

History of American Democracy

Course Syllabus
Professor David Moss
Fall 2015

HISTORY OF AMERICAN DEMOCRACY (USW 39, HBS 1139)

Professor David Moss

Harvard University, Fall 2015

Mondays and Wednesdays, 3:30-5:00

Location: HBS – Aldrich 207

Today we often hear that American democracy is broken—but what does a healthy democracy look like? How has American democratic governance functioned in the past, and how has it changed over time? This course approaches American history with these questions in mind. Based on the case method, each short reading will introduce students to a different critical episode in the development of American democracy, from the drafting of the Constitution to contemporary fights over same-sex marriage. The discussion-based classes will encourage students to challenge each other's assumptions about democratic values and practices, and draw their own conclusions about what "democracy" means in America. This course is ideal for anyone interested in deepening his or her practical and historical understanding of the American political process, and for those interested in gaining experience with the case method of instruction frequently used in business and law schools.

Note: This course, when taken for a letter grade, satisfies the General Education category of United States in the World, as well as the requirement that one of the eight General Education courses also engage substantially with Study of the Past. When taken for a letter grade, it also meets the Core area requirement for Historical Study A.

COURSE ORGANIZATION AND OBJECTIVES

The course content surveys key episodes in the development of democratic institutions and practices in the United States from the late 18th century to today. Cases are presented chronologically but are designed to address a set of unifying topics: (1) the intellectual foundations of American democracy, (2) the evolving definition of "the people" in the political process, (3) the designs and functions of political institutions, both public and private, (4) the elements of democratic culture in the United States, (5) the intersection of democratic and market forces, and (6) the tension between state coercion and individual liberty.

A Note on the Case Method: Because this course will be taught by the case method, students should be aware of how this approach differs from typical approaches used in other undergraduate history courses. Rather than providing a full survey of American history or ingraining the discipline's methods, a case-based approach focuses on key problems and decisions that defined contemporary experience across the nation's history. The case method also emphasizes a different skillset than is typical in the undergraduate classroom by regularly placing students in the position of decision-makers.

The limited scope of a particular decision (e.g., whether Theodore Roosevelt should intervene in a major dispute between industry and labor in 1902) does not imply that the case associated with each class session will simply report on a narrow historical episode. Rather, each case will frame the core decision within a broader historical context (such as the broader history of industrial-labor relations in the U.S.), which may span decades or even centuries. Although the cases in the course,

being historical in nature, address decisions that have already been made, many of the central themes and topics that they raise are ones that continue to resonate today. Better understanding such historical patterns will offer students—as citizens, scholars, and even policymakers—critical lessons for thinking about the challenges facing our democracy now, and what sorts of changes and reforms may be needed going forward.

GRADING AND ASSIGNMENTS:

The grade for the course will be based on class participation (40%), two short writing assignments (10% each), and one final research paper (40%). This course **will not** follow the Business School convention of grading on a forced curve for undergraduates. Successful class participation will require regular attendance, thorough preparation, and active engagement in class discussions and debates. Readings will consist of case studies prepared by Professor Moss and co-authors, and nearly all of the cases will be available to students on the course website. Each case is typically about 15 pages of text plus tables and graphs and has been prepared specifically for use in this course.

The two short papers will ask students to relate historical events addressed in the class to current-day challenges facing the United States and/or other democracies. Each of these essays should be no longer than 750 words, and should advance an evidence-based argument in the spirit of a newspaper op-ed.

The final research paper will typically be approximately 12-15 pages (12 point font, double spaced) and will advance an argument on a topic of the student's choosing that draws on course themes and readings. Time will be set aside in class for students to discuss their paper topics and test ideas in small groups.

ACADEMIC INTEGRITY

It is expected that all written work that students submit for the course will be their own (i.e., the exclusive work of the listed author or authors). Co-authoring a paper is an acceptable form of collaboration in the course, but students wishing to co-author assignments with other students must obtain permission from the instructor (or Course Head) in advance. Other forms of collaboration on assignments, including but not limited to sharing research and editing, must also be discussed with and approved by the instructor (or Course Head) before the assignment is submitted.

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

Students needing academic adjustments or accommodations because of a documented disability must present their Faculty Letter from the Accessible Education Office (AEO) and speak with the professor by the end of the second week of the term, September 11th. This date is important to ensure the Course Head's ability to respond in a timely manner. All discussions will remain confidential, although the Course Head may contact the AEO to discuss appropriate implementation.

HISTORY OF AMERICAN DEMOCRACY
Professor David Moss
Fall 2015
Mondays and Wednesdays, 3:30-5:00
Location: Aldrich 207

Class 1 (Sep 2)	Introduction An Australian Ballot for California?	(Draft)
Class 2 (Sep 9)	Governing an Expansive Republic: James Madison and the “Federal Negative” (1787)	(Draft)
Class 3 (Sep 16)	Implied versus Explicit Powers: Debate over the Bill of Rights and the First Bank of the United States (1787-1791)	(Draft)
Class 4 (Sep 21)	Democracy, Sovereignty, and the Struggle over Cherokee Removal	(Draft)
Class 5 (Sep 28)	Banking and Politics in Antebellum New York (1838)	(Draft)
Class 6 (Sep 30)	Wealth, Property, and Representation: A Crisis of Legitimacy in Rhode Island (1844)	(Draft)
Class 7 (Oct 5)	Democracy and Debt: Debating a Balanced Budget Amendment in Antebellum New York (1846)	(Draft)
Class 8 (Oct 7)	An Informed Citizenry: Fight over Public Education (1851)	(713077)
Assignment:	<i>First Short Paper Due</i> October 9, 12:00 PM	
Class 9 (Oct 14)	The American System: Building a New Economy and the Politics of Trade (1857)	(704036)
Class 10 (Oct 19)	A Nation Divided: The United States and the Challenge of Secession (1861)	(Draft)
Class 11 (Oct 21)	Race, Justice, and the Jury System in Post-Bellum America (1880)	(Draft)
Class 12 (Oct 26)	Labor, Capital, and Democracy: The Anthracite Coal Strike of 1902	(Draft)
Class 13 (Oct 28)	Power of the Press: Muckraking, Interest Groups, and Federal Regulation (1906)	(Draft)

Class 14 (Nov 2)	Direct Democracy or Directed Democracy? The Logic and Limits of Political Reform in the Progressive Era (1918)	(Draft)
Class 15 (Nov 4)	Democracy, Technology, and the Market: The Politics of Radio Regulation (1926)	(Draft)
Class 16 (Nov 9)	Federal Power, Public Exposure, and the Financial System: The Pecora Investigation (1932-33)	(711046)
Assignment:	<i>Second Short Paper Due</i> November 6, 12:00 PM	
Class 17 (Nov 11)	Martin Luther King and the Struggle for Black Voting Rights	(Draft)
Class 18 (Nov 16)	Democracy and Women's Rights in America: The Fight over the ERA	(Draft)
Class 19 (Nov 18)	Manufacturing Constituencies: Race and Redistricting in North Carolina (1994)	(Draft)
Class 20 (Nov 23)	Influence, Money, and Speech: The Supreme Court and <i>Citizens United</i> (2010)	(Draft)
Class 21 (Nov 30)	Majoritarian Rule vs. Tyranny of the Majority: California's 'Prop 8' and the U.S. Supreme Court (2013)	(Draft)
Class 22 (Dec 2)	Concluding Lecture	
Assignment:	<i>Final Research Paper Due</i> December 8, 11:59 PM	

Session Descriptions
and
Assignment Questions

Class 1:
September 2, 3:30 – 5:00 PM, Aldrich 207

Topic

Short Introductory Lecture – Course Overview

Sample Case Discussion: An Australian Ballot for California?

In early 1891, California lawmakers were considering a plan to reform the state's elections through the introduction of an "Australian" ballot. Under this new system, candidates from all qualifying parties would appear on official ballots, which would be printed by county and municipal governments and which voters would ultimately fill out in secret. This would mark a substantial departure from the existing way in which votes were cast in California, or for that matter in most of the United States. Traditionally, political groups prepared and distributed party-line ballots, called "tickets," for voters to submit at the polls. Because each party ticket was visually distinctive (in most cases, distinguished by a particular color), it was easy for observers to determine how individual citizens had voted as they handed in their ballots. Closely monitoring the ballot boxes, representatives of the party "political machines" frequently paid supporters who voted for the machine ticket and sought to punish those who did not. Supporters of the Australian ballot promised it would end these abuses, bring greater secrecy and honesty to California's elections, and loosen the grip of party machines on the state and municipal governments.

Despite some opposition in Republican circles, the Republican-dominated Assembly and Senate both passed the ballot bill by large margins in early March and sent it on to the Republican governor, Henry Markham, for his signature. If Markham signed the bill into law, California would join a growing roster of U.S. states using the new, secret ballot, and reformers would claim another victory in their battle against political machines.

Materials

An Australian Ballot for California? (Draft)

Assignment

1. Why did political parties play such a large role in the administration of elections in the nineteenth century? What were the main advantages and disadvantages of the voting/ballot system that emerged in the U.S. before the advent of the Australian ballot?
2. If you were advising Governor Henry Markham of California in 1891, would you have recommended that he sign or veto the ballot reform bill? What were the strongest arguments for and against the bill? Were there any better alternatives that you could have recommended?
3. Looking forward from 1891, what would you predict the long-term consequences of the Australian ballot might be if broadly adopted in the United States? What could go right, and what could go wrong?

Class 2:
September 9, 3:30 – 5:00 PM, Aldrich 207

Topic

Governing an Expansive Republic: James Madison and the “Federal Negative” (1787)

On June 8th, 1787, at the Constitutional Convention in Philadelphia, delegates from across the United States began discussing a curious proposal to expand federal power over the states. James Madison of Virginia had suggested that the new constitution include a “federal negative,” which would give Congress the authority to veto any law passed by a state legislature. He viewed this as a critical safeguard against unchecked power at the state level. In late May, Madison’s Virginia delegation had presented a plan for the constitution that included a watered-down version of the negative. Now, in June, Charles Pinckney of South Carolina revived the original version, calling it “the corner stone of an efficient national Government.” Not everyone agreed with Pinckney’s assessment, however. Opponents charged that Madison’s federal negative would allow Congress to “enslave the states” and let “large States crush the small ones.” Indeed, the question of how much power – and what types of power – to vest in the federal government went to the very heart of the debate that unfolded that summer. Whether Madison could persuade his fellow delegates at the Constitutional Convention was far from clear, but there could be little doubt how much was at stake as the new nation struggled to find its footing in Philadelphia.

Materials

James Madison, the ‘Federal Negative,’ and the Making of the U.S. Constitution (Draft)

Assignment

1. What were the biggest problems facing the United States in 1786-87?
2. Why did James Madison think more federal power was the answer? Was he right?
3. Would you have supported Madison’s proposal for a “federal negative”? What was at stake?

Class 3:
September 16, 3:30 – 5:00 PM, Aldrich 207

Topic

Implied versus Explicit Powers: Debate over the Bill of Rights and the First Bank of the United States (1787-1791)

In late February, 1791, Treasury Secretary Alexander Hamilton submitted a report to President Washington defending his recent proposal for a national bank, which he hoped would bolster the American economy and assist the federal government in managing its finances. Congress had approved the plan, but some of the President's advisers warned that the federal government lacked the authority to establish a bank because the Constitution did not grant it the power to charter corporations. In his rebuttal, Hamilton argued that Congress had "implied powers," not specifically listed in the Constitution, which lawmakers could use when necessary to achieve legitimate goals. Because the proposed bank would assist Congress in executing its fiscal responsibilities, Hamilton believed that incorporating the bank fell well within Congress's constitutional authority.

As President Washington considered these arguments, he knew that his decision to sign or veto Hamilton's bank bill would extend far beyond the issue of the bank itself. If he approved, his assent would potentially encourage the broad exercise of implied powers in the future. A veto, on the other hand, would send the message that Congress had no authority beyond the powers explicitly listed in the Constitution. Either way, President Washington would be lending his considerable weight and prestige to one side of this seminal constitutional debate, and he was well aware that much was riding on his decision.

Materials

Battle Over a Bank: Defining the Limits of Federal Power Under a New Constitution (Draft)

Assignment

1. Why did Hamilton and Madison, who had teamed up in support of ratifying the Constitution in 1787-1788, disagree so vehemently about Hamilton's proposal for a national bank just a few years later? How important was this disagreement?
2. What, if anything, did the bank controversy have to do with the debate over the Bill of Rights? Why was the Bill of Rights initially controversial? Should it have been?
3. If you were advising President Washington in 1791, would you have recommended that he sign or veto Hamilton's bank bill? If other advisors disagreed with you, how would you defend your recommendation?

Class 4:
September 21, 3:30 – 5:00 PM, Aldrich 207

Topic

Democracy, Sovereignty, and the Struggle over Cherokee Removal

By the mid-1830s, the U.S. Government and the State of Georgia had for years been pushing the Cherokees to turn all of their territory over to white settlers and move west, yet it appeared that most Cherokees wanted to keep their ancestral homeland. In October 1835, the Cherokee General Council had named a committee of leaders to work out a mutually agreeable solution with the federal government in Washington. At about the same time, however, U.S. Indian Commissioner John Schermerhorn had called a meeting at New Echota, Georgia with a separate committee of Cherokees who he believed would be more willing to “remove” the entire tribe to the West. This separate committee ultimately agreed to the Treaty of New Echota on December 29, 1835. Under the treaty, the Cherokees would cede all of their eastern territory in exchange for \$4.5 million, land in the West, and other sundry benefits.

U.S. President Andrew Jackson, who had battled Native American tribes during much of his former military career, was eager to oust the Cherokees from the eastern states. However, several members of the Senate criticized the Treaty of New Echota as a “phantom treaty,” claiming that it was signed by an illegitimate council without the consent of the Cherokee people. Approving the treaty, they insisted, would be a grave wrong against the Cherokee Nation and its official government, which the United States had long recognized.

On May 18, 1836, the U.S. Senate finally put the Treaty of New Echota to a vote. If ratified, the treaty would bind all Cherokees to the decisions of the committee at New Echota, and the Cherokee Nation would have to leave its native land.

Materials

A Tale of Two Nations: The United States and Cherokee Removal (Draft)

Assignment

1. What strategy (or strategies) did the Cherokee adopt to protect their Nation? What is your assessment of their strategy (or strategies)? Were there any better options available at the time that you would have recommended?
2. If you were advising lawmakers in Congress who opposed Cherokee removal, what recommendations would you have made to help them maximize the chances of achieving their objective?
3. Do you expect the U.S. Senate will ratify the Treaty of New Echota in May of 1836? What – if anything – does this tell us about the nature of U.S. democracy in the 1830s?

Class 5:
September 28, 3:30 – 5:00 PM, Aldrich 112

Topic

Banking and Politics in Antebellum New York (1838)

After a long period of solid Democratic control, Whigs secured a majority of seats in the New York State Assembly in 1837, the same year that a major financial panic had crippled the banking system and shaken public confidence in the state's governance. The next year, Whigs proposed a radical new system of "free banking," in which special charters would no longer need to be obtained from the legislature for a bank to commence operations. Critics of the old chartering system, which required legislative approval of every new bank, charged that it was an inefficient and crooked process that delivered banking monopolies to the powerful and rewarded politicians with kickbacks. This view, shared by many voters, was supported by widespread corruption allegations, the occasional fraud trials, and the connection of the chartering system with the Democratic bloc known as the Albany Regency.

Skeptics, including Governor Marcy, a member of the crumbling Albany Regency, had reservations about displacing the chartering mechanism. Marcy's Democrats had long relied on their capacity to grant special bank charters as a bulwark of party strength and discipline. From a policy standpoint, the governor had long stated his belief that all banks that created money by issuing banknotes should be required to obtain government charters, and he had expressed apprehension about chartering any new banks during the financial chaos of the late 1830s. A rush of new banks was likely to be unleashed if the free banking bill became law. Would this stabilize or further destabilize the state's banking system? The decision facing Governor Marcy was not easy: he could quell public ire by signing the Whigs' bill into law, or he could veto the legislation and seek a less extreme response to the crisis.

Materials

Banking and Politics in Antebellum New York (Draft)

Assignment

1. What were the biggest problems with New York's banking system over the first three decades of the nineteenth century?
2. Was the Albany Regency good or bad for the State of New York? What were its greatest strengths and weaknesses?
3. Why did the Whigs propose free banking as soon as they took control of the New York State Assembly? Was this proposal driven mainly by economic or political considerations?
4. Should Governor Marcy sign or veto the free banking bill?

Class 6:
September 30, 3:30 – 5:00 PM, Aldrich 207

Topic

Wealth, Property, and Representation: A Crisis of Legitimacy in Rhode Island (1844)

“Rhode Island is the theatre of a great and angry controversy,” wrote an observer in nearby Boston in 1842. “It is a collision not of men, but of *principles*.” He did not exaggerate. In a still-young nation that had recently undergone a seismic shift into greater democratic rights for the Jacksonian “common man,” Rhode Island continued to be governed by a charter issued in the seventeenth century by King Charles II. The small New England state now seemed an anachronism, the last holdout of a colonial past dominated by a landed aristocracy. The “collision ... of *principles*,” to which the Boston observer referred, was nothing less than a contest between two rival state governments—one claiming the right of law (the charter government), the other claiming the right of popular sovereignty (the rebel government).

The leader of the rebel government seemed an unlikely rallying figure for the landless masses. Thomas W. Dorr, putative Governor of Rhode Island, was an Exeter- and Harvard-educated lawyer and the first-born son of a wealthy merchant. As a member of the Rhode Island General Assembly, Dorr had fought fiercely but in vain to relax his state’s voting qualifications, which were the most restrictive in the country. Finding little support within the system, Dorr resolved to circumvent it. In 1840 he joined the Rhode Island Suffrage Association, which carried out an illicit constitutional convention the following year. The draft constitution that emerged ultimately won approval from a majority of white males in the state as part of an extralegal ratification process. The Suffrage Association, reinvented as the “Suffrage Party,” proceeded to hold elections and inaugurate a new government in May 1842. Dorr assumed the Governorship, knowing that doing so would incur charges of treason. By May 16, having received pledges of military support from New York and facing an arrest warrant in his native Rhode Island, Dorr had to decide on his next move.

Materials

Property, Suffrage, and the “Right of Revolution” in Rhode Island, 1842 (Draft)

Assignment

1. Why did Rhode Island have the most restrictive suffrage requirements of any state in the early 1840s? Had this always been the case?
2. How do you assess the suffrage movement’s strategy and tactics in Rhode Island up to 1842? Had its leaders made any big mistakes?
3. What should Dorr do in May 1842? Should he consider using force to achieve his objectives?

Class 7:
October 5, 3:30 – 5:00 PM, Aldrich 207

Topic

Democracy and Debt: Debating a Balanced Budget Amendment in Antebellum New York (1846)

On September 23, 1846, delegates to New York State’s constitutional convention prepared to vote on a proposal that its principal proponent, Michael Hoffman, conceded would be “a serious change in our form of government.” The proposal would place tight restrictions on state debt, which had increased sharply over the previous eight years. Anti-debt reformers had long agitated for such an amendment. The version presented to the convention in 1846 would place a cap on state debt of one million dollars, which could only be exceeded for two reasons: if lawmakers faced an extraordinary emergency, such as an invasion or insurrection, or – alternatively – if they (1) contracted the additional debt for a specific purpose, (2) enacted an associated tax sufficient to pay off the additional debt within 18 years, *and* (3) obtained approval for the tax from a majority of voters in a state-wide referendum. Critics denounced the idea of a debt-restriction amendment as unnecessary, unworkable, and subversive of republican government; they also objected that it would reverse three decades of state policy regarding “public improvements,” dating back to 1817, when New York undertook the celebrated Erie Canal. Yet popular support for a constitutional restriction on state borrowing appeared to be rising. Now, at last, the convention was about to vote on the proposal.

Materials

Debt and Democracy: The New York Constitutional Convention of 1846 (Draft)

Assignment

1. How serious were New York State’s fiscal problems in 1841? What had caused these problems?
2. Would you have supported Michael Hoffman’s “Stop and Tax” bill in 1842? Why or why not?
3. Do you believe a constitutional convention was required in New York State in 1846? Would you have supported Hoffman’s proposal to restrict state borrowing?

Class 8:
October 7, 3:30 – 5:00 PM, Aldrich 207

Topic

An Informed Citizenry: The Fight over Public Education (1851)

On March 26, 1849, the New York State legislature passed “An Act Establishing Free Schools throughout the State.” The law would abolish tuition payments (or “rate bills”) that had previously been necessary to fund primary schools, and it would require school districts to levy taxes to make up the difference. The 1849 act also specified that these provisions would only take effect if approved in a state-wide referendum. Although the Free School Law (as it was known) was ultimately approved by a large majority of the state’s voters in November, opposition remained fierce. Detractors complained especially about the burden of new taxes and the injustice of having to support other people’s children. Some critics also charged that the law was unconstitutional because—by requiring a referendum—the legislature had delegated its exclusive law-making authority to the people. Voters rejected an effort for repeal in a second referendum in November 1850, but the struggle continued. In early 1851, two state lawmakers put forward a bill that would eliminate the key funding provision of the 1849 law and reinstate tuition payments. After having approved the Free School Law in 1849 and seen the electorate endorse it twice in two years, the state legislature once again faced the decision of who should pay for primary education across the state and, ultimately, how public their schools should be.

Materials

The Struggle Over Public Education in Early America (HBS Case 713-077)

Assignment

1. Why did the so-called Common School Movement arise when it did in the United States (in the early nineteenth century)? What factors or forces most account for its development?
2. What were the best arguments for and against tax-financed common schools during the early nineteenth century?
3. What is your assessment of the motives behind the Common School Movement and the reformers who led it? How, if at all, does this affect your assessment of the reforms they were advocating?
4. Would you have supported or opposed the proposal in early 1851 to reinstate tuition payments (rate bills) in support of primary education in New York State? Why?

Class 9:
October 14, 3:30 – 5:00 PM, Aldrich 207

Topic

The American System: Building a New Economy and the Politics of Trade (1857)

When Congress passed the Tariff of 1857, lowering tariff rates across the board, there could be little doubt that American protectionists were in retreat. Within just a few months, however, demands for tariff protection had returned with a vengeance as the Panic of 1857 shook the American economy. Once again, a decision had to be made on the direction of U.S. economic policy. What had accounted for American economic growth since the ratification of the Constitution in 1788? Had high tariffs been a help or a hindrance? These were the sorts of questions that policymakers needed to answer as they reassessed their policy options in the midst of a severe economic crisis in 1857.

Materials

The American System (HBS Case 704-036)

Assignment

1. What accounts for the nation's relatively strong economic performance from 1789 to 1857? Be sure to consider a range of factors, from natural endowments to the legal system. Which factors, in your view, may have been especially important?
2. What is your assessment of economic policy during these years, both state and federal? What sorts of policies were most constructive (or destructive)? Would you have supported or opposed the so-called American System?
3. To what extent did the nation's courts make economic policy during these years? Was such judicial activity consistent with America's democratic values?
4. Imagine that you were a member of Congress in 1857. Prior to the panic, would you have sought to raise tariffs, lower tariffs, or leave tariff rates unchanged? Would you have altered your position after the panic struck? Why or why not?
5. What were the politics of trade policy in America through the first half of the nineteenth century? Did the politics of trade policy facilitate the nation's economic development or impede it?

Class 10:
October 19, 3:30 – 5:00 PM, Aldrich 207

Topic

A Nation Divided: The United States and the Challenge of Secession (1861)

Americans elected Abraham Lincoln as the nation's first Republican president in November of 1860. Northern political leaders had formed the Republican Party only a few years before, in large measure to combat the spread of slavery. Southerners had long been wary of Northern hostility toward their "peculiar institution," and Lincoln's 1860 victory proved to be the last straw in this sectional rivalry that had deeply influenced American culture and politics since the earliest days of the republic.

By the time of Lincoln's inauguration five months later, in March 1861, seven Southern states had announced their decision to secede from the Union. Lincoln rejected secession as unlawful and pledged that his government would continue to exercise its authority, as best it could, in the rebellious states. A crisis in South Carolina, the first state to secede, tested Lincoln's mettle in the opening days of his presidency. Federal troops still held Fort Sumter in Charleston harbor, but their supplies were running low. Lincoln would either have to evacuate the fort or risk war by sending provisions. The new president understood the weight of the choice he faced: nothing less than the survival of the Union was at stake.

Materials

A Nation Divided: The United States and the Challenge of Secession (Draft)

Assignment

1. What factors most account for the persistent political tension between North and South in the United States from 1789 to 1860?
2. Why did democratic governance ultimately fall short in this case? Was armed conflict between North and South inevitable, or could the political tensions between North and South have been managed more effectively in prior years?
3. What should President Lincoln do in early April, 1861? Should he evacuate or resupply Fort Sumter? More broadly, what strategy would you have recommended he follow in confronting the challenge of secession?

Class 11:
October 21, 3:30 – 5:00 PM, Aldrich 207

Topic

Race, Justice, and the Jury System in Post-Bellum America (1880)

In December 1877, an all-white grand jury in Patrick County, Virginia, indicted two black teenagers, Lee and Burwell Reynolds, for killing a white man. After a series of trials, an all-white trial jury convicted Lee of second-degree murder and sentenced him to prison. A separate all-white jury could not reach a verdict on Burwell, and he was returned to jail to await another trial. During the proceedings, the defendants' attorneys had protested to the county judge that their clients could not get fair trials from all-white juries. They also complained that although black men were allowed on juries by Virginia law, no blacks were even in the jury pools. The lawyers asked that special jury pools be created for their clients, but the judge denied their request. Finally, the lawyers petitioned a federal judge in the area, Alexander Rives, to move the trials to his court.

In December 1878, Judge Rives agreed to the petition and had the Reynolds brothers removed from state to federal custody. Not long afterward, he charged two federal grand juries, both interracial, to investigate whether Virginia state courts had excluded blacks from juries. This, he argued, would be a violation of both the 14th Amendment to the Constitution (1868) and the federal Civil Rights Act of 1875. In February and March 1879, the grand juries indicted 14 Virginia county judges, among them the judge in the Reynolds trials, for keeping the jury pools they supervised all white.

These cases provoked intense national debate. Much of it concerned the problem of federal power over the states and the interpretation of the Constitution and recent civil rights laws. But beneath these concerns lay questions, debated for centuries, about what constituted a fair trial before a jury of "peers," and how both the right and responsibility to serve on a jury intersected with citizenship, especially in a democracy. Both cases were ultimately heard by the United States Supreme Court in October 1879. It was now up to the nine justices to decide.

Materials

Race, Justice, and the Jury System in Postbellum Virginia (Draft)

Assignment

1. What is the role of juries in a democracy?
2. Did Judge Rives act properly in removing the Reynolds brothers from state to federal custody? Was he right to launch grand jury investigations of county judges in Virginia for allegedly excluding blacks from jury pools? If you had been a justice on the U.S. Supreme Court in 1879, how would you have ruled on *Virginia v. Rives* and *Ex Parte Virginia*?

Assignment, continued (for Class 11)

3. What do the Reynolds cases tell us about the challenge of rebuilding a functioning social and political system in the former Confederate states following the Civil War?
4. Based on what you know about Reconstruction, do you approve or disapprove of the choices Congress made?

Class 12:
October 26, 3:30 – 5:00 PM, Aldrich 207

Topic

Labor, Capital, and Democracy: The Anthracite Coal Strike of 1902

In late October 1902, President Theodore Roosevelt felt relieved after months of anxiety and uncertainty. Workers in Pennsylvania's anthracite coal industry had been on strike for five months, threatening to leave eastern cities in the cold without enough heating fuel for the winter. Anthracite workers and business owners had finally reached an agreement after months of stalemate, and anthracite production resumed on October 23. The agreement – the first of its kind – put decision-making power in the hands of a federal commission, appointed by the president and empowered to determine terms of employment and various operational questions in the anthracite region. After a week-long investigation in the mines, the commission began hearing testimony from hundreds of representatives of the workers and their employers, the mine operators. The hearings finally closed in February 1903, after which the commission began formulating its final judgments.

Members of the commission knew that their work would set an important precedent for industrial governance in the years ahead. Past U.S. presidents had helped put down strikes that threatened federal property or public safety, but the anthracite strike of 1902 marked the first time the government acted to resolve a strike both without force and without such a clear legal justification. The decisions of the commission would therefore have important ramifications not only for the anthracite industry, but potentially for American business–labor relations more generally. With copious amounts of data, testimony, and research to inform them, the commission members began the process of deciding how an American industry should, and would, operate.

Materials

Labor, Capital, and Government: The Anthracite Coal Strike of 1902 (Draft)

Assignment

1. Why did anthracite workers go on strike in 1902? What were their main objectives? Were they well positioned to achieve these objectives?
2. Why did President Roosevelt get involved in this dispute? Was he right to do so? Was he right to appoint a commission?
3. If you had been a member of the commission, how would you have assessed the relative merits of the workers' and employers' arguments? What sort of settlement would you have supported?
4. Looking back on the anthracite strike and the long history of industrial-labor relations in the United States (up through 1902), what advice would you have given to labor leaders such as John Mitchell and Samuel Gompers as they contemplated the best strategy for organized labor going forward?

Class 13:
October 28, 3:30 – 5:00 PM, Aldrich 207

Topic

Power of the Press: Muckraking, Interest Groups, and Federal Regulation (1906)

In early June 1906, the House Committee on Agriculture heard testimony from two investigators appointed by President Theodore Roosevelt to verify allegations of unsanitary conditions at Chicago slaughterhouses that had appeared in Upton Sinclair's recent novel, *The Jungle*. Although the investigators confirmed many of Sinclair's assertions, members of the Agriculture Committee proved skeptical, challenging the investigators on numerous details. The hearing was part of a two-month congressional debate over possible meat inspection legislation, brought about by an unusual alliance between Roosevelt and Sinclair.

After extensive and often heated communications between the House, Senate, and White House, a new meat inspection bill, not yet passed by either the House or the Senate, arrived on the president's desk for his preliminary review on June 18, 1906. It was a compromise of sorts—a mixture of ideas from all sides that had grown out of a series of proposals and counterproposals through May and June. The bill, crafted by members of the House Agriculture Committee, satisfied the president in some respects. In particular, it mandated inspection of meat products transported across state lines. Yet it also lacked provisions that Roosevelt favored, including dating of canned meats and fees on meatpackers to fund the inspections. Although the bill was hardly ideal from Roosevelt's perspective, he very much wanted to secure a statute before Congress adjourned only twelve days later. If he insisted on further negotiations, the momentum for a law spurred by *The Jungle* might dissipate, derailing the entire effort. However, if he endorsed the compromise bill, he would have to sell it to reformers in the Senate who were insisting on stricter legislation. With the congressional session rapidly winding down, Roosevelt had to decide whether to send the bill back to Capitol Hill with his blessing, or reject it and hope for something better.

Materials

The Jungle and the Debate over Federal Meat Inspection in 1906 (Draft)

Assignment

1. Was a meat inspection law necessary in 1906? Why or why not? (If yes, what provisions would you have deemed most necessary?)
2. After reading George Stigler's characterization of regulatory capture (reprinted in Appendix II of the case), do you believe the bill that arrived on President Roosevelt's desk on June 18 had been captured by industry interests? If so, why and to what extent? If not, why not? More broadly, does Stigler's model accurately characterize the political dynamic(s) at play in this case? Please think especially carefully about these questions, since they are likely to be a major focus of the class discussion.
3. What should President Roosevelt do on June 18, 1906? Should he accept the revised bill from the House Agriculture Committee and try to sell it to skeptics in the Senate, or should he send it back to the House and insist on further revisions and negotiations?

Class 14:
November 2, 3:30 – 5:00 PM, Aldrich 207

Topic

Direct Democracy or Directed Democracy? The Logic and Limits of Political Reform in the Progressive Era (1918)

On Election Day in 1918, Massachusetts voters would have to decide not only on their preferred candidates for governor and U.S. Senator, but also whether or not to approve 19 proposed amendments to the state constitution. By far the most controversial of these would establish a state process of initiative and referendum. The initiative would empower private citizens to write both laws and constitutional amendments, and pass them, even over the opposition of a majority of the state legislature. The referendum would allow voters to rescind laws that the legislature had passed. Behind this proposed amendment lay nearly three decades of agitation, both in the state and nationally, for “direct democracy” in America.

The initiative and referendum—or “I&R” for short—had become a key demand of progressivism, the diverse movement for economic, social, and political reform that swept the nation for nearly two decades after 1900. By 1918, 19 states, mostly in the West, and hundreds of counties and municipalities, including a number of cities in Massachusetts, had adopted some form of I&R. Opposition to a statewide I&R provision in Massachusetts, however, remained fierce. Opponents claimed it would threaten the rights of minorities, give undue influence to small but well organized interest groups, and place needless burdens on voters. Proponents urged the people to empower themselves and take back control of the state from the “invisible government” of party bosses and corporate lobbyists. Now, with the election approaching, Massachusetts voters would have to decide.

Materials

Direct Democracy or Directed Democracy? The Battle over the Initiative and Referendum in Massachusetts (1918) (Draft)

Assignment

1. Why did the initiative-and-referendum movement gain traction in so many states during the first two decades of the twentieth century?
2. If you had been a Massachusetts voter in November 1918, would you have favored or opposed the proposed initiative-and-referendum amendment to the state constitution? Be prepared to defend your answer.
3. Would you have expected to see particular winners and losers if the I&R amendment were adopted in Massachusetts in 1918? If so, who do you expect would be the biggest winners? Biggest losers? Why?

Class 15:
November 4, 3:30 – 5:00 PM, Aldrich 207

Topic

Democracy, Technology, and the Market: The Politics of Radio Regulation (1926)

When the *Titanic* tragically sank on April 15, 1912, potentially life-saving help was delayed as a result of failures in radio communication. In part as a result, Congress moved swiftly to regulate radio, passing the Radio Act of 1912 four months later. Although at this stage radio was still used principally for point-to-point, Morse code communications, the radio scene changed drastically in the early 1920s with the rise of broadcasting, as new private stations began to deliver music and voice programs to a listening public. By 1927, more than 700 stations were battling over 96 available frequencies. This crowding of the broadcast spectrum substantially diminished the quality of radio listening. In fact, the airwaves were so full of interference that many citizens complained that it was often impossible to tune into any station clearly.

In January 1926, both houses of Congress began considering sweeping bills to tackle the problem of interference and the question of how to allocate frequencies for broadcasting. Lawmakers vigorously debated a broad set of issues, ranging from questions of ownership and regulatory authority to the protection of free speech and the prevention of monopoly. A bill endorsed by both the House and Senate emerged a little over a year later, after the interference problem was said to have grown worse, and it finally arrived on the desk of President Calvin Coolidge on February 23, 1927. The bill would create a Federal Radio Commission with the power to license radio stations for two years at a time. President Coolidge had endorsed radio reform in his most recent annual message to Congress but had requested that all regulatory power be granted to the secretary of commerce, not to a commission. Now, with Congress having opted for a commission, he had to decide if the bill before him charted an acceptable path for American radio regulation.

Materials

Regulating Radio in the Age of Broadcasting (Draft)

Assignment

1. What were the biggest points of conflict when Congress debated radio regulation in 1926 and 1927? What in your view were the most important problems that needed to be solved?
2. Why did Congress seek to prevent any and all private ownership of the airwaves in the bill it sent to President Coolidge in February 1927? Was this a mistake?
3. After reading the excerpts from Ronald Coase that appear in the case appendix, please consider his arguments carefully. What exactly was Coase recommending? Was he right that his approach would have offered a better solution than the one Congress pursued?
4. If you were advising President Coolidge in early 1927, would you have recommended that he sign the radio bill? Why or why not?

Class 16:
November 9, 3:30 – 5:00 PM, Aldrich 207

Topic

Federal Power, Public Exposure, and the Financial System: The Pecora Investigation (1932-33)

In 1932, in the depths of the Great Depression, the Senate Banking Committee began a much-publicized investigation of the nation's financial sector. The hearings, which came to be known as the Pecora hearings after the Banking Committee's lead counsel Ferdinand Pecora, revealed how the country's most respected financial institutions knowingly misled investors as to the desirability of certain securities, engaged in irresponsible investment behavior, and offered privileges to insiders not afforded to ordinary investors. During the famous "Hundred Day" congressional session that began his presidency, Roosevelt signed two bills meant to prevent some of these abuses. The first law required companies to register new securities with the Federal Trade Commission (FTC) and to publish prospectuses with detailed information on their business ventures before they could offer new securities to the public. The second law established insurance for bank deposits and forced financial institutions to choose between investment and commercial banking.

Roosevelt also believed that the government should play a more active role in the financial system by regulating national securities exchanges. In February 1934, the president urged Congress to enact such legislation, prompting the introduction of a bill entitled the Securities Exchange Act. If enacted, this bill would force all securities exchanges to register with the Federal Trade Commission, would curtail the size of loans that could be advanced to securities investors, and would ban a number of practices (such as short-selling) that were thought to facilitate stock manipulation. Additionally, the legislation would require that all companies with exchange-listed securities publish detailed business reports as frequently as the FTC desired and would subject any company or exchange deemed to be in violation of the act's provisions to increased legal liability.

Wall Street, represented in particular by New York Stock Exchange (NYSE) President Richard Whitney, took a strong position against the Securities Exchange Act. Whitney was ultimately summoned to testify during the congressional hearings on the Securities Exchange Act in late February 1934. Would he be able to convince lawmakers that the Securities Exchange Act would impose overly burdensome regulations on exchanges and stifle American securities markets, or would his arguments fail to win over those who believed that strict regulations were exactly what financial markets required following the Great Crash?

Materials

The Pecora Hearings (HBS Case 711-046)

Assignment

1. What were the most significant findings of the Pecora Hearings?

Assignment, continued (for Class 16)

2. Do you approve or disapprove of the way Ferdinand Pecora managed the hearings? Why?
3. Overall, did the hearings do more good than harm, or more harm than good? For the financial system and the economy? For the republic?
4. If you had been a member of Congress in 1934, would you have supported or opposed the National Securities Exchange Act, introduced by Senator Fletcher? Please be prepared to defend your answer.

Class 17:
November 11, 3:30 – 5:00 PM, Aldrich 207

Topic

Martin Luther King and the Struggle for Black Voting Rights

In January 1965, Rev. Martin Luther King, Jr., the most prominent leader of the civil rights movement in the United States, launched a campaign of civil disobedience in Selma, Alabama, to bring national attention to disenfranchisement of black voters in the South. On Sunday, March 7, as part of this campaign, 400 mostly black protesters, not including King, tried to march across the Pettus Bridge, just outside Selma, only to be stopped by state troopers and local lawmen, who attacked them with tear gas and clubs. That night, all three national television networks broadcast film of the assault. The broadcasts sparked outrage against the attackers and sympathy protests across the country. King announced that he would lead a renewed march over the bridge on Tuesday, March 9.

By early Tuesday morning, however, King had learned that President Lyndon Johnson, whose help he needed to win federal voting rights legislation, did not want him to march, and that a federal judge had issued a restraining order against the march until a hearing could be held. King thought his supporters' passions were so strong that he might not be able to cancel the march even if he wanted to, yet the modern civil rights movement had never before defied a federal court order. President Johnson's representatives told King that he might avoid violating the judge's order if he marched to the bridge and then turned around before crossing it. King did not say what he would do, however, and few of his supporters knew about the turnaround possibility.

Several hours later, with television cameras recording the unfolding events, King led 2000 marchers to the bridge, where state troopers and lawmen waited. Should he try to turn the march around, which his followers might not accept, or try to cross the bridge, contrary to the president's wishes and a federal restraining order?

Materials

Martin Luther King and the Struggle for Black Voting Rights (Draft)

Assignment

1. Given the 14th and 15th amendments, which guaranteed “equal protection of the laws” and voting rights irrespective of “race, color, or previous condition of servitude” (and which were ratified in 1868 and 1870, respectively), how did racial segregation and large scale disenfranchisement of black citizens become entrenched in the South over such a long period of time?

Assignment, continued (for Class 17)

2. Why did the NAACP (founded in 1909) adopt a *legal* strategy to fight segregation and disenfranchisement in the early decades of the twentieth century? If you had been around at the time, would you have been optimistic or pessimistic about this strategy?
3. How do you explain the timing of the U.S. Supreme Court's 1954 *Brown* decision, which declared that "Separate educational facilities are inherently unequal"? Could this decision have come twenty years earlier? Fifty years earlier? Why or why not?
4. By early 1965, what was the SCLC's strategy for securing comprehensive voting rights legislation? How had King and other leaders of the SCLC come to this strategy? If you had been advising civil rights leaders at the time, would you have endorsed this strategy or recommended a different one?

Class 18:
November 16, 3:30 – 5:00 PM, Aldrich 207

Topic

Democracy and Women's Rights in America: The Fight over the ERA

On the afternoon of June 21, 1982, the Florida Senate prepared to vote on whether to ratify the proposed Equal Rights Amendment (ERA) to the U.S. Constitution, which stated that "Equality of Rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Supporters believed the ERA was essential to winning equal rights for women. Opponents claimed that the proposed amendment would dangerously expand federal power over the states, remove needed protections for women, and undermine the American family.

When Congress had sent the ERA to the states for ratification, in March 1972, it had done so through a joint resolution stipulating that state legislatures had to ratify it within seven years. As the deadline neared, however, only 35 of the requisite 38 states had voted to ratify the amendment, four of which later voted to rescind ratification, though ERA supporters questioned the constitutionality of rescission. In October 1978, Congress extended the ratification deadline to June 30, 1982, a move that ERA opponents denounced as unconstitutional. Over the next several years, one more state voted to rescind, and no new states ratified.

In 1982, ERA supporters made a final push for ratification. That June, the governor of Florida, an ERA supporter, called the state legislature into special session to consider, among other issues, approval of the ERA. If Florida ratified, supporters hoped that Illinois and either Oklahoma or North Carolina would quickly follow. On June 21, thousands of demonstrators, both for and against the amendment, converged on the state capitol in Tallahassee. That morning, the Florida House voted in favor of the ERA, 60 to 58. Now it was up to the Florida Senate to decide whether to ratify the amendment or to kill it.

Materials

Democracy and Women's Rights in America: The Fight over the ERA (Draft)

Assignment

1. Why did it take so long for women to secure the right to vote in the United States? What accounts for the timing of 19th Amendment (1920), which guaranteed that suffrage would "not be denied ... on account of sex"?
2. Why did women's rights activists propose an Equal Rights Amendment? Why was it controversial, including originally among feminists?
3. If you had been a member of the Florida State Senate in June of 1982, which way would you have voted on the ERA? Why?

Class 19:
November 18, 3:30 – 5:00 PM, Aldrich 207

Topic

Manufacturing Constituencies: Race and Redistricting in North Carolina (1994)

In 1993, Mel Watt became one of North Carolina's first black members of Congress in over 90 years, having won election the previous year to the U.S. House of Representatives from the state's newly created Twelfth Congressional District. Yet just three months after taking his seat, the Supreme Court was hearing a suit filed by five white voters claiming that Watt's new district was an unconstitutional racial gerrymander.

Snaking over 160 miles along Interstate 85 between the urban centers of Charlotte and Durham, the Twelfth District narrowed at points to the width of a right-of-way on the highway. The *Wall Street Journal* called it "political pornography." Yet the origins of the district defied such simple characterizations, for it had been drawn amid a tangled web of partisan interests, personal ambition, and federal oversight from the Civil Rights Division of the Department of Justice. In fact, the serpentine Twelfth was a direct response to an order from the Office of the Attorney General of the United States to create a second majority-black congressional district in the state, in accordance with the Assistant Attorney General's reading of Sections 2 and 5 of the Voting Rights Act of 1965.

Yet this was not the concern of the plaintiffs' litigator in *Shaw v. Reno*, the Supreme Court case about Mel Watt's district. Robinson Everett, a retired judge and moderate Democrat, embraced the ideal of a color-blind Constitution, and believed that drawing district lines based on race violated the equal protection clause of the Fourteenth Amendment, regardless of whom such lines benefitted. His first lawsuit lost in district court, but the Supreme Court accepted his appeal. Now, in the spring of 1993, it was up to the nine Justices to decide: was the district that elected North Carolina's first black congressman in nearly a century the product of a good-faith effort to comply with the Voting Rights Act, an unconstitutional racial gerrymander, or perhaps some combination of the two? The implications would be far reaching, however the Court decided.

Materials

Manufacturing Constituencies: Race and Redistricting in North Carolina, 1993 (Draft)

Assignment

1. What are the advantages and disadvantages of the district system for electing members of the U.S. House of Representatives? Why did states converge toward this system? Were there other systems that might have worked as well or better?
2. Should race ever be taken into account in formulating redistricting plans? Why or why not? And, if so, under what conditions?

Assignment, continued (for Class 19)

3. Why was the Voting Rights Act passed in 1965? What were its effects on redistricting, particularly in the Southern states? Was federal oversight of redistricting necessary, in your view?
4. What is your assessment of the various redistricting plans that were proposed in North Carolina in the early 1990s? What were the motivations behind each of these plans? Which plan would you have favored, and why?
5. If you had been a justice on the U.S. Supreme Court in 1993, how would you have ruled in the case of *Shaw v. Reno*? What arguments would you have employed in support of your position?

Class 20:
November 23, 3:30 – 5:00 PM, Aldrich 207

Topic

Influence, Money, and Speech: The Supreme Court and *Citizens United* (2010)

The story of *Citizens United* began in late 2007, as leading members of the Republican and Democratic parties were preparing for the 2008 presidential primaries. Democrats expected a three-way contest in their party between Senator Barack Obama of Illinois, Senator (and former first lady) Hillary Clinton of New York, and former senator John Edwards of North Carolina. In anticipation of the primary season, a nonprofit corporation named Citizens United made a film, *Hillary: The Movie*, which attacked Senator Clinton's character, activities in Washington, and fitness for the presidency. People interviewed in the film described Clinton as "steeped in controversy [and] steeped in sleaze," "deceitful," "ruthless," "vindictive," "venal," "sneaky," and "intolerant."

Citizens United released *Hillary: The Movie* in cinemas and on DVD, but also wished to show the film via on-demand video. Although the group sought to promote the on-demand release with television commercials, it worried that both the on-demand release and the associated advertisements could be deemed illegal—a violation of federal election law that banned corporations and labor unions from using internal treasury funds to assist with the election or defeat of candidates for certain federal offices.

Citizens United pled in District Court that the laws restricting corporate speech violated the constitution. Although the District Court disagreed, the U.S. Supreme Court soon took up the case and, on January 21, 2010, ruled decisively in Citizen United's favor. In a 5-4 decision, the Court declared that limiting corporations' independent expenditures on election speech was unconstitutional. By doing so, the Court overturned two of its own precedents: *Austin v. Michigan Chamber of Commerce* (1990) and part of *McConnell v. Federal Election Commission* (2003). The majority opinion in *Citizens United*, penned by Justice Anthony Kennedy, announced that corporations had First Amendment rights, and that existing federal law improperly infringed on these rights. The four justices in the minority joined in a spirited dissent, written by Justice John Paul Stevens, which expressed deep concern over the influence of corporate spending on elections.

Materials

Citizens United and Corporate Speech (Draft)

Assignment

1. Since the start of the twentieth century, how had federal lawmakers restricted corporate spending on federal elections, and what were the main reasons for these restrictions?
2. Do you agree with the majority decision in *Citizens United*? Why or why not?

Assignment, continued (for Class 20)

3. Irrespective of your own position on the case, please try to identify the strongest arguments on both sides and be prepared to discuss these arguments in detail, based on a close reading of the excerpted opinions and (to a lesser extent) the exhibits.

4. What do you see as the main implications of the *Citizens United* decision for American democracy?

Class 21:
November 30, 3:30 – 5:00 PM, Aldrich 207

Topic

Majoritarian Rule vs. Tyranny of the Majority: California's 'Prop 8' and the U.S. Supreme Court (2013)

When Californians went to the polls in November 2008 and read the text of Proposition 8, some may have had a feeling of déjà vu. After all, those who were old enough to remember had seen precisely the same sentence on the ballot in March 2000, then called Proposition 22, and they had passed it overwhelmingly, 61 to 39 percent. But Proposition 22, a statute, had recently been struck down as unconstitutional by the California Supreme Court. This time, the question for voters was whether to add the same 14 words to the state constitution. The words at the heart of the controversy were: “Only marriage between a man and a woman is valid or recognized in California.”

Californians narrowly approved Proposition 8 by a vote of 52 to 48 percent on November 4, 2008. The result immediately sparked nationwide protests and numerous lawsuits. After the state Supreme Court upheld the initiative as a legitimate expression of the people's authority, proponents of same-sex marriage sought relief from the federal courts, which had amassed a mixed track record on the subject of gay rights. In August 2010, U.S. District Court Judge Vaughn Walker ruled that Proposition 8 violated the Fourteenth Amendment of the U.S. Constitution, and state officials declined to appeal the decision.

However, the official sponsors of Proposition 8, all private citizens, decided to appeal the decision themselves, and they ultimately argued their case, *Perry v. Brown*, before a three-judge panel in the Ninth Circuit. In a 2-1 vote, the appeals court upheld Judge Walker's decision. The petitioners appealed to the U.S. Supreme Court, which agreed to hear the case in December 2012, now renamed *Hollingsworth v. Perry*.

Pending the Supreme Court's ruling, same-sex marriage remained illegal in California. Yet across the country, public opinion toward same-sex marriage was in flux. With much of the public focused on the issue, the fate of same-sex marriage in California—and perhaps nationwide—was now in the hands of the country's nine highest-ranking judges.

Materials

“The Only Legitimate Fountain of Power”: Initiatives, Courts, and Same-Sex Marriage in California (Draft)

Assignment

1. In what sense did Alexander Hamilton see judicial review as a way of protecting the people's will? Is this view consistent with your conception of judicial review? Why or why not?

Assignment, continued (Class 21)

2. What is your assessment of California's process for amending its constitution? How does this compare with the process in Massachusetts? Are there reasons for preferring one approach over the other?

3. After California voters approved Proposition 8 in November 2008, did proponents of same-sex marriage have any options other than challenging the measure in federal court? If you had been advising proponents of same-sex marriage, what strategy would you have recommended?

4. Imagine you were a justice on the U.S. Supreme Court in 2012. Would you have favored hearing *Hollingsworth v. Perry*? Why or why not? Once the Court agreed to hear the case, what would have been your position on it – that is, how would you have wanted the Court to rule? Be prepared to defend your position.

Class 22:
December 2, 3:30 – 5:00 PM, Aldrich 207

Topic

Concluding Lecture