

# CONSTITUTIONAL LAW: POWERS

## POLS 4700 – SPRING 2022

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:**

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

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 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:**

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

## **CORONAVIRUS INFORMATION**

**UGA adheres to guidance from the University System of Georgia and the recommendations from Georgia Department of Public Health (DPH) related to quarantine and isolation. Since this may be updated periodically, we encourage you to review the latest guidance [here](#). The following information is based on guidance last updated on December 29, 2021.**

### **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?**

The 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>.

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>.

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>

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

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

### **What do I do if I test positive for COVID-19? (Isolation guidance)**

If you test positive for COVID-19 at any time, either through a PCR test, an Antigen test, or a home test kit, you are **required to report it** through the [DawgCheck Test Reporting Survey](#). Follow the instructions provided to you when you report your positive test result in DawgCheck.

As of December 29, 2021, when an individual receive a positive COVID-19 test: Everyone, **regardless of vaccination status**, should:

- Stay home for 5 days.
- If you have symptoms or your symptoms are resolving after 5 days, you can leave your house and return to class.
- Continue to wear a mask around others for 5 additional days.

### **What do I do if I have been exposed to COVID-19? (Quarantine guidance)**

If you have been exposed (within 6 feet for a cumulative total of 15 minutes or more over a 24-hour period – unmasked\*\*) to someone with COVID-19 or to someone with a positive COVID-19 test and you are:

- Boosted, or have become fully vaccinated within the last 6 months (Moderna or Pfizer vaccine) or within the last 2 months (J&J vaccine)
  - You do not need to quarantine at home and may come to class.
  - You should wear a mask around others for 10 days.
  - If possible, get tested on day 5.
  - If you develop symptoms, get tested and isolate at home until test results are received, then proceed in accordance with the test results.
- Unvaccinated, or became fully vaccinated more than 6 months ago (Moderna or Pfizer vaccine) or more than 2 months ago (J&J vaccine) and have not received a booster:
  - You must quarantine at home for 5 days. After that you may return to class but continue to wear a mask around others for 5 additional days.
  - If possible, get tested on day 5.
  - If you develop symptoms, get tested and isolate at home until test results are received, then proceed in accordance with the test results.

\*\* “Masked-to-masked” encounters are not currently considered an exposure; this type of interaction would not warrant quarantine.

You should report the need to quarantine on [DawgCheck \(https://dawgcheck.uga.edu/\)](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](mailto:sco@uga.edu)) for assistance.

### **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://well-being.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/>

### **Monitoring conditions:**

Note that the guidance referenced in this syllabus 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 [coronavirus.uga.edu](https://coronavirus.uga.edu).

## **Course Outline**

### **MONDAY, JANUARY 10 through FRIDAY, JANUARY 21:**

[MONDAY, JANUARY 17 is the Martin Luther King, Jr. Holiday]

#### **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. 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, JANUARY 24 through WEDNESDAY, JANUARY 26:**

**2. External Constraints on the Court.**

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

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, JANUARY 28 through WEDNESDAY, FEBRUARY 2:**

**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; *Muskrat v. U.S.* (on eLC); “Mootness: The *Padilla* and *Sosna* Cases” (on eLC); *Doe v. Bush* (on eLC); “Standing” (on eLC).

Cases: *Muskrat v. U.S.*  
*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*

**FRIDAY, FEBRUARY 4 and MONDAY, FEBRUARY 7:**

**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).

**WEDNESDAY, FEBRUARY 9 through WEDNESDAY, FEBRUARY 16:**

**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*

**FRIDAY, FEBRUARY 18 and MONDAY, FEBRUARY 21:**

**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).

**WEDNESDAY, FEBRUARY 23:**

**FIRST IDENTIFY EXAM**

**FRIDAY, FEBRUARY 25 through WEDNESDAY, MARCH 2:**

**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*, 10<sup>th</sup> 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)

**FRIDAY, MARCH 3:**

**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*

**SPRING BREAK: MONDAY, MARCH 7 through FRIDAY, MARCH 11**

**MONDAY, MARCH 14 through FRIDAY, MARCH 18:**

**2. The President's Appointment and Removal Power.**

Reading: E&W, pp. 213-235.

Cases: *Myers v. U.S.*  
*Humphrey's Executor v. U.S.*  
*Morrison v. Olson*

**MONDAY, MARCH 21:**

**MIDTERM EXAM**

**WEDNESDAY, MARCH 25 through MONDAY, MARCH 28:**

**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*

**WEDNESDAY, MARCH 30 through FRIDAY, APRIL 1:**

**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*  
*West Coast Hotel v. Parrish*



**MONDAY, APRIL 4 through WEDNESDAY, APRIL 6:**

**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*

**FRIDAY, APRIL 8 through WEDNESDAY, APRIL 13:**

**D. 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*

**FRIDAY, APRIL 15 through WEDNESDAY, APRIL 20:**

**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*

**FRIDAY, APRIL 22:**

**SECOND IDENTIFY EXAM**

**MONDAY, APRIL 25:**

**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, APRIL 27:**

**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*

**FRIDAY, APRIL 29 through MONDAY, MAY 2:**

**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 IN CLASS ON MONDAY, MAY 2.**

**FINAL EXAM: WEDNESDAY, MAY 11, 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/>**

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