

CONTENTS

Preface	xi
Note on Citations	xiii
Chapter 1. Constitutional Struggles	1
The Elements of Constitutionalism	1
The Doctrine of Separated Powers	6
Implied Powers	13
Inherent Powers	18
Custom and Acquiescence	19
Chapter 2. Appointment Powers	22
Basic Principles	22
The Power to Nominate	26
Senate Advice and Consent	32
Recess Appointments	42
Temporary Appointments	54
Chapter 3. Theory in a Crucible: The Removal Power	57
The “Decision of 1789”	58
Controversies from Jackson to Cleveland	62
Court Interpretations: 1789 to 1926	65
The <i>Myers</i> Case and Its Progeny	68
Independent Commissions	72
Disloyalty Dismissals and Procedural Safeguards	75
Removal Actions from Nixon to Bush I	80
Clinton’s Travelgate	85
George W. Bush	89
Double For-Cause Removal	90
The Congressional Presence	91
Chapter 4. Legislative Powers	96
Delegation	97
Judicial Checks on Delegated Power	102
Domain of Foreign Affairs	106

Nonstatutory Controls	112
Administrative Regulation	115
Chapter 5. Vetoes: Presidential and Legislative	130
The Presidential Veto	130
Signing Statements	139
Pocket Vetoes	142
The Item Veto	149
The Legislative Veto	156
<i>Chadha</i> and Beyond	167
Chapter 6. Power over Knowledge: Seeking and	
Withholding Information	176
Congressional Investigations	176
The Speech or Debate Clause	187
Presidential Immunity	191
Impeachment	194
Executive Privilege	199
Chapter 7. The Power of the Purse	215
Constitutional Limitations	215
Presidential Responsibility for Estimates	217
Congressional Revision of Estimates	220
Impact of the 1974 Budget Act	227
Secret Spending	232
Combining Purse and Sword: The Iran-Contra Affair	240
Chapter 8. Treaties and Executive Agreements	246
Treaties	246
The Role of the House	255
Treaty Termination	262
Treaty Reinterpretation	266
Executive Agreements	268
Chapter 9. The War Power	277
Commander in Chief	277
Emergency and Prerogative Powers	280
Life-and-Property Actions	288
Delegated Emergency Powers	293
Contemporary War Powers	295
The War Powers Resolution	300

Military Initiatives from Ford to Clinton	306
Terrorist Attacks of 9/11	311
Obama's Use of Military Force	314
The Politics of Comity	321
 Chapter 10. Conclusions	 324
 Appendix: The Constitution of the United States of America (Selections)	 333
 Suggested Readings	 341
Index of Cases	351
Subject Index	361