

Handout 5 *What Are Civil Rights and Civil Liberties?*

Sometimes, the rights Americans enjoy are divided into the conceptual categories of “civil rights” and “civil liberties.” These are phrases whose meanings have shifted over time. And often, even lawyers and scholars use the terms imprecisely or synonymously. The difference is explained below.

It is important to know the differences in the definitions because some sources and texts emphasize the distinction. It is worth noting, though, that very little turns on any difference between civil rights and civil liberties. Violations of civil rights and civil liberties are equally illegal, and the activist and advocacy communities that protest or bring lawsuits about those violations usually do not distinguish them.

Civil Rights

In the 19th century, “civil rights” was used to mean rights relating to property and the court system—the right to inherit and own property, sign an enforceable contract, testify under oath, and the like. In our era, however, civil rights is used to signify something very different. The phrase has become inextricably linked to the Civil Rights Movement of the 1950s and 1960s, and to the kinds of claims of equality and antidiscrimination that participants in that movement made.

Today, antidiscrimination—that is, civil rights—claims can be made against the government or private individuals, organizations, or corporations. Claims against the government may arise under the U.S. Constitution’s 14th Amendment, which includes the “Equal Protection Clause”:

Equal Protection Clause (U.S. Constitution, Amendment 14):
Nor shall any state . . . deny to any person within its jurisdiction the **equal protection of the laws.**

There are also a large number of federal and state civil rights statutes that prohibit employment discrimination, housing discrimination, discrimination in contracting and service at stores, voting policies and practices, and more. Each has slightly different coverage, but they enforce many types of equality, including race, gender, disability, and age. Because federal law is, under the Constitution’s Supremacy Clause the “supreme law of the land,” state or local laws cannot reduce the equality protections provided under federal law, but they can be *more* protective.

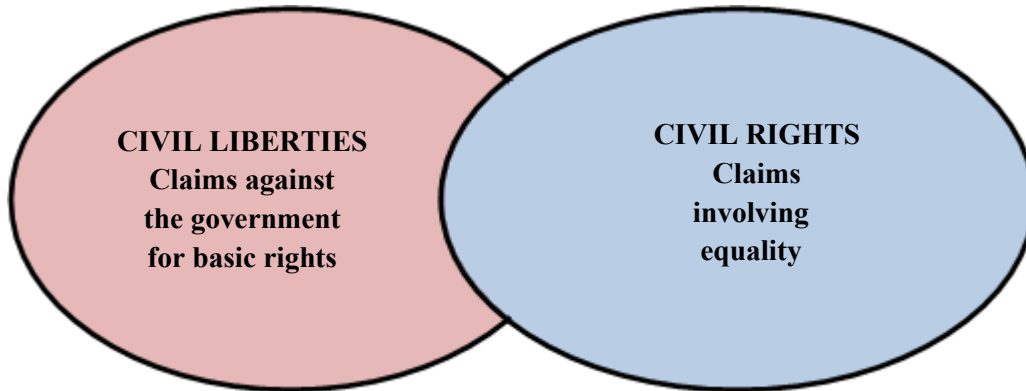
Civil Liberties

If you are being precise, current practice is to use the phrase “civil liberties” to refer to protections against government actions and abuses that are *not* related to discrimination. The core civil liberties are protected by the U.S. Constitution’s First Amendment—freedom of speech, press, and assembly, and freedom of religion, but the term is used more broadly to cover the rest of the Bill of Rights, as well.

U.S. Constitution, Amendment 1:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

In sum, *civil liberties* involve constitutional claims against the government for basic rights. *Civil rights* involve constitutional and statutory antidiscrimination claims against the government, individuals, groups, or corporations.

What are civil rights and liberties?



Civil Liberties
(vs. Government)
Freedom of religion, speech, press, peaceable assembly, right to petition the government for redress of grievances; freedom from unreasonable searches and seizures; rights against cruel and unusual punishment; right to privacy, right to marry, to have children, to raise one's children, to fair government procedures; voting rights, etc.

Civil Rights
(vs. Government)
“Equal protection of the laws” (No race or sex discrimination by the government)

Civil Rights
(vs. individuals, groups, corporations)
No discrimination in employment, housing, education, etc. on the basis of race, sex, national origin, ethnicity, disability, age, etc.

Background on Sources of Civil Rights and Liberties:
A Partial List of Constitutional Provisions and Statutes

- A. *Bill of Rights* (the U.S. Constitution's first ten amendments). These rights were added to the Constitution shortly after its adoption as a means of protecting individuals against the threat of the newly powerful federal government. Courts have since held that these guarantees apply against state and local governments as well. Highlights include:
- First Amendment: Freedom of religion, speech, press, peaceable assembly, petition the government for a redress of grievances
 - Fourth Amendment: Freedom from unreasonable searches and seizures
 - Fifth Amendment: Rights against compelled self-incrimination and to fair governmental procedures
 - Eighth Amendment: Rights against excessive bail, excessive fines, and cruel and unusual punishments
- B. The *Civil War Amendments*. After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments were added to the Constitution to:
- Abolish slavery
 - Ensure voting rights to all men
 - Guarantee equal protection under the law
 - Extend due process requirements to the states
- C. In 1920, the *Nineteenth Amendment* was added to the Constitution to extend voting rights to women, and in 1971, the *Twenty-Sixth Amendment* extended the right to vote to citizens eighteen years of age or older.
- D. There are many *civil rights statutes*, some emerging from the Civil Rights era of the 1950s and 1960s, of which *Brown v. Board of Education* was a part:
- The Civil Rights Act of 1964: prevents discrimination in public places on the basis of race, color, religion and national origin
 - The Voting Rights Act of 1965: prohibits racial discrimination in voting by regulating election administration
 - The Fair Housing Act of 1968: prohibits discrimination in sale, rental and financing of housing based on race, religion, national origin and sex

Other statutes have also added important protections:

- The Age Discrimination in Employment Act (1967): prohibits employment discrimination against people 40 years of age or older
- Title IX of the Education Amendments of 1972: forbids educational institutes to discriminate based on gender
- The Rehabilitation Act of 1973: forbids discrimination on the basis of disability by recipients of federal funding
- The Individuals with Disabilities Education Act (1975): requires public schools to provide a free and appropriate public education to kids with disabilities
- The Pregnancy Discrimination Act (1978): prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- The American with Disabilities Act (1990): forbids discrimination on the basis of disability and requires reasonable accommodations of disability by employers, governments, and others
- The Religious Land Use and Institutionalized Persons Act (2000): requires accommodation of religious practice in land use and jails and prisons

Handout 6
Final Writing Assignment

Write an essay responding to the following question: *Do court procedural rules adequately reflect the values and principles of American constitutional government?* Feel free to refer back to previous handouts from this Unit to help you respond; *Handout 4* may be particularly relevant.