

Contents

Preface xv

CHAPTER 1 *Interpreting American Constitutional History* Page 1

ESSAYS

- Jennifer Nedelsky* • The Constitution and the Protection of Private Property 3
- John E. Semonche* • The Supreme Court as a Unifying Force in American Culture 9
- Larry D. Kramer* • Popular Constitutionalism 17
- Linda K. Kerber* • Gender and American Citizenship 25

FURTHER READING 29

CHAPTER 2 *Creating the American Republic* Page 30

DOCUMENTS

1. Political Theorist John Locke Describes the Ends of Political Society and Government, 1690 32
2. American Colonists Declare Their Independence, 1776 34
3. The American Colonies Form a Confederation, 1777 37
4. Convention Delegate Edmund Randolph Proposes the Virginia Plan, May 29, 1787 40
5. William Paterson Proposes the New Jersey Plan, June 15, 1787 42
6. Delegates Debate the Creation of a National Legislature, May–June, 1787 43
7. Delegates Debate Slavery and Representation, June–July, 1787 47
8. Delegate James Madison Advocates an Extended Republic, 1788 53

ESSAYS

- Paul Finkelman* • Slavery and the Debate Over Representation 57
Forrest McDonald • The Power of Ideas in the Convention 64
Jan Lewis • Representation of Women in the Constitution 69

FURTHER READING 74

CHAPTER 3
Rights in the New Republic

Page 76

DOCUMENTS

1. Virginian James Madison Champions Religious Liberty, 1785 78
2. Anti-Federalist George Mason Outlines His Objections to the Proposed Constitution, 1787 81
3. Madison Advocates a Bill of Rights, 1789 83
4. The Sedition Act Limits Criticism of the National Government, 1798 87
5. The Virginia and Kentucky Resolutions Decry the Abuse of National Power, 1798–1799 88
6. Lyon's Case, 1798 91

ESSAYS

- Saul Cornell* • The Anti-Federalists and American Liberty 94
Leonard W. Levy • The Republicans and the Transformation of Libertarian Thought 102

FURTHER READING 109

CHAPTER 4
The Departmental Theory and the Establishment of Judicial Review

Page 110

DOCUMENTS

1. Federalist Alexander Hamilton Defends Judicial Review, 1788 113
2. *Kemper v. Hawkins*, 1793 116
3. Republican John Breckenridge Advocates the Repeal of the Federalists' Judiciary Act, 1802 118
4. *Marbury v. Madison*, 1803 122
5. *Martin v. Hunter's Lessee*, 1816 126
6. *McCulloch v. Maryland*, 1819 130
7. President Andrew Jackson Defies the Supreme Court and Vetoes the Bank Bill, 1832 136

ESSAYS

- Larry D. Kramer* • Marshall, *Marbury*, and the Defense of Judicial Review 138
- Sylvia Snowiss* • Judicial Review and the Law of the Constitution 145
- Timothy S. Huebner* • Spencer Roane, Judicial Power, and State Sovereignty 151

FURTHER READING 156

CHAPTER 5

Andrew Jackson, Nullification, and Indian Removal

Page 157

DOCUMENTS

1. South Carolinian John C. Calhoun Proposes Nullification, 1828 159
2. President Andrew Jackson Advocates Indian Removal, 1829 162
3. *Cherokee Nation v. Georgia*, 1831 164
4. *Worcester v. Georgia*, 1832 167
5. South Carolina Nullifies the Tariff, 1832 171
6. Jackson Threatens South Carolina, 1832 173

ESSAYS

- Jill Norgren* • *Worcester* and the Politics of the Nullification Crisis 177
- Gerard N. Magliocca* • Jackson, *Worcester*, and Generational Change 183

FURTHER READING 191

CHAPTER 6

Abraham Lincoln, Slavery, and the Civil War

Page 192

DOCUMENTS

1. Abolitionist Frederick Douglass Describes the Constitution as Anti-Slavery, 1852 194
2. *Dred Scott v. Sandford*, 1857 196
3. The Confederacy Writes a Constitution, 1861 201
4. President Abraham Lincoln Rejects Secession and Criticizes the Supreme Court, 1861 204
5. *Ex parte Merryman*, 1861 207
6. Lincoln Emancipates Slaves in the Confederacy, 1863 211
7. Lincoln Defends His Suspension of the Writ of Habeas Corpus, 1863 213

E S S A Y S

- Daniel Farber* • Lincoln's Mixed Record on Individual Rights 215
James M. McPherson • Abraham Lincoln and the Transformation
of American Liberty 222

F U R T H E R R E A D I N G 227

C H A P T E R 7

Reconstruction and the Fourteenth Amendment

Page 229

D O C U M E N T S

1. Congress Debates the Fourteenth Amendment, 1866 231
2. The Slaughterhouse Cases, 1873 238
3. *Bradwell v. Illinois*, 1873 243
4. *Minor v. Happersett*, 1875 245
5. The Civil Rights Cases, 1883 248
6. *Plessy v. Ferguson*, 1896 251

E S S A Y S

- Akhil Reed Amar* • Reconstruction and the Birth of the Bill of Rights 255
Michael Les Benedict • The Conservative Basis of Radical Reconstruction 260
Joan Hoff • The Supreme Court's Denial of the Rights of Women 266

F U R T H E R R E A D I N G 272

C H A P T E R 8

Protective Legislation and the Liberty to Contract

Page 274

D O C U M E N T S

1. Legal Scholar Christopher G. Tiedeman Advocates a Limited Police
Power, 1886 276
2. The People's Party Announces its Agenda for Reform, 1896 279
3. *Lochner v. New York*, 1905 281
4. Reformers Louis D. Brandeis and Josephine Goldmark Document the
Hardships Faced by Women Industrial Workers, 1908 286
5. *Muller v. Oregon*, 1908 288
6. Legal Scholar Roscoe Pound Criticizes the Liberty to Contract, 1909 290
7. *Adkins v. Children's Hospital*, 1923 293

E S S A Y S

- Paul Kens* • The *Lochner* Court and Judicial Conservatism 297
Julie Novkov • Gender, Law, and Labor in the Progressive Era 302
FURTHER READING 309

CHAPTER 9

Total War and the Emergence of Modern Civil Liberties

Page 311

D O C U M E N T S

1. President Woodrow Wilson Announces Regulations Governing Alien Enemies, 1917 313
2. The Espionage Act Restricts Speech in Wartime, 1917/1918 314
3. *Schenck v. United States*, 1919 315
4. Legal Scholar Zechariah Chafee, Jr., Advocates Freedom of Speech, 1919 317
5. *Abrams v. United States*, 1919 321
6. *Gitlow v. New York*, 1925 325
7. *Near v. Minnesota*, 1931 329

E S S A Y S

- David M. Rabban* • Oliver Wendell Holmes and the Judicial Transformation of the First Amendment 331
Samuel Walker • The Civil Liberties Bureau and the Origins of the Fight for Free Speech 338

FURTHER READING 344

CHAPTER 10

Franklin Roosevelt, the Depression, and the New Deal

Page 346

D O C U M E N T S

1. The National Recovery Act Attempts to Bring the Nation Out of the Depression, 1933 348
2. The Agricultural Adjustment Act Provides Subsidies for Farmers, 1933 d 351
3. *Schechter v. United States*, 1935 353
4. *United States v. Butler*, 1936 358
5. President Franklin D. Roosevelt Advocates Judicial Reform, 1937 361
6. *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 1937 365
7. *West Coast Hotel v. Parrish*, 1937 368

E S S A Y S

Jim Powell • The “Four Horsemen” Were Right: The New Deal Was Unconstitutional 370

Cass R. Sunstein • The New Deal Shows the Flexibility—and Genius—of the Constitution 376

FURTHER READING 382

C H A P T E R 11

Race and Civil Rights in the Cold War Era

Page 383

D O C U M E N T S

1. *Sweatt v. Painter*, 1950 385
2. An Amicus Brief Filed by the U.S. Government Urges an End to Racial Segregation, 1953 387
3. *Brown v. Board of Education, I*, 1954 389
4. *Brown v. Board of Education, II*, 1955 392
5. White Southern Members of Congress Declare their Opposition to *Brown*, 1956 393
6. The Civil Rights Act Forbids Discrimination in Public Education and Employment, 1964 395
7. President Lyndon Johnson Vows to Fight Injustice and Inequality, 1965 398

E S S A Y S

Derrick A. Bell • *Brown* Was Wrongly Decided 402

Kermit L. Hall • *Brown* Furthered the Cause of Human Rights 408

FURTHER READING 415

C H A P T E R 12

Abortion Rights: The United States and South Africa Compared

Page 417

D O C U M E N T S

1. *Griswold v. Connecticut*, 1965 419
2. A Proposed Constitutional Amendment Promises Equal Rights for Women, 1972 421
3. *Roe v. Wade*, 1973 421
4. Fundamentalist Pastor Jerry Falwell Denounces the ERA, 1980 428
5. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 1992 429

- 6. South Africa's Constitution Affirms Women's Rights, 1996 433
- 7. *Christian Lawyer's Association of South Africa v. Minister of Health*, 1998 435

E S S A Y S

- John Hart Ely • *Roe v. Wade* Was a Mistake 438
- N.E.H. Hull and Peter Charles Hoffer • *Roe* Symbolized an Idea Whose Time Had Come 445

F U R T H E R R E A D I N G 4 4 9

C H A P T E R 1 3
Freedom of and Freedom from Religion
Page 451

D O C U M E N T S

- 1. *Engel v. Vitale*, 1962 453
- 2. President John F. Kennedy Comments on the School Prayer Decision, 1962 457
- 3. *Lemon v. Kurtzman*, 1971 458
- 4. *Wallace v. Jaffree*, 1985 461
- 5. *Employment Division, Department of Human Resources of Oregon v. Smith*, 1990 463
- 6. Congress Overturns *Smith* in the Religious Freedom Restoration Act, 1993 466
- 7. *Zelman v. Simmons-Harris*, 2002 467

E S S A Y S

- Leonard W. Levy • The Establishment Clause Erects a Wall of Separation 469
- Stephen L. Carter • The Establishment Clause was not meant to Establish Public Secularism 474

F U R T H E R R E A D I N G 4 8 2

C H A P T E R 1 4
Federalism and Judicial Review
Page 484

D O C U M E N T S

- 1. *Wickard v. Filburn*, 1942 486
- 2. Senator Barry Goldwater Defends The Rights of the States, 1960 488
- 3. *Heart of Atlanta Motel v. United States*, 1964 489
- 4. Congress Protects the Victims of Gender-Motivated Violence, 1994 493

- 5. *United States v. Lopez*, 1995 495
- 6. *Printz v. United States*, 1997 498
- 7. *United States v. Morrison*, 2000 501

E S S A Y S

- Steven G. Calabresi* • In Defense of Federalism 504
- Catharine A. MacKinnon* • Federalism and the Protection of Male Sovereignty 508

F U R T H E R R E A D I N G 5 1 6

C H A P T E R 1 5

Presidential Power from the Cold War to the War on Terror

Page 518

D O C U M E N T S

- 1. *Youngstown Sheet & Tube Co. v. Sawyer*, 1952 520
- 2. Congress Gives Authority to President Lyndon B. Johnson to Wage War in Vietnam, 1964 527
- 3. Congress Reasserts Itself in the War Powers Resolution, 1973 528
- 4. *United States v. Nixon*, 1974 531
- 5. Congress Authorizes President George W. Bush to Fight International Terrorism, 2001 537
- 6. The Justice Department Asserts that Enforcement of Federal Anti-Torture Laws Would Violate the President's Powers as Commander-in-Chief, 2002 538
- 7. *Hamdi v. Rumsfeld*, 2004 541

E S S A Y S

- John Yoo* • The President Possesses the Constitutional Power to Wage War on Terrorism 544
- Peter Irons* • President Bush's War on Terrorism Has Hijacked the Constitution 549

F U R T H E R R E A D I N G 5 5 5

A P P E N D I X I

Page 557

- Constitution of the United States 557

A P P E N D I X II

Page 575

- Justices of the U.S. Supreme Court 575