

Constitutional Law

by Carl Miller

Your Constitution is an Iron Clad Contract, enforceable in a Court of Law

U.S. Constitution, Article Six, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

(The Supremacy Clause of the U.S. Constitution)

U.S. Constitution, Bill of Rights, Article One:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Bill of Rights, Article Two:

A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

U.S. Constitution, Bill of Rights, Article Four:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

U.S. Constitution, Bill of Rights, Article Five:

No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service, in time of War, or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Bill of Rights, Article Six:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of Counsel for his defense.

U.S. Constitution, Bill of Rights, Article Seven:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

U.S. Constitution, Bill of Rights, Article Eight:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Constitution, Bill of Rights, Article Nine:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

U.S. Constitution, Bill of Rights, Article Ten:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Laches:

“Doctrine of laches,” is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

“neglect or omission to do what one should do as warrants presumption that one has abandoned right or claim”, Eldridge v. Idaho State Penitentiary, 54 Idaho 213, 30 P.2d 781, 784.

“A failure to do something which should be done or to claim or enforce a right at a proper time”, Hutchinson v. Kenney, C.C.A.N.C., 27 F.2d 254, 256.

Marbury v. Madison : 5 US 137 (1803):

“No provision of the Constitution is designed to be without effect,” “Anything that is in conflict is null and void of law”, “Clearly, for a secondary law to come in conflict with the supreme Law was illogical, for certainly, the supreme Law would prevail over all other laws and certainly our forefathers had intended that the supreme Law would be the bases of all law and for any law to come in conflict would be null and void of law, it would bare no power to enforce, in would bare no obligation to obey, it would purport to settle as if it had never existed, for unconstitutionality would date from the enactment of such a law, not from the date so branded in an open court of law, no courts are bound to uphold it, and no Citizens are bound to obey it. It operates as a near nullity or a fiction of law.”

If any statement, within any law, which is passed, is unconstitutional, the whole law is unconstitutional by Marbury v. Madison.

Shephard’s Citations:

A group of reporters that go through and keep track of all court cases that have come before the courts, especially the Supreme Court and they clarify, before the court, all the cases. All cases which have cited Marbury v. Madison case, to the Supreme Court has not ever been over turned. See Shephard’s Citation of Marbury v. Madison.

Title 5, US Code Sec. 556(d), Sec. 557, Sec.706:

Courts lose jurisdiction if they do not follow Due Process Law.

Title 18, US Code Sec.2381:

In the presents of two or more witnesses of the same overt act, or in a open court of law, if you fail to timely move to protect and defend the Constitution of the United States and honor your oath of office, you are subject to the charge of capital felony treason.

Notes:

American Jurisprudence Book 16: Constitution Law Section

16Am Jur 2d:

16Am Jur 2d., Sec. 97:

“Then a constitution should receive a literal interpretation in favor of the Citizen, is especially true, with respect to those provisions which were designed to safeguard the liberty and security of the Citizen in regard to person and property.” Bary v. United States - 273 US 128

“Any constitutional provision intended to confer a benefit should be liberally construed in favor in the clearly intended and expressly designated beneficiary”

(You are the Beneficiary of the US Constitution)

16Am Jur 2d., Sec. 98:

“While an emergency can not create power and no emergency justifies the violation of any of the provisions of the United States Constitution or States Constitutions. Public emergency such as economic depression for especially liberal construction of constitutional powers and it has been declared that because of national emergency, it is the policy of the courts of times of national peril, so liberally to construed the special powers vested in the chief executive as to sustain an effectuate the purpose there of, and to that end also more liberally to construed the constituted division and classification of the powers of the coordinate branches of the government and in so far as may not be clearly inconsistent with the constitution.”

(No emergency has just cause to suppress the constitution.)

16Am Jur 2d., Sec. 114:

“As to the construction, with reference to Common Law, an important canon of construction is that constitutions must be construed to reference to the Common Law.” “The Common Law, so permitted destruction of the abatement of nuisances by summary proceedings and it was never supposed that a constitutional provision was intended to interfere with this established principle and although there is no common law of the United States in a since of a national customary law as distinguished from the common law of England, adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood.”

16Am Jur 2d., Sec. 117:

“Various facts of circumstances extrinsic to the constitution are often resorted to, by the courts, to aid them and determining its meaning, as previously noted however, such extrinsic aids may not be resorted to where the provision in the question is clear and unambiguous in such a case the courts must apply the terms of the constitution as written and they are not at liberty to search for meanings beyond the instrument.”

16Am Jur 2d., Sec. 155:

“Since the constitution is intendant for the observance of the judiciary as well as other departments of government and the judges are sworn to support its provisions, the courts are not at liberty to overlook or disregard its commands or counteract evasions thereof, it is their duty in authorized proceedings to give full effect to the existing constitution and to obey all constitutional provisions irrespective of their opinion as to the wisdom or the desirability of such provisions and irrespective of the consequences, thus it is said that the courts should be in our alert to enforce the provisions of the United

States Constitution and guard against their infringement by legislative fiat or otherwise in accordance with these basic principles, the rule is fixed that the duty in the proper case to declare a law unconstitutional cannot be declined and must be performed in accordance with the delivered judgment of the tribunal before which the validity of the enactment it is directly drawn into question. If the Constitution prescribes one rule and the statute the another in a different rule, it is the duty of the courts to declare that the Constitution and not the statute governs in cases before them for judgment.

16Am Jur 2d., Sec. 177:

“Declaratory judgments actions have often been utilized to test the constitutionality of a statute in government practices. The Uniform Declaratory Judgment Act makes pacific provisions of the determination of construction or validity of statutes and municipal ordinance by declaratory judgment and is considered to furnish a particularly appropriate method for the determination of controversies relative to the construction and validity of the statute and of ordinances. The Federal Declaratory Judgment Act, although it does not mention declarations as to the construction or validity of the statutes, has been invoked frequently as a means of a saying of the constitutionality of Congressional Legislation. A plaintiff can have a declaratory judgment action on the constitutionality of either the Federal or State statute by a single Federal Judge so long as he does not ask to have the operation of the statute enjoined. A court may grant declaratory relief, unless there is a case of controversy before the court.”

“No one is bound to obey an unconstitutional law”
(Demand a Declaratory Judgment)

16Am Jur 2d., Sec. 255:

“In all instances, where the court exercise it's power to invalidate legislation on constitutional grounds, the conflict of the statute, with the constitution must be irreconcilable. Thus a statute is not to be declared unconstitutional unless so inconsistent with the constitution that it cannot be enforced without a violation thereof. A clear incompatibility between law and the constitution must exist before the judiciary is justified holding the law unconstitutional. This principle is of course in line with the rule that doubts as the constitutionality should be resolved in favor of the constitutionality and the beneficiary.”

16Am Jur 2d., Sec. 256:

“The general rule is that a unconstitutional statute, whether Federal or State, though having the form and name of law as in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the enactment and not merrily from the date of the decision so braining it. An unconstitutional law in legal contemplation is as inoperative as if it never had been passed. Such a statute lives a question that is purports to settle just as it would be had the statute not ever been enacted. No repeal of an enactment is necessary, since an unconstitutional law is void. The general principles follows that it imposes no duty, converse no rights, creates no office, bestows no power of authority on anyone, affords no protection and justifies no acts performed under it. A contract which rests on a unconstitutional statute creates no obligation to be impaired by subsequent legislation. No one is bound to obey an unconstitutional law. No courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid. A void act cannot be legally inconsistent with a valid one and an unconstitutional law cannot operate to supersede an existing valid law. Indeed, in so far as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal, or in anyway effect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal, remains in full force and effect and where a statute in which it attempts to repeal remains in full force and effect and where a clause repealing a prior law is inserted in the act, which act is unconstitutional and void, the provision of the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law. The general principle stated above applied to the constitution as well as the laws of the several states insofar as they are repugnant to the constitution and laws of the United States.”

16Am Jur 2d., Sec. 257:

“The actual existence of a statute prior to determination, that it is unconstitutional is an operative fact and may have consequences which can not justify being ignored, when a statute which has been in effect for some time is declared unconstitutional, questions of rights claimed to have become vested of status of prior determinations deemed to have finality and acted upon accordingly and of public policy in the light of the nature, both of the statute and of its previous application demand examination. It has been said that in all inclusive statement of the principle of absolute retroactive inviolability cannot be justified. An unconstitutional statute is not necessarily a nullity it may have indeterminate consequences binding on the people.”

16Am Jur 2d., Sec. 258:

“On the other hand it is clear that Congress cannot by authorization or ratification give the slightest effect to a state law or constitution which is in conflict with the Constitution of the United States.”

16Am Jur 2d., Sec. 260:

“Although it is manifested that an unconstitutional provision in the statute is not cured because included in the same act with valid provisions and that there is no degrees of constitutionality.”

Mudook v. Penn. 319 US 105:(1943)

“A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution and that a flat license tax here involves restraints in advance the constitutional liberties of Press and Religion and inevitably tends to suppress their existence. That the ordinance is non-discriminatory and that it applies also to peddlers of wares and merchandise is immaterial. The liberties granted by the first amendment are and in a preferred position. Since the privilege in question is guaranteed by the Federal Constitution and exist independently of the states authority , the inquiry as to whether the state has given something for which it cannot ask a return, is irrelevant. No state may convert any secured liberty into a privilege and issue a license and a fee for it.”

Shuttlesworth v. Birmingham Al. 373 US 262:(1962)

“If the state does convert your right into a privilege and issue a license and a fee for it, you can ignore the license and a fee and engage the right with impunity.”

United States v. Bishop 412 US 346:

Sets the standard for criminal violation of Willful Intent

1. It must be proven that you are the party.
2. It must be proven that you had the method or opportunity to do the thing.
- 3. It must be proven that you did this with a Willful Intent.**

Willfulness - “An evil motive or intent to avoid a know duty or task under a law, with a moral certainty.”

“Now since the prosecutor does not have a cause of action for which relief can be granted, your Honor, may it please the court, Counsel is specifically precluded performing his major task, therefore, your Honor, may it please the court, at this time, I would Motion most graciously for a dismissal [with] of Prejudice, for failure to state a cause of action for which relief may be granted by this Honorable Court

and I would like to collect my cost and fees for having to defend this frivolous complaint, Sir, may it please the court."

Owen v. Independence 100 Vol. Supreme Court Reports. 1398:(1982)

Main v. Thiboutot 100 Vol. Supreme Court Reports. 2502:(1982)

"The right of action created by statute relating to deprivation under color of law, of a right secured by the constitution and the laws of the United States and comes claims which are based solely on statutory violations of Federal Law and applied to the claim that claimants had been deprived of their rights, in some capacity, to which they were entitled."

"Officers of the court have no immunity when violating constitutional right, from liability"

(When any public servant violates your rights they do so at their own peril.)

Title 18 US Code Sec. 241 & Sec. 242:

"If upon conviction, you are subject to a \$10,000.00 fine, ten years in jail, or both, and if theft results, life in prison."

Title 42 US Code Sec. 1983, Sec. 1985, & Sec. 1986:

Clearly established the right to sue anyone who violates your constitutional rights. The Constitution guarantees: he who would unlawfully jeopardize your property loses property to you, and that's what justice is all about.

"Judge, you are deemed to know the law and are sworn to uphold it. You can hardly claim that you acted in good faith for willful deformation of a law and you certainly cannot plead ignorance of the law, for that would make the law look stupid for a knowledgeable judge to claim ignorance of a law, when a Citizen on the street cannot claim ignorance of the law. Therefore, there is no judicial immunity."

Bryars v. United States 273USR 28:

"Constitutional provisions, where the security of a person and property are to be liberally construed, and it is the duty of the courts to be watchful for the constitutional rights of the Citizen and against any stealth encroachment therein. When a Federal Officer participates officially with a state official in a search, so that in substance and effect, it is their joint operation, the legality of the search and the use in evidence of the things seized is to be tested in Federal prosecutions as it would be if the undertaking were conclusively the Federal agent."

Boyd v. United States 116 USR 616:

"The Court is to protect against encroachment of constitutionality or secured liberty. It is equivalent to a compulsory production of papers, to make the non - production of them a confession of the allegations which is pretended they will prove. The seizure of compensatory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, violation of the fifth amendment, and in a prosecution for a crime, penalty or forfeiture is equally within the prohibition of the fifth amendment."

Miranda v. Arizona 384 US 436:

Where the Miranda warning the police gives at arrest, comes from. Refuse to say anything without a lawyer present. Do not ever sign a statement that you have been told of your rights. **Keep your mouth shut!**

"In the absence of other effective measures, the following procedures to safeguard the fifth amendment privileges must be observed. The person in custody must prior to interrogation be clearly informed that he has a right to remain silent and that anything he says will be used against him in a court of law. He must be clearly informed that he has a right to consult with a lawyer, to have a lawyer with him during interrogation and that if he is indigent, a lawyer will be appointed to represent him. If the individual indicates prior to and during questioning that he wishes to remain silent, the interrogation must cease. If he states that he wants an attorney, the questioning must cease until an attorney is present. Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his constitutional consul right. Where the individual answers some questions during interrogation or cuts the interrogation, he has not waived his privilege and may invoke his right to remain silent thereafter. The warnings require that the waver needed our, in the absence of a fully effective equivalent perquisites to the admission or admissibility of any statement, inculpability or exculpability made by the defendant. The limitations on the interrogation presses required for the protection of the individual's constitutional rights should not cause an undue interference the proper system of law enforcement as demonstrated by the procedures of the FBI and the safeguards afforded to other jurisdictions. In each of these cases the statements were obtained under circumstances that did not meet constitutional standards for protection of the privilege against self incrimination."

"Where rights secured by the constitution are involved, there can be no rule or law making or legislation which would abrogate or abolish them."

Norton v. Shelby County 118 USR 425:

"An unconstitutional act is not law. It confers no rights, it imposes no duties, it affords no protections, it creates no office. It is in legal contemplation as inoperative as though it has never been passed."

"The court follows the decision of the highest court of the state, in construing the constitution and the laws of the state unless they conflict with or impair the efficacy of some principle of the Federal Constitution or of the Federal Statutes or rule of the commercial or general law. The decision of the state court's in questions relating to the existence of its subordinate tribunals and eligibility in elections or appointment of their officers and the passage of its laws are conclusive upon Federal Courts. While acts of de facto incumbent of an office lawfully created by law. An existing or often held to be binding from reasons of public policy. The acts of the person assuming to fill and perform the duties of an office, which does not exist, can have no validity whatever in law."

U.S. (vs) Dougherty 473 F2d 1113 at 1139

States: "The jury has an unreviewable and unreversible power...to acquit in disregard of the instructions on the law given by the trial judge..."

U.S. (vs) Moylan 417 F2d 1002 at 1006

States: "We recognize, as appellents urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge."

TEXAS CONSTITUTION Article 1 Section 19 states : No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Texas State Law on Larceny & Extortion Section 31.01 (a) : Creating or confirming by words or conduct, a false impression of law or fact that is likely to affect the judgement of another, in the transaction.

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