
TABLE OF CONTENTS

LIST OF OTHER CONTRIBUTING AUTHORS	V
PREFACE.....	VII
ACKNOWLEDGMENTS	XI
TABLE OF CASES.....	XLIX
Foreword.....	3
Introduction	5
I. The Preambles of the Constitutions of the World	12
A. The United States of America	12
B. The Republic of France	13
Preamble to the Fifth Constitution of the Republic of France.....	13
C. The Federal Republic of Germany	13
Preamble to the Basic Law for the Federal Republic of Germany	13
D. Japan	13
Preamble to the Constitution of Japan.....	13
E. The Republic of India.....	14
Preamble to the Constitution of the Republic of India	14
F. Canada.....	14
The British North America Act.....	14
G. Commonwealth of Australia.....	15
Preamble to the Commonwealth of Australia Constitution Act 1900	15
H. The Republic of Korea.....	15
Preamble to the Constitution of the Republic of Korea.....	15
I. The Federative Republic of Brazil	16
Preamble to the Constitution of the Federal Republic of Brazil.....	16
J. The Republic of South Africa	16
Preamble to the Constitution of South Africa	16
K. The Republic of Indonesia	17
Preamble to the Constitution of the Republic of Indonesia	17
L. The Republic of Turkey	17
Preamble to the Constitution of the Republic of Turkey.....	17
M. The Republic of Argentina.....	18
Preamble to the Constitution of the Republic of Argentina	18
N. The Russian Federation	18
Preamble to the Constitution of the Russian Federation.....	18
O. The Kingdom of Saudi Arabia.....	19
Basic Law of the Kingdom of Saudi Arabia.....	19
P. The People's Republic of China	19
Preamble to the Constitution of the People's Republic of China	19
The Declaration of Independence of the State of Israel	21
The Constitution of Islamic Republic of Iran	23
Q. The European Union.....	25
The Treaty of Lisbon.....	25
R. The United Nations	26
Charter of the United Nations	26

	Notes and Questions	26
II.	The U.S. Constitution and Ordered Liberty	28
A.	The Problem of Defensible Borders and of Standing Armies.....	29
	Alexander Hamilton, The Federalist No. 1	29
	John Jay, The Federalist No. 5	30
	Alexander Hamilton, The Federalist No. 8	32
	Notes and Questions	32
B.	The Pursuit of Safety and of Happiness	33
	First Draft of First Clause of the Virginia Declarations of Rights	34
	The Declaration of Independence	34
C.	The Problem of Special Interests and Factions	34
	James Madison, The Federalist No. 10	35
	Notes and Questions	37
D.	Representation and Federalism: Controlling the Effects of Faction	39
	James Madison, The Federalist No. 10 (continued)	40
	Notes and Questions	43
E.	The Separation of Powers and the System of Checks and Balances as a Means of Controlling the Effects of Faction	44
	James Madison, The Federalist No. 47	44
	James Madison, The Federalist No. 48	45
	James Madison, The Federalist No. 51	47
	Notes and Questions	49
F.	A Unitary Executive as a Check on Faction.....	50
	Alexander Hamilton, The Federalist No. 70	51
	Notes and Questions	53
G.	Judicial Review as a Check on Faction	53
	Alexander Hamilton, The Federalist No. 78	53
	Alexander Hamilton, The Federalist No. 79	57
	Notes and Questions	57
III.	A Tale of Two Bills of Rights.....	59
	The U.S. Bill of Rights of 1791.....	59
	Notes and Questions.....	60
	The Bill of Rights of the 1936 Constitution of the Union of Soviet Socialist Republics	61
	Notes and Questions.....	63
IV.	Case Study: The Citation of Foreign Law in the U.S. Supreme Court	64
	Trop v. Dulles	65
	Notes and Questions.....	66
	Printz v. United States.....	67
	Notes and Questions.....	69
	Washington v. Glucksberg	71
	Notes and Questions.....	72
	Lawrence v. Texas	72
	Notes and Questions.....	74
	Roper v. Simmons	75
	Notes and Questions.....	80
	Aristotle, Aristotle's Nicomachean Ethics, A New Translation by Robert C. Bartlett and Susan D. Collins bk. V, at 104–05.....	81
	Notes and Questions.....	81

V.	The Common Law and the Civil Law Traditions	84
A.	The Civil Law Legal Tradition	86
B.	The Common Law Legal Tradition	102
C.	Mixed Jurisdictions and the Blending of the Two Traditions.....	115
Chapter 1. Constitutionalism and Its Origins.....		117
I.	The Theory Behind Constitutionalism	117
	Thomas Jefferson, The Declaration of Independence.....	119
	John Adams, Thoughts on Government.....	120
	Letter from Thomas Jefferson to James Madison	122
	Russell Hardin, <i>Why a Constitution?, in Social and Political Foundations</i> of Constitutions	123
	Notes and Questions.....	125
	Jack M. Balkin, <i>Framework Originalism and the Living Constitution</i>	125
	Steven G. Calabresi, & Livia Fine, <i>Two Cheers for Professor Balkin’s</i> <i>Originalism</i>	126
	Jack Balkin, <i>Living Originalism</i>	135
	Notes and Questions.....	137
II.	The Formation of Constitutions.....	139
A.	The United States of America—Contested Legality, Continuous Legitimacy	141
	Notes and Questions	145
B.	Canada—Continuous Legality and Contested Legitimacy	147
	Re: Resolution to Amend the Constitution (“Patriation Decision”)	150
	Notes and Questions	154
C.	The Republic of South Africa—Continuous Legality, Broken Legitimacy	155
	Certification of the Constitution of the Republic of South Africa	159
	Notes and Questions	159
D.	Russia—Broken Legality, Broken Legitimacy	161
	William Partlett, <i>The Dangers of Popular Constitution-Making</i>	161
	Notes and Questions	166
III.	Amendment Procedures	166
A.	The United States of America	167
1.	Article V.....	167
	Coleman v. Miller.....	168
	Notes and Questions	168
B.	The United Kingdom of Great Britain and Northern Ireland	169
C.	The Republic of France	171
	Notes and Questions	171
D.	The Federal Republic of Germany	172
	Southwest State Case	174
	Notes and Questions	177
	Privacy of Communications Case.....	180
	Notes and Questions	183
E.	Japan	183
	Notes and Questions	184
F.	The Republic of Italy.....	186
G.	The Republic of India.....	188

	Kesavananda Bharati v. State of Kerala.....	191
	Notes and Questions.....	193
H.	Canada.....	193
I.	The Commonwealth of Australia.....	195
J.	The Federative Republic of Brazil.....	196
	Precautionary Measure in Direct Action of Unconstitutionality.....	197
	Notes and Questions.....	199
K.	The United States of Mexico.....	199
L.	The Republic of South Africa.....	200
M.	The Republic of Indonesia.....	201
N.	The European Union.....	201
	Notes and Questions.....	202
O.	Turkey.....	203
IV.	The Constitutionality of Secession.....	203
A.	The United States of America.....	204
	Abraham Lincoln's First Inaugural Address.....	205
	Texas v. White.....	207
	Notes and Questions.....	210
B.	Canada.....	210
	Reference re Secession of Quebec.....	210
	Notes and Questions.....	216
C.	The European Union.....	216
	Treaty on European Union.....	217
	Notes and Questions.....	217
	Constitution of the Union of Soviet Socialist Republics.....	217
	Notes and Questions.....	218
V.	The G-20 Constitutional Democracies: History and Constitutions.....	219
A.	The United States of America.....	220
B.	The United Kingdom of Great Britain and Northern Ireland.....	225
C.	The Republic of France.....	229
D.	The Federal Republic of Germany.....	232
E.	Japan.....	236
F.	The Republic of Italy.....	241
G.	The Republic of India.....	248
H.	Canada.....	254
I.	The Commonwealth of Australia.....	259
J.	The Federative Republic of Brazil.....	265
K.	The Republic of Korea.....	269
L.	The Republic of South Africa.....	271
M.	The Republic of Indonesia.....	278
N.	The European Union.....	279
O.	The United States of Mexico.....	282
P.	The Republic of Turkey.....	284
Q.	The Republic of Argentina.....	285
R.	The Kingdom of Saudi Arabia.....	288
S.	The People's Republic of China.....	289
T.	The Russian Federation.....	289

Chapter 2. The Origins and Growth of Judicial Enforcement of Written Constitutions	291
I. Four Different Models of Judicial Review	293
A. The Four Models	294
1. The Diffuse Model	294
2. The Concentrated Model.....	297
3. The Second Look Model	300
4. The Hybrid Model	303
II. The Origins and Growth of Judicial Review in the G-20 Nations: Lessons from Comparative Constitutional Law.....	308
III. The U.S. Model of Constitutional Enforcement.....	316
Marbury v. Madison	318
Notes and Questions.....	321
A. Mark Tushnet, <i>The United States: Ecelecticisim in the Service of Pragmatism, in Interpreting Constitutions: A Comparative Study,</i> (Jeffrey Goldsworthy ed., 2006)	322
B. The Counter-Majoritarian Difficulty	324
C. The Political Question Doctrine	325
IV. Founding Constitutional Moments in Other Constitutional Democracies	326
A. The Federal Republic of Germany	326
1. Background on The Federal Constitutional Court	326
Professor Doctor Wolfgang Zeidler, <i>President of the Federal Constitutional Court, The Federal Constitutional Court of the Federal Republic of Germany: Decisions on the Constitutionality of Legal Norms</i>	327
2. Background Facts Giving Rise to the Two Foundational German Constitutional Court Opinions	329
3. Second Foundational German Case.....	330
Lüth’s Case	330
Notes and Questions	335
4. The Political Question Doctrine in Germany	335
Notes and Questions	337
5. Donald P. Kommers, <i>Germany: Balancing Rights and Duties, in Interpreting Constitutions: A Comparative Study 161,</i> (Jeffrey Goldsworthy ed., 2006)	337
Notes and Questions	339
B. The Republic of France	339
The 1962 Decision on the Referendum.....	342
Louis M. Aucoin, <i>Judicial Review in France: Access of the Individual Under French and European Law in the Aftermath of France’s Rejection of Bicentennial Reform</i>	343
Freedom of Association Case.....	345
Notes and Questions	345
C. Japan	348
David S. Law, <i>The Anatomy of a Conservative Court: Judicial Review in Japan</i>	348
Notes and Questions	350
Sakata v. Japan (The Sunakawa Case).....	350

Minister of Agriculture, Forestry and Fisheries v. Ito (The Naganuma Nike Missile Site Case II).....	352
Notes and Questions.....	353
D. The Republic of India.....	354
Kesavananda v. State of Kerala.....	354
Notes and Questions.....	354
1. S. P. Sathe, India: From Positivism to Structuralism, in Interpreting Constitutions: A Comparative Study, (Jeffrey Goldsworthy ed., 2006).....	355
M.C. Mehta and Anr v. Union of India & Ors.....	358
Notes and Questions.....	360
E. The Republic of Italy.....	360
On the Constitutional Court's Power of Judicial Review.....	363
Notes and Questions.....	365
F. Canada.....	367
R. v. Oakes.....	369
Notes and Questions.....	372
1. Peter W. Hogg, Canada: From Privy Council to Supreme Court, in Interpreting Constitutions: A Comparative Study, 55–105 (Jeffrey Goldsworthy ed., 2006).....	372
Notes and Comments.....	377
G. The Commonwealth of Australia.....	378
Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (Engineers' Case).....	380
Notes and Questions.....	381
1. Jeffrey Goldsworthy, Australia: Devotion to Legalism, in Interpreting Constitutions: A Comparative Study, 121–23 (Jeffrey Goldsworthy ed., 2006).....	383
Notes and Questions.....	386
H. The Republic of South Africa.....	387
1. Heinz Klug, South Africa: From Constitutional Promise to Social Transformation, in Interpreting Constitutions: A Comparative Study, 266 (Jeffrey Goldsworthy ed., 2006).....	387
Notes and Questions.....	389
I. The Federative Republic of Brazil.....	389
Governor of Rio Grande do Sul v. National Congress.....	391
Notes and Questions.....	392
The Brazilian Socialist Party and the Democratic Labor Party v. National Congress.....	393
Notes and Questions.....	395
J. The Republic of Korea.....	395
Decision on the Impeachment of President Moo-hyun Roh.....	398
Notes and Questions.....	403
K. The United States of Mexico.....	404
Representative of the Federal District Legislative Assembly v. Article 334(III).....	406
Municipality of Rio Bravo v. Governor of Tamaulipas et al.....	408
Notes and Questions.....	409

L.	The United Kingdom of Great Britain and Northern Ireland	411
	Ghaidan v. Godin-Mendoza	415
	Notes and Questions	419
M.	The Republic of Indonesia	421
	Notes and Questions	422
N.	The Republic of Turkey	422
O.	Israel	422
	United Mizrahi Bank Ltd. v. Migdal Cooperative Village	424
	Notes and Questions	426
V.	Treaty-Based Judicial Review	428
A.	The European Union and the European Court of Human Rights	428
B.	Mexico and Treaty-Based Judicial Review.....	431
	On the Case of Radilla Pacheco and Others.....	431
	Notes and Questions	432
	Chapter 3. The Separation of Powers	433
I.	Introduction.....	433
A.	An Historical Essay on the Origins of the Separation of Powers	434
	Steven G. Calabresi, Mark E. Berghausen & Skylar Albertson, <i>The Rise and Fall of the Separation of Powers</i>	434
	Notes and Questions	440
B.	Presidential Versus Parliamentary Systems of Government	441
1.	Bruce Ackerman, <i>The New Separation of Powers</i> , 113 Harv. L. Rev. 633 (2000)	442
	Notes and Questions	443
	Steven G. Calabresi, <i>The Virtues of Presidential Government: Why Professor Ackerman Is Wrong to Prefer the German to the U.S. Constitution</i>	444
	Notes and Questions	458
	Steven G. Calabresi & Kyle Bady, <i>Is the Separation of Powers Exportable?</i>	458
	Notes and Questions	463
C.	Bicameralism or Unicameralism?.....	464
1.	The United States of America	465
	James Madison, The Federalist No. 62	466
2.	The United Kingdom of Great Britain and Northern Ireland	469
3.	The Republic of France	472
4.	The Federal Republic of Germany	472
5.	The Republic of Italy	474
6.	Japan.....	475
7.	The Republic of India	476
8.	Canada	476
9.	The Commonwealth of Australia	478
10.	The Federative Republic of Brazil	479
11.	The United States of Mexico	479
12.	The European Union.....	480
13.	Concluding Thoughts on Bicameralism	480
II.	The Separation of Powers.....	481

III. The Legislative Power	483
A. Delegations of Lawmaking Power	486
1. The Non-Delegation Doctrine in the United States	486
Schechter Poultry Corp. v. United States	486
Notes and Questions	488
2. The Non-Delegation Doctrine in the Federal Republic of Germany	490
Kalkar Case I.....	494
Notes and Questions	497
3. Delegations of Lawmaking Power in the United Kingdom	497
4. Delegations of Lawmaking Power in France	499
5. Delegations of Lawmaking Power in Japan	500
6. Delegations of Lawmaking Power in Italy	501
7. Delegations of Lawmaking Power in Canada	502
8. Delegations of Lawmaking Power in Australia	503
9. Delegations of Lawmaking Power in Indonesia	505
10. Delegations of Lawmaking Power in Brazil	505
States, Members of the Federation (Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Mato Grosso, Mato Grosso do Sul, Pará, Paraíba, Pernambuco, Rio Grande do Sul, Rio Grande do Norte, Rio de Janeiro, Rondônia, Santa Catarina, Sergipe, Tocantins, Distrito Federal e Alagoas) v. Union	506
Workers Party v. President of the Republic—Preliminary Decision	507
B. Parliamentary Dissolution	509
IV. The Executive Power	510
A. Curing Presidential Regimes of Hyper-Presidentialism	511
1. Presidentialism in South Korea	511
2. Presidentialism in Indonesia	512
3. Presidentialism in Mexico	513
Notes and Questions	514
B. A Unitary or a Plural Executive and a Ceremonial Head of State?	514
1. The United States: A Unitary Executive	515
2. Independent Entities in Other G-20 Democracies	516
C. Prerogative Powers and Emergencies	516
John Locke, <i>Second Treatise on Civil Government</i> , Chapter XIV	517
1. The Declaration of Independence in Regard to the Exercise of the Royal Prerogative by King George III	518
Notes and Questions	518
2. Prerogative Powers, Emergency Powers, and Claims of Inherent Executive Power in the United States	518
i. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).....	519
ii. Dames & Moore v. Regan, 453 U.S. 654 (1981).....	519
Notes and Questions	520
3. Prerogative Powers and the Pardon Power	520
Alexander Hamilton, <i>The Federalist</i> No. 74	520
4. Prerogative and Emergency Powers in the United Kingdom	521

5.	Prerogative Executive Powers and the Federal Republic of Germany	522
6.	Emergency Powers in the Republic of France	524
	President Charles de Gaulle, Televised Speech of Apr. 23, 1961	525
	Application 16 of the Constitution, Constitutional Council, Opinion of Apr. 23, 1961, Rec. 69	525
	Notes and Questions	526
7.	Emergency Powers in Japan	526
8.	The Republic of Italy	527
9.	Emergency Powers in Canada.....	528
10.	Prerogative Powers in the Commonwealth of Australia	528
11.	States of Emergency in Indonesia.....	530
12.	The United States of Mexico	530
13.	Prerogative Powers of the Executive, Emergency Powers, and the Brazilian Republic	530
	Federal Council of the Brazilian Bar Association v. the President of the Republic— Precautionary Measure	531
D.	Comparative Administrative Law	533
V.	The Judicial Power	535
A.	Boundaries Between Judicial Power and Legislative Power	537
1.	The United States of America	537
i.	Bills of Attainder and Ex Post Facto Laws.....	537
	Notes and Discussion	538
ii.	Contempts of Congress	539
	Notes and Discussion	540
2.	The United Kingdom of Great Britain and Northern Ireland	541
3.	The Federal Republic of Germany	542
4.	Canada	542
	Attorney-General for Ontario v. Attorney-General for Canada (Reference Appeal Case)	542
5.	The Commonwealth of Australia	544
	Notes and Questions	545
6.	The Republic of India	546
7.	The Federative Republic of Brazil	547
B.	Boundaries Between Judicial Power and Executive Power	547
1.	The United States of America	547
i.	Judicial Review of the Legality of Executive Actions	549
2.	The Republic of France	551
3.	Japan.....	551
4.	The Republic of India	552
i.	Supreme Court Advocates-on-Record Association v. Union of India, (1993).....	552
	Madras Bar Association v. Union of India & Anr	552
5.	Scotland	555
	Starrs v. Ruxton	555
	Notes and Discussion	556
6.	Canada	557
	Reference re Remuneration of Judges of the Provincial Court (P.E.I.)	557

Notes and Questions	559
7. The Federative Republic of Brazil	559
Chapter 4. Federalism.....	561
I. Introduction.....	561
II. General Background.....	563
Steven G. Calabresi & Lucy D. Bickford, <i>Federalism and Subsidiarity: Perspectives From U.S. Constitutional Law, in NOMOS LV:</i>	
Federalism and Subsidiarity 123.....	563
Notes and Questions	583
III. Paradigm Federalism Cases	584
A. The United Kingdom of Great Britain and Northern Ireland	584
B. The Republic of France	593
Law on Corsica	594
Notes and Questions	596
C. The Federal Republic of Germany	598
1. Foundational German Federalism Cases	602
i. Southwest State Case, 1 BVerfGE 14 (1951)	603
Notes and Questions	603
Television I Case	604
Notes and Questions	606
Concordat Case.....	606
Atomic Weapons Referenda Case I	608
2. Current German Federalism Doctrine	609
Immigration Act Case.....	610
Notes and Questions	612
Junior Professor Case	613
Notes and Questions	614
Geriatric Nursing Act Case	614
3. Assessing Whether Concurrent Legislation Is Essential	618
D. Japan	620
1. The Aomori Assembly Case, Grand Bench, January 16, 1953, Hanreishu, VII, No. 1, 12 (Civil)	622
E. The Republic of Italy.....	624
Region of Sardinia Sovereignty Case.....	627
Notes and Questions	629
F. The Republic of India.....	631
S.R. Bommai v. Union of India.....	634
Notes and Questions	641
G. Canada.....	641
1. The Constitution Act 1867.....	642
i. National Power	642
Notes and Questions	643
ii. Provincial Power.....	644
Notes and Questions	645
R. v. Crown Zellerbach.....	649
Notes and Questions	651
Reference re Securities Act.....	651
Notes and Questions	662

H.	Commonwealth of Australia.....	662
1.	Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd., 28 CLR 129 (1920).....	664
2.	The Bank Nationalization Cases	664
3.	The Power to Tax	668
	Notes and Questions	669
I.	The Federative Republic of Brazil	669
	Keith S. Rosenn, <i>Federalism in Brazil</i>	669
	Notes and Questions	674
J.	The Republic of Indonesia	675
K.	The United States of Mexico	675
	Municipality of Rio Bravo v. the Governor of Tamaulipas et al.	676
	Ayuntamiento of the City of Temixco, Morelos	677
L.	The Republic of South Africa	681
	Certification of the Constitution of the Province of Kwazulu-Natal	682
M.	The Republic of Korea.....	683
N.	The Republic of Indonesia	684
O.	The European Union.....	686
1.	The European Court of Justice.....	687
	Van Gend en Loos v. Nederlandse Administratie der Belastingen	688
2.	Supremacy of EU Law over National Law	691
	Flaminio Costa v. E.N.E.L.....	691
	Roman Kwiecień, <i>The Primacy of European Union Law Over National Law Under the Constitutional Treaty</i>	693
3.	Maastricht Treaty Decisions	694
	Maastricht Treaty Case (Federal Republic of Germany)	694
	Maastricht I Decision (Republic of France)	696
	Lisbon Treaty Case (Federal Republic of Germany).....	697
	Notes and Questions	699
4.	The Charter of Fundamental Rights of the European Union	699
Chapter 5. Bills of Rights, Birthright Freedom and Equality, and Human Dignity..... 701		
I.	Introduction.....	701
II.	A History of the Bill of Rights Idea	702
A.	First Draft of the Virginia Declaration of Rights of 1776	703
	Virginia Declaration of Rights, First Draft.....	704
B.	The Declaration of the Rights of Man and of the Citizen of Aug. 26, 1789.....	708
C.	The Fourteenth Amendment and <i>Corfield v. Coryell</i>	710
1.	The Fourteenth Amendment.....	710
	Corfield v. Coryell	711
	Notes and Questions	711
	The Bill of Rights Articles in the German Basic Law.....	712
	Notes and Questions	716
III.	Bills of Rights in the G-20 Nations.....	718
A.	The United States	718

B.	The United Kingdom	718
C.	France	719
D.	Germany	719
E.	Japan	719
F.	Italy.....	720
G.	India.....	720
H.	Canada.....	720
I.	Australia.....	722
J.	Brazil	723
K.	South Korea.....	723
L.	South Africa.....	725
M.	Indonesia	726
N.	Mexico.....	728
O.	The European Union.....	728
P.	Israel.....	728
IV.	Eugenics and the Right to Procreate	730
	Buck v. Bell	734
	Notes and Questions.....	735
	Skinner v. Oklahoma ex rel. Williamson	736
	Notes and Questions.....	738
A.	Griswold v. Connecticut, 381 U.S. 479 (1965).....	739
	Notes and Questions	740
V.	Abortion.....	741
	Roe v. Wade.....	741
	Notes and Questions.....	744
	German Abortion I Case.....	744
	Notes and Questions.....	749
	Italian Abortion Case	750
	Notes and Questions.....	752
A.	French Abortion Case of 15 January 1975, Decision 74–54 DC Voluntary Interruption of Pregnancy	752
B.	Canadian Abortion Case— <i>R. v. Morgentaler</i> , (1988) 1 S.C.R. 30	753
	Brazilian Abortion Case—National Confederation of Health Workers (CNTS) v. President	754
	Notes and Questions	766
	Mexican Abortion Case—Joint Actions of Unconstitutionality	767
	Notes and Questions	771
C.	Recent Developments in American & German Abortion Jurisprudence.....	772
	Notes and Questions	773
VI.	Capital Punishment.....	775
	The Death Penalty in Japan	778
A.	The Death Penalty in the United States	780
	Gregg v. Georgia	780
	Notes and Questions.....	785
	Roper v. Simmons	786
B.	The Death Penalty in South Africa.....	787
	State v. Makwanyane and Another	787
	Notes and Questions	791

C.	The Death Penalty and The Republic of Korea.....	792
	Capital Punishment.....	792
D.	The Death Penalty and Canada.....	794
	United States v. Burns.....	794
E.	Capital Punishment in Indonesia.....	795
	Death Penalty Case.....	795
	Notes and Questions.....	799
	Firing Squad Case.....	800
	Notes and Questions.....	803
VII.	Violations of Bodily Integrity.....	803
A.	The United States.....	804
B.	The Federal Republic of Germany.....	804
C.	The Italian Republic.....	805
VIII.	Life Imprisonment.....	805
	R. v. Latimer.....	806
	German Life Imprisonment Case.....	807
	The United States Life Imprisonment Case— Miller v. Alabama.....	810
	Notes and Questions.....	811
IX.	Assisted Suicide.....	811
	Washington v. Glucksberg.....	811
	Notes and Questions.....	815
	Carter v. Canada (Attorney General).....	815
	Notes and Questions.....	820
	Aruna Ramachandra Shanbaug v. Union of India.....	821
	Notes and Questions.....	825
X.	Right to Travel.....	827
A.	The United States.....	827
B.	The Republic of India.....	828
	Notes and Questions.....	830
XI.	Human Dignity.....	830
XII.	Sexual Freedoms.....	831
	Canada (AG) v. Bedford.....	832
	Notes and Questions.....	833
Chapter 6. Equal Protection of the Laws.....		835
I.	Introduction.....	835
A.	A History of Constitutional Equality Guarantees in the United States.....	836
1.	Race Discrimination and Class Legislation.....	837
2.	Systems of Caste: Feudalism, Hinduism, and the Black Codes.....	842
B.	The Doctrinal Foundation of U.S. Equal Protection Jurisprudence.....	846
	United States v. Carolene Products Co.	847
	Notes and Questions.....	848
II.	Equality and the G-20 Constitutional Democracies.....	849
A.	The United States Constitution.....	849
B.	France.....	849
1.	The Constitution of France.....	849
2.	The Declaration of the Rights of Man and of the Citizen of 1789....	850
3.	The Preamble to the Constitution of the Fourth Republic.....	850

C.	The German Basic Law	850
D.	The Constitution of Japan	851
E.	The Constitution of Italy	851
F.	The Constitution of India	851
G.	The Canadian Charter of Rights and Freedoms	852
H.	The Constitution of Brazil	852
I.	The Constitution of South Korea	852
J.	The Constitution of South Africa	852
K.	The Constitution of Indonesia	853
L.	European Union Charter of Fundamental Rights	853
M.	The European Convention on Human Rights	853
III.	Race Discrimination	853
A.	The United States	853
1.	Equal Protection Jurisprudence Prior to <i>Brown</i>	854
	<i>Brown v. Board of Education</i>	855
	Notes and Questions	856
	<i>Loving v. Virginia</i>	858
	Notes and Questions	860
B.	The Federative Republic of Brazil	861
	Robert Cottrol, <i>Brown and the Contemporary Brazilian Struggle Against Racial Inequality: Some Preliminary Comparative Thoughts</i>	861
	Notes and Questions	866
C.	The United Kingdom	867
	<i>R(E) v. Governing Body of JFS</i>	867
	Notes and Questions	873
D.	Race-Conscious Affirmative Action in the United States	874
	<i>Fisher v. University of Texas</i>	874
	Notes and Questions	876
IV.	Religion Discrimination	877
V.	Caste Discrimination	878
	Notes and Questions	880
VI.	Gender Discrimination	881
A.	The United States	882
1.	The Quaker Influence on the Seneca Falls Convention	882
2.	Seneca Falls Declaration of Sentiments	885
	<i>Bradwell v. Illinois</i>	888
B.	Women and the Right to Vote	892
C.	The Federal Republic of Germany	892
	Nocturnal Employment Case	893
	Notes and Questions	894
D.	The Republic of France	895
E.	The Italian Republic	896
	Italian Gender Equality Case	896
	Notes and Questions	898
F.	The Republic of India	899
1.	<i>Vishaka v. State of Rajasthan (1997)</i>	899
G.	The Republic of South Africa	901
	<i>President of the Republic of South Africa v. Hugo</i>	902

H.	The Republic of Korea.....	907
	Imposition of Duties of Military Service only on Men.....	908
I.	The European Union.....	908
	Marschall v. Land Nordrhein-Westfalen.....	908
VII.	Sexual Orientation Discrimination	910
A.	The Legality and Protected Status of Same-Sex Sexual Relationships.....	910
1.	The United States	911
	Lawrence v. Texas.....	911
	Notes and Questions	912
2.	The Republic of India.....	913
	Suresh Kumar Koushal and Another v. NAZ Foundation and Others, Supreme Court of India	913
B.	Rights to Same-Sex Marriage	918
1.	Canada	918
	Reference re Same-Sex Marriage.....	918
2.	Australia	920
	The Commonwealth v. Australian Capital Territory	920
3.	The United States	921
	Obergefell v. Hodges	922
	Notes and Questions	927
4.	The European Court of Human Rights.....	928
	Case of Hämäläinen v. Finland.....	928
	Notes and Questions	932
5.	Mexico	932
	Mexican Same Sex Marriage Case.....	932
6.	Brazil.....	934
	General Prosecutor of the Republic v. National Congress and Governor of Rio de Janeiro v. State Courts and Rio de Janeiro Congress	934
	Notes and Questions	939
C.	The Right to Change Your Gender	940
1.	Germany	940
	Transsexuals Case I.....	940
	Notes and Questions	941
2.	Mexico	941
	Direct Civil Amparo 6/2008, Concerning Declaration of Jurisdiction	941
VIII.	Illegitimacy Discrimination: The United States.....	945
A.	The United States	945
IX.	Patricide and Discrimination: Japan	945
A.	Japan	946
	Patricide Case	946
	Notes and Questions	949
X.	Alienage Discrimination.....	949
A.	Canada.....	950
	Andrews v. Law Society of British Columbia.....	950
B.	The Italian Republic	952

XI. Disability Discrimination	952
A. The United States	952
XII. Language Rights and Discrimination: Canada	953
A. Canada	953
Ford v. Quebec (Attorney General)	953
Notes and Questions	961
Chapter 7. Freedom of Expression	963
I. Introduction	963
II. A History of the Constitutional Protection of Freedom of Expression	964
A. A Chronology of Events Involving Galileo and the Inquisition	964
Areopagitica; A Speech of Mr. John Milton for the Liberty of Unlicensed Printing, to the Parliament of England	965
Notes and Questions	972
B. Freedom of Expression in the U.S. at the Founding	973
1. The Trial of John Peter Zenger	973
2. William Blackstone on the Liberty of the Press	974
Notes and Questions	975
Cato's Letter No. 15, "Of Freedom of Speech: That the same is inseparable from publick Liberty"	975
Cato's Letter No. 38, "The Right and Capacity of the People to Judge of Government"	976
3. The First Amendment to the U.S. Constitution	978
John Stuart Mill, On Liberty, Chapter Two, <i>Of the Liberty of Thought and Discussion</i>	979
Notes and Questions	980
C. Freedom of Expression in the United States in the Modern Era	981
III. Freedom of Expression in the G-20 Constitutional Democracies	983
A. The First Amendment to the U.S. Constitution	984
B. The United Kingdom	986
C. The French Declaration of the Rights of Man and of the Citizen	987
D. The German Basic Law	988
E. The Constitution of Japan	989
F. The Constitution of Italy	990
G. The Constitution of India	991
H. The Canadian Charter of Rights and Freedoms	993
I. Australia	994
J. The Constitution of Brazil	994
K. The Constitution of South Korea	995
L. The Constitution of South Africa	997
M. The Constitution of Indonesia	998
N. The Constitution of Mexico	1000
O. The Charter of Fundamental Rights of the European Union	1001
P. The European Convention on Human Rights	1001
Q. The Universal Declaration of Human Rights (1948)	1001
R. Israel	1001
IV. Political Speech and Sedition	1002
A. The United States	1003
1. The Sedition Act of 1798	1003

	United States v. Lyon	1003
	Notes and Questions	1006
	2. <i>Debs v. United States</i> , 249 U.S. 211 (1919)	1007
	3. <i>Texas v. Johnson</i> , 491 U.S. 397 (1989).....	1008
B.	The Federal Republic of Germany	1009
	Flag Desecration Case	1009
	Notes and Questions	1014
V.	Political Speech: Libel and Slander Law	1014
A.	The United States	1015
	New York Times Co. v. Sullivan	1015
	Notes and Questions	1018
B.	Germany	1019
	Mephisto Case	1019
	Notes and Questions	1024
	The Boll Case	1025
	Notes and Questions	1027
C.	The Federative Republic of Brazil	1027
	Democratic Labor Party v. President of the Republic and National Congress.....	1027
VI.	Political Speech and Incitement	1030
A.	The United States of America	1031
	<i>Abrams v. United States</i>	1031
	<i>Brandenburg v. Ohio</i>	1032
	Notes and Questions	1033
B.	The European Convention on Human Rights	1034
	Case of <i>Zana v. Turkey</i>	1034
C.	Australia	1037
	<i>Coleman v. Power</i>	1037
D.	The Federative Republic of Brazil	1041
	The “Marijuana March” Cases	1041
	Notes and Questions	1042
VII.	Freedom of Expression and Hate Speech	1043
A.	The United States of America	1043
	<i>Beauharnais v. Illinois</i>	1043
	<i>Virginia v. Black</i>	1043
	Notes and Questions	1047
B.	Canada.....	1047
	<i>R. v. Keegstra</i>	1047
	Notes and Questions	1052
	<i>R. v. Zundel</i>	1052
	Notes and Questions	1059
C.	European Court of Human Rights	1060
	<i>Garaudy v. France</i>	1060
	Notes and Questions	1062
D.	The Federal Republic of Germany	1063
	Holocaust Denial Case.....	1063
E.	Brazil	1064
	<i>Siegfried Ellwanger v. Superior Court of Justice</i>	1064
	Notes and Questions	1068

VIII. Freedom of Expression: Art, Pornography, and Obscenity	1068
A. Background.....	1068
1. Savonarola	1068
2. Historical Examples of Censored Works	1070
B. The United States of America	1070
1. United States v. One Book Called “Ulysses,” 5 F. Supp. 182 (S.D.N.Y. 1933).....	1071
Notes and Questions	1072
American Booksellers Ass’n v. Hudnut	1073
C. Canada	1077
R. v. Butler	1077
Little Sisters Book and Art Emporium v. Canada (Minister of Justice).....	1082
Notes and Questions	1087
D. Italy.....	1088
Italian Obscenity Case.....	1088
IX. Freedom of Expression: Commercial Speech	1090
A. The United States of America	1090
44 Liquormart, Inc. v. Rhode Island.....	1090
B. Canada.....	1093
Irwin Toy Ltd. v. Quebec (Attorney General)	1093
Notes and Questions	1096
Chapter 8. Freedom of Religion	1097
I. Introduction.....	1097
II. Historical Background.....	1098
A. English Religious Oppression	1098
B. Library of Congress, Religion and the Founding of the American Republic	1100
Roger Williams and the Founding of the Colony of Rhode Island and the Providence Plantations, in <i>The Legacy of Roger Williams Study Guide: A Project Commemorating the Tercentenary of His Death</i>	1101
Murray N. Rothbard, <i>The First Execution for Religion on American Soil</i> , in CONCEIVED IN LIBERTY, ch. 29, “Suppressing Heresy: Massachusetts Persecutes the Quakers”	1108
Rhode Island’s Colonial Charter of 1663	1113
Notes and Questions	1115
C. Salem Witch Executions in Massachusetts in 1692	1116
D. Touro Synagogue—History	1116
Exchange of Letters Between Moses Mendes Seixas and President George Washington.....	1117
James Madison, <i>Memorial and Remonstrance Against Religious Assessments</i>	1119
Notes and Questions	1120
E. The Religion Clauses of the First Amendment	1121
III. Religion Clauses in the G-20 Constitutional Democracies	1121
A. The United States	1121
B. The United Kingdom	1122

C.	The French Declaration of Rights and of the Citizen	1123
D.	The German Basic Law	1125
E.	The Constitution of Japan	1127
F.	The Constitution of Italy	1128
G.	The Constitution of India	1130
H.	The Canadian Charter of Rights and Freedoms	1131
I.	The Constitution of Australia	1132
J.	The Constitution of Brazil	1133
K.	The Constitution of South Korea	1133
L.	The Constitution of South Africa	1134
M.	The Constitution of Indonesia	1134
N.	The Constitution of Mexico	1135
O.	Charter of Fundamental Rights of the European Union	1136
P.	The European Convention on Human Rights	1136
Q.	Israel	1137
IV.	Establishments of Religion	1137
A.	The United States	1139
	Engel v. Vitale	1139
	Notes and Questions	1142
	Metzl v. Leininger	1143
	Zelman v. Simmons-Harris	1145
	Notes and Questions	1148
B.	The European Court of Human Rights	1149
	Lautsi v. Italy	1149
C.	The Federal Republic of Germany	1152
	Classroom Crucifix Case II	1152
	Notes and Questions	1155
D.	Japan	1156
	Kakunaga v. Sekiguchi	1156
	Notes and Questions	1165
E.	Italy	1166
	Catholic Instruction Case	1166
V.	The Free Exercise of Religion	1168
A.	The United States of America	1169
	Reynolds v. United States	1169
	Notes and Questions	1171
	Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission	1174
	Notes and Questions	1179
B.	France	1180
	Law of Dec. 9, 1905 on the Separation of Church and State	1180
	Laïcité in Education (Islamic Headscarf)	1181
	Law 2004–228 of Mar. 15, 2004 on the Wearing of Signs or Dress Manifesting Religious Affiliation in Public Primary Schools, Middle Schools, and High Schools	1182
	Union Française Pour La Cohésion National	1182
C.	The Federal Republic of Germany	1183
	A General Ban on Headscarves for Teachers at State Schools Is Not Compatible with the Constitution	1184

D.	Japan	1189
	Faith Healing Case	1189
E.	The Republic of Italy.....	1190
	Decision on Scientology	1190
F.	The European Court of Human Rights	1193
	Kokkinakis v. Greece	1193
G.	Brazil	1199
	1. Religious Symbols	1199
	Jewish Center for Religious Education v. the Union.....	1200
VI.	Religion, Discrimination, and the Equal Protection Clause	1202
A.	The United States	1202
	Locke v. Davey	1202
B.	The European Court of Human Rights	1204
	Eweida and Others v. United Kingdom.....	1204
C.	The Republic of India.....	1208
	1. Mohammed Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.....	1208
	Notes and Questions	1209
VII.	Religion in Schools.....	1210
A.	The United States of America	1210
	West Virginia State Board of Education v. Barnette	1210
	Notes and Comments.....	1212
B.	The European Court of Human Rights	1212
	Leylas Şahin v. Turkey.....	1212
	Notes and Comments.....	1214
C.	Canada.....	1214
	Multani v. Commission Scolaire Marguerite-Bourgeois.....	1214
	Notes and Questions	1216
VIII.	Abe Salander, Funding Religious Education Around the World and the American Anomaly.....	1216
A.	Australia	1217
B.	Canada	1219
C.	Germany	1220
D.	Great Britain	1222
E.	France	1224
F.	Israel	1226
G.	The Netherlands.....	1227
H.	Sweden.....	1228
I.	United States.....	1229
J.	Analysis of Varying Approaches	1231
Chapter 9. Comparative Civil, Criminal, and Appellate Procedure		1233
I.	Comparative Civil Procedure	1234
A.	The Civil Law Tradition	1235
	John Henry Merryman & Rogelio Pérez-Perdomo, <i>Civil Procedure,</i> <i>in</i> The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America	1235
	Notes and Questions	1245
	Hein Kotz, <i>Civil Justice Systems in Europe and the United States</i>	1246

Notes and Comments.....	1254
1. The Structure of the French Judiciary	1254
2. The Structure of the German Judiciary	1255
3. The Crisis of the Italian Legal System with Respect to Civil Cases	1256
4. Civil Justice in Brazil	1256
B. The Common Law Tradition	1256
1. The Court System of the United Kingdom	1258
i. The County Courts, Barristers, and Solicitors	1259
ii. A Short History of the Royal Courts of England Prior to 1873	1260
iii. The Supreme Court of Judicature Acts of 1873 and 1875	1261
iv. The Constitutional Reform Act of 2005	1262
v. The Judicial Committee of the Privy Council.....	1263
2. The Disappearance of Civil Jury Trial in England and Wales	1264
Ward v. James	1264
Notes and Questions	1270
3. The Court Structure and Civil Juries in Canada.....	1270
4. Court Structure and Civil Jury Trial in Australia and New Zealand	1271
5. The Structure of the Federal Court System in the United States	1272
6. Civil Jury Trial in the United States.....	1273
Atlas Roofing Co. v. OSHA	1275
i. Non-Incorporation of the Seventh Amendment	1277
ii. The Vanishing Civil Jury Trial in the U.S.	1278
William G. Young, <i>Vanishing Trials, Vanishing Juries,</i> <i>Vanishing Constitution</i>	1278
Notes and Questions	1279
II. Comparative Criminal Procedure.....	1279
A. The Civil Law Tradition	1280
1. Criminal Procedure in the Civil Law World.....	1280
John Henry Merryman & Rogelio Pérez-Perdomo, <i>The Civil</i> <i>Law Tradition</i>	1280
i. John Langbein, Torture and Plea Bargaining.....	1286
Notes and Questions	1288
ii. General Observations on Criminal Trials in the Civil Law Tradition	1288
iii. Criminal Procedure in France	1289
iv. Criminal Procedure in Germany	1290
v. Criminal Procedure in Japan	1291
vi. Criminal Procedure in Italy.....	1292
vii. Criminal Procedure in Mexico	1293
B. The Common Law Tradition	1294
1. The English Criminal Court System	1300
i. The Magistrates' Courts	1300
ii. The Crown Courts	1301
iii. Criminal Appeals.....	1301
iv. The Growth and Development of the English Police Force	1301

2.	The Scottish Criminal Court System.....	1302
3.	The Canadian Criminal Court System	1303
	Notes and Questions	1304
4.	The South African Criminal Justice System.....	1304
5.	The Israeli Criminal Justice System	1305
6.	India and the Abolition of Criminal Jury Trial.....	1306
7.	The Criminal Justice System in the United States	1308
C.	The Convergence of the Civil Law and Common Law Traditions in Criminal Procedure Over the Last 250 Years.....	1311
1.	Adversarial vs. Inquisitorial Systems of Criminal Procedure	1312
2.	“Plea Bargaining” in Germany, Italy, and France?	1314
i.	Absprachen in Germany	1316
ii.	Patteggiamento in Italy	1318
iii.	Composition in France	1319
3.	Exclusionary Rules in Criminal Trials	1320
III.	Selected Issues in Criminal Procedure.....	1320
A.	Search and Seizure Issues.....	1320
1.	The United States	1320
2.	Brazil: Privacy of Correspondence and of Telegraphic Data and Telephone Communications. <i>Antonio Osório Ribeiro Lopes da Costa v. Parliamentary Commission of Inquiry</i> (Writ of Mandamus 23.851–8) (2001)	1321
3.	France: Increased Police Powers to Combat Terrorism, 96–377 DC of 16 July 1996	1321
4.	Germany: The Privacy of Communications Case [The Klass Case], 30 BVerfGE 1 (1970).....	1322
	Mexico: Direct Amparo on Appeal 1621/2010	1322
B.	The Exclusionary Rule.....	1324
1.	The United States	1324
	Japan v. Hashimoto	1324
	Edwards v. Police	1325
	Notes and Questions	1325
C.	Interrogation	1326
	Public Committee Against Torture in Israel v. the State of Israel.....	1326
D.	Right to Silence and Privilege Against Self-Incrimination	1329
1.	English and American Legal History	1329
	Case of Gäfgen v. Germany	1330
	Notes and Questions	1338
2.	Canada.....	1339
	R. v. Herbert	1339
E.	The Right to Silence at Trial: Adverse Inferences	1341
1.	The United States of America	1341
2.	European Court of Human Rights	1341
	Murray v. United Kingdom	1341
F.	Proof Beyond a Reasonable Doubt.....	1342
IV.	Comparative Appellate Procedure.....	1343
A.	The Civil Law Tradition	1343

Sofie M.F. Geeroms, <i>Comparative Law and Legal Translation: Why the Terms Cassation, Revision and Appeal Should Not Be Translated</i>	1343
B. The Common Law Tradition	1347
Ladd v. Marshall	1347
1. Appellate Review in England and in the United States.....	1348
Chapter 10. Economic Liberties and Property	1353
I. Introduction.....	1353
II. A History of Modern Theories of Economic Liberty and Property	1356
John Locke’s Second Treatise on Government, Chapter V, “Of Property”	1356
William Blackstone, 1 Commentaries 134–35, 140–41	1357
Adam Smith, The Wealth of Nations	1358
The First Draft of the Virginia Declaration of Rights	1359
Karl Marx, The Communist Manifesto	1359
Friedrich von Hayek, The Road to Serfdom.....	1360
Garrett Hardin, <i>The Tragedy of the Commons</i>	1362
Notes and Questions.....	1365
A. Data on the Relative Welfare of the G-20 Constitutional Democracies.....	1366
III. The Anglo-American Law of Property	1367
Thomas W. Merrill & Henry E. Smith, <i>Chapter One, in PROPERTY 1</i> , 1–16.....	1367
Notes and Questions.....	1372
Thomas W. Merrill & Henry E. Smith, <i>Chapter Three, in PROPERTY 43</i> , 43–64.....	1374
Notes and Questions.....	1379
IV. Economic Liberties in the G-20 Constitutional Democracies	1379
A. The United States	1379
B. France	1381
C. Germany	1381
D. Japan	1384
E. India.....	1385
F. Canada.....	1386
G. Australia	1387
H. South Africa.....	1388
I. Israel.....	1389
J. Other G-20 Constitutional Democracy Property Clauses	1389
V. Property Rights.....	1389
A. What Takings Are for a Public Use?.....	1390
1. The United States of America	1390
Notes and Questions	1392
2. The Federal Republic of Germany	1392
Hamburg Flood Control Case.....	1393
Notes and Questions	1395
Tenant’s Right of Occupancy Case.....	1396
Notes and Questions	1397

3.	The Republic of India	1397
	Rustom Cavasjee Cooper v. Union of India (a.k.a The Bank Nationalization Case).....	1398
	Notes and Questions	1400
4.	The Federative Republic of Brazil	1402
	Maria Terezinha Oriente Rodrigues de Moraes v. President of the Republic	1402
5.	The United States of Mexico	1404
	Action of Unconstitutionality	1404
B.	Regulatory Takings.....	1409
1.	The United States of America	1409
	Notes and Questions	1412
2.	The Federal Republic of Germany	1416
	Groundwater Case	1416
	Monument Protection Act Case.....	1420
	Notes and Questions	1422
3.	The European Court of Human Rights.....	1424
	Hutten-Czapska v. Poland.....	1424
	Notes and Questions	1426
C.	Just Compensation	1429
1.	The Republic of France	1429
	French Nationalization Case.....	1429
	Notes and Questions	1431
2.	The Federal Republic of Germany	1432
D.	Privatization.....	1433
1.	The Federal Republic of Germany	1433
	Volkswagen Denationalization Case	1433
	Notes and Questions	1434
2.	The Federative Republic of Brazil	1435
i.	Privatizations in Brazil.....	1435
	Preliminary Injunction in Direct Action of Unconstitutionality	1435
	Brazilian Association of Distribution Companies v. Brazilian Post	1436
	Notes and Questions	1438
VI.	Liberty of Contract	1438
	Notes and Questions.....	1441
VII.	Liberty to Pursue an Occupation.....	1441
	Milton Friedman, Capitalism and Freedom	1442
	Notes and Questions.....	1446
A.	The United States of America	1446
	Notes and Questions	1448
	Williamson v. Lee Optical Co.....	1448
B.	The Federal Republic of Germany	1450
	Pharmacy Case.....	1451
	Chocolate Candy Case	1455
	East German Disbarment Case	1456
	Notes and Questions.....	1459

C.	Japan	1461
	Kabushiki Kaisha Sumiyoshi v. Governor of Hiroshima Prefecture (Japanese Drug Store Case)	1461
	Notes and Questions	1464
D.	Republic of South Africa	1464
	State v. Lawrence.....	1465
	Notes and Questions	1467
E.	Israel.....	1467
F.	European Union	1468
G.	The Federative Republic of Brazil	1468
	João Antônio Volante v. Federal Council of Brazilian Bar Association and Others	1469
	Notes and Questions	1470
VIII.	Structural Constitutional Clauses That Protect Economic Liberty	1470
A.	The United States of America: The Dormant Commerce Clause	1470
	Notes and Questions	1471
B.	The Commonwealth of Australia: The <i>Bank Nationalization</i> Cases....	1472
	Commonwealth v. Bank of New South Wales.....	1473
	Notes and Questions	1475
C.	Japan: Article 25	1476
	Minimum Standards of Wholesome and Cultured Living	1476
	Notes and Questions	1479
Chapter 11.	Positive Rights and State Action.....	1481
I.	Introduction.....	1481
II.	Historical Background.....	1485
A.	Education.....	1485
1.	The United States of America	1485
2.	Education in the Other G-20 Constitutional Democracies.....	1487
B.	The Protection of the Laws.....	1488
C.	Land and Housing.....	1488
D.	Universal Health Care.....	1489
E.	Welfare.....	1491
	T.H. Marshall, Citizenship and Social Class	1492
	Notes and Questions	1493
F.	Social Rights in Some of the G-20 Constitutional Democracies	1493
1.	France	1493
2.	India	1495
	David Landau, <i>The Reality of Social Rights Enforcement</i>	1497
	President Franklin D. Roosevelt’s State of the Union Address of—An Economic Bill of Rights	1500
	Ronald Reagan’s Economic Bill of Rights	1501
	Notes and Questions	1503
III.	Education	1503
A.	The United States of America	1503
	San Antonio Indep. Sch. Dist. v. Rodriguez	1503
	Notes and Questions	1508
B.	The Federal Republic of Germany	1509
	Numerus Clausus I Case	1509

	Notes and Questions	1513
C.	The Federative Republic of Brazil	1513
	Public Prosecutors' Office of the State of Rio de Janeiro v. State of Rio de Janeiro AgR.....	1514
	Direct Action of Unconstitutionality 3330	1514
	Federal University of Goiás v. Marcos Lopes Alves and Others	1515
IV.	The Protection of the Laws	1515
A.	Does the State Have a Positive Duty to Protect Private Parties from One Another?.....	1515
	DeShaney v. Winnebago County.....	1516
	Notes and Questions	1517
1.	<i>Abortion II Case</i> , 88 BVerfGE 203 (1993).....	1519
	Notes and Questions	1520
	Carmichele v. Ministers of Safety and Security and of Justice and Constitutional Development	1521
	Notes and Questions	1524
	Von Hannover v. Germany	1525
	Notes and Questions	1529
V.	Land and Housing	1530
A.	The United States	1530
B.	The Republic of South Africa	1531
	Government of the Republic of South Africa v. Grootboom	1531
	Notes and Questions	1539
C.	The Republic of India.....	1541
	Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others	1541
	Notes and Questions	1545
VI.	Universal Health Care	1545
A.	The Republic of Italy.....	1546
	Italian Healthcare Case	1546
	Notes and Questions	1548
B.	The Republic of South Africa	1549
	Soobramoney v. Minister of Health (Kwazulu-Natal)	1549
	Notes and Questions	1552
C.	Japan	1553
	Asahi v. Japan.....	1553
	Notes and Questions	1556
D.	The Right to Healthcare in the Federative Republic of Brazil	1556
	State of Santa Catarina v. Luciano Angelo Cardoso and Others	1557
	City of Porto Alegre v. Diná Rosa Vieira	1558
VII.	Welfare	1558
A.	The United States of America	1558
	Dandridge v. Williams	1558
	Notes and Questions	1560
VIII.	Assessing Judicial Enforcement of Positive Rights.....	1560
IX.	The State Action Doctrine	1562
A.	Horizontal Application of Rights	1563
	Richard S. Kay, <i>The State Action Doctrine, the Public-Private Distinction, and the Independence of Constitutional Law</i>	1563

Notes and Questions	1565
B. Does the Constitution Bind Private Parties?	1566
1. Eliminating Caste Systems—The United States, India, South Africa, and Brazil	1566
Shelley v. Kraemer	1567
Notes and Questions	1570
Defrenne v. Sabena (No. 2)	1572
Notes and Questions	1578
The Governing Body of Juma Masjid Primary School and Another v. Essay NO and Others	1579
Notes and Questions	1584
União Brasileira de Compositores UBC v. Arthur Rodrigues Vilarinho	1585
C. Does the Constitution Prohibit the Legislature from Passing Laws That Prohibit Discrimination by Private Parties?	1588
1. The United States of America	1589
i. The Civil Rights Cases, 108 U.S. 3 (1883)	1589
Notes and Questions	1591
D. Does the Constitution Apply to Private Law?	1592
Richard Epstein, <i>Classical Liberalism Meets the New Constitutional Order: A Comment on Mark Tushnet</i>	1593
1. New York Times Co. v. Sullivan, 376 U.S. 254	1594
2. <i>Lüth's Case</i> , 7 BVerfGE 198 (1958)	1594
Notes and Questions	1595
Retail, Wholesale & Department Store Union, Local 580 v. Dolphin Delivery Ltd.	1595
Notes and Questions	1597
3. <i>MC Mehta v. Union of India</i> , AIR 1987 SC 1086, 1987 SCR (1) 819	1598
Modderklip East Squatters v. Modderklip Boerdery (Pty) Ltd.	1598
Notes and Questions	1607
Chapter 12. Constitutional Guarantees of Democracy	1609
I. The U.S. Background: The Guarantee Clause	1611
A. <i>Texas v. White</i> , 74 U.S. 700 (1869)	1612
Notes and Questions	1612
B. <i>Pacific States Telephone and Telegraph Company v. Oregon</i> , 223 U.S. 118 (1912)	1613
Notes and Questions	1613
C. <i>Colgrove v. Green</i> , 328 U.S. 549 (1946)	1614
Notes and Questions	1615
II. Reapportionment: The United States of America, Germany, Japan, Canada, Australia, and Brazil	1616
A. The United States of America	1616
Notes and Questions	1617
1. <i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	1619
Notes and Questions	1620
B. The Federal Republic of Germany	1621
Electoral District II Case	1622

	Notes and Questions	1623
C.	Japan	1624
	Kurokawa v. Chiba Prefecture Election Commission	1625
	Notes and Questions	1627
D.	Canada	1628
	Reference re Provincial Electoral Boundaries	1629
	Notes and Questions	1634
E.	Commonwealth of Australia	1635
	McGinty v. Western Australia	1636
	Notes and Questions	1638
F.	The Federative Republic of Brazil	1639
	Governor of Rio Grande do Sul v. National Congress	1639
	The Progressive Party and the Democratic Labor Party v. Superior Electoral Court	1639
	Notes and Questions	1641
III.	Gerrymandering	1642
A.	The United States of America	1642
	Notes and Questions	1643
IV.	Regulation of Campaigns	1644
A.	The United States of America	1644
	Citizens United v. Federal Election Commission	1644
	Notes and Questions	1646
B.	The Commonwealth of Australia	1646
	Australian Capital Television Pty Ltd & New South Wales v. Commonwealth	1647
	Notes and Questions	1654
C.	Canada	1654
	Harper v. Canada (Attorney General)	1654
D.	The Federative Republic of Brazil	1658
	Social Christian Party, Democratic Labor Party, Christian Labor Party v. President of the Republic and National Congress	1658
	Brazilian Association of Radio and Television Broadcasting Companies v. National Congress and the President of the Republic	1660
V.	The Right to Vote and Elections	1662
A.	The United States of America	1662
	1. Poll Taxes in Federal Elections	1663
	2. The Right to Vote in School District Elections	1664
	3. The Fifteenth Amendment	1664
	4. Foreign Voting in the United States	1666
B.	The Federal Republic of Germany	1666
	Foreign Voters Case	1667
	Notes and Questions	1668
C.	The Republic of Italy	1670
	Abroad Voters Case	1670
	Notes and Questions	1672
D.	The Republic of India	1673
	People's Union for Civil Liberties & Anr. v. Union of India	1673
E.	The Republic of South Africa	1676

New National Party v. South Africa	1676
Notes and Questions	1679
F. The Federative Republic of Brazil	1680
Preliminary Injunction in Direct Action of Unconstitutionality 4467... ..	1680
Notes and Questions	1682
G. The European Court of Human Rights.....	1682
Scoppola v. Italy	1683
Notes and Questions	1687
VI. Political Parties.....	1688
A. The United States of America	1688
Williams v. Rhodes.....	1689
Notes and Questions	1691
B. The Federal Republic of Germany	1692
All Germany Election Case	1692
Notes and Questions	1695
Three-Percent Threshold Case.....	1695
Notes and Questions	1698
C. The Czech Republic.....	1699
Five Percent Electoral Threshold Case	1699
Notes and Questions	1702
D. The Federative Republic of Brazil	1703
Five Percent Electoral Threshold Case, Brazilian Communist Party and Others v. National Congress and the President of the Republic	1703
Notes and Questions	1706
VII. Militant Democracy	1707
A. The United States of America	1707
Notes and Questions	1707
B. The Federal Republic of Germany	1708
Socialist Reich Party Case.....	1708
Notes and Questions	1709
C. The United States of Mexico	1710
Protection of the Political and Voting Rights of the Citizens	1710
Joint Cases for the Protection of the Political and Electoral Rights of the Citizen	1716
D. The European Court of Human Rights.....	1722
Refah Partisi (The Welfare Party) et al. v. Turkey.....	1723
Notes and Questions	1727
VIII. Citizens in the Civil Service.....	1727
A. The United States of America	1727
Civil Service Commission v. National Association of Letter Carriers.....	1728
Notes and Questions	1730
B. The European Court of Human Rights.....	1730
Glaserapp v. Germany	1731
Rekvényi v. Hungary	1734
Notes and Questions	1735
INDEX.....	1737