on English ideas about empire]

Lauren Benton, *Law and Colonial Cultures* [comparative]

Richard Brown, *Revolutionary Politics in Massachusetts*

L. H. Butterfield, ed., *The Earliest Diary of John Adams* [on standard legal education]

Edward Colimore, *The Philadelphia Inquirer's Guide to Historic Philadelphia* [on buildings]

Linda Colley, *Britons* [on English ideas about empire]

Dan Coquillette, ed., *Law in Colonial Massachusetts, 1630-1800* (volume in the Colonial Society of Massachusetts publication series)

Edward S. Corwin, *The 'Higher Law' Background of American Constitutional Law*

Cathy Davison, *Revolution and the Word*

Peter Hoffer, *The Law's Conscience* [on equity in the colonies]

Sheila Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-century England*

David Lemmings, *Professors of the Law: Barristers and English Legal Culture in 18th century England*

Michael Lobban, *The Common Law and English Jurisprudence 1760-1850*

David Lovejoy, *Glorious Revolution in America*

Elizabeth Mancke, *The Fault Lines of Empire* [how Canada and US began diverging in 18th c]

Allyson May, *The Bar & The Old Bailey, 1750-1850*

Edmund Morgan, *The Birth of the Republic, 1763-1789*

Gary Nash, *Quakers and Politics*

Rosemary O'Day, *The Professions in Early Modern England, 1450-1800*

Carole Shammas, Marylyn Salmon and Michael Dahlin, *Inheritance in America*

Jack Sosin, *English America and the Revolution of 1688*

Michael Warner, *The Letters of the Republic*

Richard Webster, *Philadelphia Preserved* [on buildings]