

Civil Liberties and Civil Rights

It seems that no matter how many times I discuss these two concepts, some students invariably get them confused. Let us first start by stating the basic definitions of each.

Civil liberties are the basic liberties we have from arbitrary action by the government. What I think confuses students is that the book defines civil liberties as the specific individual rights that are constitutionally protected against infringement by the government. In addition, the primary protector of individual rights is the Bill of Rights of the U.S. Constitution. These are the first ten amendments to the U.S. Constitution.

Civil Rights, on the other hand, are the rights of all persons to be treated equally under the law. This concept is much less clear to understand, and rather than having specific guarantees for individuals, such as the Bill of Rights, many of the ideas that support civil rights have developed over the years in response to the demand for greater participation within the government by its citizens. Let us look at each of these in more depth.

Civil Liberties

Again, civil liberties protect us from government interference in certain areas of our lives. The rights insured by the First Amendment – the freedoms of expression, religion, and assembly – are essential to a democracy. If people are to govern themselves, they need access to all available information and opinions in order to make intelligent, responsible, and accountable decisions. If the right to participate in public life is to be open to all, then Americans, in all their diversity, must have the right to express their opinions.

Individual participation and the expression of ideas are crucial components of democracy, but so is majority rule, which can conflict with individual rights. The majority does not have the freedom to decide that there are some ideas it would rather not hear, although, at times, the majority tries to enforce its will upon the minority.

The First Amendment to the U.S. Constitution is considered the cornerstone to our basic freedoms. It provides protection for five essential areas of individual behavior:

“Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.”

Freedom of Speech

Freedom of expression is the most basic of democratic rights. This freedom allows citizens to influence government and to act to protect their other rights.

People are not free unless they can freely express their views. A democracy depends on the free expression of ideas. Thoughts that are muffled, speech that is forbidden, and meetings that cannot be held are the enemies of the democratic process. Totalitarian governments know this, which is why they go to enormous trouble to limit expression. Though freedom of expression is not an absolute right, it has received broad protection from the courts in recent decades.

Keep in mind: NO RIGHT IS ABSOLUTE! Where do you draw the line between what is permissible and what is not permissible?

To a large degree this is what I preach about in this class. Many people often want to limit expression. Ideas can be viewed as threats.

Today we seem to have more government protection of being able to express ourselves than in the past.

In earlier historical periods, Americans were less free to express their political views.

- 1) the Sedition Act of 1798 made it a crime to print false or malicious newspaper stories about the president or other national officials.
- 2) Also, during the Civil War era, as well as the “red scares” of the 1920s and 1950s, limits on free expression were imposed.

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The Supreme Court has generally devised “**tests**” for determining certain criteria when applied to questions of acts being determined to be constitutional or not. In the modern period, free expression has been protected by the Supreme Court’s development of standards regarding when the government could infringe on political expression.

- 1) the **clear-and-present-danger** test stipulated that political expression can be restricted only if speech was “of such a nature as to create a clear and present danger of substantive evils” to the nation’s security. 1919 (Schenck v. United States)
- 2) Supreme Court distinctions between **verbal speech** and “**symbolic speech**” mean that the government can prohibit actions that threaten a legitimate public interest as long as the main purpose is not the inhibit free expression. Example: the burning of a draft card.

- 3) The court held that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Example: 1989 Texas v. Johnson.
- 4) Issues of **prior restraint**. Refers to a government's actions that prevent material from being published. In a word, it is a form of censorship. If the government thinks a speech or publication might threaten "national security", it often tries to prevent that from occurring, "prior to the fact". The Court has generally struck down any attempts by the government to do this. Viet Nam era: New York Times was getting ready to publish the so-called "Pentagon papers". The national government sued to prevent these from being published, but the Court struck this down.

Keep in mind that the Bill of Rights did not originally apply to the states. The Bill of Rights was considered necessary to protect citizens from the perceived abuses of the national government. The first statement of the First Amendment gives an pretty good idea of what they meant by this: "Congress shall make no law....".

It was not until a 1925 Supreme Court case that the protections of the Bill of Rights began to be extended to all levels of government. In the case of **Gitlow v New York (1925)** the Supreme Court used the 14th Amendment's **equal protection of the laws clause** to say to the states that they cannot deny freedom of expression:

"No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This began an era of the Court where the doctrine of **selective incorporation** began. This means that the Court began to apply selected parts of the Bill of Rights to apply to the states as well as the federal government. Over time the Court gradually applied the protections under the Bill of Rights to the states.

Since the 1930s the Court has broadly protected freedom of expression from action by the states and by local governments.

- 1) States cannot restrict free expression except when such expression is almost certain to result in **imminent lawlessness**.
- 2) The right of free expression takes precedence over the mere possibility that exercising the right may have undesirable consequences.
- 3) The Court has broadly held that while "hate speech" cannot be silenced, hate crimes can be prosecuted.
- 4) The time, place, and conditions of public assembly can be regulated.
- 5) Any government effort to regulate the content of a message is highly suspect.
- 6) Libel, slander, and obscenity are not protected as free expression.

Freedom of Religion

"Congress shall make no law respecting the establishment of religion,..."

The **establishment of religion clause** has been interpreted by the courts to mean that government may not favor one religion over another or support religion over no religion. Though assistance to religion is sometimes allowed, it is NOT to create the environment for an official religion of the state.

The Supreme Court has stated that a “**wall of separation**” must be maintained between the church and the state. State aid for educational purposes given to church-affiliated schools must primarily serve secular educational objectives. The court has consistently reaffirmed the ban on state-sponsored prayer.

“...or prohibiting the free exercise thereof;....”

The **free-exercise of religion clause** stipulates that Americans are free to hold any religious belief they choose. When possible, the Supreme Court tries to balance any potential conflict between the “free exercise” and “establishment” clauses, though sometimes one must yield to the other.

Rights of the accused

More for state and local government class, since 95% of all trials occur there. Nevertheless, it is important to know some things about the legal system at the national level, since the ultimate authority of what is legal comes from the supreme court.

Stages of the criminal justice process:

- 1) crime
- 2) arrest (warrant)
- 3) prosecution
- 4) trial
- 5) verdict

Protection of persons accused of crimes has its roots in the concept of procedural due process of the law.

“Due process” refers to the legal protections that have been established to preserve the rights of the individual.

“Procedural due process” refers primarily to procedures that authorities must follow before a person can legitimately be punished for an offense.

Specific procedural protections for the accused are spelled out in the Fourth, Fifth, Sixth, and Eighth Amendments.

Police cannot arrest a citizen without a reason. The need evidence to arrest and courts need evidence to convict. Before making an arrest, police need what the courts call “probably cause” to believe that someone is guilty of a crime. The Fourth Amendment is

quite specific in forbidding unreasonable searches and seizures. To prevent abuse of police power, the Constitution requires that no court may issue a search warrant unless probable cause exists to believe that a crime has occurred or is about to occur. Warrants must specify the area to be searched and the material sought in the police warrant. A warrant is NOT a constitutional requirement for a reasonable search, however. Most searches in this country take place without warrants.

Exclusionary rule: used by the Supreme Court since 1914. This rule prevents illegally seized evidence from being introduced in court, but until 1961 this only applied to the federal government. In the case of **Mapp v. Ohio (1961)**, local police entered a home in Cleveland searching for evidence in a gambling case. They found pornographic materials and charged the person with that crime. Supreme Court overturned this case, so now Fourth Amendment protections extend to states too.

Self-incrimination. The Fifth Amendment states that no person shall be compelled to testify against himself. This was firmly established by the Supreme court in the case of **Miranda v. Arizona (1966)**. Essentially, it ruled that you have the right to remain silent and may stop answering questions at any time. It also required police officers to notify you that anything said can be used against you in a court of law, that you have the right to an attorney, and if you cannot afford one, one will be provided for time.

Right to counsel. The Sixth Amendment always protected accused in federal courts. Majority of cases in U.S. are tried in state courts. In the case of Gideon v. Wainwright (1963), the Supreme Court ruled that accused felons must have the right to legal counsel in all cases.

Cruel and unusual punishment. The Eighth Amendment protects persons against cruel and unusual punishment. Historically the Court has upheld the death penalty, but this continues to be (at times) a hotly debated topic as to whether the death penalty itself constitutes cruel and/or unusual punishment, as well as how the death penalty is carried out.

Issues of crime and punishment in America still center around infringements on individual rights, especially those of minorities and the poor. One of the most important issues of justice is whether adherence to proper legal procedures produces reasonable outcomes. Justice = fairness. In many circumstances we find that those who are of lower socio-economic status, as well as minorities, seem to be disproportionately punished for commissions of crimes as opposed to the rest of society.

Summary:

The United States was founded on the belief that individuals have an innate right to personal liberty: To speak their minds, to worship as they choose, to be free of police intimidation. Historically the Court has been the most important branch of government in protecting these rights. Popular majorities are often tempted to diminish the freedom of those who hold minority views, have unconventional lifestyles, or simply look different.

The Bill of Rights (as arranged by function)

Protection of free expression:

Amendment 1: freedom of speech, press, and assembly; freedom to petition government.

Protection of personal beliefs:

Amendment 1: no government establishment of religion; freedom to exercise religion.

Protection of privacy:

Amendment 3: no forced quartering of troops in homes during peacetime.

Amendment 4: no unreasonable searches and seizures.

Protection of defendant's rights:

Amendment 5: grand-jury indictment required for prosecution of serious crime; no second prosecution for the same offense; no compulsion to testify against oneself; no loss of life, liberty, or property without due process of law.

Amendment 6: right to a speedy and public trial by a local, impartial jury; right to legal counsel; right to compel the attendance of favorable witnesses; right to cross-examine witnesses.

Amendment 7: right to a trial in civil suit where the value of controversy exceeds \$20.

Amendment 8: no excessive bail or fines; no cruel and unusual punishments.

Protection of other rights:

Amendment 2: right to bear arms.

Amendment 5: no taking of private property for public use without just compensation.

Amendment 9: unlisted rights are not necessarily denied.

Amendment 10: powers not delegated to the national government or denied to the states are reserved for the states or the people.

Civil Rights

Civil rights (or sometimes referred to as equal rights) involves issues of equality. As stated earlier, all persons have the right to be treated equally under the law, and have equal access to society's opportunities and public facilities.

Disadvantaged groups (primarily minorities) have had to struggle for equal rights.

The original Constitution does not mention the word "equality". The words "all men are created equal" actually comes from the Declaration of Independence, penned by Thomas Jefferson. Not even the Bill of Rights mentions equality.

So where do our ideas of people being treated “equally” come from? The Bill of Rights does have implications for equality, because it does not limit its guarantees to specific groups in society.

The first and only place in which the idea of equality appears in the Constitution is in the **Fourteenth Amendment**.

This one was one of the three major amendments passed at the end of the Civil War. (The Thirteenth Amendment abolished slavery and the Fifteenth Amendment extended the right to vote to former slaves)

As we mentioned above, the Fourteenth Amendment forbids the states from denying to anyone “**equal protection of the laws**”. Just these few words were enough to begin assuring that all Americans were treated equally.

Disadvantaged groups have had to struggle to gain a variety of rights: voting, education, employment, disabilities. To a large degree, this struggle to achieve “equality” has been a struggle of the African Americans in our society. Other groups: women, elderly, Hispanics, Asian Americans, Native Americans, and the disabled.

The struggle of African Americans to achieve equal rights is most notable in studying American history. Most African Americans originally arrived in this country as slaves. It isn't my intent to go into a great amount of detail here on the history of the Black Civil Rights movement, but there are some things you need to be sure that you are aware of.

One of the events that helped lead to the Civil War was the Supreme Court case of Dred Scott v. Sandford (1857), sometimes referred to simply as the Dred Scott case. The essential thing to note about this case was that it ruled that slaves were property, not citizens, and thus were not entitled to many rights under the law.

With the end of the Civil War (1865) came the end of slavery. As mentioned above, the Thirteenth Amendment to the Constitution officially ended the practice of slavery in all of the United States. However, this did not end discrimination. In the South, various methods were devised to continue to deny African Americans rights under the law. Among these were Jim Crow laws, which were a series of laws passed by Southern states that sought to limit access to public facilities by African Americans, as well as limit their ability to vote. These laws mandated separate facilities for whites and blacks (schools, restrooms, movie theaters, restaurants). In the Supreme Court case of **Plessy v. Ferguson (1896)**, the Court upheld the concept of separate facilities by saying that separate facilities were legal if they were equal.

This practice of “**separate but equal**” continued until the case of Brown v. Board of Education (1954). This case is probably the single most important case of the 20th Century by the Court. Supreme ruled that separate but equal violated the equal protection of the laws clause of the Fourteenth Amendment. It ordered states to remove these barriers “with all due speed”.

Still, progress was slow as Southern states continued to resist federal mandates. In 1964 Congress passed the **Civil Rights Act**. This hallmark piece of legislation provided for the following:

- 1) Prohibited federal aid to school districts that remained segregated
- 2) Made racial discrimination illegal in hotels, restaurants, and other places of public accommodations
- 3) Forbade discrimination in employment on the basis of race color, national origin, religion or gender
- 4) Created the Equal Employment Opportunity Commission (EEOC) to monitor and enforce protections against job discrimination
- 5) Provided for withholding federal grants from state and local governments and other institutions that practiced racial discrimination
- 6) Strengthened voting rights legislation
- 7) Authorized the U.S. Justice Department to initiate lawsuits to desegregated public schools and facilities

There are two types of segregation that you need to be aware of:

De facto segregation: segregation that is a consequence of social, economic, and cultural bias.

De jure segregation: segregation that is based on law.

The Civil Rights Act of 1964 was a major step towards ending de jure segregation. However, it still did not address a very important element of the rights of African Americans, and that was their right to vote. We will discuss this more in the next unit, but this was another major area of trying to restrict equality. The **Fifteenth Amendment**, adopted in 1870, guaranteed that former slaves had the right to vote, however, Southern states used a variety of laws to circumvent this. Poll taxes, literacy tests, and white only primaries helped to exclude African Americans their right to vote.

The **Voting Rights Act of 1965** prohibited any government from using voting procedures that denied a person the vote on the basis of race or color.

Equality of result is the aim of policies intended to reduce or eliminate de facto segregation.

Affirmative action programs aim to provide full and equal opportunities in employment, education, and other areas for women, minorities, and individuals belonging to traditionally disadvantaged groups. Opposition to affirmative action, especially to what has been called reverse discrimination, has intensified in recent years and may be subject to alteration.