

Civil Liberties

Civil Liberties

Bill of Rights

- Barron v. Baltimore (1833)
 - SCOTUS ruled that the 5th amendment limited the power of the federal government, not the power of the states
 - In the court's decision, Chief Justice Marshall said there was no indication that the Bill of Rights were meant to be applied to the states

14th Amendment

- Incorporation
 - 14th Amendment (1868) applied the Bill of Rights to the states via the due process clause
 - "No state may deprive any person of life, liberty or property without due process of law"
 - This assured no state could deny persons "equal protection under the law"
 - Happens via selective incorporation
 - Case by case
 - It is not automatic
 - Happens via lawsuits

1st Amendment

- Schenck v. U.S. (1919)
 - Involved in 1917 Espionage Act
 - Charles Schneck was handing out leaflets regarding the WWI draft
 - Clear and present danger doctrine and free speech
 - "The question in every case is whether the words used are used in such circumstance and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent"
- Gitlow v. New York (1925)
 - Incorporation of the 1st amendment to the states via the Due Process Clause of the 14th Amendment
- Brandenburg v. Ohio (1969)
 - Imminent Lawless Action DOctrine - the new present and limits on free speech

- “Directed to or inciting or producing imminent lawless action and is likely to incite or produce such action”
- Symbolic speech
 - Other types of protected speech
 - Texas v. Johnson (1989)
 - Flag burning case
 - SCOTUS said it was “expressive conduct” and protected the 1st Amendment
 - Congress responded with the Flag Protection Act of 1989
 - United v. Eichman (1990)
 - SCOTUS struck down the Flag Protection Act
- Freedom of Religion
 - “Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof”
 - Two major clauses in the Constitution
 - Establishment Clause
 - Congress cannot create or favor a religion
 - No state religion
 - Cannot give preference to any religion
 - Cannot fund religion
 - Neutrality is key
 - Van Orden vs. Perry (2008)
 - The monument was constitutional
 - Was a state trooper memorial with the 10 commandments written on it
 - Meant to memorialize Texas state troopers
 - Not put there to try and establish religion
 - It was neutral
 - McCreary County, Kentucky v. American Civil Liberties of KY (2005)
 - Not constitutional, in the courthouse, not “neutral”
 - 10 commandments on the wall of the courthouse
 - Not a memorial
 - Just the 10 commandments on the wall
 - Free Exercise Clause
 - Anyone can practice any religion
 - Generally applicable laws
 - Compelling interest
 - Balance state interest against the infringement on the free-exercise
 - Employment Division v. Smith (1990)
 - Generally applicable drug laws
 - Compelling state interest

- Got fired for using Peyote, an item used in Native American religion, as part of their drug counseling
- They sued, saying that they are free to practice their religion
- SCOTUS decision
 - Ruled in favor of Employment Division
- Church of Lukumi Babalu Aye, Inc v. City of Hialeah
 - Church of Santeria
 - Animal sacrifice
 - Passed city ordinance banning these specific animal sacrifices
 - SCOTUS decision
 - Ruled against city of Hialeah