

SEVENTH EDITION

Constitutional Law *and the* Criminal Justice System

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Constitutional Law and the Criminal Justice System, Seventh Edition

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About the Authors

This text is dedicated to J. Scott Harr (1953–2008), the original lead author of this text whose 30-year career embodied true commitment to the law and allegiance to the U.S. Constitution. Scott was a recipient of the Warren E. Burger Award, given in honor of the former Chief Justice of the U.S. Supreme Court, and a member of the U.S. Supreme Court bar, placing him among attorneys permitted to practice before the Supreme Court. As a police officer, police chief, attorney, and educator in criminal justice, Scott Harr's passion for and belief in the law was inspirational to his students, colleagues, and the communities in which he served. He is deeply missed.

KÄREN MATISON HESS, PH.D., (d. 2010) wrote extensively in law enforcement and criminal justice, gaining a respected reputation for the consistent pedagogical style around which she structured each textbook. She developed the original edition of *Constitutional Law and the Criminal Justice System* with Scott Harr and carried it through four successful revisions; much of her work and influence remains unchanged in this new edition.

Other texts Hess authored or co-authored for Cengage Publishing are *Careers in Criminal Justice and Related Fields: From Internship to Promotion*; *Community Policing: Partnerships for Problem Solving*; *Criminal Investigation*; *Introduction to Law Enforcement and Criminal Justice*; *Introduction to Private Security*; *Management and Supervision in Law Enforcement*; *Juvenile Justice*; and *Police Operations*.

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Preface

Constitutional Law and the Criminal Justice System was written with the criminal justice student in mind. We developed a natural progression to help students build their knowledge of the Constitution and how it directs law enforcement procedures and practices. Plain language is preferred to legalese. Court opinions are important, and students have opportunities in this text to learn how to read them, and even to read and brief some. Mastering the basic concepts of constitutional law is only the beginning, however; U.S. law is unique in that it can, and does, change to meet the changing needs of the society it serves. Thus, an important part of the knowledge students will acquire through this text and course is how to keep current with this exciting and evolving area of law.

Organization of the Text

Section I provides a foundation for understanding constitutional law beginning with a historical overview of how the Constitution came to be (Chapter 1). This is followed by an overview of our country's legal system (Chapter 2) and an examination of the Supreme Court of the United States as the final word on any legal issues (Chapter 3).

Section II focuses on the guarantees of the Constitution to citizens: their civil rights and civil liberties. The discussion first focuses on equal protection under the law and efforts to balance individual, state, and federal rights (Chapter 4). The focus then shifts to the basic freedoms guaranteed by the First Amendment (Chapter 5). This section concludes with a discussion of the gun control controversy arising from the Second Amendment (Chapter 6).

Section III describes in depth the constitutional amendment that governs searches and seizures—the Fourth Amendment. It begins with an overview of constitutional searches and seizures as required by the Fourth Amendment (Chapter 7). A detailed look at conducting constitutional seizures is presented next (Chapter 8), followed by an equally detailed look at conducting constitutional searches (Chapter 9).

Section IV examines the three other amendments particularly crucial to those in the criminal justice profession as they apply to citizens' due process rights. The section first discusses due process and obtaining information legally as required by the Fifth Amendment (Chapter 10), followed by citizens' right to counsel and a fair trial as required by the Sixth Amendment (Chapter 11). The section concludes with a discussion of bail, fines, and punishment as regulated by the Eighth Amendment (Chapter 12).

The final section of the text, Section V, provides a discussion of the remaining amendments and how additional amendments might come to be in the future (Chapter 13).

How to Use This Text

Constitutional Law and the Criminal Justice System is a carefully structured learning experience. The more actively you participate in it, the greater your learning will be. You will learn and remember more if you first familiarize yourself with the total scope of the subject. Read and think about the table of contents, which provides an outline of the many facets of constitutional law. Then follow these steps for *quadruple-strength learning* as you study each chapter:

1. Read the Learning Objectives (LOs) at the beginning of the chapter. Assess your current knowledge of the subject of each objective. Examine any preconceptions you may hold. Look at the key terms, and watch for them when they are used.
2. Read the chapter while underlining, highlighting, or taking notes—whatever is your preferred study method. Pay special attention to all highlighted information, which represents the chapter-opening LOs and reinforces the key concepts in the chapter:

LO1 *Article 3 of the U.S. Constitution established the authority for a federal judiciary. The Federal Judiciary Act of 1789 established the first Supreme Court, and although the number of justices has varied, nine has remained the agreed-upon number since 1869.*

Also, pay special attention to all the words in boldface type and their corresponding definitions. The key terms and their definitions appear in the margin the first time they are used:

judicial review the power of a court to analyze decisions of other government entities and lower courts

3. When you have finished reading the chapter, read the summary—your third exposure to the chapter’s key information. Then return to the beginning of the chapter and quiz yourself. Can you respond to all of the learning objectives? Can you define the key terms?
4. Finally, read the Discussion Questions at the end of the chapter and be prepared to contribute to a class discussion of the ideas presented in the chapter.

By following these steps, you will learn more information, understand it more fully, and remember it longer.

Note: The material selected to highlight using the quadruple-strength learning instructional design includes only the chapter’s key concepts. Although this information is certainly important in that it provides a structural foundation for understanding the topic(s) discussed, you cannot simply glance over the highlighted boxes that correspond to each Learning Objective and the summary and expect to master the chapter. You are also responsible for reading and understanding the material that surrounds these basics—the “meat” around the bones, so to speak.

New to This Edition

The seventh edition of *Constitutional Law and the Criminal Justice System* has been completely updated with the most recent Supreme Court decisions and references available. Each chapter has been revised and updated as follows:

- **Chapter 1: A Historical Overview** Streamlined discussion to reduce redundancies; added a new key term (*confederation*); added a new Myth/Fact box.
- **Chapter 2: An Overview of the U.S. Legal System** Added a new key term (*collective conscience*); changed the term *Shepardizing* to *citing* to reflect contemporary terminology; updated the section discussing Shepardizing to reflect the fact that many citing methods exist now, all under the original idea of Shepard; added information about codifying law for historical context; added a new Myth/Fact box; updated statistics on court caseloads and juvenile cases.
- **Chapter 3: The U.S. Supreme Court: The Final Word** Reorganized chapter content for improved presentation and reduced the number of first-level headings; added a new Myth/Fact Box; updated caseload statistics and public opinion data; added an explanation of the *in forma pauperis* docket; added a discussion about the current vacancy left by Scalia; added a comment about judicial interpretation; added a new “In the News” article.
- **Chapter 4: Equal Protection under the Law: Balancing Individual, State, and Federal Rights** Added several new key terms (*implicit bias*, *procedural justice*), as well as accompanying discussions about implicit bias and procedural justice; added a new Constitutional Law in Action box pertaining to enumerated versus unenumerated rights; updated the decisions for *Schuette* (2014) and *Fisher* (2016); added discussions for several new cases (*EEOC v. Abercrombie and Fitch*, 2015; *City and County of San Francisco v. Sheehan*, 2015); added a quote by Senator Hubert Humphrey regarding affirmative action; added Case in Brief boxes for ten cases (*Brown v. Board of Education*, 1954; *Regents of the University of California v. Bakke*, 1978; *Schuette v. Coalition to Defend Affirmative Action*, 2014; *Ricci v. Destefano*, 2009; *EEOC v. Abercrombie and Fitch*, 2015; *City and County of San Francisco v. Sheehan*, 2015; *United States v. Windsor*, 2013; *Obergefell v. Hodges*, 2015; *Strauder v. West Virginia*, 1880; and *Wolff v. McDonnell*, 1974); updated information pertaining to public opinion on illegal immigration; added a new table comparing Secure Communities to PEP; included a few sentences on Obama’s executive order and the November 2014 memo by the DHS Secretary; added a few paragraphs on *United States v. Texas* (2016) and the ruling that blocks Obama’s immigration executive action; included mention of new training to help officers identify and control implicit bias; added a new “In the News” article.
- **Chapter 5: The First Amendment: Basic Freedoms** Added new key term (*pure speech*) and reorganized the “Freedom of Speech” section to introduce the reader to the concept of *pure speech*; included discussions of six new cases (*Marsh v. Chambers*, 1983; *Town of Greece v. Galloway*, 2014; *Holt v. Hobbs*, 2015; *Burwell v. Hobby Lobby*, 2014; *McCullen v. Coakley*, 2014; and *Lane v. Franks*, 2014); added Case in Brief boxes for eight cases (*Everson v. Board of Education*, 1947; *Agostini v. Felton*, 1997; *Town of Greece v. Galloway*, 2014; *Burwell v. Hobby Lobby*, 2014; *Holt v. Hobbs*, 2015; *Reed v. Town of Gilbert*, 2015; *United States v. Stevens*, 2010;

and *Lane v. Franks*, 2014); added a brief explanation of separationist versus nonpreferentialist theory in the discussion of freedom of religion; expanded the discussion of the RFRA to include mention of the separation of powers issue (*Congress v. Judiciary*) and to provide a segue into two recent decisions: *Holt v. Hobbs* (2015) (RLUIPA) and *Burwell v. Hobby Lobby* (2014) (RFRA); added a new “In the News” article.

■ **Chapter 6: The Second Amendment: The Gun Control Controversy**

Updated statistics throughout; added a new “In the News” article; added discussions and Case in Brief boxes for *Caetano v. Massachusetts* (2016) and *Abramski v. United States* (2014); added a discussion of the cases for *Peruta v. County of San Diego* (2016) and *Moore v. Madigan* (7th Circuit, 2012) to demonstrate the inconsistent rulings at the circuit court level for concealed carry; included a mention of the NICS Improvement Amendments Act of 2007 (NIAA), recent changes that allow submission of mental health information (HIPPA rules) to NICS, and a push to have Social Security Administration (SSA) records submitted for people who are receiving disability payments for mental health problems as ways to improve quality of background checks; updated data on active anti-government groups in the United States; added information about terrorist watch lists and the NICS; added a new “In the News” article.

■ **Chapter 7: The Fourth Amendment: An Overview of Constitutional Searches and Seizures**

Added several new key terms (*consent decree*, *memorandum of agreement [MOA]*); added a new Constitutional Law in Action box dealing with probable cause; added considerable discussion of *Utah v. Strieff* (2016) and the attenuation doctrine; added Case in Brief boxes for *Florida v. Harris* (2013) and *U.S. v. Leon*; included a short discussion on writs of assistance/general warrants and four relevant cases; added discussion of *U.S. v. Tapley* to provide a more recent case example illustrating who is regulated by the government; added a quote by Justice Scalia in *City of Los Angeles v. Patel* (2015) regarding reasonableness of searches; clarified *privacy* in context of First Amendment versus Fourth Amendment; revised the *Spinelli* case discussion for clarity and accuracy; revised the definition of *reasonable suspicion* for clarity; added a brief discussion on consent decrees and memorandums of agreement (MOAs); revised a Constitutional Law in Action box to focus on an identity theft ring.

■ **Chapter 8: Conducting Constitutional Seizures**

Added new discussions and Case in Brief boxes for *Heien v. North Carolina* (2014), *Navarette v. California* (2014), and *Rodriguez v. United States* (2014); added a discussion of *Alabama v. White* (1990) and anonymous tips; streamlined the discussion of the *Harris v. Commonwealth* case; added a short discussion on *Steagald v. United States* (1981); included a paragraph on force needing to be *intentional* to come under Fourth Amendment regulation; added a few sentences regarding the current debate on use-of-force continuums; added a paragraph on de-escalation in use of force; included a case discussion on Tasers (*Armstrong v. Village of Pinehurst*, 2016); added a discussion and accompanying table on how a person’s status (free, pre-trial detainee, convicted) affects how the use of force will be evaluated by the court and the test used; added a use of force discussion regarding *Kingsley v. Hendrickson* (2015); streamlined overall chapter organization by moving the *Hastings* case to the “Use of Force” section and moving the “Knock and Announce Rule Revisited” section to Chapter 9.

- **Chapter 9: Conducting Constitutional Searches** Added new discussions and Case in Brief boxes for *Fernandez v. California* (2014), *Birchfield v. North Dakota* (2016), and *Riley v. California* (2014); added a Case in Brief box for *Horton v. California* (1990); expanded the discussion on search incident to arrest to include *Riley v. California* and *Birchfield v. North Dakota*; expanded the “hot pursuit” discussion to include coverage of *Stanton v. Sims* (2013) and *United States v. Santana* (1976); included a brief discussion of *Grady v. North Carolina* (2015); updated and reorganized the section on electronic surveillance and the Fourth Amendment; added a bullet point for *In Re: Application for Telephone Information Needed for a Criminal Investigation* (2015); added a new “In the News” article.
- **Chapter 10: The Fifth Amendment: Obtaining Information Legally** Added several new key terms (*eminent domain*, *rebut*); added a discussion of *Salinas v. Texas* (2013) and the need to actively invoke the right to remain silent versus mere silence; expanded the discussion of *Garrity* and *Gardner* and added a Case in Brief box for *Garrity*; added a discussion and a new Case in Brief box for *Kansas v. Cheever* (2013); added mention of *Estelle v. Smith* (1981), which deals with compelled self-incrimination; added a mention of *Martinez v. Illinois* (2014), which deals with double jeopardy; included a discussion of the Blockburger test used in double jeopardy issues; added a discussion of *Evans v. Michigan* (2013) dealing with double jeopardy; expanded the discussion of just compensation to include the Takings Clause, and to include mentions of several cases (*Horne v. Department of Agriculture*, 2015; *Loretto v. Teleprompter Manhattan CATV Corp.*, 1982; *Lucas v. South Carolina Coastal Council*, 1992; *Pennsylvania Coal Co. v. Mahon*, 1922; *Penn Central Transportation Co. v. New York City*, 1977; and *Kelo v. New London*, 2005); added Case in Brief box for *Kelo v. New London*; added a new Constitutional Law in Action box dealing with the Takings Clause; added a new “In the News” article.
- **Chapter 11: The Sixth Amendment: Right to Counsel and a Fair Trial** Added several new key terms (*prima facie*, *testimonial statement*); added new case discussions for *Betterman v. United States* (2016), *Strunk v. United States* (1973), *Lewis v. United States* (1996), *Ohio v. Clark* (2015), and *Kuhlman v. Wilson* (1986); added a Case in Brief box for *Ohio v. Clark*; clarified the jury nullification discussion; expanded the discussion of the *Batson* challenge to explain what is required; included a new Constitutional Law in Action box to illustrate *Batson* challenges; added a new “In the News” article.
- **Chapter 12: The Eighth Amendment: Bail, Fines, and Punishment** Updated Table 12.1; added mentions of these cases: *Schilb v. Kuebel* (1971), *Montgomery v. Louisiana* (2015), *Glossip v. Gross* (2015); *Hall v. Florida* (2014); *Apprendi v. New Jersey* (2000); and *Hurst v. Florida* (2016); reorganized the section on Corrections to include a discussion on the use of force and Eighth Amendment claims of cruel and unusual punishment (*Hudson v. McMillian*, 1992).
- **Chapter 13: The Remaining Amendments and a Return to the Constitution** Added a new key term (*disenfranchise*); added mentions of these cases: *Wesberry v. Sanders* (1964), *Brown v. Thomson* (1983), and *Evenwel v. Abbott* (2016); added detail to the section on the Fifteenth Amendment; added a discussion on “one person, one vote”; expanded the discussion on the Twenty-Seventh Amendment; added a brief section explaining how an amendment gets passed; added a new Constitutional Law in Action box.

Ancillaries

For the Instructor

Online Instructor's Manual. The Instructor's Manual contains a variety of resources to aid instructors in preparing and presenting text material in a manner that meets their personal preferences and course needs. For each chapter, it includes learning objectives, key terms, a detailed chapter outline and summary, lesson plans, discussion topics, student activities, and media tools.

Online Test Bank. Updated by Keith Bell of West Liberty University, the Test Bank contains multiple-choice, true/false, completion, and essay questions to challenge your students and assess their learning. It is tagged to the learning objectives that appear in the main text, references to the section in the main text where the answers can be found, and Bloom's taxonomy. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage.

Cengage Learning Testing Powered by Cognero. The Test Bank also is available through Cognero, a flexible, online system that allows you to author, edit, and manage test bank content as well as create multiple test versions in an instant. You can deliver tests from your school's learning management system, your classroom, or wherever you want.

Online PowerPoints. Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint® slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint® slides prove concept coverage using images, figures, and tables directly from the textbook.

For the Student

MindTap for Constitutional Law and the Criminal Justice System. With MindTap™ Criminal Justice for *Constitutional Law and the Criminal Justice System*, you have the tools you need to better manage your limited time, with the ability to complete assignments whenever and wherever you are ready to learn. Course material that is specially customized for you by your instructor in a proven, easy-to-use interface keeps you engaged and active in the course. MindTap helps you achieve better grades today by cultivating a true understanding of course concepts, and includes a mobile app to keep you on track. With a wide array of course-specific tools and apps—from note-taking to flashcards—you can feel confident that MindTap is a worthwhile and valuable investment in your education.

You will stay engaged with MindTap's career scenarios and remain motivated by information that shows where you stand at all times—both individually and compared to the highest performers in class. MindTap eliminates the guesswork, focusing on what's most important with a learning path designed specifically by your instructor and for your Constitutional Law course. Master the most important information with built-in study tools such as visual chapter summaries and integrated learning objectives that will help you stay organized and use your time efficiently.

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Prologue

Constitutional law—no other subject guides our daily lives as does the Constitution of the United States. Each of us can go about our business in a fairly predictable, safe way because of the guarantees and personal freedoms ensured by our Constitution. And yet how many Americans know much about it? Most have never read it. Few have studied it. Even fewer have taken the time to contemplate the implications of this incredible document—one many have died for.

Walk into any law library and the sheer volume of material is overwhelming. Yet to remain law, every one of these books must balance ever so delicately on one other, much smaller, document—the U.S. Constitution. This is a heavy burden for the Constitution to bear, yet it has done so admirably for more than two centuries. And all you have to do to see that it continues to do so is to maintain an awareness of current events. The U.S. living law changes before your eyes.

When the document was drafted in 1787, it was never meant to be an all-inclusive compendium of legal answers. It was intended as a basic framework within which all other law must remain. It is so powerful a document that any laws people try to impose on it that do not meet its tenets are simply void. However, the difficulties faced by Rosa Parks and other American heroes who have stood up for their constitutional rights remind us that the process is not quite that easy.

Those drafting the Constitution had a timeless vision. They knew society would change, as would its needs. They realized they could never foresee all the issues their country would confront (and what issues there are!). But the framers of our Constitution successfully developed the charters that established our unique U.S. legal system. The basic organizational structure is created so no one person, royalty or dictator, shall ever have total rule, and so that a handful of precious basic rights are ensured. This is what the U.S. Constitution is about. It is really quite simple. So why does a course in constitutional law strike fear in the hearts of students of all ages? Because anything that has worked so well for so many, for so long, must have some built-in complexity. And it does—interpretation.

Myriad forces affect interpretation of the Constitution: the era, societal norms, and politics. Indeed, constitutional interpretation is political, explaining why Presidents want to exercise the powerful right to appoint justices to the U.S. Supreme Court. This text addresses the awesome power the Court has in being the final arbiter of which laws are constitutional and which are not. In this role, the Supreme Court becomes the ultimate maker of law. In the famous case of *Marbury v. Madison* (1803), the Court considered whether it had the authority to review laws passed by the Congress—and the Court declared that it did. Some argue that by doing so, the U.S. Supreme Court has become the de facto ultimate lawmaking body in our country. For this reason, it has become important for political leaders to have justices on the bench whose ideologies are in accord with theirs. Politics does play a real part in interpreting laws.

The Constitution works because those who wrote it more than 200 years ago provided only basic tenets, leaving open the challenge of interpreting them as they relate to current issues. For example, free speech issues are decidedly different today than two centuries ago—but the basic idea remains. The Fourth, Fifth, and Sixth Amendments still guide government investigations, but such matters as the use of sophisticated electronic eavesdropping and computer equipment have now become an issue.

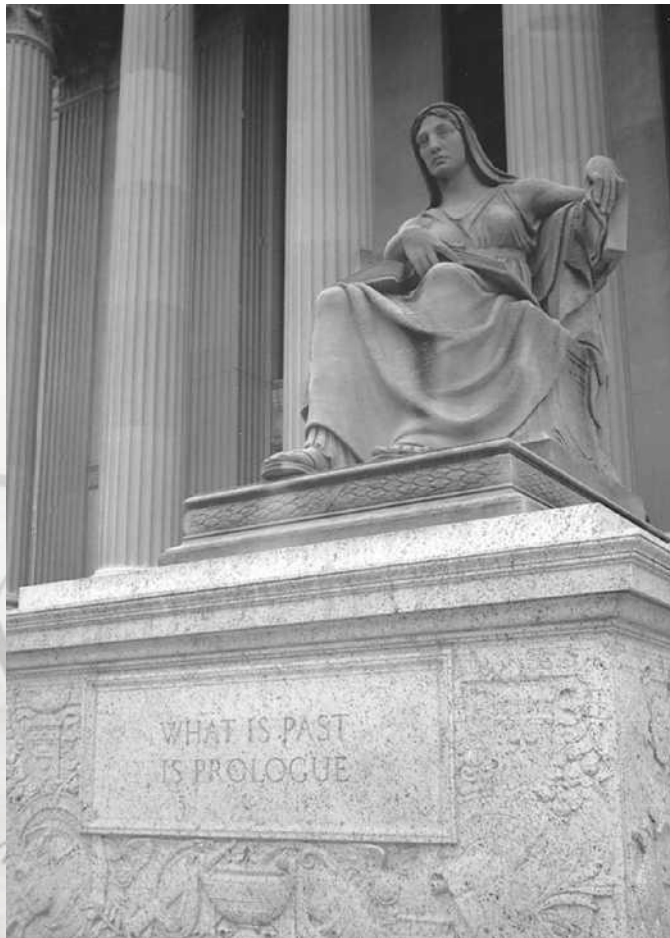
How people interpret the Constitution can cause confusion. For all who are certain how the Constitution should be read (in their favor, of course), others are just as certain it should be interpreted differently. Today's issues of abortion, gun control, and the environment beg for interpretation, flip-flopping back and forth, up and down, through our legal system, always searching for a final interpretation. Most often, the U.S. Supreme Court, as the final arbiter of law, tells us what that interpretation is—until the Court itself makes a change or until another case with a slightly different twist than previous cases is decided differently.

Before you look ahead, it is important to take time to reflect on the past. History seems to be an accurate predictor of the future because it has a unique way of repeating itself. Yet history is often overlooked. That is why this text starts with a brief, but important, review of what led to the U.S. Constitution, re-establishing the foundation on which the subsequent information neatly rests, and making the study of the Constitution logical, perhaps even enjoyable. This point is reinforced by two statues positioned at the rear exit of the National Archives in Washington, DC. Most visitors would never see these imposing statues unless they went out the wrong door. Those who do may stop, look around to get their bearings, and note the crucial advice emblazoned on one statue: "What Is Past Is Prologue."

A Historical Overview

Give me liberty, or give me death!

—Patrick Henry



Courtesy of J. Scott Harr.

What is past is prologue.

Learning Objectives

- L01** *Identify the three main groups that coexisted in 1775 in the land that would become the United States of America and which of these groups U.S. history tends to ignore.*
- L02** *Know when, where, and why the First Continental Congress and the Second Continental Congress convened and what each resulted in.*
- L03** *Name the document that formally severed the American colonies' ties with Great Britain and know when this document was signed.*
- L04** *Clarify what the primary purpose of the Constitution is and how it is achieved.*
- L05** *Describe how the balance of power was established.*
- L06** *Summarize what the Bill of Rights is and why it was included with the Constitution.*
- L07** *Pinpoint the glaring omission in the Constitution and Bill of Rights that contradicted the Declaration of Independence.*
-

Key Terms

amendments	Federalists	Patriot
anti-Federalists	Great Compromise	pluralism
confederation	law	ratify
constitution	Loyalist	supremacy clause
constitutionalism	minutemen	

Introduction

It has been said that the best way to know where you are going is to look where you have been. As discussed in the introduction to this section, constitutional law can become complicated. Any endeavor becomes easier, however, if a firm base is established from which to proceed. Although you might think a historical review is unnecessary, or that you took a wrong turn when opening a constitutional law text to begin reading about the colonists, you should gain some important insights.

This chapter begins with a discussion of the roots of the U.S. Constitution and contributions from the past. This is followed by an examination of how the United States of America developed, including a discussion of the American Revolution and the signing of the Declaration of Independence. Then the move toward the Constitution is described, followed by an overview of the Constitution itself and the balance struck through the addition of the Bill of Rights. The chapter concludes with an assessment of how the Constitution and Bill of Rights, as examples of living law, are nearly timeless documents.

Where It All Began

A **constitution** is a system of basic laws and principles that establish the nature, functions, and limits of a government or other institution. The U.S. Constitution (always written with a capital “C”) is youthful, which makes it all the more impressive. Consider other nations that rely on many more centuries, even thousands of years, of tradition and law that have been fine-tuned to serve them. And although the U.S. Constitution may be young, the history that influenced it can be traced back to when people first began forming groups throughout the world.

Every group has rules, and rules that become laws are an element of every society. **Law** is a body of rules promulgated (established) to support the norms of a society, enforced through legal means (i.e., punishment). The laws that the framers of the U.S. Constitution were familiar with helped form what would become the new law of the new country.

Representatives from every culture that has come to the United States, regardless of when they arrived or where they came from, share in the historical development of our country and legal system. It is the common thread that binds all who have come here—the desire for something better—that makes U.S. law so unique in serving the pluralistic society that created it. **Pluralism** refers to a society in which numerous distinct ethnic, religious, or cultural groups coexist within one nation, each contributing to the society as a whole.

Pluralism existed in the New World long before the colonists “discovered” America. Before the colonization of the United States, the American Indian tribes had their distinct territories, languages, and cultures. But when the colonists arrived and began taking over the land occupied by the American Indians (a population also called Native Americans), the American Indians began to band together in self-defense.

The colonists came from various countries and were of different religions and cultures. Initially they settled in specific areas and maintained their original culture, for example, the Pennsylvania Dutch. A pluralistic society challenged the colonists to exercise tolerance and respect for the opinions, customs, traditions, and lifestyles of others. Cultural and ethnic diversity enriched early American life and strengthened the emerging nation. The following list shows the ethnic population of the colonies in 1775 by percentage:

48.7	English
20.0	African (slaves)
7.8	Scots-Irish
6.9	German
6.6	Scottish
2.7	Dutch
1.4	French
0.6	Swedish
5.3	Other

Source: Armento et al., 1991, p. 49.

constitution a system of basic laws and principles that establish the nature, functions, and limits of a government or other institution

law a body of rules promulgated (established) to support the norms of a society, enforced through legal means (i.e., punishment)

pluralism a society in which numerous distinct ethnic, religious, or cultural groups coexist within one nation, each contributing to the society as a whole

Interestingly, the American Indians are absent from this chart because they were not considered part of the colonies. Also of interest is the 20 percent African population, who were slaves brought to this country primarily to work on Southern plantations. In many Southern states, slaves outnumbered colonists. For example, in 1720, South Carolina's population was 30 percent white and 70 percent black (Simmons, 1976). Concerned about the dangers the oppressed slaves could create, some of the first new laws colonists wrote were slave laws. Most Southern colonies established a special code of laws to regulate the slaves and established special enforcement officers, known as slave patrols, to ensure that these laws were obeyed.

LO1 *In 1775, three large groups coexisted in the land that would become the United States of America: the American Indians, the African slaves, and the colonists. American Indians and African Americans are not often given the recognition they are due, but these groups played an important part in the development of the United States.*

The history of the United States has generally focused on only the colonists, and the colonists with the most wealth and power—white, male property holders—are credited with creating the basic structure of our country.

Over time, interaction, and eventually assimilation, occurred among the colonists, commonly referred to as a “melting pot” because several different nationalities combined into what was known as “the American colonist.” Such assimilation was encouraged by the vast, apparently unlimited resources available, as well as by the struggle for survival. Colonists faced the threat of foreign countries wishing to control them, the dangers posed by the American Indians they were displacing, and the often-rebellious slaves in the South. Therefore, it was natural that they should band together.

Colonies developed and organized in unique ways. The emerging nation saw different priorities and different norms. Some colonies banded together for security in ways not unlike modern businesses. Massachusetts Bay and Virginia, for example, entered into business-like agreements, or charters, establishing cooperative government. Other colonists entered into compacts with primarily religious purposes that established how they chose to govern themselves, as was the case with the Plymouth, Rhode Island, Connecticut, and New Haven colonies.

Regardless of how unique the states were allowed—in fact, encouraged and demanded—to be, it was undeniable that benefits remained in working together rather than separately. A fragmented beginning was developing into a single nation. The terms *liberty* and *limited government* were ideals that compelled all that was necessary for establishing a new country. But what did these terms mean, and how could a new country be effectively governed for the good of all while ensuring individual liberty and limited government? The task was daunting, but the promise of what could be was highly motivating.

Levy and Mahoney (1987, p. 35) explain how this new country was forging the law to come: “To keep government limited—that is, to remain a constitutional society, Americans took sovereignty away from government and lodged it with the people . . . with separation of powers. Because the people, rather than government at any level, must be sovereign, they can delegate some powers to their state governments and others to a national government.”

Development of the United States of America

The land that now composes North America has always held an attraction. As long ago as 30,000 B.C.E., people began traversing the continent to seek something that held the promise of more than they had. And whether the motivations for these

incredible journeys were as basic as food or as complicated as a search for political and religious freedoms, people came hoping for something better.

After its “discovery,” America became viewed as an attractive area for expansion by the world powers. Spain, France, and England, as well as other countries, saw great importance in adding the “New World” to their growing empires. This desire for existing nations to make America a part of their government planted the tiny seed of what was to grow into independence. Just as American Indians had seen their freedom threatened by the colonists and the African American slaves had been stripped of their freedom, the colonists realized their freedom was in jeopardy from abroad and vowed to not sit idly by while those asserting power attempted to coerce them into submission. When the colonies were confronted with attempts, primarily by Great Britain, Spain, and France, to consume and control the New World, resistance grew, exemplifying the spirit associated with the United States.

Colonial Dissension Grows

As the colonies’ populations began to grow, so did serious differences between those who saw themselves as free, independent colonies and those who wanted a foreign flag flying over them. As existing empires positioned themselves politically and militarily to expand their boundaries into the New World, conflict was inevitable.

In 1750, French troops began arriving from Canada, building forts and laying claim to land that American Indians were occupying and that England was eyeing. A showdown eventually occurred in 1754, when British leaders ordered the Virginia governor to forcibly repel the French. George Washington and about 150 colonists marched against the French in what became known in North America as the French and Indian War (1754–1763). This competition between the British and the French was part of a larger, general European conflict—the Seven Years’ War. By 1763, after the French and Indian War, French resistance was defeated, and the Treaty of Paris resulted in France losing most of the land it had claimed in America. But British problems were far from resolved.

Great Britain confronted two significant problems, the first being continued westward settlement by the colonists. This was problematic for Great Britain because the American Indian tribes fought to protect their land from the colonists, and the British army was unable to protect the isolated frontier settlements. For example, nearly 2,000 colonial men, women, and children died during Pontiac’s Rebellion (Divine, Breen, Fredrickson, & Williams, 1991). In December 1763, British and colonial troops finally crushed the American Indians’ defense of their territory. When King George III learned of the fighting, he issued the Proclamation of 1763, closing the western frontier to colonial settlement and placing it under military rule. Settlers already there were ordered to leave.

The second major problem facing Great Britain was the huge debt resulting from English military action to expand the empire. The British Parliament felt the colonists should share this debt. The colonies resisted the restrictions to westward settlement and to paying for Great Britain’s war debts. Significant leaders began emerging—George Washington, Benjamin Franklin, Paul Revere, and Thomas Jefferson—leaders who had found strength in cooperating to resist the French and who now redirected their resistance toward Parliament’s efforts to control America.

Spurred on by its belief that the American colonies should share in the expenses incurred, Parliament passed the Stamp Act in 1765, requiring stamps to be purchased and placed on legal documents such as marriage licenses and wills, as well as several commodities, including playing cards, dice, newspapers, and calendars. Further resentment grew when, in 1765, Parliament passed the Quartering Act, which required colonists to feed and shelter the 10,000 British troops in America.

Protests against the increasing British attempts to rule the colonies intensified, but demands that Parliament repeal these laws were rejected—objections to the Quartering Act later found their way into the Third Amendment to the U.S. Constitution. In addition, when the king's troops marched out of Boston on their way to Lexington and Concord, they were searching for munitions—hence the wording of the Second Amendment to the U.S. Constitution.

In 1766, the Stamp Act was finally repealed but was replaced by other taxes on commodities the colonists needed to import from England. New York resisted the Quartering Act, and Parliament again found itself trying to rule from abroad, which was not working well. Dissension increased, as did tensions between the colonists and the British soldiers sent to enforce Parliament's demands.

Finally, in 1770, after 4,000 armed British troops had come to Boston from Nova Scotia and Ireland, colonists began taunting British soldiers and throwing snowballs and ice at them. The soldiers fired on these colonists in what became known as the Boston Massacre. Attempting to quell the volatile situation, Parliament eventually repealed most of the taxes and duties, except those on tea. For both sides, this remaining tax was a symbol of British rule over the colonies. In December 1773, disguised as American Indians, colonists boarded three British ships in Boston Harbor and dumped the cargos of tea overboard. This event, known as the Boston Tea Party, represented the colonists' unwillingness to pay taxes without representation.

As a result of the tea dumping, Parliament passed several laws in retaliation for such an open act of defiance, including the following:

- Town meetings were restricted to one a year.
- The king was required to appoint people to the governmental court rather than have them elected.
- The Quartering Act was expanded, requiring soldiers to be housed in private homes and buildings (which seemed like spying to the colonists).
- British officials accused of crimes in the colonies were permitted to be tried in England, away from angry American colonists.

Again the colonists were not complacent. They met to address the situation.

The First Continental Congress

In September 1774, 55 delegates from 12 colonies met in Philadelphia to address their mounting complaints against Great Britain. At this First Continental Congress, such leaders as Samuel Adams and Patrick Henry resolved to resist British rule and agreed on three important actions. First, they adopted a set of resolutions defining

the rights, liberties, and immunities of the colonists and listing actions of the British government that violated these rights. Second, they drew up an address to King George III and another to the citizens of Britain, presenting American grievances and calling for a restoration of American rights. Third, they called for each community to establish a boycott committee to prevent colonists from buying British goods until the Congress's demands were met. In general, someone who bought British goods was branded a **Loyalist** or Tory. One who supported the boycott was called a **Patriot** or rebel.

By the beginning of 1775, the colonies were actively preparing for what many saw would be an inevitable confrontation with the British. **Minutemen**, the name given to the colonial soldiers, were drilled and equipped to respond at a minute's notice to protect American lives, property, and rights. In March 1775, Patrick Henry delivered his famous plea for freedom:

Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne and have implored its interposition to arrest the tyrannical hands of the Ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne. In vain, after these things, may we indulge the fond hope of peace and reconciliation.

There is no longer any room for hope. If we wish to be free; if we mean to preserve inviolate those inestimable privileges for which we have been so long contending; if we mean, not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon, until the glorious object of our contest shall be obtained; we must fight! I repeat it, sir, we must fight!! . . . It is vain, sir, to extenuate the matter. Gentlemen may cry, peace, peace; but there is no peace. The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear or peace so sweet as to be purchased at the price of chains and slavery?

Forbid it, Almighty God—I know not what course others may take, but as for me, give me liberty, or give me death! (Brown & Bass, 1990, p. 140)

The Revolution Begins

The American Revolution was led, financed, and designed by and for those with social and economic power. Ironically, some African American slaves joined the fight for freedom. With tensions at their flash point, minutemen in Lexington and Concord were alerted by William Dawes, Paul Revere, and other midnight riders that the British soldiers were coming.

On April 19, 1775, the waiting minutemen in Lexington saw the British Redcoats approaching. Shots were exchanged, and the British killed eight Americans that morning and then moved on to Concord. The battles at Lexington and Concord strengthened the colonists' resolve and prompted them to meet again to determine how to proceed.

Loyalist a colonist who did not support the boycott of British goods in the colonies and who still paid allegiance to the British monarchy

Patriot a colonist who supported the boycott of British goods in the colonies and who owed allegiance to America rather than to the British monarchy

minutemen colonial soldiers

L02 *The First Continental Congress, which convened in September 1774, resulted in the first written agreement among the colonies to stand together in resistance against Britain. The Second Continental Congress, which met for the first time in May 1775, established the Continental Army and named George Washington its commander. This Congress made plans to raise money and buy supplies for the new army and to seek support from other countries by opening diplomatic relations with them.*

The Second Continental Congress

In May 1775, the Second Continental Congress convened in Philadelphia, with many of the same delegates from the First Continental Congress in attendance.

The colonists were now prepared for all-out war with the British.

George III denounced the American leaders as “rebels” and ordered the British military to suppress the disobedience and punish the authors of the “treacherous” resolves. The ensuing battles of Ticonderoga, Bunker Hill, Trenton, and Saratoga, among others, showed the American people’s commitment to fight for what they held so dear—their independence. As the war continued, prospects for reconciliation with Great Britain dimmed.

In May, the Congress instructed each colony to form a government of its own, assuming the powers of independent states. The movement for a break with Great Britain spread upward from the colonies to the Continental Congress, with the desire for independence firmly resolved.

The Declaration of Independence

In July 1776, after arduous debate, delegates at the Second Continental Congress voted unanimously in favor of American independence. Thomas Jefferson was selected to coordinate writing the formal announcement, which would become known as the Declaration of Independence. It listed the complaints the people had against Britain and justification for declaring independence.

L03 *On July 4, 1776, the 56 men of the Continental Congress signed the American Declaration of Independence, which formally severed ties with Great Britain.*

The entire text of the Declaration of Independence can be found on the National Archives website (www.archives.gov). However, it is important to highlight here the important sections of this historic work. First, the opening paragraph explains why the Declaration was issued, that is, the compelling necessity for the colonists to break their political ties with Great Britain. The second paragraph,

the crucial statement of the purposes of government, declares that a government’s right to rule is based on permission from the people who are governed. Third, charges against the British king were reviewed in a long list that enumerated how the king’s government had denied the American colonists their rights. Fourth, the Declaration describes the colonists’ attempts to obtain justice and the British lack of response. Fifth, the last paragraph proclaimed independence and listed actions the new United States of America could take as a country.

MYTH

The Declaration of Independence states that ours should be a government “of the people, by the people, for the people.”

FACT

This phrase comes from President Abraham Lincoln’s Gettysburg Address, delivered 87 years after the signing of the Declaration of Independence.

What It Cost the Signers

The men who signed the Declaration were the elite of their colonies, men of wealth and social standing. They were, indeed, risking all. To sign the Declaration of Independence was an act of treason—punishable by death. Because it was so dangerous to publicly accuse their king, the names of the signers were kept secret for six months. Although most of the 56 signers survived the war and many went on to illustrious careers—including two presidents, as well as vice presidents, senators, and governors—not all were so fortunate.

Nine of the 56 signers died during the American Revolution, never tasting independence. Five were captured by the British. Eighteen had their great estates looted or burned by the British. Carter Braxton of Virginia, an aristocrat who invested heavily in shipping, had most of his ships captured by the British navy and his estates ruined. He became a pauper. Richard Stockton, a New Jersey Supreme Court judge, was betrayed by his Loyalist neighbors, dragged from his bed and imprisoned, brutally beaten, and starved. His estate was devastated. Although he was released in 1777, his health was ruined, and he died within five years, leaving his family to live on charity. John Hart, the speaker of the New Jersey Assembly, was forced to flee in 1776 at the age of 65 from the bedside of his dying wife. He hid in forests and caves while the British destroyed his home, fields, and mill, and took his 13 children. When he returned, his wife was dead, his children missing, and his estate destroyed. He never saw his children again and died, shattered, in 1779 (Jacoby, 2000).

Indeed, Americans owe much to those 56 signers of the Declaration of Independence. Because of their commitment to liberty, the colonists were able to move forward in establishing the foundation for their new, free country.

The Articles of Confederation

The Second Continental Congress acted to declare independence for America and set about determining how government should be developed. Richard Henry Lee, the delegate who made the resolution for America to be independent, encouraged a **confederation** of independent states, or a union in which each state maintained sovereignty.

The 13 states were cherishing their independence and resisted agreeing to a single government of any kind. The tension over whether to secede from Great Britain in the first place, both for fear of the Crown's power and fear of the unknown, was replaced with a new tension. Once the break was made, might not a new government be even worse? Could any single government meet their needs? The colonists' solution was a confederation of independent states. In 1777, the delegates to the Second Continental Congress drafted the Articles of Confederation, creating a governmental model for this new country. The Articles of Confederation formally pledged the states to "a firm league of friendship," and "a perpetual union" created for "their common defense, the security of their liberties," and their "mutual and general welfare."

These articles were important because after they were approved in 1781, the duties of government were divided among the states and the central government. During the eight years that America operated under them, great strides were made toward unifying a group of states that had, by their own desire, become separate. And although the inadequacies of this document eventually led to the Constitution itself, the Articles of Confederation were an important stepping-stone. The articles established a congress to conduct the necessary tasks of a central government, including waging war and making peace, controlling trade with the Indians, organizing a mail service, and borrowing money.

Reflection on the reasons for the events that led up to this point can easily explain why this preliminary attempt to establish a federal government left

confederation a union of independent states, in which each state maintains sovereignty

MYTH

The Articles of Confederation mentioned establishing a confederation of only the 13 original colonies.

FACT

Article XI of the Articles of Confederation mentions allowing Canada to join and receive all of the same benefits as each state if it agreed to the confederation. No other colony was able to become part of the confederation unless nine states agreed to the admission.

Congress with much weaker powers than would eventually be established. *The founders feared a concentrated, centralized political power.* Therefore, Congress was *not* empowered to:

- Regulate trade—internally or externally.
- Levy taxes. They could ask but could not compel.
- Draft soldiers. Again, they could ask but could not compel.
- Establish a court system.
- Regulate money.

Nevertheless, Benjamin Franklin commented, “Americans are on the right road to improvement [with the Articles of Confederation], for we are making experiments.” George Washington, however, cautioned that the articles did not have the necessary strength to run a new country, and as the confederation stood, it was little more than the “shadow without the substance.”

The colonists were faced with the formidable task of governing themselves and holding together their agreed-upon union. Disputes arose within and between colonies, but they could no longer look to England for resolution. Loyalists, who had opposed the revolution, called for re-establishing a monarchy for America. Others called for a military dictatorship. The need for some sort of strong leadership became more apparent as complaints against state governments grew in number and strength.

In some states, such as Massachusetts, the right to vote was restricted to property owners and taxpayers. Creditors could sue debtors and take property away from farmers who could not pay what they owed. In 1786, a band of debt-burdened farmers in Massachusetts, led by Captain Daniel Shays, attempted to shut down the courts through armed force in what became known as “Shays’ Rebellion.” Although the state government was eventually able to overcome the rebellion and restore order, they could not ignore the strong public support surrounding the uprising and, because of that, did nothing to punish Shays or anyone else involved in the popular revolt (Beard & Beard, 1968). Shays’ Rebellion reflects the impact individuals had in forging the shape of their government and was one of the most important, if not the most important, catalysts in bringing about the Constitution (Woodard, 2006).

The Constitution Takes Shape

It can be difficult to grasp all that lies behind the Constitution unless one keeps in mind the underlying reason for the Constitution, that is, to provide a system of government that would prevent one individual from having complete power. Understandably, such a system would, out of necessity, have complexities built in to achieve such a lofty goal, but the basic reasoning is simple.

The Influence of the Magna Carta

The U.S. Constitution has important ties to what is perhaps the most important instrument of English government—the Magna Carta. This document, which King John was forced to sign on June 12, 1215, established the supremacy of the law over

the ruler and guaranteed English feudal barons individual rights and “due process of law,” including trial by jury. To this day, the British have never operated their government under a centralized “constitution.” Rather, they work under tradition, and at the heart of that tradition is the historic Magna Carta.

Those who came to America in 1620 and their descendants ultimately rejected, via the Revolutionary War, rule under the British Crown and what it had come to symbolize. However, they continued to believe in the principles contained in the Magna Carta, which was a precedent for democratic government and individual rights and the foundation for requiring rulers to uphold the law.

The colonists recognized that a document such as the Magna Carta provided a stable framework from which to start. First, the Magna Carta was a step away from total rule by a single individual. Second, it had a fairly long history of success by the time the New World began to receive visitors from abroad seeking to colonize. And finally, it provided some security in that not everything needed to start from scratch.

For some 20 years, the British Magna Carta significantly influenced the development of other documents drafted in response to colonists’ ever-growing desires for fairer treatment by their government. The revision of the Articles of Confederation was one such example. The Articles of Confederation had established “a firm league of friendship” between the states. However, they were inadequate as the foundation for effective government because they lacked a balance of power between the states and the central government. In September 1786, near the time of Shays’ Rebellion, the Annapolis Convention occurred; only five states sent delegates. The goal of this convention was to modify the Articles of Confederation to alleviate some of the economic troubles resulting from the lack of a strong central government. The delegates who attended wrote a report to congress, urging another convention be convened. The sentiment that change was needed was steadily growing, and in 1787, the Congress of the Confederation finally called for a convention of delegates from the original states to meet in Philadelphia to revise the Articles of Confederation.

The 1787 Constitutional Convention of Delegates

In May 1787, delegates to the Constitutional Convention met at Independence Hall in Philadelphia. George Washington was elected to preside over the meetings. The public was not permitted in the meetings so the delegates could speak more freely.

Arduous debate occurred during this Constitutional Convention. The delegates decided how many votes each state would have and that a new document was preferable to merely amending the Articles of Confederation. The challenge of drafting the Constitution began.

The summer of 1787 was one of record heat, and because of the standard dress of the day, the framers worked for only a few hours in the mornings. Afternoons were filled with much camaraderie and imbibing of favorite beverages. Bearing in mind the combined difficulties of communication and travel, the willingness and persistence of the delegates who gathered to shape what was to become the Constitution speaks directly to their need for such a tool. For without it, even the most revered and capable politicians and leaders of the time would have been

doomed to failure. Instead, the most incredible chapter of U.S. history was slowly being opened.

Issues that became prominent during the convention included the economy and representation, as well as the structure and powers of Congress (the legislative branch), of the executive branch, and of the judicial system. What was sought was an array of checks and balances that would allow the system to work, while achieving the primary goal of limiting power to any individual or section of the government.

The delegates at the Constitutional Convention, who came from varied backgrounds, rose to the challenge. Individual power was never their objective, but rather societal cohesiveness and democratic power to achieve “one nation, with liberty and justice for all.” The delegates who would help make the Constitution came that year with differing views but all were advocates of **constitutionalism**. That is, they believed in a government in which power is distributed and limited by a system of laws that must be obeyed by those who rule. According to that principle, constitutions are a system of fundamental laws and principles that prescribe the nature, functions, and limits of a government or other body. Constitutions are distinguished from ordinary acts of legislation in that they are drafted by special assemblages and ratified by special conventions chosen by the people. A constitution is supreme law, not to be annulled by legislation. Constitutionalism is one of the most original, distinctive contributions of the American system of government.

constitutionalism a belief in a government in which power is distributed and limited by a system of laws that must be obeyed by those who rule

L04 *The purpose of the Constitution was to establish a central government authorized to deal directly with individuals rather than states and to incorporate a system of checks and balances that would preserve the fundamental concepts contained in the Magna Carta, that is, to limit the power of the government.*

Like those who wrote the Articles of Confederation, the framers of the Constitution recognized that the people are the power. The delegates to the First Continental Congress in Philadelphia had been selected by the people of the colonies, not by existing colonial governments. Likewise, the delegates to the Constitutional Convention represented the people.

All states except Rhode Island were represented at the Constitutional Convention, which met at the State House in Philadelphia from May 25 to September 15, 1787. The 55 delegates included many of the most influential men in the country. Eight had signed the Declaration of Independence, seven were governors of their states, and 39 were congressmen. More than half were college graduates, and at least one-third were lawyers. Most held prominent positions in the Revolutionary War, and all were highly respected property owners.

Although unanimously elected president, George Washington took a limited but effective role in the deliberations. Despite some talk of the larger states getting more votes than the smaller states, the convention followed the procedures used to develop the Articles of Confederation, giving each state one vote, with seven states constituting a quorum. Any vote could be reconsidered during the convention, and many were. The convention was also governed by a rule of secrecy, requiring that nothing said during the deliberations be printed, published, or otherwise communicated without permission. Such secrecy was vital to unbiased discussion and to prevent rumors and misconceptions. The official journal to the convention was closed until 1819.

The convention first debated the Virginia resolution, calling for a national government with a bicameral legislature, an executive, and a judiciary branch.

The smaller states, however, backed the New Jersey Plan, calling for only modest revisions in the Articles of Confederation. In addition, the larger states supported representation proportional to a state's population, whereas the smaller states wanted one or two votes per state. A threatened deadlock was averted by the **Great Compromise**, which gave each state an equal vote in the Senate and a proportionate vote in the House.

The delegates also had differing philosophies regarding how the leaders of the new government should be chosen. For example, Alexander Hamilton did not believe that the general populous could be trusted to select the leaders of the country. Charles Pinckney, on the other hand, believed the opposite: that the people could, in fact, be trusted to make important decisions.

Finally, after lengthy debate, the delegates also decided to strengthen the central government and to clearly define federal powers. All other powers were entrusted to the individual states and to the people. Specifically, the country was to be governed by a president to be chosen by electors in each state, a national judiciary and a two-chamber legislature. The House of Representatives was to be popularly elected. The Senate, however, which shared certain executive powers with the president, was to be chosen by individual state legislatures. Under the Great Compromise between the large and small states, representation in the House was to be proportional to a state's population; in the Senate each state was to have two votes. The national plan for government agreed to by the convention delegates clearly separated the powers of the three branches of government and created a system of checks and balances among these three branches, as well as between the federal and state governments and the people both were to serve.

Great Compromise the agreement reached in drafting the U.S. Constitution that gave each state an equal vote in the Senate and a proportionate vote in the House

The Issue of Slavery

The issue of slavery was omitted during the constitutional debates. Although none of the framers knew whether this radical document would be ratified, they knew it would have zero chance of getting Southern ratification if it dealt with the slavery issue. At the time, slavery was on its way out in many states. Some plantation owners in the South had their doubts about slavery as well. It was not until Eli Whitney's invention of the cotton gin six years later that the demand for slaves greatly increased. As Thomas Jefferson said, "Slavery is like holding a wolf by its ears. You don't like it, but you're afraid to let it go." The Tenth Amendment, by default, left the slavery issue up to each state. The omission of slavery from the Constitution, and indirectly the failure to compromise, would lead to civil war.

Drafting the Constitution

After all issues had been debated and agreement reached, a committee was formed to draft the Constitution based on those agreements. On Tuesday, August 7, 1787, a draft Constitution was ready for a clause-by-clause review (Armento, Nash, Salter, & Wixson, 1991). After four months, what had developed is nothing short of amazing. The material was old, connected back to the Magna Carta, but it was new—with some rather brilliant concepts. It was the brainchild of a

relatively select few, but if it were to work, it had to be accepted by all. The task was monumental:

In the Constitution that emerged from these deliberations, the concept of government by consent of the governed formed the basic principle; accountability was the watchword. The rights of the people were to be protected by diffusing power among rival interests. (Mitchell, 1986, pp. 1–2)

The final document was put before the Convention on September 17. Following are the provisions of the articles contained in the final draft of the Constitution.

The Constitution of the United States: An Overview

Descriptions of the debates that forged the Constitution during the summer of 1787 in Philadelphia are fascinating, and this is certainly worthwhile reading for those who wish to pursue it further. The following condensation describes the results of those debates—the articles contained in the final draft of the Constitution (Lieberman, 1976, pp. 33–41).

The Constitution is both a structure for government and a set of principles, that is, a method for making law and a law itself. Of all the principles in this 7,000-word document, the single most important principle is that the government has been delegated its powers by the people. The government is not superior to them; its powers come only from them.

The first three articles of the Constitution establish the legislative, executive, and judicial branches of government and the country's system of checks and balances. It is interesting to note that Articles 1 through 3 go in descending order of power, with the power designated by Article 1 being greater than that in Article 2, which is greater than that presented in Article 3. The government's accountability to the people follows the same trend, in that the more power a branch has, the greater its accountability to the people.

Article I: The Legislative Branch

Article 1 establishes the legislature: "All legislative Powers herein granted shall be vested in a Congress of the United States." This legislature may pass laws, but it has no power to enforce or interpret them. This article contains the Great Compromise. Congress has two chambers, a Senate and the House of Representatives, each acting as a check against the other. Senators are chosen by each state's legislature, with each state having two senators, and each senator having one vote. (Senators are no longer chosen by state legislatures.)

Laws of the United States—in the form of bills—may originate in either house. The sole exception is that only the House of Representatives may first consider "bills for raising revenue." The cry "no taxation without representation" was still strong among the delegates. Thus, only the popular body, the house representing the people, was given the power to initiate taxes.

All bills must clear three hurdles before they can become laws. They first must pass each house in identical form and then meet the approval of the president.

The president has the power to veto, but Congress, in turn, can override that veto if each house, by a two-thirds vote, chooses to do so.

Section 8 of Article 1 grants specific powers to Congress, including coining money and establishing post offices, as well as the power to:

- Lay and collect taxes.
- Borrow money on the credit of the United States.
- Regulate international and interstate commerce.
- Naturalize foreign-born citizens.
- Raise and govern the military forces.
- Declare war.

In what has come to be known as the “elastic clause,” Congress also was given the power “to make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” In other words, Congress was granted an enormous potential reserve of power to do what was “necessary and proper” to pass laws for the nation. For the first time, the new Congress could do what the old Congress could not: enact laws that directly affected the people.

The Supreme Court addressed the necessary and proper clause in *McCulloch v. Maryland* (1819), establishing the authority of the federal government to address national issues. Historically, the clause caused considerable debate because of concern that it was too open-ended and could lead to excessive federal authority. However, the need to permit Congress to make necessary laws and carry out their enumerated powers was acknowledged in *McCulloch v. Maryland*, and reinforced in *Kinsella v. Singleton* (1960). In this later case, the clause was not considered a grant of federal power, but a declaration that Congress does possess the means needed to carry out its authority as set forth in the Constitution to run the country by enacting laws that are necessary and proper.

Article 1 is just one building block of our national government. Like the other articles and the Bill of Rights, none are exclusive and, in fact, all work together to prevent any one branch of government from having excessive or exclusive power. Although Congress is a powerful element of American law, it remains but one component required to lawfully interact with the others.

Article 2: The Executive Branch

The office of president was created to carry out the law; to provide a commander in chief of the military forces; to carry out the nation’s foreign policy, including entering into treaties with other nations; and to appoint the ambassadors, judges, and officials needed for the government to function. The president is chosen through a complex system that uses “electors,” selected by procedures that vary from state to state. The number of electors equals each state’s number of senators and representatives in Congress. Therefore, it is possible for a president to be elected without receiving a majority of the popular votes. Whether an electoral college is needed is a continuing controversy.

As a check against the president’s power, many of the president’s most significant actions must be approved by the Senate. For example, treaties require a

MYTH

Those who fought for independence intended for the Constitution to protect my right to do whatever I like. After all, "It's a Free Country!"

FACT

The Constitution protects many civil rights but never declares that individuals are free to do whatever they wish.

two-thirds Senate vote. Judges and appointed executive officials need a majority Senate vote to be confirmed. In addition, the president must report periodically to Congress on the state of the Union and may recommend laws Congress should enact. The president's most important duty is phrased, characteristically, in general language requiring that the president "shall take care that the laws be faithfully executed."

Like the other articles and elements of our legal system, the presidency is not immune from limitations. Nowhere are absolute rights or privileges guaranteed because of the ever-present tension between the people's rights and the government's needs. Individuals do not have boundless freedoms, and their government does not have boundless power, including the presidency. Although the president has great power, it is not absolute. A president can be impeached or removed from office. Although two presidents have been impeached (Andrew Johnson and Bill Clinton), none have actually been removed from office. No public figure can completely escape public or private accountability, as evidenced by the Supreme Court permitting the sexual harassment suit by Paula Jones to proceed (*Clinton v. Jones*, 1997).

Article 3: The Judicial Branch

The third article completes the national government structure, vesting judicial power in the U.S. Supreme Court, as discussed in depth in Chapter 3. Congress is also empowered to create lower courts. Federal court judges are appointed by the president and hold office for life.

As a check against judicial power, Congress is authorized to regulate the courts' dockets by deciding what kinds of cases the Supreme Court may hear on appeal. This power of Congress to regulate the courts' jurisdiction further illustrates how each branch of government is given significant power to affect the others. Congress enacts laws, but the president may veto them, and the courts may interpret them.

Federal versus State Power The fact that powers not specifically delegated to the federal government were reserved for the states and the people has been a big issue. Many court cases and policy debates revolve around that issue. Slavery, segregation, education, transportation, and environmental concerns, such as migrating waterfowl versus nonmigratory birds and the like, are all issues that at one time or another have inspired debate on the role of the federal government versus that of state government.

L05 *The balance of power was established vertically through the separation of power between the federal government and the states and laterally through the three branches of government with its system of checks and balances.*

Checks and Balances The Constitution established an effective system of checks and balances on the power of any one of the three branches of government. The president has veto power, but Congress can override with two-thirds majority vote. The president nominates Supreme Court Justices, but the legislative branch confirms or denies the nomination. The president is commander in chief, but the legislative branch declares war and pays for it.

Article 4: Other Provisions

Article 4 contains a variety of provisions, some taken over from the Articles of Confederation, further describing the creation of the federal union. The article also deals with criminal extradition, formation of new states, and Congress's power to govern in territorial lands not yet states.

Article 5: The Amendment Process

Article 5 dictates how the Constitution may be amended. An amendment must first be approved by a two-thirds vote in each house of Congress. It is then submitted to the states for ratification, requiring the approval of three-fourths of the states to pass the amendment. The people may also begin the amendment process if the legislatures of two-thirds of the states call for a constitutional convention. This article was extremely important in allowing the Bill of Rights to be added to the Constitution, as discussed shortly.

Article 6: The Constitution as the Supreme Law

The second section of Article 6 contains the famous supremacy clause:

The Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Here, in a stroke, was the solution to the problem of dual sovereignty of the federal and state governments. It was denied. In matters over which the Constitution grants the federal government authority, the states must concede.

Thus, through the **supremacy clause**, the Constitution declared itself the supreme law of the land. This clause also did something else momentous: It permitted the Supreme Court to become the ultimate decision maker in whether laws and actions of the government circumvent the Constitution and to invalidate them if they do so. This article also requires the allegiance of every federal and state official to the Constitution.

supremacy clause

Constitutional doctrine that federal law will reign when there is conflicting state law (U.S. Const. Art. VI, Paragraph 2)

The Signing of the Constitution

Once the overall format was agreed on, the next step was to seek approval of the document by the delegates. After hearing the debate over the final version of the Constitution, Benjamin Franklin, on Saturday, September 15, 1787, eloquently urged the convention to respect the spirit of compromise:

I confess that there are several parts of this Constitution which I do not at present approve. But I am not sure I shall ever approve them. For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise . . . I consent, Sir, to this Constitution because I expect no better and because I am not sure that it is not the best. (Lieberman, 1987, p. 447)

Franklin urged, “Every member of the Convention who may still have objections to it [the Constitution], would, with me, on this occasion doubt a little of his own infallibility, and . . . put his name to this instrument.” He moved that the Constitution be approved unanimously and signed by those states present. The delegates voted to accept the Constitution, and the following Monday, it was ready to be signed.

Forty-two of the 55 delegates were present on September 17, 1787, to sign the U.S. Constitution in Philadelphia, with only three members refusing to sign, including George Mason, who cited the lack of a bill of rights as a remaining concern. He proposed adding a bill of rights, but other delegates argued that the individual states’ declarations of rights would sufficiently protect individual liberties. They voted against adding a bill of rights. James Madison was quoted (The Records of the Federal Convention of 1787):

Whilst the last members were signing it, Doctor Franklin looking towards the President’s chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often in the course of the session . . . looked at that [sun] behind the President without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun. (Armento et al., 1991, p. 133)

The delegates agreed that the Constitution should next be submitted to special conventions of the states for ratification.

Ratification

ratify approve a constitutional amendment

Federalists colonists who favored a strong federal government

anti-Federalists colonists who opposed a strong federal government

Although the delegates to the Constitutional Convention had agreed to the makeup of the Constitution, each state had to approve, or **ratify**, it. Delaware was the first state to do so. New Hampshire cast the decisive vote, but ratification was not a sure thing. Many people had grave reservations. Although they were all supportive of the Constitution, the dispute tended to be more about how strong or weak the central government should be. **Federalists**, who favored a strong central government, were greatly challenged by **anti-Federalists**, who favored a weaker central government.

Political leaders such as Alexander Hamilton, James Madison, and John Jay wrote powerful essays in a newspaper called *The Federalist Papers*, which encouraged the ratification of the Constitution and the formation of a strong national government. The anti-Federalists, however, feared such a strong federal government; what would assure the country that this attempt would not fail, too? Further, they were reluctant to ratify the Constitution without a bill of rights to guarantee individual liberties.

The anti-Federalists were not successful in blocking the final ratification of the Constitution, but they did raise awareness regarding the need for a bill of rights. Because the Constitution primarily addressed the formation of a government with limited and distributed powers, a bill of rights to protect individuals was not considered necessary.

After the Philadelphia convention, most of those who drafted the Constitution could not understand why a bill of rights was such an issue for many states. They believed the Constitution could stand on its own. Nonetheless, most Federalists were willing to compromise on this issue to ratify the Constitution

and establish a new government. Fearing defeat in the Massachusetts ratifying convention, Federalist leaders sought support by drafting a list of **amendments**, additions to improve the Constitution. They enlisted John Hancock, the most popular man in Massachusetts, to present these amendments to the state convention. The proposed amendments made the Constitution acceptable to many who had opposed ratification.

amendments changes to a constitution or bylaws

The compromising strategy of the Massachusetts Federalists turned the tide of ratification. As other states debated ratification, they also insisted on amendments that would guarantee individual rights. The Bill of Rights became part of the Constitution in 1791 by the addition of ten amendments designed to ensure that the national government would not interfere with individual liberties. By December 15, 1791, the states had ratified 10 of the 12 proposed amendments to the Constitution, and the United States had a Bill of Rights. Figure 1.1 illustrates the timeline of events occurring in the United States and elsewhere between the 1620 landing of the Mayflower and the 1791 ratification of the Bill of Rights.

The Bill of Rights: A Balance Is Struck

The framers of the Constitution sought to balance the powers of the legislative, executive, and judicial branches of government. The proposed amendments aimed at balancing the rights of the states and of individual citizens against the powers of the central government. In December 1791, the 13 states passed the ten amendments that constitute the Bill of Rights. Proof of how well the Constitution would work was seen by the fact that it could, as a single document, embrace the additions that those it was drafted to serve determined necessary. Thomas Jefferson's comment on this process was of great significance: "The example of changing a Constitution by assembling the wise men of the State instead of assembling armies."

The Bill of Rights is intriguing because, whereas the Constitution is general, the amendments are specific. However, even these directives have offered enough room for interpretation to keep a steady flow of constitutional cases before courts at all levels.

The Bill of Rights continues as an outgrowth of the Magna Carta. The English, including those who left to establish the United States, found that documenting their laws reduced the likelihood of abuse, misunderstanding, or being forgotten. Because the charters and compacts of the colonies were all different, the benefits of some uniformity in a national set of laws made sense.

It was illogical for civil liberties to be safe from an overly strong federal government, only to be abused by the states. And it made even less sense for some states to have a version of a bill of rights and others to have none. James Wilson of Pennsylvania suggested, "An imperfect bill of rights was worse than none at all because the omission of some rights might justify their infringement by implying an unintended grant of government power" (Levy, 1999, p. 21).

Americans were becoming more comfortable with a clearly established, written law. Documented agreements worked. Recognizing that certain rights were so important to the country to ensure that no government, state or federal, could infringe on them, the Bill of Rights was finally agreed on. To this day, amendments are not taken lightly, and adding or deleting amendments is extremely difficult.

L06 In 1791, ten amendments, known as the Bill of Rights, were added to the Constitution to ensure the individual rights of American citizens.

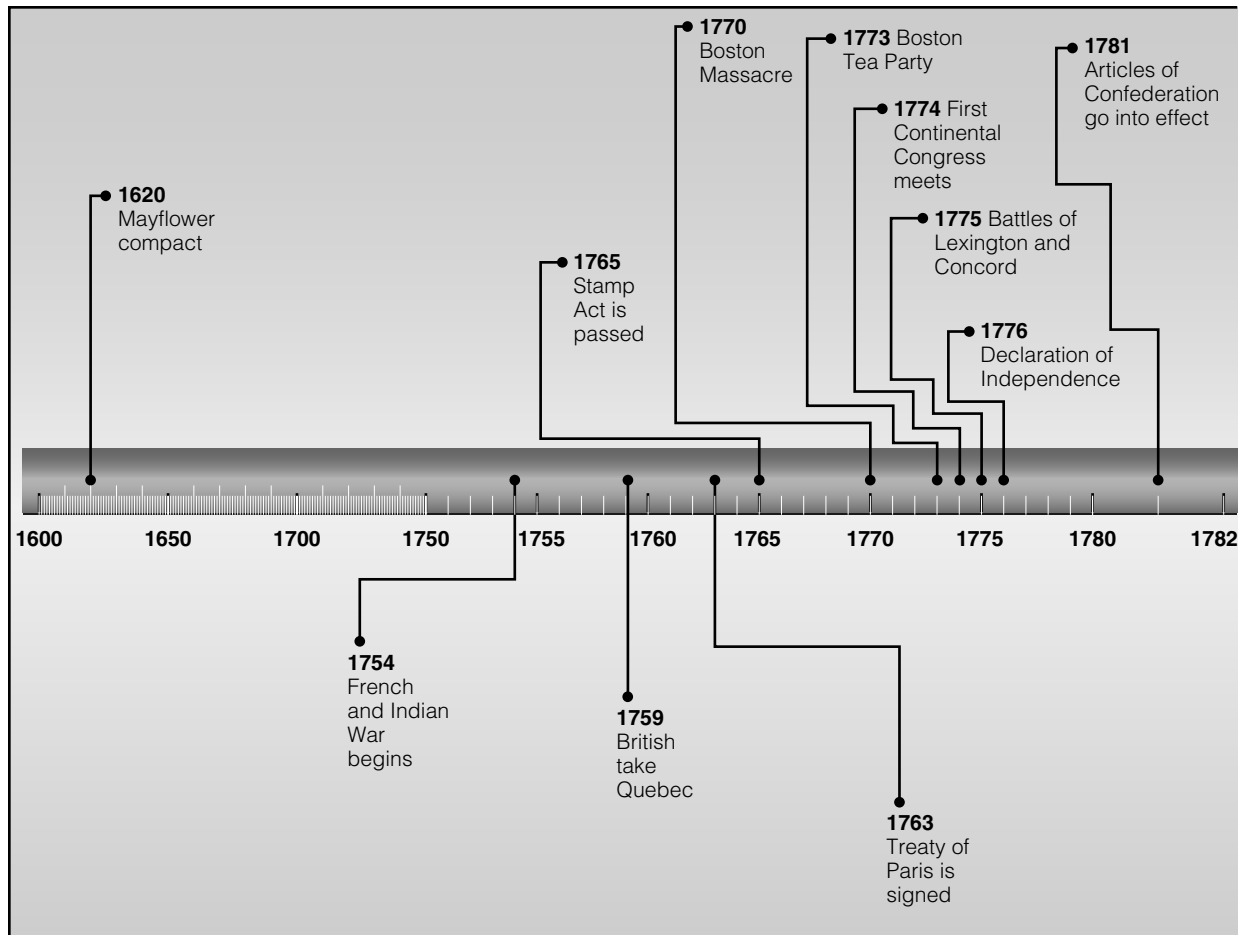


Figure 1.1 Timeline of Events

Had the Constitution been ratified without a bill of rights, it would have taken several years for those protections to be passed. By taking the form of amendments, these provisions became an integral part of the Constitution that many had argued be included originally. As noted by Supreme Court Chief Justice Warren E. Burger during the Constitution's bicentennial (Armento et al., 1991, p. 26):

The Founders, conscious of the risks of abuse of power, created a system of liberty with order and placed the Bill of Rights as a harness on government to protect people from misuse of the powers. The evils of tyranny even today fall on most of the world's people and remind us of what life would be like without our respect for human dignity and freedom. We must never forget what our strength was meant to serve and what made that strength possible—the Constitution and the Bill of Rights as they stand today.

The Bill of Rights: An Overview

Sections II, III, and IV of this text focus on the Bill of Rights, as well as additional amendments made to the Constitution. Most laws and controversies deal with these amendments. The following brief introduction to each of the first ten amendments provides an overview on which later discussions can be based.

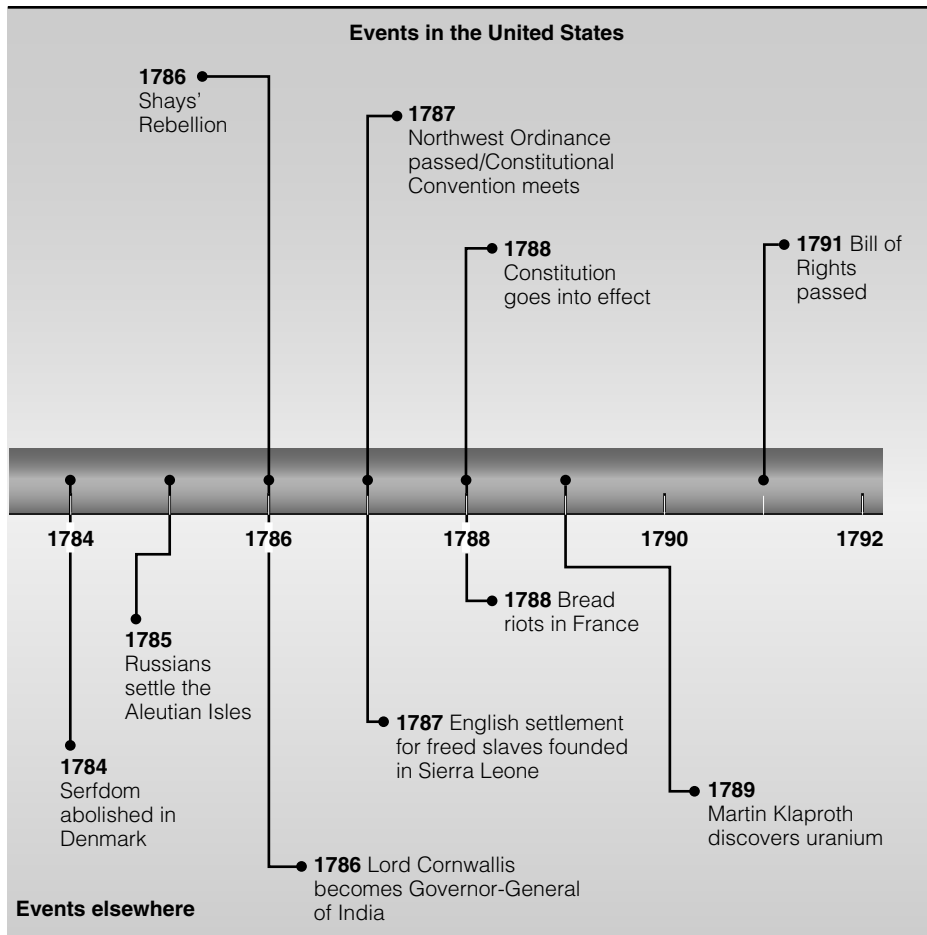


Figure 1.1 (Continued)

The *First Amendment* lists important individual liberties, including freedom of religion, speech, and the press:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

These freedoms are so basic to the American way of life that they are sometimes referred to as “First Amendment rights.”

The *Second Amendment* preserves the right of the people “to keep and bear arms”:

A well-regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The courts have ruled that this is not an absolute right. Laws prohibiting private paramilitary associations and carrying concealed weapons have been upheld.

MYTH

The U.S. government is a democracy.

FACT

The Constitution established the U.S. government as a republic, not a democracy. In fact, the word *democracy* appears nowhere in the Constitution. Article IV, Section 4 of the Constitution states, in part: “The United States shall guarantee to every State in this Union a Republican Form of Government. . . .” A democracy functions under majority rule (mob rule) and lacks legal safeguards protecting the rights of individuals in the minority. Because the framers of the Constitution feared democratic rule and how it allowed the omnipotent majority to trample on the rights of the minority, they created a republic—a representative government rule by law (the Constitution)—recognizing the inalienable rights of *all* individuals, not just those of the majority. *Think about words in the Pledge of Allegiance and what you are vowing to uphold.*

The *Third Amendment* prohibits the government from housing soldiers in private homes during peacetime without the owner's consent:

No Soldier shall, in time of peace, be quartered in any house without the consent of the Owner, nor in time of war but in a manner to be prescribed by law.

This is the only amendment that the government has never tried to violate (Lieberman, 1976).

The *Fourth Amendment* is concerned with the right to privacy and security:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment forbids the government or its agents from searching individuals, their homes, or their personal possessions or from seizing them unless the government has "probable cause" to believe a crime has been committed. If such probable cause exists, a search warrant describing in detail what (or who) is to be seized should be obtained. (This capsule description is necessarily loose: the police need not obtain warrants for every arrest or for every search. The past 15 years have seen an enormous volume of litigation over the precise limits of this amendment.)

The *Fifth Amendment* sets forth several restrictions on how the government may treat a person suspected of a crime:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fifth Amendment establishes the need for a grand jury indictment for felony cases. It prohibits double jeopardy, meaning a person acquitted by a jury of a crime may not be retried for the same offense. It prohibits the government from forcing a person to testify against himself; hence the expression "pleading the Fifth." It also contains the famous due process clause: "nor shall any person . . . be deprived of life, liberty, or property without due process of law."

The *Sixth Amendment* describes the requirements for a fair trial:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The trial must be convened speedily and must be public. The accused is entitled to an impartial jury in the community where the crime occurred and must be advised of the crimes being charged. Accused individuals must also be allowed

to cross-examine witnesses who testify against them. In addition, they can compel witnesses who will testify in their favor to come to court. Finally, they have the right to be represented by a lawyer.

The *Seventh Amendment* preserves the right to trial by jury in common law cases “where the value in controversy shall exceed twenty dollars”:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by a jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

This amendment is one of the few clauses in the Constitution that includes a figure that has lost meaning over the years. By law today, federal courts cannot hear cases where the contested value is less than \$10,000, unless a federal law is involved. The amendment also forbids courts to re-examine facts found by juries, except as the common law permits.

The *Eighth Amendment* prohibits excessive bail, excessive fines, and cruel and unusual punishment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This is the amendment that opponents of capital punishment most frequently cite.

The *Ninth Amendment* answered the objections of those who thought that naming some rights but not all might result in the government’s claiming more power than was intended:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The *Tenth Amendment* further underscores the framers’ intent to reserve certain powers to the states and to the people:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This amendment establishes no rights nor takes any away. It is a reminder that the government is for the people, not the reverse.

The U.S. Constitution and its amendments are provided in Appendix A.

A Living Law

The inclusion of the Bill of Rights stands as an example of how the U.S. Constitution lives. It is neither unchangeable nor unresponsive. It is not merely a piece of paper locked away in a vault in Washington, DC. The framers took a lot of good ideas referenced previously and, with the political skill of compromise, developed a workable form of government that continues to this day. It was designed to grow, develop, and be redefined if necessary to best serve the people’s needs. Study of the amendments and how they have been interpreted since their inception makes it obvious that the Constitution is a living document that grows with the citizens it was written to protect.

MYTH

The guarantees of “Life, Liberty, and the Pursuit of Happiness” are Constitutional rights.

FACT

This phrase is stated in the Declaration of Independence, not the Constitution. However, the Fifth Amendment does guarantee Constitutional protection to “life, liberty, or property,” stating the government cannot deprive anyone of these things without due process of law.

A Nearly Timeless Document

The final draft of the Constitution established a broad framework for the new American government. However, it did contain one critical error; it did not abolish slavery:

Those who detested slavery reconciled themselves to this grievous and glaring flaw that contradicted the Declaration of Independence at its most solemn point—that all men are created equal—by assuming that slavery would in time vanish naturally. But it would not go away so easily. The compromise that saved the Union could not be peacefully eliminated, and the amendments that would make the Constitution true to itself could come about only after the bloodiest war in American history (Lieberman, 1976, p. 49).

Although nearly timeless, the Constitution reflects the will and values of the people who originally drafted it and those charged with maintaining it. For example, whereas the Constitution as originally ratified did not prevent slavery and other discriminations, the ability of our law to be amended (in this case by the Fourteenth Amendment) speaks volumes about the American spirit to learn, even from its own mistakes.

For more than 200 years, the Constitution has been flexible enough to meet the nation's changing needs without extensive formal revision. Although the framers of the Constitution would find many modern governmental practices quite foreign, the basic system continues to operate as they planned. Recognizing the importance of ensuring in practice the division of power, Madison suggested this could best be done “by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.”

L07 *The Constitution and Bill of Rights failed to abolish slavery.*

The Declaration of Independence, which established the United States as an independent nation; the Constitution, which established its form of government; and the Bill of Rights have been carefully preserved and are housed in the Rotunda for the Charters of Freedom at the National Archives in Washington, DC. These valuable documents are contained in ballistically resistant casements and displayed under armed guard.

Summary

From the beginning, the colonists sought structure and collaboration. Law is a body of rules promulgated (established) to support the norms of that society, enforced through legal means (i.e., punishment). The U.S. Constitution was written to serve the needs of a pluralistic society. *Pluralism* refers to a society in which numerous distinct ethnic, religious, or cultural groups coexist within one nation, each contributing to the society as a whole.

The history of the Constitution is rooted in the colonists' desire for freedom from foreign rule. The colonists resisted increased taxes because they felt it was taxation without representation. The Boston Tea Party, in which colonists boarded British ships and threw their cargos of tea in the harbor, represented the colonists' unwillingness to pay taxes without representation.

As tension between the British and the colonists increased, the First Continental Congress was called and resulted in the first written agreement among the colonies to stand together in resistance to Great Britain. The British retaliated by sending more troops to quell the "rebels." In 1775, the Second Continental Congress established the Continental Army and named George Washington as its commander. On July 4, 1776, the president of the Congress signed the American Declaration of Independence, which formally severed ties with Great Britain.

The Congress also drafted the Articles of Confederation, which formally pledged the states to "a firm league of friendship," and "a perpetual union" created for "their common defense, the security of their liberties," and their "mutual and general welfare." This loose governmental structure proved unsatisfactory and resulted in the colonists seeking a stronger central government—one established by the Constitution.

The U.S. Constitution was greatly influenced by the Magna Carta, which established the supremacy of the law over the ruler and guaranteed English

feudal barons individual rights and "due process of law," including trial by jury. Americans continued to believe in the principles contained in the Magna Carta, which was a precedent for democratic government and individual rights and the foundation for requiring rulers to uphold the law. The Magna Carta greatly influenced the writers of the U.S. Constitution.

The purpose of the Constitution was to establish a central government authorized to deal directly with individuals rather than states and to incorporate a system of checks and balances that would preserve the fundamental concepts contained in the Magna Carta, that is, to limit the power of the government. The first three articles of the Constitution establish the legislative, executive, and judicial branches of government and the country's system of checks and balances. The balance of power was established vertically through the separation of power between the federal government and the states and laterally through the three branches of government with its system of checks and balances. In the supremacy clause, the Constitution declared itself the supreme law of the land.

The U.S. Constitution was signed in Philadelphia on September 17, 1787. The next step was for the individual states to ratify it. The Federalists favored a strong central government. They were greatly challenged by the anti-Federalists, who favored a weaker central government. Some states opposed the Constitution because it did not contain a bill of rights. In an important compromise, ten amendments, known as the Bill of Rights, were added to the Constitution in 1791 to ensure the individual rights of American citizens. The Constitution and Bill of Rights had one serious shortcoming: They failed to abolish slavery. The Declaration of Independence, the U.S. Constitution, and the Bill of Rights are housed in the Rotunda for the Charters of Freedom at the National Archives in Washington, DC.

Discussion Questions

1. Few people could live together and not have laws. Why?
2. Does pluralism have any negative aspects? Why have some fought so hard against the concept in the United States?
3. Do demonstrations such as the Boston Tea Party have any effect? Are they positive or negative?
4. What factors make it amazing that any organization among the colonies was successful?
5. Were the Articles of Confederation a wasted effort or were they needed?
6. What do you think about the Constitutional Convention being closed to the public? Was this necessary?
7. Why is the Constitution called a living document? Give examples.
8. What do you think the anti-Federalists were really afraid of?
9. Why should the Bill of Rights *not* have been left up to each state to develop on its own?
10. If the U.S. Constitution works so well, why do all countries not adopt it?

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An Overview of the U.S. Legal System

The law must be stable, but it must not stand still.

—Roscoe Pound



Fuse/Corbis/Getty Images

The United States is a country of laws. Citizens have not only a right but also a responsibility to be active participants in the U.S. legal system.

Learning Objectives

- L01** Compare and contrast the two prominent theories about the underlying purpose of law.
- L02** Show similarities and differences between two competing value systems (models) often identified when discussing the purpose of the criminal justice process.
- L03** Explain what the basic purpose of the U.S. legal system is.
- L04** Recognize how common law began, what it is based on, and what it is synonymous with.
- L05** Understand the difference between a crime and a tort.
- L06** Name the components of a legal opinion.
- L07** Describe the levels on which the judicial system operates and what main functions are served by courts.
- L08** Identify the officers of the court.
- L09** Summarize the three doctrines that govern whether a case will be heard in court.

Key Terms

adversarial judicial system	consensus theory	petition for certiorari
affirm	Crime Control Model	procedural law
amicus briefs	crimes	promulgate
appellate jurisdiction	dicta	remand
brief	dissenting opinion	reverse
caption	Due Process Model	ripeness doctrine
case law	exclusive jurisdiction	social contract
citing	general jurisdiction	standing
codified law	holding	<i>stare decisis</i>
collective conscience	jurisdiction	status offenses
common law	legal citation	statutory law
comparative law	limited jurisdiction	string cites
concurrent jurisdiction	mootness	substantive law
concurring opinion	ordinances	tort
conflict theory	original jurisdiction	vacate
	penal codes	venue