There Are No Secret Books
*You Can Understand the Law*

Americans are fascinated by the law. And why not? The law is important, intellectually challenging, and sometimes outrageous. Consider some cases that have made front-page news:

- Stella Liebeck, seventy-nine years old, bought a cup of coffee at the drive-through window of a McDonald’s in Albuquerque, New Mexico. As she placed the cup between her legs to remove the lid to add cream and sugar, she spilled the coffee, scalding herself. Liebeck’s injuries sent her to the hospital for seven days for burn treatment, including skin grafts, so she sued McDonald's, alleging that the coffee was dangerously hot. A jury awarded her $160,000 to compensate her for her injuries and $2.7 million to punish McDonald’s, an amount the jury calculated was equal to two days of coffee sales for McDonald’s. (The trial judge later reduced the punitive damage award to $480,000.) Was this an outrageous example of a tort system run amok, or a fair judgment for an injured victim against a wrongdoer? See Chapter 5.

- Following the terrorist attacks of September 11, 2001, the administration of President George W. Bush claimed that the president had the authority as commander-in-chief to designate both foreign nationals and United States citizens as “enemy combatants” and hold them indefinitely at the naval base at Guantanamo Bay, Cuba. Under presidential orders and Congressional legislation the detainees were denied access to the courts to review their status. The Supreme Court held the courts had the power to review the detentions, and citizens could not be held indefinitely without due process. Why does the Supreme Court get to decide issues
involving national security, and how do the justices know what the Constitution means in cases like these? See Chapter 2.

- Marc Bragg bought and sold virtual land and other assets in Second Life, the enormously popular online role-playing game. When he exploited a gap in the game’s code to acquire a parcel of land at a bargain price, Linden Research, the producer of Second Life, froze his account, depriving him of virtual property worth between $4,000 and $6,000 in the real world. Bragg sued Linden; Linden defended, claiming that property owned in Second Life was subject to the game’s terms of service that gave Linden complete control over it. How does the law take property concepts dating back to medieval times and apply them to the Internet in the twenty-first century? If a virtual world is a community with its own norms and rules, should it have its own legal system as well, or should the existing legal system at least recognize the norms and rules as binding in real-world courts? See Chapter 7.

- On the evening of February 26, 2012, George Zimmerman, a neighborhood watch volunteer, called 911 in Sanford, Florida, to report “a real suspicious guy” who “looks like he is up to no good or he is on drugs or something.” The “guy” was Trayvon Martin, a seventeen-year-old who had gone to a local 7-Eleven to buy a bag of Skittles. Zimmerman followed Martin and an altercation and struggle ensued, during which Zimmerman shot and killed Martin. When tried for homicide, Zimmerman pleaded self-defense, arguing that Martin had punched him and was hammering his head to the ground, and the jury acquitted Zimmerman. The case also raised questions about Florida’s “Stand Your Ground” law, which allows people to use deadly force to defend themselves even if they could retreat from a dangerous situation. When should a person be able to kill in self-defense? See Chapter 8.

Most of the law is not about important cases like the president’s definition of enemy combatants or dramatic cases like George Zimmerman’s. Law penetrates our everyday life in many ways. Critics charge that in recent years we have become plagued with “hyperlexis”—too much law and too many lawyers—but law has pervaded our society from the beginning. Even before the Pilgrims landed in Massachusetts they formulated the Mayflower Compact, a legal document that governed their settlement of the new world. In colonial times, legal regulation of the economy, public conduct, and social morality was at least as extensive
as it is today. Common human failings such as fornication, drunkenness, and idleness were legally—and frequently—punished, and laws closely regulated economic affairs, prescribing the size of loaves of bread and the time and place at which goods could be sold. Ordinary litigation provided an occasion for public gathering, with great orations by the lawyers and much comment by the public. Today the law affects us individually when we rent apartments or own homes, marry, drive cars, borrow money, purchase goods, belong to organizations, go to school or work, and obtain health care and collectively when the government taxes, regulates the airwaves and cyberspace, polices crime, and controls pollution.

For all our endless fascination with the law, it is hard for most people to learn much about its substance. The law is so complex and voluminous that no one, not even the most knowledgeable lawyer, can understand it all. Moreover, lawyers and legal scholars have not gone out of their way to make the law accessible to the ordinary person. Just the opposite: Legal professionals, like the priests of some obscure religion, too often try to keep the law mysterious and inaccessible.

But everybody can learn something about the law. That is what Law 101 is for. It explains the basics of the law—the rules, principles, and arguments that lawyers and judges use. Not all the law is here; there is just too much law for anyone to learn more than a few pieces of it here and there. That's one reason that most lawyers specialize, so that they can learn in depth the law of medical malpractice in New Jersey or federal tax law relating to corporations, for example. But all lawyers do know pretty much the same things when it comes to basic subjects and basic concepts, because they all go through a similar law school experience.

The public seems to be morbidly fascinated by law school as much as by law. Books and movies from The Paper Chase to Legally Blonde have fed the folklore of the first year of law school as an intellectually stimulating but grueling and dehumanizing experience. Because the first year of law school is the near-universal training ground for lawyers, this book focuses on the substance of what law students learn there as the core of knowledge that is useful and interesting to nonlawyers as well.

The first-year curriculum in nearly every American law school looks alike. A few topics are fundamental, and this book explores those topics. Constitutional law involves the structure of government (Chapter 2) and personal liberties protected from government action (Chapter 3). Civil procedure concerns the process of litigation (Chapter 4). Tort law concerns personal injuries (Chapter 5). Contract law is the law of private agreements (Chapter 6). Property law governs relationships among
people with respect to the ownership of things (Chapter 7). Criminal law defines wrongful conduct for which the state can deprive a person of life or liberty (Chapter 8). Criminal procedure prescribes the process of criminal adjudication and the rights of defendants (Chapter 9).

Nearly every law school offers courses in constitutional law, contract law, and the rest, and the courses taught in different schools resemble each other to a considerable degree in the materials used and the topics covered. Schools in New Jersey, Iowa, and California all teach basic principles of national law, often using the same judicial opinions and statutes. If you attend law school after reading this book, you will find much of the first year will be familiar to you. Every course is taught by a different professor, however, and every professor has a different perspective. Some of those differences in perspective are trivial, but some are crucial. One professor may be a political liberal, another a conservative. One may favor economic analysis as a key to understanding the law, while another takes a natural law approach. Each of these differences in perspective, and the many others that occur, leads to a very different understanding of what the law is. So while law students and lawyers all understand the same law in principle, they understand it in different ways.

This book has a perspective, too. It couldn’t be any other way. The perspective of this book is informed by much of the best scholarship about the law. Some of the elements of the perspective are widely accepted, and others are more controversial. The perspective can be summed up in a few insights about the law, as follows.

*Law is not in the law books.* Books are one of the first things that come to mind when we think about law: fat texts almost too heavy to lift; dust-covered, leather-bound tomes of precedents; law libraries filled with rows and rows of statutes and judicial opinions. While books tell us a lot about the law, they are not the law. Instead, law lives in conduct, not on the printed page; it exists in the interactions of judges, lawyers, and ordinary citizens.

Think, for example, about one of the laws we most commonly encounter: the speed limit. What is the legal speed limit on most interstate highways? Someone who looked only in the law books might think the answer is 65 mph, but we know better. If you drive at 65 mph on the New Jersey Turnpike, be prepared to have a truck bearing down on you, flashing its lights to get you to pull into the slow lane. The speed limit according to drivers’ conduct is considerably higher than 65. And legal officials act the same way. The police give drivers a cushion of 3 to 5 mph, never giving a speeding ticket to someone who is going 66. If they did, the judges would laugh them out of traffic court. As a practical
matter, the court doesn’t want to waste its time with someone who violated the speed limit by 1 or 2 mph, and as a matter of law, the police radar often isn’t accurate enough to draw that fine a line anyway. So what is the law on how fast you can drive? Something different than the books say.

To understand the law, then, we have to examine events as they occur in the world. We can generalize from those events and create theories and concepts to inform our understanding of the law, but the touchstone is always the world and not the idea. One way this is done in law school is by focusing on individual fact situations that give rise to litigation and on the judicial opinions that resolve the situations, known as cases. Each of these cases starts out as a real-world event, such as the killing of Trayvon Martin by George Zimmerman or the detention of enemy combatants, and becomes the vehicle for thinking about many related events in a way that allows us to go back and forth between the particular fact situation and a general principle of law. This book follows that model and uses many interesting cases to explore legal principles.

*Law is not secret.* Along with the mistaken notion that the law resides in the books goes the equally mistaken idea that law is secret, or at least inaccessible to the ordinary person. To understand and apply the law at the advanced, technical level that lawyers do requires professional knowledge, but to understand the basic substance of the law does not. Law reflects life. The principles and issues embodied in the law are not different from those that we experience in other aspects of our lives. Contract law, for example, is a commentary on the way people make, interpret, keep, and break their promises in commercial and noncommercial settings. Few nonlawyers can describe the objective theory of contract formation or the Statute of Frauds (you will be able to after you read Chapter 6), but they have thought a lot about contracts and promises. If you cross your fingers when you make a promise, does it mean that the promise doesn’t count? If you promise to take your children to the movies, are you off the hook if an important business meeting comes up in the meantime? What about if you just don’t feel like it? If your newly purchased television doesn’t work, can you return it to the store? And so on.

These are the kinds of issues that we all confront every day. The law provides a different forum for the discussion of these issues and the exploration of the principles, and the basic ideas involved are wholly accessible to the nonlawyer.

*There are no simple answers.* Law reflects life, and life is complicated. Therefore, legal problems defy simple solutions.
Life is complicated in two ways. First, things are often messy, so it is hard to define a legal issue and construct an appropriate solution. Think about the speed limit. If we formulate a clear rule, in this instance “driving faster than the speed limit is a crime,” we will inevitably end up with exceptions, such as “a parent rushing a desperately ill child to the hospital may exceed the speed limit.” If we formulate a fuzzy rule—“drive at a speed that is reasonable under the circumstances”—we will engender arguments in every case about how the rule should apply.

Second, life is complicated because we often are of two minds about an issue. We would like to have clear legal rules to ensure consistency, fairness, and predictability. But we want to make room for the equities of individual cases in which the application of a rule would produce an unfair result, in order to relieve a particular party of the hardship of the rule.

Politicians often would like us to think that there are simple answers to tough legal questions. Over the past few years we have become accustomed to sound-bite politics and simplistic ideologies that assert that all our problems can be solved by cutting down on frivolous litigation, getting tough on crime, making people responsible for their actions, or adhering to some other slogan. From the perspective used in this book, it’s just not so.

Law is a battleground of political conflict. The complex questions with which law deals and our conflicting responses to them are the stuff of political controversy. This is not politics in the Republican–Democratic, electoral sense, but a struggle over social resources and social values just the same. At stake in legal decisions are the most fundamental kinds of questions with which any society has to grapple: Who gets what? Who lives and who dies? What is right and what is wrong? Everyone can see this in major constitutional issues like the abortion controversy, but it applies to all other legal issues, too. Should fast-food chains be liable for obesity-related illnesses because they promote and sell super-sized portions of fattening foods? We have to see all legal decisions like this as political in a broad sense.

People make the law. Often, the law appears to be part of the natural order of things. The law and legal decisions can be seen as inevitable, based on immutable principles of justice, hardly the product of human action at all. Lawyers and judges speak as if the law itself were acting, free from their intervention: “The law requires that. . .” or “The precedents determine a result. . . .” Nonsense. Law is made by people, and “the law” or “the precedents” never control anything; we control them. All this view does is let a small group of people—the privileged, the politically powerful, and the legal professionals—control the legal
system while they deny their responsibility for doing so. Whether the issue is abortion, manufacturers' liability, or the enforceability of handshake agreements, all of us—not just the lawyers and judges—have to decide what we think is a fair and useful result.

This book strips away the mystery of the law to allow the nonlawyer to understand the rules of law and the principles and conflicts that are behind them. It doesn’t tell you how to be your own lawyer. You won’t learn how to file for divorce, sue in small claims court, or draft your own will. Other books convey that kind of advice; this one deals with issues that are more important, if less immediate. It explores the big issues that are fundamental to law, not the mechanics of particular transactions. Later, whether you use a how-to manual or go to a lawyer to deal with a legal matter, you will have a better sense of what is going on behind the rules and mechanics. And there is an important difference between this book and other law books, whether professional treatises for lawyers or how-to manuals on will drafting: This one is fun to read. The invented children’s author Lemony Snicket wrote, “Books about the law are notorious for being very long, very dull, and very difficult to read.” Not Law 101. Like the law itself, this book is full of puzzles, challenges, interesting tidbits, thought-provoking questions, and intellectual stimulation.

Each chapter is organized in question-and-answer format. The questions provide guideposts to the development of the chapter, and they make it possible to read selectively by dipping into particular topics of interest. At many points there are more questions than answers, and issues are left unresolved. Students of the law—and now you are one of them—experience this frequently and find it very frustrating. But that’s the way it has to be. The law doesn’t clearly answer some questions, and some issues are never finally settled. The courts cannot decide everything; figuring out the just solutions to hard problems is the right and duty of every informed person. After reading this book, you should be in a better position to participate in the process.
Constitutional Law and Constitutional Politics

Interpreting and Applying the Constitution

People who don't know anything about civil procedure or property law can still recall the basic elements of constitutional law from their eighth-grade civics class: separation of powers; checks and balances; judicial review; due process and equal protection of law; freedom of speech, religion, and press. And if they can't remember what they learned in the eighth grade, the newspapers and the television news will remind them of the continuing significance of constitutional law. Is abortion constitutionally protected? How about affirmative action? Can the government hold an American citizen in a military prison as a suspected terrorist?

Everything the government does is bounded by the Constitution. Constitutional law defines the relations between the president and Congress and between the federal government and the states, and it regulates the government's ability to assess taxes, to build highways, to maintain and deploy the armed forces, and to print stamps. Moreover, every hot issue seems to become a constitutional question. Once it was the constitutionality of slavery or of laws establishing maximum hours and minimum wages for workers; now it is abortion, the mandatory purchase of health insurance, detaining enemy combatants at Guantanamo Bay, and campaign financing. In the aftermath of the 2000 election, even who should be president became a constitutional issue, in the litigation resulting in the Supreme Court's decision in Bush v. Gore. So constitutional law—how our government is organized and what it can and cannot do—is the place to begin our exploration of American law.

What Is Constitutional Law?

Constitutional law involves the interpretation and application of the U.S. Constitution. Drafted in 1787, the Constitution contains fewer
than 4,400 words, divided into seven short parts called articles. The Bill of Rights (the first ten amendments to the Constitution) was added in 1791, and only seventeen more amendments have been added in the more than two centuries since. It wouldn’t take you long to do what few Americans do—read the whole Constitution, front to back.

It seems that constitutional law ought to be easy to understand. But despite the Constitution’s simplicity—or perhaps because of it—what the Constitution means and how it should apply are the most hotly debated topics of the law. And constitutional law is unique among all the bodies of law we will consider in this book, for four reasons.

First, other bodies of law work together. Property law creates rights in things like land and refrigerators, and contract law prescribes how to transfer those rights to another person. Tort law defines the right of an injured person to recover damages from a wrongdoer, and civil procedure establishes the process by which the victim can recover. But constitutional law has a different subject matter and a different status than the other fields of law. Constitutional law doesn’t address relations among individuals the way property, contract, and tort law do. Instead, it defines the structure and function of the government and the relationships between the government and individual citizens. It also defines the relative powers of the national government and the state governments and prohibits the government from taking certain actions, such as those that infringe on freedom of religion. In defining and limiting government powers, constitutional law is superior to every other body of law. The Constitution proclaims itself to be “the supreme Law of the Land.” Any state or federal law on any topic—contracts, criminal punishment, election contributions, or public schools—that conflicts with the Constitution is invalid.

Second, other bodies of law are based on a mix of statutes and judicial decisions that provide a wide range of sources for rules, principles, and arguments. Contract law, for example, began as a common law subject determined by judges and has been overlaid by many statutes. To decide a contracts case, a court can look to a rich variety of sources, from old English precedents to modern state statutes. Constitutional law is different. All constitutional decisions ultimately refer to a single, narrow source: the text of the Constitution with its amendments.

The necessary reference to a single text makes constitutional law so challenging because of the infinitely broad range of situations that the text must cover. When the constitutional text addresses a narrow issue and does so specifically, we have little problem in figuring out how to apply the text; more often, the text is vague and the cases that it covers are much more diverse, so we have to decide what the text means and
what result follows from it in a particular case. Sometimes, by universal agreement, the words mean something other than what they appear to mean. The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” but even the most ardent strict constructionist understands that the amendment also applies to the president and the courts. Other times the words demand extensive interpretation. Does the constitutional command that no state may “deny to any person within its jurisdiction the equal protection of the laws” mean that a state university cannot give a preference in admissions to African American students in order to diversify its student body?

Third, constitutional law, more obviously than other areas of law, raises fundamental political issues and value choices. One of the themes of this book is that every body of law and every legal decision implicates important values; tort law, for example, forces us to make important choices about to what extent people must take account of the interests of other people. But in constitutional law, the value questions are more readily apparent and therefore are more controversial. If all law is politics to some extent, constitutional law is more explicitly political than other bodies of law. There are very few simple or noncontroversial issues in interpreting and applying the Constitution.

Fourth, in other areas of law the processes of making and applying law seem obvious and appropriate. Legislatures and courts formulate principles of law, and courts apply those principles in deciding individual cases. In constitutional law the decision process also is clear, but whether it is appropriate is much more contested. In other areas of law the power of the courts is taken for granted, even if the correctness of the results they reach may not be. In constitutional law, by contrast, the central issues are why judges have the power to be the final arbiters of constitutional law and what theories of constitutional interpretation they should use in interpreting and applying the Constitution.

When the constitutional text requires interpreting, the courts do so, especially at the federal level. If necessary, cases are taken to the top, to be heard by the nine justices of the U.S. Supreme Court. But the Supreme Court justices are appointed, not elected, and once appointed they serve for life, without ever being subject to review again. If constitutional law involves fundamental political issues, why can those issues be decided for a democratic society by such an undemocratic institution? Moreover, the more overtly political institutions of government such as Congress resolve political issues by consulting constituents, being lobbied by interest groups, looking at opinion polls, and openly debating the pros and
cons. How does the Supreme Court decide hot political issues when it apparently is insulated from the political process?

These four distinctive features of constitutional law generate the subject matter discussed in this chapter. The most basic issues concern the structure and authority of the federal government. The ratification of the Constitution created the national government and dictated its organization and powers. Constitutional law first specifies how the federal government is organized into three branches—executive, legislative, and judicial—and what each branch, and the federal government as a whole, can do. In concept, at least, the federal government is a government of both limited and supreme powers—limited to those powers granted it by the Constitution but supreme within its sphere. Accordingly, defining the powers of the national government also defines the principles of federalism, or the relationship between the national government and the states. (The powers of both national and state governments also are limited by the constitutional guarantees of individual liberty, especially in the Bill of Rights and the post–Civil War amendments, which are discussed in Chapter 3.) Running through all of these particular topics is the issue of constitutional interpretation. The federal courts, especially the Supreme Court, are the authoritative interpreters of the Constitution. How do they determine what the constitutional text means when applied in a particular case?

We usually think of the U.S. Constitution when we think of constitutional law, but each state has its own constitution and therefore its own body of constitutional law, too. The state constitutions are in many respects like the federal Constitution, as they establish the structure of the legislative, executive, and judicial branches and include bills of rights. But state constitutional law differs from federal law in important ways.

Most state constitutions are much longer and more detailed than the federal Constitution. The Alabama constitution, for example, is more than 600 pages long—about twice as long as this book. The New Jersey constitution of 1947, a modern, reform constitution, is still about three times the length of the U.S. Constitution.

Several factors contribute to the length of state constitutions. The national government is a government of enumerated powers, possessing only the authority granted to it under the Constitution, typically in vague language. The states, on the other hand, inherently have general authority to govern, so state constitutions limit rather than grant power, and the limitations often are stated very specifically. State constitutions also often contain provisions that are not particularly “constitutional,” in the sense of being directives about fundamental issues of rights or government organization. Some of these provisions address topics of particular
concern to a state; Idaho has constitutional provisions on water rights and livestock, and New Mexico on bilingual education. Others are simply matters of detail that someone thought belonged in the constitution; the California constitution contains guidelines for the publication of court opinions. Finally, the national Constitution can be amended only through a cumbersome process and has been amended only seventeen times since the adoption of the Bill of Rights in 1791. State constitutional amendments generally can be proposed by the legislature, a constitutional commission, or citizens' petition and can be adopted by referendum. As a result, state constitutions are often amended; the Massachusetts constitution, for example, has been amended over a hundred times. Indeed, state constitutions can and frequently are even replaced altogether; the current Georgia constitution is its tenth.

The bills of rights in state constitutions also are more detailed and are in some ways more important than the federal Bill of Rights. Instead of being added on to the main body of the constitution as in the federal Constitution, state bills of rights typically come first. This tradition dates from the earliest state constitutions that contained such well-known documents as the Virginia Declaration of Rights, a model for the Bill of Rights in the U.S. Constitution. These early documents included provisions guaranteeing the rights of the people and also hortatory statements of government principle, such as the recommendation in the Pennsylvania Declaration of Rights that the legislature consist of "persons most noted for wisdom and virtue." Today state bills of rights look more like the federal Bill of Rights but add to it in two important ways. They often contain protections that are similar to those in the federal Bill of Rights but are more detailed. The Louisiana constitution, for example, prohibits "cruel or unusual punishment," a restriction analogous to the Eighth Amendment's prohibition of "cruel and unusual punishment," but it also bars "excessive" punishment, a requirement that the Louisiana Supreme Court has interpreted to mean that criminal penalties must be proportionate to the offense. And they express many rights not guaranteed by the federal Constitution; eleven constitutions expressly state a right of privacy, which the Supreme Court has found implicit in the Bill of Rights (as described in Chapter 3), and thirty-nine states guarantee access to a legal remedy for persons who suffer a legal injury.

The statement of rights in state constitutions that are broader than those granted under the U.S. Constitution has led to what Justice William Brennan labeled "the new judicial federalism." For a long time lawyers and the public at large looked mostly to the federal courts for the protection of individual rights. Since the 1970s, however, there has been a surge of interest in attention to state constitutional law as an
independent source for the definition and potential expansion of rights. Since then state courts have been actively engaged in applying state constitutions to situations both like and unlike those addressed by the federal courts.

In a 1988 case, for example, the U.S. Supreme Court ruled that a person has no reasonable expectation of privacy in garbage bags left out for collection, so it did not constitute a violation of the Fourth Amendment when the police searched the garbage for evidence of a crime (California v. Greenwood). The same issue came to the New Jersey Supreme Court shortly thereafter in State v. Hemele (1990). The New Jersey constitution contained the same proscription against "unreasonable searches and seizures" as the Fourth Amendment, but the New Jersey court believed that a person does have a reasonable expectation of privacy in trash. "Clues to people's most private traits and affairs can be found in their garbage," wrote Justice Robert Clifford. "Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests." He recognized the Supreme Court's contrary decision but in rather grandiose language pointed out the independent responsibility of state courts. "[A]lthough that Court may be a polestar that guides us as we navigate the New Jersey Constitution, we bear ultimate responsibility for the safe passage of our ship. Our eyes must not be so fixed on that star that we risk the welfare of our passengers on the shoals of constitutional doctrine. In interpreting the New Jersey Constitution, we must look in front of us as well as above us." Two justices dissented in part because they believed "the values of federalism" required the court to defer to the Supreme Court's decision. Diverging from the federal interpretation would be confusing to the public—local police could not search garbage but FBI agents could—and would undermine the moral authority of the Supreme Court as the "guardian of our liberties."
Protection against unreasonable search and seizure is a right common to federal and state constitutions, though federal and state courts may interpret the right differently. State constitutions contain broader sources of rights than the federal Constitution, however. State courts have applied these rights to strike down damage caps in personal injury cases as a violation of the right of access to the courts, to require developing municipalities to provide low- and moderate-income housing, and to compel the state to provide special funding for poor urban school districts, among other things.

The most controversial cases of this kind address the question of whether there is a state constitutional right to same-sex marriage. In 1999 the Vermont Supreme Court held that under the Common Benefits Clause of the Vermont constitution, same-sex couples could not be denied the legal benefits of marriage (Baker v. State). The court directed the legislature to remedy the unconstitutionality, which it did by reaffirming marriage was between a man and a woman but creating civil unions with equivalent legal status. Then the Massachusetts Supreme Judicial Court in Goodridge v. Department of Public Health (2003) held that the ban on same-sex marriage violated the due process and equal protection clauses of the state constitution. Marriage confers enormous legal benefits, from financial benefits such as joint income tax filing and inheritance rights to nonfinancial advantages including the presumption of parentage of children and the privilege not to testify against a spouse in court. It confers nonlegal benefits, too: "Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.....[T]he decision whether and whom to marry is among life’s momentous acts of self-definition.” Therefore, the state may not restrict marriage to heterosexual couples unless it has legitimate reasons to do so. The state argued that its reasons were providing a “favorable setting for procreation,” ensuring the optimal setting for childrearing in a two-parent family with one parent of each sex, and protecting financial
resources because same-sex couples are more financially independent and so less in need of the financial benefits of marriage such as filing joint tax returns. The court rejected each of the state’s arguments and concluded that marriage thereafter would be “the voluntary union of two persons as spouses, to the exclusion of all others,” without regard to the gender of the spouses; unlike in Vermont, the adoption of a civil union statute as an alternative to marriage would not satisfy the constitution.

The reaction to Goodridge was dramatic. In Massachusetts, more than a thousand gay and lesbian couples applied for marriage licenses on the first day they were available. At the national level, the movement to enact a federal Constitutional amendment defining marriage as between a man and a woman gained momentum, and the subject became a major issue in national campaigns. But, as in Vermont and Massachusetts, state constitutional law was a primary vehicle for the debate. The Connecticut, Iowa, and California supreme courts applied their state constitutions to invalidate limiting marriage to opposite-sex couples, and constitutional amendments banning same-sex marriage were adopted in many states.