

CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2016

Professor: Dr. John A. Maltese

Office: 104 Baldwin Hall (542-2057) and (after August 20) 206 Candler Hall

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).

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 (Dates are subject to change)

THURSDAY, AUGUST 11 and TUESDAY, AUGUST 16:

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

THURSDAY, AUGUST 18 and TUESDAY, AUGUST 23:

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.

THURSDAY, AUGUST 25 and TUESDAY, 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."

THURSDAY, SEPTEMBER 1 and TUESDAY, SEPTEMBER 6:

5. Modes of Constitutional Interpretation.

Reading: Ducat, chapter 2.

THURSDAY, SEPTEMBER 8 through THURSDAY, SEPTEMBER 15:

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, look online for *Employment Division,
Dept. of Human Resources of Oregon v. Smith*]

The Treaty Power.

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

TUESDAY, SEPTEMBER 20:

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

THURSDAY, 22:

FIRST IDENTIFY EXAM

TUESDAY, SEPTEMBER 27:

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.

THURSDAY, SEPTEMBER 29:

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

TUESDAY, OCTOBER 4 and THURSDAY, OCTOBER 6:

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

TUESDAY, OCTOBER 11:

2. The President's Appointment and Removal Powers.
Reading: Ducat, chapter 4, section a.
Myers v. U.S.
Morrison v. Olson

THURSDAY, OCTOBER 13:

MIDTERM EXAM

TUESDAY, OCTOBER 18 through TUESDAY, 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. 283-301, and section b, pp. 312-318.
Gibbons v. Ogden
Stafford v. Wallace
"The Shreveport Rate Case"
Champion v. Ames
Hammer v. Dagenhart

THURSDAY, OCTOBER 27 and TUESDAY, NOVEMBER 1:

- 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).
Read *Buck v. Bell* online.

THURSDAY, NOVEMBER 3 and TUESDAY, NOVEMBER 8:

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

THURSDAY, NOVEMBER 10:

D. Dual Federalism Revived?

Reading: Ducat, chapter 5, section c.

U.S. v. Lopez

U.S. v. Morrison

Gonzales v. Raich

TUESDAY, NOVEMBER 15:

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

THURSDAY, NOVEMBER 17:

SECOND IDENTIFY EXAM

TUESDAY, NOVEMBER 22 and THURSDAY, NOVEMBER 24:

THANKSGIVING BREAK

TUESDAY, NOVEMBER 29 and THURSDAY, DECEMBER 1:

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

FINAL EXAM: THURSDAY, DECEMBER 8, 8:00-11:00 a.m. Please double check this date and time at:

<http://www.reg.uga.edu/calendars/final-exam-dates/FinalExamDatesFall-2016>

You must take the final exam at the scheduled time.