THE INTEGRATION OF THEORY AND PRACTICE IN TEACHING STRUCTURAL ISSUES IN CONSTITUTIONAL LAW

*Daan Braveman**
*William Banks***

For fifteen years and four editions, our casebook[1] has differed from the mainstream canon[2] in two respects. First, we give relatively greater emphasis to the structure of government issues of federalism and separation of powers. Constitutional law casebooks and courses typically include an examination of judicial review, distribution of power among federal branches and between the federal and the state governments, and individual rights. The second of these themes, however, is often short-changed in favor of the study of the first and third. Structural issues have played, and continue to play, an important role in constitutional law and in society generally. Moreover, concerns about distribution of governmental power may influence individual rights determinations.[3]

To facilitate this allocation of the subject areas, we divided our basic constitutional law offering into two required courses, each three credits. Constitutional Law I begins with an examination of judicial review but then focuses exclusively on federalism and separation of powers. The separate Constitutional Law II course, taught in the Fall semester of the second year, examines individual rights issues.

* Dean and Professor of Law, Syracuse University College of Law.

** Laura J. and L. Douglas Meredith Professor, Syracuse University College of Law.

1. Daan Braveman, William C. Banks, and Rodney A. Smolla, *Constitutional Law: Structure and Rights in Our Federal System* (4th ed. 2000).

2. We use the term to refer to the teaching canon, the material used to educate law students. See J.M. Balkin and Sanford Levinson, *The Canons of Constitutional Law,* 111 Harv. L. Rev. 963, 970 (1998).

3. See, e.g., *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

We also depart from the traditional approach to constitutional law by attempting to integrate constitutional theory and doctrine with practical problems. During the past decade, considerable attention has focused on methods of integrating theory and practice into the study of law.[4] While much of this literature focused on clinical legal education, some suggested the values of greater integration in traditional classrooms as well.[5] From the beginning of our collaboration, we agreed that students understand constitutional law theory better after they see its application, and that the practical implications are more fully appreciated when the development of constitutional law theory is learned. We prepared a set of problems for nearly every section of each chapter, and we use the problems to emphasize the practical component of constitutional law in most class sessions. The problems provide opportunities to escape the "pigeonholing"[6] effect of legal education, allowing students to see relationships among topics covered in their other courses. In some instances, the practical problems also allow the use of interdisciplinary material. Finally, the problems expose students to professional lawyering skills and issues of professionalism.

As our book and teaching evolved, we devoted considerably more time and book space (in relative terms) to separation of powers and federalism. We resisted reprinting most secondary source materials, and we presented only bare bones notes and questions following full case edits. We use our book, supplementary materials, and the classroom to integrate course topics whenever possible, to illustrate the role of social science disciplines in solving constitutional law problems, to show how state constitutional law relates to and complements federal law, and to bring some current constitutional law issues to the students' attention. The following discussion uses three examples to illustrate our use of practical problems to teach the structural issues.

4. See, e.g., Hugh Brayne, Nigel Duncan, and Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998); J.P. Ogilvy, Leah Wortham, and Lisa Lerman, *Learning From Practice* (1998); *Symposium, Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 Hastings L.J. 717 (1992); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 Minn. L. Rev. 1599 (1971).

5. See, e.g., Richard Boldt and Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context*, 43 Hastings L.J. 1111 (1992).

6. The "pigeonholing" practice attempts to place issues in single boxes and, in so doing, impedes development of an understanding of the complexities of the subject. As Laurence Tribe observed, pigeonholing "endangers the pigeon." Laurence Tribe, *American Constitutional Law* 943 (Foundation Press, 2d ed. 1988).

TEACHING FEDERALISM THROUGH THE 11TH AMENDMENT

We begin the federalism section with a consideration of the reasons for a federalist structure and a historical overview. Specifically, our book includes historical material about the Constitutional Convention and the ratification debates. It then presents textual material that briefly traces the federalism theme in the pre-Civil War period, in the period from the Civil War to the New Deal, and in the modern period.

Like most casebooks, we examine federalism limits on the elected branches and the states. In this chapter, we first study the scope of federal power and then explore congressional power to regulate interstate commerce. The final section includes the dormant commerce clause cases as a vehicle for studying constitutional limits on the states' power to regulate commerce. For the most part, this chapter is typical of most other books and includes much of the "canon."

The problem in this chapter places the students in the role of legislators who are considering whether Congress has the power to enact a bill that requires all public and private employers of 15 or more employees to provide a certain level of health insurance coverage. The problem reappears as we progress through the material. When the students first consider the problem after reading *McCulloch* they have difficulty finding a source of power, even with the Court's conclusions about the Necessary and Proper Clause. We then begin the commerce clause material and discuss the problem after reading *Gibbons*,[7] *Knight*,[8] and *Hammer*.[9] When they study the post-New Deal cases,[10] they begin to see the potential for relying on the commerce clause to enact the bill. Finally, we examine the more recent cases[11] and consider their impact on congressional power. The problem enables students to understand the development of the commerce clause theory and doctrine over time. It also provides an opportunity to discuss underlying federalism values and whether congressional regulation in this area threatens those

---

7. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).
8. *United States v. E. C. Knight Co.*, 156 U.S. 1 (1895).
9. *Hammer v. Dagenhart*, 247 U.S. 25 (1918).
10. *United States v. Darby*, 312 U.S. 100 (1941); *Katzenbach v. McClung*, 379 U.S. 294 (1964).
11. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985); *New York v. United States*, 505 U.S. 144 (1992); *United States v. Lopez*, 514 U.S. 549 (1995); *Printz v. United States*, 521 U.S. 898 (1997).

values. Finally, the students must examine the legislator's duty to consider constitutional issues and the differences between the legislative and judicial processes. In that regard, the problem is a bridge to the Public Law Processes course (a required first year course focusing on lawmaking by legislative and administrative bodies). We ask students to build the kind of legislative record that might be needed to support the legislation. We compare the process for developing that record with the judicial process. We also discuss the legislator's ability to balance political considerations with the duty to uphold the constitution.

Our most significant departure from the canon is the chapter on "Federalism Limits on Federal Courts." Here, we include material that is taught more commonly in Federal Courts courses. We cover the Eleventh Amendment,[12] abstention,[13] remedies,[14] and Supreme Court review.[15] We have found that this material provides a richer opportunity than the commerce clause to examine the constitutional structuring of state-federal relations, the role of the courts in weighing federalism concerns, and the underlying federalism values.

Once again, we use a problem throughout the chapter as a vehicle for focusing the study. Last year, the problem was a variation of a case pending in Rochester, New York, which challenges the state's method of allocating funds to public schools. We review the complaint and the factual allegations supporting the claim that New York State is denying a minimally adequate education to children in the Rochester school district. The plaintiffs allege that the state is violating the state and federal constitutions as well as Title VI. They are seeking injunctive relief directing the State to develop a plan to remedy the effects of the past disparities and to ensure that Rochester school children will be provided an adequate education in the future.

At the outset (before we discuss any of the material), we consider where the parties might prefer to litigate the case, state or federal court. It is an opportunity to review material that is usually pigeonholed in the Civil Procedure course. For example,

---

12. *Hans v. Louisiana*, 134 U.S. 1 (1890); *Ex parte Young*, 209 U.S. 123 (1908); *Edelman v. Jordan*, 415 U.S. 651 (1974); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Alden v. Maine*, 119 S. Ct. 2240 (1999).

13. *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959).

14. *Younger v. Harris*, 401 U.S. 37 (1971); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).

15. *Michigan v. Long*, 463 U.S. 1032 (1983).

we discuss subject matter jurisdiction, including issues relating to federal question jurisdiction, concurrent jurisdiction, and supplemental jurisdiction. We also examine other factors that affect the forum selection decision. Such an examination leads to a discussion of the relative willingness and competence of state and federal courts to consider the issues raised in the complaint.

We then study the Eleventh Amendment as a limit on the power of the federal courts. As in the commerce clause area, we use the problem to illustrate the development of the doctrine over time, the underlying federalism issues, and the practical application. Beginning with the language of the Amendment, we consider whether plaintiffs in the Rochester case would be barred from federal court. Next, we discuss the effect of *Hans*[16] on the forum selection decision and try to reconcile that case with the Amendment's language. *Young*[17] and *Edelman*[18] allow the students to explore the possibilities of avoiding the impact of *Hans*, depending on the relief requested. *Seminole*,[19] reveals further limits on *Young* that might have an impact on the ability of the Rochester plaintiffs to bring their case in the federal court.

The problem also provides an opportunity to discuss waiver of the Eleventh Amendment immunity. After *Seminole*, we examine whether Title VI abrogates the state's immunity and whether Congress has the power to do so. This leads to a consideration of the relative power under Article I and the Fourteenth Amendment and why the federalism considerations might be different. Finally, when we next teach the material we will examine the impact of *Alden* and whether it prevents the suit against the state in any court. *Alden* is an excellent vehicle for exploring the federalism values at stake and whether the exercise of jurisdiction in such cases disserves the purposes of our federal structure.

Following the study of the Eleventh Amendment, we consider the application of the abstention doctrine if the case were brought in federal court. Could the state successfully argue under *Pullman* or *Thibodaux* that the federal court should abstain while the plaintiffs litigate their state constitutional claim in state court? Similarly, could the state invoke *Younger*-style abstention, particularly after *Pennzoil*?

16. *Hans v. Louisiana*, 134 U.S. 1 (1890).
17. *Ex Parte Young*, 209 U.S. 123 (1908).
18. *Eldelman v. Jordan*, 415 U.S. 651 (1974).
19. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

We end the study of this chapter by asking the students to decide where they would bring the Rochester case. This gives us a chance to summarize the doctrine and the theory of federalism and again address some practical considerations. For example, do the plaintiffs want to bring the case in federal court, taking many years and spending large resources to litigate the jurisdictional and abstention issues (and not reaching the merits)? Would they recommend that the plaintiffs bring two cases, one in state court and the other in federal? In considering this later possibility we have an opportunity to discuss whether plaintiffs can afford two lawsuits and to incorporate Civil Procedure material on claim and issue preclusion. We also discuss the question of who chooses the forum, the client or the lawyer, and the difficulties in adequately counseling a client on the issues that might govern the decision. At the end of the discussion, we inform them that the case was actually filed in state court and hope they have an appreciation and understanding of the theoretical and practical considerations that might have justified the forum selection.

TEACHING SEPARATION OF POWERS THROUGH ARTICLE III

Without a doubt, the constitutional law scholarship canon includes Article III and the justiciability doctrines. The casebooks generally present materials on standing, political question, and mootness/ripeness, at a minimum. Yet Article III has traditionally been at the fringes of the pedagogic canon, based on the belief that the students can learn the ideas in a Federal Courts course, or that time is short and the subject is abstract and not at the core of basic constitutional law. Too few students take the Federal Courts course (at least at our school) to justify omitting Article III in the basic Constitutional Law course. Article III is demonstrably at the core of constitutional law today,[20] and we believe that many of its abstract ideas can be made more concrete if they are presented in a way that demonstrates the interrelationship of justiciability and decisions on the merits. The

20. Apart from significant developments in the law of citizen and legislator standing in the 1990s, and the important political question decision in *Nixon v. United States*, 506 U.S. 224 (1993), consider the buzz in constitutional law circles concerning the justiciability of challenges to President Clinton's impeachment and the continuing question of the reviewability of constitutional challenges to deportations pursuant to the 1996 amendments to the Immigration and Naturalization Act. See generally *Reno v. Arab-American Anti-Discrimination Committee*, 119 S. Ct. 936 (1999).

traditional teaching canon focuses largely on the Supreme Court, thereby contributing to the abstractness of the lessons. To reduce the abstract quality, we assign and discuss supplementary materials that illustrate how separation of powers law is made by the political branches in working through actual disputes over policy.[21] By combining the teaching of justiciability and separation of powers through a war powers exercise, we find that students learn a great deal about the theory and practice of separation of powers. The abstract becomes practical, and the practical lessons reinforce the theory.

Our book's section on justiciability follows a section on the foreign relations and war powers, part of a larger chapter on separation of powers. At the end of the war powers material, a problem supplies portions of the complaint in the district court from *Dellums v. Bush*,[22] the most prominent of the judicial challenges to the Gulf War. The problem asks the students to take into account the foreign relations and war powers, including the War Powers Resolution, in framing an answer to the complaint on behalf of President Bush. In class, discussion ranges from the text of Articles I and II, to *Youngstown*[23] and the approaches to separation of powers found in the *Youngstown* Court's several opinions, to *The Prize Cases*,[24] to the War Powers Resolution.[25] After some discussion of the merits arguments, it is appropriate to ask whether a district court judge would really enjoin the Gulf War. The transition to justiciability is thus made.

We offer some narrative on Article III and on the separation of powers theory embedded in the justiciability doctrines. Instead of the usual Supreme Court fare on political question, standing, and ripeness, we present the principal Gulf War cases—*Dellums* and *Ange v. Bush*.[26] This permits us to return to the war powers problem and to revisit the discussion on framing an answer and then arguing a motion to dismiss on behalf of the President. The decision in *Dellums* may be viewed as "answering" the problem, but it is possible simply to present the questions on appeal of Judge Greene's decision.

21. We assign and discuss frequently separation of powers and federalism materials presented in Louis Fisher and Neal Devins, *Political Dynamics of Constitutional Law* (West, 2d ed. 1996). We find the notion that three branches make separation of powers law a useful antidote to the court-centeredness of the casebook.

22. 752 F. Supp. 1141 (D.D.C. 1990).

23. 343 U.S. 579 (1952).

24. 67 U.S. (2 Black) 635 (1863).

25. 50 U.S.C. §§ 1541-48 (1994).

26. 752 F. Supp. 509 (D.D.C. 1990).

The factual background of *Dellums* and *Ange* begins with the Iraqi invasion of Kuwait in August, 1990. President Bush then ordered the deployment of a force to protect against further Iraqi advances—Operation Desert Shield. By early November, approximately 230,000 United States armed forces were deployed to Saudi Arabia and to the Persian Gulf. Then, on November 8, the President announced a significant increase in the military deployment in the Persian Gulf for the express purpose of providing the United States with an offensive force capable of forcing Iraq's withdrawal from Kuwait. On November 19, Representative Ronald Dellums and 53 other Members of Congress sought a court order enjoining the President from offensive military operations against Iraq unless he obtained an authorization from Congress pursuant to Article I, Section 8, Clause 11 of the Constitution.[27]

On December 13, Judge Greene denied the injunction and ruled that the lawsuit was not ripe for judicial resolution, for two reasons. First, a majority of Congress had not expressed a view.[28] Second, the executive branch had not demonstrated a sufficient commitment to the option of initiating war without congressional authorization.[29] He also rejected the Government's arguments that the lawsuit should be dismissed for lack of standing of the congressional plaintiffs, or in exercise of the court's remedial discretion.[30] Finally, Judge Greene ruled that the political question doctrine did not bar the court from deciding the constitutional merits question in an otherwise appropriate case: "[I]n principle, an injunction may issue at the request of Members of Congress to prevent the conduct of a war which is about to be carried on without congressional authorization. . . ."[31]

Factually, *Ange* differs from *Dellums* only in that plaintiff Michael Ray Ange was a serviceman deployed to the Persian Gulf in Operation Desert Shield. His claims for relief also mirror those in *Dellums*, except that Ange claimed in addition that the Operation Desert Shield deployment violated the War Powers Resolution. In *Ange*, Judge Lamberth ruled that the war powers questions presented were nonjusticiable political questions.[32] Judge Lamberth also ruled that Sergeant Ange's lawsuit

27. *Dellums*, 752 F. Supp. at 1143-44.
28. Id. at 1149-51.
29. Id. at 1151-52.
30. Id. at 1147-49.
31. Id. at 1149.
32. *Ange v. Bush*, 752 F. Supp. 509, 511-15 (D.D.C. 1990).

was not ripe, based on the "speculative" nature of the "threat" that the President would bypass Congress and launch an offensive war.[33] According to Judge Lamberth, his refusal to exercise jurisdiction simply leaves Congress with the option of declaring war, preventing the President from doing so through exercise of the appropriations power, or impeaching President Bush.[34]

The political question doctrine's application to the problem may be addressed by asking why a federal judge would decide a dispute between members of Congress and the President. In *Dellums*, Judge Greene answered the Government's political questions argument by noting that leaving it to a "semantic decision by the Executive" to determine whether an offensive military operation constitutes a "war" that the Congress must authorize "would evade the plain language of the Constitution."[35] While other cases might present a closer factual question and provide cause for deferring to the political branches to decide whether an operation is a "war," the magnitude of forces poised for attack made this question easy to answer. Although there is ample authority for the proposition that it is for the President to conduct the nation's foreign relations,[36] the courts routinely decide foreign relations cases.[37] The differing approaches of Judges Greene and Lamberth to the political question doctrine also allow consideration of the theoretical components of the textual commitment and prudential bases for the doctrine, and for application of the theory to the facts of the Gulf War problem. Judge Greene noted that courts can and do answer the question of which political branch decides to take the nation to war,[38] while Judge Lamberth found that the same decision was textually committed "not to *one* of the political branches, but to *both*."[39] Judge Lamberth did not say why the Declaration and Commander in Chief clauses could not be interpreted independently. Judge Greene chose not to invoke the prudential justifications for finding a political question, based on the stark magnitude of the forces aligned in the Gulf.[40] Judge

33. Id. at 515-17.
34. Id. at 514.
35. *Dellums*, 752 F. Supp. at 1145.
36. See generally, Louis Henkin, *Foreign Affairs and the Constitution* (1972).
37. See, e.g., *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *Dames & Moore v. Regan*, 453 U.S. 654 (1981).
38. *Dellums*, 752 F. Supp. at 1146. See, e.g., *The Prize Cases*, 67 U.S. (2 Black) 635, 668 (1863); *Mitchell v. Laird*, 488 F.2d 611, 613-14 (D.C. Cir. 1973).
39. *Ange*, 752 F. Supp. at 514.
40. *Dellums*, 752 F.Supp. at 1146.

Lamberth, on the other hand, relied on the lack of standards and lack of expertise rationales from *Baker v. Carr.*[41]

The fact that the Supreme Court rarely invokes the political question doctrine is itself a subject for discussion, and the long odds against Supreme Court review may be tied to discussion of what strategy to take in representing Dellums or the President in the problem. Our note treatment of *Nixon v. U.S.*[42] also illustrates that the Court may muddy the theory of political questions by finding textual commitment *and* prudential bars to reviewing whether the "sole power" impeachment language bars the Senate from delegating to a committee the function of gathering evidence and hearing testimony.

Next, the standing to sue issues may be introduced by asking why the federal courts insist on anything more than a willingness to litigate and ability to pay the filing fees in order to bring a lawsuit. The separation of powers content of *Dellums* and *Ange* on standing to sue flows easily from discussion of the problem. In general, it is easy to see that relaxation of standing rules expands judicial power. But is such a tendency realistically to be feared in the war powers context? Are standing rules the most appropriate device for limiting judicial power? Does the law of standing serve interests that are not met by the political question doctrine?

The discussions about legislators as plaintiffs might begin by asking students to identify the capacities in which a legislator may sue. Suits on behalf of constituents are a classic form of third-party standing and generally present only a generalized grievance. Suits to vindicate a personal or institutional interest in legislative prerogatives are more typical. After the Court's decision in *Raines v. Byrd*[43] in 1997, such suits are also now quite difficult to maintain. Before *Raines*, Judge Greene's decision in *Dellums* applied the vote nullification standard from *Kennedy v. Sampson*[44] in finding that the plaintiffs were injured in fact because of the threat that their right to vote for or against a declaration of war would be lost. Judge Greene pointed out that this right must be confirmed by the court before the President acts, not afterward, in order to have any practical significance. Thus, there was a sufficient threatened injury to satisfy the standing

41. *Ange*, 752 F. Supp. at 512; *Baker v. Carr*, 369 U.S. 186, 217 (1962).
42. 506 U.S. 224 (1993).
43. 521 U.S. 811 (1997).
44. 511 F.2d 430 (D.C. Cir. 1974).

requirements. One practical lesson is that the judge's decision will depend on the factual setting.

Once *Raines* is assigned, the analysis and the result may change. *Raines* is not a war powers case, but its strong disavowal of legislator standing in general and its requirement that legislators' votes be completely nullified by the President's action erect a significant obstacle to legislator standing. This barrier is made even more formidable by the Court's reliance on the fact that other legislative actions could still, in theory, be taken to provide a legislative remedy. After *Raines*, the Dellums group look more like disgruntled losers in the political process than successful plaintiffs.[45]

For private citizen plaintiff Ange, Judge Lamberth found standing "to seek enforcement" of the War Powers Resolution, based on a determination that the Resolution permits a private right of action. Whether or not Judge Lamberth correctly applied the standard for private causes of action, he did not find that Ange had been injured in fact.[46] Student problem solvers should see that Ange's case presents a close call. Was his injury "actual or imminent," or "concrete and particularized?"[47] The students should also see how, in the context of the problem, standing blends into the ripeness inquiry.

Judge Greene determined that *Dellums* was not ripe for decision because Congress, or a majority of Congress, had not been "heard from" and because the President had not committed himself to initiating war unilaterally. Thus, for Judge Greene, the constitutional impasse described by Justice Powell in *Goldwater v. Carter*[48] did not exist. The problem forces students to consider the ripeness aspect of the theory of justiciability and to assess the separation of powers reasons for and against the impasse standard. In addition, the problem may be used to return to the merits and to critique Judge Greene's analysis. It does not necessarily follow that because a majority is required to declare war, only a majority may seek a court order enjoining the President from initiating war. Logically, because the Constitution re-

45. This result was confirmed in the Kosovo litigation. See generally *Campbell v. Clinton*, 203 F.3d 19 (D.C. C. T. 1999).

46. After *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), Judge Lamberth's analysis of standing would not be sustained.

47. We also note for students that gadfly litigant Walter Pietsch's Gulf War suit against the President was dismissed on both citizen and taxpayer standing grounds. *Pietsch v. Bush*, 755 F. Supp. 62 (E.D.N.Y. 1991).

48. 444 U.S. 996 (1979) (Powell, J., concurring).

quires that Congress affirmatively declare war, a smaller number of Members (as few as fifty-one Senators, for example) could prevent the President from initiating war. Thus, that smaller number should be permitted to persuade a judge to enjoin the President. Put differently, the fact that a majority of Congress may have an incorrect opinion concerning the legality of the President going it alone against Iraq should not deny the court an opportunity to say whether the President must ask for authorization. The better ripeness argument on the facts of the problem and *Dellums* is that the executive branch had not yet committed itself to offensive war.

Students will see that the impasse standard is prudential in nature, derived from separation of powers concerns. Logically, then, it is possible for the judges in this dispute to have found standing but not a ripe controversy, although practically the two inquiries blend together. Especially in light of Judge Lamberth's opinion that Ange would likely never be able to present a justiciable controversy, it is fair to ask whether the ripeness and standing doctrines are merely convenient tools for avoiding difficult cases.

Several objectives are served by combining the war powers and justiciability sections in our separation of powers unit in this way. First, we are able to develop fully the Article III law in the basic constitutional law course. We devote at least one class week to justiciability, and we spend ample time discussing both theory and practice issues. Instead of highly complex and abstract concepts of legitimacy and textual commitment (political question doctrine), and the theoretical separation of merits from standing and ripeness, students learn how separation of powers purposes are furthered through selective enforcement of "do nothing" rules by judges in real legal disputes.

Second, continuation of the Gulf War problem allows students to see the relationship of the underlying merits to Article III, and to appreciate the importance of inquiries about justiciability in a concrete setting. Third, the problem and cases force the students to understand theory. For example, parsing the Wechsler/Bickel debate about political questions,[49] thinking through the *Marbury*[50] judicial review doctrine's application, and

49. See Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1, 7-9 (1959); Alexander M. Bickel, *The Supreme Court 1960 Term Foreword: The Passive Virtues*, 75 Harv. L. Rev. 40, 75 (1961).

50. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

applying the *Baker v. Carr* factors[51] are essential ingredients in developing an answer to a motion to dismiss in *Dellums*. It has normally been our experience after teaching the separation of powers unit that the section on justiciability contributed more to the students' understanding of the separation of powers in constitutional law than any of the more traditional separation topics within the canon.

CONCLUSION

As we considered changes for the fourth edition of our casebook, we decided that, other than updates, our objectives are being well served by the book as it is. Our book works well at teaching basic doctrine and theory and examines the integration of theory, doctrine, and practice. We agree with others, however, that greater attention should be given to constitutional law and practice in legislatures, executive offices, agencies, and local government institutions. As the canon evolves, we strive to complement our course with materials and discussion that will explore these topics as well as important developments in state constitutional law.

51. *Baker v. Carr*, 369 U.S. 186, 217 (1962).