

**Princeton University**  
**Department of Politics**

**POL 420 – American Constitutional Development**  
**Spring 2003**

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Tuesday, 1:30-4:20 pm

office hours: Monday, 9:00-noon

This course examines American constitutional history, with a particular interest in constitutional change. We will examine how the Supreme Court has interpreted the Constitution over time, but we will also be interested in how constitutions are written and amended and how political practices that give shape to our constitutional system evolve. We will explore the continuing tension between the Constitution as an empowering device and the Constitution as a limiting rule. We will be interested in how the Constitution serves as an instrument of popular power and a symbol of political ideals, as well as how it serves as a fundamental law constraining government action. We will be interested in how our constitutional values and practices have changed over time, and how we can reconcile those changes with the idea of a written constitution and a consistent constitutional tradition extending from the founding to the present.

Schedule:

The Founding Period: Continuity or Counter-Revolution?

1. Liberalism and Republicanism, Rights and Powers (February 4)
2. Constitutional Politics (February 11)
  - Marc Kruman, Between Authority and Liberty, ch. 6
  - Bruce Ackerman We the People ch. 3, 7-8
  - Jack Rakove Original Meanings ch. 3-6

Early Developments

3. The Judiciary in the New Republic (February 18)
  - Keith Whittington, Constitutional Construction, ch. 2
  - Mark Graber, "The Problematic Establishment of Judicial Review," in The Supreme Court in American Politics
  - Larry Kramer, The People Themselves (manuscript), ch. 5
4. Democratization (February 25)
  - Elaine Swift "Reconstitutive Change in the U.S. Congress: The Early Senate, 1789-1841," Legislative Studies Quarterly (1989)
  - Gerald Leonard, "Party as a Political Safeguard of Federalism: Martin Van Buren and the Constitutional Theory of Party Politics," Rutgers Law Review 54 (2001)
  - Alexander Keyssar, The Right to Vote, ch. 2
5. State Action (March 4)
  - William Novak The People's Welfare pp. 1-148, 235-248
  - Gaines Foster, Moral Reconstruction, ch. 1

## Civil War and Reconstruction

6. Antebellum Federal Disputes (March 11)
  - Keith Whittington, Constitutional Construction, ch. 3
  - Larry Kramer, The People Themselves (manuscript), ch. 6
  - Barry Weingast, "Political Stability and Civil War," in Analytical Narratives
7. Constitutional Failure? (March 25)
  - Mark Graber, The Civil War as a Constitutional Failure (manuscript)
  - Mark Brandon, Free in the World, ch. 7
  - Harold Hyman, A More Perfect Union, ch. 7-9
8. Reconstruction or Revolution? (April 1)
  - Keith Whittington, Constitutional Construction, ch. 4
  - William Nelson The Fourteenth Amendment, ch. 1-6

## Industrialism, Nationalization and Constitutional Stress

9. Reform Politics (April 8)
  - Richard Hamm Shaping the Eighteenth Amendment ch. 1-2, 6-8
  - Gaines Foster, Moral Reconstruction, ch. 7
10. Property and Powers (April 15)
  - Howard Gillman The Constitution Besieged

## Modern Era

11. Another Revolution (April 22)
  - Bruce Ackerman We the People ch. 4-5
  - Barry Cushman Rethinking the New Deal Court ch. 9-12
  - William Leuchtenburg The Supreme Court Reborn ch. 5, 8
12. The Modern State (April 29)
  - Theodore J. Lowi The Personal President ch. 3
  - Barton J. Bernstein, "The Road to Watergate and Beyond: The Growth and Abuse of Executive Authority Since 1940," Law and Contemporary Problems 40 (1976)
  - Keith Whittington, Constitutional Construction, ch. 5
  - Louis Fisher, Presidential War Power ch. 7
  - Harold Koh The National Security Constitution ch. 3

## Materials:

The following books are available for purchase:

Jack Rakove Original Meanings  
Keith Whittington, Constitutional Construction  
Howard Gillman The Constitution Besieged  
Bruce Ackerman We the People  
William Nelson The Fourteenth Amendment  
William Novak The People's Welfare  
Alfred Kelly, Winfred Harbison and Herman Belz The American Constitution (suggested)

The remaining readings are contained in a packet available from Pequod's. All required readings are also available on reserve in the library.

Requirements:

The requirements for the course include both written and oral components. All students are expected to come to class fully prepared to be an active participants. A seminar cannot work unless all of its participants are prepared to make useful contributions, and you will not be able to take full advantage of the seminar if you are not prepared. Participation will be a significant component of your final grade. You will also be expected to give two scheduled oral presentations.

One oral presentation may accompany your short paper (5-10 pages) which will examine the issues in a given week's (required) readings. The bulk of your grade will be determined by a term paper. This research paper (20-25 pages) will focus on a topic of your own choosing, approved by me before March 15. The paper will be due by 4:00 pm, May 13.

Term Paper	50%
Short Paper	30%
Class Participation	20%

## Background: Colonial Antecedents

### Additional Resources for Research:

- John Philip Reid, A Constitutional History of the American Revolution
- Jack P. Greene, "The Background to the Articles of Confederation," Publius 12 (1982): 15-44
- John Philip Reid A Constitutional History of the American Revolution, four volumes
- Charles Howard McIlwain The American Revolution: A Constitutional Interpretation
- Randolph G. Adams The Political Ideas of the American Revolution
- Robert L. Schuyler Parliament and the British Empire
- Carl L. Becker The Declaration of Independence
- Jack P. Greene Peripheries and Center
- Jack P. Greene "Origins of the American Revolution: A Constitutional Interpretation," in The Reinterpretation of Early American History, ed. Billington
- Jack P. Greene "From the Perspective of Law: Context and Legitimacy in the Origins of the American Revolution: A Review Essay," South Atlantic Quarterly 85 (1986): 56
- Harvey Wheeler "Calvin's Case and the McIlwain-Schuyler Debate" American Historical Review 61 (1955-1956)
- Bernard Bailyn The Ideological Origins of the American Revolution
- Edmund S. Morgan The Birth of the Republic, 1763-89
- Edmund S. Morgan "The American Revolution: Revisions in Need of Revising," in In Search of Early America
- Edmund S. Morgan "Colonial Ideas of Parliamentary Power, 1764-1776," William & Mary Quarterly 5 (1948)
- Charles M. Andrews "The American Revolution: An Interpretation," American Historical Review 31 (1926)
- Pauline Maier American Scripture
- Pauline Maier From Resistance to Revolution
- Willi Paul Adams The First American Constitutions
- Barbara Black "The Constitution of Empire: The Case for the Colonists," Pennsylvania Law Review 124 (1976): 1157
- Peter S. Onuf The Origins of the Federal Republic
- Andrew C. McLaughlin The Foundations of American Constitutionalism
- Andrew C. McLaughlin A Constitutional History of the United States
- Andrew C. McLaughlin "The Background of American Federalism," APSR 12 (1918)
- Jack N. Rakove The Beginnings of National Politics
- Donald Lutz The Origins of American Constitutionalism
- Donald Lutz Colonial Origins of the American Constitution: A Documentary History
- A.E. Dick Howard The Road from Runnymede
- David S. Lovejoy The Glorious Revolution in America
- Michael Kammen Deputies & Liberties
- George Dargo Roots of the Republic
- J.G.A. Pocock, ed. Three British Revolutions
- Jennifer Carter "The Revolution and the Constitution," in Britain After the Glorious Revolution, ed. G. Holmes
- T.H. Breen Puritans and Adventurers
- Hendrik B. Hartog, ed. Law in the American Revolution and the Revolution in the Law
- Thomas C. Grey "Origin of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," Stanford Law Review 30 (1978): 858
- Edward S. Corwin "The 'Higher Law' Background of American Constitutional Law," Harvard Law Review 42 (1928-1929)
- Benjamin F. Wright "The Early History of Written Constitutions in America," in Essays in History and Political Theory in Honor of Charles Howard McIlwain
- Merrill Jensen The Articles of Confederation
- Gordon S. Wood The Radicalism of the American Revolution
- William E. Nelson and Robert C. Palmer Liberty and Community
- William E. Nelson The Americanization of the Common Law
- Shannon C. Stimson The American Revolution in the Law

## 2. Constitutional Politics

### Required:

Marc Kruman, Between Authority and Liberty, ch. 6

Bruce Ackerman We the People ch. 3, 7-8

Jack Rakove Original Meanings ch. 3-6

### Additional Resources for Research:

John Roche "The Constitutional Convention as a Reform Caucus" APSR 55 (1961)

Jennifer Nedelsky Private Property and the Constitution ch. 3, 5

Bruce Ackerman We the People: Transformations

Willi Paul Adams The First American Constitutions

George Anastaplo The Constitution of 1787: A Commentary

Richard Beeman, Stephen Botein and Edward Carter III, eds. Beyond Confederation

Morton Horwitz "Republicanism and Liberalism in American Constitutional Thought," Wm & Mary Law Review 29 (1987)

Michael Kammen A Machine That Would Go of Itself

Leonard Levy and Dennis Mahoney, eds. The Framing and Ratification of the Constitution

Michael Allen Gillespie and Michael Lienesch, eds. Ratifying the Constitution

Stephen Griffin American Constitutionalism

Robert A. Licht, ed. The Framers and Fundamental Rights

Donald A. Lutz The Origins of American Constitutionalism

Donald A. Lutz Popular Consent and Popular Control

Forrest McDonald Novus Ordo Seclorum

Edmund S. Morgan Inventing the People

Thomas L. Pangle The Spirit of Modern Republicanism

Gordon S. Wood The Creation of the American Republic, 1776-1787

Max Farrand, ed. The Records of the Federal Convention

Alexander Hamilton, James Madison and John Jay The Federalist Papers

Herbert Storing What the Anti-Federalists Were For

Edward S. Corwin "The Progress of Constitutional Theory between the Declaration of Independence and the Meeting of the Philadelphia Convention," American Historical Review 30 (1925)

Richard B. Morris The Forging of the Union, 1781-1787

Calvin C. Jillson Constitution Making

Stanley Elkins and Eric McKittrick "The Founding Fathers: Young Men of the Revolution," Political Science Quarterly 76 (1961)

Robert Birkby "The Politics of Accommodation: The Origin of the Supremacy Clause," Western Political Quarterly 19 (1966)

Frederick Marks Independence on Trial: Foreign Affairs and the Making of the Constitution

Rozann Rothman Acts and Enactments: The Constitutional Convention of 1787

Michael Lienesch New Order of the Ages

William E. Nelson "Reason and Compromise in the Establishment of the Constitution: 1787-1801," William and Mary Quarterly 44 (1987)

Peter S. Onuf The Origins of the Federal Republic

Daniel H. Deudney "The Philadelphia System: Sovereignty, Arms Control, and Balance of Power in American States-Union circa 1787-1861," International Organization 49 (1995)

Marc Kruman Between Authority and Liberty

### 3. The Judiciary in the New Republic

#### Required:

Keith Whittington, Constitutional Construction, ch. 2

Mark Graber, "The Problematic Establishment of Judicial Review," in The Supreme Court in American Politics

Larry Kramer, The People Themselves, ch. 5

#### Additional Resources for Research:

Edward S. Corwin The Doctrine of Judicial Review

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

William Van Alstyne "A Critical Guide to Marbury v. Madison," Duke Law Journal 1969 (1969): 1

William Crosskey Politics and the Constitution

Charles Grove Haines The American Doctrine of Judicial Supremacy

Robert L. Clinton Marbury v. Madison and Judicial Review

Sylvia Snowiss Judicial Review and the Law of the Constitution

Raoul Berger Congress v. the Supreme Court

David E. Engdahl, "John Marshall's 'Jeffersonian' Concept of Judicial Review," Duke Law Journal 42 (1992): 279

John Harrison, "The Constitutional Origins and Implications of Judicial Review," Virginia Law Review 84 (1998): 333

Dean Alfange, Jr., "Marbury v. Madison and Original Understandings of Judicial Review: In Defense of Traditional Wisdom," The Supreme Court Review, 1993

James A. O'Fallon, "Marbury," Stanford Law Review 44 (1992): 219

Richard Ellis The Jeffersonian Crisis

Robert K. Faulkner The Jurisprudence of John Marshall

S. Bloch & M. Marcus, "John Marshall's Selective Use of History in Marbury," Wisconsin Law Review 1986 (1986): 301

David Currie The Constitution in the Court: The First Hundred Years

Andrew C. McLaughlin, "Marbury v. Madison Again," ABA Journal 14 (1928): 155

George L. Haskins and Herbert A. Johnson, The History of the Supreme Court: Vol. 2, Foundations of Power

Brinton Coxe Judicial Power and Unconstitutional Legislation

Andrew C. McLaughlin The Courts, the Constitution, and Parties

James R. Stoner, Jr. Common Law and Liberal Theory

Christopher Wolfe The Rise of Modern Judicial Review

Wallace Mendelson, "Was Marshall an Activist?" in Supreme Court Activism and Restraint, eds. Halpern and Lamb

J.A.C. Grant, "Marbury v. Madison Today," American Political Science Review 23 (1929): 673

George L. Haskins, "Law versus Politics in the Early Years of the Marshall Court," U. of Penn. Law Review 130 (1981): 1

William E. Nelson, "The 18<sup>th</sup> Century Background of Marshall's Constitutional Jurisprudence," Mich. L. Rev. 76 (1978): 893

William E. Nelson, "Changing Conceptions of Judicial Review," U. of Penn. L. Rev. 120 (1972): 1166

Mark Graber, "The Passive-Aggressive Virtues: Cohens v. Virginia and the Problematic Establishment of Judicial Power," Constitutional Commentary 12 (1995): 67

Mark Graber, "Federalist or Friend of Adams: The Marshall Court and Party Politics," Studies in APD 12 (1998): 209

Mark Graber, ed. Marbury v. Madison

Burt Newmyer, John Marshall and the Heroic Age of the Supreme Court

Charles Hobson, The Great Chief Justice

Edward White, The Marshall Court and Cultural Change

#### 4. Democratization

##### Required:

Elaine Swift "Reconstitutive Change in the U.S. Congress: The Early Senate, 1789-1841," Legislative Studies Quarterly (1989)

Gerald Leonard, "Party as a Political Safeguard of Federalism: Martin Van Buren and the Constitutional Theory of Party Politics," Rutgers Law Review 54 (2001)

Alexander Keyssar, The Right to Vote, ch. 2

##### Additional Resources for Research:

James Ceaser Presidential Selection ch. 3

James Henretta "The Rise and Decline of "Democratic Republicanism," Albany Law Review 53 (1989)

Fletcher M. Green Constitutional Development in the South Atlantic States ch. 6

Ralph Ketcham Presidents Above Party

Lance Banning The Jeffersonian Persuasion

Richard V. Buel Securing the Revolution

Linda K. Kerber Federalists in Dissent

Leonard Levy Emergence of a Free Press

Richard Hofstadter The Idea of a Party System

Roy Nichols The Invention of American Political Parties

M. Ostrogorski Democracy and the Party System in the United States

Henry Jones Ford The Rise and Growth of American Politics

Ronald P. Formisano "Deferential-Participant Politics: The Early Republic's Political Culture, 1789-1840," APSR 68 (1974)

Amy Bridges A City in the Republic

Sean Wilentz Chants Democratic

Richard E. Ellis The Jeffersonian Crisis

William E. Nelson "Changing Conceptions of Judicial Review: The Evolution of Constitutional Theory in the States, 1790-1860," University of Pennsylvania Law Review 120 (1972)

Sylvia Snowiss Judicial Review and the Law of the Constitution

G. Edward White The Marshall Court and Cultural Change, 1815-1835

Alexis de Tocqueville Democracy in America

Leonard D. White The Jacksonians

Robert V. Remini Andrew Jackson and the Bank War

Richard P. McCormick The Second American Party System

Richard P. McCormick The Party Period and Public Policy

Richard P. Formisano The Transformation of Political Culture

Joel H. Silbey The American Political Nation, 1838-1893

Richard E. Ellis The Union at Risk

Morton Keller "The Politics of State Constitutional Revision, 1820-1930," in Kermit Hall, ed. The Constitutional Convention as an Amending Device

Merrill Peterson, ed. Democracy, Liberty and Property: The State Constitutional Conventions of the 1820s

James Q. Dealey Growth of American State Constitutions, 1776-1914

George M. Dennison The Dorr War

Mary P. Ryan Women in Public

Russell L. Hanson The Democratic Imagination in America

Robert H. Wiebe The Opening of American Society

Paul A. Gilje The Road to Mobocracy

David Montgomery Citizen Worker

Harry Watson Liberty and Power

## 5. State Action

### Required:

William Novak The People's Welfare pp. 1-148, 235-248  
Gaines Foster, Moral Reconstruction, ch. 1

### Additional Resources for Research:

Edward S. Corwin "The Doctrine of Due Process of Law Before the Civil War," Harvard Law Review 24 (1910)  
Max Lerner "The Supreme Court and American Capitalism," Yale Law Journal 42 (1933)  
James Willard Hurst Law and the Conditions of Freedom in the Nineteenth Century United States  
Lawrence M. Friedman A History of American Law  
Harry N. Scheiber Ohio Canal Era  
Harry N. Scheiber "Public Economic Policy and the American Legal System: Historical Perspectives," Wisconsin Law Review (1980)  
Harry N. Scheiber "The Road to Munn: Eminent Domain and the Concept of Public Purpose in State Courts," Perspectives in American History 5 (1971)  
Harry N. Scheiber "Government and the Economy: Studies of the 'Commonwealth' Policy in Nineteenth Century America," Journal of Interdisciplinary History 3 (1972)  
Harry N. Scheiber "Federalism and the American Economic Order, 1789-1910," Law and Society Review 10 (1975)  
Carter Goodrich Governmental Promotion of American Canals and Railroads, 1800-1890  
Oscar Handlin and Mary F. Handlin Commonwealth  
Theodore J. Lowi "American Business, Public Policy, Case-Studies, and Political Theory," World Politics 16 (1964)  
Daniel J. Elazar The American Partnership  
Morton J. Horwitz The Transformation of American Law, 1780-1860  
Gary T. Schwartz "Tort Law and the Economy in Nineteenth Century America: A Reinterpretation," Yale Law Journal 90 (1981)  
Randolph Bridwell and Ralph W. Whitten The Constitution and the Common Law  
Tony Freyer Harmony and Dissonance  
Tony Freyer Producers versus Capitalists  
William E. Nelson The Americanization of the Common Law  
Leonard W. Levy The Law of the Commonwealth and Chief Justice Shaw  
Hendrik Hartog Public Property and Private Power  
Christopher L. Tomlins Law, Labor and Ideology in the Early American Republic  
Milton Heath Constructive Liberalism  
Bray Hammond Banks and Politics in America  
Colleen Dunlavy Politics and Industrialization  
Gerald Berk Alternative Tracks  
James Kettner The Development of American Citizenship, 1608-1870  
Charles C. Bright "The State in the United States During the Nineteenth Century," In Statemaking and Social Movements, ed. Charles Bright and Susan Harding  
Michael Grossberg Governing the Hearth  
Morton Keller "Powers and Rights: Two Centuries of American Constitutionalism," Journal of American History 74 (1987)  
William E. Nelson The Roots of American Bureaucracy  
Harry Watson Liberty and Power  
Richard R. John "Governmental Institutions as Agents of Change: Rethinking American Political Development in the Early Republic, 1787-1835," Studies in American Political Development 11 (1997)  
Donald J. Pisani "Promotion and Regulation: Constitutionalism and the American Economy," Journal of American History 74 (1987)

## 6. Antebellum Federal Disputes

### Required:

Keith Whittington, Constitutional Construction, ch. 3

Larry Kramer, The People Themselves, ch. 6

Barry Weingast, "Political Stability and Civil War," in Analytical Narratives

### Additional Resources for Research:

Alpheus Mason, The States Rights Debate

Don Fehrenbacher Sectional Crisis and Southern Constitutionalism

Harold M. Hyman A More Perfect Union

Don E. Fehrenbacher The Dred Scott Case

Jesse T. Carpenter The South as a Conscious Minority

Paul Finkelman An Imperfect Union

Michael F. Holt The Political Crisis of the 1850s

Roy F. Nichols The Disruption of American Democracy

David M. Potter The Impending Crisis, 1848-1861

Arthur Bestor "State Sovereignty and Slavery: A Reinterpretation of Proslavery Constitutional Doctrine, 1846-1861," Journal of the Illinois State Historical Society 54 (1961)

Harry V. Jaffa Crisis of the House Divided

Harold M. Hyman, "The Narrow Escape from the 'Compromise of 1860': Secession and the Constitution," in Freedom and Reform, eds. Hyman and Leonard Levy

Roy F. Nichols "Federalism versus Democracy: The Significance of the Civil War in the History of United States Federalism," in Federalism as a Democratic Process

Leonard Richards, The Slave Power

Richard Ellis, The Union at Risk

Gary Rosen, American Compact

David Ericson, The Shaping of American Liberalism

Harry N. Scheiber "Federalism and the American Economic Order, 1789-1910," Law and Society Review 10 (1975)

William Freehling, Prelude to Civil War

Merrill Peterson, The Great Triumverate

Major Wilson, Space, Time and Freedom

John C. Calhoun, Union and Liberty

Larry Kramer, "Understanding Federalism," Vanderbilt Law Review 47 (1994): 1485

Samuel Beer, To Make a Nation

Leslie Friedman Goldstein, "State Resistance to Authority in Federal Unions: The Early United States (1790-1860) and the European Community (1958-1994)," Studies in Am. Pol. Development 11 (1997): 149

Keith Whittington, "The Path Not Taken: Dred Scott, Constitutional Law, and Political Questions," J. of Politics 63 (2001): 365

Forrest McDonald, States Rights and Union

## 7. Constitutional Failure?

### Required:

Arthur Bestor "The American Civil War as a Constitutional Crisis," American Historical Review (1964)  
Mark Graber "The Civil War as a Constitutional Failure" (selection from unpublished book manuscript)  
Barry Weingast "Political Stability and Civil War," in Analytical Narratives

### Additional Resources for Research:

Don Fehrenbacher Sectional Crisis and Southern Constitutionalism  
Harold M. Hyman and William M. Wiecek Equal Justice Under Law  
Harold M. Hyman A More Perfect Union  
Don E. Fehrenbacher The Dred Scott Case  
Paul Finkelman "Slavery and the Constitution: Making a Covenant with Death," in Beyond Confederation, ed. Beeman et al.  
William M. Wiecek The Sources of Antislavery Constitutionalism in America, 1770-1823  
Robert Cover Justice Accused  
Jesse T. Carpenter The South as a Conscious Minority  
Paul Finkelman An Imperfect Union  
Michael F. Holt The Political Crisis of the 1850s  
Roy F. Nichols The Disruption of American Democracy  
David M. Potter The Impending Crisis, 1848-1861  
Arthur Bestor "State Sovereignty and Slavery: A Reinterpretation of Proslavery Constitutional Doctrine, 1846-1861," Journal of the Illinois State Historical Society 54 (1961)  
Harry V. Jaffa Crisis of the House Divided  
Harold M. Hyman, "The Narrow Escape from the 'Compromise of 1860': Secession and the Constitution," in Freedom and Reform, eds. Hyman and Leonard Levy  
James G. Randall Constitutional Problems under Lincoln  
Phillip S. Paludan "The American Civil War Considered as a Crisis in Law and Order," American Historical Review 77 (1972)  
Roy F. Nichols "Federalism versus Democracy: The Significance of the Civil War in the History of United States Federalism," in Federalism as a Democratic Process  
Herman Belz "Abraham Lincoln and American Constitutionalism," Review of Politics 50 (1988)  
Thomas J. Pressly "Bullets and Ballots: Lincoln and the 'Right of Revolution'," American Historical Review 67 (1962)  
Robert M. Spector "Lincoln and Taney: A Study in Constitutional Polarization," American Journal of Legal History 15 (1971)  
Harold M. Hyman "Law and the Impact of the Civil War," Civil War History 14 (1968)  
Erwin W. Surrency "The Legal Effects of the Civil War," American Journal of Legal History 5 (1961)  
Eric Foner Free Soil, Free Labor, Free Men  
David M. Potter The South and the Concurrent Majority  
Robert Remini Martin Van Buren and the Making of the Democratic Party  
Arthur C. Cole The Irrepressible Conflict  
Kenneth M. Stampp The Imperiled Union  
Mark Brandon Free in the World  
J. David Greenstone The Lincolnian Persuasion  
Daniel Sutter "Enforcing Constitutional Constraints," Constitutional Political Economy 8 (1997)  
Peter Ordeshook "Constitutional Stability," Constitutional Political Economy 3 (1992)  
Anton D. Lowenberg and Ben T. Yu "Efficient Constitution Formation and Maintenance," Constitutional Political Economy 3 (1992)

## 8. Reconstruction or Revolution?

### Required:

Keith Whittington, Constitutional Construction, ch. 4

William Nelson The Fourteenth Amendment, ch. 1-6

### Additional Resources for Research:

Michael Les Benedict "Preserving the Constitution: The Conservative Basis of Radical Reconstruction," Journal of

American History (1974) Bruce Ackerman We the People: Transformations

Harold Hyman and William Wiecek Equal Justice Under the Law

Harold Hyman A More Perfect Union

Harold Hyman "Reconstruction and Political-Constitutional Institutions: The Popular Expression," in New Frontiers of the American Reconstruction

William Wiecek The Sources of Antislavery Constitutionalism

Michael Kent Curtis No State Shall Abridge

Raoul Berger Government by Judiciary

James G. Randall Constitutional Problems under Lincoln

Herman Belz A New Birth of Freedom

Herman Belz Emancipation and Equal Rights

Herman Belz Reconstructing the Union

Michael Les Benedict A Compromise on Principle

James E. Sefton Andrew Johnson and the Uses of Constitutional Power

Michael P. Zuckert "Completing the Constitution: The Thirteenth Amendment," Constitutional Commentary 4 (1987)

Earl M. Maltz Civil Rights, the Constitution, and Congress, 1863-1869

Robert J. Kaczorowski "To Begin the Nation Anew: Congress, Citizenship, and Civil Rights after the Civil War," American Historical Review 92 (1987)

Michael Les Benedict "Preserving Federalism: Reconstruction and the Waite Court," Supreme Court Review 1978

Robert C. Palmer, "The Parameters of Constitutional Reconstruction: Slaughter-House, Cruikshank, and the Fourteenth Amendment," University of Illinois Law Review (1984)

Eric Foner Reconstruction

Jack B. Scroggs "Carpetbagger Constitutional Reform in the South Atlantic States, 1867-1868," Journal of Southern History 27 (1961)

Marshall DeRosa The Confederate Constitution of 1861

George M. Fredrickson, ed. A Nation Divided

LaWanda Cox Lincoln and Black Freedom

Eric McKittrick "Reconstruction: Ultraconservative Revolution," in The Comparative Approach to American History, ed. C. Vann Woodward

Charles Larsen "Nationalism and States' Rights in Commentaries on the Constitution after the Civil War," American Journal of Legal History 3 (1959)

Richard Bense Yankee Leviathan

Emory Thomas The Confederacy as a Revolutionary Experience

## 9. Reform Politics

### Required:

Richard Hamm Shaping the Eighteenth Amendment, ch. 1-2, 6-8  
Gaines Foster, Moral Reconstruction, ch. 7

### Additional Resources for Research:

Richard Hofstadter The Age of Reform  
Morton Keller Affairs of State  
Nancy F. Cott The Grounding of Modern Feminism  
Carroll Smith-Rosenberg Disorderly Conduct  
Alison Parker Purifying America  
Kenneth Rose American Women and the Repeal of Prohibition  
James H. Timberlake Prohibition and the Progressive Movement, 1900-1920  
Peter Odegard Pressure Politics  
Joseph R. Gusfield Symbolic Crusade  
Stephen B. Wood Constitutional Politics in the Progressive Era  
Sandford Levinson, ed. Responding to Imperfection  
Walter F. Murphy "An Ordering of Constitutional Values" S. California Law Review (1980)  
Clement E. Vose Constitutional Change  
David Kyvig Explicit and Authentic Acts  
David Kyvig Repealing National Prohibition  
David Morgan Suffragists and Democrats  
John D. Buenker "The Urban Political Machine and the Seventeenth Amendment," Journal of American History 56 (1969)  
George Anastaplo The Amendments to the Constitution  
Ronald King and Susan Ellis "Partisan Advantage and Constitutional Change: The Case of the Seventeenth Amendment," Studies in American Political Development (1996)  
Russell Caplan Constitutional Brinkmanship  
Jane Mansbridge Why We Lost the ERA  
Vivian Hart Bound by Our Constitutions  
Francis F. Piven and Richard A. Cloward Poor People's Movements  
Dennis Chong Collective Action and the Civil Rights Movement  
Doug McAdam Political Process and the Development of Black Insurgency  
Lawrence Goodwyn The Populist Moment  
Gwendolyn Mink Old Labor and New Immigrants in American Political Development  
Victoria Hattam Labor Visions and State Power  
Arthur Link Woodrow Wilson and the Progressive Era  
Theda Skocpol Protecting Soldiers and Mothers  
Stephen Skowronek Building a New American State  
Alan Brinkley Voices of Protest  
Michael McCann Taking Reform Seriously  
An Costain Inviting Women's Rebellion  
Eric Foner Free Soil, Free Labor, Free Men  
William G. Ross A Muted Fury  
Kenneth Finegold Experts and Politicians  
John M. Jordan Machine-Age Ideology  
Sidney Milkis and Daniel Tichenor "The Progressive Party, Social Reformers, and the Politics of 'Direct Democracy'," Studies in American Political Development 8 (1994)  
Christopher Lasch The New Radicalism in America  
William Forbath Law and the Shaping of the American Labor Movement  
David Chalmers And the Crooked Places Made Straight  
Karen Orren Belated Feudalism  
Suzanne Marilley Women Suffrage and the Origins of Liberal Feminism in the United States, 1820-1920  
Susan Becker The Origins of the Equal Rights Amendment  
James Monroe The Democratic Wish

## 10. Property and Powers

### Required:

Howard Gillman The Constitution Besieged

### Additional Resources for Research:

Morton J. Horwitz The Transformation of American Law, 1870-1960

Morton Keller Affairs of State

Loren Beth The Development of the American Constitution, 1877-1917

Herman Belz "The Constitution in the Guided Age: The Beginnings of Constitutional Realism in American Scholarship," American Journal of Legal History 13 (1969)

Woodrow Wilson Congressional Government

Woodrow Wilson Constitutional Government in the United States

Henry Jones Ford The Rise and Growth of American Politics

J. Morgan Kousser The Shaping of Southern Politics

William M. Wiecek Constitutional Development in a Modernizing Society, 1803-1917

Jonathan Lurie The Constitution and Economic Change

Harry N. Scheiber "Property Law, Expropriations, and Resource Allocation by Government: The United States, 1789-1910," Journal of Economic History 33 (1973)

Harry N. Scheiber "The Road to Munn: Eminent Domain and the Concept of Public Purpose in the State Courts," Perspectives in American History 5 (1971)

Wallace D. Farnham "'The Weakened Spring of Government': A Study in Nineteenth Century American History," American Historical Review 68 (1963)

Stephen Skowronek Building a New American State

William E. Nelson The Roots of American Bureaucracy, 1830-1920

Michael Les Benedict "Laissez-Faire and Liberty: A Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism," Law and History Review 3 (1985)

Charles W. McCurdy "Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863-1897," Journal of American History 61 (1975)

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