

U.S. CONSTITUTIONAL HISTORY SINCE 1877

SPRING 2019

PROFESSOR MICHAEL ALLAN WOLF

3 CREDIT HOURS

SYLLABUS AND CLASS PROCEDURES

OUR CLASS WILL MEET ON TUESDAYS FROM 9:35 TO 11:30 AM AND THURSDAYS FROM 10:40 TO 11:30 AM IN MATHERLY 0015.

My office is Holland Hall Room 307, my email address is 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 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 FDR'S GREAT SUPREME COURT JUSTICES* (2010)

COURSE DESCRIPTION (FROM WEB PAGE): *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,*
- *understand how doctrines appear, evolve, and are discarded by the nation's highest tribunal,*
- *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: *Each student is permitted six hours of class absences (NOT six two-hour classes) 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.*

INTERNET USE IN THE CLASSROOM: *I expect that during each class all students will be prepared to conduct research on the internet (usually Lexis or Westlaw) using a laptop, tablet, or other means. 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>.*

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 who 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 (8-12 pages, 30% of final grade) will require 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:*

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

E (Failure)	0.0
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The law school grading policy is available at: <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.

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 50-minute period. I will distribute electronically a short excerpt from each case listed. 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 1-3

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

Classes 4-6

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

Classes 7-9

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

Classes 10-12

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

Classes 13-15

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

Classes 16-18

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

Classes 19-21

***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

Classes 22-24

***Feldman* pages 177-302**

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

Ex Parte Quirin (1942): Military commission trial for German saboteurs

Skinner v. Oklahoma (1942): Sterilization of habitual criminal offender

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

Classes 25-29

***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

Classes 30-32

***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

Gomillion v. Lightfoot (1960): 15th Amendment voting rights

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

Classes 33-34

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

Brady v. Maryland (1962): Suppression of evidence by prosecutor

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

Class 35-37

***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

Classes 38-41

***Feldman* pages 411-33**

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

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

Harper v. Virginia Board of Elections (1966): Poll tax

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

FINAL EXAM:

Thursday, May 2, 2019, at 8:30 am