

# Contents

Topical Outline of Volume II xv

Tables, Figures, and Illustrations xxi

Preface xxv

## Part 1 Themes

### 1 Introduction to Rights and Liberties 3

---

- I. Constitutional Rights 3
- II. Connections 5
- III. Sources 6
- IV. Constitutional Interpretation 8
- V. Constitutional Decision Making 10
- VI. Constitutional Authority 13
- VII. Scope 15
- VIII. Constitutional History 17
- IX. Constitutional Politics 19
- Suggested Readings 21

## Part 2 Development

### 2 The Colonial Era: Before 1776 25

---

- I. Introduction 25
- II. Foundations 29
  - A. Sources 29
    - Constitutions and Amendments 30
    - The English Bill of Rights 30
    - Massachusetts Body of Liberties 32
  - B. Principles 33
  - C. Scope 34
- III. Individual Rights 36
  - A. Property 36
  - B. Religion 37

- Establishment 38
  - William Blackstone, Of Offences Against God and Religion 40
  - John Locke, A Letter Concerning Toleration 41
  - Roger Williams, The Bloody Tenent 44
  - John Witherspoon, The Dominion of Providence over the Passions of Men 45
- Free Exercise 46
  - Maryland Toleration Act 47
  - Legal Exemptions for Religious Believers 47

- C. Guns 49
- D. Personal Freedom and Public Morality 50

### IV. Democratic Rights 51

- A. Free Speech 52
  - The Zenger Trial 54
- B. Voting 57
- C. Citizenship 58

### V. Equality 58

- A. Equality Under Law 59
- B. Race 60
  - Somerset v. Stewart 61
- C. Gender 62
- D. Native Americans 64

### VI. Criminal Justice 64

- A. Due Process and Habeas Corpus 65
- B. Search and Seizure 69
  - Entick v. Carrington 69
- C. Interrogations 71
- D. Juries and Lawyers 74
  - The Trial of William Penn and Bushell's Case 75
- E. Punishments 78

### Suggested Readings 79

### 3 The Founding Era: 1776–1791 81

---

- I. Introduction 81
- II. Foundations 86
  - A. Sources 86
    - Constitutions and Amendments 87
    - State Bills of Rights 89

- Virginia Declaration of Rights 89
  - A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania 90
  - The Drafting Debates over the National Bill of Rights 91
  - The Ratification Debates over the National Bill of Rights 92
    - The Pennsylvania Ratification Debates 92
    - The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents 93
    - Alexander Hamilton, *The Federalist* No. 84 95
    - Thomas Jefferson and James Madison, Correspondence 96
    - The First Congress Debates the Bill of Rights 97
  - The Law of Nations 102
  - Rutgers v. Waddington* 103
  - B. **Principles 104**
    - Thomas Jefferson, Declaration of Independence 104
    - James Madison, *The Federalist* No. 10 106
  - C. **Scope 108**
  - III. **Individual Rights 108**
    - A. **Property 109**
      - Contracts 110
      - Takings and Due Process 110
        - Bayard v. Singleton* 111
    - B. **Religion 111**
      - Establishment 113
        - South Carolina Constitution of 1778, Section 38 113
        - The Virginia Debate over Religious Assessments 114
          - A Bill Establishing a Provision for Teachers of the Christian Religion 114
          - James Madison, Memorial and Remonstrance against Religious Assessments 115
          - An Act for Establishing Religious Freedom 116
      - Free Exercise 117
        - House Debate over Conscientious Objectors 117
    - C. **Guns 118**
    - D. **Personal Freedom and Public Morality 119**
  - IV. **Democratic Rights 119**
    - A. **Free Speech 120**
      - Respublica v. Oswald* 122
    - B. **Voting 124**
      - John Adams and Benjamin Franklin on Universal Male Suffrage 125
      - John Adams, Letter to James Sullivan 125
      - Benjamin Franklin, Queries and Remarks Respecting Alterations in the Constitution of Pennsylvania 127
      - The Debate over Property Qualifications 128
  - C. **Citizenship 128**
    - American Identity 129
  - V. **Equality 129**
    - A. **Equality Under Law 130**
    - B. **Race 131**
      - Commonwealth v. Jennison* 132
      - Thomas Jefferson, Notes on the State of Virginia 133
    - C. **Gender 134**
      - John Adams and Abigail Adams, Correspondence on Women's Rights 134
    - D. **Native Americans 136**
  - VI. **Criminal Justice 136**
    - A. **Due Process and Habeas Corpus 137**
    - B. **Search and Seizure 138**
    - C. **Interrogations 138**
      - Commonwealth of Pennsylvania v. Dillon* 139
    - D. **Juries and Lawyers 140**
    - E. **Punishments 140**
      - Benjamin Rush, On Punishing Murder by Death 141
- Suggested Readings 142**
- 
- 4 **The Early National Era: 1791–1828 145**
- I. **Introduction 145**
  - II. **Foundations 148**
    - A. **Sources 149**
      - Natural Law 149
        - Calder v. Bull* 149
      - The Law of Nations 151
        - United States v. La Jeune Eugenie* 152
    - B. **Principles 154**
      - Marbury v. Madison* 154
    - C. **Scope 157**
  - III. **Individual Rights 157**
    - A. **Property 157**
      - Contracts 158
        - Fletcher v. Peck* 160
      - Takings and Due Process 163
        - University of North Carolina v. Foy* 163

- B. **Religion 164**
    - Establishment 165
      - Thomas Jefferson, Letter to the Danbury Baptists 165
      - Massachusetts Debates Test Oaths 166
    - Free Exercise 169
      - George Washington, Letter to the Jews of Newport 169
      - Commonwealth v. Wolf 170
  - C. **Guns 170**
    - Bliss v. Commonwealth 171
  - D. **Personal Freedom and Public Morality 172**
  - IV. **Democratic Rights 172**
    - A. **Free Speech 173**
      - The Sedition Act 174
        - The Report of a Select Committee on the Petitions Praying for a Repeal of the Alien and Sedition Laws 176
        - James Madison, Virginia Report of 1799 177
      - People v. Croswell 178
    - B. **Voting 180**
      - Massachusetts Debates Property Qualifications 181
    - C. **Citizenship 182**
      - The Alien Friends Act 183
  - V. **Equality 184**
    - A. **Equality Under Law 184**
      - Holden v. James 184
    - B. **Race 185**
      - Slavery: The Rights of Masters 186
        - Congressional Debate over the Missouri Compromise 186
      - Slavery and Free Blacks 188
        - Commonwealth v. Griffith 188
      - Free Blacks 189
        - Congressional Debate over the Missouri Compromise and Black Citizenship 190
        - Amy v. Smith 192
    - C. **Gender 194**
      - Martin v. Commonwealth 195
    - D. **Native Americans 196**
      - Johnson v. McIntosh 196
  - VI. **Criminal Justice 198**
    - A. **Due Process and Habeas Corpus 199**
    - B. **Search and Seizure 200**
      - Mayo v. Wilson 200
    - C. **Interrogations 202**
    - D. **Juries and Lawyers 202**
      - United States v. Callender 203
  - E. **Punishments 204**
    - James v. Commonwealth 205
  - F. **Infamous Crimes and Criminals 206**
    - The Burr Trial 206
      - United States v. Burr 207
- Suggested Readings 209**
- 5 **The Jacksonian Era: 1829–1860 211**


---

  - I. **Introduction 211**
  - II. **Foundations 216**
    - A. **Sources 217**
    - B. **Principles 217**
    - C. **Scope 218**
      - Incorporation 218
        - Barron v. Baltimore 218
  - III. **Individual Rights 219**
    - A. **Property 220**
      - Contracts 220
        - Proprietors of the Charles River Bridge v. Proprietors of the Warren Bridge 220
      - Takings 222
        - Beekman v. The Saratoga and Schenectady Railroad Company 223
        - Taylor v. Porter & Ford 224
      - Due Process 226
        - Wynehamer v. People 227
    - B. **Religion 229**
      - Establishment 230
      - Free Exercise 230
        - Catholics and Protestants Debate Funding for Parochial Schools in New York City 231
        - John Hughes, Speech on the School Question 232
        - Pastors of the Methodist Episcopal Church, To the Honorable the Common Council of the City of New York 233
    - C. **Guns 234**
      - State v. Buzzard 234
    - D. **Personal Freedom and Public Morality 237**
  - IV. **Democratic Rights 239**
    - A. **Free Speech 239**
      - Congress Debates Incendiary Publications in the Mail 240
        - Report from the Select Committee on the Circulation of Incendiary Publications (John S. Calhoun) 242

- Report of the Minority of the Committee on Post  
Offices and Post Roads on the President's  
Message 243
- B. **Voting 245**  
Virginia Debates Property Qualifications and  
Apportionment 245
- C. **Citizenship 247**
- V. **Equality 247**
- A. **Equality Under Law 248**
- B. **Race 248**  
Slavery: The Rights of Masters 250  
Dred Scott v. Sandford 250  
Free Blacks 257  
Roberts v. City of Boston 257
- C. **Gender 259**  
Elizabeth Cady Stanton, Keynote Address, Seneca  
Falls Convention 260
- D. **Native Americans 261**  
The Removal Debates 261
- VI. **Criminal Justice 264**
- A. **Due Process and Habeas Corpus 265**  
The Booth Cases 266  
In re Booth 267  
Ableman v. Booth 269
- B. **Search and Seizure 270**  
Rohan v. Sawin 270  
Commonwealth v. Dana 273
- C. **Interrogations 274**
- D. **Juries and Lawyers 275**  
Commonwealth v. Anthes 275
- E. **Punishments 278**
- Suggested Readings 279**
- 6 **Civil War and Reconstruction: 1861–1876 281**
- 
- I. **Introduction 281**
- II. **Foundations 285**
- A. **Sources 286**  
Constitutions and Amendments 286  
Debates over the Thirteenth Amendment 286  
Debates over the Fourteenth Amendment 291
- B. **Principles 295**
- C. **Scope 296**  
Slaughter-House Cases 296
- III. **Individual Rights 300**
- A. **Property 301**  
Contracts 301  
Takings 303  
Debate over the Second Confiscation Act 303
- Abraham Lincoln, To the Senate and House of  
Representatives 306
- Due Process 307
- B. **Religion 307**  
Establishment 308  
Free Exercise 308
- C. **Guns 309**
- D. **Personal Freedom and Public Morality 311**
- IV. **Democratic Rights 312**
- A. **Free Speech 312**  
The Trial of Clement Vallandigham 313
- B. **Voting 316**  
Congress Debates the Ironclad Oath 317
- C. **Citizenship 319**
- V. **Equality 320**
- A. **Equality Under Law 320**  
Thomas Cooley, A Treatise on the Constitutional  
Limitations which Rest upon the Legislative  
Power of the States of the American Union 322
- B. **Race 324**  
Implementing the Thirteenth Amendment 325  
Congressional Debates Over the Second  
Freedmen's Bureau Act 326  
Implementing the Fourteenth Amendment 330  
Congressional Debates over the Civil Rights  
Act of 1875 330  
Federal Courts 334  
The States and School Segregation 334  
Clark v. Board of School Directors 335
- C. **Gender 337**  
The Senate Debates Women's Suffrage 338  
Bradwell v. Illinois 341
- D. **Native Americans 343**
- VI. **Criminal Justice 344**
- A. **Due Process and Habeas Corpus 345**  
The Civil War 346  
*Ex Parte Milligan* 346  
Reconstruction 350
- B. **Search and Seizure 352**
- C. **Interrogations 353**
- D. **Juries and Lawyers 354**
- E. **Punishments 354**
- Suggested Readings 355**
- 7 **The Republican Era: 1877–1932 357**
- 
- I. **Introduction 357**
- II. **Foundations 363**
- A. **Sources 363**

- Constitutions and Amendments 364
    - Congressional Debate over Prohibition 364
    - The Debate over the Nineteenth Amendment 366
    - The Law of Nations 370
      - The Paquete Habana 370
  - B. **Principles 371**
  - C. **Scope 372**
    - Incorporation 372
      - Twining v. New Jersey 373
    - Extraterritoriality 376
      - Ross v. McIntyre 376
      - Balzac v. Porto Rico 377
    - State Action 379
      - Civil Rights Cases 379
- III. **Individual Rights 383**
- A. **Property 384**
    - Contracts 385
    - Takings 385
      - Mugler v. Kansas 386
      - Pennsylvania Coal Co. v. Mahon 388
    - Due Process 390
      - In re Jacobs 391
      - Holden v. Hardy 395
      - Lochner v. New York 397
      - Muller v. Oregon 400
      - Adkins v. Children's Hospital 403
  - B. **Religion 406**
    - Establishment 407
      - Wilbur F. Crafts, The Civil Sabbath: The Friend, Not the Foe, of Liberty 407
      - Nathaniel C. Nash, The Sunday Law: Unconstitutional and Unscriptural 408
    - Free Exercise 409
      - Reynolds v. United States 410
  - C. **Guns 413**
  - D. **Personal Freedom and Public Morality 413**
    - Commonwealth v. Campbell 414
    - Meyer v. Nebraska 416
    - Buck v. Bell 418
- IV. **Democratic Rights 418**
- A. **Free Speech 419**
    - Schenck v. United States 422
    - Whitney v. California 423
    - Near v. Minnesota 427
  - B. **Voting 429**
    - State ex rel. Runge v. Anderson 430
  - C. **Citizenship 433**
    - United States v. Wong Kim Ark 434
    - United States v. Schwimmer 437
- V. **Equality 438**
- A. **Equality Under Law 439**
    - Yick Wo v. Hopkins 440
  - B. **Race 441**
    - United States v. Bhagat Singh Thind 443
    - The Rise of Jim Crow 444
      - Debates over the Lodge Federal Elections Bill 444
      - Plessy v. Ferguson 447
      - John B. Knox, Address to the Alabama Constitutional Convention 450
      - The Birth of the Civil Rights Movement 452
      - Buchanan v. Warley 453
  - C. **Gender 454**
    - Debates over the Blanket Amendment 455
  - D. **Native Americans 458**
- VI. **Criminal Justice 458**
- A. **Due Process and Habeas Corpus 459**
    - Moore v. Dempsey 459
  - B. **Search and Seizure 462**
    - Boyd v. United States 463
    - Weeks v. United States 465
    - People v. Defore 466
    - Olmstead v. United States 467
  - C. **Interrogations 470**
  - D. **Juries and Lawyers 470**
    - Powell v. Alabama 471
  - E. **Punishments 473**
    - Weems v. United States 474
- Suggested Readings 476**
- 8 **The New Deal/Great Society Era: 1933–1968 479**
- 
- I. **Introduction 479**
  - II. **Foundations 488**
    - A. **Sources 488**
      - Constitutions and Amendments 488
      - The Law of Nations 489
    - B. **Principles 490**
      - United States v. Carolene Products Co. 492
      - American Civil Liberties Union, Policy Guide 493
    - C. **Scope 495**
      - Incorporation 495
        - Duncan v. Louisiana 496
      - Extraterritoriality 500
        - Reid v. Covert 501
      - State Action 503
        - Smith v. Allwright 504

Shelley v. Kraemer 507  
 Jones v. Alfred H. Mayer Co. 509

III. **Individual Rights 511**

A. **Property 512**

Contracts 512  
 Home Building & Loan Association v. Blaisdell 513  
 Takings 516  
 Due Process 516  
 West Coast Hotel Co. v. Parrish 517  
 Williamson v. Lee Optical, Inc. 520

B. **Religion 521**

Establishment 522  
 Engel v. Vitale 523  
 Free Exercise 525  
 Sherbert v. Verner 526

C. **Guns 528**

D. **Personal Freedom and Public Morality 529**

Skinner v. State of Oklahoma ex rel. Williamson 530  
 Perez v. Sharp 531  
 Griswold v. Connecticut 533

IV. **Democratic Rights 538**

A. **Free Speech 539**

West Virginia State Board of Education v. Barnette 544  
 The Internal Security Act 547  
 Patrick A. McCarran, The Internal Security Act of 1950 548  
 Harry Truman, Veto of the Internal Security Bill 548  
 Dennis v. United States 549  
 New York Times Co. v. Sullivan 553  
 United States v. O'Brien 555  
 Brandenburg v. Ohio 557  
 Media 558  
 Red Lion Broadcasting Co. v. Federal Communications Commission 558  
 Other Free Speech Issues 561

B. **Voting 561**

Congressional Reports on the Voting Rights Act of 1965 563  
 Katzenbach v. Morgan 566  
 Reapportionment 568  
 Reynolds v. Sims 568  
 Harper v. Virginia Board of Elections 574

C. **Citizenship 576**

V. **Equality 577**

A. **Equality Under Law 579**

B. **Race 580**

Strict Scrutiny 581

Korematsu v. United States 582

The Road to Brown 586

Nathan Margold, Preliminary Report to the Joint Committee Supervising the Expenditure of the 1930 Appropriation by the American Fund for Public Service to the N.A.A.C.P. 586

Civil Rights Advocates Debate Strategy 588

W.E. B. Du Bois, Does the Negro Need Separate Schools? 589

Chas. H. Thompson, Court Action the Only Reasonable Alternative to Remedy Immediate Abuses of the Negro Separate School 589

Brown v. Board of Education of Topeka (Brown I) 590

Bolling v. Sharpe 594

Brown v. Board of Education of Topeka (Brown II) 594

Implementing Brown 595

Green v. County School Board of New Kent County 598

C. **Gender 600**

D. **Native Americans 601**

VI. **Criminal Justice 602**

A. **Due Process and Habeas Corpus 604**

The Wickersham Commission Report 604  
 Griffin v. Illinois 605  
 Fay v. Noia 608  
 Ex parte Quirin 610

B. **Search and Seizure 612**

Mapp v. Ohio 613  
 Katz v. United States 617

C. **Interrogations 619**

Miranda v. Arizona 620

D. **Juries and Lawyers 624**

Gideon v. Wainwright 625

E. **Punishments 626**

**Suggested Readings 627**

9 **Liberalism Divided: 1969–1980 629**

I. **Introduction 629**

II. **Foundations 635**

A. **Sources 635**

Constitutions and Amendments 635

B. **Principles 636**

- C. **Scope 638**
    - State Action 639
      - Moose Lodge No. 107 v. Irvis 639
  - III. **Individual Rights 641**
    - A. **Property 641**
      - Contracts 641
      - Takings 642
        - Penn Central Transportation Co. v. City of New York 642
      - Due Process 644
        - Dandridge v. Williams 646
    - B. **Religion 647**
      - Establishment 648
      - Free Exercise 648
        - Wisconsin v. Yoder 650
    - C. **Guns 653**
    - D. **Personal Freedom and Public Morality 654**
      - Abortion 657
        - Roe v. Wade 657
        - Debate over the Human Life Amendment 662
  - IV. **Democratic Rights 664**
    - A. **Free Speech 664**
      - New York Times Co. v. United States 665
      - Campaign Finance 670
        - Buckley v. Valeo 670
    - B. **Voting 674**
      - Congressional Debate on the Voting Rights Act of 1970 675
      - The Right to Vote 679
        - Richardson v. Ramirez 679
      - Reapportionment 681
        - Gaffney v. Cummings 681
      - Regulating Elections 683
    - C. **Citizenship 684**
  - V. **Equality 685**
    - A. **Equality Under Law 686**
      - San Antonio Independent School District v. Rodriguez 686
    - B. **Race 689**
      - Implementing Brown 691
        - Swann v. Charlotte-Mecklenburg Board of Education 692
      - Executive and Legislative Attacks on Busing 694
        - Richard Nixon, Special Message to Congress on Equal Educational Opportunities and School Busing 694
        - Hubert Humphrey, Senate Retreats from Equal Opportunity 695
  - Affirmative Action 696
    - Regents of the University of California v. Bakke 696
  - Racial Discrimination 702
    - Washington v. Davis 702
  - C. **Gender 704**
    - National Organization of Women, Bill of Rights 706
    - Debate over the Equal Rights Amendment 707
      - Ruth Bader Ginsburg and Brenda Feigen Fasteau, Sex Bias in the U.S. Code 707
      - Phyllis Schlafly, A Short History of E.R.A. 708
    - The Standard of Constitutional Protection 709
      - Frontiero v. Richardson 709
    - Military Service 711
    - Pregnancy 712
  - D. **Native Americans 712**
- VI. **Criminal Justice 712**
  - A. **Due Process and Habeas Corpus 714**
    - In re Winship 715
    - Wainwright v. Sykes 718
  - B. **Search and Seizure 719**
    - United States v. Calandra 720
  - C. **Interrogations 722**
    - Harris v. New York 722
    - People v. Disbrow 724
  - D. **Juries and Lawyers 726**
    - Peters v. Kiff 727
  - E. **Punishments 728**
    - Gregg v. Georgia 730
- Suggested Readings 734**
- Part 3 **Contemporary Issues**
- 10 **The Reagan Era: 1981–1993 737**


---

  - I. **Introduction 737**
  - II. **Foundations 743**
    - A. **Sources 743**
      - Constitutions and Amendments 744
        - Debate over the Flag Protection Amendment 744
        - The Law of Nations 747
    - B. **Principles 748**

- Office of Legal Policy, Guidelines on Constitutional Litigation 749
- Chip Mellor, Natural Rights and the Future of Public Interest Law 750
- C. **Scope 751**
  - State Action 752
    - DeShaney v. Winnebago County Department of Social Services 752
- III. **Individual Rights 754**
  - A. **Property 755**
    - Contracts 756
    - Takings 756
      - Lucas v. South Carolina Coastal Council 757
    - Due Process 760
  - B. **Religion 760**
    - Establishment 760
      - Ronald Reagan, Speech to National Religious Broadcasters 761
      - Mueller v. Allen 763
      - Edwards v. Aguillard 765
      - Lee v. Weisman 768
    - Free Exercise 771
      - Employment Division v. Smith 773
      - House Committee on the Judiciary, Report on the Religious Freedom Restoration Act 776
  - C. **Guns 778**
    - Debate over the Federal Assault Weapons Ban 779
  - D. **Personal Freedom and Public Morality 781**
    - Abortion 782
      - The Reagan Administration on Roe v. Wade 782
      - Planned Parenthood of Southeastern Pennsylvania v. Casey 784
    - Gay Rights 792
      - Bowers v. Hardwick 792
- IV. **Democratic Rights 794**
  - A. **Free Speech 795**
    - Advocacy 795
      - Texas v. Johnson 796
      - The Hate Speech Debate 799
        - Doe v. University of Michigan 801
    - Public Property, Subsidies, Employees, and Schools 803
      - Rust v. Sullivan 804
    - Campaign Finance 806
    - Media 806
      - The Fairness Doctrine 807
        - Federal Communications Commission, Inquiry into Section 73.1910 807
      - Ronald Reagan, Message to the Senate Returning without Approval the Fairness in Broadcasting Bill 809
      - Ernest Hollings, Speech in Response to Reagan Veto 809
      - Other Free Speech Issues 810
    - B. **Voting 812**
      - The Voting Rights Acts 813
        - Senate Committee on the Judiciary, Senate Report on the Voting Rights Act Amendments of 1982 814
      - Majority-Minority Districts 817
        - Shaw v. Reno 817
      - The Lani Guinier Nomination Fight 821
        - Clint Bolick, Clinton's Quota Queens 822
        - Lani Guinier, What I Would Have Told the Senate 823
      - Gerrymandering 824
      - Regulating Elections 824
    - C. **Citizenship 825**
      - Plyler v. Doe 826
    - V. **Equality 829**
      - A. **Equality Under Law 829**
        - Rose, et al. v. Council for Better Education 831
      - B. **Race 833**
        - Implementing *Brown* 834
          - Freeman v. Pitts 835
        - Affirmative Action 838
          - Two Presidents on Affirmative Action 839
            - Ronald Reagan, Radio Address to the Nation on Civil Rights 839
            - William J. Clinton, Remarks on Affirmative Action 839
          - City of Richmond v. J. A. Croson Co. 840
      - C. **Gender 844**
        - National Party Platforms on Women's Rights 845
          - The Democratic Party Platform 845
          - The Republican Party Platform 846
        - American Nurses Association v. State of Illinois 846
        - Johnson v. Transportation Agency, Santa Clara County 848
      - D. **Native Americans 851**
    - VI. **Criminal Justice 852**
      - A. **Due Process and Habeas Corpus 852**
        - Herrera v. Collins 853
      - B. **Search and Seizure 857**
        - United States v. Leon 857
        - Skinner v. Railway Labor Executives Association 861



- C. **Interrogations 864**
  - D. **Juries and Lawyers 865**
    - Batson v. Kentucky 867
  - E. **Punishments 870**
    - McCleskey v. Kemp 872
    - The First Presidential Debate 876
  - Suggested Readings 878**
- 11 The Contemporary Era: 1994–Present 881**
- 
- I. **Introduction 881**
  - II. **Foundations 887**
    - A. **Sources 887**
      - Constitutions and Amendments 887
      - Comparative Constitutional Law 888
      - The Law of Nations 888
    - B. **Principles 889**
    - C. **Scope 891**
      - Incorporation 891
        - McDonald v. City of Chicago 891
      - Extraterritoriality 896
        - Boumediene v. Bush 896
  - III. **Individual Rights 901**
    - A. **Property 901**
      - Contracts 902
      - Takings 902
        - Kelo v. City of New London 903
      - Due Process 907
    - B. **Religion 907**
      - Establishment 908
        - Zelman v. Simmons-Harris 910
        - Kitzmiller v. Dover Area School District 915
      - Free Exercise 917
        - City of Boerne v. Flores 919
        - The Debate over Exemptions from the Affordable Care Act 921
          - Barack Obama, Remarks on Preventive Health Care Insurance Coverage and an Exchange with Reporters 922
          - United States Conference of Catholic Bishops, Bishops Renew Call to Legislative Action on Religious Liberty 922
      - Establishment and Free Exercise (and Free Speech) 922
    - C. **Guns 923**
      - John Ashcroft, Letter to National Rifle Association 924
      - District of Columbia v. Heller 925
    - D. **Personal Freedom and Public Morality 930**
      - Abortion 930
      - Gay Rights 932
        - Lawrence v. Texas 934
      - Goodridge v. Department of Public Health 937
      - The Defense of Marriage Act 942
        - House Committee on the Judiciary, Report on the Defense of Marriage Act 943
        - Dissenting Views on H.R. 3396 944
        - Eric Holder, Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act 945
        - States Debate Same-Sex Marriage 946
          - New York Same-Sex Marriage Law, Statement in Support 946
          - Chris Christie, Veto Message 947
          - Protect Marriage Maine, Why Marriage Matters 947
        - Right to Die (and Right to Life) 948
          - The Terri Schiavo Affair 949
            - In re Guardianship of Schiavo 949
            - Congressional Debate over the Bill for the Relief of the Parents of Terri Schiavo 950
            - George W. Bush, Statement on the Signing of Legislation for the Relief of the Parents of Theresa Marie Schiavo 951
            - Schiavo ex rel. Schindler v. Schiavo 951
    - IV. **Democratic Rights 952**
      - A. **Free Speech 952**
        - Advocacy 953
          - Snyder v. Phelps 955
        - Public Property, Subsidies, Employees, and Schools 957
          - Hill v. Colorado 958
        - Campaign Finance 962
          - Citizens United v. Federal Election Commission 963
        - Media 967
        - Other Free Speech Issues 968
          - Boy Scouts of America et al. v. Dale 969
      - B. **Voting 972**
        - One Person, One Vote 973
          - Bush v. Gore 973
        - The Voting Rights Acts 977
          - Northwest Austin Municipal Utility District No. One v. Holder 978
        - Majority-Minority Districts 980
        - Regulating Elections 982
          - Crawford v. Marion County Election Board 982
      - C. **Citizenship 986**

V. **Equality 988**

A. **Equality Under Law 989**

- Romer v. Evans 991
- Retail Industry Leaders Association v. Fielder 994

B. **Race 995**

- Affirmative Action 995
  - Grutter v. Bollinger 998
  - Parents Involved in Community Schools v. Seattle School District No. 1 1003
- Racial Profiling 1008
  - Department of Justice, Fact Sheet: Racial Profiling 1009

C. **Gender 1010**

- United States v. Virginia 1012

D. **Native Americans 1016**

VI. **Criminal Justice 1017**

A. **Due Process and Habeas Corpus 1017**

- The Antiterrorism and Effective Death Penalty Act 1019
- Congressional Debate over the AEDPA 1020
- William J. Clinton, Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996 1021
- Felker v. Turpin 1022

B. **Search and Seizure 1022**

- Kyllo v. United States 1023
- Florence v. Board of Chosen Freeholders of County of Burlington 1025

C. **Interrogations 1028**

- Dickerson v. United States 1029

D. **Juries and Lawyers 1032**

- Burdine v. Johnson 1033

E. **Punishments 1035**

- Roper v. Simmons 1036

F. **Infamous Crimes and Criminals: 1041**

- The War on Terror 1041
  - The USA Patriot Act 1043
    - Senate Debate over the Patriot Act 1043
    - George W. Bush, Remarks on Signing the USA Patriot Act of 2001 1046
- Hamdi v. Rumsfeld 1047
- Republican Presidential Candidates Debate Enhanced Interrogation 1050

**Suggested Readings 1052**

Appendices

- 1 **Constitution of the United States of America 1055**
- 2 **Researching and Reading Government Documents 1069**
- 3 **Chronological Table of Presidents, Congress, and the Supreme Court 1079**

Glossary 1083

Index 1088

Cases 1116