

A Commitment to Freedom

- The listing of the general rights of the people can be found in the first ten amendments in the Constitution, also known as the **Bill of Rights**.
 - The 13th and 14th amendments have also added to the Constitution's guarantees of personal freedom.
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- In general, **civil liberties** are protections *against government*.
 - They are guarantees of the safety of persons, opinions, and property from arbitrary acts of government.
- The term **civil rights** is sometimes reserved for those *positive acts of government* that seek to make constitutional guarantees a reality for all people.

Limited Government

- Throughout the Constitution, the extent of governmental authority is strictly limited.
- The rights that the Constitution guarantees to citizens are also limited.
- People in the United States are free to do as they please as long as they do not infringe upon the rights of others. Rights are relative.
- Sometimes, different rights conflict with one another, such as the freedom of the press and the right to a fair trial.
- Not all rights are guaranteed to **aliens**, who are foreign-born residents or non-citizens. For instance, their right to travel is often restricted.

Federalism and Individual Rights

The Bill of Rights

- The most famous of the Constitution's guarantees apply only to the National Government, not the government of the States.
- The Supreme Court held that the Bill of Rights only restricts the National Government in *Barron v. Baltimore*, in 1833.

The Modifying Effect of the 14th Amendment

- The 14th Amendment's **Due Process Clause** provides that no State can "deprive any person of life, liberty or property, without due process of law...".
- However, to include rights under that heading, the Supreme Court had to define the rights on a case by case basis, called **the process of incorporation**.

Federalism and Rights

- Each state has its own constitution that may include the same or more rights as those in the Bill of Rights.
- Protected in US and AZ - Article II and Amendments 1 - 10.
 - Speech
 - Religion
 - Press
 - Fair Trial
 - Arms

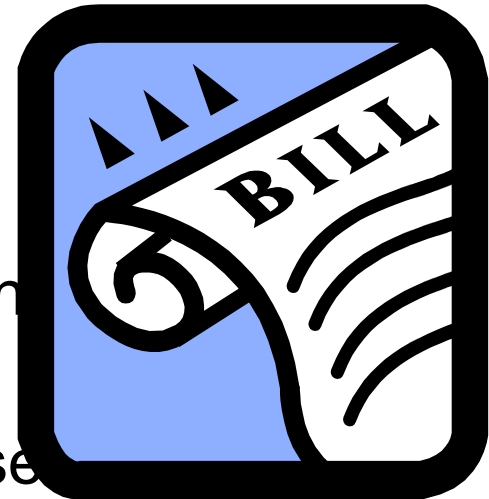
Protected in AZ Article II but NOT in B or R Article II

- Privacy
- Victims Bill of Rights
- Imprisonment for
debt

The Bill of Rights

The first ten amendments to the Constitution constitute the Bill of Rights.

- These amendments were designed to protect the basic freedoms of American citizens.
- The meanings and applications of these rights have changed over time as judicial interpretations of these freedoms has changed.



Freedoms

The freedoms included in the Bill of Rights include:

- the right to free speech
- the right to the free exercise of religion
- prohibitions against unreasonable searches and seizures
- guarantees of the due process of law
- the right to privacy

The Bill of Rights: A Charter of Liberties



Although we tend to use the terms interchangeably, a useful distinction can be made between

civil liberties
and
civil rights.

Rights and Liberties

CIVIL LIBERTIES are
protections of citizens
from unwarranted
government action.

CIVIL RIGHTS describe
government's
responsibility to protect
citizens.

The Bill of Rights'
emphasis on limiting the
powers of the national
government makes it
arguably more a "bill of
liberties."

Substantive and Procedural Liberties

As restraints on government action, there are at least two kinds of **civil liberties**:

Substantive liberties are restraints on what the government shall and shall not have the power to do.

Procedural liberties are restraints on how the government is supposed to act when it acts; for example, citizens are guaranteed “due process of law” when accused of a crime.

Hamilton's Objections to the Bill of Rights

In *Federalist* #84, Alexander Hamilton laid out several objections to including a "Bill of Rights" in the Constitution.

#1 → Hamilton's first objection was that where "Bills of rights" are appropriate in monarchies, they are unnecessary in republics where "the people surrender nothing" and "retain everything."

Hamilton's Objections to the Bill of Rights –cont.

#2 → Hamilton's second objection was that the Constitution already contained provisions protecting citizens' rights.

Rights in the main text of the Constitution:

Habeas corpus (Art. I, Sec. 9)

Prohibition of bills of attainder and ex post facto laws (Art. I, Sec. 9)

Prohibition against titles of nobility (Art. I, Sec. 9)

Guarantee of trial by jury (Art. III)

Treason defined and limited to the life of the person convicted (Art. III)

Hamilton's Objections to the Bill of Rights –cont.

#3 → Hamilton's third objection was that the inclusion of a Bill of Rights would actually be dangerous to the rights of citizens.

Hamilton argued that by implying a stronger government than the Constitution had established, a Bill of Rights would provide a “colorable pretext” for the government to claim even more powers which would, in turn, threaten liberty.

Quote

A Bill of Rights “would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?”

--Alexander Hamilton, *Federalist* #84

First Amendment Freedoms

First Amendment Overview

Parts, Issues, Cases

The Five Freedoms

1. Religion
Establishment and Free Exercise
2. Speech
3. Press
4. Peaceable Assembly
5. Petition the Government

The First Amendment

1st Amendment:

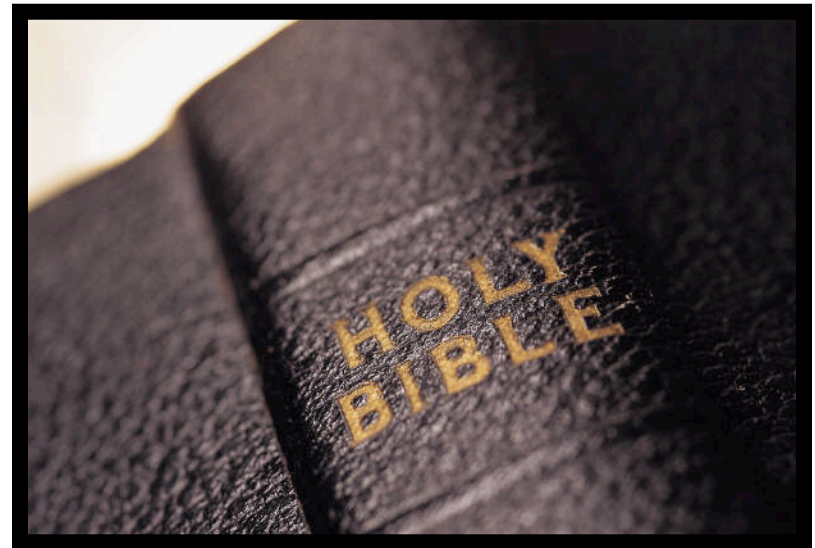
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Elements of the 1st Amendment:

- Separation of church and state
- Free Exercise of religion
- Freedom of speech

Establishment Clause




Although Thomas Jefferson believed in a “wall of separation” between the church and the state, Supreme Court interpretations of the 1st Amendment’s “establishment clause” have left room for some mingling of the government and religion.



Lemon Test

In *Lemon v. Kurtzman* (1971), the Supreme Court held that government aid to religious schools would be constitutional if they met three criteria, known as the Lemon test.

Lemon Test:

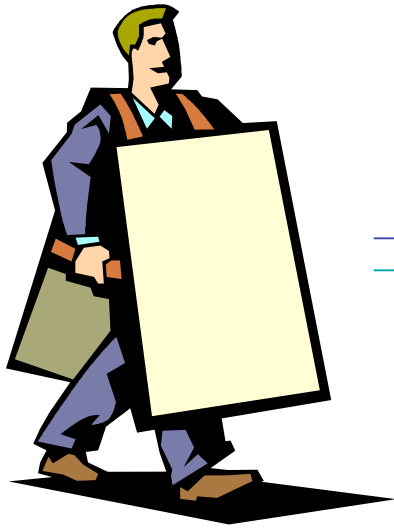
-  The government action must have a secular purpose;
-  Its effect should neither advance nor inhibit religion;
-  It does not lead to excessive entanglement with religion

Free Exercise Clause

The 1st Amendment also guarantees citizens' rights to believe and practice whatever religion he or she chooses; this is the **free exercise clause**.

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) further protecting citizens' free exercise of religion.

Speech and Press



1st Amendment protections of freedom of speech and of the press enjoy some of the strongest Constitutional protections.

Encroachments on these 1st Amendment rights often require that the government meet a **strict scrutiny** standard in which the government must show that its action is Constitutional.

Speech

Protected Speech

- The truth
- Political speech
- Symbolic speech

Speech that lacks such protections

- Speech that presents a “clear and present danger” to society
- Libel and slander
- Obscenity
- Fighting words

Rights of the Criminally Accused

4th Amendment:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Freedom of Religion

- Why can't a free society exist without free expression?
- What is the “wall of separation between church and state”?
- How has the Supreme Court ruled on Establishment Clause cases?
- How has the Supreme Court interpreted and limited the Free Exercise Clause?

Freedom of Expression

Two guarantees of religious freedom:

Establishment Clause

- Guards against establishing a mandated religion.
- In effect, freedom from religion

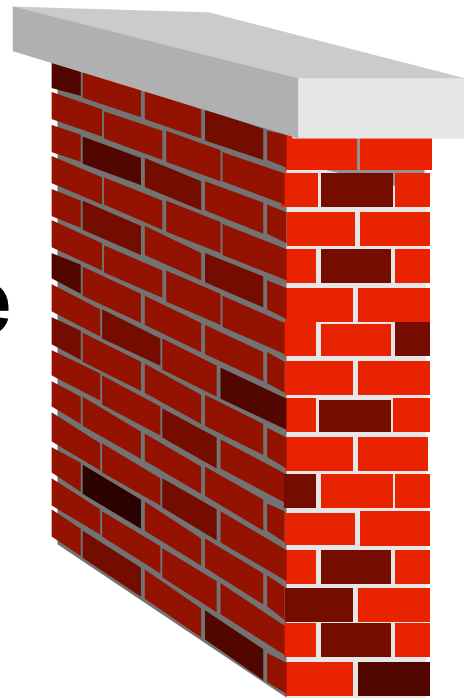
Free Exercise Clause

- Guards against the government interfering in the exercise of any religion.
- In effect, freedom for religion.

Separation of Church and State

A wall of separation?

Church and government are constitutionally separated from one another.



However, the government supports churches and religion in a variety of ways, including tax exemption.

Religion and Education

The Supreme Court has had to consider many Establishment Clause cases that involve religion and education.

Released Time—students can be released during school hours to attend religious classes, as long as the classes do not take place in a public facility

Prayers and the Bible—the use of prayer and the Bible in a religious way is not allowed in school or at school functions

Student Religious Groups—are allowed to meet in the school on the same basis as other student organizations

Evolution—a doctrine can not be preferred or prohibited according to its relation to a religious theory

Aid to Parochial Schools—the Supreme Court uses the *Lemon* test to determine what public funding of church-related schools is acceptable

The *Lemon* Test

The *Lemon* Test is based on *Lemon v. Kurtzman*, 1971.

- The purpose of the aid must be nonreligious.
- The aid can neither advance nor inhibit religion.
- Aid must not excessively entangle the government with religion.

The Free Exercise Clause

Limits

- Actions that violate social duties or disrupt social order are not covered under the Free Exercise Clause.
 - **Examples:**
 - Bigamy
 - Using poisonous snakes during religious ceremonies
 - Schoolchildren who have not been vaccinated

Free Exercise Upheld

- The Court has found many government actions to be counter to the Free Exercise Clause.
 - **Examples:**
 - Amish children cannot be forced to go to school after grade 8
 - Ministers are allowed to hold elective office
 - Unemployment benefits cannot be denied to someone who quit their job because of religious beliefs

A Few First Amendment Issues

- **Religion**

- **Establishment of Religion**

- How much can the government get involved with a religion?
 - Religion in public places
 - Prayer in schools
 - Prayer at graduations

- **Free Exercise of Religion**

- What a person does (that might be illegal) and claim it is religious?
 - Can parents do or not do something for or to their kids and claim free exercise?
 - Vaccination, school attendance
 - Flag salute

Speech Issues

- Symbolic speech
 - A “finger”
 - Is it still free speech when no words are spoken?
- Obscenity
 - Is porn free speech?
- Flag burning - Political speech
 - Is it free political speech to burn the symbol of your liberty?
- Hate Speech
 - Is it free speech to say racist remarks to someone?

More Speech Issues

- Commercial speech

- Can a business say whatever they want about their product?

- Students

- Do students have free speech at school?

- Sedition

- How much can a person complain or say bad things about the government?

- “Clear and present danger” SCHENCK v. U.S. , 249 U.S. 47 (1919)

- Can a person yell “fire” in a crowded movie theater?

Press

- “Prior restraint”
 - When can the government stop something from being published?
 - Pentagon papers
- Free press vs. Fair trial
 - What is more powerful, a person’s right to a fair trial or the public’s right to know?
- Libel
- Student newspapers
 - Are student newspapers protected by a free press?

Cases

- Religion

- Establishment of Religion

- How much can the government get involved with a religion?
 - Lemon v. Kurtzman, [403 U.S. 602, 616](#) (1971)
 - Religion in public places
 - [Marsh v. Chambers](#) 463 U.S. 783 (1983)
 - [Lynch v. Donnelly](#) 465 U.S. 668 (1984)
 - Prayer in schools
 - Abington School District v. Schempp 374 U.S. 203 (1963)
 - Prayer at graduations
 - [Lee v. Weisman](#) 505 U.S. 577 (1992)

Free Exercise Cases

- Free Exercise of Religion

- What a person do (that might be illegal) and claim it is religious like polygamy?
 - Reynolds v U.S. (1879)
- Can parents do or not do something for or to their kids and claim free exercise?
- School attendance
 - Wisconsin v. Yoder 406 U.S. 205 (1972)
- Flag salute
 - West Virginia State Board of Ed. v. Barnette 319 U.S. 624 (1943)

Freedom of Speech and Press

- How important is the two-way free exchange of ideas?
- How has the Supreme Court limited seditious speech and obscenity?
- What are the issues of prior restraint and press confidentiality?
- What limits have the Court placed on the media?
- What are symbolic speech and commercial speech?

The Free Exchange of Ideas

Freedom of Speech and Freedom of Press guarantees are meant to:

- Protect each person's right of free expression, whether spoken, written, or communicated in any other way.
- Protect all persons' right to a complete discussion of public affairs.

Freedom of Speech and Press do not protect:

- **Libel**, the false and malicious use of written words
- **Slander**, the false and malicious use spoken words
- Obscenity
- Words that incite others to commit crimes

Seditious Speech

Sedition is the crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts. Seditious speech is speech that urges such conduct.

Congress has enacted three major laws to prevent sedition and seditious speech:

- **The Alien and Sedition Acts**—made scandalous or false criticism of the government illegal. Expired before Thomas Jefferson took office in 1801.
- **The Sedition Act of 1917**—made it a crime to encourage disloyalty or spread anti-government ideas during a time of crisis. Upheld by the Supreme Court in instances of “clear and present danger.”
- **The Smith Act of 1940**—forbade advocating violent overthrow of the government, and belonging knowingly to any group that does. The Supreme Court still upholds the constitutionality of the law, but over time has modified it so that it is difficult to enforce.

Obscenity

**Obscenity laws are enforced under the postal power
(Article I, Section 8, Clause 7 of the Constitution).**

Obscenity Test laid out in *Miller v. California*, 1973

- 1) The average person finds that the work appeals to “prurient interests” judging from contemporary standards.
- 2) The work describes offensive sexual conduct that is specifically outlawed as obscene.
- 3) The work lacks serious value of any variety.

Prior Restraint

In most cases, the government cannot curb ideas *before* they are expressed. It can punish ideas *after* they are expressed.

- The Supreme Court has held in several cases that the guarantee of a free press does not allow the government to exercise **prior restraint** on publication except in grave circumstances. In *Near v. Minnesota*, the Court protected the rights of even “miscreant purveyors of scandal.”
- In *New York Times v. United States*, 1971, the government sought a court order to keep newspapers from printing “the Pentagon Papers” which had been stolen and leaked to the press. The Supreme Court found that the government couldn’t show that the papers endangered national security enough to justify prior restraint of publication.

Symbolic Speech

- **Symbolic speech** is expression by conduct.
- **Picketing**, the patrolling of a business site by workers on strike, is a prevalent form of symbolic speech.
- Supreme Court rulings show that the blanket of symbolic speech covers only so much. It does not cover destroying draft cards (*United States v. O'Brien*, 1968) but it does encompass flag burning (*Texas v. Johnson*, 1989, and *United States v. Eichman*, 1990).

Freedom of Assembly and Petition

- How does the Constitution guarantee the freedoms of assembly and petition?
- How can the government limit the time, place, and manner of assembly?
- How do public and private property affect freedom-of-assembly issues?
- How has the Supreme Court interpreted freedom of association?

The Constitution's Guarantees

The Constitution guarantees "...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

- The right to **assemble**, or gather with one another to express views.
- The right to bring views to the attention of public officials.

Time-Place-Manner Regulations

The government can make and enforce rules regarding the time, place, and manner of assemblies.

- An example of such a rule is that public areas near schools and courthouses are restricted.
- The government's rules must be **content neutral**. They can place restrictions on the basis of the time, place and manner of the assembly, but not on what the assembly is trying to say.

Public Property

Restrictions on the right to demonstrate:

Cox v. New Hampshire, 1941: the Supreme Court approved a State law requiring a license to hold a parade on a public street.

Gregory v. Chicago, 1969: so long as demonstrators act peacefully, they cannot be held accountable for disturbances that arise because of their demonstration.

Madsen v. Women's Health Services, Inc., 1994, and Hill v. Colorado, 2000: the Supreme Court approved laws creating buffer zones around abortion clinics and people going in and out of them.

Freedom of Association

- The guarantees of freedom of assembly and petition include a **right of association**—the right to associate with others to promote causes.
- The freedom of association also means that a State cannot force an organization to accept members when that association would contradict what the organization believes in.

Speech Cases

- Symbolic speech
 - A “finger”
 - [Spence v. Washington \(1974\)](#)
- Obscenity
 - [Miller v. California](#) 413 U.S. 15 (1973)
- Flag burning - Political speech
 - [Texas v Johnson](#) 491 U.S. 397 (1989)
- [Hate Speech](#)
 - [R.A.V. v St. Paul](#) 505 U.S. 377 (1992)

More Speech Cases

- Commercial speech

- Can a business say whatever they want about their product?

- Students

- Do students have free speech at school?

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- How much can a person complain or say bad things about the government?

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Press

- “Prior restraint”

- When can the government stop something from being published?

- [Near v. Minnesota](#) 283 U.S. 697 (1931)

- Pentagon papers

- [New York Times v. United States](#) 403 U.S. 713 (1971)

- Free press vs. Fair trial

- What is more powerful, a person’s right to a fair trial or the public’s right to know?

- [Sheppard v. Maxwell](#) 384 U.S. 333 (1966)

- Student newspapers

- Are student newspapers protected by a free press?

- [Hazelwood School District v. Kuhlmeier](#) 484 U.S. 260 (1988)

Assembly and Petition

- Peaceable assembly with a hostile audience
 - Can the peaceful organizers of a demonstration be held responsible for a violent audience?
[GREGORY v. CHICAGO](#), 394 U.S. 111 (1969)
- KKK
 - Can the KKK parade in a black or Jewish neighborhood?
[NATIONAL SOCIALIST PARTY v. SKOKIE](#), 432 U.S. 43 (1977)
- Association
- Street corners
 - Can a city limit the number of persons gathering on a street corner?
- “Free speech zones”
 - “Can a city set protest zones away from the event/person being protested?”

- How did Americans' commitment to freedom lead to the creation of the Bill of Rights?
- What is limited government?
- How does federalism affect individual rights?
- How did the 14th and 9th amendments further guarantee individual rights?

Vocabulary

- establishment clause
- free exercise of religion
- religious tests
- clear and present danger
- time place and manner restrictions
- public forum
- right to assembly
- right to association
- right to petition
- Commercial speech
- Symbolic speech
- Political speech

- Federalist #84
- Lemon Test
- Miller Test
- Content neutral

The 9th Amendment

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

- The Ninth Amendment states that the American people possess rights that are not set out explicitly in the Constitution.
- It has been used to protect rights as various as the rights of the accused to a woman's right to abortion without undue interference by government.

9th Amendment

Although opponents of abortion and other skeptics of a “right to privacy” argue that the Court inappropriately created this right, Justice Arthur Goldberg, concurring with Douglas’s opinion, cited the 9th Amendment as additional justification for the right to privacy.

9th Amendment:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Right to Privacy

The constitutional guarantees of due process create a right of privacy.

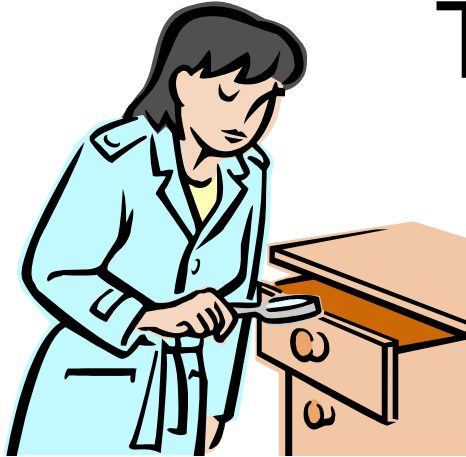
- Established in *Griswold v. Connecticut*, 1965, which held that a law outlawing birth-control was unconstitutional.
- In *Stanley v. Georgia*, 1969, the right of privacy was defined as “the right to be free, except in very limited circumstances, from unwanted governmental intrusion into one’s privacy.”

The right of privacy provoked controversy when it was applied to a woman’s right to an abortion, beginning with *Roe v. Wade* in 1973.

The Right to Privacy

“Penumbras” of Privacy

1st, 3rd, 4th, 5th and 9th



The Right to Privacy

In *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973), the Supreme Court held that American citizens enjoyed a “penumbral” (or implied) right to privacy.

In *Griswold*, Justice William O. Douglas argued that the 3rd, 4th, and 5th amendments suggested a “zone of privacy.”

The Right to Privacy

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9th Amendment

In partial response to Hamilton's third criticism of the Bill of Rights, the 9th Amendment was added to the Constitution.

9th Amendment:

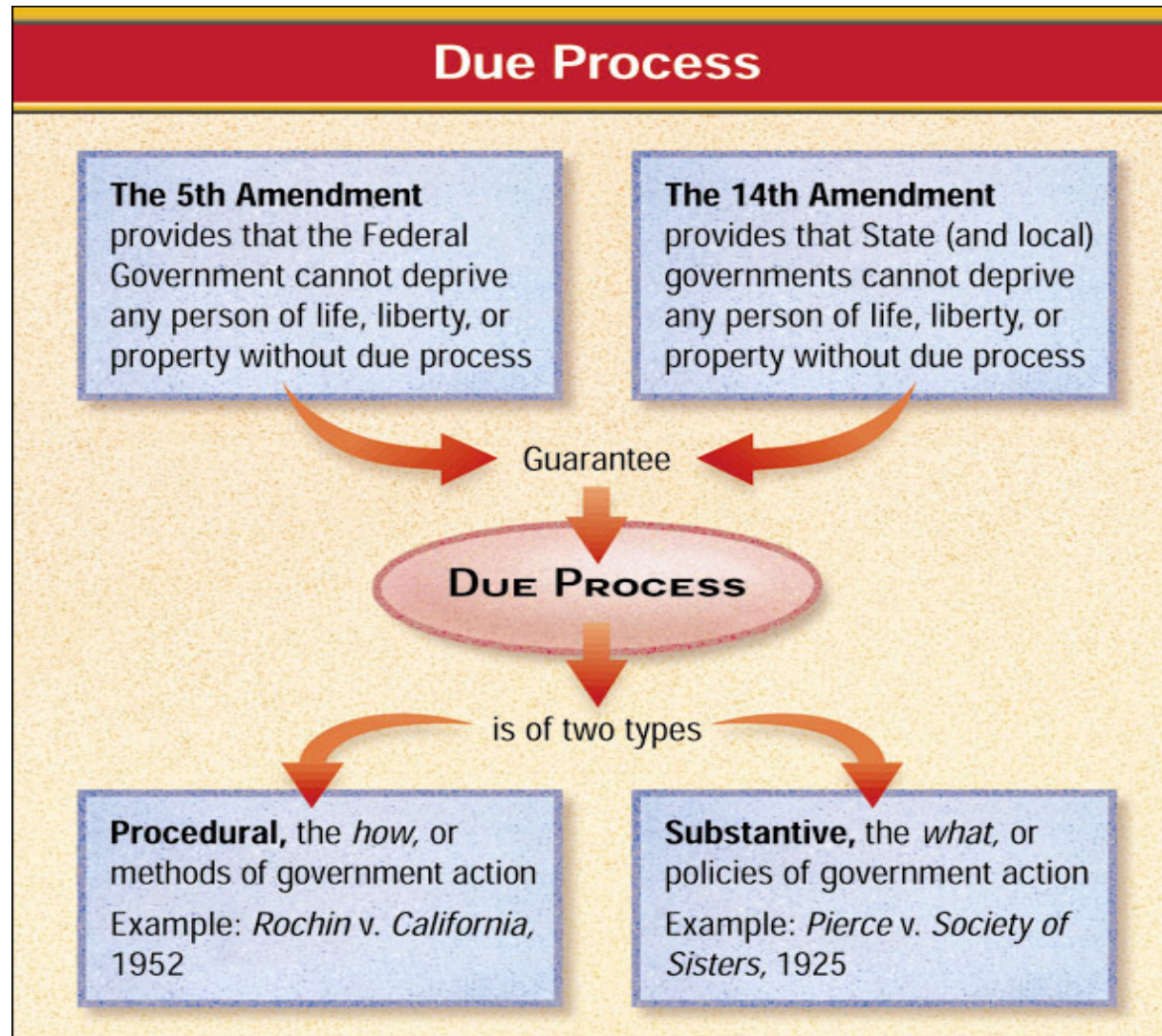
"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Follow Ups

Answer each question. Use your habits of mind. Please be brief in your answer.

1. Why is protecting freedom of expression important. What does it do?
2. Argue both that school vouchers do and do not violate the establishment clause? Which interpretation of the establishment clause would you use?
3. Why did the Framers ban religious tests for holding public office and what has been the constitutional significance of this ban?
4. In your opinion, do time, place and manner restrictions violate the right to free expression?
5. Why is the freedom of association essential to political liberty?

Due Process



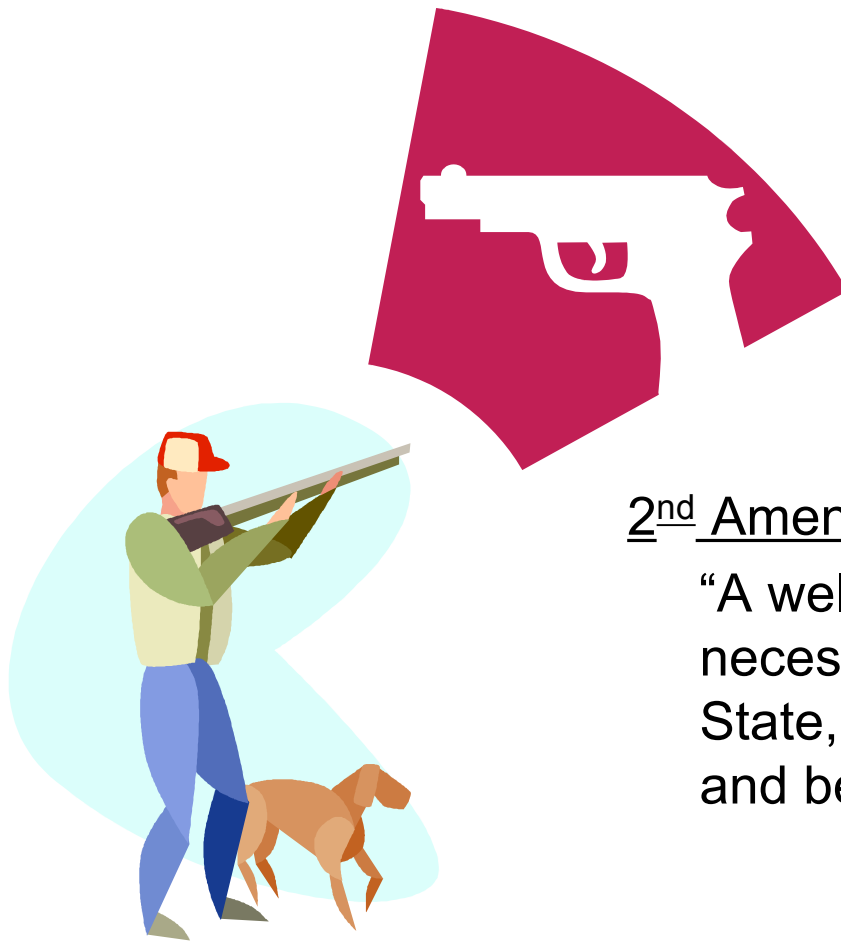
What do you think?



WHAT DO YOU THINK?

- What are acceptable ways to break down the separation of church and state?
- What do you think constitute reasonable limits on free speech?
- Is the right to bear arms and individual right or is it a collective right for well regulated militias?

The Second Amendment



2nd Amendment:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

2nd Amendment

Ambiguity and disagreement over the importance of the clause of the 2nd Amendment concerning a “well regulated Militia,” has left 2nd Amendment protections problematic.

Advocates of 2nd Amendment rights, generally adopt legislative strategies against gun control legislation rather than taking their cases to Court.

The Right to Keep and Bear Arms

- The 2nd Amendment protects the right of each State to form and keep a militia.
- Many believe that the 2nd Amendment also sets out an individual right to keep and bear arms.
- The Supreme Court has only tried one important 2nd Amendment Case, *United States v. Miller*, 1939. The case involved a section of the National Firearms Act of 1934 that forbid shipping sawed-off shotguns, silencers, and machine guns across State lines without informing the Treasury Department and paying a tax. The Court upheld the provision.
- The 2nd Amendment has as yet not been extended to each State under the 14th Amendment. Therefore, the individual States have the right to regulate arms in their own ways.

Rights of the Accused

Rules upholding Constitutional rights of the accused:

- The **exclusionary rule** excludes evidence obtained in violation of 4th Amendment protections against warrantless searches and seizures.
- The **Miranda rule** ensures that arrested persons must be informed of their rights to “remain silent” and to have legal counsel.

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The Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



The Fourth Amendment

Probable Cause —to search a premise, in most cases, a warrant must be obtained based on a reasonable suspicion of crime	Arrests —to arrest a person, a police officer needs only probable cause
Automobiles —police officers do not always need search warrants to search an automobile	The Exclusionary Rule —Evidence gained as a result of an illegal search cannot be used in court
Wiretapping —unless police officers have a warrant, tapping phone calls is not legal	Drug Testing —drug testing can be conducted without a warrant or probable cause

4th Issues

Valid Searches and Seizures Without Warrants

- Detention Short of Arrest: Stop-and-Frisk
- Search Incident to Arrest
- Vehicular Searches
- Vessel Searches
- Consent Searches
- Border Searches
- "Open Fields"
- "Plain View"
- Public Schools
- Government Offices
- Prisons and Regulation of Probation
- Drug Testing

4th Amendment Issues and the Patriot Act

Section 215 of the Patriot Act increases the governments surveillance powers in four areas

1.Records searches. It expands the government's ability to look at records on an individual's activity being held by a third parties. (Section 215)

2.Secret searches. It expands the government's ability to search private property without notice to the owner. (Section 213)

Source: ACLU

4th Amendment Issues and the Patriot Act

3. Intelligence searches. It expands a narrow exception to the Fourth Amendment that had been created for the collection of foreign intelligence information (Section 218).

4. "Trap and trace" searches. It expands another Fourth Amendment exception for spying that collects "addressing" information about the origin and destination of communications, as opposed to the content (Section 214).

Source: ACLU

5th Amendment

5th Amendment:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6th Amendment

6th Amendment:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

8th Amendment

8th Amendment:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

How are the 4th, 5th, 6th, and 8th Amendments' protections upheld in practice?

What do you think?



WHAT DO YOU THINK?

- Do you think it is right to exclude evidence of criminal wrongdoing simply because the police failed to adhere to 4th Amendment protections?
- What elements of the 3rd, 4th, and 5th Amendments suggest a “zone of privacy” for citizens?
- Is the 9th Amendment important to finding a “right to privacy” in the Bill of Rights?

Fifth Amendment Issues and Cases

Anyone who is arrested must be treated fairly. For example, people suspected of committing a crime cannot be forced to testify against themselves, and they cannot be tried more than once for the same crime.

Eminent domain issues

[Justices to weigh Miranda rights](#)

[Land war goes before Supreme Court](#)

Homeowners ask justices to block city's use of eminent domain

Sixth Amendment - Rights of Accused in Criminal Prosecutions

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Sixth Amendment **Issues and Cases**

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Issues

What do you think?

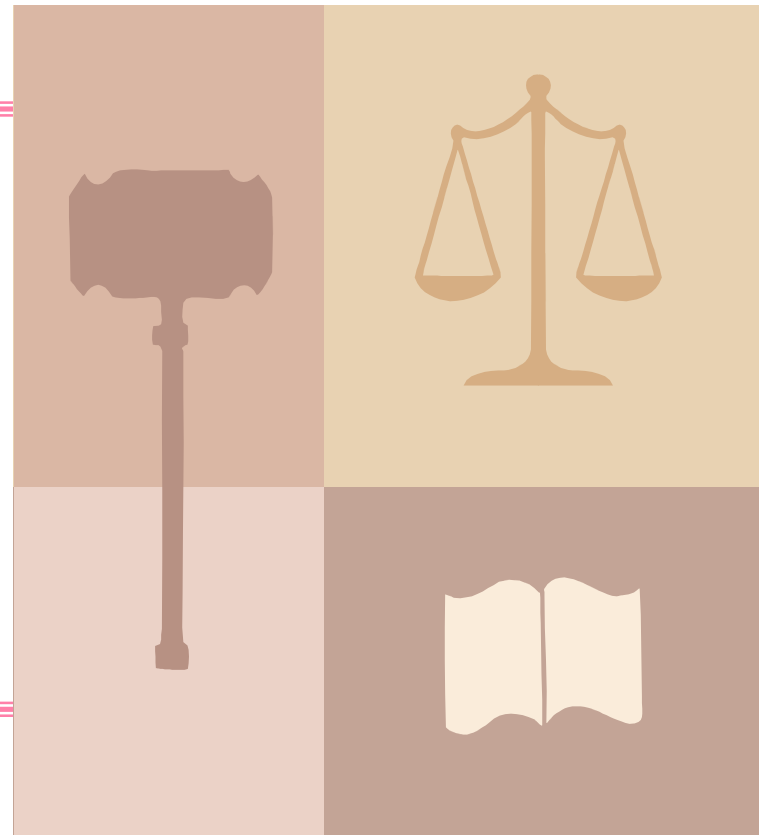


WHAT DO YOU THINK?

- How useful is a distinction between civil liberties and civil rights?
- Was the Bill of Rights necessary?
- Why is something like “due process” valuable even to those of us who will not be accused of a crime?

Nationalizing the Bill of Rights

Throughout American history, the Courts have wrestled with the question of whether the Bill of Rights restrains only the national government or are its protections applicable to the states.



Dual Citizenship



Barron v. Baltimore (1833)

Barron sued Baltimore for rendering his wharf useless on that grounds that it had violated his 5th Amendment rights by taking his property without “just compensation.”

Baron v. Baltimore

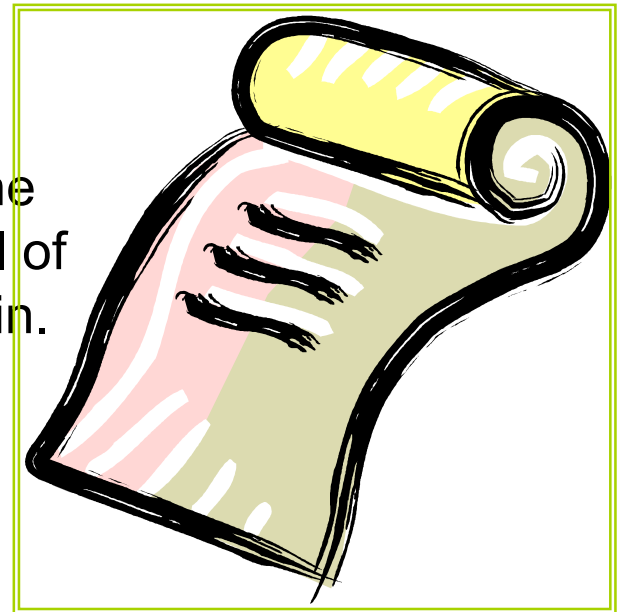
Establishing the concept of “dual citizenship,” the Supreme Court ruled, in *Barron v. Baltimore*, that the 5th Amendment and the “Bill of Rights” only protected citizens from the national government.

“The fifth amendment must be understood as restraining the power of the general government, not as applicable to the States.”

--Chief Justice John Marshall,
Barron v. Baltimore

14th Amendment

When the 14th Amendment was added to the Constitution in 1868, the question of the Bill of Rights' applicability to the states arose again.



14th Amendment:

“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.”

Barron & Slaughterhouse Cases

Despite this language in the 14th Amendment, the U.S. Supreme Court re-affirmed the *Barron* precedent in the *Slaughterhouse Cases* in 1873.

Only five years after the ratification of the Amendment, the Court was making decisions as though the amendment had never been adopted.



Selective Incorporation

On a case-by-case basis, the Supreme Court began recognizing a role for the national government to protect citizens from state governments.

Selective incorporation

defined: the process by which different protections in the Bill of rights were incorporated into the 14th Amendment, thus guaranteeing citizens' protection from state as well as national governments

The First Wave of Incorporation

Year → Right incorporated (Constitutional provision)

1897 → eminent domain (5th Amendment)

1925 → freedom of speech (1st Amendment)

1931 → freedom of the press (1st Amendment)

1939 → freedom of assembly (1st Amendment)

Incorporation Interlude

In *Palko v. Connecticut* (1937), the Supreme Court refused to incorporate “double jeopardy” (5th Amendment) on the basis that it is not a right that is “*implicit in the concept of ordered liberty*.”

The Second Wave of Incorporation

- 1961 → warrantless search and seizure (4th Amendment)
- 1963 → right to counsel in criminal trials (6th Amendment)
- 1964 → right against self-incrimination (5th Amendment)
- 1969 → right against double jeopardy (5th Amendment)

What do you think?



WHAT DO YOU THINK?

- Do you think the Framers intended the Bill of Rights to apply to the states?
- Why do you think the Supreme Court upheld “dual citizenship” even after the adoption of the 14th Amendment?
- What does selective incorporation reveal about the changing balance of power between the national and state governments?

WSII Activities

- Activity #1: Dred Scott v. Sanford
- Activity #2: Name that Amendment
- Activity #3: Get Off My Case

The Rise of the Supreme Court

- The Judiciary Act of 1801, passed by the Federalist majority, created 16 new federal judges. ↓
- Before leaving office, Adams appointed Federalists to these positions. ↓
- Jefferson and the Republicans were unhappy that Federalists controlled the courts. ↓
- After Jefferson took office, Congress repealed the Judiciary Act of 1801, doing away with the “midnight judges” and their offices.

Early Supreme Court

- In this period the Court established itself in the government by making fundamental decisions about the application of the powers within the branches and the Constitution.
- The primary issues dealt with judicial review and supremacy of the U.S. Constitution over the states.

Early Supreme Court

These issues were defined in *Marbury v. Madison* (1803) and *McCullough v. Maryland* (1819)

Today the Supreme Court has the last say, the power of judicial review established in *Marbury v. Madison* is the primary power of the Court.

The overall impact of the period is significant. The Court placed far more power in the U.S. Constitution over the states. The Court defined its role in the three branch system. That role has been significant in the definition of rights of the people.