

CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2019

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: The print version of this text is now out of print, but you can rent or buy a eTextbook version (with the same page numbering) at Amazon.com:

https://www.amazon.com/Constitutional-Interpretation-Powers-Government-1-ebook-dp-B00B6FBIUO/dp/B00B6FBIUO/ref=mt_kindle?_encoding=UTF8&me=&qid=1560186366

In addition, the UGA bookstore has used copies for you to buy, and a copy is on Reserve at the Main Library. As appropriate, I will provide links to more recent cases

Course requirements:

There will be two essay exams and a five-page paper (that together will account for two-thirds of your grade) and two identify exams dealing primarily with the identification of cases and concepts (that together will account for one-third of your grade). The paper will count as half of your final exam grade (midterm = one-third of your grade and final + paper = one-third of your grade). 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: <https://honesty.uga.edu/Academic-Honesty-Policy/>

Course Outline

WEDNESDAY, AUGUST 14 through WEDNESDAY, AUGUST 21:

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

FRIDAY, AUGUST 23 through FRIDAY, AUGUST 30:

2. Checking the Court.

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

Ex Parte McCardle

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

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

MONDAY, SEPTEMBER 2:

LABOR DAY HOLIDAY

WEDNESDAY, SEPTEMBER 4 and FRIDAY, SEPTEMBER 6:

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 9 through FRIDAY, SEPTEMBER 13:

5. Modes of Constitutional Interpretation.

Reading: Ducat, chapter 2.

MONDAY, SEPTEMBER 16 through FRIDAY, 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

MONDAY, SEPTEMBER 23 AND WEDNESDAY, 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

FRIDAY, SEPTEMBER 27:

FIRST IDENTIFY EXAM

MONDAY, SEPTEMBER 30 and WEDNESDAY, 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.

FRIDAY, OCTOBER 4 and MONDAY, OCTOBER 7:

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

WEDNESDAY, OCTOBER 9 and FRIDAY, OCTOBER 11:

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. Hawaii* (including the dissents) at, for example:

<https://www.oyez.org/cases/2017/17-965>

MONDAY, OCTOBER 14 and WEDNESDAY, OCTOBER 16:

2. The President's Appointment and Removal Power

Reading: Ducat, 176-189.

Myers v. U.S.

Humphrey's Executor v. U.S.

Morrison v. Olson

Also read: *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

FRIDAY, OCTOBER 18:

MIDTERM EXAM

MONDAY, OCTOBER 21 through FRIDAY, 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

MONDAY, OCTOBER 28 and WEDNESDAY, OCTOBER 30:

- 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>

FRIDAY, NOVEMBER 1:

FALL BREAK.

MONDAY, NOVEMBER 4 through FRIDAY, 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

MONDAY, NOVEMBER 11 and WEDNESDAY, NOVEMBER 13:

D. Dual Federalism Revived?

Reading: Ducat, chapter 5, section c.

U.S. v. Lopez

U.S. v. Morrison

Gonzales v. Raich

FRIDAY, NOVEMBER 15 through WEDNESDAY, NOVEMBER 20:

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 22:

SECOND IDENTIFY EXAM

MONDAY, NOVEMBER 25:

F. The State “Police Power”

Reading: Ducat: chapter 6, pp. 380-382 and 495-408.

Jacobson v. Massachusetts

Edwards v. California

G. The Negative or Dormant Commerce Clause

Reading: Ducat chapter 6, pp. 409-413.

Cooley v. Board of Wardens of the Port of Philadelphia

PAPER DUE

WEDNESDAY, NOVEMBER 27 through FRIDAY, NOVEMBER 29:

THANKSGIVING HOLIDAY

MONDAY, DECEMBER 2 and WEDNESDAY, DECEMBER 4:

G. The Negative or Dormant Commerce Clause (continued).

Reading: Ducat, chapter 6, pp. 379-381 and 4413-end.

Kassel v. Consolidated Freightways

City of Philadelphia v. State of New Jersey

FINAL EXAM: WEDNESDAY, DECEMBER 11, 2019, 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.