

# LAW AND COURTS

## *NEWSLETTER*

Fall, 1992

The Law and Courts Section of the American Political Science Association

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Announcements and section news will be included in the *Newsletter* as well as information regarding upcoming and past conferences. Organizers of panels focusing on law, courts, and professional meetings are encouraged to inform the *Newsletter* so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards also will be announced if there is sufficient time for submission of materials to the granting or awarding body. Finally, authors of judicial books should inform the *Newsletter* of their manuscript's publication. Announcements and correspondence dealing with these matters should be sent to:

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The *Newsletter* publishes articles, news items, announcements, commentaries, and features of interest to members of the Law, Courts, and Judicial Process Section. The *Newsletter* is published three times each year in Fall, Spring, and Summer issues. **Deadlines for submission of materials for each issue are as follows: Fall (October 15), Spring, (February 15), and Summer (June, 15).** Contributions to the *Newsletter* should be sent to the appropriate editor listed below.

**ARTICLES AND COMMENTARY**

Brief articles and notes describing matters of interest to the field will be published subject to review by *Newsletter* editors. Authors are encouraged to share research findings, teaching innovations, or commentary on developments in the field which would interest members of the section. Footnote and reference style should follow that of the *American Political Science Review*. Please send two copies of prospective articles and commentary dealing with **constitutional law and jurisprudence** to:

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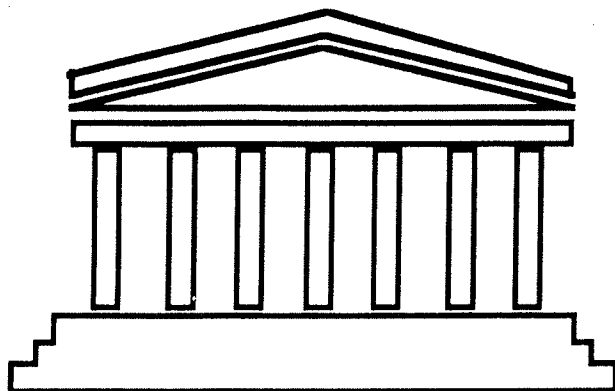
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### NOTE FROM THE EDITOR

The following articles were originally published electronically by the *Law and Politics Book Review* edited by Herb Jacob. Susan Gluck Mezey edited this special edition of the *Book Review* which is devoted to recent constitutional law texts. Because of the keen interest of the Section's membership in constitutional law, when Herb offered me the opportunity to re-print these reviews in the *Newsletter*, I knew it was an offer I couldn't refuse. I look forward to future cooperative ventures with the "Law and Politics Book Review."

Roy B. Flemming  
Newsletter Editor

### INTRODUCTION TO *The Law and Politics Book Review*

#### SUSAN GLUCK MEZEY

Thirteen constitutional law casebooks were reviewed for this project. Surprisingly, based on Jerry Goldman's discussion of the "canon" of constitutional law, there is far less overlap among the tables of contents of these books than one would have imagined.

The implications of Goldman's intriguing analysis are twofold: first, the subfield, as represented by the textbook authors, does not "share a set of common principles, rules and norms" that determine which cases are significant enough to merit inclusion in a constitutional law casebook. Although, perhaps we do to some extent, for no one would express incredulity at the cases included in the "big ten" common to all texts.

Another implication arising from Goldman's essay is that our choice of a constitutional law casebook is not simply motivated by whim. And if the selection of a casebook is more than mere happenstance (as I believe it is), then it is legitimate to ask upon what basis are our decisions made? I believe Goldman's analysis suggests that we probably evaluate the books, in part, to determine if they are compatible with our political and pedagogical predilections. Faculty who rely on casebooks -- and as the reviewers illustrate, not all faculty are comfortable doing so -- are more likely to choose those that have a sufficient number of cases that they a) like to teach, b) like to have their students learn, or c) like the outcome of the opinions. That many of the reviewers cited cases they would have wanted to see included in the texts they were reviewing reflects the individualistic nature of the constitutional law

enterprise and supports Goldman's view of the absence of a common set of beliefs in the subfield.

Aside from the selection of cases, the reviews indicate that the books also differ in the order or arrangement of cases. Although most books present cases in chronological, that is, historical, order, the reviewers discuss some authors' attempts to arrange the cases topically or conceptually. Similarly, while all the books contain introductory essays, supplementary analyses of varying lengths, and ancillary material about the justices, the courts, and the judicial process, the books differ in the extent to which the authors allocate space between the case and non-case material. Moreover, while most of the "important" cases are probably mentioned in most books, the reviewers suggest that the authors' decisions to excerpt a case or simply note its existence can lead to significant distinctions among the books. Finally, authors may or may not include probing questions to stimulate students' interest and provoke class discussion. Obviously, some of these succeed more than others.

In sum, space is a scarce resource and the reviews indicate that decisions about which cases to include, how much of the case to include, and how much to explain about the cases are critical in the creation of a textbook on constitutional law. Some may disagree with the choices made by these authors but perhaps the nature of choice means that some will be displeased with the results.

Yet, despite these differences and the lack of unanimity on the cases within, some generalizations about the books

may be made. While cases may differ, topics generally do not; with one exception, all the books are essentially divided into civil liberties and non-civil liberties material. In the civil liberties category, the reviews indicate that the topics covered in greatest depth are free expression, racial discrimination, and privacy. Topics covered less extensively include religion (establishment and free exercise) and sex discrimination. Apparently, also, there is widespread tacit agreement among most authors to exclude criminal procedure cases; a decision most of us would probably agree with -- as these cases are usually taught in other courses, if taught at all.

The reviews underscore the fact that there are two approaches to teaching undergraduates about constitutional law, using law school texts or undergraduate political science texts. If one can generalize from these reviews, it appears that most teachers of political science prefer the latter for their classes. Differences between these types of books are largely related to the extent to which the textbook authors portray courts as political actors and cases as political outcomes. Not surprisingly, the books consciously written for political science classes pay more attention to the political and social context of the decisions, to the role politics plays in judicial decisionmaking, and to the interaction between the courts and the other political institutions.

A new approach adopted by some text authors and publishers is to divide the material into two sections, with one book for civil liberties/civil rights courses and another for powers of government courses. This innovation appears to meet with approval from most of the reviewers. From a student's perspective, it is advantageous because it yields a lighter and cheaper book for the course. From the instructor's perspective, it promises a more coherent format and greater coverage of material than would be possible in a single text.

This introduction would not be complete without allowing me the opportunity to thank all those who participated in this project. The task of editing is greatly facilitated when the contributors are all as conscientious and prompt as these were.

Speaking on behalf of the reviewers, I hope that our efforts have eased the process of choosing a constitutional law casebook by shedding some light on the distinctive features of the various books available for our classrooms.

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**REVIEW ESSAY:** *Is There A Canon of Constitutional Law?* by Jerry Goldman, Department of Political Science, Northwestern University

The purpose of this brief essay is to explore some common and uncommon features of constitutional law texts. I shall pose a deceptively simple question: Does constitutional law have a canon? By "canon" I mean a widely accepted

body of rules, principles, and norms exemplified in a common set of Supreme Court opinions. I have constructed an answer by examining the similarities and differences in casebooks widely used by political scientists who teach constitutional law. I reviewed the following works:

- Lucius J. Barker and Twiley W. Barker, Jr. *Civil Liberties and the Constitution* Sixth Edition (Englewood Cliffs NJ: Prentice-Hall, 1990).
- Paul Brest and Sanford Levinson, *Processes of Constitutional Decisionmaking: Cases and Materials*, Third Edition (Boston: Little Brown, 1992).
- Craig R. Ducat and Harold W. Chase. *Constitutional Interpretation*, Fifth Edition (St. Paul MN: West Publishing Co., 1992).
- Lee Epstein and Thomas G. Walker. *Constitutional Law for a Changing America*, 2 vols. (Washington DC: CQ Press, 1992).
- Louis Fisher. *American Constitutional Law* (New York: McGraw-Hill, 1990).
- Sheldon Goldman. *Constitutional Law: Cases and Essays* Second Edition (New York: Harper Collins, 1991).
- Gerald Gunther. *Constitutional Law*, Twelfth Edition (Westbury, NY: Foundation Press, 1991).
- Susan M. Leeson and James C. Foster. *Constitutional Law: Cases in Context* (New York: St. Martin's Press, 1992).
- William B. Lockhart, Yale Kamisar, Jesse H. Choper, and Steven H. Shiffrin. *Constitutional Law* (St. Paul MN: West, 1991).
- David M. O'Brien. *Constitutional Law and Politics*, 2 vols. (New York: Norton, 1991).
- Robert J. Steamer and Richard J. Maiman. *American Constitutional Law: Introduction and Case Studies* (New York: McGraw-Hill, 1991).
- Geoffrey R. Stone, Louis M. Seidman, Cass R. Sunstein, and Mark V. Tushnet. *Constitutional Law*, Second Edition (Boston: Little Brown, 1991).

This list does not exhaust all the books used by political scientists, but it probably represents a substantial segment of the 100,000 or so students who likely enroll in constitutional law classes for undergraduates each year.

**METHOD:** I created a massive index of all *Principal Supreme Court* cases used in these books. For the purpose of this study, a case was labeled as a principal case if (1) its excerpt was treated as an opinion of the Court and the author/editor did not paraphrase a portion of the argument or (2) the author/editor signaled or otherwise identified the case as a principal case (e.g., by highlighting the case with large, bold, or italic type in the table of contents, the body of the casebook, or the index). Lawyers and casebooks geared for law school made the most use of principal, intermediate, and secondary case differentiations. Opera-

tionally, I searched for text entries that began: "Justice X delivered the Opinion of the Court" or language to that effect. Since the publication dates of the books varied over a three-year period, I settled on 1989 Term as the last year for the quest for such a canon.

Let me offer three caveats. First, I did not tabulate any cases from other courts (e.g., *Eakin v. Raub*) and I did not include materials that impact on issues of constitutional interpretation (e.g., *Federalist 78*). Some authors have structured their books around these non-Court materials. Hence my findings are biased by my decision to exclude them. Since my objective was to identify the common core of constitutional law as expressed by the Supreme Court, that core should reflect the opinions of the Justices, not their exegeses. In short, all the glosses provided by commentators, theorists, and elected officials matter little if the Court does not speak. It is the words of the Court that matter most.

My second caveat concerns the substantial contributions of text authors. I did not examine the character of the prefatory essays that are now a nearly universal feature of constitutional law texts authored by political scientists and I did not examine the voluminous commentaries and queries that stud casebooks by law teachers. A study of the essays and commentaries belongs in the domain of other reviewers. To repeat, my study focuses on the common and uncommon Supreme Court cases that comprise the twelve case books reviewed in this joint enterprise.

My third caveat concerns the search for "principal cases." My survey tilts toward books that made no distinction between principal and other case excerpts. I have assumed that the author/editors who made no such distinction regard all the cases excerpted in their books as principal cases. It stands to reason that, other things being equal, the self-identified set of principal cases should come closer to the canon of constitutional law than the set of undifferentiated cases.

**FINDINGS:** The twelve casebooks employed a total of 552 different principal Supreme Court cases, ranging from *Abington Township v. Schempp* to *Zurcher v. The Stanford Daily*. I began with the naive notion that these books contained a fairly extensive common core. I took this assumption from the idea that one teaches the monumental cases to understand the Court and its work and that the monumental cases numbered at least half of the cases in the two-quarter courses my department devotes to constitutional law and politics for undergraduates. I suspect I am not alone in this belief.

How many cases were common to all the books? Much to my surprise, there were only three such principal cases, or less than one percent of the total inventory:

*Brown v. Board of Education*  
*Griswold v. Connecticut*  
*Roe v. Wade*

These cases reflect the common core of civil rights and liberties cases, since the list of texts includes one book devoted solely to this domain (*Barker & Barker*). All other books are general texts of varying lengths and with somewhat different audiences, ranging from undergraduates to law students. Eliminating the *Barker & Barker* text reduces the case inventory to 541 but enlarges the set of common cases by only seven:

*Garcia v. SAMTA*  
*Gibbons v. Ogden*  
*Lochner v. New York*  
*McCulloch v. Maryland*  
*Marbury v. Madison*  
*New York Times v. United States*  
*Youngstown Sheet and Tube v. Sawyer*

Thus, the eleven remaining books share ten principal cases, or less than two percent of the relevant inventory. These cases represent, in addition to civil liberties, the standard government power topics such as: federalism, commerce power, separation of powers, judicial power, and substantive due process. (*New York Times v. Sullivan*, which concerns prior press restraint, joins the common set at this point because all the texts but *Barker* include it.) The expanded list also illustrates one of the problems created by dividing civil rights and liberties from government powers. Privacy arguments stem from the substantive due process cases. The roots of *Griswold v. Connecticut* and *Roe v. Wade* lie in *Lochner v. New York* and arguments in support of substantive economic due process, which reached its apogee in the 1930s. *Griswold v. Connecticut* lacks proper foundation in the absence of *Lochner v. New York*, but *Lochner* is a government power topic, not a civil liberties topic.

Perhaps it is unfair to combine consideration of massive casebooks like *Ducat & Chase* and *Gunther* with those like *Steamer & Maiman*, which is self-described as an introduction with case studies. If we eliminate *Steamer & Maiman* because it aims at a different audience, the list of books drops to ten. (The inventory remains at 541.) What new common cases enter the canon of principal constitutional cases? *Baker v. Carr* and *Hammer v. Dagenhart*. So among the ten full-length, mainstream constitutional law casebooks, I can identify at most 12 out of 541 cases that are part of the corpus of materials forming an inventory of constitutional law as formulated by political scientists and law teachers.

It struck me that one or more of the ten "mainstream" texts missed several principal cases. An argument could be made for their inclusion because these cases either (a) announced new standards that resonate today, or (b) illustrated a dramatic shift in constitutional interpretation, or (c) demonstrated fundamental errors that would take years to undo. Such a list might include:

Brandenburg v. Ohio  
 Craig v. Boren  
 Dennis v. United States  
 Everson v. Board of Education  
 Gideon v. Wainwright  
 Heart of Atlanta Motel v. United States  
 Home Building & Loan Assoc. v. Blaisdell  
 INS v. Chadha  
 Korematsu v. United States  
 Lemon v. Kurtzman  
 Mapp v. Ohio  
 Miller v. California  
 Miranda v. Arizona  
 Morrison v. Olson  
 New York Times v. Sullivan  
 NLRB v. Jones & Laughlin Steel Corp.  
 Plessy v. Ferguson  
 Shelley v. Kraemer  
 The Slaughter House Cases  
 Swann v. Charlotte-Mecklenburg Board of Education  
 United States v. Nixon  
 Webster v. Reproductive Health Services

These 22 cases can be found in many of the ten mainstream books, but they will not be found as principal cases in all of them. One book overlooked 16 cases on the list (Brest and Levinson). (Eliminating Brest & Levinson from the list would add eight principal cases to the common set: Dennis, Heart of Atlanta, Miller, Sullivan, NLRB, and Swann.) Lockhart et al. overlooked five of these 22 cases. To a lesser extent, the other eight "mainstream" books overlooked one or more such cases.

There were a few cases that should have been included in the inventory but were passed over entirely by all textbook authors. With such a wide set of interests among these books and authors, I would have guessed that one author had found a place for these orphans: Meyer v. Nebraska, Moore v. City of East Cleveland, Pierce v. Society of Sisters, Skinner v. Oklahoma, and Strauder v. West Virginia. The first four are substantive due process cases that bear on the current privacy debate; privacy concerns (and substantive due process arguments) had wide appeal among all ten books. In 1991, the Senate Judiciary Committee quizzed (then) Judge Clarence Thomas at length about his views regarding Moore v. City of East Cleveland. While Senators attempted to extract an opinion from Thomas on this important case, our profession simply ignored it. The last "orphan" case, Strauder v. West Virginia, seemed a natural for civil rights issues inasmuch as it was an early example of judicial protection of overt racial discrimination in jury selection and service.

Finally, the data I collected may be useful in formulating a strategy for adopting a text. Putting aside for the moment the editorial skills of the authors, the books with

the greatest number of principal cases offer the most flexibility, provided that the list of cases is not so eclectic as to suit only the author/editor. The advantage of a large inventory must be weighed against the heft and price of the biggest books. The following list rank-orders the books by the number of principal Supreme Court cases excerpted:

O'Brien	211 principal cases
S. Goldman	204
Epstein/Walker	192
Ducat/Chase	183
Fisher	159
Gunther	129
Stone et al	122
Lockhart et al	112
Brest/Levinson	98
Leeson/Foster	92
Barker/Barker	66
Maiman/Steamer	64

Of the first five books on the list, four are published in two volumes. The exception is Sheldon Goldman's text, which offers more cases in fewer pages than all of the jumbo texts. By this criterion, Goldman's book is a standout. The single-volume approach avoids sundering critical topics, e.g., privacy and substantive due process.

The books targeted primarily for law school audiences attempt to draw the distinction between principal and secondary cases. These books contain more case excerpts than other books, but fewer principal cases. None of the books relying on the principal-secondary distinction offers an explicit rationale its use.

**CONCLUSION:** At the beginning of this paper, I posed a simple question. It is now time for an answer. Public law has a canon, but it appears a trifling one. There is almost no agreement on the principal cases that form our civil rights and civil liberties tradition. The other cases in the very small common set reflect only a few of the great constitutional disputes of our history. Interestingly, there are three nineteenth century cases among the ten common cases and they are all the work of one justice, John Marshall. It is fair to say that the great chief justice has left a legacy that towers over any of his contemporaries or successors. Still, the size of the canon is trivial, which is not what I expected.

It would be healthy for us as a profession to re-examine the fundamentals of constitutional law. Perhaps we should contemplate the content of the canon and consider whether we share a set of common principles, rules, and norms embodied in Supreme Court opinions. To this end, we should be formulating and articulating justifications rooted in theory and practice for the inclusion or exclusion of opinions in the next generation of textbooks. Perhaps these findings will help spark such discussion and debate.

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**CIVIL LIBERTIES AND THE CONSTITUTION**, 6th Ed. by Lucius J. Barker and Twiley W. Barker, Jr. Englewood Cliffs, N.J.: Prentice Hall 1990. 689 pp. Paper \$51.00. **REVIEWED BY** Lawrence Baum, Department of Political Science, Ohio State University

Teachers of constitutional law courses today are served well by an array of good casebooks that take a variety of approaches. Lucius Barker and Twiley Barker have written the successive editions of *Civil Liberties and the Constitution* with a clear and consistent approach, one of emphasizing the broader political and social context of civil liberties law. With this approach, their book is not aimed primarily at courses that give a strong emphasis to legal analysis of civil liberties decisions. Rather, it fits best in a course whose instructor gives substantial attention to constitutional politics as well as constitutional law.

Like most other constitutional law books for political science courses, *Civil Liberties and the Constitution* is written at an appropriate level for upper-division students. It could be used in courses ranging in length from one quarter to two semesters. Depending on their course formats and use of additional readings, instructors in shorter courses may wish to exclude some text material and cases.

The book begins with an introductory chapter, followed by a series of chapters with text material and case excerpts in the various areas of civil liberties. By chapter, civil liberties law is divided into six areas: religious liberty; freedom of expression, assembly and association; the rights of the accused; racial discrimination; political participation (chiefly legislative apportionment and racial discrimination in the electoral process); and sex, privacy, and property.

The introductory chapter deals primarily with the political and social context of civil liberties law, including the roles of interest groups and of the other branches of government in constitutional politics. The text material in later chapters focuses chiefly on cases and legal issues, and the book assuredly is a text on the LAW of civil liberties. But the authors frequently refer to the politics that shape the Supreme Court's decisions and to the impact of those decisions. For instance, they give some emphasis to the effect of changes in the Court's personnel on its doctrinal positions. Readers gain a clear sense of the larger context of constitutional law that Barker and Barker seek to emphasize.

Within chapters, the text and cases cover the great majority of issue areas to which the Supreme Court has given substantial attention. There are a few areas covered in some courses that the book does not treat as separate topics. In equal protection, for instance, the authors focus on race, gender, and economic status; the text does not have sections on other distinctions such as that between

citizens and non-citizens. To take another example, conflicts between national security and freedom of expression are discussed chiefly in the context of First Amendment doctrines, and there is no section devoted specifically to the national security topic.

Discussions of individual issue areas address a wide range of specific issues within them. But the text material does not offer a comprehensive treatise on the areas that it covers; rather, it provides a picture of how the law has developed on the most important issues in each area, especially those that have been prominent in the Supreme Court's decisions. For instance, the section on the 4th Amendment focuses on the exclusionary rule and on warrantless searches rather than describing all the general principles for interpretation of the 4th Amendment. (Wire-tapping also is discussed, in the context of privacy.) In this respect the book follows what is probably the majority practice in constitutional law texts for political science courses. One advantage of this approach is that it helps to protect students from becoming overwhelmed with the array of legal issues and decisions in each area.

The book goes beyond constitutional issues to examine some statutory questions concerning discrimination. Among the cases included are some dealing with affirmative action programs under federal statutes, *WARDS COVE V. ATONIO* (1989) on "disparate impact" under Title VII, and *GROVE CITY COLLEGE V. BELL* (1984) on the scope of coverage of Title IX. Instructors easily could omit such cases and the associated text material if they wish. But I think that the book's inclusion of statutory issues is a good feature, because it helps students to understand the importance of both constitutional and statutory provisions in defining rights as well as the interrelationship between them.

The text material is very well written: it is both clear and interesting, and as a result it communicates effectively with students. This, of course, is a major virtue of the book. On the whole, material also is organized well within chapters. The number of excerpted cases in each area is within the standard range for political science casebooks, though probably smaller than average. To take some examples, there are fourteen cases in the freedom of expression chapter, thirteen on the rights of the accused, and thirteen on racial discrimination.

The authors provide a mix of major decisions from earlier eras and decisions that present the Court's current and recent positions on important issues. On capital punishment, the book includes *GREGG V. GEORGIA* (1976) along with *STANFORD V. KENTUCKY* (1989) on execution of juveniles and *McCLESKEY V. KEMP* (1987) on racial discrimination; on search and seizure, it includes *MAPP V. OHIO* (1961), *U.S. V. LEON* (1984) (the "good faith" exception to the exclusionary rule), and *CALIFORNIA V. GREENWOOD* (1988) (warrantless search of garbage).

I like the selection of cases. Inevitably, some decisions

that individual instructors would want students to read --including a few decisions that might be considered landmarks -- are not included. But the selected cases offer a good sample of major decisions, with a balance among topics and types of decisions. And they serve well in documenting shifts over time in the Court's collective preferences and the resulting policies on a number of issues.

The editing of cases emphasizes their settings and the justices' arguments and holdings on the most fundamental civil liberties issues; the authors are less concerned with conveying the Court's position on all the legal issues in each case. Thus, for instance, material on the standing issue is excised from *ROE V. WADE*. The editing is effective in achieving the authors' goals. The opinions are very readable, and I think they communicate the gist of cases quite well. The excerpts are particularly good in making clear the essence of disagreements among members of the Court in particular cases.

As my comments suggest, I think that *Civil Liberties and the Constitution* has some major strengths. First, the book's consistent reflection of its authors' concern with a balance between constitutional law and constitutional politics serves well the needs of instructors who emphasize the political context of constitutional law in their courses. Second, the readability of both the text and the case excerpts enhances the book's value for students and increases the freedom of instructors to go beyond the material covered in the book during class sessions. This is a fine book both in itself and as a text in civil liberties courses.

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**PROCESSES OF CONSTITUTIONAL DECISION-MAKING: CASES AND MATERIALS**, 3d Ed. by Paul Brest and Sanford Levinson. Boston: Little, Brown & Company 1992. lx, 1576 pp. Cloth \$50.00. **REVIEWED BY** Lief Carter, Department of Political Science, University of Georgia

The first edition of this now classic law school casebook grew out of the same frustration that produced the critical legal studies movement: constitutional theory, that quintessentially normative enterprise, had lost its normative way. Many strands of twentieth century philosophy -- Wittgenstein, Weber, and Dewey to name a few -- had by a convincing process of triangulation pulled out the shaky props beneath technical legal rationality's claim to provide a sufficient normative basis for evaluating constitutional decisionmaking. As the authors point out in their preface, academic constitutional law had collapsed into a description of what the Supreme Court said.

Now, nearly twenty years later, a rich literature on interpretive theory and hermeneutics has blossomed, and the authors have worked their material into a rich weave

of political history, case law, and contemporary scholarly commentary. For graduate students who wish to master constitutional law and theory together, this casebook provides an ideal learning tool. The book is designed for a nine-month law school course, and for undergraduates I suspect the length and organization make it difficult to use in a semester. But the authors write with admirable clarity, and well-motivated and well-coached undergraduates could gain much from using it.

Brest and Levinson's central theme takes the form of a question: Do primarily apolitical decisionmaking procedures exist by which judges can reach and defend legal conclusions that are both substantively acceptable and politically legitimate? While generously encouraging students to come to their own answers, the authors answer that they are skeptical "about the legitimating power of process and, indeed, about the meaning of 'legitimacy' itself" (p. xxxiv). Humpty Dumpty's pungent statement: "The question is...which is to be master --that's all" (p. 40) spices the entire work.

Murphy, Fleming and Harris' *American Constitutional Interpretation* provides, I think, the closest alternative. The relative merits about balance out. The Murphy book is no longer current, and its complex marbling of interpretive approaches, modes, and techniques boggles undergraduate minds more thoroughly and frequently than Brest and Levinson's six-part model, borrowed from Levinson's colleague Philip Bobbitt, presumably would. On the other hand, while Brest and Levinson is incurably Socratic, Murphy et al. takes and defends clearer positions, particularly regarding the fundamental concepts of democratic theory. In short, for depth, currency, and thoroughness of legal coverage, the edge goes to Brest and Levinson, but Murphy, Fleming, and Harris still has a pedagogical edge for undergraduate instruction. (Of course this difference only mirrors the different primary audiences of the two books in the first place.)

What, more specifically, do political scientists gain and lose in a text designed to perform primarily for law students? Some of the gains are substantial, at least in these authors' skillful hands:

1. Law texts may give more attention to the political consequences of legal decisions that lie outside the conventional federalism/ separation of powers/civil rights canon. Here the sheer policy significance of *SWIFT V. TYSON* and *ERIE* comes through clearly, and the authors don't skimp the administrative constitutional issues, for example, *DESHANEY V. WINNEBAGO*.

2. For simple pedagogic clarity, the common pattern in political science casebooks -- I think of it as the Mason and Beaney legacy -- of an introductory overview essay followed by an unbroken string of "significant cases" has always struck me as inferior to the pattern followed here that constantly weaves cases, authorial reaction and comment, and other scholarly comment, together. Cases are edited according to their merits. MCCULLOCH, which

illustrates interpretive practice early on, is virtually unedited. Other cases are condensed to a few paragraphs. This flexible format pays off particularly nicely when it enables the authors to clarify the historical significance of a case that was so different in its time than it has become in ours. *EX PARTE YOUNG*, for example, has an important place in modern civil rights litigation, but in its time, like many early civil rights cases, *YOUNG*, which allowed a suit to strike down rate regulations, moved toward *LOCHNER*.

3. The socratic I-thou voice can sharpen issues wonderfully. Commenting on the near lynching of a judge who refused to suspend foreclosure proceedings in Iowa shortly before the decision in *Home Building and Loan*, the authors ask the readers: "To what extent should the social impact of, or popular reaction to, a law influence the determination of its constitutionality? Would your views of, say, *PLESSY V. FERGUSON* change if you were persuaded that racially integrated transportation or schools would have been met with a violent response from racists" (p. 352)? And note how the authors rhetorically resurrect Louis Brandeis when they ask in the present tense the sixty-four dollar question about Brandeis's still radical-seeming position in *WHITNEY*, "What do you think that Justice Brandeis means by his reference to 'injury to the State'" (p. 336)? The book's prose is often brilliantly economical and lucid. The discussion of the various forms of rationality analysis in equal protection cases (pp. 560ff) has no equal.

4. The authors model for law students a conscientious thoroughness and balance that serves us as well. The materials are unfailingly apt even when they are obscure -- an unpublished essay by Duncan Kennedy, for example, or a letter from Gerald Gunther to the Justice Department. The book passes my idiosyncratic first test for any constitutional casebook, namely that it report extensively Justice Harlan's dissent in *LOCHNER*.

The book excels at its law school virtues, but with these come some usually acceptable costs:

1. Those who design and publish for law students assume that these students bear the burden of following whatever is on the page. These books do less with margins, headnotes, and typeface differences to keep readers moving smoothly ahead. So here at points one must try several times to get a gear to shift.

2. With the socratic voice, from Plato's reports onward, comes an irksome tendency to seem above it all, to avoid moral or analytical closure. When a politically suspect decision -- *DEBS* or *YOUNGSTOWN* -- begs for criticism, the attitude that everyone must make up his or her own mind rankles.

3. Occasionally legal terms unfamiliar to a wider audience creep in unexplained, like references to "fee ownership" in the Hawaiian land redistribution case (*MIDKIFF*). Yet what amazes is how rarely this erudite book saddles us with jargon and technical language.

Finally, this book's most important qualities have nothing to do with its law student audience. This is, above all, an academic book. Its index refers to Thomas Grey and Richard Epstein but contains no entry for Stephen Field. It is chock full of references to, and excerpts from, the recent cornucopia of academic output in constitutional theory, including the authors' own fine work. Personally I'd wish for less fence straddling on these issues. The authors, for all their skepticism, seem to have one foot in the old school. Because they often seem to say that originalist positions are identifiably real and visibly distinct from non-originalist positions, they seem not to embrace the contemporary hermeneutic center. There is surprisingly little Dworkin, and no Fish, in this constitutional world.

But a work that does so much so well barely deserves these quibbles. These academic authors can't help but honor the life of the mind. They refuse to follow the conventional and outmoded historical or textual schemes for classifying the cases. They nest clusters of cases in fresh ways that highlight our political heritage and confirm their skepticism about separating law from politics. We move from *SLAUGHTERHOUSE* to *LOCHNER* to the World War I free speech cases in twinklings and see more vividly the political impulses behind them all. Some issues -- criminal procedure and many liberties issues, for example -- receive less than average coverage, but equality, including Native American issues, gets exceptionally thorough coverage. For graduate students seeking a comprehensive overview of the constitutional law and theory, the book is ideal. Were I able to teach undergraduates for nine months, I would use it for them, to.

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**CONSTITUTIONAL INTERPRETATION**, 5th Ed. by Craig R. Ducat and Harold W. Chase. St. Paul: West Publishing Company 1992. 1700 pp. Cloth \$58.25. Paper: Volume I (700 pp.) \$28.25; Volume II (1050 pp.) \$38.25. **REVIEWED BY** Beth M. Henschen, Department of Political Science, Loyola University Chicago

In this fifth edition of *Constitutional Interpretation* (and the third produced without Harold Chase), Craig Ducat continues to offer a comprehensive treatment of the major areas of constitutional law. Rather than take a particular thematic approach, the authors seek to provide a set of materials that is "both generous and compatible with many different approaches to teaching about the Constitution" (pp. vii-viii)--and they do just that. The number of cases that are included (in introductory discussions if not excerpted) is nearly exhaustive, and instructors who reflect different styles of teaching will be comfortable with the straightforward manner in which the cases are presented.

The first chapter (Judicial Power) has a somewhat

longer introductory section (20 pages) than most of the others, since it includes a description of federal court jurisdiction and case processing in addition to a review of the Supreme Court's interpretation of the nature and extent of judicial power. Interspersed among the case excerpts are some additional discussions that add interest. "When Should Justices Disqualify Themselves?" (pp. 29-31), for example, provides information that is relevant to John Marshall's participation in *MARBURY*. Sometimes, however, these features seem to be rather abruptly "stuck in." "The Process By Which The Supreme Court Decides Cases" (pp. 46-49) follows *EX PARTE MCCARDLE* and precedes *U.S. V. WOODLEY*, a decision by the Ninth Circuit Court of Appeals involving the president's power to make recess appointments to federal courts.

Finally, Chapter 1 includes some essays, one by Ducat, for example, on methods by which justices interpret the Constitution (pp. 82-98) and another by Lon Fuller on adjudication (pp. 120-123). While these topics are certainly not irrelevant, the level at which they are addressed (especially by Fuller) may be beyond the reach of a fair number of undergraduates, and I am not certain that they add much to the text. It is also somewhat curious that, for the most part, the twelve remaining chapters contain neither supplementary essays nor the additional "feature sections" noted above.

Chapters 2, 3, and 4 deal with legislative and executive power; Chapters 5 and 6 cover the powers of the national and state governments in the federal system. A new chapter (7) on substantive due process is a welcome addition. It summarizes the Court's interpretation of the Contract Clause and includes cases on liberty of contract and privacy rights. In this edition, material on procedural guarantees in the administrative process has been eliminated (wisely, I think) from Chapter 8, Due Process of Law. Chapter 9, Obtaining Evidence, is followed by two very thorough chapters on speech and press. Chapter 12, Freedom of Religion and Chapter 13, Equal Protection of the Laws, round out the text.

Surely one of the greatest strengths of *Constitutional Interpretation* is the wealth of cases it includes. Coverage of the Court's decisions comes in four forms: 1) case excerpts that are appropriately introduced and edited; 2) discussions of other cases interspersed among excerpts in which a fair amount of the Court's ruling is reprinted; 3) tables of additional cases relevant to a particular subject matter; and 4) cases mentioned in chapter introductions. My only disagreement with this format is that the cases which are scattered among the excerpts come up rather abruptly (see, for example, *LYNCH V. DONNELLY*, pp. 1253-1258; *DAVIS V. BANDEMER*, pp. 1445-1446). Setting these decisions off by a heading would help. In a similar vein, I think it would be useful for the reader if the chapter introductions were split up so that a discussion of a single topic (for example, warrantless searches and

seizures, pp. 788-793) immediately preceded the case excerpts in that area (pp. 818-854). A final minor point: the minimum monetary amount in diversity cases has been raised from \$10,000 (p. 7) to \$50,000.

In addition to being published in one master volume, *Constitutional Interpretation* has now been divided into two paperback texts which facilitate its use in a three-course sequence. *Powers of Government* includes Chapters 1-7; Chapters 7-13 comprise *Rights of the Individual*. I used earlier editions of Ducat and Chase when I taught constitutional law in a two-course sequence but had to search for other, more appropriately divided texts when I came to Loyola with its three courses on constitutional law. I will now happily reconsider using one of the most comprehensive casebooks for political science classes on the market.

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**CONSTITUTIONAL LAW FOR A CHANGING AMERICA** by Lee Epstein and Thomas G. Walker. Washington, D.C.: Congressional Quarterly Press 1992. Paper: Volume I (550 pp.); Volume II (691 pp.) \$26.95 each. **REVIEWED BY** Edward V. Heck, Department of Political Science, San Diego State University

Nearly a decade ago Lawrence Baum (1983:194) observed that constitutional law texts were beginning to reflect the efforts of scholars to apply the perspectives and major findings of judicial process research to the study of constitutional law. Lee Epstein and Thomas Walker's two-volume *Constitutional Law for a Changing America* provides yet another option for the constitutional law instructor seeking a text that will introduce students to constitutional interpretation and the Supreme Court from the perspective of political science.

In terms of organization and case selection, Epstein and Walker's entry in this market is very much a textbook designed for a traditional two-semester constitutional law/civil liberties sequence. The volume subtitled *Institutional Powers and Constraints* covers the topics traditionally found in a semester course emphasizing governmental powers (judicial review, separation of powers, federalism, economic substantive due process, etc.), while the *Rights, Liberties, and Justice* volume provides excerpts from most of the cases generally covered in courses that emphasize the protection of constitutional rights by the modern Supreme Court. The books owe a great deal to traditional one-volume textbooks, many of which are cited in the brief essays that introduce the chapters and provide transitions between cases. Yet, Epstein and Walker have gone beyond these traditional texts in many ways, most notably by paying explicit attention to the lawyers responsible for bringing cases to the Court and the arguments they presented to the justices. Not surprisingly, the authors highlight the many contributions of interest group lawyers, while also discussing the key arguments of

governmental and private attorneys in essays and case introductions. In addition, these volumes offer features rarely found in traditional textbooks, including biographical sketches of leading justices and numerous photographs and illustrations that should help give students a good feel for the people involved in litigating constitutional issues.

Although there is no explicit organizing theme that is carried through the two volumes, many of the chapters are organized around one or more themes with case introductions generally making clear how specific cases illustrate the themes. Some of the organizational decisions are somewhat unconventional and appear at first glance to be problematic. In the *Institutional Powers and Constraints* volume, for example, the authors have split commerce clause cases between separate chapters on nation-state relations (HAMMER V. DAGENHART and U.S. V. DARBY) and the commerce power (U.S. V. E.C. KNIGHT and WICKARD V. FILBURN) with little regard for chronological development. Similarly, a chapter on the right to privacy in the rights and liberties volume mixes several Fourth Amendment cases with abortion and other privacy cases based on the due process clause of the Fourteenth Amendment. Amazingly, it works. The introductory and transitional essays clearly bring out how the cases illustrate the themes of the chapters. And, of course, an instructor may simply choose to assign the commerce clause/Tenth Amendment cases in chronological order or to cover all Fourth Amendment cases under the heading of rights of the accused.

Like all the books I examine each year as part of the never-ending search for the "perfect" constitutional law casebook, these volumes underrepresent a few topics I consider important and omit a few of my favorite cases (notably DUNCAN V. LOUISIANA). The chapter on incorporation of the Bill of Rights is thorough in covering the historical background of the debate, but very weak on Warren Court decisions embracing selective incorporation. Although the two death penalty cases excerpted in the book are precisely those I would select if limited to two cases, instructors who would like their students to explore the links between capital punishment decisions and the changing membership of the Court must look elsewhere for the cases. In the last analysis, though, I know of no competing text that provides a better selection of the cases that are vital to an understanding of the Court's role in interpreting a Constitution of rights and powers.

Similarly, I found these volumes superior to most in striking the right balance between including too much of the original text and overediting. Almost without exception, the student who reads the case excerpts in *Constitutional Law for a Changing America* should come away with a clear understanding of the major point of each majority opinion and at least some feel for the flavor of judicial discourse at the Supreme Court level. Naturally, one can quibble about the editing of specific cases. On the

whole I found the decision to divide excerpts from complicated cases among different chapters (MCCULLOCH V. MARYLAND in legislative powers and nation-state relations chapters) or even different volumes (SLAUGHTERHOUSE CASES) somewhat artificial and potentially confusing. Looking beyond such relatively minor points, I was left with two serious criticisms of the editing of cases. Surely the five-plus pages devoted to excerpts from MARBURY V. MADISON would be better utilized by including Marshall's arguments about why the Constitution is "fundamental and paramount" law rather than unusually lengthy excerpts from the introductory sections of the opinion. Moreover, I was very disappointed to find that many significant dissenting opinions (for example, Holmes in LOCHNER, Stone in U.S. V. BUTLER, Rehnquist in ROE V. WADE) are omitted entirely. I regard omission of important dissents as a serious limitation, because it leads students to underestimate the reality of internal conflict in the Court, but I must hasten to note that the authors often address the key themes of omitted dissents in essays or in other cases. For example the right to privacy chapter concludes with precisely the excerpts from plurality, concurring, and dissenting opinions in WEBSTER V. REPRODUCTIVE HEALTH SERVICES needed to prepare students to discuss the votes and opinions in PLANNED PARENTHOOD V. CASEY.

An excellent appendix and clear, concise essays add materially to the value of the book. Useful features in the appendix include an impressive thumbnail sketch of the Court's history and a brief outline of Supreme Court procedures that is much clearer than most essays on the topic. Introductory essays in each chapter set the stage without detracting from the cases themselves. Transitional essays between cases generally provide concise and accurate summaries of cases that cannot be included in full but are essential to understanding what follows. Perhaps the single best feature of the book is the inclusion in each case introduction of a wealth of material on the political and social context of the case. I know of no other text that offers as much useful background material on major "quarrels that shaped the Constitution" as found here, particularly in the *Institutional Powers and Constraints* volume where such material is vital for students with limited knowledge of American history.

Either of the two volumes could stand alone for the appropriate one-semester/quarter course. The two volumes can be used in sequence wherever a two-semester course adheres to traditional norms for organizing such courses. Although my own two-semester course in constitutional law is a bit too unconventional to correlate with the usual allocation of cases to the two separate volumes (I cover the Supreme Court and race relations from *Dred Scott* to Ollie's Barbecue during the first semester), I have no hesitation in recommending these volumes to instructors who are comfortable with the division of case materials along conventional lines. For new instructors and

those returning to the constitutional law course after a lapse of a few semesters, *Constitutional Law for a Changing America* should provide just the right mix of structure and flexibility.

### Reference

Baum, Lawrence (1983). "Judicial Politics: Still a Distinctive Field" in Finifter, Ada W., ed., *Political Science: The State of the Discipline*. Washington: American Political Science Association.

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**AMERICAN CONSTITUTIONAL LAW** by Louis Fisher. New York: McGraw Hill 1990. 1440 pp. Cloth \$54.86. Paper: Volume I (640 pp.); Volume II (896 pp.) \$27.96 each. Reviewed by *Susan Burgess*, Department of Political Science, University of Wisconsin-Milwaukee

Not too long ago, a prominent constitutional theorist was publicly lamenting the lack of a robust and wide ranging constitutional debate in the American political system. When I suggested that the kind of exchange he was looking for could be found by supplementing judicial constitutional interpretation with congressional, executive, state, and popular constitutional interpretation, he quickly replied that statutes, rules, and public opinion are flat and contribute little or nothing to creating a more engaging or dialectical constitutional debate. Consequently, he concluded, Supreme Court opinions are the only viable source of constitutional interpretation.

Academics often write and teach that the American constitutional debate is deficient, or lacking breadth and depth. But that judgment is at least partially based on assumptions about (1) the (alleged lack of) ability of the "political" branches and the public to interpret the Constitution, and (2) the (alleged lack of) a dynamic relationship between law and politics.

Louis Fisher reveals and challenges these assumptions in his text, *American Constitutional Law*. The result is a multi-dimensional representation of American constitutional interpretation that is much broader and more complex than the usual fare. According to Fisher, most constitutional law texts "concentrate on court decisions and overlook the political, historical, and social framework in which these decisions are handed down. Constitutional law is thus reduced to the judicial exercise of divining the meaning of textual provisions. The larger process, including judicial as well as nonjudicial actors, is ignored" (p. xi). Fisher seeks to provide the previously overlooked material.

Political scientists of various stripes assume a disjunction between law and politics. Some scholars assume that politics dominates constitutional interpretation, and that legal doctrine and rhetoric neither affect nor limit the shape of politics. Others overlook the politics of constitu-

tional interpretation, analyzing legal principles and doctrine as if they are not articulated by political actors who are well aware of the political consequences of their interpretations. In either case, the intersection of law and politics is left largely unexamined.

Fisher places constitutional interpretation squarely within the larger political environment in which it occurs. He argues that the "political process must be understood because it establishes the boundaries for judicial activity and influences the substance of specific decisions, if not immediately, then within a few years.... A purely legalistic approach to constitutional law misses the constant, creative interplay between the judiciary and the political branches" (p. xi).

He realizes, however, that in order to reveal the intersection between law and politics, he will have to convince readers, schooled to accept judicial supremacy as a permanent part of the American constitutional system, that "the Supreme Court is not the exclusive source of constitutional law [or] the sole or even dominant agency in deciding constitutional questions" (p. xi). Fisher shows that congressional constitutional interpretation encompasses much more than reading statutes. He demonstrates that it includes congressional floor debate, hearings, and reports and that these sources of interpretation reveal at least as much breadth and depth as the standard judicial opinions which are also well represented in this text.

*American Constitutional Law* makes it clear that characterizing statutes as the entirety of congressional constitutional interpretation would be as misleading as claiming that the headnote to a case contains the breadth and depth of the Supreme Court's reasoning. Of course, congressional hearings do not follow the same rigid format as judicial opinions do, nor do they contain nearly as much legalistic jargon. But that is only problematic if one assumes that the Constitution is primarily a legal document which is best interpreted by "experts" who can master legal forms and jargon. Those assumptions are, of course, challengeable, particularly from the standpoint of democratic authority. Fisher's text provides the grounds for such a challenge.

Each chapter of *American Constitutional Law* employs not only familiar Supreme Court cases, but also congressional and executive constitutional interpretation. Chapters include useful introductory essays, and other secondary materials, which relate the materials to one another and reveal the key questions and points to be explored in the chapter. My students regularly comment that these essays are clearly written and thus help them better understand the difficult primary material that follows. The extensive citations to primary materials and suggestions for secondary reading appear in every chapter and serve to guide students in beginning more detailed research in selected areas.

*American Constitutional Law* begins with five introductory chapters that review the political and legal context in which American constitutional interpretation takes

place. These chapters introduce the approach of the book, and include material on jurisdiction, standing, judicial organization, judicial strategy, judicial review, nonjudicial constitutional review, and the role of interest groups in constitutional interpretation. For some students, this material may be new, and thus forms an essential basis for the rest of the semester's work. For others it may serve as a review. In either case, this approach ensures that students are in roughly the same starting place before study of the substantive areas of constitutional law begins.

The middle chapters of the book contain judicial and non-judicial materials in the standard areas of constitutional interpretation. The selection of cases is standard and representative; what is novel is the inclusion of congressional and executive materials as an integral part of constitutional interpretation. The topics include separation of powers; domestic conflicts; emergencies and foreign affairs; federal-state relations; property rights; free speech in a democratic society; freedom of the press; religious freedom; rights of the accused; search and seizure; racial discrimination; group rights; rights of privacy; and political participation.

In keeping with the overall theme of the book, the final chapter explores "efforts to curb the court." It contains materials on constitutional amendments, statutory reversals, court packing, curbing jurisdiction, noncompliance, and congressional objections to judicial finality in constitutional interpretation. Appendices include the text of the Constitution, a list of the members of the Court (1789-1989), a glossary of legal terms, and a very useful essay on how to do research in public law.

*American Constitutional Law* is available in a single volume, hardcover edition, as well as in a two volume paperback split (Volume I is entitled *Constitutional Structures: Separated Powers and Federalism*, Volume II is *Constitutional Rights: Civil Rights and Liberties*). Consequently, Fisher's text can be used for a one- or two-semester sequence in constitutional law. In addition, McGraw Hill allows instructors to build a book precisely fitted to their course; they may omit or restructure the order of any of the materials available in the original edition of *American Constitutional Law*.

I have used this book for two years now, in a two semester sequence, with great profit. I hope that in future editions Fisher will provide additional non-judicial materials to balance out the abundance of cases now included. Because students (not to mention scholars) are so wedded to judicial supremacy, they tend to be extremely skeptical about the importance and quality of congressional, executive, state, and public participation in constitutional debates -- particularly if the standard examples of judicial interpretation are not offset with several sustained examples of non-judicial interpretation. For the time being, Fisher's *The Political Dynamics of Constitutional Interpretation* (co-authored with Neil Devlin, St. Paul: West Publishing Co., 1992), contains extensive non-judicial

primary material set in the context of a secondary discussion of relevant judicial cases. As such, it is a very useful supplement to the excellent base that Fisher provides for the study of politics and law in *American Constitutional Law*.

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**CONSTITUTIONAL LAW**, 12th Ed. by Gerald Gunther. Westbury, New York: Foundation Press 1991 1675 pp. Cloth \$46.00. **REVIEWED BY** Joseph F. Kobyłka, Department of Political Science, Southern Methodist University

Gerald Gunther's *Constitutional Law* is a "venerable" text. I became aware of it as an undergraduate in the 1970s, but Gunther's association with it dates back to 1965. This durability is impressive, but still more so is the fact that his first edition of this case law text was ITS seventh; it was first issued in 1937 by Noel T. Dowling, a professor of law at Columbia University. Thus, students of constitutional law have been using this volume, in one incarnation or another, for over 55 years! Surely something that has survived the vagaries of the publishing world this long is doing something right, and this volume provides an impressive overview of much of the legal literature on the cavernous subject matter of "Constitutional Law."

Evaluating a case law reader is a difficult task. Different people teach this material in different ways and, as such, any evaluation will be prejudiced by two sets of competing preferences: those of the book's user, and those of its editor/author. Although I try to separate MY instructional taste, style, and emphasis from this discussion, what follows is undoubtedly influenced by the way I approach teaching law-based classes. Indeed, while I would not adopt Gunther's volume as required reading for my classes, Foundation Press's advertisements note that it has been adopted in over 200 schools. Given its many virtues, this is not surprising. What keeps me from joining my colleagues in their decision is the essentially legalistic structure of the work, a structure that too frequently obscures the extent of the political nature of the Court in the American system of governance.

In the "Preface to the Ninth Edition," reprinted here, Gunther writes that there are three ways to structure a constitutional law text -- traditional, historical, and methodological -- and that each approach has its own utility. He opts for the "traditional, topical organization," holding it "to be the best vehicle for the pursuit of all the major themes" (p. xxvi). Using this schema, Gunther presents the material under three general headings: Part I, Judicial Function; Part II, Structure of Government; and Part III, Individual Rights. Parts I and II take up about a quarter of the book, with Part III -- curiously omitting criminal law issues and cases -- occupying the remainder.

The case coverage provided by Gunther borders on the encyclopedic. He includes most noteworthy cases via lengthy excerpts (denoted by boldface title, formal opinion presentation), brief excerpts (denoted by capitalized title, substantial opinion quotation), or citations (occasionally in opinions, usually in introductory or linking essays). The case presentation follows a traditional arrangement, and the three chapters on freedom of expression issues are first rate, as is the text's chapter (Part I) on "The Judicial Function in Constitutional Cases." Although one could quibble with the excerpt length of the selected cases -- for example, the CURTISS-WRIGHT opinion includes none of the historical analysis that undergirds its holding -- the major issues are clearly and comprehensively covered. I particularly liked his coupling of EX PARTE MCCARDLE with a discussion of U.S. V. KLEIN -- an important limiting case that most texts neglect. Also excellent is the coverage accorded the "state action doctrine." Surprisingly, however, his judicial power section does not contain a pointed discussion of the dimensions of activist and restraintist role orientations, and his treatment of "technical barriers" such as standing, mootness, ripeness, is put off until the last chapter of the book. Although one could assign the last chapter along with the first, joint textual treatment puts these difficult concepts in more pointed relief.

Gunther pays a price for his encyclopedic discussion of the areas of law he canvasses in some of his excerpting. A good example of these difficulties is his treatment of the religion clauses. Although noting most of the significant cases -- conspicuously absent is extended analysis of BOARD OF EDUCATION V. ALLEN and WALZ V. TAX COMMISSIONER -- Gunther presents substantial excerpts of only seven cases (five establishment clause, two free exercise). Notably lacking are substantial extracts from the school prayer cases ENGEL V. VITALE, ABINGTON SCHOOL DISTRICT V. SCHEMPP, and WALLACE V. JAFFREE, and the "parochial" cases LEMON V. KURTZMAN -- the genesis of the tripartite test that has "controlled" establishment clause litigation since 1971 -- COMMITTEE FOR PUBLIC EDUCATION V. NYQUIST, MEEK V. PITTINGER, WOLMAN V. WALTER, and COMMITTEE FOR PUBLIC EDUCATION V. REGAN. In the absence of extended coverage of some of these cases, the parochial case Gunther chose for fuller excerpting -- MEULLER V. ALLEN -- hangs without context and, in large measure, content.

A fuller airing of at least some of the opinions in these cases is necessary to develop an understanding of the doctrinal confusion that characterizes establishment clause litigation and the shifting coalitions of justices that are responsible for it. In legalistic fashion, Gunther accounts for the holdings in these cases, but his treatment does little to allow students to see the constitutional values and political dynamics underlying them. The internal structure of the religion chapter compounds this problem.

Eschewing a historical organization of the cases for a legally topical one, he artificially particularizes doctrinal developments as they evolved and shifted over time. For one approaching the Court as a political scientist rather than as a lawyer, Gunther's presentation of this area of law is ultimately unsatisfactory.

Much of the criticism noted above applies to the rest of this volume. The volume presents so much material, and assumes such a large store of prior knowledge about things constitutional, that I fear most undergraduates will get lost in the thicket of the law and never quite grab onto the cases that provide the law its structure and the Court its ongoing tradition and direction. The latter form the grist of an undergraduate course in constitutional law. A few other qualms include: fragmenting discussion of voting rights between two very different chapters (civil rights and technical barriers); splitting the discussion of pre-New Deal economic regulation cases between two chapters; and depreciating the Court's early treatment of contract clause litigation by only noting, not excerpting, FLETCHER V. PECK, DARTMOUTH COLLEGE V. WOODWARD, and CHARLES RIVER BRIDGE V. WARREN BRIDGE.

Gunther's CONSTITUTIONAL LAW is stunningly comprehensive. Save for the omission of any treatment of criminal law issues, the scope of its coverage is extensive; the legal analysis it provides is relevant and impressive; and the introductory and bridging essays it provides are wonderfully informative. (Note, for example, the timely section on "hate speech.") It stands -- for both students and professors -- as an excellent reference resource for cases and law review articles on selected topics. Indeed, it is not really as much a case law textbook, though it is that, as it is an introductory treatise on constitutional law. Its primary problem -- and problem is not REALLY the right word -- is that its coverage is so extensive and intensive that I think it would numb all but the most intelligent and persistent undergraduate students. Add to this the book's legalistic focus -- Gunther is, of course, a professor of law and not a social scientist -- and I think that many undergraduates would find themselves mired in legal minutiae and miss the political dimensions and ramifications of the Court's treatment of the issues that come before it. In form, style, and content, CONSTITUTIONAL LAW seems to me better suited for use in a graduate seminar or law school setting, or as a supplemental reference work for highly motivated undergraduates who wish to explore more fully particular facets of the law in which they have a keen interest.

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**CONSTITUTIONAL LAW: CASES AND ESSAYS**, 2d Ed. by Sheldon Goldman. New York: HarperCollins 1991. 916 pp. Cloth \$45.00. **REVIEWED BY** Mark A. Graber, Department of Government, University of Texas at Austin

*Constitutional Law: Cases and Essays* is the text for professors who cannot decide how to teach constitutional law. For those who want to teach constitutional history, Goldman opens with four chapters detailing the historical background of major Supreme Court cases, the voting patterns on the Court at different historical periods, and the constant political efforts to pack and unpack the federal judiciary. Those who want to teach constitutional politics will find those chapters an excellent introduction to the external and internal forces that shape judicial decisionmaking. Those who want to teach constitutional doctrine will be pleased that the last 600 pages of the text are chock full of all the important decisions and opinions ever handed down or written by Supreme Court justices (with short summaries of how constitutional policymaking has evolved in different areas of law for those who want to teach constitutional history and nice tables commenting on the impact of the decisions for those who want to teach constitutional politics). Only professors who want to teach constitutional theory are not likely to consider CONSTITUTIONAL LAW. The text barely acknowledges the philosophical debates over constitutional law, American constitutionalism, or particular constitutional doctrines that have occurred throughout American history and are currently exciting both the academy and the general public.

Still, notwithstanding the absence of one important course, Goldman offers an excellent smorgasbord of the various approaches that empirically minded political scientists take to constitutional law. The text's failure to include material on constitutional theory is hardly a fatal omission given the numerous texts already on the market that cater to constitutional law professors with a more philosophical bent. Professors who simply want to spend some time on theoretical matters in their courses will likely find a cheap paperback that can supplement *Constitutiona Law*. Philip Bobbitt's *Constitutional Fate* comes to mind, though other scholars will no doubt have their favorites. Given the overwhelmingly doctrinal or theoretical bent of most casebooks on the market, Goldman's decision to incorporate more social science materials makes his text a welcome addition to the alternatives available for persons who teach undergraduate courses in American constitutional development or American Constitutional politics.

Nevertheless, in one crucial dimension, Goldman lacks the courage of his empirical political science convictions. The first four chapters of his work offer important material on some facets of the American constitutional experience that political science students should learn but are not available or easily accessible in other major casebooks. Few works other than *Constitutiona Law* discuss, for example, how the internal dynamics of the Court affect judicial output or present any information on the impact of judicial decisions. The 600 pages of cases in CONSTITUTIONAL LAW, however, seem to be there for no better

reason than the decision made in 1870 by Christopher Columbus Langdell that law students should spend almost all of their time reading cases. Why this means that political science students in 1992 should spend at least three-quarters of their time reading cases is not explained. Undergraduates taking constitutional law should, of course, be exposed to such classic opinions as the Holmes' dissent in *ABRAMS V. UNITED STATES*, but do they really have to read *BOOS V. BARRY*, particularly if the dominant theme of the course is empirical approaches to the American constitution? As a result of the great weight given to cases in the text, *Constitutional Law* still feels like a traditional doctrinal casebook with a little political science thrown in, rather than a distinctive work emphasizing those features of American constitutionalism of most interest to social scientists. Perhaps HarperCollins may have worried that less emphasis on doctrine would have reduced potential sales, but for reasons to be discussed below the Goldman text is not likely to be adopted by professors who are primarily interested in having students analyze judicial opinions.

Professor Goldman's praiseworthy efforts to ensure that constitutional law courses include a wide variety of perspectives create some organizational and substantive problems. Rather than integrating different approaches, *Constitutional Law* devotes distinct sections to different aspects of American constitutionalism. The work first offers an historical review of the political settings of constitutional decisions, moves to a second historical review of the internal workings of the Supreme Court, and then offers a lengthy series of judicial opinions organized by topic rather than by history (although cases within each topic are for the most part organized historically). Even Professor Goldman admits that he does not teach his course as his text is laid out, and no other professor is likely to either. As a result, students may feel slightly disjointed as they continually get such reading assignments as pages 36-45, 113-18, and 357-68. Given the general historical bent of the text, *Constitutional Law* would be simpler for both student and teacher if all the material were presented in one historical sweep.

The second problem with Goldman's effort to present many different perspectives on the American constitutional experience is not so easily curable. Students reading the early essays in *Constitutional Law*, especially the material in chapters four and five on "The Justices -- Their Appointments, Backgrounds, Voting Patterns, and Patterns of Group Interaction," will learn constitutional politics from an expert, a scholar who is one of the foremost authorities in the country on these matters. No one, however, is an master of everything. Thus, although the selection and editing of cases in the doctrinal sections are adequate, the last six hundred pages of the text seem perfunctory at times with comments kept to a minimum. Not surprisingly, the doctrinal sections in casebooks written by scholars who spend most of their time studying

judicial opinions are superior to the analogous sections in *Constitutional Law*. Scholars who spend most of their times studying judicial opinions, however, usually write casebooks that lack the empirical virtues of the Goldman text. Unfortunately, any professor using a casebook will be forced to make some tragic choices because no scholar, even such a distinguished scholar as Sheldon Goldman, can write authoritatively on all aspects on the American constitutional experience.

The appropriate blurb for the Goldman work is "if you are going to use a text to teach constitutional law, you should seriously consider *Constitutional Law*." The second half of that sentence, however, is "but you probably should not use a text." Undergraduates should be exposed to the wide variety of perspectives that Goldman offers (with more theory thrown in), but no public law scholar is capable of adequately presenting material on constitutional development, constitutional politics, constitutional doctrine, and constitutional theory. Indeed, this observation suggests the following alternative. Perhaps for the next edition of *Constitutional Law*, HarperCollins and Professor Goldman should scrap the cases, retain the splendid essays, and put out an inexpensive paperback. The money students would save could be invested in other paperbacks devoted to more theoretical issues in American Constitutionalism (e.g., Smith's *Liberalism and American Constitutional Law*) and perhaps a reader of primary sources that included major judicial decisions as well as other documents of theoretical and historical significance (e.g., Urofsky's *Documents of American Constitutional and Legal History*). This might make a great syllabus for an undergraduate political science course in constitutional law.

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**CONSTITUTIONAL LAW: CASES IN CONTEXT C**  
 by Susan M. Leeson and James C. Foster. New York: St. Martin's Press 1992. 856 pp. Cloth \$38.00. **REVIEWED BY Liane Kosaki**, Department of Political Science, Washington University St. Louis

There is sometimes grumbling among those of us in the judicial subfield about our relegation to the margins of political science and to the wilderness of service teaching. As we look out at crowded constitutional law classes, we ask ourselves why we deserve this fate.

One answer to this question is the content of our courses, especially in the case of constitutional law. Most of the time, our courses in this area look pretty much like law school courses rather than political science courses. Indeed, when I took constitutional law as a graduate student, the text was Gunther's, a text which not only LOOKED like a law school text, it WAS a law school text. Moreover, an examination of constitutional texts leads the reader to conclude that courses which use these texts are structured very much like any law school course. The emphasis in many of the texts is on understanding constitutional law as the development of doctrine, rather than as a part of a political process. Thus, the organization of the texts is likely to be topical, with little, if any, attention to the historical and political contexts which might have generated these cases or have influenced the outcomes. To be sure, some casebooks give some lip-service to Supreme Court decisions as policy, or as outcomes of a political process. But that perspective is quickly abandoned for a focus on the doctrines reflected in the Court's decisions.

This is precisely the point recognized in the introduction to the new text by Susan Leeson and James Foster, and the criticism is well-taken. Rather than taking a strictly doctrinal approach, the authors have chosen to emphasize the historical contexts of these cases. Thus, the organization of the book is chronological, rather than topical. This approach allows instructors to discuss cases within a political context -- for example, discussing the decision in *MARBURY* as an outcome of the political battles between the Federalists and the Jeffersonian Republicans, *GAULT* as part of the debate about the rights of juveniles. Such an approach allows both teacher and student to consider how the kinds of legal questions generated by cases, and the decisions in those cases, can be affected by the political and social forces of the times. Moreover, the authors manage to explain the cases in a clear, readable style.

This more historical approach has definite advantages, especially with respect to the earliest period of the Court. In my experience, constitutional law texts are apt to give short shrift to the earliest cases dealing with slaves or Native Americans, for example. This is despite the fact that cases like *PRIGG* and *CHEROKEE NATION* can tell students a lot about the nature of the Court's early understanding of federalism (affected as it was by the institution of slavery), and the boundaries of the Court's power as an institution. Comparing *CHEROKEE NATION* with *COOPER* could be an instructive exercise for a generation of students who believe that when the Court speaks, people listen and obey. The early understanding of federalism is not irrelevant, given the attempts of Republican administrations, especially Reagan's, to institute a "new federalism." Moreover, understanding of the Court's history can help students to understand its evolution as a political institution.

The text also includes a great deal of information about each featured case (that is, cases for which excerpts from opinions are provided). This information includes the obligatory statement of facts (it should be noted that the statement of facts is pretty extensive, since the authors provide not only the facts of the case itself, but the legislative, social, and political background of the case), the actions of the lower court, and the vote of the justices. Not only are case excerpts fairly extensive, but summaries of the arguments provided by opposing counsel are provided. Something that is unusual is that the authors have also identified groups which filed *amicus curiae* briefs in featured cases, including summaries of the briefs as well. This allows students to evaluate the role of interest groups in the judicial process. Each chapter of the text also contains an introductory essay which identifies and delineates the issues that define each historical period, a useful feature for the student not well-versed in American history.

Another useful feature is a chapter devoted to general information about the Supreme Court. The chapter includes short discussions of the meaning and significance of judicial review, the nature of the Court's power, how a case gets to the Supreme Court, a brief description of the Court's caseload, and a guide to reading and briefing Court opinions. This is a good, although somewhat simple, introduction. Some might prefer to supplement this section with a general text on the Court. One curious omission in this section is any discussion about the selection and impact of Supreme Court justices. Given the importance of the study of judicial behavior to the subfield, I hope that the authors will add a section on this topic in future editions.

Thus, the strength of this text lies in its attempt to ground the study of constitutional law squarely in the relevant social and political environment. Every effort is made in the introductory comments and in the questions and commentary following each case to emphasize these concerns. The selection of cases, at least for the period of the Court's history prior to the emergence of the modern Court after the New Deal, is also pretty extensive.

Despite my enthusiasm for the approach taken in this text, however, the text itself is not perfect. In my view, there are two flaws. The first flaw has to do with the level of conceptual analysis presented by the authors. The authors try to make the study of constitutional law more comprehensible to the student by dividing the Court's history into three major eras: 1803-1876; 1877-1936; 1937-1991. They also identify four major principles (although I think they might be more accurately be called "issues") that are presented in cases: limited government; promotion of commerce; protection of private property; and individual liberties. While I appreciate the authors' attempts to make constitutional law less intimidating by providing these two frameworks, I fear that what is gained in accessibility might levy a cost in terms of grasping the

complexity of the cases. We can start by considering the definition of the three periods of Court history and its interaction with one of the four principles, limited government. The authors describe the first period (1803-1976) as one where "a strong national government is consistent with the principal of limited government" (p. 2). The authors have defined "limited government" as involving two kinds of debate: "The first is the extent to which government has the constitutional power to interfere with or regulate a particular activity or, conversely, the extent to which individuals can engage in that activity free from governmental impediments. The second constitutional debate has been whether the national government or state governments have authority to act" (p. 29). It seems to me that this is a somewhat simplistic way to define the debate over state versus federal power. Even without that, it left me wondering what category was appropriate for the cases in constitutional law which deal with separation of powers and the relationship between the three branches of the federal government. The issue becomes even more of a problem when we consider some of the cases that were decided during the first period of Court history. Is *COOLEY* or *DRED SCOTT* consistent with the evaluation that a "strong national government is consistent with a principal of limited government?" The confusion for the student is likely to be heightened here, especially since the chapters in the text break each of the three Court eras into shorter time periods. Rather than define three major eras, why not simply go with the shorter time periods, which would allow for a more accurate description of the issues and their resolution?

Second, although the text does a good job with case selection prior to the modern era, I am less happy with the case selection after that. Prior to this period, the authors use summaries of important cases following a excerpts from opinions in a major case as part of what they refer to as "subsequent developments", but they seem to use these summaries pretty sparingly. After the modern period, however, excerpts from case opinions become scarce, and summaries are more and more common. As a result, a number of important cases are simply summarized. Some examples of cases being given this "summary" treatment are *ABINGTON V. SCHEMPP*, *BRANDENBURG V. OHIO*, *BOWERS V. HARDWICK*, *REYNOLDS V. SIMS*, *GERTZ V. ROBERT WELCH*, *MISSISSIPPI UNIVERSITY V. HOGAN*, and *WEBSTER V. REPRODUCTIVE HEALTH*.

To be fair to the authors, one reason for the use of summaries might be to keep the length of the text within bounds for a single volume. Another reason could be that this editing is in response to the criticism that too many constitutional law texts are like law school texts in including too many cases. Given my comments at the beginning of this review, some explanation of my criticism here is in order.

I don't think that constitutional law texts necessarily

need to be exhaustive in the number of case opinions they provide. However, I do think that enough cases need to be provided so that students can evaluate the evolution of doctrine, and especially the evolution of doctrine in concert with political and social changes. In my view, providing extended treatment of the opinion in *ROE* without also providing the Court's opinion in other abortion cases makes it difficult if not impossible, even with summaries, to trace the Court's development in this area of law. Why do I think this focus on doctrine is important? Because the study of law by political scientists is not only a study of Court behavior, but of the political ideologies and theories which motivate that behavior. Providing only the text of the justices' opinions in *ROE* without providing coverage of any other opinions in subsequent abortion cases, for example, makes it difficult for the student to understand the impact of changing Court composition, changes in the justices' own positions, or responses of the Court as an institution to controversial issues over time. In the last instance, being able to compare opinions at different periods also allows students to critique the ability of *stare decisis* to accommodate change. Given the increase in the number of opinions that would have to be provided, one of the issues raised by this text is whether the increasingly common practice of publishers to produce two-volume texts, one in constitutional law and one in civil liberties, is a necessity.

Since many political science departments offer a two or even three course sequence in constitutional law (constitutional law/civil liberties, with perhaps another course in discrimination and/or defendants' rights), this would make the text in its current state suitable for the first part of such a sequence. With its very interesting approach, however, I hope the second part of the text is expanded. It is refreshing to have a text which departs from the standard law school-like approach.

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**CONSTITUTIONAL LAW: CASES-COMMENTS-QUESTIONS** by William B. Lockhart, Yale Kamisar, Jesse H. Choper, and Steven H. Shrifin. St. Paul: West Publishing Company 1991. 1643 pp. Cloth \$49.95. **REVIEWED BY** David Schultz, Department of Political Science, Trinity University

The Lockhart volume may be the definitive constitutional law text with respect to the sheer number of cases and secondary commentary included. The central theme and distinction of the book is its "commitment to the proposition that a student's understanding of constitutional law is greatly enriched by exposure to a variety of competing perspectives drawn from the best of legal scholarship" (p. xxiii). To that end the book offers an exhaustive review of the major cases in constitutional law and civil rights/liberties. This includes the death penalty but excludes all

other criminal due process cases. The text also provides several short (1-3) page essays by prominent legal scholars representing many political views discussing specific cases or problem topics in the law.

The first and last chapters of the text provide good definition of the scope of judicial power in America including the origins of judicial review, the definition of case and controversy, issues of standing, the political question doctrine, and congressional control of jurisdiction. The usual cases of *MARBURY V. MADISON*, *EX PARTE MCCARDLE*, *BAKER V. CARR*, among others are included, yet *DRED SCOTT* is not. Particularly good in these chapters are excerpts from works by Bickel, Wechsler, Bork, Choper, and Ely, as well as comments by Thomas Jefferson and other founders on the nature of judicial power. The *CAROLINE PRODUCTS* footnote number 4 is also presented and there are excellent excerpts explaining the implications of this footnote for defining judicial power. Overall, in these chapters, as is true throughout the book, the cases are well-edited and include most of the important material that undergraduates and advanced scholars would want.

Chapters 2 and 3 examine the structure of national legislative and executive power addressing in solid coverage the separation of powers and checks and balances issues. Chapter 2 is exceptionally strong on the national side of taxing, spending, and commerce power noting the latter's rise, fall, rise, and transformation from *GIBBONS V. ODGEN* through the New Deal and to contemporary cases that address civil rights and environmental regulation. Other subtopics in Chapters 2 and 3 consist of discussions of intergovernmental immunities, executive privilege, and the allocation of foreign policy power. However, the discussion of foreign policy and war powers is split between the two chapters. It is also thin on case law, especially relating to congressional war powers. More secondary commentary and discussion of foreign policy and war powers is needed.

Chapters 4 and 5 cover the other side of federalism, that is, state power to regulate, tax, and spend. As in most constitutional treatment of this subject, *COOLEY V. BOARD OF WARDENS* is the starting point and is juxtaposed to *GIBBONS*. After *COOLEY*, cases addressing federal preemption, dual federalism, state burdens on interstate commerce, and the "multiple burdens" test concerning state taxation of interstate commerce are examined. Yet ignored here as well as in Chapter 1 is the reemerging role of state courts in the political system, especially when it comes to state courts defining rights differently from the federal standard. The book seems to assume that state courts are unimportant and ignores their increased independence as of late.

Starting with Chapter 6, the civil rights/liberties discussion takes over. Chapter 6 examines economic due process by way of an analysis of the Contract, Due Process, and Eminent Domain clauses of the Constitution.

Again, all the usual cases including *CALDER V. BULL*, *THE SLAUGHTERHOUSE CASES*, and *BERMAN V. PARKER* are included. Relatively absent from this chapter are secondary commentary on these cases or inclusion of commentary exploring the recent revival of interest in property rights and the "Takings" clause issue that scholars and the Supreme Court appear to be engaged in.

Chapter 7 is the largest and best in the book. It explores the incorporation controversy, the nature and definition of individual rights, and the interpretivism/non-interpretivism issue. This is more of a jurisprudential chapter with reference to a few major cases such as *GRISWOLD V. CONNECTICUT*, *ROE V. WADE*, *REPRODUCTIVE HEALTH SERVICES V. WEBSTER*, *BOWERS v. HARDWICK*, *CRUZAN V. MISSOURI DEPARTMENT OF HEALTH*, *SHAPIRO V. THOMPSON*, and the death penalty cases. The chapter also includes some of the most important excerpted commentary written on these cases, the nature of individual rights, and the problems of interpretation these cases raise. The non-criminal due process and the right to privacy areas are well covered and there are several good edited pieces discussing *BOWERS* and the racial and economic disparity involved in death penalty sentencing.

Chapter 8 is on speech and all the usual topics on the different parts of speech, for example, pure speech and commercial speech are examined. Included as well are cases and discussion regarding hate speech, *AMERICAN BOOKSELLERS ASSOCIATION V. HUDNUT*, and the controversy surrounding women's rights and pornography. Similarly, Chapter 9 on religion includes the major cases yet little analysis or extended discussion of the Court's current rethinking of the *LEMON* test is found.

Chapter 10 on equal protection is at its best in case presentation and discussion of race and ethnicity, weaker on gender, and not very good at all on gender orientation. In fact, there are no good textbooks that handle gender orientation issues, including AIDS, very well and this is unfortunate. The gender discussion does note the recent move from patriarchy to equality in the law and it does a solid job in presenting the recent role of men and women as litigants in raising equal protection claims. Finally, discussion of other (semi-) suspect classifications, including wealth, is provided but the book ignores secondary commentary on how the current Supreme Court has not simply created three levels of scrutiny but is even now changing how scrutiny is applied to property versus civil rights.

Lastly, Chapters 11 and 12 provide analysis of the concept of state action and legislative enforcement of civil and constitutional rights. Especially in light of recent rights retrenchment on the Court, the discussion of the role of the legislative branch to enforce these rights is good; however, exploration of the role of the presidency would also be nice.

Overall, the Lockhart volume, including the yearly supplements, is a solid constitutional law text. Yet while

this is a very inclusive volume, it can not be fully appreciated or used by most undergraduates as an introductory book to constitutional law. This volume is part of West Publishing's law school series and it is currently and more appropriately used in many two semester law school courses in constitutional law and civil rights/liberties. The book could be used for two-semester graduate political science classes, or as a reference for professors or doctoral students studying for their comprehensives or preliminary examinations. It cannot be adequately appreciated in a traditional undergraduate constitutional law class without significant editing down of the number of cases and commentary included. Moreover, for professors looking for a more policy or political science focused text, this volume is not suitable. But for those looking for a no-nonsense and traditional approach to constitutional law, this would be a solid book in advanced undergraduate or graduate classes.

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**CONSTITUTIONAL LAW AND POLITICS** by David M. O'Brien. New York: W.W. Norton & Company 1991. Paper: Volume I (778 pp.); Volume II (1538 pp.) \$25.95 each. **REVIEWED BY** Judith A. Baer, Department of Political Science, Texas A&M University

To teach constitutional law, you need a casebook. The longer you teach constitutional law, the more crotchety you tend to become; you may develop a set of inflexible requirements and a collection of pet peeves. Whatever casebook you select, it will be out of date by the time it is published; sooner or later it will bore you; it never has all the cases you want your students to read; it leaves out things they need to know; it is too heavy; and it costs too much. Compiling your own casebook is one way to remedy these difficulties -- except the first, which is inevitable, and the second, which authorship will exaggerate. The minimum challenge for any casebook author is to produce a text which will suit the author's purposes without being too idiosyncratic for everyone else; the book must appeal to enough of the author's fellow constitutional law teachers to command a respectable share of the market. The maximum success to be hoped for is to dominate the market, to become the equivalent of what Ogg and Ray once was in American government. David O'Brien's new two-volume casebook has met the first requirement. We can anticipate seeing future editions. What disappoints the reader is that *Constitutional Law and Politics* has the potential for becoming the dominant undergraduate casebook and fails to fulfill it.

O'Brien's two-volume text is designed for the traditional two-term sequence: Volume I for governmental powers, Volume II for individual rights. Measured against the complaint list above, the casebook does well. Its boredom quotient is low, since both volumes permit, indeed demand, picking and choosing. Its length is such

that very little is left out. Two surprising omissions are ALLEN V. WRIGHT and DESHANEY V. DEPARTMENT OF SOCIAL SERVICES; but I wouldn't swap those for the fine glossary, which includes the sort of terms ("remand," "respondent," etc.) over which students tend to trip. Since both volumes are paperbacks, neither is an excessive strain on a student backpack. I have my doubts, however, about how well Volume II will survive a fifteen-week semester. This remark may sound like blaming an author for a publisher's decision, but I think the problem is the length of the volume, a feature within the author's control. The publisher's likely alternative, a hard-covered tome, would have priced the book out of possibility. The current price is more than reasonable, considering that each volume is designed for a semester; even requiring both volumes would keep the student book bill well below what some courses exact. The primary feature of this casebook, however, is what O'Brien includes that other books omit.

"What distinguishes this casebook is its treatment and incorporation of material on constitutional history and American politics. Few casebooks pay adequate attention to the forces of history and politics on the course of constitutional law. Yet constitutional law, history, and politics are intimately intertwined" (I, p. xvii). Well, of course, everybody knows that; intertwining them in a casebook is one of those ideas which makes so much sense that the reader wonders why it hasn't been done before. The idea is not without risk, however. Students already know that law and politics are related. A tendency to read cases in a contextual vacuum is not the problem that the instructor confronts, not with undergraduates, anyway. On the contrary, students sometimes need reminding that constitutional law is different from other political science courses; we expect them to learn to analyze the development of doctrine through cases independent of political explanations. A casebook which sacrificed case space for constitutional history and politics might be fun to read, but it would cheat the students. O'Brien succeeds admirably in shaping his casebook to his purpose while avoiding this pitfall. If anything, he over-compensates in this regard.

Chapters 1 and 2, printed in both volumes, relieve the instructor of the burden of the standard introductory lecture(s) on the workings of the Supreme Court and/or the history of interbranch conflicts on judicial review. Subsequent chapters incorporate historio-political information, often in unusual but appropriate contexts; for example, the section on the executive appointment and removal power (I, ch. 4, sec. B) lists unsuccessful Supreme Court nominations. Most of the time, O'Brien manages to inform without editorializing, but his occasional lapses will make unnecessary enemies; they should be omitted in later editions. For example, O'Brien describes Madison, in opposition to judicial review, as "less strident than Jefferson" (I, p. 31) -- after quoting a passage which gives no impression of stridency -- and his occasional use of the "Mrs. John Smith" convention in his

references to women is insult without purpose. While O'Brien's inclusion of material more often found in judicial process texts may make the casebook less attractive to instructors who like to lecture on politics and history, a book which provides students with easy access to relevant information makes it possible to devote more class time to case analysis.

*Constitutional Law and Politics* represents a good idea, ably executed. Yet, on balance, I would not adopt it for a two-term sequence even if it were irritant-free. The basic difficulty is that Volume II, in particular, contains too much material. It is chock-full of pertinent information about constitutional law cases. The chapters are crammed with charts and sidebars, inadequately differentiated from the text; I assume that the graphics necessary to separate them, familiar in American government texts, would be too expensive. O'Brien has attempted two tasks in these volumes. Not only does he cover the subject both in sufficient breadth to convey important doctrines and in sufficient depth to teach the student to read cases, but he also provides information about virtually every relevant case. The chapters on criminal procedure, for instance, go on and on, through almost one-fourth of Volume II: section after section, case after case alluded to and never mentioned again. Yeoman effort has gone into compiling these cases and writing one-sentence summaries of their holdings. But there is far more here than undergraduates need to know; I can imagine teachers forced to reassure students that, no, they are not expected to memorize all those cases. A casebook is not an encyclopedia.

Finally, I remain unconvinced that an undergraduate casebook should be divided into two volumes. O'Brien's demarcation between powers and rights forces the instructor using Volume II to pull into Volume I for KOREMATSU and HEART OF ATLANTA MOTEL. The effort to integrate politics into case law, necessary as it is, comes at the cost of separating the case law of individual rights from that of structure and power; these subjects are as intricately intertwined as are law, history, and politics.

*Constitutional Law and Politics* is a good casebook. It contains the material that an undergraduate constitutional law casebook needs; in addition, it contains historical and political information which makes it far more student-friendly than the typical casebook. David O'Brien has produced a text which amply justifies itself. Unfortunately, he has succeeded too well; his effort collapses of its own weight.

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**AMERICAN CONSTITUTIONAL LAW: CASES AND INTERPRETATION**, 3d Ed. by Ralph A. Rossum and G. Alan Tarr. New York: St. Martin's Press 1991. 760 pp. Cloth \$46.25. **REVIEWED BY** Patricia Pauly, Department of Political Science, University of Kentucky

*American Constitutional Law* is one of the better constitutional law casebooks available. Professors Rossum and Tarr should be commended for producing a solid, no nonsense introduction to the major issues in constitutional law and civil liberties appropriate for an advanced undergraduate course in political science.

The book is organized around three premises. First, the principles of the Constitution can best be understood by grappling with alternative positions on constitutional controversies. Second, "no interpretation of the Constitution can be evaluated properly without an appreciation of what those who initially drafted and ratified the Constitution sought to accomplish" (p. vii). And third, to focus exclusively on the judiciary is to ignore the important contributions of other governmental institutions to our understanding of the Constitution.

Unlike some texts that adopt a framework only to ignore it, this text revolves around these three propositions. From the first chapter through the last, the authors present competing positions and return to the question of the framers' intent. The first chapter, "Interpretation of the Constitution," introduces students to different approaches to constitutional interpretation and explores the "means and ends" of the Constitution. These approaches are referred to throughout the introductory essays that begin each of the subsequent chapters. The substantive chapters follow in a logical sequence, beginning with the horizontal division of power among the branches of the national government (chapters 3-6), moving to the vertical distribution of power between the national and state governments (chapters 7-10), and concluding with the distribution of power between the government and the individual (chapters 11-17).

Overall, the authors provide a well-rounded selection of cases dealing with the major controversies in these three areas. Consistent with the theme of competing interpretations, many of the relevant dissents and concurrences are included. Most of what one might consider the classic cases are excerpted. Only a few non-essential cases appear, but there are others I would choose to add. For example, while the nationalization of the rights of the accused is discussed in detail, the text does not consider fully the nationalization of other rights (for example, freedom of religion and speech). Similarly, although some landmark voting and representation cases, such as *BAKER V. CARR* and *BUCKLEY V. VALEO*, are treated in different chapters, voting and representation issues are not given comprehensive coverage. Chapter 12, "Freedom of Speech, Press, and Association," does not include some important cases involving commercial speech, regulation of broadcasts, fair trial/free press, or association. And there are also some important criminal procedure cases involving warrants, later limits on *MIRANDA*, and cruel and unusual punishment missing.

Each case is preceded by an effective introduction. Relevant case facts are presented along with succinct

summaries of lower court action, indicating the basis on which the lower courts ruled. These introductions also note the justices' votes. The cases themselves are well edited. The essential logic of the opinions is preserved. The only thing missing in these introductions are questions to guide the students as they read the cases.

All of the non-case materials facilitate understanding of the cases. I have already noted the strong chapter on constitutional interpretation. The other introductory chapter, "Constitutional Adjudication," traces Supreme Court procedures and includes a discussion of impact. However, it presents only a thumbnail sketch of the organization of the federal judiciary and contains surprisingly little on the opinion writing process and the importance of opinions.

Ample references and citations appear throughout the text. They are sufficient in number to be helpful but not to overwhelm the average undergraduate.

There are relatively few boxes, tables, figures, and charts compared to other casebooks; the text, as a result, is visually uncluttered. There might be room for a few more graphics (for example, a flow chart of routes of appeal), and some features currently in the text might be drawn in more detail (for example, the structure of the federal judiciary), but the tables tracing the development of the cases are well done.

In addition to the cases, the text includes some extrajudicial materials, such as statutes, congressional resolutions, and local ordinances. While references to other sources are included, the authors might also include brief excerpts from these sources, such as the *Federalist Papers*, to present the competing perspectives on constitutional issues more fully.

The book also contains the standard appendices: the Constitution, a list of Supreme Court justices, a brief glossary of legal terms, and an index of cases. Although no name or subject index is offered, the case index is especially useful as it notes the pages on which the case excerpts appear.

The clear strength of the book lies in the well organized and insightful introductory essays that begin each chapter. They set the context for the cases that follow by discussing the developments that gave rise to them. They also refer to related cases in other areas of law. An excellent concluding section ends each essay, synthesizing and integrating the major points.

An annual supplement is available. It contains the relevant cases, with introductions, but does not relate these cases to the introductory essays in the text.

Despite the book's many strengths, its adoption may prove problematic in schools where constitutional law and civil liberties are offered as two independent courses. In schools where the two courses are linked as a sequence, instructors may find that the book does not provide enough material for two semesters, though this might be remedied with supplementary readings from additional cases and other sources.

Conversely, there is likely to be too much material for a one semester class treating both constitutional law and civil liberties. The seventeen chapters would be difficult to cover in a single semester. To do so would almost certainly require either cutting whole chapters or skipping a number of cases.

I should add, however, that I would recommend the book enthusiastically if it were re-issued in a split volume format. A two volume format would retain the book's strengths and allow the authors to extend the coverage of topics that deserve fuller treatment.

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**AMERICAN CONSTITUTIONAL LAW** by Robert J. Steamer and Richard J. Maiman. New York: McGraw Hill 1992. 562 pp. Paper \$38.50. **REVIEWED BY** John Gilliom, Department of Political Science, Ohio University

Arguing that there are a growing number of one semester constitutional law classes that are ill served by the traditional large and expensive text, Steamer and Maiman have attempted to meet the resulting need with a "short case law book" that is both "comprehensive and economical." Despite the short format, the authors still cover a wide breadth of material: historically important cases, the institutional dynamics of the court, and competing theories and concepts of law and judicial review. Their obvious danger is that the omission and brevity required for such a limited amount of space will leave students only briefly acquainted with, and potentially confused about, key concepts and issues in the field.

The book is organized into seven chapters. The first provides an introductory discussion of law, the Constitution, and the structure and role of the judiciary in American politics. The chapter concludes with four cases intended to illustrate the court's policymaking role: *GIDEON V. WAINWRIGHT*, *NEW YORK TIMES V. U.S.*, *FURMAN V. GEORGIA*, AND *ROE V. WADE*. Here and throughout the book, each case is set up with an able and interesting introduction. The cases have gone through fairly extensive editing to fit the abbreviated format, but still do a good job of conveying the gist of the decision. Following each case is a helpful "aftermath" section, which describes the fate of the individuals and issues involved in the case. In the book as a whole, chapters and cases within chapters are organized in a largely ahistorical format which will frustrate teachers who attempt to portray the development of the court over time.

Judicial review is covered in the second chapter. Here, the authors provide an enlightening and more widely needed discussion that clarifies the relationship between activist and restrained jurists, on the one hand, and liberal and conservative ones, on the other. While contemporary students tend to believe that liberals are activists and

conservatives are restrained, Steamer and Maiman clearly show that there are both restrained liberals and active conservatives. Unfortunately the discussion stops short of the contemporary Supreme Court, which is probably what students most need and want to talk about. The cases of this chapter include *MARBURY V. MADISON*, *FLETCHER V. PECK*, *DRED SCOTT*, *HOME BUILDING & LOAN ASSOCIATION V. BLAISDELL*, *HEART OF ATLANTA MOTEL V. U.S.*, and others which demonstrate the issues involved in the politics of judicial review.

Chapter 3 takes on the structural issues of federalism and the separation of powers. After a brief seven page discussion, the chapter turns to a long review of case law ranging from *MCCULLOUGH V. MARYLAND* through *U.S. V. NIXON*. As will befit many political scientists' approach to constitutional law, this is by far the longest chapter in the book. Under "Due Process of Law" (ch. 4), Steamer and Maiman provide a brief but effective discussion of the concept of due process, competing theories of incorporation, and the differences between procedural and substantive due process. The discussion is illustrated with *THE SLAUGHTERHOUSE CASES*, *PALCO V. CONNECTICUT*, *MAPP V. OHIO*, *LOCHNER V. NEW YORK*, *GRISWOLD V. CONNECTICUT*, *BOWERS V. HARDWICK*, AND *CRUZAN V. MISSOURI DEPARTMENT OF HEALTH*. Economic substantive due process needs more detailed explanation and analysis; *NEBBIA V. NEW YORK* AND *FERGUSON V. SKRUPA* would be helpful additions.

The final three chapters cover freedom of expression, freedom of religion, and equal protection. Chapter 5 has an excellent selection of cases to demonstrate the issues and concepts involved in the freedom of expression debate: *SCHENCK V. U.S.*, *DENNIS V. U.S.*, *BRANDENBURG V. OHIO*, *NEAR V. MINNESOTA*, *EDWARDS V. SOUTH CAROLINA*, *TEXAS V. JOHNSON*, *NEW YORK TIMES V. SULLIVAN*, *HUSTLER MAGAZINE V. FALWELL*, *BRANZBURG V. HAYES*, *MILLER V. CALIFORNIA*, AND *COHEN V. CALIFORNIA*. Similarly, Chapter 6 provides what might be called the "greatest hits album" of religion cases.

The final chapter attempts to cover equal protection of the law and is a disappointment in the wake of the preceding First Amendment chapters. With just six cases on race and two on gender, the chapter gives only a hint of the many issues, controversies, and critical disputes at work in this area. While the cases selected are certainly crucial -- *BROWN V. BOARD OF EDUCATION*, *SWANN V. CHARLOTTE-MECKLENBERG*, *MILLIKEN V. BRADLEY*, *SHELLEY V. KRAEMER*, *BOARD OF REGENTS V. BAKKE*, *METRO BROADCASTING V. FCC*, *REED V. REED*, *FRONTIERO V. RICHARDSON*, AND *REYNOLDS V. SIMS* -- more is needed in both case law, explanation, and critical analysis.

Throughout this review, the most frequently used words are variations on the word "brief." To provide such a short

text, the authors are aware that they have had to leave a lot out and abbreviate all that remains. Let me first touch upon what is left out and then turn to what is abbreviated.

Steamer and Maiman state that their "most difficult task was to decide...what to leave out" (p. xiv) and I think that it must have been a daunting chore. Given the importance and difficulty of the decisions about what to include and what to omit, it is surprising that the book contains no discussion of the logic of organization or topic choice. Naturally, individual tastes and preferences are likely to differ widely as to what material is "essential" to the field and should be included in a book such as this. My students, for example, have been especially fascinated with Fourth Amendment law and it was surprising to see virtually no discussion in this area. The same could be said about the topic of reproductive freedom as well as the legal politics of race, class, and gender; instructors with an interest in these issues will find them inadequately covered. While there are isolated cases on each of these topics, there is not enough material to build the sort of sustained analysis and discussion that can help students to understand them.

The discussion entitled "What is Law" reveals the dangers of attempting to be both brief and comprehensive. In this introductory section the authors lead the students through a tour of legal concepts beginning with Aristotle and then continuing on to public and private law, constitutional and administrative law, statutory and decisional law, common law and equity, civil law and criminal law, and positive law and natural law. All of this is dealt with in a dizzying eight pages (pp. 3-11) and would be encountered by the students in their first night of reading. The concepts and issues raised in this section require far more explanation and discussion if students are to come away from the course with a solid understanding of the law.

The danger, and I think it has been realized, is that the demand to omit and abbreviate will leave students with a cursory and potentially confusing introduction to constitutional law. This may say less about this work in particular than about the difficulties faced in attempting to responsibly teach constitutional law in one semester or, worse, one quarter. A full-scale course in this area must normally cover legal theory, the court as an institution, and American history, while working in crash courses in economic policy and the unique dynamics of race and gender politics. Some instructors may also try to introduce their students to debates over legal interpretation and argument. Obviously, not all of this can fit into a short course or a short case book in a way that will provide students with a solid and thorough understanding of the issues involv

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CONSTITUTIONAL LAW, 2d Ed. by Geoffrey R. Stone, Louis M. Seidman, Cass R. Sunstein, and Mark V.

Tushnet. Boston: Little, Brown & Company 1991. 1716 pp. Cloth \$49.00. **REVIEWED BY** David Barnum, Department of Political Science, DePaul University

*Constitutional Law* is a relatively new entry into the notoriously crowded and competitive market of law school casebooks. It has reportedly done very well, however, and its success is not difficult to understand. The book is well organized, comprehensive, superbly written, and clearly more au courant or hip (in the context, that is, of the staid world of legal scholarship) than competing casebooks with which I am familiar (for example, Lockhart, 1991; Gunther, 1991).

The book is a full-fledged constitutional law casebook. The only area which is not covered -- the rights of criminal defendants -- is one which is now routinely omitted from law school casebooks (even those devoted exclusively to civil liberties).

The non-civil liberties material in *Constitutional Law* is presented in chapters on "The Powers of Congress," "Judicial Efforts to Protect the Expansion of the Market against Assertions of Local Power," "The Distribution of National Powers," and "Economic Liberties and the Constitution: The Contracts and Takings Clauses." Three chapters are devoted to the standard areas of civil liberties: "Equality and the Constitution," "Freedom of Expression," and "The Constitution and Religion." Finally, there are three chapters which represent a departure from the format of at least some other casebooks. A first chapter focuses on "The Role of the Supreme Court in the Constitutional Scheme," a final chapter focuses on "The Constitution and the Problem of Private Power," and a chapter in the middle of the book is devoted to "Implied Fundamental Rights," that is, the debate over original intent, the incorporation controversy, substantive due process (old and new), and substantive equal protection.

Each of the chapters begins with an introductory and/or historical section which is extremely useful and in fact downright essential if the book is to be used to teach constitutional law to undergraduates. The "Equality" chapter, for instance, begins with a section entitled "Race and the Constitution" in which the editors discuss and reprint historical scholarship on slavery and the Constitution, reprint an excerpt from DRED SCOTT (a fairly unusual choice, in my experience), discuss (in essay form with generous excerpts from cases and historical scholarship) the subject of "Reconstruction and Retreat," reprint PLESSY V. FERGUSON, and then move into the background of the school cases and eventually to BROWN and SWANN and to cases and other materials relevant to the problem of northern school segregation. The material is dense and challenging for anyone encountering issues of race and law for the first time. However, the choices the editors have made about what to reprint and in what order ensure that a conscientious student will learn as much as is humanly possible within a few pages about the social

origins of the Court's decisions on race, about how and why the law has developed in certain ways, and about what the law is today.

Obviously the Supreme Court's decisions and their content exert a strong influence on the organization of *Constitutional Law*. At the same time, one of the strengths of the book is the fact that cases play a much smaller role than in other casebooks in dictating both the organization of the book and the topics which are addressed. The book is not a collection of Supreme Court decisions embellished with commentary. It is a book about American constitutional law in which cases and other materials are deftly woven into an ongoing narrative in order to illustrate and substantiate various carefully chosen themes.

The case excerpts themselves are comparable to those which appear in other casebooks. Major cases may occupy six to eight pages, minor cases may be reprinted in half a page or so. The book also includes more non-case excerpts than most casebooks. There are lengthy passages from the "Federalist Papers" and from leading works on constitutional history and constitutional theory. These passages are very effectively integrated into a narrative written by one or another of the editors. The result is a set of purposeful, accessible, and well documented essays on each of the key areas of constitutional law.

I would also highlight the editors' effective use of "questions." The questions themselves are fairly typical law school inquiries, but *Constitutional Law* does a better job than other casebooks of transforming questions into constructive stepping stones to deeper understanding. Typically, questions are posed as part of an ongoing discussion, rather than appearing at the end of the chapter with little apparent purpose other than to leave the average student perplexed and perhaps alienated. Almost always, questions are followed by additional discussion or additional reprinted material which allows the reader to begin to formulate an answer or opinion. Of course, questions beget answers which beget new questions. At the same time, *Constitutional Law* avoids conveying any sense that the whole process is a meaningless game. It takes its own questions seriously and in doing so succeeds in engaging the reader in the challenging process of uncovering the implicit assumptions in legal arguments, articulating attainable normative goals, marshalling relevant factual data, and crafting defensible policy solutions to constitutional problems.

Finally, I would commend the simple but important decision that someone made to present the text of the book in type which is large enough to read without a magnifying glass. One response to the explosive growth of cases and other primary materials has been to publish new editions of existing casebooks with thinner pages, smaller type, more lines per inch, more reliance on footnotes, or some combination of the above. Many casebooks have become unpleasant to read in a purely physical sense. *Constitutional Law* is every bit as rigorous and substantive as the best of the existing casebooks, but, unlike many of them, it is also inviting to open and read. The print is relatively large, the titles of cases and other headings stand out clearly, and apart from necessary footnotes (that is, those reprinted from the cases themselves), footnotes are avoided and the types of material that may be relegated to footnotes in other casebooks are integrated into the main text. Speaking as someone who is rather fond of footnotes, I found it most relaxing to be able to follow the main narrative without undue interruption. My guess is that decisions about type size and format have contributed in no small measure to the popularity of the book.

In sum, *Constitutional Law* is an excellent casebook. From the perspective of those who teach undergraduate constitutional law, it does have two possible drawbacks. First, it is a LAW SCHOOL casebook, that is, it is designed to educate and socialize those who will enter the legal profession, and in this sense it may be more narrowly focused on the development of analytical skills than some instructors would prefer. Second, at 1700-plus pages, it is a long book and certainly includes far more material than could possibly be covered in a year-long course, let alone one restricted to a single quarter or semester. Today, however, most other law school casebooks -- and even many undergraduate casebooks -- are of comparable length. *Constitutional Law* is a superb example of its genre and merits a look by anyone who teaches a constitutional law course.

### References

- Gunther, Gerald. *Individual Rights in Constitutional Law*, 5th Ed. Westbury, NY: Foundation Press, 1991.
- Lockhart, William B., Yale Kamisar, Jesse H. Choper, and Steven H. Shiffrin. *Constitutional Rights and Liberties*, 7th Ed. St. Paul, MN: West Publishing, 1991.

## New Features for

### *Law and Politics Book Review*

Back issues of the Law and Courts Section publication, *The Law and Politics Book Review* are now available via gopher on the internet. To connect, log onto your campus computer system and type GOPHER at the prompt. If your computer system has gopher, this will bring you to a menu where you want to choose something like "Gophers at other universities." Then look for Northwestern University Gopher, select "Northwestern University Information" from the menu and at the next menu, select "Law and Politics Book Review." You will see a listing of reviews arranged alphabetically by the last name of the author of the book as well as a Table of Contents arranged chronologically. Simply select the review you wish to read and it will appear on your screen. You can also send reviews to your printer in this manner.

Because of low usage, *The Review* is no longer available on its own bulletin board. However, to subscribe to *The Review* by internet (or bitnet), simply send the message **SUBSCRIBE PSRT-L [yourname]** to **LISTSERV@MIZZOU1.MISSOURI.EDU**. You will receive it (free) in you e-mail box.

During the first 20 months of publication, we have published reviews of 110 books. The reviews were written by almost 100 different authors. *The Review* is now sent to more than 600 readers in more than a dozen countries.

Please send your comments and suggestions to the editor: **Herbert Jacob**, Department of Political Science, Northwestern University, Evanston, IL 60201 (or by e-mail to [mzltov@nwu.edu](mailto:mzltov@nwu.edu)).

## ANNOUNCEMENTS

### SECTION SEEKS NOMINATIONS

Nominations for the position of Chairperson-Elect, Secretary-Treasurer, and two members of the Executive Committee are being sought. The Chairperson-Elect serves a one year term before becoming Chairperson. The Secretary-Treasurer will serve a three year term. Members of the Executive Committee serve two year terms.

Nominations should be sent to:

**Christine Harrington**  
Department of Politics  
New York University  
715 Broadway  
New York, New York 10003  
V-Mail: 212.998.8509  
E-Mail: [HARRINGTON@NYUACF](mailto:HARRINGTON@NYUACF)

The Nomination Committee's selection will be announced in the summer *Newsletter*. Alternative candidates for the Executive Committee can be nominated by five members of the Section at the Annual Section meeting, or by petition sent to the Chairperson prior to the meeting.

## NATIONAL SCIENCE FOUNDATION

### SEEKS PROPOSALS

The Law and Social Science Program at the National Science Foundation supports social scientific studies of law and law-like systems of rules. These can include, but are not limited to, research designed to enhance the scientific understanding of the impact of law; human behavior and interaction as these relate to law; the dynamics of legal decisionmaking; and the nature, sources, and consequences of variations and changes in legal institutions. The primary consideration is that the research shows promise of advancing a scientific understanding of law and legal process. Within this framework, the Program has an "open window" for diverse theoretical perspectives, methods, and contexts for study. For example, research on social control, crime causation, violence, victimization, legal and social change, patterns of discretion, procedural justice, compliance and deterrence, and regulatory enforcement are among the many areas that have recently received program support.

The review process for the Law and Social Science Program takes approximately six months. It includes appraisal of proposals by e-mail: [SOWHITE@NSF.BITNET](mailto:SOWHITE@NSF.BITNET); Fax: (202) 357-0357.

### SOCIO-LEGAL INSTITUTE ON DISPUTE RESOLUTION SUMMER PROGRAM

The *Center for Socio-Legal Studies* at the Ohio State University College of Law is sponsoring the Socio-Legal Institute on Dispute Resolution Funded by a grant from the Hewlett Foundation, June 13-July 2, 1993 to be held at the law school. The institute is aimed primarily at faculty who want to devote more of their teaching or research efforts toward dispute resolution, including faculty who have not previously worked in the area. It will combine law and social science perspectives on the field and be limited to about twenty five participants.

Core faculty are Frank Sander (Harvard Law School), Craig McEwen (Bowdoin College), and Gerald Williams (Brigham Young Law School). Contributing faculty include Deborah Hensler (RAND), Maurice Rosenberg (Columbia Law School), Richard Klimoski, Carol King, Nancy Rogers, and Charles Wilson (Ohio State University).

The fee for the institute is \$1500, exclusive of costs of books, housing, and meals. Limited scholarship assistance is available. For information contact **Carol King**, Institute Administrator, The Ohio State University College of Law, 1659 N. High Street, Columbus, OH 43210. ph 614-292-6821; fax 614-292-3202.

### APSA SHORT COURSE

The *Law and Courts Section* of the American Political Science Association will hold a short course on Wednesday, September 1, 1993 at 1 pm . Called "Using and Abusing Data in the Study of Law and Courts: A Hands-On Demonstration and Discussion," it will be a two-part session. The first half will provide a hands-on demonstration of existing U.S. Supreme Court databases, including the United States Supreme Court Judicial Database (ICPSR 9422) and a newly-compiled one, which integrates the Judicial Database with information on amicus curiae participants, parties, and values and opinions. Participants can expect to learn about the contents of the databases and how to use them for research and classroom purposes. The second part will consist of two roundtable discussions on 1) the assets and deficits of the existing databases and 2) the uses and abuses of data-based approaches in the study of courts and law. Lawrence Baum, John Brigham, Lee Epstein, James Gibson, Leslie Goldstein, Joel Grossman, Ronald Kahn, and, Harold Spaeth among others will facilitate discussion. We hope that graduate students and faculty alike will participate.

If you wish to sign up for the course or seek further information, contact **Leslie Goldstein**, Department of Political Science, University of Delaware, Newark, DE 19716; phone: (302) 831-1931. The section is charging a ten dollar fee.

### **NEW DIRECTOR FOR NSF LAW AND SOCIAL SCIENCE PROGRAM**

**Susan O. White** has joined the National Science Foundation as a visiting scientist and Director of the Law and Social Sciences Program. She succeeds **Michael C. Musheno**, who returns to the School of Justice Studies at Arizona State University.

White is a Professor of Political Science at the University of New Hampshire where she is Coordinator of its Justice Studies Program. She was the first Study Director of the Committee on research on Law Enforcement and Criminal Justice at the National Academy of Sciences, which evaluated the research program of the National Institute of Justice. She was also Study Director of the NAS panels on Deterrence and on Rehabilitation of Criminal Offenders. Her publications range from studies of police socialization to the recent co-authored *Legal Socialization: A Study of Norms and Rules*. She is currently planning cross-national research on legal socialization in conjunction with the international working group on Orientations Toward Law and Normative Ordering.

Susan White is a former Trustee of the Law and Society of Criminology. She is currently on the Editorial Advisory Board of the **Law and Society Review**. White looks forward to talking with law and social science colleagues about their research interests. **SOWHITE@NSF.BITNET**; Fax: (202) 357-0357

### ***National Endowment for the Humanities Constitutionalism in Comparative Perspectives***

This seminar examines several substantive areas of American constitutional law (e.g., privacy, free speech, church-state relations, equal protection, and economic rights) in the light of the constitutional case law of Canada, Germany, and the European Court of Human Rights. The seven-week seminar runs from June 14 through July 30.

Each participant will receive a stipend of \$3600, out of which travel expenses, living costs, and research-associated expenses are to be paid by each individual. Teachers of constitutional law, philosophy, literature, history, and theology—or any other field involving skills of reading and interpretation—are encouraged to apply.

For further information, please write **Prof. Donald P. Kommers**, Robbie Professor of Government and International Studies, Notre Dame Law School, Notre Dame, IN 46556-0780.

### **AMHERST COLLEGE APPROVES**

### ***DEPARTMENT OF LAW, JURISPRUDENCE & SOCIAL THOUGHT***

Amherst College announces the creation of a Department of Law, Jurisprudence & Social Thought which will house an autonomous undergraduate major and the Amherst Series in Law, Jurisprudence & Social Thought. The major treats law as a set of historically and culturally specific institutions and processes that combine moral argument, distinctive hermeneutic and rhetorical practices, and the social organization of regulation and violence. The Department also organizes an annual series of lectures which are published by the University of Michigan Press in the series—The Amherst Series in Law, Jurisprudence & Social Thought—edited by Austin Sarat and Thomas Kearns.

## NOTICE OF CORRECTIONS TO DIRECTORY

Some errors and omissions have been identified in the most recent edition of the *Membership Directory*. Please note the following changes and correct your *Directory* accordingly.

### Corrections

The entry for "Gugg Iurs" should read as follows:

**Gregg Ivers**

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**Civil Rights/Liberties; Church-State Law and Constitutional Development; Constitutional History; Social Movements and Legal Change**

(1) Religious organizations as constitutional litigants; (2) Evolution of church-state jurisprudence in the Supreme Court.

**Inadvertant Omissions****Davis, Sue**

Department of Political Science  
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**Constitutional Law; Civil Rights/Liberties; Law and Legal Process**

Although every effort was made to avoid errors and omissions in the *Directory*, mistakes nonetheless were made. Members are strongly urged to check whether their entry in the *Directory* is correct. Please notify Roy B. Flemming if corrections are required.



### NOMINATIONS FOR NEWSLETTER EDITOR

Roy B. Flemming, after serving as Editor of the *Law and Courts Newsletter* for three years, will be stepping down after the Summer *Newsletter* is published.

Members interested in assuming editorial responsibilities for the *Newsletter* should contact Leslie Goldstein by **June 15th**.

**Leslie Goldstein**

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Nomination proposals should include information about institutional support and facilities required for publishing the *Newsletter*.