tion.[735] In various forms this maxim has been repeated to such an extent that it has become trite, and has increasingly come to be incorporated in cases in which a finding of unconstitutionality has been made as a reassurance of the Court's limited review. And it should be noted that at times the Court has absorbed natural rights doctrines into the text of the Constitution, so that it was able to reject natural law *per se* and still partake of its fruits and the same thing is true of the *laissez faire* principles incorporated in judicial decisions from about 1890 to 1937.[736]

Presumption of Constitutionality.—"It is but a decent respect to the wisdom, integrity, and patriotism of the legislative body, by which any law is passed," wrote Justice Bushrod Washington, "to presume in favor of its validity, until its violation of the Constitution is proved beyond a reasonable doubt."[737] A corollary of this maxim is that if the constitutional question turns upon circumstances, courts will presume the existence of a state of facts which would justify the legislation that is challenged.[738] It seems apparent, however, that with regard to laws which trench upon First Amendment freedoms and perhaps other rights guaranteed by the Bill of Rights such deference is far less than it would be toward statutory regulation of economic matters.[739]

Disallowance by Statutory Interpretation.—If it is possible to construe a statute so that its validity can be sustained against a

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A supposedly hallowed tenet is that the Court will not look to the motives of legislators in determining the validity of a statute. Fletcher v. Peck, 10 U.S. (6 Cr.) 87 (1810); United States v. O'Brien, 391 U.S. 367 (1968); Palmer v. Thompson, 403 U.S. 217 (1971). Yet an intent to discriminate is a requisite to finding at least some equal protection violations, Washington v. Davis, 426 U.S. 229 (1976); Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977), and a secular or religious purpose is one of the parts of the tripartite test under the Establishment Clause. Committee for Pub. Educ. and Religious Liberty v. Regan, 444 U.S. 646, 653 (1980), and id. at 665 (dissent). Other constitutional decisions have also turned upon the Court's assessment of purpose or motive. *E.g.*, Gomillion v. Lightfoot, 364 U.S. 339 (1960); *Child Labor Tax Case*, 259 U.S. 20 (1922).

[735] *Cf.* Griswold v. Connecticut, 381 U.S. 479, 522 (1965) (Justice Black dissenting). But note above the reference to the ethical mode of constitutional argument.

[736] *E.g.*, Lochner v. New York, 198 U.S. 45 (1905); United States v. Butler, 297 U.S. 1 (1936).

[737] Ogden v. Saunders, 25 U.S. (12 Wheat.) 213, 270 (1827). *See also* Fletcher v. Peck, 10 U.S. (6 Cr.) 87, 128 (1810); Legal Tender Cases (Knox v. Lee), 79 U.S. (12 Wall.) 457, 531 (1871).

[738] Munn v. Illinois, 94 U.S. 113, 132 (1877); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78–79 (1911); Metropolitan Cas. Ins. Co. v. Brownell, 294 U.S. 580, 584 (1935).

[739] *E.g.*, United States v. Robel, 389 U.S. 258 (1967); United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217 (1967). *But see* McGowan v. Maryland, 366 U.S. 420, 426 (1961). The development of the "compelling state interest" test in certain areas of equal protection litigation also bespeaks less deference to the legislative judgment.