

CIVIL LIBERTIES: Fundamental freedoms

individuals possess and that protect individuals from excessive and arbitrary government interference.

CIVIL RIGHTS: The exercise of civil liberties and the guarantee of equal treatment under the law so that individual rights are protected from either government or individuals interference.

- Liberties and rights generally outlined in constitution.
- Individual rights must be balanced by societal need to preserve order
- Rights are not absolute
- Rights and liberties are subject to interpretation
- Rights and liberties have changed (generally expanded) over time
- Rights and liberties recognized by government
- Government determines whose rights prevail when rights collide
- Rights and liberties set limits on government

The 14th Amendment

- Critical component for expanding civil liberties
- Guarantees “equal protection under the law” for all citizen
- Effectively reverses *Barron v. Baltimore* (which held that Bill of Rights did not pertain to states)
- Critical for advancement of the Civil Rights movement

Selective Incorporation: the method by which the 14th amendment is implemented.

- Assert an equal protection violation
- Define the specific right that has been violated (and whether this right has been or should be “incorporated” under the 14th amendment)

BASIC RIGHTS

First Amendment: Speech, Religion, Press, Assembly and Petition. They fall under the “fundamental freedoms doctrine.”

SPEECH: broadly protected, but not absolute. Has been expanded to cover non-verbal *expression*. Key test is “*Clear and Present Danger*.” Danger must be immediate. Can also be limited for *truthfulness* (especially commercial speech, but also libel) *obscenity* (but hard to define “community standards”) and *incitement* (“fighting words doctrine” but this is hard to define and defend. The standard is that such words incite and “immediate breach of the peace.”)

PRESS: Also broadly protected, but not absolute.

Similar “tests” as for speech. A key doctrine applied to press cases is *prior restraint*.

RELIGION: Two components, *free exercise* and *establishment*. Free exercise, can believe, but not always practice your belief. Establishment, government is not to favor one religion over any other.

Second amendment: A poorly written amendment.

Generally allows gun ownership, but with plenty of governmental regulation following the police power and public order duties of the state.

INDIVIDUALS AND THE LAW

FOURTH AMENDMENT: Guarantee that you are to be “secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures.

FIFTH AMENDMENT: Guarantees “Due Process.”

A key case is Miranda. Also includes the “takings” clause, which is important in Nevada.

SIXTH AMENDMENT: Jury trial, speedy trial, and legal assistance. (Gideon case.)

SEVENTH AMENDMENT: Extends due process and jury trial rights to “suits of common law.”

EIGHTH AMENDMENT: Cruel and unusual punishment. A pretty clear example of “evolving” societal norms.

OTHER RIGHTS: *Privacy*: drawn from Griswold (often linked to sex cases); *Abortion*. Both of these rights can be deduced from various amendments and certainly allowed under the 9th Amendment. Strict “constructionalists” disagree, though. *Suffrage*: The right to vote. Generally expanded through time. *Protection of civil rights* (especially for minority groups) strengthened by various amendments.