

# CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 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, Kevin T. McGuire, and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 11<sup>th</sup> edition (Sage/CQ Press, 2023).

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:**

This class will be a fully face-to-face class with all exams to be taken in person. You are strongly advised to attend all classes.

## **Course Outline**

### **WEDNESDAY, AUGUST 17 through FRIDAY, AUGUST 26:**

#### **I. The Distribution of Powers within the National Government.**

##### **A. Introduction.**

Reading: Epstein, McGuire & Walker (EMW), “An Introduction to the U.S. Constitution,” pp. 3-11.

##### **B. Judicial Power.**

###### **1. Judicial Review.**

Reading: EMW, chapter 2, pp. 57-83; 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 29 through WEDNESDAY, AUGUST 31:**

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

Reading: EMW, pp. 83-91 and 112-114.

Case: *Ex Parte McCardle*

**3. The Structure of the Judicial System and the Supreme Court's Place Within It; The Supreme Court Decides.**

Reading: EMW, chapter 1, pp. 13-24.

**FRIDAY, SEPTEMBER 2 through FRIDAY, SEPTEMBER 9:**

- 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: EMW, pp. 91-112; “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 5: LABOR DAY HOLIDAY}**

**MONDAY, SEPTEMBER 12 and WEDNESDAY, SEPTEMBER 14:**

- 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 16 through FRIDAY, SEPTEMBER 23:**

**B. Legislative Power.**

**1. The Source and Scope of Legislative Power:**

**a. Enumerated and Implied Powers.**

Reading: EMW, chapter 3, pp. 117-120; 137-153.

Cases: *McCulloch v. Maryland*  
*McGrain v. Dougherty*

**b. Amendment-Enforcing Powers.**

Reading: EMW, pp. 166-173; *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 26 and WEDNESDAY, SEPTEMBER 28:**

**2. Delegation of Legislative Power.**

Reading: EMW, chapter 5, pp. 248-262; *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.*  
*Gundy v. U.S.*  
*INS v. Chadha* (including Powell's concurring opinion).

**FRIDAY, SEPTEMBER 30:**

**FIRST IDENTIFY EXAM**

**MONDAY, OCTOBER 3 through FRIDAY, OCTOBER 7:**

**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); EMW, 283-288 (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 10:**

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

Reading: EMW, pp. 271-283.

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

**WEDNESDAY, OCTOBER 12 through MONDAY, OCTOBER 17:**

**2. The President’s Removal Power.**

Reading: EMW, pp. 211-220.

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

**WEDNESDAY, OCTOBER 19:**

**MIDTERM EXAM**

**FRIDAY, OCTOBER 21 through WEDNESDAY, OCTOBER 26:**

**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: EMW, pp. 375-397.

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

**FRIDAY, OCTOBER 28: FALL BREAK.**

**MONDAY, OCTOBER 31 and WEDNESDAY, NOVEMBER 2:**

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

Reading: EMW, 573-576; 590-603; 606-613; 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*

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

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

Reading: EMW, 618-620. The following three cases are available on eLC.

Cases: *Griswold v. Connecticut*

*Roe v. Wade*  
*Planned Parenthood of Southeastern Pennsylvania v. Casey*  
*Dobbs v. Jackson Women's Health Organization*

**WEDNESDAY, NOVEMBER 9 through MONDAY, NOVEMBER 14:**

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

Reading: EMW, 399-431; *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*

**WEDNESDAY, NOVEMBER 16 through MONDAY, NOVEMBER 21:**

**D. Dual Federalism Revived?**

Reading: EMW, 431-456.

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

**WEDNESDAY, NOVEMBER 23 and FRIDAY, NOVEMBER 26:**

**THANKSGIVING BREAK**

**MONDAY, NOVEMBER 28:**

**SECOND IDENTIFY EXAM**

**WEDNESDAY, NOVEMBER 30:**

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

Reading: EMW, 496-521.

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 2:**

### **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 5 and TUESDAY, DECEMBER 6:**

### **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, DECEMBER 5.**

**FINAL EXAM: WEDNESDAY, DECEMBER 14, 2022, 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.