

AMERICAN CONSTITUTIONAL LAW I:
THE FOUNDING TO SECESSION

Prof. Kimberly Smith

Fall 2020

Class meets at 3a (MW 11:30-12:40; F 11:20-12:20)

Office: Goodsell 106a

Office hours: Virtual meetings only

MWF 9-11 or by appointment

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This course explores the development of American constitutional law from the founding era to the secession crisis. We'll focus not only on constitutional doctrine but also on the broader intellectual and political context in which it evolved. Topics will include the intellectual origins of the Constitution, the Constitutional Convention and ratification, the development of the judiciary and centralization of federal power, the role of natural law in constitutional adjudication, the constitutional issues revolving around slavery, and the constitutional conflict that led to the nullification and secession crises.

Learning objectives:

- Understand the major events in constitutional development from founding to Civil War
- Explain the significance of major constitutional decisions and events, in writing and orally
- Understand how to interpret legal documents, particularly judicial opinions
- Master the basics of legal research and writing

Texts: Finkelman & Urofsky, *A March of Liberty*, Vol. I, 2nd ed.
Additional readings in coursepack and posted on moodle

Your grade will be computed as follows:

Midterm:	25%
Final:	35%
Case Note:	30%
Participation	10%

Participation and Attendance:

Much of the work for this class will take place outside of class and/or remotely. However, in-class discussion is a critical part of learning to read and analyze cases. Therefore, **attendance is very important** and missing classes may affect your grade substantially. **However, if you suspect you are sick, please do not come to class!**

Course outline

Week 1: Introduction & Constitutional Theory

Monday: Introduction

Reading: F & U, ch. 3, 4

Wednesday: What is a constitution?

Reading, Waldron, Precommitment and Disagreement

Watch: What is Law?; What is a Constitution?

Friday: Discussion

Due: Complete online legal research tutorial this week

Week 2: Constitutional Design

Monday: Fixing the Articles of Confederation

Reading: F & U 5, 6

The Articles of Confederation & Constitution (in textbook)

Watch: The Political Theory of the Constitution; Interpreting the Constitution

Wednesday: Political Theory of the Constitution

Reading: Federalist Papers 10 & 51; Centinel I

Friday: Discussion

Case note topic and preliminary bibliography due at 9:00 am Friday Sept.25

Week 3: The Bill of Rights

Monday: The Bill of Rights

Reading: F & U 7

Wednesday: Barron v Baltimore

Fed. 84

Barron v Baltimore

Friday: Discussion

Week 4: Alien & Sedition Acts

Monday: The Sedition Act controversy

Reading: F & U, 8, 10

Watch: The Sedition Act controversy

Wednesday: Nicholas' speech on the Sedition Act

Sedition Act

Nicholas' remarks

Virginia and Kentucky Resolutions

Friday: Discussion

Draft of background section of case note due at 9 AM Friday Oct. 9.

Week 5: The Federal Judiciary

Monday: Building the federal judiciary

Reading: F & U 11

Watch: The Weakest Branch

*Midterm course evaluation

Wednesday: Marbury & Martin

Marbury v Madison

Eakin v Raub

Martin v Hunters' Lessee

Friday: No class.

Written portion of midterm exam due at 9 AM Friday Oct. 16.

Friday afternoon-Saturday morning: Oral exams.

Week 6: National Bank Debate

Wednesday: The Necessary & Proper Clause

Read: McCulloch v Maryland

Jackson's veto

Reid, America's First Great Constitutional Controversy

Friday: Guest speaker: Charles Reid

Week 7: Economy and Natural Resources

Monday: Commerce Power & Public Trust Doctrine

Reading: U & F 12

Watch: Public Trust Doctrine

Wednesday: Gibbons v Ogden

Corfield v Coryell

Friday: Discussion

Revised background section and analysis section due at 9 AM Friday Oct. 30.

Week 8: National expansion and Native Americans

Monday: National Expansion, or How to Steal a Country

Reading: U & F 14, 16

Watch: Equal Footing Doctrine

Wednesday: Cherokee Nation

Worcester v Georgia

Jackson's 7th presidential address

Friday: Discussion

Week 9: Slavery

Monday: Slavery

Read: F & U 17, 18

Wednesday: Prigg v Pennsylvania

Ableman v Booth

Dred Scott v Sanford

Friday: Discussion

Week 10: Secession

Monday: Secession

Read: F & U 19

Wednesday: Lincoln's Inaugural Address

Final case note due at 9 AM Wed. Nov. 18.

Final exam: Written exam due 9 AM Sat. Nov. 21. Oral exams Sunday Nov. 22 & Monday Nov. 23.

Annotating Opinions

When you go to the Hypothes.is activity, you'll find the same excerpt posted that's in your coursepack. Each case has a "page note", which will tell each group what it should do. For each question you're asked, find a section or sections of the text that answer the question, and annotate that part of the text, explaining how it answers the question. Remember to "post" the annotation so that everyone can see it.

As your group does its work, you should make a note of any questions or confusions you have. In class on Wednesday, we'll look at the annotated document together and discuss your questions. We'll update the annotations based on our discussion. Then the annotated case will be available for everyone to review before the exam.

Discussion Forum

In addition to the annotation activity, each work group will post an answer to the weekly discussion forum question. The answer should be posted by midnight on Thursday. We will discuss the responses in class on Friday.

Research Paper: Case Note

Your assignment is to research a significant constitutional case and explain why it's important to the development of constitutional law, to constitutional politics, and to the development of the Court as a political institution. Your paper may be **no more than 15 pages** (12-pt font, 1 inch margins). Case notes are designed to explain the facts, reasoning and holding in a case in a concise and simple fashion. They are usually read by legal professionals, but they should be easily understood by an intelligent layperson. They follow a standard format:

I. Introduction: This should be brief and to the point. It should state your thesis.

II. Background: This section will discuss the specific facts of the case as well as any political, social, legal, or cultural contextual factors that you think will help to illuminate the case. It should conclude by telling us how the case got to the Supreme Court and what the major legal issues were.

III. Analysis of the Decision: This section will take us carefully, in a step-by-step analysis, through the reasoning in the Court's opinion and the concurring and dissenting opinions. You may ignore or only touch on the minor or technical issues; focus on the important ones.

IV. Significance: This section should discuss the important impacts of the decision, which may be social, economic, political or legal. Your research should alert you to a range of important consequences; this section should demonstrate your deep engagement with the scholarly literature.

V. Conclusion: A separate conclusion is optional.

You will turn in sections of the case note for me to comment on as indicated on the syllabus. You will then revise these sections and turn in a complete, polished case note on

Documenting sources: I expect you to do a significant amount of research on your case. A thoroughly researched paper will rely on many sources, drawing on both books and periodicals. Your bibliography should demonstrate that you've explored the best scholarship on the subject (which will typically mean that you should not rely on Internet sources, unless you can make the case that they're reliable and respected.) You should cite your sources; the conventions of legal scholarship demand that you carefully document your factual assertions. *PLEASE NOTE:* You should carefully document your sources on all drafts that you turn in.

Suggested cases: (You may choose a case not on this list; just clear it with me first.)

- Chisholm v Georgia, 2 Dallas 419 (1793)
- United States v Peters, 5 U.S. 115 (1809)
- Marbury v. Madison, 5 US 137 (1803)
- Martin v Hunter's Lessee, 14 US 304 (1816)
- Cohens v Virginia, 19 US 264 (1821)
- McCulloch v Maryland, 17 US 316 (1819)
- Fletcher v Peck, 10 US 87 (1810)
- U.S. v Hudson and Goodwin, 11 U.S. 32 (1812)

Dartmouth College v Woodward, 4 Wheaton 518 (1819)
Gibbons v Ogden, 22 US 1 (1824)
Barron v Baltimore, 5 U.S. 243 (1833)
Charles River Bridge v Warren Bridge, 36 US 420 (1837)
Worcester v Georgia, 6 Peters 515 (1832)
Cherokee Nation v Georgia, 5 Peters 1 (1831)
Prigg v Pennsylvania, 41 US 539 (1842)
Luther v Borden, 7 U.S. 1 (1849)
Ableman v Booth, 21 Howard 506 (1856)
Dred Scott v Sanford, 60 US 393 (1857)

Environmental cases:

Corfield v Coryell, 6 F. Cas. 546 (E.D. Penn. 1823)
Martin v Waddell, 41 U.S. 367 (1842)
McCready v Virginia, 94 US 391 (1876)