

Notes for participants

Advance readings.

There are two documents that if possible I hope you will read in advance of my seminar, and a third that it may be helpful to skim since I will discuss its contents.

(1) “The U.S. Constitution as Literature,” written by the distinguished American scholar of law and literature Robert A. Ferguson, is reproduced with Professor Ferguson’s permission from his recently published collection of essays, *Practice Extended: Beyond Law and Literature* (Columbia Univ. Press 2016). This essay will usefully provide some context for discussing the process by which the Constitution of the United States was crafted and adopted.

(2) “1791: The National Bank and the Point of Interpretation” is excerpted from my book *A Community Built on Words: The Constitution in History and Politics* (Univ. of Chicago Press 2002). This section discusses the greatest early debate over the Constitution’s meaning after its adoption as law – the question whether the federal Congress was authorized to charter a national bank; our interest is in the historical discussion, not in the normative positions I express.

(3) This document has two parts. The first is an exchange of letters between William Cushing, then chief justice of the highest court in Massachusetts, and John Adams, shortly before Adams became the first vice president of the United States: the main subject is a quite technical discussion of how a provision of the Massachusetts constitution should be interpreted. The second includes excerpted versions of the speeches that James Madison (sometimes called “the father of the [U.S.] Constitution”) and Fisher Ames delivered in the U.S. House of Representatives on the national bank question that document (2) addresses. Please do not feel obliged to read this document at all; if you do look at it briefly, ask yourself what assumptions Cushing, Adams, Madison and Ames are making about the nature of American constitutional documents and of American constitutional debate.

Additional readings.

Michael Kammen, *A Machine that Would Go of Itself: The Constitution in American Culture* (Alfred A. Knopf 1986), is the classic history of the written Constitution’s role as a cultural symbol.

Jack Rakove, *Revolutionaries: A New History of the Invention of America* (Houghton Mifflin 2010), provides a brilliant account of the emergence of American constitutionalism in the broadest sense.

James F. Simon, *What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States* (Simon & Schuster 2002), is a popular but well-crafted account of the political and constitutional events of the period 1798 to 1803 on which my seminar will focus.