CONSTITUTIONAL LAW: POWERS

POL S 4700 – FALL 2021

MWF 9:10-10:00 a.m.
Baldwin Hall 301

Professor: Dr. John A. Maltese

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Office hours: By appointment.
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Purpose of the course: POLS 4700 is part of a sequence of courses dealing with the theory and practice of American constitutional law. This segment deals primarily with separation of powers within the national government (the specific powers of Congress, the Executive Branch, and the Judiciary) and with issues of federalism (the division of power between the national government and the states).

**Required text:**


As appropriate, I will provide supplemental reading in eLC.

**Course requirements:**

There will be two essay exams and a five-page paper (that together will account for two-thirds of your grade) and two identify exams dealing primarily with the identification of cases and concepts (that together will account for one-third of your grade). The paper will count as half of your final exam grade (midterm = one-third of your grade and final + paper = one-third of your grade). You are expected to keep up with the reading and to attend class on a regular basis.

**STUDENTS ARE TO BE PRESENT ON ALL TESTING DAYS. There will be no make-up exams without documented evidence of illness or family emergency.**

The course syllabus is a general plan for the course; deviations announced to the class by the instructor may be necessary.

**Academic Honesty:**

**ALL WORK ON ALL ASSIGNMENTS MUST BE YOUR OWN.** All academic work must meet the standards contained in “A Culture of Honesty.” Students are responsible
for informing themselves about those standards before performing any academic work. **Ignorance of what constitutes plagiarism is no excuse**, so familiarize yourself with what plagiarism is. **I will refer cases of suspected academic dishonesty to the Office of Judicial Programs**. The link to more detailed information about academic honesty can be found at: [https://honesty.uga.edu/Academic-Honesty-Policy/](https://honesty.uga.edu/Academic-Honesty-Policy/)

**Course Format:**

Unless Coronavirus guidance changes, this will be a fully face-to-face class with all exams to be taken in person.

**CORONAVIRUS INFORMATION**

Note that the Coronavirus guidance referenced below is subject to change based on recommendations from the Georgia Department of Public Health, the University System of Georgia, or the Governor’s Office. For the latest on UGA policy, you can visit [https://coronavirus.uga.edu/](https://coronavirus.uga.edu/).

**Face coverings:**

Following guidance from the University System of Georgia, face coverings are recommended for all individuals while inside campus facilities.

**How can I obtain the COVID-19 vaccine?**

University Health Center is scheduling appointments for students through the UHC Patient Portal ([https://patientportal.uhs.uga.edu/login_dualauthentication.aspx](https://patientportal.uhs.uga.edu/login_dualauthentication.aspx)). Learn more here – [https://www.uhs.uga.edu/healthtopics/covid-vaccine](https://www.uhs.uga.edu/healthtopics/covid-vaccine).

The Georgia Department of Health, pharmacy chains and local providers also offer the COVID-19 vaccine at no cost to you. To find a COVID-19 vaccination location near you, please go to: [https://georgia.gov/covid-vaccine](https://georgia.gov/covid-vaccine). In addition, the University System of Georgia has made COVID-19 vaccines available at 15 campuses statewide and you can locate one here: [https://www.usg.edu/vaccination](https://www.usg.edu/vaccination).

**What do I do if I have COVID-19 symptoms?**

Students showing COVID-19 symptoms should self-isolate and schedule an appointment with the University Health Center by calling 706-542-1162 (Monday-Friday, 8 a.m.-5 p.m.). Please DO NOT walk-in. For emergencies and after-hours care, see, [https://www.uhs.uga.edu/info/emergencies](https://www.uhs.uga.edu/info/emergencies).

**What do I do if I test positive for COVID-19?**

If you test positive for COVID-19 at any time, you are required to report it through the DawgCheck Test Reporting Survey. We encourage you to stay at home if you become ill
or until you have excluded COVID-19 as the cause of your symptoms. UGA adheres to current Georgia Department of Public Health (DPH) quarantine and isolation guidance and requires that it be followed. Follow the instructions provided to you when you report your positive test result in DawgCheck. Guidelines for COVID-19 Quarantine Period (As of 8/1/21; follow DawgCheck or see DPH website for most up-to-date recommendations.)

**What do I do if I am exposed to someone with COVID-19?**

Students who are fully vaccinated do not need to quarantine upon exposure unless they have symptoms of COVID-19 themselves. All others should follow the Georgia Department of Public Health (DPH) recommendations: Students who are not fully vaccinated and have been directly exposed to COVID-19 but are not showing symptoms should self-quarantine for 10 days. Those quarantining for 10 days must have been symptom-free throughout the monitoring period and continue self-monitoring for COVID-19 symptoms for a total of 14 days.

You should report the need to quarantine on DawgCheck (https://dawgcheck.uga.edu/) and communicate directly with your faculty to coordinate your coursework while in quarantine. If you need additional help, reach out to Student Care and Outreach (sco@uga.edu) for assistance.

Students, faculty and staff who have been in close contact with someone who has COVID-19 are no longer required to quarantine if they have been fully vaccinated against the disease and show no symptoms.

**Well-being, Mental Health, and Student Support:**

If you or someone you know needs assistance, you are encouraged to contact Student Care & Outreach in the Division of Student Affairs at 706-542-7774 or visit https://sco.uga.edu/. They will help you navigate any difficult circumstances you may be facing by connecting you with the appropriate resources or services.

UGA has several resources to support your well-being and mental health: https://wellbeing.uga.edu/.

Counseling and Psychiatric Services (CAPS) is your go-to, on-campus resource for emotional, social and behavioral-health support: https://caps.uga.edu/. TAO Online Support (https://caps.uga.edu/tao/). 24/7 support at 706-542-2273. For crisis support: https://healthcenter.uga.edu/emergencies/.

The University Health Center offers FREE workshops, classes, mentoring and health coaching led by licensed clinicians or health educators: https://healthcenter.uga.edu/bewelluga/.
Course Outline

WEDNESDAY, AUGUST 18 through FRIDAY, AUGUST 27:

I. The Distribution of Powers within the National Government.
   
   A. Introduction.
      
   
   B. Judicial Power.
      
      1. Judicial Review.
         
         Reading: E&W, chapter 2, pp. 54-83; Section 13 of The Judiciary Act of 1789 (on eLC).
         
         Cases: Hylton v. U.S. (know the significance of this case)
                  Marbury v. Madison
                  Martin v. Hunter’s Lessee
                  Judge Gibson’s dissent in Eakin v. Raub

MONDAY, AUGUST 30 through WEDNESDAY, SEPTEMBER 1:

2. External Constraints on the Court.


   Case: Ex Parte McCardle

3. The Structure of the Judicial System and the Supreme Court’s Place Within It.

   Reading: E&W, chapter 1, pp. 10-22.

FRIDAY, SEPTEMBER 3 through FRIDAY, SEPTEMBER 10:

4. Gatekeeping Rules and Threshold Requirements (part 1).
   
   a. Jurisdiction (which court?) versus Justiciability (any court?).
   
   b. Justiciability and its Subsets (part 1):
      
      i. No “collusive” suits (must be a real controversy).
      
      ii. Mootness and Ripeness (when?)


iii. Standing (who?)
iv. Political Questions (what?)

Reading: E&W, pp. 91-115; “Mootness: The Padilla and Sosna Cases” (on eLC); Doe v. Bush (on eLC); “Standing” (on eLC).

Cases: Padilla v. Hanft
Sosna v. Iowa
DeFunis v. Odegaard
Doe v. Bush
Frothingham v. Mellon
Flast v. Cohen
City of Los Angeles v. Lyons
Baker v. Carr
Nixon v. United States

{MONDAY, SEPTEMBER 6: LABOR DAY HOLIDAY}

MONDAY, SEPTEMBER 13 and WEDNESDAY, SEPTEMBER 15:

5. Modes of Constitutional Interpretation.
   a. Constitutional Absolutism (“Interpretivism”)
   b. Originalism
   c. Judicial Restraint (“The Rational Basis Test”)
   d. Judicial Activism (“The Strict Scrutiny Test”)

Reading: Craig Ducat, “The Modes of Constitutional Interpretation,” 77-93 (available on eLC).

FRIDAY, SEPTEMBER 17 through FRIDAY, SEPTEMBER 24:

B. Legislative Power.
   1. The Source and Scope of Legislative Power:
      a. Enumerated and Implied Powers.

Reading: E&W, chapter 3, pp. 119-122; 141-159.

Cases: McCulloch v. Maryland
McGrain v. Dougherty

b. Amendment-Enforcing Powers.

Reading: E&W, pp. 169-176; Sherbert v. Verner (on eLC);
Employment Division, Dept. of Human Resources of Oregon v. Smith (on eLC); City of Boerne v. Flores (on eLC).

Cases: South Carolina v. Katzenbach
Sherbert v. Verner
Employment Division, Dept. of Human Resources of Oregon v. Smith
City of Boerne v. Flores

c. The Treaty Power.

Reading: Ducat, chapter 3, section a, pp. 128-131 (on eLC).

Case: Missouri v. Holland

MONDAY, SEPTEMBER 27 and WEDNESDAY, SEPTEMBER 29:

2. Delegation of Legislative Power.

Reading: E&W, chapter 5, pp. 266-270 and 275-280; J.W. Hampton, Jr. & Co. v. U.S. (available on eLC); you should also read Justice Powell’s concurring opinion in INS v. Chadha (also available on eLC).

Cases: J.W. Hampton, Jr. & Co. v. U.S.
Panama Refining Co. v. Ryan
Schechter Poultry v. U.S.
INS v. Chadha (including Powell’s concurring opinion).

FRIDAY, OCTOBER 1:

FIRST IDENTIFY EXAM

MONDAY, OCTOBER 4 through FRIDAY, OCTOBER 8:

C. Executive Power.

1. The Source and Scope of Presidential Power: Three Theories of Presidential Power.

(available on eLC); E&W, 305-310 (also read the additional concurring opinions in Youngstown Sheet & Tube Co. v. Sawyer by Douglas, Burton, and Clark on eLC).

Case: Youngstown Sheet & Tube Co. v. Sawyer (know all opinions)

**MONDAY, OCTOBER 11:**

1. The Source and Scope of Presidential Power: Three Theories of Executive Power (continued).

   Reading: E&W, pp. 290-304.

   Cases: Korematsu v. U.S.  
   Ex Parte Milligan

**WEDNESDAY, OCTOBER 13 through MONDAY, OCTOBER 18:**

2. The President’s Appointment and Removal Power.

   Reading: E&W, pp. 213-235; U.S. v. Woodley (on eLC).

   Cases: Myers v. U.S.  
   Humphrey’s Executor v. U.S.  
   Morrison v. Olson  
   U.S. v. Woodley  
   NLRB v. Noel Canning

**WEDNESDAY, OCTOBER 20:**

MIDTERM EXAM

**FRIDAY, OCTOBER 22 through WEDNESDAY, OCTOBER 27:**

II. The Distribution of Powers between the National Government and the States.

   A. The Commerce Clause: Early History and the Rise of “Dual Federalism.”


   Cases: Gibbons v. Ogden
U.S. v. E.C. Knight
Stafford v. Wallace
Champion v. Ames
Hammer v. Dagenhart

FRIDAY, OCTOBER 29: FALL BREAK.

MONDAY, NOVEMBER 1 and WEDNESDAY, NOVEMBER 3:

B. “Liberty of Contract” in the Dual Federalist Era.

Reading: E&W, 617-629 and 635-650; also read Buck v. Bell, 274 U.S. 200 (1927)(on eLC).

Cases: Lochner v. New York
Buck v. Bell
Muller v. Oregon
Adkins v. Children’s Hospital

FRIDAY, NOVEMBER 5 and MONDAY, NOVEMBER 8:

C. The Right of Privacy: Substantive Due Process All Over Again Or Something Different?

Reading: The following three cases are available on eLC.

Cases: Griswold v. Connecticut
Roe v. Wade
Planned Parenthood of Southeastern Pennsylvania v. Casey

WEDNESDAY, NOVEMBER 10 through MONDAY, NOVEMBER 15:


Reading: E&W, 428-463; Katzenbach v. McClung (available on eLC).

Cases: Schecter Poultry Corp v. U.S.
Carter v. Carter Coal
NLRB v. Jones & Laughlin Steel
U.S. v. Darby
Wickard v. Filburn
Heart of Atlanta Motel v. U.S.
Katzenbach v. McClung
Daniel v. Paul

WEDNESDAY, NOVEMBER 17 through MONDAY, NOVEMBER 22:

D. Dual Federalism Revived?

Reading: E&W, 463-494.

Cases: U.S. v. Lopez
U.S. v. Morrison
Gonzales v. Raich
National Federation of Independent Business v. Sebelius

WEDNESDAY, NOVEMBER 25 and FRIDAY, NOVEMBER 27:

THANKSGIVING BREAK

MONDAY, NOVEMBER 29:

SECOND IDENTIFY EXAM

WEDNESDAY, DECEMBER 1:

E. Taxing and Spending Powers as a Means of Government Regulation.

Reading: E&W, 535-564.

Cases: McCray v. U.S.
Bailey v. Drexel Furniture Co.
U.S. v. Butler
Steward Machine Co. v. Davis
South Dakota v. Dole
National Federation of Independent Business v. Sebelius

FRIDAY, DECEMBER 3:

F. The State “Police Power”

Reading: Jacobson v. Massachusetts (on eLC); Mayor of New York v. Miln (on eLC); Edwards v. California (on eLC).
Cases: Jacobson v. Massachusetts  
     Mayor of New York v. Miln  
     Edwards v. California

**MONDAY, DECEMBER 6 and TUESDAY, DECEMBER 7:**

G. The Negative or Dormant Commerce Clause

Reading: Ducat, “The Negative or Dormant Commerce Clause” (on eLC).

Cases: Cooley v. Board of Wardens of the Port of Philadelphia  
     Kassel v. Consolidated Freightways  
     City of Philadelphia v. State of New Jersey

PAPER DUE BY 5:00 p.m., DECEMBER 6 (submit via eLC).

FINAL EXAM: MONDAY, DECEMBER 13, 2021, 8:00 a.m.-11:00 a.m. Please confirm this date and time at:

[https://reg.uga.edu/general-information/calendars/final-exam-schedule/](https://reg.uga.edu/general-information/calendars/final-exam-schedule/)

You are expected to take the Final Exam at the scheduled time.