

TOPIC 3.5 SECOND AMENDMENT: RIGHT TO BEAR ARMS

Difference between civil liberties and civil rights?

The Second Amendment *“A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”*

District of Columbia v. Heller (2008)

Issue: Do the D.C. provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia (like the National Guard), but who wish to keep handguns and other firearms for private use in their homes?

Ruling: In a 5-4 decision, the Court struck down the District of Columbia’s ban on handguns, holding that the Second Amendment guarantees an individual right to gun ownership. --- , *the right of the people to keep and bear Arms, shall not be infringed.*”

Government Action Related to the Second Amendment	Effect on Gun Rights
National Firearms Act (1934)	Required registration of certain weapons, imposed a tax on the sale and manufacture of certain guns, and restricted the sale and ownership of high-risk weapons such as sawed-off shotguns and automatic machine guns
Gun Control Act (1968)	Ended mail-order sales of all firearms and ammunition and banned the sale of guns to felons, fugitives from justice, illegal drug users, people with mental illness, and those dishonorably discharged from the military (the law’s effect was to punish those who owned a gun or used it illegally more than prevent the purchase or possession of guns)
Brady Handgun Violence Prevention Act (1993)	Established a five-day waiting period for handgun purchases to allow for a background check
District of Columbia v. Heller (2008)	The Court ruled, in a five-to-four decision, that the Second Amendment recognizes an individual’s right to own a gun unrelated to militia service
McDonald v. Chicago (2010)	The Court applied the Second Amendment to the states (selective incorporation) via the Fourteenth Amendment’s due process clause, arguing that, based on Heller, the right to individual self-defense is at the heart of the Second Amendment

DIFFERENCE BETWEEN CIVIL LIBERTIES AND CIVIL RIGHTS?

CIVIL LIBERTIES

- Definition: legal and constitutional rights that protect i_____ from arbitrary *acts of government*. The B____ of R_____
- Freedoms that are g_____ -- either by l_____, c_____, or j_____ i_____
- Involve basic freedoms (e.g. speech and religion)
- The freedoms of conscience, religion, and expression, for example, which are secured by the F_____ Amendment
- The Bill of Rights, specifically amendments _____

CIVIL RIGHTS, rights meant to protect g_____

- Definition – policies designed to protect people against arbitrary or discriminatory *t_____ by government officials or individuals*
- Include laws prohibiting racial, gender, physical, and religious d_____ - GROUPS. Those p_____ steps taken by gov to p_____ your rights. Ex. Any and all Civil Rights Laws

- Protected by the due p_____ and e_____ p_____ clauses of the F_____ and F_____ Amendments and by the c_____ rights laws of n_____ (federal) and s_____ governments

BASIS OF OUR CIVIL LIBERTIES – PROTECTED RIGHTS IN THE ORIGINAL CONSTITUTION

- Writ of *habeas corpus***
 - Directs any official having a person in custody to produce the prisoner in court and to explain to the judge why the prisoner is being h_____; Can only be suspended during times of r_____ (Civil War)
 - Person has the right to know why he or she is being i_____
- Ex post facto* laws**
 - Latin for “a_____ the f_____”
 - Punishes a person for something that was n_____ a crime when he did it (r_____ punishment); May n_____ be passed by Congress
- Bills of attainder**
 - An act that punishes a person without benefit of t_____
 - May n_____ be passed by Congress

BILL OF RIGHTS AND THE STATES

BILL OF RIGHTS

- Added to the original Constitution to a_____ states. Demanded by the Anti-F_____
- Rights of the i_____ and states listed to protect them from the f_____ government
- Bill of Rights o_____ applied to the f_____ government and did not include protections against s_____ governments (*Barron v. Baltimore*, 1833)

– Belief was that people could protect themselves against the state governments that were in their own backyards, but they needed additional protection against a new, powerful, and distant national gov’t. Each state had its own state constitution and state bill of rights to protect their citizenry from the state government.

SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

- The B _____ of R _____ only apply to n _____ (f _____) government... NOT the states – *Barron v. Baltimore* (1833)
- 14th Amendment: created the possibility that the B of R would apply to the s _____**

14th Amendment: All persons b _____ or n _____ in the United States, and subject to the jurisdiction thereof, are c _____ of the United States and of the state wherein they reside. No s _____ shall make or enforce any law which shall a _____ the privileges or i _____ of citizens of the United States; nor shall any s _____ d _____ any person of l _____, l _____, or p _____, without d _____ p _____ of l _____; nor deny to any person within its jurisdiction the e _____ p _____ of the l _____.

SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

DOCTRINE OF INCORPORATION constitutional doctrine through which the first t _____ a _____ of the United States Constitution (known as the B _____ of R _____) are made applicable to the states through the D _____ Process clause of the Fourteenth Amendment. I _____ applies both s _____ and p _____.

SELECTIVE INCORPORATION: A constitutional doctrine through which the Bill of Rights are made applicable to the states through the Due Process clause of the Fourteenth Amendment and so applied to state and local governments.

Utilizing the language of the Fourteenth Amendment, specifically that “no state...shall a _____...d _____ p _____ of law,” the n _____ government now serves as p _____ of our inalienable right to “life, liberty and property.” Most of the

time this has resulted in the n_____ government i_____ its w_____ on s_____ and l_____ laws to the contrary.

The Fourteenth Amendment has weakened the states and strengthened the national government in our federal system of government.

Explain how has the 14th amendment impacted federalism? _____

Modifying Effect of the 14th Amendment

- The d_____ p_____ clause has been used to apply some of the provisions of the B_____ of Rights to the s_____.
- This clause bans s_____ from denying l_____, l_____, or p_____ without d_____ process of law.
- The “total i_____” view would apply a_____ of the provisions of the B_____ of Rights to the s_____. It argues for n_____ (or f_____) of the Bill of R_____.
- The “s_____ incorporation” view would apply only s_____ of these provisions and would do so on a c_____ - by-c_____ basis.

Utilizing the language of the Fourteenth Amendment, specifically that “no state...shall abridge...due process of law,” the n_____ government now serves as p_____ of our inalienable right to “life, liberty and property.” Most of the time this has resulted in the n_____ government imposing its w_____ on state and local laws to the contrary.

The F_____ Amendment has w_____ the states and strengthened the national government in our f_____ system of government.

Modifying Effect of the 14th Amendment

- **Subsequent cases federalized parts of the Bill of Rights:**
 - 1st – Freedom of Speech, Assembly, Petition, Religion
 - 2nd – Right to Bear Arms
 - 4th – Search and Seizure protections
 - 5th – Self-Incrimination, Double Jeopardy
 - 6th – Right to Counsel, Right to Bring Witnesses, Right to Confront Witnesses
 - 8th – Protection against Cruel and Unusual Punishment, Excessive Fines
- **All provisions of the Bill of Rights except Amendment 3, Amendment 7, and the Grand Jury requirement of the 5th Amendment have been federalized.**

McDonald v. Chicago (2010)-SUPREME COURT YOU MUST KNOW

Issue: Does the Second Amendment right to keep and bear arms apply to state and local governments through the 14th Amendment and thus limit Chicago’s ability to regulate guns?

Majority: 2nd Amendment right to keep and bear arms for the purpose of self-defense is fully applicable to the s_____ under the _____th Amendment. The Court considered whether the right to keep guns “is fundamental to our scheme of ordered liberty and system of justice.” The Court determined that both the Framers of and those who ratified the 14th Amendment considered the right to keep and bear arms among the f_____ rights “necessary to our system of ordered liberty.” S_____ -defense is a basic right, and that, under *Heller*, individual self-defense is the central component of the S_____ Amendment right to bear arms.

The debate over the Second Amendment involves concerns about public safety and whether or not the government regulation of firearms promotes or interferes with public safety and individual rights.

Supreme Court: “Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.” -Justice Alito

- What was the significance of the ruling in *McDonald v. Chicago*?

- Have recent Supreme Court decisions on the Second Amendment leaned more toward individual liberty or public safety?

LFRQ Practice

The federal government must often balance protecting individual liberties and providing for order and security. At times, priority is given to one over the other

Develop an argument about whether the federal government should place more emphasis on protecting individual liberties or providing for order and security.

Use at least one piece of evidence from one of the following foundational documents:

- Article II of the United States Constitution
- The Declaration of Independence
- The Fourteenth Amendment

In your essay, you must:

- ✓ Articulate a defensible claim or thesis that respond to the prompt and establishes a line of reasoning.
- ✓ Support your claim or thesis with at least two pieces of accurate and relevant evidence.
 - One piece of evidence must come from one of the foundational documents listed above.
 - A second piece of evidence can come from any other foundational document not used as your first piece of evidence, or it may be from your knowledge of course concepts.
- ✓ Use reasoning to explain why your evidence supports your claim or thesis.
- ✓ Respond to an opposing or alternative perspective using refutation, concession, or rebuttal.

3.6 BALANCING INDIVIDUAL FREEDOMS WITH PUBLIC ORDER AND SAFETY *AMSCO pg. 300-6*

EIGHTH AMENDMENT RIGHTS

- C_____ and u_____ punishment; no e_____ bail/ fines
- The Death Penalty
 - Eighth Amendment forbids the inflicting of cruel and unusual punishments
 - The d_____ penalty is n_____ considered cruel and unusual punishment in America
 - *Furman v. Georgia* (1972) - Court struck down all of the then-existing State laws providing for the death penalty but not because that punishment is cruel and unusual. Rather, the Court voided those laws because they gave too much discretion to judges or juries in deciding whether to impose the ultimate penalty. The Court found that of all the people convicted of capital crimes, only a random few, most of them African American or poor, or both, were “capriciously selected for execution.”
 - The case led to a *de facto* moratorium on capital punishment throughout the United States, which came to an end when *Gregg v. Georgia* was decided in 1976.
 - a t_____ -stage process in capital cases: first, a trial to settle the question of guilt or innocence; then, for those convicted, a second proceeding to decide if the circumstances involved in the crime justify a sentence of death. D_____ p_____. What amendment(s) contain the dp statement? _____
 - If, however, the death penalty is mandatory, such that there is no provision for mercy based on the characteristics of the offender, then it is unconstitutional.

In recent years, the Supreme Court has seen an increase in cases involving the death penalty, hinging on the question of whether certain uses of capital punishment violate the Eighth Amendment’s protection against cruel and unusual punishment.

In their rulings, which group(s) are not eligible for the death penalty?

FOURTH AMENDMENT

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...”

Probable cause- sufficient r_____ based upon known f_____ to believe a crime has been committed or that certain property is connected with a crime. Probable cause **must e**_____ for a law enforcement officer to make an arrest without a warrant, search without a warrant, or seize property in the belief the items were e_____ of a crime.

- Versus **REASONABLE SUSPICION-**

FOURTH AMENDMENT RIGHTS

The Constitution forbids only "unreasonable"	The Exclusionary Rule searches and seizures
----------------------------------------------	---------------------------------------------

<p>A police search without consent is constitutionally u_____ unless it has been authorized by a valid s_____ warrant</p> <p>–Ex: police use of sobriety checkpoints in enforcing drunk driving laws</p> <p>The constitutional requirements of a specific search warrant</p> <ul style="list-style-type: none"> • Must describe what places are to be searched • Must describe what things are to be seized 	<p><i>Mapp v. Ohio (1961)</i> - The Supreme Court ruled that evidence obtained unconstitutionally cannot be used in court against person from whom it was seized (it must be e_____ from the trial)</p> <p>Adopted mainly to prevent police m_____</p> <p>– Not used if:</p> <p>There would be “inevitable discovery” of the evidence (<i>Nix v. Williams</i>)</p> <p>Police operate “in good faith” that the warrant was valid (<i>U.S. v. Leon</i>)</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4th Amendment The Fruit Of The Poisonous Tree Doctrine- The Exclusionary Rule

A doctrine that extends the e_____ rule to make evidence i_____ in court if it was derived from evidence that was i_____ obtained. As the metaphor suggests, if the evidential "tree" is tainted, so is its "fruit."

The Exclusionary rule applies not only to evidence obtain indirectly as a result of improper police conduct but also to evidence obtained indirectly from the improper conduct.

Evidence derived initial improper conduct is usually called **F_____ Of The P_____ Tree**



USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) 2001

The law covered intelligence gathering and sharing by executive branch agencies, points of criminal procedure, and border protection. It also widened authority on tapping suspects’ phones.

- Soon, people began to question the law's constitutionality and its threat to c_____ l_____.
- Some of the most controversial parts of the Patriot Act surround issues of privacy and government surveillance. The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" It requires law-enforcement officers to obtain w_____ before making most searches.
- Does the government have the right to collect phone and internet data from individuals?

Even today, some of the issues at the heart of the debates at the Constitutional Convention still exist.

GOVERNMENT SURVEILLANCE

USA FREEDOM Act (Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection and Online Monitoring) – 2015

- Restored in modified form several provisions of the Patriot Act
- Imposes new limits on the bulk collection of telecommunication metadata on U.S. citizens by American intelligence agencies, including the National Security Agency.
- Restores authorization for roving wiretaps and tracking lone wolf terrorists

Government Action to Promote Public Order and Safety	Effect on Individual Freedom
-------------------------------------------------------------	-------------------------------------

Death penalty	The Eighth Amendment prevents c_____ and unusual p_____ and e_____ bail . Debate continues about the death penalty as a deterrent for violent crime or violation of the Eighth Amendment.
Furman v. Georgia (1972)	The Court put the death penalty on hold nationally, yet only two justices called the death penalty itself a violation of the Constitution
Gregg v. Georgia (1976)	The Court began reinstating the death penalty as states restructured their sentencing guidelines. No state can make the death penalty mandatory by law. Rather, a _____ and m _____ circumstances must be taken into account in the p _____ phase—the second phase of trial following a guilty verdict.
USA PATRIOT Act	Soon after the September 11 attacks an executive order by President George W. Bush secretly allowed the executive branch to connect with third parties—Verizon and other telecommunications companies—to acquire and examine cell phone data. This third-party relationship excused the government from obtaining warrants as long as the third party was willing to give up the information and allow this collection of metadata . Debate followed about the constitutionality of this order and Fourth Amendment protections against illegal search and seizures.

