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A NON-LAWYER'S GUIDE TO DEBUNKING THE TOP FOUR MYTHS ABOUT THE U.S.  
CONSTITUTION

The world was, put as plainly as possible, *astounded* when Hillary Clinton lost the 2016 Presidential Election. She was a political favorite, and the common string of conversation at the time sounded something like, “Hillary? She can’t lose.” The real shock came the day following the election, when it was clear that [Clinton had won the popular vote](#), despite losing the Electoral College.

The possibility of a candidate losing an election by getting more votes *must* be barred by the U.S. Constitution, right? Surely there are safeguards in place to prevent such an uproar from occurring? Dear reader, now knowing what I know about the law, I share your cynicism and know the answer to my own question: no such protections are outlined in the U.S. Constitution.

Politics aside, perhaps the confusion of myself and many other ordinary Americans in November 2016 brings light to a larger issue: what does our Constitution actually guarantee us? What protections are undeniable, and what protections are subject to the pen stroke of a Supreme Court Justice? There are at least four myths about the Constitution that every American should be able to debunk. You do *not* need a law degree to continue reading.

It is no secret that extremists on both sides of the aisle have stretched, shrunk, and exploited the U.S. Constitution to satisfy their respective polarized propagandas, by misleading the public on guaranteed rights and manipulating the text to limit rights aimed at protecting

groups previously discriminated against during our country's history. Let's bring the U.S. Constitution back to its original size.

*Myth #1: The U.S. Constitution Requires Two Political Parties*

Has anyone ever told you that the [two party system](#) is required by law? If so, do not fret, as this is an all-too-common misconception. I was personally told this by an alt-right classmate of mine from high school, during a debate revolving around "Is it Time for a New Political Party?" The U.S. Constitution does not require the creation of political parties, nor does it require that there are two central ones. It also does *not* require that we have a Democratic National Committee or a Republican National Committee (GOP).

If you are thinking about starting your own political party now that you know we're not limited to any specific number by the Constitution, hold off on picking out an animal symbol for just a moment (if you do pursue this, I would recommend something unique, maybe a phoenix rising from the ashes). While it is technically possible for the United States to have [more than two major political parties](#), the Green Party and the Libertarian Party are prime examples of how difficult, if not impossible, it is to compete with the Democrats and Republicans as the system stands.

In 2000, Ralph Nadler, a Green Party candidate, [ran for President](#). Throughout his campaign, he made almost the exact same statement repeatedly; he said that the Green Party was ["going to build a major political progressive force in America."](#) Twenty-two years later, one could argue that the Green Party has certainly made a mark; but it would be difficult to confidently assert that the Green Party will match the power of the Democrats or Republicans in the next twenty-two years. To his credit, Nadler won approximately 2,882,955 votes, equating to

roughly 2.74% of the Popular Vote in the [2000 General Election](#). Some of the American electorate blames Nadler for Gore's ultimate loss to H.W. Bush, and therefore the War on Terror, as well as the country's failure to meet several of the United Nations' outlined climate crisis goals. As you can see, another downside of being in one of the smaller political parties is it could be scapegoated by the passionate Democrats or Republicans whose candidates lost in that election.

The question remains then: could the United States survive without the two-party political system? Probably, but it would not be an overnight shift. The minority parties have not broken out of their cages for a reason (many reasons, but especially this one), if American history has taught us anything, it is that change is a slow and oftentimes painful process. But any claim that the country could *never* survive without two central parties is a stretch.

#### *Myth #2: The Constitution Requires That There Be Nine Justices on the Supreme Court*

The [Supreme Court](#), the High Court, the lawmaker of the land—whatever you choose to call it, its justices have immense oversight over the country. It all started with the Constitution, which *clearly* declared that the Court would have nine justices and could hear a case whenever the merits were deemed appropriate, right? In reality, the Constitution does not set the number of Supreme Court justices, as that power is delegated to the Congress. Prior to 1989, the number of Supreme Court justices [changed six times](#). Since then, there have been nine. In 1936, there was a controversy surrounding President Franklin Delano Roosevelt's potential push to increase the number of justices and “pack” the Court, but it [never actually took place](#).

*Myth #3: The Supreme Court's Power to Review and Declare Laws Unconstitutional is Explicitly Outlined in the Constitution*

Regardless of its number of justices, the Court is supposed to function as an [apolitical](#) “check” on governmental power. This power to “check” and potentially curtail government powers is also not explicitly declared in the Constitution. Instead, this “check,” formally known as judicial review, comes from [Marbury v. Madison](#). The facts of the case are less important than the holding. The Supreme Court held that it possessed the right of judicial review. Judicial review is the power of the federal courts, particularly the Supreme Court, to declare governmental actions as unconstitutional. It is the only branch of government with this massive oversight power.

So neither the Supreme Court's number of justices nor its power of judicial review are mentioned in the Constitution; but, the Court's jurisdiction is. The Constitution requires that the lower federal courts (if the Congress decided to create any, which it did) have either federal question jurisdiction or diversity [jurisdiction](#) over the parties. As for the Supreme Court, its creation was required by the Constitution, and it has a sort of discretionary jurisdiction, because it can hear cases that have been appealed regardless of whether the case started in state or federal court. It also has original jurisdiction, which refers to the very few cases that can be filed in and heard in the Supreme Court from inception. Anyway, those are the Sparknotes from a law school Civil Procedure course, and you do not really need to understand those concepts. What everyone should know, though, is that the Supreme Court has the last and ultimate word on whether something is constitutional. There is no way to appeal a Supreme Court decision, and if you disagree with one, you have to wait for the Court to take up another case that focuses on a similar issue and hope that the Court overturns its precedent. But if you currently lean left, I would not

hold your breath on the Court overturning any conservative decision in the next decade. My apologies for being the bearer of your bad news.

*Myth #4: The Constitution Explicitly Guarantees Our Rights*

Turning to arguably the most discouraging piece of constitutional law: individual rights. Remember the Bill of Rights, the first ten amendments to the Constitution that cover things from gun control to being free from cruel and unusual punishment? Cases covering these ten amendments are somewhat easier for the courts to decide than issues relating to the remaining amendments, because these ten expressly articulate several rights. How do we know we have a constitutional right to bear arms? The Second Amendment says so. How do we know we have the right to peacefully assemble? The First Amendment declares it. I will preface this with an acknowledgement that cases surrounding these amendments can still be convoluted, particularly when related to complicated principles like searches and seizures (Fourth Amendment) or the right to bear arms (Second Amendment). But my point is that at least with regards to the rights outlined in the first ten amendments, there is some explicit basis, some key wording, that individuals can argue their rights through.

Abortion, contraception, and same-sex marriage, among other things, are not mentioned in the Constitution. So where are the rights to those things rooted (if you agree we have those rights)? Those “rights” come from the Due Process Clause of the Fourteenth Amendment. Now, we are *really* getting into the weeds of a constitutional law class here, so I’ll keep this as straightforward as possible. The idea is that some rights are so essential, vital, and fundamental that taking them away or restricting them violates the due process rights of the person deprived regardless of how it is taken away. Again, these rights are *not* stated in the Constitution, but we

look to the Fourteenth Amendment as a placeholder for certain individual rights that many people believe everyone should have, like the freedom to control whether you have a child and whom you marry. That sounds like it is subject to interpretation, right? Exactly, which is why Supreme Court justices come out differently on whether these aforementioned freedoms should be considered constitutionally-protected rights.

The Supreme Court can “change its mind” on whether a specific freedom constitutes a constitutionally-protected right. For a transparent example, note how *Dobbs v. Jackson Women's Health Organization* overruled both *Roe v. Wade* and *Planned Parenthood v. Casey*. The majority of justices in *Dobbs* overruled the majority of justices in both *Roe* and *Casey*. It is worth mentioning that oftentimes, people who believe that the freedoms not explicitly articulated in the Constitution must be left for state legislatures and politicians to ponder over (textualists) say that it is not a matter of taking rights *away from individuals*, but rather a push to *leave more decisions to individual states*. Make of that argument what you will.

*So, What Does the Constitution Actually Say?*

Some constitutional tenets are explicit, like the First Amendment’s right to free speech or its silence regarding how many political parties there should be. But what does the Constitution say regarding the individual freedoms like healthcare, reproductive rights, and privacy? That answer depends on which Supreme Court justice you ask (and when). Congratulations on finishing your Sparknotes first-year Constitutional Law course. Good luck in your next argument, and remember to sleep with the Constitution under your pillow tonight.