

- I. Introduction Box, pp. 36-37
- A. Civil liberties: freedoms of expression & rights in the legal system -- *balances individual liberty with govt-guaranteed order*
 - B. Civil rights: citizenship rights & the right to be free from unjust discrimination -- *balances individual liberty with govt-guaranteed equality*
 - C. Constitutional provisions that limit the powers of the federal and state governments
 1. Article I, sections 9 & 10
 2. Bill of Rights (when incorporated into the 14th amendment – see next section)
 3. Later amendments: 13th, 14th, 15th, 17th, 19th, 24th, 26th
 - D. *Incorporation* doctrine:
 1. Definition: selective applications of the protections of the Bill of Rights to the states (mostly through the due process & equal protection clauses of the 14th Amendment)
 2. Exceptions
 - a. Grand jury trial in criminal cases
 - b. Jury trial in civil cases
 - c. Prohibition of excessive bail and fines
 - d. Quartering of troops in peacetime
 - e. Until recently: the right to bear arms; however, the USSC's 5:4 rulings in 2008 overturned D.C.'s handgun ban and ruled for the 1st time that the 2nd Amendment's right to bear arms confers an individual right that states (and localities) may not prohibit (but can still regulate)
- II. Civil liberties
- A. Freedoms of expression
 1. Religion
 - a. No-establishment clause
 - (1) Wording: "Congress shall make no law respecting an establishment of religion"
 - (2) Two judicial interpretations (a 3rd & more radical interpretation, Christian nationalist, is supported by the Christian right)
 - (a) Strict construction (separationists)
 - i) Goal: erect a *wall of separation* between church & state – no government establishment or preference for one religion over another or over non-religion (at least 8 of the 13 states in 1789 had state-established churches)
 - ii) Rationale: because of diversity of faiths, state-established religions can cause harm – intolerance, prejudice, hate, discrimination, persecution
 - iii) Examples of Supreme Court decisions that struck down government establishment of religion:
 - a) *State sponsorship* of religious observances and ceremonies in *public schools*
 - 1) State-sponsored prayer
 - 2) State-sponsored Bible-reading
 - 3) State-sponsored invocations/benedictions at graduation exercises
 - 4) State-sponsored posting of 10 commandments
 - b) *Religious instruction* in *public-schools*
 - 1) Released time inside public schools for religious instruction
 - 2) States prohibiting teaching of evolution
 - 3) States requiring teaching of creation science
 - c) State-funded salary supplements to *parochial-school* teachers
 - d) Separate public-school district for Hasidic Jews
 - (b) Loose construction (accommodationists)
 - i) Goal: *accommodate religious diversity* – government *should* provide *nondiscriminatory* aid to religions in general Box, p. 44
 - ii) Rationale: mixing religion & politics can improve politics & government – morality, virtue, charity
 - iii) Examples of Supreme Court decisions that upheld nondiscriminatory aid:
 - a) Tax exemptions, deductions, & credits for religious activities
 - b) Sunday blue laws
 - c) Subsidies to public-school student publications or organizations that are religious
 - d) After-hours religious meetings in public facilities
 - e) Released time from public schools for religious instruction *outside* public school buildings
 - f) Aid to parochial-school students (busing, secular textbooks, secular buildings)
 - g) Prayer in state legislatures
 - h) Public-school teachers can teach parochial-school special-ed. courses (with salaries paid by the public school)

- (3) Judicial principles used to resolve no-establishment clause disputes
 - (a) Government aid must have a secular *purpose*
 - (b) Government aid must have a secular *effect* (neither advancing nor inhibiting any religion relative to others)
 - (c) *No excessive entanglement* of government in religion
 - (d) *Strict scrutiny* when *public school children* are involved

b. Free exercise clause: libertarians & communitarians

- 2. Speech
- 3. Press
- 4. Assembly & petition

B. Crime and due process

- 1. Pre-trial
 - a. Electronic surveillance
 - b. Entry, search, and seizure
 - c. Interrogation: Miranda rights Box, p. 50
 - d. Formal charge/indictment: habeas corpus
 - e. Release from custody
- 2. Trial
 - a. Jury: size, composition, vote division
 - b. Speedy
 - c. Public
 - d. Defense witnesses
 - e. Cross-examination
 - f. Counsel
 - g. Self incrimination
 - h. Exclusion of illegally gained evidence
- 3. Post-trial
 - a. Punishment
 - b. Double jeopardy
 - c. Appeal

III. Civil rights

- A. Discrimination: prejudging an individual not on the basis of the individual's actual characteristics, but instead on the basis of the presumed characteristics of the individual's group (not all is invidious: public restrooms, in-state v. out-of-state UNCW tuition)
 - 1. *De jure* discrimination: legally enforced
 - 2. *De facto* discrimination: imposed by custom

B. Remedies

- 1. Private, voluntary actions
- 2. Government policies
 - a. Anti-discrimination policies: outlaw overt discrimination Box, pp. 57-58
 - (1) Voting: 15th Amendment & Voting Rights Act of 1965
 - (2) Schools: *Brown v. Board of Education of Topeka, KS* (1954) Figure 3.1, p. 60
 - (3) Jobs: EO (1941 & 47) & Civil Rights Act of 1964 (Title VII)
 - (4) Housing: EO (1961) & Open Housing Act of 1968
 - b. Affirmative action policies: preferential or compensatory opportunities for individuals and groups disadvantaged by past overt (intentional) discrimination or current systemic (unintentional) discrimination
 - (1) Basic test: unequal outcomes
 - (2) Rationale:
 - (a) Past or present overt discrimination has left individuals and groups handicapped in resources and abilities
 - (b) Therefore, such individuals and groups deserve preferential or compensatory treatment to "level the playing field" so that they have a truly equal opportunity to fairly compete.
 - (3) Examples of civil-rights & non-civil-rights motivations for preferential treatment by government
 - (a) Voting district boundaries: racial v. partisan gerrymandering
 - (b) Public school admissions: race & gender v. wealth & athletic criteria
 - (c) Employment decisions (hiring & promoting): race & gender v. veterans preferences, nepotism, & political patronage
 - (d) Public housing eligibility criteria: race v. income preferences
 - (e) Tax credits, deductions, & exemptions: weak v. powerful
 - (f) Public welfare: weak v. powerful
 - (4) Problems
 - (a) Threats to otherwise legitimate decision criteria (e.g., merit and seniority criteria, bank-loan red lining)
 - (b) Threats to otherwise legitimate institutions (e.g., neighborhood schools, at-large elections, runoff primaries, property-tax basis of public-school funding, annexation)
 - (c) Unjust reverse discrimination against those not responsible for past or current acts of discrimination
 - (d) Harm done to motivation and self-esteem of protected groups
 - (e) Group rights v. individual rights