

The U.S. Constitution
Wesley Advocates
Trinity United Methodist Church

1. Before the Constitution

- This class will discuss our need for a constitution and the history that preceded its drafting. We will learn about differences between English and American constitutionalism and influences from American antecedents to the Constitution such as the Revolution and the failure of the Articles of Confederation. This class will explore how the drafters sought to balance various concerns in the original Constitution and the many compromises in it.
- Reading assignment:
 - Preamble to the Constitution
 - “Introduction to the Constitution” by Paulsen, Calabresi, McConnell, Bray and Baude: <http://www.paulsencalabresiconstitution.com/forms/sample1.pdf?v=2>
 - James Baker and Jerre Williams, “American Constitutionalism”

2. Judicial Review

- This class will address the Supreme Court’s authority to interpret and review the U.S. Constitution.
- Reading assignment:
 - Article III of the Constitution
 - James Baker and Jerre Williams, “Judicial Review”
 - Federalist No. 78 (Hamilton)
 - Judicial review: *Marbury v. Madison* (with summary)
 - Optional: *Ex Parte Merryman* (a summary)

3. Theories of Constitutional Interpretation

- This class will explore approaches to interpreting the Constitution, especially originalism and living constitutionalism.
- Reading assignment:
 - *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Law* by Antonin Scalia (1997)
 - *The Incoherence of Antonin Scalia* by Richard Posner (2012):
<https://newrepublic.com/article/106441/scalia-garner-reading-the-law-textual-originalism>

4. Federalism

- This class will explore separation of powers between national and state governments with emphasis on the federal Commerce Clause, implied legislative powers, and the dormant commerce clause.
- Reading assignment:
 - Article I of the Constitution

- Article II of the Constitution
- Amendments 9 and 10 to the U.S. Constitution (unenumerated rights and reserved powers)
- “Federalism” by James Baker and Jerre Williams
- “American Federalism, 1776 to 1997: Significant Events” by Eugene Boyd, Analyst in American National Government Government Division
- “Three Events That Shaped Modern Federalism” by Donald F. Kettl in *Governing Magazine*

5. The Executive and Separation of Powers

- This class will concern powers of the legislative, executive, and judicial branches of government and separation of powers among those branches. This class will focus in particular on the specific powers assigned to the executive branch and ways that branch has evolved over time.
- Reading assignment:
 - “Article II of the Constitution” (a handout)
 - “Separation of Powers” edited by Joshua Claybourn
 - “We No Longer Have Three Branches of Government” by Mickey Edwards
 - “Congress Is Not a Coequal Branch of Government — It’s Supreme” by Jay Cost
 - Nixon and the War Powers Resolution:
<https://www.billofrightsinstitute.org/educate/educator-resources/lessons-plans/presidents-constitution/war-powers-resolution/>
 - Why the War Powers Act Doesn’t Work:
<https://www.npr.org/2011/06/16/137222043/why-the-war-powers-act-doesnt-work>
 - Optional:
 - The Cult of the Presidency:
<https://www.cato.org/publications/commentary/cult-presidency>
 - The president and the bomb:
<http://blog.nuclearsecrecy.com/2016/11/18/the-president-and-the-bomb/>

6. Safeguards of Liberty

- This class begins a review of Constitutional amendments. We will learn about the protections for speech and religion, ways they have changed over time, and ways they apply to various circumstances. We will also explore the Establishment Clause and its meaning in today’s society.
- Reading assignment:
 - “The Establishment Clause” by Marci A. Hamilton and Michael McConnell
 - “The Free Exercise Clause” by Frederick Gedicks and Michael McConnell
 - “Freedom of Speech and the Press” by Geoffrey R. Stone and Eugene Volokh
 - “Right to Assemble and Petition” by John Inazu and Burt Neuborne

- Optional:

<http://reason.com/volokh/2019/01/22/will-the-court-read-the-free-exercise-cl>

7. Safeguards of Justice

- This class addresses another group of important constitutional provisions: the Fourth, Fifth, and Sixth Amendments, all guaranteeing rights to individuals accused of committing crimes. These amendments protect us against unreasonable searches, ensure our right to remain silent in the face of police questioning, and allow us to demand the assistance of counsel and trial by jury. These rights are fundamental to our system of criminal justice. Then we will examine the Second Amendment, the right to bear arms, and incorporation.
- Reading assignment:
 - Amendments 2, 4, and 6 of the Constitution
 - "The Second Amendment" edited by Joshua A. Claybourn
 - "The Fourth Amendment" by Barry Friedman and Orin Kerr
 - "The Sixth Amendment" by Jeffrey Fisher and Stephanos Bibas

8. The Fifth Amendment

- "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
- "Criminal Procedure clauses" by Paul Cassell and Kate Stith
- Due Process: https://www.law.cornell.edu/wex/due_process
- "Due Process Clause" by Roger Fairfax and John C. Harrison
- "Takings Clause" by Richard Epstein and Eduardo M. Peñalver

9. Safeguards of Civil Rights

- This class will consider the equal protection and due process clauses of the 14th Amendment. We will begin by discussing race discrimination and the anti-classification and anti-subordination perspectives on equal protection. Next, we will discuss sex discrimination and abortion decisions derived from the due process clause. Finally, we will examine discrimination based on sexual orientation and the social progress of major civil rights movements in the United States.
- Reading assignment:
 - "The Thirteenth Amendment" by Jamal Greene and Jennifer Mason McAward
 - Clauses of the 14th Amendment
 - "Citizenship Clause" by Akhil Reed Amar and John C. Harrison
 - "Privileges or Immunities Clause" by Akhil Reed Amar and John C. Harrison

- “Due Process Clause” by Nathan S. Chapman and Kenji Yoshino
- “Equal Protection Clause” by Brian Fitzpatrick and Theodore M. Shaw
- “Enforcement Clause” by Erwin Chemerinsky and Earl Maltz
- Was the 14th Amendment a new Constitution?
<https://www.weeklystandard.com/allen-c-guelzo/1868-and-all-that>
- The Fourteenth Amendment’s “Other” Sections:
<https://journalofthecivilwarera.org/2018/07/the-fourteenth-amendments-other-sections/>
- The Constitution and Slavery:
https://www.academia.edu/37861525/The_Constitution_and_Slavery--WSJ_essay-review_by_David_S._Reynolds.pdf

10. Other Amendments and Conclusion

- Governmental authority (Amendments 11, 16, 18, and 21)
- Government processes and procedures (Amendments 12, 17, 20, 22, 25, and 27)
- “The 16th Amendment” by Joseph R. Fishkin, William E. Forbath, and Erik M. Jensen

Optional additional reading:

<https://constitutioncenter.org/interactive-constitution/amendments/>