

U.S. CONSTITUTIONAL HISTORY II
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2023 – LAW 6930 (#14103) – 3 CREDITS
SYLLABUS AND CLASS PROCEDURES

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Office Hours: I am typically in my office Monday through Friday. I do not restrict my contact with students to a few hours per week. If I am not in the office when you want to meet, and you would like to set up an appointment, please send me an email message.

MEETING TIME: Tuesdays from 3:00-4:55 pm; Thursdays from 3:00-3:50 pm

LOCATION: Holland 355C

COURSE DESCRIPTION AND OBJECTIVES:

This course gives special attention to the way in which constitutionalism has adapted to the growth of an urban and industrial society, to the extension of civil liberties and civil rights, and to the growth of executive authority.

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

STUDENT LEARNING OUTCOMES:

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 development of the modern Supreme Court,
- engage in research in primary and secondary sources,
- explain constitutional law concepts to a class whose members are predominately undergraduates
- 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.

REQUIRED READING MATERIALS:

THERE ARE FOUR TEXTS FOR THIS CLASS:

WILLIAMJAMES HULL HOFFER, *PLESSY V. FERGUSON*: RACE AND INEQUALITY IN JIM CROW AMERICA (2012)

PAUL KENS, *LOCHNER V. NEW YORK*: ECONOMIC REGULATION ON TRIAL (1998)

LAURA KALMAN, *FDR'S GAMBIT: THE COURT PACKING FIGHT AND THE RISE OF LEGAL LIBERALISM* (2022)

JOHN W. JOHNSON, *GRISWOLD V. CONNECTICUT*: BIRTH CONTROL AND THE CONSTITUTIONAL RIGHT OF PRIVACY (2005)

ADDITIONAL ASSIGNMENTS (INCLUDING NEW CASES) WILL BE POSTED ON THE CANVAS SITE FOR THIS COURSE OR DISTRIBUTED BY EMAIL.

Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

COURSE EXPECTATIONS AND GRADING EVALUATION:

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 (5-7 pages, 30% of final grade) will require the student to do outside research using primary and secondary sources, and the two-hour, open-book, unlimited-source, take-home final examination (50%) will be an essay test that students will take during the exam period. Students will also be required to make at least two oral presentations during the semester (20% of final grade).

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Each student is permitted five class 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. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each week of class is approximately 3 hours in length, requiring at least 6 hours of preparation outside of class.

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.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

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" (50-minute period). I will post on Canvas *very short* excerpts 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.

Class hours 1-5

Hoffer through Chapter 1

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

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

Mugler v. Kansas (1887): State prohibition

Class hours 6-8

Hoffer Chapters 2 through 4

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

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

Class hours 9-11

***Kens* through Chapter 10**

Lochner v. New York: Maximum hours legislation

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

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

Class hours 12-14

***Kens* Chapter 11**

Hammer v. Dagenhart (1918): Child labor laws

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

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

Class hours 15-16

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

Buck v. Bell (1927): State sterilization statute

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

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

Class hours 17-19

***Kalman* through Chapter 3**

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

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

Class hours 20-22

***Kalman* Chapters 4 through 6**

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

***Hoffer* Chapter 5 (until discussion of *Brown v. Bd. of Education*)**

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 23-24

***Kalman* Chapter 7 and Afterword**

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 25-29

***Johnson* through Chapter 2**

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 30-31

***Hoffer* Chapter 5 (beginning with discussion of *Brown v. Bd. of Education*) and Epilogue**
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 32-33

***Johnson* Chapters 3 and 4**

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 34-36

***Johnson* Chapters 5 and 6**

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 37-40

***Johnson* Chapters 7 through Epilogue**

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

Brandenburg v. Ohio (1969): free speech

New York Times Co. v. United States: Pentagon papers, First Amendment

Roe v. Wade (1973): abortion and privacy rights

San Antonio Independent School District v. Rodriguez (1973): education rights and wealth discrimination

Remaining class hours

United States v. Nixon (1974): executive privilege

Milliken v. Bradley (1974): school busing

Buckley v. Valeo (1976): campaign finance and the First Amendment

Washington v. Davis (1976): equal protection and intent