

Summary

4.1 What Are Civil Liberties?

The Bill of Rights is designed to protect the freedoms of individuals from interference by government officials. Originally these protections were applied only to actions by the national government; different sets of rights and liberties were protected by state constitutions and laws, and even when the rights themselves were the same, the level of protection for them often differed by definition across the states. Since the Civil War, as a result of the passage and ratification of the Fourteenth Amendment and a series of Supreme Court decisions, most of the Bill of Rights' protections of civil liberties have been expanded to cover actions by state governments as well through a process of selective incorporation. Nonetheless there is still vigorous debate about what these rights entail and how they should be balanced against the interests of others and of society as a whole.

4.2 Securing Basic Freedoms

The first four amendments of the Bill of Rights protect citizens' key freedoms from governmental intrusion. The First Amendment limits the government's ability to impose certain religious beliefs on the people, or to limit the practice of one's own religion. The First Amendment also protects freedom of expression by the public, the media, and organized groups via rallies, protests, and the petition of grievances. The Second Amendment today protects an individual's right to keep and bear arms for personal defense in the home, while the Third Amendment limits the ability of the government to allow the military to occupy civilians' homes except under extraordinary circumstances. Finally, the Fourth Amendment protects our persons, homes, and property from unreasonable searches and seizures, and it protects the people from unlawful arrests. However, all these provisions are subject to limitations, often to protect the interests of public order, the good of society as a whole, or to balance the rights of some citizens against those of others.

4.3 The Rights of Suspects

The rights of those suspected, accused, and convicted of crimes, along with rights in civil cases and economic liberties, are protected by the second major grouping of amendments within the Bill of Rights. The Fifth Amendment secures various procedural safeguards, protects suspects' right to remain silent, forbids trying someone twice at the same level of government for the same criminal act, and limits the taking of property for public uses. The Sixth Amendment ensures fairness in criminal trials, including through a fair and speedy trial by an impartial jury, the right to assistance of counsel, and the right to examine and compel testimony from witnesses. The Seventh Amendment ensures the right to jury trials in most civil cases (but only at the federal level). Finally, the Eighth Amendment prohibits

excessive fines and bails, as well as “cruel and unusual punishments,” although the scope of what is cruel and unusual is subject to debate.

4.4 Interpreting the Bill of Rights

The interrelationship of constitutional amendments continues to be settled through key court cases over time. Because it was not explicitly laid out in the Constitution, privacy rights required clarification through public laws and court precedents. Important cases addressing the right to privacy relate to abortion, sexual behavior, internet activity, and the privacy of personal texts and cell phone calls. The place where we draw the line between privacy and public safety is an ongoing discussion in which the courts are a significant player.

Key Terms

blue law

a law originally created to uphold a religious or moral standard, such as a prohibition against selling alcohol on Sundays

civil liberties

limitations on the power of government, designed to ensure personal freedoms

civil rights

guarantees of equal treatment by government authorities

common-law right

a right of the people rooted in legal tradition and past court rulings, rather than the Constitution

conscientious objector

a person who claims the right to refuse to perform military service on the grounds of freedom of thought, conscience, or religion

double jeopardy

a prosecution pursued twice at the same level of government for the same criminal action

due process clause

provisions of the Fifth and Fourteenth Amendments that limit government power to deny people “life, liberty, or property” on an unfair basis

economic liberty

the right of individuals to obtain, use, and trade things of value for their own benefit

eminent domain

the power of government to take or use property for a public purpose after compensating its owner; also known as the takings clause of the Fifth Amendment

establishment clause

the provision of the First Amendment that prohibits the government from endorsing a state-sponsored religion; interpreted as preventing government from favoring some religious beliefs over others or religion over non-religion

exclusionary rule

a requirement, from Supreme Court case *Mapp v. Ohio*, that evidence obtained as a result of an illegal search or seizure cannot be used to try someone for a crime

free exercise clause

the provision of the First Amendment that prohibits the government from regulating religious beliefs and practices

Miranda warning

a statement by law enforcement officers informing a person arrested, or subject to interrogation, of that person's rights

obscenity

acts or statements that are extremely offensive by contemporary standards

Patriot Act

a law passed by Congress in the wake of the 9/11 attacks that broadened federal powers to monitor electronic communications; the full name is the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act)

plea bargain

an agreement between the defendant and the prosecutor in which the defendant pleads guilty to the charge(s) in question or perhaps to less serious charges, in exchange for more lenient punishment than if convicted after a full trial

prior restraint

a government action that stops someone from doing something before they are able to do it (e.g., forbidding people to publish a book they plan to release)

probable cause

legal standard for determining whether a search or seizure is constitutional or a crime has been committed; a lower threshold than the standard of proof needed at a criminal trial

right to privacy

the right to be free of government intrusion

search warrant

a legal document, signed by a judge, allowing police to search and/or seize persons or property

selective incorporation

the gradual process of making some guarantees of the Bill of Rights (so far) apply to state governments and the national government

self-incrimination

an action or statement that admits guilt or responsibility for a crime

Sherbert test

a standard for deciding whether a law violates the free exercise clause; a law will be struck down unless there is a “compelling governmental interest” at stake and it accomplishes its goal by the “least restrictive means” possible

symbolic speech

a form of expression that does not use writing or speech but nonetheless communicates an idea (e.g., wearing an article of clothing to show solidarity with a group)

undue burden test

a means of deciding whether a law that makes it harder for women to seek abortions is constitutional