

Civil Liberties – A General Overview

CIVIL LIBERTIES
Civil liberties refer to fundamental rights and freedoms, which are typically protected by law and are essential for maintaining a free and democratic society.

OVERVIEW
Civil liberties ensure that individuals can live their lives without fear of persecution or discrimination. They serve as a safeguard against government abuse of power and are integral to fostering a society that respects and values human dignity, equality, and individual autonomy. Upholding civil liberties is crucial for promoting social justice, inclusivity, and the overall well-being of citizens.

EXAMPLES

- **Freedom of Speech:** Freedom of speech grants individuals the liberty to express their opinions, ideas, and beliefs without censorship or interference from the government.
- **Freedom of Religion:** Freedom of religion is the fundamental right that ensures individuals are free to practice, worship, or change their religion without any interference.

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The Constitution and the Bill of Rights protect our individual freedoms. The government must balance the rights of citizens and their liberties with the need for public safety and order. The due process and equal protection clauses of the 14th Amendment protect our individual liberties and civil rights from violations by the government. The due process clause prohibits government from taking away our life, liberty, and property.

The Supreme Court plays a critical role in interpreting the equal protection and due process clauses. Judicial review prevents states from infringing on fundamental liberties and rights. Important precedents have been set in cases involving freedom of expression, freedom of religion, the right to bear arms, privacy, and the rights of criminal defendants.

Citizen led groups have used social movements to assert their liberties and rights based on race, ethnicity, sexual orientation, gender identity and disability. Congress must decide how to weigh the rights of various groups against the claims from the rest of society.

CIVIL LIBERTIES are constitutionally established guarantees that protect the fundamental rights and freedoms of individuals from unreasonable governmental interference.

CIVIL RIGHTS are the protections for individuals from discrimination based on race, national origin, religion, sex, and other characteristics, ensuring equal treatment under the law.

**CIVIL RIGHTS
VERSUS
CIVIL LIBERTIES**

CIVIL RIGHTS	CIVIL LIBERTIES
A set of rights or laws granted by the government that protects the citizens from discrimination to grant social equality and equal protection under the law	A set of laws where a person's rights to be subject only to laws established for the good of the community
Imposed by the legislature	Imposed by the constitution or the Bill of Rights
Specify the social and political equality to avoid social discrimination	Focus on the basic human rights. Hence there is no specification for one particular thing

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The issue of Privacy and Technology

The technological capabilities of cellphones today with all of the data that is stored on them questions about how much privacy Americans can reasonably expect, especially in relation to law enforcement. Under what conditions should it be acceptable for law enforcement to collect location data? What restrictions should be placed on the collection, analysis, and sharing of this data? What safeguards should be put in place?

Remember, the Fourth Amendment states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

In a Supreme Court case back in 2018 (*Carpenter v. United States*), the Court in a 5-4 ruling determined that the acquisition of a person’s location history through cell tower data constituted a search and that the government needed a warrant for probable cause. The Court did note however, there may be justification for releasing cell tower data without a warrant if there are major issues such as bomb threats, active shootings, and child abductions.

Privacy today is more than cell phone technology. American political institutions are always facing challenges of balancing civil liberties with public safety when technology redefines what privacy means.

The Constitution and the Bill of Rights

An overview of protections contained within the Bill of Rights

Amendment	Protection
First Amendment	Prevents the establishment of an official religion, and protects the free exercise of religion, and freedom of speech, the press, assembly, and petition
Second Amendment	The right to keep and bear arms
Third Amendment	No forced quartering of troops in homes
Fourth Amendment	Protects against unreasonable search and seizure and establishes the right to have warrants issued before an arrest or search
Fifth Amendment	Right to a grand jury indictment in criminal cases, protection against double jeopardy and self-incrimination, the right to due process of law, and the right to just compensation when private property is taken for public use
Sixth Amendment	Protections during criminal prosecutions for a speedy and public trial by an impartial jury, the right to confront witnesses, the right to compel favorable witnesses to testify in one's defense, and the right to the assistance of defense counsel
Seventh Amendment	Right to a trial by jury in certain civil suits
Eighth Amendment	Protections against excessive bail, excessive fines, and cruel and unusual punishment
Ninth Amendment	Protection of rights not listed in the Constitution
Tenth Amendment	Powers not delegated to the federal government, nor prohibited by it to the states, are reserved to the states or to the people.

The language in the Bill of Rights does **not** restrict the actions of state governments and their officials, which has meant that for most of the nation's history, the explicit protections contained within the Bill of Rights does **not** apply to state laws and actions.

The **14th Amendment** in 1868 created the foundation for extending protections from the Bill of Rights to state laws and actions. It guaranteed against the deprivation by any state of a person's life, liberty, or property without due process of the law which ensures state governments must use legal safeguards.

Due process means the government must treat all persons fairly. This means fairness

- (1) In the law (substantive due process) and
- (2) In the procedures the government must follow (procedural due process).

Substantive Due Process – the requirement that the law be fundamentally fair to all citizens.

Procedural Due Process – the requirement that government officials use methods that are not arbitrary when making and carrying out decisions affecting constitutionally protected rights. Basically, it is how the government must act!

Gitlow v. New York

<https://www.oyez.org/cases/1900-1940/268us652>

In 1919, Benjamin Gitlow and others published “**The Left Wing Manifesto**,” that opposed America’s involvement in World War I, capitalism, and American imperialism. The manifest called for the working class to rise up against society.



In November 1919, Gitlow was arrested and charged under the **New York State Criminal Anarchy Act** – a felony to advocate for overthrowing the government by force or violence. Gitlow was found guilty and sentenced to between five and ten years hard labor.

Gitlow appealed claiming the New York law had violated his rights of substantive due process under the 14th Amendment. However, he lost his appeal. The majority opinion stated that there are restrictions on speech and on the press that are legitimate if they threaten public welfare or safety.

The opinion stated that the freedoms of speech and the press do not give individuals the right to “speak or publish, without responsibility, whatever one may choose” and it does not grant “immunity for every possible use of language.” The Supreme Court found that Gitlow’s speech was **not** protected by the First Amendment because it called for a revolution.

Even though Gitlow lost his appeal, his case changed the nation’s constitutional law. The Supreme Court had incorporated the First Amendment and applied it to the states through the Fourteenth Amendment. It now created limits on states’ abilities to restrict expression. Freedoms of speech and the press are now fundamental freedoms that states may not restrict unless there is a compelling reason to do so. The Supreme Court expanded the protection of civil liberties under the doctrine of selective incorporation while at the same time stating that Gitlow’s particular speech is not protected under the First Amendment.

Selective Incorporation is the case-by-case process through which the Supreme Court has affirmed that almost all of the protections in the Bill of Rights also apply to state governments.

Selective Incorporation has changed the balance of power under our federal system by giving the national government more power to limit the actions of the states. In each selective incorporation case, the Court used the due process clause of the Fourteenth Amendment to expand the protection of the Bill of Rights to cover state laws and actions.

Over the next two decades after the *Gitlow* case, the Supreme Court issued a series of decisions that incorporated most of the First Amendment's protections for speech, the press, assembly, and religion.

Later, in 2010, the Court incorporated the Second Amendment's protection of the "right to keep and bear arms" through the due process clause of the Fourteenth Amendment.

Key issues to remember regarding this handout.

The protections set out in the Bill of Rights initially applied to the actions of the federal government and not the state governments.

In *Gitlow v. New York*, the Supreme Court began the process of selective incorporation. Now, on a case-by-case basis, most (but not all) of the rights in the Bill of Rights apply to the actions of the states.

It is important to know the following definitions:

Due Process Clause: the clause in the 14th Amendment that restricts state governments from denying citizens life, liberty, or property without legal safeguards

Procedural Due Process: the requirement that government officials use methods that are not arbitrary when making and carrying out decisions affecting constitutionally protected rights.

Substantive Due Process: the requirement that the law be fundamentally fair to all citizens.

Selective Incorporation: the case-by-case process through which the Supreme Court affirmed that almost all of the protections in the Bill of Rights also apply to state governments.

Selective Incorporation of the Bill of Rights Table

Amendment	Right Incorporated	Supreme Court Decision
First	Freedom from establishment of religion	<i>Everson v. Board of Education</i> , 330 U.S. 1 (1947)
	Freedom of religious expression	<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940)
	Freedom of speech	<i>Gitlow v. New York</i> , 268 U.S. 652 (1925)
	Freedom of the press	<i>Near v. Minnesota ex rel. Olson</i> , 283 U.S. 697 (1931)
	Right to peaceably assemble	<i>De Jonge v. Oregon</i> , 299 U.S. 353 (1937)
Second	Right to keep and bear arms	<i>McDonald v. Chicago</i> , 561 U.S. 742 (2010)
Third	Right not to have soldiers quartered in homes	Not incorporated
Fourth	Protection against unreasonable searches and seizures	<i>Wolf v. Colorado</i> , 338 U.S. 25 (1949) (Illegally obtained evidence is still permissible in trial, however.)
	Warrant needed for search and seizure	<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961) (Illegally obtained evidence cannot be used in trial.)
Fifth	Right to indictment by grand jury in cases involving a serious crime	Not incorporated
	Protection against double jeopardy	<i>Benton v. Maryland</i> , 395 U.S. 784 (1969)
	Protection against self-incrimination	<i>Malloy v. Hogan</i> , 378 U.S. 1 (1964)
	Right of just compensation for private property taken	<i>Chicago, Burlington, and Quincy Railroad v. City of Chicago</i> , 166 U.S. 226 (1897)
Sixth	Right to a speedy and public trial	<i>In re Oliver</i> , 333 U.S. 257 (1948); <i>Klopfer v. North Carolina</i> , 386 U.S. 213 (1967)
	Right to trial by an impartial jury	<i>Parker v. Gladden</i> , 385 U.S. 363 (1966)
	Right to confront witnesses	<i>Pointer v. Texas</i> , 380 U.S. 400 (1965)
	Right to compel witnesses to testify in the defendant's favor	<i>Washington v. Texas</i> , 388 U.S. 14 (1967)
	Right to counsel in cases involving capital punishment	<i>Powell v. Alabama</i> , 287 U.S. 45 (1932)
	Right to counsel in felony cases	<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)
Seventh	Right to trial by jury in civil cases	Not incorporated
Eighth	Protection against excessive bail or fines	Protection against excessive fines was incorporated in <i>Timbs v. Indiana</i> , 586 U.S. ____ (2019).*
	Protection against cruel and unusual punishment	<i>Robinson v. California</i> , 370 U.S. 660 (1962)

*Note: Some constitutional scholars disagree on whether the protection against excessive bail has been formally incorporated. See *Schilb v. Kuebel*, 404 U.S. 357 (1971).