

TABLE OF CONTENTS

PREFACE	III
TABLE OF CASES	XXXV
TABLE OF AUTHORITIES.....	LI
CHAPTER 1. NATURE AND SCOPE OF JUDICIAL REVIEW	1
1. <i>ORIGINS, EARLY CHALLENGES, AND CONTINUING</i> <i>CONTROVERSY</i>	1
Marbury v. Madison	1
Further Historical Context.....	10
Treanor—Judicial Review Before Marbury	10
Barnett—Restoring the Lost Constitution	11
Warren—The Supreme Court in United States History	11
Cohen—The Faith of a Liberal	11
The Three Faces of Marbury	12
Fallon—Marbury and the Constitutional Mind	12
Text of the Constitution.....	14
Van Alstyne—A Critical Guide to <i>Marbury v. Madison</i>	14
Gibson— <i>Eakin v. Raub</i>	14
Bickel—The Least Dangerous Branch.....	15
Adler & Dorf—Constitutional Existence Conditions and Judicial Review	15
Wechsler—Toward Neutral Principles of Constitutional Law	16
Van Alstyne—A Critical Guide to <i>Marbury v. Madison</i>	18
The Court as “Final” Arbiter	19
Jefferson—Writings.....	19
Jackson—Veto Message	19
Lincoln—Inaugural Address.....	20
<i>Cooper v. Aaron</i>	21
Tribe—American Constitutional Law, 3d ed.	22
<i>United States v. Windsor</i>	23
Judicial Review and Democracy.....	24
Bickel—The Least Dangerous Branch.....	24
Choper—The Supreme Court and the Political Branches	25
Dworkin—Freedom’s Law.....	26
Friedman—The Will of the People	26
Martin v. Hunter’s Lessee	27
<i>Cohens v. Virginia</i>	31
2. <i>POLITICAL QUESTIONS</i>	32
<i>Baker v. Carr</i>	32
<i>Powell v. McCormack</i>	33

Nixon v. United States	34
<i>Pacific States Tel. & Tel. Co. v. Oregon</i>	42
<i>Coleman v. Miller</i>	43
<i>Gilligan v. Morgan</i>	44
<i>Vieth v. Jubelirer</i>	44
<i>Baker v. Carr</i>	47
<i>Zivotofsky v. Clinton</i>	48
3. CONGRESSIONAL REGULATION OF JUDICIAL POWER	49
Ex parte McCardle	51
<i>United States v. Klein</i>	54
<i>Boumediene v. Bush</i>	59
4. DISCRETIONARY REVIEW.....	61
United States Supreme Court Rules.....	61
Maryland v. Baltimore Radio Show, Inc.	62
5. PREREQUISITES TO FEDERAL JURISDICTION AND JUDICIAL REVIEW: AN INTRODUCTION.....	64
CHAPTER 2. NATIONAL LEGISLATIVE POWER	69
1. SOURCES AND NATURE	69
Introduction	69
McCulloch v. Maryland	72
<i>United States v. Comstock</i>	77
<i>Kansas v. Colorado</i>	79
2. THE NATIONAL COMMERCE POWER	80
I. Development of Basic Concepts.....	80
Gibbons v. Ogden	80
<i>Paul v. Virginia</i>	82
<i>Kidd v. Pearson</i>	82
<i>The Daniel Ball</i>	83
Foundations for Extending the Reach of Congressional Power	84
Champion v. Ames [The Lottery Case]	84
<i>Hoke v. United States</i>	86
Houston, East & West Texas Ry. v. United States [Shreveport Case]	87
<i>Wisconsin R.R. Comm'n v. Chicago, B. & Q. R.R.</i>	88
<i>Stafford v. Wallace</i>	88
II. Regulation of National Economic Problems	88
A. Limitations on the Commerce Power Through 1936.....	88
Hammer v. Dagenhart	88
The New Deal vs. The Great Depression	90
Stern—The Commerce Clause and the National Economy.....	90
<i>Schechter Poultry Corp. v. United States</i>	91
<i>Carter v. Carter Coal Co.</i>	91
B. Expansion of Commerce Power After 1936.....	92
<i>NLRB v. Jones & Laughlin Steel Corp.</i>	94
United States v. Darby	95

	Power to Exclude from Interstate Commerce	98
	<i>United States v. Sullivan</i>	99
	<i>Scarborough v. United States</i>	99
	Power over Local Activities Affecting Commerce	100
	<i>Wickard v. Filburn</i>	100
	<i>Maryland v. Wirtz</i>	101
	<i>Perez v. United States</i>	102
	Analogous Rationale for War Powers	102
	<i>Woods v. Cloyd W. Miller Co.</i>	102
III.	Protection of Other Interests Through the Commerce Clause	103
	Heart of Atlanta Motel, Inc. v. United States	103
	<i>Katzenbach v. McClung</i>	104
	<i>Hodel v. Virginia Surface Mining and Reclamation Ass'n</i>	107
IV.	New Limitations in the 21st Century	107
	United States v. Morrison	107
	Gonzales v. Raich	119
	Nelson & Pushaw—Rethinking the Commerce Clause	124
	Choper & Yoo—The Scope of the Commerce Clause	
	After Morrison.....	125
	<i>Jones v. United States</i>	126
	<i>Pierce County v. Guillen</i>	127
	<i>Solid Waste Agency of Northern Cook County v. United States Army Corps of Eng'rs</i>	127
	National Federation of Independent Business v. Sebelius	129
3.	THE NATIONAL TAXING AND SPENDING POWERS	136
I.	Regulation Through Taxing.....	137
	<i>Bailey v. Drexel Furniture Co. (Child Labor Tax Case)</i>	137
	<i>United States v. Constantine</i>	140
	<i>National Federation of Independent Business v. Sebelius</i>	140
II.	Regulation Through Spending.....	143
	<i>United States v. Butler</i>	143
	Steward Machine Co. v. Davis	146
	<i>Helvering v. Davis</i>	149
	South Dakota v. Dole	150
	<i>Sabri v. United States</i>	153
	<i>National Federation of Independent Business v. Sebelius</i>	154
4.	FOREIGN AFFAIRS POWER	158
I.	Treaties as a Source of Legislative Power	158
	<i>Missouri v. Holland</i>	158
	<i>Bond v. United States</i>	160
	<i>Reid v. Covert</i>	161
II.	Other Bases for Legislative Power over Foreign Affairs	162
	<i>Perez v. Brownell</i>	162

5.	<i>APPLYING NATIONAL POWERS TO STATE GOVERNMENTS: INTERGOVERNMENTAL IMMUNITIES</i>	163
I.	Origins of Immunities	163
	<i>McCulloch v. Maryland</i>	163
	<i>Dobbins v. Commissioners</i>	163
	<i>Collector v. Day</i>	164
II.	State Immunity from Federal Taxes	164
	<i>New York v. United States</i>	164
	<i>Massachusetts v. United States</i>	165
III.	Federal Immunity from State Taxes	166
IV.	State Immunity from Federal Regulation	166
	<i>Maryland v. Wirtz</i>	166
	<i>National League of Cities v. Usery</i>	167
	Garcia v. San Antonio Metropolitan Transit Authority	167
	<i>Gregory v. Ashcroft</i>	173
	Printz v. United States	174
	<i>Reno v. Condon</i>	181
	<i>Jinks v. Richland County</i>	182
	<i>Murphy v. Nat'l Collegiate Athletic Ass'n</i>	182
	CHAPTER 3. DISTRIBUTION OF FEDERAL POWERS:	
	SEPARATION OF POWERS	185
1.	<i>PRESIDENTIAL ACTION AFFECTING "CONGRESSIONAL" POWERS</i>	185
I.	Internal Matters: Domestic Lawmaking	185
	Youngstown Sheet & Tube Co. v. Sawyer [The Steel Seizure Case]	185
	<i>Dames & Moore v. Regan</i>	193
	<i>Medellin v. Texas</i>	195
II.	External Matters: Foreign Affairs and War	200
	United States v. Curtiss-Wright Export Corp.	200
	<i>Zivotofsky v. Kerry</i>	204
	Campbell v. Clinton	208
2.	<i>CONGRESSIONAL ACTION AFFECTING "PRESIDENTIAL" POWERS</i>	217
I.	Delegation of Rulemaking Power	217
	<i>Yakus v. United States</i>	217
	<i>Whitman v. American Trucking Assn's, Inc.</i>	218
	<i>United States v. Mead</i>	218
II.	Legislative and Line Item Vetoes	223
	INS v. Chadha	223
	<i>Process Gas Consumers Group v. Consumer Energy Council of America</i>	227
	Clinton v. New York	229
III.	Appointment and Removal of Officers	235
	<i>Myers v. United States</i>	235
	<i>Humphrey's Executor v. United States</i>	236

	<i>Buckley v. Valeo</i>	238
	<i>Bowsher v. Synar</i>	240
	Morrison v. Olson	243
	<i>Mistretta v. United States</i>	251
	<i>Metropolitan Washington Airports Auth. v. Citizens for</i> <i>Abatement of Airport Noise</i>	252
	<i>Free Enterprise Fund v. Public Company Accounting</i> <i>Oversight Board</i>	253
	<i>United States v. Germaine</i>	255
	<i>Freytag v. Comm’r of Internal Revenue</i>	255
	<i>Lucia v. SEC</i>	256
	<i>NLRB v. Canning</i>	257
3.	EXECUTIVE PRIVILEGE AND IMMUNITY	258
	<i>United States v. Nixon</i>	258
	<i>Nixon v. Administrator of General Services</i>	263
	<i>Nixon v. Fitzgerald</i>	263
	<i>Clinton v. Jones</i>	266
	<i>Cheney v. U.S. Dist. Ct.</i>	267
4.	IMPEACHMENT OF THE PRESIDENT	268
	CHAPTER 4. STATE POWER TO REGULATE	273
	Introduction	273
	<i>Crosby v. National Foreign Trade Council</i>	273
1.	STATE REGULATION WHEN CONGRESS’S POWER IS “DORMANT”: HISTORY AND FUNDAMENTAL ISSUES	274
	<i>Gibbons v. Ogden</i>	274
	<i>Willson v. Black-Bird Creek Marsh Co.</i>	276
	<i>City of New York v. Miln</i>	277
	Cooley v. Board of Wardens	277
2.	BASIC DOCTRINAL PRINCIPLES AND THEIR APPLICATION	280
	<i>Wyoming v. Oklahoma</i>	281
	<i>Pike v. Bruce Church, Inc.</i>	281
	I. Statutes That Discriminate on Their Faces Against Interstate Commerce	282
	Baldwin v. G.A.F. Seelig, Inc.	282
	Philadelphia v. New Jersey	286
	<i>Maine v. Taylor</i>	289
	<i>Sporhase v. Nebraska</i>	290
	<i>Hughes v. Oklahoma</i>	290
	II. Congressional Authorization of State Regulation	291
	<i>Prudential Ins. Co. v. Benjamin</i>	291
	<i>Metropolitan Life Ins. Co. v. Ward</i>	293
	III. Discriminatory Statutes That Favor Governmental Rather than Private Entities	294
	United Trash Haulers Ass’n v. Oneida-Herkimer Solid Waste Management Auth.	294
	<i>Department of Rev. v. Davis</i>	299

IV.	Statutes That Do Not Discriminate on Their Faces but Nevertheless Burden Interstate Commerce	301
	<i>Breard v. Alexandria</i>	303
	<i>Hunt v. Washington State Apple Advertising Comm'n</i>	304
	<i>Minnesota v. Clover Leaf Creamery Co.</i>	305
	<i>Bendix Autolite Corp. v. Midwesco Enterprises, Inc.</i>	306
	CTS Corp. v. Dynamics Corp.	309
	<i>Brown-Forman Distillers Corp. v. New York State Liquor Auth.</i>	313
V.	Regulation of Transportation	315
	Kassel v. Consolidated Freightways Corp.	315
	<i>Bibb v. Navajo Freight Lines</i>	320
VI.	Subsidies and Linkages.....	321
	<i>New Energy Co. of Ind. v. Limbach</i>	321
	West Lynn Creamery, Inc. v. Healy	322
	<i>Camps Newfound/Owatonna, Inc. v. Harrison</i>	325
3.	THE STATE AS A MARKET PARTICIPANT	330
	Reeves, Inc. v. Stake	330
	<i>South-Central Timber Development, Inc. v. Wunnicke</i>	334
4.	INTERSTATE PRIVILEGES AND IMMUNITIES CLAUSE	336
	United Building & Construction Trades Council v. Mayor of Camden	337
	<i>Lunding v. New York State Tax Appeals Tribunal</i>	342
	<i>McBurney v. Young</i>	342
	<i>Hillside Dairy Inc. v. Lyons</i>	344
5.	STATE POWER TO TAX	345
	Complete Auto Transit, Inc. v. Brady	346
	<i>Commonwealth Edison Co. v. Montana</i>	347
	<i>American Trucking Assn's, Inc. v. Michigan Public Serv. Comm'n</i>	350
	<i>Container Corp. v. Franchise Tax Bd.</i>	350
	<i>ASARCO v. Idaho State Tax Comm'n</i>	354
	<i>Quill Corp. v. North Dakota</i>	354
	<i>South Dakota v. Wayfair, Inc.</i>	354
	<i>Oklahoma State Tax Comm'n v. Jefferson Lines, Inc.</i>	355
	<i>Comptroller of the Treasury of Maryland v. Wynne</i>	356
CHAPTER 5. SUBSTANTIVE PROTECTION OF ECONOMIC INTERESTS		359
	Introduction	359
1.	ORIGINS OF SUBSTANTIVE DUE PROCESS	359
	I. Early Expressions of the Notion That Governmental Authority Has Implied Limits.....	360
	<i>Calder v. Bull</i>	360
	<i>Barron v. Mayor and City Council of Baltimore</i>	362
	<i>Souter—Washington v. Glucksberg</i>	362
	<i>Fletcher v. Peck</i>	362

	<i>Dred Scott v. Sandford</i>	363
II.	Fourteenth Amendment.....	364
	Slaughter-House Cases	365
2.	THE LOCHNER ERA	372
I.	The Road to <i>Lochner</i>	372
	<i>Allgeyer v. Louisiana</i>	373
	Lochner v. New York	374
	Balkin—“Wrong the Day It Was Decided”.....	378
II.	Three Decades of Control over Legislative Policy.....	379
	<i>Muller v. Oregon</i>	380
	<i>Bunting v. Oregon</i>	380
	<i>Adair v. United States</i>	380
	<i>Coppage v. Kansas</i>	380
	<i>Epic Systems Corp. v. Lewis</i>	381
	<i>Adkins v. Children’s Hospital</i>	381
	Epstein—The Classical Liberal Constitution.....	382
3.	THE ABANDONMENT OF LOCHNER	383
	Nebbia v. New York	383
	<i>West Coast Hotel Co. v. Parrish</i>	385
	What Was Wrong with <i>Lochner</i> ?.....	387
	Sunstein— <i>Lochner</i> ’s Legacy.....	388
	“The Most Celebrated Footnote in Constitutional Law”.....	389
	<i>United States v. Carolene Products Co.</i>	389
	Ackerman—Beyond <i>Carolene Products</i>	391
	The 1940s, 50s and 60s: A Far Cry from <i>Lochner</i>	392
	<i>Olsen v. Nebraska</i>	392
	<i>Lincoln Federal Labor Union v. Northwestern Iron & Metal</i> <i>Co.</i>	393
	<i>Williamson v. Lee Optical of Oklahoma, Inc.</i>	393
	<i>Ferguson v. Skrupa</i>	394
	A Note on Substantive Due Process and Punitive Damage	
	Constraints.....	394
	<i>BMW of North America, Inc. v. Gore</i>	394
	<i>State Farm Mut. Auto Ins. Co. v. Campbell</i>	395
	<i>Philip Morris v. Williams</i>	395
	<i>Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.</i>	396
4.	OTHER LIMITS ON ECONOMIC LEGISLATION: THE PROHIBITION AGAINST “TAKING” “PRIVATE PROPERTY” WITHOUT JUST COMPENSATION	396
	<i>Penn Central Transp. Co. v. New York City</i>	397
	<i>Horne v. Dep’t of Agriculture</i>	398
	<i>Lucas v. South Carolina Coastal Council</i>	398
	<i>Stop the Beach Renourishment, Inc. v. Florida Dept. of</i> <i>Environmental Protection</i>	399
	<i>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning</i> <i>Agency</i>	399
	<i>Palazzolo v. Rhode Island</i>	400

<i>Murr v. Wisconsin</i>	400
<i>Eastern Enterprises v. Apfel</i>	401
Kelo v. New London	402
A Note on the Prohibition Against “Impairing the Obligation of Contracts”	406
<i>Home Building & Loan Ass’n v. Blaisdell</i>	406
<i>United States Trust Co. v. New Jersey</i>	407
<i>Allied Structural Steel Co. v. Spannaus</i>	407
 CHAPTER 6. PROTECTION OF INDIVIDUAL RIGHTS: DUE PROCESS, THE BILL OF RIGHTS, AND UNENUMERATED RIGHTS	 409
1. APPLICABILITY OF THE BILL OF RIGHTS TO THE STATES; NATURE AND SCOPE OF FOURTEENTH AMENDMENT DUE PROCESS	409
I. Incorporation Theories	409
Cardozo—For the Court in <i>Palko v. Connecticut</i>	410
Adamson v. California	410
Frankfurter— <i>Adamson v. California</i>	411
<i>Duncan v. Louisiana</i>	414
II. Is the Bill of Rights Incorporated “Jot-for-Jot”?	417
Brennan—For the Court in <i>Malloy v. Hogan</i>	417
Harlan— <i>Baldwin v. New York</i>	418
<i>Apodaca v. Oregon</i>	419
<i>Johnson v. Louisiana</i>	419
III. In <i>McDonald v. City of Chicago</i> , the Court Looks Back on Its “Incorporation” of Bill of Rights Guarantees	420
IV. How Much More Specific Are Provisions of the Bill of Rights than Due Process Generally? The Case of Bodily Extractions	421
<i>Rochin v. California</i>	422
<i>Breithaupt v. Abram</i>	423
<i>Schmerber v. California</i>	424
<i>Winston v. Lee</i>	424
<i>Sacramento v. Lewis</i>	425
2. REPRODUCTIVE FREEDOM	425
Introductory Note on the Right of “Privacy”	425
<i>Buck v. Bell</i>	427
<i>Skinner v. Oklahoma</i>	427
Griswold v. Connecticut	429
Harlan— <i>Poe v. Ullman</i>	433
<i>Eisenstadt v. Baird</i>	438
<i>Carey v. Population Services, Int’l</i>	440
Roe v. Wade	442
<i>Doe v. Bolton</i>	447
Estrich & Sullivan—Abortion Politics	447
Balkin—Abortion and Original Meaning.....	448

McConnell—How Not to Promote Serious Deliberation	
About Abortion	448
Noonan—The Root and Branch of <i>Roe v. Wade</i>	448
MacKinnon—Reflections on Sex Equality Under Law	449
Thomson—A Defense of Abortion	449
Strauss—Abortion, Toleration, and Moral Uncertainty	450
Law—Rethinking Sex and the Constitution	451
Asaro—The Judicial Portrayal of the Physician in Abortion	
and Sterilization Decisions	452
<i>Roe v. Wade</i> 's Contribution to the Debate over Constitutional	
Decisionmaking	453
Bork—The Tempting of America	454
Ely—The Wages of Crying Wolf	455
Abortion Funding	455
<i>Maher v. Roe</i>	455
<i>Harris v. McRae</i>	456
Note on Private Insurance	457
<i>Webster v. Reproductive Health Services</i>	458
The Court Reaffirms “the Essential Holding of <i>Roe</i> ”	459
Planned Parenthood of Southeastern Pennsylvania v.	
Casey	459
Friedman—The Will of the People	470
Tribe— <i>Lawrence v. Texas</i> : The “Fundamental Right” That	
Dare Not Speak Its Name	470
Law—Abortion Compromise—Inevitable and Impossible	471
Collett—Previability Abortion and the Pain of the	
Unborn	471
Colb & Dorf—Beating Hearts: Abortion & Animal Rights	471
Purported Health Regulations	472
Whole Woman’s Health v. Hellerstedt	472
<i>Stenberg v. Carhart</i>	483
<i>Gonzales v. Carhart</i>	483
3. RIGHT TO DIE	484
Washington v. Glucksberg	484
<i>Vacco v. Quill</i>	495
McConnell—The Right to Die and the Jurisprudence of	
Tradition	498
4. SEXUAL LIBERTY	501
Bowers v. Hardwick	501
Spindelman—Reorienting <i>Bowers v. Hardwick</i>	506
Bork—The Tempting of America	508
Tribe & Dorf—Levels of Generality in the Definition of Rights	508
Lawrence v. Texas	508
Carpenter—Flagrant Conduct	522
Graglia— <i>Lawrence v. Texas</i> : Our Philosopher-Kings Adopt	
Libertarianism as Our Official National Philosophy	523

	Post—Foreword: Fashioning the Legal Constitution: Culture, Courts and Law.....	524
	Barnett—Justice Kennedy’s Libertarian Revolution: <i>Lawrence</i> <i>v. Texas</i>	524
	Tribe— <i>Lawrence v. Texas</i> : The “Fundamental Right” That Dare Not Speak Its Name	524
	Karlan—Foreword: Loving <i>Lawrence</i>	526
	The Use of Foreign and International Law	527
	Larsen—Importing Constitutional Norms	528
5.	FAMILY LIFE, PARENTING, AND MARRIAGE	530
	I. Family Composition and Living Quarters	530
	<i>Belle Terre v. Boraas</i>	530
	<i>Moore v. East Cleveland</i>	530
	Grano—Judicial Review and a Written Constitution in a Democratic Society	532
	Burt—The Constitution of the Family	532
	II. Marriage.....	533
	<i>Loving v. Virginia</i>	533
	<i>Zablocki v. Redhail</i>	533
	<i>Turner v. Safley</i>	536
	<i>Kerry v. Din</i>	536
	<i>United States v. Windsor</i>	537
	Obergefell v. Hodges	537
	<i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights</i> <i>Commission</i>	550
	III. Visitation, Care, and Custody of Children.....	552
	<i>Troxel v. Granville</i>	552
	Michael H. v. Gerald D.	554
	Levels of Generality and Tradition	558
	Balkin—Tradition, Betrayal, and the Politics of Deconstruction	558
	Tribe & Dorf—Levels of Generality in the Definition of Rights.....	559
	Other Dimensions of Privacy and Autonomy	561
	<i>Kelley v. Johnson</i>	561
	<i>Youngberg v. Romeo</i>	561
6.	THE RIGHT TO TRAVEL	563
	<i>Shapiro v. Thompson</i>	563
	<i>Aptheker v. Secretary of State</i>	563
	<i>Zemel v. Rusk</i>	564
	<i>Haig v. Agee</i>	565
	Farber—National Security, the Right to Travel, and the Court.....	565
	Ely—Democracy and Distrust	566
7.	THE RIGHT TO KEEP AND BEAR ARMS	567
	District of Columbia v. Heller	567

McDonald v. City of Chicago	575
Posner—In Defense of Looseness: The Supreme Court and Gun Control.....	583
Wilkinson—Of Guns, Abortions, and the Unraveling Rule of Law	584
Siegel—Dead or Alive: Originalism as Popular Constitutionalism in Heller	585
<i>Silvester v. Becerra</i>	586
<i>Caetano v. Massachusetts</i>	587
8. THE DEATH PENALTY AND RELATED PROBLEMS: CRUEL AND UNUSUAL PUNISHMENT	587
Introduction	587
<i>Trop v. Dulles</i>	587
I. Is the Death Penalty Always “Cruel and Unusual”?.....	588
<i>Furman v. Georgia</i>	588
<i>Gregg v. Georgia</i>	594
II. Mandatory Death Sentences.....	597
<i>Woodson v. North Carolina</i>	597
<i>Roberts (Stanislaus) v. Louisiana</i>	597
<i>Lockett v. Ohio</i>	599
<i>Eddings v. Oklahoma</i>	600
Is the Court Faced with Two Incompatible Sets of Commands?... 600	
<i>Callins v. Collins</i>	600
III. Racial Discrimination in the Administration of the Death Penalty	602
McCleskey v. Kemp	602
Kennedy— <i>McCleskey v. Kemp</i> : Race, Capital Punishment, and the Supreme Court	607
IV. Additional Constitutional Limits on Imposing Severe Punishment.....	608
<i>Atkins v. Virginia</i>	608
<i>Roper v. Simmons</i>	609
<i>Kennedy v. Louisiana</i>	609
<i>Graham v. Florida</i>	609
<i>Miller v. Alabama</i>	610
<i>Baze v. Rees</i>	611
<i>Glossip v. Gross</i>	612
9. PROCEDURAL DUE PROCESS IN NON-CRIMINAL CASES	614
I. Deprivation of “Liberty” and “Property” Interests	614
<i>Goldberg v. Kelly</i>	614
<i>Bell v. Burson</i>	615
<i>Board of Regents v. Roth</i>	615
<i>Vitek v. Jones</i>	616
II. What Kind of Hearing—and When?.....	617
<i>Goldberg v. Kelly</i>	617
Mashaw—Due Process in the Administrative State.....	618
<i>Mathews v. Eldridge</i>	618

	<i>Nelson v. Colorado</i>	620
III.	Detention and Entry	621
	What Process Is Due Military Detainees?	622
	<i>Hamdi v. Rumsfeld</i>	622
	<i>Boumediene v. Bush</i>	624
	Does Due Process Limit Entry Restrictions?.....	625
	<i>Kerry v. Din</i>	625
	<i>Trump v. Hawaii</i>	626
IV.	The Right to an Unbiased Adjudicator	626
	<i>Caperton v. Massey Coal Co.</i>	626
CHAPTER 7. FREEDOM OF EXPRESSION AND ASSOCIATION		631
1.	<i>THE SCOPE AND STRENGTH OF THE FIRST AMENDMENT</i>	631
I.	Advocacy of Illegal Action	633
	A. Emerging Principles	633
	Schenck v. United States	633
	<i>Debs v. United States</i>	634
	Stone—Perilous Times	636
	Kalven—A Worthy Tradition	636
	Kalven—Ernst Freund and the First Amendment Tradition	637
	Solum—Freedom of Communicative Action	637
	<i>Masses Publishing Co. v. Patten</i>	638
	Holmes—Dissenting in <i>Abrams v. United States</i>	640
	Schauer—Facts and the First Amendment	643
	Shiffrin—The First Amendment, Democracy, and Romance	645
	<i>United States v. Alvarez</i>	646
	Blasi—Reading Holmes Through the Lens of Schauer: The Abrams Dissent	646
	B. State Sedition Laws.....	647
	<i>Gitlow v. New York</i>	647
	Whitney v. California	650
	Lahav—Holmes and Brandeis: Libertarian and Republican Justifications for Free Speech	657
	Blasi—Free Speech and Good Character	657
	C. Communism and Illegal Advocacy	658
	Dennis v. United States	658
	Auerbach—The Communist Control Act of 1954.....	670
	<i>Yates v. United States</i>	671
	<i>United States v. Spock</i>	672
	D. A Modern “Restatement”.....	673
	Brandenburg v. Ohio	673
	Shiffrin—Defamatory Non-Media Speech and First Amendment Methodology.....	676
	<i>Hess v. Indiana</i>	677
	<i>Communist Party of Indiana v. Whitcomb</i>	678

	Smolla—Should the <i>Brandenburg v. Ohio</i> Incitement Test Apply in Media Violence Tort Cases?	679
	<i>Holder v. Humanitarian Law Project</i>	680
II.	Reputation and Privacy	681
A.	Group Libel	682
	<i>Beauharnais v. Illinois</i>	682
B.	Public Officials and Seditious Libel	686
	New York Times Co. v. Sullivan	686
	Meiklejohn—Free Speech and Its Relation to Self-Government	693
	Balkin—Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society	694
	Epstein—Privacy, Publication, and the First Amendment: The Dangers of First Amendment Exceptionalism	694
	Nimmer—The Right to Speak from Times to Time: First Amendment Theory Applied to Libel and Misapplied to Privacy	695
	<i>Curtis Pub. Co. v. Butts</i>	696
	<i>Associated Press v. Walker</i>	696
C.	Private Individuals and Public Figures	697
	Gertz v. Robert Welch, Inc.	697
	<i>Time, Inc. v. Firestone</i>	706
	Failing—Five Modern Notions in Search of an Author: The Ideology of the Intimate Society in Constitutional Speech Law	707
	Smolla—Suing the Press	707
D.	Emotional Distress	707
	<i>Hustler Magazine v. Falwell</i>	707
	<i>Snyder v. Phelps</i>	709
	<i>Time, Inc. v. Hill</i>	716
	<i>Zacchini v. Scripps-Howard Broadcasting Co.</i>	716
E.	Disclosure of Private Facts	717
	Florida Star v. B.J.F.	717
	Heyman—Spheres of Autonomy: Reforming the Content Neutrality Doctrine in First Amendment Jurisprudence	723
	<i>Bartnicki v. Vopper</i>	724
	Smolla—Information as Contraband: The First Amendment and Liability for Trafficking in Speech	730
III.	Ownership of Speech	730
	<i>Harper & Row v. Nation Enterprises</i>	730
	<i>Eldred v. Ashcroft</i>	738

IV.	Obscenity.....	740
	A. The Search for a Rationale.....	740
	Paris Adult Theatre I v. Slaton	741
	<i>Kingsley Int'l Pictures Corp. v. Regents</i>	746
	Kalven—The Metaphysics of the Law of Obscenity.....	746
	Kristol—Reflections of a Neoconservative.....	747
	B. A Revised Standard.....	748
	Miller v. California	748
	Clor—Obscenity and the First Amendment: Round	
	Three.....	758
	C. Vagueness and Overbreadth: An Overview.....	760
V.	“Fighting Words,” Offensive Words and Hostile Audiences.....	764
	A. Fighting Words.....	764
	<i>Chaplinsky v. New Hampshire</i>	764
	B. Hostile Audiences.....	767
	<i>Terminiello v. Chicago</i>	767
	<i>Feiner v. New York</i>	767
	C. Offensive Words.....	771
	Cohen v. California	771
VI.	Commercial Speech.....	777
	Virginia State Board of Pharmacy v. Virginia Citizens	
	Consumer Council	777
	Shiffrin—Dissent, Injustice, and the Meanings of	
	America.....	785
	Farber—Commercial Speech and First Amendment	
	Theory.....	785
	<i>Ohralik v. Ohio State Bar Ass’n</i>	787
	<i>In re Primus</i>	790
	<i>Cincinnati v. Discovery Network</i>	791
	<i>Martin v. Struthers</i>	792
	<i>Central Hudson Gas & Elec. Corp. v. Public Serv.</i>	
	<i>Comm’n</i>	792
	Lorillard Tobacco Co. v. Reilly	793
	<i>Thompson v. Western States Medical Center</i>	800
	O’Neil— <i>Nike v. Kasky</i> —What Might Have Been.....	801
	<i>Expressions Hair Design v. Schneiderman</i>	802
2.	THE PROBLEM OF CONTENT REGULATION	804
	<i>Chicago Police Dept. v. Mosley</i>	804
	Karst—Equality as a Central Principle in the First Amendment.....	806
	Stone—Content Regulation and the First Amendment.....	807
	R.A.V. v. St. Paul	807
	Heyman—Spheres of Autonomy: Reforming the Content	
	Neutrality Doctrine in First Amendment Jurisprudence.....	821
	Rosenfeld—Hate Speech in Constitutional Jurisprudence: A	
	Comparative Analysis.....	821
	<i>Dawson v. Delaware</i>	822
	<i>Wisconsin v. Mitchell</i>	822

	<i>Virginia v. Black</i>	824
	<i>Matal v. Tam</i>	831
I.	“Hate Speech” and the <i>Skokie</i> Controversy	833
	<i>Collin v. Smith</i>	833
	Schauer—Harry Kalven and the Perils of Particularism	834
	Brink—Millian Principles, Freedom of Expression, and Hate Speech	835
	Douglas-Scott—The Hatefulness of Protected Speech: A Comparison of the American and European Approaches	836
	Rosenfeld—Hate Speech in Constitutional Jurisprudence: A Comparative Analysis	836
	Lawrence—If He Hollers Let Him Go: Regulating Racist Speech on Campus	837
	Shiffrin—Racist Speech, Outsider Jurisprudence, and the Meaning of America	838
	United States v. O’Brien	839
	Emerson—The System of Freedom of Expression	844
	Nimmer—Nimmer, The Meaning of Symbolic Speech Under the First Amendment	844
	Shiffrin—The First Amendment, Democracy, and Romance	845
	<i>Heffernan v. City of Paterson, N.J.</i>	847
	Texas v. Johnson	848
	Volokh—Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, “Situation-Altering Utterances,” and the Uncharted Zones	858
	Fletcher—Loyalty	858
	Shiffrin—The First Amendment	858
	Karst—Law’s Promise, Law’s Expression	859
	<i>United States v. Eichman</i>	859
	<i>Clark v. Community for Creative Non-Violence</i>	861
	Tushnet—Character as Argument	866
	<i>Arcara v. Cloud Books, Inc.</i>	867
	<i>Cohen v. Cowles Media Co.</i>	870
	Reed v. Gilbert	870
3.	GOVERNMENT PROPERTY AND THE PUBLIC FORUM	883
	<i>Hague v. C.I.O.</i>	883
I.	Foundation Cases	883
	A. Mandatory Access	883
	<i>Schneider v. Irvington</i>	883
	<i>Cox v. New Hampshire</i>	885
	<i>Heffron v. International Soc. for Krishna Consciousness</i>	885
	<i>Ward v. Rock Against Racism</i>	886
	International Society for Krishna Consciousness, Inc. v. Lee	887

	Lee v. International Society for Krishna Consciousness, Inc.	896
	Farber & Nowak—The Misleading Nature of Public Forum Analysis: Content and Context in First Amendment Adjudication	897
	Post—Between Governance and Management: The History and Theory of the Public Forum	898
	<i>Lehman v. Shaker Heights</i>	898
	<i>Burson v. Freeman</i>	899
	<i>Minnesota Voters Alliance v. Mansky</i>	900
II.	Privacy and the Public Forum	902
	Hill v. Colorado	902
	Nauman—The Captive Audience Doctrine and Floating Buffer Zones: An Analysis of <i>Hill v. Colorado</i>	912
	Kitrosser—From Marshall McLuhan to Anthropomorphic Cows: Communicative Manner and the First Amendment	912
	<i>McCullen v. Coakley</i>	913
	<i>Packingham v. North Carolina</i>	914
4.	NEW CATEGORIES?	915
I.	Harm to Children and the Overbreadth Doctrine	915
	<i>New York v. Ferber</i>	915
	Schauer—Codifying the First Amendment	921
	<i>Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.</i>	921
	<i>Massachusetts v. Oakes</i>	922
	<i>Ashcroft v. Free Speech Coalition</i>	923
	<i>United States v. Williams</i>	926
II.	Harm to Women: Feminism and Pornography	926
	Proposed Los Angeles County Anti-Pornography Civil Rights Law	927
	Sunstein—Neutrality in Constitutional Law	930
	Mackinnon—Pornography, Civil Rights, and Speech	931
	Kaminer—Pornography and the First Amendment	932
	Koppelman—Does Obscenity Cause Moral Harm?	932
	Langton—Speech Acts and Unspeakable Acts	933
	Meyer—Sex, Sin, and Women’s Liberation: Against Porn- Suppression	933
	Emerson—Pornography and the First Amendment: A Reply to Professor MacKinnon	934
	<i>American Booksellers Ass’n v. Hudnut</i>	934
	Fried—Perfect Freedom, Perfect Justice	940
	Sunstein—Pornography and the First Amendment	941
III.	Animal Cruelty and the Flight from New Categories	941
	<i>United States v. Stevens</i>	941
IV.	Intentional Infliction of Emotional Distress	946
	<i>Snyder v. Phelps</i>	946

V.	Violent Video Games	946
	<i>Brown v. Entertainment Merchants Ass’n</i>	946
VI.	Stolen Valor and the Problem of Non-Defamatory Falsity	953
	<i>United States v. Alvarez</i>	953
VII.	“Indecent” or “Near Obscene” Speech	960
	<i>Renton v. Playtime Theatres, Inc.</i>	960
	Stone—Content-Neutral Restrictions	964
	Stone—Restrictions of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions	965
	<i>Boos v. Barry</i>	966
	<i>Los Angeles v. Alameda Books</i>	967
	<i>Barnes v. Glen Theatre, Inc.</i>	968
	<i>Erie v. Pap’s A.M.</i>	969
	Blasi—Six Conservatives in Search of the First Amendment	977
VIII.	Private Speech	977
	<i>Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.</i>	978
5.	PRIOR RESTRAINTS	985
I.	Foundation Cases	986
A.	Licensing	986
	<i>Lovell v. Griffin</i>	986
	<i>Watchtower Bible & Tract Society v. Stratton</i>	988
B.	Injunctions	991
	Near v. Minnesota	991
	Jeffries—Rethinking Prior Restraint	994
	<i>Walker v. Birmingham</i>	995
	Blasi—Prior Restraints on Demonstrations	995
II.	Prior Restraints for Obscenity, and Commercial Speech	997
	<i>Kingsley Books, Inc. v. Brown</i>	997
	<i>Freedman v. Maryland</i>	998
	<i>Bantam Books, Inc. v. Sullivan</i>	999
	<i>Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations</i>	999
III.	Licensing “Professionals”: A Dichotomy Between Speech and Press?	1000
	<i>Lowe v. SEC</i>	1000
	Volokh—Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, “Situation-Altering Utterances,” and the Uncharted Zones	1004
	<i>Riley v. National Federation of the Blind</i>	1004
IV.	Prior Restraints and National Security	1005
	New York Times Co. v. United States [The Pentagon Papers Case]	1005
	<i>United States v. Progressive, Inc.</i>	1012
	<i>Snepp v. United States</i>	1014
6.	JUSTICE AND NEWSGATHERING	1015
I.	Publicity About Trials	1015
	<i>Sheppard v. Maxwell</i>	1015

	<i>Nebraska Press Ass'n v. Stuart</i>	1017
II.	Newsgathering.....	1023
	A. Protection of Confidential Sources	1023
	Branzburg v. Hayes	1023
	Randall—Freeing Newsgathering from the Reporter’s Privilege.....	1032
	<i>In re Farber</i>	1033
	<i>Zurcher v. Stanford Daily</i>	1033
	B. Access to Trials and Other Governmentally Controlled Information and Institutions	1036
	Richmond Newspapers, Inc. v. Virginia	1036
	Anderson—Freedom of the Press.....	1045
	Blasi—The Checking Value in First Amendment Theory	1046
7.	GOVERNMENT SPEECH	1047
	I. Subsidies of Speech	1048
	<i>Pleasant Grove City v. Summum</i>	1048
	Walker v. Texas Division, Sons of Confederate Veterans, Inc.	1049
	Rust v. Sullivan	1063
	Post—Subsidized Speech	1072
	Williams—Truth, Autonomy, and Speech: Feminist Theory and the First Amendment.....	1073
	<i>Rosenberger v. University of Virginia</i>	1074
	Bezanson & Buss—The Many Faces of Government Speech.....	1074
	<i>National Institute of Family and Life Advocates v. Becerra</i>	1075
	Heyman—State-Supported Speech	1076
	II. Government as Educator and Editor	1077
	<i>Pierce v. Society of Sisters</i>	1077
	Yudof—When Government Speaks: Politics, Law, and Government Expression in America.....	1079
	Greene—Why Vouchers Are Unconstitutional and Why They Are Not	1080
	<i>Meyer v. Nebraska</i>	1080
	Tinker v. Des Moines School District	1082
	<i>Morse v. Frederick</i>	1087
	Hazelwood School District v. Kuhlmeier	1089
	Hafen—Hazelwood School District and the Role of First Amendment Institutions	1093
	Minow & Spelman—Passion for Justice	1093
	III. Government as Employer	1094
	<i>Garcetti v. Ceballos</i>	1094
8.	THE ELECTRONIC MEDIA	1102
	I. Access to the Mass Media	1103
	<i>Miami Herald Pub. Co. v. Tornillo</i>	1103

	<i>Red Lion Broadcasting Co. v. FCC</i>	1104
	Bollinger—Freedom of the Press and Public Access: Toward a Theory of Partial Regulation of the Mass Media.....	1107
	Nimmer—Is Freedom of the Press a Redundancy? What Does It Add to Freedom of Speech?	1107
	<i>Columbia Broadcasting System, Inc. v. Democratic Nat’l Committee</i>	1109
	<i>Arkansas Educational Television Comm’n v. Forbes</i>	1119
	Schauer—Principles, Institutions, and the First Amendment....	1119
	Bezanson & Buss—The Many Faces of Government Speech	1119
	<i>Los Angeles v. Preferred Communications, Inc.</i>	1120
	<i>Turner Broadcasting System, Inc. v. FCC (Turner I)</i>	1120
	Bezanson & Buss—The Many Faces of Government Speech	1122
	<i>Turner Broadcasting System, Inc. v. FCC (Turner II)</i>	1122
II.	The Electronic Media and Content Regulation	1124
	FCC v. Pacifica Foundation	1124
	Shiffrin—The First Amendment, Democracy, and Romance	1133
	Cole—Playing by Pornography’s Rules: The Regulation of Sexual Expression.....	1134
	<i>Sable Communications v. FCC</i>	1134
	<i>Reno v. American Civil Liberties Union</i>	1135
	<i>Denver Area Educational Telecommunications Consortium, Inc. v. FCC</i>	1136
	Weinberg—Cable TV, Indecency and the Court.....	1142
9.	THE RIGHT NOT TO SPEAK, THE RIGHT TO ASSOCIATE, AND THE RIGHT NOT TO ASSOCIATE	1143
I.	The Right Not to Be Associated with Particular Ideas	1143
	<i>West Virginia State Bd. of Educ. v. Barnette</i>	1143
	Shiffrin—What Is Really Wrong with Compelled Association?.....	1144
	<i>Wooley v. Maynard</i>	1145
	Bezanson—Speaking Through Others’ Voices: Authorship, Originality, and Free Speech	1147
	Tribe—Disentangling Symmetries: Speech, Association, Parenthood	1147
	<i>Pruneyard Shopping Center v. Robins</i>	1148
	<i>Rumsfeld v. Forum for Academic and Institutional Rights, Inc.</i>	1150
	<i>Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston</i>	1151
	<i>NAACP v. Claiborne Hardware Co.</i>	1152
	<i>Zauderer v. Office of Disciplinary Counsel</i>	1152
	<i>Knox v. Service Employees Int’l Union</i>	1154
	<i>Harris v. Quinn</i>	1155
	<i>Janus v. American Federation of State, County, and Municipal Employees, Council 31</i>	1155

	<i>Johanns v. Livestock Marketing Association</i>	1158
	<i>McIntyre v. Ohio Elections Comm'n</i>	1161
	<i>Brown v. Socialist Workers</i>	1162
	<i>Lamont v. Postmaster General</i>	1162
II.	Intimate Association and Expressive Association.....	1162
	<i>Roberts v. United States Jaycees</i>	1162
	<i>Boy Scouts of America v. Dale</i>	1169
	Tribe—Disentangling Symmetries: Speech, Association, Parenthood	1171
	<i>Christian Legal Society v. Martinez</i>	1172
	<i>Rumsfeld v. Forum for Academic and Institutional Rights, Inc.</i>	1174
10.	WEALTH, EQUALITY, AND THE POLITICAL PROCESS	1175
	Buckley v. Valeo	1175
	Ringhand—Defining Democracy: The Supreme Court’s Campaign Finance Dilemma	1189
	Balkin—Some Realism About Pluralism: Legal Realist Approaches to the First Amendment	1190
	<i>Randall v. Sorrell</i>	1191
	<i>McCutcheon v. FEC</i>	1193
	Citizens United v. FEC	1193
	Anderson—Freedom of the Press	1205
	<i>McConnell v. FEC</i>	1206
	<i>FEC v. Wisconsin Right to Life, Inc.</i>	1208
	<i>Williams-Yulee v. Florida Bar</i>	1208
	CHAPTER 8. FREEDOM OF RELIGION	1209
1.	THE ESTABLISHMENT CLAUSE	1209
I.	Introduction	1209
	<i>Everson v. Board of Educ.</i>	1210
II.	Aid to Religion	1211
	<i>Everson v. Board of Educ.</i>	1211
	<i>Walz v. Tax Comm'n</i>	1214
	<i>Texas Monthly, Inc. v. Bullock</i>	1215
	<i>Lemon v. Kurtzman</i>	1215
	<i>Mitchell v. Helms</i>	1217
	Zelman v. Simmons-Harris	1218
III.	Religion and Public Schools	1232
	Wallace v. Jaffree	1232
	<i>McCullum v. Board of Educ.</i>	1238
	<i>Zorach v. Clauson</i>	1238
	<i>Stone v. Graham</i>	1241
	<i>Epperson v. Arkansas</i>	1241
	<i>Edwards v. Aguillard</i>	1242
	<i>Board of Educ. v. Mergens</i>	1245
	<i>Good News Club v. Milford Central School</i>	1247

IV.	Official Acknowledgment of Religion	1249
	Allegheny County v. ACLU	1249
	<i>McCreary County v. ACLU</i>	1261
	<i>Van Orden v. Perry</i>	1264
	<i>Lee v. Weisman</i>	1270
	<i>Greece v. Galloway</i>	1272
	<i>Elk Grove Unified School Dist. v. Newdow</i>	1274
	<i>Santa Fe Ind. School Dist. v. Doe</i>	1275
	<i>Capitol Square Review & Advisory Board v. Pinette</i>	1277
	<i>Salazar v. Buono</i>	1279
	Smith—Symbols, Perceptions, and Doctrinal Illusions	1280
2.	THE FREE EXERCISE CLAUSE AND RELATED STATUTORY	
	ISSUES	1283
I.	Conflict with State Regulation	1283
	<i>Reynolds v. United States</i>	1283
	<i>Cantwell v. Connecticut</i>	1283
	<i>West Virginia State Bd. of Educ. v. Barnette</i>	1284
	Hobbie v. Unemployment Appeals Comm’n	1284
	<i>Jimmy Swaggart Ministries v. Board of Equal.</i>	1287
	<i>United States v. Lee</i>	1287
	<i>Gillette v. United States</i>	1288
	<i>Johnson v. Robison</i>	1288
	<i>Bob Jones Univ. v. United States</i>	1289
	<i>Lyng v. Northwest Indian Cemetery Protective Ass’n</i>	1289
	Employment Division v. Smith	1290
	<i>Church of the Lukumi Babalu Aye, Inc. v. Hialeah</i>	1300
	<i>Locke v. Davey</i>	1302
	<i>Trinity Lutheran Church of Columbus, Inc. v. Comer</i>	1304
	<i>Hosanna-Tabor Evangelical Lutheran Church and School</i>	
	<i>v. Equal Employment Opportunity Comm’n</i>	1305
	<i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights</i>	
	<i>Comm’n</i>	1306
	Trump v. Hawaii	1307
II.	Non-Mainstream Religious Beliefs and Practices	1323
	<i>United States v. Ballard</i>	1323
	<i>Torcaso v. Watkins</i>	1324
	<i>United States v. Seeger</i>	1326
	<i>Welsh v. United States</i>	1327
	<i>Thomas v. Review Bd.</i>	1329
3.	PREFERENCE AMONG RELIGIONS	1330
	<i>Board of Educ. of Kiryas Joel v. Grumet</i>	1330
	<i>Larkin v. Grendel’s Den, Inc.</i>	1331
	<i>Jones v. Wolf</i>	1332
	<i>Larson v. Valente</i>	1333
	<i>Hernandez v. Commissioner</i>	1335

4.	<i>CONFLICT BETWEEN THE CLAUSES</i>	1336
	Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos	1336
	<i>Welsh v. United States</i>	1340
	<i>Thomas v. Review Bd.</i>	1341
	<i>Texas Monthly, Inc. v. Bullock</i>	1343
	<i>Thornton v. Caldor, Inc.</i>	1344
	<i>Cutter v. Wilkinson</i>	1345
	CHAPTER 9. EQUAL PROTECTION	1349
1.	<i>TRADITIONAL APPROACH</i>	1350
	Railway Express Agency v. New York	1351
	New Orleans v. Dukes	1353
	<i>New York City Transit Auth. v. Beazer</i>	1358
	<i>Armour v. Indianapolis</i>	1360
	United States R.R. Retirement Bd. v. Fritz	1361
	<i>United States Dept. of Agriculture v. Moreno</i>	1366
	<i>Logan v. Zimmerman Brush Co.</i>	1367
	<i>Village of Willowbrook v. Olech</i>	1368
	<i>Engquist v. Oregon Dept. of Agriculture</i>	1368
2.	<i>RACE AND ETHNIC ANCESTRY</i>	1370
I.	Historical Background.....	1370
	<i>Dred Scott v. Sandford</i>	1370
II.	Discrimination Against Racial and Ethnic Minorities.....	1377
	<i>Strauder v. West Virginia</i>	1377
	Plessy v. Ferguson	1378
	Korematsu v. United States	1387
	<i>Ex parte Endo</i>	1391
	Kennedy—Freedom from Fear: The American People in Depression and War.....	1392
	Rehnquist—All the Laws But One.....	1393
	<i>Trump v. Hawaii</i>	1395
	Brown v. Board of Education	1395
	<i>Bolling v. Sharpe</i>	1399
	Brown v. Board of Education (II)	1405
	Loving v. Virginia	1407
	<i>Anderson v. Martin</i>	1411
	<i>Palmore v. Sidoti</i>	1411
	<i>Johnson v. California</i>	1411
III.	History of School Desegregation.....	1412
	<i>Cooper v. Aaron</i>	1413
	<i>Griffin v. County School Bd.</i>	1414
	<i>Green v. County School Bd.</i>	1414
	<i>Swann v. Charlotte-Mecklenburg Bd. of Educ.</i>	1415
	<i>Keyes v. School Dist.</i>	1416
	<i>Oklahoma City Bd. of Educ. v. Dowell</i>	1417
	<i>Freeman v. Pitts</i>	1417

	Parents Involved in Community Schools v. Seattle School Dist.	1419
IV.	De Jure vs. De Facto Discrimination	1432
	Yick Wo v. Hopkins	1432
	<i>United States v. Armstrong</i>	1433
	<i>Castaneda v. Partida</i>	1434
	<i>Mayor of Phila. v. Educational Equality League</i>	1434
	<i>Batson v. Kentucky</i>	1435
	<i>McCleskey v. Kemp</i>	1436
	Washington v. Davis	1438
	Klarman—An Interpretive History of Modern Equal Protection	1442
	<i>Memphis v. Greene</i>	1446
	<i>Personnel Administrator v. Feeney</i>	1448
	<i>Arlington Heights v. Metropolitan Housing Dev. Corp.</i>	1452
	<i>Abbott v. Perez</i>	1454
V.	Affirmative Action	1455
	A. Affirmative Action in Higher Education	1456
	<i>Regents of Univ. of California v. Bakke</i>	1456
	Grutter v. Bollinger	1461
	<i>Gratz v. Bollinger</i>	1469
	Fisher v. University of Texas	1470
	B. Employment and Government Contracts	1482
	<i>Wygant v. Jackson Bd. of Educ.</i>	1482
	<i>Richmond v. J.A. Croson Co.</i>	1484
	<i>Adarand Constructors, Inc. v. Pena</i>	1489
	C. “The Political Process Doctrine”	1491
	<i>Schuette v. Coalition to Defend Affirmative Action, Integration, and Immigration Rights by Any Means Necessary (BAMN)</i>	1491
3.	DISCRIMINATIONS BASED ON GENDER	1496
	I. Defining the Level of Scrutiny	1496
	<i>Reed v. Reed</i>	1497
	<i>Frontiero v. Richardson</i>	1497
	Craig v. Boren	1502
	United States v. Virginia	1507
	II. Differences—Real and Imagined	1516
	<i>Geduldig v. Aiello</i>	1516
	<i>Dothard v. Rawlinson</i>	1517
	<i>Michael M. v. Superior Court</i>	1517
	Olsen—Statutory Rape: A Feminist Critique of Rights Analysis	1520
	Minow—Introduction: Finding Our Paradoxes, Affirming Our Beyond	1521
	<i>Rostker v. Goldberg</i>	1522
	<i>Nguyen v. INS</i>	1525
	<i>Sessions v. Morales-Santana</i>	1526

III.	“Benign” or “Remedial” Discrimination	1527
	Califano v. Webster	1528
	<i>Orr v. Orr</i>	1529
	Mississippi Univ. for Women v. Hogan	1530
4.	SPECIAL SCRUTINY FOR OTHER CLASSIFICATIONS:	
	DOCTRINE AND DEBATES	1535
I.	Sexual Orientation	1536
	Romer v. Evans	1536
	<i>Lawrence v. Texas</i>	1544
	<i>United States v. Windsor</i>	1546
	<i>Obergefell v. Hodges</i>	1548
II.	Alienage	1549
	A. State Discriminations Against Lawfully Admitted	
	Aliens	1550
	<i>Graham v. Richardson</i>	1550
	<i>Sugarman v. Dougall</i>	1550
	<i>In re Griffiths</i>	1550
	Ambach v. Norwick	1552
	<i>Plyler v. Doe</i>	1553
	B. Federal Discriminations Against Aliens	1556
	<i>Mathews v. Diaz</i>	1556
	C. A Note on Aliens’ Constitutional Rights Other than Equal	
	Protection	1557
III.	People with Intellectual Disabilities	1558
	Cleburne v. Cleburne Living Center, Inc.	1558
	<i>Heller v. Doe</i>	1563
IV.	Other Challenged Bases for Discrimination	1563
	<i>Mathews v. Lucas</i>	1563
	<i>Clark v. Jeter</i>	1564
	<i>Massachusetts Bd. of Retirement v. Murgia</i>	1565
	<i>James v. Valtierra</i>	1566
	<i>Bearden v. Georgia</i>	1567
5.	FUNDAMENTAL RIGHTS	1570
I.	Voting	1571
	A. Denial or Qualification of the Right	1571
	<i>Harper v. Virginia State Bd. of Elecs.</i>	1571
	Kramer v. Union Free School District	1572
	<i>Crawford v. Marion County Elec. Bd.</i>	1576
	B. “Dilution” of the Right: Apportionment	1578
	Reynolds v. Sims	1578
	<i>Gordon v. Lance</i>	1584
	<i>Burns v. Richardson</i>	1585
	<i>Evenwel v. Abbott</i>	1585
	C. “Dilution” of the Right: Issues Involving Race	1585
	Mobile v. Bolden	1586
	<i>Rogers v. Lodge</i>	1591
	<i>United Jewish Organizations v. Carey</i>	1594

	Shaw v. Reno	1595
	<i>Miller v. Johnson</i>	1600
	Cooper v. Harris	1602
D.	“Dilution” of the Right: Partisan Gerrymanders	1607
	Davis v. Bandemer	1608
	Vieth v. Jubelirer	1612
	<i>League of United Latin American Citizens v. Perry</i>	1616
	<i>Gill v. Whitford</i>	1616
	<i>Arizona State Legislature v. Arizona Independent</i> <i>Redistricting Comm’n</i>	1618
E.	Equality in the Counting and Recounting of Votes	1619
	Bush v. Gore	1619
II.	Travel	1626
	Shapiro v. Thompson	1627
	<i>McCarthy v. Philadelphia Civil Service Comm’n</i>	1631
	<i>Martinez v. Bynum</i>	1632
	<i>Doe v. Bolton</i>	1632
	<i>Dunn v. Blumstein</i>	1633
	<i>Memorial Hospital v. Maricopa County</i>	1633
	<i>Sosna v. Iowa</i>	1634
	Saenz v. Roe	1634
III.	Access to the Courts	1641
	<i>Griffin v. Illinois</i>	1641
	<i>Douglas v. California</i>	1642
	<i>Ross v. Moffitt</i>	1643
	M.L.B. v. S.L.J.	1643
	<i>Halbert v. Michigan</i>	1647
IV.	Welfare and Education.....	1648
	<i>Dandridge v. Williams</i>	1648
	San Antonio Ind. School Dist. v. Rodriguez	1650
	<i>Plyler v. Doe</i>	1662
	CHAPTER 10. THE CONCEPT OF STATE ACTION	1663
1.	INTRODUCTION	1663
	Civil Rights Cases	1664
2.	“GOVERNMENT FUNCTION”	1668
I.	Electoral Functions: The “White Primary” Cases	1668
	<i>Smith v. Allwright</i>	1668
	<i>Terry v. Adams</i>	1669
II.	Municipal Functions: Privately Owned Spaces Open to the Public.....	1670
	<i>Marsh v. Alabama</i>	1670
	<i>Evans v. Newton</i>	1670
	<i>Amalgamated Food Employees Union v. Logan Valley Plaza</i>	1671
	<i>Lloyd Corp. v. Tanner</i>	1671
	<i>Hudgens v. NLRB</i>	1671

III.	Refusals to Find “Governmental Function”	1672
	Jackson v. Metropolitan Edison Co.	1672
	<i>CBS v. Democratic Nat’l Comm.</i>	1675
	Flagg Bros., Inc. v. Brooks	1676
3.	<i>STATE “INVOLVEMENT”</i>	1680
I.	State Enforcement	1680
	Shelley v. Kraemer	1680
	<i>N.Y. Times Co. v. Sullivan</i>	1683
II.	Symbiotic Relationships Between the State and Private Entities.....	1684
	Burton v. Wilmington Parking Auth.	1684
	<i>Lugar v. Edmondson Oil Co.</i>	1685
	<i>Edmonson v. Leesville Concrete Co.</i>	1686
	<i>Brentwood Academy v. Tennessee Secondary School Athletic Ass’n (TSSAA)</i>	1687
III.	State Licensing and Authorization	1688
	Moose Lodge v. Irvis	1688
	<i>Gilmore v. Montgomery</i>	1691
IV.	State Subsidization and Regulation.....	1692
	Rendell-Baker v. Kohn	1692
	<i>San Francisco Arts & Athletics, Inc. v. United States Olympic Comm. (USOC)</i>	1695
4.	<i>STATE FAILURE TO ACT</i>	1696
	DeShaney v. Winnebago County Dep’t of Social Serv.	1696
 CHAPTER 11. CONGRESSIONAL ENFORCEMENT OF CIVIL RIGHTS		
		1701
1.	<i>HISTORICAL FRAMEWORK</i>	1701
	Civil Rights Cases	1702
2.	<i>REGULATION OF PRIVATE PERSONS</i>	1705
I.	Thirteenth Amendment	1705
	42 U.S.C. § 1981	1705
	42 U.S.C. § 1982	1705
	Jones v. Alfred H. Mayer Co.	1705
	<i>Runyon v. McCrary</i>	1707
	<i>Griffin v. Breckenridge</i>	1709
	<i>Carpenters, Local 610 v. Scott</i>	1709
	<i>Bray v. Alexandria Women’s Health Clinic</i>	1710
II.	Fourteenth Amendment.....	1710
	18 U.S.C. § 241	1710
	18 U.S.C. § 242	1710
	<i>United States v. Price</i>	1711
	<i>United States v. Morrison</i>	1712
3.	<i>REGULATION OF STATE ACTORS</i>	1713
I.	Fourteenth Amendment.....	1713
	Katzenbach v. Morgan	1713

Boerne v. Flores	1718
<i>Tennessee v. Lane</i>	1725
Note on § 5 and State Sovereign Immunity.....	1725
<i>Florida Prepaid Postsecondary Education Expense Board</i>	
<i>v. College Savings Bank</i>	1727
<i>Kimel v. Florida Bd. of Regents</i>	1727
<i>Nevada Dep't of Human Resources v. Hibbs</i>	1728
II. Fifteenth Amendment.....	1730
Shelby County v. Holder	1730
CHAPTER 12. LIMITATIONS ON JUDICIAL POWER AND	
REVIEW	1737
Introduction	1737
1. ADVISORY OPINIONS AND EXECUTIVE REVISION	1739
Correspondence of the Justices (1793).....	1739
2. STANDING	1742
I. The Structure of Standing Doctrine.....	1742
Allen v. Wright	1742
<i>United States v. Students Challenging Regulatory Agency</i>	
<i>Procedures (SCRAP)</i>	1752
<i>Friends of the Earth, Inc. v. Laidlaw Environmental</i>	
<i>Services (TOC), Inc.</i>	1752
<i>Heckler v. Mathews</i>	1752
<i>Sprint Communications Co. v. APCC Services, Inc.</i>	1753
<i>Clapper v. Amnesty International</i>	1753
<i>Simon v. Eastern Kentucky Welfare Rights Org.</i>	1754
<i>Regents of the University of California v. Bakke</i>	1755
<i>Los Angeles v. Lyons</i>	1756
II. Congressional Power to Create Standing	1758
Lujan v. Defenders of Wildlife	1758
Sunstein—What's Standing After Lujan?.....	1763
<i>FEC v. Akins</i>	1764
<i>Massachusetts v. EPA</i>	1764
<i>Spokeo, Inc. v. Robins</i>	1765
<i>Vermont Agency of Natural Resources v. United States ex</i>	
<i>rel. Stevens</i>	1766
III. Taxpayer Standing and Other Status-Based Standing Issues....	1767
<i>Frothingham v. Mellon</i>	1767
<i>Flast v. Cohen</i>	1768
<i>Valley Forge Christian College v. Americans United for</i>	
<i>Separation of Church and State, Inc.</i>	1769
<i>Hein v. Freedom from Religion Foundation, Inc.</i>	1770
<i>ASARCO Inc. v. Kadish</i>	1772
<i>United States v. Hays</i>	1773
<i>Gill v. Whitford</i>	1773
<i>Coleman v. Miller</i>	1774
<i>Raines v. Byrd</i>	1774

	<i>Arizona State Legislature v. Arizona Independent Redistricting</i>	
	<i>Comm'n</i>	1775
3.	TIMING OF ADJUDICATION	1776
I.	Mootness	1776
	DeFunis v. Odegaard	1776
	<i>Friends of the Earth v. Laidlaw Env. Servs. (TOC), Inc.</i>	1779
	<i>United States Parole Comm'n v. Geraghty</i>	1780
II.	Ripeness	1781
	United Public Workers v. Mitchell	1781
	<i>O'Shea v. Littleton</i>	1784
	Appendix A. The Justices of the Supreme Court	1787
	Appendix B. The Constitution of the United States	1801
	INDEX	1817