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## PREFACE TO THE NINTH EDITION

After observing that every new edition of a constitutional law casebook addresses numerous issues that the Supreme Court had not dealt with in detail before—and implicitly observing that issues that once concerned the Court fall off the docket for years—the Preface to the Seventh Edition of this casebook referred to an “American tendency to constitutionalize political controversy” and noted:

[The] Justices present themselves and the results they reach as above politics. Their interpretive techniques, doctrinal tests, and rhetorical tropes are designed to separate—or, at least to create the appearance of separation—between constitutional analysis and political disputation. A student cannot become proficient in constitutional law without mastering these tools and taking them seriously on their own terms. [Constitutional] law is an insider’s game, and the opinions of the Justices establish the rules by which it is played. It follows that teachers must explain these rules, and students must master them.

But no thoughtful student of constitutional law can remain solely an insider. It would be odd indeed if the Court’s regular engagement with intensely controversial issues remained altogether uncontaminated by political passions. Even the most casual outside observer cannot help but notice that the Justices often divide according to familiar, if no doubt overly simple, political categories.

Yet, we continued,

[The] familiar law/politics divide is itself too simple. The bifurcation obscures the different senses in which the terms “law” and “politics” are used. Constitutional law is not ordinary law, and constitutional politics is not ordinary politics. Constitutional law is inevitably embedded in the history and culture of the period in which it is made. Constitutional politics is not about—or at least not just about—partisan division, but also about the deepest questions of political theory.

We continue to offer the perspectives we described then in this Ninth Edition. As before, we present recent developments in constitutional law with what we hope is an appropriate emphasis—taking some developments as perhaps portending substantial change in constitutional doctrine and others as having more modest effects. Recent changes to the jurisprudence of the First Amendment Religion Clauses and the right to abortion are an example of the former. Changes to the law of executive branch appointments and removals may be among the latter (although time may portend others).

The results of recent elections, reflecting shifts in the underlying political coalitions comprising both main parties, have also already inserted new issues, or revived old ones, in discussions of constitutional law. We live in deeply unsettled times, and the future is even more unknowable than usual. It is at least possible that over the lifetime of this Edition, crucial issues of systemic constitutional stability will take center stage. If that happens, our hope for this Edition is that it gives teachers of constitutional law the raw materials to foster intelligent discussion of any constitutional crisis. Whether it happens or not, teachers will have to decide for themselves how to incorporate discussions of our new and evolving situation into their

courses. We have tried to write a book that is provocative but not tendentious, that suggests avenues for discussion but does not insist on a particular resolution.

Near the conclusion of an earlier Preface, we wrote, “Our aim for this book is to teach students about both the inside and the outside of constitutional law. [We] have tried to ask questions of our students that, for one reason or another, the Justices have failed to ask of themselves.” As before, and now more than ever, “We are guided by the firm conviction that thinking clearly about constitutional law—both what it is and what it might be—is vital for law students and, indeed, for citizens generally.”

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