United States Constitutional Law: Theory, Practice, and Interpretation

Class 9: The Constitution in Action—Same-Sex Marriage

Friday, October 11, 2019

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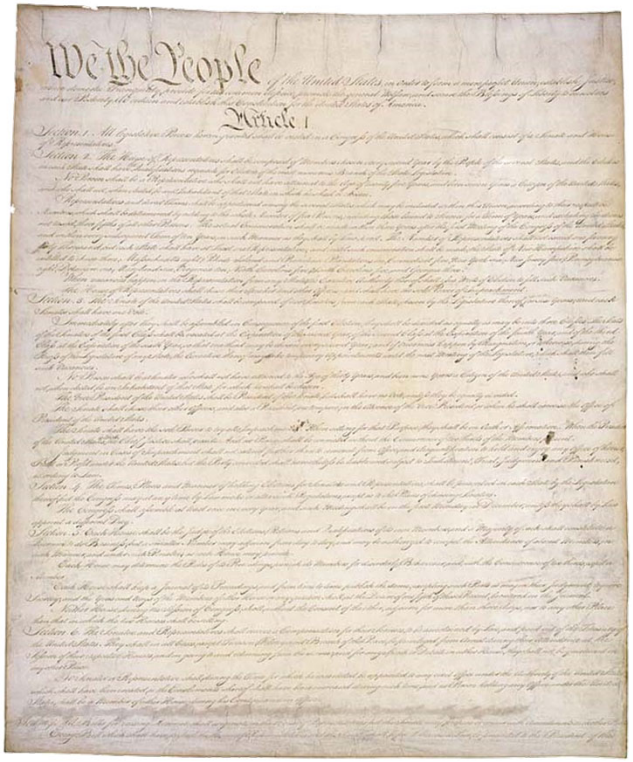
United States Constitution (Ratified 1788)

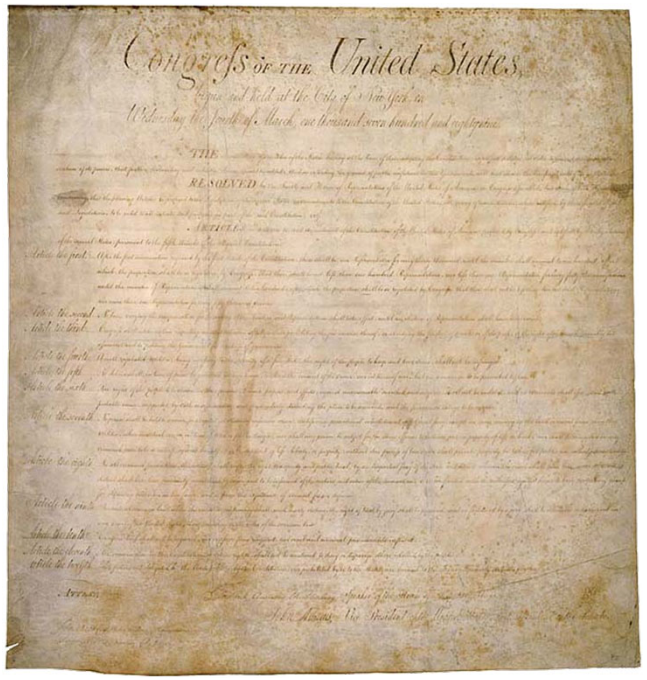

We the People

Article I

United States Supreme Court

United States Constitutional Law: Theory, Practice, and Interpretation

- Introduction
- Governmental structure
- Individual rights
- Enforcing the Constitution
- Interpreting the Constitution
- The Constitution in action



The United States Constitution in Action

- Introduction
- Racial discrimination
- The right to keep and bear arms
- Abortion
- Same-sex marriage
- A hypothetical municipal ordinance prohibiting dog ownership

Supreme Court Case Presentations

- Background
  - Who were the parties?
  - What happened (what were the facts of underlying the dispute)?
  - How did the case get to the Court (what was the procedural history)?
- Court's ruling, justices' votes, and final disposition
  - Who won (which party prevailed) and what did the Court do (affirm or reverse the last lower court)?
  - How did each justice vote (to affirm or to reverse)?
  - What happens next (did the Court remand and, if so, to where and for what)?
- Rationale and reasoning of each opinion (majority, concurrences, dissents)
  - What approach to constitutional interpretation did each opinion take?
  - What role did precedent and *stare decisis* play in each opinion?

Importance of “Interpretation”

“Whoever hath an ultimate authority to interpret any written or spoken laws, it is he who is truly the Law-giver to all intents and purposes, and not the person who first wrote or spoke them.”

Bishop Hoadly in a 1717 sermon before the English King.

Honesty in Constitutional Interpretation

- Ask first: “What do I personally think about this issue as a matter of social policy?”
- Then ask: “What does the Constitution say about the issue?”
  - Is there an individual right regarding that issue in the Constitution?
  - To which governmental institution did the Constitution delegate the power to regulate on to the issue?
    - To the States, the Federal government or both?
    - If to the Federal government, to Congress, the President, or the Judiciary?

Principal Dichotomy

Originalists

- Constitution establishes a fixed governmental framework
- Consider intention of framers or original public understanding
- Questions about moral and political soundness of policy are historical
- Is this overly conservative and tied to the “dead hand of the past”?
- Is this approach incapable of rational and responsible change?

Living Constitutionalists

- Constitution is evolving in response to changing circumstances and improved moral and political beliefs
- Reasoning resembles development of common law
- Is this threatening to the rule of law and the separation of powers?
- Is this constitutional amendment under the guise of interpretation?

Same-Sex Marriage

John Arthur and Jim Obergefell

Fourteenth Amendment § 1 (1868)

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Obergefell v. Hodges (2015)

NOT JUST
GAY...
ECSTATIC!!!
THE ARC
OF HISTORY
BENDS TOWARD
JUSTICE

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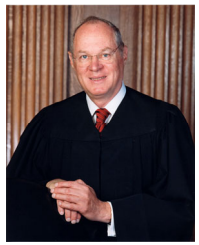


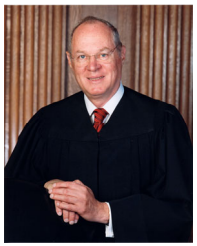
Obergefell v. Hodges (2015): Holding

"The Constitution promises liberty to all within its reach . . . a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity."

The fundamental rights found in the Fourteenth Amendment's Due Process Clause "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."

The "identification and protection" of these fundamental rights "has not been reduced to any formula."

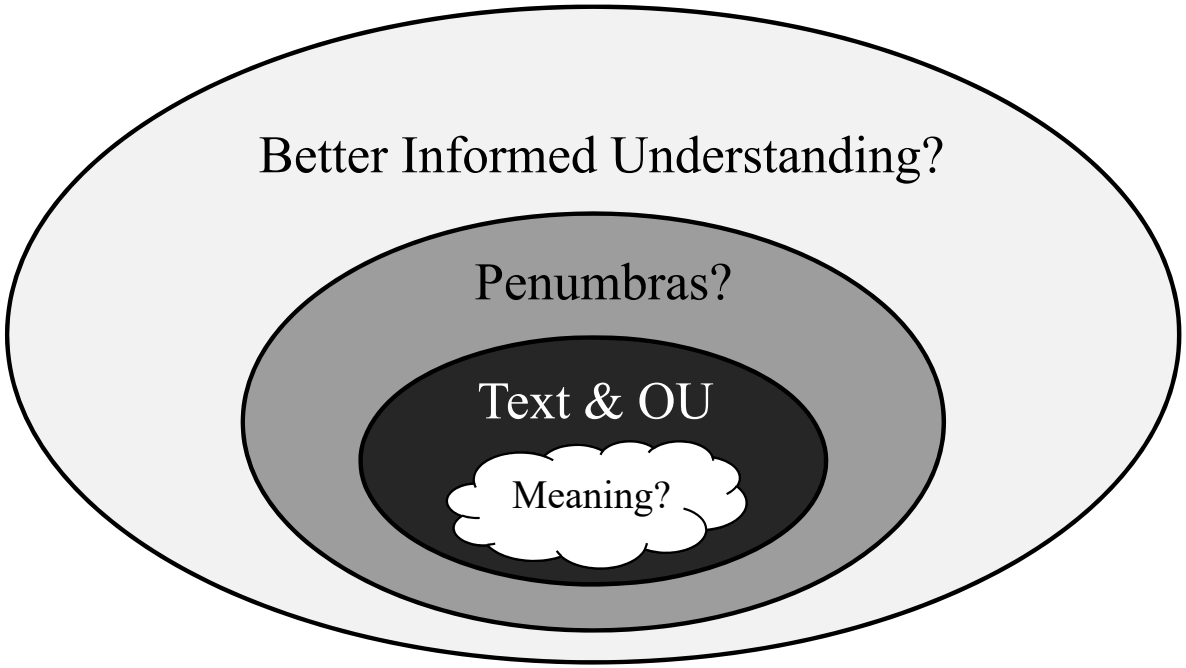
The Due Process Clause includes a fundamental right to same-sex marriage.

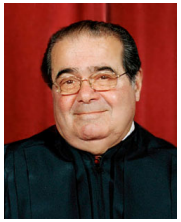


Obergefell v. Hodges (2015): Rationale

1. “The right to personal choice regarding marriage is inherent in the concept of individual autonomy.“
2. “The right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals", a principle applying equally to same-sex couples.
3. The fundamental right to marry "safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.”
4. “Marriage is a keystone of our social order", and "[t]here is no difference between same- and opposite-sex couples with respect to this principle"; preventing same-sex couples from marrying puts them at odds with society, denies them countless benefits of marriage, and introduces instability into their relationships for no justifiable reason.

Obergefell Majority's Approach to Constitutional Interpretation





Obergefell v. Hodges (2015) (Scalia, J., dissenting)

- “Judicial Putsch”; before signing, “I would hide my head in a bag.”
- “Rights, we are told, can “rise . . . from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era.” (Huh? How can a better informed understanding of how constitutional imperatives [whatever that means] define [whatever that means] an urgent liberty [never mind], give birth to a right?).”
- "Buried beneath the . . . straining-to-be-memorable passages is a startling assertion: No matter what it was the People ratified, the Fourteenth Amendment protects those rights that the Judiciary, in its 'reasoned judgment,' thinks the 14th Amendment ought to protect."