

Contents

Preface	xxvii
Acknowledgments	xxxix
The Constitution of the United States	xlili
Articles of Confederation	lxi
Members of the Supreme Court of the United States	lxviii

PART I: INTRODUCTION: THE FOUNDATION OF MODERN CONSTITUTIONAL LAW

Chapter 1: The Founding 3

A. The Origins of the Constitution	3
1. The Declaration of Independence	4
The Declaration of Independence	4
a. Popular Sovereignty, the Social Compact, and the State of Nature	12
b. The Separation of Powers	16
c. Natural Rights as a Constraint on Government	17
d. What Are Natural Rights?	18
2. The Origin of American Federalism	20
a. Speech by Governor Thomas Hutchinson to the Massachusetts General Court	21
b. Answer of the Council to the Speech of Governor Hutchinson, of January Sixth	22
c. Answer of the Council to the Speech of Governor Hutchinson, of February Sixteenth	23
3. The Agency Theory of Government	24
4. Defects in the Articles of Confederation	25
5. Drafting and Ratifying the Constitution	26
a. The Virginia Plan	26
b. The New Jersey Plan	27
c. Hamilton's Plan	27

- d. The “Great Compromise” over Representation 28
- e. Ratification of the Constitution 28
- 6. Defending the Constitution: *The Federalist* Papers 29
 - a. *Federalist No. 10*: The Problem of Faction 30
James Madison, *Federalist No. 10* 30
 - b. *Federalist No. 78*: The Judicial Duty to Declare Unconstitutional Laws to Be Void 35
Alexander Hamilton, *Federalist No. 78* 36
 - c. *Federalist No. 51*: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments 39
James Madison, *Federalist No. 51* 40

B. The Origins of the Bill of Rights 43

- 1. Federalist Objections to a Bill of Rights 44
 - a. James Wilson, Speech in the Statehouse Yard, Philadelphia 44
 - b. James Wilson, Speeches to the Pennsylvania Ratification Convention 45
 - c. James Wilson, Speeches to the Pennsylvania Ratification Convention 46
 - d. James Iredell, Speech to the North Carolina Ratification Convention 46
- 2. The Anti-Federalist Reply 46
Brutus II, *The New York Journal* 47
- 3. James Madison Delivers on the Promise of Amendments 48
Madison’s Speech to the House Introducing Amendments 49
- 4. The Original Meaning of the Phrase “Rights . . . Retained by the People” in the Ninth Amendment 56

Chapter 2: Early Structural Controversies 61

A. The Scope of Congressional Power: The Debate over the First National Bank 61

- 1. James Madison, Speech in Congress Opposing the National Bank 63
- 2. Opinion of Attorney General Edmund Randolph 66
- 3. Opinion of Secretary of State Thomas Jefferson 68
- 4. Opinion of Secretary of the Treasury Alexander Hamilton 70

B. Popular Sovereignty vs. State Sovereignty 73

- Chisholm v. Georgia* 76
- The Eleventh Amendment, 1795 85

C. Fundamental Principles vs. Expressed Constraints 86

- Calder v. Bull* 87

Chapter 3: Foundational Cases on Constitutional Structure: The Marshall Court 91

A. The Judicial Power 92

- Marbury v. Madison* 94

1. Evidence of the Meaning of the “Judicial Power”	101
2. Judicial Review of State Statutes and State Supreme Court Decisions	105
B. The Necessary and Proper Clause	107
<i>McCulloch v. Maryland</i>	109
1. John Marshall, “A Friend of the Constitution,” <i>Alexandria Gazette</i>	121
2. James Madison, Letter to Judge Spencer Roane	122
3. James Madison, Letter to Charles J. Ingersoll	125
4. Andrew Jackson, Veto Message	127
C. The Commerce Clause	130
<i>Gibbons v. Ogden</i>	132
1. Evidence of the Original Meaning of the Word “Commerce”	140
D. Did the “Bill of Rights” Apply to the States?	145
<i>Barron v. City of Baltimore</i>	147
 Chapter 4: Slavery and the Constitution	 151
A. The Development of Slavery in America from 1619 to 1787	152
B. The Constitution’s Three Primary Concessions to Slavery	153
1. The First Compromise over Slavery: The Three-Fifths Clause	153
2. The Second Concession to Slavery: The Slave Trade Clause	154
3. The Third Concession to Slavery: The Fugitive Slave Clause	156
4. Antislavery Delegates Held the Line and Rejected the Concept of “Property in Man”	157
5. Why Compromise with Slaveholders?	158
6. The Growth of Slavery and Proslavery Ideology <i>After</i> Ratification	159
a. Radical Abolitionists	160
b. Political Abolitionists	160
c. Constitutional Abolitionists	161
C. The Fugitive Slave Act of 1793	162
1. Salmon P. Chase Argued That the Fugitive Slave Act Was Unconstitutional	162
Speech of Salmon P. Chase, in the Case of the Colored Woman, Matilda, Who Was Brought Before the Court of Common Pleas of Hamilton County, Ohio, by Writ of Habeas Corpus	163
2. The Taney Court Upheld the Constitutionality of the Fugitive Slave Act	168
<i>Prigg v. Pennsylvania</i>	170
3. Constitutional Abolitionism: Rejecting the Framers’ Intent	175
4. The Constitutional Abolitionists Respond to <i>Prigg</i>	178
Lysander Spooner, A Defence for Fugitive Slaves Against the Acts of Congress of February 12, 1793	179

PART II: THE LEGISLATIVE POWER

Chapter 5: Enumerated Powers 185

A. The Chase Court 186

United States v. Dewitt 188

Hepburn v. Griswold 190

Knox v. Lee 196

Juilliard v. Greenman 201

B. Progressive Era Cases 202

United States v. E.C. Knight Co. 205

Champion v. Ames 210

Hammer v. Dagenhart 216

Schechter Poultry Corp. v. United States 221

C. The New Deal Court 227

1. The Substantial Effects Doctrine 229

NLRB v. Jones & Laughlin Steel Corp. 229

United States v. Darby 233

2. The Aggregation Principle 236

Wickard v. Filburn 236

Barry Cushman, Rethinking the New Deal Court: The Structure of a Constitutional Revolution 239

United States v. South-Eastern Underwriters 242

D. The Warren Court 244

Heart of Atlanta Motel v. United States 246

Katzenbach v. McClung 254

E. The Rehnquist Court 257

1. The Spending Power 258

South Dakota v. Dole 258

President James Madison, Veto of Federal Public Works Bill 263

2. The Commerce Clause and Necessary and Proper Clause 264

United States v. Lopez 266

United States v. Morrison 276

Gonzales v. Raich 280

F. The Roberts Court 294

1. The Commerce and Necessary and Proper Clauses 294

NFIB v. Sebelius 296

2. The Spending Power 319

NFIB v. Sebelius 319

3. The Relationship Between the Spending Power and the Necessary and Proper Clause 325

Landor v. Louisiana Department of Corrections and Public Safety 326

- 4. The Jurisdictional Hook 336
 United States v. Hemani 337

Chapter 6: Federalism Limits on Congressional Power 341

A. The Tenth Amendment 341

- 1. The Rise and Fall of the Tenth Amendment on the Burger Court 341
- 2. The Rise of the Tenth Amendment on the Rehnquist Court 343
- 3. The Anti-Commandeering Doctrine 346
 New York v. United States 347
 Printz v. United States 357

B. The Eleventh Amendment 366

Hans v. State of Louisiana 367

C. Abrogating State Sovereign Immunity Through Article I Powers 371

Seminole Tribe of Florida v. Florida 372

D. Limiting the Enforcement Clause of the Fourteenth Amendment 376

City of Boerne v. Flores 377

E. Abrogating State Sovereign Immunity Through the Enforcement Clause 383

Allen v. Cooper 384

Chapter 7: Federal Limits on State Power 389

A. The Dormant Commerce Clause 389

Willson v. Black Bird Creek Marsh Co. 391
 Cooley v. Board of Wardens 392
 South Carolina State Highway Department v. Barnwell Bros. 395
 Hunt v. Washington State Apple Advertising Commission 398
 National Pork Producers Council v. Ross 402

B. The Privileges and Immunities Clause of Article IV 409

Hicklin v. Orbeck 411
 Supreme Court of New Hampshire v. Piper 416

C. The Obligation of Contracts Clause 421

Trustees of Dartmouth College v. Woodward 421
 Home Building & Loan Association v. Blaisdell 427
 Sveen v. Melin 437

D. The Bill of Attainder Clause 442

Ex parte Garland 443
 United States v. Lovett 449
 Nixon v. Administrator of General Services 454

E. The Ex Post Facto Clause 462

Calder et Wife v. Bull et Wife 463
 Ellingburg v. United States 468

PART III: THE EXECUTIVE POWER

Chapter 8: The Executive Power 477

- A. **The Original Meaning of the Executive Power 479**
 - Alexander Hamilton, *Federalist No. 70* 480
- B. **President Lincoln's Use of Executive Power in the Civil War 483**
 - 1. Lincoln's Suspension of the Writ of Habeas Corpus 483
 - Ex parte Merryman* 486
 - Abraham Lincoln, Message to Congress in Special Session 492
 - 2. Lincoln's Use of Military Force as Commander-in-Chief 494
 - The Prize Cases* 495
- C. **President Roosevelt's Detention of People of Japanese Ancestry During World War II 498**
 - Hirabayashi v. United States* 500
 - Korematsu v. United States* 507
 - Ex parte Endo* 515
- D. **President Truman's Seizure of the Steel Industry During the Korean War 517**
 - Youngstown Sheet & Tube Co. v. Sawyer* 518
- E. **President Nixon's Claim of Executive Privilege During the Watergate Scandal 531**
 - United States v. Nixon* 533
- F. **President Clinton's Immunity from Civil Suit 536**
 - Clinton v. Jones* 536
- G. **President Trump's Immunity from a Grand Jury Subpoena 541**
 - Trump v. Vance* 542
- H. **Former President Trump's Immunity from Criminal Prosecution 553**
 - Trump v. United States (2024)* 554

Chapter 9: The Separation of Powers 569

- A. **The Removal Power 570**
 - 1. The Reagan Administration Challenges the Independent Counsel Statute 571
 - Morrison v. Olson* 572
 - 2. President Trump's Power to Fire Commissioners of "Independent" Agencies 584
 - Trump v. Slaughter* 584

3. President Trump's Power to Remove a Federal Reserve Governor for Cause 608
Trump v. Cook 609

B. The Modern Nondelegation Doctrine 618

1. The Intelligible Principles Test 618
Federal Communications Commission v. Consumers' Research 619
2. The Major Questions Doctrine 628
Learning Resources, Inc. v. Trump 630

PART IV: THE JUDICIAL POWER

Chapter 10: Advisory Opinions and the Political Question Doctrine 649

A. Prohibition of Advisory Opinions 650

B. The Political Question Doctrine 651

1. The Political Question Doctrine and the Guarantee Clause 652
Baker v. Carr 652
2. The Political Question Doctrine and Impeachment 658
Walter Nixon v. United States 658
3. The Political Question Doctrine and Foreign Policy 662
Zivotofsky ex rel. Zivotofsky v. Clinton 662
4. The Political Question Doctrine and Political Gerrymandering 669
Rucho v. Common Cause 670

Chapter 11: Standing, Ripeness, and Mootness 681

A. Standing 681

- Allen v. Wright* 683
Clapper v. Amnesty International USA 690
TransUnion LLC v. Ramirez 696

B. Ripeness 702

- Doe v. Bush* 703

C. Mootness 706

- DeFunis v. Odegaard* 707
Friends of the Earth v. Laidlaw Environmental Services 709
New York State Rifle & Pistol Association v. City of New York 710

PART V: THE FOUNDATION OF MODERN CONSTITUTIONAL RIGHTS

Chapter 12: Slavery, Citizenship, and Due Process of Law 717

A. *Dred Scott* and Citizenship 718

Dred Scott v. Sandford — Part I 719

B. *Dred Scott* and Due Process of Law 735

1. The Missouri Compromise of 1820 735
2. Slavery in the Federal Capital 736
3. *Dred Scott* Follows the Pinckney Report 739
Dred Scott v. Sandford — Part II 740
4. The Threat Posed by *Dred Scott* to the Northern States 744

C. Constitutional Abolitionism and the *Dred Scott* Decision 745

Frederick Douglass, Speech Delivered, in Part, at the Anniversary of the American Abolition Society, Held in New York 746

Frederick Douglass, The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?, Speech Delivered in Glasgow, Scotland 750

D. The Aftermath of *Dred Scott v. Sandford* 751

PART VI: FORMATIVE INTERPRETATIONS OF THE RECONSTRUCTION AMENDMENTS

Chapter 13: The Reconstruction Amendments 757

A. The Adoption of the Reconstruction Amendments 758

1. The Thirteenth Amendment and the Civil Rights Act of 1866 758
2. The Fourteenth Amendment 762
 - a. The Citizenship Clause 762
 - b. The Privileges or Immunities Clause 762
 - c. The Due Process of Law Clause 762
 - d. The Equal Protection Clause 762
 - e. Section 5 of the Fourteenth Amendment: The Enforcement Clause 763
3. The Fifteenth Amendment 763

B. What Did the “Privileges or Immunities of Citizens of the United States” Protect? 768

1. The History of the Privileges or Immunities Clause 768
 - a. Privileges and Immunities and *Corfield v. Coryell* 768
 - b. Privileges and Immunities and Slavery 770

c. Privileges and Immunities and <i>Dred Scott</i>	772
d. The Privileges or Immunities Clause of the Fourteenth Amendment	772
2. The Supreme Court Deletes the Privileges or Immunities Clause from the Constitution	773
<i>The Slaughter-House Cases</i>	775
<i>Bradwell v. State of Illinois</i>	791
3. Did the Privileges or Immunities Clause Protect Enumerated Rights from State Abridgement?	793
<i>United States v. Cruikshank</i>	797
<i>McDonald v. City of Chicago</i>	801
4. Did the Privileges or Immunities Clause Protect Unenumerated Rights from State Infringement?	813
C. The Enforcement Powers of the Thirteenth and Fourteenth Amendments	817
1. Congress's Enforcement Powers and the Civil Rights Act of 1875	817
<i>Strauder v. West Virginia</i>	820
<i>The Civil Rights Cases</i>	829
2. The Supreme Court's Modern Approach to Congress's Enforcement Powers	845
<i>Katzenbach v. Morgan</i>	846
<i>United States v. Morrison</i>	849
D. Defining the Due Process and Equal Protection Clauses of the Fourteenth Amendment	852
1. What Is the Original Meaning of the "Due Process of Law" and of the "Equal Protection of the Law"?	852
a. "The Due Process of Law"	852
b. The Equal Protection of the Laws Clause	854
2. The Due Process and Equal Protection Clauses Can Both Bar Racial Discrimination	856
<i>Yick Wo v. Hopkins</i>	857
3. The "Separate but Equal" Doctrine	860
<i>Plessy v. Ferguson</i>	862
E. The Citizenship Clause of the Fourteenth Amendment	872
1. The Rival Theories of Citizenship	874
<i>Trump v. Barbara (Part I)</i>	875
2. Evidence of Original Meaning	890
a. Textual Analysis	890
<i>Trump v. Barbara (Part II)</i>	890
b. Contextual Evidence: The Civil Rights Act of 1866	895
<i>Trump v. Barbara (Part III)</i>	896
c. Congressional Debate over the Fourteenth Amendment	904
<i>Trump v. Barbara (Part IV)</i>	904
d. Postratification Executive Branch Practice	906
<i>Trump v. Barbara (Part V)</i>	907
3. The Chinese Exclusion Act and Postratification Judicial Interpretations	911
<i>United States v. Wong Kim Ark</i>	913
<i>Trump v. Barbara (Part VI)</i>	916

4. Can Congress Reverse the Holding of *Trump v. Barbara* by Statute? 924
Trump v. Barbara (Part VII) 925

Chapter 14: Expanding the Scope of the Due Process Clause 927

A. The Original Meaning of the Due Process Clauses 928

1. The Procedural Core: Procedural Due Process 928
2. Beyond Procedure: Three Positions on the Scope of Judicial Review 928
 - a. The Classical View 929
 - b. Modern Substantive Due Process 930
 - c. Legislative Due Process 930
3. The Positions in Combination 931

B. The Due Process Clause During the Progressive Era 931

1. Extending Fundamental Rights to the States Through the Due Process Clause 932
Chicago, Burlington & Quincy Railroad Co. v. City of Chicago 933
2. “Economic” Liberty in the Progressive Era 936
Lochner v. People of the State of New York 937
Muller v. State of Oregon 951
Buchanan v. Warley 955
Adkins v. Children’s Hospital of the District of Columbia 960
3. “Personal” Liberty in the Progressive Era 965
Meyer v. State of Nebraska 966
Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary 970
Buck v. Bell 974

C. From the Presumption of Liberty to the Presumption of Constitutionality 979

1. “Economic” Liberty Before the New Deal 981
O’Gorman & Young, Inc. v. Hartford Fire Insurance Co. 982
Nebbia v. People of State of New York 985
2. “Economic” Liberty Before and After 1937 990
West Coast Hotel Co. v. Parrish 992

D. Qualifying the Presumption of Constitutionality 998

- United States v. Carolene Products Co.* 999
 A Footnote to Footnote Four 1003
 Footnote Four and “Representation Reinforcement” 1006
 John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* 1007

E. The Irrebuttable Presumption of Constitutionality After the New Deal 1008

1. The Federal District Court in *Lee Optical* Applies the Rebuttable Presumption of Constitutionality 1008
Lee Optical of Oklahoma v. Williamson 1009

2.	The Warren Court Makes the Presumption of Constitutionality Virtually Impossible to Rebut	1014
	<i>Williamson v. Lee Optical of Oklahoma</i>	1015
3.	A Brief History of the Supreme Court's Approaches to the Due Process Clause	1017
4.	The Filled Milk Act Is Finally Declared Unconstitutional	1017
	<i>Milnot Company v. Richardson</i>	1018
F.	What About the Ninth Amendment?	1021
1.	James Madison and the Ninth Amendment	1021
2.	The Supreme Court Dismisses the Ninth Amendment	1022
	<i>United Public Workers v. Mitchell</i>	1023
3.	The Ninth Amendment, Ghosts, and Ink Blots	1023
 PART VII: EQUAL PROTECTION OF THE LAW		
 Chapter 15: Equal Protection of the Law: Classifications on the Basis of Race		
		1029
A.	Rejecting "Separate but Equal"	1030
1.	Racial Discrimination by State Governments	1030
	<i>Brown v. Board of Education of Topeka</i>	1033
2.	Racial Discrimination by the Federal Government	1037
	<i>Bolling v. Sharpe</i>	1038
	<i>Brown v. Board of Education of Topeka (Brown II)</i>	1041
3.	The Massive Resistance to <i>Brown</i>	1043
	<i>Cooper v. Aaron</i>	1046
4.	Can <i>Brown</i> Be Reconciled with Original Meaning?	1050
	Michael W. McConnell, Originalism and the Desegregation Decisions	1051
	Michael J. Klarman, <i>Brown</i> , Originalism, and Constitutional Theory: A Response to Professor McConnell	1058
	Michael W. McConnell, The Originalist Justification for <i>Brown</i> : A Reply to Professor Klarman	1060
5.	Racial Classifications That Apply Equally to All Races	1064
	<i>Loving v. Virginia</i>	1065
6.	The Three Tiers of Scrutiny Under the Equal Protection Clause	1069
7.	Is There Discriminatory Intent or a Discriminatory Impact?	1070
	<i>Washington v. Davis</i>	1070
	Postscript: Disparate Impact in Employment Discrimination Law	1073
B.	Affirmative Action in Higher Education	1075
1.	Affirmative Action on the Burger Court	1077
	<i>Regents of the University of California v. Bakke</i>	1077
	An Act to Establish a Bureau for the Relief of Freedmen and Refugees	1085

2. Affirmative Action on the Rehnquist Court 1086
3. Affirmative Action on the Roberts Court 1087
Students for Fair Admissions v. President and Fellows of Harvard College 1090

C. Affirmative Action in Employment 1115
Adarand Constructors v. Peña 1115

Chapter 16: Equal Protection of the Law: Other Classifications 1125

- A. Sex Classification 1126**
United States v. Virginia 1127
- B. “Other” Types of Classifications and “Heightened” Rational Basis Scrutiny 1135**
Cleburne v. Cleburne Living Center, Inc. 1136
- C. Transgender Status 1142**
United States v. Skrmetti 1143
West Virginia v. B.P.J. (2026) 1157

PART VIII: LIBERTY

Chapter 17: Modern Substantive Due Process 1169

- A. Protecting the Unenumerated Right of Privacy 1169**
1. “Penumbras, Formed by Emanations” from Enumerated Rights: The Right of Privacy 1169
Griswold v. Connecticut 1172
Eisenstadt v. Baird 1187
 2. From Penumbras of Enumerated Rights to Substantive Due Process 1188
Roe v. Wade 1189
 3. From Privacy to Liberty 1195
Planned Parenthood of Southeastern Pennsylvania v. Casey 1197
- B. Protecting Rights That Are “Deeply Rooted in This Nation’s History and Tradition” 1203**
Bowers v. Hardwick 1204
Washington v. Glucksberg 1209
Troxel v. Granville 1213
- C. Liberty-Based Substantive Due Process 1216**
Lawrence v. Texas 1217
Obergefell v. Hodges 1226

D. History and Tradition-Based Substantive Due Process 1240

1. The Right to Keep and Bear Arms 1241
McDonald v. City of Chicago 1242
2. Excessive Fines 1255
Timbs v. Indiana 1256
3. Abortion 1258
Dobbs v. Jackson Women's Health Organization 1259

E. *Stare Decisis* and Substantive Due Process 1279

- Planned Parenthood of Southeastern Pennsylvania v. Casey* 1280
Lawrence v. Texas 1282
Dobbs v. Jackson Women's Health Organization 1286

Chapter 18: Procedural Due Process 1297**A. The Burger Court Expands Procedural Due Process 1298**

- Goldberg v. Kelly* 1299
The Board of Regents of State Colleges v. Roth 1306

B. The Burger Court Narrows Procedural Due Process 1311

- Mathews v. Eldridge* 1312

C. Modern Procedural Due Process 1316

- Nelson v. Colorado* 1316

Chapter 19: Freedoms of Speech and Press 1319**A. The Origin of Free Speech Doctrine 1319**

1. Sedition and the Original Meaning of the First Amendment 1319
The Virginia Resolution 1322
The Kentucky Resolution 1324
2. Freedom of Speech as a Natural Right Regulated for the Public Good 1328
Judd Campbell, Natural Rights and the First Amendment 1330
3. The Bad Tendency Test 1334
Schenck v. United States 1335
Debs v. United States 1337
Abrams v. United States 1338
Gitlow v. People of State of New York 1341
Stromberg v. California 1343
4. Unprotected Speech 1344
Chaplinsky v. New Hampshire 1344
5. The Imminent Lawless Action Test 1346
Brandenburg v. Ohio 1347

B. What Constitutes "Speech"? 1350

1. When Is Conduct Speech? 1350
United States v. O'Brien 1351

	<i>Texas v. Johnson</i>	1354
	<i>R.A.V. v. City of St. Paul</i>	1359
2.	Does Money Equal Speech?	1363
	<i>Buckley v. Valeo</i>	1364
	<i>McConnell v. Federal Election Commission</i>	1366
	<i>Citizens United v. Federal Election Commission</i>	1369
C.	What Constitutes “Abridging” the Freedom of Speech?	1382
1.	How May the Government Regulate the Time, Place, and Manner of Speech?	1382
	<i>Ward v. Rock Against Racism</i>	1383
2.	Does the First Amendment Ever Protect Speech That Is Tortious?	1386
	<i>New York Times Co. v. Sullivan</i>	1388
	<i>McKee v. Cosby</i>	1395
	<i>Snyder v. Phelps</i>	1398
3.	Is the Press Exempt from General Laws?	1402
	<i>Branzburg v. Hayes</i>	1402
4.	May the Government Mandate Access to Publishers?	1405
	<i>Red Lion Broadcasting Co. v. Federal Communications Commission</i>	1406
	<i>Miami Herald v. Tornillo</i>	1410
	<i>Moody v. NetChoice LLC</i>	1412
5.	May the Government Compel People to Engage in Speech?	1417
	<i>West Virginia v. Barnette</i>	1418
	<i>303 Creative LLC v. Elenis</i>	1421
D.	Is Obscenity Protected?	1432
1.	“Obscene” and Sexually Explicit Speech	1432
	<i>Stanley v. Georgia</i>	1433
	<i>Miller v. California</i>	1435
	<i>Ashcroft v. Free Speech Coalition</i>	1439
2.	Should Depictions of Violence Be Treated the Same as Obscenity?	1444
	<i>Brown v. Entertainment Merchants Association</i>	1445
3.	Should Commercial Speech Receive Less Protection?	1449
	<i>Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council</i>	1450
	<i>Central Hudson Gas & Electric Corp. v. Public Service Commission</i>	1453
	<i>Lorillard Tobacco v. Reilly</i>	1456
E.	Does the Government Have Free Speech Rights?	1460
1.	Speech of Government Employees and Officials	1460
	<i>Pickering v. Board of Education</i>	1461
	<i>Garcetti v. Ceballos</i>	1463
2.	Speech Inside and Outside of Public Schools	1467
	<i>John F. Tinker and Mary Beth Tinker, Minors v. Des Moines Independent School District</i>	1467
	<i>Mahanoy Area School District v. B.L., a Minor, by and Through Her Father, Lawrence Levy and Her Mother, Betty Lou Levy</i>	1472

- 3. Government Pressure on Private Parties to Restrict Speech 1478
 - National Rifle Association of America v. Vullo* 1478
 - Murthy v. Missouri* 1484

F. What Speech Rights Do Professionals Have? 1489

- National Institute of Family and Life Advocates v. Becerra* 1489
- Chiles v. Salazar* 1493

Chapter 20: Freedom of Association 1501

A. Compulsory Disclosure of Membership 1502

- NAACP v. Alabama* 1502
- Buckley v. Valeo* 1505
- McConnell v. Federal Election Commission* 1507
- Americans for Prosperity Foundation v. Bonta* 1508

B. Compulsory Association 1515

- Roberts v. United States Jaycees* 1516
- Boy Scouts of America v. Dale* 1525

Chapter 21: The Free Exercise of Religion 1535

A. Belief v. Conduct 1535

- James Madison's Memorial and Remonstrance Against Religious Assessments 1535
- People v. Philips* 1538
- Reynolds v. United States* 1542

B. Generally Applicable Laws That Burden the Free Exercise of Religion 1546

- Barnette et al. v. West Virginia State Board of Education* 1546
- Sherbert v. Verner* 1549
- Wisconsin v. Yoder* 1550
- Employment Division, Department of Human Resources of Oregon v. Smith* 1555
- Church of the Lukumi Babalu Aye v. City of Hialeah* 1559

C. Congress Responds to *Employment Division v. Smith* 1564

D. Free Exercise on the Roberts Court 1564

- Mahmoud v. Taylor* 1565

Chapter 22: No Law Respecting an Establishment of Religion 1581

A. The Original Meaning of the Establishment Clause 1582

1. What Did It Mean to Create an Establishment of Religion?	1582
President James Madison, Veto Message	1582
Letter from James Madison to Bishop John Carroll	1583
James Madison, Detached Memoranda	1584
2. What Is a Separation Between Church and State?	1585
3. Was the Establishment Clause Incorporated?	1586
B. Separating Church and State	1587
<i>Everson v. Board of Education of Ewing Township</i>	1588
<i>Engel v. Vitale</i>	1592
<i>Lemon v. Kurtzman</i>	1595
C. The History and Tradition Test: Prayer	1598
<i>Lee v. Weisman</i>	1598
<i>Town of Greece v. Galloway</i>	1600
<i>Kennedy v. Bremerton School District</i>	1609
D. Religious Institutions and the Establishment Clause	1626
<i>Our Lady of Guadalupe School v. Morrissey-Berru</i>	1627
<i>Carson v. Makin</i>	1635
<i>Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission</i>	1642

Chapter 23: The Right to Keep and Bear Arms 1649

A. What Is the Scope of the Right to Keep and Bear Arms?	1651
<i>District of Columbia v. Heller</i>	1653
B. Where Can You Exercise the Right to Keep and Bear Arms?	1668
<i>New York State Rifle & Pistol Association, Inc. v. Bruen</i>	1669
<i>Wolford v. Lopez</i>	1684
C. Who Can Exercise the Right to Keep and Bear Arms?	1702
<i>United States v. Rahimi</i>	1703
<i>United States v. Hemani</i>	1717

Table of Cases	1727
----------------	------

Index	1733
-------	------