

# CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2018

Professor: Dr. John A. Maltese

Office: 206 Candler Hall (542-2059)

Office hours: By appointment.

[jmaltese@uga.edu](mailto:jmaltese@uga.edu)

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, 10<sup>th</sup> 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=](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). A portion of the essay exams may consist of a take-home essay. You are expected to keep up with the reading and to attend class on a regular basis.

***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 13 through FRIDAY, AUGUST 17:

#### **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 20 through FRIDAY, AUGUST 24:

##### 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 27 and WEDNESDAY, AUGUST 31:

##### 4. Gatekeeping Rules and Threshold Requirements.

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

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

**MONDAY, SEPTEMBER 3:**

LABOR DAY HOLIDAY

**WEDNESDAY, SEPTEMBER 5 through MONDAY, SEPTEMBER 10:**

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

**WEDNESDAY, SEPTEMBER 12 through WEDNESDAY, SEPTEMBER 19:**

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 21 AND MONDAY, SEPTEMBER 24:**

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 26:**

FIRST IDENTIFY EXAM

**FRIDAY, SEPTEMBER 28 and MONDAY, OCTOBER 1:**

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 3 and FRIDAY, OCTOBER 5:**

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 15:**

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

**WEDNESDAY, OCTOBER 17:**

MIDTERM EXAM

**FRIDAY, OCTOBER 19 through WEDNESDAY, OCTOBER 24:**

**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 26:**

FALL BREAK

**MONDAY, OCTOBER 29:**

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, OCTOBER 31 and FRIDAY, NOVEMBER 2:**

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 5 through FRIDAY, NOVEMBER 9:**

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 12 and WEDNESDAY, NOVEMBER 14:**

D. Dual Federalism Revived?

Reading: Ducat, chapter 5, section c.

*U.S. v. Lopez*  
*U.S. v. Morrison*  
*Gonzales v. Raich*

**FRIDAY, NOVEMBER 16:**

SECOND IDENTIFY EXAM

**MONDAY, NOVEMBER 19 THROUGH FRIDAY, NOVEMBER 23:**

THANKSGIVING BREAK

**MONDAY, NOVEMBER 26 and WEDNESDAY, NOVEMBER 28:**

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, NOVEMBER 30 and MONDAY, DECEMBER 3:**

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 4:**

Wrapping Up: Trump and the Judiciary.

**FINAL EXAM: MONDAY, DECEMBER 10, 2018, 8:00-11:00 a.m. Please confirm this date and time at:**

**<https://reg.uga.edu/general-information/calendars/final-exam-schedule/>**

**You must take the final exam at the scheduled time.**