

THE REVOLUTIONARY ORIGINS OF AMERICAN CONSTITUTIONALISM

February 17-March 24, 2012.

Description:

This seminar, which is offered by the Institute for Constitutional History, will explore the origins of American constitutionalism in the Anglo-American past and the arguments and achievements of the revolutionary period (roughly 1764-1789). The seminar will meet at the New-York Historical Society on six successive Friday afternoons from 3 to 5 p.m. starting on the 17th of February.

Instructors:

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READINGS

Background (optional):

- Participants who feel the need for background information might read Gordon S. Wood's *The American Revolution: A History* (Modern Library Chronicles; New York, 2002) or consult the essays, including R.B. Bernstein's "The American Revolution as a Constitutional Controversy," at: <http://revolution.h-net.msu.edu>

Recommended:

- James Madison, *Notes of Debates in the Federal Convention of 1787*, introduction by Adrienne Koch (Bicentennial edition, W.W. Norton and Company; New York, 1987; now published by Ohio University Press).
- Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (Simon and Schuster; New York, 2010; pb. 2011).

Online Readings:

- Most readings will be available online.

BEGINNINGS

I. FROM RESISTANCE TO REVOLUTION (FEBRUARY 17)

Secondary Sources:

- Bernard Bailyn, *The Ideological Origins of the American Revolution* (Harvard University Press, Cambridge, Mass., 1992 [enlarged edition; orig. 1967], Foreword and Chapters III, V, pages ix-xvi, 55-93, 160-229).
- Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge UP; Cambridge and New York, 2011), esp. "Prologue: the Inheritance" and "Epilogue: Legacy," pp. 1-18, 187-90.

- Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (Knopf, New York, 1972), Chapters 2, pp. 27-48; pp. 77-100 of Chapter 4, and pp. 113 to 140 of Chapter 5.

Documents:

- The “Constitution” of the Albany, N.Y., Sons of Liberty, 1766.
- The English Bill of Rights, 1689
- Congressional Declaration and Resolves, October 14, 1774
- The Association (or “Continental Association”), approved by the First Continental Congress on October 20, 1774 -- Note especially provisions 11, 12, and the final paragraph.
- Daniel Dulany, *Considerations on the Propriety of Imposing Taxes in the British Colonies, for the Purpose of raising a Revenue, by Act of Parliament* (1765); selected passages.
- John Dickinson, *Letters from a Farmer in Pennsylvania* (1767), letters 2 and 3.
- James Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* (1774, but first written 1769) (You might start with note “r,” which summarizes Wilson’s conclusion, then skim the text. Note the eighth paragraph, which begins “All men are, by nature, equal and free...”)
- Thomas Paine, *Common Sense* (1776) Pay particular attention to the part before “Of the Present Ability of America” (although the final paragraphs of that section are important), and to Paine’s proposed constitutional designs in “Of Monarchy and Hereditary Succession.” Read also the “Appendix.”
- The Declaration of Independence (1776), showing the changes Congress made in the Jefferson/Committee draft between July 2 and 4, 1776, from Pauline Maier, *American Scripture* (Knopf, NY, 1997), Appendix C, pp. 235-41.

THE CREATION OF THE AMERICAN REPUBLIC

II. THE STATES (FEBRUARY 24)

- Congressional resolution of May 10, 1776, and preamble added May 15, 1776. (Digital copy supplied.)
- John Adams, *Thoughts on Government*, 1776.
- Anonymous, *Four Letters on Interesting Subjects* , 1776.
- The Virginia Declaration of Rights, June 12, 1776
- An earlier version of the Mason draft of the declaration as it appeared in the *Pennsylvania Gazette*, June 12, 1776.
- The first state constitutions of Virginia, June 29, 1776; Pennsylvania, September 28, 1776; and New York, April 20, 1777
- Also the Massachusetts Constitution, March 2, 1780
- James Madison, “Memorial and Remonstrance against Religious Assessments” (1785)
- The Virginia Statute of Religious Freedom, October 31, 1785.

Recommended:

- Gordon S. Wood, *The Creation of the American Republic* (UNC Press; Chapel Hill, 1969), chapters 4-9, pp. 125-390, which provides a classic, but very detailed, account of the ground-breaking changes made in the first state constitutions. Together those constitutions served as an experiment in constitutional design that profoundly influenced the federal Constitution.

III. THE NATION, ACT I -- THE CONFEDERATION (MARCH 2)

- The Articles of Confederation, November 25, 1777 (ratified March 1, 1781)
- James Madison, “Vices of the Political System of the United States,” spring 1787.
- Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (Oxford University Press; New York and Oxford, 2003), chapter 10, “Congressional Insolvency,” pp. 149-62.
- Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (Simon and Schuster; New York, 2010), pp. 11-20 (“The State of the Nation” and “What is to be Done?” in the Prologue).
- Sample the correspondence over the deficiencies of the Confederation and the issues it raised.
- Especially recommended: Rufus King April 30, 1786; Washington to Jay, August 1, 1786; Jay to Washington, January 7, 1787; Madison to Washington, April 16, 1788; Richard Henry Lee to George Mason, May 15, and Edward Carrington to Jefferson, June 9, 1787.

IV. THE NATION, ACT II -- THE FEDERAL CONVENTION AND THE CONSTITUTION (MARCH 9)

- Guide to Reading “Madison’s Notes.”
- James Madison, *Notes of Debates in the Federal Convention of 1787*, introduction by Adrienne Koch (Bicentennial edition, W.W. Norton and Company; New York, 1987; now published by Ohio University Press).
- The three documents reported by the Convention: 1) the final Constitution, available in many places, 2) its resolution on the ratification and implementation of the Constitution, and 3) the letter from the Convention to Congress, September 17, 1787, at:

Reading Instructions for Madison’s Notes.

Begin by reading Madison's preface and pp. 21- 166, taking particular note of the resolutions—which grew from the Virginia Plan (30-33)--- reported by the *committee of the whole* on *June 19* at 148-51. Those resolutions are key to the debates thereafter, when the delegates’ discussed the resolutions again *as a convention*. Skim the make-or-break debates on resolutions 7 and 8 that run from pp. 220-302. Thereafter, the debates proceeded with

fewer fireworks, and you can pick and choose which issues to follow. Debates over the presidency, which many said was the hardest issue the convention faced, are on pp. 306-14, 322-36, 356-72.

As a result of these discussions, the convention produced a revised set of resolutions (pp. 379-85), which a *Committee of Detail* made into a draft constitution while the convention adjourned from July 26-August 6 (see pp. 385-96). When the delegates returned, they debated the draft, revisiting issues it had discussed before in the light of other decisions.

Note the discussions of slavery and the slave trade on pp. 409-13, 502-08. In late August, the convention set up a Committee of Eleven (i.e. of representatives of all the states then represented in the convention) to propose solutions to several problems it hadn't solved. The committee's recommendations opened another round of debates, especially on the executive (see 573-79, 582-97, and 605-66 on impeachment).

Finally, on *September 12*, a *Committee of Style* charged with incorporating agreed-upon changes into the draft constitution and refining its wording presented its report (616-27). That led to still more debates, in the course of which George Mason raised the issue of a bill of rights (630). Read also the record of the convention's closing days, esp. 650-59. Why did so many delegates express mixed feelings about the Constitution?

V. THE PEOPLE DEBATE THE CONSTITUTION, 1787-1788 (MARCH 16)

- R.B. Bernstein, “The Argument over the Constitution,” under “essays.”
- Maier, *Ratification*, chs. 3-7, pp. 70-213; pp. 214-17, 225-41, and 252-53 of Ch. 8 (i.e., the sections on Virginia), and Chs.9-10, pp. 254- 319.
- The amendments recommended by the ratifying conventions of Massachusetts, South Carolina, New Hampshire, Virginia, and New York from Helen E. Veit, et al. eds., *Creating the Bill of Rights: The Documentary Record from the First Federal Convention* (Johns Hopkins University Press; Baltimore, 1991), 14-28.
- Hamilton’s Conjectures on the Constitution and the future of the United States, late September 1787.
- James Wilson’s speech in the Pennsylvania ratifying convention, November 24, 1787.
- “Centinel” Letters I and IV.
- *The Federalist*, nos. 1, 10,14, 37, 51,69, 70, 78 (any version).

VI. COMPLETING AND LAUNCHING THE EXPERIMENT (MARCH 24)

- Maier, *Ratification*, Epilogue, pp. 435-68.
- Madison, Speech to House of Representatives, June 8, 1789
- The twelve amendments proposed by Congress, September 25, 1789
- Judiciary Act of 1789
- Maeva Marcus and Natalie Wexler, “The Judiciary Act of 1789: Political Compromise or Constitutional Interpretation?” in Marcus, ed., *Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789* (Oxford University Press; New York and Oxford, 1992), 13-39.

- Gordon S. Wood, "The Origins of Judicial Review Revisited, or How the Marshall Court Made More out of Less," *Washington and Lee Law Review*, 56 (1999), 787-809