

## The Supreme Court's Ability to Protect Rights

Bradley Miller  
miller@iastate.edu

Since the Supreme Court is limited to textually demonstrable decisions, it can only adjudicate on those actions specified in the text of the Constitution. Without going down the slippery slope of using the ninth amendment as a basis to adjudicate rights, the Supreme Court is limited to those rights that have been described in the Constitution's text. The question of a right being able to be adjudicated is not a question if it is a fundamental right or if fundamental rights are important in a republic. It is up to the legislature to delineate what fundamental rights are.

According to Black's Law dictionary, a fundamental right is a right derived from natural or fundamental law. In the case of Constitutional law, the Constitution is the fundamental law. A fundamental right triggers strict scrutiny to determine whether the law violates the Due Process Clause or the Equal Protection Clause of the 14<sup>th</sup> Amendment (Black's Law Dictionary: 541). The constitution in the 14<sup>th</sup> Amendment states "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" The terms "No state shall..." and "nor shall any State..." simply limit the reach of this amendment to actions of the state.

The Supreme Court is bound to the text of the constitution based on the rationale used in *Baker v. Carr*. In that case, Justice Brennan uses the key phrase "textually demonstrable constitutional commitment." It is a matter of separation of powers. It is impossible for the court to undertake independent resolutions "without expressing lack of respect due coordinate branches of government" (*Baker v. Carr*). With that limitation, Supreme Court should only rule on those rights expressly described in the Constitution.

The limit to state actions was well stated in the *Civil Rights Cases*. Justice Bradley describes that the constitution "does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the [fourteenth] amendment." In this . On March 1, 1875, Congress passed the Civil Rights Act, entitled "An Act to protect all citizens in their civil and legal rights." In all of the cases that make up the *Civil Rights Cases* the primary question was the constitutionality of the law. During the consideration of the law, Senators argued that authority to pass the law was by the virtue of the Fourteenth Amendment. Justice Bradley's opinion recognizes that "[Under the Fourteenth Amendment, it] is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment." "The last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition." He thus comes to the conclusion that, "until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected

by the Fourteenth Amendment, no legislation of the United States, under said Amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority”

In the case of *Buchanan v. Warley*, the court declared unconstitutional the provisions of a city ordinance which were discriminatory in nature. In the opinion for this case, the court stated, “The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color.” In this case, the city ordinance was a state action and thus fell under the jurisdiction of the 14<sup>th</sup> Amendment.

The court’s power to provide relief is only within the scope of the constitution’s limit to state actions. In *Plessy v. Ferguson*, Justice Brown put it this way, “Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation.” The case brought into question a Louisiana segregation law. Passengers of the colored race were required to sit in a separate section of the train than whites. Mr. Plessy was arrested for sitting in the white section when the officer of the passenger train discerned him as not being white. Plessy only challenged the classification of himself as colored, but the question of the constitutionality of the Louisiana law was still discussed in the case. “If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.” “If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals.”

## Bibliography

The Constitution of the United States (1787)

Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27, L.Ed. 835 (1883)

Buchanan v. Warley, [245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149 (1917)]

Bodenhamer, David J. and Ely, James W. "The Bill of Rights in Modern America *After 200 years*". Indiana University Press. Bloomington and Indianapolis, IN. 1993

Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1183, 41 L.Ed. 256 (1896)