5h Amendment: Federal Bar (1791)

No person shall be... deprived of life, liberty, or property, without due process of law

Federal Standards

DISTINCT STANDARDS

State Standards

State-established Civil Rights

States quaranteed and maintained legal definitions of individual civil rights before, during, and after the ratification of the Constitution. No universal understanding.

Reinforced by Barron v Baltimore (1833), where courts found that there was no mechanism within the Constitution to hold states accountable to federally dictated standards.

Birth of Substantive Due Process

Dredd Scott (1857)) created substantive due process rights for the slave holder, stating that the substantive due process rights belong to the property holder, not the slave. Therefore, the Missouri Compromise's prohibition on slavery was invalid

14th Amendment: State Bar (1868)

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.

No State shall make or enforce any law which shall

Gitlow v New York(1925)

Courts move to include free speech and press as the most fundamental liberties to be protected under the due process and equal protection clauses of the 14h Amendment

Lochner v New York(1905)

Progressive New York state laws restricting work hours struck down for interfering with the liberty of the laborer and the employer to engage in a contract. Due Process applied to strike down NY State law. Reversed in West Coast Hotel Co. v Parrish

Palko v Connecticut(1937)

Examining Double jeopardy in state courts: rejects Total incorporation, but establishes process of selective. Must be "implicit in the concept of ordered liberty" and "rooted in the traditions and conscience of our people to be ranked as fundamental."

Warren Court (1953-69)

Court incorporates nearly every single one of the first eight amendments via the due process clause of the 14th Amendment. Kev cases:

- Brown v Board (53)
- Engle v Vitale(62)
- Abbinaton v Schempp (63)
- Mapp v Ohio(61)
- Gideon v Wainwright(66)
- Miranda v Arizona(66)
- Benton v Maryland(69)
- Griwold v Connecticut(65)

STANDARDS ARE BEING REESTABLISHED AND REDEFINED

Slaughterhouse Cases (1873)

Privileges or Immunities clause cannot be used to hold states to federal civil right standards; No incorporation of essential due process rights.

Dissent proposes idea of universal incorporation no traction in legal field.

US v Cruikshank (1875)

Due Process not enforceable on private actions; First Amendment fails substantive due process for state governance; Second Amendment is outside the authority of the Federal government.

Plessy v Ferguson (1896)

STANDARDS MORE "UNIVERSAL"

Separate but equal accommodations for racial segregation satisfy the Fourteenth Amendment's requirement for equal protection.

constitution.

Bolling v Sharpe(1954)

Establishes reverse incorporation where the federal government is required to meet state standards of **equal** protection (origin: 14th Amendment) through the Due Process clause of the 5h Amendment.

Dissenting Justice Harlan argues for a color blind

Substantive Due Process v Procedural Due Process

Remember, our essential liberties (life, liberty, property) can be taken away from us provided the government goes through due process beforehand

What's the rub? These essential rights are open to subjective Interpretation by judges.

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Substantive a right against the imposition of *certain kinds* of policies on us under any circumstances in a way evaluate the *intent* of the law(using Strict Scrutiny test) VS Procedural one that requires gov to enforce its policies in a way that ensures we are fairly treated under the rules in a way, evaluate the effect of the law (using Rational Basistest)

