

# CIVIL LIBERTIES AND CIVIL RIGHTS

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# INTRODUCTION

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## LIBERTIES AND RIGHTS: WHAT'S THE DIFFERENCE?

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## 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

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# 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
- Not originally included in Constitution because Hamilton & others thought it irrelevant

- 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



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

- **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
- Difference in practice and action

- 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
- Hugely protected (no censorship unless extraordinary circumstances)
- May publish secret documents that were given to them illegally<sup>1</sup>

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<sup>1</sup>*New York Times v. United States*

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

- 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.*

- The right to bear arms
- Recently applied to the states<sup>2</sup>

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<sup>2</sup>*McDonald v. Chicago*



- 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 rights<sup>3</sup>

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<sup>3</sup>*Miranda v. Arizona*

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

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<sup>4</sup>*Gideon v. Wainwright*

- 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 people<sup>5</sup>

State	Total executions	2015
TX	532	13
OK	112	1
VA	111	1
FL	92	2
MO	86	6

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<sup>5</sup>Data [available online](#)

- 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.*

- Has been used to justify:
  - The right to privacy
  - Birth control
  - Abortion<sup>6</sup>
  - Homosexuality
  - Death

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<sup>6</sup>Roe v. Wade

## CIVIL RIGHTS

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- 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?
- *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
- 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

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
- 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

# 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: 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

- 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
  - Struck down White Primary<sup>7</sup>
  - 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%

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<sup>7</sup>*Smith v. Allwright*

- *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 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
  - 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
- Selma Voting Rights march - 1965
- Voting Rights Act of 1965 - prohibits racial discrimination in voting
- War on poverty
- King assassinated 1968 in Memphis

## 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