

# Today's Agenda

1

- Civil Liberties vs. Civil Rights
- Return to the Bill of Rights
- Dual Citizenship
- Incorporation
- First Amendment
- Right to Privacy

# Civil Liberties

2

- **Civil liberties** are personal guarantees and freedoms that the government cannot abridge, either by law or by judicial interpretation without due process.
- No civil liberty is absolute as the argument can be made that under certain circumstances freedom must be sacrificed in favor of order
- ACLU – American Civil Liberties Union



# Civil Liberties vs. Civil Rights

3

- “Civil rights” has traditionally revolved around **the *basic right to be free from unequal treatment based on certain protected characteristics*** in settings such as employment and housing
- “Civil liberties” concerns the ***basic rights and freedoms that are guaranteed -- either explicitly identified in the Bill of Rights and the Constitution***, or interpreted through the years by courts and lawmakers.

# Civil Liberties vs. Civil Rights 2

4

- Let's simplify it:
- Civil Liberties: what government must NOT do
- Civil Rights: how the government must treat you

# POP QUIZ!!!

5

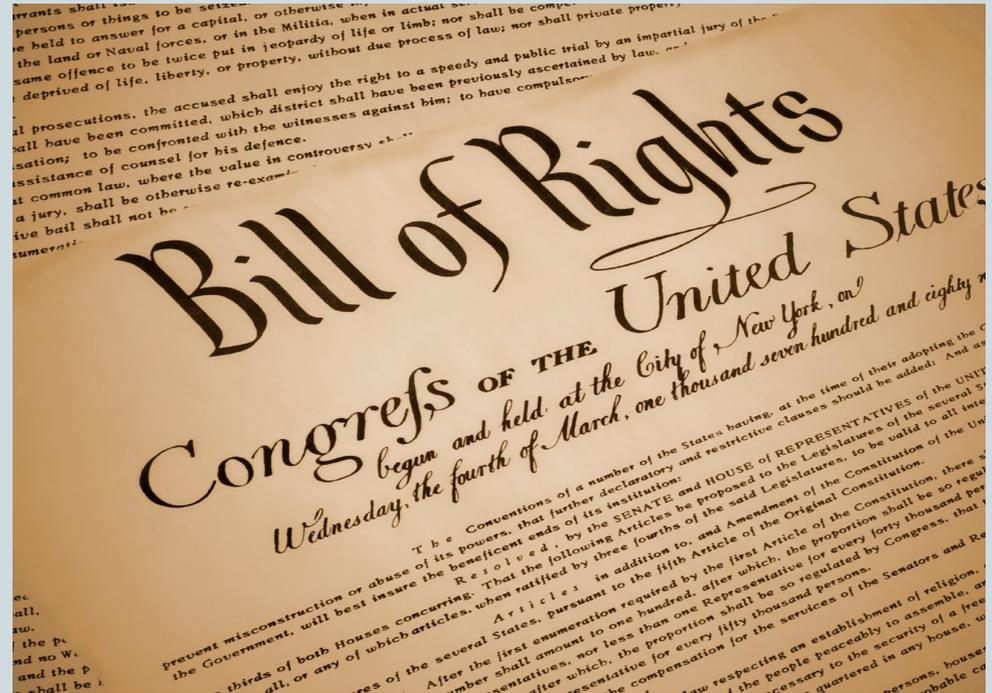
- Get out paper and a pen/pencil!



# Where Do Our Civil Liberties Come From?

6

- Natural Rights
- What Protects them?
  - US Constitution
  - The Bill of Rights
  - The 14<sup>th</sup> Amendment



# Are Civil Rights/Liberties Universal?

7

- France 1789 “Declaration of the Rights of Man and of the Citizen”
- UN 1948 “United Nations Universal Declaration of Human Rights”
- Europe 1953 “European Convention on Human Rights”

# The Bill of Rights and Majority Rule

8

- Remember that to get the Constitution ratified, Federalists had pledged to amend the Constitution by adding a Bill of Rights
- Antifederalists saw the need for these protections against potential *tyranny* of a strong federal gov't
  - Fear of tyranny of the majority
- 1791, the ten amendments (aka the Bill of Rights) include both substantive and procedural restraints on governmental power

# Stopping Tyranny of the Majority

9

- The clear and absolute language of the Bill of Rights offers little latitude to politicians who might want to change protected liberties, but some amendments not so clear cut:
  - Establishment Clause
    - ✦ Does it prevent silent prayer in public schools
  - 8<sup>th</sup> amendment
    - ✦ What is “cruel and unusual”?

# Barron v. Baltimore (1833)

10

- First BIG Case of Civil Liberties
- The city of Baltimore had been disposing of sand and gravel near a wharf owned by John Barron, rendering the wharf commercially useless
- Barron sued the city of Baltimore on the Fifth Amendment grounds that he had been deprived of property without compensation
- The Supreme Court ruled against Barron, stating “the Fifth Amendment must be understood as restraining the power of the General Government, not as applicable to the States”

# “Dual Citizenship”

11

- The Court confirmed the idea of “dual citizenship” – that each American is a citizen of the national government and, separately, a citizen of one of the states
- Dual citizenship means that citizens have liberties that protect them against national government action and a separate set of liberties that protect them against state government action

# Bill of Rights, Not State Rights

12

- Many states had their own bill of rights
- Example: New Hampshire Bill of Rights
  - 1784
- Many similar to U.S. BoR
  - “The Liberty of the Press is essential to the security of freedom in a state; it ought, therefore, to be inviolably preserved”
  - “The people have a right in an orderly and peaceable manner, to assemble and consult upon the common good”
- Many are different
  - “All elections ought to be free, and every inhabitant of the state having the proper qualifications, has equal right to elect, and be elected into office.”

# Dred Scott v. Sanford (1857)

13

- Dred Scott, born a slave in Virginia
- Brought to the Wisconsin Territory
- Lived in free states/territory for 10 yrs.
- Owner died, wife tried to claim Scott as her slave



# Dred Scott v. Sanford Decision

14

- “Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.”

- “A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing ***with its own citizens*** as to all the rights and privileges enjoyed by them within its dominion and by its laws. But ***that will not make him a citizen of the United States***, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.”

# How to End Dual Citizenship?

- The 14<sup>th</sup> Amendment
- “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.”

# Incorporation

16

- **Incorporation** is the process of bringing state laws and practices under the Bill of Rights protections by applying the 14<sup>th</sup> amendment to the states.
- The Bill of Rights did not automatically apply to everyone after the ratification of the 14<sup>th</sup> amendment
- “Selective incorporation”

# The 1<sup>st</sup> Amendment

17

- “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 peaceably to assemble, and to petition the Government for a redress of grievances.”

# Incorporation of the 1<sup>st</sup> Amendment

18

- Freedom of Religion – *Engle v. Vitale* 1962
- Free exercise – *Cantwell v. Connecticut* 1940
- Freedom of Speech - *Gitlow v. New York* 1925
- Freedom of the Press - *Near v. Minnesota* 1931
- Right of Assembly - *DeJonge v. Oregon* 1937

# Engle v. Vitale 1962

19

- Question over whether public schools can force students to say a prayer out-loud
- Case brought by Jewish parents of New York school children
- Court found that school's prayer is a religious activity by the very nature of it being a prayer
- Incorporated the Establishment Clause

# *Cantwell v. Connecticut 1940*

20

- Connecticut creates a law requiring organizations soliciting money to register with the state
  - Did this in order to protect people from fraud
- A family of Jehovah's Witness's went door to door
- "to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."

# Freedom of Religion in the B. of R.

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”
- The first clause is the **Establishment Clause**. This is sometimes referred to as the separation of church and state
- The second clause is the **Free Exercise Clause**. This protects a citizen’s right to believe and practice whatever religion he or she chooses

# The Lemon Test

22

- Lemon v. Kurtzman 1971
- The Lemon test and the Establishment Clause – Government can be involved with religion if:
  - it has a secular purpose
  - its effect is neither to advance nor inhibit religion
  - it does not create excessive entanglement
- Does prayer time in a public school violate the Lemon test?

# From Lemons to Neutrality

- By the 1990s, the Lemon test was fading from establishment decisions.
- Justices tested a policy's neutrality.
- Neutrality Test: used to root out policies that preferred religious groups over nonreligious groups engaged in similar activities.
  - Tax credits for religious school tuition OK if also available for secular schools.
  - Religious groups can meet in public schools as long as they follow the same rules as other groups.

# Right to Privacy

24

- 9<sup>th</sup> Amendment: “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people”
- The explicitly guaranteed rights from ***penumbras***
  - Implicit zones of protected privacy rights on which the existence of explicit rights is based.
  - What actions are so personal that they should be shielded from interference by the government and other third parties?

# Right to Privacy

25

- Court's attention mostly on reproductive rights.
  - Connecticut had a statute forbidding the use of contraceptives
  - The Court invalidated the law based on a “zone of privacy” in *Griswold v. Conn.* (1965)
  - Rights not limited to those specifically identified in the Constitution.

# Right to Privacy and Abortion

26

- *Roe v. Wade* (1973) cemented the right to privacy
  - “The right of privacy, whether it be founded in the 14<sup>th</sup> amendment’s concept of liberty...or...in the 9<sup>th</sup> amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”
- Decision abortion’s varying legality across the states

# Right to Privacy and Abortion

27

- *Roe v Wade* did not wholly exempt abortion from gov' t regulation
  - States could regulate abortions from the end of the first trimester to fetus viability.
    - ✦ States could forbid abortions in final trimester except “for preservation of the life/health of the mother”
- States have backed away from trimester standard
  - Cannot ban abortions, but can impose regulations, as long as no undue burdens.
    - ✦ Waiting periods
    - ✦ Counseling sessions
    - ✦ Parental consent for minors

# Any Questions?

28

