



# Economic Liberties and the Constitution

## ► **Constitutional Provisions impacting property rights:**

### ► “Contracts Clause”

- Article I, Section 10 prohibits states from “impairing the obligation of contracts.”

### ► Due Process Clause

- This involves substantive due process analysis; to be covered in more detail later in the course.

### ► Takings Clause

- Public purpose required for eminent domain
- Just compensation required



# *Lochner v. New York*

- Facts:

- New York law regulated working hours in a bakery.
- Lochner was fined for violating those rules.

- Issue:

- May New York constitutionally restrict employment conditions?

- Answer: No!

- The right to purchase or sell labor is a constitutionally guaranteed rights protected by the due process clause of the 14<sup>th</sup> Amendment.
- Where the state seeks to restrict this right it must show that its reasons outweigh the freedom interest of the individual. This was not shown in this case.

# “*Lochner*” Era Jurisprudence

- ▶ The idea that the Due Process Clause protected economic rights against state interference lasted for more than three decades and was applied in a variety of contexts.
- ▶ This idea has since been **overturned** to the extent that arguments are, to this day, sometimes derided as being “*Lochner*” era arguments when they rely too heavily on the protection of economic interests.
  - ▶ Rather, Due Process protection is reserved for other types of liberty interests.

# Lochner Reversed

- ▶ *Lochner* was officially overruled starting in the late 1930s, in cases such as:
- ▶ West Coast Hotel Co. v. Parrish
  - ▶ Upheld minimum wage rules
- ▶ United States v. Carolene Products Co.,
  - ▶ Upheld the federal “Filled Milk Act.”
  - ▶ **Note:** this case included perhaps the most famous footnote in the history of constitutional law; the **Footnote 4** that foretold of different levels of scrutiny based on whether a law impacted a “discrete and insular minority.”



# *Phillip Morris USA v. Williams*

- ▶ Facts:

- ▶ In a lawsuit by a smoker, the jury assessed heavy punitive damages against cigarette manufacturer.
- ▶ These damages were based in part by a desire to punish the defendant for harming other people; not just the plaintiffs.

- ▶ Issue:

- ▶ Do punitive damages for injuries cause to nonparties violate the Due Process Clause?

- ▶ Answer: Yes!

- ▶ To permit punishment for injuring a nonparty would impermissibly invite the jury to speculate and address facts beyond the scope of the evidence. This deprives the defendant of its Due Process Rights because of its arbitrariness.



# The Takings Clause

- ▶ Part of the Fifth Amendment:

*Nor shall private property be taken for public use without just compensation*

- ▶ This is based on the historical power of “eminent domain” which is implicitly preserved by the Constitution.
- ▶ This was the first Bill of Rights provision to be incorporated to the states through the 14<sup>th</sup> Amendment.
  - ▶ Likely due to the *Lochner* era protection of property rights.

# Issues in a Takings Clause Case

## 1) Is there a “**taking**” at all?

- Regulatory takings
- Possessory takings

## 2) Is the object or right taken considered “**property**” for purposes of the Takings Clause?

- This is usually a matter of state law.

## 3) If there is a taking, is it for “**public use**”?

- This is the most controversial issue, as demonstrated in the Kelo case.

## 4) Has “**just compensation**” been paid?

- Just compensation is based on fair market value.



# *Lucas v. South Carolina Coastal Council*

- ▶ Facts:

- ▶ After Lucas had purchased beachfront lots, South Carolina has to law preventing those lots from being developed, thereby preventing Lucas from building the homes on the lots that he had planned.

- ▶ Issue:

- ▶ Is that regulation considered a regulatory takings, requiring the payment to Lucas of just compensation?

- ▶ Answer: Yes!

- ▶ This regulation prohibited all economically beneficial use of the land.
- ▶ Requiring the preservation of land for environmental purposes amounts to converting the land the public use. As such, it is a taking under the Fifth Amendment.





# *Kelo v. City of New London*

## ► Facts:

- To create jobs and revitalize the city economy, New London condemned certain private residential property so that it could be used by private corporations in a manner that would bring jobs and economic prosperity to the city.

## ► Issue:

- Is this taking considered for a “public use” even though it is being set aside for use by private corporations?

## ► Answer: Yes!

- The city's development plan is entitled to deference.
- The city reasonably believes that the new project will provide benefits to the community including increased tax revenue and new jobs.
- This is enough public benefit to allow the taking under the Fifth Amendment.