

# CONSTITUTIONAL LAW: POWERS

## POLS 4700 – FALL 2020

Professor: Dr. John A. Maltese

Office: 206 Candler Hall (542-2059)

Office hours: By appointment, via Zoom.

[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).

### **Information About COVID-19**

#### **COVID-19 Course Modifications:**

In order to maintain the health and safety of the university community, social distancing will be enforced in classrooms. As a result, this class will be taught using a combination of hybrid and HyFlex approaches. “Hybrid” means that some parts of this class (some lectures and all exams) will be online. “HyFlex” means that there will be a regular opportunity for students to participate in face-to-face class sessions. Roughly one-third of the class will be able to meet each class period. Since this class meets MWF, you should have the opportunity to participate in a face-to-face class about once a week. Those classes will be streamed synchronously via Zoom so that those not attending the face-to-face session can nonetheless participate. Those classes will also be recorded and posted to eLC. We may also have occasional class sessions in which everyone participates via Zoom. This is uncharted territory for all of us. I will do my best to modify and improve the course as we go along, based on your feedback. Modifications may also be necessary due to changing conditions associated with the pandemic.

In-person instruction will conclude at Thanksgiving Break. All remaining instruction, as well as final exams, will be delivered online following Thanksgiving. The University will remain open after Thanksgiving Break and will continue to provide regular campus operations and student life services until the end of Fall Semester.

#### **Face Coverings Are Mandatory:**

Face coverings in public spaces, including classrooms, are **mandatory** for all. Wearing a face covering is in addition to and not a substitute for also maintaining six feet social distancing. Anyone not using a face covering when required will be asked to wear one or

must leave the area. Please note that a face shield is not an acceptable alternative to a face mask or cloth face covering.

### **Keep a Safe Distance:**

In all public spaces (including stairwells, halls, offices, bathrooms, classrooms, and labs), please maintain six feet between you and others. The seating capacity in your classroom has been modified to allow for social distancing. Please sit in designated, marked seats. In all public spaces, including classrooms, you should not remove signage or re-arrange furniture, even if it appears that furniture is not being used. To help maintain distance, please keep right, where possible. If you enter/exit through the front doors of Baldwin, please follow the signs (and traffic) directing you through a specific set of doors.

### **Don't Congregate:**

If you want to spend some time chatting with someone, please take it outside or online. We are also requesting that you enter and exit Baldwin without delay, staying outside of the building as long as practicable before your class begins and then leaving once your class is finished.

### **Keep it Clean:**

Cleaning and disinfecting of public spaces are important to reduce the risk of exposure to COVID-19. Classrooms are only being cleaned once-per-day. There are sanitation wipes/buckets and stands in proximity to your classroom. *Prior to heading in to class*, you should take a wipe from the station and wipe down all high-touch surfaces associated with your seat. You should help further slow the spread of the virus by frequently washing your hands. Bathrooms will be cleaned frequently during the day. On occasions that bathrooms are closed for cleaning, you may need to use those on other floors or in other buildings. Please be conscious of the density of traffic in bathrooms and practice social distancing.

### **DawgCheck:**

Please perform a quick symptom check each weekday on DawgCheck—on the UGA app or website—whether you feel sick or not. It will help health providers monitor the health situation on campus: <https://dawgcheck.uga.edu/>

By coming to campus, you are acknowledging that you have checked, and do not have, symptoms of COVID-19.

### **What do I do if I have an underlying medical condition that makes me vulnerable?**

If you have an underlying medical condition or, for any reason, believe that you are at a high risk of developing a serious case of COVID-19, you may request an accommodation through the Disability Resource Center (DRC) at [drc@uga.edu](mailto:drc@uga.edu) or 706-542-8719. More

information can be found at - [https://drc.uga.edu/content\\_page/student-accommodation-guidelines](https://drc.uga.edu/content_page/student-accommodation-guidelines)

### **What do I do if I have symptoms?**

Students showing symptoms should self-isolate and schedule an appointment with the University Health Center by calling 706-542-1162 (Monday-Friday, 8 a.m.-5 p.m.). Please DO NOT walk-in. For emergencies and after-hours care, see <https://www.uhs.uga.edu/info/emergencies>.

### **What do I do if I am notified that I have been exposed?**

Students who learn they have been directly exposed to COVID-19 but are not showing symptoms should self-quarantine for 14 days consistent with Department of Public Health (DPH) and Centers for Disease Control and Prevention (CDC) guidelines. Please correspond with your instructor via email, with a cc: to Student Care & Outreach at [sco@uga.edu](mailto:sco@uga.edu), to coordinate continuing your coursework while self-quarantined. If you develop symptoms, you should contact the University Health Center to make an appointment to be tested. You should continue to monitor your symptoms daily on DawgCheck.

### **How do I get a test?**

Students who are demonstrating symptoms of COVID-19 should call the University Health Center. UHC is offering testing by appointment for students; appointments may be booked by calling 706-542-1162.

UGA will also be recruiting asymptomatic students to participate in surveillance tests. Students living in residence halls, Greek housing and off-campus apartment complexes are encouraged to participate.

### **What do I do if I test positive?**

Any student with a positive COVID-19 test is **required** to report the test in DawgCheck and should self-isolate immediately. Students should not attend classes in-person until the isolation period is completed. Once you report the positive test through DawgCheck, UGA Student Care and Outreach will follow up with you.

### **Staying in Touch:**

Office hours and academic advising are encouraged, but should be done by appointment. To ensure safe distancing, faculty and staff are more likely to meet with you online or by phone.

### **Stay Informed:**

Check your email regularly so you don't miss important information, and also check the University [COVID-19 website](#) for updates and resources, this web site includes links from student affairs with helpful, up-to-date messages for students and parents.

### **Mental Health and Wellness Resources:**

- If you or someone you know needs assistance, you are encouraged to contact Student Care and Outreach in the Division of Student Affairs at 706-542-7774 or visit <https://sco.uga.edu>. They will help you navigate any difficult circumstances you may be facing by connecting you with the appropriate resources or services.
- UGA has several resources for a student seeking mental health services (<https://www.uhs.uga.edu/bewelluga/bewelluga>) or crisis support (<https://www.uhs.uga.edu/info/emergencies>).
- If you need help managing stress anxiety, relationships, etc., please visit BeWellUGA (<https://www.uhs.uga.edu/bewelluga/bewelluga>) for a list of FREE workshops, classes, mentoring, and health coaching led by licensed clinicians and health educators in the University Health Center.
- Additional resources can be accessed through the UGA App.

### **Information about this Course**

#### **Required text:**

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

Note: Used copies of the print version of this text are available at the UGA Bookstore and are available online. You can also 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\\_other?\\_encoding=UTF8&me=&qid=1596744806](https://www.amazon.com/Constitutional-Interpretation-Powers-Government-1-ebook-dp-B00B6FBIUO/dp/B00B6FBIUO/ref=mt_other?_encoding=UTF8&me=&qid=1596744806)

As appropriate, I will provide links to more recent cases and post additional readings on eLC.

### **Course requirements:**

The plan is for there to be two essay exams (a midterm and a final) and a five-page paper (that together will account for two-thirds of your grade). There will likely also be a combination of quizzes and two identify exams dealing primarily with the identification of cases and concepts that together will account for the remaining 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). Given the unusual circumstances of this semester, however, there may be some modifications to this plan. You are expected to keep up with the reading and to attend class (virtually or in person) on a regular basis.

***STUDENTS ARE EXPECTED TO TAKE EXAMS WHEN THEY ARE SCHEDULED. All exams will be online. 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**

### **FRIDAY, AUGUST 21 through FRIDAY, AUGUST 28:**

#### **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 31 through FRIDAY, SEPTEMBER 4:**

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 7:**

LABOR DAY HOLIDAY

**WEDNESDAY, SEPTEMBER 9 through MONDAY, SEPTEMBER 14:**

4. Gatekeeping Rules and Threshold Requirements.

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

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

**WEDNESDAY, SEPTEMBER 16 through MONDAY, SEPTEMBER 21:**

5. Modes of Constitutional Interpretation.

Reading: Ducat, chapter 2.

**WEDNESDAY, SEPTEMBER 23 through MONDAY, SEPTEMBER 28:**

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*

**WEDNESDAY, SEPTEMBER 30 AND FRIDAY, OCTOBER 2:**

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*

**MONDAY, OCTOBER 5:**

FIRST IDENTIFY EXAM

**WEDNESDAY, OCTOBER 7 and FRIDAY, OCTOBER 9:**

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.

**MONDAY, OCTOBER 12 and WEDNESDAY, OCTOBER 14:**

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*

**FRIDAY, OCTOBER 16 and MONDAY, OCTOBER 19:**

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* (2018):  
[https://www.supremecourt.gov/opinions/17pdf/17-965\\_h315.pdf](https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf)

And, *Department of Homeland Security, et al v. Regents of the University of California, et al*, (2020):  
[https://www.supremecourt.gov/opinions/19pdf/18-587\\_5ifl.pdf](https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf)

**WEDNESDAY, OCTOBER 21 and FRIDAY, OCTOBER 23:**

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: *Seila Law LLC v. Consumer Financial Protection Bureau* (2020): [https://www.supremecourt.gov/opinions/19pdf/19-7\\_new\\_bq7d.pdf](https://www.supremecourt.gov/opinions/19pdf/19-7_new_bq7d.pdf)

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

**MONDAY, OCTOBER 26:**

MIDTERM EXAM

**WEDNESDAY, OCTOBER 28 through WEDNESDAY, OCTOBER 28:**

**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*



**FRIDAY, OCTOBER 30:**

FALL BREAK.

**MONDAY, NOVEMBER 2 and WEDNESDAY, NOVEMBER 4:**

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 6 through WEDNESDAY, NOVEMBER 11:**

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*

**FRIDAY, NOVEMBER 13 and MONDAY, NOVEMBER 16:**

D. Dual Federalism Revived?

Reading: Ducat, chapter 5, section c.

*U.S. v. Lopez*

*U.S. v. Morrison*

*Gonzales v. Raich*

**WEDNESDAY, NOVEMBER 18 through MONDAY, NOVEMBER 23:**

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>

**WEDNESDAY, NOVEMBER 25 through FRIDAY, NOVEMBER 27:**

THANKSGIVING HOLIDAY

**MONDAY, NOVEMBER 30 (The remainder of the semester is entirely online):**

SECOND IDENTIFY EXAM

**WEDNESDAY, DECEMBER 2 and FRIDAY, DECEMBER 4:**

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*

**MONDAY, DECEMBER 7 through WEDNESDAY, DECEMBER 9:**

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*

Conclusions and Review.

**PAPER DUE DECEMBER 7, 2020 by noon.**

**FINAL EXAM: FRIDAY, DECEMBER 11, 2020, 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.**