

CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2023

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*, 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

WEDNESDAY, AUGUST 16 through FRIDAY, AUGUST 25:

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 28 through WEDNESDAY, AUGUST 30:

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 1 through FRIDAY, SEPTEMBER 8:

- 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; *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

{**MONDAY, SEPTEMBER 4: LABOR DAY HOLIDAY**}

MONDAY, SEPTEMBER 11 and WEDNESDAY, SEPTEMBER 13:

- 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 15 through FRIDAY, SEPTEMBER 22:

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 25 and WEDNESDAY, SEPTEMBER 27:

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 29:

FIRST IDENTIFY EXAM

MONDAY, OCTOBER 2 through FRIDAY, OCTOBER 6:

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)

MONDAY, OCTOBER 9:

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 11 through MONDAY, OCTOBER 16:

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 18:

MIDTERM EXAM

FRIDAY, OCTOBER 20 through WEDNESDAY, OCTOBER 25:

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 27: FALL BREAK.

MONDAY, OCTOBER 30 and WEDNESDAY, NOVEMBER 1:

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 3 and MONDAY, NOVEMBER 6:

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 8 through MONDAY, NOVEMBER 13:

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, NOVEMBER 15 through MONDAY, NOVEMBER 20:

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 22 and FRIDAY, NOVEMBER 25:

THANKSGIVING BREAK

MONDAY, NOVEMBER 27:

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, NOVEMBER 29:

SECOND IDENTIFY EXAM

FRIDAY, DECEMBER 1:

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 4 and TUESDAY, DECEMBER 5:

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 TUESDAY, DECEMBER 5.

FINAL EXAM: FRIDAY, DECEMBER 8, 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.