

CONSTITUTIONAL HISTORY OF THE U.S. TO 1877 (AMH 3551)

FALL 2021

PROFESSOR MICHAEL ALLAN WOLF

3 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 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 make sure that I am available in my office or to set up an appointment, please send me an email message.

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)

ADDITIONAL ASSIGNMENTS WILL BE POSTED ON THE CANVAS SITE FOR THIS COURSE.

COURSE DESCRIPTION: *Analyzes the development of constitutionalism from English colonial origins to the end of Reconstruction, emphasizing the inherent tension between concepts of power and liberty.*

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 POLICIES:

ATTENDANCE POLICY: *Attendance is expected and absences will have an impact on your participation grade (see discussion below). If you know you will miss class the day an assignment is due, you should consult the instructor beforehand. Unexpected illnesses and emergencies do happen. If you become ill or are otherwise unable to make class the day an assignment is due, please email the instructor as soon as possible (ideally before class).*

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.*

ACADEMIC HONESTY: *UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.”*

The Honor Code (<https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor in this class.

GRADING AND ASSIGNMENTS:

Reading assignments listed on the course schedule should be completed for the date listed on the order of readings (subject to revision), so that you are prepared to discuss the material in class.

*There will be two essay tests and two 1,500-word papers. **There is no final examination.** Papers turned in after class on the day due will be marked down half a grade (for example, from an A to an A-). Papers turned in a day late will be marked down a full grade (for example, from an A to a B). Papers turned in two days late will be marked down two full grades (from an A to a C). Papers turned in five days late will be given an F.*

- 1. Class participation (based on a mix of attendance and discussion): 20% of grade*

2. Two tests: 30% of grade (15% each)

3. Two papers: 50% of grade (25% each)

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.

GRADING SCALE:

Letter Grade	Point Equivalent
A	4.00
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C	2.00
C-	1.67
D+	1.33
D	1.00
D-	0.67
E	0.00

Additional information about UF's grading policies is available here:

<https://catalog.ufl.edu/UGRD/academic-regulations/grades-grading-policies/#gradingpoliciestext>

ACCOMMODATIONS:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (disability.ufl.edu/). Once registered, students will receive an accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

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). For most classes, I will also distribute one or more historical documents to accompany the assignment. 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. Johnson (1867): challenging Reconstruction

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

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

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

UNDERGRAD PAPER TWO/LAW STUDENT PAPER

COUNSELING AND WELLNESS CENTER:

College can be difficult, sometimes our personal lives can be stressful. Contact information for the Counseling and Wellness Center: counseling.ufl.edu, 392-1575. If there is an emergency, you can also contact the University Police Department: 392-1111 or 9-1-1.

CLASS DEMEANOR:

Students are expected to arrive to class on time and behave in a manner that is respectful to the instructor and to fellow students. Please avoid the use of cell phones. Opinions held by other students should be respected in discussion.

COURSE EVALUATION:

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/>.