

LEARNING MADE EASY



2nd Edition

U.S. Constitution

for
dummies[®]
A Wiley Brand



Trace the evolution
of the Constitution

Recognize the power of
the U.S. Supreme Court

Details on recent Supreme
Court decisions

Dr. Michael Arnheim
Constitutional expert

U.S. Constitution

for
dummies[®]
A Wiley Brand



U.S. Constitution

2nd Edition

by Dr. Michael Arnheim
Constitutional expert

for
dummies[®]
A Wiley Brand

U.S. Constitution For Dummies®, 2nd Edition

Published by: **John Wiley & Sons, Inc.**, 111 River Street, Hoboken, NJ 07030-5774, www.wiley.com

Copyright © 2018 by John Wiley & Sons, Inc., Hoboken, New Jersey

Media and software compilation copyright © 2018 by John Wiley & Sons, Inc. All rights reserved.

Published simultaneously in Canada

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except as permitted under Sections 107 or 108 of the 1976 United States Copyright Act, without the prior written permission of the Publisher. Requests to the Publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, (201) 748-6011, fax (201) 748-6008, or online at <http://www.wiley.com/go/permissions>.

Trademarks: Wiley, For Dummies, the Dummies Man logo, Dummies.com, Making Everything Easier, and related trade dress are trademarks or registered trademarks of John Wiley & Sons, Inc., and may not be used without written permission. All other trademarks are the property of their respective owners. John Wiley & Sons, Inc., is not associated with any product or vendor mentioned in this book.

LIMIT OF LIABILITY/DISCLAIMER OF WARRANTY: WHILE THE PUBLISHER AND AUTHOR HAVE USED THEIR BEST EFFORTS IN PREPARING THIS BOOK, THEY MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE CONTENTS OF THIS BOOK AND SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY MAY BE CREATED OR EXTENDED BY SALES REPRESENTATIVES OR WRITTEN SALES MATERIALS. THE ADVICE AND STRATEGIES CONTAINED HEREIN MAY NOT BE SUITABLE FOR YOUR SITUATION. YOU SHOULD CONSULT WITH A PROFESSIONAL WHERE APPROPRIATE. NEITHER THE PUBLISHER NOR THE AUTHOR SHALL BE LIABLE FOR DAMAGES ARISING HEREFROM.

For general information on our other products and services, please contact our Customer Care Department within the U.S. at 877-762-2974, outside the U.S. at 317-572-3993, or fax 317-572-4002. For technical support, please visit <https://hub.wiley.com/community/support/dummies>.

Wiley publishes in a variety of print and electronic formats and by print-on-demand. Some material included with standard print versions of this book may not be included in e-books or in print-on-demand. If this book refers to media such as a CD or DVD that is not included in the version you purchased, you may download this material at <http://booksupport.wiley.com>. For more information about Wiley products, visit www.wiley.com.

Library of Congress Control Number: 2018941628

ISBN: 978-1-119-38729-9; ISBN 978-1-119-38736-7 (ebk); ISBN 978-1-119-38748-0 (ebk)

Manufactured in the United States of America

10 9 8 7 6 5 4 3 2 1

Contents at a Glance

Introduction	1
Part 1: Getting Started with the U.S. Constitution	5
CHAPTER 1: Identifying the Main Principles and Controversies of the Constitution	7
CHAPTER 2: Probing Underlying Concepts: Big Thinkers, Big Thoughts	17
CHAPTER 3: Untangling Some Confusion and Ambiguities	31
CHAPTER 4: Catching a Bird's-Eye View of the Constitution	43
CHAPTER 5: Changing the Constitution by Amendment and Interpretation	53
Part 2: We the People: How the United States Is Governed	65
CHAPTER 6: Scrutinizing Sovereignty: Who Rules America?	67
CHAPTER 7: Defining Federalism	79
CHAPTER 8: Separation of Powers: Checking and Balancing	89
CHAPTER 9: Doing Business: The Commerce Clause	107
Part 3: Assessing the Three Engines of Government: The President, Congress, and the Judiciary	117
CHAPTER 10: Examining the Role of the President	119
CHAPTER 11: Giving Everyone a Voice: The House of Representatives and the Senate	143
CHAPTER 12: "Saying What the Law Is": The Judicial System	163
CHAPTER 13: You're Fired! Investigating the Impeachment Process	181
Part 4: Guaranteeing Important Rights: The Bill of Rights	195
CHAPTER 14: The First Amendment: Freedom of Religion, Speech, and Assembly	197
CHAPTER 15: The Second Amendment: Bearing Arms	211
CHAPTER 16: The Third and Fourth Amendments: Protecting Citizens from Government Forces	223
CHAPTER 17: Taking the Fifth — and a Bit of the Fourteenth	239
CHAPTER 18: Regulating Crime and Punishment: The Sixth through Eighth Amendments	257
CHAPTER 19: Analyzing an "Inkblot" and a "Truism": The Ninth and Tenth Amendments	275

Part 5: Addressing Liberties and Modifying the Government: More Amendments	287
CHAPTER 20: States' Rights, Elections, and Slavery: The Eleventh through Thirteenth Amendments	289
CHAPTER 21: The Fourteenth Amendment: Ensuring Equal Protection	303
CHAPTER 22: Starts, Stops, and Clarifications: Amendments since 1870	319
Part 6: The Part of Tens	337
CHAPTER 23: Ten Landmark Constitutional Cases	339
CHAPTER 24: Ten Influential Supreme Court Justices	353
CHAPTER 25: Two Sides of Five Constitutional Conundrums	365
Appendix: Constitution of the United States of America	379
Index	403

Table of Contents

INTRODUCTION	1
About This Book	1
Conventions Used in This Book	2
Icons Used in This Book	2
Beyond the Book	3
Where to Go from Here	3
 PART 1: GETTING STARTED WITH THE U.S. CONSTITUTION	 5
CHAPTER 1: Identifying the Main Principles and Controversies of the Constitution	7
Defining “Constitution”	8
Knowing When and Why the Constitution Was Created	8
Summarizing the Main Principles of the Constitution	10
Identifying Some Areas of Controversy	13
 CHAPTER 2: Probing Underlying Concepts: Big Thinkers, Big Thoughts	 17
Building on Magna Carta	18
Respecting the Rule of Law (or the Rule of Lawyers?)	20
Analyzing the Concepts Underlying the Declaration of Independence	21
Invoking the law of nature	24
Securing “unalienable Rights”	24
“Deriving their just powers from the consent of the governed”	26
Establishing a Republic	27
Getting rid of the king	28
Leaving democracy out of the U.S. Constitution	28
 CHAPTER 3: Untangling Some Confusion and Ambiguities	 31
Listing Some Sources of Confusion	32
Discarding Out-of-Date Ideas?	33
Clarifying Uncertainties	35
Giving Some Important Principles the Silent Treatment	35
Interpreting the Constitution	38
Changing the Constitution	38
Identifying methods of interpretation	39

CHAPTER 4:	Catching a Bird's-Eye View of the Constitution	43
	Presenting the Preamble: "We the People . . ."	44
	Article I: Setting Up the Congress	45
	Magnifying the commerce power	45
	(Mis)interpreting the "necessary and proper" clause	46
	Article II: Hailing the Chief	46
	Listing presidential powers and duties	48
	Identifying the real issues	48
	Article III: Understating Judicial Power	49
	Article IV: Getting Along with the Neighbors — and Uncle Sam	50
	Article V: Changing versus Amending the Constitution	51
	Article VI: Fudging Federalism	52
	Article VII: Ratifying the Constitution	52
CHAPTER 5:	Changing the Constitution by Amendment and Interpretation	53
	Noting the Four Paths to an Amendment	54
	Explaining What Happens in Practice	55
	Listing the Amendments	58
	Debating the Need for Judge-Made Law	59
	Dissenting views to restricting change	59
	Maintaining proper amendment procedure	60
	Sampling judge-made amendments	61
	PART 2: WE THE PEOPLE: HOW THE UNITED STATES IS GOVERNED	65
CHAPTER 6:	Scrutinizing Sovereignty: Who Rules America?	67
	Introducing "We the People"	68
	Ordaining and establishing a Constitution	68
	Resolving to preserve democracy	69
	Defining democracy	71
	Testing for democracy today	72
	Hailing the Chief	73
	Congress: Flexing Its Lawmaking Muscle	74
	Giving the States Their Due	75
	The High Court: Saying What the Law Is	76
	Uncovering Conspiracies	77
CHAPTER 7:	Defining Federalism	79
	Tracing the Origins of U.S. Federalism	79
	Analyzing the founding documents	80
	Forming "a more perfect Union"	81

Defining sovereignty	82
Can a state secede from the union?	83
Testing State Sovereignty: Some Recent Supreme Court Decisions	84
Foreign Affairs: Looking at the Influence of Treaties	88
CHAPTER 8: Separation of Powers: Checking and Balancing	89
No Moonlighting for the President	90
Keeping the Branches Apart	92
Membership	93
Functions	94
Checking and Balancing	97
Keeping each branch in line	97
Considering the judiciary's special position	99
Pondering the legality of executive orders	101
Examples of executive orders	101
Reviewing administrative regulations	103
Trumping the President	103
CHAPTER 9: Doing Business: The Commerce Clause	107
How the Commerce Clause Was Born	108
Interpreting the Commerce Clause	108
Hunting Down the Dormant Commerce Clause	109
Looking at double taxation and the Dormant Commerce Clause	109
Passing judgment	110
Tracing the Changing Meaning of the Commerce Clause	111
Protecting freedom of contract	112
Introducing the Four Horsemen and the Three Musketeers	112
Signaling the feds' control of the economy	113
Using the Commerce Clause to advance civil rights	114
Turning back the federal tide?	115
"Appropriating state police powers under the guise of regulating commerce"	115
Taking a step backward	115
Missing an opportunity?	116
PART 3: ASSESSING THE THREE ENGINES OF GOVERNMENT: THE PRESIDENT, CONGRESS, AND THE JUDICIARY	117
CHAPTER 10: Examining the Role of the President	119
Being "eligible to the Office of President"	119
Interpreting "natural born Citizen"	120
Looking at the two-term rule	122

Picking a President	123
Examining the modern electoral system	124
Exploding some myths about the Electoral College	125
Canning the President	128
Signing, Vetoing, and Pocketing Legislation	129
Appointing Key Positions	130
Hailing the Chief: The President's Administration	131
Uncovering the secrets of Cabinet secretaries	132
Unmasking the imperial presidency	133
Unlocking the Executive Office of the President	134
Selling the President's legislative program	135
Battling Executive Privilege	137
Making War versus Declaring War	138
Controlling the President through the War Powers Act of 1973	140
Preventing presidential precedents?	141
 CHAPTER 11: Giving Everyone a Voice: The House of Representatives and the Senate	143
Making the Laws That Govern the Land.	144
One function, two houses	144
Keeping the President in the loop.	145
Visiting the People's House	146
Representing the U.S. population	146
Respecting the power of the Speaker.	146
Controlling the nation's purse strings	151
Deciding disputed presidential elections.	152
Impeaching the President and other civil officers	153
Declaring war	153
Getting to Know the Senate	154
Electing a senator	155
Presiding over the Senate	156
Advising and consenting.	157
Passing Legislation	157
Tracking a bill's progress	158
Examining congressional committees	160
 CHAPTER 12: "Saying What the Law Is": The Judicial System	163
Examining the Courts' Function.	164
Defining jurisdiction	164
Applying the law	165
Appointments and Elections: Becoming a Judge	165
Judging the election process	166
Considering whether elections taint the judiciary	167

Understanding Judicial Independence without Accountability.	168
Bypassing term limits and salary concerns	169
Grappling with issues the Constitution doesn't address.	170
Making the Judiciary Paramount: Judicial Review.	171
Understanding the nature of judicial review.	172
Tracing the origins of judicial review	173
Noting Jefferson's response to <i>Marbury v. Madison</i>	174
Considering alternatives for solving constitutional conflicts	174
Watching the Supreme Court's power seep into politics.	175
Casting the Swing Vote.	176
Labeling Supreme Court Justices	178
Stare decisis/free exercise of power.	178
Judicial activism/judicial restraint	179

CHAPTER 13: You're Fired! Investigating the Impeachment Process

Impeachment Process	181
There's Nothing Peachy about Impeachment.	182
"High Crimes and Misdemeanors": What Impeachment Is and Isn't.	182
Defining impeachment.	183
Can you be impeached for something that isn't a crime at all?	183
Explaining the Impeachment Process	185
Playing grand jury and prosecutor: The role of the House	185
Trying the articles of impeachment: The role of the Senate. . . .	186
Understanding the Implications of Impeachment	187
Impeaching isn't the same as convicting	187
Keeping Congress out of the fray	187
Impeaching for poor private conduct.	188
Ducking impeachment with a pardon?	189
Tracking Impeachment in Action	190
A look at Johnson, Nixon, and Clinton	190
Judging the judges.	192
Removing State Officials from Office	192
Impeaching governors	193
Total recall, or terminating a governor.	193

PART 4: GUARANTEEING IMPORTANT RIGHTS: THE BILL OF RIGHTS

CHAPTER 14: The First Amendment: Freedom of Religion, Speech, and Assembly

Freedom of Religion, Speech, and Assembly	197
Considering the Amendment's Wording	198
Prohibiting Congress from taking away rights	198
Applying the amendment to the states	198

Separating Church and State	199
Assuring the Free Exercise of Religion	201
Looking at belief and practice	201
Adopting a strict scrutiny test	202
Guaranteeing Freedom of Expression	203
Denying protection to speech creating a “clear and present danger”	204
Allowing obscenity to be seen?	205
Using and abusing the right to freedom of the press	206
Letting money talk.	207
Leaking Classified Information	208
Having Your Cake	209
Protecting the Right to Assemble and Petition	209
 CHAPTER 15: The Second Amendment: Bearing Arms	211
Debating Interpretation: Individual versus State Rights	212
Breaking Down the Amendment’s Clauses	213
Understanding the states’ rights interpretation	214
Explaining “the right of the people”	216
Upholding Individual Rights: <i>D.C. v. Heller</i>	217
Considering the Continuation of the Debate	219
Clarifying the results	220
Continuing debate.	221
 CHAPTER 16: The Third and Fourth Amendments: Protecting Citizens from Government Forces	223
Keeping the Feds Out of Your House	223
Keeping the Government Off Your Back	226
Prohibiting “unreasonable searches and seizures”	227
Excluding evidence	230
Rewriting the Fourth Amendment	233
Defining “probable cause”	235
Forbidding police fishing expeditions.	236
Searching people or premises without a warrant?	237
 CHAPTER 17: Taking the Fifth — and a Bit of the Fourteenth	239
Invoking the “Great Right” against Self-Incrimination	240
Peeking Behind the Closed Doors of the Grand Jury	241
Deciding whether to indict.	242
Victimizing suspects or protecting victims?	243
Avoiding Double Jeopardy	244
Applying the principle.	244
Allowing for an end to litigation	244
Jeopardizing “life or limb”	245

Agonizing over Due Process	246
Trying to define the term	246
Triggering due process	247
Wrestling with substantive due process	248
Opening Up the Incorporation Debate	251
Does the Bill of Rights apply to the states?	251
Watching selective incorporation in action	252
Taking Private Property	254
Recognizing eminent domain	254
Losing protection	255
 CHAPTER 18: Regulating Crime and Punishment: The Sixth through Eighth Amendments	 257
Outlining Defendants' Rights in Criminal Prosecutions: The Sixth Amendment	258
Having the same rights in a state and federal trial.	259
How speedy is a speedy trial?	259
Appreciating the need for a public trial	260
Guaranteeing trial by jury	261
Being "informed of the nature and cause of the accusation"	263
Confronting adverse witnesses	263
Compelling witnesses to attend	264
Demanding the right to counsel	264
Guaranteeing Jury Trials in Civil Suits: The Seventh Amendment	265
Prohibiting "Cruel and Unusual Punishments": The Eighth Amendment	266
Banning excessive bail	267
Removing excessive fines	268
Barring "cruel and unusual punishments"	268
Debating the death penalty	271
 CHAPTER 19: Analyzing an "Inkblot" and a "Truism": The Ninth and Tenth Amendments	 275
Reading the Constitution: The Ninth Amendment	276
Considering the Tenth Amendment	279
Analyzing the wording	279
Balancing power between federal and state governments	280
Determining the limits of federal power	281
Puzzling over "prohibited" powers	282
Disentangling states' rights from individual rights	284
Giving the Tenth Amendment its due	286

PART 5: ADDRESSING LIBERTIES AND MODIFYING THE GOVERNMENT: MORE AMENDMENTS.....287

CHAPTER 20: States' Rights, Elections, and Slavery: The Eleventh through Thirteenth Amendments289

The Eleventh Amendment: Asserting State Sovereign Immunity? . . .	290
Overruling the Supreme Court	290
Interpreting the Eleventh Amendment	290
Cleaning Up the Framers' Political Mess: The Twelfth Amendment	292
Electing the President: The original rules.	292
Understanding politics 1796 style.	293
Tying and vying with your running mate: The 1800 election . . .	293
Preventing future chaos	294
Removing the Blot of Slavery: The Thirteenth Amendment	294
Tracking the debate on slavery	295
Sliding into secession	296
Considering the Corwin amendment.	297
Graduating from emancipation to abolition	298
Introducing an entirely different thirteenth amendment	299

CHAPTER 21: The Fourteenth Amendment: Ensuring Equal Protection303

Defining Citizenship	304
Understanding States' Obligations	306
Disentangling state citizenship	307
Analyzing "privileges or immunities"	307
Achieving "Equal Justice Under Law" — Or Not.	309
Age discrimination.	310
Capital punishment.	310
Racial segregation	311
School busing.	311
Affirmative action	312
Gerrymandering	314
Disqualifying Confederates from Office.	316
Repudiating Confederate Debts	316
Empowering Congress	316

CHAPTER 22: Starts, Stops, and Clarifications: Amendments since 1870319

Removing Race Qualifications for Voting: The Fifteenth Amendment	320
Letting Uncle Sam Raid Your Piggy Bank: The Sixteenth Amendment	322

Electing the Senate: The Seventeenth Amendment	322
Outlawing Liquor: The Eighteenth Amendment	324
Giving Women the Vote: The Nineteenth Amendment	324
Moving Out of the Horse and Buggy Age: The Twentieth Amendment	325
Repealing Prohibition: The Twenty-First Amendment	326
Taking George Washington's Lead: The Twenty-Second Amendment	327
Enfranchising the Nation's Capital: The Twenty-Third Amendment	328
Banning Tax Barriers to Voting: The Twenty-Fourth Amendment	330
Succeeding to the Presidency: The Twenty-Fifth Amendment	331
Succeeding as President or Acting President?	331
Replacing the Veep	332
Acting as President	333
Lowering the Voting Age: The Twenty-Sixth Amendment	333
Limiting Congressional Pay Raises: The Twenty-Seventh Amendment	334
PART 6: THE PART OF TENS	337
CHAPTER 23: Ten Landmark Constitutional Cases	339
<i>Marbury v. Madison</i> (1803)	339
<i>Brown v. Board of Education</i> (1954)	341
<i>Grutter v. Bollinger</i> and <i>Gratz v. Bollinger</i> (2003).	342
<i>Kelo v. City of New London</i> (2005)	344
<i>Clinton v. Jones</i> (1997)	345
<i>Roe v. Wade</i> (1973)	345
<i>Citizens United v. Federal Election Commission (FEC)</i> (2010)	346
<i>Obergefell v. Hodges</i> (2015)	348
<i>Glossip v. Gross</i> (2015)	348
<i>Riley v. California</i> (2014)	350
CHAPTER 24: Ten Influential Supreme Court Justices	353
John Marshall	354
Oliver Wendell Holmes, Jr.	355
Hugo Black	355
Earl Warren	356
Thurgood Marshall	357
John Paul Stevens	358
Sandra Day O'Connor	359
Antonin Scalia	360
Anthony Kennedy	361
John Roberts	362

CHAPTER 25: Two Sides of Five Constitutional Conundrums	365
Is the Constitution Outdated?	366
Should the Electoral College Be Abolished?	367
Does the U.S. Supreme Court Have Too Much Power?	370
Is the United States a Democracy?	373
Does the President Have Too Much Power?	374
 APPENDIX: CONSTITUTION OF THE UNITED STATES OF AMERICA	379
 INDEX	403

Introduction

Okay, so you bought this book (or you got it as a present, or you borrowed it, or you're browsing through it in a bookstore). Obviously, you have some interest in the U.S. Constitution, but maybe you're afraid the Constitution isn't really that interesting.

Well, you're in luck. Even if you don't find the Constitution itself to be the most riveting read, it's a never-ending source of debates and arguments. And we all know how interesting debates and arguments can be!

About This Book

This book explains the Constitution simply and thoroughly, including all the juicy controversy it evokes. Whether you're a student, a lawyer, or just a concerned citizen, I hope you find it to be both a good read and a great resource.

You don't have to read this book from cover to cover, and you don't have to read the chapters in order. I've written each chapter so it can be understood on its own; if it refers to topics that aren't covered in that chapter, I tell you where to find information about that topic elsewhere in the book. Using the Table of Contents or the Index, feel free to identify topics of the greatest interest to you, and dive in wherever you want. Even if you dive into the middle or end first, I promise I won't let you get lost.

I cover the entire Constitution in this book, but I don't give each article or amendment equal attention. That's because some parts are more important, more difficult to understand, more controversial, or more relevant to modern society than others. If I believe a particular part of the Constitution requires or deserves more explanation than another, I give it lots of real estate in the pages that follow. Parts that are easier to understand or less important to your 21st-century life get less space in the book.

Throughout the book, I offer not just facts but also a variety of opinions about constitutional issues that have created debate for more than 200 years. In some cases, the opinions belong to Supreme Court justices, advocates for or against specific rights, or any number of other sources. In other cases, the opinions are my own — and I alert you to that fact. I may sometimes try to persuade you of the

rightness or wrongness of a certain opinion, but you're welcome to disagree — that's the fun and the privilege of becoming a more informed citizen!

Conventions Used in This Book

Whenever I quote or refer to a specific part of the Constitution, I tell you the name of that part. You'll often see this reference in the form of an *article*, a *section*, and maybe a *clause* — for example, Article I, Section 8, Clause 3. If you turn to the Appendix at the back of the book, where the text of the Constitution is provided, you can see that it's broken into seven articles, some of which are divided into sections. If a section contains more than one paragraph, I refer to each paragraph as a clause. So if you're looking for Clause 3 within Section 8 of Article I, just find the third paragraph in that section.

The amendments to the Constitution appear in the Appendix after the main body of the document (and after the list of people who signed it). It's pretty easy to locate an amendment, as long as you aren't too rusty on Roman numerals.

When you see the term *the Constitution*, it always refers to the U.S. Constitution. Each of the 50 states also has its own constitution, but if I'm referring to one of those, I include the state name (such as *the Virginia Constitution*). Similarly, when I refer to *the Supreme Court*, *the high court*, or just *the Court*, that means the U.S. Supreme Court. If I refer to a state supreme court, I always give the name of the state concerned (such as *the Texas Supreme Court*).

You can't learn about the Constitution without being introduced to some legal, political, and other jargon, but I do my best in this book to ease you into the constitutional vocabulary. If I use a term that I suspect may not be familiar to you, I put that term in italic and provide a definition or explanation nearby.

Icons Used in This Book

Throughout this book, you find small pictures in the margins. These *icons* highlight paragraphs that contain certain types of information. Here's what each icon means:



CONTROVERSY

The Constitution is nothing if not controversial, and this icon highlights paragraphs that explain what all the debate is about. If you want to know why people can't seem to figure out what this document means even after 200-plus years, head toward these icons.



IN MY
OPINION

Where there's debate, there are opinions, and I won't pretend not to have some of my own. Where you see this icon, you'll know that I'm offering my perspective on the subject at hand, and I don't necessarily expect you to agree!



REMEMBER

The Remember icon sits beside paragraphs that contain information that's worth committing to memory. Even if you're not studying for an exam on the Constitution, you may want to read these paragraphs twice.



TECHNICAL
STUFF

This icon denotes material that may fall into the “too much information” category for some readers. If you like to know lots of details about a topic, the information in these paragraphs may thrill you. If details aren't your thing, feel free to skip these paragraphs altogether.

Beyond the Book

To gain some additional insight into the U.S. Constitution, beyond the written words of this book, head to www.dummies.com/cheatsheet/usconstitution for an easily accessible reference guide.

Where to Go from Here

That depends on why you're reading this book. If you're a student who needs help understanding how and why the Constitution was created, what it says, and why it's still so important, I'd suggest that you start at the beginning.

If you picked up this book because you want to understand the debate about a certain issue (such as gun rights), check the Table of Contents or Index and flip to the chapter where that debate is explored. (In the case of gun rights, that'd be Chapter 15.)

If you're planning to start a campaign to impeach a government official who rubs you entirely the wrong way, perhaps Chapter 13 will be your cup of tea.

If you want to very quickly get a sense of why constitutional issues can cause tempers to flare, flip to Chapter 25 and read about just five of the many debates that keep people talking.

The law as stated in this book is correct, to the best of my knowledge, as of Presidents' Day, February 19, 2018.

1

Getting Started with the U.S. Constitution

IN THIS PART . . .

Uncover the ideas on which the Constitution was based.

Find out how the Constitution was originally ratified in 1788.

Gain insight into some of the more confusing aspects of the Constitution.

See how the Constitution has undergone some fundamental changes without formal amendment.

IN THIS CHAPTER

- » Understanding what a constitution is
- » Finding out who created the U.S. Constitution, and why
- » Breaking down the Constitution's chief tenets
- » Introducing some constitutional problems

Chapter **1**

Identifying the Main Principles and Controversies of the Constitution

Most of the stuff written about the Constitution is boring and hard to understand. But it doesn't have to be. And frankly, it shouldn't be, because the Constitution is pretty important — yes, important to *you* in your daily life.

In this book, I do my best to explain the Constitution in simple language. And in this chapter, I offer a broad introduction to the Constitution: what it is, who created it, the principles it does and doesn't discuss, and the areas of controversy that keep it in the headlines even today.

Defining “Constitution”

First, what exactly *is* a constitution? Okay, here goes. A constitution is a sort of super-law that regulates the way a country or state is run. How helpful is that as a definition? Not very? So let’s be more specific, and this time let’s focus specifically on the Constitution of the United States.

The U.S. Constitution is the supreme law of the nation controlling the following main features (plus a few more):

- » The functions and powers of the different branches of the government: the President, the Congress, and the courts
- » The way in which the President and the Congress are elected and how federal judges are appointed
- » The way government officials — including the President and the judges — can be fired
- » The relationship between the federal government and the states
- » Your rights as a citizen or inhabitant of the United States



The word “constitution” can mean *either* the physical paper document *or* constitutional law as defined by the U.S. Supreme Court, which includes a number of features that don’t actually appear in the document, such as the rights to privacy, abortion, and gay marriage. These additional features are mainly a product of the so-called “living constitution” approach to the Constitution (as a document), which believes that the Constitution needs to be constantly reinterpreted to take account of changes in prevailing social, political, and moral values. On the other hand, strict constructionists, textualists, and originalists interpret the Constitution (as a document) sticking closely to the perceived original meaning of the words in question. I discuss the different approaches to constitutional interpretation in Chapter 3.

Knowing When and Why the Constitution Was Created

The Constitution emerged from a meeting called the Philadelphia Convention, which took place in 1787. (That meeting has since come to be known also as the *Constitutional Convention*.) The Convention was held because the *Articles of Confederation* — the document that had been serving as the country’s first

governing constitution — were considered to be weak and problematic (see Chapter 2). The stated goal of the Convention was to revise the Articles of Confederation, but the outcome was much more than a mere revision: It was a new form of government. See Figure 1-1 for a look at a scene from the Convention.

FIGURE 1-1:
George Washington
presiding over
the Constitutional
Convention, 1787.



Source: Howard Chandler — *The Indian Reporter*

The 55 delegates to the Philadelphia Convention came to be known as the *Framers* of the Constitution. They represented 12 of the 13 states (Rhode Island didn't send a delegate), and they included some familiar names, such as George Washington, Alexander Hamilton, and James Madison.

The Convention lasted from May 25 to September 17, 1787. In the end, only 39 of the 55 delegates actually signed the Constitution. Three delegates refused to sign it, and the rest had left the Convention before the signing took place.

For the Constitution to take effect, it had to be *ratified* — or confirmed — by nine states. Special conventions were summoned in each state, and the Delaware, New Jersey, and Georgia conventions ratified the Constitution unanimously. But some of the other states saw a pretty fierce battle for ratification. In New York, for example, the Constitution was ratified only by 30 votes to 27.

Ratification was achieved in 1788, and the Constitution took effect with the swearing in of President George Washington and Vice President John Adams on April 30, 1789.

DISTINGUISHING THE FOUNDERS FROM THE FRAMERS

The term *Founding Fathers* was (probably) coined by President Warren G. Harding about 100 years ago. *Founding Fathers*, or simply *Founders*, refers to the political leaders of the struggle for American independence against Britain. It includes the American leaders in the Revolutionary War, the signatories of the Declaration of Independence, and also the Framers of the Constitution (or simply, *Framers*).

The Founders include George Washington, Benjamin Franklin, Alexander Hamilton, John Jay, John Adams, Thomas Jefferson, James Madison, James Monroe, Patrick Henry, and Tom Paine.

The term *Founding Fathers* overlaps somewhat with the term *Framers of the Constitution*, but the two terms are not identical in meaning. The term *Founders* is much broader than the term *Framers* because it covers all the leaders in the fight for American independence, including all the delegates to the Philadelphia Convention who drafted the Constitution. So all the Framers were Founders, but not all the Founders were Framers!

Thomas Jefferson, for example, drafted the Declaration of Independence and was one of the leading Founders of the United States. But he was not involved in the drafting of the Constitution because he was on official business in France at the time. So Jefferson was a very prominent Founder, but he was not a Framer.

Summarizing the Main Principles of the Constitution

In broad strokes, here are the principles you find in the Constitution:

- » **Liberty:** The Framers of the Constitution aimed to establish a form of government that gave the people as much individual freedom as possible, by guaranteeing them
 - Religious freedom
 - Freedom of speech
 - Freedom to defend themselves with arms
- » **Federalism:** The United States started out as 13 separate British colonies, which banded together to throw off the British yoke. At first, in 1777, the

colonies formed a loose alliance under the so-called *Articles of Confederation* (not to be confused with the similarly named Confederacy proclaimed by the seceding southern states in the 1860s). But the need for a stronger central government resulted in the drafting of the U.S. Constitution, which was ratified in its original, unamended form in 1788. The Constitution established a *federal* system of government, which gave the central or federal government certain clearly defined and limited powers, reserving the remaining powers to the states or to the people.

» **Separation of powers:** The Framers of the Constitution were very anxious to prevent any one person or institution from becoming too powerful. So the Constitution keeps the three branches of government separate. These branches are the Executive (the President), Legislative (Congress), and Judicial (the law courts). But a system of “checks and balances” cuts across this separation. So, for example, Congress passes laws, but the President can veto them. Similarly, the President has the power to appoint Cabinet officers and federal judges, but his appointments are subject to the “advice and consent” of the Senate. And the Supreme Court can check any perceived abuse of the power of Congress by striking down laws that the Court rules are unconstitutional.

» **Due process:** “Due process of law” is one of the main buzz phrases of the Constitution — according to the Supreme Court. You may assume that this phrase would refer simply to *procedure*, or how things should be done, like whether or not you are allowed a jury trial. But the Supreme Court has widened its interpretation of the phrase greatly to include *substantive due process*, or what rights the Constitution actually confers or protects. As a result, the Court has interpreted the Constitution as guaranteeing a bunch of controversial “fundamental rights,” including

- An expansion of the rights of those suspected or accused of crimes
- An expansion of minority rights
- Privacy
- Abortion

Here are some of the principles you may assume are addressed in the Constitution, but aren't:

» **Democracy:** The words *democracy* and *democratic* don't figure anywhere in the text of the Constitution. In its original form, the Constitution was not democratic, and the House of Representatives was the only directly elected part of the federal government. The Constitution became democratic as a result of the rise of President Andrew Jackson's Democratic Party in the 1830s (see Chapter 6).

» **Equality:** Equality was also not one of the principles of the Constitution in its original form.

- Slavery formed an integral part of the Constitution until the Civil War. For example, Article IV, Section 2, Clause 3 provided in its original, unamended form that runaway slaves who escaped from a slave state to a free state had to be “delivered up” to their original owners. The whole structure of the House of Representatives also depended on slavery. In its original form, Article I, Section 2 of the Constitution apportioned the representation of the various states according to the numbers of their free population — plus three-fifths of their slaves. This “three-fifths rule” cynically used the slave population (who of course didn’t have the right to vote) to give the slave states more representation in the House than they would otherwise have had.
- Women didn’t have the right to vote in the U.S. as a whole until 1920, though some states had allowed women to vote before then.

THE FEDERALIST PAPERS

When the U.S. Constitution emerged from the Philadelphia Convention after being signed by delegates from each of the 12 participating states, it still had to be ratified, or confirmed, by the states, each of which summoned a special convention for this purpose. Fierce controversy reigned.

In October 1787, Alexander Hamilton, a leading member of the Convention and a dedicated upholder of the Constitution, started publishing a series of articles explaining and justifying the Constitution. Hamilton got James Madison, another leading Convention delegate, to join him. John Jay, another Founding Father (although not a Convention delegate) also contributed some articles.

The series of articles was titled *The Federalist* and was described as “a Collection of Essays written in favor of the New Constitution.” Hamilton himself wrote 51 of the 85 articles, Madison contributed 27, and Jay wrote 5.

Although they were written before the Constitution took effect, these essays show tremendous insight into the problems of government and have been cited ever since as embodying an authoritative interpretation of the Constitution.