

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

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

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
 - * 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 Wainright(1963)* = rules that people are entitled to a public defender if th
 - + Unfunded mandate
- Miranda Rights
 - * *Miranda v Arizona(1966)* = doesn't establish new rights, just ensures that the rights
 - * All confessions are assumed to be invalid unless the rights of the confessor are expli
- 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 c
 - + **Penumbra** = shadow, used as legal precedent
 - * *Roe v Wade(1972)* = Abortion falls within the *penumbra* established in *Griswold v C

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.