



# State Constitutional Law: The Modern Experience (American Casebook Series)

*Randy Holland, Stephen McAllister, Jeffrey Shaman, Jeffrey Sutton*

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In this, the second edition of *State Constitutional Law: The Modern Experience*, the authors present cases, scholarly writings, and other materials about our ever-evolving, ever-more-relevant state charters of government. The casebook starts by placing state constitutions in context—in the context of a federal system that leaves some powers exclusively with the States, delegates some powers exclusively to the Federal Government, and permits overlapping authority by both sovereigns in many areas. The resulting combination of state and federal charters—what might be called American Constitutional Law—presents fruitful opportunities for give and take, for exporting and importing constitutional tools and insights between and among the different sovereigns.

The casebook often addresses the point by explaining how the U.S. Constitution deals with an issue before discussing how the state constitutions handle an identical or similar issue. At other times, the casebook explains and illustrates how the state constitutions contain provisions that have no parallel in the U.S. Constitution. A central theme of the book, explored in the context of a variety of constitutional guarantees, is that state constitutions provide a rich source of rights independent of the federal constitution. Considerable space is devoted to the reasons why a state court might construe the liberty and property rights found in their constitutions, to use two prominent examples, more broadly than comparable rights found in the U.S. Constitution. Among the reasons considered are: differences in the text between the state and federal constitutional provisions, the smaller scope of the state courts' jurisdiction, state constitutional history, unique state traditions and customs, and disagreement with the U.S. Supreme Court's interpretation of similar language.

State constitutional law, like its federal counterpart, is not confined to individual rights. The casebook also explores the organization and structure of state and local governments, the method of choosing state judges, the many executive-branch powers found in state constitutions but not in their federal counterpart, the ease with which most state constitutions can be amended, and other topics, such as taxation, public finance and school funding. The casebook is not parochial. It looks at these issues through the lens of important state court decisions from nearly every one of our 50 States. In that sense, it is designed for a survey course, one that does not purport to cover any one State's constitution in detail but that considers the kinds of provisions found in many state charters. Like a traditional contracts, real property or torts textbook, the casebook uses the most interesting state court decisions from around the country to illustrate the astonishing array of state constitutional issues at play in American Constitutional Law.

It is difficult to overstate the growing significance of state constitutional law. Many of the ground-breaking constitutional debates of the day are being aired in the state courts under their own constitutions—often as a prelude to debates about whether to nationalize this or that right under the National Constitution. To use the most salient example, it is doubtful that there would have been a national right to marriage equality in 2015, see *Obergefell v. Hodges*, without the establishment of a Massachusetts right to marry in 2003, see *Goodridge v. Department of Public Health*. In other areas of constitutional litigation—gun rights, capital punishment, property rights, school funding, free exercise claims, to name but a few—state courts often are the key innovators as well, relying on their own constitutions to address individual rights and structural

debates of the twenty-first century. The mission of the casebook is to introduce students to this increasingly significant body of American law and to prepare them to practic

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