

CONSTITUTIONAL LAW:
STRUCTURE AND RIGHTS
IN OUR FEDERAL SYSTEM

SIXTH EDITION

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CONSTITUTIONAL LAW: STRUCTURE AND RIGHTS IN OUR FEDERAL SYSTEM

SIXTH EDITION

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MATTHEW  BENDER

(2010-Pub.638)

Dedication

For our families

Preface

Twenty-five years ago we set out to create a constitutional law casebook that teaches well. We wanted to teach from a book that would engage students in learning basic constitutional law and would enable teachers to work with cases and problems relatively unencumbered by extensive secondary source materials and treatise-like notes. In preparing the sixth edition of our casebook, we have continued to develop the characteristics that distinguish our book from others. First, we continue to place heavy emphasis on the structure of government, the constitutional concepts of federalism and separation of powers. Typically, the constitutional law course has focused on three themes: judicial function, distribution of government power among the branches of the federal government and between the federal government and the states, and individual rights. The separation of powers and federalism issues, however, have been shortchanged in favor of study of the judicial function and individual rights.

Since the conception of our first edition in the early 1980s, separation of powers and federalism have retained their status as dominant themes in constitutional law as well as society generally. They continue to deserve close examination. Indeed, the renewed attention to separation of powers and federalism issues by the Supreme Court in recent years underscores the importance of structural issues in constitutional law.

Our treatment of the individual rights material also distinguishes this book from others. In prior editions, we organized the rights material around the contexts in which rights issues arise. Beginning with the third edition, we adopted a more traditional approach of presenting the individual rights materials doctrinally through separated examination of due process, equal protection, and the First Amendment. In doing so, however, we have maintained a unique focus. The chapter on equal protection, for example, begins with a consideration of the groups that were excluded from constitutional protection and then examines whether the equal protection clause has served as a vehicle of inclusion. Continuing what we started in the fifth edition, we have added an extended treatment of the war on terrorism and related “enemy combatant” cases in chapter two. We also omitted the electoral districting and reapportionment materials in favor of their extensive coverage in specialized texts and courses, and we relocated congressional enforcement of civil rights from what was chapter nine to the earlier chapter on congressional powers, chapter four.

Preface

Finally, we have rejected the notion that a good casebook must also be a treatise. We also have worked hard to produce a treatment of constitutional law that may reasonably be presented in a survey course. With a few exceptions, we have prepared only brief notes and comments to guide the reader through the cases and to provoke independent thought about important constitutional issues without overwhelming students with scholarly debates. In lieu of extensive excerpts from secondary sources, we rely on hypothetical problems to facilitate study of the material. In drafting problems, we have been mindful of the value of placing law students in practical situations where they may be asked to be problem solvers of concrete and realistic constitutional issues. We remain convinced that such practical problems enable students to develop a better understanding of the underlying theory and doctrine.

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Rodney A. Smolla
Lexington, Virginia
March, 2010

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