Fromm Institute for Lifelong Learning
Carcieri/Great Equal Protection Cases

Session One: Introduction, Part One

Introductory Terms/Concepts, Text of the EPC, Early Cases:
Yick Wo v. Hopkins (1886)
Plessy v. Ferguson (1896)

Session Two: Introduction, Part Two

Brown v. Board of Education of Topeka (1954)
Boiling v. Sharpe (1954)
Modern Equal Protection Analysis:
   U.S. v. Carolene Products (1938), Footnote Four

Session Three: Education, Wealth, and Age

Massachusetts Board of Retirement v. Murgia (1976)

Session Four: Gay Marriage and Voting Rights

Hollingsworth v. Perry (2013)
Baker v. Carr (1962)
Shaw v. Reno (1993)

Session Five: Gender, Part One

Bradwell v. Illinois (1873)
Reed v. Reed (1971)
Frontiero v. Richardson (1974)
(Other selected cases as time permits)
Session Six: Gender, Part Two

Craig v. Boren (1976)
Nguyen v. Immigration and Nationalization Service (2001)
(Other selected cases as time permits)

Session Seven: Race/Affirmative Action, Part One

Korematsu v. United States, (1944)
Loving v. Virginia, (1967)
University of California Regents v. Bakke (1978)

Session Eight: Race/Affirmative Action, Part Two

University of Texas v. Fisher I (2013)
University of Texas v. Fisher II (2016)
Course Overview/Introductory Terms and Concepts

Constitution: One Source of Law - Two Basic Functions:

1) **Empower Gov’t**: Legislative, Executive, and Judicial Powers

2) **Disempower Gov’t**: Separation of Powers, Federalism, Bill of Rights

   - Constitutional Text v. Constitutional Law
   - Constitutional Interpretation: Judicial Review

Rights

and Interests, Privileges, and Powers

Natural v. Civil Rights

The 14th Amendment to the U.S. Constitution (1868):

Section One: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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....”

Section Five: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.”
“any person”

“within its jurisdiction”

“the equal protection of the laws”

Aristotle: the goal of democracy is liberty, but its conception of justice is equality. So, are we equal?

Yes – 1) biologically, we are all members of the same species

2) Hobbes – we are by nature all equally vulnerable to violent death

No – 1) social/economic inequality is inescapable in a free society

2) humans have different capacities, for which government can and must account

The Slaughterhouse Cases, 83 U.S. 36 (1873)

The Court interpreted the Privileges or Immunities, Due Process, and Equal Protection Clauses of the 14th Amendment narrowly, holding that States, not the federal government, remain the primary protectors of individual rights under the 14th Amendment.

The Civil Rights Cases, 109 U.S. 3 (1883) – Doctrine of State Action:

“Civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual....”
Yick Wo v. Hopkins, 118 U.S. 356 (1886)

FACTS/PROCEDURE: A San Francisco ordinance prohibited the operation of laundries in buildings other than those made of stone or brick unless the board of supervisors granted a waiver. More than 300 of 320 laundries in San Francisco were wooden structures. With only one exception, the board granted waivers to all Caucasian applicants but denied them to all Chinese applicants - approximately 200. Yick Wo and 150 other Chinese aliens were convicted of violating the ordinance, and they appealed.

ISSUE: Whether conviction under a law which is facially race neutral but discriminatory as applied violates EP.

HOLDING: Yes

REASONS (RATIONALES): “The DP and EP clauses of the 14th Amendment are universal in their application ... without regard to any differences of race, of color, or of nationality; the equal protection of the laws is a pledge of the protection of equal laws.... (We have) “a government of laws and not of men.” For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.”

Plessy v. Ferguson, 163 U.S. 537 (1896)

F: A Louisiana law required “separate but equal” accommodations for blacks and whites in railroad cars. When Plessy, who was one eighth black, refused to leave a white car, he was ejected and then prosecuted under the law.

I: Whether a law requiring separate but equal public accommodations based solely on race violates the Fourteenth Amendment.

H: No
R1: The Fourteenth Amendment provides only for the political and legal equality of the races, not their social equality.

R2: The long tradition of separate public schools for the races justifies such arrangements in public accommodations generally.

R3: Equal protection must be understood against the background of permissible distinctions between the sexes and between adults and children.

R4: *Strader v. West Virginia* is distinguishable since it involved inequality in the political/legal sphere rather the social sphere.

R5: Assuming *arguendo* that there is a property right in whiteness, this law does not deprive plaintiff of this right since he is not white.

R6: Upholding this law will not justify legal distinctions based on arbitrary characteristics like hair color since any law must be both reasonable and enacted in good faith.

R7: That “separate means inferior” is simply an interpretation.

R8: Legislation is powerless to defeat social prejudice.

**Harlan, J., dissenting:**

"... in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."