

**512:402 -- Constitutional History to 1877 -- Paul G. E. Clemens**

Hardenbergh (HH) B6, Tuesday/Thursday 6<sup>th</sup> Period: 5:40-7:00pm

Office: Van Dyck Hall 217B, 848-932-8232, clemens@history.rutgers.edu

Today, we think about the Constitution primarily in terms of the Supreme Court and landmark issues such as free speech, abortion rights, the financing of political campaigns, gay marriage, and the right to bear arms. Many of these issues had antecedents in an earlier period, and it is that period that we look at in this course. In this course, we will look at such issues as the ideology of the American Revolution; the framing of the Constitution; and the Bill of Rights. We study Madison and Hamilton as constitutional thinkers. We look at the Supreme Court during the chief justiceships of John Marshall and Roger Brooke Taney courts. A major concern will be the way the Court dealt with slavery and its constitutional relationship to the coming of the Civil War. This story we will follow into the post-war era with the passage of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments. And we pay particular attention to the origins and original meanings of the 1<sup>st</sup> and 2<sup>nd</sup> Amendments (about which you will read a book). Some students will participate in moot court debates on landmark cases. There are three essay examinations in the course (the third a take-home) but no final exam.



Howard Chandler Christy's *Scene at the Signing of the Constitution of the United States* (1940)

*Note: 39 of the 55 delegates who attend the convention are in this painting. You can identify them at the interactive website at: <http://teachingamericanhistory.org/convention/christy/> but before you go there, see how many you can identify on your own.*

The course is divided into four parts. The first third builds toward a class reenactment of the Philadelphia Constitutional Convention of 1787. Groups of students will represent each of the states at the convention. Second, we investigate how the Supreme Court under Chief Justices Marshall and, third, under Chief Justice Roger Brooke Taney helped shape the American experiment in republican government. We will use moot courts to get at some of the key issues (for example, the court's role in stimulating economic growth in the Charles River Bridge case). Finally, we will consider the slavery as a constitutional issues leading to the Civil War, the free speech issues raised during the war itself, and

the struggle to assure both the freedom of former slaves and the civil equality of all Americans that led to the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments.

You will write a short research report on some aspect of New Jersey state constitutional law or a state debate over the ratification of the Constitution—both of which can be done with online research.

There are two books for this course, and both of them take you over the entire span of American constitutional history (so useful beyond this course):

Geoffrey R. Stone, *War and Liberty: An American Dilemma: 1790 to the Present* (W.W. Norton, 2007) ISBN: 978-0393330045. This is a readable abridgement of an award-winning book that looks at why the 1<sup>st</sup> Amendment matters and how it has been ignored in many instances during wars, declared and undeclared. The book begins with the undeclared war against France of 1798 (and the infamous Alien and Sedition Acts). Then, in separate chapters, Stone covers the Civil War (and Lincoln's imposition of martial law and suspension of the writ of habeas corpus, World War I (and the Sedition and Espionage Acts), World War II (especially the internment of Japanese Americans), the Cold War, and the current War on Terror.

Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (Oxford University Press, 2008). ISBN: 978-0195341034. (Also available in Kindle e-book edition). Cornell explains both the origins of the 2<sup>nd</sup> Amendment, and the long-lasting debate over gun control that began several decades after its passage, bringing the story up to the early 21<sup>st</sup>-century. Along with Mark Tushnet, he is among the leading authorities on the history of the 2<sup>nd</sup> Amendment, and the like Tushnet his analysis, he states, has made neither side in the current debate happy. Cornell provides a critically important perspective on the history of gun regulation. He also gives us a chance to reflect on the difference between the complex and messy way people in specific eras thought about (and differed over) a constitutional right. Finally, he explores the way advocates and lawyers today shape that history into much simpler stories to convince the public and win cases.

**Recommended Only:** R. Kent Newmyer, *The Supreme Court under Marshall and Taney* (Wiley-Blackwell, 2005) ISBN: 978-0882952413. The (used) 1978 first edition is cheaper and better.

**Meet the Professor.** I am a colonial historian, who trained as a mathematician (BS) at the University of Maryland. I then got my PhD in history at the University of Wisconsin (so proof that your undergrad degree does not decide your life choices), and minored in law at the state's law school. At Rutgers, I have taught the American Revolution, Constitutional History, Famous Trial, and both halves of the American history survey, Making of America. I have also taught research seminars for undergraduates on Rutgers history while I was writing my book, *Rutgers since 1945*. I am currently on a



book project on the Pandemic at Rutgers, and am collaborating in this project with a colleague who works on medical history. I love teaching and try to integrate it with academic advising (hope to see many of you in person or virtually beyond the classroom this semester).

Fun facts: I'm a hiker (the picture comes from Kings Canyon National Park, California – google the Hart Tree Trail if you want to know about one of the great sequoia hikes in the world—but sadly in an area threatened by

California wildfires. I have two older children—both work for Sony doing video animation for PlayStation (if you have used a PlayStation game in the last decade or so, my daughter probably worked on the animation).