

Civil Liberties: Protecting Freedoms & Challenging Rules

What are **civil liberties**? Do we take them for granted? How do civil liberties and **civil rights** differ?

- individual liberties/freedoms (life, liberty, property) possessed by all human beings; unalienable/ inseparable rights not granted/conveyed by any government or document
- in U.S.—protections are mainly contained in the first 10 amendments to the *Constitution* or The Bill of Rights (passed in 1789 by the first Congress, ratified by 1791)
- basic personal liberties/freedoms ensured in writing (liberties) & how much the government protects or restricts personal liberties/freedoms & do they do so in an equitable manner for all individuals (rights)

Amendments

- 1st— religion, speech, press, assembly, petition
- 2nd—arms
- 3rd—quartering of soldiers
- 4th—search & seizure
- 5th—grand jury, double jeopardy, self-incrimination, due process, eminent domain
- 6th—criminal court procedure
- 7th—trial by jury in common law cases
- 8th—bails, fines, cruel and unusual punishment (the punishment should fit the crime)
- 9th—rights retained by the people; not just limited to first 8 amendments
- 10th—rights reserved to the states and people if not specifically given to the national government in the *Constitution*
- **14th—no person denied “equal protection,” “due process,” also known as incorporation doctrine**

Class Notes...

Clauses

Due Process—constitutional guarantee that no person shall be deprived of “life, liberty, or property” by either state or national government without due process of law

Establishment—clause refers to the First Amendment’s statement that “Congress shall make no law respecting an establishment of religion”

Free Exercise—clause refers to the First Amendment’s statement against the national government interfering with any citizen’s freedom to worship as they chose

Terms to Remember...**Class Notes...**

- ⇒ **positive law**—laws/rules made by human beings to restrict personal freedoms
- ⇒ **natural law**—law human beings may discover through rational analysis; preexisting law of nature
- ⇒ **common law right**—right rooted in legal tradition and past court rulings
- ⇒ **unalienable rights**—freedoms/liberties that exist outside the laws of the state; inseparable from human existence; protected or restricted by governments/ ruling powers
- ⇒ **compelling interest**—the government may not restrict the freedoms/liberties of an individual without a very good reason
- ⇒ **undue burden test**—restrictions allowed on abortions that do not present a substantial obstacle or undue burden on women
- ⇒ **RFRA or Religious Freedom Restoration Act (1993)**—law mandates strict scrutiny before government may violate religious freedoms/free exercise of religious beliefs; especially applicable to Native American rights
- ⇒ **Religious Land Use and Institutionalized Persons Act**—government may not impose a “substantial burden” and must use “the least restrictive means” of “furtherance of a compelling interest”; protection from zoning issues over use of land belonging to religious groups; incarcerated persons have religious exercise rights within certain limitations

habeas corpus issues

- ⇒ **Ex parte Milligan** (1866)—civilians not to be tried in military courts unless civilian courts are not functioning
- ⇒ **Ex parte Quirin** (1942)—foreign nationals may be tried in military courts instead of civilian if enemy agents sent for destructive acts

1st Amendment

- ⇒ **Near v. Minnesota** (1931)—censorship of the press prior to printing is unconstitutional except in rare cases
- ⇒ **New York Times v. Sullivan** (1964)—public figures must meet a higher standard for libel; malicious intent or “reckless disregard” for the truth must be proved
- ⇒ **Miller v. California** (1973)—the Miller Test; free speech does not extend to obscenity; contemporary community standards apply
- ⇒ **Lemon v. Kurtzman** (1971)—the Lemon Test; government may not become excessively entangled with religious practice; laws should be neutral on the issue of religion; secular purpose standard
- ⇒ **Gillette v. US** (1971)—conscientious objection to military service; how do you determine who will serve when the rule does not apply to all
- ⇒ **Wisconsin v. Yoder** (1972)—Amish parents may homeschool their children; government is not allowed to place an undue burden on religious practice; government must demonstrate a compelling interest to limit a religious practice and it must be narrowly defined
- ⇒ **Burwell v. Hobby Lobby** (2014)—closely held businesses do not have to provide employees free access to abortifacients if it violates the religious beliefs of the business’ owners; SCOTUS determined there were other less restrictive ways to ensure access for these services
- ⇒ **Schenck v. United States** (1919)—encouraging the avoidance of the draft for military service during a time of war presents a “clear and present danger” to public order and may result in conviction and imprisonment
- ⇒ **Brandenburg v. Ohio** (1969)—SCOTUS refines “clear and present danger” test; only speech or writing that constitutes a direct call or plan to imminent lawless action may be suppressed; advocating a hypothetical revolt does not meet the test
- ⇒ **Texas v. Johnson** (1989)—SCOTUS rules flag burning is a form of symbolic speech protected by the 1st Amendment
- ⇒ **NAACP v. Alabama** (1958)—governments may not compel associations to release confidential membership records
- ⇒ **BSA et al. v. Dale** (2000)—1st Amendment protections for free assembly and expressive association may not be infringed without a compelling interest

Class Notes...

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Cases to Consider...**Class Notes...****2nd Amendment**

- ⇒ **D.C. v. Heller** (2008)—some gun control laws violate 2nd Amendment protections; individuals retain the right to keep arms for lawful purposes such as home self-defense
- ⇒ **US v. Miller**

4th Amendment (privacy and procedure cases)

- ⇒ **Griswold v. Connecticut** (1965)—SCOTUS strikes down law forbidding married individuals from using contraception
- ⇒ **Roe v. Wade** (1973)—abortions may be regulated based on fetus' viability
- ⇒ **Miranda v. Arizona** (1966)—suspects required to be informed of the protections of their rights in connection to due process

5th Amendment

- ⇒ **Kelo et al. v. City of New London** (2005)—local government allowed to seize homes to take land for a private corporation; redevelopment
- ⇒ **Mapp v. Ohio** (1961)—evidence obtained without a warrant is excluded from criminal trial; exclusionary rule

6th Amendment

- ⇒ **Gideon v. Wainwright** (1963)—right to an attorney in felony cases

14th Amendment

- ⇒ **Barron v. Baltimore** (1833)—SCOTUS determines Bill of Rights apply only to the federal/national government (14th Amendment now ensures states must also comply to protect rights of the people)
- ⇒ **Sherbert v. Verner** (1963)—the Sherbert Test; under 14th Amendment protections states may not deny unemployment benefits to an individual turning down a job requiring them to work on their Sabbath

Terms to remember...

Class Notes...

- **Expression**—speech or action by an individual; limited by the rights of other individuals; defined by the courts; protected by the *Constitution* and other laws
- **Prior Restraint**—to restrain/prevent ahead of time; government entities seeking to restrain the press from printing/publishing information prior to actual publication; government control of media
- **Libel**—to write untrue statements; to defame or disparage another individual in writing
- **Slander**—to speak untrue statements; to defame or disparage another individual by speech
- **Symbolic Speech**—activity that expresses opinion without verbal speech; flag burning; arm bands; etc.
- **Commercial Speech**—advertising, and there are prohibitions against false claims about products and services
- **Right to Assembly**—individuals may gather together for various causes and purposes; the government may not interfere in such assembling without just cause such as the health and safety of other individuals and/or property
- **economic liberty**—right to obtain, use and trade property for personal benefit
- **eminent domain**—government seizure of property for public good

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Class Notes...

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