

W4321y: The Constitutional Law of
Presidential-Congressional Relations

Course description: Readings in constitutional and public law, including the ambiguous legacy of the Framers; presidential prerogatives and rules of constitutional interpretation; presidential emergency powers; the struggle for control of bureaucracy and budgets; and the diplomatic and war powers of the president and Congress. In five class sessions we will simulate counsel whom the president has asked to advise him on the constitutionality of certain executive actions which he may take in the context of the US government's effort to combat terrorism.

Prerequisites: sophomore standing. Prior coursework in American national government is strongly recommended.

Requirements: Attendance at all lectures, participation in assigned discussions of cases, and participation in the five simulations. The five simulation position papers (each eight pages) count for three-quarters of the grade, with better papers having greater weight. Oral participation in the simulations counts for one-quarter of the grade.

Course Readings: All readings are required, and although the simulations seem narrowly drawn, cases and materials from the entire section will be useful in preparing the briefs. The textbooks are Christopher Pyle and Richard Pious, The President, Congress and the Constitution (New York: Free Press, 1984) and Louis Fisher, Constitutional Conflicts Between Congress and the President (Russell: University Press of Kansas, 1998).

Obtaining Readings: Books and articles can be obtained in the Barnard College reserve room, and books are also located in the SIPA reserve room. Some books will be available for purchase at local bookstores, particularly Labyrinth. Law review articles are available in the Columbia Law School Library, and other journal articles are available in the SIPA Library. All court cases on the syllabus *not* specified as a handout are found in Pyle and Pious. Those specified as handouts have been edited by me and will be on reserve in the Barnard Library. These cases are also available in unedited form on the Internet using Lexis or Findlaw, or in bound volumes in the Columbia Law Library.

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Topics and Readings

Part One: Prerogative and Emergency Presidential Powers

January 23: Course Introduction: Presidential, Congressional, and Judicial Power

- Richard Pious The Presidency, ch. 11
M. A. Borelli, et.al. “The White House Counsel’s Office” (reserve room)
Steven Calabresi “The President, The Supreme Court and the
Constitution . . .” *Law and Contemporary Problems*,
Vol. 61, No. 1, pp. 61-82 (obtain on-line at
www.law.duke.edu/journals/61LCPCalabresi)

January 28: Separation of Powers, Checks and Balances and Presidential Power

- Louis Fisher Constitutional Conflicts Between Congress and the
President, ch. 1
Jeffrey Tulis, ed. The Presidency in the Constitutional Order
(articles by Grant, Flaumenhaft, and Mansfield)

January 30: Constructing and Legitimizing Prerogative Power

- Richard Pious The Presidency, ch. 2,4
Handout “Rules of Constitutional Construction” (reserve room)
Craig Ducat and “Federal District Judges and Presidential Power During
Robert Dudley the Postwar Era,” Journal of Politics, Vol. 51, no. 1,
February 1989, pp. 98-118. (obtain on-line at
J-Stor, accessed via CU or Barnard Library home
Pages, “resources” and then “databases.”)

February 6: Martial Rule

(Prepare to discuss Ex Parte Milligan)

- Pyle and Pious The President, Congress and the Constitution,
pp. 47-76, 121-4
Pyle and Pious Duncan v. Kahanamoku, Sheriff 327 U.S. 304 (1946)
Handout case: Ex Parte Milligan 71 U.S. 2 (1866)
(Do not read this case in Pyle and Pious. Use the
longer version from reserves or on-line.)

February 8: Detention and Relocation

(Prepare to discuss Neagle, Hirabayashi, Korematsu)

- Pyle and Pious The President, Congress and the Constitution,
pp. 88-125 (continue on next page)

Pyle and Pious In re Neagle 135 U.S. 1 (1880); In Re Debs 158 U.S. 564 ((1895); Hirabayashi v U.S. 323 U.S. 214 (1944); Korematsu v. US 323 U.S. 214 (1944); Ex Parte Endo 323 U.S. 579 (1944)

Simulation Game: Materials for Game One will be distributed.

February 13: Property Seizure

(Prepare to discuss Youngstown)

Pyle and Pious The President, Congress and the Constitution, pp. 125-151

Pyle and Pious Youngstown Sheet and Tube v. Sawyer 343 U.S. 579 (1952)

February 15: Simulation Game One: Proposals to Detain “pro-Islamist” Internet Hackers

(Written Position Papers due February 14)

Part Two: Control of Administration

February 20 : Executive Powers

(Prepare to discuss Kendall, Miss. v. Johnson, and NTEU v.. Nixon)

Louis Fisher Constitutional Conflicts Between Congress and the President pp. 103-118.

Pyle and Pious The President, Congress and the Constitution, ch. 3 pp. 153-177

Pyle and Pious Kendall v. U.S. 37 U.S. 524 (1838); Miss. v. Johnson 71 U.S. 475 (1867); National Treasury Employees Union v. Nixon 492 F. 2d. 587 (1974)

February 22: Appointment Powers

(Prepare to discuss Buckley)

Louis Fisher Constitutional Conflicts Between Congress and the President, ch. 2

Pyle and Pious The President, Congress and the Constitution, ch. 3

Pyle and Pious Buckley v. Valeo 424 U.S. 1 (1976)

February 27: Removal Powers

(Prepare to discuss Shurtleff, Myers, and Humphrey’s)

Louis Fisher Constitutional Conflicts Between Congress and the President, ch. 3

Pyle and Pious The President, Congress and the Constitution, ch. 3, pp. 195-218. (continue on next page)

Pyle and Pious Shurtleff v. U.S. 189 U.S. 311 (1907); Myers v. U.S. 272 U.S. 52 (1926); Humphrey's Executor v. U.S., 295 U.S. 602 (1935), Wiener v. U.S. 357 U.S. 349 (1958)

March 1: Legislative Vetoes

(Prepare to discuss Chadha)

Louis Fisher Constitutional Conflicts Between Congress and the President pp. 141-159
Pyle and Pious The President, Congress and the Constitution, ch. 3 pp. 177-195
Pyle and Pious Chadha v. INS 77 L. Ed. 2d, 317 (1983)
Bessette and Tulis The Presidency in the Constitutional Order, (article by Murray Dry)

March 6: Impoundment and Sequestration

(Prepare to discuss Train and Bowsher)

Louis Fisher Constitutional Conflicts Between Congress and the President pp. 196-211.
Handout Cases: Train v. New York 420 U.S. 35 (1975)
Bowsher v. Synar 478 U.S. 714 (1986)

Game Simulation: Materials for Game Two will be distributed

March 8: Line-Item Vetoes

(Prepare to discuss Byrd and Clinton)

Louis Fisher Constitutional Conflicts Between Congress and the President, pp. 132-140.
Handout Case: Byrd v. Raines, 956 F. Supp. 25 (D.D.C. 1997)
Raines v. Byrd 117 S. Ct. 2312 (1997)
Clinton v. New York 524 US 417 (1998)

March 13: Simulation Game Two: Proposed executive order permitting the Office of Homeland Security to develop budget proposals, supervise quarterly allotments of funds, and recommend impoundments to be carried out by subsequent presidential Executive Orders.

(Written Position Papers due March 8)

Part Three: Control of Information and Accountability

March 15: Civil and Criminal Immunity

(Prepare to discuss Nixon and Clinton cases)

Richard Pious "The Paradox of Clinton Winning and the Presidency Losing" Political Science Quarterly, Winter 1999-2000, pp. 569-77 (on reserve at Barnard)
continue on next page

Handout cases: Nixon v. Fitzgerald, 457 U.S. 731 (1982)
Harlow v. Fitzgerald 457 U.S. 800 (1982)
Clinton v. Jones 117 S. Ct. 1644 (1998)

March 25 Testimonial Privileges
(Prepare to discuss Nixon, Nixon and Espy)

Richard Pious “The Paradox of Clinton Winning and the Presidency Losing” Political Science Quarterly, Winter 1999-2000
(On-line using Proquest Direct, from Barnard or CU Library Home pages, “Resources” then “Databases.”)
Louis Fisher Constitutional Conflicts Between Congress and the President, pp. 181 – 195
Jeffrey Tulis, ed. The Presidency in the Constitutional Order, (Schmitt)
Handout Cases
Senate Select Committee v. Nixon, 498 F.2d 725 (1974)
U.S. v. Nixon, 418 U.S. 683 (1974)
In re Sealed Case (Espy), 121 F. 3d. 729 (1997)

March 27 Testimonial Privileges, continued

Handout Cases
In re Bruce Lindsey 158 F. 3d 1263 (1998)
In re Sealed Case (Secret Service, 1998)
Rubin v. United States 119 S. Ct. 461 (1998)

April 1: Special Prosecutors and Independent Counsel
(Prepare to discuss Morrison)

Pyle and Pious, ed. The President, Congress and the Constitution, pp., 215-219
Pyle and Pious Nader v. Bork
Handout case: Morrison v. Olson 447 U.S. 654 (1988)

Simulation Game: Materials for Game Three will be distributed

April 3: Simulation Game Three: Should the President honor a judicial subpoena to testify regarding the detention orders? Should the FBI and Director of Homeland Security honor such subpoenas?

(Written Position Papers due April 3)

Part Four: Diplomatic and Commitment Powers

April 8: The President as Sole Organ

(Prepare to discuss U.S. v. Curtiss Wright)

Pyle and Pious The President, Congress and the Constitution,
ch. 4, pp. 233-243.

Pyle and Pious U.S. v. Curtiss Wright 299 U.S. 304 (1936)

April 10: Treaty Abrogation

(Prepare to discuss Goldwater v. Carter)

Louis Fisher Constitutional Conflicts Between Congress and the
President pp. 225-244.

Pyle and Pious The President, Congress and the Constitution,
ch. 4, pp. 243-267

Pyle and Pious Goldwater v. Carter 481 F. Supp. 949, 617 F. 2 697,
444 U.S. 996 (1979)

April 15: Treaty Interpretation

Louis Fisher Constitutional Conflicts Between Congress and the
President pp. 245-247.

Chayes and Chayes "Testing and Development of 'Exotic' Systems Under
the ABM Treaty: The Great Reinterpretation Caper,"
Harvard Law Review, vol. 99, 1986, pp. 1956-1971.
(Barnard or CU reserves or Law Library)

Block, Casey and Rivkin "The Senate's Pie-in-the-Sky Treaty Interpretation:
Power and the Quest for Legislative Supremacy,"
University of Pennsylvania Law Review, vol. 137,
no. 5, May 1989, pp. 1481-1510. (Barnard or CU
reserves or Law Library.)

Simulation Game: Materials for Game Four will be distributed

April 17: Executive Agreements and Commitment Powers

(Prepare to discuss Dames and Moore)

Louis Fisher Constitutional Conflicts Between Congress and the
President pp. 248-255.

Pyle and Pious The President, Congress and the Constitution, ch. 4,
pp. 267-283

Pyle and Pious U.S. v. Belmont, 301 U.S. 324 (1937), Dames and
Moore v. Regan 452 U.S. 654 (1981)

