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# CONSTITUTIONAL

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# INTERPRETATION

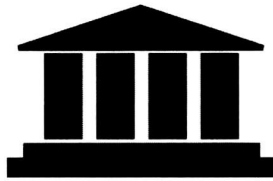
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EIGHTH EDITION

CRAIG R. DUCAT

# CONSTITUTIONAL INTERPRETATION

EIGHTH EDITION



CRAIG R. DUCAT  
Distinguished Teaching Professor Emeritus  
Northern Illinois University

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*In memory of*

**Harold W. Chase**  
**1922–1982**

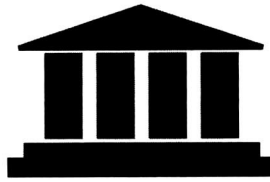
*teacher, scholar, mentor, publishing partner, friend, and*  
*“the very model of a modern Major-General”*

*Though all the winds of doctrine were let loose to play upon the earth, so*  
*Truth be in the field, we do injuriously, by licensing and prohibiting, to*  
*misdoubt her strength. Let her and Falsehood grapple; who ever knew the*  
*Truth put to the worse, in a free and open encounter?*

—John Milton, AREOPAGITICA

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## PREFACE

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Nearly 30 years ago—it was in 1974, to be exact—Hal Chase and I saw the first edition of our *Constitutional Interpretation* appear in print. We never dreamed we would see an eighth. Preparation of this edition, however, was a bittersweet event for me, because it occurred on the twentieth anniversary of Hal's death. It seemed entirely appropriate, therefore, that this edition be dedicated to him. As I wrote in the preface to the third edition, "Although Hal's remarkable agility in debate, his uncommon sense, his contagious goodwill, and his indomitable vigor are now matters of memory to the many former students and colleagues who revere him, this edition could not do better than to aspire to continue Hal's consistent commitment to fair-mindedness." This is as true now as it was then.

The eighth edition retains the format of its predecessor. It reflects developments in American constitutional law through the end of the Supreme Court's October 2001 Term. To accommodate material previously appearing in the 1999–2002 annual supplements, some cases from the seventh edition have been deleted, some summarized, and many more tightly edited. Material on the presidential pardoning power has been restored because of the controversy generated during President Clinton's final hours in office. This edition also includes relevant coverage of the USA PATRIOT Act, the authorization to intervene militarily in Afghanistan and Iraq, and legislation and executive orders dealing with electronic surveillance and resident aliens in the aftermath of the September 11, 2001 tragedy. The appendix on Supreme Court Justices has been enlarged slightly to include more substantial biographies of current members of the Court, and the appendix focusing on legal citations and research has been restored to put that information at your fingertips making this text a more complete resource.

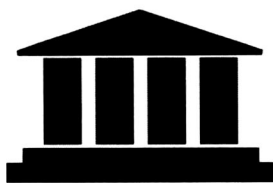
As with preceding editions, *Constitutional Interpretation* is published in hardback and two paperback components, subtitled *Powers of Government* (Chapters 1–7) and *Rights of the Individual* (Chapters 8–14). Throughout, footnotes appearing in judicial opinions are numbered, and footnotes I have added are lettered. Notes indicated by an asterisk may be from either source, although the context should make clear which it is. Like its predecessors, this edition frequently uses figures, charts, and tables to summarize doctrines, political developments, and court decisions.

At the urging of several colleagues, the material on the modes of constitutional interpretation has been restored as Chapter 2 but expanded to include a discussion of the relationship between judicial attitudes and constitutional doctrines in the context of American political history. Chapter 2 is reprinted as an essay at the end of the second paperback volume. Although the chapters have been renumbered, they follow the same sequence as in the seventh edition.

The result is a comprehensive and timely edition of *Constitutional Interpretation* that includes developments to October 2002. As in the past, cumulative annual supplements will continue to be available in time for fall semester and will include coverage of Supreme Court decisions through the end of the preceding June.

As with the revision of previous versions, this edition profited substantially from the specific suggestions of many valued colleagues: Robert Dudley (George Mason University), Cynthia Ostberg (University of the Pacific), Paula Lundberg (formerly of Northern Illinois University), Cornell W. Clayton (Washington State University), Anthony Gabrielli (High Point University), and Douglas S. Reed (Georgetown University). My thanks to Amy McGaughey, my editor, the staff at Wadsworth Publishing, and Emily Bush at Carlisle Communications for the efficient and conscientious production of this edition. I also want to acknowledge the immeasurable contributions made by thousands of undergraduate and graduate students whose favorable response and probing questions over three decades helped frame these materials. Finally, completing a project of this magnitude, edition after edition, would not have been possible without the affection and support of those closest. To Patrick Voisine especially, Jim Tucker, and Chris Fosnaugh I owe particular debts of gratitude.

CRAIG R. DUCAT  
DeKalb, Illinois  
October 2002



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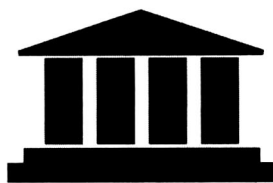
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