

# CONSTITUTIONAL LAW

## *Cases and Materials*

EDWARD L. BARRETT, JR.

*University Casebook Series*

# CONSTITUTIONAL LAW

## CASES AND MATERIALS

By

EDWARD L. BARRETT, Jr.

Professor of Law, University of California, Davis

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**For Beth—with gratitude for thirty-five  
years of love and companionship**

\*



## PREFACE

The fourth edition of this book was published just as the Burger Court was taking shape. The addition of Justice Stevens in December, 1975, resulted in a Court a majority of which has been appointed since the end of the 1968 term. Hence, not only has the outpouring of major constitutional decisions continued its dramatic pace, but broad new approaches to constitutional adjudication have emerged.

These developments have occasioned a major revision of the book. The revision has been more extensive than normally would be true for a new edition at this time since my former co-editor, Paul Bruton, has retired from teaching and has not participated in this edition. That unfortunate loss has provided the necessity for me to rethink and reorganize the areas of the book for which he previously was responsible. Because of the extensive character of that revision, his name does not appear on the title page. Nevertheless, I remain deeply in his debt and that of John Honnold who participated in the first three editions of the book. They contributed much to my education and their imprint is still upon this book in many ways. I trust they will regard with charity the changes I have made in a book to which they gave so many years of effort.

The technique of presentation remains substantially unchanged. I believe there is need for a teaching book in this area which relies largely on the basic materials—cases, constitutional provisions, and statutes—and requires students to create their own generalizations from such materials. Limitations of space—and of student time—have forced some modifications in approach. This edition presents more brief forms of cases than previously and in a number of places textual notes have been added to increase coverage and to place materials in perspective. Also the material has been outlined in a more detailed fashion to assist the student in perceiving the forests to which the trees relate. But no attempt has been made to change the book into a text nor to include the extensive questions and problems which I use in teaching my own course. I continue to believe that it is better for each instructor to provide his individualized syllabus unencumbered by the questions of others which he may not wish to address. Having said this much, I should add that I fully respect the judgment of those who think otherwise. In fact, in my own teaching and scholarship I rely constantly for insight and stimulation upon the magnificent contributions made by Gerald Gunther in his brilliant book, *Cases and Materials on Constitutional Law* (9th ed. 1975).

My major disappointment in preparing this edition is that I had neither the time nor the wisdom to reduce the size of the book. Instead, there is a small increase, resulting from the large number of new and important cases, from the attention now being paid by the Court to new areas or old areas revisited, and from a conscious decision to include materials in some