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)

**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)

**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, Hirabayishi, 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  

**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  

**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)

**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.


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.


**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)

continue on next page
Handout cases:  

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)  
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)  

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


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*)


**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  

**April 15:** Treaty Interpretation

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

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  
April 20: Simulation Game Four: Re-interpreting the ABM Treaty or a PUPD with Russia and China?  
(Written Position Papers due April 18)

Part Five: War Powers

April 22: Presidential Warmaking: Constitutional Justifications  
(This will be a lecture and you need not do the readings in advance.)

Louis Fisher Constitutional Conflicts Between Congress and the President pp. 256-273  
Pyle and Pious The President, Congress and the Constitution, ch. 5, pp. 285-344  
Pyle and Pious The Prize Cases 67 U.S. 635 (1863)

April 27: The Courts and the Vietnam War  
(Prepare to discuss Massachusetts v. Laird, Mitchell v. Laird, and Holtzman v. Schlesinger)

Pyle and Pious The President, Congress and the Constitution, ch. 5 pp. 344-361  

April 29: The War Powers Act and Judicial Interpretation  
(Prepare to discuss Crockett, Lowry, Dellums, and Ange)

Louis Fisher Constitutional Conflicts Between Congress and the President pp. 274-292  
Pyle and Pious The President, Congress and the Constitution, ch. 5  
Campbell v. Clinton TK

Simulation Game: Materials for Game Five will be distributed

May 4: Simulation Game Five: Deployment of forces near Iraq

May 9 Written Position Papers Due. Return by 5:00 PM to 408 Lehman Hall, Barnard College. (No e-mail or faxes accepted.)

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