Chapter Objectives

While studying this chapter, the student will learn to:

1. Identify the problems of the Articles of Confederation that led to the development of the Constitution.
2. Cite instances where the Supreme Court has used historical documents such as the Articles, the debates of the Constitutional Convention, debates of the ratifying conventions, and the Federalist Papers to resolve modern cases and interpret the Constitution.
3. List the components of Madisonian democracy.
4. Explain why the founders felt a need to check power.
5. Recount the ratification of the Constitution.

Constitutional Connector

This chapter explains why the Constitution was necessary and describes some of the problems with our first “constitution,” the Articles of Confederation. This chapter traces the development of the Constitution from the Virginia Plan that was presented at the Constitutional Convention through ratification by the states. Also covered is the structure of the constitutional system of Madisonian democracy and how this structure operates to produce a government that is strong enough to be effective yet not so powerful as to trample on individual rights. Individual rights are protected in the text of the Constitution, in the Bill of Rights, and in subsequent amendments to the Constitution. Note that historical documents from this period are currently used by the Supreme Court to interpret the Constitution.

CHAPTER OUTLINE

Relevancy of the Articles of Confederation
Problems under the Articles of Confederation
Constitutional Convention
Federalist Papers
Ratification of the Constitution
Relevance of the Historical Documents
Transformation of Government

STUDY TIPS

1. Examine how the government operated under the Articles of Confederation and the problems that existed.
2. Note how the “new” Constitution attempts to solve these problems and limitations. Examine Exhibit 1-1, which lays out the solution in the form of Madisonian democracy. These three components can help to organize your thought process as you proceed through this chapter and as you progress through the rest of the text. See Exhibit 1-3, which shows the transformation of government during this period in time.
3. Realize that the Supreme Court today uses the Articles of Confederation, Federalist Papers, and records of the Constitutional Convention as tools to interpret the Constitution.

4. Keep in mind the early development of the Constitution: Constitutional Convention (1787), ratification of the Constitution by the states (1787–1789), first government formed under the Constitution (1789), and Bill of Rights (1791). See the Constitutional Timeline (Appendix B, pages 254–255) to get a perspective on the sequence of events.

5. As you proceed throughout your course and this text, keep in mind some basic principles:
   a. The Constitution is the supreme law of the land. The Constitution trumps all other forms of law. If there is a conflict between federal and state law, federal law wins out.
   b. Seven articles comprise the original text of the Constitution. The Bill of Rights contains the first 10 amendments to the Constitution. There are a total of 27 amendments. Once an amendment is approved (by two-thirds of the House of Representatives, two-thirds of the Senate, and three-fourths of the states), the amendment becomes part of the Constitution.
   c. The Constitution is the source of many rights, such as freedom of speech, due process, and equal protection of the law. However, the Constitution does not regulate the behavior of individuals. For the Constitution to come into play, the federal, state, or local government must have acted on an individual. Put another way, for the most part, only the government can violate the Constitution. This concept—that for the Constitution to be violated, the violator must be the government—is called state action. If a private citizen breaks into your house and conducts a search without a search warrant, the Fourth Amendment is not violated. If a federal, state, or local police officer did the same thing, however, the Fourth Amendment right against unreasonable searches and seizures would be violated. You may have a private lawsuit against the person who broke into your home, and that person may be prosecuted for violation of criminal law, but the Constitution was not violated. If a private restaurant refuses to serve customers based on the race of the customer, the Constitution is not violated. This kind of discrimination may violate the Civil Rights Act of 1964 but not the Constitution. The Civil Rights Act of 1964 is a federal statute that outlaws private discrimination. A statute is a rule of law that comes from a legislature, such as Congress. Thus, statutes can and do add more rights to the rights contained in the Constitution. Chapter 7 covers the principle of state action but it is important to get a feel for the concept now.
   d. The 50 states can pass laws that add to our rights. The states cannot give fewer rights than the Constitution requires. Florida can pass a law tomorrow legalizing same-sex marriages, but Florida is not required by the Constitution to do so. Florida cannot pass a law requiring everyone to join a state religion because the First Amendment forbids it. Put another way, states are free to do anything they want as long as their laws do not conflict with the Constitution or federal statutes.

6. Take a few minutes to go through the original text of the Constitution and the 27 amendments. The entire Constitution can be read in a short time. However, over the years the United States Supreme Court has been called upon to interpret the Constitution, and as a result we have thousands of cases from the Court to consider as we try to understand constitutional law. These cases are the framework of the study of the Constitution because it is the job of the courts to tell us what the Constitution means and the extent to which the Constitution protects our rights.

EXERCISES

1. *Federalist No. 51* states “if angels were to govern men, neither external nor internal controls would be necessary.” State how the Constitution addresses this reality.
2. Diagram the three branches of the federal government and list the basic functions of each.
3. Read the Preamble of the Constitution and list the reasons that the Constitution was drafted.
INTERNET EXERCISES
   Click on “Federalist Papers.”
   a. What were the Federalist Papers?
   b. How many Federalist Papers were there?
   c. Who were the authors?

QUIZ
TRUE OR FALSE
1. The Articles of Confederation were America’s first constitution.
2. The Constitution replaced the Articles of Confederation.
3. The central or federal government was too strong during the era of the Articles of
   Confederation.
4. The government under the Articles of Confederation had no president.
5. The government under the Articles had no Congress.
6. The Federalist Papers were written to help get the Constitution ratified by the states.
7. James Madison was the primary drafter of the plan that became the Constitution.
8. The plan that came to be the Constitution was called the New Jersey Plan.
9. The Constitution required unanimous approval of the states before it became operative.
10. The Bill of Rights contains the first 10 amendments to the Constitution.

ANSWER KEY
1. True
2. True
3. False
4. True
5. False
6. True
7. True
8. False
9. False
10. True
Chapter Objectives
While studying this chapter, the student will learn to:
1. Identify the powers granted to Congress by Article I of the Constitution.
2. Identify the methods by which the powers of Congress are checked.
3. State ways in which the federal government is a limited government of enumerated powers.
4. Describe how Congress enlarges its scope of authority by use of its enumerated powers in conjunction with the Necessary and Proper Clause.

Constitutional Connector
Chapter 1 gave an overview of the structure of the Constitution under Madisonian democracy. This chapter covers the powers of the Congress and gives an introduction of how the powers of Congress interact with the powers of the president. Chapter 3 will cover the powers of the president and explore in depth the separation of powers that is part of component I of Madisonian democracy.

CHAPTER OUTLINE
Powers of the Congress
   Taxing and Spending Power
   War Power and Treaty Power
Supreme Court Opinions
   Clinton v. City of New York

STUDY TIPS
1. Keep in mind that Article I of the Constitution created the Congress, which consists of the House and the Senate. Article I gave Congress the power to make laws, not the president. Always bear in mind that Congress can only act if a power has been given to Congress by the Constitution.
2. Study Exhibit 2-1, which lists the major powers of Congress, and realize that for Congress to act it must base its laws on these powers.
3. Note that the Necessary and Proper Clause, when coupled with the enumerated powers, stretches the enumerated powers and produces implied powers. That is why the Necessary and Proper Clause is often called the elastic clause.
4. Note how the Congress and president check each other’s power. Only the Congress can create laws but the president can stop a bill from becoming law by using the veto. The Congress can then check the president by overriding the veto, but it will take a two-thirds vote of both houses. If a veto is overridden the bill becomes law. See Exhibit 2-2 on how a bill becomes a law.
5. The next chapter will explore further the checking of power between the Congress and the president.
EXERCISES

1. Go through the Constitution and state the constitutional requirements for a person to be:
   a. a member of the House of Representatives
   b. a member of the Senate
   c. the President
2. State the term of office for:
   a. a member of the House of Representatives
   b. a member of the Senate
   c. the President
3. State the total number of terms allowable for:
   a. a member of the House of Representatives
   b. a member of the Senate
   c. the President

INTERNET EXERCISES

1. Today the House of Representatives consists of 435 members and reflects about one representative for every 600,000 citizens. Go to http://www.archives.gov/national_archives_experience/constitution_transcript.html and determine how many representatives each state got in the first Congress.
   a. What is the popular name of the treaty?
   b. What was the vote for passage in the Senate?
3. To obtain a detailed review on how a bill becomes law, go to http://thomas.loc.gov/ and click on “How Congress Makes Laws.”

QUIZ

TRUE OR FALSE

1. Article II of the Constitution created the Congress.
2. The president makes the laws.
3. Only the Congress can tax and spend.
4. Congress consists of a House and Senate, and a bill must pass both houses before it can be presented to the president for his signature.
5. A bill must pass both houses of Congress by a two-thirds vote.
6. A two-thirds vote of both houses is required to override a presidential veto.
7. The line-item veto was declared unconstitutional.
8. The president can negotiate a treaty but the House must then approve the treaty by a two-thirds vote.
9. If a power is not delegated to the federal government that power is reserved to the states or to the people.
10. The Congress has implied power in addition to the enumerated powers.

ANSWER KEY

1. False
2. False
3. True
4. True
Chapter 2

5. False
6. True
7. True
8. False
9. True
10. True
Chapter Objectives

While studying this chapter, the student will learn to:

1. Identify the powers of the president.
2. Analyze the principle of the separation of powers in domestic and foreign arenas.
3. Examine the limits of presidential and congressional immunity.
4. Examine congressional oversight of the executive branch, including impeachment.

Constitutional Connector

Chapter 2 outlined the powers of Congress and gave some examples of how the powers of Congress and the powers of the president interact within component I of Madisonian democracy. This chapter will cover the powers of the president and issues of separation of powers as we see how the Supreme Court has struck the balance between presidential and congressional power.

CHAPTER OUTLINE

Powers of the President
   Delegation
Separated Powers
   The Steel Seizure Case
   Legislative Veto
Appointment and Removal of Presidential Appointees
Foreign Affairs
   Treaties and Executive Agreements
   War Powers Resolution
Presidential and Congressional Immunities
   Suing the President
   Executive Privilege—United States v. Nixon
   Congress—Speech or Debate Clause
Impeachment—The Ultimate Check on Executive Power
Congressional Power of Oversight and Investigation of the Executive Branch
Supreme Court Opinions
   United States v. Curtiss-Wright Export Corp.
   United States v. Nixon
STUDY TIPS

1. See Exhibit 3-1 for the powers of the president.
2. Note that the president’s powers are enlarged through delegation. Delegation is the transfer of power from the Congress to the president. See Exhibit 3-2, which shows the organization of the federal government.
3. Other examples of delegation: In 1991 and 2002, Congress authorized the president to use military force in Iraq.
4. Note that the president is the only official who represents the country at home and abroad.
5. Keep in mind that only Congress can declare war, but the president acting as commander in chief can commit armed forces to battle—presidents have done so hundreds of times in history. Congress has declared war very few times in history, the last time was World War II.
6. Note the ways that Congress and the president check each other’s powers through the principle of separation of powers.
7. Study the Steel Seizure case and Exhibit 3-3. The Supreme Court still uses this case as the key precedent.
8. Congress can check the president by impeachment, which is the voting of articles of impeachment, but the president can only be removed by a two-thirds vote of the Senate. No president has been removed from office. Bill Clinton and Andrew Johnson were impeached by the House. President Nixon resigned during Watergate and was not impeached by the House, although the House Judiciary Committee voted articles of impeachment.

EXERCISES

1. List some of the president’s powers and the checks on those powers possessed by Congress.
2. The Congress passed a law stating in part that, “The United States government neither directly nor indirectly shall supply arms to a group of rebels who are attempting to overthrow a Central American country.” Suppose that the president, while the law is in effect, supplies arms to a group of rebels. Review the three categories of presidential power as reflected in the Steel Seizure case and Exhibit 3-3 and state which category this presidential action is in.
3. Based on the facts of question 2, what are the options of the Congress?

INTERNET EXERCISES

1. To review the impeachment of President Clinton and the President’s rebuttal, go to http://www.cnn.com/starr.report/.
2. To obtain a list of President Bush’s cabinet, go to http://www.whitehouse.gov/government/. Click on “President Bush’s Cabinet.”
3. To see an example of a delegation of power from Congress to the president, where Congress authorized President Bush to invade Iraq in 2003, go to http://thomas.loc.gov/home/thomas2.html. Click on “Public Laws” and go to “107th Congress.” Go to “Public Law 107-243 (PL 107-243).”

QUIZ

TRUE OR FALSE

1. Article II created the executive branch.
2. The president is the chief executive officer of the federal government.
3. The Constitution gives the power to declare war to the president.
4. President Truman acted constitutionally when he seized steel mills in the Steel Seizure case.
5. The president is chosen by a direct vote of the people.
6. The line-item veto is unconstitutional.
7. The president exerts power by use of the legislative veto.
8. Congress can check the power of the president by voting to cut off funds for a presidential initiative.
9. Congress can remove the president from office by a vote of impeachment in the House and a two-thirds vote of the Senate.
10. President Clinton is the only president who has been impeached.

**ANSWER KEY**

1. True
2. True
3. False
4. False
5. False
6. True
7. False
8. True
9. True
10. False
Chapter Objectives
While studying this chapter, the student will learn to:
1. Identify the powers of the judicial branch.
2. Examine the power of judicial review.
3. Understand how the Supreme Court does its work.
4. Grasp the doctrines that limit access to the courts.

Constitutional Connector
Chapters 2 and 3 explained how the Supreme Court decided cases involving the powers of Congress and the president in relation to the doctrine of separation of powers. This chapter continues the coverage of component I of Madisonian democracy and discusses the powers given to the judicial branch. The focus is on how the Supreme Court accomplishes its constitutional duties under Article III through the use of judicial review.

CHAPTER OUTLINE
Powers of the Judicial Branch
   Judicial Review—Marbury v. Madison
How the Supreme Court Does Its Work
   Selection of Cases
   The Process of Deciding Cases
   Methods of Constitutional Interpretation
Federal Review of State Court Judgments
Doctrines That Limit Access to the Courts—Justiciability
   Standing
   Ripeness and Mootness
   Advisory Opinions
   Political Questions
Supreme Court Opinions
   Cooper v. Aaron
   Nixon v. United States

STUDY TIPS
1. Be sure you understand the principle of judicial review.
2. See the discussion of judicial review in the text in the context of the famous case of Marbury v. Madison.
3. Note that judicial review is not written anywhere in the Constitution, but was established in *Marbury v. Madison*.

4. Remember that through judicial review, the Supreme Court has the power to declare that acts passed by Congress are unconstitutional if they are in conflict with the Constitution.

5. Note also that the Supreme Court can declare acts of the president and laws of the states to be unconstitutional.

6. Judicial review is the exception rather than the rule, and the vast majority of laws are constitutional.

7. As powerful as the Supreme Court is, the Court must wait until a case is brought before it. The Court cannot just reach out and declare that a given law is unconstitutional, but must wait until a case is brought that deals with that law. See Exhibit 4-4 to visualize how a case gets to the Supreme Court.

8. Note that the Supreme Court and the lower federal courts are independent from the president and Congress. The president nominates all of the federal judges and the Senate must approve. Once on the Court, all federal judges serve for life and can only be removed by impeachment in the House and removal through the Senate, with a two-thirds vote needed for removal. Review Exhibits 4-1 and 4-2 to see the federal court system.

9. Examine the doctrines that limit access to the courts as set out in Exhibit 4-5. The term *justiciability* includes the concepts of the limiting doctrines of standing, ripeness, mootness, political question, and advisory opinions.

**EXERCISES**

1. Diagram the three levels of the federal court system.
2. Diagram the court system in your state.
3. Trace a case from the time that it is filed until it reaches the United States Supreme Court.

**INTERNET EXERCISES**

1. Go to [http://thomas.loc.gov/home/thomas2.html](http://thomas.loc.gov/home/thomas2.html).
   a. Scroll down to “Presidential Nominations.”
   b. Select “100th Congress.”
   c. The search term is “Robert Bork.”
   d. Bork was nominated by President Reagan to be an associate justice of the Supreme Court.
   e. What happened to the nomination?

2. Go to [http://thomas.loc.gov/home/thomas2.html](http://thomas.loc.gov/home/thomas2.html).
   a. Do same as step 1a above.
   b. Search for “Anthony Kennedy.”
   c. What happened to the nomination?

**QUIZ**

**TRUE OR FALSE**

1. Article III created the judicial branch.
2. The Supreme Court can hear and decide any case.
3. The principle of judicial review is stated in Article III of the Constitution.
4. Federal question cases are the only kinds of cases that can be brought into federal court.
5. The case of *Marbury v. Madison* established the principle of judicial review.
6. The Supreme Court advises the president on which laws are constitutional.
7. Supreme Court justices serve for life and can only be removed through the impeachment process.
8. It takes five justices to agree for a case to be heard by the Supreme Court.
9. A majority opinion by the Supreme Court establishes a precedent.
10. A party must establish standing in order for a court to decide the case.

ANSWER KEY

1. True
2. False
3. False
4. False
5. True
6. False
7. True
8. False
9. True
10. True
Federalism—Component II of Madisonian Democracy

Chapter Objectives

While studying this chapter, the student will learn to:

1. Analyze the relationship between the federal and state governments under the concept of federalism.
2. Assess the role of the Tenth Amendment in the Constitution's federal structure.
3. Assess the role of the Full Faith and Credit Clause in the Constitution's federal structure.
4. Analyze the impact of the Eleventh Amendment on federalism.

Constitutional Connector

The previous three chapters covered component I of Madisonian democracy, which consists of a federal government that disperses power within three co-equal branches. Congress, the president, and the Supreme Court interact and check each other's power under the principle of separation of powers. This chapter covers component II of Madisonian democracy—federalism, which disperses power a second time into one federal and 50 state governments.

CHAPTER OUTLINE

Federalism and the Tenth Amendment
Benefits of Federalism
Application of Federalism

McCulloch v. Maryland
Parameters of State and Federal Power

Federalism and the Eleventh Amendment
Federalism and Full Faith and Credit

Supreme Court Opinions

Garcia v. San Antonio Metropolitan Transit Authority
Printz v. United States

STUDY TIPS

1. Federalism is the principle wherein power is divided between the federal government and the government of the 50 states.
2. Keep in mind that federalism is a key component of Madisonian democracy because the goal is to avoid the concentration of power to preserve freedom.
3. Read the Tenth Amendment. This reflects the essence of federalism in that all power not delegated to the federal government is reserved to the states and the people.
4. Note the practical benefits of federalism listed in the text. Federalism allows for the states to experiment with policies and gives incentives for positive change.
5. Study one of the key cases in the history of constitutional law, McCulloch v. Maryland. See Exhibit 5-1 and note the two issues decided in McCulloch.
6. States possess police power, which can be seen as the reserved power of the Tenth Amendment. Realize that police power not only includes power to pass criminal laws, but also gives the states power to protect the health, welfare, and safety of their citizens.

7. See Exhibit 5-2, which outlines some recent Eleventh Amendment cases.

8. With its decisions in the Tenth and Eleventh Amendment cases, the Supreme Court has been tipping the balance of power under federalism in favor of the states.

9. Note that the Full Faith and Credit Clause acts as unifying force that obligates the states to recognize the judgments and laws of the other states.

**EXERCISES**

1. Read the Eleventh Amendment. How does the Eleventh Amendment prevent an individual from suing a state in federal court if the state is allegedly violating federal law?

2. A same-sex couple is married in New Mexico and then moves to Pennsylvania. What part of the Constitution and what federal law is implicated?

3. Read Article I of the Constitution. Note that Congress does not possess the power to create a bank. Why is it constitutional for Congress to charter a bank when that power is not enumerated in the Constitution?

**INTERNET EXERCISES**


**QUIZ**

**TRUE OR FALSE**

1. Federalism divides power among the three branches of the federal government.

2. The case of *McCulloch v. Maryland* had the effect of expanding federal power.

3. If there is a conflict between state law and federal law, state law prevails.

4. When Congress uses an enumerated power that is coupled with the Necessary and Proper Clause, the result is to establish implied powers.

5. The states are free to pass any laws as long as those laws do not conflict with the Constitution or federal law.

6. When Congress acts within its enumerated powers, Congress can preempt state law.

7. In recent Tenth Amendment cases the Supreme Court has ruled to increase federal power.

8. In recent Eleventh Amendment cases the Supreme Court has ruled to increase federal power.

9. The Full Faith and Credit Clause obligates the states to recognize the judgments and laws of the other states.

10. A state cannot be sued in federal court without that state’s consent.

**ANSWER KEY**

1. False
2. True
3. False
4. True
5. True
6. True
7. False
8. False
9. True
10. True
Chapter Objectives

While studying this chapter, the student will learn to:

1. Understand why and how the Commerce Clause is used by Congress to augment its power and justify the laws it passes.
2. Trace the development of the Commerce Clause and its relationship to federalism.
3. Examine the power and limitations that the states possess under the Dormant Commerce Clause.

Constitutional Connector

Chapter 5 covered component II of Madisonian democracy—federalism. Principles of federalism relate directly to this chapter because when Congress uses its commerce power to enlarge its power, the power of the states can be reduced, which in turn results in the loss of state sovereignty. Just as the Supreme Court has moved back and forth in its interpretation of federalism and the Tenth Amendment, the Court has moved back and forth in its interpretation of the Commerce Clause, sometimes favoring the federal government and sometimes favoring the states. This chapter focuses on how the Supreme Court has reacted when Congress exercises the use of its commerce power.

CHAPTER OUTLINE

Commerce Power
   Phase I—1824
   Phase II—1880–1930s
   Phase III—1880–1930s
   Phase IV—1930s–1995
   Phase V—1995–Present
Dormant Commerce Clause
   Application of Dormant Commerce Clause
Supreme Court Opinions
   Katzenbach v. McClung
   United States v. Lopez
STUDY TIPS

1. When you read this chapter keep in mind that the federal government is one of limited and enumerated powers. For Congress to pass laws, those laws must be based on an enumerated power. The power chosen by Congress time and again has been the power to regulate interstate commerce, given by Article I, Section 8, Clause 3. This power is referred to as commerce power or the Commerce Clause.

2. Refer back to Chapter 5, which covers federalism. Both Chapter 5 and this chapter explore the relationship of the federal government and the states. Both chapters cover cases where Congress passed laws based on the Commerce Clause and cover the issue of whether such laws invade the sovereignty of the states and violate principles of federalism and the Tenth Amendment.

3. Review the various phases of Commerce Clause development as illustrated in Exhibit 6-1. Note the various phases when the Court would uphold or strike down federal laws when Congress based these laws on the Commerce Clause. Review Exhibit 6-2, which outlines the extent of Commerce Clause power in Phase V, which is the current phase.

4. Note that Congress used the Commerce Clause to pass the Civil Rights Act of 1964. The Civil Rights Act was found to be constitutional in the cases of Katzenbach v. McClung and Heart of Atlanta Motel v. United States.

5. Review Exhibit 6-3 to visualize the Dormant Commerce Clause. Realize that the Dormant Commerce Clause involves state regulation of interstate commerce. The issue in Dormant Commerce Clause cases is whether the state law interferes with the free flow of interstate commerce or tries to protect one state’s market at the expense of the other states. If it does, the state law violates the Dormant Commerce Clause.

EXERCISES

1. Trace the five phases of Commerce Clause development.

QUIZ

TRUE OR FALSE

1. Congress uses the Commerce Clause to address a variety of social issues.
2. Congress possesses police power.
3. The states possess police power.
4. The Supreme Court has been inconsistent in deciding cases under the Commerce Clause.
5. The current trend in Commerce Clause cases is to favor federal power as opposed to state power.
6. Congress has used the Commerce Clause to outlaw racial and gender discrimination.
7. Because guns in schools are a national problem, Congress can use the Commerce Clause to make it a crime to possess a gun within 1,000 feet of a school.
8. Commerce includes such activities as transportation, traffic, trade, telephones, and faxes.
9. The Dormant Commerce Clause involves state regulation of commerce.
10. State regulation of commerce must not interfere with the free flow of interstate commerce.

ANSWER KEY

1. True
2. False
3. True
4. True
5. False
6. True
7. False
8. True
9. True
10. True
Guarantees and Protection of Rights—Component III of Madisonian Democracy

Chapter Objectives
While studying this chapter, the student will learn to:
1. Examine the rights that are set out in the text of the original Constitution, the Bill of Rights, and the Civil War Amendments.
2. Understand and apply the principle of state action.
3. Comprehend and assess incorporation of the Bill of Rights through the Fourteenth Amendment.
4. Learn how additional rights can be added to the Constitution through the amendment process.

Constitutional Connector
The previous chapters emphasized that the Constitution protects individuals from the intrusion of government by creating and then dispersing power into three branches of government (Chapters 2, 3, and 4—component I of Madisonian democracy). For a double layer of protection, power is divided a second time under principles of federalism (Chapter 5—component II of Madisonian democracy). This chapter will cover component III of Madisonian democracy by surveying the guarantees of rights that are listed in the original text of the Constitution, the Bill of Rights, and other key amendments including the Thirteenth, Fourteenth, and Fifteenth Amendments.

CHAPTER OUTLINE
Constitutional Rights
The Principle of State Action
State Action and the Thirteenth Amendment
Rights in Original Text of the Constitution
Bill of Rights
The Civil War Amendments
Amending the Constitution
Supreme Court Opinions
The Civil Rights Cases
Moose Lodge No. 107 v. Irvis

STUDY TIPS
1. This chapter sets out the rights in the original Constitution, Bill of Rights, and later amendments that compose component III of Madisonian democracy. Note that the remaining chapters in the text explore in detail how the Supreme Court decides cases. Chapter 8 covers criminal justice; Chapter 9 covers due process; Chapter 10 covers privacy, abortion, and end of life decisions; Chapter 11 covers equal protection; and Chapter 12
covers First Amendment rights. Review Exhibits 7-1 and 7-3 to see a listing of rights. As you read this chapter reflect back on the first six chapters, which lay out the structure of the Constitution. Then look ahead to Chapters 8 through 12, which cover rights and how the Supreme Court protects those rights through the process of judicial review.

2. Realize that through the doctrine of selective incorporation most of the rights of the Bill of Rights apply to the federal and state governments. See Exhibit 7-2, which illustrates incorporation. Review Exhibit 7-3, which lists the rights of the Bill of Rights that have and have not been incorporated.

3. The principle of state action is one of the most surprising concepts and one of the keys to understanding the basic core of constitutional law. State action means that for the Constitution to be violated the government must be the violator. Another way to think of it is that, for the most part, only the federal, state, or local government can violate our constitutional rights. This may seem strange, but it is a basic tenet of constitutional law.

4. See the DeShaney case to understand the principle of state action. The boy was harmed by his father—not the county—so there was no state action.

5. Note how difficult it is to amend the Constitution. For a proposal to become an amendment to the Constitution it must pass both houses of Congress by two-thirds vote and then be approved by three-fourths of the states.

**EXERCISES**

Match the right with the amendment.

1. Freedom of speech and religion  
   a. Fifth Amendment
2. No illegal searches and seizures  
   b. Sixth Amendment
3. No cruel and unusual punishment  
   c. First Amendment
4. Right to a lawyer  
   d. Fourth Amendment
5. Right not to incriminate oneself  
   e. Eighth Amendment

**INTERNET EXERCISES**

   a. Which amendment put term limits on the president?
   b. One amendment was not ratified by state legislatures, but by ratifying conventions. Which amendment?
   c. Which amendment changed how senators are selected? What was the change?

**QUIZ**

**TRUE OR FALSE**

1. All of the rights of the Bill of Rights apply to the federal and state governments.
2. Generally, only the government can violate the Constitution.
3. The Constitution lists rights in the original text, in the Bill of Rights, and in later amendments.
4. The Constitution is violated when a private college refuses to admit women.
5. There are 25 amendments to the Constitution.
6. The Constitution sets out specific laws to govern individuals.
7. The Supreme Court protects individual rights by the use of judicial review.
8. Amendments Thirteen, Fourteen, and Fifteen are known as the Civil War Amendments.
9. The Civil War Amendments increased the power of the states.
10. A statute is required to outlaw private discrimination in restaurants and hotels.
Guarantees and Protection of Rights—Component III of Madisonian Democracy

ANSWER KEY

1. False
2. True
3. True
4. False
5. False
6. False
7. True
8. True
9. False
10. True
Chapter Objectives

While studying this chapter, the student will learn to:

1. Explore the interrelationship of the Constitution and criminal justice.
2. Obtain an understanding of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments within the context of criminal justice.

Constitutional Connector

The goal of this chapter is to view the three components of Madisonian democracy covered in the first seven chapters within the context of the criminal justice system. Because the Constitution gave increased power to the federal government, the threat against individual liberties also increased. This increase in the power of the federal government caused many to call for a Bill of Rights to restrain this new and powerful federal government. The Bill of Rights and specifically Amendments Four, Five, Six, and Eight are at the heart of the study of criminal justice. Before covering the rights enumerated in the Bill of Rights (component III of Madisonian democracy), this chapter will cover component I, creation and then separation of powers into three branches of government; and component II, federalism—the further separation of power into a federal government and the governments of the states.

CHAPTER OUTLINE

The Constitution and Criminal Justice
   The Presumption of Innocence and Guilt beyond a Reasonable Doubt
Criminal Justice and Separation of Powers
Criminal Justice and Federalism
Fourth Amendment
   What Is Not Covered under the Fourth Amendment
   Warrants
   Exclusionary Rule
   Seizure of Person (Arrest)
   Probable Cause
   Exceptions to the Search Warrant Requirement
   Search and Bodily Invasions
   Students and Public Employees
   Fourth Amendment Electronic Surveillance
Fifth Amendment
   Miranda Warnings
   Issues of Immunity at Trial
Sixth Amendment
- Sixth Amendment Right to a Lawyer
- Sixth Amendment Right to Effective Assistance of Counsel
- Sixth Amendment Identification Procedures—Lineups, Showups, Photo Identification
- Sixth Amendment Right to a Jury Trial
- Sixth Amendment Right to a Speedy Trial
- The Sixth Amendment and the Confrontation of Witnesses
- Sixth Amendment and Right to a Public Trial

The Eighth Amendment
- Cruel and Unusual Punishment—Death Penalty
- Cruel and Unusual Punishment—Non-Death-Penalty Cases

Appeals and Habeas Corpus

Supreme Court Opinions
- Hamdi v. Rumsfeld
- Kyllo v. United States

STUDY TIPS

1. As you read through this chapter keep in mind how important the study of the Constitution is to a professional in the field of criminal justice. This is so because the Supreme Court interprets the Constitution and in doing so lays down principles that must be followed by everyone. Miranda warnings are a good example of this. Also, the Supreme Court establishes the rules of search and seizure under the Fourth Amendment. The rights of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments are at the core of the study of criminal justice.

2. Realize that the Supreme Court enforces the rights of the Fourth, Fifth, Sixth, and Fourteenth Amendments through the Exclusionary Rule. If law enforcement officials violate the rights of an individual, a court may exclude the illegally obtained evidence from the trial. That excluded evidence can be in the form of statements or physical evidence such as a gun or drugs.

3. When evidence is excluded, the search for the truth at trial is limited in order to promote other values that are embodied in the amendments. Those values and rights include the right to be free of illegal searches and seizures, the right not to incriminate oneself, and the right to a lawyer. Even if the Exclusionary Rule is violated the evidence may still be used to impeach the defendant at trial.

4. Read the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and differentiate which rights come from which amendments.

5. See Exhibit 8-1, “Criminal Justice and Separation of Powers.” Note the workings of separation of powers (component I of Madisonian democracy). The president, congress, and courts each have a vital role. At the state level, power is separated among the governor, state legislature, and state court system.

6. Study the recent cases on separation of powers and the war on terrorism and review Exhibit 8-2.

7. Note that federalism, component II of Madisonian democracy, plays a role in criminal justice. Congress must not invade the powers of the states when it passes criminal law. Most criminal laws are state laws. In addition, states are free to add more rights than the federal Constitution requires.

8. Remember that most of the rights of the Bill of Rights have been incorporated and apply to the states as well as the federal government.

9. Take note of when the Fourth Amendment comes into play and note the exceptions to the search warrant requirements. See Exhibit 8-3.

10. Read the Fifth Amendment and take note of when the Fifth Amendment can and cannot be invoked. See Exhibit 8-4. Do the same with the Sixth Amendment and see Exhibit 8-5.
11. Note the many other rights that are included in the Sixth Amendment.
12. The Eighth Amendment prohibits cruel and unusual punishment but the death penalty is not per se unconstitutional. For the death penalty to be constitutional the trial must be separated into a guilt phase and a penalty phase where evidence of aggravating circumstances and mitigating circumstances can be admitted.

EXERCISES

1. The Fourth Amendment establishes a requirement that search warrants are required for police to conduct a search. State the exceptions to the search warrant requirement. Why were these exceptions established?
2. Miranda warnings are required when the police have a suspect in custody. State the Miranda warnings and explain why they were established by the Supreme Court.

INTERNET EXERCISES

1. Go to http://thomas.loc.gov. Click on “107 Congress.” Click on “Bill Status and Summary” and put in the search “USA Patriot Act.” Click on “HR 2975.” Scroll down to “Text of Legislation” and click. Click on the third version. This is the Patriot Act. Hit the Back button twice and click on “CRS Summary.” This explains the changes made by the Patriot Act, including changes to the Foreign Intelligence Surveillance Act.
2. The Patriot Act made changes to the Foreign Intelligence Surveillance Act (FISA), which was passed in 1978. To see a summary of the FISA, go to http://thomas.loc.gov. Go to the “95th Congress.” Click on “Public Laws.” Put in as a search “95-511.” Click on “S-1566.” Scroll down to “Summary.” This is a summary of the FISA as passed in 1978. The Patriot Act made changes to FISA.

QUIZ

TRUE OR FALSE

1. The Supreme Court plays no role in the area of criminal justice.
2. The Exclusionary Rule requires the exclusion of evidence if that evidence was obtained in violation of a defendant’s constitutional rights.
3. Issues of separation of powers and federalism are important elements in criminal justice.
4. States can afford more but not less rights than the Constitution requires.
5. A reasonable expectation of privacy is required to trigger the protections of the Fourth Amendment.
6. A search warrant is always required for a search to be legal.
7. The Fifth Amendment right not to incriminate oneself cannot be invoked when a person is interrogated by police.
8. Miranda warnings are required by the Constitution.
9. The Sixth Amendment right to a lawyer is triggered when a person is questioned by the police.
10. The Eighth Amendment prohibits cruel and unusual punishment.

ANSWER KEY

1. False
2. True
3. True
4. True
5. True
6. False
7. False
8. True
9. False
10. True
Chapter Objectives

While studying this chapter, the student will learn to:

1. Compare and contrast procedural due process and substantive due process.
2. Distinguish the rights that are categorized as fundamental and nonfundamental.
3. Explain how the Court establishes and defines fundamental rights through the “liberty” concept of the Due Process Clause.
4. Understand and apply the strict scrutiny and rational basis tests to due process issues.

Constitutional Connector

The previous chapter covered constitutional rights in the context of the criminal justice system. This chapter covers fundamental constitutional rights within the context of component III of Madisonian democracy, primarily in a noncriminal setting, and explains how the Supreme Court interprets the Constitution to establish fundamental rights and explains the tests developed and used by the Supreme Court to decide cases involving procedural and substantive due process.

CHAPTER OUTLINE

Due Process
Procedural Due Process
Substantive Due Process
Other Fundamental Rights
   Strict Scrutiny and Rational Basis
Liberty of Contract No Longer a Fundamental Right
Supreme Court Opinions
   Lawrence v. Texas
   Michael H. v. Gerald D.

STUDY TIPS

1. Don’t think of due process as just one concept. Due process encompasses a number of different principles. Take a look at Exhibit 9-1 to see the three basic parts of due process. The three parts of due process are: (1) due process incorporates most of the rights of the Bill of Rights; (2) due process has a procedural component; and (3) substantive due process. Keep these three parts of due process in mind as you read through the chapter.
2. Incorporation, one of the parts of due process, was covered in Chapters 7 and 8.
3. Read through the cases on procedural due process and note that when procedural due process is invoked the issue is the steps the government must go through before life, liberty, and property can be taken away.
4. Note the basic components of procedural due process as set out in Exhibit 9-2. The government cannot take away our life, liberty, or property without due process of law.
5. The rest of the chapter is devoted to substantive due process. See Exhibits 9-3 and 9-4 to visualize substantive due process and to see the rights that are established under substantive due process. Some of these rights are the right to an abortion, the right of privacy, and the right to use contraceptives.

6. Note the tests used in this area of the law: strict scrutiny tests for fundamental rights protected under substantive due process and rational basis tests for all other laws.

7. Note also that when the Supreme Court uses strict scrutiny to strike down laws that infringe on fundamental rights, the Court overturns the majority that passed the law. The fundamental rights created under substantive scrutiny are thus kept out of the political process. Abortion is a good example. States can regulate abortion, but since abortion is a fundamental right states cannot ban all abortions.

8. Also note that sometimes the Court uses the rational basis test and still strikes down the law at issue. See Lawrence v. Texas.

EXERCISES

1. The Fourteenth Amendment Due Process Clause protects life, liberty, and property. State some interests that the Supreme Court has found to be constitutionally protected.

2. State some interests that are not constitutionally protected under the Due Process Clause.

3. List some of the rights protected under the substantive component of the Due Process Clause.

INTERNET EXERCISES


QUIZ

TRUE OR FALSE

1. Due process contains at least three different classes.
2. The government can take away our life, liberty, and property but must first afford due process.
3. All interests are protected under due process.
4. Fundamental rights are established under the theory of substantive due process.
5. Both the Fifth and Fourteenth Amendments contain Due Process Clauses.
6. The Fifth Amendment’s Due Process Clause applies to the states.
7. The Fourteenth Amendment’s Due Process Clause applies to the federal government.
8. Most laws are judged under the rational basis test.
9. Most laws involve fundamental rights.
10. Freedom of contract is a fundamental right protected under the Constitution.

ANSWER KEY

1. True
2. True
3. False
Chapter 9

4. True
5. True
6. False
7. False
8. True
9. False
10. False
Chapter Objectives

While studying this chapter, the student will learn to:

1. Trace and understand the origins of the right of privacy as it relates to abortion rights.
2. Understand the Court’s reasoning in interpreting the constitutionally protected right of privacy.
3. Assess the constitutionality of a ban on partial birth abortion.
4. Compare the right to refuse medical attention with laws that ban assisted suicide.

Constitutional Connector

The previous chapter covered procedural due process, substantive due process, and the use of “liberty” concept of the Due Process Clause as a limitation of the power of government to enact laws that impinge on fundamental constitutional rights. This chapter traces the right of privacy as an aspect of substantive due process in the context of abortion rights and end-of-life decisions.

CHAPTER OUTLINE

Liberty, Privacy, and Abortion
- Development of Privacy and Griswold
- Ninth Amendment
- Government Funding of Abortion
- Partial Birth Abortion

End-of-Life Decisions—Right to Refuse Medical Attention and Right to Assisted Suicide
- Supreme Court Opinions
  - Griswold v. Connecticut
  - Roe v. Wade

STUDY TIPS

1. Note how this chapter traces the development of the right of privacy including Griswold (right of privacy), Roe (legalized abortion), Casey (upheld but modified Roe), and Carhart (partial birth abortion ban unconstitutional). These cases stand for the principle that the Constitution, specifically the Liberty Clause of the Fourteenth Amendment, creates a zone of privacy that the government cannot enter. This constitutional right of privacy is sometimes referred to as the right of personal autonomy. Study Exhibits 10-1 (right of privacy), 10-2 (Roe trimesters), and 10-3 (Casey’s modification of Roe).

2. It is a good idea to look back at Chapter 9, which discussed substantive due process, as you read this chapter. Abortion rights are protected under a substantive due process theory as part of the liberty concept of the Fourteenth Amendment’s Due Process Clause.
3. Read the Ninth Amendment, as some justices see the Ninth Amendment as a source of the right of privacy.

4. Note that 1992’s *Casey* modified *Roe* by abolishing the trimester framework of *Roe*. *Casey* upheld abortion as a fundamental right and established viability as the constitutional dividing line. Prior to viability, a state can regulate but cannot ban abortion. After viability a state can ban abortions as long as the law has a “health and life of the mother” exception.

5. The recent federal law banning partial birth abortion was declared unconstitutional by two lower federal courts. The courts followed the *Carhart* decision in ruling that the law was unconstitutional because it contained no health of the mother exception and because the law created an undue burden on a woman’s right to choose an abortion.

6. The Court has ruled that a competent adult has a liberty interest in refusing medical attention. However, assisted suicide laws are constitutional.

**EXERCISES**

1. Read the Ninth Amendment. Can the Ninth Amendment be the basis of a constitutional right of privacy? Explain.

2. Trace the development of the right of privacy from the early cases through *Griswold* and *Roe*.

3. What are the three basic principles established by *Roe* and *Casey*?

**INTERNET EXERCISES**

1. Go to [http://thomas.loc.gov/home/thomas2.html](http://thomas.loc.gov/home/thomas2.html). Click on “Bill Summary and Status for the 108th Congress.” Put in the search term “partial birth abortion.” Click on the fifth selection, which is Senate Bill 3. This is the federal ban on partial birth abortion, PL 108–105.

**QUIZ**

**TRUE OR FALSE**

1. The case of *Griswold v. Connecticut* established a constitutional right of privacy.

2. A fundamental right is judged under the strict scrutiny test.

3. States can ban abortion at all stages of a pregnancy.


5. *Roe v. Wade* has been overruled.

6. The *Casey* case established the undue burden test to judge abortion laws.

7. The Supreme Court upheld a state law that banned partial birth abortion.

8. States must make funds available to those who cannot afford the abortion procedure.

9. States cannot ban abortion prior to viability.

10. *Casey* has overruled the trimester test established by *Roe*.

**ANSWER KEY**

1. True

2. True

3. False

4. True

5. False
6. True
7. False
8. False
9. True
10. True
Chapter Objectives

While studying this chapter, the student will learn to:

1. Distinguish between due process and equal protection.
2. Identify and apply the various tests used in equal protection analysis.
3. Identify the role of equal protection in analyzing affirmative action cases.
4. Assess equal protection and racial gerrymandering.

Constitutional Connector

The previous chapters have discussed the process the Supreme Court uses to analyze state and federal statutes that are challenged as an infringement of a person’s rights that are guaranteed under the Due Process Clause of the Fourteenth and Fifth Amendments. The Equal Protection Clause of the Fourteenth Amendment states in part that a state shall not “deny to any person within its jurisdiction the equal protection of the laws.” This chapter explains how the Court analyzes a statute to decide if that statute violates the Equal Protection Clause.

CHAPTER OUTLINE

Due Process versus Equal Protection
Classifications under Equal Protection
Origins of Equal Protection—Race
   Equal Protection—Race, Strict Scrutiny
   Equal Protection—Fundamental Rights, Strict Scrutiny
   Equal Protection—Gender, Middle-Level Scrutiny
   Equal Protection—Illegitimacy, Middle-Level Scrutiny
   Equal Protection—Economic and Social Classifications, Rational Basis
   Equal Protection—Alienage, Strict Scrutiny and Rational Basis
   Equal Protection—Other Classifications, Rational Basis
Affirmative Action
Gerrymandering and Equal Protection
Racial Gerrymandering
Supreme Court Opinions
   Brown v. Board of Education
   Railway Express Agency, Inc. v. New York

STUDY TIPS

1. Read the first page of the chapter carefully to find out when to analyze a law under due process as opposed to equal protection. Then study the Equal Protection Clause and learn the classifications and the corresponding tests that the Supreme Court has developed. See Exhibits 11-1 and 11-2 for the classifications and the tests used to analyze these laws.
2. Note that the Equal Protection Clause comes into play when a law classifies individuals. Most classifications are legal, but when a law classifies on the basis of a protected class such as race or gender, a higher level of scrutiny is used to make sure the law does not violate the Equal Protection Clause.

3. When a state law classifies, the Equal Protection Clause of the Fourteenth Amendment is implicated. When the federal government classifies, the Fifth Amendment is implicated. Note that the Fifth Amendment does not contain an Equal Protection Clause, but the Supreme Court ruled that the federal government must also afford equal protection through the Due Process Clause of the Fifth Amendment.

4. As you read about affirmative action, note that the Equal Protection Clause comes into play when affirmative action plans use race or gender as a tool to remedy discrimination. See Exhibit 11-3 for an overview of affirmative action in education.

5. The Equal Protection Clause is also implicated in racial gerrymandering. See Exhibit 11-4.

6. Review Exhibit 11-5 for an overview of the efforts to stop discrimination.

EXERCISES

Match the classification with the constitutional test. (A choice can be used more than once or not at all.)

1. gender  a. rational basis
2. race     b. middle level
3. economic and social class  c. strict scrutiny
4. illegitimates  d. rational scrutiny

INTERNET EXERCISES

   a. What is the name of the case?
   b. When was the case decided?
   c. This case overruled two prior Supreme Court cases. State the names of these two cases.

QUIZ

TRUE OR FALSE

1. Equal protection concerns laws that classify individuals into groups.
2. When race is used to classify individuals the strict scrutiny test is used.
3. A state university that excluded women would be in violation of the Fourteenth Amendment.
4. A federal university that excluded women would violate the Fifth Amendment.
5. The rational basis test is used to judge laws that classify on the basis of gender.
6. Most laws are evaluated by the Supreme Court under the rational basis test and are thus upheld as unconstitutional.
7. The principle of separate but equal was overruled in the case of Brown v. Board of Education.
8. Racial diversity on a college campus is a compelling interest that can justify the use of race in affirmative action plans.
9. A congressional district that uses race as the predominant factor is racially gerrymandered and violates the Equal Protection Clause.
10. Even when a compelling interest is found, an affirmative action plan must still be narrowly tailored.
ANSWER KEY

1. True
2. True
3. True
4. True
5. False
6. True
7. True
8. True
9. True
10. True
First Amendment Rights and Component III of Madisonian Democracy

Chapter Objectives
While studying this chapter, the student will learn to:
1. Understand freedom of speech, press, and association.
2. Understand freedom of religion.

Constitutional Connector
This chapter is a survey of the rights of the First Amendment and highlights some of the key cases in connection with freedom of speech, press, and association and freedom of religion. The Supreme Court within component III of Madisonian democracy protects the First Amendment rights through the use of judicial review. Because First Amendment rights are fundamental rights, the Supreme Court for the most part uses strict scrutiny (see Chapters 9, 10, and 11 for a discussion of the strict scrutiny test). The Court has also developed other tests that are specific to First Amendment cases.

CHAPTER OUTLINE
The First Amendment
Freedom of Speech
Time, Place, and Manner
Speech Not Protected by First Amendment
Freedom of Religion
Supreme Court Opinions
Reno v. American Civil Liberties Union
Employment Division, Department of Human Resources v. Smith

STUDY TIPS
1. Note the many rights included in the First Amendment. See Exhibit 12-1 for a listing of First Amendment rights and the cases that incorporated these rights.
2. Note that the strict scrutiny test is used for most First Amendment issues.
3. Notice the differences between a content-based law and a content-neutral law.
4. Become familiar with the term time, place, and manner restriction, and other terminology in the chapter that is specific to First Amendment cases.
5. See Exhibit 12-2 and note the kinds of speech that are not protected by the First Amendment.
6. Note that burning the flag in protest as political expression is protected under the First Amendment. This kind of political speech is the most highly protected form of speech.
7. Believe it or not, nude dancing is protected expression under the First Amendment.
8. Carefully review the definition of obscenity and note that obscenity is *not* protected speech but indecency is! Where the line is drawn is the difficult part. Look at *Miller,* which gave an extensive definition of obscenity.

9. Examine Exhibit 12-3, which lists the extent of regulation allowed for different types of media.

10. Remember that freedom of religion has two separate parts: the Free Exercise Clause and the Establishment Clause.

11. Review the numerous cases where issues involving the Free Exercise Clause and the Establishment Clause are decided.

**EXERCISES**

1. Review Exhibit 12-2 and state one example of the six areas of speech that are not protected by the First Amendment.

**INTERNET EXERCISES**


2. Now put in as a search "Howard Stern" and click on the various actions taken by the FCC against his radio show.

**QUIZ**

**TRUE OR FALSE**

1. Obscenity is not protected speech under the First Amendment.

2. Freedom of speech is a fundamental right.

3. Reasonable time, place, and manner restrictions can be placed on speech.

4. A content-neutral law is one that prohibits the message the speech conveys.

5. A law is vague when a reasonable person would not know if he or she is violating it.

6. When a law is broader than necessary to achieve its purpose, the law is overbroad.

7. Burning the flag in protest is not protected under the First Amendment.

8. Nude dancing is protected expression under the First Amendment.


10. A school-sponsored prayer by a student at a football game does not violate the Establishment Clause.

**ANSWER KEY**

1. True

2. True

3. True

4. False

5. True

6. True

7. False

8. True

9. True

10. False