

CONSTITUTIONAL LAW: POWERS

POLS 4700 – MAYMESTER 2021

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:

Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 10th edition (Sage/CQ Press, 2020).

As appropriate, I will provide supplemental reading in eLC.

Course requirements:

There will be two essay exams (that will each account for one-third 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). 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 your self 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/>

Course Format:

To the extent possible, this will be a fully face-to-face class to allow for discussion and interaction, with all exams to be taken in person.

Face Coverings Are Mandatory:

Face coverings in public spaces, including classrooms, are mandatory for all.

Keep a Safe Distance:

In all public spaces (including stairwells, halls, offices, bathrooms, classrooms, and labs), please maintain six feet between you and others. The seating capacity in our classroom has been modified to allow for social distancing. Please sit in designated, marked seats.

Mental Health and Wellness Resources:

- If you or someone you know needs assistance, you are encouraged to contact Student Care and 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 for a student seeking mental health services (<https://www.uhs.uga.edu/bewelluga/bewelluga>) or crisis support (<https://www.uhs.uga.edu/info/emergencies>).
- If you need help managing stress anxiety, relationships, etc., please visit BeWellUGA (<https://www.uhs.uga.edu/bewelluga/bewelluga>) for a list of FREE workshops, classes, mentoring, and health coaching led by licensed clinicians and health educators in the University Health Center.
- Additional resources can be accessed through the UGA App.

Course Outline

WEDNESDAY, MAY 19:

I. The Distribution of Powers within the National Government.

A. Introduction.

Reading: Epstein & Walker (E&W), "An Introduction to the U.S. Constitution," pp. 2-9.

B. Judicial Power.

1. The Structure of the Judicial System and the Supreme Court's Place Within It.

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

2. Judicial Review (part 1).

Reading: E&W, chapter 2, pp. 54-69; Section 13 of The Judiciary Act of 1789 (on eLC).

Cases: *Hylton v. U.S.* (know the significance of this case)
Marbury v. Madison

THURSDAY, MAY 20:

2. Judicial Review (part 2).

Reading: E&W, chapter 2, pp. 69-83.

Cases: *Martin v. Hunter's Lessee*
Judge Gibson's dissent in *Eakin v. Raub*

3. External Constraints on the Court.

Reading: E&W, pp. 83-88 and 115-118.

Case: *Ex Parte McCordle*

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).

Reading: E&W, pp. 91-94; *Muskrat v. U.S.* (on eLC).

Case: *Muskrat v. U.S.*

FRIDAY, MAY 21:

4. Gatekeeping Rules and Threshold Requirements (part 2).

b. Justiciability and its Subsets (part 2):

- ii. Mootness and Ripeness (when?)
- iii. Standing (who?)
- iv. Political Questions (what?)

Reading: E&W, pp. 94-115; “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

- 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).

MONDAY, MAY 24:

5. Modes of Constitutional Interpretation (finish up, as needed).

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

TUESDAY, MAY 25:

- 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*

WEDNESDAY, MAY 26:

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).

C. Executive Power.

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

Reading: Joseph A. Pika, John A. Maltese, Andrew Rudalevige,
"Interpreting Constitutional Language," excerpt from *The
Politics of the Presidency*, 10th edition, SAGE/CQ, 2021
(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)

THURSDAY, MAY 27:

FIRST IDENTIFY EXAM (first half of the class).

Second half of class:

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

FRIDAY, MAY 28:

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

MONDAY, MAY 31:

HOLIDAY: MEMORIAL DAY

TUESDAY, JUNE 1:

MIDTERM EXAM

WEDNESDAY, JUNE 2:

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

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

Reading: E&W, pp. 336-340; 405-428.

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

THURSDAY, JUNE 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: *The Slaughterhouse Cases*
Munn v. Illinois
Lochner v. New York
Buck v. Bell
Muller v. Oregon
Adkins v. Children’s Hospital

FRIDAY, JUNE 4:

C. The Commerce Power Since 1937: The Rise of “Cooperative Federalism.”

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

Cases: *Schechter 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

MONDAY, JUNE 7:

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

TUESDAY, JUNE 8:

SECOND IDENTIFY EXAM (first half of the class)

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

WEDNESDAY, JUNE 9:

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

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

THURSDAY, JUNE 10:

FINAL EXAM