**HARVARD UNIVERSITY**

**HARVARD EXTENSION SCHOOL**

**LSTU-E 109A: A CONSTITUTIONAL CONVENTION**

Allan A. Ryan

January Term, 2016

Course website: <https://canvas.harvard.edu/courses/8048>

**INTRODUCTION**

In 1878, Prime Minister William Gladstone called the American Constitution “the most wonderful work ever struck off at a given time by the brain and purpose of man.” Yet today, there are many who see in the Constitution the source of many political ills: campaign finance, firearms regulation, political gridlock, criminal defendants’ rights, and the method of electing a president, to name just some. At the same time, many who claim to venerate the Constitution and who are quick to label any unpopular political decision “unconstitutional” have apparently never actually read it.

We’ll start at the beginning of understanding: we’ll read and consider every word of the Constitution, from the grand concepts (equal protection, due process and how the Constitution preserved slavery without ever actually mentioning it) to the obscure (what is the only crime defined in the Constitution, and what are “letters of marque and reprisal?”). We’ll read the long sentence in the Constitution that applied to only one person, visit the least-known amendment in the Bill of Rights, and consider an amendment that was ratified 203 years after it was submitted to the states.

A weekend is not quite long enough to become a constitutional expert, but the objective here is to acquaint students with the text itself (it’s not really that long), to consider why the Constitution is so detailed in some of its provisions and so vague in others, and to appreciate both why it has lasted 250 years and why it may be in need of serious change today. Do we venerate the Constitution too much to fix it?

Pre-course reading includes a lively history of how the US progressed from the Declaration of Independence to a fractious coalition of autonomous states under the Articles of Confederation to the drafting, selling and ratification of the Constitution.

Following the weekend, each student will write a course paper drafting an amendment to the Constitution that would fix a current problem of the student’s choice, and explaining persuasively why such an amendment is needed in 2016. Details are attached to this syllabus.

**SCHEDULE**

Friday, January 8: class meets from 5.00 to 8.00 p.m.

Saturday, January 9: class meets from 9.00 a.m. to 5.00 p.m.

Sunday, January 10: class meets from 9.00 a.m. to 1:00 p.m.

Sunday, January 24: Course papers due at 6.00 p.m., submitted via email.

All classes are held in One Brattle Square, which is in Harvard Square at the intersection of Massachusetts Avenue, Brattle Street, and Mount Auburn Street. The classroom is on the second floor. More details are on the course website. There will be short breaks each morning and afternoon, and a one-hour lunch break on Saturday.

Because of the brevity of the course, attendance at all three sessions is required.

**INSTRUCTOR**

Allan A. Ryan has been a lawyer at Harvard since 1985 and is Director of Intellectual Property at Harvard Business School Publishing. He teaches The Constitution and the Media in the Extension School’s Master of Journalism program, and Intellectual Property, and War Crimes, Genocide and Justice, in the Harvard Summer School. He graduated from Dartmouth College and the University of Minnesota Law School, and was a law clerk for Justice Byron R. White on the Supreme Court of the United States. He later was an Assistant to the Solicitor General of the United States and argued eight cases before the Supreme Court. He was also a US Marine Corps officer and Director of the Office of Special Investigations, US Department of Justice. He is the author of *Yamashita’s Ghost: War Crimes, MacArthur’s Justice and Command Accountability* (2012) and *The 9/11 Terror Cases: Constitutional Challenges in the War Against Al Qaeda* (2015), both published by the University Press of Kansas.

**READINGS AND OTHER COURSE REQUIREMENTS**

Prior to the first class, all students are to read Joseph J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (2015), and read the Constitution itself. It’s an appendix in Ellis’s book, and can be found online everywhere.

I have printed the text of the Constitution on 105 PowerPoint slides that we will use to guide the discussion in class. Students should bring a laptop to class or print the slides in order to participate in class discussion. They are posted on the course website.

Before our first class, please send me a brief introduction to yourself, perhaps with a few words on what leads you to enroll in this course. If you are in a degree program at the Extension School, please let me know that as well.

**COURSE PAPER**

Please see the requirement for writing a course paper, which is attached to this syllabus (and also separately posted on the course website).

**Accommodations for disability, and Academic Integrity**

The Academic Dean asks that the following notices appear in the syllabus:

“The Extension School is committed to providing an accessible academic community. The Accessibility Office offers a variety of accommodations and services to students with documented disabilities. Please visit [www.extension.harvard.edu/resources-policies/resources/disability-services-accessibility](http://www.extension.harvard.edu/resources-policies/resources/disability-services-accessibility) for more information.”

“You are responsible for understanding Harvard Extension School policies on academic integrity ([www.extension.harvard.edu/resources-policies/student-conduct/academic-integrity](http://www.extension.harvard.edu/resources-policies/student-conduct/academic-integrity)) and how to use sources responsibly. Not knowing the rules, misunderstanding the rules, running out of time, submitting the wrong draft, or being overwhelmed with multiple demands are not acceptable excuses. There are no excuses for failure to uphold academic integrity. To support your learning about academic citation rules, please visit the Harvard Extension School Tips to Avoid Plagiarism ([www.extension.harvard.edu/resources-policies/resources/tips-avoid-plagiarism](http://www.extension.harvard.edu/resources-policies/resources/tips-avoid-plagiarism)), where you'll find links to the Harvard Guide to Using Sources and two free online 15-minute tutorials to test your knowledge of academic citation policy. The tutorials are anonymous open-learning tools.”

**COURSE PAPER REQUIREMENTS**

Your grade in this course will be determined by the paper you write after the class sessions have concluded. The paper will be due in two weeks, on Sunday, January 24 at 6 p.m. Boston time. Further details are below.

Here is your assignment:

Now that we have examined every part of the Constitution, draft an amendment that will fix a problem that the Constitution, including amendments, has created or failed to address. You can choose any problem you like, except reform of the presidential electoral process (the Electoral College), about which a great deal has already been written.

The paper will be in three parts:

1. The problem you identify that needs fixing. What is it? What part of the Constitution creates it (or fails to fix it)? Why is it a problem that needs fixing?
2. The amendment you are drafting. Imagine you are a delegate to a constitutional convention. Draft the actual text of the amendment you are proposing, and identify what if any text of the present Constitution would be amended.
3. The discussion of the problem and your solution. How would your amendment fix, or at least improve, the problem you’ve identified? What are the arguments in favor of your proposal? What are the arguments that could be made against it? What is your response to those opposing arguments?

Papers will be graded according to the problem selected, the clarity and appropriateness of the drafted amendment, and the nature of your discussion in Sections I and III. Originality and thoughtfulness are expected.

I expect your paper to reflect an appropriate degree of independent research, and citation to sources. For example, if the problem you are addressing has been the subject of academic, political, or journalistic commentary, you should cite and discuss such commentary to an appropriate degree. You may (but are not required to) address the political difficulties or consequences of your proposed amendment, such as whether it is likely to be ratified, or what opposition to it might be anticipated.

Students taking this course for undergraduate credit will submit a paper of 10 to 12 pages (no more, no less).

Students taking the course for graduate credit will submit a paper of 15-17 pages (no more, no less).

Students taking the course for no credit do not receive a grade and so are not required to submit a paper, but if you wish to submit one, I will read it and let you know the grade you would have received.

Please use Microsoft Word, double-spaced, with conventional fonts and margins. I prefer footnotes (bottom of the text page) and not endnotes (end of the paper) to cite your sources.

Submit your paper by email to these two addresses: ryan@hbsp.harvard.edu and aar4@comcast.net by the deadline. Please use “Constitutional Convention paper” as the subject line so it does not get overlooked in my mailboxes.

Given the tight schedule I have to submit course grades, the deadline must be enforced. Extensions cannot be granted except for genuine emergencies. I regret that my deadline for submitting course grades does not afford me enough time to comment on your papers and return them to you.

After grades have been submitted and reported to you (by DCE, not by me), I would welcome any thoughts you might have on the course, including suggestions for improving it in future years. Please send any comments to me at the email addresses above.

I hope you have enjoyed taking this course as much as I have enjoyed preparing it. Best wishes for your continued academic career.