THE EVOLUTION OF CIVIL LIBERTIES & CIVIL RIGHTS
THE BILL OF RIGHTS
AND THE STATES
Civil Liberties: legal and constitutional rights that protect individuals from arbitrary acts of government

The Bill of Rights

The first ten amendments to the Constitution were intended to restrict the new federal government, not existing state governments. It is important to note that the First Amendment begins with the words, “Congress shall make no law...”

Barron v. Baltimore: John Barron co-owned a profitable wharf in Baltimore Harbor. He complained that the city of Baltimore damaged his business when a construction project made the water too shallow for most vessels. Barron argued that the Fifth Amendment required the city of Baltimore to provide him with just compensation.
THE FOURTEENTH AMENDMENT (1868)

“No state shall make or enforce any law which 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 due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

- Contains two key clauses:
  - The Due Process Clause
  - The Equal Protection Clause

- What is the first major case to test incorporation?
Gitlow v. New York: 
- Benjamin Gitlow wrote a pamphlet entitled “The Revolutionary Age” urging industrial workers to strike and join in a revolution to overthrow organized government.
- Gitlow was arrested and convicted for violating a New York state law that made it a crime to advocate the overthrow of the government by force or violence.
- Gitlow argued that the NY law violated his right to freedom of speech and the press.
- The Supreme Court voted to uphold Gitlow’s conviction. However, the Court also ruled that “freedom of speech and of the press...are among the fundamental and personal rights and liberties protected by the Due Process Clause of the Fourteenth Amendment...”
THE FIRST AMENDMENT
What is meant by the Establishment Clause?
Thomas Jefferson contended that the First Amendment created “a wall of separation between Church and State,” forbidding any government support for religion. Although Americans have traditionally opposed the creation of a national church, school prayer and aid to church-related schools have sparked controversial court cases.
Engel v. Vitale:
• In 1951, New York public schools recited the following prayer each morning: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country.”
• Steven Engel, father of two children, objected with the prayer, arguing it violated the Establishment Clause as applied to the states by the 14th Amend.
• Supreme Court ruled that state-sponsored prayer in public school was unconstitutional and “breaks the constitutional wall of separation”
• Voluntary prayer before or after school hours allowed; moment of silence
Lemon v. Kurtzman
• The Supreme Court declared that aid to church-related schools must meet the following three tests: 1) government’s action must have a secular legislative purpose; 2) government’s action must neither advance nor inhibit religion; 3) government’s action must not foster an “excessive entanglement” between government and religion.
• Based on the Lemon test, the Court struck down the Pennsylvania law because it did not hold up to the test.

What is meant by the Free Exercise Clause?
The Free Exercise clause guarantees the right to practice any religion or no religion at all. In its interpretations of the Free Exercise Clause, the Court has made distinctions between belief and practice. It has ruled that, while religious belief is absolute, the practice of those beliefs may be restricted, especially if those practices conflict with criminal laws.
Oregon v. Smith: arrest of Native Americans using peyote, a hallucinogen drug, during a religious ceremony was upheld
Reynolds v. United States:
## FREEDOM OF EXPRESSION

- The Supreme Court has made decisions that both protect and limit freedom of speech and the press
- **The “Clear and Present Danger” Test**
  - *Schneck v. United States (1919)*
- **Libel and slander**
- **Obscenity**
  - *Roth v. United States (1957)*
  - *Miller v. California (1973)*
- **Symbolic speech**
  - *Tinker v. Des Moines (1965)*
  - *Texas v. Johnson (1989)*
- **Prior restraint**
  - *Near v. Minnesota (1931)*

### Schneck v. United States (1919): Ruled urging the protest of the draft not protected during wartime
Libel—written defamation that falsely attacks a person’s reputation
Slander—spoken defamation that falsely attacks a person’s reputation

### New York Times v. Sullivan (1964): Ruled statements about public figures are libelous only when they are both false and purposely malicious

### Roth v. United States (1957): Ruled “obscenity is not within the area of constitutionally protected speech or press”

### Miller v. California (1973): Clarifies classification of obscenity and lists a number of tests; up to each community to implement these tests
Symbolic speech—forms of nonverbal communication that convey an opinion

### Tinker v. Des Moines (1965): Ruled wearing black armbands in protest of the Vietnam War was protected symbolic speech

### Texas v. Johnson (1989): Ruled flag burning as a protected form of symbolic speech
FREEDOM OF EXPRESSION

- Is symbolic speech protected?
- What about commercial speech?
- Why is government censorship accepted for television and radio, but not for print media?
- How does free press impact impartiality of trials?

Only a limited number of broadcast frequencies available—need to share space provided to support different views
FREEDOM OF ASSEMBLY

- What limits can be placed on freedom of assembly?
- Why is the right to associate protected?
RIGHTS OF THE ACCUSED
Due process deals with the administration of justice and thus the Due Process Clause acts as a safeguard from arbitrary denial of life, liberty, or property by the Government outside the sanction of law.

Originally in the Fifth Amendment obligated by the federal government, and then incorporated by the states after the Fourteenth Amendment.

Legal searches must have probable cause—reason to believe that a person should be arrested, and police must obtain a search warrant—written authorization from a court specifying the area to be searched and what the police are searching for (required by the Fourth Amendment)

*Weeks v. United States* (1914): first established exclusionary rule, applied only to federal cases

*Mapp v. Ohio* (1961): extended the exclusionary rule to the states through incorporation

Why might law enforcement not like the exclusionary rule?
**Gideon v. Wainwright (1963):**
ruled that the Sixth Amendment right-to-counsel provision applies to those accused of major crimes under state law
Self-incrimination—compulsion to be a witness against oneself
Fifth Amendment forbids forced self-incrimination

Miranda v. Arizona (1966):
overturned Miranda’s conviction, declaring that police must inform criminal suspects of their constitutional rights before questioning suspects after arrest
Although the Supreme Court has ruled that the death penalty is not a per se violation of the Eight Amendment’s “cruel and unusual” clause, it has limited the application of the death penalty in numerous ways. In Atkins v. Virginia (2002), the Supreme Court determined that executions of the mentally ill is “cruel and unusual” punishment. The Court further limited the application of the death penalty in 2006 when they invalidated the death penalty for juvenile offenders in Roper v. Simmons (2005).
THE RIGHT TO PRIVACY
Justice Louis D. Brandeis defined privacy as “the right to be left alone”
The Bill of Rights does not specifically grant Americans the right to privacy, however, it is implied in several places:
• 1st Amendment’s guarantee of freedom of religion
• 3rd Amendment’s prohibition against government forcing citizens to quarter soldiers in their homes
• 4th Amendment’s protection against unreasonable search and seizures
• 5th Amendment’s rule that private property cannot be seized without “due process of law”

**Griswold v. Connecticut (1965):** ruled that the Connecticut law criminalizing the use of contraceptives violates the right to marital privacy

**Roe v. Wade (1973):** struck down Texas law allowing abortions only to save the life of the mother in favor of protecting
Liberal vs. Conservative interpretations of freedoms
EVOLUTION OF CIVIL RIGHTS
Policies designed to protect people against arbitrary or discriminatory treatment by government officials or individuals. Liberties are recognized and protected under the constitution. Civil rights are fought for and won through law making and policy creation to limit discrimination and promote equality. Civil rights strengthen the power of government; ironically, civil rights do not stifle individualism, they often enhance it.
THE SUPREME COURT

- **Reasonable Classification**
  - Ruled government must have the power to make reasonable classifications between person and groups
  - Can you think of some reasonable classifications?

- **Strict Scrutiny**
  - Ruled that classification by race and ethnic background is inherently suspect and must therefore meet a strict scrutiny test
  - Classification based on race and ethnic background must be justified by a "compelling public interest."

Ex. Denying the vote to citizens under the age of 18 or imposing a high tax on the sale of cigarettes
The Dred Scott decision established the principle that national legislation could not limit the spread of slavery into the territories. It repealed the Northwest Ordinance of 1787 and the Missouri Compromise of 1820.

Citizenship Clause of the Fourteenth Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The Due Process Clause and Equal Protection Clause were designed to protect the rights of newly freed African American citizens against infringement by state governments.

Plessy: case involved a dispute over the legality of Louisiana law requiring “equal but separate accommodations for the white and colored races” on railroad coaches. The Supreme Court upheld the law. The “separate but equal” doctrine sanctioned segregation and strengthened the states at the expense of the federal government.
Brown: the Supreme Court reversed the principle of “separate but equal” by declaring that racially segregated schools are inherently unequal.

Integration did not move as quickly as the Court dictated it should. In most parts of the US, residential concentrations by race have made it difficult to achieve racial balance in schools. This concentration results in de facto segregation, as distinct from de jure segregation, which results from laws or administrative decisions by public agencies (mainly state and local authorities.) One solution to both de facto and de jure segregation seemed to be transporting some African American schoolchildren to white schools and some white schoolchildren to black schools. Courts ordered school districts to engage in “bussing” across neighborhoods. Bussing proved to be an unpopular policy for both parties involved.
The Supreme Court upheld the provisions outlawing segregation in places of public accommodation by ruling that such segregation involved interstate commerce and thus fell under the legislative authority of Congress.
Methods of disenfranchisement:
1. Poll taxes required voters to pay a special tax in order to vote.
2. Literacy tests required voters to pass difficult reading comprehension questions before they could register to vote.
3. White primaries excluded African Americans from voting in primary elections

By 1960, only 29% of African Americans of voting age were registered to vote in the South. In contrast to 61% of whites registered.

Voting Rights Act of 1965 significantly improved the voter registration disparity between whites and blacks. As the number of African American voters increased, so did the number of African American elected officials. In 1965, only about 70 held public office in the 11 southern states. By the early twenty-first century the number soared over 5,000.
WOMEN’S RIGHTS

- What are the ongoing issues for women’s rights advocates?
- Why are some issues – like comparable worth – so controversial?
- Is there some disagreement about the equality women desire?
More than 2 million Native Americans live on reservations in the U.S. Lack of organization has hampered Native American attempts to gain political power. A 1985 Supreme Court ruling upheld treaty rights of Native American tribes and in 1990 Congressed passed the Native American Languages Act, encouraging the continuation of native languages and culture.

With the successes of the African American civil rights movement, other minorities have also pressed to end discrimination. Hispanics or Latinos are the fastest growing minority group. Civil rights action on behalf of Hispanics has concentrated on health care for undocumented immigrants, affirmative action, and redistricting plans that do not discriminate against Hispanic Americans.

Discrimination against Asians arriving in the United States began almost immediately as Asian workers began competing for jobs. Beginning in 1882, the Chinese Exclusion Act limited the number of Asians permitted to enter the U.S. After the bombing of Pearl Harbor, people of Japanese descent were forced into relocation camps. The Supreme Court upheld these actions until 1944, when they declared the internments to be illegal in Korematsu v. U.S. In 1988 Congress appropriated funds to compensate former camp detainees or their survivors.

Older Americans can receive discrimination in the work force and education based off of age. In 1975, the Age Discrimination Act banned some kinds of discrimination based off age and compulsory retirement has now been phased out.

Minor’s rights are not the same as an adult’s. While the supreme court has struck down cases that infringe upon children’s basic rights, they usually rule in favor of the parents’ right to make decisions regarding their child.

The Education for All Handicapped Children Act (1975) guarantees that children with disabilities will receive an “appropriate” education. The Americans with Disabilities Act (1990) forbids employers and owners of public accommodations from discriminating against people with disabilities (must make facilities wheelchair accessible, etc.) The Act created the Telecommunications Relay Service, which allows hearing- and speech-impaired people access to telephone communications.

Prior to the 1960s and 1970s few people were willing to discuss their sexual preferences in relation to same-
In 1965, President Johnson issued an executive order requiring all contractors and unions doing business with the federal government to take affirmative action in hiring minorities. Two years later, this order was amended to extend affirmative action to women.

Classifications for race discrimination must meet strict scrutiny. The discriminating practice must be “narrowly tailored” to attain a “compelling government interest.” –education is one example

Supporters:
• Believe affirmative action is needed to make up for past injustices. “Freedom is not enough,” insisted President Johnson. “You do not take a person who for years has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, ‘you are free to compete with all the others’ and still justly believe that you have been completely fair.”
• Argue that increasing the number of women and minorities in desirable jobs is an important social goal

Critics:
• Argue that affirmative action programs create reverse discrimination that unfairly penalizes members of the majority group.
• Contend that laws and policies should promote equal opportunity, not equal results.

Regents:
• 1971, the medical school of UC Davis increased the size of its entering class to 100 students (when it was at 50 before, there were no minority students included.) To address the absence of minority students, the Regents created a special plan in which 16 of the 100 spaces in each entering class were set aside for “disadvantaged” or “minority” applicants. Candidates for the 16 special slots did not have to meet the same academic standards as the other applicants.
• Allan Bakke, a 37 year old, white NASA engineer, applied for admission. The school rejected Bakke’s application twice, even though his test scores were higher than those of all minority candidates who were accepted.
• Court ordered that Bakke be admitted.