

THE ANTEBELLUM AND POST-CIVIL WAR CONSTITUTION[S]
INSTITUTE FOR CONSTITUTIONAL HISTORY
FALL 2015

Professor and Contact Information

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Office: GW office TBA (234 University of Maryland School of Law)

Office Hours will be Monday 4-6 and by appointment

Class Schedule

Monday 6:00-8:00, September 21-October 26

Required Books

Hamilton, Madison and Jay, *The Federalist Papers* (any edition will do)

Michael Vorenberg, *The Thirteenth Amendment*

Nelson, *The Fourteenth Amendment*

Packet of Materials that will be made available a week before Class.

Evaluation/Grading

Two short reaction papers (1500 words) due the third and sixth classes.

Class participation

• **DISABILITY SUPPORT SERVICES:**

Any student who may need an accommodation based on the potential impact of a disability should contact the Office of Disability Support Services (DSS) at: 202-994-8250 in the Rome Hall, Suite 102, to establish eligibility and the Dean of Students Office at 202-994-8320 to coordinate reasonable accommodations. For additional information please refer to: <http://gwired.gwu.edu/dss/>. Remember, Law School examination protocol calls for anonymous grading and disclosure of disability to a professor has the potential to breach exam anonymity. Students may contact the Dean of Students Office regarding registering with the Office of DSS or eligibility to receive accommodations (e.g., notetaking assistance, adaptive technologies, etc.).

• **ACADEMIC INTEGRITY POLICY:**

Students must strictly adhere to the GW Law School's Academic Integrity Code (see GW Law School Bulletin) and publication Citing Responsibly, and the University's Code of Student Conduct. At the time the exam is completed, each student must provide a signed Pledge of Honesty to the proctor (or Records Office if it is a take-home exam).

• **RECORDING OF CLASSES:**

This course will follow the Law School's "Class Recording Policy," available at the Dean of Students Office Website. Essentially, students may request class recordings when they will be absent for religious reasons, family emergencies, and other authorized absences. Requests for recording and questions about the policy should be directed to the Dean of Students Office.

Course Description

This course explores the extent to which the post-Civil War Amendments made fundamental changes in the American constitutional order. Abraham Lincoln in 1863 promised "a new birth of freedom." Many contemporary scholars believed the post-Civil War Constitution was designed to achieve that new birth of freedom by radically changing the basic design and commitments of the American constitutional order. Conservatives in 1865, however, spoke of that "Constitution as it was," minus slavery. The Supreme Court championed this view in *The Slaughter-House Cases* (1873). The debate is hardly academic. As the opinions in *Shelby County v. Holder* (2013) demonstrate, basic contemporary regime commitments depend to a fair degree on the extent of constitutional change during the Civil War and Reconstruction.

We will explore this issue by examining primary and secondary sources. The first third of the course will explore the basic commitments of the constitutional regime established in 1787 through a close reading of crucial *Federalist Papers* and major selections from other Federalist and anti-Federalist writings. The second third of the course will examine the basic commitments of the constitutional regime Republicans hoped to establish in 1865 through a close reading of the debates over the Thirteenth and Fourteenth Amendments, as well as such measures as the Civil Rights Act of 1866 and the Second Freedman's Bureau Act. The last third of the course will look at some prominent claims that the constitutional regime was fundamentally altered during the Civil War and Reconstruction.

Course Outline

Week One: September 21: *The Federalist Papers*

Hamilton, Madison and Jay, *Federalist* 1, 10, 23, 31, 37, 45, 51, 61, 70-71, 78, 84 (any edition of *The Federalist Papers* will do)

Week Two: September 28: The Ratification Debates

Wood, *The Creation of the American Republic*, 471-564

Amar, "The Bill of Rights as a Constitution," 100 *Yale Law Journal* 1131 (1991)

Week Three: October 5: The Thirteenth Amendment

Michael Vorenberg, *The Thirteenth Amendment*, pp. 36-233

Materials from the Congressional Debates on the Thirteenth Amendment, *The Complete American Constitutionalism* (Vol. V). All material will be online.

Week Four: October 12: The Fourteenth and Fifteenth Amendments

William Nelson, *The Fourteenth Amendment*, pp. 1-148
Materials from the Congressional Debates on the Fourteenth Amendment, *The Complete American Constitutionalism* (Vol. V). All material will be online.

Week Five: October 19: The Yale Theories

Bruce Ackerman, "Constitutional Politics/Constitutional Law," 99 *Yale Law Journal* 453 (1989)
Akhil Amar, "The Bill of Rights and the Fourteenth Amendment," 101 *Yale Law Journal* 1193 (1992)

Week Six: October 26: Alternatives

Christopher Eisgruber, "The Fourteenth Amendment's Constitution," 69 *Southern California Law Review* 47 (1995).
Mark Graber, "Constructing Constitutional Politics" (online)