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Civil Rights and Civil Liberties

Civil Liberties

Civil Liberties and Civil Rights

Civil Liberties

- Protection from government infringing on constitutional rights
- “Areas of personal freedom constitutionally protected from government interference.”*

Civil Rights

- Protection of rights by government
- “Obligation imposed on government to take positive action to protect citizens from any illegal action of government agencies and other private citizens.”*

*Definitions from *We the People*



Civil Liberties: The Bill of Rights

- The first 10 amendments
 - The first 8 amendments to the constitution
 - These list specific civil liberties (rights)
- Amendments 9 & 10
 - 9: if not written down does not mean it is not a right
 - 10: powers not written down in the constitution are reserved for the states and people

Bill of Rights, simplified

- 1. Freedom of:
 - Establishing religion + prohibiting free exercise of religion
 - Abridging speech, press, assembly, petition government
- 2. Right of people to keep and bear arms
- 3. No quartering Soldiers
- 4. No unreasonable search & seizure; specific warrant based on probable cause
- 5. Rights of Accused: grand jury, no “double jeopardy,” no self-incrimination, due process, just compensation
- 6. Trials: speedy, public, impartial local jury, informed of accusation, confront witness, subpoena witnesses; right to counsel
- 7. Civil trial by jury if >\$20
- 8. Punishment: no excessive bail or fines; no cruel and unusual punishment
- 9. Writing down these rights does not imply other rights do not exist
- 10. Residual powers to states or the people

How do we know the specifics of the rights?

- Example of the First Amendment:
 - “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- Some possible questions:
 - If “establishment of religion” means that there should be no official religion, does that mean there should be no prayers in public school?
 - If the government is not to abridge freedom of speech, can people say whatever they want to say, whenever they want? Can they make offensive comments about others? Can a shopping mall ban protests?
 - If the government is not to abridge freedom of the press, are there no limits to what the press can publish? Can the press publish false information? Government secrets? Criticism of the governor of California or the president of the United States?

- Example of the Fourth Amendment:
 - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- Some possible questions:
 - What if the police unintentionally make a mistake when getting a warrant?
 - Does this need for warrants apply to automobiles, phones and computers?
 - What *is* “probable cause”?
 - What happens if the police search a home without a warrant?

Who decides, and how?

- What if a law, or procedure, or practice violates one's rights?
- Generally, the courts decide
- In the US, the Supreme Court almost never gives its opinion unless it has a real case to decide
- So, in order to challenge a law or practice, there has to be a real case of someone adversely affected
 - To an extent, one has to break a law to test a law
- The Supreme Court often gives a “narrow” ruling that addresses specifics rather than broad pronouncements.

Example of the First Amendment:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

- Some possible questions & short answers based on Supreme Court decisions:
 - If “establishment of religion” means that there should be no official religion, does that mean there should be no prayers in public school?
 - No school-sponsored prayer, though students can meet and pray on their own
 - If the government is not to abridge freedom of speech, can people say whatever they want to say, whenever they want? Can they make offensive comments about others? Can a shopping mall ban protests?
 - Words as well as expressive actions are given a high amount of protection, although there are limits – not because the speech is offensive or outrageous, but as in one example, when national security is demonstrated to be at risk. Governments can regulate in the interests of public health and safety.
 - If the government is not to abridge freedom of the press, are there no limits to what the press can publish? Can the press publish false information? Government secrets? Criticism of the governor of California or the president of the United States?
 - Again, the press has broad freedom to publish. “Prior restraint” (censorship, or prohibiting the publication of information) is limited. Newspapers can be sued for libel after publication.

Example of the Fourth Amendment:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- A possible question:
 - What happens if the police search a home without a warrant?
 - The Supreme Court decided (*Mapp v Ohio* is the famous case) that if police search a house without a warrant, then any of the evidence found cannot not be used in court
 - This is known as the “exclusionary rule”
 - The fourth amendment does not say this, but the court decided that the way to ensure police do not violate people’s rights by conducting warrantless searches was to remove the incentive to conduct warrantless searches

One of these houses harbors illegal substances of some type and the other does not. If both houses are searched without a warrant, whose rights are being violated?



If both houses are searched without a warrant, then the rights of the residents of both houses are being violated.

No illegal contents: What can these innocent people do after their rights have been violated? Complain? Sue the police?

Illegal contents: The Supreme Court thought that complaints and suits would not be enough to prevent police from doing warrantless searches, so they ruled that the illegal contents cannot be used in court as a deterrent.



One of these houses harbors illegal substances of some type and the other does not. If both houses are searched **with** a warrant, whose rights are being violated?



If both houses are searched **with** a properly obtained warrant, then the rights residents of both houses are **not** being violated.

Even if they are innocent, the Fourth Amendment protects against warrantless searches, not all searches.

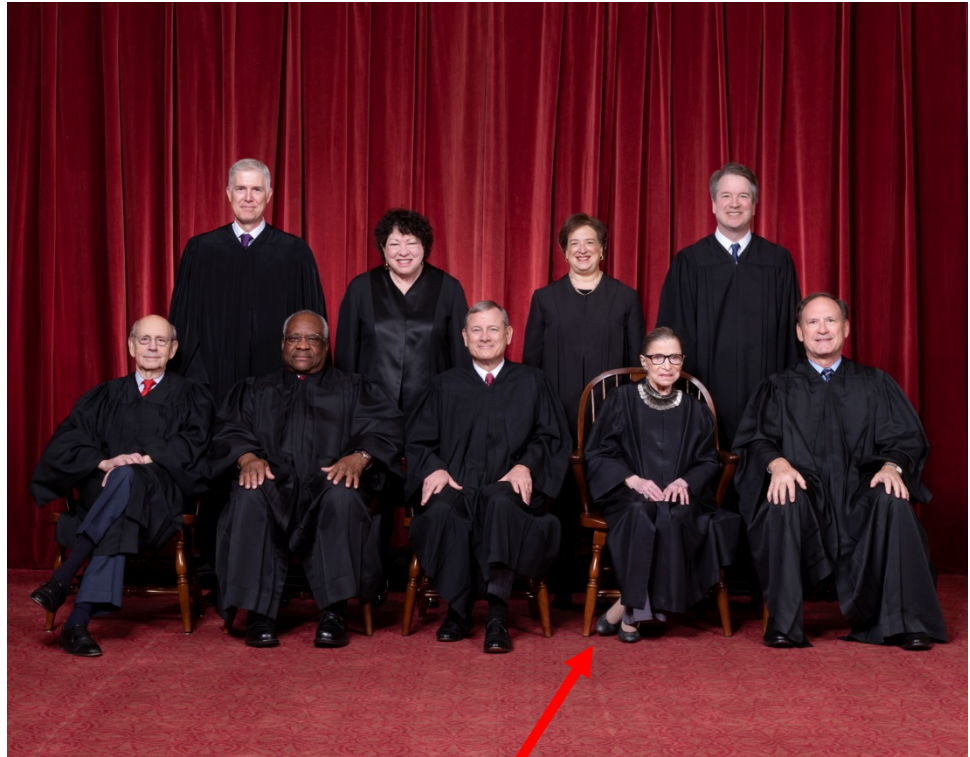
If the police obtain a warrant and search as house and find the illegal substance, then they can use what they find in court



Interpretation
continues...

- The Supreme Court (and other courts) continue to rule on whether laws and procedures violate civil liberties.
- Who serves on the Supreme Court matters for how the Court decides cases

Justices on the US Supreme Court



Justice Ruth Bader Ginsburg passed away September 18, 2020.
President Trump nominated Amy Coney Barrett in September to fill
Bader Ginsburg's seat.

Incorporation of the Bill of Rights

Incorporation of the Bill of Rights: the process through which the rights in the Bill of Rights were also applied to state governments. Also called “nationalization” of the Bill of Rights



Bill of Rights initially was directed at limiting the national government

1. Congress shall make
no law ...

Civil Liberties: The Bill of Rights

- Originally applied only to national govt.
 - *Barron v. Baltimore* (1833)
 - Question of Fifth Amendment
 - Ruling: Bill of Rights only applied to federal government – in other words, only protected citizens from actions by the national government
 - Therefore, people's rights depended primarily on what state they lived in



Civil Liberties: The Bill of Rights

- How did Bill of Rights end up applied to states? (Called “Incorporation” or “Nationalization”)
 - Applied to states through 14th amendment

The Civil War era amendments to the Constitution

13. “Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2: Congress shall have power to enforce this article by appropriate legislation.” (ratified 1865)
14. Equal protection, etc. (ratified 1868) – next slide
15. “Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. Section 2: Congress shall have power to enforce this article by appropriate legislation.” ” (ratified 1870)

Fourteenth Amendment (Section 1) 1868

- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
- No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;
- nor shall any State deprive any person of life, liberty, or property, without due process of law;
- nor deny to any person within its jurisdiction the equal protection of the laws.



Approaches to incorporation

- Total incorporation
 - 14th amendment means all rights immediately: *court did not agree to this*
- Selective incorporation
 - 14th amendment means important rights, not all rights
 - Therefore, case by case method
 - This means that a real case has to get to the Supreme Court

The Process of Incorporation

Bill of Rights

- Initially applied only to national govt. (only protected from national govt.)
- Decision by Supreme Court in *Barron v. Baltimore*, 1833

14th Amendment

- Ratified 1868 to ensure rights & liberties regardless of state
- However, Supreme Court did not interpret it this way

Incorporation begins

- 1897 case Supreme Court selectively incorporated part of 5th amendment
- Later (1920s+) Supreme Court selectively incorporated many rights
- Incorporation has often overlapped with interpretation of rights

The Third Amendment has not been incorporated

- Why not?
- To be incorporated, a real case needs to reach the Supreme Court and the Supreme Court has to decide it is an important enough right
- What is the Third Amendment?
- Bans quartering of soldiers
- Has this been a serious enough issue to have a case reach the Supreme Court?



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TABLE 4.2

Incorporation of the Bill of Rights into the Fourteenth Amendment

SELECTED PROVISIONS AND AMENDMENTS	INCORPORATED	KEY CASE
Eminent domain (V)	1897	<i>Chicago, Burlington, and Quincy R.R. v. Chicago</i>
Freedom of speech (I)	1925	<i>Gitlow v. New York</i>
Freedom of press (I)	1931	<i>Near v. Minnesota</i>
Free exercise of religion (I)	1934	<i>Hamilton v. Regents of the University of California</i>
Freedom of assembly (I) and freedom to petition the government for redress of grievances (I)	1937	<i>DeJonge v. Oregon</i>
Freedom of assembly (I)	1939	<i>Hague v. CIO</i>
Nonestablishment of state religion (I)	1947	<i>Everson v. Board of Education</i>
Freedom from unnecessary search and seizure (IV)	1949	<i>Wolf v. Colorado</i>
Freedom from warrantless search and seizure (IV; "exclusionary rule")	1961	<i>Mapp v. Ohio</i>
Freedom from cruel and unusual punishment (VIII)	1962	<i>Robinson v. California</i>
Right to counsel in any criminal trial (VI)	1963	<i>Gideon v. Wainwright</i>
Right against self-incrimination and forced confessions (V)	1964	<i>Malloy v. Hogan</i> ; <i>Escobedo v. Illinois</i>
Right to counsel and to remain silent (V)	1966	<i>Miranda v. Arizona</i>
Right against double jeopardy (V)	1969	<i>Benton v. Maryland</i>
Right to bear arms (II)	2010	<i>McDonald v. Chicago</i>