

CIVIL LIBERTIES AND CIVIL RIGHTS

J. Alexander Branham

Fall 2016

INTRODUCTION

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited
- What government *can't* do

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited
- What government *can't* do

Civil Rights

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited
- What government *can't* do

Civil Rights

- Who may participate in collective decision making process

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited
- What government *can't* do

Civil Rights

- Who may participate in collective decision making process
- How government must (or cannot) treat its citizens

LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

Civil Liberties

- Limitations on collective action
- Defines spheres (e.g. religion) where the influence of government is limited
- What government *can't* do

Civil Rights

- Who may participate in collective decision making process
- How government must (or cannot) treat its citizens
- What government *must* do

CIVIL LIBERTIES

WHO DECIDES?

- The courts are the major actor

WHO DECIDES?

- The courts are the major actor
 - Jurisdiction from Article II, statutes, and prior decisions (precedent)

WHO DECIDES?

- The courts are the major actor
 - Jurisdiction from Article II, statutes, and prior decisions (precedent)
- Congress also plays a role

WHO DECIDES?

- The courts are the major actor
 - Jurisdiction from Article II, statutes, and prior decisions (precedent)
- Congress also plays a role
 - Constitutional amendments, lawmaking

WHO DECIDES?

- The courts are the major actor
 - Jurisdiction from Article II, statutes, and prior decisions (precedent)
- Congress also plays a role
 - Constitutional amendments, lawmaking
- The president to a lesser extent

- Confusingly, the bill of rights focuses on what government must *not* do and thus is concerned with civil liberties

- Confusingly, the bill of rights focuses on what government must *not* do and thus is concerned with civil liberties
- Not originally included in Constitution because Hamilton & others thought it irrelevant

- Originally applied only to the federal government (dual citizenship)

- Originally applied only to the federal government (dual citizenship)
- The 14th amendment (post Civil War) provides for a single national citizenship, but the Court doesn't start to expand protections provided by the Bill of Rights to the states until late 1800s, but especially the 1930s & 60s

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion
- What does that mean?

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion
- What does that mean?

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion
- What does that mean?
- No official state church?

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion
- What does that mean?
- No official state church?
- Government can't take sides, but isn't prohibited from providing assistance to religion?

THE FIRST AMENDMENT

- **Establishment Clause** prevents Congress from making a law respecting the establishment of religion
- What does that mean?
- No official state church?
- Government can't take sides, but isn't prohibited from providing assistance to religion?
- Wall of separation?

- Free exercise of religion protects citizens' rights to believe and practice whatever religion (or not) they choose

THE FIRST AMENDMENT

- Free exercise of religion protects citizens' rights to believe and practice whatever religion (or not) they choose
- Difference in practice and action

THE FIRST AMENDMENT

- Freedom of speech

THE FIRST AMENDMENT

- Freedom of speech
- Court has been especially hesitant to curb political speech

- Freedom of speech
- Court has been especially hesitant to curb political speech
- “Clear and present danger”

- Freedom of speech
- Court has been especially hesitant to curb political speech
- “Clear and present danger”
- Some controversy about whether spending money on campaigns is speech

- Freedom of the press

¹*New York Times v. United States*

- Freedom of the press
- Hugely protected (no censorship unless extraordinary circumstances)

¹*New York Times v. United States*

- Freedom of the press
- Hugely protected (no censorship unless extraordinary circumstances)
- May publish secret documents that were given to them illegally¹

¹*New York Times v. United States*

THE FIRST AMENDMENT

- Freedom of assembly and freedom to petition

THE FIRST AMENDMENT

- Freedom of assembly and freedom to petition
- Flag burning

THE FIRST AMENDMENT

- Freedom of assembly and freedom to petition
- Flag burning
- Picketing

THE FIRST AMENDMENT

- Freedom of assembly and freedom to petition
- Flag burning
- Picketing
- *Peaceful* demonstration (in public areas)

THE FIRST AMENDMENT - LIMITATIONS

- Libel/slander *not* protected

THE FIRST AMENDMENT - LIMITATIONS

- Libel/slander *not* protected
- Obscenity and pornography

THE FIRST AMENDMENT - LIMITATIONS

- Libel/slander *not* protected
- Obscenity and pornography
- Fighting words (sometimes)

THE FIRST AMENDMENT - LIMITATIONS

- Libel/slander *not* protected
- Obscenity and pornography
- Fighting words (sometimes)
- Student speech

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

²*McDonald v. Chicago*

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

- The right to bear arms

²*McDonald v. Chicago*

THE SECOND AMENDMENT

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

- The right to bear arms
- Recently applied to the states²

²*McDonald v. Chicago*

- Protection against unreasonable searches and seizures (4th amendment)

³*Miranda v. Arizona*

- Protection against **unreasonable searches and seizures** (4th amendment)
 - Exclusionary rule prevents improperly obtained evidence from being introduced during a trial

³*Miranda v. Arizona*

- Protection against **unreasonable searches and seizures** (4th amendment)
 - Exclusionary rule prevents improperly obtained evidence from being introduced during a trial
- No **double jeopardy** (5th)

³*Miranda v. Arizona*

- Protection against **unreasonable searches and seizures** (4th amendment)
 - Exclusionary rule prevents improperly obtained evidence from being introduced during a trial
- No **double jeopardy** (5th)
- Right to a **grand jury** (5th)

³*Miranda v. Arizona*

- Protection against **unreasonable searches and seizures** (4th amendment)
 - Exclusionary rule prevents improperly obtained evidence from being introduced during a trial
- No **double jeopardy** (5th)
- Right to a **grand jury** (5th)
- Protection against **self-incrimination** (5th)

³*Miranda v. Arizona*

- Protection against **unreasonable searches and seizures** (4th amendment)
 - Exclusionary rule prevents improperly obtained evidence from being introduced during a trial
- No **double jeopardy** (5th)
- Right to a **grand jury** (5th)
- Protection against **self-incrimination** (5th)
 - Miranda rights³

³*Miranda v. Arizona*

- Right to counsel (6th)⁴

⁴*Gideon v. Wainwright*

- Right to counsel (6th)⁴
- Protection against cruel and unusual punishments (8th)

⁴*Gideon v. Wainwright*

THE DEATH PENALTY

- Banned by the Supreme Court in 1972 for being applied in a capricious manner, reinstated in 1976

State	Total executions	2015	2016 (to date)
TX	532	13	6
OK	112	1	0
VA	111	1	0
FL	92	2	1
MO	86	6	1

⁵Data [available online](#)

THE DEATH PENALTY

- Banned by the Supreme Court in 1972 for being applied in a capricious manner, reinstated in 1976
- 1976 - 2015 the U.S. executed 1,422 people⁵

State	Total executions	2015	2016 (to date)
TX	532	13	6
OK	112	1	0
VA	111	1	0
FL	92	2	1
MO	86	6	1

⁵Data [available online](#)

- Arguments for?

- Arguments for?
- Arguments against?

- Arguments for?
- Arguments against?
- Should we use it?

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:
 - The right to privacy

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:
 - The right to privacy
 - Birth control

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:
 - The right to privacy
 - Birth control
 - Abortion⁶

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:
 - The right to privacy
 - Birth control
 - Abortion⁶
 - Homosexuality

⁶*Roe v. Wade*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Has been used to justify:
 - The right to privacy
 - Birth control
 - Abortion⁶
 - Homosexuality
 - Death

⁶*Roe v. Wade*

CIVIL RIGHTS

CIVIL RIGHTS: WHAT ARE THEY?

- Recall that civil rights regulate who can participate and how they can do so

CIVIL RIGHTS: WHAT ARE THEY?

- Recall that civil rights regulate who can participate and how they can do so
- Civil liberties are what government *can't* do, civil rights are oftentimes obligations that government must meet

- *Who has what right and how much do they have?*

- *Who has what right and how much do they have?*
- *Citizens 18 years and older have the right to vote and their votes are counted equally*

- *Who has what right and how much do they have?*
- *Citizens 18 years and older have the right to vote and their votes are counted equally*
- Today, guiding principals of civil rights are that they ought to be

- *Who has what right and how much do they have?*
- *Citizens 18 years and older have the right to vote and their votes are counted equally*
- Today, guiding principals of civil rights are that they ought to be
 - **Universal** - everyone can enjoy that right

- *Who has what right and how much do they have?*
- *Citizens 18 years and older have the right to vote and their votes are counted equally*
- Today, guiding principals of civil rights are that they ought to be
 - **Universal** - everyone can enjoy that right
 - **Equal** - all people who enjoy a right have an equal ability or opportunity to practice that right

- Right to vote not guaranteed for all

- Right to vote not guaranteed for all
- Permits groups to be treated differently

- Right to vote not guaranteed for all
- Permits groups to be treated differently
- Permits states to limit rights to property owners...

- Right to vote not guaranteed for all
- Permits groups to be treated differently
- Permits states to limit rights to property owners...
 - And to put limits on who could own property

- Right to vote not guaranteed for all
- Permits groups to be treated differently
- Permits states to limit rights to property owners...
 - And to put limits on who could own property
- Black people especially target

13th amendment prohibits slavery

13th amendment prohibits slavery

15th amendment extends the right to vote to blacks

13th amendment prohibits slavery

15th amendment extends the right to vote to blacks

14th amendment equal protection clause

13th amendment prohibits slavery

15th amendment extends the right to vote to blacks

14th amendment equal protection clause

... 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.

- Originally left to states to decide

- Originally left to states to decide
- Property requirements

THE RIGHT TO VOTE

- Originally left to states to decide
- Property requirements
 - Dropped as the economy industrialized

- Originally left to states to decide
- Property requirements
 - Dropped as the economy industrialized
- Poll taxes (repealed by 24th amendment)

THE RIGHT TO VOTE

- Originally left to states to decide
- Property requirements
 - Dropped as the economy industrialized
- Poll taxes (repealed by 24th amendment)
 - Texas had one 1902 - 1964

- Originally left to states to decide
- Property requirements
 - Dropped as the economy industrialized
- Poll taxes (repealed by 24th amendment)
 - Texas had one 1902 - 1964
 - In 1964, \$1.75 is \$13.38 in today's dollars

- Originally left to states to decide
- Property requirements
 - Dropped as the economy industrialized
- Poll taxes (repealed by 24th amendment)
 - Texas had one 1902 - 1964
 - In 1964, \$1.75 is \$13.38 in today's dollars
 - In 1902 \$1.75 is \$48.33 in today's dollars

- The US inherited economic and political system from Britain, where the rights of women were severely restricted

- The US inherited economic and political system from Britain, where the rights of women were severely restricted
- Minor advances as the US expanded

- The US inherited economic and political system from Britain, where the rights of women were severely restricted
- Minor advances as the US expanded
- 1848 - Seneca Falls and the Declaration of Sentiments and Resolutions

- The US inherited economic and political system from Britain, where the rights of women were severely restricted
- Minor advances as the US expanded
- 1848 - Seneca Falls and the Declaration of Sentiments and Resolutions
 - Asserts that women were entitled to equal rights as men

WOMEN'S SUFFRAGE

- The US inherited economic and political system from Britain, where the rights of women were severely restricted
- Minor advances as the US expanded
- 1848 - Seneca Falls and the Declaration of Sentiments and Resolutions
 - Asserts that women were entitled to equal rights as men



1869 National Women's Suffrage Association (NWSA) formed in NY

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1916 Montana elects a woman to US Congress

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1916 Montana elects a woman to US Congress

1918 All western states + MI + NY have women's suffrage

WOMEN'S SUFFRAGE

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1916 Montana elects a woman to US Congress

1918 All western states + MI + NY have women's suffrage

1919 19th amendment proposed by Congress

WOMEN'S SUFFRAGE

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1916 Montana elects a woman to US Congress

1918 All western states + MI + NY have women's suffrage

1919 19th amendment proposed by Congress

1920 19th amendment ratified by 3/4 of states

WOMEN'S SUFFRAGE

1869 National Women's Suffrage Association (NWSA) formed in NY

1869 Wyoming grants women's suffrage

1916 Montana elects a woman to US Congress

1918 All western states + MI + NY have women's suffrage

1919 19th amendment proposed by Congress

1920 19th amendment ratified by 3/4 of states

1920 Women vote

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South
- After Reconstruction, states began to limit blacks' participation

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South
- After Reconstruction, states began to limit blacks' participation
 - White primary

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South
- After Reconstruction, states began to limit blacks' participation
 - White primary
 - Poll taxes

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South
- After Reconstruction, states began to limit blacks' participation
 - White primary
 - Poll taxes
 - Literacy tests

RIGHT TO VOTE FOR BLACK PEOPLE

- Granted by 15th amendment
- Enforced while federal troops occupied the South
- After Reconstruction, states began to limit blacks' participation
 - White primary
 - Poll taxes
 - Literacy tests
 - Registration list purges

- Supreme Court intervened

⁷*Smith v. Allwright*

- Supreme Court intervened
 - Struck down White Primary⁷

⁷*Smith v. Allwright*

- Supreme Court intervened
 - Struck down White Primary⁷
 - Can't draw district boundaries to discriminate against minorities

⁷*Smith v. Allwright*

- Supreme Court intervened
 - Struck down White Primary⁷
 - Can't draw district boundaries to discriminate against minorities
- Congress finally passes Voting Rights Act 1965 that prohibits racial discrimination in voting

⁷*Smith v. Allwright*

- Supreme Court intervened
 - Struck down White Primary⁷
 - Can't draw district boundaries to discriminate against minorities
- Congress finally passes Voting Rights Act 1965 that prohibits racial discrimination in voting
 - Has been amended five times to extend protections

⁷*Smith v. Allwright*

- Supreme Court intervened
 - Struck down White Primary⁷
 - Can't draw district boundaries to discriminate against minorities
- Congress finally passes Voting Rights Act 1965 that prohibits racial discrimination in voting
 - Has been amended five times to extend protections
- Mississippi black voter turnout in 1964: 6%

⁷*Smith v. Allwright*

RIGHT TO VOTE FOR BLACK PEOPLE

- Supreme Court intervened
 - Struck down White Primary⁷
 - Can't draw district boundaries to discriminate against minorities
- Congress finally passes Voting Rights Act 1965 that prohibits racial discrimination in voting
 - Has been amended five times to extend protections
- Mississippi black voter turnout in 1964: 6%
- Mississippi black voter turnout in 1969: 59%

⁷*Smith v. Allwright*

- *Plessy v. Ferguson* 1896 - **separate but equal** - the Supreme Court upholds Louisiana statute that requires segregation in schools and public places

- *Plessy v. Ferguson* 1896 - **separate but equal** - the Supreme Court upholds Louisiana statute that requires segregation in schools and public places
 - Several minor challenges to this but nothing major

- *Plessy v. Ferguson* 1896 - **separate but equal** - the Supreme Court upholds Louisiana statute that requires segregation in schools and public places
 - Several minor challenges to this but nothing major
- *Brown v. Board of Education* 1954 - reverses *Plessy*

- *Plessy v. Ferguson* 1896 - **separate but equal** - the Supreme Court upholds Louisiana statute that requires segregation in schools and public places
 - Several minor challenges to this but nothing major
- *Brown v. Board of Education* 1954 - reverses *Plessy*
 - Segregation no longer allowed under the law, but remains prevalent anyway

THE LITTLE ROCK NINE

- The Little Rock Nine were the first black students who registered to attend Little Rock Central High School

THE LITTLE ROCK NINE

- The Little Rock Nine were the first black students who registered to attend Little Rock Central High School
- Arkansas Governor mobilizes the AK National Guard and prevents the Little Rock Nine from entering the school

THE LITTLE ROCK NINE

- The Little Rock Nine were the first black students who registered to attend Little Rock Central High School
- Arkansas Governor mobilizes the AK National Guard and prevents the Little Rock Nine from entering the school
- Monday Sep 4th 1957 Elizabeth Eckford attempts to go to school

THE LITTLE ROCK NINE



- September 24th - President Eisenhower sends the Army to Little Rock and federalizes the AK National Guard

- April - Letter from a Birmingham Jail

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation
- August - March on Washington

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation
- August - March on Washington
 - ~250,000 march on Washington DC

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation
- August - March on Washington
 - ~250,000 march on Washington DC
 - MLK delivers “I Have a Dream”

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation
- August - March on Washington
 - ~250,000 march on Washington DC
 - MLK delivers “I Have a Dream”
- November - JFK assassinated in Dallas

- April - Letter from a Birmingham Jail
 - Outlines nonviolent resistance as a response to racist laws
- June - JFK switches course, endorsing strong civil rights legislation
- August - March on Washington
 - ~250,000 march on Washington DC
 - MLK delivers “I Have a Dream”
- November - JFK assassinated in Dallas
 - LBJ asserts strong support for civil rights legislation

- Civil rights act of 1964 - outlaws discrimination based on race, color, religion, sex, or national origin in schools, workplaces, and public accommodations

- Civil rights act of 1964 - outlaws discrimination based on race, color, religion, sex, or national origin in schools, workplaces, and public accommodations
- Selma Voting Rights march - 1965

- Civil rights act of 1964 - outlaws discrimination based on race, color, religion, sex, or national origin in schools, workplaces, and public accommodations
- Selma Voting Rights march - 1965
- Voting Rights Act of 1965 - prohibits racial discrimination in voting

- Civil rights act of 1964 - outlaws discrimination based on race, color, religion, sex, or national origin in schools, workplaces, and public accommodations
- Selma Voting Rights march - 1965
- Voting Rights Act of 1965 - prohibits racial discrimination in voting
- War on poverty

- Civil rights act of 1964 - outlaws discrimination based on race, color, religion, sex, or national origin in schools, workplaces, and public accommodations
- Selma Voting Rights march - 1965
- Voting Rights Act of 1965 - prohibits racial discrimination in voting
- War on poverty
- King assassinated 1968 in Memphis

- Women (esp. economic)

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos
 - Generally registration rates far below that of whites or blacks

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos
 - Generally registration rates far below that of whites or blacks
- Asian Americans

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos
 - Generally registration rates far below that of whites or blacks
- Asian Americans
- Immigrants

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos
 - Generally registration rates far below that of whites or blacks
- Asian Americans
- Immigrants
- Americans with disabilities

OTHER GROUPS

- Women (esp. economic)
 - 1972 proposal of ERA, fell three states short in 1982
 - Sexual harassment
- Latinos
 - Generally registration rates far below that of whites or blacks
- Asian Americans
- Immigrants
- Americans with disabilities
- LGBT community