

CONSTITUTIONAL LAW: POWERS

POLS 4700 – SPRING 2023

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

Professor: Dr. John A. Maltese

Office: 206 Candler Hall (542-2059)

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*, 11th 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

MONDAY, JANUARY 9 through FRIDAY, JANUARY 20:

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, JANUARY 16 IS THE MARTIN LUTHER KING, JR. HOLIDAY}

MONDAY, JANUARY 23 and WEDNESDAY, JANUARY 25:

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, JANUARY 27 through WEDNESDAY, FEBRUARY 1:

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: *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 3 and MONDAY, FEBRUARY 6:

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 8 through WEDNESDAY, FEBRUARY 15:

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: “The Treaty Power” (on eLC).

Case: *Missouri v. Holland*

FRIDAY, FEBRUARY 17 and MONDAY, FEBRUARY 20:

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).

WEDNESDAY, FEBRUARY 22:

FIRST IDENTIFY EXAM

FRIDAY, FEBRUARY 24 through WEDNESDAY, MARCH 1:

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); 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)

FRIDAY, MARCH 3:

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

{SPRING BREAK: MARCH 6-MARCH 10}

MONDAY, MARCH 13 and WEDNESDAY, MARCH 15:

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

FRIDAY, MARCH 17:

MIDTERM EXAM

MONDAY, MARCH 20 through FRIDAY, MARCH 24:

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

MONDAY, MARCH 27 and WEDNESDAY, MARCH 29:

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, MARCH 31 and MONDAY, APRIL 3:

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, APRIL 5 through MONDAY, APRIL 10:

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

WEDNESDAY, APRIL 12 through MONDAY, APRIL 17:

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, APRIL 19:

SECOND IDENTIFY EXAM

FRIDAY, APRIL 21 and MONDAY, APRIL 24:

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

WEDNESDAY, APRIL 26:

F. The State “Police Power”

Reading: *Jacobson v. Massachusetts* (on eLC); *Edwards v. California* (on eLC).

Cases: *Jacobson v. Massachusetts*
Edwards v. California

FRIDAY, APRIL 28 and MONDAY, MAY 1:

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 1.

FINAL EXAM: FRIDAY, MAY 5, 2023, 8:00 a.m.-11:00 a.m. in our normal location. 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.