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Introductory Essays and Selected Cases

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# **AMERICAN CONSTITUTIONAL LAW**

***In memory of Lucy Williams Warnock, 1944–2010***

# PREFACE

**T**he devastating terrorist attacks on September 11, 2001, the U.S. government's responses to them and to more recent attempted terrorist attacks, continue to illustrate the recurring tension in American constitutional law between security and freedom. Understandably, Americans demand security. Yet the nation that is defended is defined by its devotion to individual liberty and constitutional limitations. This tension is reflected throughout this book and is expressly addressed in Chapter Fifteen—Security and Freedom in Wartime.

The tension is itself a reminder of the Supreme Court's central place in American government, a development that must be considered alongside two facts: First, on a substantial number of major constitutional issues in recent terms, the Court has split 5–4 or 6–3. Second, President Obama's recent appointments to the Court, like those of his predecessors, have a substantial influence not only on the makeup of the Court but therefore on the future of American constitutional law. With that prospect in mind, the Introduction retains its distinctive focus on institutional development and the politics of judicial selection.

This edition, following the pattern set in earlier ones, is rooted in the conviction that constitutional law is an intricate blend of politics, history, and competing values. Even though judicial decisions are couched in the language and method used by lawyers, constitutional cases are proper turf for students of politics and government. This is because the judiciary is the place where law and politics meet.

Accordingly, the book emphasizes the ongoing importance of constitutional interpretation. Interpretation represents choices made about the meaning of the Constitution. These choices in turn affect the operation of the political system, help to define individual rights and freedoms, and influence the quality of life that Americans enjoy. Constitutional interpretation has thus made the justices participants in the governing process. Their decisions embody selections among hard (and consequential) alternatives, rather than the easy dictates of a cold mechanical process. The book invites students to become party to the dialogue that the Court has maintained with the American people for over two centuries, a dialogue that reflects a historic attraction to, and suspicion of, majority rule—on the part of both the people and the Court.

## NEW TO THIS EDITION

New material in both essays and cases reflects recent developments, especially from the 2007–2008 and 2009–2010 terms. Moreover, all data in tables have been updated.

- The Introduction, which is the first substantive chapter in the book, includes new material on the Obama appointments of Judge Sonia Sotomayor and Solicitor General Elena Kagan to the Supreme Court.

- Chapter Three expands the discussion of the theories of presidential powers to include the unitary executive theory.
- Chapter Three includes an update of the Supreme Court's most recent decisions relating to the Guantanamo detainees.
- Chapter Five adds the decision on campaign finance regulation in *Citizens United v. Federal Election Commission* (2010).
- Chapter Nine has been reorganized to include not only materials relating to the Bill of Rights but new material on the developing law on the Second Amendment as well.
- Chapter Nine adds *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago* (2010).
- Chapter Ten has been updated to include the most recent data on FISA and other types of electronic surveillance.
- Chapter Fifteen adds the important detainee case of *Boumediene v. Bush* (2008).
- Tables 1 and 2 in the Appendix have been updated to reflect changes at the White House and in the personnel of the Supreme Court. The tables are organized both by natural or discrete court and by presidential term respectively.

## FEATURES

- Essays. A distinctive feature of the book remains the essay preceding the cases in each chapter. These essays supply the historical and political contexts and trace the meandering thread of constitutional doctrine across major decisions.
- Case Excerpts. The case excerpts that follow the essays—essential for learning and in depicting constitutional interpretation at work—are as generous as space allows. As shown in the contents, cases in each chapter are grouped by subtopic within that chapter, loosely corresponding to the organization of the essay itself.
- Tips on reading a Supreme Court decision are presented in Chapter One.
- Court-related publications as well as the abundant Court-related resources available on the Internet are surveyed in Chapter One.
- Glossary. Complementing both the essays and case excerpts is the glossary, which contains a definition of every term that is set in boldface in the essays and listed among the key terms at the conclusion of each chapter essay.
- Epilogue. It displays a table on American constitutional development, which also serves as a chronology of all cases reprinted in the book.
- Selected Readings. To complement both the essays and excerpted cases, each chapter essay concludes with a short and updated list of suggestions for further reading.

Throughout, names of cases discussed in the essays that are also reprinted in the book appear in boldface italics. Each case headnote features the voting alignment for that case. The few footnotes scattered about are numbered consecutively by chapter. In every instance, text appearing within excerpted opinions is the Court's, except for brief insertions within brackets for dates or case names or unless specially marked "—Ed." as having been inserted for this book.

- Web site: **[www.prenhall.com/mason](http://www.prenhall.com/mason)**. The site complements the sixteenth edition and facilitates teaching and learning in at least three ways: (1) The site contains important decisions handed down after this edition went to press, which are edited in the same manner as cases excerpted in the book. (2) The site retains cases from previous editions that were displaced by new material and so may be used as a case archive. Faculty designing syllabi thus have a larger number of edited cases from which to choose. (3) Finally, the site contains useful noncase material as well as links to other Court-related sites.

## ACKNOWLEDGMENTS

Through the years since publication of the first edition of *American Constitutional Law* in 1954, general readers, faculty, and students have contributed to its betterment. Their suggestions, reflected in both deletions and additions, indicate the measure of my indebtedness. I am especially grateful to those scholars who thoroughly reviewed the fifteenth edition and made recommendations for the sixteenth. These include Morris Jenkins, University of Toledo; Kati Mohammad-Zadeh, University of Minnesota; Ronald Nelson, University of South Alabama; and Kent Rissmiller, Worcester Polytechnic Institute. Other helpful suggestions came from Richard A. Glenn of Millersville University of Pennsylvania and Robert J. Bresler of Pennsylvania State University. Special thanks are due also to Stephen K. Medvic, chair of the Department of Government at Franklin & Marshall College and Jan A. Sams, academic coordinator for the department, as well as to my students, past and present, in Government 314 and 315.

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Much gratitude is owed also to family—my son Todd, my daughter Claire, my brother Mason, my grandson Jackson, and especially to Ellen, my wife and best friend for more than 40 years. Their love and devotion have been both sustaining and reassuring.

Finally, and sadly, I note the passing of Walter F. Murphy (1929-2010), who was a colleague of Professor Mason's for many years at Princeton. Walter's legacy as a teacher and mentor in the discipline is equaled only by his scholarly impact on the study of the Supreme Court.

Questions, suggestions, and comments about the book are welcomed via e-mail: [grier.stephenson@fandm.edu](mailto:grier.stephenson@fandm.edu).

*D. G. S., Jr.*



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