SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas Wesleyan Law Review

Volume 8 | Issue 1 Article 3

10-1-2001

Dissent and Fallay in Dickerson v. United States

Rodney C. Roberts

Follow this and additional works at: https://scholarship.law.tamu.edu/txwes-lr

Recommended Citation
Rodney C. Roberts, *Dissent and Fallay in Dickerson v. United States*, 8 Tex. Wesleyan L. Rev. 1 (2001).
Available at: https://doi.org/10.37419/TWLR.V8.I1.1

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Texas Wesleyan Law Review by an authorized editor of Texas A&M Law Scholarship. For more information, please contact aretteen@law.tamu.edu.

ESSAY

DISSENT AND FALLACY IN *DICKERSON v. UNITED STATES*

Rodney C. Roberts†

I. Introduction

In *Dickerson v. United States*,[1] the Supreme Court ruled against 18 U.S.C. § 3501, a federal statute enacted by Congress that would have superseded the Court's ruling in *Miranda v. Arizona*[2] "that certain warnings must be given before a suspect's statement made during custodial interrogation could be admitted in evidence."[3] If Professor Chemerinsky is correct, *Dickerson* "will be remembered both for its practical significance in requiring that the police and courts continue to follow *Miranda* and for its broader theoretical significance in limiting the ability of Congress to overturn such judicially created devices for protecting constitutional rights."[4] This Essay bears upon the broader theoretical significance of *Dickerson.*

In his dissent from the majority in *Dickerson*, Justice Scalia (joined by Justice Thomas) argues that the Court "acts in plain violation of the Constitution when it denies effect to this Act of Congress."[5] This Essay aims to show that an important part of the reasoning in his dissent is fallacious, and insofar as the dissent is influenced by this reasoning, it is without value.

Because dissenting opinions generally, and those of the Supreme Court especially, can become valuable in subsequent legal opinions and analyses, and because logic has a clear and important role to play in legal reasoning, it is important to recognize when fallacies occur in dissenting Supreme Court opinions and to understand the precise nature of any such fallacy.

II. Dissent, Logic, and the Law

Sound reasoning in a dissenting opinion helps to create the possibility that, at some point in the future, the dissent may be "cited and

† Assistant Professor of Philosophy, University of Hawai'i at Mānoa. M.A., Ph.D., University of Wisconsin-Madison. Thanks are due to Professors Jim Tiles, Mary Tiles, and Eliot Deutsch for their encouragement and comments on the idea for this Essay.

1. 120 S. Ct. 2326 (2000).
2. 384 U.S. 436 (1966).
3. *Dickerson*, 120 S. Ct. at 2329.
4. Erwin Chemerinsky, *The Court Should Have Remained Silent: Why the Court Erred in Deciding* Dickerson v. United States, 149 U. Pa. L. Rev. 287, 288 (2000).
5. *Dickerson*, 120 S. Ct. at 2338 (Scalia, J., dissenting).

DOI: https://doi.org/10.37419/TWLR.V8.I1.1

respected as an authority."[6] Unfortunately, some may be tempted to undervalue the importance of logic in judicial reasoning, holding to "the old tradition [which] says that law is law, and has nothing to do with any other field of human inquiry."[7] However, as Professor Cohen has pointed out, "it would be only the wisdom of the ostrich" that would encourage us to spare the law from penetrating logical analysis "when the foundations of our legal system are questioned both inside and outside of the legal fraternity."[8] Indeed, "the effort to assume the form of a deductive system underlies all constructive legal scholarship."[9] It is important, therefore, that logical analysis be brought to bear upon the dissent in *Dickerson*.

III. Sufficient and Necessary Conditions

Before proceeding with an analysis of the dissent, two logical concepts, which are the keys to understanding the fallacy in Justice Scalia's argument, must be made clear. These concepts, *viz.*, that of a sufficient condition, and that of a necessary condition, can be taken together.

All conditional or "if . . . then . . ." statements consist of two components: an antecedent and a consequent.[10] The former immediately follows the "if," and the latter immediately follows the "then."[11]

> Conditional statements are especially important in logic because they express the relationship between necessary and sufficient conditions. *A* is said to be a sufficient condition for *B* whenever the occurrence of *A* is all that is needed for the occurrence of *B* . . . [and] *B* is said to be a necessary condition for *A* whenever *A* cannot occur without the occurrence of *B*.[12]

The rules of logic hold that the statement which names the sufficient condition be placed in the antecedent of the conditional statement, and that the statement which names the necessary condition be placed in the consequent.[13]

Hence, this relationship can be illustrated with the example: If *X* is a woman, then *X* is a human being. This statement asserts that being

6. Henry Campbell Black, Handbook on the Construction and Interpretation of the Laws 421 (1896).

7. Morris R. Cohen, *The Place of Logic in the Law*, 29 Harv. L. Rev. 622, 623 (1916), *reprinted in* Morris R. Cohen, *The Place of Logic in the Law*, *in* Law and the Social Order: Essays in Legal Philosophy 165, 166 (reprint 1994).

8. *Id.*, *reprinted in* Morris R. Cohen, *The Place of Logic in the Law*, *in* Law and the Social Order: Essays in Legal Philosophy 165, 166 (reprint 1994).

9. *Id.* at 624, *reprinted in* Morris R. Cohen, *The Place of Logic in the Law*, *in* Law and the Social Order: Essays in Legal Philosophy 165, 167 (reprint 1994).

10. Patrick J. Hurley, A Concise Introduction to Logic 22 (7th ed. 2000).

11. *Id.*

12. *Id.* at 24.

13. *Id.* at 306.

DOI: 10.37419/TWLR.V8.I1.1

a woman is a sufficient condition for being a human being, and that being a human being is a necessary condition for being a woman.

Alternatively, because "the statement that follows 'only if' is always the consequent,"[14] the same relationship can be expressed as: *X* is a woman only if *X* is a human being. Therefore, like the first example, this statement also asserts that being a human being is a necessary condition for being a woman.

Having clarified what sufficient and necessary conditions are, this Essay now proceeds to the argument in question.

IV. The Real Argument

Justice Scalia opens section one of his dissent by stating that "[e]arly in this Nation's history, this Court established the sound proposition that constitutional government in a system of separated powers requires judges to regard as inoperative any legislative act, even of Congress itself, that is 'repugnant to the Constitution.'"[15] He then quotes the Court in *Marbury v. Madison*[16] as saying:

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case.[17]

Using "P" to indicate the premise, and "C" to indicate the conclusion, and following the rules of logic, the argument that emerges from this quotation is:

P: "[I]f a law be in opposition to the constitution," then the Court must "disregard[ ] the law."[18]

C: A law being in opposition to the Constitution is a sufficient condition for the Court to disregard that law.

V. The Fallacious Argument

However, immediately following the quotation from *Marbury*, Justice Scalia claims that "[t]he power we recognized in *Marbury* will thus permit us, indeed require us, to 'disregar[d]' § 3501, a duly enacted statute governing the admissibility of evidence in the federal courts, only if it 'be in opposition to the constitution'—here, assertedly, the dictates of the Fifth Amendment."[19]

14. *Id.* at 305.
15. Dickerson v. United States, 120 S. Ct. 2326, 2338 (2000) (Scalia, J., dissenting).
16. 5 U.S. (1 Cranch) 137 (1803).
17. *Id.* at 178, *quoted in Dickerson*, 120 S. Ct. at 2338 (Scalia, J., dissenting).
18. *Id.*
19. *Dickerson*, 120 S. Ct. at 2338 (Scalia, J., dissenting).

Because Justice Scalia claims that *Marbury* requires the Court to "disregar[d]" § 3501 *only if* it is "in opposition to the constitution," he argues thus:

> P: "[I]f a law be in opposition to the constitution," then the Court must "disregard[ ] the law."[20]
>
> ---
>
> C: A law being in opposition to the Constitution is a necessary condition for the Court to disregard that law.

Because the premise stated in the quotation from *Marbury* implies that being in opposition to the Constitution is a *sufficient* condition for the Court to disregard a law, and because Justice Scalia infers from this premise that being in opposition to the Constitution is a *necessary* condition for the Court to disregard a law, the result of his inference is a conclusion which is not logically implied by the premise. Thus, he commits the fallacy of missing the point.[21]

VI. A Possible Objection

One might object to this analysis, claiming that, even if it is correct, and Justice Scalia's reasoning is fallacious, it nevertheless has little or no bearing on the argument he advances in the dissent. Hence, this fallacy does little or nothing to mitigate the force of the overall argument. After all, the objector might say, the conclusion in Justice Scalia's dissent has nothing to do with sufficient and necessary conditions; rather, it is a claim about the constitutionality of the Court's action in *Dickerson*.

This objection is mistaken. Indeed, the fallacious inference is grounds for Justice Scalia's claim of unconstitutionality. Having established, fallaciously, that being in opposition to the Constitution is a necessary condition for the Court to disregard a law, he later claims that "[b]y disregarding congressional action that concededly does not violate the Constitution, the Court flagrantly offends fundamental principles of separation of powers, and arrogates to itself prerogatives reserved to the representatives of the people."[22]

Hence, Justice Scalia claims that, because § 3501 "concededly does not violate the Constitution,"[23] that is, because the fallaciously inferred necessary condition of being in opposition to the Constitution is not met, the Court's action in *Dickerson* therefore "offends" the Constitution.

---

20. *Marbury*, 5 U.S. at 178.
21. Hurley, *supra* note 10, at 130–31.
22. *Dickerson*, 120 S. Ct. at 2342 (Scalia, J., dissenting).
23. *Id.* (Scalia, J., dissenting).

DOI: 10.37419/TWLR.V8.I1.1

VII. CONCLUSION

Because the argument advanced by Justice Scalia from *Marbury* is fallacious, it advances no good reason for thinking that being in opposition to the Constitution is a necessary condition for the Court to disregard a law. However, the fallaciousness of the argument does provide good reason for questioning the value of the dissent in *Dickerson.* As Mr. Black tells us:

> If the court bases its conclusions wholly or in part upon what it supposes to have been the doctrine of a former case, whereas such former case in reality decided no such thing, then, in so far as the judgment was influenced by the mistaken conception of the former case, it is without value.[24]

Because Justice Scalia's claim of unconstitutionality is grounded upon his fallacious inference from *Marbury*, and because the judgment in his dissent was clearly influenced by that inference, insofar as it was, the dissent is without value.

This Essay attempts to show only that an important part of the reasoning in the *Dickerson* dissent is fallacious, and, insofar as the dissent is influenced by this reasoning, it is without value. This Essay makes no claim regarding the constitutionality of § 3501 or regarding the Supreme Court's action in this case.

---

24. BLACK, *supra* note 6, at 418–19.