

Civil Liberties and Public Policy

The Bill of Rights–

Then and Now

- Civil Liberties

- Definition: The legal constitutional protections against the government.

- The Bill of Rights and the States

- The Bill of Rights is the first 10 amendments.

- Written to restrict the national government.

- Most are “incorporated” into state and local laws due to 14th Amendment SELECTIVE

- INCORPORATION-most significant constitutional development since Constitution

- Fundamental Rights- explicitly or implicitly guaranteed by the Constitution

Freedom of Religion

- The Establishment Clause
 - “Congress shall make no law respecting the establishment of religion.”
- The Free Exercise Clause
 - Prohibits government from interfering with the practice of religion
 - Some religious practices may conflict with other rights, and then be denied or punished

Freedom of Expression

- Prior Restraint
 - Definition: A government preventing material from being published. Censorship.
 - May be permissible during wartime.
 - May be punished *after* something is published.
 - Judges most suspicious about prior restraint

Freedom of Expression

- Free Speech and Public Order
 - Limited if it presents a “clear and present danger”
 - Permissible to advocate the violent overthrow of government in abstract, but not to incite anyone to imminent lawless action
 - Limited if on private property, like a shopping center

Freedom of Expression

- Free Press and Fair Trials
 - The public has a right to know what happens.
 - The press' own information may *not* be protected. Can serve jail time.
 - Shield laws

Freedom of Expression

- Obscenity
 - No clear definition on what constitutes obscenity.
 - *Miller v. California* stated that materials were obscene if the work:
 - appeals “to a prurient interest in sex”
 - showed “patently offensive” sexual conduct
 - lacks “serious literary, artistic, political or scientific value”
 - Local areas make their own decisions on obscenity

Freedom of Expression

- Libel and Slander
 - Libel: The publication of false or malicious statements that damage someone's reputation.
 - Slander: The same thing, only spoken instead of printed.
 - Different standards for private individuals and public (politicians, celebrities) individuals
 - Difficult to prove

Freedom of Expression

- Symbolic Speech
 - Definition: Nonverbal communication, such as burning a flag or wearing an armband.
 - Generally protected along with verbal speech.

Freedom of Expression

- Commercial Speech
 - Definition: Communication in the form of advertising.
 - Generally the most restricted and regulated form of speech (FTC).
- Regulation of the Public Airwaves
 - Broadcast stations must follow FCC rules.
 - Cable / satellite has blurred the lines.

Freedom of Expression

- Freedom of Assembly
 - Right to Assemble
 - Generally permissible, but must meet reasonable local standards.
 - Balance between freedom to assemble and order in society.
 - Right to Associate
 - Freedom to join groups / associations without government interference.

Defendants' Rights

- Interpreting Defendants' Rights
 - Criminal Justice personnel are limited by the Bill of Rights.
 - Failure to follow the rules usually invalidates a conviction.
 - Courts continually rule on what is constitutional and what is not.

Defendants' Rights

- Searches and Seizures
 - Probable Cause: The situation occurring when the police have reason to believe that a person should be arrested.
 - Unreasonable searches and seizures: Evidence is obtained in a haphazard or random manner.
 - Exclusionary Rule: The rule that evidence, no matter how incriminating, cannot be introduced into trial if it was not constitutionally obtained.

Defendants' Rights

- Self-Incrimination
 - Definition: The situation occurring when an individual accused of a crime is compelled to be a witness against himself or herself in court.
 - Fifth Amendment; also double jeopardy
 - Miranda warnings
 - Entrapments may be overturned
 - Prevents police brutality

Defendants' Rights

- The Right to Counsel
 - The state must provide lawyers in most criminal cases.
 - Sixth Amendment
- Trials
 - Right to grand jury
 - Not guilty or innocence- enough evidence to warrant trial- sent back on “true bill”
 - Plea bargaining: An actual bargain between the prosecution and defense.
 - Juries generally consist of 12 people.

Defendants' Rights

- Cruel and Unusual Punishment
 - The Eighth Amendment forbids cruel and unusual punishment.
 - The Death Penalty
 - Varies from state to state
 - Cannot be mandatory
- Ex post facto laws- cannot
 - Be applied to civil laws
 - Decrease punishment for crimes
 - Reduce the proof necessary to convict after it was committed

The Right to Privacy

- Is There a Right to Privacy?
 - Definition: The right to a private personal life free from the intrusion of government.
 - Not explicitly stated in the Constitution
 - Implied by the Fourth Amendment
 - Very debatable

Property Rights

- People have right to own, use, rent, invest in, buy and sell property- NOT right TO property.
- National and state governments have power of EMINENT DOMAIN- take private property for public use.
- Kelo v. City of New London

Due Process Rights

- Due Process- rules and regulations that restrain those in gov't who exercise power
 - Procedural Due Process- How the law is applied; gov't must proceed by proper methods
 - Substantive Due Process- Limits what a gov't can do- must act reasonably.

The Right to Privacy

- Controversy over Abortion
 - *Roe v. Wade* (1973)
 - 1st 3 mo. unrestricted
 - *Planned Parenthood v. Casey* (1992)
 - Protections of those seeking an abortion
 - Rights of protesters

When should abortions be legal?

Understanding Civil Liberties

- Civil Liberties and Democracy
 - People need the right to express themselves.
 - Courts continue to define the limits of civil liberties.
- Civil Liberties and the Scope of Government
 - Must decide the line between freedom & order
 - Civil liberties limit the scope of government