# Civil Rights & Liberties: Crash Course Government #23

Crash Course: U.S. Government and Politics
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Hi, I'm Craig, and this is Crash Course Government and Politics, and today we're finally, at long last, moving on from the structures and branches of government and onto the structures and branches of trees. This is a nature show now.

Okay, we're not moving on completely, because we're still talking about courts, but today we'll be discussing actual court decisions, and the kind of things that courts rule on, rather than how they do it. That's right, we're moving onto civil rights and civil liberties.

(Intro)

Okay, first I want to talk about something that I find confusing: the difference between civil rights and civil liberties. Usually in America, we use the terms interchangeably, which adds to the confusion, but lawyers and political scientists draw a distinction, so you should know about it.

Then you can go back to calling civil liberties "rights" and civil rights "liberties," and most people won't care, but I'll care. I'll be disappointed in you.

So civil liberties are limitations placed on the government. Basically, they are things the government can't do that might interfere with your personal freedom.

Civil rights are curbs on the power of majorities to make decisions that would benefit some at the expense of others. Basically, civil rights are guarantees of equal citizenship, and they mean that citizens are protected from discrimination by majorities.

Take, for example, same sex marriage. You could think of it as a liberty, except that not everyone is free to marry at any given time. Six year olds can't get married, and you can't marry your sibling.

But same sex marriage is a civil rights issue because in the states that don't allow it, the majority of voters is denying something to a minority, creating inequality in the way that the laws work.

Now, just to make things more confusing, lawyers often talk about the difference between substantive and procedural liberties, but they usually call them rights instead of liberties. That's a lawyer eagle. A legal eagle.

Substantive liberties are limits on what the government can do. For example, the first amendment says that congress shall make no law establishing religion. So this means that they cannot create a national church or declare that Christianity or Islam or Hinduism is the official religion of the US.

Procedural liberties are limits on how the government can act. For example, in America in courtroom dramas, there is a presumption that someone is innocent until proven guilty.

This presumption means that in criminal cases, juries and judges have to act as though the accused is innocent until the prosecution convinces them otherwise. If they are not convinced, the accused person doesn't go to prison.

So now that we understand the difference between civil rights and civil liberties perfectly because of my amazing explanation, let's focus on liberties and try to figure out what they are and where they come from, with some help from Thought Bubble.

So civil liberties are contained in the incredibly unhelpfully named "Bill of Rights," which isn't even called that in the Constitution. It's just a name that we give to the first 10 amendments.

The 9th amendment is included to remind us that the list of liberties and/or rights in the other amendments isn't exhaustive. There might be other rights out there, but the constitution doesn't specifically say what they are. Thanks constitution.

In some cases, it's pretty clear. The first amendment, for example, says that "congress shall make no law respecting the establishment of religion, or abridging the free exercise thereof, or abridging the freedom of speech or of the press to assemble or to infringe the right to petition the government for redress of grievances." Pretty straight forward. But other cases are not so clear.

The second amendment says "the right to keep and bear arms shall not be infringed," but it doesn't say by whom. Same thing with the 5th amendment guarantees against self incrimination. Could congress force you to incriminate yourself? How would they do that?

And the 8th amendment prohibits cruel and unusual punishments, like presumably shock pens, but it doesn't say who is forbidden from cruelly and unusually punishing. My mom wasn't forbidden from keeping me from playing video games.

As usual, we might expect the Supreme Court to sort out this mess, but initially they were no help at all. In a case that you've probably never heard of, called Barron vs. Baltimore, decided in 1833, the court said that the Bill of Rights applied to the national, meaning federal government, not to the states.

They said that every American has dual citizenship, but not the good kind. They meant you are a citizen of the US and of the state in which you reside, and basically that the constitution only protected you from the federal government.

In other words, if the state of Indiana wanted to punish me cruelly or unusually, they could. Thanks, Thought Bubble. So Barron vs. Baltimore left Americans in a bit of a civil liberties pickle, and not the good kind of pickle.

They were protected from the national government doing terrible things, like quartering troops in their homes, but not from the state doing the same thing.

And since the state was close to home and the national government was far away and, compared with today, tiny and weak, these protections were pretty weaksauce, so what happened to change this? I hope something, because I like a zesty government sauce.

The 14th amendment and the Supreme Court happened. After the Civil War, as part of the reconstruction, the 13th, 14th, and 15th amendments were added to the constitution. Of these, the 14th is the most important, probably the most important of all amendments. What does it say?

Well the first section, which is the one that really matters, and I'm not going to read the whole thing okay? It reads "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 any person within its jurisdiction the equal protection of the laws."

What this means is that the federal government's like: "Listen states, you can't be dumb. Just stop it. Okay? We're all in this together. Alright?" It means states can't deny equal protection, civil rights, or due process, which in this case encompasses civil liberties. This in theory makes it impossible for states to infringe upon the liberties and the Bill of Rights.

But the legal system being what it is, it's not quite that simple. Did you think it'd be simple? The Supreme Court could have just ruled that all the rights and liberties in the Bill of Rights applied to the states, which seems to be what the 14th amendment implies, but they didn't. Instead they ruled that each of the rights or liberties had to be incorporated against the states on a case-by-case basis.

This is a concept called selective incorporation, and it supposedly reserves more power to the states. What it really means is that when the people thought that the states were violating liberties, they had to go to the Supreme Court, which by now has incorporated almost every clause in the Bill of Rights against the states.

You want examples? We've got them. In the famous case of Gitlow vs. New York, the court ruled that the first amendment protection of the freedom of speech could not be violated by a state. In this case, it was New York, but once a liberty is incorporated against one state, it's incorporated against all of them. In Mapp vs. Ohio, the court ruled that states couldn't use evidence gathered from warrantless searches. In Benton vs. Maryland, the right against Double Jeopardy, being tried for the same crime twice, was incorporated against the states. By now, almost all the rights and liberties mentioned in the first ten Amendments have been incorporated against the states. This means that individuals are protected from all their governments taking away their liberties, and that's a good thing. I loves my liberties.

So we'll be talking about civil rights and civil liberties for a number of episodes, and this topic, while confusing, can be lots of fun. We might play liberties bingo, or civil rights kickball. I don't know what those things are, but they sound like fun. The main thing to remember is that going all the way back to the framers, Americans have been concerned about a too powerful government taking away citizens' freedoms. Yes, these liberties apply mostly to citizens, although some do apply to non-citizens, too. In order to put limits on government, the Bill of Rights was added to the Constitution in 1789, but this didn't mean that those limits applied to the states, probably because the founders expected states to be the main protectors of rights, and in fact, many state constitutions have provisions that copy or in some ways, go beyond what's in the US Constitution. Only after the 14th Amendment was passed, following the Civil War, did the national government get around to addressing this issue of states denying people's liberties. Even then, it took numerous court cases for us to get to the point that most civil liberties that we assume cannot be taken away by the government have actually been guaranteed through the process of selective incorporation. It's taken a long time to get where we are, and there's still a long way to go. Protecting civil liberties requires vigilant citizens to be aware of the ways that government is overstepping its bounds, but that's only half the equation. It's also vital that our majority pay attention the civil rights of others, and that we ensure that everyone is afforded the same protections and benefits promised by our system of law. Thanks for watching. I'll see you next time.

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