

# Chapter 5

# Civil Liberties

# Civil Liberties & Civil Rights

- **Civil liberties:** protections the Constitution provides individuals against the abuse of government power.
- **Civil rights:** protecting certain groups (women, minorities, gays) against discrimination.

# Culture and Civil Liberties

- **Rights in Conflict** – The Constitution lists competing rights. When one person asserts his rights, another person's rights may be threatened.
- **Examples:**
  - A robber whose car is improperly searched by police might not be convicted. The victim loses the right to see his attacker punished.
  - A factory owner sets rules for employees which may include limiting freedom of expression.
- These conflicts are often brought into court, so courts have a powerful impact on our constitutional liberties.

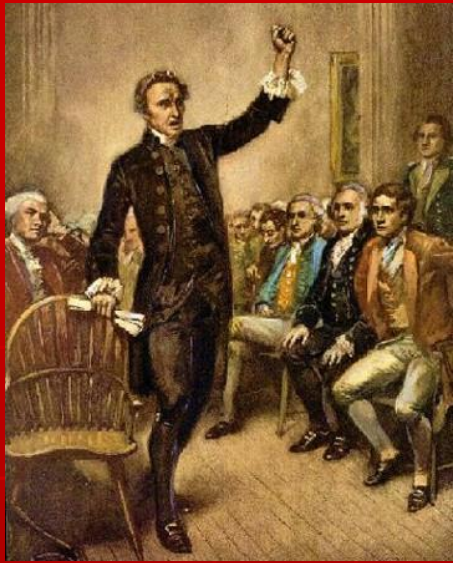
# Culture and Civil Liberties

- **Rights are based on values.**
- **America was first settled by white, European Protestants and thus “Americanism” reflected the values of that cultural group.**
- **Native Americans, blacks, Catholics and Jews were minorities and often persecuted.**
- **Waves of immigration have brought people with different values.**
- **As the diversity of values has increased, so has conflict over rights.**

# The Original Constitution

- **Most of the Framers believed that the original Constitution adequately protected individual rights by preventing the abuse of power by the different branches of government.**

- **writ of *habeus corpus***
- **no bills of attainder**
- **no *ex post facto* laws**
- **trial by jury in federal courts in criminal cases**
- **protection as citizens move from one state to another**
- **no titles of nobility**
- **limits on punishment for and use of the crime of treason**
- **no religious oaths for holding federal office**
- **guarantee of republican form of government for all states.**



# The Original Constitution

- Not everyone agreed.
- Federalists had to agree to add the Bill of Rights to secure support for ratification.



# Selective Incorporation

- **The Bill of Rights was originally thought to only apply to the federal government, not the states.**
- **The Fourteenth Amendment was ratified in 1868 to protect newly freed slaves.**

# Fourteenth Amendment

Section. 1. 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.**



# Fourteenth Amendment

Section. 1. All persons born or naturalized in the United States, and who, when they were adopted, were domiciled in the State wherein they were adopted, or who, when they were adopted, were domiciled in any State 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.

**DUE PROCESS CLAUSE**  
The government has to have a good reason to take away these rights. People must be treated fairly under the law.

# Fourteenth Amendment

**EQUAL PROTECTION CLAUSE**  
**The government must apply the law to all people equally, no matter their race, religion, gender, nation of origin, etc.**

Section 1. 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.**

# Selective Incorporation

- **The Bill of Rights was originally thought to only apply to the federal government, not the states.**
- **The Fourteenth Amendment was ratified in 1868 to protect newly freed slaves.**
- **The Supreme Court began using these two phrases to apply specific rights to state governments.**
- ***Selective incorporation (def) – The process by which most federal rights are also applied to the states.***

# Selective Incorporation

## *Barron v. Baltimore* (1833)

- John Barron was co-owner of a profitable wharf in Baltimore harbor.



### IN A NUTSHELL

No. The Court ruled that the Bill of Rights contains no language implying that states must respect the rights listed therein. The protections only apply to the federal government.

- Barron claim: the government cannot take private property without paying just compensation.
- Constitutional question: Does the 5<sup>th</sup> Amendment's eminent domain protection apply to the states?

# Selective Incorporation

## *Gitlow V. New York (1925)*



### IN A NUTSHELL

Yes. The due process clause of the Fourteenth Amendment protects the specific “privileges and immunities” in the Bill of Rights and no state may deprive citizens of them.

which forbade  
government.

- Constitutional question: Does the New York state law violate the U.S. Constitution’s protection of free speech?
- Constitutional issue: ***Does the First Amendment apply to the states?***

# Selective Incorporation

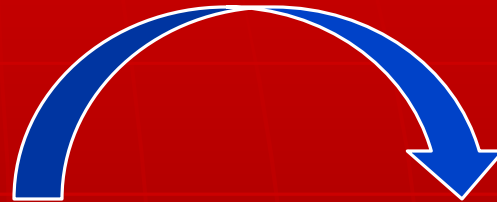
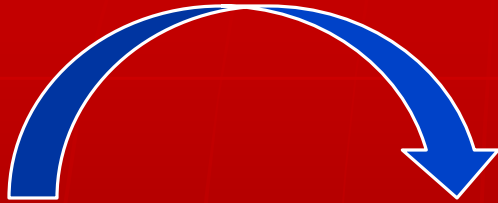
- ***Gitlow*** was the first incorporation case that applied a specific provision of the Bill of Rights (free speech) to state governments.
- Today, nearly the entire Bill of Rights has been applied to the states through the process of ***selective incorporation***.
- Most recently, in ***McDonald v. Chicago (2010)***, the individual right to own firearms was applied to the states.

# Selective Incorporation: Rights not yet incorporated

- **Amendment III: Freedom from quartering of soldiers (incorporated only in Second U.S. Circuit)**
- **Amendment V: Right to indictment by a grand jury.**
- **Amendment VI: Right to a jury selected from residents of state or district where crime occurred.**
- **Amendment VII: Right to jury trial in civil cases.**
- **Amendment VIII: Protection against excessive fines.**



# Selective Incorporation



**1833**

*Barron v Baltimore*

**Bill of Rights does not apply to state governments.**

**1878**

*Fourteenth Amendment*

**State governments must ensure due process and equal protection.**

**1925**

*Gitlow v New York*

**First Amendment protections apply to states. Selective incorporation begins.**