

American Constitutional Law: Introductory Essays and Selected Cases (13th Edition)

By Alpheus Thomas Mason, Donald Grier Stephenson

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Editorial Review

From the Back Cover
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The presidential campaign of 2000—along with its extended and chaotic finish—was but the latest reminder of the Supreme Court's place in American government. When the Court finished its 1999-2000 term, 27 percent of its cases had been decided by a 5 to 4 vote, the highest proportion in a decade. Some of these cases dealt with the most divisive questions of the day. Democrats and Republicans alike realized (and emphasized) that anticipated retirements might enable the next president to shape the balance of power on the bench for the next decade. One arena where the future makeup of the Supreme Court matters is constitutional law.

This edition, following the pattern set in earlier ones, is rooted in the conviction that constitutional law is an intricate blend of politics, history, and competing values. Judicial decisions are an important one of its dimensions. Other dimensions include the cultural climate in which decisions are rendered, and the theory that rationalizes both the decision and the policy it announces. Even though judicial decisions are couched in the language and method used by lawyers, constitutional cases are proper turf for political scientists as well. This is because the judiciary is the place where law and politics meet.

Accordingly, the book emphasizes the continuing importance of constitutional interpretation. Interpretation represents choices made about the meaning of the Constitution. These choices in turn greatly affect the operation of the political system; they help to define individual rights and freedoms and they influence the quality of life that Americans enjoy. Constitutional interpretation has thus made the Court a compelling force in the political system that the framers devised. The book invites students to become party to the dialogue that the Court has maintained with the American people for over two centuries, a dialogue that reflects a historic attraction to, and suspicion of, majority rule. The goal of this broad approach is better understanding of the present in light of the past, and of the past in light of the present. Revealed, among other things, are justices who are participants in the governing process. Under the impact of various pressures, their decisions reflect the selection of hard (and consequential) alternatives rather than the easy dictate of a brooding omnipresence or soulless command of mechanics.

Readers familiar with earlier editions of this book will recognize several changes in organization or design that are new with the thirteenth edition. First, a chapter (Five) has been added to focus on the Court and the electoral process. Chapter Five recognizes the central role in electoral politics that the Court has assumed in recent decades. This chapter combines new material with material on voting, districting, representation, campaign finance, and party politics that in the last edition had been spread among Chapters Two, Ten, and Thirteen. If desired, the cases now in Chapter Five may still be studied in the contexts of those three chapters on judicial review, freedom of expression, and equal protection, respectively. Second, Chapter Two contains an expanded discussion of the political question doctrine. Third, commerce clause issues and development are now combined in a single chapter (Six). Fourth, discussion of intergovernmental immunity occurs in Chapter Four, rather than being divided between Chapters Four and Seven. Fifth, the name and headnote for each case reprinted now includes a site on the Internet, as well as the standard printed sources, where the case may be found in its entirety. Finally, the record of the incorporation of the Bill of Rights into the Fourteenth Amendment is now illustrated by a table that has been added to Chapter Nine.

For the first time, *American Constitutional Law* has a page on the World Wide Web: **www.prenhall.com/mason**. This site complements the book and facilitates teaching and learning in at least three ways. The site contains important decisions handed down after this book went to press. These will be edited in the same manner as cases excerpted in the book. Moreover, the site retains cases from the twelfth edition that were displaced by cases added to this edition. Faculty designing syllabi thus have a larger number of edited cases from which to choose. Finally, the site contains links to useful Court-related sites as well as to appropriate noncase material.

A distinctive feature of the book remains the introductory essay preceding the cases in each chapter. These essays supply the historical and political contexts and trace the meandering thread of constitutional doctrine through major decisions. Case excerpts—essential for learning and in depicting constitutional interpretation at work—are as generous as space allows. Material added for the thirteenth edition in both essays and cases reflects recent developments, especially from the 1999-2000 term: in Chapter Three, the line-item veto case, the connection between the Clinton immunity case and the impeachment controversy, and the continuing debate over presidential war powers, this time in Yugoslavia; in Chapter Four, the reemergence of dual federalism as manifested by Eleventh Amendment limits on congressional power and a narrowed reading of Congress's powers under both Section 5 of the Fourteenth Amendment and the commerce clause; in Chapter Five, the constitutional problems arising from state regulation of party primaries, and the Supreme Court's intervention in the 2000 presidential elections; in Chapter Eight, the surprising return to the Fourteenth Amendment's privileges and immunities clause in a "new property" case; in Chapter Nine, the Court's reaffirmation of the landmark Miranda decision, as well as tightened standards for claiming rights under the Fourth Amendment; in Chapter Ten, expressive association, gay rights, and the Boy Scouts of America; in Chapter Eleven, the first school prayer case in eight terms; and, in Chapter Twelve, the first ruling on "partial birth" abortion. In total, there are ten cases new to this edition. The landscape of constitutional law remains as changeable as it is fascinating.

As in earlier editions, this one includes relevant extrajudicial material. The student is thus alerted to illuminating debates, sometimes unstaged, outside the Court: in Chapter Two, Alexander Hamilton's and Robert Yates's sharply divergent prognoses concerning the possible consequences of judicial review; differences as to the judicial function echoed in the Marshall-Gibson encounter; poignant statements by presidents Jackson and Lincoln, laid alongside the Court's pronouncement in Cooper v. Aaron, highlighting the question of who has the last word in debate over what the Constitution means; and clashing approaches to constitutional interpretation in statements by judge Bork and Professor Tribe. Chapter Eight includes justice Brewer's fervent advocacy in 1893 of a "strengthened judiciary" and Professor Thayer's closely reasoned plea that the Court resist "stepping into the shoes of the lawmaker." Chapter Nine, which contains the materials relating to the origins of the Bill of Rights as well as the incorporation doctrine, recalls

Jefferson's drive for a Bill of Rights in the face of Hamilton's and James Wilson's vigorous refutation of its necessity. Justice Cardozo's unpublished concurring opinion in Home Building & Loan Association v. Blaisdell (1934) and justice Frankfurter's letter of 1940 to justice Stone regarding the first flag-salute case, reproduced in Chapters Eight and Eleven, respectively, portray the bargaining that is part of the decision-making process.

Emphasis on constitutional interpretation has shaped the pedagogical design of the book. Anticipating the probability of new faces on the Supreme Court, the Introduction retains its distinctive focus on institutional development and the politics of judicial selection. Every discipline has its unique literature, and the literature on the study of the Supreme Court and the Constitution includes judicial opinions. Just as one should acquire a talent for reading a poem to appreciate poetry, or for reading a play to understand dramatic works, understanding constitutional law depends in part on one's skill at reading cases. To assist students in learning how to study cases, therefore, Chapter One offers suggestions on "Reading a Supreme Court Decision." The same chapter contains a list of Web sites providing judicial decisions and other Court-related information. Relevant to both essays and cases, and intended to aid discussion and further study, are a list of key terms and queries following the essay in each chapter. Each term is boldfaced and defined in the chapter essay and relates to the cases that follow. Chapters One, Five, and Nine retain the charts, maps, and graph useful in grasping judicial organization, the majority-minority district controversy, and the scope of electronic surveillance, respectively. Chapters One and Two retain the tables depicting the Court's business. Acknowledging the outpouring of scholarship on the Court in recent years, the selected readings for each chapter have been reworked and updated.

Throughout, names of cases discussed in the essays that are also reprinted in the book appear in boldface italics. Headnotes to cases contain the voting alignments of each case. The endpapers contain a table on American constitutional development, which presents a chronology of all cases reprinted in the book. Citations to cases discussed in the essays appear in the index of cases. Tables 1 and 2 in the Appendix show Court appointments by natural Court periods and by president and party affiliation, as well. Footnotes are numbered consecutively by chapter. In every instance, footnotes appearing in excerpted opinions are the Court's, unless specially marked "—ED." as having been inserted for this book.

Many persons cooperated in shaping the contents and organization of this book. Through the years since publication of the first edition in 1954, general readers, teachers, and students have contributed to its betterment. Their suggestions, reflected in both omissions and additions, indicate the measure of my indebtedness. I am especially grateful to James J. Lopach of the University of Montana, among others, who carefully reviewed the twelfth edition and made suggestions for the thirteenth. I am also grateful to Robert J. Bresler of Pennsylvania State University for general comments and to Chief Justice William H. Rehnquist who reviewed for accuracy the material in Chapter One dealing with current decision-making procedures at the Supreme Court. Special thanks are due James F. Van Orden, class of '01 at Franklin and Marshall College, who ably assisted in ways both seen and unseen.

Also deserving of credit for their wisdom, guidance, and forbearance are the staff at Prentice Hall. In particular, my thanks go to Heather Shelstad, Beth Gillett Mejia, Brian Prybella, Jessica Drew, Joanne Riker, and Nancy Marcello.

Finally, special gratitude, as always, is owed to family—especially to Ellen, my wife and best friend for more than 33 years. Her love, encouragement, and patience have been invaluable.

Questions, suggestions, and comments about the book are welcomed via e-mail:
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D.G.S., Jr.

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Paul Mackey:

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