# U.S. CONSTITUTIONAL HISTORY II

# SPRING 2021

**PROFESSOR MICHAEL ALLAN WOLF**

**LAW 6930: CLASS 14912 (IN-PERSON), 23160 (ONLINE)**

**3 CREDIT HOURS**

***SYLLABUS AND CLASS PROCEDURES***

OUR CLASS WILL MEET ON TUESDAYS FROM 3:00 TO 5:00 PM AND ON THURSDAYS FROM 3:00 TO 3:55 PM ONLINE AND (ONLY FOR STUDENTS ENROLLED IN THE IN-PERSON SECTIONS) IN HOLLAND 382.

*My email address is* wolfm@law.ufl.edu*, and my phone number is 352-273-0934. I have an open-door policy, so if you would like to schedule a Zoom meeting, please send me an email message.*

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

Michael J. Klarman, Brown v. Board of Education *and the Civil Rights Movement* (2007)

Paul Kens, Lochner v. New York*: Economic Regulation on Trial* (1998)

Philippa Strum, *Speaking Freely:* Whitney v. California *and American Speech Law* (2015)

Noah Feldman, *Scorpions: The Battles and Triumphs of FDRs Great Supreme Court Justices* (2010)

**COURSE DESCRIPTION:** *The course will explore how the turbulent decades between the 1870s and 1960s witnessed significant changes in society and politics that had an impact on, and were directly affected by, the decisions of the U.S. Supreme Court. The course will explore the give-and-take between the Court and the American people.*

**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 nature of modern American constitutional jurisprudence,*
* *understand how modern understandings (popular, political, and legal) of constitutional jurisprudence in the Supreme Court 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: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>. Each student is permitted six class hour (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.

**PROCEDURES FOR STUDENTS REGISTERED IN LIVE VERSION OF THE CLASS:** *In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.*

*• You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus.*

*• This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.*

*• Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.*

*• Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.*

*• If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. (See https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/.)*

*• Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/).*

**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 means. Of course, students are not to use these devices (including smart phones) for any non-pedagogical purposes.*

**PHOTOS AND VIDEOS:** *Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.*

**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 of students disrupt the learning environment by a one-half grade bump.*

THERE WILL BE ONE PAPER, ONE FINAL EXAMINATION, AND AT LEAST

**TWO ORAL PRESENTATIONS:** *The paper (5-7 pages, 30% 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 at least two oral presentations during the semester (20% 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:*

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| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |

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| --- | --- |
| E (Failure) | 0.0 |

The law school grading policy is available at: [http://www.law.ufl.edu/student-](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9) [affairs/current-students/academic-policies#9](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9).

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 (<http://www.dso.ufl.edu/drc/>). 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 a list of the cases that I anticipate we will cover during the semester, at a pace of roughly 2 cases per "class hour" (55-minute period). I will post on Canvas ***very short*** excerpts from each case listed. ***The dates for reading assignments and tests are my best estimate; they are not set in stone.*** 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.

***PLEASE NOTE: A FEW CLASS TIMES HAVE BEEN MARKED WITH STRIKEOUTS BECAUSE THEY ARE FOR THE UNDERGRADUATES IN THE CLASS.***

**Class hours 1-5 (Jan. 12, 14, 19)**

**Bradwell v. The State (1873): Gender Discrimination**

**Slaughterhouse Cases (1873): Reconstruction Amendments**

**United States v. Cruikshank (1875): Racial Violence during Reconstruction**

**Munn v Illinois (1877): Rate regulation**

**Reynolds v. United States (1879): Anti-Mormon legislation**

**Civil Rights Cases (1883): Racial discrimination in public accommodations**

**Class hours 6-8 (Jan. 21, 26)**

***Klarman* pages 3-27**

**Yick Wo v. Hopkins (1886): Local regulation targeting Asian immigrants**

**Mugler v. Kansas (1887): State prohibition**

**Pollock v. Farmers Loan and Trust (1895): Income taxes**

**United States v. E. C. Knight Company (1895): Sherman Antitrust Act**

**Plessy v. Ferguson (1896): Racial segregation by law**

**Williams v. Mississippi (1898): Literacy test and poll tax for African American voters**

**Class hours 9-11 (Jan. 28, Feb. 2)**

**Lone Wolf v. Hitchcock (1903): Congressional abrogation of Native American treaty Dorr v. United States, 195 U.S. 138 (1904): Constitution did not require jury trial in case from the Philippines**

# *Paul Kens, Lochner v. New York: Economic Regulation on Trial (1998)*

# Lochner v. New York (1905): Maximum hours legislation

**Muller v. Oregon (1908): Maximum hours legislation for women**

**Class hours 12-14 (Feb. 4, 9)**

**Coppage v. Kansas (1915): Anti-union legislation**

**Frank v. Mangum (1915): No due process violation for disorder in courtroom**

**Buchanan v. Warley (1916): Racial zoning**

**Hammer v. Dagenhart (1918): Child labor laws**

***Strum* to page 105**

**Abrams v. U.S. (1919): Inciting resistance to the World War I effort**

**Class hours 15-17 (Feb. 11, 16)**

**Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball**

**Clubs (1922): Antitrust protection for baseball**

**Meyer v. Nebraska, 262 U.S. 390 (1923): State statute outlawing foreign language instruction**

**Pierce v. Society of Sisters (1925): Compulsory public education statute**

**Village of Euclid v. Ambler Realty Co. (1926): Local zoning**

**Buck v. Bell (1927): State sterilization statute**

**Class hours 18-20 (Feb. 18, 23)**

***Strum* to page 155**

**Whitney v. California (1927): California Criminal Syndicalism Act did not violate**

**First Amendment**

**Olmstead v. U.S. (1928): Wiretapped telephone conversations**

***Feldman* to page 73**

**Powell v. Alabama (1935): Right to counsel in trial charged with racial bias**

**Schechter Poultry (1935): National Industrial Recovery Act**

**Carter v. Carter Coal Co. (1936): New Deal Act protecting coal miners**

**Brown v. Mississippi (1936): Confession extracted by coercion**

**Class hours 21-23 (Feb. 25, March 2)**

***Feldman* pages 74-174**

**Palko v. Connecticut (1937): Double-jeopardy incorporation**

**National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937):**

**NLRA**

**West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937): State minimum wage act for women workers**

***Klarman* pages 27-53**

**Missouri ex rel. Gaines v. Canada (1938): Denial of admission to state law school United States v. Carolene Products Company (1938): Rational basis test for economic regulation**

**U.S. v. Miller (1939): Sawed-off shotgun and Second Amendment**

**Class hours 24-26 (March 4, 9)**

***Feldman* pages 177-302**

**Minersville School District v. Gobitis (1940): Flag salute**

**Wickard v. Filburn (1942): Allotments for wheat growers**

**West Virginia State Board of Education v. Barnette (1943): Flag salute**

**Korematsu v. U.S. (1944): Evacuation and internment of Japanese-Americans**

**Class hours 27-31 (March 11, 16, 18, 23)**

***Feldman* pages 305-68**

**Marsh v. Alabama (1946): Distributing religious literature in a company town Colegrove v. Green (1946): Apportionment challenge to congressional districts Everson v. Board of Education (1947): Establishment Clause challenge to funding costs of private schools**

**Adamson v. California (1947): Incorporation of self-incrimination right**

**Shelley v. Kraemer (1948): Racially restrictive covenants**

**Sweatt v. Painter (1950): Separate but equal for law schools**

**Dennis v. United States (1951): Communists in labor unions**

**Youngstown Sheet & Tube Company v. Sawyer (1952): Government seizure of steel mills**

**Berman v. Parker (1954): Eminent domain for urban renewal**

**Class hours 32-34 (March 23, 25, 30)**

***Klarman* pages 55-187**

***Feldman* pages 305-408**

**Brown v. Bd. of Education I and II (1954, 1955): Racially segregated public schools**

**Cooper v. Aaron (1958): State resistance to Brown**

**Baker v. Carr (1962): Legislative apportionment and political questions**

**Class hours 35-36 (March 30, April 1)**

**Roth v. U.S. (1957): No First Amendment protections for obscenity**

**Mapp v. Ohio (1961): Exclusionary rule for evidence obtained in police searches and seizures**

**Gideon v. Wainwright (1963): Right to counsel for state criminal defendants**

**Class hours 37-39 (April 6, 8)**

***Klarman* pages 189-231**

**Engel v. Vitale (1962): Prayer in public schools**

**Sherbert v. Verner (1963): Substantial burden of First Amendment rights of Seventh-Day Adventist**

**N.Y. Times v. Sullivan (1964): Libel claims brought by public figures**

**Heart of Atlanta Motel, Inc. v. U.S. (1964): Civil Rights Act of 1964**

**Griffin v. School Board of Prince Edward County (1964): Closing public schools to avoid *Brown***

**Class hours 40-44 (April 13, 15, 20)**

***Feldman* pages 411-33**

**Griswold v. Connecticut (1965): Contraceptives and the right to privacy**

**Miranda v. Arizona (1966): Self-incrimination protection for suspects**

**Loving v. Virginia (1967): Interracial marriage**

**Katz v. United States (1967): FBI eavesdropping on pay phone conversation**

**Epperson v. Arkansas (1968): Teaching evolution**

**Jones v. Alfred H. Mayer Company (1968): Housing discrimination**

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|  | FINAL EXAMINATION: |

*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 (April 23-May 6) 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)*.*

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|  | HEALTH AND WELLNESS RESOURCES: |

*Law school can be difficult; sometimes our personal lives can be stressful. Contact information for the Counseling and Wellness Center:*

[*http://www.counseling.ufl.edu/cwc/Default.aspx,*](http://www.counseling.ufl.edu/cwc/Default.aspx) *392-1575. If there is an emergency, you can also contact the University Police Department: 392-1111 or 9-1-1. Other resources include:*

*U Matter, We Care: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.*

*Student Health Care Center: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.*

*UF Health Shands Emergency Room / Trauma Center: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.*

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|  | CLASS DEMEANOR: |

*Students are expected to arrive to class on time (for online students, this means with your video on and your sound muted) and behave in a manner that is respectful to the instructor and to fellow students. Please avoid the use of cell phones except for Zoom purposes.*

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|  | COURSE EVALUATION: |

*Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at* [*https://evaluations.ufl.edu.*](https://evaluations.ufl.edu/) *Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at* [*https://evaluations.ufl.edu/results/.*](https://evaluations.ufl.edu/results/)