**CREATION OF THE CONSTITUTION**

Stanford Law School

Spring Term, 2016

Prof. Michael McConnell

**BOOK LIST:**

John Locke, Second Treatise on Government (any edition)

Herbert Storing, What The Anti-Federalists Were For (Chicago 1981)

The Federalist (Signet Classics ed.)

Max Farrand, ed., The Records of the Federal Convention of 1787 (Yale 1966), Vols. I & II.

Daniel A. Farber & Suzanna Sherry, A History of the American Constitution (West, 3d ed. 2013)

Additional readings will be found on Canvas, and on the Liberty Library Website, at http://www.constitution.org/liberlib.htm.

You should also have a convenient copy of the Constitution with you for all class sessions.

Recommended supplementary text: Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Kansas 1985).

ASSIGNMENTS AND COURSE OUTLINE

*Note: Where certain pages or paragraphs are specified (for example: Madison’s Notes, Aug 21, II Farrand 359-363, or Locke, Second Treatise, 8 (¶¶95-99)), only these pages are assigned. If the assignment is to “skim,” we will not discuss the document in detail, but you should have a general understanding of its nature.*

Preparatory Reading:

 The Constitution of the United States (read it several times, all the way through)

I recommend you read Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Kansas 1985), as preparation.

Class Session 1: The British Constitutional Heritage

 Bailyn, Ideological Origins of the American Revolution, Chapter 2

 http://site.ebrary.com/lib/stanford/reader.action?docID=10641425&ppg=43

 Mayflower Compact (Liberty Library Website, Item #30)

Class Session 2: Republicanism

 G. Wood, Creation of the American Republic 53-70 (from Canvas)

 Niles, “On Liberty” (from Canvas)

 Jefferson, “Notes on the State of Virginia” (from Canvas)

Class Session 3: Lockean Liberalism

 Locke, Second Treatise, chapters 2, 4, 5, 7 (¶87-end), 9, chapter 19 (¶¶ 221-223, 240-243)

 [Discussion of these passages will likely extend to the next day]

Class Session 4: The New Sciences of Economics and Politics

 Farber & Sherry 26-27 (discussion of Mandeville)

 Adam Smith, *The Wealth of Nations*, Ch. 1 & 2 (from Canvas)

 [I suggest you read ahead for the next class, which is a much longer assignment]

Class Session 5: Experience

 The Articles of Confederation, Liberty Library website, item # 100

 Alexander Hamilton, Letter to Duane (Canvas)

 James Madison, “Vices of the System” (Liberty Library website, item # 114

(Selected Works of James Madison – scroll down; “Vices” is the next-to-last item under “revolution and confederation, 1772-1787”)

 The Federalist Nos. 15, 21-22

Class Session 6: The Convention Gathers

 Farber & Sherry 31-38

 Resolution of Congress, Feb. 21, 1787 (from Canvas)

 Madison’s Notes (from Farrand, ed., Records of the Federal Convention)

 May 25

*To help understanding the readings about the Convention, you should refer to the brief biographical sketches of the delegates, at pp. 657-668 of Farber & Sherry* (in course supplement).

Class Session 7: The Virginia Plan

Madison’s Notes

 May 29; also read Yates’s Notes for May 29

May 30; also read Yates’s Notes for May 30

The text of the Virginia Plan is reprinted in Appendix B, Farber & Sherry, pp. 619-21.

Class Session 8: The Problem of Representation

Madison’s Notes

 May 31

 June 6

 June 7

 June 9, pp. 176 (last ¶) - 180

 June 11

 June 12

 June 13 (last paragraph)

 June 14

Class Session 9: Alternative Plans: New Jersey and Hamilton

Madison’s Notes

 June 15

June 16

The text of the New Jersey plan is reprinted in Appendix B, Farber & Sherry, pp. 624-26)

 June 18

 June 19

Class Session 10: Impasse

 Madison’s Notes

 June 20 (first few paragraphs, until Lansing)

 June 25 (first paragraph of C. Pinckney, then bottom of 404 to the end)

 June 26

 June 27

 June 28

 June 29 (also read Yates’ account of Madison speech, at 475-76)

 June 30

Class Session 11: Compromise

 Madison’s Notes

 July 2

 July 3 (from Yates’ Notes)

 July 5

 Farber & Sherry 198-203

 Madison’s Notes (Vol. II)

 July 14

 July 16 (first two paragraphs, then from Randolph (p.17) to the end)

Class Session 12: No Additional Assignment

Class Session 13: The Committee of Detail

Farber & Sherry 203-208

Madison’s Notes

 July 23 (from the middle of p. 95 to the end)

 July 24 (last four paragraphs)

Skim II Farrand 129-175

Ewald, *The Committee of Detail* (Canvas)

 [This reading is lengthy; read what you can.]

The Secret Maryland Meeting: McHenry’s Notes, Aug. 6, II Farrand 190-192

Class Session 14: National Powers

 Committee of Detail Draft, Art. VII

 Farber & Sherry 633-34

 Madison’s Notes

 Aug 13 (II Farrand 273-280) (Origination Clause)

 Aug 16 (Taxation; Commerce; Legal Tender)

 Aug 17 (II Farrand 316) (Law of Nations)

 Aug 18 (II Farrand 324-29) (Miscellaneous powers)

 Aug 21 (II Farrand 359-363) (Taxation and trade)

 Sept 14 (II Farrand 615-16) (Roads, canals, corporations, university)

 Sept 15 (II Farrand 625) (Tonnage)

 Necessary and Proper Clause

 Madison’s Notes

 Aug 20 (II Farrand 344 (bottom paragraph) – 345 (top)

 Federalist No. 33

 The Negative & the Supremacy Clause

 Madison’s Notes

 June 8

 July 17 (pp. 27-29)

 New Jersey Plan, § 6

 Farber & Sherry 625-26

 Committee on Detail draft, Art. VIII

 Farber & Sherry 634

 Committee on Style draft, Art. VI, cl. 2

 Farber & Sherry 649

Class Session 15: Constructing the Executive

 Locke, Second Treatise, chapters 12, 14

 Farber & Sherry 115-18

 Madison’s Notes:

 June 1

 June 2 (p. 85 (Dickinson) to the end)

 June 4

 July 19 (Vol. II)

 Aug 20 (II Farrand 340-44)

 Farber & Sherry 125-60

Class Session 16: Military and Foreign Affairs

 Blackstone, War (Canvas)

 Farber & Sherry 209-12

 Madison’s Notes

 Aug 18 (II Farrand 329-33)

The Federalist No. 41 (pp. 252-258)

Class Session 17: Constructing the Judiciary

Farber & Sherry 71-75

Madison’s Notes

 July 18 (pp. 41-46)

 Aug 27 (pp. 428-end)

 The “Arising Under” Clause

 Farber & Sherry 89-90

 Habeas Corpus

 Madison’s Notes Aug 28 (p. 438)

 The Council of Revision

 Farber & Sherry 95-108

 Art I, § 9

 Farber & Sherry 108-110

 Wood 453-63 (from Canvas)

Class Session 18: Slavery

 Farber & Sherry 221-64

Class Session 19: Completion

 Farber & Sherry 212-217

 Madison’s Notes

 September 10

 September 13

 September 14 (first motion, II Farrand 612)

 September 15

 Mason’s “Objections to this Constitution” (II Farrand 637-40)

 September 17

 Letter to Congress (II Farrand 666-667)

 Federalist No. 37

Class Session 20: Ratification Debates Begin

 Farber & Sherry 265-73, 328

 Storing 1-14, 71-76

 Brutus No. 1, from Liberty Library Website, # 105, Part 2, Click "Brutus"

 The Federalist Nos. 1-2

Class Session 21: The Problem of Scale

 Storing 15-47

 Patrick Henry 1 (Canvas)

 An Old Whig No. 2 (Canvas)

 The Federalist Nos. 9, 10, 14, 17, 46 (pp. 294-end), 51 (esp. second part)

Class Session 22: The Aristocracy/Democracy Debate

 Farber & Sherry 274-76, 281-84, 309-15

 Madison’s Notes

 June 2, pp. 86-87 (Dickinson)

 June 7\*

 June 12\*

 June 21 (pp. 358-62)

 June 25 (pp. 408-09)\*

 June 26

 Aug 7 (II Farrand 201-06)

 Aug 14 (II Farrand 283-290)

 \* denotes portions previously assigned; please review

 Storing 48-63

The Federalist Nos. 35 (beginning at top of p. 210), 39 (first four paragraphs, to top of p. 238), 55, 62, 63 (first seven paragraphs, through carryover paragraph at top of p. 383)

Class Session 23: Debating the Executive

 Patrick Henry 2 (Canvas)

 Cato # 4, http://www.law.gmu.edu/assets/files/academics/founders/CatoIV.pdf

The Federalist Nos. 48 (pp. 305 – middle of 307), 67 (first three paragraphs), 69-70, 72, 74, 76

Class Session 24: Debating the Judiciary

 Brutus Nos. 11, 15 (Liberty Library Website, Item # 105, Part 2, Click "Brutus")

 Farber & Sherry 298-302

 The Federalist Nos. 37 (paragraph from pp. 224-225), 49 78-81

Class Session 25: Absence of Bill of Rights

 Farber & Sherry 333-42

 Brackenridge, “Cursory Remarks” (from Canvas)

 Storing 64-70

 The Federalist, No. 84

New York Ratification instrument (Liberty Library Website, # 105(Constitutional Ratification Debates), Part 7 (Documentary

History of the Constitution), Vol. 2, (“Declaration of New York Convention of the Ratification of the Constitution”)

 Farber & Sherry 343-356

Class Session 26: Adding a Bill of Rights

 Farber & Sherry 356-74

Class Session 27: No Additional Assignment