



Civil Rights & Civil Liberties

Unit 4

Unit 3A: Civil Rights Protections For:

1 African Americans

2 Women & Minorities

3 Disabled and Elderly

4 LGBTQ



Civil Rights v. Civil Liberties

Civil Rights

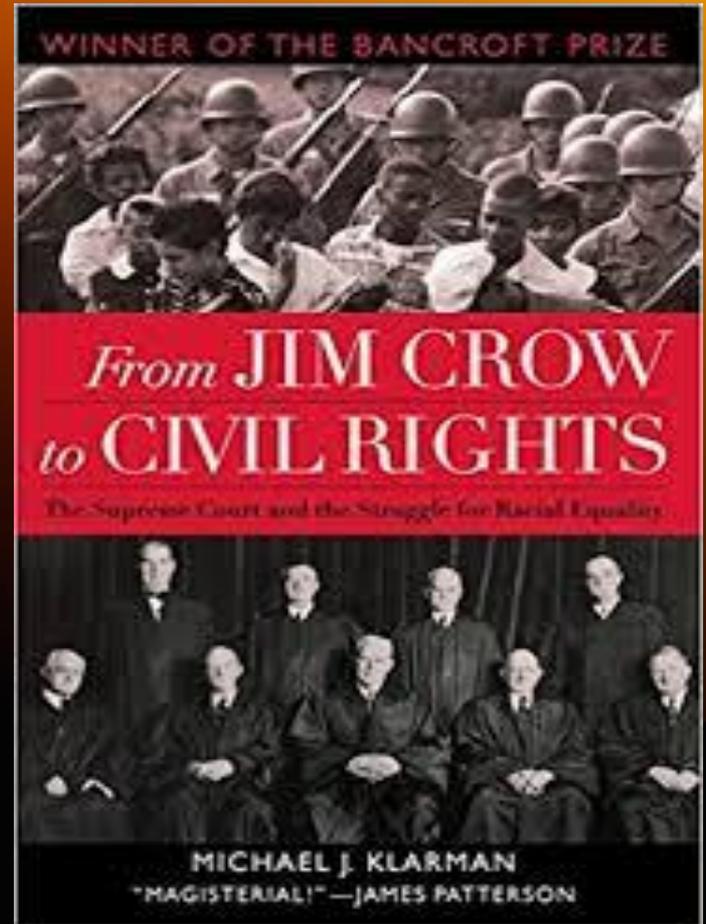
- Guaranteed protections of groups from discrimination, prejudice, inequality, injustice
- Equal protection (14th Amendment)

Civil Liberties

- Guaranteed freedoms for individuals and protections from government action
- Freedom of speech, press, assembly, religion, petition, trial by jury, legal representation
- Due process (5th Amendment and 14th Amendment)



Civil rights are the constitutional rights of all persons, not just citizens, to due process and the equal protection of the laws: the constitutional right not to be discriminated against by governments or individuals because of race, ethnic background, religion, or gender.



Reconstruction Amendments 1865-1870

Guaranteed:

- End to slavery
- Due process
- Equal protection
- Right to vote

The South Resists:

- ✓ Black Codes
- ✓ Jim Crow Laws
- ✓ Literacy Tests
- ✓ Poll Taxes
- ✓ The grandfather clause

13th
Amendment

14th
Amendment

15th
Amendment

Reconstruction
Amendments



13th Amendment

Ratified December 6, 1865.



Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction

1. Why was this amendment added to the Constitution?
2. How could this amendment be circumvented?



14th Amendment

Ratified July 9, 1868.

- All persons born or naturalized in the United States...are citizens of the United States and of the State wherein they reside.
 - 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.
1. Why was this amendment added to the Constitution?
 2. How could this amendment be circumvented?



15th Amendment

Ratified February 3, 1870.



The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

1. Why was this amendment added to the Constitution?
2. How could this amendment be circumvented?



Civil Rights 1865-1954



Plessy v. Ferguson (1896)

- Introduction of “separate, but equal doctrine”
- Segregation made legal.

Can separate public accommodations be made equal?

The Rise of Jim Crow

- Southern society totally segregated: railroads, restaurants, theatres, graveyards, water fountains, etc.



Civil Rights 1865-1954

The NAACP

- National Association for the Advancement of Colored People
- Fought against segregation and for civil rights
- Began to fight segregation through litigation

Why did the NAACP choose to fight segregation through litigation instead of legislation?

Brown v. Board of Education (1954)

- Class Action suit consisting of 4 carefully selected cases by NAACP
- SCOTUS ruling calls separate, but equal “inherently unequal”.
- Southern states/courts shall implement ruling “with all deliberate speed.” (2nd Brown Case)



The Civil Rights Movement

Leaders and Strategies

- Rosa Parks, MLK, SCLC, SNCC
- What were the goals of these leaders & groups?
- What tactics did they use to achieve these goals?
- Why were these tactics successful?

Political Factors

- What obstacles stood in the way of the bill in Congress?
- What obstacles stood in the way of the bill outside of Congress?

What was the political fallout from the passage of the bill?



The Limitations of the Civil Rights Laws

- Jim Crow Laws
- The Civil Rights Cases
- *Plessy v. Ferguson*

Voting Barriers

- White primary
- Grandfather clause
- Poll taxes
- Literacy tests
- Extralegal Methods of Enforcing White Supremacy



Segregation



De jure segregation

- Imposed by law
- Jim Crow laws

De facto segregation

- Results from social/economic conditions
- By personal choice
- White flight



Brown v. Board of Education



Brown v. Board of Education of Topeka (1953):

- ✓ Desegregation of schools
- ✓ Overturns Plessy v. Ferguson

Brown v. Board of Education (1954):

- ✓ Referred to as the second Brown decision
- ✓ “with all deliberate speed”



A View on Racial Segregation

Henry B. Brown – *Majority Opinion in Plessy v. Ferguson* (1896)

- If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals...Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

John Marshall Harland – *Dissenting Opinion in Plessy v. Ferguson* (1896)

- But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved... In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott case*.

A View on Racial Segregation

Earl Warren – *"Brown v. Board of Education"* (1954)

- In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world... We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

"The Southern Manifesto: Declaration of Constitutional Principles" (1956)

- We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power... The original Constitution does not mention education. Neither does the 14th Amendment nor any other amendment. The debates preceding the submission of the 14th Amendment clearly show that there was no intent that it should affect the system of education maintained by the States... This unwarranted exercise of power by the Court, contrary to the Constitution, is creating chaos and confusion in the States principally affected. It is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding. Without regard to the consent of the governed, outside agitators are threatening immediate and revolutionary changes in our public-school systems.

Policy Making Process



Civil Rights Act 1964

Ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin (ended Jim Crow Laws)

Title II (of Civil Rights Act of 1964): Places of public accommodation

- **Makes it a federal offense to discriminate against any customer or patron in a place of public accommodation because of race, color, religion, or national origin**
- *Heart of Atlanta Motel v. U.S. (1964)* - Congress has a right to regulate individual businesses in the interest of promoting interstate travel

Title VII (of Civil Rights Act of 1964): Employment

- **Makes it illegal for any employer in any industry affecting interstate commerce and employing 15 or more people to discriminate in employment practices against any person because of race, color, national origin, religion, or sex**



Voting Rights Act 1965

Section 2

- Reaffirmed that the right to vote shall not be abridged based on race/color/ethnic background (15th Amendment)

Section 4

- Banned literacy tests, grandfather clauses, and white primaries at the national level
- Determined which districts would be target for pre-clearance

Section 5 → “Preclearance”

- Targeted districts in the country where the likelihood of discrimination was the greatest
- District can't implement changes without clearance from the AG or the US District Court of DC
- AG can assign a “federal examiner” to these districts to observe election practices

* 24th Amendment (1964) banned poll taxes



Voter Registration Rates

	<u>March 1965</u>			<u>November 1988</u>		
	Black	White	Gap	Black	White	Gap
Alabama	19.3	69.2	49.9	68.4	75.0	6.6
Georgia	27.4	62.6	35.2	56.8	63.9	7.1
Louisiana	31.6	80.5	48.9	77.1	75.1	-2.0
Mississippi	6.7	69.9	63.2	74.2	80.5	6.3
North Carolina	46.8	96.8	50.0	58.2	65.6	7.4
South Carolina	37.3	75.7	38.4	56.7	61.8	5.1
Virginia	38.3	61.1	22.8	63.8	68.5	4.7



#BlacklivesMatter



Black lives matter protesters hold placards as they march to the city hall in Baltimore, Maryland, during demonstration over the death of Freddie Gray. Gray, 25, was arrested for possessing a switchblade knife outside the Gilmore Houses housing project on Baltimore's west side. Gray died from a severe spinal injury he allegedly received while in police custody.



Women's Rights Movement

First feminist wave

- Minor v. Happersett, 1874
- NAWSA, 1890
- Alice Paul's tactics
- Suffrage granted – 19th Amendment, 1920

Second feminist wave: 1960-present

- Rise of National Organization for Women (NOW), 1966 – dedicated to women's rights & gender equality via a constitutional amendment
- Other women's groups such as EMILY'S List, 1985 – pro-choice



Women's Rights Legislation:

- Equal Pay Act of 1963: requires equal pay for substantially equal work
 - Does not address occupational segregation / inequalities (female clerks v. male truck drivers)
 - 2009 - Lilly Ledbetter Fair Pay Act (Congressional action to overturn SCOTUS ruling: overturned the 180day rule)
 - President Obama's Executive Orders
 - 2014 - Prohibiting federal contractors from retaliating against employees who discuss their pay
- Title VII of Civil Rights Act of 1964: prohibited employment discrimination on the basis of sex
 - Extends to sexual harassment = sexual discrimination
- Equal Rights Amendment (ERA) Proposal, ratification struggle, and its ultimate defeat
 - 3 state strategy going forward?
- Title IX of Education Act of 1972: prohibited gender discrimination in federally subsidized education programs, including athletics



Women's Rights Movement



Silent Sentinels posted in front of the White House gates. The women were often attacked by onlookers and arrested, but the protests continued. Long prison terms were imposed in an attempt to scare women away. Women who could not personally stand on the picket line sent money to support the families of those who were jailed. Women in jail organized hunger strikes, only to be force-fed through the nose.

Suffrage Movement (1848-1920)

- 1848 Seneca Falls Convention
- National American Women's Suffrage Association (NAWSA) formed 1869
- 1920 → 19th Amendment passed

The Women's Rights Movement (1966-present)

- Title VII of the Civil Rights Act of 1964
- 1966 → National Organization for Women (NOW) formed
- Goals → Equal rights amendment & equal treatment through litigation



Equal Rights Amendment (ERA)



VOTING ON THE EQUAL RIGHTS AMENDMENT

The Equal Rights Amendment (ERA) passed Congress in 1972

- "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex."
- 1978 → 35 states had ratified, needed 38
- Amendment failed to attain $\frac{3}{4}$ of states before deadline in 1980.



Why was the ERA defeated?



- ❑ SCOTUS decision in *Roe v. Wade* in 1973 turned public opinion
- ❑ Some feared it would give government the power to draft women into the military
- ❑ Those who opposed the amendment were organized and vocal

What did the public think?

- Large majority of public supported the amendment.
- Many viewed it as a simple “fix” to the 14th Amendment
- Every President from Truman to Nixon backed its inclusion



Landmark Cases

Women's Rights

- ***Reed v. Reed (1971)***: Gender discrimination violates the equal protection clause of the Constitution.
- ***Craig v. Boren (1976)***: Gender discrimination can be justified only if it serves "important governmental objectives" and is "substantially related to those objectives."
- ***Rostker v. Goldberg (1981)***: Congress can draft men without drafting women.
- ***United States v. Virginia (1996)***: State may not finance an all-male military school.

GENDER DISCRIMINATION



Civil Rights: Hispanics and Latinos

Hernandez v. Texas (1954)

- Mexican-American citizens (and other racial groups) entitled to equal protection per 14th Amendment

Bilingual Education Act

- Title VII of Elementary and Secondary Education Act of 1968
- Provide federal funds for limited English speakers



Affirmative Action

Equality of Results v. Equality of Opportunity

- Making certain that people achieve the same result
- Giving people an equal chance to succeed

Reverse discrimination

- Using race or sex to give preferential treatment to some people

Purpose

- increase representation from a group that has historically been excluded/discriminated against
 - Wanted to promote equal participation, diversity
 - Anyone getting federal aid/contracts → Employment, education, government contracts



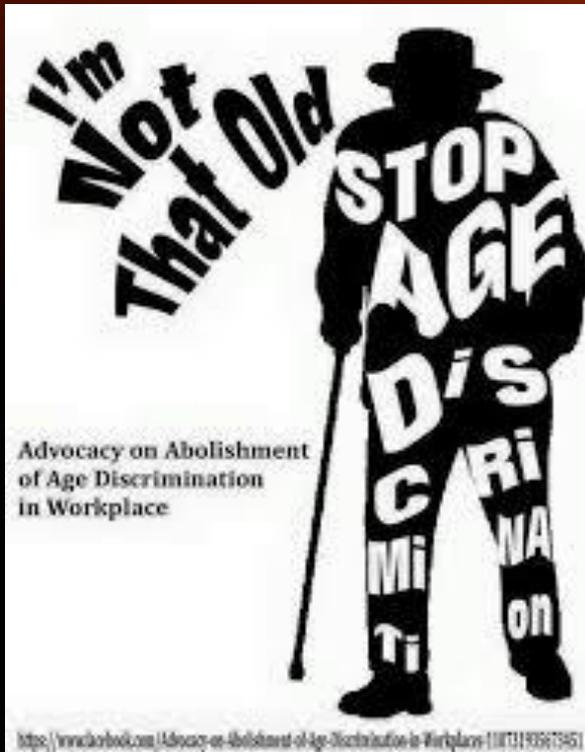
AFFIRMATIVE ACTION

Affirmative Action

- **Regents of the University of California v. Bakke (1978):** In a confused set of rival opinions, the decisive vote was cast by Justice Powell, who said that a quota-like ban on Bakke's admission was unconstitutional but that "diversity" was a legitimate goal that could be pursued by taking race into account.
- **United Steelworkers v. Weber (1979):** Despite the ban on racial classifications in the 1964 Civil Rights Act, this case upheld the use of race in an employment agreement between the steelworkers union and steel plant.
- **Richmond v. Croson (1989):** Affirmative action plans must be judged by the strict scrutiny standard that requires any race-conscious plan to be narrowly tailored to serve a compelling interest.
- **Grutter v. Bollinger and Gratz v. Bollinger (2003):** Numerical benefits cannot be used to admit minorities into college, but race can be a "plus factor" in making those decisions.
- **Parents v. Seattle School District (2007):** Race cannot be used to decide which students may attend especially popular high schools because this was not "narrowly tailored" to achieve a "compelling" goal.



Age Discrimination



Age Discrimination in Employment Act, 1967 (ADEA): covers individuals over the age of 40, prohibits discrimination against individuals on the basis of age unless age is shown to be a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.



American With Disabilities Act, 1990

Definition of Disabled: physical or mental impairment that substantially limits one's everyday activities

- Extended the protections of the Civil Rights Act to citizens with physical or mental disabilities.
 - Guarantees access to public facilities and employment
 - Requires employer to “reasonably accommodate” the needs of persons with disabilities unless to do so would cause the employer to suffer “undo hardship.”
- Implemented by states per order of the federal government
Categorical Grant? Block Grant? Unfunded Mandate?
- SCOTUS limited the definition of disabled in a series of cases in 1999: bipolar, epilepsy, diabetes, and other conditions do not constitute a disability if conditions can be corrected by medication.



LGBTQ Rights:

Bowers v. Hardwick (1986)

- Georgia law prohibiting homosexual relations (sodomy laws) ruled constitutional

Lawrence v. Texas (2003)

- Overturned *Bowers v. Hardwick*
- Sodomy laws now unconstitutional

Defense of Marriage Act (DOMA) (1996)

- Federal government recognizes marriage as legal union between male and female
- Some states recognize same-sex marriage; some outlaw it; some recognize same-sex civil unions
- Ruled unconstitutional by *United States v. Windsor* (2013)

Don't Ask, Don't Tell

- Policy enacted in the military allowing discharges for homosexuality
- Military could not ask sexual orientation, you could not be openly gay
- Repealed in 2010

Same-Sex Marriage

- *United States v. Windsor* (2013)
- *Obergefell v. Hodges* (2015)



How Things Work

How the Court Decides If You Discriminate

The Supreme Court has produced three different tests to decide if a government policy produces unconstitutional discrimination. Don't be surprised if you find it a bit hard to tell them apart.

1. **Rational basis** If the policy uses reasonable means to achieve a legitimate government goal, it is constitutional.

Examples: If the government says you can't buy a drink until you are 21, this meets the rational basis test: the government wants to prevent children from drinking, and age 21 is a reasonable means to define when a person is an adult. And a state can ban advertising on trucks unless the ad is about the truck owner's own business.

2. **Intermediate scrutiny** If the policy "serves an important government interest" and is "substantially related" to serving that interest, it is constitutional.

Examples: Men can be punished for statutory rape even if women are not punished because

men and women are not "similarly situated." And men can be barred from entering hospital delivery rooms even though (obviously) women are admitted.

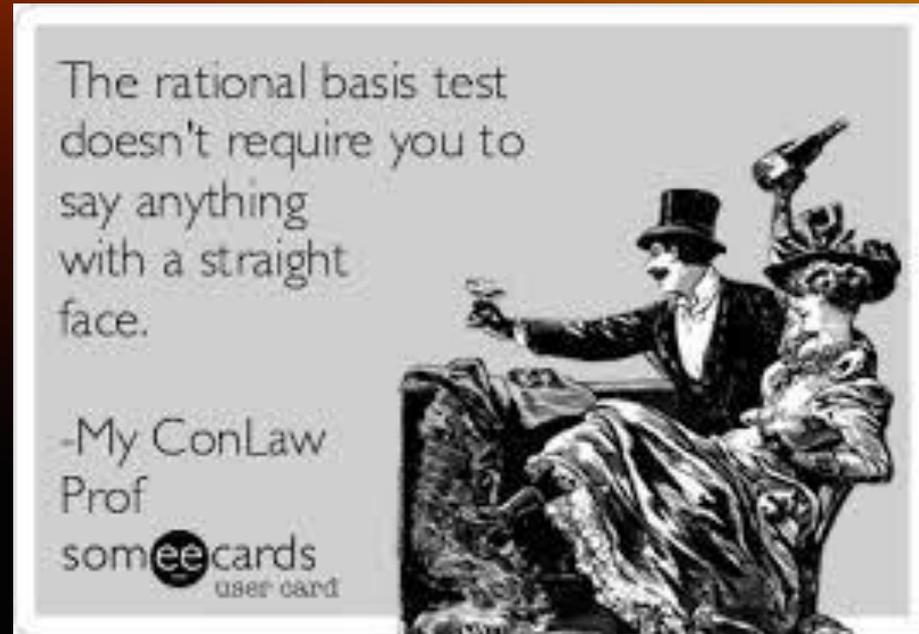
3. **Strict scrutiny** To be constitutional, the discrimination must serve a "compelling government interest," it must be "narrowly tailored" to attain that interest, and it must use the "least restrictive means" to attain it.

Examples: Distinctions based on race, ethnicity, religion, or voting must pass the strict scrutiny test. You cannot bar black children from a public school or black adults from voting, and you cannot prevent one religion from knocking on your door to promote its views.



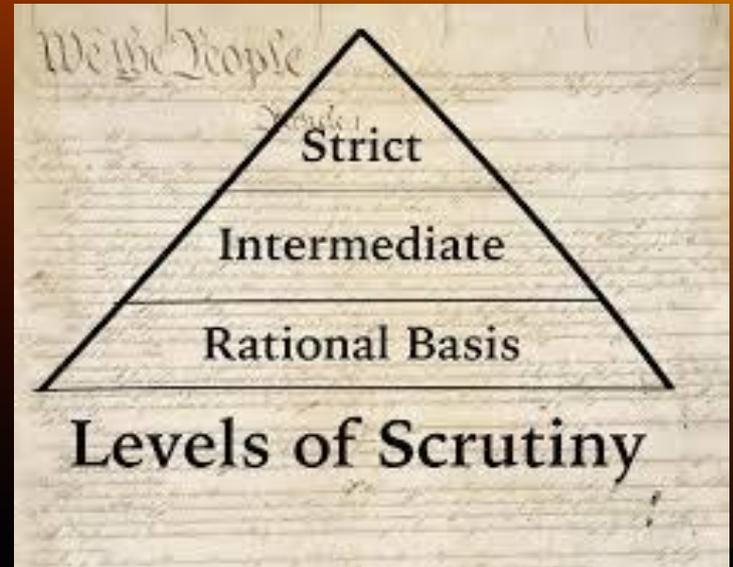
Rational Basis

- Classification must bear rational relationship to some legitimate government purpose
- Assumes law is constitutional as long as it meets reasonable government interest
- Burden on party challenging law to show classification is unreasonable
 - Ex: age, mental ability



Intermediate Scrutiny

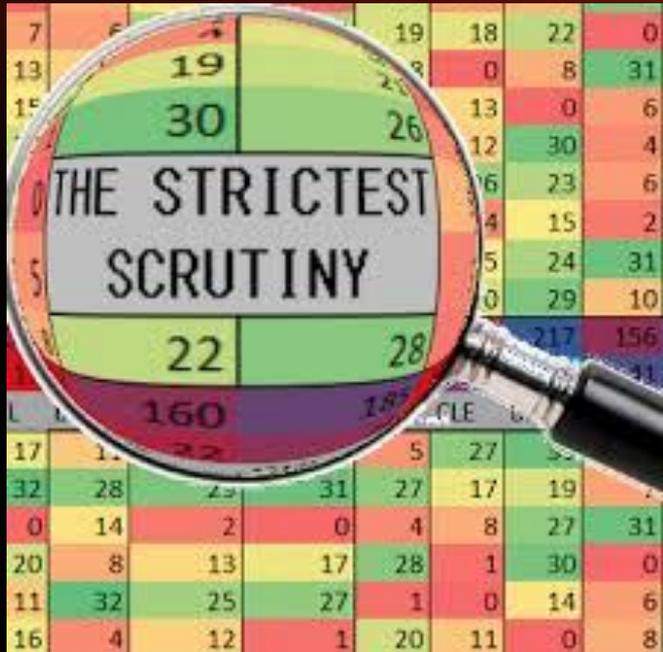
- Classification must be “substantially related to an important gov’t purpose”
 - Used to test gender-based laws
 - Burden on gov’t



Strict Scrutiny

Highest standard of judicial review!

- Based on “compelling interest” → no other way for government to accomplish goal
- Used to test suspect classifications → where people have been deliberately treated unequally
 - Race, national origin, sex
- Also for laws infringing on fundamental rights (if guaranteed by Constitution)
 - Religion, speech, voting rights ...



CIVIL LIBERTIES: UNIT 3B



Unit 3B: Civil Liberties

1 Incorporation of the 14th Amendment

2 Freedoms of Religion & Expression

3 Freedoms of press, assembly, & petition

4 Rights of the Accused



Original Constitutional Guarantees

Writ of *habeas corpus*

- Directs any official having a person in custody to produce the prisoner in court and to explain to the judge why the prisoner is being held; Can only be suspended during times of rebellion (Civil War)
- **Person has the right to know why he or she is being imprisoned**

Ex post facto laws

- Latin for “after the fact”
- **Punishes a person for something that was not a crime when he did it (retroactive punishment); May not be passed by Congress**

Bills of attainder

- **An act that punishes a person without benefit of trial**
- **May not be passed by Congress**



Bill of Rights & the States

Anti-Federalists insisted a Bill of Rights be added to the Constitution to protect individual liberties against incursions from the national government.



The Bill of Rights (1791)

First Amendment

- Establishment and free exercise of religion, speech, press, assembly, petition

Second Amendment

- Right to bear arms

Third Amendment

- Quartering soldiers

Fourth Amendment

- Searches and seizures

Fifth Amendment

- Grand jury, double jeopardy, self-incrimination, due process, eminent domain

Sixth Amendment

- Speedy and fair public trial by jury, informed of charges, confrontation of witnesses, right to attorney

Seventh Amendment

- Trial by jury in civil cases

Eighth Amendment

- Cruel and unusual punishment

Ninth Amendment

- Un-enumerated rights of the people

Tenth Amendment

- Reserved powers



14th Amendment (1868): Find It!

Section 1.

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. 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.

1. Citizenship Clause - **underline it & label #1**
2. Privileges and Immunities Clause - **circle it & label #2**
3. Due Process Clause - **underline it and label #3**
4. Equal Protection Clause - **circle it and label #4**



Selective Incorporation

WHAT IS SELECTIVE INCORPORATION?



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*SCOTUS initially ruled in *Barron v.**

Baltimore, (1833) That the Bill of Rights only applied to the federal government and did not include protections against state governments.

Future rulings would begin the process of **selective incorporation**: The process by which provisions of the Bill of Rights are brought within the scope of the Fourteenth Amendment and so applied to state and local governments.



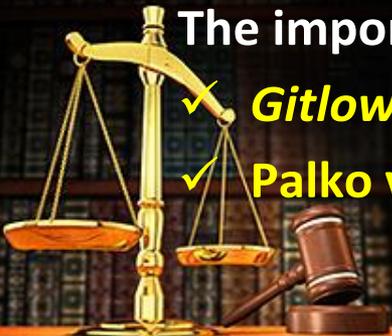
Selective Incorporation

Modifying Effect of the 14th Amendment

- The due process clause has been used to apply some of the provisions of the Bill of Rights to the states.
- This clause bans states from denying life, liberty, or property without due process of law.
- The “total incorporation” view would apply all of the provisions of the Bill of Rights to the states. It argues for nationalization (or federalization) of the Bill of Rights.
- The “selective incorporation” view would apply only some of these provisions, and would do so on a case-by-case basis.

The important cases here:

- ✓ *Gitlow v. New York* (1925)
- ✓ *Palko v. Connecticut* (1937)



The Warren Court 1953-1969



In 1953, President Eisenhower nominated Earl Warren to be Chief Justice of SCOTUS. Warren's term was one of the most important in the history of the Court. The Warren Court handed down several landmark cases that almost completely incorporated the first eight amendments into the due process clause of the 14th Amendment



Selective Incorporation

Subsequent cases federalized parts of the Bill of Rights:

- 1st – Assembly, Petition, Religion
- 2nd – Right to Bear Arms
- 4th – Search and Seizure protections
- 5th – Self-Incrimination, Double Jeopardy
- 6th – Right to Counsel, Right to Bring Witnesses, Right to Confront Witnesses
- 8th – Protection against Cruel and Unusual Punishment

All provisions of the Bill of Rights except Amendment 3, Amendment 7, and the Grand Jury requirement of the 5th Amendment have been federalized.

How has selective incorporation profoundly altered American federalism?



1st Amendment: Religion: Establishment Clause

Establishment Clause:

- “Congress shall make no law respecting an establishment of religion...”
- Prohibits government from establishing any official religion or sponsoring any religion(s) over others
- *Everson v. Board of Education* (1947)
 - Incorporated Establishment Clause to states

SCOTUS Cases:

Engel v. Vitale (1962)

- School-sanctioned public prayer unconstitutional

LEMON V. KURTZMAN (1971) *Established the LEMON TEST:* a law must...

- Be primarily secular in purpose
- Neither aid nor inhibit religion
- Not create excessive government/religion entanglements



Establishment Clause

- **No Government “Establishment of Religion”**
 - A “wall of separation” - Separation of church and state (words of Thomas Jefferson)
- **Basic meaning of establishment clause is that government may not establish an official religion.**
 - **“Accommodationist View”**: Government should bend a bit and allow a certain degree of church/state blending (allowing nativity scenes on city property, and allowing a non-denominational prayer in public school)
 - **“Separationist View”**: Government should allow virtually no blending of church and state. There should be a “wall of separation” between the two.



Religion: free Exercise Clause

PROVIDES FOR FREEDOM OF WORSHIP

Religious practices that have been restricted:

- Polygamy (*Reynolds v. U.S.*)
- Drug use (*Oregon v. Smith*)
- Not vaccinating children of Christian Scientists before they enter school
- Not paying Social Security taxes (Amish)
- Wearing a Jewish skullcap (Yarmulke) in the military

Religious practices that have been permitted:

- Not saluting flag in public school (Jehovah's Witnesses)
- Not sending children to school past the 8th Grade (Amish)
- Animal Sacrifice (Santeria case)

- Article 6 bans religious tests/oaths as qualifications to hold public office.



FREEDOM OF SPEECH – HISTORIC TEST

The Clear and Present Danger Test

Schenck v. United States, 1919

- Created a precedent that 1st Amendment guarantees of free speech are not absolute; Public authorities could limit free speech
- Speech may be restricted when it incites violent action (imminent threat to society such as falsely shouting “Fire” in crowded theater)

Brandenburg v. Ohio, 1969

- Scotus limited the “clear and present danger” test by ruling that the government could punish the advocacy of illegal action only if “such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”



NON-PROTECTED SPEECH

Supreme Court holds that all speech is protected unless it falls into one of the four narrow categories:

1. Libel and slander
2. Obscenity and pornography
3. Fighting words
4. Commercial speech



NON-PROTECTED SPEECH

Libel and slander

- Libel is a written defamation that falsely attacks a person's good name and reputation
- Slander is a spoken defamation that falsely attacks a person's good name and reputation

***New York Times v. Sullivan (1964)* - Supreme Court established the guidelines for libel cases**

- Public officials and public figures must first prove "actual malice"
- State laws may allow private persons to collect damages without proving actual malice



Limits on student speech

Bethel v. Fraser (1986) – school can suspend a student from school for making a speech full of sexual double entendres or innuendos.



She said the man sat on the benches in only his boxer shorts for about five minutes, and exposed himself.

“It wasn’t long, but it was long enough,” Mrs. Mankin said.

The Star-Democrat (Easton, Md.) 7/1/82





Although students do have a protected right to free speech at school under certain conditions, that right is not absolute. The Supreme Court has limited student speech in a variety of ways.



NON-PROTECTED SPEECH

Obscenity (i.e. pornography)

- *Miller v. California* (1973) gave constitutional definition of obscenity
 1. Appeals to prurient interest in sex,
 2. Patently offensive, and
 3. Must lack serious literary/artistic/political/scientific value.

If not meeting all three criteria, then not obscene

- Sexually explicit materials about or aimed at minors are not protected by the First Amendment



NON-PROTECTED SPEECH

Fighting words

- Governments may punish certain well-defined and narrowly limited classes of speech that by their very utterance inflict injury or tend to incite an immediate breach of peace

Commercial speech

- Commercial speech (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters.
- The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising.



PROTECTED SPEECH

Prior restraint

- Blocking speech before it is given.
- Such action is presumed by courts to be unconstitutional.
- In the Pentagon Papers case (*New York Times v. U.S.*), the court refused to impose prior restraint: the revelations may have embarrassed the government, but they did not endanger national security.

Symbolic speech

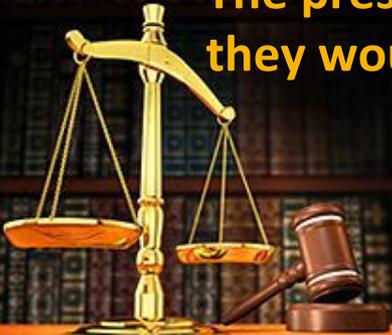
- *Tinker v. Des Moines (1969)* – wearing black armband at school at protest Vietnam War
- *Texas v. Johnson (1989)* – flag burning



FREEDOM OF THE PRESS

CONTROVERSIAL AREAS

- **Executive Privilege**
 - Right of presidents to withhold information from the courts.
 - *U.S. v. Nixon (1974)*: A President generally does have executive privilege, but not in criminal cases. Even the President is not above the law.
- **Shield laws**
 - Protect reporters from having to reveal their sources.
 - The press claims that without them, their sources would “dry up,” and they would be unable to provide information to the public.



FREEDOM OF THE PRESS

CONTROVERSIAL AREAS

Courts have protected press's right to publish

- The 1966 Freedom of Information Act
 - Liberalized access to non-classified government records
 - Electronic Freedom of Information Act of 1996 requires most federal agencies to put their files online and to establish an index of their records - NASA a leader (UFO documents!)

– Student Press

Hazelwood v. Kuhlmeier (1988)

- High school newspaper was not a public forum and could therefore be restricted just as other high school activities could be restricted by school authorities



FREEDOM OF ASSEMBLY

PUBLIC FORUMS AND TIME, PLACE, AND MANNER REGULATIONS

- Governments may not specify what can or cannot be said, but they can make reasonable time, place, and manner regulations for the holdings of assemblies, protests, or gatherings
- Police must have right to order groups to disperse (public order)
- Problem of “heckler’s veto”: if govt. restricted assembly every time an opposing group claimed that there might be “violence or disorder” there would be very few assemblies. Courts are therefore reluctant to impose prior restraint.
- The extent to which governments may limit access depends on the kind of forums involved:
 - Public forums (historically associated with free exercise such as streets, parks)
 - Limited public forums (public property such as city hall or schools after-hours)
 - Nonpublic forums (libraries, courthouses, government offices) - can not interfere with normal activities in order to stage a public protest
- Civil disobedience is not a protected right



FOURTH AMENDMENT RIGHTS

The Constitution forbids only "unreasonable" searches and seizures

A police search without consent is constitutionally unreasonable unless it has been authorized by a valid search warrant

- Ex: police use of sobriety checkpoints in enforcing drunk driving laws

The constitutional requirements of a specific search warrant

- Must describe what places are to be searched
- Must describe what things are to be seized



FOURTH AMENDMENT RIGHTS

The Exclusionary Rule



Mapp v. Ohio (1961) - The Supreme Court ruled **that** evidence obtained unconstitutionally cannot be used in court against person from whom it was seized

Adopted mainly to prevent police misconduct

Exceptions: Not used if:

- There would be “**inevitable discovery**” of the evidence (***Nix v. Williams***)
- Police operate “**in good faith**” that the warrant was valid (***U.S. v. Leon***)



FIFTH AMENDMENT RIGHTS

Checklist of Basic Rights

- ✓ Presumption of innocence
- ✓ Meaningful written notice
- ✓ Opportunity to be heard
- ✓ Impartial tribunal
- ✓ Right to confront accuser
- ✓ Right to record hearing
- ✓ Right to active participation of counsel/advisor (in some states)

Due Process Rights

When government denies life, liberty or property, it must use fair procedures:

- **Observe Bill of Rights**
- **Provide reasonable notice**
- **Provide chance to be heard**

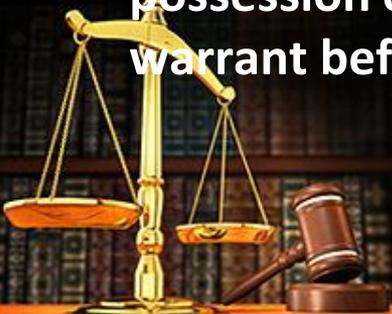


FIFTH AMENDMENT RIGHTS

Due Process Rights

- Procedural due process refers to the methods by which a law is enforced; pertains not to the law itself, but to the way in which the law is applied
- Examples of violations of procedural due process:
 - Illegal Searches or Unfair Court Procedures.
- Substantive due process places limits on what a government may do; pertains to the content of the law
- Examples of violations of substantive due process:
 - Ban on all abortions within a state or a county ordinance banning all firearms.

Example of distinction between procedural and substantive: a law prohibits possession of narcotics (substantive) and police must generally obtain a warrant before conducting a search for narcotics in one's home (procedural).



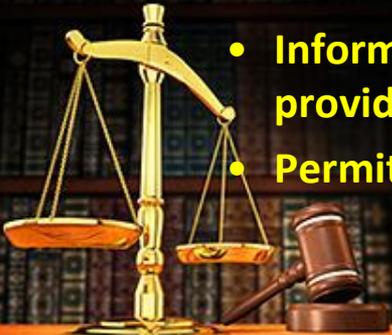
FIFTH AMENDMENT RIGHTS

No Self-incrimination - the right to remain silent

- You have the right to remain silent
 - You do not have to testify against yourself; “I plead the 5th”
 - Designed so that the burden is on the government to prove guilt

The Miranda Warning

- *Miranda v. Arizona* (1966) - Supreme Court announced that no conviction could stand if evidence introduced at the trial had been obtained by the police during "custodial interrogation" unless suspects have been:
 - Notified that they are free to remain silent
 - Warned that what they say may be used against them in court
 - Told that they have a right to have attorneys present during questioning
 - Informed that if they cannot afford to hire their own lawyer, attorneys will be provided for them
 - Permitted to terminate any stage of the police interrogation



FIFTH AMENDMENT RIGHTS

Double jeopardy

- Fifth amendment prevents individual from being tried again (if found innocent)
 - Still can be tried by both federal and state governments for the same offense (or by two states)
 - Double jeopardy does not forbid civil prosecution after acquittal in a criminal trial

Grand Jury Indictment

- Grand jury indictment is necessary in order to require anyone to stand trial for a serious crime
- Grand jurors are concerned with whether there is enough evidence to warrant a trial
- Plea bargaining - pleading guilty to a lesser offense in return for not having to stand trial for a more serious charge (about 90% of cases end in a plea deal)



SIXTH AMENDMENT RIGHTS – “FAIR TRIAL”

The Right to counsel

- Judges have an obligation to ensure that all persons subject to any kind of custodial interrogation are represented by lawyers
- Right to counsel extends to all hearings for all offenses for which an accused could be deprived of liberty
- In *Gideon v. Wainwright* (1963), the United States Supreme Court ruled that the Sixth Amendment right-to-counsel provision applies to those accused of major crimes under state laws



SIXTH AMENDMENT RIGHTS – “FAIR TRIAL”

- Government is obligated to give the defendant a speedy trial
- Government is obligated to give the defendant a public trial
- An impartial jury consists of persons who represent a fair cross-section of the community
- Defendant has the constitutional right to obtain witness in his/her favor
 - Constitution gives accused persons the right to be confronted with the witnesses against them



EIGHTH AMENDMENT RIGHTS

NO excessive bail, excessive fines, or cruel and unusual punishments

- **The Death Penalty**

- Eighth Amendment forbids the inflicting of cruel and unusual punishments
- The death penalty is not considered cruel and unusual punishment in America
- ***Furman v. Georgia (1972)* - Court halted capital punishment until states could administer it in "consistent fashion" decision that ruled on the requirement for a degree of consistency in the application of the death penalty.**
 - The case led to a *de facto* moratorium on capital punishment throughout the United States, which came to an end when *Gregg v. Georgia* was decided in 1976.
- ***Gregg v. Georgia (1976)* - The death penalty does not, automatically, violate the Eighth Amendment.**
 - If the jury is furnished with standards to direct and limit the sentencing discretion, and the jury's decision is subjected to meaningful appellate review, the death sentence may be constitutional.
 - If, however, the death penalty is mandatory, such that there is no provision for mercy based on the characteristics of the offender, then it is unconstitutional.

