

CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2017

Professor: Dr. John A. Maltese

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Office hours: By appointment.

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Purpose of the course: POLS 4700 is part of a sequence of courses dealing with the theory and practice of American constitutional law. This segment deals primarily with separation of powers within the national government (the specific powers of Congress, the Executive Branch, and the Judiciary) and with issues of federalism (the division of power between the national government and the states).

Required text:

Craig R. Ducat, *Constitutional Interpretation, 10th ed. – Vol. I: Powers of Government* (Thomson/West, 2013).

Note: This text is now out of print. The bookstore has used copies. You can also find copies at places like Amazon.com. You can also buy or rent an eTextbook version from either the UGA bookstore or Amazon:

https://www.amazon.com/Constitutional-Interpretation-Powers-Government-1-ebook/dp/B00B6FBIUO/ref=mt_kindle?_encoding=UTF8&me=

I will provide links to more recent cases to supplement this text.

Course requirements:

There will be two essay exams (that together will account for 2/3 of your grade) and two identify exams dealing primarily with the identification of cases and concepts (that together will account for 1/3 of your grade). You are expected to keep up with the reading and to attend class on a regular basis. The quizzes and midterm will be announced in class with ample advance warning.

STUDENTS ARE TO BE PRESENT ON ALL TESTING DAYS. There will be no make-up exams without documented evidence of illness or family emergency.

The course syllabus is a general plan for the course; deviations announced to the class by the instructor may be necessary.

Academic Honesty:

ALL WORK ON ALL ASSIGNMENTS MUST BE YOUR OWN. All academic work must meet the standards contained in “A Culture of Honesty.” Students are responsible for informing themselves about those standards before performing any academic work. **Ignorance of what constitutes plagiarism is no excuse**, so familiarize your self with what plagiarism is. **I will refer cases of suspected academic dishonesty to the Office of Judicial Programs.** The link to more detailed information about academic honesty can be found at: <http://www.uga.edu/ovpi/honesty/acadhon.htm>

Course Outline

MONDAY, AUGUST 14 through FRIDAY, AUGUST 18:

I. The Distribution of Powers within the National Government.

A. Judicial Power.

1. Judicial Review.

Reading: Ducat, chapter 1, section a through page 23.

Marbury v. Madison

Judge Gibson’s dissent in *Eakin v. Raub*

Martin v. Hunter’s Lessee

MONDAY, AUGUST 21 through FRIDAY, AUGUST 25:

2. Checking the Court.

Reading: Ducat, chapter 1, pp. 23-26.

Ex Parte McCordle

3. The Structure of the Judicial System and the Supreme Court’s Place Within It.

Reading: Ducat, chapter 1, pp. 26-39.

MONDAY, AUGUST 28 and WEDNESDAY, AUGUST 30:

4. Gatekeeping Rules and Threshold Requirements.

Reading: Ducat, chapter 1, pp. 40-76.

Cases dealing with “case and controversy,” “ripeness,” “mootness,” and “political questions.”

[NO CLASS ON FRIDAY, SEPTEMBER 1; LABOR DAY HOLIDAY ON MONDAY, SEPTEMBER 4]:

WEDNESDAY, SEPTEMBER 6 through MONDAY, SEPTEMBER 11:

5. Modes of Constitutional Interpretation.
Reading: Ducat, chapter 2.

WEDNESDAY, SEPTEMBER 13 through WEDNESDAY, SEPTEMBER 20:

B. Legislative Power.

1. The Source and Scope of Legislative Power:

Enumerated and Implied Powers.

Reading: Ducat, chapter 3, section a, pp. 107-115.

McCulloch v. Maryland.

Amendment-Enforcing Powers.

Reading: Ducat, chapter 3, section a, pp. 116-124.

South Carolina v. Katzenbach

City of Boerne v. Flores

Also read *Employment Division, Dept. of Human Resources of Oregon v. Smith*:

<https://www.law.cornell.edu/supremecourt/text/494/872>

The Treaty Power.

Reading: Ducat, chapter 3, section a, pp. 128-131.

Missouri v. Holland

FRIDAY, SEPTEMBER 22 AND MONDAY, SEPTEMBER 25:

2. Delegation of Legislative Power.

Reading: Ducat, chapter 3, section b, pp. 132-148.

J.W. Hampton, Jr. & Co. v. U.S.

Panama Refining Co. v. Ryan

Schechter Poultry Corp. v. U.S.

INS v. Chadha

Ducat, chapter 4, pp. 242-47.

U.S. v. Curtiss-Wright Export

WEDNESDAY, SEPTEMBER 27:

FIRST IDENTIFY EXAM

FRIDAY, SEPTEMBER 29 and MONDAY, OCTOBER 2:

C. Executive Power.

1. The Source and Scope of Presidential Power: Three Theories of Executive Power.

Reading: Ducat, chapter 4, section b, pp. 190-93.

WEDNESDAY, OCTOBER 4 and FRIDAY, OCTOBER 6:

1. The Source and Scope of Executive Power (cont'd).

Reading: Ducat, chapter 4, section b, pp. 206-214.

Youngstown Sheet & Tube Co. v. Sawyer

MONDAY, OCTOBER 9 through FRIDAY, OCTOBER 13:

1. The Source and Scope of Executive Power (cont'd).

Reading: Ducat, chapter 4, section b, pp. 198-end.

Korematsu v. U.S.

Ex Parte Milligan

U.S. v. Nixon

Also read: *Trump v. International Refugee Assistance Project*

<https://www.oyez.org/cases/2017/16-1436>

MONDAY, OCTOBER 16:

Recess Appointments.

Reading: *U.S. v. Woodley*, 751 F.2d 1008 (1985)

<http://openjurist.org/751/f2d/1008/united-states-v-woodley>

NLRB v. Noel Canning, 573 U.S. – (2014)

https://www.supremecourt.gov/opinions/13pdf/12-1281_mc8p.pdf

WEDNESDAY, OCTOBER 18:

MIDTERM EXAM

FRIDAY, OCTOBER 20 through WEDNESDAY, OCTOBER 25:

II. The Distribution of Powers between the National Government and the States.

A. The Commerce Clause: Early History and the Rise of “Dual Federalism.”

Reading: Ducat, chapter 5, section a, pp. 283-297.

Gibbons v. Ogden

Stafford v. Wallace

“The Shreveport Rate Case”

FRIDAY, OCTOBER 27:

FALL BREAK

MONDAY, OCTOBER 30:

A. The Commerce Clause: Early History and the Rise of “Dual Federalism”
(cont’d).

Reading: Ducat, chapter 5, section a, pp. 298-301, and section b,
pp. 312-318.

Champion v. Ames

Hammer v. Dagenhart

WEDNESDAY, NOVEMBER 1 and FRIDAY, NOVEMBER 3:

B. “Liberty of Contract” in the Dual Federalist Era.

Reading: Ducat, chapter 7, section b (pay special attention to
pages 444-47 and to *Lochner v. New York* on p. 456).

Also read: *Buck v. Bell*, 274 U.S. 200 (1927)

<https://supreme.justia.com/cases/federal/us/274/200/case.html>

MONDAY, NOVEMBER 6 through FRIDAY, NOVEMBER 10:

C. The Commerce Power Since 1937: The Rise of “Cooperative Federalism.”

Reading: Ducat, chapter 5, end of section b (pp. 319-336) and end of
section a (pp. 304-311).

Carter v. Carter Coal

NLRB v. Jones & Laughlin Steel

Wickard v. Filburn

Heart of Atlanta Motel v. U.S.

Katzenbach v. McClung

Daniel v. Paul

MONDAY, NOVEMBER 13 and WEDNESDAY, NOVEMBER 15:

D. Dual Federalism Revived?

Reading: Ducat, chapter 5, section c.

U.S. v. Lopez

U.S. v. Morrison

Gonzales v. Raich

FRIDAY, NOVEMBER 17:

SECOND IDENTIFY EXAM

MONDAY, NOVEMBER 20 THROUGH FRIDAY, NOVEMBER 24:

THANKSGIVING BREAK

MONDAY, NOVEMBER 27 and WEDNESDAY, NOVEMBER 29:

E. Taxing and Spending Powers as a Means of Government Regulation.

Reading: Ducat, chapter 5, section d.

McCray v. U.S.

Bailey v. Drexel Furniture Co.

U.S. v. Butler

Steward Machine Co. v. Davis

South Dakota v. Dole

Also read: *National Federation of Independent Business v. Sebelius*,

<https://www.law.cornell.edu/supremecourt/text/11-393>

FRIDAY, DECEMBER 1 and MONDAY, DECEMBER 4:

F. The Regulatory Power of the States and the “Dormant” Commerce Clause.

Reading: Ducat, chapter 6, pp. 379-381 and 409-end.

Jacobson v. Massachusetts

Cooley v. The Board of Wardens of the Port of Philadelphia

Kassel v. Consolidated Freightways

City of Philadelphia v. State of New Jersey

TUESDAY, DECEMBER 5:

Wrapping Up: Trump and the Judiciary.

FINAL EXAM: FRIDAY, DECEMBER 8, 2017, 8:00-11:00 a.m. Please confirm this date and time at:

<http://reg.uga.edu/calendars/final-exam-dates/FinalExamDatesFall-2017>

You must take the final exam at the scheduled time.