

Contents

<i>Preface</i>	<i>page</i> ix
<i>Notes to the Reader</i>	xv
<i>Acknowledgments</i>	xvi
Introduction: What Is the Constitution?	1
1 Constitutional Lawyers as Problem Solvers	4
1.1 Excursus: Originalism	13
2 Identifying the Problem: The Twofold Logic of Constitutional Law	17
2.1 Questions of Authorization and Questions of Prohibition	17
2.2 The Background Presuppositions of Constitutional Law	24
3 Solving Constitutional Problems: The Basic Toolkit	39
3.1 Arguments Focused on the Written Constitution	43
3.2 Arguments Derived from the Constitution-in-Practice	69
4 Solving Constitutional Problems: The Importance of Institutional Perspective	106
4.1 The Constitutional Perspective from within the Federal Courts	106
4.2 The Constitutional Perspective from within the Executive Branch	136
4.3 The Constitutional Perspective from the Standpoint of Congress	148
5 Solving Constitutional Problems: Specific Clauses in the Written Constitution	153
6 Identifying the Solution: Persuasiveness in Constitutional Law	172
6.1 Excursus: The Road from Plessy to Brown	199
Conclusion: Constitutional Law as Problem Solving	203

<i>The Constitution of the United States of America</i>	207
<i>Appendix: The Common Law</i>	228
<i>Additional Reading</i>	237
<i>Index</i>	239