

Contents at a Glance

Foreword	xix
Introduction	1
Part I: Exploring Constitutional Basics	7
Chapter 1: Constitutional Law: The Framework for Governance	9
Chapter 2: Framing the U.S. Constitution: Big Thinkers, Big Thoughts.....	17
Chapter 3: Debating the Constitution	31
Chapter 4: Introducing . . . the Constitution! The Preamble and the Seven Articles.....	43
Chapter 5: Amending versus Interpreting the Constitution: Taking Time for Change.....	53
Part II: We the People: How the United States Is Governed	65
Chapter 6: Scrutinizing Sovereignty: Who Rules America?	67
Chapter 7: Federalism: Forming One out of Many	79
Chapter 8: Separation of Powers: To Each His Own.....	91
Chapter 9: Doing Business: The Commerce Clause.....	101
Part III: Balancing the Branches of Government: The President, Congress, and the Judiciary	113
Chapter 10: Looking at the Role of Commander in Chief.....	115
Chapter 11: Giving Everyone a Voice: The House of Representatives and Senate.....	139
Chapter 12: “During Good Behaviour”: The Judicial System	157
Chapter 13: You’re Fired! Investigating the Impeachment Process	179
Part IV: The Bill of Rights: Specifying Rights through Amendments	193
Chapter 14: The First Amendment: Freedom of Religion, Speech, and Assembly	195
Chapter 15: The Second Amendment: Bearing Arms	207
Chapter 16: The Third and Fourth Amendments: Protecting Citizens from Government Forces	217
Chapter 17: Taking the Fifth — and a Bit of the Fourteenth	231

Chapter 18: Dealing with Justice and Individual Rights: The Sixth through Eighth Amendments	247
Chapter 19: The Ninth and Tenth Amendments: Leaving Things Up to the People and States	263
<i>Part V: Addressing Liberties and Modifying the Government: More Amendments.....</i>	277
Chapter 20: States' Rights, Elections, and Slavery: The Eleventh through Thirteenth Amendments	279
Chapter 21: The Fourteenth Amendment: Ensuring Equal Protection	291
Chapter 22: Starts, Stops, and Clarifications: Amendments since 1870.....	305
<i>Part VI: The Part of Tens</i>	321
Chapter 23: Ten Landmark Constitutional Cases	323
Chapter 24: Ten Influential Supreme Court Justices	329
Chapter 25: Two Sides of Five Constitutional Conundrums.....	337
<i>Appendix: Constitution of the United States of America</i>	345
<i>Index</i>	369

Table of Contents

.....
Foreword.....*xix*

Introduction..... **1**

About This Book.....	1
Conventions Used in This Book.....	2
What You're Not To Read.....	2
How This Book is Organized	3
Part I: Exploring Constitutional Basics	3
Part II: We the People: How the United States Is Governed	3
Part III: Balancing the Branches of Government: The President, Congress, and the Judiciary.....	4
Part IV: The Bill of Rights: Specifying Rights through Amendments.....	5
Part V: Addressing Liberties and Modifying the Government: More Amendments	5
Part VI: The Part of Tens.....	5
Icons Used in This Book	5
Where To Go from Here.....	6

Part 1: Exploring Constitutional Basics..... **7**

Chapter 1: Constitutional Law: The Framework for Governance **9**

Defining "Constitution"	9
Knowing When and Why the Constitution Was Created.....	10
Summarizing the Main Principles of the Constitution.....	11
Identifying Some Areas of Controversy	14

**Chapter 2: Framing the U.S. Constitution:
Big Thinkers, Big Thoughts****17**

Building on Magna Carta	18
Respecting the Rule of Law (Or the Rule of Lawyers?)	19
Analyzing the Concepts Underlying the Declaration of Independence	21
Invoking the law of nature	22
Securing "unalienable Rights"	23
"Deriving their just powers from the consent of the governed" ...	24



Establishing a Republic.....	26
Getting rid of the king.....	26
Crafting the Articles of Confederation	28
Leaving democracy out of the U.S. Constitution	29

Chapter 3: Debating the Constitution 31

Listing Some Sources of Confusion	31
Discarding Out-Of-Date Ideas?	33
Untangling Ambiguities.....	34
Giving Some Important Principles the Silent Treatment.....	35
Interpreting the Constitution.....	37
Comparing interpretations of “cruel and unusual punishments”....	38
Comparing interpretations of partial-birth abortion	39
Identifying methods of interpretation.....	40

Chapter 4: Introducing . . . the Constitution!

The Preamble and the Seven Articles 43

Presenting the Preamble: “We the People . . .”	43
Article I: Setting up the Congress	44
Magnifying the commerce power	45
(Mis)interpreting the “necessary and proper” clause	46
Article II: Hailing the Chief.....	46
Listing presidential powers and duties.....	47
Identifying the real issues	47
A drafting boo-boo.....	48
Succeeding to the presidency	48
Article III: Understating Judicial Power	49
Article IV: Getting Along with the Neighbors — and Uncle Sam	50
Article V: Changing versus Amending the Constitution	51
Article VI: Fudging Federalism	52
Article VII: Ratifying the Constitution	52

Chapter 5: Amending versus Interpreting the Constitution:

Taking Time for Change 53

Noting the Four Paths to an Amendment.....	54
Explaining What Happens in Practice.....	55
Listing the Amendments.....	56
Rating the Ratification of the Fourteenth Amendment.....	57
Reviving a Forgotten Amendment	58
Calling Time on an ERA.....	59
Reviewing Other Unratified Proposed Amendments	59
Debating the Need for Judge-Made Law	60
Reading a Right to Privacy into the Constitution.....	61
Using a sledgehammer to crack a nut: <i>Griswold v. Connecticut</i> ...	62
Disliking a law versus declaring it unconstitutional	62
Embarking on the road to <i>Roe v. Wade</i>	63

***Part II: We the People: How the United States Is Governed* 65**

Chapter 6: Scrutinizing Sovereignty: Who Rules America? 67

Introducing “We the People” 68
 Ordaining and establishing a Constitution 68
 Resolving to preserve democracy 69
 Defining democracy 70
 Testing for democracy today 71
 Hailing the Chief 72
 Congress: Flexing Its Lawmaking Muscle 73
 The High Court: Saying What the Law Is 74
 Giving the States Their Due 76
 Uncovering Conspiracies 77

Chapter 7: Federalism: Forming One out of Many 79

Tracing the Origins of U.S. Federalism 79
 Analyzing the founding documents 80
 Forming “a more perfect Union” 81
 Banking on *McCulloch v. Maryland* 82
 Testing the limits of federal power 83
 Realizing the repercussions 84
 Navigating the Commerce Clause with John Marshall 85
 Riding the Federalism Rollercoaster 85
 Ignoring the Elephant in the Room:
 The Question of State Sovereignty 88
 Defining sovereignty 88
 Testing state sovereignty: *Chisholm v. Georgia* 89
 Can a state secede from the union? 89
 Dredging up the Articles of Confederation 89

Chapter 8: Separation of Powers: To Each His Own 91

No Moonlighting for the President 92
 Keeping the Branches Apart 93
 Membership 93
 Functions 94
 Checking and Balancing 97
 Keeping each branch in line 97
 Considering the judiciary’s special position 99

Chapter 9: Doing Business: The Commerce Clause 101

How the Commerce Clause Was Born 101
 Interpreting the Commerce Clause 102
 Hunting Down the Dormant Commerce Clause 103
 Assuming Congress has exclusive power 103
 Giving concurrent powers to the states 104
 Poking holes in the Dormant Commerce Clause 105

- Tracing the Changing Meaning of the Commerce Clause..... 106
 - Protecting freedom of contract..... 106
 - Introducing the Four Horsemen and the Three Musketeers 107
 - Signaling the feds’ control of the economy 108
 - Controlling the production of wheat that
 - never left its home farm 109
 - Using the Commerce Clause to advance civil rights 110
 - Turning back the federal tide? 110
 - “Appropriating state police powers under
 - the guise of regulating commerce” 111
 - Taking a step backward 112

***Part III: Balancing the Branches of Government:
The President, Congress, and the Judiciary 113***

Chapter 10: Looking at the Role of Commander in Chief. 115

- Being “Eligible to the Office of President” 115
- Picking a President..... 117
 - Paying the price for passing over political parties..... 117
 - Rescuing the situation with the Twelfth Amendment..... 118
 - Examining the modern electoral system 118
 - Exploding some myths about the Electoral College..... 120
- Canning the President..... 123
- Signing, Vetoing, and Pocketing Legislation 123
- Appointing Key Positions 124
- Hailing the Chief: The President’s Administration..... 125
 - Uncovering the secrets of Cabinet secretaries 126
 - Unmasking the imperial presidency..... 128
 - Unlocking the Executive Office of the President..... 129
 - Selling the President’s legislative program 130
- Battling Executive Privilege..... 131
 - Claiming executive privilege in the early days 131
 - Achieving a total blowout against President Nixon 132
 - Balancing recent claims of justice against executive privilege.... 133
- Making War versus Declaring War 134
 - Controlling the President through the
 - War Powers Act of 1973..... 135
 - Preventing presidential precedents? 136

**Chapter 11: Giving Everyone a Voice: The House
of Representatives and Senate 139**

- Making the Laws That Govern the Land..... 140
 - One function, two houses 140
 - Keeping the President in the loop 140

Visiting the People’s House.....	141
Representing the U.S. population	142
Respecting the power of the Speaker.....	142
Controlling the nation’s purse strings	145
Deciding disputed presidential elections	146
Impeaching the President and other civil officers.....	147
Declaring war.....	147
Getting to Know the Senate.....	149
Electing a senator	150
Presiding over the Senate	151
Advising and consenting.....	152
Passing Legislation.....	153
Tracking a bill’s progress	153
Examining congressional committees.....	155

Chapter 12: “During Good Behaviour”: The Judicial System. 157

Examining the Courts’ Function	157
Defining jurisdiction	158
Applying the law	159
Appointments and Elections: Becoming a Judge	159
Judging the election process.....	160
Considering whether elections taint the judiciary.....	161
Understanding Judicial Independence without Accountability	162
Bypassing term limits and salary concerns	162
Grappling with issues the Constitution doesn’t address.....	163
Examining the abortion litmus test	164
Making the Judiciary Paramount: Judicial Review	165
Understanding the nature of judicial review.....	165
Tracing the origins of judicial review.....	167
Noting Jefferson’s response to Marbury v. Madison	169
Considering alternatives for solving Constitutional conflicts.....	170
Watching the Supreme Court’s power seep into politics	171
Casting the Swing Vote	172
Recalling “the switch in time that saved nine”	172
Wielding the swing vote under Rehnquist and Roberts	173
Labeling Supreme Court Justices	175
Conservative/liberal	175
Strict constructionism/living Constitution.....	175
Stare decisis/free exercise of power	176
Judicial activism/judicial restraint	176

Chapter 13: You’re Fired! Investigating the Impeachment Process . . . 179

There’s Nothing Peachy about Impeachment	179
“High Crimes and Misdemeanors”: What Impeachment Is and Isn’t	180
Defining impeachment	181
Can you be impeached for something that isn’t a crime at all?... 181	

Tracking the Impeachment Process.....	182
Playing grand jury and prosecutor: The role of the House	183
Trying the articles of impeachment: The role of the Senate	184
Understanding the Implications of Impeachment	184
Impeaching isn't the same as convicting	184
Keeping Congress out of the fray.....	185
Impeaching for poor private conduct	185
Pardoning is not an option	186
Impeachment in Action: Johnson, the Judges, and Clinton	186
Andrew Johnson: "Let them impeach and be damned"	187
Judging the judges	188
Bill Clinton: "I did not have sexual relations . . ."	188
Removing State Officials from Office.....	191
Impeaching governors.....	192
Total recall, or terminating a governor.....	192

Part IV: The Bill of Rights: Specifying Rights through Amendments..... 193

Chapter 14: The First Amendment: Freedom of Religion, Speech, and Assembly195

Considering the Amendment's Wording	195
Prohibiting Congress from taking away rights.....	196
Applying the amendment to the states.....	196
Separating Church and State.....	196
Guaranteeing the Free Exercise of Religion	199
Adopting a strict scrutiny test	199
Witnessing judicial gyrations: Jehovah's Witnesses and the Supreme Court	200
Guaranteeing Freedom of Expression.....	201
Denying protection to speech creating a "clear and present danger"	202
Allowing obscenity to be seen?.....	203
Using and abusing the right to freedom of the press.....	204
Protecting the Right to Assemble and Petition	205

Chapter 15: The Second Amendment: Bearing Arms207

Debating Interpretation: Individual versus State Rights	208
Breaking Down the Amendment's Clauses	209
Understanding the states' rights interpretation.....	209
Interpreting "the right of the people"	212
Upholding Individual Rights: D.C. v. Heller	213
Considering an earlier Supreme Court decision.....	214
Taking two sides on what Miller meant	215
Considering the Future of the Debate.....	215

**Chapter 16: The Third and Fourth Amendments:
Protecting Citizens from Government Forces 217**

Keeping the Feds Out of Your House..... 217
 Keeping the Government Off Your Back..... 220
 Prohibiting “unreasonable searches and seizures” 221
 Excluding evidence..... 222
 Avoiding making “a crazy quilt of the Fourth Amendment”..... 224
 Rewriting the Fourth Amendment 225
 Defining “probable cause” 226
 Prohibiting police fishing expeditions 227
 Searching without a warrant? 228
 Protecting America without a warrant?..... 229

Chapter 17: Taking the Fifth — and a Bit of the Fourteenth 231

Invoking the “Great Right” Against Self-Incrimination..... 232
 Peeking Behind the Closed Doors of the Grand Jury..... 233
 Deciding whether to indict 234
 Victimizing suspects or protecting victims? 235
 Avoiding Double Jeopardy 235
 Applying the principle..... 235
 Allowing for an end to litigation..... 236
 Jeopardizing “life or limb” 237
 Agonizing over Due Process..... 237
 Trying to define the term 238
 Triggering due process 238
 Wrestling with substantive due process 239
 Opening Up the Incorporation Debate..... 242
 Does the Bill of Rights apply to the states? 242
 Watching selective incorporation in action 243
 Taking Private Property..... 245
 Recognizing eminent domain 246
 Losing protection..... 246

**Chapter 18: Dealing with Justice and Individual Rights:
The Sixth through Eighth Amendments 247**

Outlining Defendants’ Rights in Criminal Prosecutions:
 The Sixth Amendment..... 248
 Having the same rights in a state and federal trial..... 249
 How speedy is a speedy trial? 249
 Appreciating the need for a public trial..... 250
 Guaranteeing trial by jury..... 251
 Being “informed of the nature and cause of the accusation”..... 253
 Confronting adverse witnesses..... 253
 Compelling witnesses to attend..... 254
 Demanding the right to counsel..... 254
 Guaranteeing Jury Trials in Civil Suits: The Seventh Amendment..... 256

Prohibiting “Cruel and Unusual Punishments”:	
The Eighth Amendment	257
Banning excessive bail	257
Removing excessive fines	258
Barring “cruel and unusual punishments”	259
Debating the death penalty	260

**Chapter 19: The Ninth and Tenth Amendments:
Leaving Things Up to the People and States 263**

Reading the Constitution: The Ninth Amendment	264
Considering the Tenth Amendment	266
Analyzing the wording	267
Balancing power between federal and state governments	267
Determining the limits of federal power	268
Puzzling over “prohibited” powers	271
Disentangling states’ rights from individual rights	272
Giving the Tenth Amendment its due	276

***Part V: Addressing Liberties and Modifying
the Government: More Amendments 277***

**Chapter 20: States’ Rights, Elections, and Slavery:
The Eleventh through Thirteenth Amendments 279**

The Eleventh Amendment: Asserting State Sovereign Immunity?	280
Overruling the Supreme Court	280
Interpreting the Eleventh Amendment	280
Cleaning Up the Framers’ Political Mess: The Twelfth Amendment	282
Electing the President: The original rules	282
Understanding politics 1796 style	283
Tying and vying with your running mate: The 1800 election	283
Preventing future chaos	284
Removing the Blot of Slavery: The Thirteenth Amendment	284
Tracking the debate on slavery	285
Sliding into secession	286
Considering the Corwin amendment	287
Graduating from emancipation to abolition	288
Introducing an entirely different thirteenth amendment	289

**Chapter 21: The Fourteenth Amendment:
Ensuring Equal Protection 291**

Defining Citizenship	292
Understanding States’ Obligations	293
Disentangling state citizenship	294
Analyzing “privileges or immunities”	294

Achieving “Equal Justice Under Law” — Or Not 296
 Age discrimination 297
 Capital punishment 297
 Racial segregation 298
 School busing 298
 Affirmative action 300
 Gerrymandering 301
 Apportioning Representatives 301
 Recognizing proportionality 80 years too late? 301
 Denying or abridging the right to vote 302
 Disqualifying Confederates from Office 303
 Repudiating Confederate Debts 304
 Empowering Congress 304

**Chapter 22: Starts, Stops, and Clarifications:
 Amendments since 1870 305**

Removing Race Qualifications for Voting:
 The Fifteenth Amendment 305
 Letting Uncle Sam Raid Your Piggy Bank:
 The Sixteenth Amendment 307
 Electing the Senate: The Seventeenth Amendment 308
 Outlawing Liquor: The Eighteenth Amendment 309
 Giving Women the Vote: The Nineteenth Amendment 310
 Moving Out of the Horse and Buggy Age:
 The Twentieth Amendment 311
 Repealing Prohibition: The Twenty-First Amendment 311
 Taking George Washington’s Lead:
 The Twenty-Second Amendment 312
 Enfranchising the Nation’s Capital: The Twenty-Third Amendment 314
 Banning Tax Barriers to Voting: The Twenty-Fourth Amendment 315
 Succeeding to the Presidency: The Twenty-Fifth Amendment 317
 Succeeding as President or Acting President? 317
 Replacing the Veep 317
 Acting as President 318
 Lowering the Voting Age: The Twenty-Sixth Amendment 319
 Limiting Congressional Pay Raises:
 The Twenty-Seventh Amendment 320

Part VI: The Part of Tens 321

Chapter 23: Ten Landmark Constitutional Cases 323

Marbury v. Madison (1803) 323
 Brown v. Board of Education (1954) 324
 Parents Involved in Community Schools v.
 Seattle School District No. 1 and Meredith v.
 Jefferson County Board of Education (2007) 325

West Coast Hotel v. Parrish (1937)	325
United States v. Lopez (1995)	326
Kelo v. City of New London (2005)	326
United States v. Nixon (1974)	327
Nixon v. Fitzgerald (1982)	327
Clinton v. Jones (1997)	327
Boumediene v. Bush (2008)	328
Chapter 24: Ten Influential Supreme Court Justices	329
John Marshall	330
Oliver Wendell Holmes, Jr.	331
Louis Brandeis	331
Felix Frankfurter	332
Earl Warren	332
Thurgood Marshall	333
William Rehnquist	334
Sandra Day O'Connor	335
Antonin Scalia	335
John Roberts	336
Chapter 25: Two Sides of Five Constitutional Conundrums	337
Is the Constitution Outdated?	337
Should the Electoral College Be Abolished?	338
Does the U.S. Supreme Court Have Too Much Power?	340
Why Is There No Agreed-Upon Interpretation of the Constitution?	342
Does the President Have Too Much Power?	343
 Appendix: Constitution of the United States of America	 345
 Index	 369