

2018 UNIT 2: CIVIL LIBERTIES AND CIVIL RIGHTS

Through the U.S. Constitution, but primarily through the Bill of Rights and the Fourteenth Amendment, citizens and groups have attempted to restrict national and state governments from unduly infringing upon individual rights essential to ordered liberty and from denying equal protection under the law. Likewise, it has sometimes been argued that these legal protections have been used to block reforms and restrict freedoms of others in the name of social order.

The Constitution, but especially the Bill of Rights and the Fourteenth Amendment, are used to assert the rights of citizens and protect groups from discrimination. As such, the government must respect the dignity of the person and assure equal treatment, with its power constrained in the process of protecting individual freedoms. The Fourteenth Amendment includes two clauses that affirm and protect civil rights and liberties—the due process clause and the equal protection clause. The courts must balance the desire for social order with the protection of individual rights and freedoms when considering due process and equal protection challenges.

In a process known as selective incorporation, the Supreme Court has used the power of judicial review to interpret the due process clause in such a way as to prevent states from unduly restricting fundamental freedoms. The Court has been called upon to interpret protections for freedom of political expression and religious exercise, the right to bear arms, the right of privacy, and the rights necessary to ensure that those accused of crimes receive a fair trial.

The equal protection clause provides that states may not deprive persons of equal protection under the law. African Americans, Hispanics, women, LGBTQ (lesbian, gay, bisexual, transgender, queer) people, and other groups have used the clause to lead social movements on behalf of their concerns. The Supreme Court has rendered several landmark decisions that expand civil rights, and Congress has passed legislation that expands equality. At times Congress and the courts are asked to determine the legitimacy of equal protection claims by various groups, as well as weigh the majority's concerns that they will be harmed by the changes sought.

Essential Questions:

- To what extent do the U.S. Constitution and its amendments protect against undue government infringement on essential liberties and from invidious discrimination?
- How have U.S. Supreme Court rulings defined civil liberties and civil rights?

2018 UNIT 2A: CIVIL LIBERTIES

Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.

1) Students will be able to:

Explain how the U.S. Constitution protects individual liberties and rights

Students will know that:

- a) The **U.S. Constitution** includes the **Bill of Rights** specifically designed to protect individual liberties and rights
- b) Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary governmental interference
- c) The application of the **Bill of Rights** is continuously interpreted by the courts

2) Students will be able to:

Describe the rights protected in the Bill of Rights

Students will know that:

- a) The **Bill of Rights** consists of the first ten Amendments to the **Constitution**, which enumerate the liberties and rights of individuals

Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.

3) Students will be able to:

Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty

Students will know that:

- a) The interpretation and application of the **First Amendment's** establishment and free exercise clauses reflect an ongoing debate over balancing majoritarian religions practice and free exercise, as represented by such cases as:
 - ***Engel v. Vitale*** (1962), which declared school sponsorship of religious activities violates the establishment clause
 - ***Wisconsin v. Yoder*** (1972), which held that compelling Amish students to attend school past the eighth grade violates the free exercise clause
- b) The Supreme Court has held that symbolic speech is protected by the **First Amendment**, demonstrated by ***Tinker v. Des Moines Independent Community School District*** (1969), in which the court ruled that public school students could wear black armbands in school to protest the Vietnam War
- c) Efforts to balance social order and individual freedom are reflected in interpretations of the **First Amendment** that limit speech, including:
 - Time, place, and manner regulations
 - Defamatory, offensive, and obscene statements and gestures
 - That which creates a "clear and present danger" based on the ruling in ***Schenck v. United States*** (1919)
- d) In ***New York Times Co. v. United States*** (1971), the Supreme Court bolstered the freedom of the press, establishing a "heavy presumption against prior restraint" even in cases involving national security
- e) The Supreme Court's decisions on the **Second Amendment** rest upon its constitutional interpretation of individual liberty

4) Students will be able to:

Explain how the Supreme Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety

Students will know that:

- a) Court decisions defining cruel and unusual punishment involve interpretation of the **Eighth Amendment** and its application to state death penalty statutes over time
- b) The debate about the **Second and Fourth Amendments** involves concerns about public safety and whether or not the government regulation of firearms or collection of digital metadata promotes or interferes with public safety and individual rights

Protections of the Bill of Rights have been selectively incorporated by way of the Fourteenth Amendment's due process clause to prevent state infringement of basic liberties.

5) Students will be able to:

Explain the implications of the doctrine of selective incorporation

Students will know that:

- a) The doctrine of selective incorporation has imposed on state regulation of civil rights and liberties as represented by:
- ***McDonald v. Chicago*** (2010), which ruled the **Second Amendment's** right to keep and bear arms for self-defense in one's home is applicable to the states through the **Fourteenth Amendment**

6) Students will be able to:

Explain the extent to which states are limited by the due process clause from infringing upon individual liberties

Students will know that:

- a) The Supreme Court has on occasion ruled in favor of states' power to restrict individual liberty; for example, when speech can be shown to increase the danger to public safety
- b) The Miranda rule involves the interpretation and application of accused persons' due process rights as protected by the **Fifth and Sixth Amendments**, yet the Supreme Court has sanctioned a public safety exception that allows unwarned interrogation to stand as direct evidence in court
- c) Pretrial rights of the accused and the prohibition of unreasonable searches and seizures are intended to ensure that citizen liberties are not eclipsed by the need for social order and security, including:
- The right to legal counsel, a speedy and public trial, and an impartial jury
 - Protection against warrantless searches of cell phone data under the **Fourth Amendment**
 - Limitations placed on bulk collection of telecommunication metadata (Patriot and USA Freedom Acts)
- d) The due process clause has been applied to guarantee the right to an attorney and protection from unreasonable searches and seizures, as represented by:
- ***Gideon v. Wainwright*** (1963), which guaranteed the right to an attorney for the poor or indigent
 - The exclusionary rule, which stipulates that evidence illegally seized by law enforcement officers in violation of the suspect's **Fourth Amendment** right to be free from unreasonable searches and seizures cannot be used against that suspect in criminal prosecution
- e) While a right to privacy is not explicitly named in the Constitution, the Supreme Court has interpreted the due process clause to protect the right of privacy from state infringement. This interpretation of the due process clause has been the subject of controversy, such as has resulted from:
- ***Roe v. Wade*** (1973), which extended the right to privacy to a woman's decision to have an abortion while recognizing compelling state interests in potential life and maternal health

2018 UNIT 2B: CIVIL RIGHTS

The Fourteenth Amendment's equal protection clause as well as other constitutional provisions have often been used to support the advancement of equality.

1) Students will be able to:

Explain how constitutional provisions have supported and motivated social movements

Students will know that:

- a) Civil rights protect individuals from discrimination based on characteristics such as race, national origin, religion, and sex; these rights are guaranteed to all citizens under the due process and equal protection clauses of the **U.S. Constitution**, as well as acts of Congress
- b) The leadership and events associated with civil, women's, and LGBTQ rights are evidence of how the equal protection clause can support and motivate social movements, as represented by:
 - Dr. Martin Luther King's "**Letter from a Birmingham Jail**" and the civil rights movements of the 1960s
 - The National Organization for Women and the women's rights movement
 - The pro-life (anti-abortion) movement

Public policy promoting civil rights is influenced by citizen-state interactions and constitutional interpretation over time.

2) Students will be able to:

Explain how the government has responded to social movements

Students will know that:

- a) The government can respond to social movements through court rulings and/or policies, as in:
 - **Brown v. Board of Education** (1954), which declared that race-based school segregation violates the **Fourteenth Amendment's** equal protection clause
 - The Civil Rights Act of 1964
 - Title IX of the Education Amendments Act of 1972
 - The Voting Rights Act of 1965

The Supreme Court's interpretation of the U.S. Constitution is influenced by the composition of the Court and citizen-state interactions. At times, it has restricted minority rights and, at others, protected them.

3) Students will be able to:

Explain how the Supreme Court has at times allowed the restriction of the civil rights of minority groups and at other times has protected those rights

Students will know that:

- a) Decisions demonstrating that minority rights have been restricted at times and protected at other times include:
 - State laws and Supreme Court holdings restricting African American access to the same restaurants, hotels, schools, etc., as the majority white population based on the "separate but equal" doctrine
 - **Brown v. Board of Education** (1954), which declared that race-based school segregation violates the **Fourteenth Amendment's** equal protection clause
 - The Supreme Court upholding the rights of the majority in cases that limit and prohibit majority-minority districting
- b) The debate on affirmative action includes justices who insist that the **Constitution** is colorblind and those who maintain that it forbids only racial classifications designed to harm minorities, not help them