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The Civil Rights Amendments

Constitutional reform and civil rights 1860-1875 (PREVIEW RELEASE: collection under construction)

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Negotiations in this collection (5)

The Road to Civil War

None

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United States Thirteenth Amendment 1863-65

An amendment to the United States Constitution to abolish slavery introduced during the American ...

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United States Fourteenth Amendment & The Civil Rights Act of 1866

An amendment to the Constitution of the United States that granted citizenship and equal rights, ...

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United States Fifteenth Amendment

None

United States Nineteenth Amendment and Edmunds Tucker Act

The Nineteenth Amendment to the United States Constitution secured the right to vote

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.

1875 Civil Rights Act

- Banned discrimination in public accommodations
- Not enforced by President Grant
- Struck down by the Supreme Court 1883
- “it would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to guests he will entertain, or as to the people he will take into his coach or cab or car; or admit to his concert or theater, or deal with in other matters of intercourse or business. Innkeepers and public carriers, by the laws of all the states, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them. If the laws themselves make any unjust discrimination, amenable to the prohibitions of the fourteenth amendment, congress has full power to afford a remedy under that amendment and in accordance with it.”

**So how did the Civil Rights
acts of the 1960s work?**

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Equal access.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

Establishments affecting interstate commerce.

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

Lodgings.

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

Restaurants, etc.

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

Theaters, stadiums, etc.

(4) any establishment (A)(i) which is physically located

Other covered establishments.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

- Before July 2023, the general principle in operation in the United States was that:
 - Until the end of the first trimester of pregnancy (12 weeks), the state could only insist that an abortion be performed by a licensed doctor in safe conditions.
 - Until the end of the second Trimester (24 weeks — roughly until viability) the state could create regulations reasonably aimed to protect the health of the pregnant person.
 - During the third trimester,

the state's interest in protecting human life outweighed any right to privacy.

- This was rooted in a decision in 1973 called *Roe v. Wade*.
- That decision was rooted in a 'right to privacy' in the US Constitution.
- That right to privacy was based on a reading of the 'due process clause'.
- With some technical changes, this was upheld in *Planned Parenthood v. Casey* (1994).

- All of this was overturned in a case decided last summer called *Dobbs v. Jackson Women's Health*.
- This case held that there was no right to an abortion in the US Constitution. It suggested that the idea of a 'Right to Privacy' might itself be suspect.



The invention of 'judicial review'

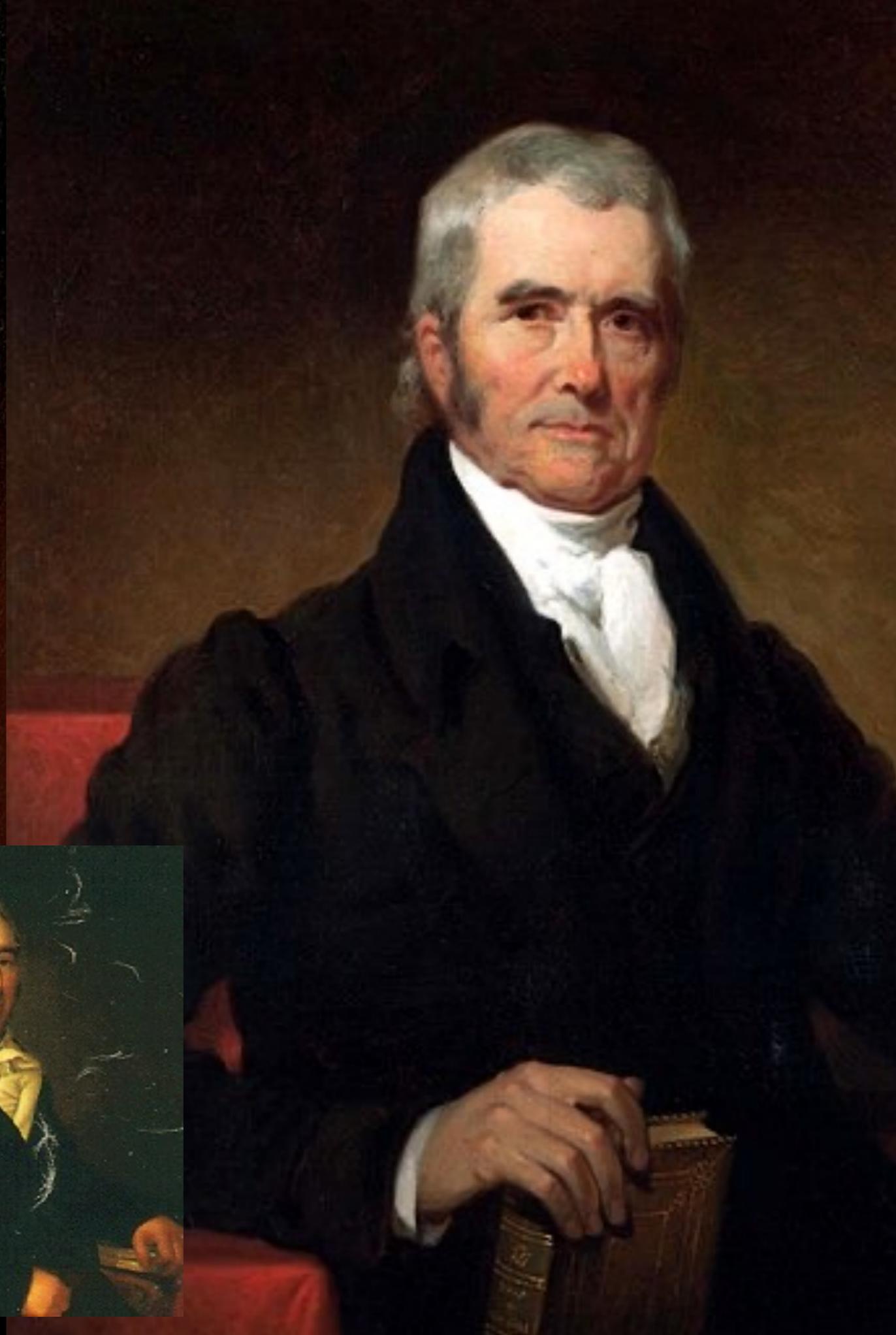
‘It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.’

Marbury v Madison (1803)

“The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law. My construction of the constitution is very different from that you quote. It is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to its action; and especially, where it is to act ultimately and without appeal.”

Jefferson to Judge Spencer Roane 6th September 1819



Standing

‘It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress.’

Marbury v Madison

‘We are next confronted with issues of justiciability, standing, and abstention. Have Roe and the Does established that "personal stake in the outcome of the controversy,”

...

‘But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied. Our law should not be that rigid.

Roe v Wade

The Fourteenth Amendment



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United States Fourteenth Amendment & The Civil Rights Act of 1866

An amendment to the Constitution of the United States that granted citizenship and equal rights, both civil and legal, to African Americans and slaves who had been emancipated by the thirteenth amendment.

Part of: **The Civil Rights Amendments.**

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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.

The (limited) rights of American Citizens

**No State shall make or enforce
any law which shall abridge
the privileges or immunities of
citizens of the United States;**

‘It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States....I am not aware that the Supreme Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guaranteed.’

Sen. Jacob Howard 1866

‘The constitutional provision there alluded to did not create those rights....It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens. Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.’

Slaughter House Cases 1873

Ordered Liberty, Due Process, and Privacy

**nor shall any State deprive any
person of life, liberty, or
property, without due process
of law;**

‘Ordered Liberty’

... and due process

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor.

Lochner v. New York (1905)

<https://supreme.justia.com/cases/federal/us/198/45/#tab-opinion-1921257>

Ordered Liberty in the 20th Century

- Fundamental to the idea of ‘incorporation’, by which the general rights outlined in the ‘Bill of Rights’ became rights that could be relied on in the states themselves, contrary to their police power.
- Freedom of Religion
- Freedom of Speech
- Freedom of the Press
- The Right to Keep and Bear Arms
- Privacy

'Privacy'

- Olmstead v. United States (1928) held that wiretapping was allowed without a warrant 5-4. Overturned in Katz v. United States (1967).
- Loving v. Virginia (1967) right to interracial marriage.
 - Also equal protection
- Stanley v. Georgia (1969) possession of obscene materials (restricted 1990).
- Adultery? Never ruled on directly.
- Griswold v. Connecticut (1965) contraception for married couples.
 - 'The penumbra of the constitution'
 - Expanded in a later case on the grounds of 'equal protection'
- Lawrence v. Texas (2003) struck down an anti-sodomy law.

Roe v Wade



Robert Bork

Obergefell v. Hodges

‘The fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs.’

... ‘has not been reduced to any formula’

Obergefell v. Hodges (2015)

Settled Law?

‘Balls and Strikes’

If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it's my job to call balls and strikes, and not to pitch or bat.

John Roberts, Confirmation Hearing, 2005



the top of the shoulders

midpoint

the top of the uniform pants

the hollow beneath the
kneecap





State Restrictions prior to Dobbs

Dobbs v Jackson Women's Health Organization

Not 'deeply rooted'

What next?

New Frontiers

- Can you cross state lines?
- What about a Federal law in favour of abortion?
- Or what about a law against?
- Or a constitutional amendment?
- Has the issue really been ‘returned to the states’?
- Are more rights at risk?
 - In particular, is contraception itself at risk?

**...nor deny to any person
within its jurisdiction the
equal protection of the laws.**



England and Wales abortion law has been settled, minister tells Commons

Edward Argar says government does not intend to change law after case of woman jailed for late abortion



Edward Argar: '... it would be inappropriate for me to seek to direct the Sentencing Council, given its independent function.' Photograph: Amer Ghazzal/Alamy

Abortion law in England and Wales has been settled by parliament and the government does not intend to change it, a justice minister has told MPs,

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