

CONTENTS

Preface to the Eighth Edition	xxxi
Preface to the Seventh Edition	xxxiii
Preface to the Sixth Edition	xxxv
Preface to the Fifth Edition	xxxvii
Preface to the Fourth Edition	xxxix
Preface to the Third Edition	xli
Preface to the Second Edition	xliii
Preface to the First Edition	xlvi
The Constitution of the United States	xlvi

PART I	THE ROLE OF THE COURTS IN CONSTITUTIONAL INTERPRETATION	1
Chapter 1	Judicial Review and Constitutional Structure	3
A.	The Origins and Theory of Judicial Review	3
1.	Marbury v. Madison: The Establishment of Judicial Review	6
	<i>Marbury v. Madison</i>	7
	Notes	14
2.	Judicial Exclusivity in Constitutional Interpretation?	20
	<i>Cooper v. Aaron</i>	20
	Note	21
B.	The Power to Review State Court Judgments	23
	<i>Martin v. Hunter's Lessee</i>	25
	Notes	29
C.	The Adequate and Independent State Grounds Doctrine	31
	<i>Michigan v. Long</i>	31
	Notes	32
D.	The Utility of Judicial Review	33
1.	Counter-Majoritarian Role	34
2.	Avoiding the Counter-Majoritarian Problem	35
3.	Stability	35

4. Entrenched Error	36
5. Erosion of Constitutional Responsibility by the Political Branches	36
E. Methods of Constitutional Interpretation	37
1. Interpretation or Imagination?	37
<i>Calder v. Bull</i>	37
Notes	38
2. The Textual Method	39
3. Historical Argument	39
a. Original Intent	39
b. Original Meaning	40
c. The “Vectors” of History	40
4. Structural Arguments	41
5. Doctrinal Arguments	42
6. Prudential Arguments	42
7. Cultural Arguments	43
8. Constitutional Interpretation Versus Constitutional Implementation	43
F. The Uneven Nature of Judicial Review: Tiered Review and the Unequal Status of Constitutional Claims	44
 Chapter 2 Doctrines Limiting the Scope of Judicial Review	 49
A. Direct Political Controls: Amendment, Appointment, and Impeachment	49
1. Amendment	49
a. Non-contemporaneous Ratification	50
b. Convention Calls	51
c. Rescission Before Ratification	51
d. “Unconstitutional” Amendments?	51
2. Appointment	52
3. Impeachment	53
B. Congressional Power to Control the Jurisdiction of the Federal Courts	54
1. Power to Establish Federal Courts	55
2. Exceptions to and Regulations of Supreme Court Appellate Jurisdiction	55
<i>Ex parte McCardle</i>	55
Notes	57
a. “External” Limits on Congressional Power to Curtail the Supreme Court’s Appellate Jurisdiction	59
b. “Internal” Limits on Congressional Power to Curtail the Supreme Court’s Appellate Jurisdiction	59

3. Limitations on Congressional Control of the Jurisdiction of Inferior Federal Courts	60
a. The Mandatory Federal Jurisdiction Position	61
b. The Discretionary Position	62
c. The Irrelevance of Motive	63
4. Limitations on Congressional Power to Curtail the Jurisdiction of All Federal Courts	63
<i>United States v. Klein</i>	64
Notes	65
C. Justiciability: The Proper Role of Federal Courts	67
1. Advisory Opinions	68
<i>The Correspondence of Jefferson and the Justices</i>	68
Notes	69
2. Standing to Sue	71
a. The Constitutional Core of Standing	71
<i>Lujan v. Defenders of Wildlife</i>	71
Notes	76
<i>Massachusetts v. Environmental Protection Agency</i>	86
Notes	95
b. “Prudential” or Non-constitutional Standing Rules	99
i. Third-Party Standing	100
ii. The “Zone of Interests” Requirement	100
c. Organizational Standing	100
3. Ripeness and Mootness	101
a. Ripeness	101
b. Mootness	102
4. Political Questions	103
Note	105
<i>Nixon v. United States</i>	106
Notes	112

PART II ENFORCING THE CONSTITUTIONAL ALLOCATION OF GOVERNMENT POWER

117

A. Who Should Decide Federalism Issues?	118
B. What Is the Purpose or Value of Federalism?	119
1. The Liberty of Individual Choice	119
2. Experimental Laboratories	120
3. Thwarting Tyranny	120

4. Controlling Negative Externalities	121
5. Fidelity to the Constitution's Design	121
6. The Practical Value of Uniformity	121
C. Federalism and Fundamental Constitutional Rights	122
 Chapter 3 The Limits of Federal Legislative Power: Judicially or Politically Enforceable Federalism?	 123
A. Implementing Enumerated Powers and "Default" Rules	123
1. Implementing Enumerated Powers: The "Necessary and Proper Clause"	123
<i>McCulloch v. Maryland</i>	124
Notes	130
2. Implying "Default" Rules for Federal and State Power	134
<i>McCulloch v. Maryland</i>	135
Notes	138
<i>U.S. Term Limits, Inc. v. Thornton</i>	139
Note	145
B. Commerce	146
1. Origins, Development, and the New Deal "Revolution"	147
<i>Gibbons v. Ogden</i>	147
Notes	149
<i>NLRB v. Jones & Laughlin Steel Corp.</i>	159
Notes	162
<i>Wickard v. Filburn</i>	162
Notes	164
2. The "Counter-Revolution"	165
<i>United States v. Lopez</i>	165
Notes	171
<i>Gonzales v. Raich</i>	175
Notes and Problems	181
<i>National Federation of Independent Business v. Sebelius</i>	184
3. Limits Imposed by Principles of State Autonomy	188
a. Substantive Immunity	188
b. Procedural Immunity	190
Notes	193
<i>Murphy v. National Collegiate Athletic Association</i>	195
Notes, Questions, and Problems	201

Contents	xv
C. Taxation	204
<i>Bailey v. Drexel Furniture Co. (Child Labor Tax Case)</i>	205
Notes	207
<i>National Federation of Independent Business v. Sebelius</i>	209
D. Spending	214
<i>United States v. Butler</i>	214
Note	217
<i>South Dakota v. Dole</i>	219
Notes	223
<i>National Federation of Independent Business v. Sebelius</i>	224
E. Treaty Implementation	227
<i>Missouri v. Holland</i>	227
Notes and Problems	228
F. Power to Regulate in Aid of War-Making	231
<i>Woods v. Cloyd W. Miller Co.</i>	231
Problem	232
G. Foreign Affairs	233
H. Power to Enforce the Reconstruction Amendments	236
 Chapter 4 Limiting the Scope of State Power over Interstate Commerce	 237
A. The Dormant Commerce Clause	238
1. Introduction	238
a. Theory	238
b. Doctrinal History	239
<i>Cooley v. Board of Wardens</i>	241
Note	243
c. Modern Doctrine	244
2. Discrimination Against Interstate Commerce	245
<i>Philadelphia v. New Jersey</i>	245
Notes	249
3. Neutral Burdens on Interstate Commerce	252
<i>Southern Pacific Co. v. Arizona</i>	253
<i>Kassel v. Consolidated Freightways Corp.</i>	256
Notes	264
4. Facially Neutral Regulations with Discriminatory Effects on Interstate Commerce	269
<i>Dean Milk Co. v. Madison</i>	270
Notes	272

a. Assessing Discriminatory Effects	273
<i>Hunt v. Washington State Apple Advertising Commission</i>	273
Note	275
<i>Exxon Corp. v. Governor of Maryland</i>	276
Note	277
b. Assessing Discriminatory Purposes	278
<i>West Lynn Creamery, Inc. v. Healy</i>	278
Notes and Problems	282
5. States as “Market Participants”: An Exception to the Dormant Commerce Clause	283
<i>South-Central Timber Development, Inc. v. Wunnicke</i>	283
Notes	288
B. The Privileges and Immunities Clause of Article IV	291
<i>United Building & Construction Trades Council v. City of Camden</i>	292
Notes and Problems	296
C. Preemption and Consent: Congress Has the Final Word	300
1. Preemption	300
Notes	301
2. Consent to State Regulation of Interstate Commerce	305
D. State Taxation of Interstate Commerce	307
Notes	307
 Chapter 5 Separation of Powers	 311
A. The Reasons for Separated Powers	311
B. Executive Action	313
1. In Domestic Affairs	313
<i>Youngstown Sheet & Tube Co. v. Sawyer (The Steel Seizure Case)</i>	313
Notes and Problem	323
a. The Appointment Power	323
<i>Morrison v. Olson</i>	324
Notes	327
b. The Removal Power	330
<i>Morrison v. Olson</i>	331
Notes	334
2. In Foreign Affairs	339
a. General Principles	339
<i>United States v. Curtiss-Wright Export Corp.</i>	339
Notes	341

Contents

xvii

<i>Trump v. Hawaii</i>	343
<i>Zivotofsky v. Kerry</i>	349
Notes and Questions	354
<i>Dames & Moore v. Regan</i>	355
Note	358
b. War	359
<i>The Prize Cases</i>	359
Note	360
<i>The War Powers Resolution</i>	360
Notes	362
c. Treaties and Executive Agreements	371
C. Legislative Action and the Administrative State	375
1. General Themes	375
<i>Mistretta v. United States</i>	375
<i>Morrison v. Olson</i>	381
Note	384
2. Specific Limits	384
a. Nondelegation	384
<i>Mistretta v. United States</i>	384
Notes	386
b. Bicameralism and Presentment	390
<i>INS v. Chadha</i>	390
Notes	396
<i>Clinton v. City of New York</i>	397
c. Appropriations	402
<i>Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited</i>	403
D. Immunities and Privileges	408
1. Legislative Immunities	408
2. Executive Immunities	409
<i>Clinton v. Jones</i>	411
Note	414
<i>Trump v. United States</i>	414
Notes	426
3. Executive Privilege	426
<i>United States v. Nixon</i>	426
Note	429

PART III	INDIVIDUAL RIGHTS: LIMITS ON THE USE OF GOVERNMENTAL POWER	431
Chapter 6	Due Process	435
A.	Procedural Due Process	435
1.	Defining the Interests Protected by Due Process	436
a.	Property	437
	<i>Cleveland Board of Education v. Loudermill</i>	438
	Notes	440
b.	Liberty	441
2.	Determining the Process That Is Due	443
	<i>Mathews v. Eldridge</i>	444
	Notes	447
B.	Substantive Due Process	450
1.	The Incorporation Doctrine	451
	<i>Slaughter-House Cases</i>	453
	Notes	457
2.	The Rise and Fall of Economic Rights as the Substance of Due Process	462
	<i>Lochner v. New York</i>	464
	Notes	468
3.	The Modern Revival: “Privacy” Rights	473
a.	Origins: Contraceptive Use	475
	<i>Griswold v. Connecticut</i>	475
	Notes	481
b.	Abortion	484
	<i>Dobbs v. Jackson Women’s Health Organization</i>	486
	Notes	500
c.	Family Relationships	502
	<i>Moore v. City of East Cleveland</i>	503
	Notes and Problems	505
d.	The Right to Die	508
	<i>Cruzan v. Director, Missouri Department of Health</i>	508
	Notes	512
	<i>Washington v. Glucksberg</i>	513
	Notes	516
e.	Consensual Sexual Choices	517
	<i>Lawrence v. Texas</i>	519
	Notes	524

Contents	xix
f. Marriage	525
<i>Obergefell v. Hodges</i>	527
Notes and Questions	532
g. Other Asserted Privacy or Autonomy Interests	534
 Chapter 7 Economic Rights: The Takings and Contracts Clauses	 535
A. The Takings Clause	535
1. The Public Use Requirement	537
<i>Hawaii Housing Authority v. Midkiff</i>	537
Notes	539
<i>Kelo v. City of New London</i>	540
Notes and Problems	545
2. Regulatory Takings: When Does Regulation Become a Taking?	547
a. Early Approaches	548
<i>Pennsylvania Coal Co. v. Mahon</i>	548
Notes	550
<i>Miller v. Schoene</i>	551
Questions	552
b. The Categorical Approach	552
<i>Lucas v. South Carolina Coastal Council</i>	552
<i>Horne v. Department of Agriculture</i>	559
Note	562
c. The Balancing Approach	564
<i>Penn Central Transportation Co. v. New York City</i>	564
Notes	567
<i>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</i>	568
Notes and Problem	572
3. Conditional Regulatory Takings	575
<i>Nollan v. California Coastal Commission</i>	576
<i>Dolan v. City of Tigard</i>	578
Notes	580
B. The Contracts Clause	582
<i>Home Building & Loan Association v. Blaisdell</i>	584
Note	587
1. Public Contracts After <i>Blaisdell</i>	588
<i>United States Trust Co. v. New Jersey</i>	588
Notes	591

2. Private Contracts After <i>Blaisdell</i>	591
<i>Allied Structural Steel Co. v. Spannaus</i>	591
<i>Energy Reserves Group, Inc. v. Kansas Power & Light Co.</i>	593
Notes and Problems	594
Chapter 8 Equal Protection	597
A. Overview	597
1. Levels of Judicial Scrutiny	598
2. Classifications and Objectives	599
3. Categorizing Classifications	600
B. Minimal Scrutiny: The Default Level of Review	602
1. Means: What Is Not Rational?	602
<i>Railway Express Agency, Inc. v. New York</i>	602
Notes	604
<i>United States Railroad Retirement Board v. Fritz</i>	606
Note	609
2. Ends: What Purposes Are Not Legitimate?	610
<i>United States Department of Agriculture v. Moreno</i>	610
<i>Romer v. Evans</i>	611
Notes	615
3. “Enhanced” Minimal Scrutiny: Is the Problem Means, Ends, or Both?	617
<i>City of Cleburne, Texas v. Cleburne Living Center, Inc.</i>	617
Notes	621
<i>Plyler v. Doe</i>	621
Notes	625
C. Strict Scrutiny and Suspect Classifications: Race and Ethnicity	626
1. Overview	626
2. Purposeful Discrimination Required	628
<i>Washington v. Davis</i>	630
Notes	632
3. Official Racial Segregation	636
a. The Road to <i>Brown</i>	600
b. The End of “Separate but Equal”	638
<i>Brown v. Board of Education of Topeka (Brown I)</i>	638
Notes	639
4. Affirmative Action	645
a. First Views: <i>Bakke</i>	600
<i>Regents of the University of California v. Bakke</i>	645

b. General Principles	652
<i>City of Richmond v. J.A. Croson Co.</i>	652
Note	657
<i>Adarand Constructors, Inc. v. Peña</i>	657
Notes and Problems	661
c. Public Universities and Public Schools	662
<i>Grutter v. Bollinger</i>	662
<i>Gratz v. Bollinger</i>	673
Note	676
<i>Students for Fair Admission, Inc. v. President and Fellows of Harvard College</i>	677
Notes	691
<i>Parents Involved in Community Schools v. Seattle School District No. 1; Meredith v. Jefferson County Board of Education</i>	692
Problem	699
5. Race and the Political Process	699
<i>Hunter v. Erickson</i>	700
<i>Washington v. Seattle School District</i>	702
Notes	706
<i>Schuette v. Coalition to Defend Affirmative Action</i>	707
D. Strict Scrutiny and Suspect Classifications: Lawful Resident Aliens	714
<i>Sugarman v. Dougall</i>	714
Notes	717
E. Intermediate Scrutiny: Sex and Illegitimacy	718
<i>Craig v. Boren</i>	719
Notes	723
<i>Michael M. v. Superior Court of Sonoma County</i>	723
<i>Rostker v. Goldberg</i>	726
Notes	727
<i>United States v. Virginia</i>	729
Notes	736
F. Fundamental Rights: Strict Scrutiny Redux	741
1. Introduction	741
<i>San Antonio Independent School District v. Rodriguez</i>	742
Notes	746
2. Voting: Denial	747
<i>Harper v. Virginia State Board of Elections</i>	747
Notes	748

<i>Crawford v. Marion County Election Board</i>	752
Note and Problem	756
3. Voting: Dilution	756
<i>Reynolds v. Sims</i>	756
<i>Bush v. Gore</i>	758
Notes	760
4. Voting: Gerrymanders	761
<i>Davis v. Bandemer</i>	761
Notes	763
<i>Shaw v. Reno</i>	768
Notes	771
5. Access to Courts	773
a. Criminal Litigation	773
b. Civil Litigation	775
<i>M.L.B. v. S.L.J.</i>	775
Note	778
6. Penalties on the Right of Interstate Migration	778
a. Origins	778
b. Two Versions of a Single Right	779
<i>Saenz v. Roe</i>	780
Problems	784
 Chapter 9 Free Expression of Ideas	 787
A. Overview of Free Expression	787
1. Rationales for Free Expression	787
2. The Distinction Between Content-Based Regulation and Content-Neutral Regulation	789
B. Content-Based Regulation of Speech	793
1. Incitement of Immediate Crime	793
<i>Brandenburg v. Ohio</i>	799
Notes and Problem	801
2. True Threats	802
<i>Virginia v. Black</i>	802
Notes and Problem	805
3. Obscenity, Pornography, and Putative Analogs	807
a. Obscenity	807
<i>Roth v. United States; Alberts v. California</i>	807
Notes	809

Contents

xxiii

<i>Miller v. California</i>	811
<i>Paris Adult Theatre I v. Slaton</i>	813
Notes and Problem	815
b. Pornography	817
<i>New York v. Ferber</i>	817
Notes	819
<i>Ashcroft v. The Free Speech Coalition</i>	820
Problems	821
c. Analogs: Depictions of Cruelty and Violence	822
<i>United States v. Stevens</i>	822
Notes and Questions	824
<i>Brown v. Entertainment Merchants Association</i>	825
4. Fighting Words	830
<i>Chaplinsky v. New Hampshire</i>	830
Notes	831
5. Offensive Speech	833
a. The General Rule	833
<i>Cohen v. California</i>	833
Notes and Problems	837
<i>Matal v. Tam</i>	838
Note	840
b. Hate Speech	841
<i>R.A.V. v. City of St. Paul</i>	843
<i>Wisconsin v. Mitchell</i>	848
Notes	849
Notes	850
c. Hostile Audiences	851
<i>Terminiello v. Chicago</i>	851
<i>Feiner v. New York</i>	852
Note	854
d. Indecent Speech, Broadcasting, and Captive Audiences	855
<i>FCC v. Pacifica Foundation</i>	855
Notes and Problems	858
e. Indecency, Cable Television, and the Internet	860
<i>Free Speech Coalition, Inc. v. Paxton</i>	862
6. False Statements of Fact	870
a. Defamation	870
<i>New York Times Co. v. Sullivan</i>	870

Notes	873
<i>Gertz v. Robert Welch, Inc.</i>	875
Notes	877
b. “False Light” Invasion of Privacy	879
c. Lies About Oneself	880
<i>United States v. Alvarez</i>	880
Notes and Questions	885
7. Tortious Invasion of Emotional and Economic Interests	886
a. Intentional Infliction of Emotional Distress	886
<i>Hustler Magazine v. Falwell</i>	886
Notes	888
<i>Snyder v. Phelps</i>	888
b. Public Disclosure of Private Facts	892
c. Misappropriation of Expression	894
8. Commercial Speech	895
<i>Virginia Board of Pharmacy v. Virginia Citizens Consumer Council</i>	896
Notes	899
<i>Central Hudson Gas & Electric Corp. v. Public Service Commission</i> [of N.Y.]	899
Notes	902
<i>44 Liquormart, Inc. v. Rhode Island</i>	905
Notes	908
C. Content-Neutral Regulations of Speech	910
1. Time, Place, and Manner of Speech	911
<i>Ward v. Rock Against Racism</i>	911
Notes and Problems	914
<i>McCullen v. Coakley</i>	917
Notes and Problems	922
<i>Packingham v. North Carolina</i>	923
2. Expressive Conduct	926
<i>United States v. O’Brien</i>	927
Notes and Problems	930
<i>Texas v. Johnson</i>	931
Note and Problems	935
3. The “Secondary Effects” Doctrine	937
<i>City of Renton v. Playtime Theatres, Inc.</i>	937
Notes and Problems	939

D. Regulation of Speech When the Government Is Both Sovereign and Proprietor	941
1. Public Forum	941
<i>International Society for Krishna Consciousness, Inc. v. Lee; Lee v. International Society for Krishna Consciousness, Inc.</i>	942
Notes	950
2. Public Education	955
<i>Tinker v. Des Moines School District</i>	955
<i>Bethel School District No. 403 v. Fraser</i>	957
<i>Hazelwood School District v. Kuhlmeier</i>	959
Notes and Problems	961
<i>Mahanoy Area School District v. B.L.</i>	963
Notes and Problem	970
3. Public Employment	971
<i>Connick v. Myers</i>	973
Notes	975
<i>Garcetti v. Ceballos</i>	978
Notes and Problems	981
4. Public Sponsorship of Speech	985
<i>Rust v. Sullivan</i>	986
Notes and Problems	987
<i>Legal Services Corp. v. Velasquez</i>	989
Notes and Problems	992
E. Overbreadth, Vagueness, and Prior Restraints	998
1. Overbreadth	998
<i>Broadrick v. Oklahoma</i>	999
Notes	1001
2. Vagueness	1003
3. Prior Restraints	1004
a. Licensing	1005
b. Injunctions	1007
<i>Near v. Minnesota</i>	1007
Notes	1008
F. Expression Rights Implicit in the Free Speech Guarantee	1011
1. Freedom of Association	1011
<i>Roberts v. United States Jaycees</i>	1012
Notes	1016
<i>Rumsfeld v. Forum for Academic and Institutional Rights, Inc.</i>	1018

Notes and Problems	1019
<i>Americans for Prosperity Foundation v. Bonta</i>	1024
Notes	1029
2. The Freedom Not to Speak	1029
<i>West Virginia State Board of Education v. Barnette</i>	1030
<i>Wooley v. Maynard</i>	1031
Notes	1033
<i>Pacific Gas & Electric Co. v. Public Utilities Commission</i>	1033
Notes	1036
<i>303 Creative LLC v. Elenis</i>	1038
<i>Rumsfeld v. Forum for Academic and Institutional Rights, Inc.</i>	1042
Problems	1043
<i>National Institute of Family and Life Advocates v. Becerra</i>	1043
Problems	1050
G. Free Expression and the Political Process	1050
1. Money as Speech: Political Contributions and Expenditures	1050
<i>Buckley v. Valeo</i>	1050
Notes	1055
<i>McConnell v. Federal Election Commission</i>	1056
Notes	1063
<i>Citizens United v. Federal Election Commission</i>	1065
Notes	1072
2. Government Regulation of Elections	1074
<i>California Democratic Party v. Jones</i>	1075
Notes	1079
<i>Republican Party of Minnesota v. White</i>	1081
Notes	1085
H. Freedom of the Press	1087
1. Special Privileges for the Press?	1087
a. A “Reporter’s Privilege”?	1087
b. Immunity from Search?	1088
c. A Right of Access to Government Information and Proceedings?	1088
<i>Richmond Newspapers, Inc. v. Virginia</i>	1088
Notes	1091
2. Singling Out the Press for Unfavorable Treatment	1092
<i>Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue</i>	1092
Notes	1095

Chapter 10 The Religion Clauses	1097
A. A Summary of the History and Theory of the Religion Clauses	1097
1. Two Views of History	1097
2. The Quest for a Unifying Theory	1099
3. A Threshold Problem: Defining Religion	1100
B. The Free Exercise Clause	1102
1. Generally Applicable Laws That Impede Religious Conduct	1102
<i>Sherbert v. Verner</i>	1103
Notes	1105
<i>Employment Division, Department of Human Resources of Oregon v. Smith</i>	1107
Notes	1111
2. Legislation That Targets Religious Conduct or Belief	1114
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i>	1115
Notes and Problem	1118
<i>Fulton v. Philadelphia</i>	1122
Notes	1129
<i>Locke v. Davey</i>	1129
Note and Problem	1132
<i>Trinity Lutheran Church v. Comer</i>	1133
Notes	1137
<i>Kennedy v. Bremerton School District</i>	1140
Notes	1148
C. The Establishment Clause	1148
1. Government Financial Aid to Religion	1150
<i>Everson v. Board of Education</i>	1150
Notes	1151
<i>Mueller v. Allen</i>	1152
Notes	1155
<i>Agostini v. Felton</i>	1156
Note and Problems	1158
<i>Zelman v. Simmons-Harris</i>	1159
Notes and Problem	1164
2. Governmental Endorsement of Religious Belief or Non-belief and Governmental Coercion to Believe or Not Believe	1164
a. Religion and Public Schools	1164
<i>Lee v. Weisman</i>	1167
Notes	1170

<i>Edwards v. Aguillard</i>	1171
Note	1175
<i>Good News Club v. Milford Central School</i>	1175
b. Other Government Adoption of Religious Symbols	1177
<i>Lynch v. Donnelly</i>	1177
Notes	1181
<i>McCreary County v. American Civil Liberties Union of Kentucky</i>	1183
<i>Van Orden v. Perry</i>	1187
Notes and Problems	1190
<i>Town of Greece v. Galloway</i>	1191
Notes and Questions	1198
<i>The American Legion v. American Humanist Association</i>	1198
Notes and Problem	1206
3. Governmental Accommodation of Religion	1207
a. Cession of Government Power to Religion	1207
b. Religious Exemptions from General Requirements	1208
 Chapter 11 State Action and the Power to Enforce Constitutional Rights	 1211
A. State Action	1211
1. The Public Function Doctrine	1212
<i>Marsh v. Alabama</i>	1213
Notes	1214
<i>Jackson v. Metropolitan Edison Co.</i>	1215
Notes	1218
2. Inextricable Entanglement	1219
<i>Burton v. Wilmington Parking Authority</i>	1220
Notes	1221
<i>Brentwood Academy v. Tennessee Secondary School Athletic Association</i>	1222
Notes and Problems	1226
3. Coercion and Encouragement	1227
<i>Shelley v. Kraemer</i>	1227
Notes	1228
<i>Reitman v. Mulkey</i>	1230
Notes	1232
B. Congressional Power to Enforce Constitutional Rights	1234
1. The Scope of Enforcement Power: Public or Private Conduct?	1234
<i>Civil Rights Cases</i>	1234
Notes and Problems	1236

Contents	xxix
2. The Scope of Enforcement Power: Remedial or Substantive?	1239
<i>Katzenbach v. Morgan</i>	1240
Notes	1242
<i>City of Boerne v. Flores</i>	1244
Notes and Problem	1247
<i>Board of Trustees of the University of Alabama v. Garrett</i>	1248
Notes and Problems	1251
<i>Nevada Department of Human Resources v. Hibbs</i>	1253
Notes	1256
<i>Shelby County v. Holder</i>	1258
Note	1220
 Chapter 12 The Right to Keep and Bear Arms	 1265
<i>District of Columbia v. Heller</i>	1265
Notes	1282
<i>New York State Rifle & Pistol Association, Inc. v. Bruen</i>	1286
Notes and Problem	1300
 Table of Cases	 1305
Index	0000