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. 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
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)

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)
Riegle v. FOMC 656 F. 2d 873 (1981)
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),

March 16: Legislative Control of Administration

Part A: Legislative Vetoes
Louis Fisher  Constitutional Conflicts Between Congress and the President, pp. 141-159.
Case:

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)

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.
Cases:
Goldwater v. Carter, 481 F. Supp. 949
617 F. 2d 697, 444 U.S. 996 (1979)

March 30: Presidential War Powers

Part A: Early Cases
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)
Part B: Presidential Warmaking and Vietnam

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

Cases:
- *Da Costa v. Laird* 448 F. 2d 1368 (1971)
- *Da Costa v. Laird* 405 U.S. 979 (1972)  (Douglas Diss)
- *Orlando v. Laird* 443 F. 2d 1039 (1971)
- *Da Costa v. Laird* 471 F. 2d 1146 (1973)

April 6: Presidential War Powers, Continued

Part A: The War Powers Resolution and Early Cases

Cases:

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


Cases: