Preface to the Third Edition		xxi
Acknowled	lgments	XXV
Chapter 1	The Constitution and How Constitutional Law Works	1
A. How Co	nstitutional Law Works	2
B. Constitu	tional Doctrines: Free Speech and the Right to Bear Arms	4
	lom of Speech	4
	United States v. O'Brien	5
	Notes and Questions	9
	Ward v. Rock Against Racism	10
	Notes and Questions	14
	Texas v. Johnson	14
	Notes and Questions	22
	Expressions Hair Design v. Schneiderman	23
	Notes and Questions	27
	R.A.V. v. City of St. Paul	28
	Notes and Questions	32
	Mahanoy Area School District v. B. L.	32
	Notes and Questions	38
Practice	Perspective: Outdoor Advertising	38
2. The H	Right to Bear Arms	39
	District of Columbia v. Heller	39
	Notes and Questions	48
	New York State Rifle & Pistol Assoc., Inc. v. Bruen	48
	Notes and Questions	60
C. Doctrine	e and Judicial Review	60
Problem	n: Burning Bar Cards	62

xii		Contents
Chapter 2	Separation of Powers: The Legislative Power	63
A. The Co	nmerce Power	65
	Gibbons v. Ogden	65
	Notes and Questions	70
	Wickard v. Filburn	73
	Notes and Questions	76
	Heart of Atlanta Motel, Inc. v. United States	76
	Notes and Questions	78
	United States v. Lopez	79
	Notes and Questions	87
	Gonzales v. Raich	88
	Notes and Questions	95
	United States v. Walker	96
	Notes and Questions	98
Practice	Perspective: Prairie Dogs on Non-Federal Land	99
	NFIB v. Sebelius	99
	Notes and Questions	113
Problem	n: The Grandparent Caretaker	114
B. The Tax	ing Power	114
	NFIB v. Sebelius	114
	Notes and Questions	122
C. The Spe	ending Power	122
	South Dakota v. Dole	123
	Notes and Questions	127
	NFIB v. Sebelius	127
	Notes and Questions	135
D. The Tre	aty Power	136
	Missouri v. Holland	136
	Notes and Questions	138
	Bond v. United States	139
	Notes and Questions	146
E. The Neo	cessary and Proper Power	147
	McCulloch v. Maryland	148
	Notes and Questions	155
	United States v. Comstock	156
	Notes and Questions	163
	Trump v. Mazars USA, LLP	164
	Notes and Questions	174

Contents		
F. Limiting Congressional Authority: The Anti-Commandeering Principle		
Garcia v. San Antonio Metropolitan Transit Authority	175	
Notes and Questions	181	
New York v. United States	181	
Notes and Questions	191	
Printz v. United States	191	
Notes and Questions	197	
Practice Perspective: Enforcing the Controlled Substances Act	197	
Problem: "The Healthcare Promotion Act"	197	
Chapter 3 Separation of Powers: The Executive Power	199	
A. Execution of the Laws	200	
Riley v. St. Luke's Episcopal Hospital	201	
Notes and Questions	205	
Practice Perspective: Private False-Marking Suits	206	
B. Appointment and Removal of Officers	206	
Morrison v. Olson	207	
Notes and Questions	218	
Edmond v. United States	218	
Notes and Questions	222	
Free Enterprise Fund v. Public Company Accounting Oversight Board	222	
Notes and Questions	226	
Seila Law LLC v. Consumer Financial Protection Bureau	227	
Notes and Questions	244	
C. National Security	245	
Prize Cases	246	
Notes and Questions	250	
Youngstown Sheet & Tube Co. v. Sawyer	250	
Notes and Questions	259	
Hamdi v. Rumsfeld	260	
Notes and Questions	266	
D. Foreign Affairs	266	
United States v. Curtiss-Wright Export Corp.	266	
Notes and Questions	271	
Dames & Moore v. Regan	271	
Notes and Questions	277	
Medellín v. Texas	278	
Notes and Questions	284	

xiv	Contents
Zivotofsky v. Kerry	285
Notes and Questions	292
E. A Judicially Enforceable Limit on Executive Power: The Major Questions Doctrine	293
National Federation of Independent Business v. Occupational Safety and Health Administration	<i>293</i>
Notes and Questions	301
F. Executive Privileges and Immunities	302
United States v. Nixon	302
Notes and Questions	307
Clinton v. Jones	308
Notes and Questions	312
Trump v. Vance	312
Notes and Questions	318
Problems: The Spotted Owl Protectors and the National Energy Policy Development Group	319
Chapter 4 A Structural Limitation on the States: The Dormant Commerce Clause Doctrine	321
Willson v. The Black Bird Creek Marsh Company	321
Notes and Questions	322
A. Facially Discriminatory State Laws	323
Philadelphia v. New Jersey	323
Notes and Questions	328
Maine v. Taylor	328
Notes and Questions	332
B. Facially Neutral State Laws	333
Kassel v. Consolidated Freightways Corp.	333
Notes and Questions	339
Practice Perspective: California Egg Regulation	340
C. The Market Participant Exception	340
South-Central Timber Development, Inc. v. Wunnicke	340
Notes and Questions	345
D. State Privileges and Immunities	346
McBurney v. Young	346
Notes and Questions	351
United Building & Construction Trades Council v. Mayor and	
Council of the City of Camden	351
Notes and Questions	355
Problem: State University Tuition	356

Contents	XV
Chapter 5 The State Action Doctrine	357
A. First Principles: The Civil Rights Cases	358
Civil Rights Cases	358
Notes and Questions	364
B. The Outer Limits of State Action	365
Shelley v. Kraemer	365
Notes and Questions	370
Burton v. Wilmington Parking Authority	370
Notes and Questions	374
C. Modern Cases	375
Jackson v. Metropolitan Edison Co.	375
Notes and Questions	379
Brentwood Academy v. Tennessee Secondary School Athletic Association	379
Notes and Questions	383
Manhattan Community Access Corporation v. Halleck	383
Notes and Questions	389
D. Action v. Inaction	390
DeShaney v. Winnebago County Department of Social Services	390
Notes and Questions	396
Practice Perspective: Detroit Drag Racing	396
Problem: The Short-Term Rental	397
Chapter 6 Procedural Due Process	399
A. Liberty	399
Paul v. Davis	400
Notes and Questions	405
B. Property	406
Board of Regents v. Roth	406
Notes and Questions	409
Perry v. Sindermann	409
Notes and Questions	412
Cleveland Board of Education v. Loudermill	412
Notes and Questions	416
C. Process Due	416
Goldberg v. Kelly	417
Notes and Questions	422
Mathews v. Eldridge	422
Notes and Questions	429

## Contents

	Cleveland Board of Education v. Loudermill	430
	Notes and Questions	432
	Hamdi v. Rumsfeld	433
	Notes and Questions	441
	Practice Perspective: The Failure to Upload	442
	Problem: Mail Delivery	442
Ch	apter 7 Substantive Due Process	445
A.	Economic Interests	445
	Lochner v. New York	445
	Notes and Questions	452
	West Coast Hotel Co. v. Parrish	453
	Notes and Questions	457
B.	Incorporation and Unenumerated Rights	457
C.	Modern Substantive Due Process: Personal Interests	459
	1. Introduction to Unenumerated Rights	459
	Pierce v. Society of Sisters	459
	Notes and Questions	460
	2. Intimate Conduct	461
	Griswold v. Connecticut	461
	Notes and Questions	469
	Lawrence v. Texas	469
	Notes and Questions	478
	3. Family	479
	Moore v. City of East Cleveland	479
	Notes and Questions	483
	Troxel v. Granville	483
	Notes and Questions	491
	4. Marriage	492
	Loving v. Virginia	492
	Notes and Questions	494
	Obergefell v. Hodges	494
	Notes and Questions	503
	5. The Right to Die	503
	Cruzan v. Director, Missouri Department of Health	503
	Notes and Questions	509
	Practice Perspective: The Smoking Ban	510

xvi

Contents		xvii
	Washington v. Glucksberg	510
	Notes and Questions	517
6. Cho	ice	517
	Dobbs v. Jackson Women's Health Organization	520
	Notes and Questions	538
7. Eco	nomic Substantive Due Process, Revisited	538
	Sorrell v. IMS Health, Inc.	539
	Notes and Questions	547
8. Reco	ognizing New Fundamental Interests Under the U.S. Constitution	548
	District Attorney's Office v. Osborne	548
	Notes and Questions	555
Practic	e Perspective: Kicked Out of College	556
Chapter 8	Equal Protection	557
A. Suspec	t Classifications	559
1. Race		559
	Plessy v. Ferguson	559
	Notes and Questions	564
	Brown v. Board of Education (Brown I)	564
	Notes and Questions	567
	Korematsu v. United States	568
	Notes and Questions	575
	Loving v. Virginia	576
	Notes and Questions	578
	Johnson v. California	578
	Notes and Questions	582
2. De F	acto v. De Jure Discrimination	583
	Yick Wo v. Hopkins	583
	Notes and Questions	586
	Washington v. Davis	586
	Notes and Questions	590
	Arlington Heights v. Metropolitan Housing Development Corp.	590
	Notes and Questions	595
	e Perspective: Retroactive Application of a	595
	encing Law	
3. AIIII	mative Action	596 5 <i>96</i>
	City of Richmond v. J.A. Croson Co.	<i>596</i>
	Notes and Questions	602

	Grutter v. Bollinger	603
	Notes and Questions	614
	Gratz v. Bollinger	614
	Notes and Questions	621
	Parents Involved in Community Schools v. Seattle School District No. 1	621
	Notes and Questions	634
	Fisher v. University of Texas at Austin	635
	Notes and Questions	643
B	. Quasi-Suspect Classifications	644
	1. Sex	644
	Craig v. Boren	644
	Notes and Questions	649
	Michael M. v. Superior Court	649
	Notes and Questions	653
	United States v. Virginia	653
	Notes and Questions	662
	Sessions v. Morales-Santana	663
	Notes and Questions	667
	2. Citizenship of Minors	667
	Plyler v. Doe	667
	Notes and Questions	673
	3. Sexual Orientation	673
	Varnum v. Brien	673
	Notes and Questions	680
С	. Economic Classifications	680
	Williamson v. Lee Optical	680
	Notes and Questions	681
	New York City Transit Authority v. Beazer	682
	Notes and Questions	685
D	. Enhanced Rational Basis Review	686
	City of Cleburne v. Cleburne Living Center, Inc.	686
	Notes and Questions	692
	Romer v. Evans	693
	Notes and Questions	699
	Practice Perspective: Surveillance Targeting	700

Contents	xix
E. Fundamental Interests	701
Zablocki v. Redhail	701
Notes and Questions	705
San Antonio Independent School District v. Rodriguez	706
Notes and Questions	714
Problem: The Federal Medical Provision Assistance Act	715
Chapter 9 The Religion Clauses	717
A. The Establishment Clause	717
Town of Greece v. Galloway	717
Notes and Questions	726
Practice Perspective: "In God We Trust"	728
B. The Free Exercise Clause	728
Employment Division, Department of Human Resources of Oregon v. Smith	728
Notes and Questions	733
Church of the Lukumi Babalu Aye v. City of Hialeah	733
Notes and Questions	740
Roman Catholic Diocese of Brooklyn v. Cuomo	741
Notes and Questions	748
Kennedy v. Bremerton School District	749
Notes and Questions	765
Problem: The Public High School Graduation Ceremony	765
Chapter 10 Justiciability	767
A. Standing	768
Lujan v. Defenders of Wildlife	768
Notes and Questions	774
Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.	774
Notes and Questions	782
Clapper v. Amnesty International USA	782
Notes and Questions	790
Practice Perspective: The Problem with "Salon-Only" Products	791
California v. Texas	791
Notes and Questions	797

XX	Contents
B. The Political Question Doctrine	798
Baker v. Carr	798
Notes and Questions	804
Zivotofsky v. Clinton	804
Notes and Questions	810
Practice Perspective: Attack on the Pharmaceutical Plant	811
Problem: Challenging Presidential Policy	811
Appendix: The United States Constitution	813
Table of Cases	
Index	833