

Civil Liberties: Protecting Freedoms & Challenging Rules

What are civil liberties?

- individual 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)

Amendments at a Glance...

- 1st— religion, speech, press, assembly, petition
- 2nd—right to bear 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—powers 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...

Liberty of Person and Property...

Unreasonable Search & Seizure—law enforcement or government officials search or seize a person or property without probable cause and a proper warrant for the search or the seizure

habeas corpus issues (present the body; the government may not hold individuals without charging them; prevent unlawful detention)

- ⇒ **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

property issues (protection of private property)

- ⇒ **economic liberty**—right to obtain, use and trade property for personal benefit
- ⇒ **eminent domain**—government seizure of property for public good

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...

- ⇒ Types of Law
 - ⇒ **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**—rooted in legal tradition and past court rulings; precedent

- ⇒ Concerns of the Court/Government
 - ⇒ **compelling interest**—the government may not restrict the freedoms/liberties of an individual without a very good reason
 - ⇒ **undue burden test**—restrictions imposed by government/law do not present a substantial obstacle or undue burden on individual liberty; least restrictive means of achieving a governmental objective
 - ⇒ **strict scrutiny**—method of rigorous review of government action/law; is a policy absolutely necessary to achieve an objective deemed necessary to the public good

- ⇒ Legislation
 - ⇒ **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

Legal Terms to Review...

- ⇒ **Search Warrant**—written authorization from a court specifying the area to be searched and what the police are searching for
- ⇒ **Exclusionary Rule**—evidence not obtained by authorities within the protections of due process will not be admissible in court; if evidence is obtained without a proper search warrant or probable cause, it cannot be used against a person
- ⇒ **Self-Incrimination**—situation occurring when an individual accused of a crime is compelled to be a witness against themselves in court or at any step of procedural due process
- ⇒ **Plea Bargaining**—when the lawyer for a defendant and the prosecutor make a deal for a guilty plea to a lesser crime that is likely to obtain a conviction; with the promise not to pursue a conviction for a worse crime with a larger penalty; unconstitutional condition placed upon individuals accused of a crime—give up your constitutional rights and you will receive a benefit
- ⇒ **Probable Cause**—law enforcement officials believe a person may be connected to a crime; they must have some evidence; evidence must be substantiated by a judge before a search warrant is issued; reason to suspect a connection between a criminal act and a particular individual
- ⇒ **amicus curiae**—friend of the court; legal paperwork filed with the court in support of one side or the other in a case
- ⇒ **ex post facto**—after the fact; no law applies retroactively; prohibited power
- ⇒ **bill of attainder**—legislature tries, convicts and punishes an individual; prohibited power
- ⇒ **double jeopardy**—right against being tried twice for the same crime; prohibited power

