

THE CONSTITUTION OF THE UNITED STATES

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SECOND EDITION

FOUNDATION PRESS

UNIVERSITY CASEBOOK SERIES®

THE CONSTITUTION OF THE UNITED STATES

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To Kristen, love of my life (MSP)

To Mimi, whose love is patient and kind (SGC)

To the next generation of constitutionalists (MWM)

To Abigail (SLB)

PREFACE

The second edition of this casebook continues the organizing principles and central themes of the first edition. As we said in the preface to that edition,

Why another casebook in the field of constitutional law? The existing casebooks are valuable. They offer a diverse array of approaches, and they are excellent compendia of cases. They tend, though, to focus *only* on cases—and almost exclusively U.S. Supreme Court decisions—as the source of constitutional law. They also emphasize present doctrine more than constitutional history. And they offer more attention to judicial discourse about the Constitution than to the document’s own words and phrases and organization.

On each of these points, this casebook offers a different emphasis. It considers how the Constitution is interpreted and applied not only by the Court but also by Congress, the executive branch, lower federal courts, and all branches of state governments. It offers more detail on the history of the formation of the Constitution and more treatment of its principles in our nation’s first 150 years. And in keeping with the premise that the document itself is the source of constitutional law, this book will emphasize the Constitution’s text and structure. . . .

Our aim is that students should learn how to think about constitutional issues, rather than learn every fine detail of what the Court’s most recent thinking is. We should not be in the business of producing law school graduates whose constitutional sophistication has a built-in obsolescence. We should be in the business of training future lawyer-citizens to be able to think about their Constitution, to deal with the constitutional law issues that will arise during their lifetimes, and to be able to place those issues in a broader context.

As in the first edition, four features are especially prominent. First, the organization largely tracks the Constitution’s own structure. Second, emphasis is placed on constitutional history. The history is *not* mere background. Rather, it reveals how other interpreters have addressed enduring questions; it shows the path-dependence of constitutional law; and it offers students a chance to interpret the Constitution a few steps removed from contemporary politics. Third, the focus is on “Great Cases.” These include not only the great good cases but also the great tragic ones (such as *Dred Scott*), and they include great “cases” of constitutional interpretation outside the courts (such as President Lincoln’s First Inaugural Address). Fourth, the casebook lays stress on questions of interpretive methodology. Throughout the book, attention is given to five types of constitutional argument: text, structure, historical purpose, practice and precedent, and policy. The relative merits of these types of constitutional argument, and their inevitable conflicts, are considered in many contexts.

Yet there are also refinements in the second edition. Materials have been added, both old and new—from James Madison’s speech in the House on the constitutionality of the Bank of the United States to the judicial opinions in *The Health Care Cases*. Greater attention is given to procedural due process, to the affirmative role of the federal judiciary, and to the First Amendment. (Indeed, the breadth of materials on the First Amendment will make the book a suitable core for some courses on that subject.) Other

cases have been cut or trimmed, especially ones that professors adopting the book rarely chose to assign. And the entire text has been revised for concision and clarity. In all, the book is substantially shorter than the first edition.

We appreciate the suggestions from professors and students who used the first edition. We are also grateful for the contributions of Hannah Dubina, Paul Harold, Joshua Hawley, the reference librarians of the UCLA School of Law, and the production team at Foundation Press. Their efforts have made the book a clearer and more useful introduction to the Constitution of the United States.

MSP

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May 2013

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SECOND EDITION

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