

2016-09-21

## Civil Rights and Civil Liberties

### Civil Liberties

#### Key questions

1. What is the basis for our liberties?
2. What are “property rights”?
3. Do we have a right to “privacy”?

#### What is the difference?

#### Civil Liberties:

- Specific protections against government tyranny
  - The bill of rights
- 14th Amendment *Due Process Clause* + > “No state shall deprive any person of life, liberty or property without due process of law.” + Forms the basis of all civil liberties court cases

#### Civil Rights:

- Protections against *discrimination*
- 14th Amendment
  - *Equal Protection Clause*
    - \* “No state shall deny to any person within its jurisdiction the equal protection of the laws.”

#### Selective Incorporation

- The process by which fundamental civil liberties are extended from federal restrictions to include state restrictions
- *Gitlow v New York(1925)*
  - Supreme court rules that freedom of speech and press apply to states as well
  - Court ruled that it didn’t meet “clear and present danger” conditions established in *Schenck v US(1919)*
  - However, BoR application will be decided on a court-by-court basis

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### Tinker v Demoine

- Kid wore black armband to school to protest Vietnam war
- School punished him
- Supreme court ruled that it was not a “clear and present danger”

### The First Amendment

- Protects freedom of speech, press, assembly, religion, and petition
  - SPARP
- Freedom of religion
  - *Free Exercise Clause*
    - \* [...] or prohibiting the free exercise thereof.
  - *Establishment Clause*
    - \* Congress shall make no law respecting an establishment of religion[...]
    - \* *Lemon v Kurtzman*(1971) established **Lemon Test**
    - \* **Lemon Test** =
      - Secular purpose
      - Primary effect neither advances nor inhibits religion
      - No excessive government entanglement with religion
- Freedom of Expression
  - Rule of Thumb: the Supreme Court does not allow censoring of material prior to its publication
    - \* Established by Pentagon Papers Case(Nixon told his advisors to take news paper to court for planning to publish on Vietnam War)
  - Defamation
    - \* **Libel** = written false statements that Defame another person
    - \* **Slander** = spoken false statement that defame another person
    - \* Court must decide if test is written with “actual malice” or “reckless disregard for the truth”
  - Obscenity
    - \* *Miller v California*(1973)
      - Obscenity must be judged by “the average person, applying contemporary community standards”
      - Satisfy “**prurient** interest”
      - Prurient = unwholesome, sexual interest

- \* Must be “in a patently offensive way, sexual conduct specifically defined by applicable state law:
  - \* Must have “serious literary, artistic, political, or scientific value”
  - Symbolic Speech
    - \* Burning government-issued documents is illegal(draft cards)
    - \* Burning symbols for political purposes is okay!
  - **Commercial Speech** can be restricted because it is *public*
    - \* *FCC v Pacifica(1978)* = court uphold bans on obscenity on public frequencies
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### **Freedom of Religion**

- Free exercise clause
  - [...]or prohibiting the free exercise thereof
  - Fed gov may not impose specific burdens on religion

### **Rights of the Accused**

- Amendments as legal basis
  - Fourth Amendment = protect against unlawful search and seizure
  - Fifth Amendment = protect against self-incrimination
  - Sixth Amendment = protects right to a jury and a fair, speedy trial
  - Eighth Amendment = protects against cruel and unusual punishment
- *Exclusionary Rule* = evidence gathered in a way that violates the constitution cannot be used in a trial
  - Established by *Mapp v Ohio(1961)*
  - Legal basis = 4th and 5th amendment
- Warrants
  - Judges must sign off on a request for law-enforcement to gain access to something
  - In order for judge to issue, there must be *probable cause*
    - \* Must be in plain view
    - \* Must be in immediate control of the individual in suspicion
- Right to an Attourney

- *Gideon v Wainwright*(1963) = rules that people are entitled to a public defender if they can't afford
  - \* Unfunded mandate
- Miranda Rights
  - *Miranda v Arizona*(1966) = doesn't establish new rights, just ensures that the rights must be *told*
  - All confessions are assumed to be invalid unless the rights of the confessor are explicitly stated prior
- Death Penalty
  - *Furman v Georgia*(1972) = must not be administered in a cruel and unusual way
    - \* States rewrote laws to account for severity of crime
  - *Gregg v Georgia*(1976) = it is constitutional—an expression of society's outrage
- Right to Privacy
  - *Griswold v Connecticut*(1965) = Establishes right of privacy in relationships to get contraception without consent of partner
    - \* **Penumbra** = shadow, used as legal precedent
  - *Roe v Wade*(1972) = Abortion falls within the *penumbra* established in *Griswold v Connecticut*

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**Practice FRQ**

Initially, the United States did little to protect citizens from the actions of the states. In the twentieth century, the Supreme Court interpreted the Constitution to protect the rights of citizens from state governments in a process referred to as **selective incorporation** a. Define **selective incorporation**

b. For **two** of the following, explain how each has been incorporated. Each of your explanations must be based on a specific and relevant Supreme Court decision.

- Rights of criminal defendants - First Amendment - Privacy rights

## Answer

- a. Selective incorporation is the process by which the Bill of Rights is selectively applied to the actions of states on a court-by-court basis.
- b.
  - **Rights of criminal defendants:** The bill of rights explicitly grants rights to those accused of crimes. However, those rights weren't typically applied to the states. In particular, states were not required to provide suspects with legal representation if they could not afford it. That changed with *Gideon v Wainwright*, which established the principle that, without ready access to public defenders, the accused could not be guaranteed a fair and speedy trial, violating the Bill of Rights. This furthered selective incorporation by establishing the precedent that the rights of the accused would be guaranteed by state governments
  - **First Amendment** = Various state laws and policies abridged freedom of speech. In particular, in *Tinker v Des Moines*, a student was punished for wearing a black arm-band to school in protest of the Vietnam War. The case was brought before the supreme court, and it ruled that the speech did not constitute a "clear and present danger", and thus, the student's right to speech was being violated. This contributed to selective incorporation, because an amendment meant to protect citizens from the Federal Government was being applied to State Governments

## Civil Rights

### Key Ideas

- Equality
- *Equal Protection*
- Right to vote
- Rights of students
- Equal access

### Definitions

- **Civil Rights** = Protections granted by the government to protect groups from discrimination
- **Civil Liberties** = Rights granted to individuals to protect from government action

## Protected Classes

- Ethnic Minorities
- Women
- People older than 40
- The disabled

## How do Civil Rights Come About?

- Lawsuit is filed
- Must prove actions were done with *malice*
- *Equal Protection Clause* used to justify it

## Classification of Rules

- **Strict scrutiny** = policy or actions discriminating based on race are inherently difficult to justify—only okay if it serves a “compelling public interest”
  - **Mid-level review** = policy or actions discriminating based on gender are only okay if they “bear a substantial relationship to an important legislative purpose”
  - **Rational Basis Test** = any other policy or action that discriminates based on other criterion must be *reasonable* and bear a “rational relationship to a legitimate governmental interest”
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## Voting Rights

- Many obstacles to suffrage
  - Literacy tests
  - Racially discriminatory laws(Jim Crowe)
  - Poll taxes
- 24th Amendment outlaws mentioned obstacles
- **Voting Rights Act of 1965** = makes voter disenfranchisement illegal

## Education Rights

- *Brown v Board of Education*
  - Was a consolidated case
    - \* Composed of many people suing simultaneously but given the alias *Brown v Board of Education* for simplicity
  - Overruled *Plessy v Furgeson* and “seperate but equal” laws
  - “Seperate but equal is *inherently* unequal”
  - No real legal basis for decision—based upon social science and the like
- Court case was initially spotty in its enforcement
  - Linda Brown wants a federal enforcement order
  - Court decides that desegregation must happen with “all deliberate speed”
- Desegregation vs Integration?
  - *Swan v Charlotte Mecklenburg(1971)* = permits racial quotas, redrawing of district lines, and court-demanded busing
  - Busing between cities was only allowed if both places practiced segregation
- Racial Quotas
  - Also called “affirmative action”
  - *University of California Regents v Bakke(1978)*
  - *Gratz v Bollinger(2003)*
  - *Grutter v Bollinger(2003)*
  - Proposition 209

## Civil Rights Act of 1964

- Prohibits discrimination in public places
- Prevents discrimination in job interviews & acceptance
- Establishes the **EEOC** = **E**qual **E**mployment **O**pportunity **C**ommission
- Prevents discriminating institutions from receiving federal money
- Civil Rights cases can be taken up by Justice Department—people don’t have to sue to establish legal precedent

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## Gender Discrimination

- Classification rule called “Mid-level review”

- Serves as a middle-ground between rational basis review and strict scrutiny
- Arbitrary discrimination not okay
- Some gender discrimination ruled okay(e.g. All-male drafts)