

# CONSTITUTIONAL LAW: POWERS

## POLS 4700 – FALL 2024

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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### **Course Objectives and Learning Outcomes:**

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). Upon successful completion of this course you should be able to:

- Read and analyze Supreme Court opinions and understand how they influence the balance of power in government and impact public policy.
- Explain judicial review, how it developed in the United States, debates over its use, and its role in enforcing the rule of law.
- Explain competing theories of constitutional interpretation, their strengths and weaknesses, and how each impacts how justices decide cases and craft legal opinions.
- Identify the source and scope of power allocated to the three branches of government at the national level, and how and why that balance has changed over time.
- Compare and contrast dual and cooperative federalism and discuss how each affects the balance of power between the national government and the states.
- Understand why Supreme Court interpretations have varied over different historical eras.

### **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.

### **Use of AI in this Course:**

UGA’s policy is that the use of AI for coursework is not permitted unless explicitly authorized by me (your course instructor) ahead of time.

### **Well-being Resources:**

UGA Well-being Resources promote student success by cultivating a culture that supports a more active, healthy, and engaged student community.

Anyone needing assistance is encouraged to contact Student Care & Outreach (SCO) in the Division of Student Affairs at 706-542-8479 or visit [sco.uga.edu](http://sco.uga.edu). Student Care & Outreach helps students navigate difficult circumstances by connecting them with the most appropriate resources or services. They also administer the Embark@UGA program which supports students experiencing, or who have experienced, homelessness, foster care, or housing insecurity.

UGA provides both clinical and non-clinical options to support student well-being and mental health, any time, any place. Whether on campus, or studying from home or abroad, UGA Well-being Resources are here to help.

- Well-being Resources: <https://well-being.uga.edu>
- Student Care and Outreach: <https://sco.uga.edu>
- University Health Center: <https://healthcenter.uga.edu>
- Counseling and Psychiatric Services: <https://caps.uga.edu> or CAPS 24/7 crisis support at 706-542-2273
- Health Promotion/ Fontaine Center: <https://healthpromotion.uga.edu>
- Disability Resource Center and Testing Services: <https://drc.uga.edu>

Additional information, including free digital well-being resources, can be accessed through the UGA app or by visiting <https://well-being.uga.edu>.

### **Course Outline**

#### **WEDNESDAY, AUGUST 14 through FRIDAY, AUGUST 23:**

##### **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 26 through WEDNESDAY, AUGUST 28:**

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

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

Case: *Ex Parte McCordle*

### **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, AUGUST 30 through FRIDAY, SEPTEMBER 6:**

- #### **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” and *FDA v. Alliance for Hippocratic Medicine* (on eLC).

Cases: *Muskrat v. U.S.*  
*Padilla v. Hanft*  
*Sosna v. Iowa*  
*DeFunis v. Odegaard*  
*FDA v. Alliance for Hippocratic Medicine*  
*Doe v. Bush*  
*Frothingham v. Mellon*  
*Flast v. Cohen*  
*City of Los Angeles v. Lyons*  
*Baker v. Carr*  
*Nixon v. United States*

#### **[MONDAY, SEPTEMBER 2: LABOR DAY HOLIDAY]**

#### **MONDAY, SEPTEMBER 9 and WEDNESDAY, SEPTEMBER 11:**

- #### **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 13 through FRIDAY, SEPTEMBER 20:**

**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 23 and WEDNESDAY, SEPTEMBER 25:**

**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 27:**

**FIRST IDENTIFY EXAM**

**MONDAY, SEPTEMBER 30 through FRIDAY, OCTOBER 4:**

**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 7:**

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

Reading: EMW, pp. 271-283. *Trump v. U.S.* (available on eLC)

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

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

**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 16:**

**MIDTERM EXAM**

**FRIDAY, OCTOBER 18 through WEDNESDAY, OCTOBER 23:**

**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 25 and MONDAY, OCTOBER 28:**

**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*

**WEDNESDAY, OCTOBER 30 and MONDAY, NOVEMBER 4:**

**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*

**[FRIDAY, NOVEMBER 1: FALL BREAK]**

**WEDNESDAY, NOVEMBER 6 through MONDAY, NOVEMBER 11:**

**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 13 through MONDAY, NOVEMBER 18:**

**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 20:**

**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, NOVEMBER 22:**

**SECOND IDENTIFY EXAM**

**MONDAY, NOVEMBER 25:**

**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*

**[WEDNESDAY, NOVEMBER 22 and FRIDAY, NOVEMBER 25:  
THANKSGIVING BREAK]**

**MONDAY, DECEMBER 2 and TUESDAY, DECEMBER 3:**

**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 3.**

**FINAL EXAM: MONDAY, DECEMBER 9, 2024, 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.