

SEVENTH EDITION

Constitutional Law *and the* Criminal Justice System

J. SCOTT HARR

KÄREN M. HESS

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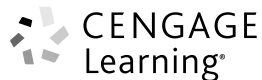
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About the Authors

This text is dedicated to J. Scott Harr (1953–2008), the original lead author of this text whose 30-year career embodied true commitment to the law and allegiance to the U.S. Constitution. Scott was a recipient of the Warren E. Burger Award, given in honor of the former Chief Justice of the U.S. Supreme Court, and a member of the U.S. Supreme Court bar, placing him among attorneys permitted to practice before the Supreme Court. As a police officer, police chief, attorney, and educator in criminal justice, Scott Harr's passion for and belief in the law was inspirational to his students, colleagues, and the communities in which he served. He is deeply missed.

KÄREN MATISON HESS, PH.D., (d. 2010) wrote extensively in law enforcement and criminal justice, gaining a respected reputation for the consistent pedagogical style around which she structured each textbook. She developed the original edition of *Constitutional Law and the Criminal Justice System* with Scott Harr and carried it through four successful revisions; much of her work and influence remains unchanged in this new edition.

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Preface

Constitutional Law and the Criminal Justice System was written with the criminal justice student in mind. We developed a natural progression to help students build their knowledge of the Constitution and how it directs law enforcement procedures and practices. Plain language is preferred to legalese. Court opinions are important, and students have opportunities in this text to learn how to read them, and even to read and brief some. Mastering the basic concepts of constitutional law is only the beginning, however; U.S. law is unique in that it can, and does, change to meet the changing needs of the society it serves. Thus, an important part of the knowledge students will acquire through this text and course is how to keep current with this exciting and evolving area of law.

Organization of the Text

Section I provides a foundation for understanding constitutional law beginning with a historical overview of how the Constitution came to be (Chapter 1). This is followed by an overview of our country's legal system (Chapter 2) and an examination of the Supreme Court of the United States as the final word on any legal issues (Chapter 3).

Section II focuses on the guarantees of the Constitution to citizens: their civil rights and civil liberties. The discussion first focuses on equal protection under the law and efforts to balance individual, state, and federal rights (Chapter 4). The focus then shifts to the basic freedoms guaranteed by the First Amendment (Chapter 5). This section concludes with a discussion of the gun control controversy arising from the Second Amendment (Chapter 6).

Section III describes in depth the constitutional amendment that governs searches and seizures—the Fourth Amendment. It begins with an overview of constitutional searches and seizures as required by the Fourth Amendment (Chapter 7). A detailed look at conducting constitutional seizures is presented next (Chapter 8), followed by an equally detailed look at conducting constitutional searches (Chapter 9).

Section IV examines the three other amendments particularly crucial to those in the criminal justice profession as they apply to citizens' due process rights. The section first discusses due process and obtaining information legally as required by the Fifth Amendment (Chapter 10), followed by citizens' right to counsel and a fair trial as required by the Sixth Amendment (Chapter 11). The section concludes with a discussion of bail, fines, and punishment as regulated by the Eighth Amendment (Chapter 12).

The final section of the text, Section V, provides a discussion of the remaining amendments and how additional amendments might come to be in the future (Chapter 13).

How to Use This Text

Constitutional Law and the Criminal Justice System is a carefully structured learning experience. The more actively you participate in it, the greater your learning will be. You will learn and remember more if you first familiarize yourself with the total scope of the subject. Read and think about the table of contents, which provides an outline of the many facets of constitutional law. Then follow these steps for *quadruple-strength learning* as you study each chapter:

1. Read the Learning Objectives (LOs) at the beginning of the chapter. Assess your current knowledge of the subject of each objective. Examine any preconceptions you may hold. Look at the key terms, and watch for them when they are used.
2. Read the chapter while underlining, highlighting, or taking notes—whatever is your preferred study method. Pay special attention to all highlighted information, which represents the chapter-opening LOs and reinforces the key concepts in the chapter:

LO1 *Article 3 of the U.S. Constitution established the authority for a federal judiciary. The Federal Judiciary Act of 1789 established the first Supreme Court, and although the number of justices has varied, nine has remained the agreed-upon number since 1869.*

Also, pay special attention to all the words in boldface type and their corresponding definitions. The key terms and their definitions appear in the margin the first time they are used:

judicial review the power of a court to analyze decisions of other government entities and lower courts

3. When you have finished reading the chapter, read the summary—your third exposure to the chapter’s key information. Then return to the beginning of the chapter and quiz yourself. Can you respond to all of the learning objectives? Can you define the key terms?
4. Finally, read the Discussion Questions at the end of the chapter and be prepared to contribute to a class discussion of the ideas presented in the chapter.

By following these steps, you will learn more information, understand it more fully, and remember it longer.

Note: The material selected to highlight using the quadruple-strength learning instructional design includes only the chapter’s key concepts. Although this information is certainly important in that it provides a structural foundation for understanding the topic(s) discussed, you cannot simply glance over the highlighted boxes that correspond to each Learning Objective and the summary and expect to master the chapter. You are also responsible for reading and understanding the material that surrounds these basics—the “meat” around the bones, so to speak.

New to This Edition

The seventh edition of *Constitutional Law and the Criminal Justice System* has been completely updated with the most recent Supreme Court decisions and references available. Each chapter has been revised and updated as follows:

- **Chapter 1: A Historical Overview** Streamlined discussion to reduce redundancies; added a new key term (*confederation*); added a new Myth/Fact box.
- **Chapter 2: An Overview of the U.S. Legal System** Added a new key term (*collective conscience*); changed the term *Shepardizing* to *citing* to reflect contemporary terminology; updated the section discussing Shepardizing to reflect the fact that many citing methods exist now, all under the original idea of Shepard; added information about codifying law for historical context; added a new Myth/Fact box; updated statistics on court caseloads and juvenile cases.
- **Chapter 3: The U.S. Supreme Court: The Final Word** Reorganized chapter content for improved presentation and reduced the number of first-level headings; added a new Myth/Fact Box; updated caseload statistics and public opinion data; added an explanation of the *in forma pauperis* docket; added a discussion about the current vacancy left by Scalia; added a comment about judicial interpretation; added a new “In the News” article.
- **Chapter 4: Equal Protection under the Law: Balancing Individual, State, and Federal Rights** Added several new key terms (*implicit bias*, *procedural justice*), as well as accompanying discussions about implicit bias and procedural justice; added a new Constitutional Law in Action box pertaining to enumerated versus unenumerated rights; updated the decisions for *Schuette* (2014) and *Fisher* (2016); added discussions for several new cases (*EEOC v. Abercrombie and Fitch*, 2015; *City and County of San Francisco v. Sheehan*, 2015); added a quote by Senator Hubert Humphrey regarding affirmative action; added Case in Brief boxes for ten cases (*Brown v. Board of Education*, 1954; *Regents of the University of California v. Bakke*, 1978; *Schuette v. Coalition to Defend Affirmative Action*, 2014; *Ricci v. Destefano*, 2009; *EEOC v. Abercrombie and Fitch*, 2015; *City and County of San Francisco v. Sheehan*, 2015; *United States v. Windsor*, 2013; *Obergefell v. Hodges*, 2015; *Strauder v. West Virginia*, 1880; and *Wolff v. McDonnell*, 1974); updated information pertaining to public opinion on illegal immigration; added a new table comparing Secure Communities to PEP; included a few sentences on Obama’s executive order and the November 2014 memo by the DHS Secretary; added a few paragraphs on *United States v. Texas* (2016) and the ruling that blocks Obama’s immigration executive action; included mention of new training to help officers identify and control implicit bias; added a new “In the News” article.
- **Chapter 5: The First Amendment: Basic Freedoms** Added new key term (*pure speech*) and reorganized the “Freedom of Speech” section to introduce the reader to the concept of *pure speech*; included discussions of six new cases (*Marsh v. Chambers*, 1983; *Town of Greece v. Galloway*, 2014; *Holt v. Hobbs*, 2015; *Burwell v. Hobby Lobby*, 2014; *McCullen v. Coakley*, 2014; and *Lane v. Franks*, 2014); added Case in Brief boxes for eight cases (*Everson v. Board of Education*, 1947; *Agostini v. Felton*, 1997; *Town of Greece v. Galloway*, 2014; *Burwell v. Hobby Lobby*, 2014; *Holt v. Hobbs*, 2015; *Reed v. Town of Gilbert*, 2015; *United States v. Stevens*, 2010;

and *Lane v. Franks*, 2014); added a brief explanation of separationist versus nonpreferentialist theory in the discussion of freedom of religion; expanded the discussion of the RFRA to include mention of the separation of powers issue (*Congress v. Judiciary*) and to provide a segue into two recent decisions: *Holt v. Hobbs* (2015) (RLUIPA) and *Burwell v. Hobby Lobby* (2014) (RFRA); added a new “In the News” article.

- **Chapter 6: The Second Amendment: The Gun Control Controversy** Updated statistics throughout; added a new “In the News” article; added discussions and Case in Brief boxes for *Caetano v. Massachusetts* (2016) and *Abramski v. United States* (2014); added a discussion of the cases for *Peruta v. County of San Diego* (2016) and *Moore v. Madigan* (7th Circuit, 2012) to demonstrate the inconsistent rulings at the circuit court level for concealed carry; included a mention of the NICS Improvement Amendments Act of 2007 (NIAA), recent changes that allow submission of mental health information (HIPPA rules) to NICS, and a push to have Social Security Administration (SSA) records submitted for people who are receiving disability payments for mental health problems as ways to improve quality of background checks; updated data on active anti-government groups in the United States; added information about terrorist watch lists and the NICS; added a new “In the News” article.
- **Chapter 7: The Fourth Amendment: An Overview of Constitutional Searches and Seizures** Added several new key terms (*consent decree*, *memorandum of agreement [MOA]*); added a new Constitutional Law in Action box dealing with probable cause; added considerable discussion of *Utah v. Strieff* (2016) and the attenuation doctrine; added Case in Brief boxes for *Florida v. Harris* (2013) and *U.S. v. Leon*; included a short discussion on writs of assistance/general warrants and four relevant cases; added discussion of *U.S. v. Tapley* to provide a more recent case example illustrating who is regulated by the government; added a quote by Justice Scalia in *City of Los Angeles v. Patel* (2015) regarding reasonableness of searches; clarified *privacy* in context of First Amendment versus Fourth Amendment; revised the *Spinelli* case discussion for clarity and accuracy; revised the definition of *reasonable suspicion* for clarity; added a brief discussion on consent decrees and memorandums of agreement (MOAs); revised a Constitutional Law in Action box to focus on an identity theft ring.
- **Chapter 8: Conducting Constitutional Seizures** Added new discussions and Case in Brief boxes for *Heien v. North Carolina* (2014), *Navarette v. California* (2014), and *Rodriguez v. United States* (2014); added a discussion of *Alabama v. White* (1990) and anonymous tips; streamlined the discussion of the *Harris v. Commonwealth* case; added a short discussion on *Steagald v. United States* (1981); included a paragraph on force needing to be *intentional* to come under Fourth Amendment regulation; added a few sentences regarding the current debate on use-of-force continuums; added a paragraph on de-escalation in use of force; included a case discussion on Tasers (*Armstrong v. Village of Pinehurst*, 2016); added a discussion and accompanying table on how a person’s status (free, pre-trial detainee, convicted) affects how the use of force will be evaluated by the court and the test used; added a use of force discussion regarding *Kingsley v. Hendrickson* (2015); streamlined overall chapter organization by moving the *Hastings* case to the “Use of Force” section and moving the “Knock and Announce Rule Revisited” section to Chapter 9.

- **Chapter 9: Conducting Constitutional Searches** Added new discussions and Case in Brief boxes for *Fernandez v. California* (2014), *Birchfield v. North Dakota* (2016), and *Riley v. California* (2014); added a Case in Brief box for *Horton v. California* (1990); expanded the discussion on search incident to arrest to include *Riley v. California* and *Birchfield v. North Dakota*; expanded the “hot pursuit” discussion to include coverage of *Stanton v. Sims* (2013) and *United States v. Santana* (1976); included a brief discussion of *Grady v. North Carolina* (2015); updated and reorganized the section on electronic surveillance and the Fourth Amendment; added a bullet point for *In Re: Application for Telephone Information Needed for a Criminal Investigation* (2015); added a new “In the News” article.
- **Chapter 10: The Fifth Amendment: Obtaining Information Legally** Added several new key terms (*eminent domain, rebut*); added a discussion of *Salinas v. Texas* (2013) and the need to actively invoke the right to remain silent versus mere silence; expanded the discussion of *Garrity* and *Gardner* and added a Case in Brief box for *Garrity*; added a discussion and a new Case in Brief box for *Kansas v. Cheever* (2013); added mention of *Estelle v. Smith* (1981), which deals with compelled self-incrimination; added a mention of *Martinez v. Illinois* (2014), which deals with double jeopardy; included a discussion of the Blockburger test used in double jeopardy issues; added a discussion of *Evans v. Michigan* (2013) dealing with double jeopardy; expanded the discussion of just compensation to include the Takings Clause, and to include mentions of several cases (*Horne v. Department of Agriculture*, 2015; *Loretto v. Teleprompter Manhattan CATV Corp.*, 1982; *Lucas v. South Carolina Coastal Council*, 1992; *Pennsylvania Coal Co. v. Mahon*, 1922; *Penn Central Transportation Co. v. New York City*, 1977; and *Kelo v. New London*, 2005); added Case in Brief box for *Kelo v. New London*; added a new Constitutional Law in Action box dealing with the Takings Clause; added a new “In the News” article.
- **Chapter 11: The Sixth Amendment: Right to Counsel and a Fair Trial** Added several new key terms (*prima facie, testimonial statement*); added new case discussions for *Betterman v. United States* (2016), *Strunk v. United States* (1973), *Lewis v. United States* (1996), *Ohio v. Clark* (2015), and *Kuhlman v. Wilson* (1986); added a Case in Brief box for *Ohio v. Clark*; clarified the jury nullification discussion; expanded the discussion of the *Batson* challenge to explain what is required; included a new Constitutional Law in Action box to illustrate *Batson* challenges; added a new “In the News” article.
- **Chapter 12: The Eighth Amendment: Bail, Fines, and Punishment** Updated Table 12.1; added mentions of these cases: *Schilb v. Kuebel* (1971), *Montgomery v. Louisiana* (2015), *Glossip v. Gross* (2015); *Hall v. Florida* (2014); *Apprendi v. New Jersey* (2000); and *Hurst v. Florida* (2016); reorganized the section on Corrections to include a discussion on the use of force and Eighth Amendment claims of cruel and unusual punishment (*Hudson v. McMillian*, 1992).
- **Chapter 13: The Remaining Amendments and a Return to the Constitution** Added a new key term (*disenfranchise*); added mentions of these cases: *Wesberry v. Sanders* (1964), *Brown v. Thomson* (1983), and *Evenwel v. Abbott* (2016); added detail to the section on the Fifteenth Amendment; added a discussion on “one person, one vote”; expanded the discussion on the Twenty-Seventh Amendment; added a brief section explaining how an amendment gets passed; added a new Constitutional Law in Action box.

Ancillaries

For the Instructor

Online Instructor's Manual. The Instructor's Manual contains a variety of resources to aid instructors in preparing and presenting text material in a manner that meets their personal preferences and course needs. For each chapter, it includes learning objectives, key terms, a detailed chapter outline and summary, lesson plans, discussion topics, student activities, and media tools.

Online Test Bank. Updated by Keith Bell of West Liberty University, the Test Bank contains multiple-choice, true/false, completion, and essay questions to challenge your students and assess their learning. It is tagged to the learning objectives that appear in the main text, references to the section in the main text where the answers can be found, and Bloom's taxonomy. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage.

Cengage Learning Testing Powered by Cognero. The Test Bank also is available through Cognero, a flexible, online system that allows you to author, edit, and manage test bank content as well as create multiple test versions in an instant. You can deliver tests from your school's learning management system, your classroom, or wherever you want.

Online PowerPoints. Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint® slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint® slides prove concept coverage using images, figures, and tables directly from the textbook.

For the Student

MindTap for Constitutional Law and the Criminal Justice System. With MindTap™ Criminal Justice for *Constitutional Law and the Criminal Justice System*, you have the tools you need to better manage your limited time, with the ability to complete assignments whenever and wherever you are ready to learn. Course material that is specially customized for you by your instructor in a proven, easy-to-use interface keeps you engaged and active in the course. MindTap helps you achieve better grades today by cultivating a true understanding of course concepts, and includes a mobile app to keep you on track. With a wide array of course-specific tools and apps—from note-taking to flashcards—you can feel confident that MindTap is a worthwhile and valuable investment in your education.

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Prologue

Constitutional law—no other subject guides our daily lives as does the Constitution of the United States. Each of us can go about our business in a fairly predictable, safe way because of the guarantees and personal freedoms ensured by our Constitution. And yet how many Americans know much about it? Most have never read it. Few have studied it. Even fewer have taken the time to contemplate the implications of this incredible document—one many have died for.

Walk into any law library and the sheer volume of material is overwhelming. Yet to remain law, every one of these books must balance ever so delicately on one other, much smaller, document—the U.S. Constitution. This is a heavy burden for the Constitution to bear, yet it has done so admirably for more than two centuries. And all you have to do to see that it continues to do so is to maintain an awareness of current events. The U.S. living law changes before your eyes.

When the document was drafted in 1787, it was never meant to be an all-inclusive compendium of legal answers. It was intended as a basic framework within which all other law must remain. It is so powerful a document that any laws people try to impose on it that do not meet its tenets are simply void. However, the difficulties faced by Rosa Parks and other American heroes who have stood up for their constitutional rights remind us that the process is not quite that easy.

Those drafting the Constitution had a timeless vision. They knew society would change, as would its needs. They realized they could never foresee all the issues their country would confront (and what issues there are!). But the framers of our Constitution successfully developed the charters that established our unique U.S. legal system. The basic organizational structure is created so no one person, royalty or dictator, shall ever have total rule, and so that a handful of precious basic rights are ensured. This is what the U.S. Constitution is about. It is really quite simple. So why does a course in constitutional law strike fear in the hearts of students of all ages? Because anything that has worked so well for so many, for so long, must have some built-in complexity. And it does—interpretation.

Myriad forces affect interpretation of the Constitution: the era, societal norms, and politics. Indeed, constitutional interpretation is political, explaining why Presidents want to exercise the powerful right to appoint justices to the U.S. Supreme Court. This text addresses the awesome power the Court has in being the final arbiter of which laws are constitutional and which are not. In this role, the Supreme Court becomes the ultimate maker of law. In the famous case of *Marbury v. Madison* (1803), the Court considered whether it had the authority to review laws passed by the Congress—and the Court declared that it did. Some argue that by doing so, the U.S. Supreme Court has become the de facto ultimate lawmaking body in our country. For this reason, it has become important for political leaders to have justices on the bench whose ideologies are in accord with theirs. Politics does play a real part in interpreting laws.

The Constitution works because those who wrote it more than 200 years ago provided only basic tenets, leaving open the challenge of interpreting them as they relate to current issues. For example, free speech issues are decidedly different today than two centuries ago—but the basic idea remains. The Fourth, Fifth, and Sixth Amendments still guide government investigations, but such matters as the use of sophisticated electronic eavesdropping and computer equipment have now become an issue.

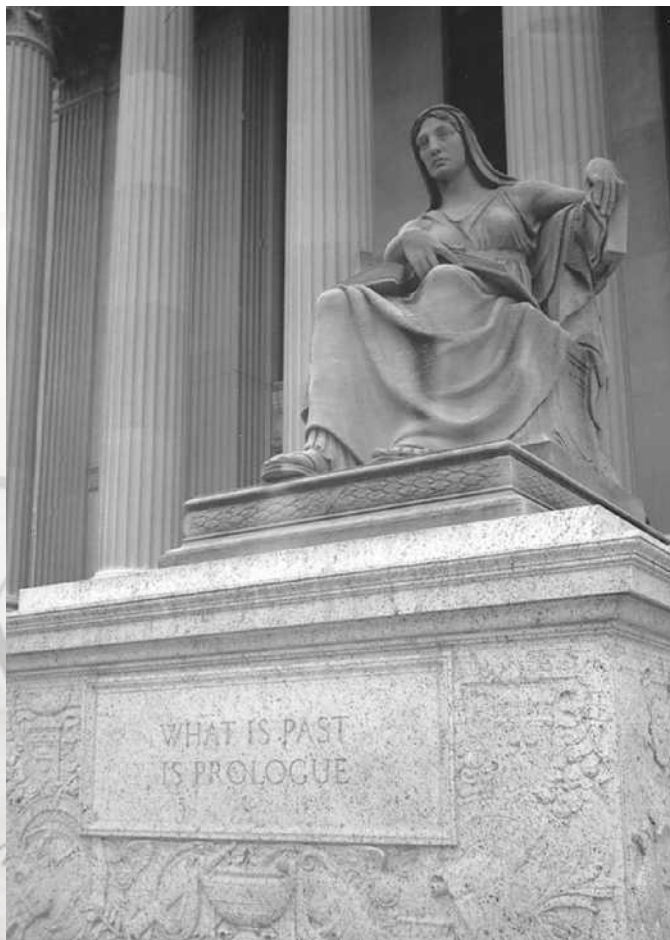
How people interpret the Constitution can cause confusion. For all who are certain how the Constitution should be read (in their favor, of course), others are just as certain it should be interpreted differently. Today's issues of abortion, gun control, and the environment beg for interpretation, flip-flopping back and forth, up and down, through our legal system, always searching for a final interpretation. Most often, the U.S. Supreme Court, as the final arbiter of law, tells us what that interpretation is—until the Court itself makes a change or until another case with a slightly different twist than previous cases is decided differently.

Before you look ahead, it is important to take time to reflect on the past. History seems to be an accurate predictor of the future because it has a unique way of repeating itself. Yet history is often overlooked. That is why this text starts with a brief, but important, review of what led to the U.S. Constitution, re-establishing the foundation on which the subsequent information neatly rests, and making the study of the Constitution logical, perhaps even enjoyable. This point is reinforced by two statues positioned at the rear exit of the National Archives in Washington, DC. Most visitors would never see these imposing statues unless they went out the wrong door. Those who do may stop, look around to get their bearings, and note the crucial advice emblazoned on one statue: "What Is Past Is Prologue."

A Historical Overview

Give me liberty, or give me death!

—Patrick Henry



Courtesy of J. Scott Harr.

What is past is prologue.

Learning Objectives

- L01** Identify the three main groups that coexisted in 1775 in the land that would become the United States of America and which of these groups U.S. history tends to ignore.
- L02** Know when, where, and why the First Continental Congress and the Second Continental Congress convened and what each resulted in.
- L03** Name the document that formally severed the American colonies' ties with Great Britain and know when this document was signed.
- L04** Clarify what the primary purpose of the Constitution is and how it is achieved.
- L05** Describe how the balance of power was established.
- L06** Summarize what the Bill of Rights is and why it was included with the Constitution.
- L07** Pinpoint the glaring omission in the Constitution and Bill of Rights that contradicted the Declaration of Independence.

Key Terms

amendments	Federalists	Patriot
anti-Federalists	Great Compromise	pluralism
confederation	law	ratify
constitution	Loyalist	supremacy clause
constitutionalism	minutemen	

Introduction

It has been said that the best way to know where you are going is to look where you have been. As discussed in the introduction to this section, constitutional law can become complicated. Any endeavor becomes easier, however, if a firm base is established from which to proceed. Although you might think a historical review is unnecessary, or that you took a wrong turn when opening a constitutional law text to begin reading about the colonists, you should gain some important insights.

This chapter begins with a discussion of the roots of the U.S. Constitution and contributions from the past. This is followed by an examination of how the United States of America developed, including a discussion of the American Revolution and the signing of the Declaration of Independence. Then the move toward the Constitution is described, followed by an overview of the Constitution itself and the balance struck through the addition of the Bill of Rights. The chapter concludes with an assessment of how the Constitution and Bill of Rights, as examples of living law, are nearly timeless documents.

Where It All Began

A **constitution** is a system of basic laws and principles that establish the nature, functions, and limits of a government or other institution. The U.S. Constitution (always written with a capital “C”) is youthful, which makes it all the more impressive. Consider other nations that rely on many more centuries, even thousands of years, of tradition and law that have been fine-tuned to serve them. And although the U.S. Constitution may be young, the history that influenced it can be traced back to when people first began forming groups throughout the world.

Every group has rules, and rules that become laws are an element of every society. **Law** is a body of rules promulgated (established) to support the norms of a society, enforced through legal means (i.e., punishment). The laws that the framers of the U.S. Constitution were familiar with helped form what would become the new law of the new country.

Representatives from every culture that has come to the United States, regardless of when they arrived or where they came from, share in the historical development of our country and legal system. It is the common thread that binds all who have come here—the desire for something better—that makes U.S. law so unique in serving the pluralistic society that created it. **Pluralism** refers to a society in which numerous distinct ethnic, religious, or cultural groups coexist within one nation, each contributing to the society as a whole.

Pluralism existed in the New World long before the colonists “discovered” America. Before the colonization of the United States, the American Indian tribes had their distinct territories, languages, and cultures. But when the colonists arrived and began taking over the land occupied by the American Indians (a population also called Native Americans), the American Indians began to band together in self-defense.

The colonists came from various countries and were of different religions and cultures. Initially they settled in specific areas and maintained their original culture, for example, the Pennsylvania Dutch. A pluralistic society challenged the colonists to exercise tolerance and respect for the opinions, customs, traditions, and lifestyles of others. Cultural and ethnic diversity enriched early American life and strengthened the emerging nation. The following list shows the ethnic population of the colonies in 1775 by percentage:

48.7	English
20.0	African (slaves)
7.8	Scots-Irish
6.9	German
6.6	Scottish
2.7	Dutch
1.4	French
0.6	Swedish
5.3	Other

Source: Armento et al., 1991, p. 49.

constitution a system of basic laws and principles that establish the nature, functions, and limits of a government or other institution

law a body of rules promulgated (established) to support the norms of a society, enforced through legal means (i.e., punishment)

pluralism a society in which numerous distinct ethnic, religious, or cultural groups coexist within one nation, each contributing to the society as a whole

Interestingly, the American Indians are absent from this chart because they were not considered part of the colonies. Also of interest is the 20 percent African population, who were slaves brought to this country primarily to work on Southern plantations. In many Southern states, slaves outnumbered colonists. For example, in 1720, South Carolina's population was 30 percent white and 70 percent black (Simmons, 1976). Concerned about the dangers the oppressed slaves could create, some of the first new laws colonists wrote were slave laws. Most Southern colonies established a special code of laws to regulate the slaves and established special enforcement officers, known as slave patrols, to ensure that these laws were obeyed.

LO1 *In 1775, three large groups coexisted in the land that would become the United States of America: the American Indians, the African slaves, and the colonists. American Indians and African Americans are not often given the recognition they are due, but these groups played an important part in the development of the United States.*

The history of the United States has generally focused on only the colonists, and the colonists with the most wealth and power—white, male property holders—are credited with creating the basic structure of our country.

Over time, interaction, and eventually assimilation, occurred among the colonists, commonly referred to as a “melting pot” because several different nationalities combined into what was known as “the American colonist.” Such assimilation was encouraged by the vast, apparently unlimited resources available, as well as by the struggle for survival. Colonists faced the threat of foreign countries wishing to control them, the dangers posed by the American Indians they were displacing, and the often-rebellious slaves in the South. Therefore, it was natural that they should band together.

Colonies developed and organized in unique ways. The emerging nation saw different priorities and different norms. Some colonies banded together for security in ways not unlike modern businesses. Massachusetts Bay and Virginia, for example, entered into business-like agreements, or charters, establishing cooperative government. Other colonists entered into compacts with primarily religious purposes that established how they chose to govern themselves, as was the case with the Plymouth, Rhode Island, Connecticut, and New Haven colonies.

Regardless of how unique the states were allowed—in fact, encouraged and demanded—to be, it was undeniable that benefits remained in working together rather than separately. A fragmented beginning was developing into a single nation. The terms *liberty* and *limited government* were ideals that compelled all that was necessary for establishing a new country. But what did these terms mean, and how could a new country be effectively governed for the good of all while ensuring individual liberty and limited government? The task was daunting, but the promise of what could be was highly motivating.

Levy and Mahoney (1987, p. 35) explain how this new country was forging the law to come: “To keep government limited—that is, to remain a constitutional society, Americans took sovereignty away from government and lodged it with the people . . . with separation of powers. Because the people, rather than government at any level, must be sovereign, they can delegate some powers to their state governments and others to a national government.”

Development of the United States of America

The land that now composes North America has always held an attraction. As long ago as 30,000 B.C.E., people began traversing the continent to seek something that held the promise of more than they had. And whether the motivations for these

incredible journeys were as basic as food or as complicated as a search for political and religious freedoms, people came hoping for something better.

After its “discovery,” America became viewed as an attractive area for expansion by the world powers. Spain, France, and England, as well as other countries, saw great importance in adding the “New World” to their growing empires. This desire for existing nations to make America a part of their government planted the tiny seed of what was to grow into independence. Just as American Indians had seen their freedom threatened by the colonists and the African American slaves had been stripped of their freedom, the colonists realized their freedom was in jeopardy from abroad and vowed to not sit idly by while those asserting power attempted to coerce them into submission. When the colonies were confronted with attempts, primarily by Great Britain, Spain, and France, to consume and control the New World, resistance grew, exemplifying the spirit associated with the United States.

Colonial Dissension Grows

As the colonies’ populations began to grow, so did serious differences between those who saw themselves as free, independent colonies and those who wanted a foreign flag flying over them. As existing empires positioned themselves politically and militarily to expand their boundaries into the New World, conflict was inevitable.

In 1750, French troops began arriving from Canada, building forts and laying claim to land that American Indians were occupying and that England was eyeing. A showdown eventually occurred in 1754, when British leaders ordered the Virginia governor to forcibly repel the French. George Washington and about 150 colonists marched against the French in what became known in North America as the French and Indian War (1754–1763). This competition between the British and the French was part of a larger, general European conflict—the Seven Years’ War. By 1763, after the French and Indian War, French resistance was defeated, and the Treaty of Paris resulted in France losing most of the land it had claimed in America. But British problems were far from resolved.

Great Britain confronted two significant problems, the first being continued westward settlement by the colonists. This was problematic for Great Britain because the American Indian tribes fought to protect their land from the colonists, and the British army was unable to protect the isolated frontier settlements. For example, nearly 2,000 colonial men, women, and children died during Pontiac’s Rebellion (Divine, Breen, Fredrickson, & Williams, 1991). In December 1763, British and colonial troops finally crushed the American Indians’ defense of their territory. When King George III learned of the fighting, he issued the Proclamation of 1763, closing the western frontier to colonial settlement and placing it under military rule. Settlers already there were ordered to leave.

The second major problem facing Great Britain was the huge debt resulting from English military action to expand the empire. The British Parliament felt the colonists should share this debt. The colonies resisted the restrictions to westward settlement and to paying for Great Britain’s war debts. Significant leaders began emerging—George Washington, Benjamin Franklin, Paul Revere, and Thomas Jefferson—leaders who had found strength in cooperating to resist the French and who now redirected their resistance toward Parliament’s efforts to control America.

Spurred on by its belief that the American colonies should share in the expenses incurred, Parliament passed the Stamp Act in 1765, requiring stamps to be purchased and placed on legal documents such as marriage licenses and wills, as well as several commodities, including playing cards, dice, newspapers, and calendars. Further resentment grew when, in 1765, Parliament passed the Quartering Act, which required colonists to feed and shelter the 10,000 British troops in America.

Protests against the increasing British attempts to rule the colonies intensified, but demands that Parliament repeal these laws were rejected—objections to the Quartering Act later found their way into the Third Amendment to the U.S. Constitution. In addition, when the king's troops marched out of Boston on their way to Lexington and Concord, they were searching for munitions—hence the wording of the Second Amendment to the U.S. Constitution.

In 1766, the Stamp Act was finally repealed but was replaced by other taxes on commodities the colonists needed to import from England. New York resisted the Quartering Act, and Parliament again found itself trying to rule from abroad, which was not working well. Dissension increased, as did tensions between the colonists and the British soldiers sent to enforce Parliament's demands.

Finally, in 1770, after 4,000 armed British troops had come to Boston from Nova Scotia and Ireland, colonists began taunting British soldiers and throwing snowballs and ice at them. The soldiers fired on these colonists in what became known as the Boston Massacre. Attempting to quell the volatile situation, Parliament eventually repealed most of the taxes and duties, except those on tea. For both sides, this remaining tax was a symbol of British rule over the colonies. In December 1773, disguised as American Indians, colonists boarded three British ships in Boston Harbor and dumped the cargos of tea overboard. This event, known as the Boston Tea Party, represented the colonists' unwillingness to pay taxes without representation.

As a result of the tea dumping, Parliament passed several laws in retaliation for such an open act of defiance, including the following:

- Town meetings were restricted to one a year.
- The king was required to appoint people to the governmental court rather than have them elected.
- The Quartering Act was expanded, requiring soldiers to be housed in private homes and buildings (which seemed like spying to the colonists).
- British officials accused of crimes in the colonies were permitted to be tried in England, away from angry American colonists.

Again the colonists were not complacent. They met to address the situation.

The First Continental Congress

In September 1774, 55 delegates from 12 colonies met in Philadelphia to address their mounting complaints against Great Britain. At this First Continental Congress, such leaders as Samuel Adams and Patrick Henry resolved to resist British rule and agreed on three important actions. First, they adopted a set of resolutions defining

the rights, liberties, and immunities of the colonists and listing actions of the British government that violated these rights. Second, they drew up an address to King George III and another to the citizens of Britain, presenting American grievances and calling for a restoration of American rights. Third, they called for each community to establish a boycott committee to prevent colonists from buying British goods until the Congress's demands were met. In general, someone who bought British goods was branded a **Loyalist** or Tory. One who supported the boycott was called a **Patriot** or rebel.

By the beginning of 1775, the colonies were actively preparing for what many saw would be an inevitable confrontation with the British. **Minutemen**, the name given to the colonial soldiers, were drilled and equipped to respond at a minute's notice to protect American lives, property, and rights. In March 1775, Patrick Henry delivered his famous plea for freedom:

Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne and have implored its interposition to arrest the tyrannical hands of the Ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne. In vain, after these things, may we indulge the fond hope of peace and reconciliation.

There is no longer any room for hope. If we wish to be free; if we mean to preserve inviolate those inestimable privileges for which we have been so long contending; if we mean, not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon, until the glorious object of our contest shall be obtained; we must fight! I repeat it, sir, we must fight!! . . . It is vain, sir, to extenuate the matter. Gentlemen may cry, peace, peace; but there is no peace. The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear or peace so sweet as to be purchased at the price of chains and slavery?

Forbid it, Almighty God—I know not what course others may take, but as for me, give me liberty, or give me death! (Brown & Bass, 1990, p. 140)

The Revolution Begins

The American Revolution was led, financed, and designed by and for those with social and economic power. Ironically, some African American slaves joined the fight for freedom. With tensions at their flash point, minutemen in Lexington and Concord were alerted by William Dawes, Paul Revere, and other midnight riders that the British soldiers were coming.

On April 19, 1775, the waiting minutemen in Lexington saw the British Redcoats approaching. Shots were exchanged, and the British killed eight Americans that morning and then moved on to Concord. The battles at Lexington and Concord strengthened the colonists' resolve and prompted them to meet again to determine how to proceed.

Loyalist a colonist who did not support the boycott of British goods in the colonies and who still paid allegiance to the British monarchy

Patriot a colonist who supported the boycott of British goods in the colonies and who owed allegiance to America rather than to the British monarchy

minutemen colonial soldiers