

Constitutional Law chronology, Spring 2005. Professor Macdonald.

The structure of the Constitution's protections of civil rights and civil liberties

The application of the Bill of Rights to the states

The rejection of application before the Civil War

Barron v. Mayor and City Council of Baltimore

A false start in applying the Bill of Rights to the states: the Privileges and Immunities Clause and the *Slaughterhouse Cases*

The Slaughterhouse Cases

Saenz v. Roe

The Privileges and Immunities Clause of Article IV, § 2

Analysis under the Privileges and Immunities Clause

What are the “Privileges and Immunities of Citizenship”?

Toomer v. Witsell

United Building and Construction Trades Council

Baldwin v. Fish and Game Commission

What justifications are sufficient to permit discrimination?

Supreme Court of New Hampshire v. Piper

The incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment

Twining v. New Jersey

The debate over incorporation

Palko v. Connecticut

Adamson v. California

The current law as to what's incorporated

Duncan v. State of Louisiana

The content of incorporated rights

The application of the Bill of Rights and the Constitution to private conduct

The requirement for state action

The Civil Rights Cases

The exceptions to the state action doctrine

The public functions exception

Marsh v. Alabama

Jackson v. Metropolitan Edison Co.

Elections

Terry v. Adams

Private property used for public purposes

Evans v. Newton

Amalgamated Food Employees v. Logan Valley Plaza

Lloyd Corp. v. Tanner

Hudgens v. National Labor Relations Board

The entanglement exception

Judicial and law enforcement actions

Shelley v. Kraemer

Example: prejudgment attachment
Lugar v. Edmonson Oil Co.

Example: peremptory challenges
Edmonson v. Leesville Concrete Co.

Government regulation
Burton v. Wilmington Parking Authority
Moose Lodge No. 107 v. Irvis
American Manufacturers Mutual Ins. v. Sullivan

Government subsidies
Norwood v. Harrison
Rendell-Baker v. Kohn
Blum v. Yaretsky

Initiatives encouraging violations of rights
Reitman v. Mulkey

More recent cases
Hunter v. Erickson
Washington v. Seattle School Dist. No. 1
Crawford v. Board of Education
Romer v. Evans
Brentwood Academy v. Tennessee Secondary School

Economic liberties

Historical overview

Economic substantive due process

The early history of economic substantive due process

Substantive due process of the *Lochner* era

Allgeyer v. Louisiana

Lochner v. New York

Laws protecting unionizing

Coppage v. Kansas

Maximum hours laws

Muller v. Oregon

Minimum wage laws

Adkins v. Children's Hospital

Consumer protection legislation

Weaver v. Palmer Bros. Co.

Nebbia v. New York

Economic substantive due process since 1937

Pressures for change

West Coast Hotel Co. v. Parrish

United States v. Carolene Products Co.

Economic substantive due process since 1937

Williamson v. Lee Optical

BMW of North America, Inc. v. Gore

State Farm v. Campbell

Too much deference?

The Contracts Clause

The modern use of the contracts clause

Home Building & Loan Assn. v. Blaisdell

Government interference with private contracts

Energy Reverses Group, Inc. v. Kansas Power & Light Co.

Allied Structural Steel Co. v. Spannaus

Government interference with government contracts

United States Trust Co. v. New Jersey

The Takings Clause

Is there a “taking”?

Possessory takings

Loretto v. Teleprompter Manhattan CATV Corp.

Regulatory takings

Pennsylvania Coal Co. v. Mahon

Miller v. Schoene

Penn Central Transportation Co. v. New York City

Lucas v. South Carolina Coastal Council

Palazzolo v. Rhode Island

Tahoe-Sierra Preservation Council v. Tahoe Regional Planning

Nollan v. California Coastal Commission

Dolan v. City of Tigard

What is “property”?

Phillips v. Washington Legal Foundation

Is it for “public use”?

Hawaii Housing Authority v. Midkiff

What is the requirement for “just compensation”?

Brown v. Legal Foundation of Washington

Equal protection

Introduction

Constitutional provisions concerning equal protection

A framework for equal protection analysis

Question 1: what is the classification?

Question 2: what is the appropriate level of scrutiny?

Question 3: does the government action meet the level of scrutiny?

The protection of fundamental rights under equal protection

The rational basis test

Does the law have a legitimate purpose?

What constitutes a legitimate purpose?

Romer v. Evans

Must it be the actual purpose or is a conceivable purpose enough?

United States Railroad Retirement Board v. Fritz

Tolerance for underinclusiveness under rational basis review

Railway Express Agency, Inc. v. New York

- Tolerance for overinclusiveness under rational basis review
 - New York City Transit Authority v. Beazer*
- Cases where laws are deemed arbitrary and unreasonable
 - United States Department of Agriculture v. Moreno*
 - City of Cleburne, Texas v. Cleburne Living Center, Inc.*
- Classifications based on race and national origin
 - Race discrimination and slavery before the Thirteenth and Fourteenth Amends.
 - The case of *Dred Scott v. Sandford*
 - Dred Scott v. Sandford*
 - The post-Civil War amendments
 - Strict scrutiny for discrimination based on race and national origin
 - Proving the existence of a race of national origin classification
 - Race and national origin classifications on the face of the law
 - Race-specific classifications that disadvantage racial minorities
 - Korematsuv. United States*
 - Racial classifications burdening both whites and minorities
 - Loving v. Virginia*
 - Palmore v. Sidoti*
 - Laws requiring separation of the races
 - The case of *Plessy v. Ferguson*
 - Plessy v. Ferguson*
 - The initial attack on “separate but equal”
 - The case of *Brown v. Board of Education*
 - Brown v. Board of Education*
 - The invalidation of segregation in other contexts
 - Facially neutral laws with discriminatory impact or administration
 - The requirement for proof of a discriminatory purpose
 - Washington v. Davis*
 - McCleskey v. Kemp*
 - City of Mobil v. Bolden*
 - Is proof of a discriminatory effect also required?
 - Palmer v. Thompson*
 - How is a discriminatory purpose proven?
 - Personnel Administrator of Massachusetts v. Feeney*
 - Village of Arlington Heights v. Metropolitan Housing*
 - Application: discriminatory use of peremptory challenges
- Remedies: the problem of school segregation
 - The problem of remedies
 - Brown v. Board of Education*
 - Massive resistance
 - Judicial power to impose remedies in school segregation cases
 - Swann v. Charlotte-Mecklenburg Board of Education*
 - Milliken v. Bradley*
 - When should federal desegregation remedies end?
 - Board of Educatio of Oklahoma City v. Dowell*

- Racial classifications benefiting minorities
 - The initial rulings on affirmative action
 - Regents of the University of California v. Bakke*
 - Fullilove v. Klutznick*
 - United States v. Paradise*
 - Wygant v. Jackson Board of Education*
 - Grutter v. Bollinger*
 - Gratz v. Bollinger*
 - The emergence of strict scrutiny as the test
 - Richmond v. J.A. Croson Co.*
 - Adarand Constructors, Inc. v. Peña*
 - The arguments for and against strict scrutiny
- Gender classifications
 - The level of scrutiny
 - Early cases approving gender discrimination
 - The emergence of intermediate scrutiny
 - Frontiero v. Richardson*
 - Craig v. Boren*
 - United States v. Virginia*
 - Proving the existence of a gender classification
 - When is it “discrimination”?
 - Geduldig v. Aiello*
 - Gender classifications benefiting women
 - Gender classifications based on role stereotypes
 - Orr v. Orr*
 - Mississippi University for Women v. Hogan*
 - Michael M. v. Superior Court of Sonoma County*
 - Rostker v. Goldberg*
 - Nguyen v. Immigration and Naturalization Service*
 - Gender classifications benefiting women as a remedy
 - Califano v. Webster*
- Alienage classifications
 - Strict scrutiny as the general rule
 - Graham v. Richardson*
 - Alienage classifications related to self-government and the democratic process
 - Foley v. Connelie*
 - Ambach v. Norwick*
 - Congressionally approved discrimination
 - Undocumented aliens and equal protection
 - Plyler v. Doe*
- Discrimination against non-marital children
 - Laws denying benefits to all non-marital children
 - Laws that provide a benefit to some non-marital children
- Other types of discrimination: only rational basis review
 - Age classifications

Massachusetts Board of Retirement v. Murgia
Discrimination based on disability
Wealth discrimination
Discrimination based on sexual orientation

Fundamental rights under due process and equal protection

Introduction

The concept of fundamental rights
The Ninth Amendment
Procedural due process

Framework for analyzing fundamental rights

First issue: is there a fundamental right?
Second issue: is the constitutional right infringed?
Third issue: is there a sufficient justification for the govt.'s infringement of a rt.?
Fourth issue: is the means sufficiently related to the purpose?

Constitutional protection for family autonomy

The right to marry

Loving v. Virginia
Zablocki v. Redhail

The right to custody of one's children

Stanley v. Illinois
Michael H. v. Gerald D.

The right to keep the family together

Moore v. City of East Cleveland, Ohio

The right of parents to control the upbringing of their children

Meyer v. Nebraska
Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary
Troxel v. Granville

Constitutional protection for reproductive autonomy

The right to procreate

Buck v. Bell
Skinner v. Oklahoma

The right to purchase and use contraceptives

Griswold v. Connecticut
Eisenstadt v. Baird

The right to abortion

The recognition and reaffirmation of the right to abortion
Roe v. Wade
Planned Parenthood v. Casey

Government regulation of abortions

Stenberg v. Carhart

Government restrictions on funds and facilities for abortions

Maher v. Roe

Harris v. McRae

Spousal consent and notice requirements

Planned Parenthood v. Danforth
Planned Parenthood v. Casey
Parental notice and consent requirements
Bellotti v. Baird

Constitutional protection for medical care decisions
Right to refuse treatment
Cruzan v. Director, Missouri Department of Health

Right to physician-assisted suicide
Washington v. Glucksberg
Vacco v. Quill

Constitutional protection for sexual orientation and sexual activity
Bowers v. Hardwick
Lawrence v. Texas

Constitutional protection for control over information
Whalen v. Roe