

## INTRODUCTION TO THE 2012 CENTENNIAL EDITION

The need for a comprehensive treatise on the Constitution was apparent to Congress from early in the 20th century. In 1911, the Senate Manual (a compilation of the Senate's parliamentary procedures) included the United States Constitution and amendments with citations to U.S. Supreme Court constitutional decisions. A century later, the field of constitutional law has expanded exponentially. As a result, this present iteration of that early publication exceeds 2300 hundred pages, and references almost 6000 cases. Consistent with its publication in the 21st Century, this volume is available at the website of the Government Printing Office ([www.gpo.gov/constitutionannotated](http://www.gpo.gov/constitutionannotated)) and will be updated regularly as Supreme Court cases are decided.

Sixty years ago, Professor Edward S. Corwin wrote an introduction to this treatise that broadly explored then existent trends of constitutional adjudication. In some respects—the law of federalism, the withdrawal of judicial supervision of economic regulation, the continued expansion of presidential power and the consequent overshadowing of Congress—he has been confirmed in his evaluations. But, in other respects, entire new vistas of fundamental law of which he was largely unaware have opened up. *Brown v. Board of Education* was but two Terms of the Court away, and the revolution in race relations brought about by all three branches of the Federal Government could have been only dimly perceived. The apportionment-districting decisions were still blanketed in time; abortion as a constitutionally protected liberty was unheralded. The Supreme Court's application of many provisions of the Bill of Rights to the States was then nascent, and few could anticipate that the expanded meaning and application of these Amendments would prove revolutionary. Sixty years has also exposed the ebb and flow of constitutional law, from the liberal activism of the 1960s and 1970s to a more recent posture of judicial restraint or even conservative activism. Throughout this period of change, however, certain movements, notably expansion of the protection of speech and press, continued apace despite ideological shifts.

This brief survey is primarily a suggestive review of the Court's treatment of the doctrines of constitutional law over the last sixty years, with a closer focus on issues that have arisen since the last volume of this treatise was published ten years ago. For instance, in previous editions we noted the rise of federalism concerns, but only in the last two decade has the strength of the Court's deference toward states become apparent. Conversely, in this treatise as well as in previous ones, we note the rise of the equal protection clause as a central concept of constitutional jurisprudence in the period 1952–1982. Although that rise has somewhat abated in recent years, the clause remains one of the predominant sources of constitutional constraints upon the Federal Government and the States. Similarly, the due process clauses of the Fifth and Fourteenth Amendments, recently slowed in their expansion, remain significant both in terms of procedural protections for civil and criminal litigants and in terms of the application of substantive due process to personal liberties.

### SECTION I

Issues relating to national federalism as a doctrine have proved to be far more pervasive and encompassing than it was possible to anticipate in 1952. In some respects, of course, later cases only confirmed those decisions already on the books. The foremost example of this confirmation has been the enlargement of congressional power under the commerce clause. The expansive reading of that clause's authorization to Congress to reach many local incidents of business and production was already apparent by 1952. Despite the abundance of new legislation under this power during the 1960s to 1980s, the doctrine itself was scarcely enlarged beyond the limits of that earlier period. Under the commerce clause, Congress can assert legislative jurisdiction on the basis of movement over a state boundary, whether antecedent or subsequent to the point of regulation; can regulate other elements touching upon those transactions, such as in-