

**The Constitutional Law of  
Presidential-Congressional Relations**

**Seminar Description:** Readings and cases in constitutional and public law, including presidential prerogatives and rules of constitutional interpretation; the struggle for control of bureaucracy and budgets; and the diplomatic and war powers of the president and Congress.

**Course Reading:** Louis Fisher, *Constitutional Conflicts Between Congress and the President* (Lawrence University Press of Kansas, 1998).

**Obtaining Readings:** The Fisher book may be obtained via any on-line service. Articles are available on-line using J-Stor, Proquest and Lexis-Nexis. I have edited and condensed the assigned the court cases and will e-mail copies to each seminar participant. Feel free to read the unedited and full versions, obtained on-line using Lexis-Nexis, or at the Law School Library. I will also make available to all participants the assigned articles.

**Contact Information:** e-mail: [rpious@barnard.edu](mailto:rpious@barnard.edu). I will be available 30 minutes prior to each session, and for a brief period afterwards.

**Topics and Readings (Readings due on date indicated)**

**March 2: Introduction to Public Law and Prerogative Power**

**Part A Partial Separation of Powers**

Richard Pious "Public Law and the 'Executive' Constitution"  
Louis Fisher *Constitutional Conflicts Between President and Congress*, ch. 1

**Part B Prerogative Powers**

Richard Pious "Inherent War and Executive Powers and Prerogative Politics" *Presidential Studies Quarterly*, Spring 2007

Cases:

*In re Neagle* 135 U.S. 1 (1880)  
*In re Debs* 158 U.S. 564 (1895)  
*Youngstown v. Sawyer* 343 U.S. 579 (1952)

**March 9: Executive Power**

**Part A Executive and Ministerial Powers**

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

Cases:

*Marbury v. Madison* 5 U.S. 137 (1803)  
*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).

**Part B Appointment and Removal Powers**

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

Appointment Cases:

*Springer v. Philippine Islands* 277 U.S. 189 (1928)  
*Buckley v. Valeo*, 424 U.S. 1 (1976).  
*Riegle v. FOMC* 656 F. 2d 873 (1981)  
*Morrison v. Olson* 487 U.S. 654 (1988)

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

Removal Cases:

*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).  
*Nader v. Bork* 366 F. Supp. 104 (1973)  
*Morrison v. Olson* 487 U.S. 654 (1988)

**March 16: Legislative Control of Administration**

**Part A: Legislative Vetoes**

Louis Fisher      *Constitutional Conflicts Between Congress and the President*, pp. 141-159.

Case:

*INS v. Chadha*, 462 U.S. 919 (1983)

**Part B: Spending Powers**

Louis Fisher      *Constitutional Conflicts Between Congress and the President*, pp. 132-140, 196-211.

Cases:

*Train v. New York*, 420 U.S. 35 (1975)  
*New Haven v. United States* 809 F. 2d 900 (1986)  
*Bowsher v. Synar*, 478 U.S. 714. (1986)  
*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)

**March 23: Foreign Affairs and the Invitation to Struggle**

**Part A: Sovereign Powers and Sole Organ Powers**

Cases:

*U.S. v. Curtiss Wright* 299 U.S. 304 (1936)  
*Chicago and Southern Air Lines Inc. v Waterman* 333 U.S. 103 (1947)  
*Zemel v. Rusk* 361 U.S. 1 (1965)

**Part B: Treaty Reinterpretation and Abrogation and Executive Agreements**

Louis Fisher      *Constitutional Conflicts Between Congress and the President* pp. 225-247.

Ryan J. Barrilaux, "Parallel Unilateral Policy Declarations," *Presidential Studies Quarterly*, Vo. 17, No.1, Winter 1987 pp. 107-117

Cases:

*Goldwater v. Carter*, 481 F. Supp. 949  
617 F. 2d 697,  
444 U.S. 996 (1979)  
*Dames and Moore v. Regan*, 453 U.S. 654 (1981)

**March 30: Presidential War Powers**

**Part A: Early Cases**

Richard Pious v. Nancy Kassop, "The Framers Would Approve of Presidential War Powers" in Michael Nelson, ed. *Debating the Presidency*, (Washington, D.C., CQ press, 2006)

Cases:

*Bas v. Tingy* 4 U.S. 37 (1800)  
*Fleming v. Page* 50 U.S. 603 (1850)  
*Durand v. Hollins* 8 F. Cas. 111 (1860)  
*Prize Cases* 67 U.S. 635 (1863)

*Hamilton v. McLaughry* 136 F. 445 (1905)

**Part B: Presidential Warmaking and Vietnam**

Louis Fisher *Constitutional Conflicts Between Congress and the President*, pp. 256-273

Cases:

*Berk v. Laird* 429 F. 2d 302 (1970)

*Da Costa v. Laird* 448 F. 2d 1368 (1971)

*Da Costa v. Laird* 405 U.S. 979 (1972) (Douglas Diss)

*Massachusetts v. Laird*, 451 F 2d 26 (1971)

*Orlando v. Laird* 443 F. 2d 1039 (1971)

*Da Costa v. Laird* 471 F. 2d 1146 (1973)

*Mitchell v. Laird*, 488 F. 2d 611 (D.D. Cir. 1973)

*Holtzman v. Schlesinger*, 484 F 2d 1307 (1973).

**April 6: Presidential War Powers, Continued**

**Part A: The War Powers Resolution and Early Cases**

Cases:

*Crockett v. Reagan*, 558 F. Supp. 893 (D.D.C. 1982)

*Lowry v. Reagan* 676 F. Supp. 333 (D.D.C. 1987)

**Part B: Bush I, Clinton I 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

Cases:

*Dellums v. Bush* 752 F. Supp. 1141 D.D. C. 1990)

*Ange v. Bush* 752 F. Supp. 509 (D.D.C. 1990)

*Campbell v. Clinton* 203 F. 3rd 19 (1999)

*Doe v. Bush* 323 F. 3rd (2003)