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# The Scope Of Congressional Powers

## Chapter 11 Answers

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The New Imperial Presidency

Reading and Understanding Constitutional Law

Congressional Power, Judicial Doctrine, and Constitutional Law

Keyed to Stone

John Marshall and the 200-Year Odyssey of *McCulloch v. Maryland*

Examples and Explanations

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The Oxford Handbook of U.S. National Security

Nationwide Service of Process, Personal Jurisdiction and the Bankruptcy Code

Hearing Before the Subcommittee on Fisheries, Wildlife, and Water of the Committee on Environment and Public Works, United States Senate, One Hundred Ninth Congress, Second Session, August 1, 2006

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Our Democracy  
Congressional Research Service, April 6 2012  
Legalines on Constitutional Law  
Presidential Power  
The Origins of the Necessary and Proper Clause

*The Scope Of  
Congressional Powers  
Chapter 11 Answers*

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## **HARRISON JORDAN**

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*The New Imperial Presidency* Aspen  
Publishers

Congress' power to legislate is not unlimited and federal courts have an obligation to monitor Congress' exercise of its authority. In creating the current Fifth Amendment analysis, federal courts have fallen woefully short in defining the

scope of congressional authority. Courts must develop an analytical framework that recognizes and responds to the varying strengths of the federal interest. This Article contends that in the bankruptcy context, the nature of the claim being litigated alters the balance under the Fifth Amendment analysis and acts as a limitation on Congress' otherwise broad power to authorize bankruptcy courts to exercise personal jurisdiction based on nationwide service

of process. Specifically, when a bankruptcy court resolves a dispute that arises under state law, the federal interest is arguably at its lowest ebb and the defendant's liberty interests protected by the due process clause are brought to the forefront. In such instances, the bankruptcy court is enforcing state substantive rights not a federally-created right and thus the interests of the sovereign are diminished as are its coercive powers. In these circumstances, the current, one-size-fits-all Fifth Amendment analysis is ill-suited to protect the individual liberty interests at stake.

### **Reading and Understanding**

**Constitutional Law** DIANE Publishing 2019 marks the 200th anniversary of one of the most important Supreme

Court decisions in American history: *McCulloch v. Maryland*. The state of Maryland tried to impede the establishment of the Bank of the United States, but Chief Justice John Marshall decided that the Necessary and Proper clause of the Constitution gave the federal government implied powers that allowed it to charter the bank without hindrance. The decision expanded the power of the national government vis-à-vis the states, and it still figures centrally in contemporary debates about the scope of national legislative power. Indeed, Chief Justice Roberts' 2012 decision upholding the Affordable Care Act relied on it. In *The Spirit of the Constitution*, David S. Schwartz tells the story of the decision's long-term impact and the evolution of Justice Marshall's

reputation. By tracing the rich history of McCulloch's influence from 1819 to the present, he shows that its meaning-and significance-for judges, political leaders, and the public varied greatly over time. The case was alternately celebrated, denounced, ignored, and reinterpreted to suit the needs of the moment. While Marshall was never reviled, he was not seen as especially influential until the late nineteenth century. Competing parties utilized McCulloch in constitutional debates over national power in the early republic; over the question of slavery in the late antebellum period; and over Congress's role in regulating the economy and civil rights in the twentieth century. Even after McCulloch's meaning seemed fixed by the mid-twentieth century, new

debates about its implications have emerged in recent times. Schwartz's analysis of McCulloch's remarkable impact reaffirms the case's importance and unveils the circuitous process through which American constitutional law and ideology are made.

Congressional Power, Judicial Doctrine, and Constitutional Law Gilberts Law Summaries

"The Oxford Handbook of US National Security frames the context, institutions, and processes the US government uses to advance national interests through foreign policy, government institutions, and grand strategy. Contributors examine contemporary national security challenges and the processes and tools used to improve national security."-- Provided by publisher.

**Keyed to Stone** University of Chicago Press

The Necessary and Proper Clause is one of the most important parts of the US Constitution. Today this short thirty-nine-word paragraph is cited as the legal foundation for much of the modern federal government. Through three independent lines of research, the authors trace the lineage of the Necessary and Proper Clause to the everyday law of the Founding Era - the same law that American founders such as Madison, Hamilton, and Washington applied in their daily lives. Origins of the Necessary and Proper Clause are found in law-governing agencies, public administration, and corporations. Moreover, all of those areas were undergirded by common principles of

fiduciary responsibility - reflecting the Founders' view that a public office is truly a public trust. This explains the choice of language in the clause and provides clues about its meaning. This book thus serves as a reference source for scholars seeking to understand the intellectual foundations of one of the Constitution's most important clauses. [John Marshall and the 200-Year Odyssey of McCulloch v. Maryland](#) University of Michigan Press

The dramatic, untold story of how women battled blatant inequities in America's legal system. As late as 1967, men outnumbered women twenty to one in American law schools. With the loss of deferments from Vietnam, reluctant law schools began admitting women to avoid plummeting enrollments. As women

entered, the law resisted. Judges would not hire women. Law firms asserted a right to discriminate against women. Judges permitted discrimination by employers against pregnant women. Courts viewed sexual harassment as, one judge said, "a game played by the male superiors." Violence against women seemed to exist beyond the law's comprehension. In this landmark book, Fred Strebeigh shows how American law advanced, far and fast. He brings together legal evidence and personal histories to portray the work of concerned women and men to advance legal rights in America. *Equal* combines interviews with litigators, plaintiffs, and judges, including Ruth Bader Ginsburg and Catharine MacKinnon, along with research from private archives of

attorneys who took cases to the Supreme Court, to narrate battles waged against high odds and pinnacles of legal power. *Equal*, in the words of Professor Suzanne A. Kim of Rutgers Law School, is a book for "anyone interested in how each individual can improve our society through compassion, drive, and creativity."

*Examples and Explanations* Harvard University Press

This is a print on demand edition of a hard to find publication. The lines of authority between states and the federal gov;t. are, to a significant extent, defined by the U.S. Constitution and relevant case law. In recent years, however, the Supreme Court has decided a number of cases that would seem to re-evaluate this historical

relationship. This report discusses state and federal legislative power, focusing on a number of these federalism cases. The report does not, however, address the larger policy issue of when it is appropriate as opposed to constitutionally permissible to exercise federal powers. Contents: Powers of the States; Powers of the Federal Govt.; The Commerce Clause; The 14th Amendment; The 10th Amendment; 11th Amend. and State Sovereign Immunity; The Spending Clause; Conclusion.

**United States Government** NYU Press  
The fundamental fact about our Constitution is that it is old -- the oldest written constitution in the world. The fundamental challenge for interpreters of the Constitution is how to read that old document over time. In Fidelity &

Constraint, legal scholar Lawrence Lessig explains that one of the most basic approaches to interpreting the constitution is the process of translation. Indeed, some of the most significant shifts in constitutional doctrine are products of the evolution of the translation process over time. In every new era, judges understand their translations as instances of "interpretive fidelity," framed within each new temporal context. Yet, as Lessig also argues, there is a repeatedly occurring countermove that upends the process of translation. Throughout American history, there has been a second fidelity in addition to interpretive fidelity: what Lessig calls "fidelity to role." In each of the cycles of translation that he describes, the role of the judge -- the



ultimate translator -- has evolved too. Old ways of interpreting the text now become illegitimate because they do not match up with the judge's perceived role. And when that conflict occurs, the practice of judges within our tradition has been to follow the guidance of a fidelity to role. Ultimately, Lessig not only shows us how important the concept of translation is to constitutional interpretation, but also exposes the institutional limits on this practice. The first work of both constitutional and foundational theory by one of America's leading legal minds, *Fidelity & Constraint* maps strategies that both help judges understand the fundamental conflict at the heart of interpretation whenever it arises and work around the limits it inevitably creates.

*A Reference Guide to the United States Constitution ABC-CLIO*

Congress's contempt power is the means by which Congress responds to certain acts that in its view obstruct the legislative process. Chapter 1 examines the source of the contempt power, reviews the historical development of the early case law, outlines the statutory and common law basis for Congress's contempt power, and analyses the procedures associated with inherent contempt, criminal contempt, and the civil enforcement of subpoenas. It also includes a detailed discussion of two recent information access disputes that led to the approval of contempt citations in the House against then-White House Chief of Staff Joshua Bolten and former White House Counsel Harriet Miers, as

well as Attorney General Eric Holder. Congress gathers much of the information necessary to oversee the implementation of existing laws or to evaluate whether new laws are necessary from the executive branch. While executive branch officials comply with most congressional requests for information, there are times when the executive branch chooses to resist disclosure. When Congress finds an inquiry blocked by the withholding of information by the executive branch, or where the traditional process of negotiation and accommodation is inappropriate or unavailing, a subpoena - either for testimony or documents -- may be used to compel compliance with congressional demands as reported in chapter 2. As reported in chapter 3, the

Committee on the Judiciary ("the Committee") is currently engaged in an investigation into alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration. Few provisions in the U.S. Constitution grant the President an authority as free from legislative constraint as the Pardon Clause. While the pardon power has been wielded in numerous instances throughout American history, there is limited case law interpreting it. This lack of judicial guidance has begot various unsettled legal questions concerning the pardon power's scope and breadth. For instance, whether the President may issue a self-pardon has been the subject of conflicting views and debate as

discussed in chapter 4. Chapter 5 examines the broad constitutional authority of Congress to establish and shape the federal bureaucracy. Congress may use its Article I law-making powers to create federal agencies and individual offices within those agencies, design agencies' basic structures and operations, and prescribe, subject to certain constitutional limitations, how those holding agency offices are appointed and removed. Congress also may enumerate the powers, duties, and functions to be exercised by agencies, as well as directly counteract, through later legislation, certain agency actions implementing delegated authority. The Trump Administration has recently questioned the legal validity of numerous investigative demands made

by House committees. These objections have been based on various grounds, but two specific arguments will be addressed in chapter 6. First, the President and other Administration officials have contended that certain committee demands lack a valid "legislative purpose" and therefore do not fall within Congress's investigative authority. Second, the President has made a more generalized claim that his advisers cannot be made to testify before Congress, even in the face of a committee subpoena. House Democrats have introduced a resolution that, if approved by the House, would formally "censure and condemn" President Trump for disparaging comments on immigration issues he allegedly made during a meeting with Members of

Congress. Chapter 7 will discuss examples of congressional censure of the President before addressing its constitutional validity. Under the U.S. Constitution, the House of Representatives has the power to formally charge a federal officer with wrongdoing, a process known as impeachment. The House impeachment process generally proceeds in three phases: (1) initiation of the impeachment process; (2) Judiciary Committee investigation, hearings, and mark-up of articles of impeachment; and (3) full House consideration of the articles of impeachment. Chapter 8 provides an overview of the procedures and should not be treated or cited as an authority on congressional proceedings.

**Constitutional Law--national Power**

**and Federalism** Oxford University Press  
 This Essay, part of a symposium titled 'Federalism as the New Nationalism,' argues that the interpretive struggle over the meaning of American federalism has recently shifted to two textually peripheral but substantively important battlegrounds: the Necessary and Proper Clause and, to a lesser extent, the General Welfare Clause. For nearly a decade, these quieter, more structurally ambiguous federal powers - the 'shadow powers,' as I term them - have steadily increased in prominence. Beginning with *Gonzales v. Raich* (2005) and continuing through and beyond *NFIB v. Sebelius* (2012), the Supreme Court's federalism jurisprudence has shifted from its once-typical form of inquiry into the scope of Congress's commerce

power, refracted through the Tenth Amendment, to become an inquiry into the transsubstantive reasons for allowing Congress to regulate at all.

Paradoxically, the growth of shadow powers analysis has tended to narrow the permissible scope of congressional regulatory power. My claim is that the prominence of shadow powers analysis in the Court's recent decisions is both doctrinally unprecedented and unhelpful because it fails to set meaningful standards for how federalism should work in practice. The novelty of shadow powers analysis lies in the sharp line the Court appears increasingly willing to draw between solid, if controversial, Article I powers such as the commerce power, and auxiliary Article I powers such the necessary and proper power.

The invocation of the shadow powers has helped the Court find room to maneuver within its federalism analysis, while also appearing to maintain its commitment to an apparently unmoving baseline of a narrow commerce power. This maneuvering might be productive if it were carried out explicitly, with some discussion by the Court of the reasons for preferring to adjudicate federalism at its doctrinal and textual periphery rather than at its center. But the result of the growth of shadow powers analysis has in fact been to obscure the outlines of federalism's map - to shroud genuine (and perhaps salutary) doctrinal changes within a fog of constitutional text, insufficiently overruled precedents, and acontextual readings of foundational cases.

**Federalism: A Reference Guide to the United States Constitution**

Cambridge University Press

A leading casebook on foreign relations law, authored by two widely cited and experienced scholars, *Foreign Relations Law: Cases and Materials, Sixth Edition* examines the law that regulates the conduct of contemporary U.S. foreign relations. It offers a compelling mix of cases, statutes, and executive branch materials, as well as extensive notes and questions and discussion of relevant historical background.

**The Shadow Powers of Article 1**

Princeton University Press

For over a century, Congress's power to enforce the Fourteenth Amendment's guarantee of "the equal protection of the laws" has presented judges and scholars

with a puzzle. What does it mean for Congress to "enforce" such a wide-ranging, open-ended provision when the Supreme Court has insisted on its own superiority in interpreting the Fourteenth Amendment? In *Enforcing the Equal Protection Clause*, William D. Araiza offers a unique understanding of Congress's enforcement power and its relationship to the Court's claim to supremacy when interpreting the Constitution. Drawing on the history of American thinking about equality in the decades before and after the Civil War, Araiza argues that congressional enforcement and judicial supremacy can co-exist, but only if the Court limits its role to ensuring that enforcement legislation reasonably promotes the core meaning of the Equal Protection Clause.

Much of the Court's equal protection jurisprudence stops short of stating such core meaning, thus leaving Congress free (subject to appropriate judicial checks) to enforce the full scope of the constitutional guarantee. Araiza's thesis reconciles the Supreme Court's ultimate role in interpreting the Constitution with Congress's superior capacity to transform the Fourteenth Amendment's majestic principles into living reality. The Fourteenth Amendment's Enforcement Clause raises difficult issues of separation of powers, federalism, and constitutional rights. Araiza illuminates each of these in this scholarly, timely work that is both intellectually rigorous but also accessible to non-specialist readers.

*Congressional Oversight of Covert*

*Activities* Oxford University Press  
NATIONAL POWER AND FEDERALISM is part of a two-volume set that includes a corresponding treatment of Individual Rights. Now your students can get the specific extra guidance they need, when they need it. Organized to parallel the major casebooks, this inexpensive study guide adheres To The successful format of the Examples & Explanations Series: - Clear, readable text includes sufficient historical and theoretical detail to supply a solid overview without overwhelming readers -Examples bring the complex issues to life and show students how to apply what they have learned in class - Explanations help students measure their understanding of the material and provide suggested answers and feedback No other book offers such an

engaging and effective approach. In a straightforward--but not simplistic -- style, May and Ides address: -Judicial Review -Congressional Power to Limit the Jurisdiction of the Supreme Court and Inferior Federal Courts -Justiciability -Special Limitations on Federal Judicial Review of State Laws -Powers of the National Government -The Supremacy Clause -The Separation of Powers -The Dormant Commerce Clause -The Privileges and Immunities Clause of Article IV. This comprehensive yet manageable guide is distinguished from the crowd of superficial Con Law study aids by the level of practice it affords students. When you review CONSTITUTIONAL LAW: National Power and Federalism, Examples and Explanations, you'll find it a worthy

teaching partner, ideally suited To The needs of the first-year law student. Table of Contents Preface Acknowledgments Chapter 1: Judicial Review 1.1 Introduction and Overview 1.2 the Background of Marbury v. Madison 1.3 Marbury v. Madison: Judicial Review of the Coordinate Branches 1.4 Federal Judicial Review of State Conduct 1.5 the Role of the Judicial Review in a Democratic Society 1.6 the Debate Over Constitutional Interpretation 1.7 the Techniques of Constitutional Interpretation 1.8 Authoritativeness of Judicial Interpretations Chapter 2: Congressional Power to Limit the Jurisdiction of the Supreme Court and Inferior Federal Courts 2.1 Introduction and Overview 2.2 the Power to Make Exceptions To The Jurisdiction of the



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Principles and Policies Wolters Kluwer Constitutional Law, Cases and Materials provides an overview of constitutional law, focusing closely on Supreme Court decisions. The casebook cites key cases in its discussions of the Courts re-emphasis on federalism disputes, racial gerrymandering, sex discrimination material, and changes in first amendment standards. Federalism dispute cases include *Seminole Tribe of Florida v. Florida*, *United States v. Lopez*, and *U.S. Term Limits, Inc. v. Thornton*. Racial gerrymandering cases include *Adarand Constructors, Inc. v. Peña*. New sex discrimination material includes *J.E.B. v. Alabama ex rel. T.B. and United States v. Virginia*. Changes in First Amendment standards cases include 44 *Liquormart, Inc. v. Rhode Island*. First

Amendment limits on cable television regulation cases include *Denver Area Educational Telecommunications Consortium, Inc. v. Federal Communications Commission*. Summary of Contents" Table Of Cases" Part I. The Constitution And The Courts: The Judicial Function In Constitutional Cases Chapter 1. The Constitution 1. The Constitution of the United States of America 2. History of the Adoption of the Constitution and Its Most Significant Amendments 2. Judicial Review 1. The Legitimacy of Judicial Review 2. Congressional Control of Judicial Review by the Federal Courts 3. The Jurisdiction of Federal Courts in Constitutional Cases 1. Supreme Court Review of State Court Decisions 2. Constitutional Litigation Initiated in the Federal

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*An Originalist Argument against Its Ever-Expanding Powers* Wolters Kluwer  
How foot voting outperforms ballot box voting -- Foot voting and federalism -- Foot voting and international migration -- Foot voting in the private sector -- Foot voting and self-determination -- Problems and keyhole solutions -- The foot voting constitution -- Implications for international law and global governance -- Conclusion : prospects for a foot voting future.  
*Constitutional Law* Oxford University Press  
Has the imperial presidency returned?

The New Imperial Presidency suggests that the Congressional framework meant to guide and constrain presidential behavior has slowly eroded over the decades since Watergate. Author Andrew Rudalevige describes the evolution of executive power in our separated system of governance. Rudalevige discusses the abuse of power that prompted what he calls the resurgence regime against the imperial presidency, and inquires as to how and why, over the three decades that followed Watergate, presidents regained their standing. The New Imperial Presidency shows that presidents have always tried to interpret Constitutional powers broadly. Ambitious executives can choose from an array of actions that push against congressional power and,

finding insufficient resistance, expand the scope of presidential power.

*An Overview* SAGE

The U.S. Constitution establishes a system of dual sovereignty between the states and the federal government, with each state having its own government, endowed with all the functions essential to separate and independent existence. Although the Supremacy Clause of the Constitution designates "the Laws of the United States" as "the supreme Law of the Land," other provisions of the Constitution—as well as legal principles undergirding those provisions—nonetheless prohibit the national government from enacting certain types of laws that impinge upon state sovereignty. The various principles that delineate the proper boundaries

between the powers of the federal and state governments are collectively known as "federalism." Federalism-based restrictions that the Constitution imposes on the national government's ability to enact legislation may inform Congress's work in any number of areas of law in which the states and the federal government dually operate. There are two central ways in which the Constitution imposes federalism-based limitations on Congress's powers. First, Congress's powers are restricted by and to the terms of express grants of power in the Constitution, which thereby establish internal constraints on the federal government's authority. The Constitution explicitly grants Congress a limited set of carefully defined enumerated powers, while reserving

most other legislative powers to the states. As a result, Congress may not enact any legislation that exceeds the scope of its limited enumerated powers. That said, Congress's enumerated powers nevertheless do authorize the federal government to enact legislation that may significantly influence the scope of power exercised by the states. For instance, subject to certain restrictions, Congress may utilize its taxing and spending powers to encourage states to undertake certain types of actions that Congress might otherwise lack the constitutional authority to undertake on its own. Similarly, the Supreme Court has interpreted the Constitution's Commerce Clause to afford Congress substantial (but not unlimited) authority to regulate

certain purely intrastate economic activities that substantially affect interstate commerce in the aggregate. Congress may also enact certain types of legislation in order to implement international treaties. Additionally, pursuant to a collection of constitutional amendments ratified shortly after the Civil War, Congress may directly regulate the states in limited respects in order to prevent states from depriving persons of certain procedural and substantive rights. Finally, the Necessary and Proper Clause augments Congress's enumerated powers by empowering the federal government to enact laws that are "necessary and proper" to execute its express powers. In addition to the internal constraints on Congress's authority, the Constitution also imposes

external limitations on Congress's powers vis-à-vis the states-that is, affirmative prohibitions on certain types of federal actions found elsewhere in the text or structure of the Constitution. The Supreme Court has recognized, for instance, that the national government may not commandeer the states' authority for its own purposes by forcing a state's legislature or executive to implement federal commands. Nor may Congress apply undue pressure to coerce states into taking actions they are otherwise disinclined to take. Furthermore, the principle of state sovereign immunity-which limits the circumstances in which a state may be forced to defend itself against a lawsuit against its will-imposes significant constraints on Congress's ability to



subject states to suit. Finally, the Supreme Court has recognized limits to the extent to which Congress may subject some states to more onerous regulatory burdens than other states. *Constitutional Law* Wolters Kluwer

A constitutional originalist sounds the alarm over the presidency's ever-expanding powers, ascribing them unexpectedly to the liberal embrace of a living Constitution. Liberal scholars and politicians routinely denounce the imperial presidency—a self-aggrandizing executive that has progressively sidelined Congress. Yet the same people invariably extol the virtues of a living Constitution, whose meaning adapts with the times. Saikrishna Bangalore Prakash argues that these stances are fundamentally incompatible. A

constitution prone to informal amendment systematically favors the executive and ensures that there are no enduring constraints on executive power. In this careful study, Prakash contends that an originalist interpretation of the Constitution can rein in the “living presidency” legitimated by the living Constitution. No one who reads the Constitution would conclude that presidents may declare war, legislate by fiat, and make treaties without the Senate. Yet presidents do all these things. They get away with it, Prakash argues, because Congress, the courts, and the public routinely excuse these violations. With the passage of time, these transgressions are treated as informal constitutional amendments. The result is an executive increasingly

liberated from the Constitution. The solution is originalism. Though often associated with conservative goals, originalism in Prakash's argument should appeal to Republicans and Democrats alike, as almost all Americans decry the presidency's stunning expansion. The Living Presidency proposes a baker's dozen of reforms, all of which could be enacted if only Congress asserted its lawful authority.

*Congressional Powers* Wolters Kluwer

This book traces the history from colonial times to the present of the monetary powers exercised by the Congress under the Constitution. It follows the evolution of the American banking and monetary system from the perspective of specific provisions in the Constitution that authorize the

government to coin money and regulate its value. The author critically examines how far the development of the contemporary money and banking system has pushed beyond the narrow powers spelled out in the Constitution. He shows how changes in congressional legislation, Supreme Court decisions on precedent-setting cases, and the evolution of central banking powers within the Federal Reserve System have expanded the scope of the federal government's monetary powers. Yet, the author views this history within the context of private limits to the authority of Congress and the Congress's distrust of lodging the central bank within the Executive branch, preferring instead to respect an independent central banking tradition. The Hamiltonian tradition, he

concludes, still offers the best institutional arrangement to confront unstable markets and destabilizing political influence.

### **The Law of the Executive Branch**

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Provides more than seven hundred alphabetical entries covering the interaction of law and society around the globe, including the sociology of law, law and economics, law and political science, psychology and law, and criminology.

Renewing Presidential Power After Watergate LexisNexis

Traditional in scope, with full coverage of both structure of government issues (separation of powers and federalism) and individual rights, Constitutional Law: Structure and Rights in Our Federal

System nevertheless emphasizes structural issues more so than many other Constitutional Law casebooks. The Sixth Edition continues the coverage of Congressional powers, including enforcement of civil rights, and adds an extended section on the war on terrorism and related "enemy combatant" cases. Individual rights are discussed in context and within chapters focusing on traditional doctrinal categories, such as economic and social rights, rights of conscience and expression, and rights in the public arena. In the Sixth Edition, the electoral districting and reapportionment materials has been omitted and the congressional enforcement of civil rights has been relocated. Brief notes and comments guide students through the

cases and provoke independent thought. Hypothetical problems then ask students to analyze concrete and realistic constitutional issues, thereby enabling them to develop a better understanding of the underlying theory and doctrine. In a discussion of federalism, the United

States Supreme Court cited this casebook in *Printz v. United States* concerning the Brady Act. *Constitutional Law: Structure and Rights in Our Federal System* is supplemented annually. This eBook features links to Lexis Advance for further legal research options.

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