



Recent Books on the Constitution

Randy E. Barnett

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Every year, I teach a seminar called *Recent Books on the Constitution*. I initially designed this course when I visited Georgetown in 2005. Because I tend to read what relates directly to my current projects, I felt that I was not keeping up with the literature. By assigning recent books on the Constitution to read as part of my teaching, I would actually read them. This has really worked for me.

The complete list of all the books I have assigned is below. Since 2005, I have assigned 85 books by 79 authors, with Sandy Levinson, Gerard Magliocca, Eric Segall, Dan Farber, Philip Hamburger, and David Bernstein each making 2 appearances. Four books were assigned in manuscript before publication. This fall, I am assigning a portion of my book with Evan Bernick: [The Original Meaning of the 14th Amendment: Its Letter and Spirit](#), plus these 5 books:

- Helen Norton, [The Government's Speech and the Constitution \(2020\)](#)
- Aziz Huq, [The Collapse of Constitutional Remedies \(2021\)](#)
- David Bernstein, [Classified: The Untold Story of Racial Classification in America \(2022\)](#)
- Stuart Banner, [The Decline of Natural Law: How American Lawyers Once Used Natural Law and Why they Stopped \(2021\)](#)
- Philip Hamburger, [Purchasing Submission: Conditions, Power, and Freedom \(2021\)](#)

I choose books I think I *ought* to read--either because of the subject or the author. I then hold off reading them myself so I can read them at the same time as the students. This enables me to react to the books along with them, and for me to remember their nuances for class discussion.

The seminar format is to read 6 books, taking 2 weeks on each book, with the author coming to the class during the second week to discuss the book. The first book is now always one of mine to use as a trial run and to give the students an idea of where I am coming from when we discuss the other books. When books are longer than 250 pages, I ask the author to tell me which 250 pages I should assign. If I assign much more than 125 pages per week, I fear the students won't read them, or won't read them carefully enough. To help assure that they do, students submit one-page summaries of each half of the book (graded pass-fail). On the day before the author's visit, they submit a 5500 character critique of the book, which I send to the author electronically

the day before class. (They *all* read them.) When the class ends, there is no exam or paper for the students to write or for me to grade. We are done!

Students consistently tell me that the course is extremely enriching, and helps them develop their critical skills. It is also empowering for them to see how well they are able to find the holes in a professor's book-length presentation. I find that, collectively, the students are able to nail the weaknesses of every book (except mine, of course).

[Note to law professors: I have a budget to pay for the authors' travel expenses. But now that we all have access to Zoom teaching, this seminar format can be replicated anywhere at zero cost. Wouldn't it be great if there were a dozen or more such book seminars around the country? Try it. I promise you will love it.]

If you click on READ MORE you will see why teaching this class has been enormously rewarding for me. Offer my heartfelt thanks to all these authors for trekking to DC to discuss their books with my students.

2021:

- Ilan Wurman, *The Second Founding: An Introduction to the 14th Amendment* (2020)
- Stephen Halbrook, *The Right to Bear Arms: A Constitutional Right of the People or a Privilege of the Ruling Class?* (2021)
- Donald Drakeman, *The Hollow Core of Constitutional Theory: Why We Need the Framers* (2021)
- Jamal Greene, *How Rights Went Wrong: Why Our Obsession With Rights is Tearing America Apart* (2021)
- David Schwartz, *The Spirit of the Constitution: John Marshall and the 200-Year Odyssey of McCulloch v. Maryland* (2019)

2020:

- Paul Finkelman, *Supreme Injustice: Slavery in the Nation's Highest Court* (2017)
- Eric Segall, *Originalism as Faith* (2018)
- Greg Weiner, *The Political Constitution: The Case Against Judicial Supremacy* (2019)
- Robert Ross, *The Framers' Intentions: The Myth of the Nonpartisan Constitution* (2019)
- Jack Balkin, *The Cycles of Constitutional Time* (2020)

2019:

- Neal Devins, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* (2019)
- Larry Lessig, *Fidelity & Constraint: How the Supreme Court Has Read the American Constitution* (2019)
- Jonathan Gienapp, *The Second Creation: Fixing the American Constitution in the Founding Era* (2018)

- Rebecca Zietlow, *The Forgotten Emancipator: James Mitchell Ashley and the Ideological Origins of Reconstruction* (2017)
- Lee Strang, *Originalism's Promise: A Natural Law Account of the American Constitution* (2019)

2018:

- Martha Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (2018)
- John Compton, *The Evangelical Origins of the Living Constitution* (2014)
- Josh Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* (2017)
- Adam Carrington, *Justice Stephen Field's Cooperative Constitution of Liberty: Liberty in Full* (2017)
- Gerard Magliocca, *The Heart of the Constitution: How the Bill of Rights became the Bill of Rights* (2018)

2017:

- Barry Friedman, *Unwarranted: Policing Without Permission* (2017)
- Bruce Frohnen & George Carey, *Constitutional Morality and the Rise of Quasi-Law* (2016)
- Geoffrey R. Stone, *Sex and the Constitution* (2017)
- Suja Thomas, *The Missing American Jury* (2016)
- Thomas G. West, *The Political Theory of the American Founding* (2017)

2016:

- Carson Holloway, *Hamilton versus Jefferson in the Washington Administration: Completing the Founding or Destroying the Founding?* (2015)
- Michael Paulsen & Luke Paulsen, *The Constitution: An Introduction* (2015)
- Thomas Leonard, *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era* (2016)
- Tara Smith, *Judicial Review in an Objective Legal System* (2015)
- Ilya Somin, *The Grasping Hand: *Kelo v. City of New London* and the Limits of Eminent Domain* (2015)

2015:

- Damon Root, *Over Ruled: The Long War for the Control of the U.S. Supreme Court* (Palgrave 2014)
- F.H. Buckley, *The Once and Future King: The Rise of Crown Government in America* (Encounter 2014)
- Brad Snyder, *The House of Truth* (Oxford 2017) (assigned ms)
- Stephen Garbaum, *The New Commonwealth Model of Constitutionalism* (Cambridge 2013)

- Laura Donohue, *The Future of Foreign Intelligence* (Chicago 2016) (assigned ms)

2014:

- Clark Neily, *Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government* (Encounter 2013)
- Thomas Healy, *The Great Dissent: How Oliver Wendell Holmes Changes His Mind – and the History of Free Speech in America* (Metropolitan Books, 2013)
- John McGinnis & Michael Rappaport, *Originalism and the Good Constitution* (Harvard 2013)
- Stephen Griffin, *Long Wars and the Constitution* (Harvard 2013)
- Garrett Epps, *American Epic: Reading the U.S. Constitution* (Oxford 2013)
- Louis Michael Seidman, *On Constitutional Disobedience* (Oxford 2012)

2012 (Fall):

- Gerard Magliocca, *John Bingham: America's Founding Son* (NYU, 2013) (assigned ms)
- Akhil Reed Amar, *America's Unwritten Constitution* (Basic Books, 2012)
- John Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* (Yale 2012)
- Justice Antonin Scalia, *Reading Law: The Interpretation of Legal Texts* (West, 2012)
- Abner Greene, *Against Obligation* (Harvard 2012)
- Sandy Levinson, *Framed: America's 51 Constitutions and the Crisis of Governance* (Oxford 2012)

2012 (Spring)

- Michael J. Gerhardt, *The Power of Precedent* (Oxford 2008)
- Robert Bennett & Lawrence Solum, *Constitutional Originalism* (Cornell 2011)
- Gary L McDowell, *The Language of Law & the Foundations of American Constitutionalism* (Cambridge 2010)
- Eric Segall, *Supreme Myths: Why the Supreme Court Is Not a Court and Its Justices Are Not Judges* (Praeger 2012)
- Michael Greve, *The Upside-Down Constitution* (Harvard 2012)
- Alexander Tsesis, *The Thirteenth Amendment and American Freedom* (NYU 2004)

2011:

- H. Jefferson Powell, *Constitutional Conscience* (Chicago, 2008)
- Jeremy A Rabkin, *Law Without Nations?* (Princeton, 2005)
- Christian G. Fritz, *American Sovereigns* (Cambridge, 2007)
- Timothy Sandefur, *The Right to Earn a Living* (Cato Institute, 2010)
- Sonu Bedi, *Rejecting Rights* (Cambridge, 2009)
- Alison LaCroix, *The Ideological Origins of American Federalism* (Harvard, 2010)

2010:

- David Bernstein, *Rehabilitating Lochner* (Chicago 2011) (assigned ms)
- Brian Tamanaha, *The Formalist-Realist Divide: The Role of Politics in Judging* (Princeton, 2009)
- Earl Maltz, *Slavery and the Supreme Court, 1825-1861* (Kansas, 2009)
- Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* (Cambridge, 2004)
- George Thomas, *The Madisonian Constitution* (Johns Hopkins, 2008)
- David Strauss, *The Living Constitution* (Oxford, 2010)

2007:

- Alex Aleinikoff, *Semblances of Sovereignty: The Constitution, the State, and American Citizenship* (Harvard, 2002)
- Dan Farber, *Retained by the People: The "Silent" Ninth Amendment and the Constitutional Rights Americans Don't Know They Have* (Perseus, 2007)
- Jim Fleming, *Securing Constitutional Democracy: The Case of Autonomy* (Chicago, 2006)
- Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge, 2006)
- Keith Whittington, *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History* (Princeton, 2007)

2006:

- Philip Hamburger, *Separation of Church and State* (Harvard, 2002)
- Kermit Roosevelt, *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions* (Yale, 2006)
- Elizabeth Price Foley, *Liberty for All: Reclaiming Individual Privacy in a New Era of Public Morality* (Yale, 2006)
- John Yoo, *The Powers of War and Peace : The Constitution and Foreign Affairs after 9/11* (Chicago, 2005)
- Sanford Levinson, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (and How We the People Can Correct It)* (Oxford, 2006)

2005 (Taught when I was a visitor at Georgetown. Only Mark Tushnet, who was then still on the Georgetown faculty, appeared. His class visit gave me the idea to invite all the authors in the future):

- Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton, 2000)
- Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* (Harvard, 2001)
- Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford, 2004)
- Daniel A. Farber, Suzanna Sherry, *Desperately Seeking Certainty: The Misguided Quest for Constitutional Foundations* (Chicago, 2004)
- James R. Stoner, *Common Law Liberty: Rethinking American Constitutionalism* (Kansas, 2003)