

W4321y: The Constitutional Law of
Presidential-Congressional Relations

Course description: Readings in constitutional and public law, including presidential prerogatives and rules of constitutional interpretation; the struggle for control of bureaucracy and budgets; the diplomatic and war powers of the president and Congress, the use of presidential emergency powers; testimonial privileges, immunity, and the impeachment process. In several class sessions we will simulate counsel whom the president has asked to advise him on the constitutionality of certain executive actions that he might take in the context of the US government's effort to combat terrorism and nuclear proliferation.

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

Requirements: Attendance at all lectures, participation in class discussions of assigned cases, and participation in the four in-class simulations, which count for 10 percent of the final grade. There are three position papers (each ten to twelve pages), which count for 90 percent of the grade, with better papers having greater weight. Extra credit is given for superior participation in discussing the assigned cases.

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 position papers. The textbooks are Christopher Pyle and Richard Pious, *The President, Congress and the Constitution* (New York: Free Press, 1984), Louis Fisher, *Constitutional Conflicts Between Congress and the President* (Russell: University Press of Kansas, 1998) and (if it arrives this semester) Richard Pious, *The War on Terrorism and the Rule of Law*. (If not, copies of relevant chapters will be on reserve.)

Obtaining Readings: Books can be obtained in the Barnard College and SIPA reserve rooms. 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. Articles are also available on-line using J-Stor and Proquest (accessed via CU or Barnard Library home pages, click on "resources" and then "databases.") Court cases, heavily edited and condensed to make it easier for you to read and understand, are located in Pyle and Pious, *The President, Congress and the Constitution* or in Pious, ed. *Cases for W4321y*. The latter volume is on reserve in the Barnard Library (not in SIPA). These cases are also available in unedited form on the Internet using Lexis or Findlaw, but you will find them much longer and much more difficult to read.

Contact Information: e-mail: rpious@barnard.edu. Office: 408 Lehman Hall, Hours: M 1:30-2:30, W 4-5.

Topics and Readings (Readings due on date indicated)

Introduction to Public Law and Prerogative Power

- January 18** Course Orientation and Separation of Powers
Richard Pious "Public Law and the 'Executive' Constitution"
M.A. Borelli, "The White House Counsel's Office"
Richard Pious, *The Presidency*, ch. 11
Louis Fisher *Constitutional Conflicts Between President and Congress*, ch. 1
- January 23** Prerogative Power and Executive Construction
Richard Pious *The Presidency*, chs. 2, 4.
Pious Cases for W4321y, "Rules of Constitutional Construction" (Handout)
Pyle and Pious In re Neagle 135 U.S. 1 (1880)
In re Debs 158 U.S. 564 (1895)

- January 25** Case Study: The Steel Seizure
 Pyle and Pious *The President, Congress and the Constitution* pp. 125-151
 Pyle and Pious *Youngstown v. Sawyer* 343 U.S. 579 (1952)

Part One: Executive Power

- January 30** Construing Executive Power
 Louis Fisher *Constitutional Conflicts Between Congress and the President*, pp. 103-118.
 Richard Pious *The Presidency*, ch. 10
 Pyle and Pious *The President, Congress and the Constitution*, ch. 3, pp. 153-177
Kendall v. U.S. 37 U.S. 524 (1838), Miss. v. Johnson 71 U.S. 475 (1867), NTEU v. Nixon 492 F. 2d 587 (1974).
- February 1** Appointment Powers
 Louis Fisher *Constitutional Conflicts Between Congress and the President*, ch. 2
 Pyle and Pious *The President, Congress and the Constitution* ch. 3 pp. 200-202
 Pyle and Pious Buckley v. Valeo, 424 U.S. 1 (1976).
- February 6** Removal Powers
 Louis Fisher *Constitutional Conflicts Between Congress and the President*, ch. 3
 Pyle and Pious, *The President, Congress and the Constitution* ch. 3, 202-218.
 Pyle and Pious Shurtleff v. U.S. 189 U.S. 311, Myers v. U.S. 272 US 52 (1926),
Humphrey's Executor v. U.S. 295 U.S. 602 (1935),
Weiner v. U.S. 357 U.S. 349 (1958).
- February 8** Legislative Vetoes
 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 INS v. Chadha, 462 U.S. 919 (1983)
- February 13** Impoundment and Sequestration
 Louis Fisher *Constitutional Conflicts Between Congress and the President*, pp. 196-211.
 Pious, ed. *Cases for W4321y* Train v. New York, 420 U.S. 35 (1975)
Bowsher v. Synar, 478 U.S. 714. (1986)
Handout of First Simulation Game Materials
(Read Pious, The War on Terror and the Rule of Law, ch. 7)
- February 15** Line-Item Vetoes
 Louis Fisher *Constitutional Conflicts Between Congress and the President*, pp. 132-140.
 Pious, ed. *Cases for W4321y*, Byrd v. Raines 956 F. Supp. 25 (D.D.C. 1997)
Raines v. Byrd, 117 S. Ct. 2312 (1997)
Clinton v. New York 524 U.S. 417) (1998)

Handout of First Position Papers due February 27. Return in class or place under office door, 408 Lehman Hall.

- February 20** Simulation Game One: Reorganizing the INS Hearings Processes

Part Two: Statecraft and War Powers

- February 22** Sole Organ
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)
Harold Koh *The National Security Constitution* ch. 5
- February 27** Treaty Interpretation (Lecture class. Readings should be completed after you hand in the position papers, during the following days.)
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. (Nexis-Lexis 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. (Nexis-Lexis, Law Lib)

First Position Papers due February 27. Return in class or place under office door, 408 Lehman Hall.

- March 1** Treaty Abrogation
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. 2d 697, 444 U.S. 996 (1979)

Handout of Second Simulation Game Materials

- March 6** Executive Agreements and PUPD
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, 453 U.S. 654 (1981)
Ryan J. Barrilaux, "Parallel Unilateral Policy Declarations," *Presidential Studies Quarterly*, vol. 17, no. 1, Winter 1987, pp. 107-117.

March 8 Simulation Game Two: Funding an Iran Agreement

- March 20** Presidential Warmaking and Vietnam
Louis Fisher *Constitutional Conflicts Between Congress and the President*, pp. 256-273
Pyle and Pious *The President, Congress and the Constitution*, ch. 5, pp. 344-361
Pyle and Pious Massachusetts v. Laird, 451 F 2d 26 (1971), Mitchell v. Laird, 488 F. 2d 611 (D.D. Cir. 1973), Holtzman v. Schlesinger, 484 F 2d 1307 (1973).

- March 22** The War Powers Resolution
Pyle and Pious, *The President, Congress and the Constitution*, ch. 5
pp. 359-369
Pyle and Pious Crockett v. Reagan, 558 F. Supp. 893 (D.D.C. 1982)
Handout of Second Position Papers due April 10
- March 27** Judicial Interpretation of WPR
Pyle and Pious *The President, Congress and the Constitution*, ch. 5
Pious, ed. *Cases for W4321y*, Lowry v. Reagan 676 F. Supp. 333 (D.D.C.
1987), Dellums v. Bush 752 F. Supp. 1141 D.D. C. 1990)
Ange v. Bush 752 F. Supp. 509 (D.D.C. 1990)
- March 29** Bush I Clinton and Bush II Interpretations of War Powers
- Louis Fisher *Constitutional Conflicts Between Congress and the
President*, pp. 274-292
- David Adler "The Clinton Theory of the War Power," *Presidential
Studies Quarterly*, Vol. 30, No. 1, March 2000, pp.
155-169 (On-line, ProQuest Direct)
- Pious, ed. *Cases for W4321y*, Campbell v. Clinton 203 F. 3rd 19 (1999)
UN Resolutions 678, 687, 1441, Doe v. Bush 323 F. 3rd (2003)
- April 3** **Simulation Game Three: Preemptive Strike Against Iran**
- Part Three: War on Terror**
- April 5** Martial Law, Detention and Relocation in Wartime
Pyle and Pious *The President, Congress and the Constitution*, pp. 47-76, 88-125
Hirabayashi v. U.S. 320 U.S. 81 (1943)
Korematsu v. U.S. 323 U.S. 214 (1944)
Ex Parte Endo 323 U.S. 283 (1944)
Duncan v. Kahanamoku, Sheriff, 327 U.S. 304 (1946)
Pious, ed. *Cases for W4321y*: Ex Parte Milligan (do not read
this case in Pyle and Pious, as the text contains publisher's errors).
- April 10** Detention of Citizens in War on Terror
Richard Pious *The War on Terror and the Rule of Law* ch. 1, 8
Padilla v. Rumsfeld 352 F. 3d 695 (2004)
Hamdi v. Rumsfeld 542 U.S. 507 (2004)
Second Position Papers due April 5, in class or under office door.
- April 12** Detention of Non-Citizens in War on Terror
Richard Pious *The War on Terror and the Rule of Law* ch. 9
Pious *Cases for W4321y*: Gherebi v. Bush
Rasul v. Bush 542 U.S. 466 (2004)
- April 17** Extraordinary Rendition, Mistreatment of Prisoners and Torture
Richard Pious *The War on Terror and the Rule of Law* ch. 10
- April 19** Military Tribunals
Richard Pious *Cases for W4321y*, "Military Tribunals, Prerogative Power, and the
War on Terrorism"
Richard Pious *The War on Terror and the Rule of Law* ch. 11 (see next page)
Johnson v. Eisentrager 339 U.S. 763 (1950)
Hamdan v. Rumsfeld, 344 F. Supp. 2nd (2004)
Hamdan v. Rumsfeld 415 F. 3d 33 (2005)

April 24

Testimonial Privileges

Richard Pious "The Paradox of Clinton Winning and the Presidency Losing" *Political Science Quarterly*, Winter 1999-2000

Louis Fisher *Constitutional Conflicts Between Congress and the President* pp.181-195

Pious, ed. *Cases for W 4321y*, Senate Select Committee v. Nixon, 498 F.2d 725 (1974), U.S. v. Nixon, 418 U.S. 683 (1974) In re Bruce Lindsey 158 F. 3d 1263 (1998)

Handout Materials for Simulation Game Four

(Also read Richard Pious "The Impeachment Process: The Intersection of Popular and Constitutional Law" *St. Louis University Law Journal* Fall 1999, available on Lexis-Nexis)

Handout of Third Position Papers due May 8

April 26

Criminal and Civil Immunity

Richard Pious "The Paradox of Clinton Winning and the Presidency Losing" *Political Science Quarterly*, Winter 1999-2000,

Pious, ed. *Cases for W4321y*: Nixon v. Fitzgerald, 457 U.S. 731 (1982) Harlow v. Fitzgerald 457 U.S. 800 (1982) Clinton v. Jones 117 S. Ct. 1644 (1998)

May 1

Simulation Game Four: Impeachment, Censure, or Investigation

May 8

No class session.

Third Position Paper Due. Return to 408 Lehman Hall by 5 pm. If the paper is late, e-mail to me as soon as you have finished to minimize grade penalty.