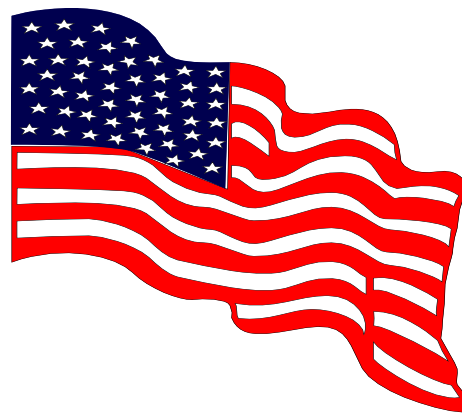


# AMERICAN CONSTITUTIONAL LAW

**POLITICAL SCIENCE 345, THREE SEMESTER CREDITS**

*Civil Liberties and Civil Rights*



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**Office Hours M/W 1:30-2:30; T/TH 1:30-2:30**

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**<https://www.youtube.com/channel/UCZWxocmAzVs1YJeENv3Pe2Q>**

Dear Students:

Greetings and welcome to a unique intellectual journey across the landscape of American constitutional law. My name is Gene Straughan and I am the instructor. My educational background is in the disciplines of political science, law, and criminal justice. It provides me with a social scientific understanding of the political, economic, and cultural aspects of society, especially within the context of the legal and political systems. Along with this particular course, I teach American National government, state and local politics, law and society, political philosophy, judicial process, criminal procedure, criminal law, trial advocacy, juvenile delinquency, comparative criminal justice systems, justice issues and public policy, introduction to social science, torts, and other courses at Lewis-Clark State College. My research interests focus on how public policy seeks to resolve legal conflicts within the United States between a dominant culture and various subcultures, probing the significance of the unwritten character of the law and calibrating the proper weight to be assigned to societal values. I also work closely with federal and state agencies on projects regarding crime prevention, law enforcement, prosecution, adjudication and corrections. I continue to help governors, legislators, administrators, and others to improve the funding of higher education. I consider myself very fortunate because I thoroughly enjoy teaching, research, and public service. My professional efforts reflect a commitment to sharing my experiences with academic colleagues, the community, and most importantly students.

What makes the study of American constitutional law fascinating is the enduring struggle to pursue the lofty but competing aims of democracy. The Constitution created a unique democratic form of government that strikes a delicate balance between majority rule and minority rights. It expressly grants Congress, the President, and the states the power to enact and enforce laws on behalf of the majority for the welfare of society. The majority is expected to rule on most public policy matters. But the power of majority rule must show equal concern and respect to the autonomy, dignity, diversity, and moral capacity of individuals. The Constitution protects the civil liberties and civil rights of everyone. The principle of civil liberty recognizes that individual fulfillment depends on people having the liberty to pursue their notions of the good life free from government interference. The principle of civil rights recognizes that individual fulfillment depends on people having the right to participate in the political, economic, and social arenas on an equal footing with others. Of course, the protection of civil liberties and civil rights is not absolute. No one has a right to sacrifice humans as part of a religious ritual, publish falsehoods about another, operate a vehicle with poor eyesight, or be a physician without earning a medical degree. The right of the people to govern themselves according to popular notions of order, welfare, and morality must be balanced against protection for individual rights. As such, the genius of the Constitution is the line drawn between promoting the interests of the politically powerful and protecting the personal freedom of the politically powerless.

As the twenty-first century begins, the people of the United States are confronting a wide array of constitutional issues. Should the Constitution be interpreted narrowly according

to the letter and intent of its provisions or broadly according to the spirit and evolving standards of a modern democratic society? How can government control violent crime and combat the looming threat of terrorism without sacrificing individual freedom? Other questions are equally compelling: Does the First Amendment safeguard offensive and pornographic expression? Should the religion clauses prohibit public school prayer, but protect unpopular religious practices? What procedural rights are guaranteed to criminal suspects under the Fourth, Fifth, and Sixth Amendments? Should evidence obtained in violation of the Constitution be excluded from a criminal prosecution? How does the right to privacy protect personal choices about procreation, abortion, sexual relations, and euthanasia? How should public and private forms discrimination be treated under the equal protection clause? What affirmative steps can be taken to ameliorate the lingering effects of unequal treatment toward women, minorities, and others? There are no simple answers to the intractable problems the Constitution is expected to resolve. Commonly cited solutions might work or might be only symbolic and even make the problems worse.

At few times has there been a greater challenge to reflect on the competing principles of the Constitution. Students should come to realize that democratic government is neither altruistic nor egotistic, but a human enterprise—one with moral spirit, selfishness, and even dangerous arrogance. The human capacity for justice makes democracy possible, but the human inclination to injustice makes democracy necessary. Students should also be willing to shed their prejudices and think critically about leading legal and political issues of constitutional law. Students are invited to discover what sociologist C. Wright Mills called the “sociological imagination.” He described this state of mind as “the capacity to shift from one perspective to another—from the political to the psychological; from the examination of a single family to comparative assessment of the national budgets of the world. It is the capacity to range from the most impersonal and remote transformations to the most intimate features of human self—and to see the relations between the two.” But with challenges come rewards for students who open their minds and learn more about the Constitution. Such a richer appreciation of constitutional law can only lead students to become more committed to keeping government responsive to the people and problems of the twenty-first century. Remember that nothing is graven in stone. There are no final lessons to understanding the delicate balance between a safe but free democratic society.

Sincerely yours,

Gene T. Straughan, Ph.D., Professor and Director of LCSC Justice Studies Program

# INTRODUCTION TO CONSTITUTIONAL LAW

**COURSE DESCRIPTION:** The objective of this course is to provide a comprehensive perspective of the democratic system of limited government, majority rule, and individual rights established under the United States Constitution. The course itself is organized into three broad areas: (1) Freedom of Expression, (2) Due Process of the Law, and (3) Equality Under the Law. Section One introduces the historical development of the power of judicial review and the way the Supreme Court has interpreted the Bill of Rights to protect civil liberties. Detailed attention is devoted to the protection of freedom from government interference with individual choices about religion, politics, speech, press, assembly, and association. Section Two covers how the concept of due process of law has been construed by the Supreme Court to impose substantive and procedural restraints on government officials. Basic principles are explained from the standpoint of the regulation of private choices and the criminal justice process with regard to stops, frisks, searches, arrests, interrogations, prosecutions, trials, and punishment. Section Three examines civil rights and the efforts of the Supreme Court to guarantee the freedom of everyone to receive equal treatment from the public and private sectors. Judicial standards of equality are examined within the context of discrimination based on race, gender, illegitimacy, disability, age, wealth, and alienage. By focusing on these general areas, the course will provide students with an opportunity to accomplish the following objectives:

- A. To develop critical thinking about how and why a balance must exist between preserving a peaceful democratic society and protecting individual freedom.
- B. To provide a perspective of the power of judicial review and the protection of the freedom of individuals to express their vision of the good life.
- C. To understand the principles of due process, ranging from the regulation of personal choices to the detection, prosecution and punishment of criminals.
- D. To explain the struggle to protect the freedom of individuals to compete on an equal footing for social, economic, and political opportunities.

**COURSE TEXTBOOKS:** The reading materials recommended for this class include Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, 10<sup>th</sup> ed. (New York: CQ Press, 2019) and David O'Brien, *Lanahan Readings in Civil Rights and Civil Liberties*, 3<sup>rd</sup> ed. (Boston: Lanahan Press, 2017). In writing these texts, the authors have concentrated on how the Supreme Court has interpreted the federal Constitution to guarantee individual freedom within the context of an orderly democratic nation. *Constitutional Law* uses excerpts from judicial decisions to evaluate the issues, rationales, and significance of the cases defining the principles of constitutional law. The *Lanahan Readings* contain articles written by scholars who examine the proper institutional role of the Court and the proper scope of civil liberties and civil rights within an orderly democratic system. These texts go beyond simply presenting general information about constitutional law. They also explain how justices reach different results according to their attitudinal perceptions of the law within the context of the language, intent, precedent, and case facts.

**COURSE WORK AND EVALUATION:** The work requirements for this course consist of a research project and three exams—each of which are worth 100 points and amount to 400 possible points. Each test will be made up of essay questions designed to evaluate the ability of students to comprehend, analyze and apply the legal principles of constitutional law. The research paper must examine a dilemma of constitutional law and analyze how courts have dealt (empirical component) and should deal (normative component) with the situation. The topic of the paper will be proposed by the student and approved by the instructor. The paper must be a minimum of eight pages long and draw from and cite at least five academic sources, including two from scholarly journals. In addition, the students may receive extra credit by taking part in class discussions and completing any of the end-of-section questions worth six points each. Students are also required to write course assignments in their own words, except for those few occasions where they find it necessary to quote and cite authorities. The course work is structured to evaluate not only the student's knowledge and application of the subject, but also his or her ability to analyze and synthesize it. In terms of the grading scale, the research paper will account for 25% of the course grade and the examinations 75% (or 25% for each test) with the following breakdown:

<u>Grade In Course</u>	<u>Percent of Total</u>	<u>Range of Points</u>
A+	100-97%	400-388
A	96-93%	387-372
A-	92-90%	371-360
B+	89-87%	359-348
B	86-83%	347-332
B-	82-80%	331-320
C+	79-77%	319-308
C	76-73%	307-292
C-	72-70%	291-280
D+	69-67%	279-268
D	66-63%	267-252
D-	62-60%	251-240
F	59-00%	239-00

**SUGGESTED STUDY METHODS:** No method of study can meet the diverse needs of each student. Still a number of strategies can be used to gain a better perspective of the subject. Before attending class the students need to read the materials and brief the corresponding court cases from the assigned readings. This will allow students to familiarize themselves with the focus of the lectures and at the same time enable them to digest the judicial decisions. After the students have finished the readings, they should outline the material in order to fully understand the principles and issues of constitutional law. When outlining the students should brief the important case facts and judicial positions emerging from the judicial opinions. This will help the students to concentrate on what constitutional issues were raised by each case and how the justices went about resolving them. The next important strategy is to attend class. After all, the classroom is where the greatest amount of learning takes place through an open dialogue of the subject. Plus the examination questions will be taken directly from the lectures and readings. It is important to realize that students learn what they read and write about on a regular basis. So the key to unlocking the doors of American constitutional law is to take the assignments seriously.

## CALENDAR FOR CONSTITUTIONAL LAW

<b>Section 1: Freedom of Expression</b>	<b>Dates</b>	<b>Text Assignment</b>	<b>Page #s</b>
A. Law, Politics, and the Court	1/19	CL Casebook:	01-064
		Anthology 17:	03-044
B. The Changing Bill of Rights	1/26	CL Casebook:	65-086
		Anthology 17:	47-105
C. Church, State, and Freedom	2/02	CL Casebook:	88-182
		Anthology 17:	137-168
D. Speech and Press Freedoms	2/09	CL Casebook:	183-306
		Anthology 17:	107-124
E. Obscenity and Libel Speech	2/16	CL Casebook:	307-353
		Anthology 17:	125-136
F. Examination for the Section	2/23	Books Listed:	All
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<b>Section 2: Due Process of the Law</b>	<b>Dates</b>	<b>Text Assignment</b>	<b>Page #s</b>
A. The Basic Right to Privacy	2/28	CL Casebook:	365-426
		Anthology 17:	304-326
B. Fourth Amendment Rights	3/07	CL Casebook:	428-478
		Anthology 17:	171-217
C. Self-Incrimination Privilege	3/09	CL Casebook:	478-496
		Anthology 17:	218-225
D. Rights Related to Fair Trial	3/14	CL Casebook:	497-527
		Anthology 17:	226-241
E. Eighth Amendment Rights	3/21	CL Casebook:	527-553
		Anthology 17:	243-271
F. Examination for the Section	3/24	Books Listed:	All
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<b>Section 3: Equality Under the Law</b>	<b>Dates</b>	<b>Text Assignment</b>	<b>Page #s</b>
A. Race-Based Discrimination	4/04	CL Casebook:	556-611
		Anthology 17:	273-292
B. Affirmative Action Policies	4/11	CL Casebook:	611-631
		Anthology 17:	327-338
B. Sex-Related Classifications	4/18	CL Casebook:	631-656
		Anthology 17:	293-311
C. Wealth, Age, and Disability	4/25	CL Casebook:	656-668
		Anthology 17:	312-329
E. Voting and Representation	5/02	CL Casebook:	669-720
		Anthology 17:	339-353
F. Examination for the Section	5/11	Books Listed:	All

## THE AMERICAN JUDICIARY—A LEGAL/POLITICAL INSTITUTION

**INTRODUCTION:** This section examines the structure, functions, and processes of the federal court system. It consists of trial courts, appellate courts, and a supreme court. Trial courts hear cases for the first time and render a verdict while appellate courts decide legal issues raised at trial. Sitting at the top is the United States Supreme Court. It wields the power of judicial review and strikes down governmental actions which circumvent statutory or constitutional provisions. Much controversy emerges over the proper role of the Court because judicial review is countermajoritarian and the justices are somewhat insulated from electoral politics. Unlike other elected officials, the justices function relatively independent of the ballot box since they are given life tenure. But the justices are sensitive to their political climate. The appointment process is often political and the power of the Court is one of only judgment. Equally important, the justices must wait for the litigants to initiate cases and then certain jurisdictional requirements must be present. The Court also depends on the President to enforce and the people to comply with its decisions which can be tempered by various checks and balances. Still curbs on judicial power have been rare, leaving justices with extensive leeway to interpret the often vague language of the law. Not surprisingly the justices often decide cases in a way which perpetuates their own policy preferences. Depending upon the ideological makeup of its members, the Court has leaned toward either judicial activism or restraint. The argument over whether judges should be active or passive in the exercise of judicial review and how they should construe the charter is as old as the Republic. Today, the debate continues between people who believe judges should adapt the purposes of the Constitution to new conditions and others who think judges should be faithful to the original and plain meaning of the text.

**READING ASSIGNMENT:** Casebook, pages 1-64, 354-364; and Anthology, pages 3-44.

**CONCEPT QUESTIONS:** Explain each concept and then incorporate specific examples to better illustrate the important points. Also discuss what the discipline of political science has to say about the overall significance of each concept.

1. Federal Court System
2. The Judicial Process
3. Judicial Review Power
4. Decisional Compliance
5. Appointment of Jurists
6. Activism and Restraint

**ESSAY QUESTIONS:** Address the primary issues of each essay question by defining concepts and incorporating specific examples. Also discuss what the discipline of political science has to say about the overall significance of such issues.

1. What are the jurisdictional conditions and restrictions on the power of the Supreme Court to hear and resolve concrete cases between adverse parties?
2. What are the different approaches to constitutional interpretation, and how does each approach relate to the individual right to keep and bear arms?

### READINGS FOR FURTHER STUDY:

1. Henry J. Abraham and Barbara Perry, *Freedom and the Court: Civil Rights and Liberties In the United States* (New York: Oxford University Press, 1994).
2. William C. Louthan, *The United States Supreme Court: Lawmaking in the Third Branch of Government* (Englewood Cliffs: Prentice Hall, 1991).
3. Jeffrey A. Segal and Harold Spaeth, *The United States Supreme Court and the Attitudinal Model* (New York: Cambridge University Press, 1993).
4. Gene Thomas Straughan, "Religious Liberty for the Politically Powerful: The Changing Free Exercise Jurisprudence of the United States Supreme Court," 1 *Innovations: A Journal of Politics*, pages 81-109 (1998).
5. Melvin I. Urofsky, *The Continuity of Change: The Supreme Court and Personal Liberties 1953-1986* (Belmont, California: Wadsworth Publishing, 1991).

## FIRST AMENDMENT RIGHTS—FREEDOM OF/FROM EXPRESSION

**INTRODUCTION:** This section examines the historical struggle to protect freedom of conscience and expression within a peaceful society. Beyond limiting power through institutional devices, the Founders adopted constitutional protections to prevent arbitrary government interference with human dignity, autonomy, and diverse choices about the good life. The principle of civil liberty recognizes that the fulfillment of individuals and progress of civilization depends on an atmosphere free from government regulation, except where such expression poses a clear risk of harm to others. The Bill of Rights reflects the early American commitment to protecting individual choices from arbitrary interference by the national government. Not until 1925 was the Fourteenth Amendment's due process clause interpreted by the Supreme Court to selectively incorporate the Bill of Rights to extend to the states. One of the first provisions to be incorporated was the First Amendment. It contains broad language that guarantees freedom of religion, speech, press, association, assembly, and petition. At first glance the guarantees of the First Amendment seem absolute. But individual expression must always be balanced against such competing interests as maintaining public order and the rights of others. No one has a right to sacrifice humans as part of a religious ritual, publish defamatory falsehoods about another, or falsely shout "Fire!" in a dark crowded theater. Over the years, the Supreme Court has embraced a practical approach to protecting civil liberties. It accords them a preferred position, but refuses to construe them as outweighing all government regulations. When interfering with personal expression, the state must have an overriding interest unrelated to the moral content of the regulated expression and use the least restrictive means. But just how compelling the justification must be before choices about the good life are overridden is open to debate.

**READING ASSIGNMENT:** Casebook, pages 65-86, 87-353; Anthology, pages 45-168.

**CONCEPT QUESTIONS:** Explain each concept and then incorporate specific examples to better illustrate the important points. Also discuss what the discipline of political science has to say about the overall significance of each concept.

1. The Preferred Position
2. Incorporation Doctrine
3. Freedom of the Press
4. Association/Assembly
5. Pornography/Obscenity
6. Hate-Motivated Speech

**ESSAY QUESTIONS:** Address the primary issues of each essay question by defining concepts and incorporating specific examples. Also discuss what the discipline of political science has to say about the overall significance of such issues.

1. How is religious freedom safeguarded under the First Amendment, and how are religious choices protected by the establishment and free exercise clauses?
2. What are the rationales for safeguarding freedom of expression, and why are some forms of speech accorded constitutional protection and others are not?

### READINGS FOR FURTHER STUDY:

1. Robert Alley, *School Prayer: The Supreme Court, the Congress, and the First Amendment* (Amherst, New York: Prometheus Books, 1995).
2. Stanley Fish, *There is No Such Thing As Free Speech and It is a Good Thing, Too* (New York: Oxford University Press, 1994).
3. Nat Hentoff, *Free Speech For Me But Not for Thee: How the American Left and Right Relentlessly Censor Each Other* (New York: Harper Perennial, 1992).
4. Lucas A. Powe, *The Fourth Estate and the Constitution: Freedom of the Press In America* (Berkeley: University of California Press, 1991).
5. Gene T. Straughan, *How the First Amendment Protects Religious Liberty: From the Founding to the Rehnquist Court* (Moscow: University of Idaho, 1994).



## DUE PROCESS GUARANTEES—SUBSTANTIVE AND PROCEDURAL

**INTRODUCTION:** This section considers the ways in which the due process clauses protect against governmental deprivation of life, liberty, and property. Early Americans knew from their experience how the state sometimes resorts to taking away freedom to further the momentary interests of the majority. The Fifth and Fourteenth Amendments were adopted to prevent federal and state officials from depriving anyone of life, liberty, or property without due process of law. But under what conditions does government interfere with a protected area and then what process is due? During the past two hundred years the due process clauses have been interpreted by the courts as encompassing procedural and substantive guarantees. Due process requires the substantive ends of laws to be reasonably compatible with the aims of the Constitution and the decision-making processes of the state to be fundamentally fair. Procedural due process protects against arbitrary searches, seizures, interrogations, prosecutions, and punishments by government. Substantive due process shields the privacy and property rights of people from arbitrary interference by the state. Much disagreement exists over how government power may be exercised and what government may regulate. Recent controversies center around the breadth of the exclusionary rule and the right to privacy. Neither the exclusion of illegally obtained evidence from criminal trials nor the right to make choices about intimate matters is expressly found within the Constitution. Nevertheless, the Supreme Court has for the most part supported the exclusionary remedy and expanded the right to privacy to include spatial, bodily, and associational matters. Whether such protection extends to decisions about abortion, sexual activities, and suicide has proven to be more controversial. Once again the Court has struggled to determine when government may interfere with life, liberty, or property without undermining due process.

**READING ASSIGNMENT:** Casebook, pages 365-553; Anthology, pages 169-271.

**CONCEPT QUESTIONS:** Explain each concept and then incorporate specific examples to better illustrate the important points. Also discuss what the discipline of political science has to say about the overall significance of each concept.

1. Due Process Standards
2. The Exclusionary Rule
3. Right to Remain Silent
4. Right to Legal Counsel
5. Capital Punishment
6. Right to Die Issue

**ESSAY QUESTIONS:** Address the primary issues of each essay question by defining concepts and incorporating specific examples. Also discuss what the discipline of political science has to say about the overall significance of such issues.

1. What constitutional provisions create a right to privacy and how is privacy protected within different spatial, bodily, and associational contexts?
2. What are the search and seizure conditions of the Fourth Amendment and what exceptions have been created regarding search warrants and probable cause?

### READINGS FOR FURTHER STUDY:

1. Robert M. Baird and Stuart Rosenbaum, *Punishment and the Death Penalty: The Current Debate* (Amherst, New York: Prometheus Books, 1995).
2. Ronald Huff, Arye Rattner, and E. Sagarin, *Convicted But Innocent: Wrongful Conviction and Public Policy* (Thousand Oaks: Sage Publications, 1996).
3. Wayne R. LaFare and Jerold Israel, *Criminal Procedure: The Student Hornbook Series*, 2nd ed. (St. Paul: West Publishing Company, 1993).
4. Darien A. McWhirter, *Privacy As A Constitutional Right: Sex, Drugs, and the Right to Life* (New York: Quorum Books, 1992).
5. Samuel Walker, *Taming the System: The Control of Discretion In the Criminal Justice System* (New York: Oxford University Press, 1993).

## EQUALITY UNDER THE LAW—THE EVOLUTION OF CIVIL RIGHTS

**INTRODUCTION:** This section covers the enduring struggle to guarantee everybody an equal footing to compete within the social, political, and economic sectors of society. The ambivalence of the Framers toward the principle of equality is reflected in their narrow extension of civil rights to white males. Only after the Civil War was equality for other groups considered with the passage of the 13th, 14th, 15th, 19th, and 26th Amendments. It took the Civil Rights Movement of the 1960s for the nation to start fulfilling the promise of equality. Today the principle of equal treatment recognizes that opportunities to a fulfilling life cannot be denied because of a stereotype or immutable trait. Of course no one has a right to live in a mansion, operate a car while being blind, or be a doctor without earning a medical degree. Over the years, the Supreme Court has adopted a three-tiered approach to determining when the state denies the equal protection of the law. Laws regulating citizenship, age, disability, wealth or nonfundamental rights must be rationally related to accomplishing a legitimate state end. Laws affecting gender or illegitimacy must be substantially related to achieving an important state end. Laws touching race and fundamental rights must be necessarily related to achieving a compelling state end. Under such a sliding scale, the Court scrutinizes the rationales for some regulations (race or sex) but shows deference to other ones (age or alienage). Equally important is how Congress has relied on its spending and commerce power to level out the playing field. Federal laws forbid discrimination in education, employment and public accommodations. Still, the white male tends to finish the socioeconomic race of life far ahead of others. It is unlikely that women or minorities will catch up given their history of unequal treatment. The question remains one of determining what action is necessary to provide an equal footing for everyone.

**READING ASSIGNMENT:** Casebook, pages 556-720; Anthology, pages 273-353.

**CONCEPT QUESTIONS:** Explain each concept and then incorporate specific examples to better illustrate the important points. Also discuss what the discipline of political science has to say about the overall significance of each concept.

1. Equality of Treatment
2. Segregation Practices
3. Housing Discrimination
4. Disparate Impact Cases
5. Selecting the Jury
6. Affirmative Action

**ESSAY QUESTIONS:** Address the primary issues of each essay question by defining concepts and incorporating specific examples. Also discuss what the discipline of political science has to say about the overall significance of such issues.

1. How are racial forms of public and private discrimination treated under the Constitution, and what is the law of public school de and re segregation?
2. What is the difference between a fundamental and non-fundamental right, and how are gender-based classifications scrutinized under the Constitution?

**READINGS FOR FURTHER STUDY:**

1. Abraham L. Davis and Barbara Luck Graham, *The Supreme Court, Race and Civil Rights* (Thousand Oaks, California: Sage Publications, 1995).
2. Douglas Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993).
3. Donald Nieman, *"Promises to Keep:" African Americans and the Constitutional Order, 1776 to the Present* (New York: Oxford University Press, 1991).
4. Dorothy M. Stetson, *Women's Rights In the United States: Policy Debates and Gender Roles* (Pacific Grove, California: Wadsworth Publishing, 1991).
5. John R. Wunder, *"Retained By the People:" A History of American Indians and the Bill of Rights* (New York: Oxford University Press, 1994).