

Civil liberties and civil rights; the metaphorical shield and sword



**ASSIGN
BUSTER**

Civil liberties and civil rights are a vital part of our American government. However, the two concepts tend to be blurred. I originally thought that our liberty and our rights would be interchangeable and that finding differences between them would be like trying to find the differences between beige and ivory. The terms seem to be used synonymously in our modern colloquial usage. While the two concepts do tend to go hand in hand and, in some cases cross over into one another, there are significant differences in the definition and significance of each.

Civil liberties, according to Scott Abernathy, “ refers to the fundamental rights and freedoms of citizens, the protection of which involves restricting the power of a government.” I believe this definition is where most of the confusion arises as the term ‘ rights’ resides within the definition. However, the fundamental rights that Abernathy is referring to is the Bill of Rights. Our civil liberties, or freedoms, originate from that document which places a standard that ensures that our government cannot infringe on those liberties. Freedom of speech, the right to bear arms, and our right to a trial by jury are some examples of these liberties. Our civil liberties can be interpreted as freedoms that we should naturally hold and that our government cannot take away or obstruct. Abernathy refers to these civil liberties as negative freedoms because protecting them involves restricting government action. Lauren Ratliff Santoro cements this correlation while representing The Ohio State University Department of Political Science, stating in an article posted on the College of Arts and Sciences Blog, “ civil liberties, based on the Bill of Rights (the first ten amendments of the United States Constitution) and the ‘ Due Process’ Clause of the Fourteenth

Amendment, are political freedoms that protect individuals from government tyranny.” So, we can safely accept that civil liberties are protections or shields put in place to limit to what extent the government can sanction us individually and collectively as citizens in relation to our freedoms.

Santoro provides an example of a violation of civil liberties while examining the United State Department of Justice report on the Ferguson Police Department as a result of the Michael Brown shooting that occurred in 2014. According to Santoro, Ferguson Police Officers were asking for pedestrians’ identification without probable cause. Santoro sites this as an example of a violation of their civil liberties as identified in the fourth amendment of the Bill of Rights. The fourth amendment protects us as citizens against unreasonable search and seizures without probable cause. The act of asking for identification from individuals without reason is a violation of their civil liberties. Robert K. Carr strengthens this concept and correlates our civil liberties to a metaphorical shield in a study conducted in 1947 of the work of the Civil Rights Section. Christopher Schmidt, in his article *Civil Rights-Civil Liberties Divide*, explains Carr’s metaphor by stating, “ from the perspective of the shield approach, ‘ interference with private rights by public agencies is the great historic threat to civil liberty, and the chief method of meeting this threat has long been to invoke the constitutional bill of rights...Government was the enemy of freedom.” This simple metaphor captures the meaning of civil liberties perfectly. Our civil liberties provide us protection, very much like a shield or a defensive measure, that our government cannot restrict or intrude upon. But what exactly defines our civil rights?

Abernathy states in our text that, “ civil rights refer to the fundamental rights of individuals to be treated equally under the laws and policies of governments, regardless of their identities and lived experiences.” This definition is key to understanding the difference between civil liberties and civil rights. The equal treatment verbiage, regardless of identity, is the key to unlocking this concept. Loren Mulraine, law professor at Belmont University College of Law, confirms Abernathy’s definition by stating, “ the legal area known as ‘ civil rights’ has traditionally revolved around the basic right to be free from unequal treatment based on certain protected characteristics such as race, gender, or disability.” This definition goes hand in hand with Abernathy, but specifically mentions the areas of race and gender, as they have been the primary arenas in which civil rights battles have been waged. If we go back to the case of the Ferguson Police Department, officers went on to specifically target African Americans which moved this violation of civil liberties into a civil rights violation by discriminating against a specific racial group. Santoro states that they were, “ not ensuring equality of citizenship.” The focus on an individual racial group made these incidents violations of their civil rights.

In our text, Abernathy goes on to explain and correlate civil rights as positive freedoms, as they require positive or offensive action from either us as citizens to exercise them or the government to secure them. If we look back at Carr’s metaphor of the shield approach; with every defensive action, an offensive or positive action will be required in order to fight for or secure those rights. According to Schmidt, Carr’s metaphor for this action was aptly named the sword approach. He states, “ the use of a defensive weapon is

not enough. A sword must be wielded and aggressive battle waged to safeguard our fundamental rights. In this battle to preserve civil rights, the role of government inevitably changes from oppressor to protector.” The sword is a perfect embodiment of government’s role in civil rights and the movements used to fight for those rights and ensure equality. Key points in our political history have displayed this action. Case in point, the Supreme Court ruling on *Brown vs. the Board of Education* , in which the Supreme Court overturned the decision in *Plessy vs. Ferguson* and declared that separate but equal facilities for African Americans were inherently unequal. However, our government alone cannot represent the sword by itself. Abernathy names organizations such as the National Association for the Advancement of Colored People (NAACP) and the National Organization for Women (NOW) as embodiments of the sword in fighting for both African Americans and women’s rights to equality and providing support for cases to reach the Supreme Court. Abernathy also cites the Civil Rights Act of 1964 and The Voting Rights Act of 1965 as, “ major pieces of civil rights legislation, finally giving support to efforts that had begun in the Supreme Court and on the streets.”

In conclusion, I believe that a clear line can be established utilizing Carr’s shield and sword approach. Civil liberties and civil rights will inevitably continue to be misused in conversation or short-hand reference, but the definitions and significance abound. Civil liberties are the freedoms granted to us by the Bill of Rights, our shield to protect ourselves. Civil rights are what we fight for to ensure equal treatment to all citizens regardless of personal identities or characteristics, our sword to fight for equality. The

battle will inevitably continue to wage. Nevertheless, if we look at whether we are shielding our selves or fighting, we can determine if it is a liberty or a right.

Works Cited

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