

Civil Liberties And Civil Rights

Is there a difference?

Yes!

Civil Liberties / Rights

Civil liberties and civil rights are commonly used interchangeably, but they represent two fundamentally different principles.

Civil Rights
Prevent
Discrimination

Civil Liberties
Provide Basic Rights
& Freedom

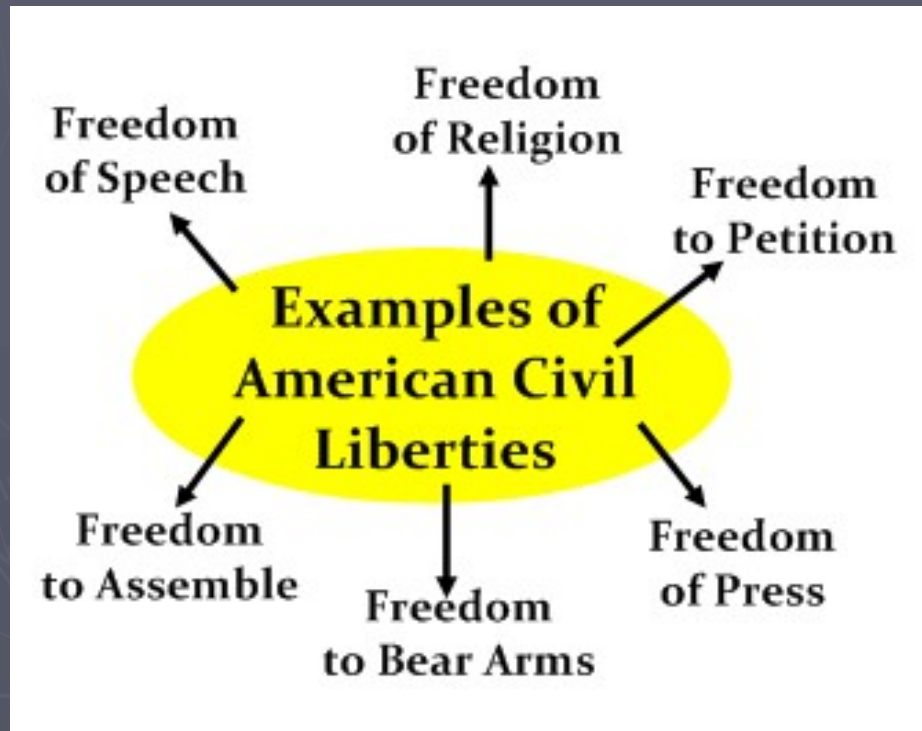


Civil Liberties / Rights

Civil liberties, based on the Bill of Rights and the “due process” clause of the Fourteenth Amendment, are political freedoms that protect individuals from government tyranny.



Civil Liberties / Rights



...Individual rights to speech, to privacy, and to bearing arms are examples of the civil liberties that we are guaranteed as U.S. citizens.

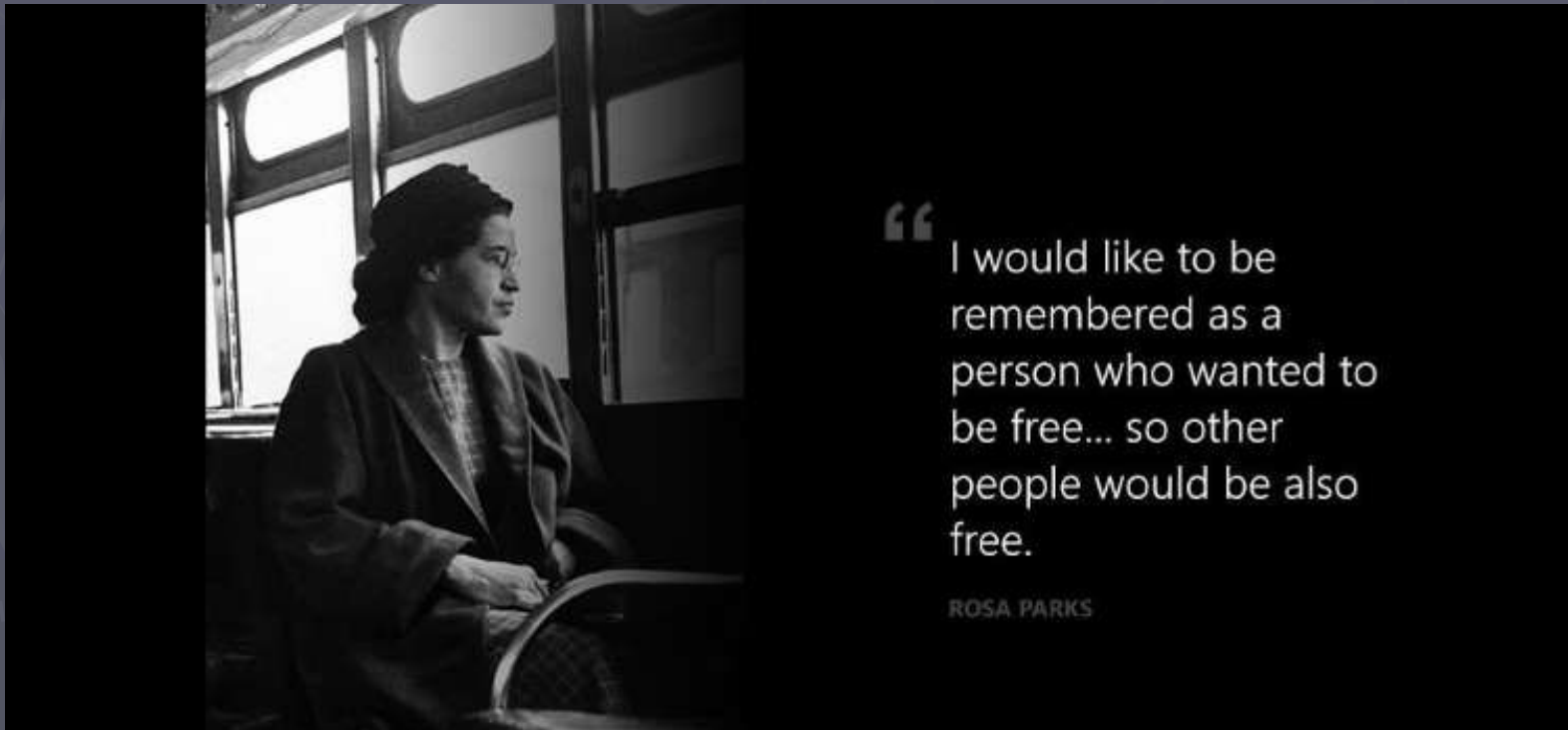
Civil Liberties / Rights

Civil rights, on the other hand, protect individuals from discrimination by the government and other individuals and originate from the “Equal Protection” Clause of the Fourteenth Amendment.



Civil Liberties / Rights

Civil rights guarantee the equality of all citizens; the Civil Rights Act of 1965 are prime examples of laws instituted to ensure equal protection of all citizens under the law.



“ I would like to be remembered as a person who wanted to be free... so other people would be also free.

ROSA PARKS

Civil Liberties / Rights

All rights are derived from the Constitution. Statutes may elaborate rights in particular areas, but they must ultimately draw on the rights found in the Constitution.





Rights Within the Constitution

Civil Liberties / Rights

Prohibition of:

- 1. Bills of Attainder** – legislative findings of guilt. Only the judicial branch find one guilty of a crime.
- 2. Ex Post Facto Laws** – make a specific act a crime, increase the penalties for that crime, or make it easier to convict someone of said crime, *after* it has been committed.
- 3. Writ of Habeas Corpus** – prisoners must either be charged with a crime or released.

Civil Liberties / Rights

Definition of Treason

Levying war against the United States or “adhering to their enemies, giving them aid and comfort.”

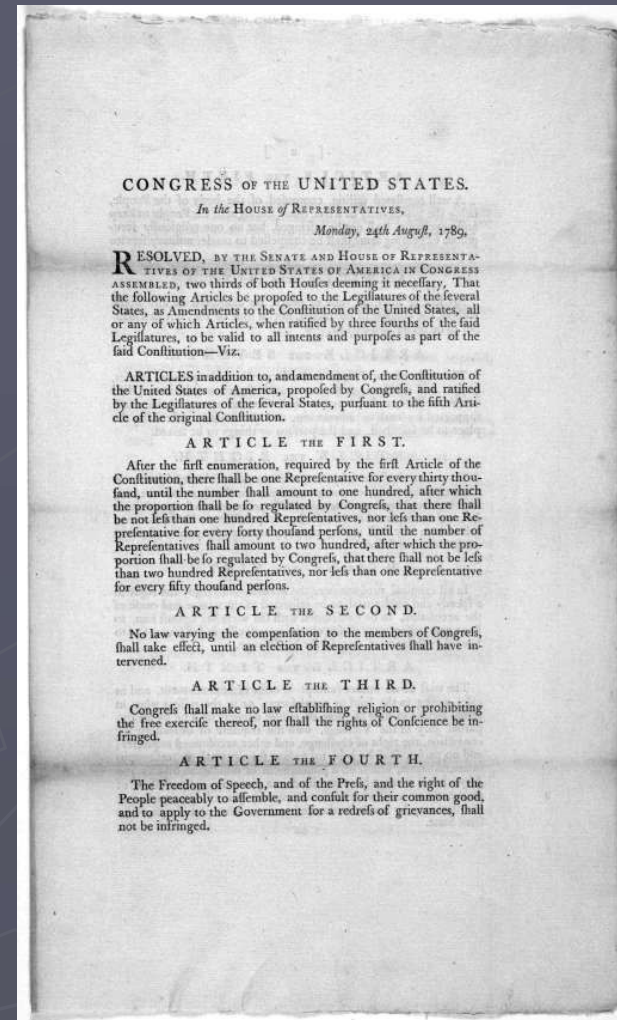


Civil Liberties / Rights

The Bill of Rights

Civil Liberties / Rights

1. The First Ten Amendments of the Constitution



Civil Liberties / Rights

2. Fourteenth Amendment Expansion (Due Process)

This clause of the 14th Amendment prohibits states from denying any person "life, liberty, or property, without due process of law."



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First Amendment Rights (Religion)

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1. Establishment Clause –
Congress should not provide direct aid to religion.



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2. Free Exercise Clause

Congress should not interfere with people's practice of their religion.

No Impeding (allow Free Exercise)

- The Free Exercise Clause... "or prohibiting the free exercise thereof."
- Government cannot:
 - Burden the conscience (not have to work on the sabbath)
 - Restrict religious expression (unless it's criminal)
 - Discriminate against a religion (every church is tax exempt)
 - Invade the autonomy of a church

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First Amendment Rights (Freedom of Expression)

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Extensive constitutional protection, but limits depending on historical context.

Some judicial standards on expression....



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Some judicial standards on expression:

- 1. *Schenck v. U.S.* –** Holmes offers the “clear and present danger” test.
- 2. *U.S. v. Carolene Products Co.* –** Harlan Stone offers the “preferred freedoms” test (Court recognizes freedoms under the First Amendment are more important and thus should receive rigorous scrutiny by the Court).
- 3. Justice Black’s “absolute standard” for free speech.** Government should make *no* law....

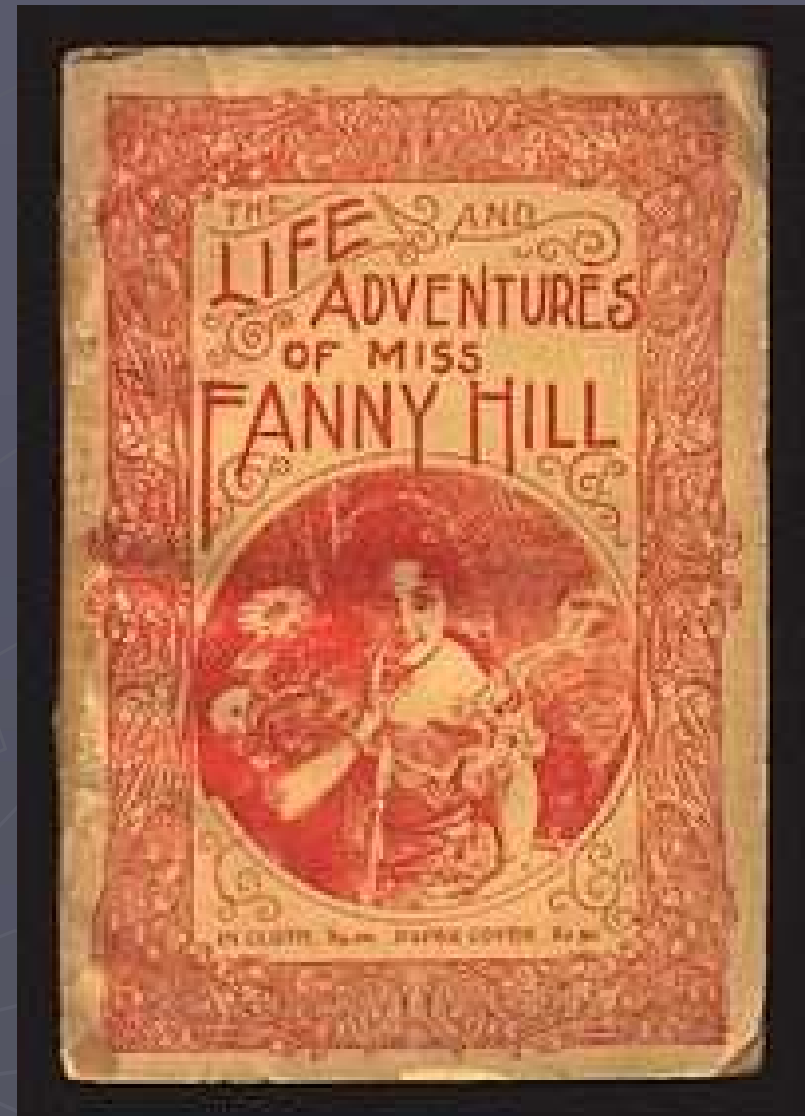
Civil Liberties / Rights

- 4.** Justice Frankfurter's "balancing test" suggested that the Court should balance the value of the speech against the danger it poses to society.
- 5.** *Brandenburg v. Ohio* – which leads to the Brandenburg Doctrine, which holds that speech is allowable unless it threatens "imminent lawless action and is likely to incite or produce such action."

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Judicial Standards on Obscenity

1. *Memoirs of a Woman of Pleasure v. Attorney General of Massachusetts* – material must be “utterly without any redeeming social value.”



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2. *Miller v. California*

The dominant theme of the work taken as a whole “appeals to his or her prurient interest.”

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National Security Issues

3. The Smith Act of 1940 – which prohibits a wide variety of activities aimed at the overthrow of the government.



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Individual Rights

In

Criminal Procedure

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Search and Seizure (4th Amendment)

Prohibition against “unreasonable searches and seizures.” Includes language on “reasonable cause” for police searches.



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Pretrial Rights

Miranda v. Arizona,
rights given to
suspects at the
time of arrest.



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No Excessive Bail
(8th Amendment)

Use of Grand Jury
(5th Amendment) – to
ensure there is
enough evidence of
a crime to warrant a
trial.



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Trial Stage

Right to Counsel (6th Amendment)

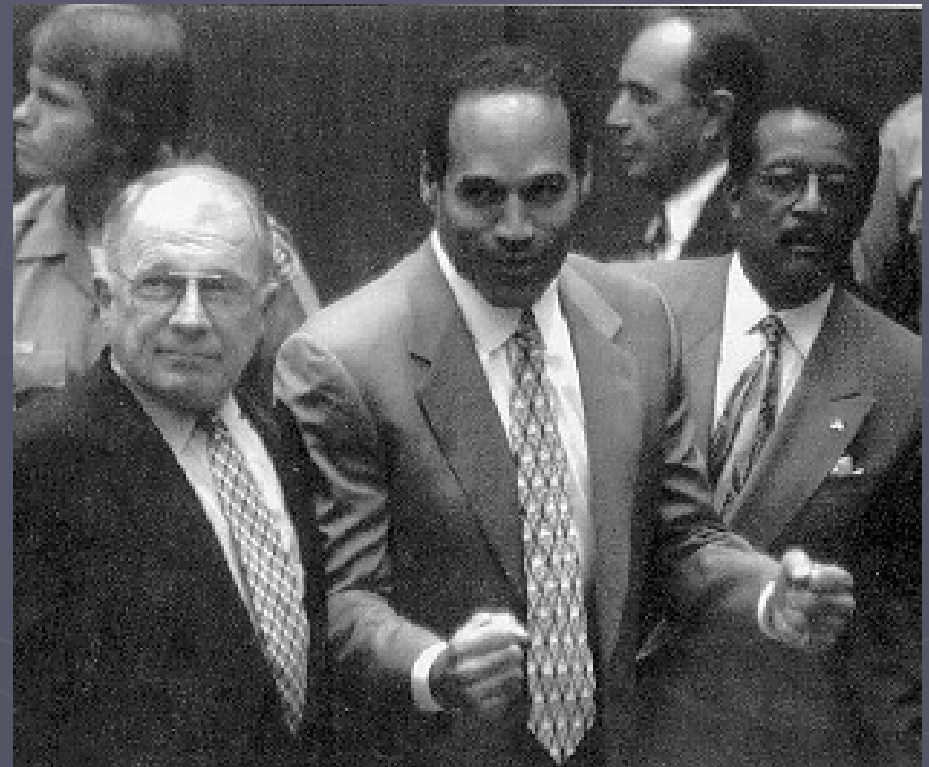
Right given to a low-income citizens after case of *Gideon v. Wainwright*.

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Right to Cross Examine
(6th Amendment)

**Speedy Trial and
Impartial Jury** (6th
Amendment)

**Protection Against Self-
Incrimination** (5th
Amendment)

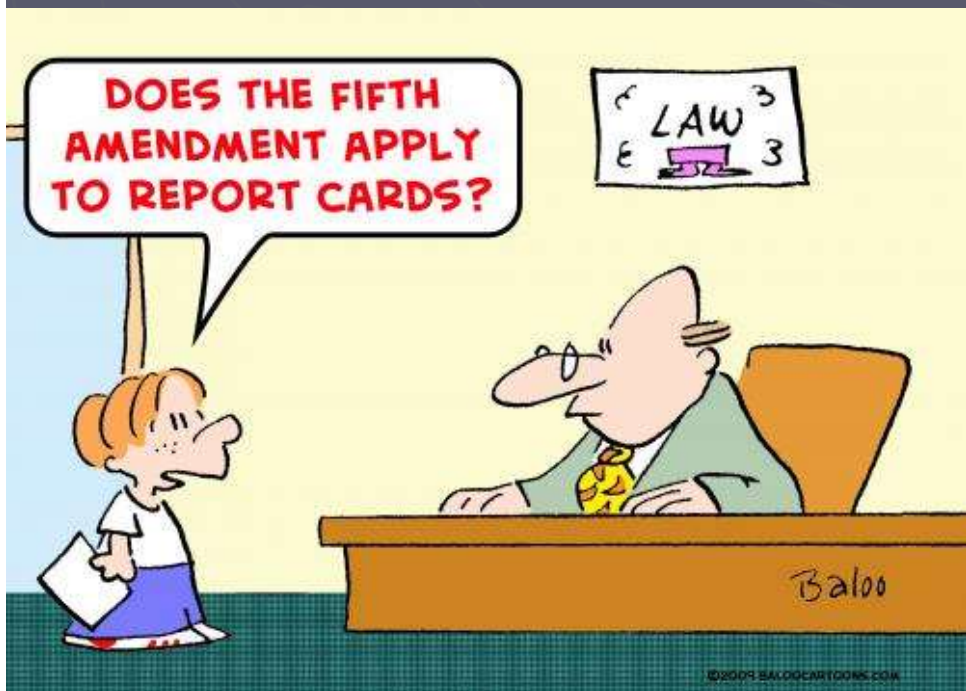


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Post Trial Rights

No Double Jeopardy or Self- Incrimination

(5th Amendment)



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**Racial
Discrimination**

Civil Liberties / Rights

1. Voting Rights

Voting Rights Act
of 1965



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THE VOTING RIGHTS ACT ENTAILS

- Nationwide prohibition of voting discrimination
- Enforced the voting rights stated in the 14th and 15th amendments
- Gave racial minorities the right to vote across the country
- Outlaws literacy tests
- No state or local govt. can impose any voting qualifications

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Voting Rights Today?

The case of *Shelby County v. Holder* (2013)

**THE VOTING RIGHTS ACT:
50 Years Later**

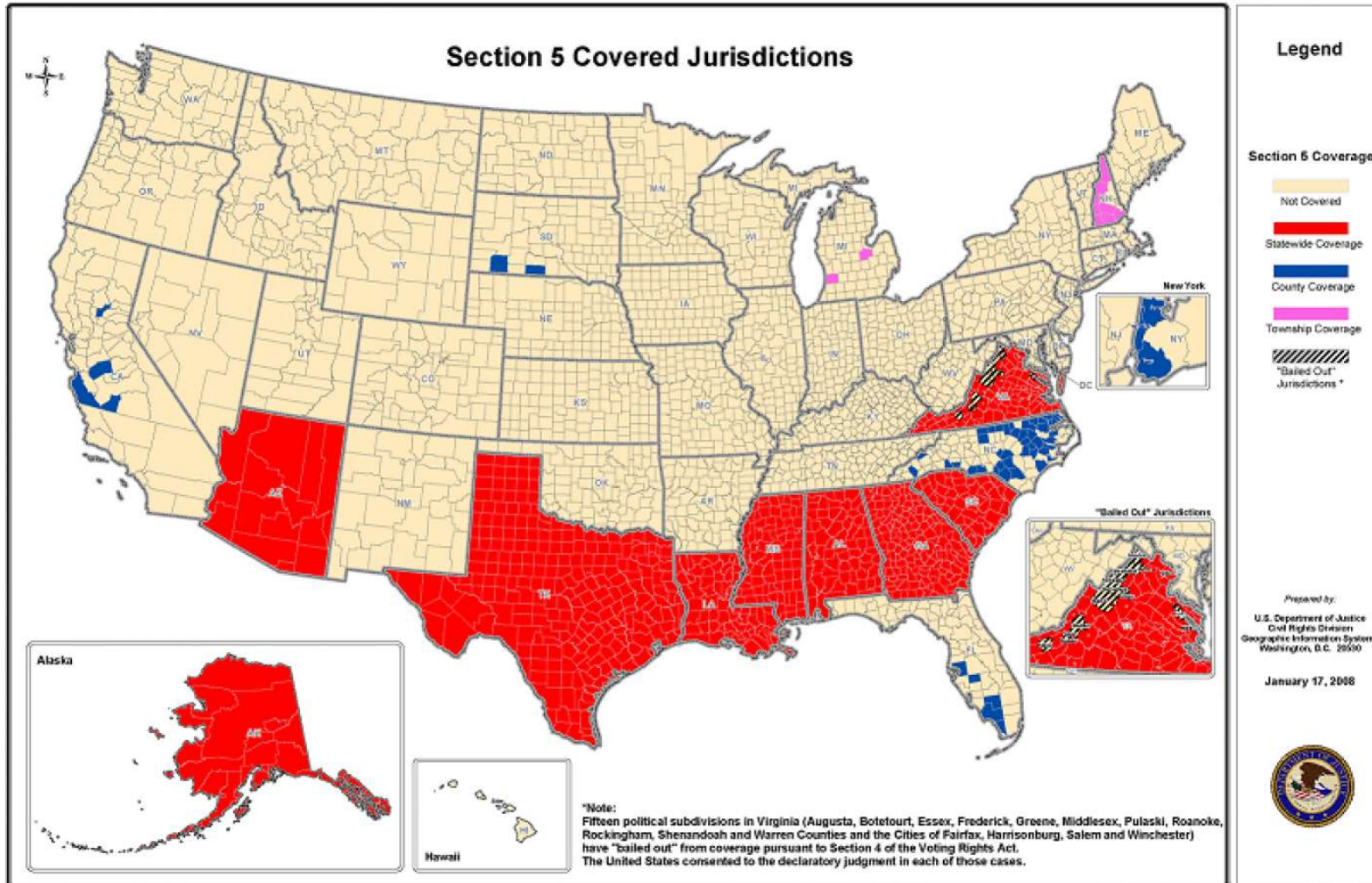


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In the Shelby case, the court invalidated the formula (known as "Section 5") that determined which states and localities, because of a history of discrimination, had to seek federal **preclearance.**"

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Preclearance is approval, from either the Department of Justice or a federal court, for a state to implement any changes to their voting laws or procedures.



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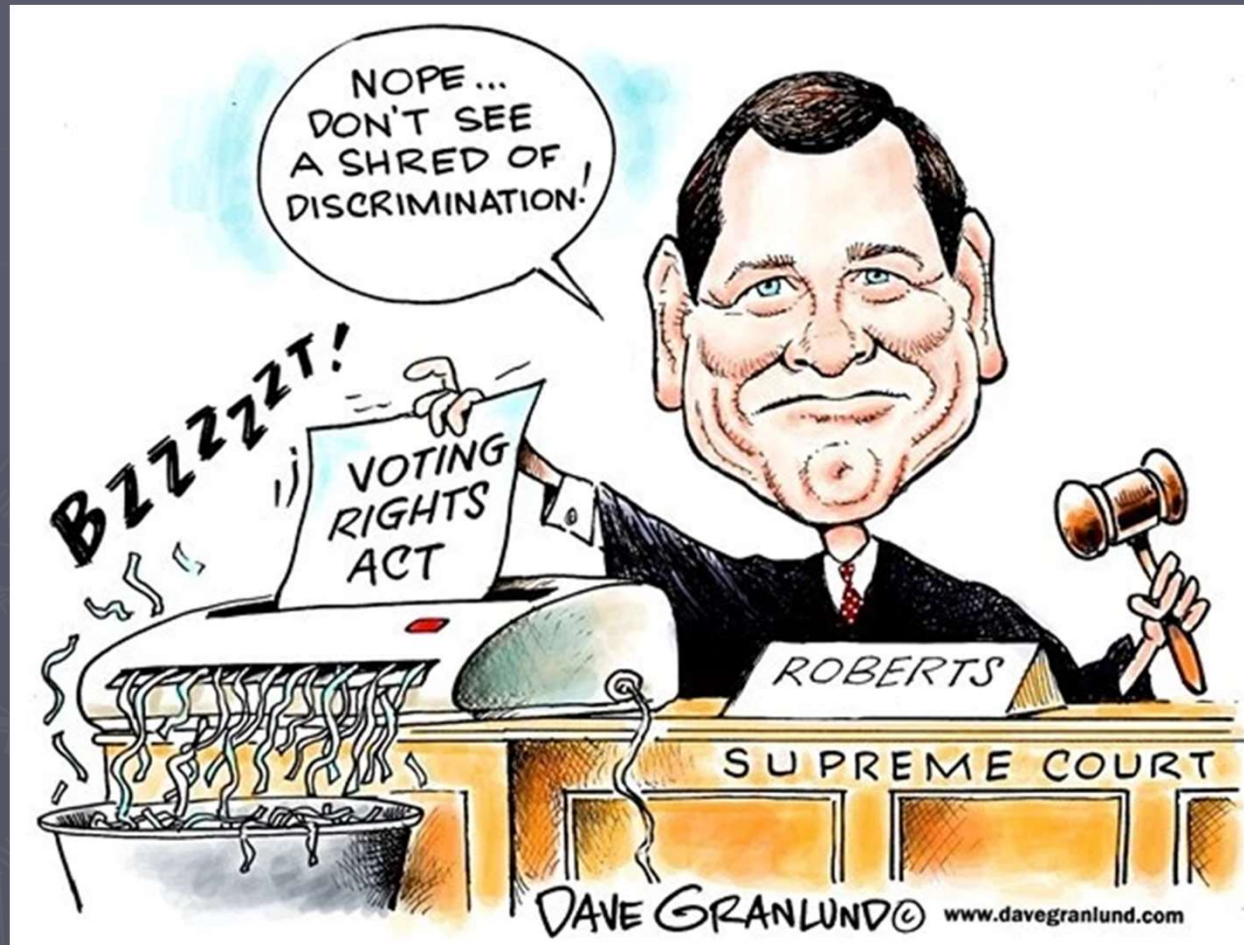
On June 25, 2013, the Court ruled in a 5-4 vote that Section 4 (b) is unconstitutional because the coverage formula (for Section 5) is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.

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The majority opinion was delivered by Chief Justice John Roberts joined by Justices Scalia, Kennedy, Thomas, and Alito.



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Current Status

June 2013 -- the U.S. Supreme Court (*Shelby County V. Holder*) struck down the coverage formula used for Section 5 of the VRA.

Jurisdictions no longer need to seek approval from the Department of Justice and show lack of discriminatory purpose.

However, Section 5 itself was not removed. Congress is left to devise a new coverage formula.

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Voting Rights Advancement Act
Pass the Voting Rights Advancement Act.

“
There is no other work more important in this or any Congress than protecting the full access of all Americans to the democratic process. We should make it simple and easy for people to make their voices heard in our society.

—Rep. John Lewis (D-GA)

”
#RestoreTheVRA



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Currently,



And of course in
terms of voter ID...



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The decision has had 3 major impacts:

In June, the U.S. Supreme Court struck down a key part of the Voting Rights Act of 1965.



That's sounds like a pretty big deal...

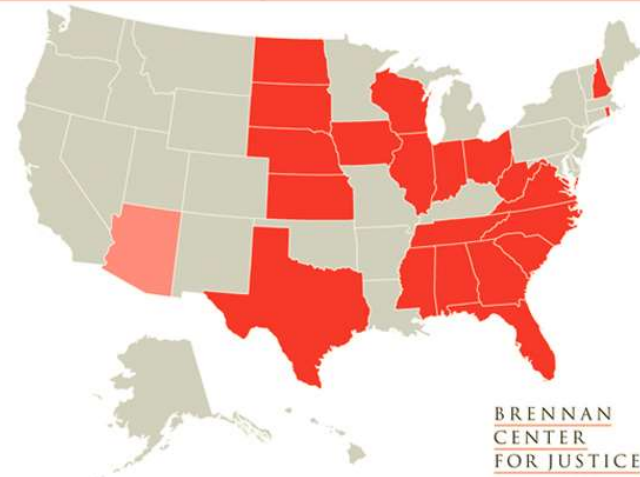
Well, it depends on who you ask, but for a lot of people, it's a really big deal.

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1. Section 5 no longer blocks or deters discriminatory voting changes, as it did for decades and right up to the Court's decision.

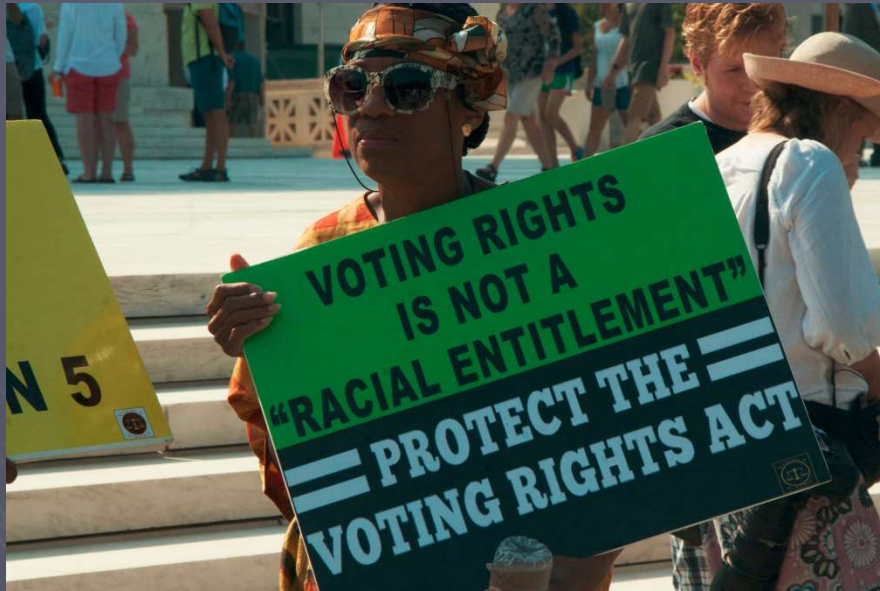
V IS FOR VOTER SUPPRESSION
WHY ARE STATES MAKING IT HARDER TO VOTE?

States With New Voting Restrictions Since the 2010 Election



SINCE 2010, NEW VOTING RESTRICTIONS
ARE SLATED TO BE IN PLACE IN 22 STATES.
SOME POLITICIANS DON'T WANT YOU TO VOTE
#CORPORATIONSARENOTPEOPLE #MONEYISNOTSPEECH #GETMONEYOUT @PAY2PLAYTV

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2. Challenging discriminatory laws and practices is now more difficult, expensive, and time-consuming.

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3. The public now lacks critical information about new voting laws that Section 5 once mandated be disclosed prior to implementation.

Do you think the Voting Rights Act is necessary today to make sure that blacks are allowed to vote, or do you think it is no longer necessary?



Poll conducted May 31-June 4, 2013

The New York Times | CBSNEWS Poll

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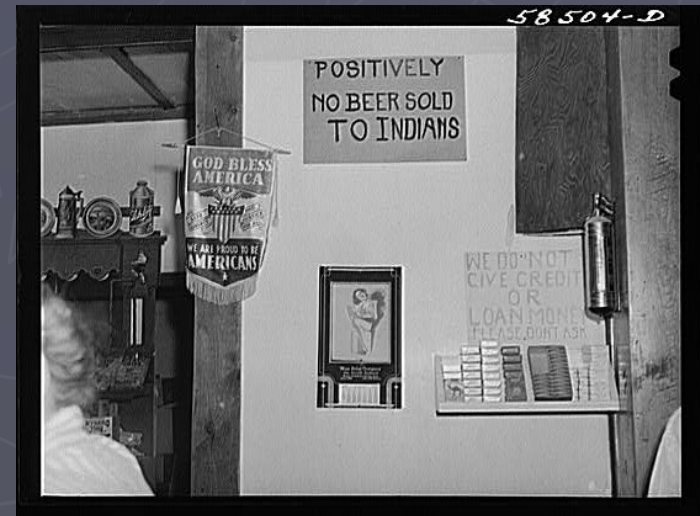


2. Equal Education – *Brown v. Board of Education of Topeka* (1956), overturns the “separate but equal” doctrine created by the *Plessy v. Ferguson* case of 1896.

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3. Private Discrimination

1964 Civil Rights Act eliminates non-state discrimination.



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4. Affirmative Action / Equal Employment

Dealt with racial discrimination in higher education and employment. Famous case: *Regents of the University of Calif. v. Bakke*.

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Gender

Discrimination

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1. Employment

Supreme Court applied equal protection clause to gender discrimination starting in 1971.



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2. Comparable Worth Doctrine

Some jobs held largely by women (such as nursing), should be paid at the same level as men are paid in comparable jobs (very complex issue).

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3. Abortion

The court weighs in starting in 1973, in the case *Roe v. Wade*. Women are held to have a constitutional right to an abortion through the second trimester. They based their decision on the "right to privacy" they discerned in the due process clause of the 14th Amendment.

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Recent Issues

In

**Civil Rights and
Liberties**

Civil Liberties / Rights

1. Privacy

Griswold v. Connecticut
(1965), where the court found the state could not pass a law prohibiting the sale and use of contraceptives.

A photo showing a witness panel completely made up of men testifying on President Obama's proposed birth control benefit on Capitol Hill on Thursday morning quickly went viral across the internet.



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2. Sexual Orientation

Especially around the issue of same-sex marriage.



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3. The Mentally Impaired – the court has found that if an individual is no danger to society and can function outside an institution, they cannot be institutionalized against their will.

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4. Prisoners

More access to
legal resources.



AP

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5. Life Extension Issues

At birth and old age...



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6. The Elderly

Recent statute: age discrimination in Employment Act of 1967.



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7. The Disabled

**Recent statute:
Americans with
Disabilities Act
(ADA), prohibits
employment
discrimination and
requires access to
facilities for them.**



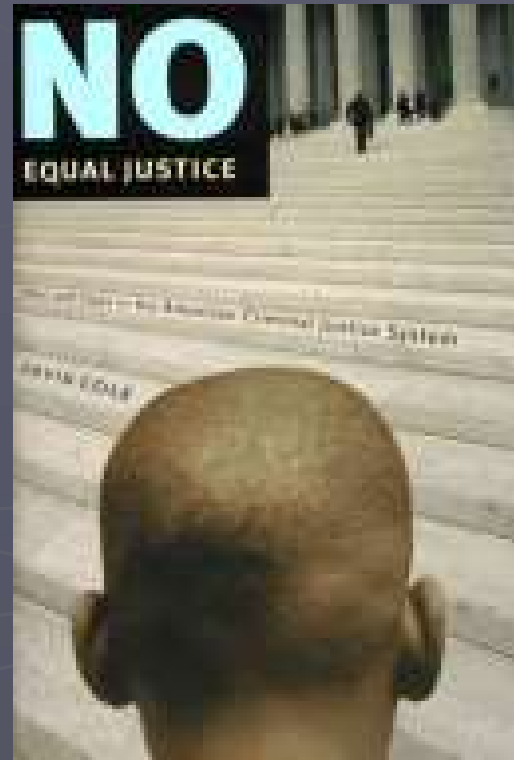
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**Liberty
And
Justice
For All?**



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In ***No Equal Justice***, Professor David Cole submits his thesis on the American criminal justice system. It can be broken down into three parts:



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Nearly 1 in 3 black males likely to go to prison based on constant 2001 incarceration rates

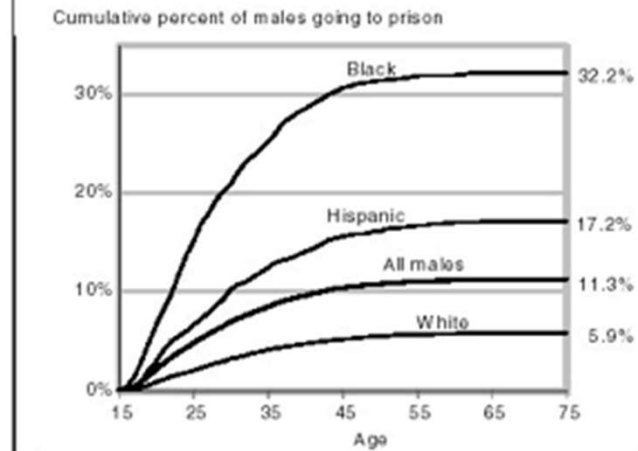


Figure 4

Thesis One: While our criminal justice system is based on the premise and promise of equality before the law, the administration of that law, whether by police, the Congress, or the Supreme Court, is in fact based on the exploitation of inequality.

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Thesis Two: The problem is not that we have ignored inequality's effects within the criminal justice system, or that have tried but failed to achieve equality there.



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Thesis Three: Instead, *our criminal justice system affirmatively depends on inequality, such that without race and class disparities, the privileged among us could not enjoy as much constitutional protection of our liberties as we do.*

