

Constitutional Law: Principles and Practice

The Right to Privacy Under the Due Process and Equal Protection Clauses

Chapter 13

Constitutional Law: Principles and Practice

The Right to Privacy

- Freedom of speech and religion
- Economic rights
- Protection from
 - Unreasonable searches and seizures
 - Self-incrimination and double jeopardy
 - Cruel and unusual punishment
- The right to a speedy trial and the right to bail

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The Ninth Amendment

- Contains no specific rights
- Provides the Court with justification necessary to protect unenumerated rights

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The Right to Marry

- The right to marry is protected by the Due Process Clause of the Constitution.
- “Liberty” includes the freedom to marry.

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The Right to Reproductive Freedom

- Constitutional protection extends to the right to procreate.
- The Supreme Court has allowed sterilization in one case. (*Buck v. Bell*, 1927)

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Contraception

- Both married and unmarried people have a constitutional right to access contraception.
- *Griswold v. Connecticut* (1965) invalidated a law that made it a crime to give advice about contraception to married people.

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Abortion Rights

- The right to an abortion is one of the unenumerated rights involving reproductive autonomy.
- Some state regulation of abortion is constitutional; other regulations are not constitutional.
- Landmark case is *Roe v. Wade* (1973)

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Constitutional Protection for Sexual Acts and Sexual Orientation

- *Bowers v. Hardwick* (1986)
 - The constitutional right to privacy does not include a right for consenting adults to engage in homosexual activity, even in a private home.
- *Lawrence v. Texas* (2003)
 - Human dignity is protected by the Fourteenth Amendment.
 - The U.S. Constitution precludes government intrusion into the realm of consensual adult intimacy and the choice of an intimate partner.

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Same-Sex Marriage

- *Goodridge v. Department of Public Health* (2003)
 - Barring an individual from the protections, benefits, and obligations of civil marriage solely because of same-sex issues violates the Massachusetts Constitution.
 - The Supreme Court has yet to rule on this issue.

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The Right to Die

- The right to privacy also includes the right to accept or reject medical care.
- *Cruzan v. Director, Missouri Dept. of Health* (1990)
 - Individuals have a due process right to reject medical care.
 - A state law requiring clear and convincing evidence of the patient's wishes was valid.