



## CHAPTER 1

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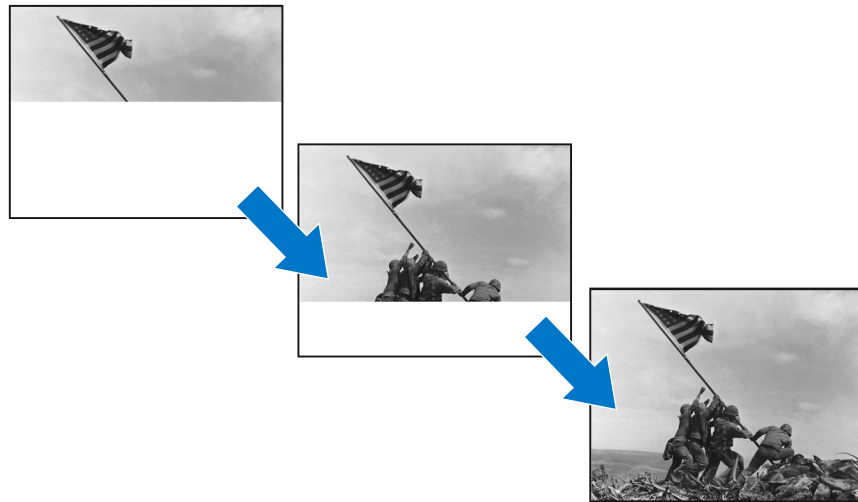
# *How to Use This Book*

## A. An Integrated Approach for Integrated Cases

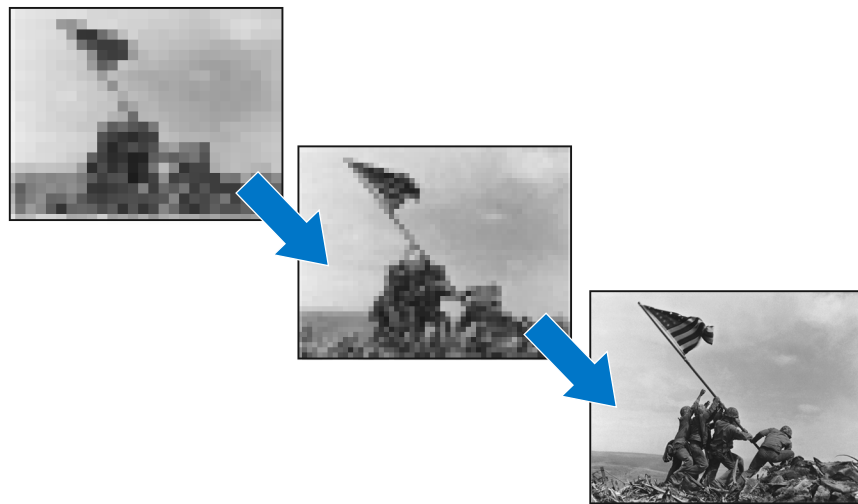
Almost every important constitutional law decision involves more than one legal doctrine. For example, litigation over individual rights like same-sex marriage and abortion may involve legal theories relating to equality, freedom, state-federal relationships, and the proper role of the judiciary. The Supreme Court opinion upholding the constitutionality of the Affordable Care Act discusses the federal government's powers (including the powers to regulate commerce, to impose taxes, to spend money, and to make laws necessary and proper to effectuate these and other powers), state-federal relationships, and the proper role of the judiciary.

In cases like these, lawyers and judges use many different constitutional tools to examine a single set of facts—but these tools are all part of an integrated toolkit, with each legal doctrine affecting the others. This book proposes that the best way for future lawyers to learn this toolkit is to begin using the tools in combination with each other from the very beginning of the course.

An illustration may help. It is possible to teach constitutional law one doctrine at a time, fleshing out the details of each topic before moving to the next. This approach is similar to downloading a computerized image pixel by pixel, as seen on the next page. By the end of the process, the entire picture is displayed at full resolution, but in the early phases of the download the final shape remains a mystery to the viewer. This method emphasizes the parts, leaving the whole for last.



Another way to download images begins by showing the general shape of the full picture at low resolution. The first glimpse may be blurry, but it indicates the relationships among the parts of the whole. The rest of the download adds successive layers of detail at increasingly higher resolution until the picture comes into final focus.

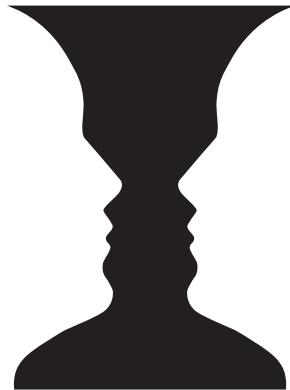


It is hard to comprehend a forest presented one tree at a time. Sketching the big picture first—even if it starts out looking a bit fuzzy—makes the details easier to comprehend when they are introduced later. This method also emphasizes how the interactions among constitutional ideas can be as important as each idea in itself.

## B. The Big Picture: Powers and Their Limits

The picture of US constitutional law that will be presented in this book is based on the figure-ground illusion known as the Rubin Vase. Depending on one's choice of focus, the diagram might look like a vase or like two faces in profile.

**A Rubin Vase**



Translated to the realm of constitutional law, the dark area in the diagram (the vase) represents constitutionally acceptable government action, while the light areas (the two faces) represent constitutionally unacceptable government action. Phrased another way, the vase represents the government's power, while the faces represent limits on that power. For example, individual rights are a limit on government power; if a person has a constitutional right to do something, then the government's law-making power in that area is limited.

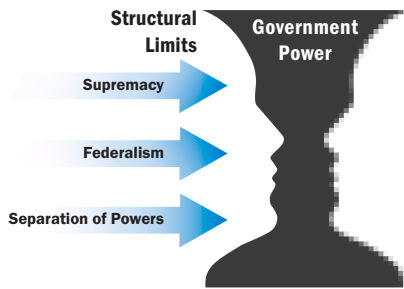
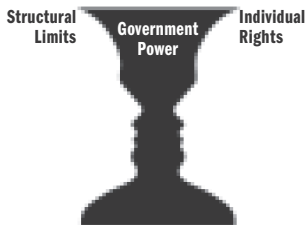
To decide if a law is constitutional, lawyers typically consider both the source of the government's power and any limits on it. Imagine that the US Congress is considering a bill to make it a crime to gamble on sports. To decide if the law is constitutional, one relevant question would involve the vase: does the federal government possess a power that allows it to criminalize gambling on sports? Another relevant question would look at the faces: do individuals have a constitutional right to gamble on sports? The answers to these questions often have a reciprocal relationship: saying yes to a power may mean saying no to a right, or vice versa.

The different areas in the diagram combine to create a roadmap for approaching every constitutional law question covered in this book:

For government action to be constitutional, there must be a **source of power** authorizing that type of action, and the power must not be exercised in a way that violates **limits** based on constitutional *structure* or individual *rights*.

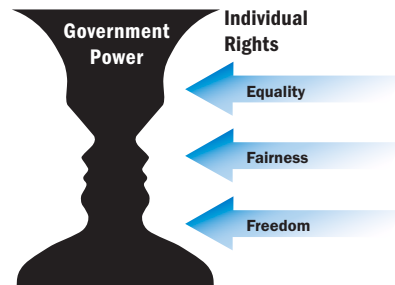
The book presents these concepts in three parts.

**Part I** sketches the big picture—the relationship of affirmative powers and negative limits. Government power is symbolized by the vase, limits arising from the structure of government are symbolized by the left face, and limits arising from individual rights are symbolized by the right face. Part I sketches this picture by presenting a set of historically important cases in roughly chronological order, the way the nation experienced them. Not every boundary within this picture will be in perfect focus by the end of Part I, but it will give you working knowledge of the structure of the US Constitution, the most significant events in the nation’s constitutional history, and the most important topics of recurring constitutional dispute. The big picture outlined in Part I will be the framework for understanding the more detailed constitutional topics presented in Parts II and III.



**Part II** sharpens the focus on the left-hand boundary: structural limits. A structural limit prevents one part of the government from exercising a power reserved for another part. The structural limit of supremacy means that states cannot exercise powers reserved for the federal government. The structural limit of federalism means that the federal government cannot exercise powers reserved for the states. And the structural limit of separation of powers means that branches within the federal government (legislative, executive, and judicial) may not take actions reserved to other branches.

Finally, **Part III** sharpens the focus on the right-hand boundary: individual rights. Constitutional rights tend to serve three national values that sometimes overlap: equality (treating people similarly to each other), fairness (following proper procedures), and freedom (allowing people to do what they want). As examples of these three types of rights, Part III focuses on rights enshrined in the Fourteenth Amendment. Equality is exemplified by the Equal Protection Clause, fairness by the procedural due process doctrine, and freedom by the substantive due process doctrine.



Each Part of the book concludes with a “Master Class”—a case or set of cases on a related topic providing an opportunity to review and reconsider the material in each Part. The Master Class for Part I (the big picture) studies the Civil Rights Act

of the 1964; the Master Class for Part II (structural limits) studies the Affordable Care Act; and the Master Class for Part III (individual rights) studies gay rights.

The book's structure inevitably involves some repetition. As computer programmers would say, this is not a bug—it's a feature. Psychological research about learning has shown that a person's comprehension and long-term memory are better when material is presented in smaller doses spread over time, instead of in a single concentrated blast revisited only at exam time. The book's intentional repetitions also reflect historical reality. You will visit and revisit central constitutional questions just as the country has, continuing eternal debates as they resurface in new social and political contexts.

## C. Features of the Book

Because Supreme Court opinions on constitutional topics can be complex, the book includes features to help you more easily understand and organize the material.

### 1. Kickstarters

To help you navigate between the chronological presentation of Part I and the topic-by-topic presentation of Parts II and III, the book contains a series of “Kickstarters”—modules that can be the starting point for your own outlines and notes.

***kickstarter***

By design, the Kickstarters are not sufficiently detailed to be a substitute for the assigned reading. However, the Kickstarters can help you get up to speed on the basics more quickly, so that you can spend more of your study time and class time delving into issues at greater depth. The book contains two types of Kickstarters.

The **Master Kickstarter** (found in Appendix C) suggests a structure for an outline of the course as a whole. Especially in Part I, the book presents cases in a different order than seen in the Master Kickstarter, but familiarity with it will help you situate your daily reading assignments within the big picture.

The **Topical Kickstarters** (found throughout Parts II and III) suggest methods for thinking about specific legal topics, such as the Spending Clause or the Equal Protection Clause. The topical Kickstarters should not be confused with a list of elements. No case law requires judges to write their opinions (or lawyers to write their briefs) in Kickstarter order. They are intended to provide a framework broad enough to encompass the questions that most commonly arise in each area. Familiarity with the topics in the Kickstarter should help you understand the cases that follow, prepare for class discussions, and draft your own more detailed outlines.

## 2. Flash-Forwards and Flashbacks

Eternal constitutional debates can arise in cases decided centuries apart from each other. The book contains two features designed to connect older and newer cases that grapple with similar problems. **Flash-Forwards** (found mostly in Part I) point forward in time, indicating factual and legal developments that arose after the opinion was issued. **Flashbacks** (found mostly in Parts II and III) point back in time, reminding you of precedents studied in earlier chapters.



## 3. Case Background

Even though some constitutional opinions are written in abstract terms, the facts of the cases matter just as much in constitutional law as any other area of law. To emphasize the importance of the facts—and to fill factual gaps the opinions might omit or downplay—the book provides longer-than-usual introductions to many cases. The case introductions make it easier to understand the opinions that follow. The goal is to give readers any necessary background information before the cases (not after, when it may be too late to avoid confusion). Occasional **sidebars** help explain passages that may not be self-explanatory for people studying constitutional law for the first time.

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### ■ TERMINOLOGY

**SIDEBARS:** This is an example of a sidebar. The book's sidebars fall into four categories: TERMINOLOGY, HISTORY, BIOGRAPHY, OBSERVATION, and WEBSITE.

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## 4. Study Questions

Questions appear before—not after—the major cases, to give you a sense of what to read for. By considering these questions in advance of class (by yourself individually, or even better with a group), you will find the class discussion more engaging. Indeed, your professors might ask some of these questions in class. Of course, they will also ask many questions not found in the book—but if you are able to answer the book's questions, you will likely have a strong enough understanding of the case to participate meaningfully in class discussion.

## 5. Case Editing

There's no avoiding it: Some constitutional law opinions are very long. In keeping with the book's philosophy of considering cases as an integrated whole, most opinions appear at close to their original length. Rest assured, the cases have been edited for length when appropriate—but not at the cost of eliminating their complexity. Keeping the cases largely intact avoids the confusion that can arise when cases are edited so heavily that important facts or connecting ideas are missing.

Stylistically, the book edits opinions with an eye towards ease of reading. Almost all internal punctuation and citations are omitted, with exceptions for citations to cases studied elsewhere in the book. Some paragraph breaks have been added or subtracted to improve the flow. To avoid the distracting use of [sic], the book substitutes modern spelling, capitalization, punctuation, and sometimes grammar if older versions would pose obstacles to modern readers. Deletions original to this book are marked with ellipses (. . .) and original additions are [within brackets]. Particularly for older cases, subheadings are occasionally added to aid comprehension.

## **6. Chapter Recaps**

Each chapter ends with a short recap of that chapter's high points. The recaps are too brief to be a substitute for the assigned reading, but they can be a useful reminder of how the chapter's material relates to the big picture.

## **Chapter Recap**