



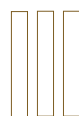
KINDER INSTITUTE  
on CONSTITUTIONAL DEMOCRACY



NEWSLETTER | WINTER 2016



## The COLUMNS



### CAMPUS & COMMUNITY

In conjunction with the final 2016 meeting of the Kinder Institute's Advisory Board, we officially introduced Professor **Jay Sexton** to the University of Missouri community on November 1, hosting the inaugural lecture for our Chair in Constitutional Democracy in the Great Room at Reynolds Alumni Center. In addition to our board, a standing room only crowd of MU faculty members, Kinder Institute undergraduate, graduate, and postdoctoral fellows, university leaders, community allies, and colleagues from across the state came together for Prof. Sexton's lecture, which examined the external forces that shaped



The winter transition from class-in-session to school-on-pause can be an eerie one at Mizzou. Where once there were crowds, in mid-December, there are only squirrels. In most cases, this sudden quiet is unsettling, but we have to admit that it has been a little less so this time around, as it has allowed us a moment to reflect on (and decompress after) a seam-burstingly busy semester.

As you will see in the pages that follow, between NEH lectures, job talks, history colloquia, selection committee meetings, and film screenings, hardly a week went by when we weren't rushing to a different corner of the campus or city to gather students, colleagues, and Columbia residents together for spirited conversations about topics ranging from the importance of the humanities in today's global marketplace to anti-masonic fervor in the early nineteenth century to John Travolta's spot on Bill Clinton impersonation. More than anything, though, when it was all said and done, we realized that the packed Fall 2016 calendar raised the bar in terms of both the volume and diversity of programming that we can bring to our community, and, to be sure, talks have already begun around the office about how we can match, and hopefully exceed, the energy of the past few months going forward.

We wish everyone a happy and healthy New Year, and we hope to be able to spread word soon about some of the exciting new ventures that we are working on here at the Kinder Institute.

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Kinder Institute on Constitutional Democracy  
University of Missouri



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U.S. politics during the period of national formation as well as the global impact of American political practices and ideas during the decades spanning from the American Revolution through the Civil War. For those who were unable to attend, a video of the lecture is available on the Kinder Institute website, [democracy.missouri.edu](http://democracy.missouri.edu). Also, for readers in the St. Louis area, Prof. Sexton will reprise the lecture during an April 28 lunch event at the Bellerive Country Club. Anyone interested in attending the St. Louis lecture can contact Kinder Institute Communications Associate **Thomas Kane**, KaneTC@missouri.edu, for more information.

U.S. Constitutional Democracy and the World



Professor of History and Chair in  
Constitutional Democracy Jay Sexton

What do a gold rush, the terrors of Jacobin extremism, and “Jingo Jim” Blaine have in common? As Prof. Sexton pointed out in introducing his inaugural lecture, on one hand, they all represent various national origin points for that guardian of democracy, the secret ballot. More to the point of his talk,

though, in tracing the advent of the secret ballot from Australia, to France, back to Australia by way of Victorian England, and finally to the 1884 U.S. presidential election, Prof. Sexton underscored just how borderless the narrative of U.S. constitutional democracy is and, in turn, how a global approach is imperative to any comprehensive study of the nation’s political history.

Driving his subsequent discussion of why we need to re-visit the American past with the praxis of global constellation in mind were two primary questions—what did the U.S. founding look like from an international perspective; and when and why did U.S. constitutional democracy start mattering to the wider world? As for the former, Prof. Sexton noted how establishing an international lens through which to view the founding means accounting for the various geopolitical pressures that the new nation faced in the 1780s: resurgent British power; frontier hinterlands without compulsion for national loyalty; and a plummeting post-war credit rating that needed servicing at precisely the moment when internal improvements required an infusion of foreign capital (to name but a few). This pall of uncertainty in mind, the fact that the Constitution empowered the federal government to engage with foreign nations—through diplomatic channels, treaty making, and declarations of war—not only helped ease some of these pressures but also, and perhaps more importantly, inspired international recognition of the United States’ commitment to establishing a globally responsible government: one which prioritized national interest while also discouraging the aggressive assertion of U.S. principles abroad.

The Constitution, Prof. Sexton added, was but one of two founding documents penned in 1787 that resonated internationally. An innovative, outward-looking blueprint for how to sustainably expand into and incorporate new territories, the Northwest Ordinance, with its carrot and stick policy of offering territories the right to self-governance after a period of federal control, was later echoed in colonial reforms in Victorian England that accelerated the integration of South Africa, Canada, and Australia into the empire and ultimately helped secure Great Britain’s capacity to resist German force in the early- and mid-twentieth century.

Answering the question of when and why U.S. constitutional democracy began mattering to the wider world, Prof. Sexton went on to explain, likewise starts with confronting national weakness. As a global trend toward both democratization and emancipation emerged during the early nineteenth century, the United States’ moral standing rightfully diminished, with critics at home and abroad decrying the nation’s toleration and expansion of slavery. But then Peoria happened; and then Gettysburg. And as news of a seismic philosophical shift circulated, Lincoln’s rhetorical (and the Union Army’s physical) attack on slavery as inconsistent with a government of, for, and by the people became a new touchstone for global approaches to understanding American politics. The reasons for this, Prof. Sexton noted in drawing his talk to a close, were numerous: Lincoln’s reaffirmation of the ideals of republican government came during a decade when nations around the globe were themselves composing democratic constitutions and struggling with national formation; his near mythical status as a self-made autodidact taking on slavery and hereditary privilege personified an international desire to widen the life chances of the individual; and finally, tying into Prof. Sexton’s current research, Lincoln became a global celebrity in part because the Civil War unfolded during a period of burgeoning communication networks, when steam power and the telegraph were rising to prominence and the printing press was becoming more and more ubiquitous.

Taken together, he concluded, examining national formation in terms of foreign pressure and examining the Civil War in terms of a global moment of constitutional construction should ultimately lead us to re-think how we tend to periodize and insulate the Founders and, in turn, should spur

us to map out the many developmental traits that the U.S. has shared with other colonial societies and states from the decade after the Revolution, through the 1860s, and into the present.







## NEH LECTURE SERIES

Thanks to a generous invitation from our friends at the Missouri Humanities Council, we had the distinct pleasure of being one of a select group of state institutions to develop a slate of Fall 2016 programs for the NEH's nationwide "Humanities in the Public Square" grant initiative. As a whole, the Missouri contingent's programming focused on exploring the causes of and potential remedies for the forms of social, political, and economic fracture that plague society today and that ultimately obstruct the full realization of many core national ideals. Consistent with our mission, we largely approached this theme with an eye toward origins, bringing in scholars to speak on topics such as the raucous history of elections in the early republic and the consistency of twentieth-century Supreme Court rulings on religious exemption with the social compact constitutionalism of the American founders.

That said, the thematic scope of the NEH initiative, combined with the proximity to election season of the lecture series we developed for it, provided us with a unique opportunity to address questions of a more immediate nature and, moreover, to do so in a manner that added nuance, civility, and objectivity to a strain of public discourse too often animated by inherited, un-considered bias. The cornerstones of our more contemporarily-oriented programming were a pair of talks, detailed in the following pages, that used the 2016 presidential race as a springboard for raising questions about the future of party politics in America.

## NEH LECTURE SERIES

### *The Triumph of Bernie Sanders and the Future of the U.S. Left*

University of Pennsylvania Professor of Political Science Adolph Reed



As Professor **Adolph Reed** noted in his opening remarks, fully engaging with the topic of his October 27 lecture has to begin with sorting through the quantitative dissonance inherent in its title. Where, one would be fair in asking, do we locate the triumph in a presidential campaign that, at least as far as the horse race goes, fell well short of its goal?

As he went on to explain, though, questions of this nature are to some degree built on a false premise. While Sanders' candidacy certainly gathered momentum and thus understandably raised expectations, the chances of a victory in the Democratic primary, let

alone the general election, were always remote given the herculean task the campaign took on: building a counterhegemonic movement capable of altering the terms of mainstream political debate and, in this, the terms of the nation's policy agenda. Though many on both sides of the aisle might wish it otherwise, an outcome of this magnitude, Prof. Reed argued, cannot be achieved without a protracted struggle that unfolds over multiple election cycles.

This in mind, he proposed that the measures of success need to be re-calibrated when it comes to evaluating Sanders' candidacy. The question we should be asking is whether or not his campaign laid the groundwork necessary to more effectively contest for power going forward. And the answer to this question, Prof. Reed contended, is a resounding yes. Perhaps most importantly, he noted how the efforts to elect Sanders enabled organizers to identify a cadre of supporters disposed to do the work required to affect a seismic transformation of the political landscape. In unpacking the nature of this base, he described it as a group capable of congealing into the "serious left" that the nation currently lacks ("There is," he declared at the beginning of his lecture, "no left to speak of in the U.S."). The serious left that began to form during the Sanders campaign, he further noted, consists of people

driven by class-based, anti-capitalist ideas about issues such as wage scale and urban development; people capable of marshaling a constituency broad enough and energized enough to intervene on behalf of the worker and to prevent public interest from being encroached upon by private capital. Though the Sanders campaign may not have been in a position to succeed by conventional metrics in 2016, Prof. Reed argued that, given the presence of this newly-formed "serious left," it still allowed us to begin asking the question of what policy would look like if it were actually crafted by individuals acting on behalf of the working class majority. All this said, Prof. Reed also noted how the gains that the Sanders camp made over the last year-plus reveal two flaws in particular from which the left still suffers: (1) an inability to conceptualize the need to organize or, conversely, a misguided belief that what is perceived to be a correct issue agenda will produce votes for itself; and (2) an unwillingness to engage in cross-ideological discussion. This latter flaw, he concluded, is particularly crippling, since the work of demonstrating how candidates like Sanders are on the right side of issues that "most of the people are concerned with most of the time" requires spanning precisely the partisan boundaries that he saw the left repeatedly shy away from over the course of the Democratic primary and the general election.





## *What is the Future of the Conservative Movement?*

University of Alabama Assistant Professor of Political Science George Hawley



Much like Prof. Reed focused in his talk on the structural implications of the Sanders campaign for the American left, Professor **George Hawley** used his election day lecture to examine how Donald Trump's candidacy might affect the U.S. conservative movement going forward, outlining three possible scenarios that were ordered according to what he saw at the time as ascending likelihood and descending benefit to conservatism. However, given the way that things played out in the hours after the lecture, it makes some sense to start at the end of his list and work backwards.

### *Scenario #3: Trump loses by a smaller margin than Mitt Romney in 2012*

In this scenario, what then seemed to him to be the likeliest and most destructive to American conservatism, Prof. Hawley speculated that a narrative would have emerged that Trump had been stabbed in the back by the conservative establishment and that a less flawed but fundamentally similar candidate with more party support would have won. On a more systemic level, he detailed how this quasi-victory for Trumpism would have in turn exposed the degree to which a traditional conservative platform—built around the “three-legged stool” of fiscal conservatism, Christian morals, and strong national defense—no longer appeals to self-identified Republican voters.

### *Scenario #2: Trump loses in a landslide and the Republicans retain control of the Senate*

Here, Prof. Hawley posited, anti-Trump conservative iconoclasts would have been praised, the Trump camp purged from the GOP, and if things broke in a certain way in the years after the 2016 election, a “true” conservative candidate may have been poised to succeed in 2020. As he was quick to point out, though, that's a big ‘if.’ More specifically, he explained that this prognostication insufficiently accounts for

how, for years, factors such as shifts in the demographic map and the secularization of American society have made victory more difficult for traditionally conservative candidates. Conservative optimism in this case is predicated on the somewhat far-fetched assumption that a tolerant, pro-immigration candidate who sold the American working class on the benefits of the free market could bring new constituencies into the conservative fold—a task, he noted, that the movement has failed at since the days of Milton Friedman.

### *Scenario #1: Trump wins and the Republican party retains control of the Senate*

While this would intuitively seem to be a huge victory for the conservative movement, Prof. Hawley noted that the potential benefits of this scenario come with two significant and unlikely-to-be-fulfilled caveats: the conservative intelligentsia making peace with Trump and Trump forgiving members of an establishment that had spent the past year vehemently speaking out against him. He added, however, that a Trump White House and Republican House and Senate would almost certainly increase the legislative leverage of conservative think tanks like the Heritage Foundation and American Enterprise Institute, a clear win for the movement.

What is the common thread here, Prof. Hawley asked? That there is “no plausible scenario” in which the future of conservatism looks bright. As he argued in concluding his talk, given its funding, publications, and institutions, the conservative movement isn't going anywhere anytime soon. Its visibility, though, belies the degree to which the movement is, as he described it, “a Potemkin Village.” Its principles speak to a center-right nation that doesn't exist, and as seen in the degree to which Trump seized on conservative symbolism while more or less abandoning its dogma, the GOP is currently successful in spite of, not because of, the conservative movement.





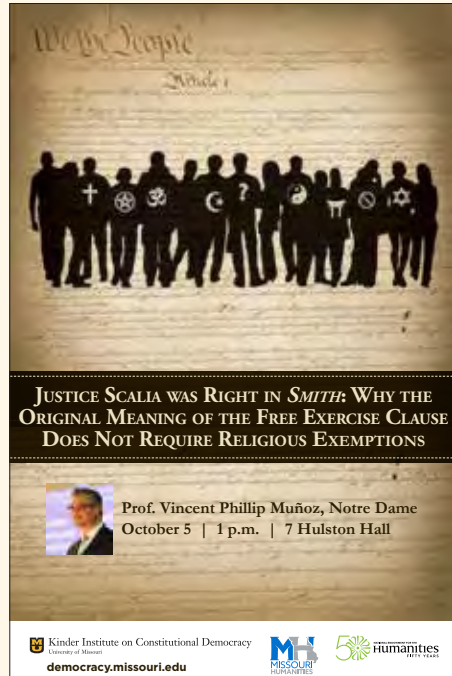
## OTHER FALL 2016 NEH LECTURES

In addition to the twin lectures on the future of U.S. party politics, the Kinder Institute hosted or co-sponsored the following events as part of NEH programming in October and November.

### *Why Justice Scalia Was Right in Smith*

University of Notre Dame Tocqueville Associate Professor of Religion and Public Life Vincent Phillip Muñoz

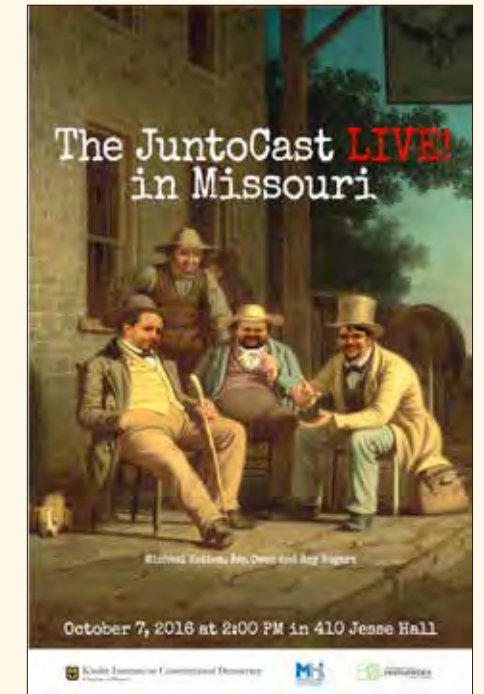
While the consensus among conservative legal scholars is that late Supreme Court Justice Antonin Scalia's opinion in *Employment Division of Oregon v. Smith* (1990) was wholly out of touch with proper interpretations of the First Amendment—Prof. Michael Stokes Paulsen went so far as to call it “a constitutional disaster”—Professor **Vincent Phillip Muñoz** told a different story in his October 5 talk at the MU Law School, arguing that Scalia's non-exemptionist ruling in *Smith* is, in fact, the only construction consistent with the American Founders' natural rights philosophy and social compact constitutionalism. After tracing the history of case law related to religious exemption from 1879's *Reynolds v. United States* to *Sherbert v. Verner* (1963) to *Smith*, Prof. Muñoz turned to the documentary history and philosophical foundations of early America to explain why he felt the rulings in *Reynolds* and in *Smith*—both of which claimed that there is no constitutional precedent for demanding that individuals be granted religious exemption from generally applicable laws—embodied the Founders' intentions for the First Amendment's free exercise clause. Specifically, he argued that, because the Founders conceived of religious freedom as a right so inalienable that it could not be ceded to the government, they thus crafted the First Amendment to be categorically prohibitive, stripping the state of any jurisdiction or authority over religious practice as such; which is to say that they crafted it with the intention of preventing the establishment of balancing standards, like exemptions, which weighed religious practice against state interest.



### *JuntoCast Live!*

University of Illinois-Springfield Assistant Professor of History Ken Owen, Kinder Institute Associate Director Jeff Pasley, and Ph.D. candidates Michael Hattem (Yale University) and Roy Rogers (CUNY-Graduate Center)

A test run of sorts for future Kinder Institute media initiatives, **Ken Owen, Michael Hattem, and Roy Rogers** came to Columbia on October 7 to host a pre-MRSEAH live taping of the early Americanist podcast, *JuntoCast*. Focusing on the timely subject of electoral culture and processes from before the Revolution through the early nineteenth century, the three hosts plus our own **Jeff Pasley** touched on topics ranging from the communal ritualism of colonial elections to the uneven development of electoral policies after the implementation of the Electoral College. A link to the whole conversation can be found on the Kinder Institute website, [democracy.missouri.edu](http://democracy.missouri.edu).







*White Rage: The Unspoken Truth of Our Racial Divide*

Emory University Samuel Candler Dobbs Chair of African American Studies  
Carol Anderson

Drawing on her August 2014 *Washington Post* op-ed, penned in rebuke of the nature of popular discourse about protests in Ferguson, MO, Professor **Carol Anderson** focused in her October 14 talk, the keynote lecture for the Fall 2016 Black Studies Conference at Mizzou, on the various ways in which civil rights gains have been rolled back by policies which reflect white rage over minority aspiration, progress, and achievement. She discussed, for example, how the constitutionality of property tax-based school district funding, upheld in *San Antonio Independent School District v. Rodriguez* (1973), has subjected generations of minority students to a discriminatory financing mechanism that Thurgood Marshall described as merely substituting economics for race as a way to turn back the clock to a pre-*Brown v. Board* America. She looked, in addition, at Tulia, TX, lawman Tom Coleman, who, in pursuit of victory in Nixon and Reagan's War on Drugs, fabricated distribution charges that resulted in the wrongful conviction and incarceration of nearly 50% of Tulia's African American male population. In light of these and countless other, sadly similar events, Prof. Anderson concluded by noting how President Obama's election cannot be viewed as a beacon of



progress but instead as an historical landmark that underscores the cross-class physical and political vulnerability of minority citizens in the United States. The Kinder Institute, along with a number of other organizations on campus, co-sponsored Prof. Anderson's lecture with the MU Department of Black Studies.

*Why We Need the Humanities*

University of Notre Dame Distinguished Research Professor  
Donald Drakeman

Using a recent *Time* article examining many Japanese universities' decisions to eliminate humanities and social science departments as a starting point, Professor **Donald Drakeman** began his November 10 talk, the last in our Fall 2016 NEH Lecture Series, by acknowledging how, in tough times, it is easy to see these courses of study as "luxury goods," incapable of meeting society's shifting needs in a STEM-fixated global economy. In unpacking the thesis of his talk, however, Prof. Drakemen countered this popular perception with the argument that, perhaps now more than ever, the humanities and social sciences are vital to the task of solving the unique problems that have arisen as a result of rapid innovation in science and technology. Contextualizing their significance, he went on to explain, requires momentarily putting aside (though by no means discounting) claims about the intrinsic worth of studying the humanities and instead focusing on a use-value

rarely associated with such academic pursuits. Take the example of the multi-trillion-dollar medical science industry, Prof. Drakeman argued, where ROI-driven calls to de-emphasize the humanities grossly miss the larger point of how they are imperative to answering pressing questions that the field faces. Who, he asked, is better equipped to deliberate over the ethical distribution of limited resources than a doctor of philosophy? He concluded, though, by noting how the corrective course of action

is not as simple as "we should invest more in English departments." In assessing the current state of higher education, Prof. Drakeman suggested that certain philosophical shifts will have to take place in academia if we are to best tap into the humanities' potential, including increasing fundamental preference diversity, de-stigmatizing the public humanities, and encouraging scholars in fields such as history and political science to embrace discussing the practical aspects of their work with audiences both inside and outside the university.

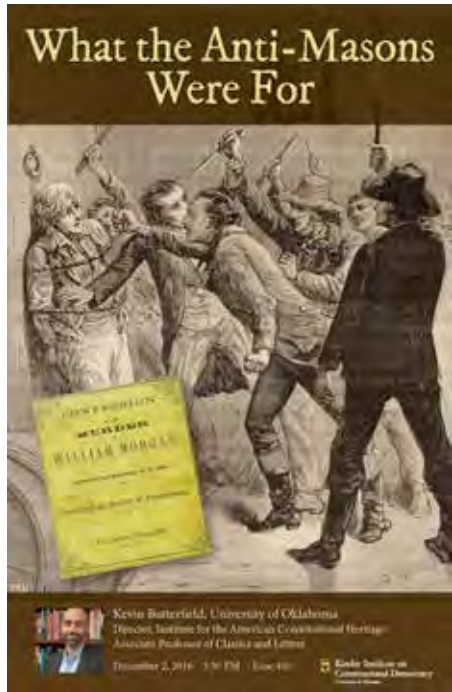
*Democracy at the Movies*

An election season film series co-curated with Ragtag Cinema

For the final two installments of the Kinder Institute's "Democracy at the Movies" film series, MU Assistant Professor of History **Keona Ervin** led an October 4 post-movie discussion of Leo Hurwitz's 1948 *Strange Victory*, a haunting documentary montage that explores the violent segregation of post-World War II America, while Associate Professor of History **Catherine Rymph** introduced the November 1 screening of Mike Nichols' 1998 *Primary Colors* with remarks on the political climate during the Clinton administration.







## ACADEMIC WORKSHOPS

Not to be lost among the recent flurry of lectures, we also remained committed to providing on-campus and visiting scholars of American political history with various outlets for sharing their research with colleagues at MU and from around the region. The calendar for our Friday colloquium series doubled in size this past semester, and the Missouri Regional Seminar on Early American History continued its Fall 2016 pattern of generating spirited discussion of colonial America, with Southern Illinois University-Edwardsville Assistant Professor **Robert Paulett** presenting his current work on the aesthetic origins of the Proclamation of 1763 during the November 4 meeting in St. Louis. And we fully anticipate more of the same in the spring, with the colloquium series dance card already full; the MRSEAH dates and venues locked in; and the Shawnee Trail Regional Conference on American Politics and Constitutionalism set to make its out of town debut on April 13, 2017, as a mini-conference held within the annual meeting of the Southwest Social Science Association in Austin, TX.

In addition, it would be an enormous understatement to say that we are looking forward to the launch of our most ambitious scholarly project to date, *Starting Points*, an online journal of American principles and American practice. Developed by Kinder Institute Associate Professor of Constitutional Democracy **Adam Seagrave**, the goal of the journal is to create a space for scholars from a wide range of academic fields to come together for a cross-disciplinary discussion of questions surrounding the meaning of American ideals and their practical implementation over time. The first volume of the journal is on schedule to go live at the end of January, with new articles and other features appearing at short intervals thereafter.

## FRIDAY COLLOQUIUM SERIES

### *What the Anti-Masons Were For*

University of Oklahoma Associate Professor of Classics & Letters  
Kevin Butterfield

For the final Friday Colloquium Series event of the semester, Director of Oklahoma’s Institute for the American Constitutional Heritage **Kevin Butterfield** gave a December 2 talk on his current research project, which looks at the birth of the anti-masonic movement and, more broadly, at the relationship between private associations and legal and political structures in early-nineteenth-century America.

In discussing the title of his talk, a play on Herbert Storing’s seminal work, *What the Anti-Federalists Were For*, Prof. Butterfield stressed how his objective for the new project is to use a narrative examination of the anti-masons to unpack the positive, substantive agenda of the movement. Answering the question of what the anti-masons actually were for, he went on to explain, begins with looking into the aftermath of Western New York freemasons’ September 1826 kidnapping and (presumed) murder of William Morgan, himself a member of the fraternal order who was known to be collaborating with publisher David Miller on an exposé on masonic rituals. On a level of origin points, Miller’s handbill denouncing the freemasons and the local judicial system that had been corrupted by them, published in the days after Morgan’s disappearance, went on to spawn a network of anti-masonic newspapers as well as an organized political movement that

found support from the likes of John Quincy Adams and Thaddeus Stevens. More importantly, though, Prof. Butterfield showed how Miller’s demand in the handbill that the government aggressively work to counteract the threat to individual rights posed by the freemasons’ accumulation of power set the ideological foundations for the movement going forward. In Miller’s re-telling of the incident, Morgan was nothing short of a free speech martyr—a freeborn, peaceable American whose fate underscored both the vulnerability of ordinary citizens in a rapidly changing society and local and national political institutions’ susceptibility to manipulation at the hands of private interests and actors.

Other touchstones of anti-masonic rhetoric, Prof. Butterfield added, likewise began to take shape in the handbill, including calls to preserve the sanctity of a superintending legal power; to recognize the parallels between domestic and republican ideals; and to at all times acknowledge the sovereignty of public opinion. And in many respects, he argued, the movement worked, as the decades following the Morgan affair saw a marked decrease in masonic participation, along the eastern seaboard in particular. Still, Prof. Butterfield noted in concluding his talk, the importance of anti-masonry in the early republic can perhaps best be seen in the various ways in which leaders of other social movements drew on, and at times critiqued, its rise to prominence in their own literature. “All this fearful commotion,” abolitionist William Lloyd Garrison wrote in the February 6, 1829, *Journal of Our Times*, “has arisen from the abduction of one man. More than two millions of unhappy beings are groaning out their lives in bondage, and scarcely a pulse quickens, or a heart leaps, or a tongue pleads in their behalf. ‘Tis a trifling affair, which concerns nobody. Oh for the spirit that now rages, to break every fetter of oppression.”

In addition to Prof. Butterfield’s talk, the Kinder Institute hosted the following scholars in Jesse Hall 410 to present their research during the second half of the Fall 2016 semester.

### *The Feds and the Fur Trade*

University of Missouri Ph.D. Candidate in History Jonathan Jones

Discussing his dissertation research during a September 30 colloquium, **Jonathon Jones** focused specifically on how examinations of the historical development of American political economy too often give short shrift to the early republic period. For example, he argued that the collision of profit-seeking private actors and government officials and agencies that we usually associate with the Progressive Era was likewise a prominent feature of the fur trade industry in post-Louisiana Purchase America. If, on the one hand, the government frequently turned to traders who were familiar with the area to fill the leadership void created by the acquisition of land west of the Mississippi, the flip-side of this arrangement was that figures like Pierre Choteau and John Jacob Astor increasingly came not only to rely on but also to expect government support for their capital enterprises. These lines perhaps became blurriest, Jones noted, when it came to treaty negotiations with Native American tribes, as these treaties evolved into a subsidy of sorts for traders who, in the course of executing the annuity agreements whereby tribes received money and goods in exchange for land, often re-routed funds to themselves as debt repayment. And though the re-organization of the Indian Department in 1834 began to introduce greater competition to markets in the American West,





hints of monopoly remained, with independent traders paying deposit and license fees to...you guessed it: large fur companies that then channeled much of this income into diversifying their business interests on the east coast.

*Robert Dickson, Citizen of Convenience*

Washington State University Assistant Professor of History  
Lawrence B.A. Hatter

Continuing our Fall 2016 trend of traveling eighteenth-century North American fur trade routes, Professor **Lawrence Hatter** presented a chapter from his forthcoming University of Virginia Press book that focuses on provisions to the 1795 Jay Treaty that were designed to facilitate movement and commerce across the U.S.-Canada border. As he demonstrated in his November 3 talk, the ambiguous conceptions of citizenship created by these provisions were easily and readily exploited by British fur traders like Robert Dickson, who sidestepped the naturalization process and moved freely throughout the United States, claiming or denying his status as a British subject according to convenience and profitability. Prof. Hatter went on to explain how, as one might expect, this lack of fetter drew the ire of isolationist American entrepreneurs like James Wilkinson, who unsuccessfully attempted to ban foreign trade on the Missouri River in the early nineteenth century. On the other side of the aisle from Wilkinson, however, were profiteers like John Jacob Astor, who, in seeing Dickson’s chameleonic national status as a potential boon, attempted to enlist him as an agent of the American Fur Co. and openly lobbied for him to be appointed as a U.S. Indian Agent by the federal government. All of this changed, Prof. Hatter concluded, with the War of 1812, during which many of the same British traders who were exploiting loopholes in the Jay Treaty—including Dickson at Fort Michilimackinac—played

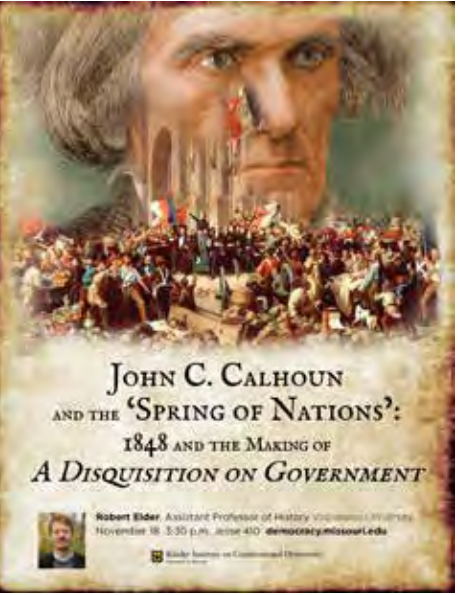


key roles in mobilizing and leading Native American attacks on U.S. forts along border waterways.

*John C. Calhoun and the ‘Spring of Nations’*

Valparaiso University Assistant Professor of History Robert Elder

For the final colloquium before the Thanksgiving break, Professor **Robert Elder** came to campus to give a November 18 talk on his current book project, a cultural biography which seeks to identify South Carolina statesman John C. Calhoun’s place in the Southern intellectual tradition. In particular, Prof. Elder focused in his talk on Calhoun’s commentary on the rash of revolutions that swept across Europe during 1848. Contained largely in correspondence with his daughter Anna, who lived in Belgium at the time, these writings, Prof. Elder argued, provide new and illuminating context for reading Calhoun’s *Disquisition on Government*, as the upheavals in Europe gave Calhoun an opportunity to test the theories on government that he was developing and chronicling in the *Disquisition*. The case of France, for example, ultimately served to affirm Calhoun’s belief that governments founded on a principle of natural equality extend the scope of liberty beyond its reasonable limits and, in doing so, open themselves up to the tyranny of the numerical majority and a subsequent descent into absolutism. By contrast, Prof. Elder noted that Calhoun was somewhat more optimistic about the post-revolution fate of Germany, whose proposed government he felt more closely resembled the United States’ own federal structure. Specifically, while he had concerns about whether Germany would sufficiently empower its member states, Calhoun did think that it was moving in the direction of striking the balance between strong government and rationally circumscribed liberty and suffrage that he associated with the best and most stable of constitutional systems.







## UNDERGRADUATE

It wasn't just Kinder Institute faculty and staffers who were busy this fall. Our undergraduate fellows also had a whirlwind semester that included attending Prof. **Mariah Zeisberg's** Constitution Day lecture and Prof. **Jay Sexton's** inaugural chair lecture (see pp. 2-3); having lunch with visiting scholars **Vincent Phillip Muñoz** and **Donald Drakeman** (see pp. 8-11); and laying the groundwork for the third volume of the *Journal on Constitutional Democracy*, which will tackle the theme "But let us begin..." (from JFK's inaugural address) through articles that explore topics and questions ranging from the efficacy of FCC regulation to the early-twentieth century origins of the conservationist movement to whether or not the spirit of the Declaration of Independence supports the revolutionary pursuit and institution of non-democratic governments (see pp. 18-19 for an excerpt from Senior Political Science and Economics major **Thomas Groeller's** article, "Baseball and the Sherman Antitrust Act").

And much to our delight, our undergrads also spent the fall helping transform the fourth floor of Jesse Hall from an office space into a hive of activity, participating in colloquium series events, utilizing our common areas as group study lounges in their downtime, and, in the spirit of honesty, using us for our coffee when they were in between classes. That said, it will be a little less active in the spring, as a pair of frequent fourth floor dwellers will be moving on to new and exciting pastures after December graduation. **Bishop Davidson**, an inaugural undergraduate fellow and founder of the Washington Society, recently took a job as an Associate Regional Director (Midwest) with the Intercollegiate Studies Institute in Wilmington, DE, while current fellow, former Kinder Scholar, and aspiring international lawyer **Kate Hargis** finished up her undergraduate career a semester early in order to take advantage of an incredible opportunity to attend The Hague University during Spring 2017, where she will study Dutch culture, European politics, EU decision making, and public international law.



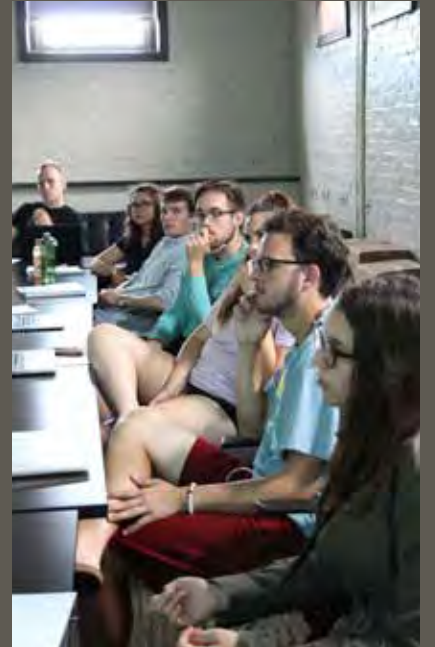
## KINDER SCHOLARS

Easily the most difficult task of the semester, we chose the third class of Kinder Scholars D.C. Summer Program participants in early December, following an initial review of applications and, for the first time, a day of group interviews at which each and every student excelled. After starting with a record number of applications from undergraduates across a wide range of academic majors and minors at MU, we are pleased to announce that the 21 students listed below have been selected to live, study, and work in the capital this coming summer as part of the 2017 Kinder Scholars Program.

**Tom Coulter** (Data Journalism, History)\*  
**Emilie Bridges** (Political Communication)  
**Cole Edwards** (Agribusiness Management)  
**Natalie Fitts** (Journalism)\*  
**Katie Graves** (Journalism)  
**Jane Kielhofner** (Health Sciences)  
**Nicholas Knoth** (Political Science, History)  
**Kiara Lewis** (Business, International Studies)  
**Noelle Mack** (Communication, Political Science)  
**Logan Malach** (Education, History, Political Science)  
**Abas Pauti** (Journalism)  
**Allie Pecorin** (Journalism)\*  
**Hughes Ransom** (Journalism, Political Science)  
**Claire Reiling** (Anthropology)  
**Raymond Rhatican** (Political Science)  
**Timothy Riordan** (Accounting)  
**George Roberson** (Political Science)  
**Lauren Russ** (International Studies)  
**Tricia Swartz** (Political Science)\*  
**Spencer Tauchen** (Philosophy, Sociology, Political Science)\*  
**Greer Wetherington** (Psychology)

Students marked \* are current or former members of our Society of Fellows

Preparations for the summer began immediately after the class was chosen, with participants coming together for a December 8 meeting on internship hunting in D.C. Introductory meetings and outings will continue on a monthly basis throughout the spring semester, so the cohort can begin to gel and gather the information necessary to succeed in the capital prior to the program's official start on June 5, 2017.





## Baseball and the Sherman Antitrust Act

by Thomas Groeller

In 1890, Congress passed the Sherman Antitrust Act, the first significant piece of legislation aimed at regulating monopolistic behavior among American businesses and one that arose as a direct result of a rapidly changing economic landscape in the post-Civil War U.S.<sup>1</sup> The decades leading up to the Sherman Act were full of technological growth, much of which connected America—and sectors of the American economy—more than ever before. In particular, the expansion of the railroad allowed goods to be shipped nationwide at a fraction of the former cost, which then allowed businesses to expand their local operations across state lines in an attempt to gain more profit and greater market share. The widened scope of operation and opportunity naturally led to the rise of large, national corporations, which, in turn, naturally led to the popular public fear that these corporations would compromise economic wellbeing.<sup>2</sup> Which bring us back to the Sherman Act, a legislative innovation intended to ease the public's fear by protecting local businesses and private actors against abuse at the hands of monopolies.

In 1953, George Toolson, a pitcher for the Newark Bears (the AAA affiliate of the New York Yankees), wished to seek a different employer, believing that his skills exceeded his minor league baseball status.<sup>3</sup> Under the rules of Major League Baseball (MLB), the Yankees' parent corporation, the team did not have to—and ultimately did not—grant Toolson the contract release he desired, a business decision that effectively ended Toolson's career in professional baseball. In most job markets, this would not have been the outcome, as Toolson would have simply switched to a different employer. In professional baseball, however, the MLB owns almost 100% of the labor market, leaving Toolson nowhere else to go for employment in his chosen field. The story of Toolson raises the obvious question of why, given the presence of antitrust legislation, the MLB was allowed to own so much of the market? Ironically, the answer is in large part because Major League Baseball was granted an exemption from the Sherman Act in 1922, which ensured that the league could not be broken up by any federal antitrust action.<sup>4</sup> This paper will use Major League Baseball as a case study for examining courts' application and interpretation of the Sherman Act over time, with a particular focus both on how the language of the Act creates the possibility of exemption from its terms and whether or not Major League Baseball's exemption status is due for an update.

### I.

Making sense of whether or not the MLB exemption effectively supports a monopolistic enterprise requires first attending to the language with which the Sherman Antitrust Act defines its purpose and, in turn, using this language to define exactly what kind of economic entity Major League Baseball is. The Act is broken into eight different sections, but only the first two (excerpted below) discuss the anti-competitive violations that are subject to punishment. Section One of the Sherman Act reads,

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal<sup>5</sup>

Section Two then states,

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the

trade or commerce among the several States, or with foreign nations, shall be deemed guilty.<sup>6</sup>

Though repeated multiple times, as if the very act of repetition lends it clarity, the word “monopolize” is never explicitly defined anywhere in the legislation. Similarly, the phrases “restraint of trade” and “among the several states” repeat in two of the first three sections but also do not have clearly elucidated meanings. To end the act, Section Eight provides at least the façade of insight by telling the reader that “person” also includes corporations and associations in its definition.<sup>7</sup> In short, the act tells us that persons, corporations, and associations are subject to fine and punishment if they “restrain trade” or “attempt to monopolize among the several states.” The vagueness of the Act's key terms is important, here, because of the degree to which it gives the courts latitude to manipulate and apply these terms—and, in this, to shape the purpose of the Act itself—however they see fit in any given case. The MLB in particular stands to benefit from this vague language in so far as it would seem to present corporations like itself with a mechanism for slipping through the legislative and judicial cracks and becoming exempt from federal regulations.

It would be reasonable to wonder whether the vague language could perhaps be clarified if the conditions that led to the Sherman Act and how it was worded were better understood. While there is no unanimous interpretation of the Act's original cause, the two leading critical viewpoints posit that (a) it was passed to protect the American people from monopolistic price abuse or (b) it was passed to protect local businesses from the newly emerging trusts and nationalized markets. Defenders of the former viewpoint commonly argue that the Act was intended to maximize citizen welfare when corporations obtained a high market share across state boundaries.<sup>8</sup> Welfare abuse, historians go on to explain, could occur in a monopoly through price gouging of goods or wage cutting in employment. Supporters of the latter viewpoint usually say that the technological changes of the market were the main cause of the Sherman Act's passage.<sup>9</sup> Before sophisticated railroad systems, transporting goods across multiple states was rarely possible because of the costs associated with long distance travel. As the railroad system grew in America in the late 1800s, however, so did the opportunity for monopolization. Specifically, as the new transportation networks cut cargo costs, local businesses felt pressure from larger, national corporations who could now afford to move their products around the country...

<sup>1</sup>Sherman Antitrust Act. 26. 2 Jul. 1890. Stat. 209

<sup>2</sup>Robert H. Bork. “Legislative Intent and the Policy of the Sherman Act.” *The Journal of Law & Economics*, Vol. 9 (Oct., 1966), pp. 7-48

<sup>3</sup>Roger I. Abrams. “Before the Flood: The History of Baseball's Antitrust Exemption.” *Marquette Sports Law Review*, Volume 9 (1999), pp. 307-313

<sup>4</sup>*Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, et al.*, 259 U.S. 200 (1922).

<sup>5</sup>Sherman Antitrust Act. 26. 2 Jul. 1890. Stat. 209

<sup>6</sup>Sherman Antitrust Act. 26. 2 Jul. 1890. Stat. 209

<sup>7</sup>Sherman Antitrust Act. 26. 2 Jul. 1890. Stat. 209

<sup>8</sup>Robert H. Bork. “Legislative Intent and the Policy of the Sherman Act.” *The Journal of Law & Economics*, Vol. 9 (Oct., 1966), pp. 7-48

<sup>9</sup>Anne Mayhew. “The Sherman Act as Protective Reaction.” *Journal of Economic Issues*, Vol. 24, No. 2 (Jun., 1990), pp. 389-396



## POLITICAL SCIENCE JOB TALKS

As we have mentioned in the past, we believe that adding to our faculty ranks is key to sustaining—and steepening—the growth curve that the Kinder Institute is on. Not only do these new hires enrich intellectual life at the Institute and widen the breadth of our undergraduate curriculum. As we quickly learned with Professors **Jay Sexton** and **Adam Seagrave**, who joined us in August 2016, these new colleagues are also often at the fore of fostering the kinds of interdisciplinary, cross-institutional research networks that are essential to continued innovation in and re-evaluation of the fields of American political thought and history. So with a pair of open offices on the fourth floor of Jesse Hall, we embarked on searches for two Endowed Professors of Constitutional Democracy during the fall semester, one each in History and Political Science. While candidates for the history position will not be in Columbia for interviews until February, we had the pleasure of hosting the following political science scholars on campus during November to discuss their research. Below are brief recaps of each of their four job talks.

### *Delegation and Bureaucratic Responsiveness to Elected Officials*

University of Illinois Assistant Professor of Political Science Jennifer Selin

For the first job talk, Professor **Jen Selin** outlined her current research into how the amount of authority accumulated by administrative agencies affects their responsiveness to the legislative and executive branches, arguing that a range of factors—from access to information to relative ideological uniformity—advantage the president in dealings with bureaucratic actors.

### *The Psychology of American Constitutionalism*

North Carolina State University Associate Professor of Political Science Jim Zink

Tracing his work back to Madison and Jefferson's competing ideas about constitutional veneration, Professor **Jim Zink** examined how, particularly on the level of national elections, we see a voter bias toward constitutional stability that stems chiefly from the difficulty of the amendment process.

### *The Unitary Executive as an Historical Variable*

Yale University Ph.D. Candidate in Political Science Patrick O'Brien

Beginning with Jefferson and Jackson's conflicting experiences with attempting to dismantle the national bank, and from there looking at an array of test cases from across American history, **Patrick O'Brien** worked against the leading approach to examining presidential control to argue that the theory of the unitary executive—which relies on factors such as first-mover and information advantages to understand presidential power—ignores the degree to which changes in administrative context over time can determine executive agency.

### *Martin Luther King, Jr. and the Prophetic Voice: Interpreting King's Contribution to American Political Thought*

Princeton University Thomas W. Smith Research Associate in Religion and Public Life Sarah Beth V. Kitch

Drawing on research for her current book project, Dr. **Sarah Beth Kitch** used a thorough examination of Dr. King's participation in the Hebrew prophetic tradition—specifically through his vision of justice and his notion of creative suffering—to challenge critics of King's contribution to American political life and thought who alternately claim that he was either dangerously idealistic or too dependent on a politics of respectability.

## RESEARCH AND TRAVEL GRANTS

Twice each academic year, once in the fall and again in the spring, the Kinder Institute awards research and travel grants to faculty and graduate students from across MU whose work demonstrates the potential to open new lines of scholarly inquiry into the nation's democratic and constitutional traditions, broadly construed to span multiple eras and continents and to transcend any notion of disciplinary boundary. During the October 2016 award cycle, the Institute supported the projects of the following individuals.

### *Faculty*

**Jay Dow** (Political Science): To support archival research at the American Antiquarian Society and Historical Society of Pennsylvania for his current book project on elections in the early republic

**Harrison Kim** (History): For Summer 2017 travel to conduct research for an article that sorts through the history of elections in North Korea to inquire into their situationally democratic nature

**Lee Manion** (English): To conduct research at Harvard's Houghton Library for his current book manuscript, *The King is Emperor: Sovereignty, Justice, and Theories of Empire in Pre-Modern Literature*

**Abigail Manzella** (English): For research at University of Illinois' Gwendolyn Brooks Archives for an article on the intersection of literature and constitutional history in Brooks' *Maud Martha*

**Bryce Reeder** (Political Science): To conduct field interviews for a current research project on the relationship between political beliefs and military service

### *Graduate Students*

**Jessica Anderson** (Political Science): To present at the International Studies Association's February 2017 annual meeting

**Brandon Flint** (History): To conduct research at the National Archives in College Park, MD, for his dissertation, *God in This New World of Tomorrow: The Rise of Protestant Short-Term Missions*

**Ed Goldring** (Political Science): For travel to Seoul to conduct research on the use of U.S. aid in North Korea

**Michael Hendricks** (Political Science): For field research in Nicaragua on the influence of foreign infrastructure investment on democratic institutions in the developing world

**Joel Reed** and **Josh Bramlett** (Political Communication): To collect data for their joint project analyzing campaign communication in partisan and non-partisan elections

**Sean Rost** (History): To present at the October 2016 annual meeting of the Western Historical Society



*“Jay Dow employs skill, care, and a range of intellectual tools to masterfully explain how each member of the U.S. House of Representatives came to be selected by voters in unique districts. He makes a constructive and persuasive case that these single member districts are vital for the American experiment in republican government.”*

—David Brian Robertson,  
author of *The Original  
Compromise: What the  
Constitution’s Framers Were Really  
Thinking*

*“Electing the House addresses several important questions related to the creation, development, institutionalization, and consequences of single member districts (SMD). Jay Dow shows that this critical feature of the US electoral system is best understood through a historical developmental approach that includes a blend of Founding ideas, institutions, social and political changes, and strategic choices. The book contributes mightily to the American political development (APD) literature on Congress, debates over the vitality of the American electoral system, and congressional reform.”*

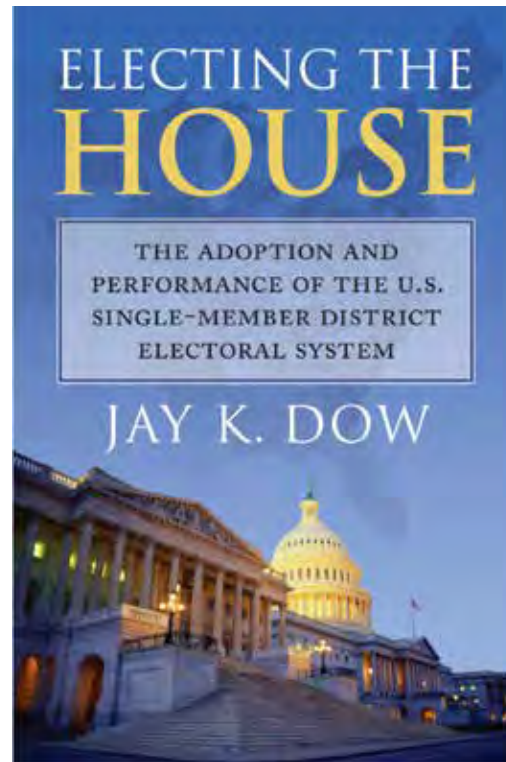
—Daniel Palazzolo, professor  
of political science, University  
of Richmond

## RECENT FACULTY PUBLICATIONS

### Electing the House

#### *The Adoption and Performance of the U.S. Single-Member District Electoral System*

Jay K. Dow  
University Press of Kansas



In the United States we elect members of the House of Representative from single-member districts: the candidate who receives the most votes from each geographically defined district wins a seat in the House. This system—so long in place that it seems perfectly natural—is, however, unusual. Most countries use proportional representation to elect their legislatures. Electing the House is the first book-length study to explore how the US came to adopt the single-member district system, how it solidified into a seemingly permanent fixture of American government and whether it performs well by the standards it was intended to achieve.

The US Constitution grants the states the authority to elect representatives

in a manner of their own choosing, subject to restrictions that Congress might impose. Electing the House reminds us that in the nation’s early years the states exercised this privilege and elected their representatives using a variety of methods. Dow traces the general adoption of the present system to the Jacksonian Era—specifically to the major franchise expansion and voter mobilization of the time. The single-member district plurality-rule system was the Federalists’ solution to tyranny of the majority under the expectation of universal franchise, and the Jacksonian-WhigsEra response to the political uncertainty caused by large-scale voter mobilization. The system was solidified concurrently with the enfranchisement of women in the early twentieth century and African Americans in the Civil Rights Era. Dow persuasively argues that the single-member district system became the way that we elect our representatives because it fits especially well within the corpus of political thought that informs our collective understanding of good governance and it performs well by the standards it was meant to achieve, and these standards are still relevant today.

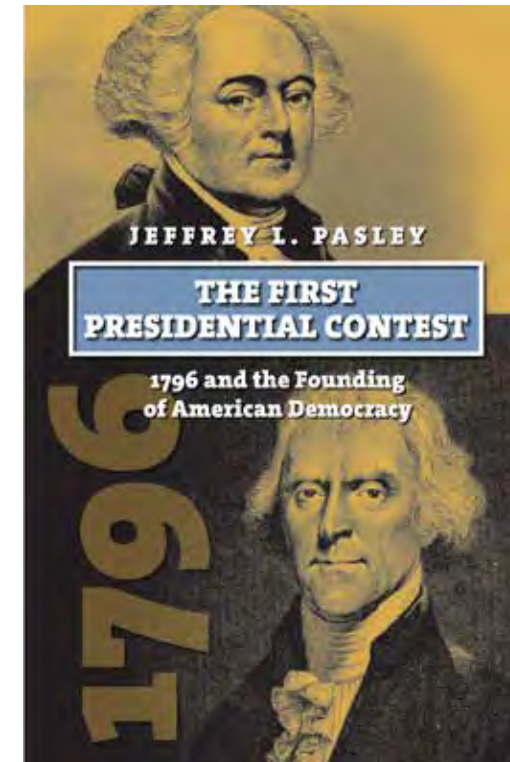
Locating the development of single-member district system within the context of American political thought, Dow's study clarifies the workings and the significance of a critical electoral process in our time. In the process, the book informs and enhances our understanding of the evolution of the American political system.

*Now in paperback!*

### The First Presidential Contest

#### *1796 and the Founding of American Democracy*

Jeffrey L. Pasley  
University Press of Kansas



This is the first study in half a century to focus on the election of 1796. At first glance, the first presidential contest looks unfamiliar—parties were frowned upon, there was no national vote, and the candidates did not even participate (the political mores of the day forbade it). Yet for all that, Jeffrey L. Pasley contends, the election of 1796 was absolutely seminal, setting the stage for all of American politics to follow.

Challenging much of the conventional understanding of this election, Pasley argues that Federalist and Democratic-Republican were deeply meaningful categories for politicians and citizens of the 1790s, even if the names could be inconsistent and the institutional presence lacking. He treats the 1796

election as a rough draft of the democratic presidential campaigns that came later rather than as the personal squabble depicted by other historians. It set the geographic pattern of New England competing with the South at the two extremes of American politics, and it established the basic ideological dynamic of a liberal, rights-spreading American left arrayed against a conservative, society-protecting right, each with its own competing model of leadership.

Rather than the inner thoughts and personal lives of the Founders, covered in so many other volumes, Pasley focuses on images of Adams and Jefferson created by supporters—and detractors—through the press, capturing the way that ordinary citizens in 1796 would have actually experienced candidates they never heard speak. Newspaper editors, minor officials, now forgotten congressman, and individual elector candidates all take a leading role in the story to show how politics of the day actually worked.

Pasley's cogent study rescues the election of 1796 from the shadow of 1800 and invites us to rethink how we view that campaign and the origins of American politics.

*“Carefully researched and engagingly written, Pasley’s volume is the definitive work on this underappreciated election.”*

—*Journal of  
Interdisciplinary History*

*“A superb, important book.  
Likely to become the definitive  
study of the 1796 election.”*

—*Journal of American History*

*“The Presidential election of 1796, memorialized in history tomes for the bitter divisions the campaign mirrored among citizens in the fledgling Republic, receives innovative and refreshing analytical consideration in this eminently readable and clever account of the Adams-Jefferson contest.”*

—*Political Science Quarterly*

*“Vivid and precise, compelling and even funny, this is political history as it needs to be written, as its best practitioners are writing it today. The election year narrative may never be the same—just better for Pasley’s patient unpacking of where it all began. Neither students nor fans of the presidency, of democracy, or of the founding should miss it.”*

—David Waldstreicher, author  
of *Slavery’s Constitution: From  
Revolution to Ratification and  
Runaway America: Benjamin  
Franklin, Slavery, and the  
American Revolution*





Final details are still in the process of being ironed out, but our calendar is already starting to fill up for the spring, with a packed Colloquium Series schedule, a pair of out-of-town lectures for MU alumni and other friends of the Institute in and around St. Louis, and a yet-to-be-titled Abraham Lincoln film series just a few of the things that are on the horizon. We will update our website with information about upcoming events as it comes in, but this is a teaser of what is in store over the next few months.

Invest in the mission of the Kinder Institute with your donation to:

#### Kinder Institute Scholarship Fund

Exclusively supports student participation in one of four transformational, scholarly opportunities for MU undergraduates: our academic internship program in Washington, D.C., Society of Fellows, summer study abroad classes, and Honors College course series.

#### Kinder Institute Endowment

Allows us to expand the scope of programming designed to engage our constituents in thoughtful dialogue about the nation's experience with democratic governance, from the founding of the United States through the present day. These programs are essential to attracting the very best students and scholars to the University of Missouri and to heightening the quality and civility of discourse about matters of the utmost national importance on our campus and in our community.

For more information about contributing to the Kinder Institute, please feel free to contact Director Justin Dyer, [DyerJB@missouri.edu](mailto:DyerJB@missouri.edu)

## SPRING 2017 PREVIEW

1/20

"Jefferson and His Legacies: Opium and Empire, 1776-1844," a Colloquium Series event with Robert H. Smith International Center for Jefferson Studies Historian **Christa Dierksheide** (3:30 PM, Jesse Hall 410)

2/28

"Does the Constitution Enact John Stuart Mill's *On Liberty*," a talk by Boston University Paul J. Liacos Professor of Law **James Fleming** (4:00 PM, Jesse Hall 410)

3/21

"The Property-centered Constitutionalism of the Founding Generation," an out-of-town lecture with Vanderbilt University Professor of Law **James Ely** (Luncheon at the St. Louis Club)

4/5

"Slavery and the Second Amendment: Gun Rights, Gun Control, and the Search for a Usable Constitutional Past," Public Lecture with Fordham University Paul and Diane Guenther Chair in American History **Saul Cornell** (5:30 PM, Mumford Hall 133)

4/28

"U.S. Constitutional Democracy and the World," a reprise of this year's Kinder Institute Chair Lecture with Professor of History **Jay Sexton** (Luncheon at the Bellerive Country Club)



To reserve a spot at Prof. Ely or Prof. Sexton's St. Louis-area lectures, contact **Thomas Kane**, at [KaneTC@missouri.edu](mailto:KaneTC@missouri.edu)

For information on all upcoming events visit [democracy.missouri.edu](http://democracy.missouri.edu)



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