



Constitutional Law Research

Including The United States Supreme Court

The Nature of the Constitution

The Constitution is a pervasive document, cited as the supreme law of the land. All statutory and subordinate law conflicts with constitutional language and principles are resolved in favor of the Constitution. The document covers the organization of political structures, the judiciary, and sets out the respective responsibilities and limits for the executive, legislative, and judicial branches of government.

The Constitution also spells out the rights of citizens against the power of government. These rights are heavily litigated to the extent that specific bodies of research for those individual rights exist in great detail. The following table indicates some of these areas.

Freedom of Speech	1 st Amendment
Freedom of Religion	1 st Amendment
Rights related to Weapons	2 nd Amendment
Searches and Seizure Law	4 th Amendment
Right against Self-Incrimination	5 th Amendment
Government Taking of Property	5 th Amendment
Rights to a Speedy Trial, Jury, and Counsel	6 th Amendment
Rights to a Civil Trial	7 th Amendment
Right to Bail, Capital Punishment	8 th Amendment
Unenumerated Rights, Privacy	9 th Amendment
Powers reserved to States	10 th Amendment
Suits against States, Sovereign Immunity	11 th Amendment
Privileges and Immunities, Due Process, Equal Protection	14 th Amendment

There are generally extensive treatises devoted to each of these issues. These materials would be a better starting point for research devoted to one of these topics rather than starting with general constitutional research. More often than not, these specialty treatises will have extensive commentary on specific constitutional issues, and will examine specific situations and cases in great detail. Many of them will be supplemented at a faster pace than general (survey) treatises on constitutional law, keep them current with ongoing cases from the federal courts. The trend in electronic publishing is for Lexis and Westlaw to place their text of their multi-volume print treatises online as an alternative source to the printed copy. One advantage of online access is that the material contained in the regular supplements and pocket parts is integrated with the main text. The best way to identify these print treatises is to use the library online catalog, or by



asking a reference librarian for a recommendation. Otherwise, they are usually highlighted as part of a subject's organization in an online library.

Sources of the text of the Constitution

All versions of the United States Code contain a copy of the Constitution. The commercial versions (USCA and USCS) are heavily annotated with cross-referenced listings for texts and other materials. One difficulty of using the annotated volumes for research is the sheer volume of annotations. Annotations for the 14th Amendment alone fill two volumes of the USCA. One tool each commercial version of the U.S. Code provides is an organization of Notes of Decisions according to a topical outline. This outline is extensive considering the depth of court decisions interpreting and implementing a constitutional principle. Locate a useful outline point and then examine the annotations that appear under that point. This is similar to using the topic and key number outlines that appear in digests. One note, however, is that these outlines do not use key numbers, nor are they organized to correlate to the digests. Another strategy is to use keyword searches on Lexis or Westlaw in the Code databases, which will allow you to search annotation sets for relevant cases.

Another strategy is to use various commentaries, such as hornbooks and other treatises to determine the leading cases and status of a constitutional issue. Example of titles that provide scholarly commentary are Nowak and Rotunda's *Constitutional Law*, 6th Edition (West 2000), and Tribe's *American Constitutional Law*, 3rd Edition (Foundation Press, 2000). As constitutional law can change significantly with each passing term of the Supreme Court, a more current edition is a better source for information. Many of these treatises have pocket part supplements that update the information in the main volume.

The Constitution of the United States Analysis and Interpretation is by far one of the best resources for contemporary constitutional research. The current edition contains the text of the Constitution, with commentary and annotations of cases decided by the Supreme Court of the United States. The volume and pocket parts are prepared by the Congressional Research Service of the Library of Congress. The paper edition is for sale by the Government Printing Office for \$163, although the text is available for free download at (<http://www.gpoaccess.gov/constitution/index.html>). Most libraries, even non-law libraries, would likely have a copy of this book.

Online sources for the text of the Constitution are too numerous to mention. A simple search for United States Constitution should bring up many sources along with related documents. As with any Internet related search, the value of a site depends on your trust of the source of the information. While there may be many sites, they are all subject to question as to accuracy and timeliness.

There are various law reviews devoted exclusively to constitutional issues, such as the *Hastings Constitutional Law Quarterly*, or *Constitutional Commentary* published by the University of Minnesota, among others. The Constitution is so broad that there are



journals devoted to single constitutional issues, such as the *Harvard Civil Rights Civil Liberties Law Review*, and the *Journal of Church and State*. Most all of these are searchable through the various paper and electronic indexes for law review and scholarly articles. Articles typically devote themselves to a research issue, and analyze the development of that issue through case law, legislative action, and other materials relevant to that issue.

The Federalist Papers (The Federalist)

The Federalist Papers were a series of newspaper articles debating the adoption of the Constitution. These were written by John Jay, Alexander Hamilton, and James Madison. The Supreme Court has used elements of the Federalist Papers as support for the intention of the framers of the Constitution. Two examples of the use of the Federalist Papers by the Supreme Court appear below:

On a separate point, I agree with Justice SCALIA that the majority's extended analysis of the division of authority between the English Parliament and the Crown with regard to regulation of the military, see ante, at 1744-1747, has no relevance to this case. It is true that we frequently consult English history and common law in attempting to determine the content of constitutional provisions, but the majority fails to cite a single separation-of-powers case in which we have relied on the structure of the English Government in attempting to understand the governmental structure erected by the Framers of the Constitution. **Nor does the majority cite any historical evidence, whether from the constitutional debates, the Federalist Papers, or some other source, that demonstrates that the Framers sought to embrace, or at least actively considered, the English system of shared power over the military.** If the majority pointed to some basis for conducting the inquiry that it does, I might be willing to accept its analysis. (Mr. Justice Thomas, opinion concurring in the judgment, *Loving vs. United States*, 517 U.S. 748 (1996) at 779. Emphasis added.)

And:

The dangers of congressional usurpation of Executive Branch functions have long been recognized. "[T]he debates of the Constitutional Convention, and the Federalist Papers, are replete with expressions of fear that the Legislative Branch of the National Government will aggrandize itself at the expense of the other two branches." *Buckley v. Valeo*, 424 U.S. 1, 129, 96 S.Ct. 612, 687, 46 L.Ed.2d 659 (1976). Indeed, we also have observed only recently that "[t]he hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted." *Chadha*, supra, 462 U.S., at 951, 103 S.Ct., at 2784. With these principles in mind, we turn to consideration of whether the Comptroller General is controlled by Congress. (Chief Justice Burger, opinion of the Court, *Bowsher vs. Synar*, 478 U.S. 714 (1986) at 727. Emphasis added.)



There are several commentaries relevant to the use of the Federalist Papers in constitutional jurisprudence. See, for example, James G. Wilson, *The Most Sacred Text: The Supreme Court's Use of The Federalist Papers*, 1985 B.Y.U. L. Rev. 65 (discussing how the Supreme Court has utilized The Federalist in opinions), and Charles W. Pierson, *The Federalist in the Supreme Court*, 33 Yale L.J. 728 (1924).

The Federalist Papers are available from a variety of sources. They are online at Yale University's Avalon Project (<http://www.yale.edu/lawweb/avalon/federal/fed.htm>), Thomas (<http://memory.loc.gov/const/fed/fedpapers.html>), The Constitution Society (<http://www.constitution.org/fed/federa00.htm>), and many others. A simple search in Google or another search engine should bring up any number of online sources. The citation form for the Federalist Papers is located in Rule 15.7(b) of the Uniform System of Citation. Because of variations in printed editions, indicating the source is advisable.

Debates of the Constitutional Convention

The Debates in the Federal Convention of 1787 were authored by James Madison from notes taken by him at the time of the Convention. These were not published until approximately 1840, and appeared at that time in rough form. The Supreme Court frequently turns to the Debates as a way of divining the intentions of the framers of the Constitution.

The Debates have appeared in several editions throughout the years, and are available online in several locations. The Constitution Society provides a copy with access by calendar day (http://www.constitution.org/dfc/dfc_0000.htm).

Elliot's Debates

Once the text of the Constitution was made public, it had to be ratified by the States. At the time, each state convened its own constitutional convention to determine whether or not to ratify the Constitution. **Elliot's Debates** is a five-volume collection of the debates at the time between the Constitutional Convention of 1787 and the First Federal Congress of 1789.

Elliot's Debates collects the documents pertinent to the discussions on ratification such as the Declaration of Independence, the Articles of Confederation, the Journal of the Constitutional Convention, the text of the proposed Constitution, and the debates in the various states.

The Library of Congress provides online access to the text of Elliot's Debates at <http://memory.loc.gov/ammem/amlaw/lwed.html>.



The Records of the Federal Convention of 1787 (Farrand's Records)

Max Farrand collected the documentary records of the Constitutional Convention and published them in an acclaimed scholarly work in 1911. Three of the four volumes are available online through the Library of Congress' American Memory Project (<http://memory.loc.gov/ammem/amlaw/lwfr.html>). The page's description of the work sums up the history and significance best:

According to Farrand's introduction, at the close of the convention, the secretary, William Johnson, delivered all the materials to the president of the convention, George Washington, who turned these papers over to the Department of State in 1796. In 1818, Congress ordered that the records be printed, which was done under the supervision of the Secretary of State John Q. Adams, in 1819.

Farrand's Records remains the single best source for discussions of the Constitutional Convention. The notes taken at that time by James Madison, and later revised by him, form the largest single block of material other than the official proceedings. The three volumes also include notes and letters by many other participants, as well as the various constitutional plans proposed during the convention.

(Legislative) History of Amendments

The Constitution has been amended on various occasions since its adoption. Although there are several ways to adopt an amendment, the only one utilized so far is to have congress propose an amendment (by a two-thirds vote in each house), and for three-fourths of the states to adopt it in order to become law.

This process generates documents in the congressional stage, including the typical legislative history documents such as committee reports, hearings, and debate. All of this material can be researched using the standard research sources (with consideration for the dates of the material and generally availability of documents.) For more information on the amendment process, see page at the National Archives site (http://www.archives.gov/federal_register/constitution/amendment_process.html).

The United States Supreme Court

Decisions

Decisions of the Court are reported in three paper sources: United States Reports (official), United States Reports Lawyer's Edition (Lexis), and the Supreme Court Reporter (West). Opinions also appear on Lexis and Westlaw within an hour after they are released, as well as the Court's own web site (<http://www.supremecourtus.gov>). Both



Lexis and Westlaw carry all opinions of the Court. Slip opinions appear on the Court's web site beginning with the 2001 Term, and bound volumes starting with Volume 502 of U.S. Reports (1991 Term) are downloadable at the same location in PDF format. According to information from the Court, slip opinions are maintained on the Court's site until they appear in a bound volume. For a more detailed document containing information on the opinions of the Court, their publication, see http://www.supremecourtus.gov/opinions/info_opinions.html.

The Rules for Citation of Supreme Court opinions are contained in Table 1 of the Uniform System of Citation (17th Edition). Citations to the Court's earliest volumes are to the name of the Reporter of Decisions, rather than to the convention we follow today. Published citations may appear in either format. The following table will indicate the corresponding volumes to named reporter citation.

91 U.S. to date	Cite as U.S.
68 U.S. to 90 U.S.	1 Wallace to 23 Wallace
66 U.S. to 67 U.S.	1 Black to 2 Black
42 U.S. to 65 U.S.	1 Howard to 24 Howard
26 U.S. to 41 U.S.	1 Peters to 16 Peters
14 U.S. to 25 U.S.	1 Wheaton to 12 Wheaton
5 U.S. to 13 U.S.	1 Cranch to 9 Cranch
1 U.S. to 4 U.S.	1 Dallas to 4 Dallas

Note that there are no Supreme Court opinions in 1 U.S. (1 Dallas). This volume contains cases from various Pennsylvania Courts. The first published summary of Supreme Court activity (The February Term, 1790) appears at 2 U.S. 399 (2 Dallas).

The workload of the Court demonstrates that the Justices consider only the most important cases presented to them. According to the 2002 *End of Year Report on the Federal Judiciary* issued on January 1st, 2003, the total number of case filings in the 2001 Term was 7,924. Of these, 88 cases were argued and 85 were disposed of in 76 signed opinions.

Digests

There are two digests devoted to the Supreme Court, one published by West, and the other by Lexis. The West Digest (*United States Supreme Court Digest*) is organized against the topic and key number system West uses in all of its digest products. The Lexis Digest (*United States Supreme Court Digest Lawyer's Edition*) is also organized by topic, with the outline numbers corresponding to headnotes appearing in the Lawyer's Edition of U.S. Reports. The Lexis Digest also cross-references to American Law Reports, AmJur, and other research sets.



Oral Arguments

Transcripts to oral arguments are available on the Supreme Court web site beginning with the 2000 Term. They are available on Lexis starting with the 1979 Term, and on Westlaw beginning with the 1990 Term. Recordings of oral arguments are available in Real Player format from the Oyez Project (<http://www.oyez.org/oyez/frontpage>). Some later arguments are downloadable with a limited use license in MP3 format. Arguments are available with cases starting in 1961, with some arguments from cases in the 1950's. The recordings were provided to Oyez from the National Archives.

Briefs

Supreme Court briefs and records are available in microform format. Coverage varies with libraries. DePaul, for example, has a microform collection that starts with 1945. Lexis and Westlaw have a briefs database for all argued cases starting with 1979. Note that the selected briefs online may not be a complete set. Items such as amicus briefs, joint appendices, petitions for certiorari or other documents may not appear online. The most complete set of materials will be with the microform collection.

Coverage for Lexis (from the Lexis online information statement):

Current Inclusions: (as of 1993/94 Term): Merit Briefs for cases granted cert. and Special Masters. No joint appendices are collected, only appendices to specific briefs. **Inclusions Prior To 1993/94 Term:** All briefs for cases granted cert, joint appendices and selected special masters available. Also available, selected petitions for writs of certiorari from the US Supreme Court.

Coverage for Westlaw (from the Westlaw online information statement):

Full text of merits briefs (petitioners', respondents', supplemental, and reply briefs) and amicus briefs filed with the U.S. Supreme Court for cases in which certiorari has been granted or probable jurisdiction has been noted and for which oral argument has been scheduled. Coverage of merits briefs begins with the 1990-91 Term. Coverage of amicus briefs begins with the 1995-96 Term.

Another source for briefs is Findlaw. Selected briefs beginning with the 1999 Term of Court are available for free download at

http://supreme.lp.findlaw.com/supreme_court/briefs/index.html.

A commercial source is BriefServe, <http://www.briefserve.com> with briefs from the 1984 Term to the present, with briefs sent in PDF format. The cost is \$25.00 per brief.

For more information, see the Court's own pamphlet on where to find briefs at

http://www.supremecourtus.gov/oral_arguments/briefsource.pdf.

Practice before the Supreme Court



One of the more useful books in print, and revised regularly, is Stern and Gressman's Supreme Court Practice. Now in its 8th edition published in 2002, the book presents a detailed description of the Court's procedure, and instructs attorneys on how to properly prepare and file issues with the Court. It covers important topics such as jurisdiction, procedure, brief writing, and analyzes historical factors in the Court's past operation.

The bibliographic record for this item is:

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