* 19		Page
PREFA	CE TO THE SECOND EDITION	iii
PREFA	CE TO THE FIRST EDITION	vii
THE C		xxxi
TABLE	OF CASES	xlix
	CHAPTER 1. APPROACHES TO CONSTITUTIONAL ANALYSIS	
Section		
1-1	Overview: Seven Models of Constitutional Law	1
1-2	The Basic Pattern: Model I and the Roots of Models III and IV	2
1-3	The Civil War's Impact: The Rise of Model II	
1-4	The Depression: Collapse of Model II	
1-5	The Post-Depression Models: III through VII	
1–6	The Tension Between Containing Government and Har-	
1-7	nessing Its Capacities	10
1-8	The Antimajoritarian Difficulty The Worry About Judicial Legitimacy: Guarding the	10
1-0	O1:	12
1-9	The Limited Relevance of Institutional Questions	15
CF	HAPTER 2. MODEL I—THE MODEL OF SEPARATED	
	AND DIVIDED POWERS	
2-1	Constitutional Law's Interplay of Structure and Substance	18
2-2	The Persistence of Model I: Independence and Interdepen-	
2-3	The Link Petureen Consideration of Derven Considerations and	18
1-1-1	The Link Between Separation-of-Power Considerations and Controversies Over Federal-State Division	20
2-4	Plan of the Model I Chapters	21
	CHAPTER 3. FEDERAL JUDICIAL POWER	
3-1	Structuring the Inquiry Into Federal Judicial Power	23
3–2	Overview—Marbury v. Madison: Judicial Review as Axi-	23
3–3	Judicial Review and Debate Over the Normative Breadth	20
	and Retroactive Reach of a Judgment of Unconstitution-	00
3-4	ality: Defining Marbury's Assumption	26
3-4	Judicial Review and the Problem of "Other Minds": The	
	Legitimacy of Differing Interpretations of the Constitution	32
3–5	Judicial Review in an Institutional Setting: The Paradox of Congressional Control of Federal Court Jurisdiction	42
3-6	The Antimajoritarian Difficulty Reexamined	61

Section		Page
3-7	Overview—Limits on the Exercise of Federal Judicial Pow-	
	er: The Requirement of a "Case" or "Controversy" as	
	Defined by the Doctrines of Justiciability	67
3–8	Nonconstitutional Aspects of Justiciability Doctrine	69
3–9	The Ban on Advisory Opinions and the Problems of Declaratory or Partially Circumventable Judgments	73
3-10	Ripeness	77
3-11	Mootness	82
3-12	Collusive Suits	93
3-13	The Political Question Doctrine	96
3-14	Standing: A Summary	107
3-15	Injury in Fact as the Constitutional Core of the Standing	
	Requirement: Its Application in Federal and State Courts	111
3-16	Injury in Fact: Defining Judicially Cognizable Harms	
3-17	Injury in Fact: Citizen and Taxpayer Standing, and the	
	Policy Against Assertion of "Generalized Grievances"	124
3-18	Causation and Redressability: Tracing the Connection Be-	
	tween the Litigant and the Litigation	129
3-19	The Policy Against Third-Party Standing and the Related	
112	Zone-of-Interests Test Favoring a Nexus Between the	
	Party Seeking Standing and the Right Asserted	134
3–20	Standing of Organizations, States, and Legislators: The Question of Capacity	145
3-21	Triangulating Standing: A Schematic Summary	154
3-22	Overview: Constitutional Limits on Federal Judicial Pow-	101
	er to Review or Control State Action	155
	Limits on the Power of Federal Courts to Make Common Law	156
	The Policy Against Federal Court Review of State Court	
	Decisions Resting on "Adequate and Independent State	1
	Grounds"	162
3-25	Limits on the Power of Federal Courts to Entertain Suits	
	Against States: The Eleventh Amendment and Its Sup-	
	posed Exemplification of Sovereign Immunity	173
3-26	Removing the Eleventh Amendment Shield: The Conun-	
	drum of Constructive Waiver, and an Alternative Theo-	
	1) of The Action Tringling Tropology	178
3-27	The Limits of the Eleventh Amendment: The Significance of Ex parte Young	189
3-28	Judicial Federalism: The Twin Policies of Preserving the	
	Integrity of State Law and Respecting the Institutional	house
1,1	Autonomy of State Judicial Systems	195
3-29	Preserving the Integrity of State Law: Exhaustion of State	
	Administrative Remedies and Pullman Abstention	198
100	Preserving State Institutional Autonomy: The Younger	
7. 7.	Doctrino	201

11	CHAPTER 4. FEDERAL EXECUTIVE POWER
Section	
4-1	The Puzzle of the Presidency: Its Uneasy Truce With Constitutionalism
4-2	The Constitutional and Extra-Constitutional Character of Presidential Power: An Overview of Its Interactions
BIB	With Legislative Authority and an Introduction to Issues of Delegation
4–3	The Legislative Veto: A Case Study In The Separation of Powers
4-4	The Limits of Executive Authority in Foreign Affairs: The "Domestication" of International Policy
4-5	Treaties and Executive Agreements
4-6	The Impact of Federal Foreign Affairs Supremacy on State Action
4-7	The President as Commander in Chief: Constitutional Control of the "Dogs of War"
4-8	The "Silent" Limits of "Inherent" Executive Authority
4-9	The President as Chief Executive: Powers of Appointment
4-10	The President as Chief Executive: Powers of Removal
4–11	The President as Chief Executive: Powers of Prosecution and Pardon
4–12	The President as Chief Executive: The Power to Spend or Not to Spend
4–13	A Further Study in Negation: Analyzing, "Pocket"ing, and "Item"izing the Presidential Veto
4-14	The "Privileges and Immunities" of Executive Leadership: Limiting Criminal and Civil Liability
4–15	The "Privileges and Immunities" of Executive Leadership: Secrets of State and Presidential Privacy
4–16	Remedies for Presidential Abuse of Privilege: Congress' Power to Say No
4-17	The Ultimate Remedy: Impeachment for High Crimes and Misdemeanors
	CHAPTER 5. FEDERAL LEGISLATIVE POWER: CONGRESSIONAL AUTHORITY AND THE IMPLICATIONS OF STATE SOVEREIGNTY
5-1	The Scope and Limits of Congressional Power
5-2	The Doctrine of Enumerated Powers
5-3	The Doctrine of Implied Powers: All Laws Which Shall Be "Necessary and Proper"
5-4	The Power to Regulate Interstate Commerce: Decline and Rebirth of the "Substantial Economic Effect" Principle
5-5	Contemporary Commerce Clause Analysis: The "Cumulative Effect" Principle

Section		Page
5-6	Contemporary Commerce Clause Analysis: The Power to Prohibit Interstate Commerce Under the "Protective"	311
5-7	Principle Internal Limits on the Power of Congress to Regulate	OII
247.0	Interstate Commerce: The Politics of Federalism	313
5–8	Judicial Review as Shaping the Politics of the Commerce Clause	316
5-9	The Tax Power	318
5-10	The Spending Power	321
5-11	Other Domestic Powers Granted Congress by Article I, § 8	324
5–12	Congressional Power to Enforce the Civil War Amendments: Overview	330
5–13	Congressional Power to Enforce the Thirteenth Amendment	331
5-14	Congressional Power to Enforce the Fourteenth and Fifteenth Amendments	334
5–15	Congressional Power and the State Action Limit on Four- teenth and Fifteenth Amendment Guarantees	350
5–16	Congressional Powers in Foreign Affairs: War, Immigration, and Citizenship	353
5–17	Congressional Action and the Separation of Powers: The Problem of Delegation	362
5–18	Congressional Action and the Separation of Powers: The Speech or Debate Clause	370
5–19	Congressional Investigations and the Separation of Powers: Legislative Autonomy and Judicial Review	375
5–20	State Sovereignty as a Limit on Congressional Power: Overview	378
5–21	State Sovereignty and the Jurisprudence of Rights: Using Individual Rights to Define State Roles	385
5–22	From National League of Cities to Garcia: The Unsteady Course of the New States' Rights	386
5–23	The "Republican Form of Government" Clause as a Possible Touchstone for Future States' Rights Jurisprudence	397
5–24	Reflections on the Rebirth of Federalism: Policy vs. Principle	399
LOC	TER 6. FEDERALISM-BASED LIMITS ON STATE A AL POWER: REGULATION AND TAXATION OF COLERCE, FEDERAL SUPREMACY, AND PROBLEMS OF INTERSTATE DISCRIMINATION	M-
6-1	The Judicial Role in Confining Economic Localism	401
6–2	Judicial Review of State Regulation of Interstate Com- merce: Historical Origins and Fundamental Considera-	
		403
6-3		404
6-4	The Cooley Doctrine: Bridge to the Modern Cases	406

Sectio		Pag
6-5	Judicial Review of State Regulation of Interstate Com- merce: Contemporary Doctrine and the Theme of Politi-	
	cal Representation	40
6-6	Restrictions on Access to Local Markets by Out-of-State Sellers and Suppliers	41
6-7	Restrictions on Access to Local Transportation Facilities by Out-of-State Users	41
6-8	Restrictions on Access by Out-of-State Buyers to Scarce Local Resources or Commodities: Price, Production, and Use Controls	42
6-9	Restrictions Which Put Pressure on Out-of-State Business- es to Relocate Within the Regulating State	
6-10	State "Ownership" of Natural Resources	
6-11	State Participation in the Market	
6–12	State Regulations Which Discourage Multi-State Business Structures	43
6–13	A Doctrinal Underview: Economic vs. Other Concerns, Local Needs, and Less Restrictive Alternatives	43
6–14	The Case for Doctrinal Disarray: State Treatment of Out- of-State Corporations	43
6–15	State Taxation of Interstate Commerce: Structuring the Constitutional Analysis	44
6–16	No Taxation Without Representation: The Basic Requirements of Nexus and Fair Apportionment	44
6-17	Forbidden Discriminatory Taxes	45
6–18	State Taxes Which Cumulatively Burden Interstate Commerce	45
6-19	Localizing the Subject Matter of a Tax as a Solution to the	
	Problem of Cumulative Burdens	46
6–20	Apportioning the Measure of a Tax as a Solution to the Problem of Cumulative Burdens	46
6-21	State Regulation of Foreign Commerce	46
6-21	State Taxation of Foreign Commerce	46
6–23 6–24	Tax Immunity Under the Import-Export Clause. The Effect of the Twenty-First Amendment on the Opera-	
6–25	tion of the Commerce Clause The Effect of Federal Legislation on State Action: Pre-	
1.3	emption	
	Actual Conflict Between Federal and State Law	
6–27	Federal Occupation of the Field	49
6–28	The Effect of the Presence of Relevant Federal Regulatory Agencies or of Federal Licensing on Preemption Deci-	
	sions	50
6–29	Use of Preemption Analysis Outside the Commerce Clause Context	50
6–30	The Special Role of Federal Supremacy in Direct Intergovernmental Confrontation: Immunizing Federal Institu-	
718		51

Secti		Page
6-31	The Scope of Federal Tax Immunity	514
6-32	Formalism, Realism, and the Role of Congress in Intergov-	
	ernmental Immunity Cases	518
6–33	Congressional Authorization and Ratification and Their Limits	521
6-34		528
6-35		020
0-00	ern Interpretation	532
	CHAPTER 7. DIRECT PROTECTION OF INDIVIDUALS	
	AND GROUPS: MODELS BEYOND THE SEPARATION	
	AND DIVISION OF POWER	
7-1	The Limited Nature of Direct Federal Protection in the Pre-Civil War Era	546
7-2	Fourteenth Amendment Privileges or Immunities: Historical Background and Early Interpretation	548
7–3	The Inversion of the Slaughterhouse Logic: Glimpse at a	-
	Boomerang	553
7-4	The Penumbral Career of National Privileges or Immunities: Phantom or Phoenix?	
	CHAPTER 8. MODEL II—THE MODEL OF IMPLIED	
4- (-	LIMITATIONS ON GOVERNMENT: THE RISE AND	
	FALL OF CONTRACTUAL LIBERTY	
8–1	Evolution and Federalization of the Theory of Implied	
	Limitations	560
8–2	The Lochner Era: Model II Triumphant	567
8–3	Model II's Scrutiny of Means-Ends Relationships	568
8-4	Model II's Scrutiny of Legislative Ends	570
8-5	The Decline of Lochner: Internal Erosion	574
8-6	The Decline of Lochner: External Assault	578
8-7	Judicial Abdication After the Collapse of Lochner	581
	CHAPTER 9. MODEL III—THE MODEL OF SETTLED	
	EXPECTATIONS: UNCOMPENSATED TAKINGS AND	
	CONTRACT IMPAIRMENTS	FIE
9-1	The Background of Model III	587
9-2	The Shift from Direct to Indirect Enforcement of the Ban	130
46.	on Takings for a Private Purpose	588
9-3	The Traditional Tests for Compensable Takings: Physical	
	Takeover, Destruction of Value, and Innocent Use	592
9-4	Regulatory Takings	595
9-5	Physical Invasions	599
9-6	The Compensation Requirement as an Attempt to Limit	
	Arbitrary Sacrifice of the Few to the Many	605
9-7	The Problematic Nature of Property	
9-8	Early Applications of the Contract Impairment Clause	
	CONTRACTOR OF THE CONTRACTOR O	

Section 9-9	Invoking the Contract Clause to Protect Private Agreements
9–10	Invoking the Contract Clause to Protect Public Commitments
9–11	The Resurrection of the Contract Clause
TA	PTER 10. MODEL IV—THE MODEL OF GOVERNMI L REGULARITY: EX POST FACTO LAWS, BILLS OF ATTAINDER, AND PROCEDURAL DUE PROCESS
10-1	The Values and Dimensions of Governmental Regularity
10–2	The Ban on Ex Post Facto Laws: The Safeguard of Prospectivity
10–3	Modern Ex Post Facto Doctrine: Problems of Prevention, Increased Punishment, and Altered Procedure
10-4	The Ban of Bills of Attainder: Generality as a Supplementary Safeguard
10-5	Limiting Bill of Attainder Doctrine to Punitive Measures
10–6	Applying Bill of Attainder Doctrine to Non-legislative Action: Separation of Powers Considerations
10-7	Procedural Due Process: Intrinsic and Instrumental Aspects
10-8	The Development of Procedural Due Process Prior to 1970: Common-Law Interests and Unconstitutional Conditions
10–9	Extending Procedural Due Process Beyond the Common- Law Core of Personal Interests
10–10	The Narrowing of Protected Interests: Formalizing the Entitlement Concept
10–11	Narrowing Turns to Erosion: Uses of the Entitlement Concept to Cut Back the Core
10–12	What Process Is Due: Identifying the Source of the Protection to Be Accorded
10–13	What Process Is Due: Methods of Specifying Required Protections
10–14	Current Doctrine: The Relevance of Timing and the Need for More than Post-Deprivation Process
10–15	Current Doctrine: Issues of Formality, Content, and Standards of Proof
10–16	Current Doctrine: Issues of Neutrality
10–17	Current Doctrine: Issues of Waiver
	Meaningful Access to Judicial Protection as a Separate Strand of Due Process Doctrine
10-19	The Future of Procedural Due Process

CHAPTER 11. MODEL V—THE MODEL OF PREFERRED RIGHTS: LIBERTY BEYOND CONTRACT

Section	
11-1	The Basic Problem of Post-1937 Constitutional Law
11-2	Selective Incorporation of Bill of Rights Safeguards as a Partial Answer
11–3	Beyond Incorporation: The Ninth Amendment and the "Rational Continuum"
11-4	True and False Starts in the Search for Substantive Rights
11-5	The Elusive Distinction Between Withholding a Subsidy and Imposing a Penalty
C	HAPTER 12. RIGHTS OF COMMUNICATION AND EXPRESSION
12-1	The System of Free Expression
12-2	The Two Ways in Which Government Might "Abridge" Speech—And the Two Corresponding "Tracks" of First Amendment Analysis
12-3	Separating Content-Based Abridgments From Those Independent of Expressive Content: Getting Onto Track One
12-4	Distinguishing Government's Addition of Its Own Voice From Government's Silencing of Others
12-5	Facially Neutral Abridgments Motivated by Content Censorship
12-6	A Closer Look at the Relevance of Motive: The O'Brien Case
12-7	The Persistent But Oversimplified Distinction Between Speech and Conduct
12–8	The Structure of Track-One Analysis: Evaluating Content-Based Abridgments Under Chaplinsky's Two-Level The-
12-9	Clear and Present Danger: Advocacy of Lawless Action
12-3	Clear and Present Danger: "Fighting Words," Vulgarities, and Hostile or Otherwise Special Audiences
12–11	Clear and Present Danger: The Administration of Justice and Alleged Conflicts Between Free Press and Fair Trial
12-12	Defamation: From Personal Assault to Seditious Libel
The state of the same	Defamation of Persons Other Than Public Officials
	The Conflict Between Free Speech and Personal Control Over Information
	The Assimilation of Commercial Speech Into the First Amendment
	The Continuing Suppression of Obscenity
- 24	New Approaches to the Problem of Sexually Explicit Mate-
	rial: Pornography and Feminism

Section	raye
12–18	The New Theory of Content-Based Abridgments on Track One: From Mandatory Content Neutrality to Permissi-
	ble Content Discrimination
12–19	Accommodating Rights to Know, Rights Not to Know, Open Minds, and Closed Communities
12–20	The First Amendment Right to Know: Proceedings Presumptively Open to the Public 955
12–21	The First Amendment Right to Know: Preventing or Penalizing Dissemination of Information "Leaked" From Proceedings or Sources Not "Open to the Public" 965
12–22	The First Amendment Right to Know: Protecting Confidentiality in News Gathering 971
12-23	Government Abridgments of Speech Independent of Ex-
	pressive Content: Track-Two Analysis and Less Restrictive Alternatives
12–24	Public and Semi-Public Forums: From Streets and Parks to Special-Purpose Public Places and Institutions 986
12-25	Private Forums: From Shopping Centers to the Media 998
12-26	The First Amendment Freedom of Association
12-27	Overbreadth: Facial Invalidation as the Response to De-
	terrent Effect1022
12–28	Requiring Substantial Overbreadth: The Diminishing Concern With Deterrence 1024
12-29	The Limited Possibility of Judicial Reconstruction as an Alternative to Facial Invalidation: Trading Overbreadth for Vagueness Where First Amendment Privileges Cannot Be Categorically Defined
12–30	Further Limits on the Use of Saving Constructions: Federalism and Separation-of-Powers Considerations
12–31	Relations Between Vagueness and Overbreadth—The Void for Vagueness Doctrine 1033
12-32	Third Party Standing in First Amendment Litigation: Dif-
8801	
12–33	Facial Invalidation and Substantive Values in First Amendment Jurisprudence: Less Restrictive Alterna-
	tives or Hidden Balancing?
12–34	Constitutional Limits on the Use of Prior Restraints: Two Meanings of "Prior"1039
12-35	Pre-Publication Restraints: Their Procedural Signifi-
	cance1042
12-36	Constitutionally Permissible Prior Restraints
12-37	First Amendment Due Process: Judicial Privacy in the
	Resolution of First Amendment Claims
12-38	The Problem of Overbroad Delegation
12-39	Procedural Overbreadth 1058

CHA	APTER 13. RIGHTS OF POLITICAL PARTICIPATION	JN
Section		Page
13–1	Political Participation: Rights Poised Between Procedura	
	Due Process and the Freedoms of Expression and Association	- -1062
13-2	Apportionment	_1063
13-3	The Quantitative Dimension: One Person, One Vote	_1063
13-4	The Scope of the Guarantee	_1066
13-5	One Person, One Vote: The Requisite Approximation o Equality	f _1068
13-6	One Person, One Vote: Deviations Justified by a Legitimate State Goal	.1071
13-7	The Qualitative Dimension: Fair and Effective Representation	-1074
13-8	Vote Dilution and Racial Groups	_1076
13–9	Vote Dilution and Political Groups	_1080
13–10	Restrictions on the Franchise	1084
13–11	Restricting the Franchise to "Primarily Interested" Persons	- -1086
13–12	Residency, Durational Residency Requirements, and Voting	_1088
13–13	Implications of Voter Residency Requirements for Exclusionary Zoning	-109
13–14	Voting by Military Personnel or Others Initially Moving to	
	a Community for a Limited Purpose	
	Poll Taxes and Literacy Tests	
13–16	Disenfranchising Persons Convicted of Crime or Awaiting Trial	_1094
13–17	The Power to Recognize Distinctive Voter Interests in Direct Referendum Elections	
13–18	Regulation of Candidates, Campaigns, Conventions, and	
	Elections	_109′
13-19	Candidate Eligibility Requirements	_1098
13-20	Party Organization and Political Support	_110
13-21	Candidate Filing Fees	.111
	Party Autonomy versus Governmental Regulation	.1112
13-23	State Action Problems in Political Party Activity	.1118
13-24	Party Affiliation Requirements	_112
13-25	Equal Representation in the Party Nominating Process	1120
13-26	Regulation of Campaign Speech	1129
13-27	Campaign Finance: General Considerations	_1132
13-28	Contribution Limits	_1130
13-29	Expenditure Limitations	_114
13-30	Subsidies to Candidates	_1148
	Dicologuro Provicione	115

C	HAPTER 14. RIGHTS OF RELIGIOUS AUTONOMY
Section	Page
14-1	The Relation of Religious Autonomy to Other Constitu-
	tional Concerns1154
14-2	Constitutional Text and History: The Religion Clauses 1155
14-3	Framers' Intent, Pre-Adoption History, and Post-Adoption
	History as Aids to Understanding1158
14-4	Attempts to Reconcile the Two Clauses: Forbidden, Per-
	missible, and Required Accommodation
14-5	A Case Study of Forbidden, Permissible, and Required
	Accommodation: Religious Exercises and Public
	Schools1169
14-6	Defining "Religion" in the First Amendment
14-7	Neutrality 1188
14-8	The Free Exercise Principle as Dominant in Cases of
	Conflict 1201
14-9	The Requirement of Secular Purpose1204
14-10	The Requirement of Secular Effect1214
14-11	The Requirement of No Excessive Entanglement
14-12	The Requirement That Free Exercise Claimants Show
	Sincerity and Religious Burden 1242
14-13	The Requirement That the State Show That Only Uniform
	Enforcement Can Achieve an Unusually Important
	End
14-14	The Entanglement Concept Disentangled: Distinguishing
	the Mandated Separation of Religious and Governmen-
	tal Power From the Forbidden Separation of Religion
	and Politics 1275
14–15	Official Acknowledgment and Endorsement of Religious
	Values1284
14–16	Tensions Between Religious Autonomy and Religious Com-
	munity
	CHAPTER 15. RIGHTS OF PRIVACY AND
	PERSONHOOD
15-1	Attempts to Classify the Kinds of Interests That Count as
	Privacy1302
15-2	The Significance and Substance of Rights of Person-
	hood1304
15–3	Sources of Protected Rights of Personhood
15-4	Points of Intersection Between Personhood and Law1312
15-5	Governmental Shaping of the Mind: Mandatory Incanta-
	tion and Liberty of Conscience
15–6	Governmental Shaping of the Mind: Compulsory Educa-
	tion and Freedom of Inquiry
15–7	Governmental Shaping of the Mind: Screening the
	Sources of Consciousness

Section	Page
15–8	Governmental Shaping of the Mind: Coercive Conditioning
15–9	Governmental Intrusion on the Body: From Physical Invasion to Gross Neglect
15–10	Governmental Control Over the Body: Decisions About Birth and Babies 1337
15–11	Governmental Control Over the Body: Decisions About Death and Dying 1362
15–12	Governmental Interference With Choice of Life Plan, Pattern, or Style: Risk-Taking
15-13	Life Plan or Style: Vocation1373
15-14	Life Plan or Style: Travel 1378
Y .	Life Plan or Style: Appearance and Apparel
	Controlling a Life's Informational Traces: Reputation and Records 1389
15-17	The Dual Character of Associational Rights1400
15-18	Bounding the Community's Power Over Persons: Harms
1.633 6	Existing Only in the Mind of the Beholder
15-19	Bounding the Community's Power Over Persons: Conduct
	Occurring Within Protected Sanctuaries
15-20	Bounding the Community's Power Over Persons: Choices
23543-7	Implicit in Special Personal Relationships—Families
	and Other Intimate Communities 1414
15-21	The Future of Privacy and Personhood: Sex and Sexual
	Orientation1421
3.4	
- 13	CHAPTER 16. MODEL VI—THE MODEL OF
	EQUAL PROTECTION
16-1	Overview of Equal Protection Analysis
16-2	The Basic Requirement of Minimum Rationality
16–3	The Conceivable Basis Test and Covertly Heightened Scrutiny
16-4	The Pros and Cons of Approximation: Underinclusiveness and Overinclusiveness 1446
16-5	Rationality and Restraint: Beyond Pluralism
16-6	Equal Protection Strict Scrutiny
16-7	Inequalities Bearing on Fundamental Rights
16-8	The Fundamental Right to Interstate Travel
16–9	Intersection of Model V "Preferred Rights" and Model VI "Equality of Rights" 1458
16–10	The Fundamental Right to Equal Voting Opportuni- ty 1460
16-11	The Fundamental Right to Equal Litigation Opportunity1461
16-12	Rights Deemed Fundamental Because of Feared Invidious
PERM	Discrimination 1463
16-13	Suspect Classifications and Forms of Invidious Govern-
	ment Action 1465
	Facially Invidious Discrimination: Racial and Ancestral
10 11	

Section	Page
16–15	"Separate But Equal" Discrimination
16–16	"Neutral" Governmental Reflection of Private Preju-
- 125	dice1480
16–17	The Application of Equal Protection Principles to a State's Entire Legal and Governmental Apparatus
16-18	
	Inadequate Remedies: The Case of School Desegrega-
10-13	tion
16-20	The Problem of Discriminatory Purpose: When Reserva-
	tions About Remedies Masquerading as Questions About the Existence of Constitutional Violations1502
16-21	
10-21	Making Sense of the Equal Protection Clause: A Right Not to Be Subjugated 1514
16-22	Affirmative Action: Governmental Attention to Race in
	Redressing Past Injury, Combatting Persistent
	Prejudice, or Pursuing Goals of Diversity and Integra-
1000	tion1521
16–23	Discrimination Against Aliens: Broadening the Concept of
	Suspect Classification 1544
16-24	Discrimination Against Illegitimates
16-25	Gender Discrimination: The Early Acceptance of
	Prejudiced Laws
16-26	Gender Discrimination: The Emerging Condemnation of
	Explicit Sex-Role Stereotyping Under an Intermediate
	Standard of Review
16-27	
	"Benign" Gender Discrimination1565
16–28	The Tangled Web of Gender Discrimination: Using One
	Discriminatory Practice to Justify Another
16–29	Equal Protection and "Real" Gender Differences: The
I de la company	Case of Pregnancy 1577
16–30	Gender Discrimination and the Equal Rights Amend- ment1585
16 21	Age-Based and Disability-Based Discrimination: New Ho-
10-01	rizons for Semi-Suspect Classifications
16-32	Cataloguing the Techniques of Intermediate Review: As-
	sessing Importance, Demanding Close Fit, Altering Per-
	spective, Requiring Current Articulation, Limiting Af-
	terthought, and Permitting Rebuttal
16-33	Identifying the Circumstances That Trigger Intermediate
	Review
16-34	Intermediate Remedies: The Irrebuttable Presumption
	Doctrine
16-35	Equal or Minimal Protection: Poverty in Constitutional
	Law1625
16-36	The Early Emergence of Poverty as a Potentially Suspect
	Criterion for Legislative Discrimination
16-37	Equal Justice for Rich and Poor Alike: The Basic Prem-
2.24.4	•

Section	Page
16–38	Criminal Justice: Equal Access to State Court Review of Criminal Convictions1629
16-39	Criminal Justice: Equalizing the "Price" of Liberty1633
	Criminal Justice: Investigatory and Prosecutory Re-
	form1634
16-41	Criminal Justice: Recoupment Schemes
	Criminal Justice: Substantive Requirements of Specifi-
	city
	Civil Justice: A Judicial Hearing at a Meaningful Time 1637
16-44	Civil Justice: Equal Access to Divorce Proceedings Under the Due Process Clause 1639
16-45	
	Equal Participation in the Political Process: Demise of the
10 10	Poll Tax
16-47	Demise of Property Ownership as a Means of Voter Qualification 1642
16-48	Equal Access to the Ballot for Political Candidates1642
16-49	Welfare Rights: The Guarantee of Distribution With an
	Even Hand and the Implicit Recognition of Affirmative Duties to the Poor 1643
16-50	Welfare Distribution With an Even Hand-Criteria of
	Eligibility 1645
16-51	Decline of Judicial Intervention on Behalf of the Poor:
1551	
223	OU 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
16-52	Decline But Not Demise of Judicial Intervention on Behalf
	of the Poor: Minimal Protection of the Laws
16-53	Fuentes v. Shevin Revisited1660
16-54	Brotherhood of Railway Trainmen Restrained1660
16-55	Bullock v. Carter Restricted
16-56	Pre-termination Hearings: The Requirement of a Showing of Desperation 1662
16-57	Rights Among the Poor: A Minimally Even Hand Suffices 1662
16–58	A Right to What Money Can Buy: Understanding Valtier- ra, Rodriguez, and Salyer1665
16-59	Reconciling Room at the Top With Protection at the Bot-
	tom1671
CI	HAPTER 17. MODEL VII—TOWARD A MODEL OF
	STRUCTURAL JUSTICE?
	The Relevance of Structure to Substance
17-2	and Principles1677
17–3	Two Levels at Which Structural Analysis Plays a Role: Due Process of Lawmaking and Due Process of Law-
	applying 1682

	CHAPTER 18. THE PROBLEM OF STATE ACTION	
Section	n	age
18-1	The Lessons of "Anti-doctrine"	688
18-2	The Dialectic of Purpose and the Inevitable Indeterminacy	
	of Contemporary State Action "Doctrine"	691
18-3	The State Action Requirement in a Pluralist Jurispru-	
		698
18-4	State Action and "Color of Law"1	703
18-5	The "Public Function" Cases	705
18-6	Common Law as a Subject of State Action Theory: The	
	Role of Constitutional Rights in Fixing the Relevant	
	Level of Analysis1	711
18-7	The Positive State as a Subject of State Action Theory:	4,1
	The Role of Governmental Carrots and Sticks in Fixing	
		715
Appe	endix—The Justices of the Supreme Court1	721
Table	e of Authorities1	723
Index	x	755