

The Unwritten Constitution

RECALL: Our CONSTITUTION was created at the **CONSTITUTIONAL CONVENTION** in **1787**, it was **RATIFIED** in **1788**.

It states the duties which make our **GOVERNMENT** function, but other customs and traditions stem from the **Founding Fathers**.



Once the **CONSTITUTION** went into effect, other measures of government began to appear. These measures are informal for our system of government. There are nowhere to be found in the **CONSTITUTION**. They are part of **THE UNWRITTEN CONSTITUTION**.

THE CABINET

The **"CABINET"** is the **PRESIDENT'S** group of **EXPERT ADVISORS**. **CABINETS** usually include the **VICE PRESIDENT** and the heads of



DEPARTMENTS
such as:
FINANCE
DEFENSE
EDUCATION
and
HEALTH

LOBBYING

LOBBYING is **CONTROVERSIAL** because it creates opportunities for **CORRUPTION** (bribe, favors), but it also provides a way for citizens to voice members of Congress about the nation and decide if more different forms of **LEGISLATION** is the answer.



EXPLAIN

TERM LIMITS

The **FIRST PRESIDENT**, **GEORGE WASHINGTON** (1789-1797), set a precedent for all future **PRESIDENTS** by serving **TWO TERMS** in office. There were



debates in the **CONSTITUTION** about how long a **PRESIDENT** should serve. The **FEDERALIST** 30 proposed **four** years.

THE CABINET

Washington was the **FIRST** person to establish a **CABINET**. So he set a **PRESIDENT** in his own time. There were **INDEPENDENT** **DEPT.** **SECRETARIES** who had a **CABINET** but **WASN'T** **NOTED** in the **CONSTITUTION** about a **CABINET**.



POLITICAL PARTIES

Political parties are not mentioned in the **CONSTITUTION**, yet there they are. They played a role in our system of government.

In the **FEDERALIST** 10, **JAMES MADISON** argued against **political parties**. They were **dangerous**.



EXPLAIN

TERM LIMITS

The custom of serving only up to **TWO TERMS** is an example of the **UNWRITTEN CONSTITUTION**. The **31st** **PRESIDENT**, **FRANKLIN D. ROOSEVELT** served four terms.



He served four terms in 1933. The **CONSTITUTION** was changed and **TWO TERMS** were created. The **22nd** **AMENDMENT** sets **PRESIDENTS** to **TWO TERMS**.

LOBBYING

LOBBYING is when **CONGRESSIONAL** or **GOVERNMENTAL** members of **CONGRESS** to pass laws that would benefit them.



JUDICIAL REVIEW

The **SUPREME COURT** has the **FINAL** say about the **CONSTITUTIONALITY** of laws. **MAKING** the **CHIEF** **JUSTICE** **JOHN MARSHALL** led the **LAWYERS** **SUPREME COURT** case.

MARSHALL
VS.
MADISON


JUDICIAL REVIEW is established in the **CONSTITUTION**.



EXPLAIN

Makers Of The Unwritten Constitution

Richard H. FALLON



Makers Of The Unwritten Constitution:

The Makers of the Unwritten Constitution William Bennett Munro, 1930 *Makers of the Unwritten Constitution* Munro, 1930 **The Makers of the Unwritten Constitution** William Bennett Munro, 1982 The Makers of the Unwritten Constitution. The Fred Morgan Kirby Lectures ... 1929 William Bennett MUNRO, 1930 **Legal Positivism in American Jurisprudence** Anthony J. Sebok, 1998-10-28 This work represents a serious and philosophically sophisticated guide to modern American legal theory demonstrating that legal positivism has been a misunderstood and underappreciated perspective through most of twentieth century American legal thought *John R. Commons: Selected Essays Volume 2* Malcolm Rutherford, Warren Samuels, 2019-10-16 John R Commons is one of the most significant figures in the development of American economics One of the founders of the institutional school Commons developed theories which continue to influence the evolution of capitalism and of institutional change These volumes collect for the first time his major essays and articles **Constitutional Faith** Sanford Levinson, 2011-08-22 This book examines the constitutional faith that has since 1788 been a central component of American civil religion By taking seriously the parallel between wholehearted acceptance of the Constitution and religious faith Sanford Levinson opens up a host of intriguing questions about what it means to be American While some view the Constitution as the central component of an American religion that serves to unite the social order Levinson maintains that its sacred role can result in conflict fragmentation and even war To Levinson the Constitution's value lies in the realm of the discourse it sustains a uniquely American form of political rhetoric that allows citizens to grapple with every important public issue imaginable In a new afterword Levinson looks at the deepening of constitutional worship and attributes the current widespread frustrations with the government to the static nature of the Constitution

Makers of the American Republic David Gregg, Sidney Howard Carney (Jr), 1904 *The Invisible Constitution* Laurence H. Tribe, 2008-09-17 As everyone knows the United States Constitution is a tangible visible document Many see it in fact as a sacred text holding no meaning other than that which is clearly visible on the page Yet as renowned legal scholar Laurence Tribe shows what is not written in the Constitution plays a key role in its interpretation Indeed some of the most contentious Constitutional debates of our time hinge on the extent to which it can admit of divergent readings In *The Invisible Constitution* Tribe argues that there is an unseen constitution impalpable but powerful that accompanies the parchment version It is the visible document's shadow its dark matter always there and possessing some of its key meanings and values despite its absence on the page As Tribe illustrates some of our most cherished and widely held beliefs about constitutional rights are not part of the written document but can only be deduced by piecing together hints and clues from it Moreover some passages of the Constitution do not even hold today despite their continuing existence Amendments may have fundamentally altered what the Constitution originally said about slavery and voting rights yet the old provisos about each are still in the text unrevised Through a variety of historical episodes and key constitutional cases Tribe brings to life this

invisible constitution showing how it has evolved and how it works Detailing its invisible structures and principles Tribe compellingly demonstrates the invisible constitution's existence and operative power Remarkably original keenly perceptive and written with Tribe's trademark analytical flair this latest volume in Oxford's Inalienable Rights series offers a new way of understanding many of the central constitutional debates of our time About the Series Combining authority with wit accessibility and style Very Short Introductions offer an introduction to some of life's most interesting topics Written by experts for the newcomer they demonstrate the finest contemporary thinking about the central problems and issues in hundreds of key topics from philosophy to Freud quantum theory to Islam

The Invisible Constitution in Comparative Perspective Rosalind Dixon, Adrienne Stone, 2018-11-08 Constitutions worldwide inevitably have invisible features they have silences and lacunae unwritten or conventional underpinnings and social and political dimensions not apparent to certain observers This contributed volume will help its wide audience including scholars students and practitioners understand the dimensions to contemporary constitutions and their role in the interpretation legitimacy and stability of different constitutional systems

Implementing the Constitution Richard H. FALLON, 2001 This book argues that the Supreme Court performs two functions The first is to identify the Constitution's idealized meaning The second is to develop tests and doctrines to realize that meaning in practice Bridging the gap between the two implementing the Constitution requires moral vision but also practical wisdom and common sense ingenuity and occasionally a willingness to make compromises In emphasizing the Court's responsibility to make practical judgments Implementing the Constitution takes issue with the two positions that have dominated recent debates about the Court's proper role Constitutional originalists maintain that the Court's essential function is to identify the original understanding of constitutional language and then apply it deductively to current problems This position is both unwise and unworkable the book argues It also critiques well known accounts according to which the Court is concerned almost exclusively with matters of moral and constitutional principle Implementing the Constitution bridges the worlds of constitutional theory political theory and constitutional practice It illuminates the Supreme Court's decision of actual cases and its development of well known doctrines It is a doctrinal study that yields jurisprudential insights and a contribution to constitutional theory that is closely tied to actual judicial practice

Philosophical Foundations of Constitutional Law David Dyzenhaus, Malcolm Thorburn, 2016-02-05 Constitutional law has been and remains an area of intense philosophical interest and yet the debate has taken place in a variety of different fields with very little to connect them In a collection of essays bringing together scholars from several constitutional systems and disciplines Philosophical Foundations of Constitutional Law unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution why one might be necessary what problems it must address what problems constitutions usually address and some of the issues raised by the administration of a constitutional regime Although these issues of institutional design are of abiding importance many of them have taken on new significance in the last few years as

law makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders. Thus questions of constitutional revolutions challenges to the demands of the rule of law and the separation of powers have taken on new and pressing importance. The essays in this volume address these questions filling the gap in the philosophical analysis of constitutional law. The volume will provoke specialists in philosophy politics and law to develop new philosophically grounded analyses of constitutional law and will be a valuable resource for graduate students in law politics and philosophy.

The American economic review, 1936 The Language of Law and the Foundations of American Constitutionalism Gary L. McDowell, 2010-06-28

For much of its history the interpretation of the United States Constitution presupposed judges seeking the meaning of the text and the original intentions behind that text a process that was deemed by Chief Justice John Marshall to be the most sacred rule of interpretation. Since the end of the nineteenth century a radically new understanding has developed in which the moral intuition of the judges is allowed to supplant the Constitution's original meaning as the foundation of interpretation. The Founders' Constitution of fixed and permanent meaning has been replaced by the idea of a living or evolving constitution. Gary L. McDowell refutes this new understanding recovering the theoretical grounds of the original Constitution as understood by those who framed and ratified it. It was he argues the intention of the Founders that the judiciary must be bound by the original meaning of the Constitution when interpreting it.

FDR's Long New Deal Robert E. Wright, 2024-10-28

During his presidency FDR led the American public to believe that the US government could set policy that would transform the economy. This book argues that this assumption which ultimately became embedded into the general American psyche has impacted our economy today in more ways than one. Robert E. Wright breaks down the negative societal impact of the New Deal throughout this book. The chapters highlight the lasting influence of these policies providing new perspectives and never before seen archival research related to FDR's policies. The book provides insight into how assumptions of governmental intervention in the economy have shifted the direction of the economy over time. It also dives into socioeconomic topics related to social justice critiquing the New Deal in its original and historical contexts. Wright brings a long term public choice perspective to the New Deal providing interdisciplinary insights into socioeconomic topics such as gender race and climate. The resulting book is ideal for those interested in economics American history law and policy.

The Dynamic Constitution Richard H. Fallon, Jr, 2013-04-22

In this revised and updated second edition of *The Dynamic Constitution* Richard H. Fallon Jr provides an engaging sophisticated introduction to American constitutional law. Suitable for lawyers and non lawyers alike this book discusses contemporary constitutional doctrine involving such issues as freedom of speech freedom of religion rights to privacy and sexual autonomy the death penalty and the powers of Congress. Through examples of Supreme Court cases and portraits of past and present Justices this book dramatizes the historical and cultural factors that have shaped constitutional law. *The Dynamic Constitution* 2nd edition combines detailed explication of current doctrine with insightful analysis of the political culture and theoretical

debates in which constitutional practice is situated Professor Fallon uses insights from political science to explain some aspects of constitutional evolution and emphasizes features of the judicial process that distinguish constitutional law from ordinary politics

The Dynamic Constitution Richard H. Fallon, 2013-04-22 In this revised second edition of *The Dynamic Constitution* Richard H Fallon Jr provides an engaging sophisticated introduction to American constitutional law

Diminishing the Bill of Rights William Davenport Mercer, 2017-04-13 The modern effort to locate American liberties it turns out began in the mud at the bottom of Baltimore harbor John Barron Jr and John Craig sued the city for damages after Baltimore's rebuilt drainage system diverted water and sediment into the harbor preventing large ships from tying up at Barron and Craig's wharf By the time the case reached the U S Supreme Court in 1833 the issue had become whether the city's actions constituted a taking of property by the state without just compensation a violation of the Fifth Amendment to the U S Constitution The high court's decision in *Barron v Baltimore* marked a critical step in the rapid evolution of law and constitutional rights during the first half of the nineteenth century *Diminishing the Bill of Rights* examines the backstory and context of this decision as a turning point in the development of our current conception of individual rights Since the colonial period Americans had viewed their rights as springing from multiple sources including the common law natural right and English legal tradition Despite this rich heritage and a prohibition grounded in the Magna Carta against uncompensated state takings of property the Court ruled against Barron's claim The Bill of Rights Chief Justice John Marshall declared in his opinion for the majority restrained only the federal government not the states The Fifth Amendment accordingly did not apply to Maryland or any of the cities it chartered In explaining how the Court came to reject a multisourced view of human liberties a position seemingly inconsistent with its previous decisions William Davenport Mercer helps explain why we now envision the Constitution as essential to guaranteeing our rights Marshall's view of rights in *Barron* Mercer argues helped him navigate the Court through the precarious political currents of the time While the chief justice may have effected a shrewd political maneuver the decision helped hasten a reconceptualization of rights as located in documents Its legacy as Mercer's work makes clear is among the Jacksonian era's significant democratic reforms and marks the emergence of a distinctly American constitutionalism

Living Law Roger Cotterrell, 2017-07-05 *Living Law* presents a comprehensive overview of relationships between legal and social theory and of current approaches to the sociological study of legal ideas It explores the nature of legal theory and sociolegal studies today as teaching and research fields and the work of many of the major sociolegal theorists In addition it sets out the author's distinctive approach to sociological analysis of law applying this in a range of studies in specific legal fields such as the law of contract property and trusts constitutional analysis and comparative law

The Rights Retained by the People: The Ninth Amendment and Constitutional Interpretation Randy E. Barnett, 1993-03-16 Volume II of *The Rights Retained by the People* explores how the Ninth Amendment affects the proper way of interpreting the Constitution as a whole Contributors Sotirios A Barber Michael W McConnell Sanford Levinson

Stephen Macedo Andrzej Rapacznski Thomas C Grey Lawrence G Sager Morris S Arnold Earl M Maltz Susanna Sherry Calvin R Massey Thomas McAfee and Raoul Berger Together with Volume I which covers primarily the history and proper interpretation of the amendment itself these books constitute the definitive reference work on the Ninth Amendment

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