**Individual Rights:**

**Securing and Expanding Rights throughout America’s History**

A course offered through JMU and conducted at

Montpelier’s Robert H. Smith Center for the Constitution

2015

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Office hours: Instructor is available at all times via email

Instructor will be available to meet, formally or informally, during all Montpelier modules or email to arrange an appointment

 *It may be said, in some instances, [bills of rights] do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.*

 *In some instances [bills of rights] assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. …*

 *But whatever may be the form which the several [state constitutions] have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.*

— James Madison, proposal to adopt a bill of rights in the First Congress, June 8, 1789

 *Who is a citizen? What constitutes a citizen of the United States? I have often been pained by the fruitless search in our law books and the records of our courts for a clear and satisfactory definition of the phrase* citizen of the United States*. I find no such definition, no authoritative establishment of the meaning of the phrase, neither by a course of judicial decisions in our courts, nor by the continued and consentaneous action of the different branches of our political government. For aught I see to the contrary, the subject is now as little understood in its details and elements, and the question as open to argument and to speculative criticism, as it was at the beginning of the government. Eighty years of practical enjoyment of citizenship, under the Constitution, have not sufficed to teach us either the exact meaning of the word, or the constituent elements of the thing we prize so highly.*

— Attorney General Edward Bates, 1862

**I. Course Description**

 The American Founding was a time of intense optimism about the progress that had already been made and would continue to be made to secure human rights. In the words of Thomas Jefferson, written less than two weeks before his death, “all eyes are opened, or opening, to the rights of man.” Yet the Constitution was formed during a period when many rights were left insecure or simply denied outright. The original 1787 Constitution contained no bill of rights; therefore, essential rights like freedom of speech and religion were not guaranteed by the federal government. Also, states had very different requirements for those who wished to exercise their voting rights: most of them restricted suffrage to white male property owners. Finally, although the Constitution guaranteed certain rights, privileges, and immunities to citizens, it gave very little guidance for determining who was a citizen and who was not.

 But the Constitution, whatever its imperfections, contained the means for its own remediation. And the history of the Constitution’s amendments is a history of an ever growing awareness of the need to better define, secure, and in many cases expand the rights of Americans. This course will explore both the history and the ideas that led to these developments. It will begin with the basics: What are rights? What is the difference between a natural and a civil right? And how does the Constitution protect rights? It will then proceed to tell the story of how individual rights were secured under the Constitution throughout America’s history.

 Of course, not all of the Constitution’s amendments deal with the expansion of rights (think of the income tax and Prohibition), and not all of the rights secured under the Constitution have been done through the amendment process alone. This course will not examine those amendments which are irrelevant to the subject of rights, and it will frequently be necessary to explore subjects (such as the Civil Rights legislation of the 1960s and certain judicial decisions starting in the 20th century) that carry the story of individual rights beyond the passage of individual amendments. In other words: the primary focus of this course will be on how the rights of Americans were secured and expanded within the confines of the United States Constitution, principally but not wholly through the amendment process.

 The instruction takes place through one online course and two 3-day residential modules to be held at Montpelier, the bucolic and inspiring home of James Madison, Father of the Constitution, offered through Montpelier’s Robert H. Smith Center for the Constitution. These residential modules include lectures, activities, tours, meals, and accommodation, all on-site. Top-notch instructors drawn from colleges and universities ranging across the United States will do most of the teaching, but the instructor on record will be on hand at all of the modules; she will take part in some of the teaching; and she will superintend the course as a whole. Descriptions of the three modules are as follows:

**Module 1: The Bill of Rights in Historical Perspective**

Taught by Sue Leeson, J.D. and Ph.D., Senior Justice, Oregon Supreme Court;

and Lynn Uzzell, scholar in residence at James Madison’s Montpelier: March 13–15, 2015

 During the ratification debates, many Antifederalists criticized the Constitution because it lacked a bill of rights. James Madison and other Federalists responded that, because the Constitution already restricted the authority of the national government through its enumerated powers, a bill of rights was not needed to further protect rights. Students will start by discussing what both sides in the debate agreed on: natural rights need certain protections from government power. Then we will explore how the Bill of Rights was meant to provide additional protections. Next, the class will consider how certain developments—such as the “incorporation doctrine” following adoption of the 14th Amendment and competing theories of constitutional interpretation—have affected the meaning of the Bill of Rights over time. Finally, students will examine specific provisions of the Bill of Rights, looking at their historic origins and tracing their meanings throughout American history.

**Module 2: Suffrage and the Constitution**

An online course, to be taken Summer 2015

 When the Framers of the Constitution deliberated on who should be given “the right of suffrage,” James Madison acknowledged that it would be difficult to establish one uniform rule that would satisfy the diverse practices and opinions prevailing throughout all thirteen states. The Constitution therefore allowed each state to decide its own qualifications for voting, but it indelibly tied the qualifications required to elect the representatives in the Lower House of the state legislature with those required to elect members of the House of Representatives. Although the Constitution still allows states to curtail the franchise for certain reasons, it has moved steadily in the direction of universal suffrage since its adoption. After the Bill of Rights was passed, seven of the next seventeen constitutional amendments either encouraged or required an expansion of the franchise. All of these amendments curtailed the states’ discretion when deciding who could vote and for which elections.

 In this online module, students will examine the rich history that has expanded the right to vote since our nation’s founding, as well as the historical reasons for restricting suffrage. The student will examine all of those issues of suffrage that have been resolved through constitutional amendments (such as restrictions based on race, sex, and age). But students will also explore some issues that have been resolved through the ordinary legislative process (such as suffrage restrictions for Native Americans, resident aliens, and some religious groups). Finally, the online component will examine current issues related to suffrage (such as voter participation, representation for citizens residing in Washington, D.C. and U.S. territories, and suffrage restrictions for prisoners and ex-felons).

**Module 3: The Constitution and Citizenship**

Taught by Dr. Lynn Uzzell and one other scholar, TBD: November 20–22, 2015

 “Citizenship” is one of those words that is commonly invoked but imperfectly understood. Indeed, the term had an ambiguous meaning within the text of the original Constitution and a troubled history within our nation. Justice Taney exploited that constitutional ambiguity in the infamous *Dred Scott* decision (1857), when he declared that Americans with African ancestry were “not included, and were not intended to be included, under the word ‘citizens’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” The Framers of the 14th Amendment intended to clarify and correct much of that ambiguity, but confusions and disagreements continue to this day. Indeed, most of the recent op-eds, essays, and books that have been written on the subject of citizenship remain vague or incomplete, and they are often infused with partisan rancor. This module on The Constitution and Citizenship will seek to unfold the many layers and textures inherent in the idea of citizenship in America. It will track the constitutional meaning(s) of citizenship throughout America’s history and elucidate, as much as possible, what remains confusing and controversial about this topic today.

**II. Objectives of the Course**

 By the end of the course, all students should be able to discuss intelligently the progress of rights within the context of America’s constitutional history. They should understand the obstacles that hindered an enjoyment of equal rights by all Americans, and the process whereby many of those obstacles were finally removed. The course will provide multiple perspectives on some of the most contentious issues concerning rights, which we will discuss and debate together as a class. Students are expected to understand the varying viewpoints and arrive at his or her own informed opinion about the subject. For those students who are also teachers, this course will provide both content and learning techniques that can be applied to the classroom.

 Each student will be required to demonstrate a basic competence in the course content through the tests given at the conclusion of each module. But the student’s deeper grasp of the subject will be demonstrated in a research paper which addresses a more specialized topic relating to the protection of rights under the Constitution, a paper which analyzes and evaluates both primary and secondary source material to develop and defend its thesis.

**III. Assignments and Grading**

 Because this course is based on Montpelier’s module schedule, it is not possible that the requirements for this course can be completed within the usual semester framework. The individual modules are given over the course of the 2015 calendar year. Exams and papers are due as described below, and extensions on these assignments will be granted only for exigent circumstances and with the approval of the instructor on record.

 **A. Online and On-site Modules and Exams**

 The student must actively participate in each of the three Montpelier modules. Upon completion of each of the three components, the student will take an open-book exam from home and send the answers to the instructor on record via the Center’s Canvas learning platform. The completed exam will be due 2 weeks after the completion of each seminar or online course. Each exam will be worth 10% of the final grade (in other words, the three exams will constitute 30% of the overall grade).

 **B. Final Paper**

 After completing the module participation requirements, the student will write a scholarly 20-page research paper on a topic approved by the instructor on record. The instructor will provide the student with basic guidelines that delineate what a good essay should look like, as well as suggested paper topics, but students are encouraged to write on a constitutional topic of individual interest. Original paper topics must receive prior approval, but they are cheerfully accepted. The term paper is due four weeks after the completion of the third course. The essay is worth 70% of the final grade.

 **A Few Examples of Essay Topics:**

The 1st Amendment prevents Congress from making any law “respecting an establishment of religion, or prohibiting the free exercise thereof.” What does that mean? Are these two requirements in tension or complimentary? How have the meanings of the religious freedom clauses evolved throughout America’s history? Is there one “authentic” interpretation of that phrase? How should religious freedom be protected in America?

What have been the various arguments used throughout American history to restrict suffrage rights? Are any of them legitimate? If yes, then how can we distinguish between a justifiable and unjustifiable disenfranchisement? If not, then what would a fair voting rights policy look like, and does the United States Constitution need to be changed to bring it about? Examine examples from American history, legal interpretations, and the arguments from various voting rights activists to make your case.

What are the rights, duties, privileges, and immunities of citizenship? How are they different from human rights? Who deserves them and for what reason? Is it ever legitimate to deny some rights to some citizens? If so, which ones and under what circumstances? Examine examples from American history, legal interpretations, and the arguments from various rights activists to make your case. Should the Constitution be amended to reflect these realities?

**IV. Texts**

 The online component of the Rights course embeds its own text within the website, as well as providing primary source documents, video, and interactive activities. The remaining reading material will be contained in reading packets to be read in preparation for the on-site modules. Each Montpelier module will provide a separate reading packet, which is included in the cost of the course. The reading material will be available online three weeks before the module, and bound reading packets will be handed out upon the student’s arrival at Montpelier. The packet will be composed chiefly of primary documents, and it will be compiled by the instructor(s) leading that module. Below are representative examples of documents that would be required for the course:

* The Declaration of Independence
* The Articles of Confederation
* The Constitution of the United States
* Passages from political philosophers and jurists influential to the American Founding (Locke, Montesquieu, Blackstone, etc.)
* Selections from the notes of the debates during the Constitutional Convention, the ratifying conventions, or sessions of Congress
* Selected essays from Federalistsand Antifederalists
* Selections from key court cases (such as *Barron v. Baltimore*, *Dred Scott v. Sandford*, and *Shelby County v. Holder*).
* Executive orders, as well as private correspondence and public speeches of American presidents
* 2-3 Additional academic essays per module treating historical or theoretical aspects of the subject