
PREFACE

The third edition of this casebook continues the themes and organizing principles of previous editions. As we said in the preface to the first 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 previous editions, four features are especially prominent. First, the organization largely tracks the Constitution’s own structure. Second, emphasis is placed on constitutional history. This history is not mere background. Rather, it reveals other paths for addressing enduring questions and it offers students a chance to interpret the Constitution a few steps away 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, historical context, structure, practice and precedent, and policy. The relative merits of these types of constitutional argument, and their inevitable conflicts, are considered in many scenarios.

Along with this continuity of design, there is some touching up. The organization is more linear, and the pace begins more quickly. In the chapter on separation of powers, new attention is given to the power of the purse and executive discretion, as well as the prerogative powers. In the federalism chapter, there is additional coverage of the taxing and spending powers, and of the Necessary and Proper Clause. In the chapter on the Reconstruction Amendments, there is new attention to slavery, the drafting of the Fourteenth Amendment, affirmative action, and incorporation.

Throughout these additions, we have continued to emphasize interpretation by the political branches, and the additions include congressional debates about the spending power, speeches in Congress about the Civil Rights Act of 1866 and the Fourteenth Amendment, a signing statement by President Barack Obama, a radio address by President Franklin Delano Roosevelt, and drafts of the Equal Rights Amendment. These additions mean that the casebook is now suitable not only for a survey course on structure or rights, but also for a course more specifically on federalism or the Fourteenth Amendment. But casebook revision giveth and taketh away, and there are painful cuts. The omitted materials—from *In re Neagle* and *Summers v. Earth Island Institute* to *Erie* and *Eisenstadt*—are all included in the supplemental materials for adopters of this book.

Finally, we are delighted to welcome a new coauthor, Will Baude. Will is a distinguished constitutional law professor at the University of Chicago, and he has already made major contributions to this edition.

We are grateful to all those who helped make this book possible. Thank you to the professors who gave invaluable criticisms and suggestions: Josh Blackman, Nathan Chapman, Peter Conti-Brown, Marc DeGirolami, Tessa Dysart, Rick Garnett, Christopher Green, Philip Hamburger, Kurt Lash, Zachary Price, Sai Prakash, and Ryan Williams. Thank you as well to Mark Burnside and Dottie Lee, for their meticulous proofreading. Thank you to the reference librarians of the UCLA School of Law for for their ever-skillful assistance. And thank you to the production team at Foundation Press. Due to these combined efforts this is, we hope, a good book made better.

MSP
SGC
MWM
SLB
WPB