

## Civil Liberties v. Civil Rights

- **Civil Liberties** – prevents government intrusion into individual lives.
  - Free speech, free press, free religion
- **Civil Rights** – requires government to ensure equal treatment of citizens
  - Voting rights, racial and gender discrimination.

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## Origins of Civil Liberties

- The philosophy began before the constitution
- Several documents preceded the Constitution
  - Massachusetts Body of Liberties (1641)
  - The New York Charter of Liberties (1683)

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## Bill of Rights

- Not in the original constitution
- The Constitution protects no individual liberties or rights
- 1<sup>st</sup> ten amendments = Bill of Rights

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## Interpretation of the Bill of Rights

- At first applied to the national government and not states
- Partial Reversal in 1920
  - 14<sup>th</sup> amendment (life, liberty, or property) "Due Process"
- Still does not apply to all civil liberties

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## Civil Liberties and Freedom of Speech

- Free Speech & National Security
  - The government can restrict free speech when in the interest of national security.
  - Schenck v. U.S. (1919)
    - Schenck asked men to resist WWI
    - Court established "**the clear and present danger test**"

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## Civil Liberties and Freedom of Speech (continued)

- Free Speech & National Security
  - Schenck v. U.S.
    - speech aimed at inciting an illegal act is not protected by the 1<sup>st</sup> amendment
- Non-threatening Speech and Expression
  - Hate speech acceptable
  - Speech that endorses "lawless action" cannot be punished unless such action is "imminent."

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## Civil Liberties and Freedom of Speech (continued)

- Symbolic Speech – an act that conveys a political message.
  - Vietnam protests
    - Flag burning (yes)
    - Burning draft cards (no)
  - Texas v. Johnson
    - 1989 – flag burning law unconstitutional

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## Civil Liberties and Freedom of Speech (continued)

- Obscenity
  - Traditional standard
    - “tendency” to “deprave and corrupt”
  - Modern standard
    - As a whole it is, “utterly without social importance.”

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## Civil Liberties and Freedom of Religion

- **Establishment of Religion Clause** – gov’t cannot establish an official religion
  - Separation of church and state
  - Problem is the indirect involvement by the state in religion
  - Lemon v. Kurtzman (1971) set policy; a law does not violate this clause if:
    - The act is secular in nature
    - Has a neutral effect
    - No excessive gov’t involvement in religion

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## Civil Liberties and Freedom of Religion (continued)

- **Free Exercise of Religion Clause**
  - gov't cannot prohibit the free exercise of religion.
  - The right to believe vs. The right to practice religion
    - Illegal drugs
    - Polygamy

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## Civil Liberties and Criminal Proceedings

- Searches and Seizures
  - 4<sup>th</sup> amendment
  - Police need **probable cause** to search
    - Probable Cause – Have good reason to believe a crime has been committed
  - **Exclusionary rule** – illegally seized evidence cannot be used against you

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## Civil Liberties and Criminal Proceedings (continued)

- Protection from Self-Incrimination
  - 5<sup>th</sup> Amendment
  - Miranda v. Arizona
    - Court Established the **Miranda Rights**
      - **Advised of their constitutional rights**
      - **Testimony may be used against them**
      - **Right to an attorney**
      - **May terminate questioning**

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## Civil Rights

- Civil Rights not in original constitution, only in amendments
- Civil Rights did not come into being until 1868 with the 14<sup>th</sup> amendment
- Protection from government discrimination not individual discrimination

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## Civil Rights (continued)

- Racial Equality
  - 13<sup>th</sup> banned slavery
  - 14<sup>th</sup>
    - Made former slaves citizens
    - Equal protection & due process
  - 15<sup>th</sup> right to vote
- Before 1930s courts ruled these amendments applied to the national gov't and not the states

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## Civil Rights (continued)

- Jim Crow Laws
  - Slang term for laws segregating blacks from whites.
    - Poll Tax
    - Making blacks sit at the back of buses
  - These laws eroded the intent of the Civil War amendments between 1870s and 1940s

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### Civil Rights (continued)

- "Separate but Equal" doctrine
  - States could provide separate but equal facilities for African Americans.
  - Established by Plessy v. Ferguson 1896

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### Civil Rights (continued)

- Brown v. Board of Education of Topeka
  - Ruled that "separate but equal" was not equal
  - Called for the desegregation of public schools

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### Civil Rights (continued)

- Government Involvement
  - Civil Rights Act of 1964
  - Elementary and Secondary Education Act 1965
  - Voting Rights Act 1965

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## Civil Rights (continued)

- Affirmative Action – Preferential hiring for minorities.
  - Designed to right past wrongs.
  - **Reverse discrimination** – Using race or sex to give preferential treatment to some people.
  - Race & sex can be considered for hiring, but must not be only criteria.

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## Civil Rights (continued)

- Women's Rights
  - Came after civil rights for African-Americans
  - 1970s, affirmative action programs
  - ERA (Equal Rights Amendment)
  - Title IX

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