

U.S. History textbook standard review criteria

(current as of 12/4/2013)

This is not a comprehensive course syllabus, but a checklist of facts that U.S. History textbooks often censor on major topics. Use it to evaluate current texts, and to show publishers how to improve future editions.

Subtle forms of political correctness should not:

- *Let race and gender quotas dictate coverage.*
People or events that had more influence for a longer time, should receive more attention than those with less influence.
- *Use language to stigmatize or idealize.*
Patterns of pejoratives toward Europeans, and superlatives toward non-Europeans, are editorially suspect.
- *Note conflict between, but not within, groups.*
Individuals of the same race, class, or gender often disagree more among themselves, than their group as a whole disagrees with other out-groups.
- *Tell only of whites mistreating non-whites.*
Brutalities to Europeans by people of color are as noteworthy as inhumanities to non-whites by whites.
- *Pretend to Indian unity against white expansion.*
Intertribal hatreds were almost always deeper and more divisive than hostility to Europeans (e.g., Tlascalans vs. Aztecs, Iroquois vs. Algonquins, Comanches vs. Apaches). Tecumseh's seldom appeared and succeeded.
- *Hold different races to different ethical norms.*
If whites should have paid for Indian lands, Indians should have paid for taking each others' hunting grounds.
- *Equate nativism with xenophobia.*
Nativism (preference for the native-born) is not xenophobia (hatred of foreigners). Immigration limits are not xenophobic per se.

Stereotypes of whites-as-oppressors, and people-of-color-as-victims, are inappropriate.

- Some sub-Saharan African peoples practiced human sacrifice (e.g., Ashanti, Dahomey). The Aztecs and some other New World Indians practiced cannibalism and human sacrifice.
- In the Columbian exchange, infection was a two-way street. A very lethal strain of syphilis, probably from America, killed many Europeans in the early 1500s.

- Although slavery had long existed worldwide, only the white Christian West realized it was wrong, engaged in self-criticism over it, and took the lead in abolishing it.

All 13 colonies were privately initiated and funded.

Jamestown and Plymouth began to prosper only when they turned from joint labor and sharing from a common storehouse to private land ownership and the individual profit motive.

Mercantilist economic restrictions on British North America helped drain the colonies of specie, discourage manufacturing, promote slavery, and increase American indebtedness to British lenders.

Colonial religion limited government.

- Church polity encouraged self-rule:
 - Lack of a bishop in America meant lay control of Anglican churches.
 - Congregationalism brought local autonomy.
 - Presbyterianism implied republicanism (representative government).
- Calvinist covenant theology nurtured constitutionalism.
- Great Awakening fostered self-determination:
 - Stressed equal opportunity for salvation (free will over predestination in Methodism).
 - Emphasis on faith over reason encouraged democracy, anti-elitism (the educated few might reason, but all could believe).
 - Reaffirmed Protestant individualism (priesthood of all believers; right of each person to interpret Scripture).
 - United colonies in common experience.
 - Expanded most those denominations (Baptists, Methodists) seeking disestablishment.
- Pessimistic view of human nature (sinners needing divine savior) called for checks and balances.

During Pontiac's Rebellion Indians massacred British frontier garrisons and sadistically tortured captives, sometimes eating slain foes or drinking their blood (Francis Parkman, *Conspiracy of Pontiac*, vol. 1 [Boston: Little, Brown, and Company, 1895], pp. 269, 298, 343).

British Acts of Parliament between 1763 and 1775 violated all these rights of Englishmen.

- Taxation by consent of property-owners
- Trial by jury of peers
- Presumption of innocence
- Due process of law before property seizure
- Liability for unlawful property seizure
- Speedy trial
- No standing army in peacetime without consent
- No quartering of troops in private homes
- Freedom of travel in peacetime
- Regular legislative sessions

Colonists said Acts of Parliament between 1763 and 1775 were unjust, unnecessary, and unconstitutional.

- Americans were defending the same rights of Englishmen against Parliament after 1763, that Parliament had defended against the king in 1688-89.
- Taxes in the colonies were properly lower than in England, because America had an unfavorable balance of trade with England due to the Navigation Acts.
- Parliament intended the Proclamation of 1763 not to help the Indians, but to protect the British fur trade west of the Appalachians, and to redirect westward settlement toward British land speculators in Quebec and East and West Florida.
- If colonists needed few British troops to protect them from the French before 1754, why did they need more after 1763 when the French were gone?
- Why were British soldiers stationed in eastern cities, if they were in America to protect colonists from Indians on the western frontier?

To the English mind, "natural rights" meant the specific rights of Englishmen defined by the British Constitutional tradition from 1215 to 1689, all of which restrained government.

Antifederalists warned that rights not enumerated to the people are among the unenumerated powers of rulers, so the Constitution needed a Bill of Rights to restrain the federal government.

Madison and Hamilton agreed (in the *Federalist*) that the federal government was supreme over the states only in the exercise of its exclusively delegated powers, and that the states were supreme over it in exercise of their constitutionally reserved powers.

Jefferson said the Constitution governs relations between citizens of one state with citizens of other states or of foreign nations, but not between citizens of the same state.

Jeffersonians viewed impeachment of federal judges as a check on arbitrariness and high-handedness, judicial misbehavior being whatever a majority of the House and two-thirds of the Senate defined it to be. (Impeached federal judges John Pickering and Samuel Chase were not charged with criminal conduct.)

The first Congress refused Madison's bid to word the Bill of Rights to apply to the states as well as to the federal government.

In its Anglo-American historical context, the original intent of the 2nd Amendment was to arm the people (i.e., the general militia), not just the select militia, as the last line of defense against tyranny; and to guarantee that right not just against abrogation, but against infringement.

Strict and loose constructionists interpreted the elastic clause differently. Both believed in implied powers, but strict constructionists said "necessary and proper" meant "absolutely necessary," while loose constructionists said it meant "convenient, and not expressly forbidden."

Madison and Jefferson held that the "general welfare" clause authorized the federal government to exercise only its enumerated powers, the purpose of enumerated powers being to exclude unenumerated powers.

"States' rights" **under** the Constitution differed from "state sovereignty" **over** the Constitution. (This distinction prevents textbooks from implying that Appomattox repealed the 10th Amendment because it overturned secession.)

- "States' rights" accepted the constitutional principle of shared sovereignty. Based on original intent, it strictly interpreted implied powers and the elastic clause. Examples of its exercise were:

— *Maryland's attempt to tax the Second Bank of the U.S.*

Since the Bank was not *absolutely necessary* to the carrying out of delegated federal powers, but only *convenient*, Jeffersonians said it was unconstitutional.

— *Established state churches*

In *Barron v. Baltimore* (1833), the Supreme Court ruled that the Bill of Rights limits the federal government, not the states. Thus despite the First Amendment, Connecticut had an established church until 1818, and Massachusetts until 1833.

— *States' sole use of the police power*

States in the 1800s exercised their police power over public health, safety, and morals to recognize the general Christian theism and values most Americans professed.

— *"Personal liberty laws"*

Free states enjoined state officials from enforcing federal fugitive slave acts (1820s-50s).

- "State sovereignty" rejected the constitutional principle of shared sovereignty, which denies some powers to the states (e.g., control over foreign policy and tariffs). Instances of its expression included:

— *Nullification*

New England states in the War of 1812 withheld their militias from federal service and did not enforce federal laws against trading with British Canada.

Georgia disregarded a Supreme Court ruling (1832) against its authority over Cherokee lands.

South Carolina's bid (1832-33) to stop collection of tariffs in Charleston brought an ultimatum from strict-constructionist, states'-rights nationalist Andrew Jackson. In *Briscoe v. Bank of Kentucky* (1837), the Supreme Court constitutionalized state-owned banks' issuing paper money, although the Constitution forbids states to "emit bills of credit."

— *Secession*

First threatened by northeastern states and later carried out by the South, secession was really a question of whether undivided sovereignty existed. If a state could secede, it was ultimately sovereign; if it could not, the federal government was ultimately sovereign. The Constitution was silent on the right to secede because it shared sovereignty.

Article VI of the Constitution affirms Constitutional supremacy, not "national/federal supremacy." Constitutional laws are supreme. Unconstitutional federal laws are null and void, with the people the final judges of constitutionality. Jefferson denied that the federal government alone should decide the constitutionality of its acts, for that would make the federal government rather than the Constitution supreme. States too, he wrote in the *Kentucky Resolutions*, should sit in judgment of the extent of federal power under the Constitution, to help protect the people.

When institutions of government disagreed on constitutional interpretation, Jeffersonians and Jacksonians looked to the people to resolve the dispute at the next election.

As a further check and balance, Jeffersonians and Jacksonians thought each branch of the federal government (not just the Supreme Court) should decide an act's constitutionality.

- John Marshall expected Secretary of State Madison to ignore a Supreme Court order to give William Marbury his commission.
- President Jefferson, citing the equality of branches of government, refused Chief Justice Marshall's subpoena to testify at Aaron Burr's trial (but did offer to give a deposition). Jefferson also decided which papers on the case were public records that the court could see, and which to withhold under executive privilege.
- Jackson vetoed recharter of a national bank because he believed it unconstitutional, even though the Supreme Court had declared it constitutional.
- Jackson did not enforce a Supreme Court ruling against Georgia's authority over Cherokee lands.
- Lincoln called the *Dred Scott* decision not settled constitutional interpretation unless the other federal branches concurred.
- Lincoln suspended habeas corpus in some instances during the Civil War despite a Supreme Court prohibition.

Jeffersonians repealed the Judiciary Act of 1801, firing 16 Federalist judges by abolishing their offices.

Only in *Marbury v. Madison* did the pre-Civil War Supreme Court declare a federal law unconstitutional. (The 1857 *Dred Scott* decision did not void the Missouri Compromise, because the 1854 Kansas-Nebraska Act had already repealed it.)

Before 1861, presidents vetoed many more acts of Congress on constitutional grounds than the Supreme Court overturned.

Washington, Adams, and Jefferson believed republican liberty requires virtuous citizens.

Congress saw no conflict between the First Amendment denying federal support of religion, and its confirmation of the Northwest Ordinance which stated, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Jacksonians wanted government to favor no one person or group and each individual to control his own affairs.

In the antebellum decades the Northeast and the South vied for the political support of the West in Congress. The Northeast supported the West's desire for federal aid to internal improvements and exclusion of slave labor in the territories. The South supported the West's desire for low tariffs and generous federal public-land policies.

On strict constructionist/originalist grounds, most presidents from Jefferson to Buchanan usually opposed bills for federal aid to internal improvements as unconstitutional special-interest measures.

Mexico in 1845 formally agreed to recognize Texas' independence, provided Texas agreed never to be annexed by the U.S..

Multiple instances of American heroism in the Mexican war included:

- Captain Charles May's dragoon charge up the center against Mexican artillery helped break the line and win the Battle of Resaca de la Palma.
- The accuracy and almost superhuman rapidity of American artillery fire at the climax of the Battle of Buena Vista overcame the greatest odds the U.S. Army had ever faced.
- To Santa Anna's surprise, U.S. Army engineers overcame very difficult terrain to fortify a key artillery position leading to American victory at Cerro Gordo, enabling U.S. forces to capture Mexico City from the less-defended east instead of from the west.
- Winfield Scott's Mexico City campaign ranks with MacArthur's Inchon landing among the most brilliant feats in U.S. military history.

- The Americans won although outnumbered at least 2 or 3 to 1 in most battles, and inflicted on the Mexicans up to 10 times the number of U.S. casualties per action.

White frontiersmen's perspective differed on the 1864 Sand Creek incident.

- Indian behavior was seasonal. They "surrendered" in the fall (Sand Creek occurred in late November), when grass for their ponies died. They returned to the warpath in the spring when the grass grew.
- Cheyenne chief Black Kettle was friendly. His braves were not.
- Little Raven's Arapahoes had received a pledge of truce. Black Kettle's warriors had not.
- Indian women and children were attacked because the women fought alongside the men, and to avenge cruelty to settlers' families in recent frontier depredations.
- The soldiers involved testified they did not see Black Kettle waving flags during their charge.
- The commanding officer reported after the encounter that "... scalps of white men, women, and children, several of which they had not had time to dry and tan since taken ... were taken from the belts of dead warriors on the battlefield of Sand Creek, and from their teepees What of the Indian blanket that was captured, fringed with white women's scalps?"
- At Sand Creek, whites mutilated the Indian dead in retaliation, and as psychological warfare (Indians thought that whatever disfigurements the body received, the soul bore in the after-life).

Radical Reconstruction involved the abridgment in federal policy of many constitutional principles.

- *Bills of attainder*
"40 acres and a mule" unconstitutionally punished the previous landowner without a trial.
- *Taxation without representation*
From 1867 to 1871, under the Reconstruction Acts, an "iron-clad oath" disfranchised Southerners who had voluntarily aided the Confederacy. Meanwhile huge tax increases and soaring state debts far exceeded real value received. The personal impact of political corruption on individual Southerners was greater than that of the Tweed and Grant scandals on Northerners. New state social spending – plus costs of post-war rebuilding – tripled and quadrupled Southern state tax rates in 1870 compared to 1860, though the property-tax base had shrunken.

- 15% of Mississippi landowners could not pay these taxes and lost their land at one time.
- *Unfree elections/restriction on republican form of government*
Until 1872, the 14th Amendment barred ex-Confederate officials from state or federal office if, before supporting the Confederacy, they had sworn to uphold the U.S. Constitution, depriving the South of its natural leaders.
- *Standing army in peacetime without consent*
Under Radical Reconstruction, after the President formally declared the rebellion over and with ex-Confederate states unrepresented in Congress, the Army occupied the South.
- *No separation of powers*
Through their issuance of general orders, commanding generals in the five military districts under Radical Reconstruction combined executive, legislative, and judicial functions.
- *Juryless trials*
Peacetime military tribunals in the South during Radical Reconstruction lacked juries.
- *Extra-Constitutional amending process*
Ex-Confederate states had to ratify the 14th Amendment as if they were in the Union, but were unrepresented in the Congress that proposed it, as if they were not in the Union.
- *Partisan motives of Constitutional amendments*
The 14th Amendment assured Republican dominance, not black suffrage: The South could either enfranchise the freedman, which would increase black Republican membership in Congress (the 13th Amendment repealed the 3/5s Compromise); or it could disfranchise him and lose white Democratic representation there. The 15th Amendment forbade disfranchisement on the basis of race only after Grant won in 1868 due to the freedmen's vote in the South.

Under Article III, Section 2, par. 2 of the Constitution, Congress in 1868 stripped the Supreme Court of appellate jurisdiction over the 1867 Habeas Corpus Act.

Principles and benefits of free enterprise were prominent in the U.S. Industrial Revolution.

- Individuals acquired, held, used, and disposed of property without government consent.
- People earned unequal pay due to unequal abilities which had unequal market values.
- State general incorporation laws let firms incorporate without special legislative permission.
- Instead of government depressing agriculture to fund industrial growth, a stock market raised private capital to fund economic development.

- Competition encouraged innovation.
- The profit motive stimulated entrepreneurship.
- Low taxes fostered capital accumulation.
- The market price mechanism directed investment and guided entrepreneurs.
- Mass production lowered prices and raised purchasing power and living standards.
- Job opportunities grew for immigrants and unskilled agricultural laborers.
- Old wealth was not redistributed; new wealth was created.

Firms receiving government aid performed poorly against independent entrepreneurs in the same industry.

- After losing their New York State legal monopoly in 1824, Robert Fulton's steamboat associates bankrupted against cheaper market competitors.
- Cornelius Vanderbilt in the 1850s drastically undercut fares of federally-subsidized steamship companies.
- James J. Hill's Great Northern Railroad in the 1880s and 1890s had lower rates and higher profits than transcontinental railroads built with federal aid.

Overbuilding of land-grant railroads through federal aid raised rates and impaired service.

The economics of railroading justified rebating and long-short haul rate differentials.

- Railroads competed through rebates.
- Railroads could carry big shipments long distances cheaper per unit mile because they have high fixed costs but low variable costs.

Business' private pooling, price-fixing, joint-rate, and marketing-quota agreements failed without government support.

Economies of scale increased optimum firm size in the late 1800s.

Trusts appeared in the 1880s because archaic state incorporation laws did not provide for corporations in one state to control out-of-state corporations.

Trusts reorganized either as incorporated holding companies when New Jersey in 1889 began allowing New Jersey corporations to control out-of-state corporations, or as interstate corporations when New Jersey in 1891 passed a general incorporation law for interstate corporations.

Chain stores purchased in volume discounts. Oligopolistic competition in national markets lowered consumer prices.

Unlike inefficient, government-created monopolies, efficient, free-market monopolies benefited consumers.

A case exists against, as well as for, antitrust.

- Predatory pricing seldom occurred. "Cutthroat competition" meant more-efficient firms used economies of scale to lower consumer prices. (The demand for most goods is elastic — the cheaper they are, the more they sell and the higher the profit.) No rational firm cuts prices to eliminate competitors if that requires expanding beyond its most profitable size.
- 32 years after the government lost the 1895 E.C. Knight antitrust case, free-market forces had driven the American Sugar Refining Company's market share down from 98% to 27%.
- Rates fell on railroads under Northern Securities Company control (1901-4).
- The rule of law is uniform, predictable. The "rule of reason" in antitrust has been erratic, unpredictable, sometimes contradictory.
 - For two decades or more before its 1911 break-up, Standard Oil had lost market share while expanding production and sometimes cutting prices. *Despite* this, the Supreme Court in 1911 ordered Standard Oil dissolved, on the ground that as a holding company it prevented competition among its member firms. (The American Tobacco break-up, also in 1911, occurred under similar circumstances and reasoning.)
 - From 1901 to 1911, U.S. Steel lost market share while increasing output and lowering prices. *Because* of this, the Supreme Court in 1920 held that U.S. Steel had not restrained trade and refused to order its dissolution, even though the companies that had combined to form it no longer competed among themselves. (This was just the opposite outcome of the 1911 Standard Oil and American Tobacco cases.)
 - Between 1888 and 1937, Alcoa greatly raised production and lowered the price of aluminum. A federal court in 1945 found Alcoa had monopolized the U.S. virgin ingot aluminum market due to its economic efficiency, but did not break Alcoa up because U.S. government-owned aluminum plants built during WWII would be sold to private companies (Reynolds and Kaiser),

creating competition in the industry. (This ruling judged Alcoa a monopoly in a very narrowly-defined market, but did not punish it for restraining trade.)

- Part of the 1914 Clayton Antitrust Act itself restrained trade. By forbidding volume sales discounts to chain stores which sold for less, it protected higher-cost small businesses from competing with their more-efficient rivals. Antitrust preferred more "competitors" over real competition, and corporate welfare over consumer welfare.
- Antitrust applied only to competing firms in free markets, never to companies owing their position to government favors, such as high tariffs or licensing.

The more highly regulated an industry is, the more it influences its regulator. The ICC raised rather than lowered rates, protecting "competitors" from competition.

Private ownership fostered development and conservation of natural resources.

- Well-defined, enforceable, transferable private property rights in land, water, and livestock facilitated Great Plains settlement in the late 1800s.
 - cattlemen's range rights
 - prior claim and first-use water rights
 - branding
 - barbed wire enclosure
 - homesteading and preemption
 - federal land grants through transcontinental railroads to individuals
- Private ownership conserved resources by giving owners an interest in long-run property values.
- Speculators conserved resources by holding them off the market for higher prices.

Technology conserved, substituted, and/or raised the productivity of natural resources.

- Desulfurizing and "cracking" increased the supply of usable petroleum from the same resource base.
- Kerosene replaced whale oil for lighting; natural gas and electricity replaced kerosene.
- Coal displaced wood as an energy source; petroleum derivatives displaced coal.
- Preservatives extended the service life of wood (railroad ties, utility poles).
- Steel superseded wood in construction.
- Industry utilized byproducts.

Technology expanded the economy's natural resource base by developing new natural resources such as oil, rubber, and bauxite (natural resources are raw materials industry can use).

Modern welfare statism contrasts with 19th century private charity, which was:

- Religious (undertaken as a calling)
- Redemptive (sought recipients' spiritual change)
- Unsentimental (withheld aid from undeserving poor)
- Economical (referred indigents for help to their families/friends where possible)
- Individual (dealt with the needy one-on-one, not as a class)
- Personal (stressed close caseworker-client contact)
- Voluntary (used mostly unpaid staffs)
- Extensive (reached hundreds of thousands annually in late 1800s)
- Urban (worked in big-city slums)

Constitutional restraints on federal power gradually diminished.

- *McCulloch v. Maryland* (1819)
Supreme Court constitutionalized the Bank of the United States, despite a Constitutional Convention vote not to empower the federal government to charter corporations, such as banks.
- *Knox v. Lee* (1871)
Supreme Court constitutionalized U.S. fiat paper money as legal tender, despite a Constitutional Convention vote not to allow this.
- Interstate Commerce Act (1887)
Quasi-legislative, -executive, and -judicial power vested over time in a regulatory body, violating the separation-of-powers principle.
- *Champion v. Ames* (1903)
Supreme Court found implied in the commerce clause a federal police power, under which the federal government can not just regulate interstate commerce but prohibit it. Previously, all police powers were reserved to the states under the 10th Amendment.
- *Federal Reserve Act* (1913)
Despite a Constitutional Convention vote not to allow federal fiat paper money as legal tender, the Federal Reserve System provided for an "elastic" money supply with price controls on credit, which insured its expansion.
- *NLRB v. Jones and Laughlin Steel* (1937)
The federal government under the interstate commerce clause could regulate intrastate production.

- *Wickard v. Filburn* (1942)
The federal government under the interstate commerce clause could regulate intrastate consumption.
- FDR tried to promote prosperity by:
 - price inflation (withdrawing gold coins from circulation)
 - monetary inflation (expanding bank credit)
 - restricting production (AAA, SCDA Act)
 - restraining price competition (ICC, NRA)
 - restraining wage competition (NRA, NLRA, FLSA)
- 16th Amendment (1913)
Direct federal taxation of incomes departed from the Constitution's original reliance on indirect taxation only.
- 17th Amendment (1913)
With U.S. Senators no longer elected by state legislators, states lost their check on federal power, eroding the constitutional principle of "mixed government."
- 18th Amendment (1919)/*Roe v. Wade* (1973)
In national prohibition and abortion, the federal government exercised states' reserved police power over health, welfare, safety, and moral issues.
- Concept of rights changed from being a *check* on government to being a *claim* on government:
 - Social gospel
 - Populist party
 - Socialist party
 - Progressive era independent regulatory commissions
- Korean (1950) and Vietnam (1964) Wars
Presidents committed U.S. forces to overseas combat without the Congressional declaration of war required by the Constitution.

Judicial review, said the *Federalist*, would determine whether executive and legislative acts were within their Constitutional grants of power. Threat of impeachment would keep judges from using judicial review to legislate.

To insure the uniform and predictable rule of law, Jefferson and Madison said the original intent of a law's authors must prevail, otherwise the courts would function as constitutional conventions in continuous session.

Following the original intent of the 14th Amendment, early Supreme Court rulings narrowly defined the rights, as U.S. citizens, of butchers (1873 *Slaughterhouse* cases) and of railroad

property owners (1877 *Granger* cases), as well as of blacks (1883 *Civil Rights* cases).

Supreme Court power grew over time due to neglect of the original intent of the Constitution.

- Sherman Anti-Trust Act (1890)

So vaguely worded was this Act that Congress in effect delegated to the federal judiciary the power to legislate on the subject, violating the separation-of-powers principle.

- *Chicago, Milwaukee and St. Paul Railroad Co. v. Minnesota* (1890)

Supreme Court asserted power to review railroad and warehouse rates set by states, holding that under the 14th Amendment corporations were legal persons whose property could not be taken without due process. (The original intent of the due-process clause was to constitutionalize certain civil rights of freedmen covered in the 1866 Civil Rights Act.)

- *Gitlow v. New York* (1925)

Supreme Court claimed jurisdiction over state free-speech laws on the ground that the 1st Amendment free-speech clause restrains the states through the 14th Amendment due-process clause. (The Bill of Rights' original intent was to restrain only the federal government, letting states write their own free-speech laws. The due-process clause's original intent was only to restrain states from denying the procedural common-law rights of the accused to indictment and reply in court.)

- *Reynolds v. Sims* (1964)

Supreme Court held that state legislative districts not based on the "one man, one vote" formula violate the equal-protection clause of the 14th Amendment, and ordered their reapportionment. (The 14th Amendment says Congress — not the courts — would enforce its provisions, and acknowledges each state's sovereignty over its own suffrage laws.)

Supreme Court equated what was wise, just, or reasonable, with what was constitutional.

- "Sociological jurisprudence"

Supreme Court (*Muller v. Oregon*, 1908) upheld an Oregon law limiting women's workday to 10 hours; states' right to exercise their police power depends on gender (i.e., because women are physically weaker than men, they have less freedom of contract than *Lochner v. New York* [1905] vested in men); Supreme Court can decide when to override the original intent of the Constitution to reserve the police power to the states.

- "Clear and present danger" doctrine
Supreme Court upheld the conviction under federal law of socialists who mailed pamphlets opposing the WWI draft, even though the 1st Amendment says that "Congress shall make no law ... abridging the freedom of speech, or of the press." (*Schenck v. U.S.*, 1919).

Strict and loose constructionists disagreed over the "due process" clause.

Strict constructionists said the "due process" clause meant only that the Supreme Court could supervise lower courts' procedures (procedural due process). Loose constructionists said it empowered the Supreme Court to revise laws as well (substantive due process), abridging the separation-of-powers principle.

Constitutional supremacy conflicted with natural law theory.

Constitutional supremacy accepted the original intent of the written statute as the objective expression of the known will of the people. Natural law theory looked to subjective concepts of abstract equity and justice to decide what the law should be. Substantive due process adjudication rested on natural law theory.

Under Andrew Mellon's federal tax reforms:

- *The lowest incomes got the biggest tax cuts.*
Between 1921 and 1929, tax rates on incomes under \$4000 a year fell by 87.5% (i.e., from 4% to ½%), while tax rates on the highest incomes fell only 67% — from 73% to 24%.
- *The highest incomes paid most of the taxes.*
In 1921, those earning under \$10,000 a year paid 22.5% of the total federal income tax revenue, and those earning over \$100,000 a year paid 28%. In 1929, the under-\$10,000 bracket paid 1.3%, and the over-\$100,000 bracket paid 65%.
- *Tax revenue rose as tax rates fell.*
Federal personal income tax collections went from \$719 million in 1921 to over \$1 billion in 1929. Lower tax rates led the wealthy to invest more in new productive facilities and less in tax-exempt government bonds.

Laissez-faire theory says that federal monetary policy caused the Great Depression and that government economic intervention prolonged it.

- Under free market conditions, prices tend to fall as productivity increases. U.S. prices in the 1920s were stable. Rising productivity concealed monetary inflation.

- Below-market interest rates during the 1920s misled entrepreneurs to malinvest, beginning a boom-bust cycle. Capital goods industries overproduced. Consumer goods industries underproduced.
- To speed recovery, prices (including wages) should have fallen as quickly as possible and as far as necessary to balance supply and demand, clear markets, lower the cost of living, and minimize unemployment.
- High wages do not cause prosperity. Profits, savings, investment, and productivity cause prosperity, which results in high wages. Taxes erode profits, savings, and investment. Government spending represents unproductive consumption. To restore prosperity, government should have cut taxes and spending.

From 1928 to 1933 gold flowed into the Treasury. Under a freely-functioning gold standard the money supply should therefore have expanded during that time. But instead the U.S. experienced deflation because the Federal Reserve System – to discourage stock market speculation – artificially shrank the money supply, which suspended the operation of the gold standard and prolonged and worsened the Depression.

U.S. abandonment of the international gold standard in 1971 – ending dollar redeemability in gold to settle international trade balances – encouraged the U.S. to *buy* from other nations *without selling* to them, paying in unbacked fiat money. This expansion of credit profited banks and accelerated over time. Such "globalization" was not traditional free trade based on comparative advantage, which assumed the gold standard to balance imports and exports. Instead, it meant permanent ("structural") trade imbalances, where industries shifted to Asia with its lower wage and production costs, "deindustrializing" the West which, without the gold standard, *no longer had to produce in order to consume*. In reaction to this, protectionism would reserve home markets for domestically-produced goods fewer in number and of poorer quality due to inefficient production and no comparative advantage.

In the Cold War, Communist totalitarianism was not the moral equivalent of the West's free political and economic system. Determined not to repeat the mistake of appeasement in the 1930s, Western leaders rightly viewed expansionist Soviet imperialism as a serious aggressive threat.

North Vietnamese communism under Ho Chi Minh was Stalinist and Maoist in practice.

- Ho came to power in 1945 on a wave of communist terror in which thousands of his political foes died, including competing non-communist Vietnamese nationalist leaders.
- More bloody than Ngo Dinh Diem's repression in the South was the purge by communists between 1951 and 1956 in North Vietnam that killed ca. 50,000.
- Diem cancelled the 1956 Vietnam-wide election because Ho would not allow a free election (with international observers) in the North.
- Communists' 1968 massacre of about 3,000 civilians at Hue dwarfed U.S. soldiers' killing of 200+ noncombatants at My Lai the same year.

Critics said Great Society programs did not work.

- *As spending on "anti-poverty" programs increased, the poverty rate stopped declining.* The percentage of Americans below the poverty line fell from 30% in 1950 to 18% in 1964, and to 13% in 1968. But although social welfare spending quadrupled during the 1970s, in 1980 13% of Americans were still officially poor — and this percentage did not include those who would be officially poor if federal payments they received (e.g., AFDC, SSI) did not count as part of their income.
- *Job training programs had little impact on the hardcore unemployed whom they chiefly targeted.* Some already-employed workers used these programs to upgrade their skills and get better jobs. But most of the chronically jobless who enrolled in them either dropped out, never got jobs afterward, or (due to poor work habits) soon lost the jobs they did get.
- *From 1965 to 1980, about as many real dollars were spent on federal jobs programs, as on the space program from 1958 to 1969, yet the unemployment rate among black males under 20 years of age rose from 1966 to 1980.* The Great Society no longer distinguished between the "deserving" and the "undeserving" poor. Instead it blamed "the system" for poverty and granted welfare as a "right," debunking the work ethic.
- *Federal spending on education more than tripled in real dollars between 1964 and 1980, but academic achievement gaps among groups changed little.* Despite Great Society emphases on "compensatory education," bilingual education, and racial integration, *A Nation at Risk* reported in 1983 that education had declined during this period.

Reaganomics had benefits as well as defects.

- "The wealthy" (i.e., the top quintile of households in terms of annual income) received the most income in part because this quintile contained the most people — about 25% of the population in the 1980s, compared to about 15% for the bottom quintile (and also more than each of the middle three quintiles).
- The trendline was steepest for the highest quintile and gentlest for the lowest, but real income rose in the 1980s for all five quintiles.
- Tax cuts promoted economic expansion. Deficits of the 1980s protected that expansion by restraining government growth. The deficits upset political liberals most.

Government-imposed price controls caused surpluses and shortages.

- Agricultural price floors caused overproduction.
- Oil price ceilings caused energy crises.
- Rent controls caused housing shortages and homelessness.
- Minimum wages caused unemployment.

Federal fiscal and monetary policies, as well as fluctuations in market supply and demand, influenced business cycles.

- Government borrowing to cover its deficits tended to "crowd out" private borrowing and slow economic growth.
- Monetary inflation temporarily lowered interest rates and encouraged overborrowing, overinvestment, and overexpansion throughout the economy, followed by general cutbacks, layoffs, and inventory reductions when expected future consumer demand fell short.

Market competition best limited discrimination and expanded minority opportunity.

- Even bigoted employers will hire minority individuals whose skills give them a competitive edge in the marketplace, unless government forbids it.
- Jews, Japanese, and Chinese prospered in America despite discrimination by shunning political action in favor of individual economic self-improvement and personal achievement.

Federal farm programs had negative as well as positive effects.

- Farms had become much more productive and greatly lowered unit output costs since 1909-14, but the "parity" concept arbitrarily froze

the 1909-14 price ratio between agricultural and industrial goods into a permanent norm.

- Since private speculators buy crops at harvest based on their expected resale prices over the year, government need not support crop prices to insure farmers fair market value.
- Acreage restrictions and production quotas penalized more-efficient farmers and less-efficient farmers equally, while in the free market the least-efficient would stop producing and the most-efficient would produce all they could more cheaply.
- Farmers grew crops on marginal lands to get subsidies for taking them out of production again, eroding these poorer soils and destroying wildlife habitats.
- Farmers used more herbicides, pesticides, and fertilizer on land they did cultivate, to compensate for production lost on the acres government paid them not to plant.

Public works or work relief projects did harm as well as good.

- Instead of creating new jobs, public works projects only shifted employment from the private to the public sector, because the taxes to pay for them reduced private sector demand as much as they increased public sector demand.
- Work relief jobs were less productive than private-sector jobs because their goal was employment, not efficient production.

Government loans hurt as well as helped.

- More-efficient producers got fewer private loans when government taxed capital away to lend to poorer credit risks, resulting in lower overall productivity, employment, and purchasing power.
- Government loan guarantees encouraged overindebtedness, overexpansion, and eventual increased bankruptcies and business contractions.

Labor unions had defects as well as benefits.

- Higher wages do not increase prosperity. Higher productivity increases prosperity by lowering prices and raising purchasing power even if nominal wages fall, as prices fall faster than wages (which occurred in the late 1800s).
- Higher productivity results from reinvested profits not paid out in above-market wages
- Above-market union wages curtail capital formation, reduce the number of available unionized jobs, and may close less-efficient unionized plants.

- Higher prices of union-made goods cut sales and purchasing power.
- Featherbedding impairs efficiency.

Free trade creates prosperity better than protectionism does.

- Free trade lessens international political and military tensions, promotes comparative advantage, stimulates foreign investment, lowers prices, boosts exports, and most quickly raises living standards.
- Even trade with a protectionist nation benefits a free-trade nation, since the foreign exchange the protectionist nation earns by selling to the free-trade nation must be spent directly or indirectly in the free-trade nation.