

APGoPo Unit 2

RIGHTS IN AMERICA

PROPERTY RIGHTS

The founders saw the government as not only the protector of property but also the potential abuser of property rights. The Fifth Amendment allows the government the right to eminent domain, but the owner must be fairly compensated. The Court has interpreted this clause to be a direct taking of property, not just a government action that may result in a property losing value, such as a rezoning regulation. Also, the government and the property owner sometimes interpret "just compensation" differently. In such a case, the courts are the final arbitrators.

- Definition - Property rights are the rights of an individual to own, use, rent, invest in, buy, and sell property
- National and state governments' power of eminent domain - the power to take private property for public use
 - Taking clause
 - "Just compensation" is not always easy to define (court determines value in a dispute)

DUE PROCESS RIGHTS

The due process clauses in the Fifth and Fourteenth Amendment forbid the national and state governments to "deny any person life, liberty, or property without due process of law." Although the Supreme Court has refused to define precisely what is meant by due process, it generally requires a procedure that gives an individual a fair hearing or formal trial.

- Definition - when govt. denies life, liberty or property, it must use fair procedures ("give you your due process"):
 - Observe Bill of Rights, provide reasonable notice, provide chance to be heard.

PRIVACY RIGHTS

The phrase "right to privacy" does not appear anywhere in the Constitution or the Bill of Rights. The idea was first expressed in the 1965 *Griswold v. Connecticut* case in which a doctor and family-planning specialist were arrested for disseminating birth control devices under a little-used Connecticut law that forbid the use of contraceptives. The Supreme Court ruled against the state, with the majority opinion identifying "penumbras" - unstated liberties implied by the stated rights - that protected a right to privacy, including a right to family planning.

The most important application of privacy rights came in the area of abortion as first ruled by the Court in *Roe v. Wade* in 1973. "Jane Roe" challenged the Texas law allowing abortion only to save the life of a mother. Texas argued that a state has the power to regulate abortions, but the state overruled, forbidding any state control of abortions during the first three months of a pregnancy and limiting state control during the fourth through sixth months. The justices cited the right to privacy as the liberty to choose to have an abortion before the baby was viable. The *Roe v. Wade* decision sparked the controversy that surrounds abortion today. Since the late 1980s the Supreme Court has tended to rule more conservatively on abortion rights.

- Fundamental rights are those which are explicitly in the Constitution (Bill of Rights)
- Such rights include those which are implicitly in the Constitution (travel, political association, privacy – *Griswold v. Connecticut, 1965*).
- Abortion Cases:
 - Prior to 1973: states set own abortion policies.
 - *Roe v. Wade, 1973*: established trimester guidelines. Based upon right of privacy implied in Bill of Rights.
 - *Webster v. Reproductive Health Services, 1987*: did not overturn *Roe*, but gave states more leeway in restricting abortion.
 - *Planned Parenthood v. Casey, 1992*: somewhat defined that leeway: states cannot impose an "undue burden" on a women's right to an abortion.

HOMOSEXUAL RIGHTS

In the last two decades, homosexuals have become much more active in their attempt to gain equal rights in employment, education, housing, and acceptance by the general public. Many cities have banned discrimination, and many colleges and universities have gay rights organizations on campus. Despite these changes, civil rights for homosexuals is still a controversial issue.

Currently, a controversial topic is state recognition of homosexual marriages and civil unions. After courts in Massachusetts upheld the right in that state in 2004, a number of homosexual marriages were conducted in other areas of the country, including San Francisco and New York City. In reaction, several states passed initiatives in the election of 2004 that banned recognition of homosexual marriages.

- *Lawrence v. Texas (2003)* – Court struck down Texas sodomy law through use of "liberty" part of 14th Amendment's due process clause
- Gay marriage – many state laws denying gay marriage are being struck down for violating due process and equal protection laws
- Most effective way to secure rights has been through litigation in the courts to gain protections against discrimination