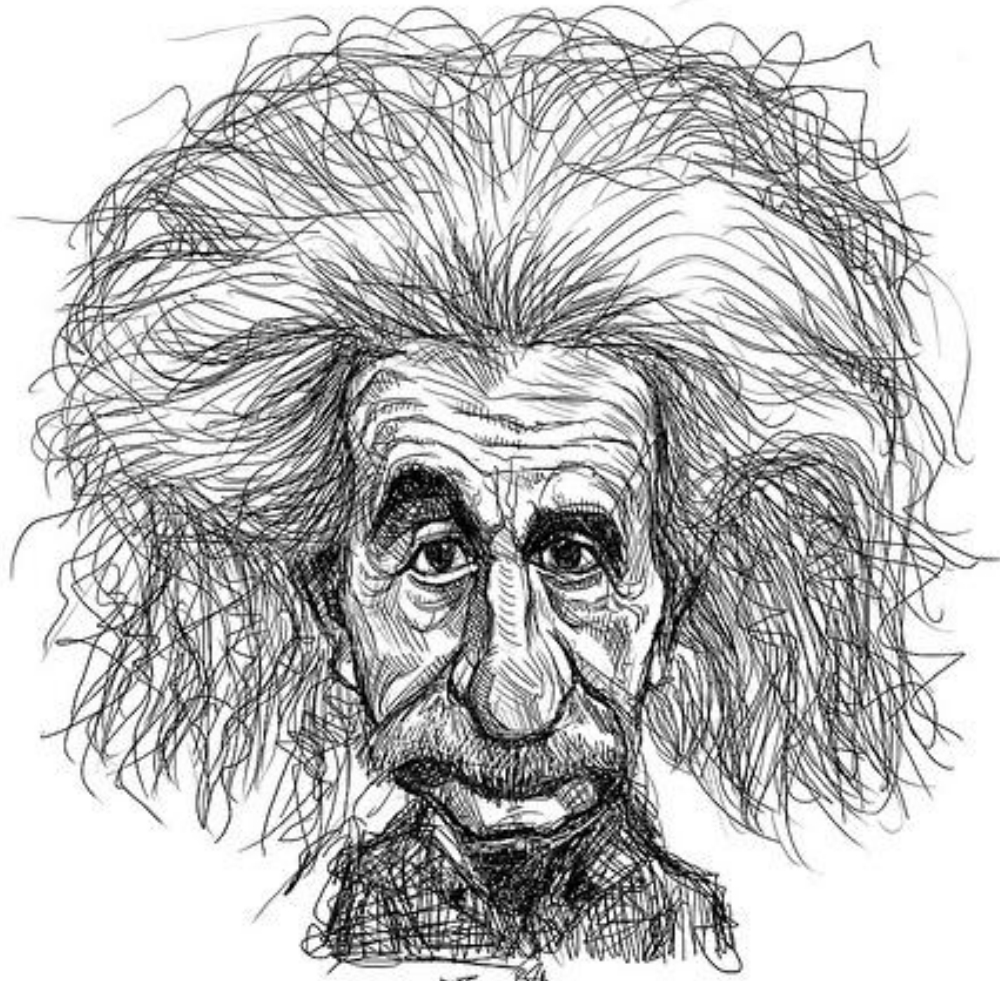


AP

U.S. Government & Politics

Quick Notes



UNIT 2

CIVIL LIBERTIES AND CIVIL RIGHTS

APGoPo 2-1

BILL OF RIGHTS AND SELECTIVE INCORPORATION

BILL OF RIGHTS AND THE STATES

The overwhelming majority of court decisions that define American civil liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791.

Even though most of the state constitutions in 1787 included separate bills of rights for their citizens, the original Constitution did not. Most of the attention of the Constitution focused on defining the powers of the branches of government, not on preserving individual rights. Many people were widely suspicious of these omissions, and in order to gain ratification, the founders agreed to add ten amendments in 1791, the Bill of Rights.

- Added to the original Constitution to appease states
- Rights of the individuals and states listed to protect them from the federal government
- Bill of Rights only applied to the federal government and did not include protections against state governments (*Barron v. Baltimore*, 1833)

SELECTIVE INCORPORATION AND THE FOURTEENTH AMENDMENT

One important consequence of the Fourteenth Amendment is the incorporation of the Bill of Rights to apply to the states. The Bill of Rights originally only limited the powers of the federal government.

It was assumed that the states' bills of rights would protect individuals from abuse by state laws. However, the 14th Amendment nationalized the nature of civil rights with this statement:

"No State shall 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."

Incorporation happened gradually over time through individual court decisions that required states to protect most of the same liberties and rights that the Bill of Rights protects from federal abuse. These changes are reflected in numerous court decisions made between 1925 and 1969.

One example of a case that reflects incorporation is *Gitlow v. New York* (1925). Benjamin Gitlow was arrested and found guilty of breaking a New York state sedition act when he passed out pamphlets that supported socialism and overthrow of the government. Gitlow believed that his freedom of speech was violated, and the case was appealed to the Supreme Court. Even though the Court did not declare the New York law unconstitutional, the majority opinion stated that "fundamental personal rights" were protected from infringement by states by the Due Process Clause of the Fourteenth Amendment.

- Incorporation - the process by which provisions of the Bill of Rights are brought within the scope of the Fourteenth Amendment and so applied to state and local governments.
- Modifying Effect of the 14th Amendment
 - The due process and equal protection clauses have been used to apply some of the provisions of the Bill of Rights to the states.
 - The "total incorporation" view would apply all of the provisions of the Bill of Rights to the states. It argues for nationalization (or federalization) of the Bill of Rights.
 - The "selective incorporation" view would apply only some of these provisions, and would do so on a case-by-case basis.
 - The Supreme Court selectively incorporated the Bill of Rights into the Due Process Clause.
 - The important case here: *Gitlow v. New York*, 1925.
 - States may not deny free speech and press. These were protected by 14th Amendment Due Process Clause.
 - Subsequent cases federalized parts of the Bill of Rights:
 - 1st – Assembly, Petition, Religion
 - 2nd – Right to Bear Arms
 - 4th – Search and Seizure protections
 - 5th – Self-Incrimination, Double Jeopardy
 - 6th – Right to Counsel, Right to Bring Witnesses, Right to Confront Witnesses
 - 8th – Protection against Cruel and Unusual Punishment
 - All provisions of the Bill of Rights except Amendment 3, Amendment 7, Amendment 10, and the Grand Jury requirement of the 5th Amendment have been federalized.

CIVIL LIBERTIES AND CIVIL RIGHTS

A respect for civil liberties and civil rights is one of the most fundamental principles of the American political culture. The founders were very concerned with defining and protecting liberties and rights, and their efforts are reflected in the Declaration of Independence, the Constitution, and the Bill of Rights. Civil liberties and rights have continued to evolve through the years by means of additional amendments (particularly the Fourteenth), court decisions, and legislative actions.

- Civil liberties
 - Involve basic freedoms (e.g. , speech and religion); The constitutionally protected freedoms of all persons against governmental restraint
 - Provisions in the Bill of Rights that provide guarantees against arbitrary interference by government
 - The freedoms of conscience, religion, and expression, for example, which are secured by the First Amendment.
 - These civil liberties are also protected by the due process and equal protection clauses of the Fifth and Fourteenth Amendments.
- Civil rights
 - Protected by the 5th Amendment (against the national government)
 - Protected by the 14th Amendment (against the state governments)
 - Protected by congressional legislation

RIGHTS IN THE ORIGINAL CONSTITUTION

Most of the framers believed that the basic "natural rights" were guaranteed by the original Constitution before the Bill of Rights was added. Rights specifically mentioned in the body of the Constitution are:

- writ of *habeas corpus*
- no *ex post facto* laws
- no bills of attainder
- trial by jury in federal courts in criminal cases
- protection as citizens move from one state to another
- no titles of nobility
- limits on punishment for and use of the crime of treason
- no religious oaths for holding federal office
- guarantee of republican government for all states

"The privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." - Article One, Section Nine - The Constitution of the United States

Habeas Corpus literally means "produce the body." The writ is a court order requiring government officials to present a prisoner in court and to explain to the judge why the person is being held. Suspension of *habeas corpus* is a right of Congress, since the passage above appears in Article One, which defines the powers of Congress.

Originally, the writ was only a court inquiry regarding the jurisdiction of the court that ordered the individual's confinement, but today it has developed into a remedy that a prisoner can formally request. A federal judge may order the jailer to show cause why the person is being held, and the judge may order the prisoner's immediate release.

- Writ of *habeas corpus*
 - Directs any official having a person in custody to produce the prisoner in court and to explain to the judge why the prisoner is being held; Can only be suspended during times of rebellion (Civil War)
 - Person has the right to know why he or she is being imprisoned

The Constitution forbids both national and state governments from passing *ex post facto* laws. An *ex post facto* law is a retroactive criminal law that affects the accused individual negatively. Such laws may make an action a crime that was not a crime when committed, or they may increase punishment for a crime after it was committed. On the other hand, the restriction does not apply to penal laws that work in favor of the accused.

- *Ex post facto* laws
 - Latin for "after the fact"
 - Punishes a person for something that was not a crime when he did it (retroactive punishment)
 - May not be passed by Congress

A bill of attainder is a legislative act that punishes an individual or group without judicial trial. The Constitution forbids them because the founders believed that it is the job of the Courts, not Congress, to decide that a person is guilty of a crime and then impose punishment

- Bills of attainder
 - An act that punishes a person without benefit of trial
 - May not be passed by Congress

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FIRST AMENDMENT FREEDOMS - FREEDOM OF RELIGION

THE ESTABLISHMENT CLAUSE

The Establishment Clause of the First Amendment prohibits the government from establishing an official church. Surprisingly, the First Amendment does not refer specifically to the "separation of church and state" or a "wall of separation." Those phrases evolved later, probably from letters written by Thomas Jefferson, but the First Amendment does prohibit the establishment of a government sponsored religion, such as the Anglican Church in England.

- No Government "Establishment of Religion"
 - A "wall of separation" - Separation of church and state (words of Jefferson; it is implied within 1st amendment, but not stated – kind of like "fair trial")
- Basic meaning of establishment clause: government may not establish an official religion.
- *Lemon v. Kurtzman*: Established a 3-part test to determine if a statute or practice violates the establishment clause:
 - Non-Secular (Religious) Purpose
 - Excessive Entanglement with Government.
 - Advances or Inhibits Religion
 - If any is present, the statute or practice is unconstitutional
- Key rulings.
 - *Engle v. Vitale, 1962*: no state-sponsored, recited prayer in public school. No teacher-led prayer.
 - No devotional Bible-reading in public school.
 - Moment of silence in public school is constitutional (as long as the purpose is not stated as being for prayer).
 - State laws may not prohibit the teaching of evolution in public school.
 - State laws that require the posting of the 10 Commandments in public school are unconstitutional.
 - Released time for students is constitutional. Allowing students to meet on campus for religious groups (such as Christian Club) is constitutional.
 - Christmas displays in town squares are constitutional as long as they include some secular content.
 - Constitutional forms of state aid to private schools: textbooks, classrooms, lunches, bus transportation.
 - Unconstitutional forms of state aid to private schools: field trips, teacher salaries, counseling services, remedial instruction.

THE FREE EXERCISE CLAUSE

The free exercise clause does not allow any laws prohibiting the free exercise of religion. The courts have interpreted the 14th Amendment to extend the freedom to protection from state governments as well. Religions sometimes require actions that violate the rights of others or forbid actions that society thinks are necessary. The Supreme Court has never allowed religious freedom to be an excuse for any type of behavior. It has consistently ruled that people have the absolute right to believe what they want, but not necessarily the right to religious practices that may harm society.

- Provides Freedom of Worship
- Religious practices that have been restricted:
 - Polygamy
 - Prohibiting medical treatment to children based on religious beliefs
 - Not paying Social Security taxes (Amish)
 - Wearing a Jewish skullcap (Yarmulke) in the military
- Religious practices that have been permitted:
 - Not saluting flag in public school (Jehovah's Witnesses)
 - Not sending children to school past the 8th Grade (Amish)
 - Animal Sacrifice (Santeria case)
- Article 6 bans religious tests/oaths as qualifications to hold public office

ESTABLISHMENT CLAUSE CASES

- *Engel v. Vitale (1962)* - Prohibited state-sponsored recitation of prayer in public schools by virtue of First Amendment's establishment clause and the 14th Amendment's due process clause; Warren Court's judicial activism.
- *Abington v. Schempp (1963)* - Prohibited devotional Bible reading in public schools by virtue of establishment clause and due process clause; Warren Court's judicial activism.
- *Lemon v. Kurtzman (1971)* - Established 3-part test to determine if establishment clause is violated: nonsecular purpose, advances/inhibits religion, excessive entanglement with government.
- *Wallace v. Jaffree (1985)* - Banned Alabama's moment of silence law that provided for a one-minute period of silence for meditation or voluntary prayer.
- *Zelman v. Simmons-Harris (2002)* - Public money can be used to send disadvantaged children to religious schools in tuition voucher programs.

FREE EXERCISE CLAUSE CASES

- *Reynolds v. U.S. (1879)* - Religious duty (practice of polygamy) was not a suitable defense to a criminal indictment.
- *Oregon Employment Division v. Smith (1990)* - State can deny unemployment benefits to a worker fired for using illegal drugs for religious purposes.

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FIRST AMENDMENT FREEDOMS - FREEDOM OF SPEECH

FREEDOM OF SPEECH

The definition of freedom of speech has changed dramatically over the years, with an ever-increasing emphasis on protection of free speech, often at the expense of other liberties and rights. Until recently, especially during times of war and crisis when national security is at stake, the government has passed laws that control free speech.

The most famous Supreme Court case that resulted from restrictions imposed during World War I was *Schenck v. United States*. Charles Schenck, a socialist who mailed circulars to young men urging them to resist the military draft, was convicted of violating the Espionage Act. The Supreme Court upheld his conviction, with Oliver Wendell Holmes writing the precedent-setting opinion that any language that directly caused an illegal act was not protected by the First Amendment. Holmes distinguished between language that was merely critical of the government and that which was directly a "clear and present danger" to national security. The "clear and present danger" test became a standard by which to balance national security and freedom of speech.

By the late 1950s, with McCarthyism (Red Scare) subsided and a new Supreme Court under the direction of Earl Warren, the Court leaned more and more toward freedom of speech. No laws were passed restricting speech during the Vietnam War, and the *Brandenburg v. Ohio* case established that speech would have to be judged as inciting "imminent" unlawful action in order to be restricted. The case involved a Ku Klux Klan leader convicted of attempting to incite mob action when he said "We'll take the (expletive deleted) street later." The conviction was overturned by the Supreme Court because Brandenburg did not call for an "imminent" action.

- The Clear and Present Danger Test
 - *Schenck v. United States*, 1919
 - Created precedent that 1st Amendment guarantees of free speech are not absolute; Public authorities could limit free speech
 - Speech may be restricted when it incites violent action (imminent threat such as falsely shouting "Fire" in crowded theater)
 - *Brandenburg v. Ohio*, 1969
 - SC limited the clear and present danger test by ruling that the government could punish the advocacy of illegal action only if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"

NON-PROTECTED SPEECH

Today, the following forms of speaking and writing are not granted full constitutional protection:

- Supreme Court holds that all speech is protected unless it falls into one of the four narrow categories – libel, obscenity, fighting words, and commercial speech.
- Libel and slander
 - Libel is a written defamation that falsely attacks a person's good name and reputation
 - Slander is a spoken defamation that falsely attacks a person's good name and reputation
 - *New York Times v. Sullivan* (1964) – Supreme Court established the guidelines for libel cases
 - Public officials and public figures must first prove "actual malice"
 - State laws may allow private persons to collect damages without proving actual malice
 - Limits on student speech
 - *Bethel v. Fraser* (1986) – school can suspend a student from school for making a speech full of sexual innuendos
- Obscenity and pornography
 - *Miller v. California* (1973) gave constitutional definition of obscenity – 1) Appeals to prurient interest in sex, 2) Patently offensive, and 3) Must lack serious literary/artistic/political/scientific value.
 - Sexually explicit materials about or aimed at minors are not protected by the First Amendment
- Fighting words
 - Governments may punish certain well-defined and narrowly limited classes of speech that by their very utterance inflict injury or tend to incite an immediate breach of peace
 - Burning of a cross
 - In 2003 SC ruled that a Virginia law that prohibited the burning of a cross with an intent to intimidate did not violate the First Amendment
- Commercial speech
 - Commercial speech (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters
 - The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising

PROTECTED SPEECH

- Prior restraint
 - Blocking speech before it is given
 - Such action is presumed by courts to be unconstitutional
 - *New York Times v. United States* (1971) – In the Pentagon Papers case, the court refused to impose prior restraint: the revelations may have embarrassed the government, but they did not endanger national security
- Certain forms of symbolic speech are protected
 - *Tinker v. Des Moines* (1969) – wearing black armband at school at protest Vietnam War
 - *Texas v. Johnson* (1989) – flag burning

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1ST AMENDMENT FREEDOMS - PRESS, ASSEMBLY, PETITION

FREEDOM OF THE PRESS

Freedom of the press is often protected because it is closely related to freedom of speech; the press is used as a form of expression. Today the press includes newspapers, magazines, radio, television, and the Internet.

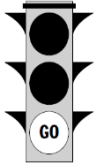
CONTROVERSIAL AREAS

- Executive Privilege
 - Right of presidents to withhold information from the courts.
 - *U.S. v. Nixon* (1974): A President generally does have executive privilege, but not in criminal cases.
- Shield laws
 - Protect reporters from having to reveal their sources.
 - The press claims that without them, their sources would "dry up," >> unable to provide information to the public.
- Courts have protected press's right to publish
 - Sunshine laws require "open meetings" of public agencies
 - The 1966 Freedom of Information Act - liberalized access to non-classified government records
 - Student Press - *Hazelwood v. Kuhlmeier* (1988)
 - High school newspaper was not a public forum and could therefore be restricted just as other high school activities could be restricted by school authorities as long as censorship is related to legitimate concerns.

FREEDOM OF ASSEMBLY AND PETITION

The First Amendment guarantees the "right of the people peacefully to assemble, and to petition the Government for a redress of grievances." Freedom of assembly and petition applies to both private and public places, allowing citizens to make their views known to government officials through petitions, letters, picketing, demonstrations, parades, and marches. The courts have protected these rights while allowing the government to set limits to protect the rights and safety of others.

GUARANTEES OF THE FREEDOM OF ASSEMBLY AND PETITION

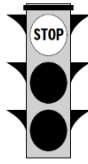


Assembly: The Constitution protects people's right to gather together to express their views on public matters and their right to organize in political parties and other organizations to influence public policy. The government may not specify what can or cannot be said, but they can make reasonable time, place, and manner regulations.

Petition: The Constitution protects people's right to bring their views to public officials by such means as letters, advertisements, petitions, lobbying, parades, and other demonstrations.

Association: The guarantees of freedom of assembly and petition also include a guarantee of association. The Supreme Court has ruled, "it is beyond doubt that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect" of the Constitution's guarantees of free expression.

RESTRICTIONS ON ASSEMBLY AND PETITION



"Peaceable" assembly: The Constitution does not give people the right to incite violence, block roads, close schools or otherwise endanger life, property, or the public order.

Exclusion of private property: The rights of assembly and petition exclude use of private property. Privately owned shopping malls, for example, are not public areas.

Exclusion for illegal ends: People do not have the right to assemble to pursue illegal ends.

- Government may require groups wanting to parade or demonstrate to first obtain a permit
- Police must have right to order groups to disperse (public order)
- Restrictions on assembly must be worded precisely and must apply to all groups equally
- Federal crime to obstruct abortion clinic activity
- Civil disobedience is not a protected right
- The extent to which governments may limit access depends on the kind of forums involved:
 - Public forums (historically associated with free exercise such as streets, parks)
 - Limited public forums (public property such as city hall or schools after-hours)
 - Nonpublic forums (libraries, courthouses, government offices) - cannot interfere with normal activities in order to stage a public protest
 - Certain public facilities (schools, airports, jails) not generally open to the public may be restricted from demonstrations

RIGHTS IN AMERICA

PROPERTY RIGHTS

The founders saw the government as not only the protector of property but also the potential abuser of property rights. The Fifth Amendment allows the government the right to eminent domain, but the owner must be fairly compensated. The Court has interpreted this clause to be a direct taking of property, not just a government action that may result in a property losing value, such as a rezoning regulation. Also, the government and the property owner sometimes interpret "just compensation" differently. In such a case, the courts are the final arbitrators.

- Definition - Property rights are the rights of an individual to own, use, rent, invest in, buy, and sell property
- National and state governments' power of eminent domain - the power to take private property for public use
 - Taking clause
 - "Just compensation" is not always easy to define (court determines value in a dispute)

DUE PROCESS RIGHTS

The due process clauses in the Fifth and Fourteenth Amendment forbid the national and state governments to "deny any person life, liberty, or property without due process of law." Although the Supreme Court has refused to define precisely what is meant by due process, it generally requires a procedure that gives an individual a fair hearing or formal trial.

- Definition - when govt. denies life, liberty or property, it must use fair procedures ("give you your due process"):
 - Observe Bill of Rights, provide reasonable notice, provide chance to be heard.

PRIVACY RIGHTS

The phrase "right to privacy" does not appear anywhere in the Constitution or the Bill of Rights. The idea was first expressed in the 1965 *Griswold v. Connecticut* case in which a doctor and family-planning specialist were arrested for disseminating birth control devices under a little-used Connecticut law that forbid the use of contraceptives. The Supreme Court ruled against the state, with the majority opinion identifying "penumbras" - unstated liberties implied by the stated rights - that protected a right to privacy, including a right to family planning.

The most important application of privacy rights came in the area of abortion as first ruled by the Court in *Roe v. Wade* in 1973. "Jane Roe" challenged the Texas law allowing abortion only to save the life of a mother. Texas argued that a state has the power to regulate abortions, but the state overruled, forbidding any state control of abortions during the first three months of a pregnancy and limiting state control during the fourth through sixth months. The justices cited the right to privacy as the liberty to choose to have an abortion before the baby was viable. The *Roe v. Wade* decision sparked the controversy that surrounds abortion today. Since the late 1980s the Supreme Court has tended to rule more conservatively on abortion rights.

- Fundamental rights are those which are explicitly in the Constitution (Bill of Rights)
- Such rights include those which are implicitly in the Constitution (travel, political association, privacy – *Griswold v. Connecticut, 1965*).
- Abortion Cases:
 - Prior to 1973: states set own abortion policies.
 - *Roe v. Wade, 1973*: established trimester guidelines. Based upon right of privacy implied in Bill of Rights.
 - *Webster v. Reproductive Health Services, 1987*: did not overturn *Roe*, but gave states more leeway in restricting abortion.
 - *Planned Parenthood v. Casey, 1992*: somewhat defined that leeway: states cannot impose an "undue burden" on a women's right to an abortion.

HOMOSEXUAL RIGHTS

In the last two decades, homosexuals have become much more active in their attempt to gain equal rights in employment, education, housing, and acceptance by the general public. Many cities have banned discrimination, and many colleges and universities have gay rights organizations on campus. Despite these changes, civil rights for homosexuals is still a controversial issue.

Currently, a controversial topic is state recognition of homosexual marriages and civil unions. After courts in Massachusetts upheld the right in that state in 2004, a number of homosexual marriages were conducted in other areas of the country, including San Francisco and New York City. In reaction, several states passed initiatives in the election of 2004 that banned recognition of homosexual marriages.

- *Lawrence v. Texas (2003)* – Court struck down Texas sodomy law through use of "liberty" part of 14th Amendment's due process clause
- Gay marriage – many state laws denying gay marriage are being struck down for violating due process and equal protection laws
- Most effective way to secure rights has been through litigation in the courts to gain protections against discrimination

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RIGHTS OF CRIMINAL SUSPECTS – 4TH AND 5TH AMENDMENT

FOURTH AMENDMENT RIGHTS

Freedom from unreasonable search and seizure is guaranteed by the Fourth Amendment. To prevent abuse by police, the Constitution requires that searches of private property are permissible only if probable cause exists that indicates that a crime may have taken place. An important limitation was set on police searches by *Mapp v. Ohio*, a 1961 case in which the police broke into the home of Dollree Mapp, a woman under suspicion for illegal gambling activities. Instead, they found obscene materials and arrested Mapp for possessing them. She appealed her case, claiming that the Fourth Amendment should be applied to state and local governments, and that the evidence had been seized illegally. The police, she claimed, had no probable cause for suspecting her for the crime she was arrested for. The court ruled in her favor, thus redefining the rights of the accused.

- The Constitution forbids only "unreasonable" searches and seizures
- A police search without consent is constitutionally unreasonable unless it has been authorized by a valid search warrant
- The Constitution requirements of a specific search warrant
 - Must describe what places are to be searched
 - Must describe what things are to be seized
- The Exclusionary Rule
 - *Mapp v. Ohio (1961)* - The Supreme Court ruled that evidence obtained unconstitutionally cannot be used in court against person from whom it was seized
 - Adopted mainly to prevent police misconduct
 - Not used if:
 - There would be "inevitable discovery" of the evidence (*Nix v. Williams*)
 - Police operate "in good faith" that the warrant was valid (*U.S. v. Leon*)

FIFTH AMENDMENT RIGHTS

DUE PROCESS	<ul style="list-style-type: none"> ○ When govt. denies life, liberty or property, it must use fair procedures: <ul style="list-style-type: none"> ▪ Observe Bill of Rights. ▪ Provide reasonable notice. ▪ Provide chance to be heard.
SELF-INCRIMINATION	<ul style="list-style-type: none"> ○ 5th Amendment protection against self-incrimination <ul style="list-style-type: none"> ▪ You do not have to testify against yourself; "I plead the 5th" ▪ Designed so that the burden is on the government to prove guilt ▪ The Right to Remain Silent ○ <i>Miranda v. Arizona (1966)</i> - Supreme Court announced that no conviction could stand if evidence introduced at the trial had been obtained by the police during "custodial interrogation" unless suspects have been: <ul style="list-style-type: none"> ▪ Notified that they are free to remain silent ▪ Warned that what they say may be used against them in court ▪ Told that they have a right to have attorneys present during questioning ▪ Informed that if they cannot afford to hire their own lawyer, attorneys will be provided for them ▪ Permitted to terminate any stage of the police interrogation
DOUBLE JEOPARDY	<ul style="list-style-type: none"> ○ Fifth amendment prevents individual from being tried again (if found innocent) <ul style="list-style-type: none"> ▪ Still can be tried by both federal and state governments for the same offense (or by two states) ▪ Double jeopardy does not forbid civil prosecution after acquittal in a criminal trial
GRAND JURY	<ul style="list-style-type: none"> ○ Grand jury indictment is necessary in order to require anyone to stand trial for a serious crime ○ Grand jurors are concerned with whether there is enough evidence to warrant an indictment and a trial ○ Plea bargaining - pleading guilty to a lesser offense in return for not having to stand trial for a more serious charge (about 90% of cases)
EMINENT DOMAIN	<ul style="list-style-type: none"> ○ Government has the power to claim private property for public use ○ Owner of the land MUST be fairly compensated. ○ Government and the property owner sometimes interpret "just compensation" differently >> Courts are the final arbitrators

RIGHTS OF CRIMINAL SUSPECTS – 6TH AND 8TH AMENDMENT

SIXTH AMENDMENT	<i>Guarantee of a speedy trial; Guarantee of a public trial; The right to confront witnesses; The right to have legal counsel (an attorney); Impartial jury of your peers</i>
	<p>SPEEDY TRIAL</p> <ul style="list-style-type: none"> • The accused has the right to a quick trial; does not mean that their trial must be over in one week • State cannot make them sit in jail for years while they wait to have a trial <p>PUBLIC TRIAL</p> <ul style="list-style-type: none"> • It must be available to the public so that it is fairer to the accused <p>THE RIGHT TO CONFRONT WITNESSES</p> <ul style="list-style-type: none"> • Constitution gives accused persons the right to be confronted with the witnesses against them • Defendant has the constitutional right to obtain witness in his favor <p>THE RIGHT TO COUNSEL (RIGHT TO AN ATTORNEY)</p> <ul style="list-style-type: none"> • Judges have an obligation to ensure that all persons subject to any kind of custodial interrogation are represented by lawyers • Right to counsel extends to all hearings for all offenses for which an accused could be deprived of liberty • In <i>Gideon v. Wainwright (1963)</i>, the United States Supreme Court ruled that the Sixth Amendment right-to-counsel provision applies to those accused of major crimes under state laws <p>IMPARTIAL JURY OF YOUR PEERS</p> <ul style="list-style-type: none"> • An impartial jury consists of persons who represent a fair cross-section of the community

EIGHTH AMENDMENT	<i>No excessive bail; No cruel and unusual punishment shall be used against a convicted criminal</i>
	<p>NO EXCESSIVE BAIL</p> <ul style="list-style-type: none"> • Ensures that bail cannot be "excessive," at an amount so high that it would be impossible for all but the richest defendants to pay it <p>CRUEL AND UNUSUAL PUNISHMENT</p> <ul style="list-style-type: none"> • The Death Penalty <ul style="list-style-type: none"> ○ Eighth Amendment forbids the inflicting of cruel and unusual punishments ○ The death penalty is not considered cruel and unusual punishment in America ○ <i>Furman v. Georgia (1972)</i> - Court halted capital punishment until states could administer it in "consistent fashion" decision that ruled on the requirement for a degree of consistency in the application of the death penalty. <ul style="list-style-type: none"> ▪ The case led to a de facto moratorium on capital punishment throughout the United States, which came to an end when <i>Gregg v. Georgia</i> was decided in 1976. ○ <i>Gregg v. Georgia (1976)</i> - The death penalty does not, automatically, violate the Eighth Amendment. <ul style="list-style-type: none"> ▪ Capital punishment is an extreme sanction, but it is suitable to the most extreme of crimes. ▪ If the jury is furnished with standards to direct and limit the sentencing discretion, and the jury's decision is subjected to meaningful appellate review, the death sentence may be constitutional. ▪ If, however, the death penalty is mandatory, such that there is no provision for mercy based on the characteristics of the offender, then it is unconstitutional.

CIVIL RIGHTS

One of the most influential Constitutional clauses during the mid to late 20th century has been the equal protection clause of the Fourteenth Amendment that forbids any state to “deny to any person within its jurisdiction the equal protection of the laws.” This clause has not been interpreted to mean that everyone is to be treated the same, but that certain divisions in society, such as sex, race, and ethnicity are suspect categories, and that laws that make distinctions that affect these groups will be subjected to especially strict scrutiny. In recent years, these suspect categories have been expanded to include discrimination based on age, disability, and sexual preference.

CIVIL RIGHTS FOR RACIAL MINORITIES

The United States has always been home to many different racial and ethnic groups that have experienced varying degrees of acceptance into American society. The history of African Americans includes 250 years of slavery followed by almost a century of widespread discrimination. Their efforts to secure equal rights and eliminate segregation have led the way for others.

CIVIL WAR AMENDMENTS	<p>13th Amendment</p> <ul style="list-style-type: none"> ◆ Abolished slavery <p>14th Amendment</p> <ul style="list-style-type: none"> ◆ Defined citizenship to include the former slaves and provided for due process and equal protection, which were used by the Supreme Court to incorporate the Bill of Rights to the state and local governments <p>15th Amendment</p> <ul style="list-style-type: none"> ◆ Provided that individuals could not be denied the right to vote based on race or the fact that they were once a slave
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After the “Civil War” amendments many discriminatory laws remained in states across the country, and the states of the defeated Confederacy passed Jim Crow laws, which segregated blacks from whites in virtually all public facilities including schools, restaurants, hotels, and bathrooms. In addition to this *de jure* (by law) segregation, strict *de facto* (in reality) segregation existed in neighborhoods in the South and the North.

The 1896 court decision *Plessy v. Ferguson* supported the segregation laws. Homer Plessy sued the state of Louisiana for arresting him for riding in a “whites only” railroad car. The Court ruled that the law did not violate the equal protection clause of the 14th Amendment, as Plessy claimed. The majority opinion stated that segregation is not unconstitutional as long as the facilities were substantially equal. This “separate but equal” doctrine remained the Court’s policies until the 1950s.

In 1909 the National Association for the Advancement of Colored People (NAACP) was founded to promote the enforcement of civil rights guaranteed by the Fourteenth and Fifteenth Amendments. The NAACP struggled for years to convince white-dominated state and national legislatures to pass laws protecting black civil rights and they made little progress until they turned their attentions to the courts. The NAACP decided that the courts were the best place to bring about change, and they assembled a legal team that began to slowly chip away at the “separate but equal” doctrine.

In *Brown v. Board of Education of Topeka* in 1954, argued that separate but equal facilities are “inherently unequal” and that separation had “a detrimental effect upon the colored children.” The Court overturned the earlier *Plessy* decision and ruled that “separate but equal” facilities are unconstitutional.

DE JURE SEGREGATION ENDED	<p>Civil Rights Act of 1964</p> <ul style="list-style-type: none"> • Banned discrimination in public facilities and voter registration • Allowed the government to withhold federal funds from states and local areas not complying with the law <p>24th Amendment</p> <ul style="list-style-type: none"> • Banned paying a tax to vote (the poll tax) - a practice intended to keep blacks from voting <p>Voting Rights Act of 1965</p> <ul style="list-style-type: none"> • Outlawed literacy tests • Establishes extensive federal oversight over elections • Allowed federal officials to register new voters >> number of registered black voters increased dramatically, and today registration rates of African Americans are about equal to those of whites
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WOMEN'S RIGHTS

Before the 1970s the Court interpreted the equal protection clause of the Fourteenth Amendment very differently for women than it did for blacks. Whereas the legal tradition clearly intended to keep blacks in a subservient position, the legal system claimed to be protecting women by treating them differently.

In the late eighteenth century, not only were women denied the right to vote, but they had few legal rights, little education, and almost no choices regarding work. The legal doctrine known as coverture deprived married women of any identity separate from that of their husbands. Circumstances began to change in the mid-nineteenth century.

THE SUFFRAGE MOVEMENT

A meeting in Seneca Falls, New York in 1848 is often seen as the beginning of the women's suffrage (right to vote) movement. The meeting produced a *Document of Sentiments* modeled after the Declaration of Independence signed by 100 men and women that endorsed the movement.

It took 72 years until the goal of voting rights was reached. With the passage of the Nineteenth Amendment in 1920, the suffrage movement that had begun in the early 1800s came to a successful end. The Amendment was brief and to the point: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

However, other legal rights were not achieved until the late 20th century, partly because the Courts sought to protect women from injustice. In 1908 the Court upheld an Oregon law that limited female (but not male) laundry workers to a ten-hour workday. The Court claimed that "The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued, labor, particularly when done standing...." So biological differences justified differences in legal status, an attitude reflecting protective paternalism.

Other legal rights were not addressed until the 1970s, when the women's movement questioned the Court's justification for different treatment of the sexes under the law. A unanimous Court responded by setting down a new test, the reasonableness standard: a law that endorses different treatment "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike."

FIRST FEMINIST WAVE

- Struggle for suffrage – 19th Amendment, 1920

SECOND FEMINIST WAVE: 1960-PRESENT

- Rise of NOW (National Organization for Women) and other women's groups (e.g., EMILY'S List)
- Legislation
 - Equal Pay Act of 1963
 - Aimed to abolish wage disparity based on sex
 - Title VII of Civil Rights Act of 1964
 - Prohibited employment discrimination on the basis of gender
 - Title IX of Education Act of 1972
 - Prohibited gender discrimination in federally subsidized education programs, including athletics

VOTING RIGHTS

PROTECTING VOTING RIGHTS

- After federal troops withdrew from the South in 1877, southern Democrats used social pressure, violence, and terrorist activities to keep African-Americans from voting
- Southern States created Jim Crow laws that made it difficult or impossible for African-Americans to vote; use of grandfather clause to keep white people voting
- Other devices used to keep African Americans from voting
 - White primary - Primary operated by the Democratic party in southern states that, before Republicans gained strength in the "one-party South," essentially constituted an election; ruled unconstitutional
 - Racial gerrymandering - the drawing of election districts to ensure that African Americans would be a minority in all districts – unconstitutional (15th Amendment)
 - Poll tax
 - Literacy tests

THE VOTING RIGHTS ACT OF 1965

- Prohibits any voting qualifications or standards (including literacy tests) that result in a denial of the right of any citizen to vote on account of race and color
- Requires that states that had a history of denying African-Americans the right to vote must clear any changes in any voting practice or laws that might result in dilution of voting power with the Department of Justice
- The Supreme Court, in a series of cases beginning with *Shaw v. Reno*, announced that although states may take race into account, they may not make race the sole reason for drawing district lines (majority-minority districts are LEGAL)
- Effect - It has been a major instrument for increasing the number of African American and other minority voters

Voting Rights	15th	19th	23rd	24th	26th
	African American males were guaranteed the right to vote (1870)	The right to vote cannot be denied because of a person's gender (1920)	People who live in Washington, D.C. are allowed to vote for President and granted three electoral votes (1961)	People cannot be denied the right to vote in federal elections because they had not paid a tax on voting (1964)	18-year-olds granted right to vote (1971)

RIGHTS TO EQUAL ACCESS: ACCOMMODATIONS, JOBS, AND HOMES

ACCOMMODATIONS

- Title II (of Civil Rights Act of 1964): Places of public accommodation
 - Makes it a federal offense to discriminate against any customer or patron in a place of public accommodation because of race, color, religion, or national origin
 - *Heart of Atlanta Motel v. U.S. (1964)* - Congress has a right to regulate individual businesses in the interest of promoting interstate travel
- Title VII (of Civil Rights Act of 1964): Employment
 - Makes it illegal for any employer in any industry affecting interstate commerce and employing 15 or more people to discriminate in employment practices against any person because of race, color, national origin, religion, or sex
 - Aggrieved persons can file a class action suit
 - Equal Employment Opportunity Commission (EEOC) enforces its provisions
 - Affirmative action programs - 1965 presidential executive order requires all contractors of the federal government, including universities, to adopt and implement affirmative action programs to correct for "underutilization" of women and minorities
- Housing: Fair Housing Act and Amendments, 1968 and 1988
 - The Fair Housing Act of 1968, amended in 1988, forbids (with some exclusions) owners to refuse to sell or rent to any person because of race, color, religion, national origin, sex (since 1978), handicap, or because a person has children (since 1988)
 - Housing segregation persists

EDUCATION RIGHTS

PLESSY V. FERGUSON (1896)	<ul style="list-style-type: none"> • The Court endorsed the separate-but-equal doctrine • Separate but equal always resulted in discrimination against African-Americans, leading to lawsuits challenging the doctrine
BROWN V. BOARD OF EDUCATION (1954)	<ul style="list-style-type: none"> • The Court reversed its <i>Plessy</i> decision; segregation is itself discrimination (separate-but-equal unconstitutional) • <i>Brown I</i> was the end of segregation (de jure segregation) • <i>Brown II</i> was the process of integration • Title VI of the Civil Rights Act of 1964 stipulates that federal dollars under any grant or project be withdrawn from a school that discriminates (Civil Rights Act of 1964 essentially ends Jim Crow laws)
FROM SEGREGATION TO DESEGREGATION	<ul style="list-style-type: none"> • Supreme Court sustained the right of judges to order busing to overcome de jure segregation • The Court has refused to permit judges to order busing to overcome the effects of de facto segregation • The Supreme Court started to limit mandates to those violating the Constitution • Political support behind efforts to integrate schools by busing is fading
AFFIRMATIVE ACTION CONTROVERSY	<ul style="list-style-type: none"> • Affirmative action <ul style="list-style-type: none"> ○ Policy designed to correct the effects of past discrimination ○ Policies requiring special efforts in employment, promotion, or school admissions on behalf of disadvantaged groups ○ Issues are race or gender based • Goals: <ul style="list-style-type: none"> ○ The goal of affirmative action is to move beyond equal opportunity toward equal results. ○ Some groups have claimed that affirmative action programs constitute “reverse discrimination.” • Constitutionality of affirmative action programs <ul style="list-style-type: none"> ○ <i>University of California Regents v. Bakke (1978)</i> <ul style="list-style-type: none"> ▪ Quotas cannot be used for admissions (cannot reserve seats for racial minority groups) ▪ Affirmative action programs are not necessarily unconstitutional • Reaffirming the Importance of Diversity <ul style="list-style-type: none"> ○ <i>Gratz v. Bollinger (2003)</i> – race cannot be used as a “bonus” point ○ <i>Grutter v. Bollinger (2003)</i> – race can be one of the factors to be considered in admissions

KEY COURT CASES – UNIT 2

Schenck v. U.S. (1919) - Oliver Wendell Holmes; clear and present danger test; shouting "fire" in a crowded theater; limits on speech, especially in wartime.

Tinker v. Des Moines (1969) - "Students do not shed their constitutional rights at the schoolhouse gate, and therefore are entitled to the free expression of their views as long as there is no substantial or material interference of the educational process."

Texas v. Johnson (1989) - Struck down a Texas law that banned flag burning, which the Court declared was protected by First Amendment.

Reynolds v. U.S. (1879) - Religious duty (practice of polygamy) was not a suitable defense to a criminal indictment.

Engel v. Vitale (1962) - Prohibited state-sponsored recitation of prayer in public schools by virtue of First Amendment's establishment clause and the 14th Amendment's due process clause; Warren Court's judicial activism.

Lemon v. Kurtzman (1971) - Established 3-part test to determine if establishment clause is violated: nonsecular purpose, advances/inhibits religion, excessive entanglement with government.

New York Times v. Sullivan (1964) - The Supreme Court rules on libel, which against public figures it stipulates must be published maliciously and with "reckless disregard for truth."

New York Times v. U.S. (1971) - Pentagon Papers; In order to exercise prior restraint, the government must show sufficient evidence that the publication would cause a "grave and irreparable" danger.

District of Columbia v. Heller (2008) - Supreme Court held that a constitutional right to gun ownership - irrespective of service in a state militia - did exist.

Mapp v. Ohio (1961) - Established exclusionary rule; illegally obtained evidence cannot be used in court; Warren Court's judicial activism.

Miranda v. Arizona (1966) - Established Miranda warnings of counsel and silence. Must be given before questioning. Warren Court's judicial activism in criminal rights.

Gideon v. Wainwright (1963) - Ordered states to provide lawyers for those unable to afford them in criminal proceedings; Warren Court's judicial activism in criminal rights.

Gitlow v. New York (1925) - Established precedent of federalizing Bill of Rights (applying them to the states); states cannot deny freedom of speech protected through due process clause of 14th Amendment.

Plessy v. Ferguson (1896) - Established separate but equal.

Brown v. Board, 1st (1954) - School segregation unconstitutional; segregation psychologically damaging to blacks; overturned separate but equal; use of 14th Amendment; judicial activism of Warren Court; unanimous decision.

Brown v. Board, 2nd (1955) - Ordered schools to desegregate "with all due and deliberate speed."

U.C. Regents v. Bakke (1978) - Alan Bakke and UC Davis Medical School; strict quotas unconstitutional, but states may allow race to be taken into account as ONE factor in admissions decisions. Bakke admitted.

Gratz v. Bollinger (2003) - Struck down use of "bonus points" for race in undergrad admissions at University of Michigan.

Grutter v. Bollinger (2003) - Allowed the use of race as a general factor in law school admissions at University of Michigan.

Griswold v. Connecticut (1965) - Established right of privacy through 4th and 9th Amendments. Set a precedent for *Roe v. Wade*.

Roe v. Wade (1973) - Established national abortion guidelines; trimester guidelines: no state interference in 1st, state may regulate to protect health of mother in 2nd, state may regulate to protect health of unborn child in 3rd. Inferred from right of privacy established in *Griswold v. Connecticut*.

Planned Parenthood v. Casey (1992) - States can regulate abortion, but not with regulations that impose "undue burden" upon women; did not overturn *Roe v. Wade*, but gave states more leeway in regulating abortion (e.g., 24-hour waiting period, parental consent for minors).

Lawrence v. Texas (2003) - Using right of privacy, struck down Texas law banning sodomy.

KEY LEGISLATION

Civil Rights Act of 1964:

Title II bans discrimination in public places on basis of race, color, national origin, or religion.

Title VII:

- Prohibits employment discrimination on basis of all of the above plus sex. Allows employers to give racial preferences in hiring.
- Executive Order #11246 required federal contractors to adopt affirmative action programs.
- Allowed class action suits.
- Enforced by EEOC.

Voting Rights Act of 1965:

- Suspended literacy tests.
- Empowered federal officials to register voters.
- Empowered federal officials to ensure that citizens could vote.
- Empowered federal officials to count ballots.
- Prohibited states from changing voting procedures without federal permission.

Age Discrimination in Employment Act, 1967:

Bans age discrimination for jobs unless age is related to job performance.

Title IX of Education Act of 1972:

- No institution of higher learning that receives federal funding may discriminate on the basis of gender.
- Schools forced to increase funding of women's programs, especially sports programs.

Freedom of Information Act, 1974:

Allows public access to non-classified federal documents.

Communications Decency Act (CDA), 1997:

- Prohibited circulation of "indecent" material on internet to minors. Struck down by Supreme Court.

Brady Act, 1993:

- Gun control act. Limited types of guns that could be purchased.
- The provision of this law in which Congress required local law enforcement officers to do background checks on gun buyers was declared unconstitutional in 1997 - it interfered with the discretionary powers of the states.