

An Introductory Bibliography to American Constitutional History

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Since its creation, the American Constitution has stimulated a steady stream of literature about both its history and operation. This bibliography is an introduction to that vast literature. It is selective in the truest sense of the word. The numbers of books devoted to the Constitution run into the thousands; writings in history and political science journals and law reviews are even more extensive. This brief bibliography should nonetheless have value for teachers of American history and civics and the general reading public curious about our constitutional history. A fuller listing of the historical literature on the Constitution, especially that available in article form, can be found in Kermit L. Hall, comp., *A Comprehensive Bibliography of American Constitutional and Legal History*, 5 vols. (Millwood, N.Y., Kraus Thomson International, 1984).

ABOUT THE AUTHOR

Kermit L. Hall, is professor of history and law at the University of Florida. He has held grants from the National Science Foundation and the National Endowment for the Humanities, and he is the author of *The Rule of Law in American History* (forthcoming from Oxford University Press). He is currently engaged in a study of the impact of popular election on state judicial decision-making.

Creation of the Constitution and the Founding

Bailyn, Bernard. *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press of Harvard University Press, 1967).

A penetrating analysis of the ideas that shaped both the revolutionary era's politics and the development of a distinctive form of American constitutionalism. Bailyn identifies English republican writers as the chief source of American constitutional thought.

Becker, Carl L. *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Alfred A. Knopf, 1956 [1st ed., 1922].)

An indispensable introduction to the text of the Declaration of Independence. Becker believed that the ideas of John Locke shaped not only the Declaration but the American Constitution, a position hotly disputed in Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, New York: Doubleday & Company, 1978). Wills contends that Locke counted for little and that the ideas of the Scottish Moral Enlightenment better explain the Declaration.

Bowen, Catherine Drinker. *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787* (Boston: Little, Brown Co., 1966).

A highly readable and reliable account of the day-to-day events in the Constitutional Convention.

Brant, Irving. *The Bill of Rights: Its Origin and Meaning* (New York: New American Library, 1967 (paperback); Indianapolis: Bobbs-Merrill, 1965 (hardback)).

A history of the Bill of Rights from its beginnings to the recent past. Brant, who was also the biographer of James Madison, offers valuable insights into the intellectual

background of the founding era. On the politics of the Bill of Rights, a fascinating subject in its own right, see: Robert A. Rutland, *The Birth of the Bill of Rights, 1776-1791* (Chapel Hill: University of North Carolina Press, 1955).

Corwin, Edward D. *The "Higher Law" Background of American Constitutional Law* (Ithaca, N.Y.: Cornell University Press, 1955).

An eloquent introduction to the idea of the Constitution as "Higher Law." From the time of its first publication in the *Harvard Law Review* in 1929 this exploration of the remote sources of the American Constitution has been one of the most universally admired and heavily used essays in the history of constitutional law and political thought.

Levy, Leonard W. ed. *Essays on the Making of the Constitution* (New York: Oxford University Press, 1969).

A fascinating collection of some of the best writing on the political and social forces, as well as the philosophical notions, that shaped the Constitution. The essays range from Charles Beard's famous "economic" interpretation of the Convention to Stanley M. Elkins and Eric McKittrick's provocative analysis of the relationship of the framers' youth to their continental vision.

McDonald, Forrest. *We the People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, Midway Reprint Series, 1976 [1st ed. 1958]).

The most convincing attack on the Beard thesis. McDonald shows that the framers operated under a complex set of motives and that the factions in the Constitutional Convention were a good deal more fluid than Beard had believed.

Morris, Richard B. *Seven Who Shaped Our Destiny* (New York: Harper & Row, Publishers, 1973).

A lively account of the most important figures in the revolutionary era and the creation of the Constitution. Biographical in nature, but filled with insights about the development of American attitudes toward liberty and authority.

Rakove, Jack N. *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Alfred A. Knopf, 1979).

A clearly written and forcefully argued account of why the Articles of Confederation eventually gave way to the Constitution. Certainly the best account of political activity leading to the calling of the Constitutional Convention.

Wood, Gordon S. *The Creation of the American Republic, 1776-1787* (New York: W. W. Norton, 1972 [1st ed., 1969]).

One of the most important books ever written about the Constitution. Wood stresses the inherent conservatism of the Federalists in writing the Constitution, and he also

shows that they made a distinctive contribution to western political thought through republican ideology.

The Nineteenth Century

Beth, Loren P. *The American Constitution, 1877-1917* (New York: Harper & Row, 1971).

A volume in the New American Nation Series, this book provides the single best synthesis of constitutional developments during these years. Beth, a political scientist, does particularly well at relating institutional developments to broad changes in constitutional policy-making by the Supreme Court.

Fehrenbacher, Don E. *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978).

A brilliant examination of one of this nation's most famous constitutional law cases. This Pulitzer Prize-winning study probes the issues of slavery, the coming of the Civil War, and the meaning of judicial power in our constitutional order.

Hyman, Harold, and William Wiecek. *Equal Justice Under Law: Constitutional Development 1835-1875* (New York: Harper & Row, 1982).

A scholarly study filled with insights based on the most recent historical writing. The authors analyze extensively the 13th, 14th, and 15th amendments, and they argue provocatively that the significance of each must be understood in relationship to the others.

Levy, Leonard W. *Legacy of Suppression: Freedom of Speech and Press in Early American History* (Cambridge: Belknap Press of Harvard University Press, 1960).

A critical assessment of the early struggles over freedom of speech and press, particularly the attitudes which fueled the famous Alien and Sedition Acts. Levy gives low marks to the Jeffersonians as well as the Federalists on matters of civil liberties.

Newmyer, R. Kent. *The Supreme Court Under Marshall and Taney* (New York: Crowell, 1968).

A readable synthesis of the work of the Marshall and Taney Courts which stresses their fundamental nationalism. It is also a good introduction to the basic workings of the Supreme Court.

Stites, Francis N. *John Marshall: Defender of the Constitution* (Boston: Little, Brown and Company, 1981).

A brief, highly readable account of the nation's greatest Supreme Court justice. It also provides an excellent sense of the interaction of law and politics in the early Republic.

The Twentieth Century

Carter, Dan T. ***Scottsboro: A Tragedy of the American South*** (Baton Rouge: Louisiana State University Press, 1979 [1st ed., 1969]).

A fascinating analysis of the famous Scottsboro, Alabama rape case and the problem of Southern racism during the 1930s. The book is especially important in relating the constitutional commitment to fair trial and the right to counsel in the context of super-heated social tensions.

Cortner, Richard C. ***The Supreme Court and the Second Bill of Rights*** (Madison, Wisconsin: The University of Wisconsin Press, 1981).

A systematic description of the nationalization of the Bill of Rights through decisions of the Supreme Court. Cortner explains how the Supreme Court interpreted the "due process" clause of the 14th amendment to mean that the Bill of Rights, originally a limitation only on the federal government, also protected individuals against state government action.

Kluger, Richard. ***Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*** (New York: Vintage, 1977).

A fascinating account of the battle against segregated schools. Kluger starts with Reconstruction and ends with the civil rights turbulence of the 1960s. Particularly good in explaining the litigation strategy pursued by the NAACP's Legal Defense Fund in *Brown* and other civil rights cases.

Kutler, Stanley I. ***The American Inquisition: Justice and Injustice in the Cold War*** (New York: Hill and Wang, 1982).

A provocative yet balanced analysis of the interaction of anticommunism and constitutional values during the Cold War. Kutler draws expertly on case studies to drive home the personal and institutional consequences of political persecution.

Lewis, Anthony. ***Gideon's Trumpet*** (New York: Random House, 1964).

A highly readable account of the Supreme Court's 1962 landmark decision in *Gideon v. Wainwright*. The Court extended the right to counsel to the poor, and Lewis shows forcefully how human actors in the constitutional process contributed to the development of this important right.

Murphy, Paul L. ***The Constitution in Crisis Times, 1918-1969*** (New York: Harper & Row, 1972).

An historical overview of constitutional developments with emphasis given to their social and cultural roots. Murphy gives heavy, but not exclusive, attention to the emergence of civil liberties and civil rights.

General

Berger, Raoul. ***Government by Judiciary: The Transformation of the Fourteenth Amendment*** (Cambridge: Harvard University Press, 1977).

A trenchant attack on the Supreme Court's development of the 14th amendment. Berger throws darts at all of the twentieth-century liberal proponents of an activist judiciary. He hits the target often enough to make the book important, although flawed.

Bickel, Alexander M. ***The Least Dangerous Branch: The Supreme Court at the Bar of Politics*** (Indianapolis: Bobbs-Merrill Co. Inc., 1962).

A brief, forceful meditation on the relationship of the Supreme Court to the two other branches. Bickel carefully defines the limited role of judicial review in the American system while simultaneously arguing that the principled nature of American constitutionalism depends upon judicial power.

Burns, James MacGregor. ***The Deadlock of Democracy: Four Party Politics in America*** (Englewood Cliffs, N. J.: Prentice-Hall, 1963).

A penetrating discussion of the divisions within American political parties between their executive and legislative wings. Burns, one of the nation's foremost political scientists, brings a sharp analytical sense to the practical operation of parties in the American constitutional system.

Kelly, Alfred H., Winifred A. Harbison, and Herman Belz. ***The American Constitution: Its Origins and Development***, 6th ed. (New York: W. W. Norton & Co., 1983 [1st ed., 1948]).

The 6th edition is newly revised and rewritten. It provides a sweeping and detailed examination of the development of American constitutionalism from its English origins to the present. It also contains an excellent annotated bibliography.

McCloskey, Robert G. ***The American Supreme Court*** (Chicago: University of Chicago Press, 1960).

A lucid account of the development of the Supreme Court and its power of judicial review. Although the book covers only the period through the 1950s, it remains perhaps the single best introduction to the history of the Court.

McLaughlin, Andrew C. ***The Foundations of American Constitutionalism*** (New York: New York University Press, 1932).

A brief, lively analysis of the historical origins of the principle of constitutionalism. McLaughlin emphasizes the role of New Englanders in transforming seventeenth- and eighteenth-century ideas into workable frames of government.

Schlesinger, Arthur M., Jr. ***The Imperial Presidency*** (Boston: Houghton Mifflin, 1973).

A shrewd analysis of the growth of presidential power written from the perspective of Richard Nixon and the Watergate disaster. Schlesinger deftly blends the development of constitutional law with political drama and international relations.

White, G. Edward. *The American Judicial Tradition: Profiles of Leading American Judges* (New York: Oxford University Press, 1976).

White skillfully puts biography into the service of constitutional and legal history through an examination of the lives of the nation's most prominent judges. Its panoramic coverage provides a sense of change within unity in the American judicial tradition.

Suggested additional bibliographical sources: Earlean M. McCarrick, ed. *U.S. Constitution: A Guide to Information Sources*. Gale Research Company, 1980.

Stephen M. Millett, ed *A Selected Bibliography of American Constitutional History*. ABC/Clío Press, 1975.

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