

Civil Liberties and Civil Rights

I. The Constitution and the States

II. Civil Liberties

A. Freedom of Religion

B. Freedom of Speech

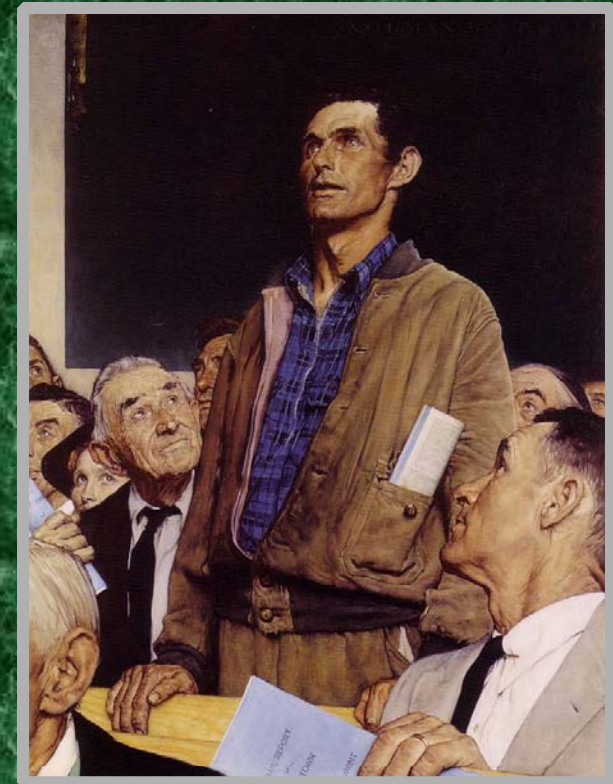
C. Freedom of the Press

D. Freedom of Assembly

III. Civil Rights

A. Political Rights

B. Criminal Rights



States and Civil Liberties

- *Barron v. Baltimore* (1833)
- 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*.” (Emphasis added)
- *Gitlow v. New York* (1925)

“SELECTIVE INCORPORATION”

Rights in Original Constitutional

- Writ of Habeas Corpus
- Ex Post Facto Laws
- Bills of Attainder



The First Amendment (1789)

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for redress of grievances.”

Freedom of Religion

- Establishment Clause

- *Lemon v. Kurtzman* (1971)

- Law must have a secular legislative purpose.
 - Law must neither advance nor inhibit religion.
 - Law must avoid “excessive government entanglement with religion”.

- *Board of Education of Kiryas Joel Village School District v. Grumet* (1994)

- Free Exercise Clause

- *Employment Services v. Smith* (1990)

Freedom of Speech

- **Beliefs, Speech, and Action**
- **Protected v. Unprotected Speech**
- **Constitutional Tests**
 - Clear and present danger test
 - *Schenck v. US* (1919)
 - Imminent lawless action
 - *Brandenberg v. Ohio* (1968)

Unprotected Speech

- Libel -- *New York Times v. Sullivan* (1964)
- Obscenity -- *Miller v. California* (1973)
 - Prurient in nature
 - Completely devoid of scientific, political, educational, or social value
 - Violates local community standards
- Fighting words
- Commercial speech

Freedom of the Press

- Prior restraint
 - Pentagon Papers
 - *New York Times v. United States* (1971)
- Freedom of Information Act (1966)
 - Puts burden on government to show cause for keeping information secret



Freedom of Assembly

- Can be restricted, but only by *reasonable* limitations on
 - Time
 - Place
 - Manner
- Civil disobedience **NOT** protected (i.e., still can be prosecuted for trespassing)

African-American Civil Rights

- Era of Slavery 1789-1865
- Reconstruction 1865-77
 - 1876 Election: Rutherford B. Hayes (R) v. Samuel Tilden (D)
- Jim Crow and Segregation 1877-1933
 - Racial gerrymandering, white primaries, poll taxes, literacy tests, “grandfather clauses”.
- Democratic Party Adoption of Civil Rights 1933-1950s
- Civil Rights Era 1950s and 1960s
- Legacy of the Civil Rights Era

Lynching

Lynching of Thomas Shipp and Abram Smith,
Marion, IN, August, 1930



Rosa Parks



Birmingham Protests, 1963



Major Civil Rights Laws

- Civil Rights Act of 1957
- Civil Rights Act of 1964
- Voting Rights Act of 1965
- Age Discrimination in Employment Act of 1967
- Fair Housing Act of 1968
- Title IX, Education Amendment of 1972
- Rehabilitation Act of 1973
- Civil Rights Restoration Act of 1988
- Americans with Disabilities Act of 1991
- Civil Rights Act of 1991

Affirmative Action in Higher Education

- *Bakke v. Board of Regents of California (1978)*: Upheld the constitutionality of affirmative action programs, but rejected the use of quotas.
- *Hopwood v Texas (1996)*: A lower court ruling that overturned the use of racial criteria in University of Texas law school
- *Gratz v. Bollinger (2003)*: Overturned the University of Michigan's undergraduate admissions system that assigned points to underrepresented minorities.
- *Grutter v. Bollinger (2003)*: Upheld the more narrowly tailored affirmative action program used in the University of Michigan's law school admissions.

Women's Rights

- Equal Rights Amendment [ERA] (1972)
 - Written in 1923; passed Congress in 1972
 - Quickly ratified by 35 states; couldn't get last 3
 - Died at 10 year expiration (June 1982)
- Title IX, Education Amendment of 1972
 - Prohibits discrimination on the basis of sex in any college program receiving federal funding
 - EX: Sports

Upholding Criminal Rights

- Fourth -- Illegal Searches and Seizures
 - Probable Cause
 - Exclusionary Rule (*Mapp v. Ohio* [1961])
- Fifth -- Self-Incrimination and Double Jeopardy
 - *Miranda V. Arizona* (1966)
- Sixth -- Right to Counsel and Trial by Jury
 - *Gideon v. Wainwright* (1963)
- Eight -- “Cruel and Unusual Punishment”
 - Death penalty NOT considered a violation