# U.S. CONSTITUTIONAL HISTORY I:

# FROM THE FOUNDING TO RECONSTRUCTION

# FALL 2021

**PROFESSOR MICHAEL ALLAN WOLF**

**LAW 6930, CLASS 27413 THREE CREDIT HOURS**

***SYLLABUS AND CLASS PROCEDURES***

OUR CLASS WILL MEET ON TUESDAYS FROM 3 TO 4:55 PM AND THURSDAYS FROM 3:00 TO 3:50 PM IN HOLLAND 355C.

*My office is Holland Hall Room 355C, my email address is* [wolfm@law.ufl.edu](mailto:wolfm@law.ufl.edu)*, and my phone number is 352-273-0934. I am typically in my office Monday through Friday. If my door is open, you are welcome, as I do not restrict my contact with students to a few hours per week. If you would like to set up an appointment, please send me an email message.*

IN ADDITION TO THE EDITED CASES AND OTHER MATERIALS DISTRIBUTED ON CANVAS, THERE ARE FOUR REQUIRED TEXTS FOR THIS CLASS:

MICHAEL J. KLARMAN, The Framers' Coup: The Making of the United States Constitution (2016)

Mary Sarah Bilder, Madison’s Hand: Revising the Constitutional Convention (2015).

William Davenport Mercer, Diminishing the Bill of Rights: *Barron v. Baltimore* and the Foundations of American Liberty (2017)

James Oakes, The Crooked Path to Abolition: Abraham Lincoln and the Antislavery Constitution (2021).

**COURSE DESCRIPTION (FROM WEB PAGE):** *This course will explore the origins and early interpretations of the U.S. Constitution. Readings will focus on English constitutionalism, early state constitutions, the Articles of Confederation, the framing and ratification processes, and Supreme Court opinions from the beginning of the Court to Reconstruction.*

**COURSE GOALS AND/OR OBJECTIVES:** *By the end of this course, it is my hope that students will:*

* *be familiar with the interplay between social, political, economic, and ideological developments and the work of the Supreme Court,*
* *appreciate the origins and unique nature of American constitutionalism,*
* *understand how modern understandings (popular, political, and legal) of the origins, ratification, and meaning of the Constitution contrast with the historical reality,*
* *engage in research in primary sources and present those findings to the class,*
* *appreciate that the current body of constitutional law is a product of decades of complex and profound developments within and outside the Court,*
* *analyze and discuss the course of American constitutional history in class and in writing.*

COURSE POLICIES:

**ATTENDANCE POLICY:** *The law school’s policy on attendance can be found at:*

[*https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies*](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies)*. Each student is permitted six "class hour" (roughly 55 minutes each) absences during the semester. Within one week of missing class, you are responsible for reporting to me via email that you missed class. There is no need to explain your absence, as I do not differentiate between excused and non-excused absences. I reserve the right to reduce the grade for a student with excessive absences and to bar the student from taking the final exam.*

**INTERNET USE IN THE CLASSROOM:** *I expect that during each class all students will be prepared to conduct research on the internet using a laptop, tablet, or other device. Of course, students are not to use these devices (including smart phones) for any non-pedagogical purposes.*

**ACADEMIC HONESTY:** *Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at* [http://www.dso.ufl.edu/students.php.](http://www.dso.ufl.edu/students.php)

GRADING POLICIES:

*I expect that students will have done the assigned readings for each class. I will rely on student participation to facilitate the learning of challenging concepts. Students who participate at a consistently high level may be rewarded by a one-half grade bump (e.g., from B+ to A-). I reserve the right to lower the grades by a one-half grade bump of students who disrupt the learning environment.*

THERE WILL BE ONE PAPER, ONE FINAL EXAMINATION, AND ONE ORAL PRESENTATION: *The paper (5-7 pages, 40% of final grade) will require the student to do outside research using primary and secondary sources, and the final examination (50%) will be an essay test. Students will also be required to make one oral presentation during the semester (10% of final grade).*

**GRADING SCALE:** *The Levin College of Law’s mean and mandatory distributions are posted on the College’s website, and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:*

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D | 1.0 |
| D- | 0.67 |
| E | 0.0 |

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

WORKLOAD/CLASS PREPARATION:

*It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.*

ACCOMMODATIONS:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

ONLINE COURSE EVALUATION PROCESS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

CLASS READINGS:

You will find below the book chapters, cases, and other materials that I anticipate we will cover during the semester. A "class" is equivalent to a "class hour" (there are three class hours per week). I will distribute electronically a short excerpt from each case listed. Before reading that excerpt, students should review the summary for the case on the Oyez site ([www.oyez.org](http://www.oyez.org)). For most classes, I will also distribute one or more historical documents to accompany the assignment. I will arrange before class for individual law students to explain a document or case to the class (that is the oral presentation component of the class). In the event we are moving more slowly than anticipated, I will not speed up to cover all of these readings. Instead, I will make cuts in the assigned readings.

Classes 1-2

The British Constitution: <https://www.bl.uk/magna-carta/articles/britains-unwritten-constitution>

The Declaration of Independence: <https://avalon.law.yale.edu/18th_century/declare.asp>

Constitution of Pennsylvania (1776): <https://avalon.law.yale.edu/18th_century/pa08.asp>

The Articles of Confederation: <https://avalon.law.yale.edu/18th_century/artconf.asp>

Klarman, pages 1-48

Classes 3-5

Klarman, pages 48-125

Bilder, pages 1-46

Classes 6-10

Klarman, pages 126-256

Bilder, pages 49-153

U.S. Constitution: <https://www.archives.gov/founding-docs/constitution-transcript>

Classes 11-13

Klarman, pages 257-304

Oakes, pages xi-25

*UNDERGRAD TEST ONE*

Classes 14-17

Klarman, pages 305-545

Bilder, pages 154-176

Classes 18-20

Klarman, pages 546-631

Bilder, pages 179-262

Bill of Rights: <https://avalon.law.yale.edu/18th_century/rights1.asp>

Classes 21-24

Chisholm v. Georgia (1793): state parties and federal jurisdiction

Ware v. Hylton (1796): state law and the Treaty of Paris

Hylton v. U.S. (1796): carriage tax

Calder v. Bull (1798): ex post facto laws

*UNDERGRAD PAPER ONE*

**Classes 25-29**

**Mercer, pages 3-84**

**Marbury v. Madison (1803): mandamus and judicial review**

**Fletcher v. Peck (1810): Yazoo land fraud**

**Martin v. Hunter's Lessee (1816): Supreme Court review of state decisions**

**Trustees of Dartmouth College v. Woodward (1819): Contract Clause and private colleges**

**Classes 30-33**

**Mercer, pages 85-212**

**McCulloch v. Maryland (1819): constitutionality of the Bank of the United States**

**Cohens v. Virginia (1821): state decisions and the Supreme Court**

**Ogden v. Saunders (1827): bankruptcy law and the Contracts Clause**

**Worcester v. Georgia (1832): state regulation of Native Americans**

**Barron v. Baltimore (1833): Bill of Rights not applicable to the states**

**Charles River Bridge v. Warren Bridge (1837): Contracts Clause and competition**

***UNDERGRAD TEST TWO***

**Classes 34-36**

**Oakes, pages 26-133**

**United States v. The Amistad (1841): slave revolt on a ship**

**Prigg v. Pennsylvania (1842): preemption and fugitive slaves**

**Dred Scott v. Sandford (1857): slavery and the Missouri Compromise**

**Classes 37-42**

**Oakes, pages 134-204**

**Ex parte Vallandigham (1864): appeals from military courts**

**Ex parte Milligan (1866): civilian trials in military tribunals**

**Mississippi v. Johson (1867): challenging Reconstruction**

**Georgia v. Stanton (1868): challenging Reconstruction (again)**

**Ex parte McCardle (1869): congressional withdrawal of Supreme Court jurisdiction**

**Texas v. White (1869): legal effects of secession**

***UNDERGRAD* PAPER TWO/*LAW STUDENT* PAPER**

FINAL EXAM:

*The two-hour, unlimited source, open-book exam will be administered on a flexible basis, meaning that you can choose the time during the final examination period (December 3-16) during which to take the test. The law school policy on exam delays and accommodations can be found here:* [*https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form*](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form)*.*