

SYLLABUS
CONSTITUTIONAL LAW (Spring 2013)
Seton Hall University School of Law
Professor Lubben
stephen.lubben@shu.edu

This course provides an overview of the [primary law of the United States](#), including relationships among the states, the states and the federal government, the three branches of the federal government, and the rights of individuals in relation to both federal and state government.

The course is organized historically.

So, too, is part one of the text, taking us from the Founding until the New Deal. In the preface the authors acknowledge that the Warren and Burger Courts likely seem equally historical for most students – same for some professors, who were not alive during the Warren Court (1953-1969), and were finishing junior high school at the end of the Burger Court (1969-1986) – but the authors nonetheless lump everything after 1937 in the general “modern” materials.

“Modern” here is used in a way your grandparents might understand.

I have attempted to reorganize the materials in a more historical manner, only considering the “modern” to entail only those cases decided after 1986. Unfortunately this does mean that we jump around a bit starting with class 14 or so. Be sure to consult the syllabus carefully.

Course Materials

Brest, Levinson, Balkin, Amar & Siegel, *Processes of Constitutional Decisionmaking* (5th edition 2006) *together with the 2012 supplement*.

While there is a copy of the Constitution at the front of the book, I find it easier to have a copy I can refer to as I read. You can photocopy the one in the book, or print one out from the many [available online](#).

Assignments

Assignments are listed below. Please read the indicated pages in the text and prepare for class as described below. This syllabus will be updated on the course Blackboard page – and I’ll post other materials there too.

The Arabic numbers below correspond to the class numbers

I. Introduction

1. The Constitution, pages 1-26
 - a. Prepare discussion questions (Blackboard)
 - b. <http://www.guardian.co.uk/uk/2012/aug/31/secret-royal-veto-powers-exposed>
2. Bank of the United States: Executive and Legislative Constitutional Law, pages 27-37
 - a. Constitution, Article I, § 8
3. Bank of the United States: The Judiciary Gets Involved, pages 38-74
4. Bank of the United States: The Return of the Executive (and the States), pages 74 to 85, 91 to 95

II. The Marshall Court (1801-1835)

5. The Election of 1800 and Its Fallout, pages 97-136
6. Early Takes on Presidential Power, Property Rights, and the Rights of "Others", pages 136-68
7. National Commerce, pages 168-186, 208-10
 - a. Constitution, Article I, § 8, clauses 3, 4, 5, 18
 - b. Constitution, Article I, § 10, clauses 1, 2
 - c. Constitution, Article IV, § 2, clause 1

III. The Taney Court and the Civil War (1835-1865)

8. Commerce and Slavery, pages 187-208, 212-215
9. The Judiciary and the Coming War, pages 215-261

Note: there will be no class on Feb. 7, the following class will be on Feb. 11

10. Presidential Power, pages 261-91

IV. Reconstruction to the New Deal (1866-1934)

11. The Fourteenth Amendment, pages 301-19; supp. pages 1-9
12. Limiting the Fourteenth Amendment, pages 319-51
13. Race and the Fourteenth Amendment, pages 351-85, pages 398-405

14. Economic Rights, pages 412-35, 1339-42
15. The National Economy, pages 291-99, 386-98, 435-60
16. Changing the Constitutional relationship, pages 471-83

V. New Deal to the Warren Court (1934-1954)

17. The National Economy, pages 1179-82, 499-520, 549-58, 564-70
18. Presidential Power (part I), pages 872-81 (start with Ex Parte Quirin), 966-81

Note: the following class will take place on March 1, as a makeup for the Feb. 7th class

19. Presidential Power (part II), 819-38; supp. 188-89 (questions for page 836 of main text)

VI. The Warren Court (1954-1969)

20. Race and the Fourteenth Amendment, pages 893-931, 932-34
21. The National Economy and Race, pages 931-32, 558-64, 570-94
22. Changing the Constitutional relationship, pages 958-66, 485-93, 1342-53, 1355-65
23. *Mid Course Review (and catch up)*

VII. The Burger Court (1969-1986)

24. Race and the Fourteenth Amendment, pages 935-43, 1024-45, 1071-1077
25. Gender and the Fourteenth Amendment, pages 1182-1219, 1282-96
26. Sexuality and the Fourteenth Amendment, pages 1353-54, 1387-1409, 1465-82
27. Presidential Power, pages 736, 838-41 (start with note 8), 795-819, 749-61

VIII. The Modern Era – Rehnquist (1987-2005) and Roberts (2005 -)

28. Presidential Power (Generally), pages 761, 773-92, supp. pages 181-188, text pages 881-887
29. Presidential Power (National Security, part 1), pages 841-71, supp. pages 198-226
30. Presidential Power (National Security, part 2), Supp. pages 189-98, pages 878-81, 871-72, supp. pages 226-265
 - a. http://www.washingtonpost.com/opinions/providing-a-legal-basis-to-attack-iran/2012/09/27/e30e87a4-043b-11e2-91e7-2962c74e7738_print.html
31. Race and the Fourteenth Amendment (part 1), pages 1077-1120
32. Race and the Fourteenth Amendment (part 2), pages 1120-51; supp. pages 267-317
33. Sexuality and the Fourteenth Amendment, pages 1419-65; supp. pages 319-342; text pages 1482-1518
34. Gender and the Fourteenth Amendment, pages 1226-62, 1296-1311
 - a. <http://www.lawfareblog.com/2013/01/how-the-rules-changed-on-women-in-combat-a-legislative-and-executive-history-primer/>
35. Changing the Constitutional relationship (part 1), pages 649-711; *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006); supp. pages 173-74.
36. Changing the Constitutional relationship (part 2), pages 494-97, supp. pages 11-95
37. The National Economy (part 1), pages 600-29, 730-36
38. The National Economy (part 2), supp. pages. 95-173
39. *Course Review (and ketchup)*

Grading and Examinations

Final examination

Your grade will be based primarily on an open-book, essay final examination at the end of the course.

Attendance and preparedness

Your preparation for class and active participation during class are essential. Prior preparation of the assigned reading materials and questions in the book will therefore be presumed, and I reserve the right to incorporate these factors into your final class grade. In addition to reading the assigned pages in the text, you must read the other assigned materials, and any other relevant materials -- *especially the relevant bits of the Constitution*.

I call on people in class and expect everyone to be prepared. If there is a day when you cannot be prepared let me know by email before class and I will not call on you that day. Excessive requests to “opt out” of class participation will affect your final grade.

Office Hours and Discussion

I am in my office most days of the week, from approximately 10am to 5pm. Feel free to come by to discuss anything related to the class. Questions or requests to schedule a meeting at a specific time can be sent to my e-mail address shown at the top of the syllabus (my preferred means of communication). Please note that I generally prefer *not* to answer substantive questions in telephone call

Friday, March 8, 2013