

The Bill of Rights of 1791 was much more limited in scope than the provisions that so pervade our constitutional consciousness today. It originally applied only to the federal government, meaning that the US Constitution's Bill of Rights did not protect against state governmental infringement of these rights. (Many states had their own bill of rights in their own state constitutions.) Most of the rights in the Bill of Rights were much later applied to the states through the 1868 Fourteenth Amendment, but in many cases that did not occur until well into the 20th century.

Almost all constitutional rights protect people from governmental action, not private conduct. The only exception is the Thirteenth Amendment, which prohibits slavery (including slaveholding by private individuals).

INTERPRETING THE CONSTITUTION

For better or worse, the Constitution often does not speak for itself. Sometimes in cases, issues arise that are not directly addressed by any constitutional provision. In other cases, the Constitution's broad, open-ended language raises questions as to when they should apply.

Even when the Constitution is written in absolute terms, most people agree that, at least with regard to individual rights, it usually does not function in absolutes. Circumstances matter. The First Amendment, for example, is written in absolute terms and prohibits Congress from making any law impinging the freedom of speech.

However, Justice Oliver Wendell Holmes famously said that falsely shouting fire in a theater and causing a panic is not protected. Most people would agree that the right to free speech, though crucial in a free society, must have certain limitations. Lawyers and judges are therefore left to argue about how best to interpret the Constitution.

PRIVATE LAW VERSUS CONSTITUTION LAW

Constitutional rights only involve the relationship between the government and individuals, not the relationship between different individuals. Individuals are protected from each other by private law, such as tort law and contract law.

Constitutional Interpretation 7th vol Iipb2000

Craig Ducat



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