

Preface

Welcome to the Fourth Edition of *Constitutional Structure: Cases in Context*. We recognize that choosing a casebook is one of the most important decisions law professors make. For students, this selection is beyond their control, but it often makes or breaks the foundation of their legal education.

In a crowded marketplace, our reinvigorated text stands out for professors and students alike because of its clarity, context, consideration, and the canon.

CLARITY

In preparing the Fourth Edition, every page was reviewed and re-edited with a primary focus: clarity. Placing ourselves back in the shoes of a 1L who has never before studied this material, we rethought what works, and what does not work. Specifically, we sought to provide students with a more accessible and engaging way to learn constitutional law than is now available in existing casebooks.

First, after extensive market research, we concluded that most textbooks — especially those that have evolved through many editions over a long period of time — are simply unrealistic about what students can actually learn in a three- or four-credit course. Most books drown students with tedious notes, commentary, and “squibs” *after* the cases, which professors dread to field questions about, even as most students skip them. We chose a different path. *Before* each decision we include a clear, easy-to-understand study guide that consists of a series of precise questions. These learning objectives pinpoint what students should take away from the reading — we do not hide the ball. In addition, we have line-edited the text to present this information using simple, clear prose.

Second, rather than assuming that students will grasp complicated postures, we provide them with the background information necessary to dive right into the cases. For example, if a decision involves a complex regulatory scheme, or considers an obscure historical event, the study guide will offer a brief synopsis of the underlying facts so students can instead focus on the important analysis. Further, our casebook includes dozens of photographs of the people and places behind the cases. These additional illustrations and tidbits of information make the study of constitutional law come alive just a little more, and differentiate our text from all the others.

Third, we have divided each chapter into a series of *Assignments*, which average thirty pages in length. The readings are long enough to help students understand the arguments, but edited where necessary to prevent overwhelming them. Where feasible within each doctrinal category, the canonical cases are presented chronologically as they were decided. Learning how a line of cases developed conveys the story of constitutional law that every lawyer *ought* to know. With our ready-made syllabi, professors can rearrange the materials to fit into three-, four-, and six-credit courses.

Finally, the Fourth Edition allows professors to *flip* the classroom. Students can access an online catalogue of videos about most of the cases in the book. We spent more than two years scripting, filming, and editing the video library. The videos discuss the facts, posture, analysis, and holding of the cases, centered around the study guide questions in the book. They situate each case in the broader narrative of constitutional law. Building on modern learning techniques, students can prepare themselves online *before* class. In our experience, these videos save an enormous amount of class time. They empower professors to dive deeper into the analysis and reasoning of the content, rather than consuming precious class time bringing every student up to speed on the facts. These resources are extremely valuable in one-semester courses where class time is scarce.

CONTEXT

The narrative theme of the book is reflected in its title: *Cases in Context*. Constitutional law has not developed in a vacuum. Rather, over the course of two centuries, all three branches of our government have interpreted the Constitution's seven articles and twenty-seven amendments in the context of complicated, real-world events. Professors take their knowledge of this story for granted, having picked it up along the way. But for most students it is entirely new and more than a little strange. This story is almost impossible to grasp when confronting disparate cases completely divorced from the context in which they were decided.

As with previous editions, the Fourth Edition aims to place each of these developments, throughout the history of our republic, in the proper context. All students — even those unfamiliar with American history — will learn the essential background information to grasp how this body of law has come to be what it is today. To do that, we hew to discussions of first principles and method, rather than doctrinal details. And we graphically present this narrative through the videos that accompany the text.

CONSIDERATION

By providing both cases and context, our book aims to nonjudgmentally convey the competing narratives that all lawyers ought to know. But it also provides consideration of different perspectives. We strive to always present competing points of view — primarily through the generous use of dissenting opinions. Consideration of all sides of all issues will enrich the pedagogical experience, and more importantly, will better equip future

attorneys with different modalities of argumentation. Regardless of how professors may view these issues, *Cases in Context* will provide students with a balanced perspective. With less opinionated supplementation by the casebook authors, each professor can put his or her own stamp on the story as it unfolds.

Before proceeding further, let us put our cards on the table. Though ascendant in recent years — “We are all originalists,” Justice Kagan observed during her confirmation hearings — we concede that our views on originalism are not in the majority in faculty lounges across the country, or on the courts. But, while evidence of original meaning is included, this is *not* an originalist casebook. Neither is it technically doctrinal. Rather, it is a book about the “canon” and the “anti-canon” that comprises constitutional law.

THE CANON

The “canon” are the cases accepted by the vast majority of judges, lawyers, and law professors as landmark cases to be followed and emulated. The “anti-canon” are the cases most everyone believes to have been wrongly decided in so egregious a manner as to be object lessons in how *not* to do constitutional law. Taken together, these decisions provide the basic vocabulary of constitutional law that every lawyer who practices constitutional law must somehow internalize. The conventional categorization of some cases as “canonical” and other cases as “anti-canonical” does not reflect our own opinions about which cases are *good* and which cases are *bad*. This categorization reflects the facts of our current constitutional practice that every constitutional lawyer must know.

To internalize the canon, however, it is not enough for students to memorize the good cases and the bad ones. Students must appreciate *why* some cases have become canonical and others have become reviled. This task requires them to understand the *narrative* of constitutional law as it has developed since the Founding. No casebook presents the narrative of constitutional law as effectively or engagingly as this one.

The Fourth Edition includes all of the classic cases in the “canon,” as well as those in the “anti-canon,” and the connective tissue that explains how and why they came to be thought of in this way. At its heart, this is a story that dates back to the Founding. Our goal was to allow this story to emerge from the materials themselves rather than from us.

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To the professors who have chosen to adopt this book, we thank you. To the students reading this preface before starting their course on constitutional law, brace yourselves: it’s a wild ride.

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