

## Lecture 1 . January 26, 2023

### American Politics and the Law

#### Introduction : Constitutional foundations.

#### 1. Myths and realities

Many of the most widely held myths about American government concern the American Constitution and its Framers. Because the **US Constitution** plays such a significant role in the American system we can begin our exploration of American politics by **focusing on the myths and the realities** associated with this document.

There are many myths about the Framers of the Constitution, some are very flattering. For instance one commentator called **the Framers** *"the most distinguished group which has ever gathered on this continent"*. Others have painted a less flattering picture of the Framers as a gathering of *anti-Democratic and self-serving members of America's elite*.

**What is the reality behind these pictures of the framers? Who were these men?** We know there were 55 of them, they began arriving in Philadelphia in May 1787, they are also called the **Founding Fathers** among them were merchants, physicians, bankers, planters and soldiers, their average age was 43, with the youngest at 26 (Jonathan Dayton of New Jersey) and the oldest Benjamin Franklin at 81. **Over half were trained in the law** and more than 2/3 had served in the Continental Congress which had governed the new nation during the Revolutionary War.

That summer they took part in a rare moment of **decisive political creation** they applied their knowledge and rare experience of government to **the design of a new constitution**.

The meeting in Philadelphia was convened because many of the country's political leaders saw the national government under the Articles of Confederation as not strong enough to cope with the young republic's problems.

**Their goal was to revise the inadequacies of the Articles of Confederation.** Written in 1777 and ratified in 1781 as America's first constitution the Articles of Confederation had established **a loose union of States** and a National Congress with few powers. By 1787 it was clear to many officials that the national government under the Articles could not conduct an effective foreign policy; even worse was the confederation's inability to deal with the nation's financial problems. *(under the Articles the National Congress had no power to tax)*

The delegates, mostly well-educated and wealthy, included at least two men of international reputation **George Washington and Benjamin Franklin**.

A popular and imposing figure, **George Washington** was unanimously elected to chair the meeting, he was a general of 50 years old and he contributed little to the conventions' debates but could enforce its strict rules because the delegates feared his anger.

**Benjamin Franklin** was well regarded by the other delegates and many constantly sought his opinions. At 81 years of age, even if his physical powers were failing him, and despite being well prepared for the meetings, he was not always attentive during the conventions' debates and rarely spoke. Nevertheless **his influence** helped in the eventual adoption of the document.

During the final days of the Convention he expressed his support by noting that *"whenever a group of men are gathered to write a Constitution, you inevitably assemble with*

# Seasoned Judgements The American Constit

**Leonard W. Levy**



## **Seasoned Judgements The American Constit:**

**Seasoned Judgments** Leonard W. Levy, Leonard Levy's new book a compendium of his law review articles book chapters and basic shorter writings on themes with which he has long been identified is a treasure chest of sound and reasonable analysis of American constitutional history As one reviewer of the manuscript put matters There is not a clinker amongst them For anyone who thinks that liberal analysis has grown soft and flabby a good dose of Levy's book should set the record straight *Seasoned Judgments* is divided into three parts Rights Constitutional History and The Marshall Court In this progression from the general to the concrete Levy never ignores the context as well as the content of the judicial process Indeed it is this linkage that separates him from nearly all other commentators and writers on the subjects covered Whether discussing why the original Constitution lacked a Bill of Rights or why the Fourth Amendment uses the imperative form shall not rather than the conditional form ought not the reader enters a world of explanation rich in detail and careful scholarly elaboration Well known as editor in chief of the multivolumed *Encyclopedia of the American Constitution* this new volume extracts some of Levy's own contributions to that effort As a result one can for the first time gain a clear sense of the author's own profound sense of the major issues confronting American law from the founding fathers to the present The analysis of such still unresolved issues as flag desecration the exclusionary rule testimonial compulsion taxation without representation and the nature of the Constitution itself will be of tremendous appeal to historians and political scientists as well as attorneys and judges

The Supreme Court and Religion in American Life, Vol. 2 James Hitchcock, 2009-01-10 School vouchers The Pledge of Allegiance The ban on government grants for theology students The abundance of church and state issues brought before the Supreme Court in recent years underscores an incontrovertible truth in the American legal system the relationship between the state and religion in this country is still fluid and changing This the second of two volumes by historian and legal scholar James Hitchcock offers a complete analysis and interpretation of the Court's historical understanding of religion explaining the revolutionary change that occurred in the 1940s In Volume I *The Odyssey of the Religion Clauses* Princeton Hitchcock provides the first comprehensive survey of the court cases involving the Religion Clauses including a number that scholars have ignored Here Hitchcock examines how in the early history of our country a strict separation of church and state was sustained through the opinions of Jefferson and Madison even though their views were those of the minority Despite the Founding Fathers' ideas the American polity evolved on the assumption that religion was necessary to a healthy society and cooperation between religion and government was assumed This view was seldom questioned until the 1940s notes Hitchcock Then with the beginning of the New Deal and the appointment of justices who believed they had the freedom to apply the Constitution in new ways the judicial climate changed Hitchcock reveals the personal histories of these justices and describes how the nucleus of the Court after World War II was composed of men who were alienated from their own faiths and who looked at religious belief as irrational divisive and potentially dangerous assumptions that became enshrined

in the modern jurisprudence of the Religion Clauses He goes on to offer a fascinating look at how the modern Court continues to grapple with the question of whether traditional religious liberty is to be upheld     The Political Theory of the American Founding Thomas G. West, 2017-04-03 This book provides a complete overview of the Founders natural rights theory and its policy implications     **The Constitutional Convention of 1787** John R. Vile, 2005-06-24 The first encyclopedic treatment of the personalities politics and events involved in drafting the U S Constitution This comprehensive treatment of all the personalities philosophies debates and compromises involved in drafting the U S Constitution is the first encyclopedic work on the subject compiling information into an easily accessible A Z format Biographies of all 55 delegates analysis of the competing political viewpoints procedural and substantive disputes along with a host of other details are all presented here Both the detail and the scholarship in this book are unmatched in any other work the encyclopedic presentation simply does not exist elsewhere Civil liberties the scope of authority of the three branches of government and other constitutional matters are increasingly at the forefront of public discussion Scholars citizens interested in self education and reference librarians faced with questions about the Constitution will find in this book all they require to answer their needs     **God's Reflections** Ronald Ian Phillips, Ernest Schmidt, David Grotzke, Seth Grotzke, 2022-04-07 Using a unique and ground breaking approach that combines religion with American history these four authors masterfully present a thoroughly researched and captivating account of fifty two inspirational stories of America s exceptionalism intricately woven with God s truths Each story connects the life giving honesty of the American people with a life shaping application from the gospel Individuals interested in the history of the United States or Christianity and looking for an overarching account of what unites us as Americans and believers will be enthralled by these inspiring stories of struggles and triumphs We are not the light just the reflection if we stand close enough to the Source The further we move away from God s will for our lives the more we stumble in the dark But as believers we know there is an all powerful force that will lift us up and help us to walk in the light The goal of God s Reflections Biblical Insight from America s Story is to draw Christians closer to the light source so they can radiate brighter in their service to God and their country and be part of the greatest rescue mission of all making disciples for Jesus Christ     **Reconstructing the Fourth Amendment** Andrew E. Taslitz, 2009-03 The modern law of search and seizure permits warrantless searches that ruin the citizenry s trust in law enforcement harms minorities and embraces an individualistic notion of the rights that it protects ignoring essential roles that properly conceived protections of privacy mobility and property play in uniting Americans Many believe the Fourth Amendment is a poor bulwark against state tyrannies particularly during the War on Terror Historical amnesia has obscured the Fourth Amendment s positive aspects and Andrew E Taslitz rescues its forgotten history in Reconstructing the Fourth Amendment which includes two novel arguments First that the original Fourth Amendment of 1791 born in political struggle between the English and the colonists served important political functions particularly in regulating expressive political violence Second

that the Amendment's meaning changed when the Fourteenth Amendment was created to give teeth to outlawing slavery and its focus shifted from primary emphasis on individualistic privacy notions as central to a white democratic polis to enhanced protections for group privacy individual mobility and property in a multi racial republic With an understanding of the historical roots of the Fourth Amendment suggests Taslitz we can upend negative assumptions of modern search and seizure law and create new institutional approaches that give political voice to citizens and safeguard against unnecessary humiliation and dehumanization at the hands of the police

**The Establishment Clause** Leonard W. Levy, 2017-03-01

Leonard Levy's classic work examines the circumstances that led to the writing of the establishment clause of the First Amendment Congress shall make no law respecting an establishment of religion He argues that contrary to popular belief the framers of the Constitution intended to prohibit government aid to religion even on an impartial basis He thus refutes the view of nonpreferentialists who interpret the clause as allowing such aid provided that the assistance is not restricted to a preferred church For this new edition Levy has added to his original arguments and incorporated much new material including an analysis of Jefferson's ideas on the relationship between church and state and a discussion of the establishment clause cases brought before the Supreme Court since the book was originally published in 1986

*The Tyranny of Good Intentions* Paul Craig Roberts, Lawrence M. Stratton, 2008-03-25 In this updated and expanded edition of *The Tyranny of Good Intentions* Paul Craig Roberts and Lawrence M Stratton renew their valiant campaign to reclaim that which is rightly ours liberty protected by the rule of law They show how crusading legislators and unfair prosecutors are remaking American law into a weapon wielded by the government and how the erosion of the legal principles we hold dear such as habeas corpus and the prohibition against self incrimination is destroying the presumption of innocence A new introduction and new chapters cover recent marquee cases and make this provocative book essential reading for anyone who cringes at the thought of unbridled state power and sees our civil liberties slowly slipping away in the name of the War on Drugs the War on Crime and the War on Terror

**The First Tycoon** T. J. Stiles, 2009 From the award winning author of *Jesse James Last Rebel of the Civil War* comes the first full authoritative look at the life of Cornelius Vanderbilt the complex and combative man whose genius and force of will gave birth to modern capitalism

**Regulating Our Constitutional Rights** William B. Glidden, 2023-05-22 The author argues that we the people's rights under the Constitution as amended cannot be characterized as specific prohibitions against government Life liberty and property rights and the freedoms of religion speech and press for example are neither self defining nor precise Accordingly in our representative democracy the unelected unaccountable life tenured judges on the Supreme Court should defer to the laws of Congress affecting these rights absent a clear constitutional violation But the modern conservative Court has become increasingly willing to overturn the laws and policy choices of our nation's elected representatives based on the judges political and ideological preferences Congress has the constitutional power to control the jurisdiction of the lower federal courts and the appellate jurisdiction of

the Supreme Court but it has not chosen to exercise this power in any meaningful way to preserve and protect the American people's right to be governed by majoritarian rule *A License to Steal* Leonard W. Levy, 2014-03-30 Leonard Levy traces the development and implementation of forfeiture and contends that it is a questionable practice which because it is so often abused serves only to undermine civil society Arguing that civil forfeiture is unconstitutional Levy provides examples of the victimization of innocent people and demonstrates that it has been used primarily against petty offenders rather than against its original targets members of organized crime *Did Calvin Murder Servetus?* Stanford Rives, 2008-12-21 Rives details all the allegations whether Calvin as complainant witness and prosecutor in 1553 of Servetus for heresy murdered Servetus contrary to Calvin's own stated principles in Calvin's Institutes **Forgotten Founder, Drunken Prophet** Bill

Kauffman, 2014-04-22 The Anti-Federalist Luther Martin of Maryland is known to us if he is known at all as the wild man of the Constitutional Convention a verbose frequently drunken radical who annoyed the hell out of James Madison George Washington Gouverneur Morris and the other giants responsible for the creation of the Constitution in Philadelphia that summer of 1787 In Bill Kauffman's rollicking account of his turbulent life and times Martin is still something of a fitfully charming reprobate but he is also a prophetic voice warning his heedless contemporaries and his amnesiac posterity that the Constitution whatever its devisers intentions would come to be used as a blueprint for centralized government and a militaristic foreign policy In Martin's view the Constitution was the tool of a counterrevolution aimed at reducing the states to ciphers and at fortifying a national government whose powers to tax and coerce would be frightening Martin delivered the most forceful and sustained attack on the Constitution ever levied a critique that modern readers might find jarringly relevant And Martin's post-convention career though clouded by drink and scandal found him as defense counsel in two of the great trials of the age the Senate trial of the impeached Supreme Court justice Samuel Chase and the treason trial of his friend Aaron Burr Kauffman's Luther Martin is a brilliant and passionate polemicist a stubborn and admirable defender of a decentralized republic who fights for the principles of 1776 all the way to the last ditch and last drop In remembering this forgotten founder we remember also the principles that once animated many of the earliest and many later American patriots

**The U.S. Justice System** Steven Harmon Wilson, 2011-12-06 A comprehensive three-volume set that provides detailed background essays short topical entries and primary document excerpts to explain the organization history and functioning of the U.S. justice system *The U.S. Justice System: An Encyclopedia* is a one-stop resource uniquely structured to include both introductory information as well as more in-depth and detailed resources It explains not only how the American civil and criminal justice system affects the parties to a particular case or other legal action but also how the rights benefits and legal protections of our country impact virtually all people in America The set comprises three volumes The first volume provides chapter-length essays explaining the organization and functioning of federal state and local government as well as the working of federal and state judiciaries regulatory bodies and penal systems The second volume contains shorter

alphabetically arranged entries on hundreds of law related topics including case descriptions and biographies of major figures federal and state court organizational charts legal statistics and other background information The third volume contains original documents statutes and texts of important cases relevant to the functioning of the American justice system Readers will understand the structures concepts and vocabulary of American law and legal institutions and grasp how the U S legal system has evolved to meet the complex changing needs of the nation

**Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2015** John R. Vile, 2015-07-20 Now in its fourth edition and completely updated this is the most comprehensive book on constitutional amendments and proposed amendments available Although only 27 amendments have ever been added to the U S Constitution the last one having been ratified in 1992 throughout American history members of Congress have introduced more than 11 000 amendments and countless individuals outside of Congress have advanced their own proposals to revise the Constitution the wellspring of America s legal political and cultural foundations At a time when calls for a new constitutional convention are on the rise it is essential for students of political science and history as well as American citizens to understand proposed alternatives This updated edition of the established standard for high school and college libraries as well as public and law libraries serves as the go to reference for learning about existing constitutional amendments proposed amendments and the issues related to them An alphabetically arranged two volume set it contains more than 500 entries that discuss amendments that have been proposed in Congress from 1789 to the present It also discusses prominent proposals for extensive constitutional changes introduced outside Congress as well as discussions of major amending issues

**Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2023** John R. Vile, 2023-10-19 Written by a leading scholar of the constitutional amending process this two volume encyclopedia now in its fifth edition is an indispensable resource for students legal historians and high school and college librarians This authoritative reference resource provides a history and analysis of all 27 ratified amendments to the Constitution as well as insights and information on thousands of other amendments that have been proposed but never ratified from America s birth until the present day The set also includes a rich bibliography of informative books articles and other media related to constitutional amendments and the amending process

*The Great Debate* Rodney D. Scott, 1999

[Program of the Annual Meeting - American Historical Association](#) American Historical Association, 1996 Some programs include also the programs of societies meeting concurrently with the association

**Religion and the State in American Law** Boris I. Bittker, Scott C. Idleman, Frank S. Ravitch, 2015-10-06 This book provides a comprehensive overview of religion and government in the United States providing historical context to contemporary issues

[Civil Rights and Civil Liberties in America](#) Michael C. LeMay, 2021-04-21 This book covers civil rights and civil liberties politics in the United States from the ratification of the Bill of Rights to more recent controversies such as the travel ban and proposals to end birthright citizenship

**Civil Rights and Civil Liberties A Reference**

Handbook provides a thorough overview of civil rights in U S history detailing all the relevant amendments to the Constitution and reviewing key Supreme Court decisions and landmark cases on the topic Aimed at general readers as well as high school college and university students it focuses on the role of federal courts in civil rights and civil liberties politics It also profiles the primary actors in civil rights and civil liberties both organizations and people The volume comprises seven chapters Chapter 1 presents the history and background of the topic and Chapter 2 discusses problems controversies and solutions Chapter 3 consists of essays by contributors that round out the coauthors expertise Chapter 4 profiles important organizations and people while Chapter 5 offers relevant data and documents Chapter 6 is composed of an annotated list of important resources Finally Chapter 7 offers a useful chronology citing and describing the major events related to the topic from the nation s founding until 2019



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