# Best of American Case Law

## Readings for J. Pahre, Constitutional Law

### I. Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) (Excerpts)

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. A common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.

In the first cases in this Court construing the Fourteenth Amendment, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance until 1896 in the case of *Plessy v. Ferguson, supra,* involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In *Cumming v. County Board of Education,* and *Gong Lum v. Rice,* the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter,* the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter,* there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

We cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider public education in the light of its

present place in American life. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity is a right which must be made available to all on equal terms.

We come then to the question: does segregation of children in public schools on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement, but which make for greatness in a law school." In  requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications because of their race generates a feeling of inferiority as to their status that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

*It is so ordered.*

## II. In Re Gault, 387 U.S. 1 (1967) (Excerpts)

MR. JUSTICE FORTAS delivered the opinion of the Court.

This is an appeal under from a judgment of the Supreme Court of Arizona affirming the dismissal of a petition for a writ of habeas corpus. The petition sought the release of Gerald Francis Gault, appellants' 15-year-old son, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. We begin with a statement of the facts.

On Monday, June 8, 1964, at about 10 a.m., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerald was then still subject to a six months' probation order, entered as a result of his having been in the company of another boy who had stolen a wallet from a purse. The action on June 8 arose from a verbal complaint by a neighbor of the boys, Mrs. Cook, about a telephone call in which the caller or callers made lewd remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

When Gerald was picked up, his mother and father were both at work. No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had been arrested. Gerald was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, Gerald's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then that Gerald was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault "why Jerry was there," and said that a hearing would be held the following day.

Officer Flagg filed a petition with the court on the hearing day. It was not served on the Gaults. Indeed, none of them saw this petition until the habeas corpus hearing on August 17, 1964. The petition was entirely formal. It made no reference to any factual basis for the judicial action which it initiated. It recited only that "said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; [and that] said minor is a delinquent minor." It prayed for a hearing and an order regarding "the care and custody of said minor." Officer Flagg executed a formal affidavit in support of the petition.

On June 9, Gerald, his mother, his older brother, and Probation Officers Flagg and Henderson appeared before the Juvenile Judge in chambers. Gerald's father was not there; he was at work out of the city. Mrs. Cook, the complainant, was not there. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. Our information about the proceedings and the subsequent hearing on June 15, derives entirely from the testimony of the Juvenile Court Judge, Mr. and Mrs. Gault and Officer Flagg at the habeas corpus proceeding conducted two months later. From this, it appears that, at the June 9 hearing, Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg

recalled that Gerald had admitted making the lewd remarks. Judge McGhee testified that Gerald "admitted making one of these [lewd] statements." At the conclusion of the hearing, the judge said he would "think about it." Gerald was taken back to the Detention Home. He was not sent to his own home with his parents. On June 11 or 12, after having been detained since June 8, Gerald was released and driven home. There is no explanation in the record as to why he was kept in the Detention Home or why he was released. At 5 p.m. on the day of Gerald's release, Mrs. Gault received a note signed by Officer Flagg. It was on plain paper, not letterhead. Its entire text was as follows:

"Mrs. Gault: Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency. /s/Flagg”

At the appointed time on Monday, June 15, Gerald, his father and mother, Ronald Lewis and his father, and Officers Flagg and Henderson were present before Judge McGhee. Witnesses at the habeas corpus proceeding differed in their recollections of Gerald's testimony at the June 15 hearing. Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number, and that the other boy had made the remarks. Officer Flagg agreed that, at this hearing Gerald did not admit making the lewd remarks. But Judge McGhee recalled that "there was some admission again of some of the lewd statements. He didn't admit any of the more serious lewd statements." Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present "so she could see which boy that done the talking, the dirty talking over the phone." The Juvenile Judge said, "she didn't have to be present at that hearing." The judge did not speak to Mrs. Cook or communicate with her at any time. Probation Officer Flagg had talked to her once -- over the telephone -- on June 9.

At this June 15 hearing a "referral report" made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge as "Lewd Phone Calls." At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School "for the period of his minority [that is, until 21], unless sooner discharged by due process of law." An order to that effect was entered. It recites that "after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years."

No appeal is permitted by Arizona law in juvenile cases. On August 3, 1964, a petition for a writ of habeas corpus was filed with Superior Court. At the habeas corpus hearing on August 17, Judge McGhee was vigorously cross-examined as to the basis for his actions. He testified that he had considered the fact that Gerald was on probation. He was asked "under what section of . . . the code you found the boy delinquent?"

His answer is set forth in the margin. He concluded that Gerald came within ARS § 201-6(a), which specifies that a "delinquent child" includes one "who has violated a law of the state or an ordinance or regulation of a political subdivision thereof." The law which Gerald was found to have violated is ARS § 13-377. This section of the Arizona Criminal Code provides that a person who "in the presence or hearing of any woman or child . . . uses vulgar, abusive or obscene language, is guilty of a misdemeanor. . . ." The penalty specified in the Criminal Code,

which would apply to an adult, is $5 to $50, or imprisonment for not more than two months. The judge also testified that he acted under ARS § 8-201-6(d), which includes in the definition of a "delinquent child" one who, as the judge phrased it, is "habitually involved in immoral matters." Asked about the basis for his conclusion that Gerald was "habitually involved in immoral matters," the judge testified, somewhat vaguely, that two years earlier, a "referral" was made concerning Gerald, "where the boy had stolen a baseball glove from another boy and lied to the Police Department about it." The judge said there was "no hearing," and "no accusation" relating to this incident, "because of lack of material foundation." But it seems to have remained in his mind as a relevant factor. The judge also testified that Gerald had admitted making other phone calls in the past, which, as the judge recalled the boy's testimony, were "silly calls, or funny calls."

The Superior Court dismissed the writ, and appellants sought review in the Arizona Supreme Court. The Supreme Court affirmed the dismissal of the writ.

Appellants urge us to hold the Juvenile Code of Arizona invalid on its face or as applied in this case. They argue that, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed through proceedings in which the Juvenile Court has unlimited discretion, and in which the following rights are denied:

1. Notice of the charges;

2. Right to counsel;

3. Right to confrontation and cross-examination;

4. Privilege against self-incrimination;

5. Right to a transcript of the proceedings; and

6. Right to appellate review.

From the inception of the juvenile court system, wide differences have been tolerated -- indeed insisted upon -- between the procedural rights accorded to adults and those of juveniles. In all jurisdictions, there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case, it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury. It is frequent practice that rules governing the arrest and interrogation of adults by the police are not observed in the case of juveniles. The history and theory underlying this development are well known, but a recapitulation is necessary for purposes of this opinion.

The Juvenile Court movement began in this country at the end of the last century. The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were convinced that society's duty to the child could not be confined by the concept of justice alone.

They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child was to "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were inapplicable, the idea of crime and punishment was to be abandoned. The child was to be "rehabilitated," and the procedures, from apprehension through institutionalization, were to be "clinical", not punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae.* The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky, and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where it was used to describe the power of the state to act *in loco parentis* for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders. In these old days, the state was not deemed to have authority to accord them fewer procedural rights than adults.

The right of the state, as *parens patriae,* to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty, but to custody." He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions, the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled. On this basis, proceedings involving juveniles were described as "civil," not "criminal," and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.

Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is -- to say the least -- debatable. And in practice, as we remarked in the *Kent* case, *supra,* the results have not been entirely satisfactory. Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts. . . ." The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.

Due process of law is the primary and indispensable foundation of individual freedom. It is the essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. As Mr. Justice Frankfurter has said: "The history of

American freedom is, in no small measure, the history of procedure." The procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. "Procedure is to law what *scientific method' is to science."*

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process. But it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings.

We now turn to the specific issues which are presented to us in the present case.

*NOTICE OF CHARGES.*

We cannot agree with the conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity." It is obvious, as we have discussed above, that no purpose of shielding the child from the public stigma is served by the procedure approved by the court below. The "initial hearing" in the present case was a hearing on the merits. Notice at that time is not timely, and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and, in any event, sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.

*RIGHT TO COUNSEL*

Appellants charge that the Juvenile Court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency, and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona rejected the proposition that "due process requires that an infant have a right to counsel."

We do not agree. Probation officers, in the Arizona scheme, are also arresting officers. They file petitions which they verify, as here, alleging the delinquency of the child, and they testify against the child. And here the probation officer was also superintendent of the Detention Home. The

probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and, in fact, is as arresting officer and witness against the child. Nor can the judge represent the child. There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. In adult proceedings, this contention has been foreclosed by decisions of this Court. A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

*CONFRONTATION, SELF-INCRIMINATION, CROSS-EXAMINATION*

Appellants urge that the writ of habeas corpus should have been granted because of the denial of the rights of confrontation and cross-examination in the Juvenile Court hearings, and because the privilege against self-incrimination was not observed. The Juvenile Court Judge testified at the habeas corpus hearing that he had proceeded on the basis of Gerald's admissions at the two hearings. Appellants attack this on the ground that the admissions were obtained in disregard of the privilege against self-incrimination. If the confession is disregarded, appellants argue that the delinquency conclusion, since it was fundamentally based on a finding that Gerald had made lewd remarks during the phone call to Mrs. Cook, is fatally defective. Our first question, then, is whether Gerald's admission was improperly obtained and relied on as the basis of decision. For this purpose, it is necessary briefly to recall the relevant facts.

Mrs. Cook, the complainant, and the recipient of the alleged telephone call, was not called as a witness. Gerald's mother asked the Juvenile Court Judge why Mrs. Cook was not present, and the judge replied that "she didn't have to be present." Mrs. Cook was spoken to only once, by Officer Flagg, by telephone. The judge did not speak with her at all. Gerald had been questioned by the probation officer after having been taken into custody. The exact circumstances of this questioning do not appear, but any admissions Gerald may have made at this time do not appear in the record. Gerald was also questioned by the Juvenile Court Judge at each of the two hearings. The judge testified in the habeas corpus proceeding that Gerald admitted making "some of the lewd statements. . . , [but not] any of the more serious lewd statements." There was conflict and uncertainty as to what Gerald did or did not admit.

This Court has emphasized that admissions and confessions of juveniles require special caution. In *Haley v. Ohio,* where this Court reversed the conviction of a 15-year-old boy for murder, MR. JUSTICE DOUGLAS said:

“Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. … He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour

after hour, from midnight until dawn. No lawyer stood guard to make sure that the police stopped short of the point where he became the victim of coercion."

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals, but not to children. The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive. As MR. JUSTICE WHITE, concurring, stated in *Murphy v. Waterfront Commission*, 378 U. S. 52, 378 U. S. 94 (1964):

"The privilege can be claimed in *any proceeding*, be it criminal or civil, administrative or judicial, investigatory or adjudicatory . . . it protects *any disclosures* which the witness may reasonably apprehend *could be used in a criminal prosecution or which could lead to other evidence that might be so used.* " (Emphasis added.)

We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of "delinquency" and an order committing Gerald to a state institution for a maximum of six years.

*APPELLATE REVIEW AND TRANSCRIPT OF PROCEEDINGS*

Appellants urge that the Arizona statute is unconstitutional under the Due Process Clause because, as construed by its Supreme Court, "there is no right of appeal from a juvenile court order. . . ." The court held that there is no right to a transcript because there is no right to appeal and because the proceedings are confidential.

In view of the fact that we must reverse the Supreme Court of Arizona's affirmance of the dismissal of the writ of habeas corpus for other reasons, we need not rule on this question in the present case or upon the failure to provide a transcript or recording of the hearings -- or, indeed, the failure of the Juvenile Judge to state the grounds for his conclusion.

As the present case illustrates, the consequences of failure to provide an appeal, to record the proceedings, or to make findings or state the grounds for the juvenile court's conclusion may be to throw a burden upon the machinery for habeas corpus, to saddle the reviewing process with the burden of attempting to reconstruct a record, and to impose upon the Juvenile Judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him.

For the reasons stated, the judgment of the Supreme Court of Arizona is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

## III. Obergefell v. Hodges, 576 U.S. ____, (2015) (Excerpts)

Justice Kennedy delivered the opinion of the Court.

The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity. The petitioners in these cases seek to find that liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex.

These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman. The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased. The respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. Citations to those cases are in Appendix A, *infra*. The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. It consolidated the cases and reversed the judgments of the District Courts. The Court of Appeals held that a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State.

The petitioners sought certiorari. This Court granted review, limited to two questions. 574 U. S. ___ (2015). The first, presented by the cases from Michigan and Kentucky, is whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex. The second, presented by the cases from Ohio, Tennessee, and, again, Kentucky, is whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

Before addressing the principles and precedents that govern these cases, it is appropriate to note the history of the subject now before the Court.

I

From their beginning to their most recent page, the annals of human history reveal the transcendent importance of marriage. The lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life. Marriage is sacred to those who live by their religions and offers unique fulfillment to those who find meaning in the secular realm. Its dynamic allows two people to find a life that could not be found alone, for a marriage becomes greater than just the two persons. Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.

The centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together. Confucius taught that marriage lies at the foundation of government. 2 Li Chi: Book of Rites 266. This wisdom was echoed centuries later and half a world away by Cicero, who wrote, "The first bond of society is marriage; next, children; and then the family." There are untold references to the beauty of marriage in religious and philosophical texts spanning time, cultures, and faiths, as well as in art and literature in all their forms. It is fair and necessary to say these references were based on the understanding that marriage is a union between two persons of the opposite sex.

That history is the beginning of these cases. The respondents say it should be the end as well. To them, it would demean a timeless institution if the concept and lawful status of marriage were extended to two persons of the same sex. Marriage, in their view, is by its nature a gender-differentiated union of man and woman. This view long has been held and continues to be held in good faith by reasonable and sincere people here and throughout the world.

The petitioners acknowledge this history but contend that these cases cannot end there. Were their intent to demean the revered idea and reality of marriage, the petitioners' claims would be of a different order. But that is neither their purpose nor their submission. To the contrary, it is the enduring importance of marriage that underlies the petitioners' contentions. Far from seeking to devalue marriage, the petitioners seek it for themselves because of their respect and need for its privileges and responsibilities. And their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.

Recounting the circumstances of these cases illustrates the urgency of the petitioners' cause. James Obergefell, a plaintiff in the Ohio case, met John Arthur over two decades ago. They fell in love and started a life together, establishing a lasting, committed relation. In 2011, however, Arthur was diagnosed with amyotrophic lateral sclerosis, or ALS. This debilitating disease is progressive, with no known cure. Two years ago, Obergefell and Arthur decided to commit to one another, resolving to marry before Arthur died. To fulfill their mutual promise, they traveled from Ohio to Maryland, where same-sex marriage was legal. It was difficult for Arthur to move, and so the couple were wed inside a medical transport plane as it remained on the tarmac in Baltimore. Three months later, Arthur died. Ohio law does not permit Obergefell to be listed as the surviving spouse on Arthur's death certificate. By statute, they must remain strangers even in death, a state-imposed separation Obergefell deems "hurtful for the rest of time." He brought suit to be shown as the surviving spouse on Arthur's death certificate.

April DeBoer and Jayne Rowse are co-plaintiffs in the case from Michigan. They celebrated a commitment ceremony to honor their permanent relation in 2007. They both work as nurses, DeBoer in a neonatal unit and Rowse in an emergency unit. In 2009, DeBoer and Rowse fostered and then adopted a baby boy. Later that same year, they welcomed another son into their family. The new baby, born prematurely and abandoned by his biological mother, required around-the-clock care. The next year, a baby girl with special needs joined their family. Michigan, however, permits only opposite-sex married couples or single individuals to adopt, so each child can have only one woman as his or her legal parent. If an emergency were

to arise, schools and hospitals may treat the three children as if they had only one parent. And, were tragedy to befall either DeBoer or Rowse, the other would have no legal rights over the children she had not been permitted to adopt. This couple seeks relief from the continuing uncertainty their unmarried status creates in their lives.

Army Reserve Sergeant First Class Ijpe DeKoe and his partner Thomas Kostura, co-plaintiffs in the Tennessee case, fell in love. In 2011, DeKoe received orders to deploy to Afghanistan. Before leaving, he and Kostura married in New York. A week later, DeKoe began his deployment, which lasted for almost a year. When he returned, the two settled in Tennessee, where DeKoe works full-time for the Army Reserve. Their lawful marriage is stripped from them whenever they reside in Tennessee, returning and disappearing as they travel across state lines. DeKoe, who served this Nation to preserve the freedom the Constitution protects, must endure a substantial burden.

The cases now before the Court involve other petitioners as well, each with their own experiences. Their stories reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses' memory, joined by its bond.

II

The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution even as confined to opposite-sex relations has evolved over time.

For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. As the status of women changed, the institution further evolved. Under the old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. See 1 W. Blackstone, Commentaries on the Laws of England 430 (1765). As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. These and other developments in the institution of marriage over the past centuries were not mere superficial changes. Rather, they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential.

These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.

This dynamic can be seen in the Nation's experiences with the rights of gays and lesbians. Until the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations, a belief often embodied in the criminal law. For this reason, among others, many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to

remain unspoken. Even when a greater awareness of the humanity and integrity of homosexual persons came in the period after World War II, the argument that gays and lesbians had a just claim to dignity was in conflict with both law and widespread social conventions. Same-sex intimacy remained a crime in many States. Gays and lesbians were prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate.

For much of the 20th century, moreover, homosexuality was treated as an illness. When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, homosexuality was classified as a mental disorder, a position adhered to until 1973. Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable.

In the late 20th century, following substantial cultural and political developments, same-sex couples began to lead more public lives and to establish families. This development was followed by extensive discussion of the issue in both governmental and private sectors and by a shift in public attitudes toward greater tolerance. Questions about the rights of gays and lesbians soon reached the courts, where the issue could be discussed in the formal discourse of the law.

This Court first gave detailed consideration to the legal status of homosexuals in *Bowersv. Hardwick*, 478 U. S. 186 (1986) . There it upheld the constitutionality of a Georgia law deemed to criminalize certain homosexual acts. Ten years later, in *Romerv. Evans*, 517 U. S. 620 (1996) , the Court invalidated an amendment to Colorado's Constitution that sought to foreclose any branch or political subdivision of the State from protecting persons against discrimination based on sexual orientation. Then, in 2003, the Court overruled *Bowers*, holding that laws making same-sex intimacy a crime "demea[n] the lives of homosexual persons." *Lawrencev. Texas*, 539 U. S. 558 .

Against this background, the legal question of same-sex marriage arose. In 1993, the Hawaii Supreme Court held Hawaii's law restricting marriage to opposite-sex couples constituted a classification on the basis of sex and was therefore subject to strict scrutiny under the Hawaii Constitution. *Baehrv. Lewin*, 74 Haw. 530, 852 P. 2d 44. Although this decision did not mandate that same-sex marriage be allowed, some States were concerned by its implications and reaffirmed in their laws that marriage is defined as a union between opposite-sex partners. So too in 1996, Congress passed the Defense of Marriage Act (DOMA), 110Stat. 2419, defining marriage for all federal-law purposes as "only a legal union between one man and one woman as husband and wife."

The new and widespread discussion of the subject led other States to a different conclusion. In 2003, the Supreme Judicial Court of Massachusetts held the State's Constitution guaranteed same-sex couples the right to marry. After that ruling, some additional States granted marriage rights to same-sex couples, either through judicial or legislative processes. Two Terms ago, in *United Statesv. Windsor*, 570 U. S. ___ (2013), this Court invalidated DOMA to the extent it barred the Federal Government from treating same-sex marriages as valid even when they were lawful in the State where they were licensed.

Numerous cases about same-sex marriage have reached the United States Courts of Appeals in recent years. In accordance with the judicial duty to base their decisions on principled reasons and neutral discussions, without scornful or disparaging commentary, courts have written a substantial body of law considering all sides of these issues. That case law helps to explain and formulate the underlying principles this Court now must consider.. There also have been many thoughtful District Court decisions addressing same-sex marriage and most of them, too, have concluded same-sex couples must be allowed to marry. In addition, the highest courts of many States have contributed to this ongoing dialogue in decisions interpreting their own State Constitutions. These state and federal judicial opinions are cited in Appendix A, infra.

After years of litigation, legislation, referenda, and the discussions that attended these public acts, the States are now divided on the issue of same-sex marriage. See Office of the Atty. Gen. of Maryland, The State of Marriage Equality in America, State-by-State Supp. (2015).

III

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. See *Duncanv. Louisiana*, 391 U. S. 145 149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.

The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. That responsibility, however, "has not been reduced to any formula." *Poev. Ullman*, 367 U. S. 497, 542 (1961) (Harlan, J., dissenting). Rather, it requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. See *ibid.* That process is guided by many of the same considerations relevant to analysis of other constitutional provisions that set forth broad principles rather than specific requirements. History and tradition guide and discipline this inquiry but do not set its outer boundaries. See *Lawrence*, *supra*, at 572. That method respects our history and learns from it without allowing the past alone to rule the present.

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967) , which invalidated bans on interracial unions, a unanimous Court held marriage is "one of the vital personal rights essential to the orderly pursuit of happiness by free men." The Court reaffirmed that holding in *Zablockiv. Redhail*, 434 U. S. 374, 384 (1978) , which held the right to marry was burdened by a law

prohibiting fathers who were behind on child support from marrying. The Court again applied this principle in *Turnerv. Safley*, 482 U. S. 78, 95 (1987) , which held the right to marry was abridged by regulations limiting the privilege of prison inmates to marry. In other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause.

It cannot be denied that this Court's cases describing the right to marry presumed a relationship involving opposite-sex partners. The Court, like many institutions, has made assumptions defined by the world and time of which it is a part. This was evident in *Bakerv. Nelson*, 409 U. S. 810 , a one-line summary decision issued in 1972, holding the exclusion of same-sex couples from marriage did not present a substantial federal question.

Still, there are other, more instructive precedents. This Court's cases have expressed constitutional principles of broader reach. In defining the right to marry these cases have identified essential attributes of that right based in history, tradition, and other constitutional liberties inherent in this intimate bond. See, *e.g.*, *Lawrence*, 539 U. S., at 574; *Turner*, *supra*, at 95; *Zablocki*, *supra*, at 384; *Loving*, *supra*, at 12; *Griswold*, *supra*, at 486. And in assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected.

This analysis compels the conclusion that same-sex couples may exercise the right to marry. The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

A first premise of the Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12; see also *Zablocki*, *supra*, at 384 (observing *Loving* held "the right to marry is of fundamental importance for all individuals"). Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make.

Choices about marriage shape an individual's destiny. As the Supreme Judicial Court of Massachusetts has explained, because "it fulfils yearnings for security, safe haven, and connection that express our common human ity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition." *Goodridge*, 440 Mass., at 322, 798 N. E. 2d, at 955.

The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. See *Windsor*, 570 U. S., at ___ ___ (slip op., at 22 23). There is dignity in the bond between two men or two women who seek to marry and, in their autonomy, to make such profound choices. Cf. *Loving*, *supra*, at 12 ("[T]he freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State").

A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. This point was central to *Griswold* v. *Connecticut*, which held the Constitution protects the right of married couples to use contraception. 381 U. S., at 485. Suggesting that marriage is a right "older than the Bill of Rights," *Griswold* described marriage this way:

"Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any. " *Id.*, at 486.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. The Court has recognized these connections by describing the varied rights as a unified whole: "[T]he right to 'marry, establish a home and bring up children' is a central part of the liberty protected by the Due Process Clause." But marriage also confers more profound benefits. By giving recognition and legal structure to their parents' relationship, marriage allows children "to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor*, *supra*, at ___ (slip op., at 23). Marriage also affords the permanency and stability important to children's best interests.

The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better-informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era. Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied. Under the Constitution, same-sex couples seek in marriage the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood to deny them this right.

The right of same-sex couples to marry is derived, too, from the Fourteenth Amendment's guarantee of the equal protection of the laws. The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other. In any particular case one Clause may be thought to capture the essence of the right in a more accurate and comprehensive way, even as the two Clauses may converge in the identification and definition of the right. This interrelation of the two principles furthers our understanding of what freedom is and must become.

The Court's cases touching upon the right to marry reflect this dynamic. In *Loving* the Court invalidated a prohibition on interracial marriage under both the Equal Protection Clause and the Due Process Clause. The Court first declared the prohibition invalid because of its un-equal

treatment of interracial couples. It stated: "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." 388 U. S., at 12. With this link to equal protection the Court proceeded to hold the prohibition offended central precepts of liberty: "To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law." *Ibid.* The reasons why marriage is a fundamental right became more clear and compelling from a full awareness and understanding of the hurt that resulted from laws barring interracial unions.

Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged. To take but one period, this occurred with respect to marriage in the 1970's and 1980's. Notwithstanding the gradual erosion of the doctrine of coverture, see *supra*, at 6, invidious sex-based classifications in marriage remained common through the mid-20th century. Like *Loving* and *Zablocki*, these precedents show the Equal Protection Clause can help to identify and correct inequalities in the institution of marriage, vindicating precepts of liberty and equality under the Constitution.

In *Lawrence* the Court acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. Although *Lawrence* elaborated its holding under the Due Process Clause, it acknowledged, and sought to remedy, the continuing inequality that resulted from laws making intimacy in the lives of gays and lesbians a crime against the State. See *ibid. Lawrence* therefore drew upon principles of liberty and equality to define and protect the rights of gays and lesbians, holding the State "cannot demean their existence or control their destiny by making their private sexual conduct a crime." *Id.*, at 578.

This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. The State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

IV

The respondents warn there has been insufficient democratic discourse before deciding an issue so basic as the definition of marriage.

The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia Bd. of Ed.v. Barnette*, 319 U. S. 624, 638 (1943) . This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." *Ibid.* It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process. The issue before the Court here is the legal question whether the Constitution protects the right of same-sex couples to marry.

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate that same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

V

These cases also present the question whether the Constitution requires States to recognize same-sex marriages validly performed out of State. The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold, and it now does hold, that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

The judgment of the Court of Appeals for the Sixth Circuit is reversed.

*It is so ordered.*