Civil Liberties and Civil Rights

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Civil Liberties

- Protections from government power.
- E.g. unreasonable search and seizure, freedom of the press, etc.

*Can you think of any other examples?*
Why are Civil Liberties important in contemporary America?

1. **New technologies** create new areas where civil liberties apply. Who would've thought about freedom of expression on the internet in 1765?

2. **Modern lifestyles** — “cultural changes bringing freer expression in lifestyle, art, and politics (KGK 193).”
Civil Liberties

Who protects civil liberties?

- As discussed, civil rights are protected by majority decisions.
- Civil Liberties on the other hand are principally protected by Supreme Court decisions (hence, minority driven).

Why do civil rights protections require majority action and civil liberties require actions by minority actors?
Bill of Rights — insulate citizens from certain government actions.

**Fourteenth Amendment** — passed after Civil War. Gave federal government ability to protect former slaves.

Supreme Court interprets 14th amendment to give them authority over state/local laws.
Freedom Of Speech

- First Amendment
- “Congress shall make no law...abridging the freedom of speech.”

- What is speech?
After World War I various states enact sedition laws.

**Sedition Laws** — Laws that ban certain language from being used.

**Schenck v. United States (1919)** — Supreme Court rules that states can only ban language that represents *clear and present danger*.

Contemporary Supreme Court uses clear and present danger test on first amendment issues and security.
Brandenburg v. Ohio (1969) — Supreme Court says that language can only be banned if it advocates imminent legal action. Thus, individuals can advocate illegal action which is not imminent.

Supreme Court also holds that KKK can go on marches through African American/Jewish neighborhoods.
Freedom of the Press

- First Amendment
- “Congress shall make no law...abridging the freedom...of the press.”

- Why is a free press essential to democracy?
Freedom of Press – Why?

- If citizens learn from the press shouldn't political knowledge be high?
- Consider this: Converse (1964) finds that 1.9% of Americans are well-informed and that many citizens switch party affiliation over the course of months.

- *Given the above, does a free press matter? Are Americans politically aware?*
Freedom of Press — Limitations

- **Press cannot:**
  - **Slander** — “Forms of false and malicious information that damage another person’s reputation (KGK 792).”
  - **Libel** — “A published falsehood or statement resulting in the defamation of someone’s character (KGK 188).”

- Are both of these things bad? Should they be allowed?
Freedom of Religion

- First Amendment
- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”
- Establishment of Religion Clause
- Free Exercise Clause
Lemon v. Kurtzman (1971) — Supreme Court decided that state laws must be the following to not violate the first amendment (aka lemon test).

**Lemon Test:**

1. statute must have legislative purpose.
2. state’s primary effects must not advance or impede religion.
3. statute must not foster entanglement of government and religion.
By 1900’s justices abandon the Lemon test in favor of the Neutrality Test.

Neutrality Test — if a statute favors one religious group over another it is unconstitutional.
Freedom of Religion In Practice

- **Engle v. Vitale (1962)** – Supreme Court rules school prayer is unconstitutional.
  
  “Almighty God, we acknowledge our dependence on Thee, and we beg thy blessing upon us, our parents, our teachers, and our country.”

- **School District of Abington Township v. Schempp (1963)** – Supreme Court rules that reading of Bible verses in schools is unconstitutional.

- 2001 - Courts rule moment of silence before class is unconstitutional.

- **What do you think?**
Second Amendment — Right to Bear Arms

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

- **US v. Miller (1939)** — Supreme Court rules that rights to bear arms is collective right and that individuals must register sawed off shot guns.

Fourth Amendment

- Protects against illegal searches and seizures.
- Largely where the “right to privacy” comes from.
- **Terry v. Ohio (1968)** — Agents of the state must have probable cause to search individuals.
- **Katz v. United States (1967)** — Supreme Court rules wiretap on public phone booth is unconstitutional. Thus, public spaces are protected, not just the individuals private domain.

- *What do you think?*
Fourth Amendment

Criterion to search without warrant:

1. “during a valid arrest.”
2. “when searching to ensure that evidence is not lost.”
3. “when searching with the consent of the subject.”
4. “when the search occurs in ‘hot pursuit’ of a suspect in the act of committing a crime.”
5. “when seizing evidence that is in plain view.”
6. “when searching places other than residences that the Court has decided merit low protection.”
Fifth Amendment

“'I plead the fifth!'”

“No person...shall be compelled...to be a witness against himself.”

Until the 1960’s police officers employed “tricks of the trade (beatings, threats against livelihood, etc)” to induce confessions.
Fifth Amendment

- **Miranda v. Arizona (1964)** – Supreme court rules that arrested individuals must be advised of their constitutional rights when arrested.

  “You have the right to remain silent, anything you do or say can and will be used against you in the court of law, you have the right to an attorney...”

- Should evidence be thrown out if individuals do not receive their Miranda rights?
**Fifth Amendment - Habeas Corpus**

- **Habeas Corpus** — Determines if the defendant is being unlawfully detained. Individuals held by law enforcement have right to Habeas Corpus requests.

Habeas Corpus can be suspended in the cases arising in the land or naval forces, or in the Militia, when in actual service in times of War or publican danger (constitution).
Who is entitled to Habeas Corpus?

- **Rasul v. Bush (2004)** – Supreme court rules that defendants at Guantanamo Bay were entitled to habeas corpus.
- **Hamdi v. Rumsfeld (2004)** – Supreme court rules that US nationals caught abroad as enemy combatants were entitled to habeas corpus.
Sixth Amendment

“In all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defense.”

Gideon v. Waiwright (1932) — Judge turns down defendant’s request for lawyer. Supreme court throws conviction out on the grounds that lawyer was not provided to the defendant.
“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
One way the Supreme Court judges whether or not statutes constitute unusual punishment is by surveying foreign countries to see what they do. If there is an international consensus against a type of punishment supreme court rules it unconstitutional.

Should the United States look to other countries to decide whether or not its laws are constitutional?
Cruel and Unusual Punishment?

  - The justification for this decision is that there is a consensus amongst the states (US states).
- **Baze v. Rees (2008)** — Supreme court rules that the lethal injection cocktail (3 drugs) is constitutional.
- **Kennedy v. Louisiana (2008)** — Supreme court rules that individuals who commit child rape cannot be executed.
Privacy

- No right to privacy explicitly in the US constitution.

- **Griswold v. Connecticut (1965)** — Supreme court rules that American’s rights are not limited to those found explicitly in the US constitution.

- **Penumbra** — judically created rights based on the provisions of the Bill of Rights.

- Is it a good thing that the US Supreme Court extends rights protections beyond those found explicitly in the US constitution.
Now Let’s Talk about Civil Rights!
What is a Civil Right?

- Protections provided for by the use of government power.
- Government action is necessary to protect civil rights.
- Examples: minority rights and gender rights.
Colonialists argued for “civic rights,” known today as civil rights.
“no taxation without representation!”
Why is this a civil right?
Were the colonists justified in making this claim?

Consider this...

1. In 1765 residents of Great Britain were subject to tax rates twenty six times higher than those found in the American colonies.

2. British empire spends 8 million pounds in 1765 on expenses, 5 of which go to debt. French Indian War (a war fought for the Americans) causes British debt to double.

3. Colonialists had a small number of stand in members of the parliament (so-called virtual representation).
Tyranny by the Majority

- A majority takes away/compromises the rights of a minority.
- Should majorities be checked?
- How can this be prevented in a functioning democracy?
Madison was concerned about majority tyranny.

**Madison’s Solution**

1. Republican Government.
2. Large population.

How do republics prevent majority tyranny?

Why does size matter?

Is the evolution of African American rights consistent with Madison’s plan to prevent majority tyranny?
As United States grows larger segments of population grow tired of slavery, eventually civil war removes slavery as an institution.

Was the civil war really about slavery, might it have been states rights?
Civil Rights Act 1964

- Department of Health Education and Welfare has right to withhold funding from schools that do not integrate.
- Also includes women’s rights.
  - Southern opponents added provision to income sex discrimination in the bill, since they thought it would prevent passage.
Voting Rights Act of 1965

- Stopped tests at the ballot box.
- Sent federal officers to non-cooperative districts.
- **Literacy Test** — Test required to vote which was mostly used to prevent African Americans from voting.
- **Poll Tax** — Mandated payment for right to vote, designed to discriminate against African Americans (i.e. authorities only used it against poor African Americans).
**Voting Rights Act 1965**

- *Was it a success?*
- Between 1970 and 2002 the number of African American members of congress and state officials has increased from 179 to 671.
Indirect Racism

With the passage of the Voting Rights Act of 1965 outright discrimination by the government was over. But what about indirect discrimination?

Indirect discrimination arises as a result of past acts of discrimination.

Why is indirect discrimination possible?

Can you think of any examples of indirect discrimination?
Affirmative Action

- Solution to past discrimination.
  
  “a policy that requires any employers or government agencies that have practiced past discrimination to compensate minorities and women by giving them special consideration in their selection for employment and education (KGK 174).”

- Quotas — “setting aside a certain share of admissions, government contracts, and jobs for those who suffered from past discrimination (KGK 174).”

- Does it work? Is it fair? What about class discrimination?
Gay Rights

- Homosexual causes have lacked popular support other right’s protections have enjoyed. Ergo, little action has been undertaken.
- Courts have largely advanced gay rights.
  1. **Lawrence v. Texas (2003)** – Supreme court rules that anti-sodomy laws are unconstitutional. Before this decision such laws were used to discriminate against homosexuals.
  2. *Some states* have extended protections to homosexuals such as hate crimes laws, others have banned homosexuals from such protections.
Gay Rights and Marriage Equality

- **Defense of Marriage Act (1995)** – States do not have to honor gay marriages from other states.

- **2003** – Massachusetts Supreme court rules gay marriage ban is unconstitutional.

- **2008** – California Supreme Court rules gay marriage ban is unconstitutional. In response CA voters pass constitutional amendment banning gay marriage.

- Massachusetts and Connecticut are the only states which allow gay marriage. Eight other states provide legal opportunities for “civil unions.”