

CONSTITUTIONAL LAW OVERVIEW

by Professor Robert Pushaw

I. OVERVIEW OF CONSTITUTIONAL LAW I—GOVERNMENT STRUCTURE

A. ROLE OF FEDERAL COURTS IN INTERPRETING CONSTITUTION

Theme: Founders expected constitutional interpretation to be shared by all three branches. Over past 50 years, however, Supreme Court has asserted it's the ultimate arbiter of the Constitution, and that everyone (not merely the parties to a particular case) must follow its interpretation unless Court changes its mind (*Cooper*).

1. Ongoing Controversy

(A) Judicial Activism or Independence of the Judiciary?

Article III makes judges independent, especially so they can enforce Constitution, even when it's politically unpopular (e.g., allowing offensive free speech, like flag burning). But Framers intended federal courts to invalidate laws only when they "clearly" violated Constitution, like suspending habeas corpus when there's no emergency. Gradually, however, Court began to strike down laws that did NOT clearly contradict any constitutional provision, but rather with Court's view of the best interpretation of that provision. And because Court is independent of political process, and enjoys such prestige, it can create new constitutional rights under the guise of interpretation. Such activism can reflect either liberal or conservative ideology. So independence is a two-edged sword.

(B) States' Rights vs. National Uniformity

Supremacy Clause makes plain that FEDERAL law trumps STATE law when they conflict. Court is final word on federal constitutional law, which must be (1) superior to all other law, and (2) uniform, so that your rights don't vary depending on what state you're in.

Nonetheless, there's been a persistent notion of "states' rights"—states can act on own independent interpretation of Constitution. That's how Southern States justified secession, and you would think that this idea would have died after the Civil War. But it didn't (e.g., Southern States' resistance to desegregation). Even today, a majority of the Court assert that federal law (including the Constitution) generally should be construed narrowly to preserve state power—*Lopez* and *Morrison* are examples.

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Jonathan Neville



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Jonathan Neville,1998 This book provides casebriefs for the important cases in the constitutional law casebook by Rotunda It includes the facts of the case issues holdings and the court s reasoning It also has a summary of the relevant law in order to show how the casebriefs work together with the law This title includes cases pertaining to judicial review the doctrine of implied power state power to regulate commerce commerce clause and federal power executive and legislative branches due process state action equal protection congressional enforcement of civil rights freedom of speech and religion and the Constitution **Constitutional Law** Spectra,1998-02 158 Brad R. Roth, *Recording for the Blind & Dyslexic, ... Catalog of Books* ,1996 *Constitutional Law* Jonathan Neville,1998 Constitutional Law - Stone Geoffrey R. Stone,Spectra,1994-01-01 Sleeping with a Wall Street Banker Marlene Morgan,2013-09-05 Sleeping With A Wall Street Banker Psychological thriller Lawyer Alice Francis leaves her life in London for a new start with Wall Street banker Jake Logan in New York She learns quickly that Jake is a man consumed by his need to control He loves but on his own terms When Jakes ex girlfriend Jessica finds out about Jakes relationship with Alice Alices life takes a dark turn For all the trappings of success from a Wall Street career Jake is a man tormented by the irrational guilt he carries from his past relationship with Jessica Jessica is unmarried and childless with a biological clock that has all but stopped ticking and Jake is her back up plan Her ultimate goal is to fix Jakes life by blackmailing him in an effort to force him into a horrible relationship that was never meant to be When Alice enters the picture Jessicas plans are turned upside down Mentally unbalanced Jessica resorts to extreme measures If she cant have Jake no one will **Subject Catalog** Library of Congress, **Constitutional Law** Jesse H. Choper,1997-02 **BAR/BRI Digest** ,2004 Books Out Loud ,2004 **Barbri Bar Review** Peter Jan Honigsberg,2004 Features summary of test strategies and skills sample drafting instructions examples of common legal forms practice tests and model answers Criminal Law Jonathan Neville,2003 *LSAT* The staff of Kaplan, Inc,2001 *Constitutional Law* Spectra,1998-05 *Get Into Law School* Ruth Lammert-Reeves,2003 *Get Into Law School A Strategic Approach* Choosing and getting into the right school is crucial to getting the most out of your law school years and your career as a lawyer Kaplan and Newsweek have brought together some of the nation s top admissions experts to create this exclusive guide to getting into law school This excellent resource includes Advice from top admissions of cers on writing persuasive personal statements obtaining the best recommendations preparing your application and more Expert guidance on choosing the best options for nancing law school including tips on nancial aid borrowing and managing expenses Specialized information for every student including minorities women gays and lesbians the disabled and others **Bowker's Law Books and Serials in Print** ,2000 Legalines on Civil Procedure,- Keyed to Hazard Jonathan

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