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State Action Doctrine

📅 7-09-2012, 02:43 👁 1 743

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With one exception, the provisions of the United States Constitution, including its amendments, apply to branches, departments, agencies, and officials of government and not to private individuals, groups, or organizations. (The exception is the Thirteenth Amendment, which simply outlaws slavery in the United States and its territories.) The primary, if not sole, purpose of any constitution is to create, organize, empower, and limit a government, and to the extent that private persons/groups/organizations need to be aided or controlled, a government, once formed by a constitution, can do that through statutes and other kinds of civil laws. If, moreover, the provisions in the U.S. Constitution that restrict the government were interpreted as applying to private entities, that would give the courts in the United States a significant amount of power over private individuals, groups, and organizations, because the courts are responsible for enforcing the Constitution. To limit its own power, among other reasons, the Supreme Court has enunciated the State Action Doctrine, which says that the Constitution, except for the Thirteenth Amendment, applies only to government and not to private entities.

The first case in which the Court explicitly stated the State Action Doctrine was the Civil Rights Cases (<http://uscivilliberties.org/historical-overview/3604-civil-rights-cases-109-us-3-1883.html>) (1883). The issue was whether Congress could pass a law making it a crime for public accommodations, for example, hotels, to discriminate against persons because of their race. Because the Fourteenth Amendment gives it the power to enforce the clause that prohibits states from denying persons “equal protection of the laws,” Congress thought it could pass an antidiscrimination law that applies to private businesses and organizations. The Court, however, said that it could not, because the equal protection clause limits only state governments.

Since then, the Court has consistently adhered to the State Action Doctrine but many times has had to address the issue of what distinguishes government action from private action. Even before deciding the Civil Rights Cases (<http://uscivilliberties.org/historical-overview/3604-civil-rights-cases-109-us-3-1883.html>), the Court had addressed that issue in *Ex parte Virginia* (1880) and held that even unauthorized actions by officials and agencies of government are state actions. In later cases, the Court held that what might seem to be private action classified as state action if it is officially encouraged by the government, located on public property, receives significant public funding or

assistance, is heavily regulated by the government, or performs a function normally performed by government. Just how much government involvement is enough to constitute state action has varied from case to case.

Perhaps the most extreme and controversial expansion of the meaning of state action occurred in *Shelley v. Kraemer* (1948), which held that judicial enforcement of private contracts, including restrictive covenants (private contracts not to sell houses to blacks), is state action and, therefore, violates the Fourteenth Amendment's equal protection clause. The decision implied that private persons cannot rely on government agencies, such as the police, to enforce their actions if, were they government actions, they would violate the Constitution. The decision seemed to restrict the freedom of association protected by the First Amendment.

ELLIS M. WEST

References and Further Reading

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- Rotunda, Ronald D., and John E. Nowak. "State Action." in *Treatise on Constitutional Law: Substance and Procedure*, Vol. 2, Chap. 16. St. Paul, Minn.: West Group, 1999, pp. 758–821.

Cases and Statutes Cited

- [Civil Rights Cases](http://uscivilliberties.org/historical-overview/3604-civil-rights-cases-109-us-3-1883.html) (<http://uscivilliberties.org/historical-overview/3604-civil-rights-cases-109-us-3-1883.html>), 109 U.S. 3 (1883)
- *Ex parte Virginia*, 100 U.S. 339 (1880)
- *Shelley v. Kraemer*, 334 U.S. 1 (1948)

See also *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968); [Company Towns and Freedom of Speech](http://uscivilliberties.org/historical-overview/3630-company-towns-and-freedom-of-speech.html) (<http://uscivilliberties.org/historical-overview/3630-company-towns-and-freedom-of-speech.html>); *Lloyd Corporation v. Tanner*, 407 U.S. 551 (1972); *Restrictive Covenants*



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- Restrictive Covenants (<https://uscivilliberties.org/themes/4377-restrictive-covenants.html>)
- Lloyd Corporation v. Tanner, 407 U.S. 551 (1972) (<https://uscivilliberties.org/cases/4061-lloyd-corporation-v-tanner-407-us-551-1972.html>)
- Corrigan v. Buckley, 271 U.S. 323 (1926) (<https://uscivilliberties.org/cases/3650-corrigan-v-buckley-271-us-323-1926.html>)
- Civil Rights Cases, 109 U.S. 3 (1883) (<https://uscivilliberties.org/historical-overview/3604-civil-rights-cases-109-us-3-1883.html>)
- Buchanan v. Warley, 245 U.S. 60 (1917) (<https://uscivilliberties.org/cases/3257-buchanan-v-warley-245-us-60-1917.html>)
- Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, 391 U.S. 308 (1968) (<https://uscivilliberties.org/cases/3079-amalgamated-food-employees-union-local-590-v-logan-valley-plaza-391-us-308-1968.html>)

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