

# Civil Liberties

**Essential Question** How does the Constitution protect the civil rights and civil liberties of Americans?



**About the Photo** On April 22, 1990, more than 200 million people around the globe rallied and raised awareness for environmental concerns, including marching at the Capitol in Washington, D.C. Originally begun in 1970, the idea of Earth Day was thought up by Gaylord Nelson, a U.S. Senator from Wisconsin, as a way to protest pollution in the same way war was protested. Because of the success of Earth Day and a new public awareness of environmental issues, several bills were passed in the following years, including the formation of the U.S. Environmental Protection Agency in 1970, the Clean Air Act of 1972, and the Endangered Species Act of 1973.



## CHAPTER AT A GLANCE

### SECTION 1 **Protecting Constitutional Rights**

- The Bill of Rights protects Americans' civil liberties and civil rights.
- In some cases, government may place limits on individual freedoms for the sake of the common good.
- The Supreme Court has established that many of the provisions of the Bill of Rights limit the actions of state and local governments as well as of the federal government.

### SECTION 2 **First Amendment Freedoms**

- The First Amendment protects five freedoms that are fundamental to the American concept of liberty: religion, speech, press, assembly, and petition.
- Government may not act to establish an official religion, support one religion over another, or tell people what they must believe in matters of religion.
- The First Amendment gives every person the right to express his or her opinion. While this guarantee protects unpopular speech, free expression is not unlimited.

### SECTION 3 **Protecting Individual Liberties**

- The Second Amendment protects the right to keep and bear arms. The Third and Fourth Amendments guard the rights to security of home and person.
- The Supreme Court has interpreted the Constitution as protecting a right to privacy.
- The Constitution's guarantees of due process require that government act in accordance with fair and public laws in whatever it does.

### SECTION 4 **Crime and Punishment**

- The Constitution protects rights of people accused of crimes, including the right to a fair trial.
- People convicted of crimes also have certain rights. The Constitution prohibits government from imposing excessive fines or cruel and unusual punishments.

## CONNECTING TO THE CONSTITUTION



Our nation's system of government is based on constitutional law established by the United States Constitution. See the "We the People: The Citizen and the Constitution" pages in this chapter for an in-depth exploration of fundamental rights and the doctrine of incorporation.

SECTION  
**1**

# Protecting Constitutional Rights

## BEFORE YOU READ

### Main Idea

The United States was formed out of a belief that individuals had certain important liberties and rights. The Constitution's Bill of Rights protects these liberties and rights.

### Reading Focus

1. What is the Bill of Rights, and what does it protect?
2. What are the limitations on civil liberties and rights?
3. How does the Fourteenth Amendment help protect civil liberties?

### Key Terms

civil liberties  
civil rights  
due process  
incorporation doctrine

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**TAKING NOTES**

Use the graphic organizer online to take notes on how the Bill of Rights protects Americans' civil liberties and rights.



## Guarding OUR Liberties

### WHY IT MATTERS

**The Importance of the Bill of Rights** In the early years of World War II, as German troops swiftly conquered the democratic nations of Europe, President Franklin D. Roosevelt gave an eloquent speech in which he predicted a brighter future for the world. Roosevelt's historic "Four Freedoms" speech, delivered before Congress in January 1941, predicted a time when American ideals of liberty had spread to the farthest reaches of the earth. To Roosevelt, the essential human freedoms that every person should possess include the freedom of speech and expression and the freedom to worship as he or she chooses.

Why are liberties such as those promoted by Roosevelt so important to Americans? Simply put, civil liberties—including religious freedom, freedom of speech, and personal security—are the fundamental safeguards that protect us from government actions. The Bill of Rights guards these freedoms.

Respecting and protecting civil liberties is among the most important responsibilities of a democratic government. The principle behind the Bill of Rights—that government may not restrict freedoms and liberties without good reason—is why the United States has long been a symbol of freedom to people around the world. Without these protections, American society would be very different. ■

**For many Americans, the Statue of Liberty symbolizes the rights and freedoms that we hold dear.**

## The Bill of Rights

It was a firm commitment to their personal freedoms that drove American colonists to break from Great Britain in the Revolutionary War. The Declaration of Independence explains the colonists' actions as an effort to protect their rights, including "Life, Liberty, and the pursuit of Happiness." Eventually, this quest to protect these rights led to the creation of the Bill of Rights.

**After Independence** Once independent from Great Britain, states adopted their own constitutions, most of which protected the liberties Americans had fought so hard to win. Virginia, for example, approved a Declaration of Rights that protected many freedoms, including freedom of religion.

Yet when delegates gathered in 1787 to draft a new national constitution, there was little talk of specifically protecting individual rights until the very end of the Constitutional Convention. At that time, George Mason—who had written the Virginia Declaration of Rights—proposed including a bill of rights in the Constitution. Other delegates argued that state constitutions and a separation of powers were enough to protect Americans' rights, and Mason's proposal was defeated. As a result, the Constitution included few specific protections of individual rights.

**The Ratification Battle** During the national debate over the ratification of the Constitution, it quickly became clear that the lack of a bill of rights could doom the Constitution. After years of British rule, the American people simply did not trust any government's commitment to protecting liberties and rights. Thomas Jefferson expressed concern over the Constitution.

### PRIMARY SOURCE

“A bill of rights is what the people are entitled to against every government on earth, general or particular, and which no just government should refuse.”

—Thomas Jefferson, letter to James Madison, 1787

**The Ten Amendments** In order to win ratification of the Constitution, supporters of the Constitution agreed to add a bill of rights as soon as the new national government

### PROFILES IN GOVERNMENT

## George Mason

1725-1792



George Mason, sometimes called the Father of the Bill of Rights, was a Virginia political leader and an early advocate of the constitutional protection of individual rights.

In 1776 Mason helped write the first Virginia constitution and the Virginia Declaration of Rights, a document that listed the inalienable rights of Virginians and called for independence from Great Britain. The Declaration influenced Thomas Jefferson's draft of the Declaration of Independence later that year.

Mason was a member of the Constitutional Convention that met in 1787, although he refused to sign the Constitution, believing that it did not do enough to protect individual liberties against government abuse. Later, as a delegate to the Virginia convention that met to ratify the Constitution, Mason urged delegates to demand a bill of rights as a condition of ratification. The Bill of Rights that was eventually adopted is based largely on Mason's Virginia Declaration of Rights.

**Draw Conclusions** Why is George Mason called the Father of the Bill of Rights?

met in 1789. When the government gathered, James Madison began drafting amendments to the Constitution. Members of Congress changed some of his proposals and rejected others. They also debated the very existence of a bill of rights. Some members of Congress feared that listing individual rights might imply that the government would protect only those rights. To address this concern, they added an amendment stating that listing specific rights did not mean that other rights were denied to the people.

Ultimately, 10 amendments were ratified by the states. These amendments—the Bill of Rights—became part of the Constitution in December 1791.

The amendments in the Bill of Rights protect both civil liberties and civil rights. **Civil liberties** are basic freedoms to think and to act that all people have and that are protected against government abuse. For example, the First Amendment's guarantee of religious freedom protects a civil liberty. **Civil rights** are rights of fair and equal status and treatment and the right to participate in government. The First Amendment's guarantee of the right to petition government helps protect a civil right.

### RESPONSIBILITIES OF LEADERSHIP

James Madison and the other Framers had to make difficult decisions about what should be included in a bill of rights. In all, the states proposed a total of 210 amendments, 10 of which eventually became the Bill of Rights.

## BILL OF RIGHTS

**First Amendment** Protects freedom of speech and expression and forbids Congress from making laws that establish religion or limit the free exercise of religion.

**Second Amendment** Protects the right to bear arms.

**Third Amendment** Prevents government from forcing someone to house troops in his or her home except in specific circumstances.

**Fourth Amendment** Prohibits government from searching a building or person, or seizing a person, without first meeting specific legal standards or getting a court order.

**Fifth Amendment** Protects people accused of a crime:

- requires a grand jury indictment for most serious crimes;
- prevents “double jeopardy”—an individual cannot be tried more than once for the same offense;
- prevents people from being forced to testify against themselves.

Protects people from unfair government actions:

- requires due process before government deprives anyone of life, liberty, or property;
- prohibits government from confiscating property without making proper payment.

**Sixth Amendment** Protects people accused of a crime:

- requires speedy and public trial by jury;
- requires that accused persons be told of charges against them;
- permits accused to question witnesses against them and to call their own witnesses;
- requires that accused persons be given legal assistance.

**Seventh Amendment** Guarantees trial by jury in federal civil cases involving more than \$20.

**Eighth Amendment** Protects against excessive bail or fines in criminal cases and against “cruel and unusual punishments.”

**Ninth Amendment** Protects other rights that are not specifically mentioned in the Constitution.

**Tenth Amendment** Reserves to the states or to the people powers not given to the federal government.

Skills FOCUS

INTERPRETING CHARTS

1. What fundamental freedoms are protected by the First Amendment?
2. How does the Fifth Amendment protect Americans?

Despite the language of the Bill of Rights, civil liberties and rights were not originally guaranteed for all Americans. Women and slaves, for example, had their freedoms severely restricted. Over time, the protections of liberties and rights have been expanded to cover all American citizens. Today debate on this issue centers on the rights of aliens—citizens of other countries who are living in or visiting the United States.

**READING CHECK Sequencing** List the sequence of events that led to the creation of the Bill of Rights.

## Limits on Civil Liberties and Rights

The Bill of Rights sets limits on government, but people do not have complete freedom to do whatever they choose. To protect the common good—the welfare of all—there are limits on individual liberties and rights.

**When Rights Conflict** To the Framers of the Constitution, the ideal government would be one that limited liberties as little as possible. Yet in some cases the government does limit personal freedoms. That is because one person’s exercise of a certain freedom—such as smoking in a public place—can sometimes harm another person or conflict with civic responsibilities. In other words, individual liberties and rights can conflict. In that case, the government must decide if liberties and rights should be limited for the sake of the common good.

Take, for example, the freedom of speech. The right to express ideas publicly is widely considered to be necessary for democracy, and the First Amendment limits the government’s power to deny this right. Yet the Supreme Court has found that when speech is likely to lead to immediate lawless action, government can limit free speech. For example, during wartime the government may be able to limit speech that aids the enemy, such as publishing information about the tactics of American soldiers. The Court has examined the limits of different constitutionally protected freedoms over the years. You will read more about the Court’s decisions later in this chapter.



How is due process related to the principle of limited government?

**The Role of the Courts** Balancing the protection of civil liberties and the protection of the common good is an enormous challenge for government. One way government maintains this balance is through the courts, which can strike down laws that they determine violate individual liberties and rights.

The courts, however, cannot bring action on their own. They can only issue rulings when cases are brought before them. Early in the history of the United States, few such cases were brought before the courts, in part because many of the people and groups who most needed their rights protected did not have access to the courts. African Americans, for example, could not readily bring a case against white people who were denying them rights. As a result, most Supreme Court cases that have protected civil liberties and rights have occurred since the early 1900s.

Some of the cases involving civil liberties and rights have come to the courts through the actions of interest groups such as the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), and the Mexican American Legal Defense and Educational Fund (MALDEF). The groups' involvement in these cases has had an important impact on the courts' decisions about liberties and rights.

**READING CHECK Summarizing** Why are individual liberties and rights sometimes limited?

## Civil Liberties and the Fourteenth Amendment

The Bill of Rights was intended to limit the actions of the federal government. This does not mean, of course, that state and local governments can deny individuals their civil liberties and rights. For one thing, many state constitutions have their own bills of rights. Article I of the Indiana state constitution, for example, clearly outlines the basic freedoms that residents of the state possess. In addition, the U.S. Supreme Court has ruled that most protections in the Bill of Rights apply not only to the federal government but also to state and local governments.

**The Due Process Clause** The Supreme Court's rulings that much of the Bill of Rights applies to state and local governments are based upon the Fourteenth Amendment. Ratified in the aftermath of the Civil War, the Fourteenth Amendment was intended to protect the rights of formerly enslaved African Americans. The amendment forbade states from passing laws that would "deprive any person of life, liberty, or property without due process of law." **Due process** means following established and complete legal procedures.

The Court has held that the Fourteenth Amendment's due process clause means that many of the guarantees of the Bill of Rights apply to the states. Thus, the Court has incorporated, or merged, much of the Bill of Rights into the Fourteenth Amendment. The Court's reasoning for incorporating these rights—known as **selective incorporation**—holds that certain protections are essential to due process of the law. Thus, states cannot deny these protections to the people.

**Key Cases** The process of incorporation has taken place through a number of Supreme Court cases over many years. The first such case was *Chicago, Burlington & Quincy Railroad Company v. Chicago* (1897). In this case, the Court held that the Fourteenth Amendment's due process clause incorporated the Fifth Amendment's "just compensation" clause, thus requiring the states to give owners fair compensation when taking private property.

Starting in the 1920s, a flurry of cases led to the incorporation of the First Amendment freedoms. In *Gitlow v. New York* (1925) the Court agreed that New York State could forbid a man from plotting to overthrow the government. Using the due process clause, however, the Court ruled for the first time that states must respect the First Amendment's guarantee of freedom of speech.

Six years later, in *Near v. Minnesota* (1931), the Court incorporated the freedom of the press. *DeJonge v. Oregon* (1937) incorporated freedom of assembly and petition. *Everson v. Board of Education of Ewing Township* (1947) incorporated the First Amendment's limits against government establishment of religion.

# PROCESS OF INCORPORATION

QUICK FACTS

AMENDMENT, PROVISIONS	SUPREME COURT DECISIONS
First, Establishment clause	<i>Everson v. Board of Education</i> , 1947
First, Free exercise clause	<i>Cantwell v. Connecticut</i> , 1940
First, Freedom of speech	<i>Gitlow v. New York</i> , 1925
First, Freedom of the press	<i>Near v. Minnesota</i> , 1931
First, Assembly and petition	<i>DeJonge v. Oregon</i> , 1937
Second, Right to bear arms	<i>McDonald v. Chicago</i> , 2010
Fourth, Exclusionary rule	<i>Mapp v. Ohio</i> , 1961
Fifth, Double jeopardy	<i>Benton v. Maryland</i> , 1969
Fifth, Self-incrimination	<i>Malloy v. Hogan</i> , 1964
Sixth, Speedy trial	<i>Klopfert v. North Carolina</i> , 1967
Sixth, Trial by impartial jury	<i>Duncan v. Louisiana</i> , 1968
Sixth, Confront witnesses	<i>Pointer v. Texas</i> , 1965
Sixth, Right to counsel	<i>Gideon v. Wainwright</i> , 1963
Eighth, Cruel and unusual punishments	<i>Robinson v. California</i> , 1962

Other Supreme Court rulings have addressed other Bill of Rights amendments—sometimes in painstaking detail. For example, it has taken at least a dozen cases to incorporate each aspect of the Sixth Amendment. The Court has also issued multiple rulings incorporating parts of the Fourth, Fifth, and Eighth Amendments.

The Supreme Court has not incorporated all of the Bill of Rights into the Fourteenth Amendment. The Court's deliberate decision to incorporate only certain rights is known as selective incorporation. In *Hurtado v. California* (1884), for example, the Court chose not to apply the Fifth Amendment's grand jury requirement to the states.

Note the recent ruling in 2010 on the incorporation of the Second Amendment's protection of the right to bear arms. However, the Supreme Court so far has not ruled on the incorporation of the Third or Seventh Amendments. Still, the incorporation of many rights into the Fourteenth Amendment has proved critically important for the protection of the rights and liberties that Americans hold dear.

**READING CHECK Summarizing** How has the incorporation of the Bill of Rights into the Fourteenth Amendment affected the protection of civil liberties?

## SECTION 1 ASSESSMENT

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ONLINE QUIZ

### Reviewing Ideas and Terms

- a. Recall** What is the difference between **civil liberties** and **civil rights**?

**b. Make Inferences** What do you think the desire for a bill of rights that some Americans felt during the 1780s suggests about their attitude toward the new national government?
- a. Describe** How do the courts help to protect civil liberties and rights?

**b. Explain** How can individual rights and the common good come into conflict?

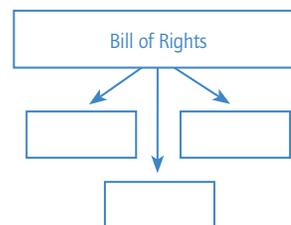
**c. Elaborate** "My right to swing my fist ends where it meets your nose." What do you think this statement means?
- a. Define** Define the following terms: **due process**, **selective incorporation**.

**b. Explain** How has the incorporation doctrine affected Americans' civil liberties?

**c. Evaluate** Do you believe that each state should be bound by all guarantees and protections of the Bill of Rights?

### Critical Thinking

- Rate** Use a graphic organizer like the one below to list the civil liberties and civil rights protected by the Bill of Rights. You may need to add more boxes to your chart. In your opinion, which of these liberties and rights are most important today? Why?



### FOCUS ON WRITING

- Persuasive** Write a newspaper editorial from the perspective of an American in the 1780s, arguing either for or against the addition of a bill of rights to the U.S. Constitution.

21<sup>ST</sup> CENTURY

SECTION  
2

# First Amendment Freedom

## BEFORE YOU READ

### Main Idea

The First Amendment protects five fundamental freedoms that are central to the American notion of liberty: the freedoms of religion, speech, the press, assembly, and petition.

### Reading Focus

1. How does the First Amendment guarantee religious freedom?
2. What are the guarantees of and limits on the freedoms of speech and of the press?
3. What are the guarantees of and limits on the freedoms of assembly and petition?

### Key Terms

establishment clause  
free exercise clause  
slander  
libel  
treason  
sedition  
prior restraint  
symbolic speech  
freedom of association

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**TAKING NOTES**

Use the graphic organizer online to take notes on the five freedoms protected by the First Amendment.

### WHY IT MATTERS

**The First Amendment** Today the five rights protected by the First Amendment—freedom of religion, speech, the press, assembly, and petition—are such a basic part of American government and society that many Americans take them for granted. The Framers of the Constitution had vivid memories of British restrictions on these freedoms, including forcing colonial support for the Church of England, punishing writers for criticizing public officials and laws, and limiting public demonstrations. The First Amendment was intended to prevent similar government abuses of Americans' rights.

The First Amendment is only 45 words long, covering barely two lines in the original handwritten copy of the Bill of Rights.

**People gather at a rally in support of education funding, exercising their constitutional right to assemble peacefully.**

Yet despite its short length, the amendment is a cornerstone of the nation's liberty and is fundamental to our concept of what it means to be an American.

These rights are the freedoms that many Americans cherish above all others. With few exceptions, government cannot tell you what to believe in matters of religion, what you may or may not say, what the press may write or publish, or with whom you may gather. In short, the First Amendment gives us the freedom to live our lives as we see fit. ■

## FUNDAMENTAL Freedom



## Religious Freedom

Chief among the freedoms guaranteed by the First Amendment is the freedom of religion. The search for religious freedom was a central factor in the development of the United States. In colonial times, many people came to the American colonies for the freedom to practice their faith without the discrimination they faced in their home countries. As a result, protecting religious freedom was a major goal for the Framers.

The First Amendment guarantees religious freedom in two ways. First, it forbids the government from establishing an official religion. This portion of the amendment has been tested in court cases involving public religious displays and schools. Second, the First Amendment guarantees people's right to a "free exercise" of their own religion.

**The Establishment Clause** "Congress shall make no law respecting an establishment of religion." This part of the First Amendment, called the **establishment clause**, declares that government cannot take actions that create an official religion or support one religion over another. Through the incorporation doctrine, discussed in Section 1, state governments face the same prohibition.

The idea behind the establishment clause was famously expressed in 1802 by Thomas Jefferson, a firm defender of religious freedom. In a letter to a religious group in Connecticut, Jefferson wrote that "religion is a matter which lies solely between Man & his God." He then cited the establishment clause, which he said built "a wall of separation between Church & State."

Jefferson's notion of the "wall of separation" has become a common metaphor for the separation of church and state. But while the First Amendment limits government support of religion, there is much disagreement about just how separated church and state should be. As a result, the courts have faced difficult questions about the proper role of government in religion. For example, can cities allow religious displays on public property? Can public money be used to support religious schools? Rather than issuing rigid guidelines, the courts have taken a case-by-case approach.

**Public Displays** One issue the courts face under the establishment clause is the legality of government-sponsored religious displays. In *Lynch v. Donnelly* (1984), for example, the Supreme Court evaluated a Rhode Island display that included both religious and nonreligious symbols, such as a Christmas tree, a scene depicting Jesus's birth, and colored lights. The Court decided 5–4 that the display did not intend to benefit a particular religion. Acknowledging religion, the decision said, does not necessarily mean the government is promoting it.

In 2005 a divided Supreme Court issued two 5–4 decisions about government displays of the Ten Commandments, which are part of the Christian and Jewish traditions. In one case, government officials in Kentucky hung framed copies of the Ten Commandments in two courthouses. After a lawsuit, they modified these displays to include other historical documents, such as the Declaration of Independence. Government officials claimed that their goal was to show that the Commandments were part of the foundation of U.S. law and government. The Court, in *McCreary County v. ACLU of Kentucky* (2005), held that this display was an unconstitutional government promotion of a particular religious belief because it had no legitimate secular purpose. That is, the Court felt that the display focused excessively on the religious aspects of the Ten Commandments.

On the same day, however, the Court's decision in *Van Orden v. Perry* (2005) allowed the display of the Ten Commandments at the Texas state capitol. In Texas, the Ten Commandments were carved into a stone marker and were part of a larger display that included other markers representing aspects of Texas history. For this reason, the Court found that the Texas display of the Ten Commandments did not primarily promote a religion. Rather, it was part of a historical and educational display.

**Religion and Education** Perhaps the strongest debate over the meaning of the establishment clause has to do with education. Indeed, the first Supreme Court case exploring the limits of the establishment clause was based on educational issues.

### ACADEMIC VOCABULARY

#### discrimination

negative treatment based on class or category rather than on individual merit



Do you think it is important to keep church and state separate? Why or why not?



## Public Religious Displays

Government-supported religious displays, such as the National Hanukkah Menorah at left and the Ten Commandments monument above, have been the subject of a number of Supreme Court rulings. Are these religious displays always lawful? Why or why not?

*Everson v. Board of Education* (1947) centered on a New Jersey school district's plan to use public money to bus students to private schools. In a 5–4 decision, the Court narrowly upheld the New Jersey plan, observing that the plan applied to students of all private schools. Because it did not single out students attending religious schools, the plan did not violate the establishment clause. The busing plan, said the Court, was similar to the use of public money for fire departments that protect all schools—public and private alike.

The Court again tackled the issue of religion in public schools in *Engel v. Vitale* (1962). New York school officials had written a prayer that public school students were asked to recite at the start of each day. The prayer was not based on any specific religion and students were not forced to participate, but the Court held that the prayer violated the establishment clause.

### PRIMARY SOURCE

“We think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite.”

—Hugo L. Black, *Engel v. Vitale*, 1962

The *Engel* decision drew sharp criticism from some Americans who noted that the practice of beginning the school day with prayer had a long history in the United States. Others, however, supported the ruling. The public debate over prayer in public schools continues today.

The Supreme Court again took up a case involving public support for religious schools in *Lemon v. Kurtzman* (1971). In *Lemon*, the Court struck down a law that allowed public funding for the teaching of non-religious subjects at private schools, including religious schools. In its ruling, the Court established the so-called Lemon Test for use in future establishment clause cases. According to this test, a law must meet all three of the following standards in order to be found constitutional:

- It must have a secular, or nonreligious, purpose.
- Its major effects must neither advance nor inhibit religion.
- It must not encourage “excessive government entanglement with religion.”

The Supreme Court applied the Lemon Test in the case *Wallace v. Jaffree* (1985). At issue in this case was an Alabama law requiring that the public school day begin with “silent meditation or voluntary prayer.”



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## Separation of Church and State

The separation of church and state can be a controversial issue. What do you think the cartoonist believes about the current condition of the “wall of separation” between church and state?

In *Wallace*, the six-justice majority applied the Lemon Test and found that the Alabama law had a religious purpose. Therefore, the law was unconstitutional.

**Free Exercise of Religion** The First Amendment also protects freedom of religion through what is known as the **free exercise clause**, which guarantees each person the right to hold any religious beliefs they choose. Simply put, the government cannot tell a person what he or she must believe in matters of religion.

The free exercise clause does not give people a clear right to behave in any way they wish, however. Courts have ruled that religious practices can be limited in some cases. For example, the Supreme Court found in *Employment Division of Oregon v. Smith* (1990) that government can punish illegal drug use even if the drug use is part of a religious practice. Yet deciding when government may limit religiously based behavior has been a difficult challenge for the courts.

The Supreme Court first took on the issue of limiting religiously based behavior in *Reynolds v. United States* (1878). The case involved a Mormon religious practice that the faith now prohibits—polygamy, or the

marriage of a man to more than one woman. The Court held that even though some Mormons saw polygamy as a religious duty, government could forbid it. Government had a strong interest in preserving certain social norms, the Court held. Toward that goal, laws regulating behavior could be constitutional, even if the result was to outlaw a religious practice—as long as those laws were neutral and did not target a specific religious group.

Similarly, in *Minersville School District v. Gobitis* (1940), the Court ruled that a child could be expelled from public school for refusing to salute the American flag or recite the Pledge of Allegiance, even though these actions violated the child’s religious beliefs as a Jehovah’s Witness. The Court held that government had an interest in encouraging national unity and that the flag-saluting requirement was therefore constitutional.

Three years later, though, the Supreme Court reversed itself. *West Virginia State Board of Education v. Barnette* (1943) also involved a Jehovah’s Witness family and a state law requiring a flag salute. In *Barnette*, the Court decided that the state’s interest in national unity was not strong enough to force people to act against their beliefs. Why the change? The beginning of American involvement in World War II in 1941 had made any refusal to salute the flag appear dangerously unpatriotic. As a result, Jehovah’s Witnesses across the country had been physically assaulted, their meeting places burned to the ground. Recognizing the harmful consequences of the *Gobitis* decision, the Court interpreted the matter differently in *Barnette*, this time taking the side of religious freedom.

The *Barnette* ruling was later followed by the case of *Wisconsin v. Yoder* (1972). In this case the Court heard a challenge to a state law requiring school attendance until age 17, which conflicted with Amish religious beliefs. The Supreme Court again found that the state interest in forcing school attendance was not strong enough to justify the law at the expense of religious beliefs.

**READING CHECK Identifying the Main Idea** What two main guarantees regarding religion are protected by the First Amendment?

## Freedom of Speech and of the Press

The First Amendment forbids Congress from making any law abridging freedom of speech or press, but courts have not treated these freedoms as absolute. The Supreme Court has ruled that government may place limits on freedom of speech and press, especially concerning issues of national security.

**Why Freedom of Speech and of the Press?** In the U.S. system of government, decisions are made by representatives chosen by the people. If Americans are to make thoughtful decisions and participate fully in the democratic process, they must have access to a full range of opinions, beliefs, and information. They must also be able to discuss and criticize government policies without fear of punishment.

This principle of free political debate has led to the adoption of open meeting laws by states and the federal government. These laws generally require government bodies to debate and act in public, rather than behind closed doors. Furthermore, under the Freedom of Information Act, the federal government must release government documents—except for certain secret or private records—to the press and the public upon request.

Protecting freedom of speech and of the press is especially challenging in the case of unpopular ideas. Few people, for example, would agree with racist or offensive speech, and it would be relatively easy for government to outlaw such speech. Yet the First Amendment exists especially to protect unpopular ideas.

**Limits on Freedoms** While the First Amendment protects even unpopular ideas, it does have limits. The ability to speak and to print ideas can be limited by government for a variety of reasons. For example, government can limit speech or printed material that is judged obscene. You will read more about government restrictions on the media later in this section. Government can also regulate what businesses say about their products. False advertising, for example, can be outlawed.

As with other basic rights, freedom of speech and of the press does not give a person the right to knowingly harm another person. As Supreme Court justice Oliver Wendell Holmes wrote in *Schenck v. United States* (1919), “The most stringent [strict] protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

The Supreme Court has also ruled that the Constitution does not protect defamation, or false statements about a person that cause harm to that person. A spoken defamatory statement is called **slander**. Defamation in print is called **libel**.

Individuals who believe that they have been slandered or libeled may take legal action to defend themselves. In the landmark case *New York Times Co. v. Sullivan* (1964), however, the Supreme Court ruled that public officials have fewer legal protections against libel than do private citizens.

### PRIMARY SOURCES

## The Fundamental Rights



Supreme Court justice Robert H. Jackson wrote the majority opinion for *West Virginia State Board of Education v. Barnette* (1943), a decision that struck down a law that forced schoolchildren to salute the flag. The end of Jackson’s opinion, excerpted here, is an eloquent defense of personal freedom.

“The very purpose of a Bill of Rights was to withdraw certain subjects from . . . political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections . . .

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”



### INTERPRETING PRIMARY SOURCES

**Understanding Points of View** What does Jackson believe about the government’s ability to restrict the freedoms mentioned in the excerpt?

See **Skills Handbook**, p. H4.

The *Times* case involved a full-page advertisement in the *New York Times* in which civil rights leaders described racial discrimination in the South. Some of the statements in the advertisement were false, and an elected official in Montgomery, Alabama, brought suit for libel.

In its decision, the Court rejected the libel suit. To be libelous, the Court ruled, a false statement about a public official must be shown to demonstrate “actual malice.” That is, the author must have known that the statement was false or recklessly disregarded whether or not it was false. The Court noted that trying to prevent all false statements involving public officials would have a chilling effect on free speech.



Do you think that in times of war and emergency the government should be able to place greater limitations upon freedom of expression than at other times? Why or why not?

#### PRIMARY SOURCE

“Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement [forceful], caustic [biting], and sometimes unpleasantly sharp attacks on government and public officials.”

—William J. Brennan,  
*New York Times Co. v. Sullivan*, 1964

As with laws against slander and libel, the government may limit First Amendment freedoms in the name of national security, such as to prevent treason or sedition.

**Treason** is the crime of making war against the United States or giving “aid and comfort” to its enemies. During wartime, certain speech or writings may be treasonous—for example, publishing information about the location or tactics of American forces that aids the enemy.

**Sedition** is a legal term for speech or actions that inspire revolt against the government. Courts have upheld laws banning seditious speech. Attempts to define seditious speech and to analyze whether or not it has been protected by the First Amendment have caused controversy throughout American history.

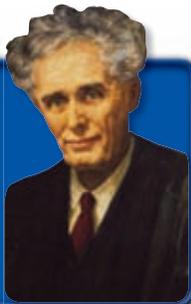
**The Alien and Sedition Acts** In 1798 the United States was on the verge of war with France. The Federalist Party, which controlled Congress and the presidency, passed the Alien and Sedition Acts. The acts were supposedly intended to protect the country from domestic dissent during a war; among other things, the acts outlawed “false, scandalous, and malicious” statements about the U.S. government. In reality, the new laws seemed designed to silence the Federalists’ political rivals, the Democratic-Republicans.

Widespread public anger at the acts helped bring about the defeat of President John Adams, a Federalist, in the election of 1800. Three of the four acts were later repealed or allowed to expire, but the Alien Enemies Act, which authorizes the president to deport resident aliens if their home countries are at war with the United States, remains in effect today.

**A “Clear and Present Danger”** During World War I, the federal government again passed laws—the Espionage Act and the Sedition Act—targeting criticism of the government and interference with the American war effort. Charles Schenck, who opposed the war, printed a flyer urging men to refuse to serve in the military and was convicted of interfering with the war effort. In *Schenck v. United States* (1919), the Supreme Court upheld his conviction.

## PROFILES IN GOVERNMENT

**Louis Brandeis**  
1856–1941



Louis Brandeis was a Supreme Court justice from 1916 to 1939. As a successful lawyer in Boston, Massachusetts, Brandeis developed what came to be

known as the “Brandeis brief,” a technique in which he used economic and sociological data and expert opinions to help support his case in court. This was a revolutionary idea at the time, although it is now a common practice.

Brandeis was nominated to the Supreme Court by President Woodrow Wilson in 1916, becoming the first Jewish member of the Court. As a justice, Brandeis was a firm supporter of individual rights and believed that “the unlimited exercise of governmental power in the name of the people” was dangerous to the American way of life. In his opinions and votes, he consistently worked to expand protections of civil liberties and to limit the exercise of governmental power. Brandeis retired from the Court in 1939. Brandeis University in Massachusetts is named after him.

**Summarizing** What did Brandeis believe about civil liberties and governmental power?

## Media Freedom

Radio and television broadcasters, such as political commentator Rush Limbaugh, at right, can be fined or otherwise punished for speech that violates federal regulations. Do you think that broadcasters should be regulated by the federal government? Why or why not?



The *Schenck* decision, written by Justice Oliver Wendell Holmes, established the idea that speech can be limited if it creates a “clear and present danger” of an outcome that government has a right to prevent. Yet Holmes soon changed his view. In *Abrams v. United States* (1919), Holmes argued for a specific definition of dangerous speech. “It is only the present danger of immediate evil or an intent to bring it about,” he wrote, “that warrants [justifies] Congress in setting a limit to the expression of opinion.”

The Court continued to struggle with the “clear and present danger” standard in later years. In *Whitney v. California* (1927), the Court went even further than it had in *Schenck*: The majority opinion held that the state has the power to punish those whose words *might* encourage crime, disturb the peace, or otherwise harm the public welfare.

On the eve of the entry of the United States into World War II, Congress passed the Smith Act, which outlawed calling for the forceful overthrow of the United States. Organizing or joining a group that held such views was also outlawed. The Smith Act remains in force today, although it has been severely limited by the Court’s rulings in cases such as *Yates v. United States* (1957).

In 1969 the Court issued a new standard for determining when government can outlaw seditious speech. In *Brandenburg v. Ohio* (1969), the Court overturned its *Whitney* decision and ruled that speech must be allowed unless it is *likely* to lead to immediate lawless action.

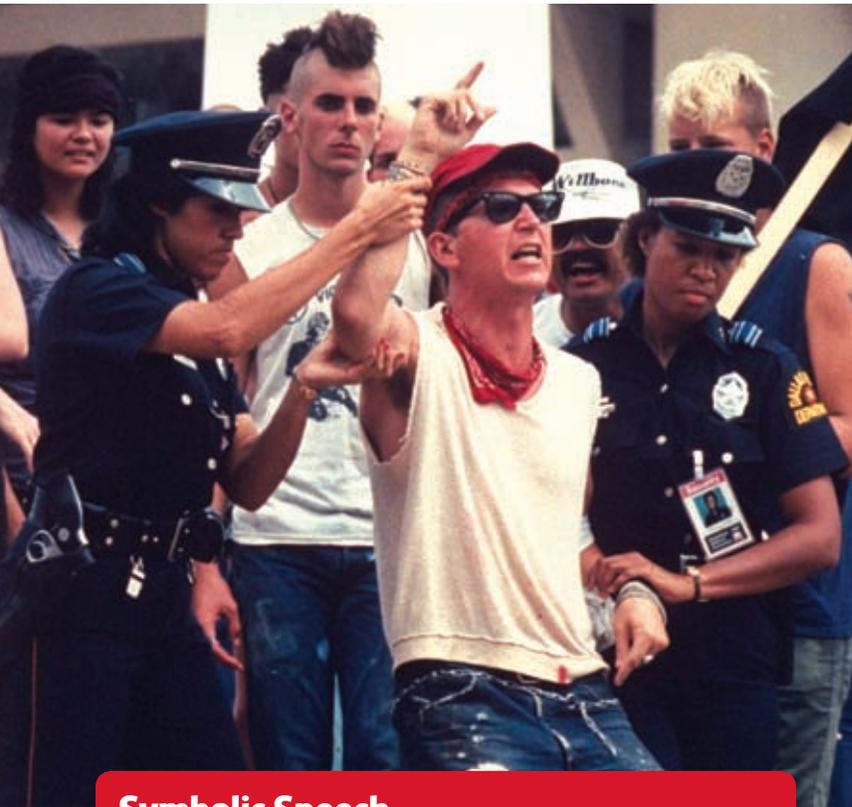
### The First Amendment and the Media

Just as the First Amendment protects the freedom of speech, it also protects the freedom of the press. This protection acknowledges the importance of a free media

in a democratic society. The press is vital to the free spread of information and ideas. As with speech, government has tried to balance the need for media freedom, the rights of others, and issues of national security.

Radio and television broadcasters have fewer First Amendment protections than print media, as the courts have allowed government to regulate the public airwaves over which radio and TV programs are broadcast. Congress created the Federal Communications Commission (FCC) to carry out this regulation. The FCC grants licenses to those wishing to use the public airwaves. Under FCC rules, certain language and content are limited or prohibited.

Because cable systems do not use public airwaves, they are given greater freedom than broadcasters. The Internet is also less subject to government regulation. The government has tried to limit pornography on the Internet, but this effort has been largely unsuccessful. In one case, *Reno v. American Civil Liberties Union* (1997), the Supreme Court rejected a law that sought to regulate Internet pornography, in part because users are not likely to encounter offensive content by accident. Instead, the Court ruled that the law violated the First Amendment’s guarantee of free speech.



## Symbolic Speech

Protester Gregory Johnson was arrested for burning the American flag, but in *Texas v. Johnson* (1989), the Supreme Court ruled that his actions were a protected form of speech.

**Prior Restraint** Another issue related to the freedom of the press is **prior restraint**, or government action that seeks to prevent materials from being published. Consider the case of Jay Near, a Minnesota newspaper publisher in the 1920s who printed articles accusing local officials of corruption. The state of Minnesota tried to stop Near from publishing his paper. The state was not seeking to punish him for a past crime but was instead trying to restrict him from printing similar articles in the future. The Supreme Court ruled in *Near v. Minnesota* (1931) that prior restraint is almost always unconstitutional. Minnesota could punish Near if he violated a law, but the state could not prevent him from publishing his paper merely because officials believed he might violate a law in the future.

The Court addressed another case involving prior restraint in *New York Times Co. v. United States* (1971), in which President Richard Nixon tried to halt the

*New York Times* publication of the Pentagon Papers. These were classified documents about the history of U.S. involvement in the Vietnam War. The White House argued that publishing the papers would threaten national security and the peace process, but in reality the Nixon administration realized that publication would reveal that U.S. officials had long misled the public about the war. The Court ruled that the government had failed to prove a need for prior restraint, and the papers were published.

**Symbolic Speech** In general, the Supreme Court has granted some First Amendment protections to **symbolic speech**, or the communication of ideas through symbols and actions. The Court has held that some symbolic speech deserves protection as long as the speech does not pose a major threat to property or public order.

An early case in which the Court protected symbolic speech was *Stromberg v. California* (1931). In *Stromberg*, the Court ruled on the case of a young woman who had been convicted under a California law that prohibited the display of a red flag, which according to the law was a symbol of opposition to organized government. The Court overturned her conviction, ruling that the California law was an overly vague and unconstitutional restriction on free speech.

Another important symbolic speech case was *Tinker v. Des Moines Independent Community School District* (1969). The Court ruled in *Tinker* that an Iowa school district could not prevent students from wearing black armbands to protest the Vietnam War. You will read more about the *Tinker* case in Chapter 13.

In the case *Texas v. Johnson* (1989) the Supreme Court ruled that burning the American flag as part of a political protest was a protected act of free speech. “If there is a bedrock principle underlying the First Amendment,” the ruling said, “it is that Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

**READING CHECK Drawing Conclusions** Why are freedom of speech and freedom of the press so important in our democratic system?

## Freedoms of Assembly and Petition

The First Amendment's final two protections prohibit government from denying people the right "peaceably to assemble, and to petition the Government for a redress of grievances." In other words, people have the right to meet together and express their views peacefully. This right helps ensure that Americans can share ideas with each other and make their opinions known to their government, including through measures known as initiatives, or petitions designed to force government to consider an issue or allow a vote. Still, there are limits to the right of assembly and petition.

**Landmark Cases** The Supreme Court has affirmed the freedoms of assembly and petition in several major decisions over the years, including *DeJonge v. Oregon* (1937). That case involved a man named Dirk DeJonge, who had attended a meeting of the American Communist Party. At the time, the party called for a revolution against the U.S. government. Oregon state law prohibited

participation in meetings held by such organizations. DeJonge, however, argued that the meeting he attended was peaceful, did not involve discussion of any illegal actions, and was thus protected by the First Amendment. The Court agreed. The ruling recognized the right to peaceably assemble as a basic civil liberty and incorporated it into the Fourteenth Amendment, making it illegal for state governments to deny this right.

*Edwards v. South Carolina* (1963) was another important case involving the rights of assembly and petition. This case involved a group of 187 African American students in South Carolina who had gathered to protest racial injustice in the state. Though the assembly was peaceful, local police told the students to leave the area, fearing that the crowd gathering to watch the protest might become violent. When the students did not end their protest, they were arrested. In the *Edwards* decision, the Court declared that the students had been denied their constitutional right to assemble and petition for a redress of grievances. If an assembly is peaceful, the ruling said, it cannot be stopped simply because bystanders are disorderly.

## Peaceful Protests

The First Amendment protects Americans' right to meet and express their views peacefully, even when those views are offensive to others. These photos show police officers protecting members of the Ku Klux Klan at a white supremacy rally as a crowd of anti-Klan demonstrators protests. *When may the right to assemble be limited by the government?*



**Limits on Assembly and Petition** In general, government cannot limit the right of assembly and petition based on protesters' points of view. Only in extreme cases, such as protesters encouraging others to commit violent acts, does government have strong enough reason to limit this important First Amendment freedom.

Government can more easily limit the right of assembly and petition for reasons other than the ideas expressed by protesters. For example, governments can place reasonable restrictions on the time, manner, and place of a gathering. Courts have found, for example, that citizens can be required to obtain a permit for holding a demonstration. They can be denied the right to make excessive noise. They can be kept off of private property or prevented from invading the privacy of others. But any such rules must serve a clear and valid purpose, and government must apply them evenly and without regard to the content of the demonstrator's message.

**Freedom of Association** The phrase *freedom of association* does not appear in the First Amendment. Still, the Supreme Court has determined that the freedoms guaranteed by the amendment together

establish the right to **freedom of association**—the right to join with others, share ideas, and work toward a common purpose.

A major case involving the freedom of association is *National Association for the Advancement of Colored People v. Alabama ex rel. Patterson* (1958). The state of Alabama had tried to force the National Association for the Advancement of Colored People (NAACP) to give the state a list of its members. At the time, however, the NAACP was involved in a bitter fight to improve civil rights in Alabama and feared that publicizing the names of its members would lead to violence and other harmful consequences.

The Supreme Court agreed with the NAACP. In a unanimous ruling, the Court stated that “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” Forcing the release of the names of the NAACP's members, the Court felt, would harm the freedom to associate. Alabama's actions, therefore, violated the Constitution.

**READING CHECK Drawing Conclusions** What are the purposes of the freedoms of assembly and petition?

## SECTION 2 ASSESSMENT

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ONLINE QUIZ

### Reviewing Ideas and Terms

- Define** What are the **establishment clause** and the **free exercise clause**?
  - Contrast** What is the difference between government acknowledgment of religion and government endorsement of religion?
  - Evaluate** Why do you think so many questions of religious freedom have involved schools and public education?
- Describe** Under what conditions can the freedoms of speech and of the press be limited?
  - Draw Conclusions** Why do you think the courts are reluctant to allow **prior restraint**?
  - Predict** What might happen if the freedoms of speech and of the press were rights that could never be restricted or limited by government?
- Describe** What are time, manner, and place restrictions?
  - Make Inferences** How is the **freedom of association** implied by the First Amendment?

### Critical Thinking

- Analyze** Use a chart like the one below to explain how civil liberties are protected by the First Amendment and limited by the government. Are the limits on these freedoms reasonable? Why or why not?

	Protections	Limits
Religion		
Speech and Press		
Assembly and Petition		

### FOCUS ON WRITING

- Descriptive** Write a short essay that evaluates how interpretations of the First Amendment have changed over time. In your essay, include a time line that lists major Supreme Court rulings on the First Amendment. You may wish to focus on one of the freedoms protected by the amendment.



# Prayer in Public Schools

**Does the Constitution permit prayer in public schools?**

## THE ISSUE

The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” This protection of religious freedom both forbids the government from establishing an official religion and guarantees Americans’ right to freely exercise their own religious beliefs. But what about prayer in public schools? Some Americans believe that allowing prayer in public schools is an unconstitutional government support for religion. Others believe that the right to pray in public schools is an essential religious freedom.

## VIEWPOINTS

### Prayer in public schools should be prohibited.

State-sponsored prayer implies that only one form of prayer—and of religion—is approved of by the state. American public school students come from families with many different religious beliefs or with no religious beliefs at all. As a result, any state-sponsored prayer will differ from some students’ beliefs and will interfere with parents’ right to influence their children’s religious upbringing. Furthermore, the First Amendment forbids any government action to establish an official religion or support one religion over another. This separation between church and state is an important protection of religious freedom. In *Engel v. Vitale* (1962), the Supreme Court held that government-sponsored prayer in public schools violates the establishment clause, even if students are not forced to take part in the prayer. There should be no praying in public schools.



This 1990 photo of a coach leading his team in prayer predates court rulings that have declared this practice unconstitutional.

### Prayer should be allowed in public schools.

Prayer has been a part of American classroom life since colonial times, and religion has had and continues to have an important role in American public life. The influence of religion in the United States should be acknowledged in the classroom. Fortunately, the *Engel* decision does not actually forbid prayer in public schools; it merely says that *government-sponsored* prayer is unconstitutional, not prayer of any kind. In fact, students may pray alone or in groups on school property, including in classrooms outside of regular class hours. Furthermore, students may form religious clubs, wear clothing with religious messages, or hand out religious materials to classmates. So long as the government—in this case, the school—takes no action to promote one religion over another, there is no violation of the First Amendment. Prayer should continue to be allowed in public schools.

## What Is Your Opinion?



1. Do you agree with the Supreme Court’s interpretation of the establishment clause in *Engel v. Vitale*? Why or why not?
2. Should beginning the official school day with prayer be permitted in public schools? Why or why not?



# SECTION 3

# Protecting Individual Liberties

## BEFORE YOU READ

### Main Idea

A key purpose of the Bill of Rights is to protect individuals from government abuses. Several amendments limit the government's power and protect individual rights against government actions.

### Reading Focus

1. What are the purposes of and limits on the right to keep and bear arms?
2. How does the Bill of Rights guarantee the security of home and person?
3. How has the right to privacy developed?
4. How and why does the Constitution guarantee due process of law?

### Key Terms

probable cause  
search warrant  
exclusionary rule  
police power  
procedural due process  
substantive due process



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**TAKING NOTES**

Use the graphic organizer online to take notes on the different amendments discussed in this section.

## Following THE Rules

### WHY IT MATTERS

**Limits on Government** What would life be like if police could enter your home for no reason at any time, day or night? What if the government could use illegally obtained evidence against you in court to convict you of a crime you did not commit? Thanks to the Constitution, these events cannot legally happen in the United States.

We all follow many rules and laws each day. Some of these rules are social customs, such as shaking someone's hand when you first meet him or her. Others are rules set by your school, such as no running in the hallway or no speaking loudly in the library. Still others are laws established by government, such as those regarding speed limits. These rules all restrict your actions in some way.

You may think of rules and laws as being things that only people have to obey, but it is important to know that governments also have rules they must follow. The government must act according to established rules and laws that are designed to protect the American people's rights and liberties. Many of these limits on government actions are established by the Bill of Rights, which guards Americans' right to live freely without government interference. ■

**The actions of government authorities, such as these FBI agents seizing evidence during a terrorism investigation, are limited by rules and laws.**



## The Right to Keep and Bear Arms

Today one of the most heavily debated amendments in the Bill of Rights is the Second Amendment, which reads, “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.” This amendment was included in the Bill of Rights to protect the right of states to form militias and to ease the fears of those who worried about the power of a standing army controlled by the federal government.

Some Americans believe that the Second Amendment protects an individual right to own all kinds of firearms. Others believe that the amendment was intended only to protect the rights of states to form militia units, and that government can therefore place many limits on gun ownership.

The Supreme Court has issued two major rulings on the Second Amendment. In the first case, *United States v. Miller* (1939), the Court upheld a law that placed some restrictions on possession of automatic weapons and sawed-off shotguns, the types of guns that were then often used by criminals. The Court ruled that the Second Amendment was not meant to protect the right to have all types of weapons. Instead, it protected only those guns that might be used by people in a militia.

In the second case, *McDonald v. Chicago* (2010), the Court ruled again in support of the “the right to keep and bear arms” by stating that the Second Amendment applies equally to both the federal government and state and local governments. *McDonald v. Chicago* involved a challenge to Chicago’s gun control law, which is one of the strictest in the nation. The Court’s decision in *McDonald* followed a case in 2008 that overturned portions of an equally strict Washington, D.C., law that banned almost all ownership of handguns or rifles within the District. Gun rights advocates hailed the decision in *McDonald v. Chicago* as a major victory, while gun control supporters fear it will weaken gun laws across the country.

**READING CHECK Summarizing** What is the controversy over the Second Amendment?

## Security of Home and Person

Much of the Bill of Rights reflects Americans’ desire to protect their rights from the kind of government abuses they had seen during their years under British rule. Together, the Third and Fourth Amendments help protect Americans’ rights to be secure in both home and person.

**The Third Amendment** In colonial times, the British military sometimes quartered—housed—its soldiers in colonists’ homes. Although the British occasionally paid homeowners for the food and shelter, they often did not. As tensions between Great Britain and the colonies rose during the years leading up to the Revolutionary War, more British soldiers were sent to the colonies—and many of them occupied private homes. As a result, the Declaration of Independence listed the quartering of troops among the many American complaints against the British government.

The Third Amendment forbids the government from housing troops in private houses during times of peace without the consent of the owner. During war, troops can only occupy private houses as prescribed by law. In other words, military forces cannot simply take over a house for no reason or without due process.

Today the Third Amendment is largely forgotten by most Americans. The forced quartering of troops has never been the subject of a Supreme Court case, and the amendment has not been incorporated into the Fourteenth Amendment.

**The Fourth Amendment** Like the Third Amendment, the Fourth Amendment was a result of a hated British practice during colonial days: the use of writs of assistance. A writ was a legal document that gave British authorities wide power to search private homes and businesses. British officials could conduct their searches without first showing **probable cause**, or the strong likelihood that they would find evidence of a crime. To show probable cause, authorities must explain what evidence they are looking for and why they believe they will find it in that location.

With a writ of assistance, however, the British could enter anyone's home at any time and search for as long as they wanted.

The Fourth Amendment was written to protect Americans against similar government abuses. It has proved to be an important guarantee of personal security.

**Search and Seizure** The purpose of the Fourth Amendment is to ensure that people are "secure in their persons, houses, papers, and effects." The amendment forbids "unreasonable searches and seizures." It also sets terms for issuing a **search warrant**, a document that gives police legal authority to search private property. The Fourth Amendment says government can issue a search warrant only after authorities have proved to a judge that there is probable cause for a search. The warrant must describe what will be searched and seized.

In most cases, authorities today need a search warrant to enter and search a building without the owner's consent. Officials can enter in an emergency situation without a warrant, but they must follow strict rules. They can only search for evidence directly related to the crime they are investigating. They may seize any other evidence they come across, but only if it is in "plain view," and only if the officer does not search for it.

The issue of "plain view" came before the Supreme Court in *Arizona v. Hicks* (1987), a case in which police entered an apartment without a warrant after a gun was fired there. The police then noticed some expensive stereo equipment in the apartment. Suspecting it had been stolen, officers moved the equipment to locate the serial numbers, which helped them determine that the equipment was indeed stolen property. The Court held that by moving the equipment, police had conducted a warrantless search without probable cause.

As a result of the warrantless search in *Hicks*, police could not use the stereo equipment as evidence. This rule that evidence obtained illegally may not be used against a person in court is known as the **exclusionary rule**. The rule was established in *Weeks v. United States* (1914), in which the Court decided that the Fourth Amendment prevents such government actions.

The Court expanded the exclusionary rule to state actions in *Mapp v. Ohio* (1961). In *Mapp*, police had forcibly entered Dollree Mapp's home in Cleveland, Ohio, to look for gambling evidence. They did not have a warrant for the search and found no evidence of gambling, but they did find several allegedly obscene books. Mapp was convicted of violating obscenity laws. The Court overturned her conviction, finding the books had been seized in an illegal search.

The Fourth Amendment does not always require police to obtain a warrant before a search or seizure of evidence. For example, a person's right to be free from police searches does not reach outdoors. The Court has held that police can search through a person's trash without a warrant.

**Pedestrians and Cars** What about situations in which police stop people on the street to arrest or question them? Legally speaking, stopping a person is considered seizure. Police can stop someone on the basis of a reasonable suspicion—if, for example, the person is acting oddly. Once stopped, police may frisk, or search, the person if there is concern for the safety of the police officer or others. The frisk is meant to find concealed weapons, though police may seize other evidence in some cases. To arrest a person, however, the police must be able to show probable cause.

The Fourth Amendment also relates to the stopping and searching of vehicles. Under some circumstances, police can stop and search automobiles without a warrant. For example, police can stop drivers who are observed committing traffic violations. If the police have stopped a vehicle based on probable cause, they may seize any evidence that is in plain view and may search any place that is within reach or control of the vehicle's occupants. In some cases officers can also search the vehicle's trunk without a search warrant.

**Electronic Communications** The Fourth Amendment also protects a person's "papers." With the invention of the telegraph, telephone, and Internet, the courts have had to decide whether the Fourth Amendment applies to new means of communication.

## PRIMARY SOURCES

# Government Surveillance

After the September 11, 2001, terrorist attacks on the United States, President George W. Bush authorized the National Security Agency (NSA) to monitor certain telephone calls, e-mails, and other communications without first obtaining a warrant. The controversial program was intended to help officials prevent future terrorist attacks, but it was widely criticized by people who believed it sacrificed important civil liberties protections.



Skills  
FOCUS

## INTERPRETING PRIMARY SOURCES

**Analyzing Political Cartoons** Does the artist support or oppose the NSA's warrantless surveillance program? How can you tell?

See **Skills Handbook**, p. H8.

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The Supreme Court first addressed this issue in *Olmstead v. United States* (1928). In *Olmstead*, agents had used evidence obtained by wiretapping, or using a concealed listening device to monitor telephone calls. The Court did not view wiretapping as an illegal search. But the Court reversed itself in *Katz v. United States* (1967). In *Katz*, the Court ruled that the Fourth Amendment protects a person's privacy as well as his or her personal space. After *Katz*, wiretapping has usually required a warrant based on probable cause.

The treatment of electronic communications became a major issue after the September 11, 2001, terrorist attacks on the United States. The USA PATRIOT Act, passed by Congress after the attacks, gave law enforcement agencies wide power to prevent future attacks. Among other things, the act gave officials more freedom to search telephone and e-mail communications and business, medical, and library records. Critics charge that the PATRIOT Act weakens important civil liberties protections. In 2007 a federal judge struck down part of the act, ruling that it gave officials too much power to search phone and Internet records without court oversight.

In late 2005, during President George W. Bush's second term, Americans learned about a secret program under which the National Security Agency (NSA) was authorized to monitor telephone calls, e-mails, and other communications to U.S. residents made by people outside the United States with suspected terrorist links. The NSA did not obtain warrants before intercepting these conversations. As a result, there was widespread public debate about whether the program violated the Fourth Amendment.

**Testing for Drugs** Another modern-day Fourth Amendment question involves testing people for the use of illegal drugs. Are such tests a violation of the Fourth Amendment's protections of personal security? In general, courts have held that private employers have wide freedom to test their workers in order to discourage drug use. Governments, however, face limits in their ability to test workers. Courts have ruled that governments cannot test all employees to screen for drug use. They can, however, test employees whose jobs may affect public safety, such as airline crews and mechanics, bus and truck drivers, or railroad workers.

**Protections for Students** The Supreme Court has ruled that public school students have fewer Fourth Amendment protections than does the general population. While students do have some rights to privacy, the Court has ruled that a school's need to ensure a safe learning environment can override privacy concerns. For example, school officials may search students for drugs or weapons. In *New Jersey v. T.L.O.* (1985), the Court permitted an official's search of a student's purse without probable cause.

In another case, *Vernonia School District v. Acton* (1995), the Court ruled that schools could randomly test student athletes for drug use. The *Vernonia* decision held that the school's interest in fighting drug use overrode student privacy concerns. The Court later extended this ruling in *Board of Education*

of *Pottawatomie County v. Earls* (2002), in which the Court held that schools may require students participating in extracurricular activities to be tested for drugs.

**READING CHECK Summarizing** How do the Third and Fourth Amendments protect Americans' security?

## The Right to Privacy

Throughout this section you have read references to the Supreme Court's protection of a right to privacy. Yet the Constitution makes no explicit reference to such a right. Where does this unstated right come from?

Those who believe in a right to privacy say that it is implied in several amendments. For example, the Fourth Amendment implies that people can expect not to have their privacy violated by unreasonable searches. Some scholars argue that a right to privacy should be considered part of the concept of liberty guaranteed by the due process clauses of the Fifth and Fourteenth Amendments.

In *Olmstead v. United States*, the case involving the use of wiretaps on telephones, Justice Louis Brandeis wrote a dissent in which he argued for the existence of a "right to be let alone." Nearly 40 years later, the Court finally embraced a right to privacy in *Griswold v. Connecticut* (1965).

*Griswold* involved an organization that provided information about birth control to married couples. At the time, providing such information violated Connecticut law. The Court's decision stated that several constitutional amendments, including the Third and Fourth Amendments, create "zones of privacy." Within these zones of privacy, the Court held, was the right of married couples to make decisions about birth control.

Surely the most controversial Court decision concerning the right to privacy is *Roe v. Wade* (1973). This case centered on the question of whether state law could deny a woman the right to end a pregnancy by abortion. The Court, citing the right to privacy, said that the state could not do so in the first three months of the pregnancy.

The decision in *Roe v. Wade* has met with both approval and disapproval. Some critics have sought to bring cases to the Court that might lead to a reversal of *Roe*. In *Planned*

### ACADEMIC VOCABULARY

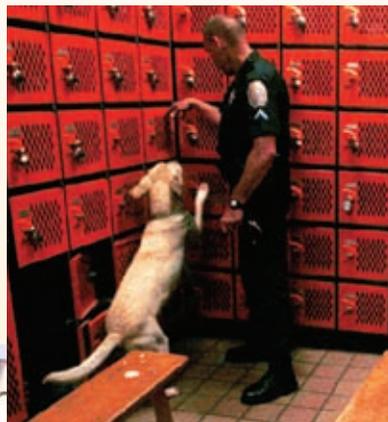
**explicit** fully and clearly expressed

## Students and the Fourth Amendment

The Supreme Court has ruled that public school students have fewer privacy rights under the Fourth Amendment than the general public. Officials can search students, their lockers, and their belongings for drugs or weapons.

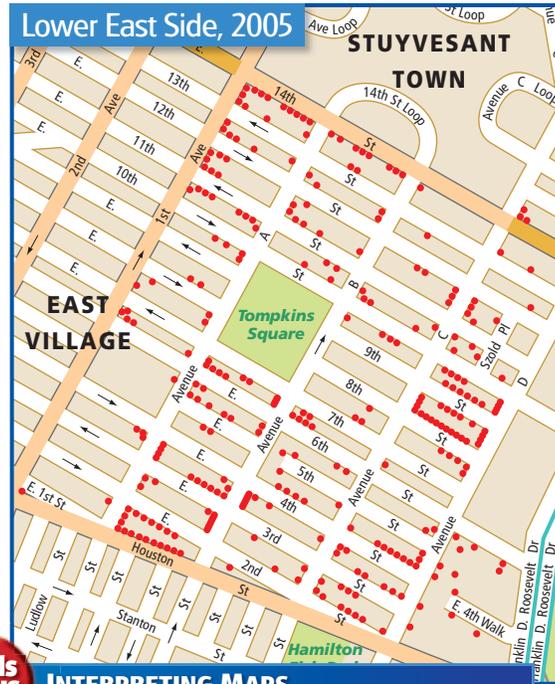
*Why do students have limited Fourth Amendment rights?*

At right, a police officer and a drug-sniffing dog search student lockers. Below, students enter a school through metal detectors intended to prevent students from bringing weapons into the building.



# Surveillance and the Right to Privacy

Surveillance cameras in public places—such as the Lower East Side of Manhattan, New York City—can help reduce crime, but civil liberties advocates worry that the growth of surveillance has harmed the right to privacy.



Skills FOCUS

## INTERPRETING MAPS

How do these maps show a change in surveillance cameras in the Lower East Side over time?

*Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court upheld some requirements of a law that allowed abortion only after a woman met several requirements, including parental consent for pregnant minors. The basic privacy right identified in *Roe v. Wade*, however, was left in place.

**READING CHECK Drawing Conclusions** Where does the concept of the right to privacy come from?

## Due Process of Law

The concept of due process is key to the protections provided by the Bill of Rights. The Fifth Amendment forbids the federal government from depriving people of “life, liberty, or property, without due process of law.” The Fourteenth Amendment gives the same protections against state governments.

As you read earlier, due process requires that government act fairly and reasonably in accordance with established laws. Due process limits the government’s **police power**,

or its ability to regulate behavior for the common good. There are two different components of due process: procedural due process and substantive due process.

**Procedural Due Process** As the term suggests, **procedural due process** requires that government follow certain procedures before punishing a person. You will read more about these procedures in Section 4.

As with all rights, the right to procedural due process can be limited when government has a strong reason to do so. For example, the Supreme Court ruled in *Mackey v. Montrym* (1979) that a state could take away a driver’s license if the driver refused to take tests to show if he or she had been drinking alcohol. The state’s action in this case involved penalizing people without finding them guilty—that is, without going through a process. Yet the Supreme Court decided that the state’s interest in getting drunk drivers off the road was strong enough to deny due process.

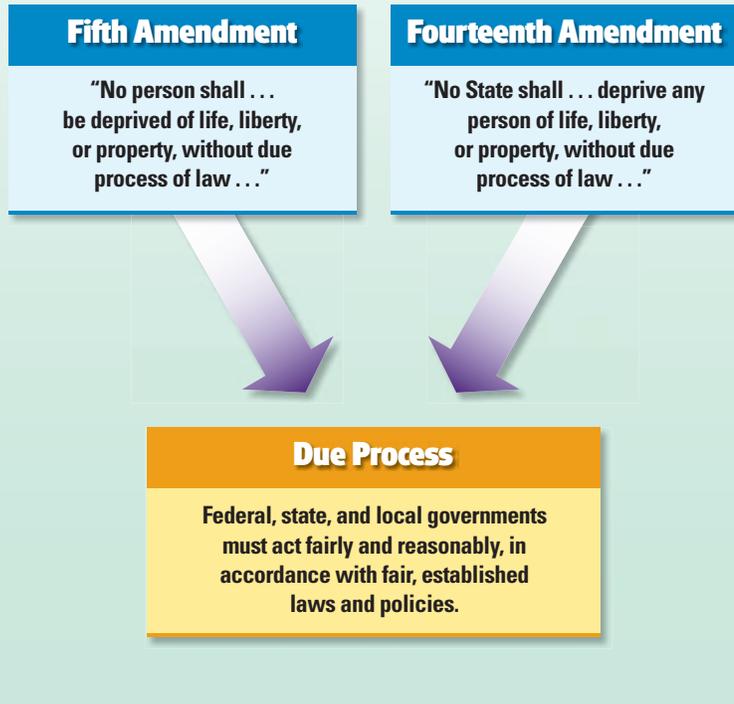
## RESPONSIBILITIES OF LEADERSHIP

The police power is one of the greatest powers the government has. Using it wisely is an important responsibility.

**QUICK  
FACTS**

# Due Process

Due process requires that government act fairly and reasonably in accordance with established rules if it seeks to deprive a person of life, liberty, or property. This important concept has two sources: the Fifth Amendment, which limits the actions of the national government, and the Fourteenth Amendment, which limits state and local governments.



**Substantive Due Process** Procedural due process involves questions about whether or not legal procedures are fair. **Substantive due process**, on the other hand, concerns whether the laws themselves are fair and just. Substantive due process is based on the idea that all people have inalienable rights that cannot be taken away from them, even by laws that have been passed properly. For example, a racial segregation law may violate substantive due process.

The Supreme Court addressed substantive due process in its decision on three lawsuits collectively known as the Slaughterhouse Cases (1873). These lawsuits involved a Louisiana law that allowed only one slaughterhouse to operate in a certain part of the state. The Court upheld the law in a 5–4 decision, but Justice Stephen Field dissented, arguing that the law violated most butchers’ inalienable rights by unconstitutionally denying them the right to work. This was a violation, he wrote, of substantive due process. Field’s opinion, joined by three other justices, would later become the basis for Supreme Court rulings that further defined due process.

**READING CHECK Contrasting** What is the difference between procedural and substantive due process?

**SECTION**



**ASSESSMENT**



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**ONLINE QUIZ**

## Reviewing Ideas and Terms

- a. Identify** What right does the Second Amendment protect?

**b. Predict** What might happen if there were no Second Amendment?
- a. Define** Define the terms **probable cause**, **search warrant**, and **exclusionary rule**.

**b. Explain** Why must search warrants clearly explain what items the police are looking for?

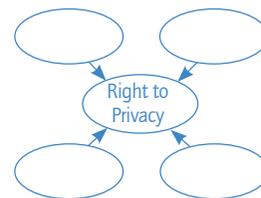
**c. Evaluate** Do you believe that the NSA wiretapping program violates the Fourth Amendment? Why or why not?
- a. Recall** How does the Fourth Amendment imply a right to privacy?

**b. Evaluate** Do you think that it is proper for the courts to infer rights—such as the right to privacy—that are not explicitly mentioned in the Constitution? Explain your answer.
- a. Define** What are **procedural due process** and **substantive due process**?

**b. Elaborate** How does due process limit government’s police power?

## Critical Thinking

- Interpret** Use a graphic organizer like the one below to explain how the Second, Third, Fourth, and Fifth Amendments imply the existence of a right to privacy.



## FOCUS ON WRITING



- Persuasive** The Supreme Court has ruled that students in public schools have fewer Fourth Amendment protections than the rest of the population. Do you agree or disagree with the Court? Write an opinion essay for your school newspaper in which you explain your position.

SECTION  
4

# Crime and Punishment

**BEFORE YOU READ**

**Main Idea**

The Constitution contains many features that help ensure that people accused of a crime receive fair and reasonable treatment—from arrest to trial to punishment.

**Reading Focus**

1. How does the U.S. justice system address both civil law and criminal law?
2. How does the Constitution guarantee the rights of those accused of a crime?
3. What are the major constitutional guarantees for ensuring fair trials?
4. How does the Constitution address the punishment of persons convicted of crimes?

**Key Terms**

civil law  
criminal law  
indictment  
bail  
capital punishment  
Miranda warnings  
bench trial  
double jeopardy

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**TAKING NOTES**

Use the graphic organizer online to take notes on the protected rights of people accused of crimes.

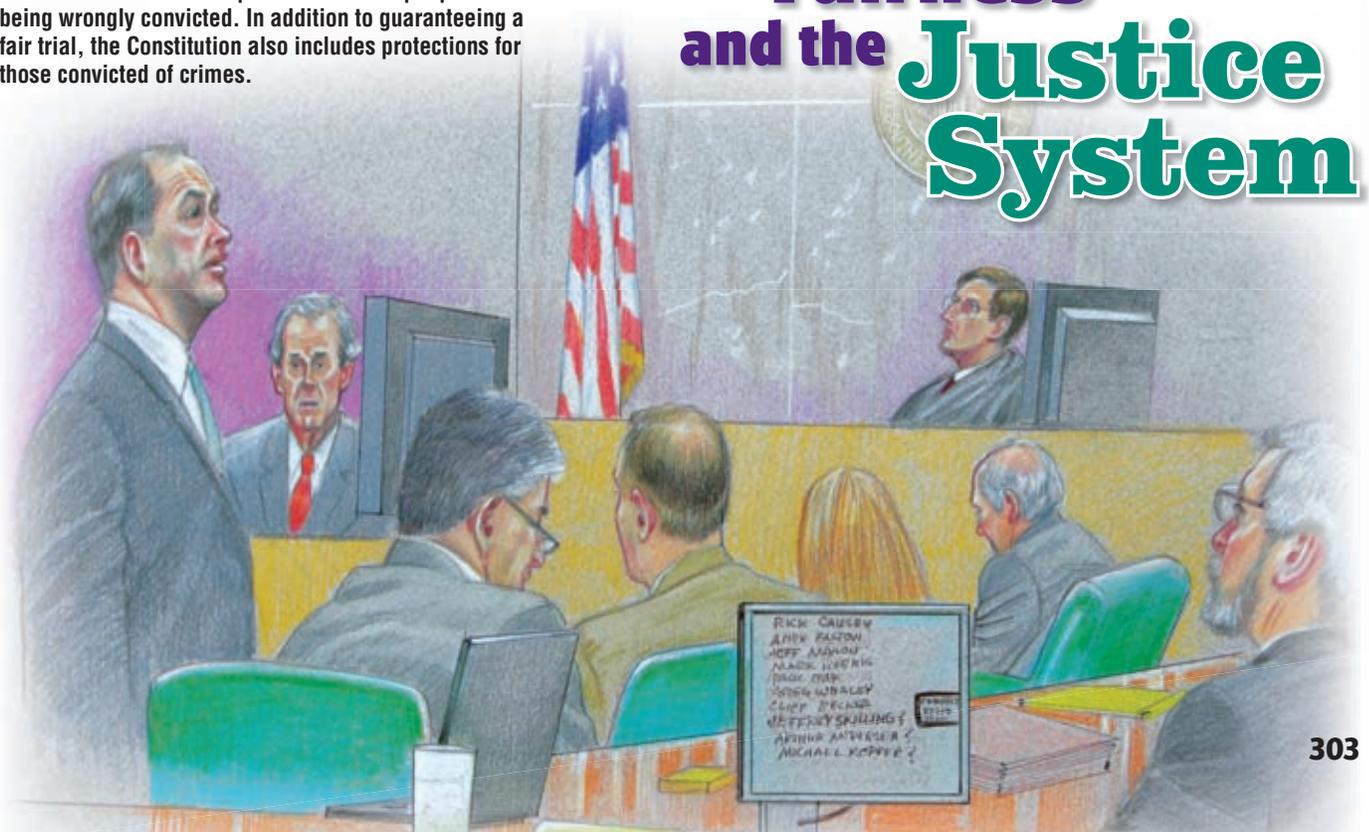
**WHY IT MATTERS**

**Protections for the Accused** Even a child understands the fundamental concept of fairness. A child playing a game with friends, for example, quickly learns about fairness and the importance of playing by the rules. Fairness is at the heart of the U.S. justice system, which sets rules to protect the rights of those accused of crimes and to ensure a fair outcome to a trial. The Constitution offers many protections for persons accused of crimes as well as for those convicted and sentenced to be punished.

Why are there so many protections for those accused of crimes? While it is important to punish people who have committed crimes, it is also important to be sure that innocent people are not wrongly convicted. It is a core principle of American justice that a person accused of a crime is innocent until proven guilty. It can be difficult to balance the rights of the accused and society's interest in preventing and punishing crime, but under American law all people, no matter how terrible their crimes or how long their criminal records, are entitled to justice. ■

All persons accused of crimes have certain rights to ensure a fair trial and to prevent innocent people from being wrongly convicted. In addition to guaranteeing a fair trial, the Constitution also includes protections for those convicted of crimes.

## Fairness and the Justice System



## The U.S. Justice System

In this chapter you have read about the importance of civil liberties in American life. These basic freedoms to think and to act as we choose are guarded by the U.S. justice system, which also provides protections for persons accused of crimes and for those convicted of crimes. The justice system seeks fair and impartial outcomes for disputes of all kinds. It follows rules and guidelines established in the Constitution and in U.S. law in order to resolve lawsuits, criminal trials, and other disputes.

**Types of Law** The law is commonly classified into two categories: civil law and criminal law. **Civil law** covers private disputes between people over property or relationships. People who violate civil law are often fined or otherwise punished, but they are not usually subject to imprisonment. **Criminal law** is the system for dealing with crimes and their punishments. People who violate criminal law may be fined, imprisoned, or even executed.

**Civil Law** The field of civil law consists of several categories, including contracts, tort law, property law, and family law. A contract is a legal agreement, or promise, between two or more parties that makes clear what

each party must do and when he or she must do it. Contracts may be verbal or written agreements, but all are legally binding. Failure to follow the contract—known as breach of contract—may lead to legal action against one or more parties.

Another category of civil law is called tort law. A tort is an action that harms another person, such as medical malpractice, wrongful death, or a civil rights violation. Personal injury cases are a common example of tort law.

Property law, as the name suggests, involves the purchase and sale of property, such as a house or an automobile. Family law addresses issues related to families, such as marriage, divorce, and child custody.

**Civil Lawsuits** As you read in Chapter 8, a case in civil law is called a lawsuit. In a lawsuit, a plaintiff brings the suit against a defendant, often seeking damages, or financial compensation from the defendant to correct the alleged wrong. The plaintiff does not have to demonstrate the defendant's guilt beyond a reasonable doubt. Instead, a defendant may be found guilty based on a preponderance—majority—of evidence.

Not all civil lawsuits go to trial. In some cases, parties in civil suits may seek—or may be ordered to seek—alternative dispute resolution outside of the government judicial process. The alternative dispute resolution process is similar to a trial, but it is less formal and less costly. There are three basic types of alternative dispute resolution:

- Mediation, in which a trained negotiator works with both sides to reach a compromise agreement acceptable to everyone;
- Arbitration, in which a third party listens to both sides and issues a ruling that both sides have agreed in advance to accept;
- Negotiation, in which the sides discuss ways to resolve the issue without the involvement of a third party.



### Settling a Civil Lawsuit

In 1999 five tobacco manufacturers, sometimes referred to as Big Tobacco, settled a civil lawsuit brought by 46 states. The suit accused the companies of hiding smoking's harmful effects.

## Justice Delayed

Edgar Ray Killen was first tried for the 1964 murder of three civil rights workers in 1967, but the all-white jury could not agree on a verdict. It was not until 2005, after years of increasing public pressure, that Killen—at 80 years old—was finally tried again. He was convicted of manslaughter. Below, Killen consults with his attorney; at right, he faces the judge at a hearing.



Civil lawsuits that are not settled by alternative dispute resolution go to trial. Both federal and state courts hear civil cases, and procedures can vary. In general, though, cases follow the same basic steps:

- The plaintiff hires a lawyer and files a complaint with the court.
- The two sides can seek to settle the dispute before trial.
- If the trial goes forward, the two sides exchange information about evidence and witnesses in a process known as discovery.
- The trial may be heard by a jury or, in some cases, by a judge alone.
- The jury or judge issues a ruling.
- Decisions may be appealed.

### Criminal Law and Types of Crimes

While civil law deals with private offenses and disagreements, criminal law deals with crimes, or offenses against the public. In general, a crime occurs when a person breaks a law passed by any form of government.

There are two types of crimes—misdemeanors and felonies. A misdemeanor is a relatively minor offense for which a person may receive a minor fine or may be imprisoned for less than a year. Trespassing, traffic violations, and petty theft are

examples of misdemeanor crimes. A felony is a more serious crime, such as murder, sexual assault, or grand theft, that carries a harsher sentence.

**Criminal Justice Processes** The Fifth Amendment guarantees that people cannot face trial for most federal crimes without first facing a grand jury. Remember that a grand jury is a group of 16 to 23 citizens who gather in secret to decide whether there is enough evidence to send an accused person to trial. The grand jury hears and collects evidence about alleged crimes. It calls witnesses and can use subpoenas, court orders requiring people to appear in court or to produce certain evidence in court. If the grand jury believes there is enough evidence to charge a person with a crime, it issues a formal complaint of criminal wrongdoing called an **indictment**. If the defendant waives his or her right to be indicted by a grand jury, a prosecutor can bring charges in what is called an information, an official report of the offense for which the person is charged.

Next, the accused is arrested, or taken into custody by police. Arrest may happen before indictment or after, depending on the circumstances of the alleged crime.

## ACADEMIC VOCABULARY

**presume** suppose; take for granted

After indictment and arrest, the accused may face several hearings before trial. Among these hearings is the arraignment, the formal reading of charges against the accused. At this time, the accused enters a plea—guilty or not guilty. Other hearings may involve motions, or requests, by the prosecutor or the defense—for example, to move the location of the trial or to block certain evidence from being considered.

The court also may hold a hearing to discuss the setting of bail. **Bail** is money pledged by the accused as a guarantee that he or she will return to court for trial. If the accused appears in court at the proper time, the money is returned. If he or she flees, the money is forfeited. Bail helps ensure that innocent people are not imprisoned unnecessarily before trial.

Often, a defendant will plead guilty before a trial takes place. This may occur as the result of a plea bargain, by which the defendant agrees to plead guilty to a lesser charge. Government may accept the plea bargain to ensure a conviction or to obtain the defendant's assistance in another criminal matter, such as testifying against another person involved in the crime. In U.S. courts, the vast majority of criminal cases are settled through plea bargain.

If a defendant does not plead guilty or accept a plea bargain, the trial takes place. This complex process usually involves jury selection, which you will read about later in this section. Both sides present evidence and witnesses to support their claims, and the judge or jury decides the case.

**Sentencing** If a defendant pleads guilty or is found guilty in a trial, sentencing takes place at a separate hearing. Sentences depend on the severity of the crime and other factors. Some convicted people receive probation, meaning they remain free but are under close supervision by authorities. Other convicted people are sent to prison. A small number receive **capital punishment**—punishment by death. You will read more about sentencing and punishment later in this section.

### READING CHECK Comparing and Contrasting

In the U.S. justice system, how are civil and criminal cases similar and different?

## Rights of the Accused

In our justice system, we presume that people accused of crimes are innocent until they are proven guilty beyond a reasonable doubt. Balancing the rights of the accused with the need to protect society from criminals is a major challenge. Yet the Framers recognized that people can need protection from government, especially when a person's freedom is at stake.

**Habeas Corpus** The writ of habeas corpus, which you read about in an earlier chapter, is one such protection from government actions. Remember that the writ of habeas corpus is a legal order requiring that an imprisoned person be brought before a court so that a judge may determine whether or not the imprisonment is legal. Sometimes referred to as the “writ of liberty,” the writ of habeas corpus is an important protection against the government abusing its police power. Without this protection, the government could arrest and hold people for any length of time without ever having to defend its actions in court.

Article I, Section 9, of the Constitution provides that: “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.” Citing these words, President Abraham Lincoln suspended habeas corpus in certain parts of the country during the Civil War. Under Lincoln's order, people faced arrest merely for criticizing the government. In addition, prisoners faced military trials, not trial by jury.

Lincoln's action was—and remains—controversial. In the decision *Ex parte Merryman* (1861), a federal court ruled that his order was unconstitutional. In response, Congress passed a law approving of Lincoln's action. After the war, in *Ex parte Milligan* (1866), the Supreme Court ruled that neither Lincoln nor Congress had the power to suspend habeas corpus in this case, noting that Milligan was a civilian, the civil courts were functioning, and Milligan's activities did not take place in the theater of war.

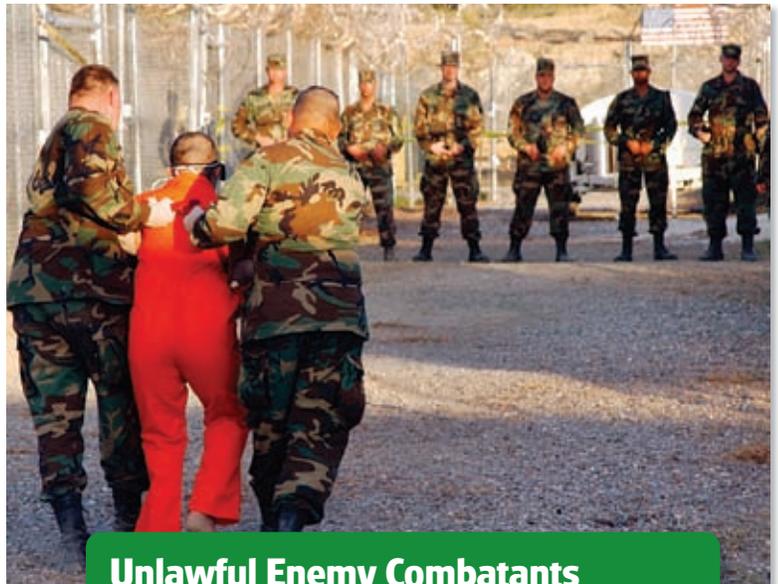
The writ of habeas corpus has received much public attention in the aftermath of the September 11, 2001, terrorist attacks on

the United States. In the years following the attacks, the United States and its allies captured a number of suspected terrorists in Afghanistan and Iraq. Many of these people—labeled unlawful enemy combatants by the Bush administration—were being held by the U.S. military several years after their capture without receiving any formal hearing or judicial process. Most were held in a U.S.-run facility at Guantánamo Bay, Cuba.

Several court cases have challenged the legality of the detentions, including three Supreme Court decisions. In *Hamdi v. Rumsfeld* (2004) and *Rasul v. Bush* (2004), the Supreme Court ruled that unlawful enemy combatants detained by the United States did have limited rights to challenge their imprisonment in a federal court. In 2006 Congress passed a law establishing a system for trying unlawful enemy combatants in military tribunals. A federal court in Washington, D.C., however, ruled that the law stripped detainees of the right to habeas corpus. A third Supreme Court case, *Boumediene v. Bush* (2008) ruled that detainees have a constitutional right to challenge their detentions in U.S. courts.

**Grand Juries** As you read earlier, the Fifth Amendment includes the guarantee that people cannot be tried for most federal crimes without first being indicted by a grand jury. The grand jury guarantee has not been incorporated into the Fourteenth Amendment, and some states do not have grand jury systems. In many states today, criminal charges are brought by a prosecutor in an information.

**Self-Incrimination** The Fifth Amendment provides another valuable safeguard for persons accused of crime, protecting the accused from being “compelled in any criminal case to be a witness against himself.” This means that a person cannot be forced to give evidence or testimony that is incriminating—that is, evidence or testimony that suggests his or her own guilt. This protection covers any government proceeding that might lead to criminal charges, such as pre-trial questioning by police as well as criminal trials themselves.



### Unlawful Enemy Combatants

In 2008, the United States government denied the writ of habeas corpus to unlawful enemy combatants held at Guantánamo Bay. Do you think the government was right to deny habeas corpus to these unlawful enemy combatants?

The protection against self-incrimination exists only for spoken testimony, however. Government can force people to be searched or to have blood samples or fingerprints taken as evidence, among other things.

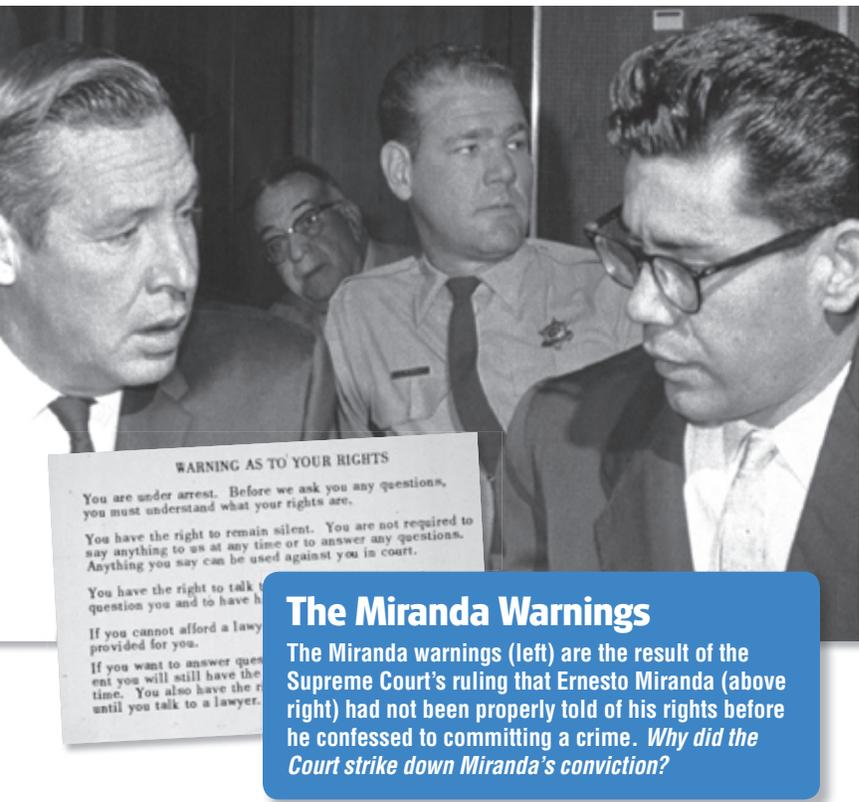
Government can also force people to give testimony against themselves by giving them immunity. That is, the government can agree not to prosecute a person for a crime. In return, the person can be forced to testify.

The protection against self-incrimination was the subject of *Miranda v. Arizona* (1966). The issue in *Miranda* was a suspect’s confession to a crime after being questioned by police, who had not told him that he had the right to consult with an attorney before or during questioning. The Supreme Court ruled that the questioning of suspects under such circumstances violated the Fifth Amendment and that the resulting confession could not be used at trial.

#### PRIMARY SOURCE

“We hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege.”

—Earl Warren, *Miranda v. Arizona*, 1966



The *Miranda* decision requires police to read the Miranda warnings to a suspect before the suspect is questioned. The **Miranda warnings** are a list of certain constitutional rights possessed by those accused of crimes. Suspects must be told that:

- They have the right to remain silent.
- Anything they say can be used against them in court.
- They have the right to have an attorney present.
- If they cannot afford an attorney, one will be provided for them.

If the police fail to advise a suspect of these rights, the courts may refuse to consider a confession as evidence. As a result, the Miranda warnings are controversial. Critics argue that some guilty people go unpunished simply because a police officer did not inform them of their rights. Others, however, believe that the warnings protect innocent people from being tricked or forced into confessing to crimes they did not commit.

**Bail** The Eighth Amendment provides that “excessive bail shall not be required.” Courts have ruled that bail is excessive if it is greater than the amount judged necessary to ensure

a suspect’s appearance at trial. The Eighth Amendment does not mean, however, that all people accused of crimes must be allowed to post bail. Some people charged with particularly serious crimes, such as murder, are not allowed to post bail.

**Bills of Attainder** Article I, Sections 9 and 10, of the Constitution prohibit Congress and the states from passing bills of attainder. As you read in Chapter 5, a bill of attainder is a law that declares a certain person guilty of a crime. In practice, a bill of attainder takes away a person’s right to a trial and violates the system of separation of powers by allowing a legislative body to convict and punish a person without trial.

Bills of attainder were common during the colonial era, but they are rare today. Still, cases involving bills of attainder occasionally arise. In *United States v. Lovett* (1946) the Supreme Court overturned part of an appropriations bill that forbade the use of appropriated money to pay the salaries of three specific people. The Court found that this bill was legislative punishment without benefit of trial and thus was an unconstitutional bill of attainder.

**Ex Post Facto Laws** The Constitution also outlaws ex post facto laws in Article I, Sections 9 and 10. Ex post facto laws are laws that apply to events in the past. If not prohibited, such laws would make it possible to punish a person for actions that were legal at the time they were committed.

**Victims’ Rights** Although the Bill of Rights and other parts of the Constitution provide many protections for people accused of crime, some people feel that the Constitution does not sufficiently protect victims of crimes. As a result, in recent years a number of states have passed laws designed to protect victims’ rights. These laws often defend the victim’s right to be treated with fairness and respect; to be present at court proceedings related to the offense; and to be informed about the conviction, sentence, imprisonment, and release of the accused.

**READING CHECK Making Inferences** Why do persons accused of crimes need special protection against possible government abuse?

# "LANDMARK SUPREME COURT CASES"

Constitutional Issue: Due Process

DIVISION FOR  
PUBLIC  
EDUCATION  
AMERICAN BAR ASSOCIATION

## *Miranda v. Arizona* (1966)

### WHY IT MATTERS

*Miranda v. Arizona* protects the rights of criminal suspects during police interrogations. Suspects in police custody must be informed of their rights before questioning.

### Background

In 1963 Ernesto Miranda was arrested and brought to a Phoenix, Arizona, police station, where he was accused of committing a serious crime. The victim identified Miranda as responsible for the crime, but Miranda claimed to be innocent. After two hours of police questioning, however, Miranda confessed. At trial, prosecutors used Miranda's signed confession as evidence, and he was convicted and sentenced to jail.

After Miranda appealed his conviction, the police acknowledged that they had never told Miranda he had the right to consult with an attorney before or during questioning. It was unclear, however, whether Miranda had been warned that anything he said during interrogation could be used against him in court.

### Arguments for Miranda

In Miranda's appeal to the Supreme Court, his attorney argued that Miranda's conviction was unconstitutional, violating aspects of the Fifth, Sixth, and Fourteenth Amendments. In *Brown v. Mississippi* (1936), the Court had ruled that confessions obtained through coercion, or force, by state or local officials violated the due process clause of the Fourteenth Amendment. As a result of *Brown*, coerced confessions were not admissible in court. Miranda's attorney also argued that Miranda's conviction violated the Court's recent decision in *Gideon v. Wainwright* (1963), in which the Court held that the Sixth Amendment protects a criminal defendant's right to an attorney. Furthermore, Miranda's attorney claimed that Miranda's conviction violated the Fifth Amendment protection against self-incrimination.

### Arguments for Arizona

The state of Arizona argued that there was no reason that Miranda's confession could not be used in court. Arizona argued that Miranda's confession had been given freely with no coercion. He had not been beaten or otherwise mistreated by police, as the suspect had been in *Brown v. Mississippi*. Although Phoenix police had not told Miranda of his right to consult with an attorney, Arizona claimed that this did not make his confession any less admissible.

### THE IMPACT TODAY

In a 5–4 decision, the Court ruled that Miranda's rights had been violated and struck down his conviction. Today the issues of due process and the rights of criminal suspects are still highly debated. Some people worry that providing too many protections for suspects would mean that criminals might escape punishment for their crimes simply because of police mistakes over legal technicalities. On the other side of the debate are those who worry that having too few protections for people accused of crimes would result in police abuse of power. They believe that innocent people would be coerced, through violence, intimidation, or trickery, into making false confessions to crimes they did not commit. Courts must balance the rights of those accused of crimes with the rights of society to be protected from criminals.

### CRITICAL THINKING

**What Do You Think?** Did the Supreme Court make the correct decision in ruling that Miranda's rights had been violated or did the Court go too far in protecting the rights of persons accused of crimes?

## PROTECTIONS FOR THE ACCUSED

QUICK  
FACTS

PROTECTION AND SOURCE	MEANING
<b>Habeas Corpus,</b> Article I, Section 9	<ul style="list-style-type: none"> <li>Prisoner has right to court hearing to determine legality of imprisonment.</li> </ul>
<b>No Self-Incrimination,</b> Fifth Amendment	<ul style="list-style-type: none"> <li>Person cannot be forced to give testimony that suggests his or her own guilt.</li> </ul>
<b>Grand Jury,</b> Fifth Amendment	<ul style="list-style-type: none"> <li>Person cannot face trial for most federal crimes unless indicted by a grand jury.</li> </ul>
<b>No Bills of Attainder,</b> Article I, Sections 9 and 10	<ul style="list-style-type: none"> <li>Congress and states cannot pass laws declaring a specific person guilty of a crime.</li> </ul>
<b>No Ex Post Facto Laws,</b> Article I, Sections 9 and 10	<ul style="list-style-type: none"> <li>Congress and states cannot pass laws that apply to past actions.</li> </ul>
<b>Speedy and Public Trial,</b> Sixth Amendment	<ul style="list-style-type: none"> <li>Trial must take place soon after arrest or indictment and must be open to the public.</li> </ul>
<b>Trial by Jury,</b> Sixth Amendment	<ul style="list-style-type: none"> <li>All those facing criminal charges must be tried by a jury.</li> </ul>
<b>Adequate Defense,</b> Sixth Amendment	<ul style="list-style-type: none"> <li>Defendants must be informed of charges, be able to confront witnesses in court, and have adequate legal representation.</li> </ul>
<b>No Double Jeopardy,</b> Fifth Amendment	<ul style="list-style-type: none"> <li>No person may be made to stand trial twice for the same offense.</li> </ul>

The courts have never defined what the word *speedy* means, and there is no set time in which a trial is required to take place. But if a trial takes place soon after an arrest or indictment, an innocent person will spend less time confined in jail. Furthermore, the memories of witnesses will be fresher, helping ensure that their testimony is more accurate.

When considering complaints about the lack of a speedy trial, a court will examine the reasons for any delay and the delay's impact on a defendant. In general, delays that harm a defendant or that give the prosecutor an advantage may violate the Sixth Amendment. In such cases, the charges against the accused may be dropped.

A public trial is another important element of a fair trial. Opening a trial to the public and the press helps prevent abuses of the law by allowing the public to monitor the proceedings and make sure everything is done according to law. Press access to the courtroom, however, is controversial. Some argue that press coverage—especially television coverage—may influence jurors and affect the outcome of a trial. In *Chandler v. Florida* (1981), however, the Supreme Court ruled that televising a trial does not necessarily prevent a fair trial.

Courts do have the power, however, to place limits on public access to courtrooms. For example, television cameras can be blocked if the judge feels the fairness of a trial is threatened. A judge may also keep some people out of a courtroom in order to maintain order and to prevent unfair influence of witnesses or the jury. Indeed, in extreme cases, trials may even be closed to the public. This can only happen, however, if there is no other way to ensure that a defendant gets a fair trial or to protect important public interests.

**Trial by Jury** The Sixth Amendment also says that those facing criminal charges have a right to trial by a jury. This right has been incorporated into the Fourteenth Amendment and applies to state as well as federal criminal trials. In the federal system and in most states, a trial jury—sometimes called a petit jury—is made up of 12 people. It is the responsibility of all citizens to serve as members of a jury, if called to do so.

## Guarantees of a Fair Trial

The Constitution provides many safeguards for the rights of those accused of crimes. Portions of the Fifth, Sixth, Seventh, and Eighth Amendments, as well as Article I, guarantee the basic courtroom protections that define the American legal system.

**Speedy and Public Trial** The Sixth Amendment says, in part, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” This guarantee also applies to the states through the incorporation doctrine.

A defendant may waive his or her right to a jury trial. If no jury is used, the judge conducts a **bench trial**, in which he or she alone hears and decides the case. The Supreme Court has held that jury trials are unnecessary for minor criminal offenses in which the possible punishment is less than six months' imprisonment.

The Sixth Amendment says that jury trials shall take place in the district in which the crime took place. Jurors must be impartial, or unbiased, and must come from the area where the crime was committed. Defendants are allowed to request that the trial be moved to another location if finding an impartial jury in the area would be difficult.

Under the Seventh Amendment, jury trials are guaranteed for certain types of civil cases, including those involving money damages. The right to a jury trial in civil cases has not been incorporated into the Fourteenth Amendment, and the states have different rules on this subject.

**Right to an Adequate Defense** The Sixth Amendment includes several features that help a defendant present an adequate defense at trial. All have been incorporated into the Fourteenth Amendment. These rights help guarantee that the judicial process is fair.

Under the Sixth Amendment, all defendants have the right to be informed of the charges against them. Simply put, the government must make clear what a defendant is accused of doing.

Defendants also have the right to be confronted with the witnesses against them. In general, a prosecutor cannot use as evidence something said by a person outside of the courtroom. The defendant must have the chance to cross-examine all witnesses and to expose errors or weaknesses in their testimony. This right is considered essential in building a defense. The courts sometimes need to use a subpoena, a legal document that requires a person to appear in court, to ensure that witnesses appear at trial.

Adequate legal representation is another important element of a fair trial. In *Powell v. Alabama* (1932), the Supreme Court ruled that state criminal defendants charged with a capital offense (a crime punishable by death) could not receive a fair trial unless

## PRIMARY SOURCES

# The Right to an Attorney

21<sup>ST</sup>  
CENTURY

Clarence Gideon was a poor, uneducated man who was convicted of a crime when he could not afford to hire a lawyer to defend him. His handwritten appeals to the Supreme Court, such as the excerpt below, contain many misspellings and grammatical errors, but the Court ultimately ruled in his favor in *Gideon v. Wainwright*. "Petitioner [Gideon] will attempt to show this Court that a citizen of the State of Florida cannot get a just and fair trial without the aid of counsel . . ."

“Respondent [Florida’s attorney general] claims that I have no right to file petition for writ of Habeus Corpus. Take away this right to a citizen and there is nothing left.

It makes no differense how old I am or what color I am or what church I belong to if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me a attorney and the court refused. All countrys try to give there Citizens a fair trial and see to it that they have counsel.”

Skills  
FOCUS

## INTERPRETING PRIMARY SOURCES

**Understanding Points of View** Why does Gideon believe that his trial was unfair?

See **Skills Handbook**, p. H4.

they were represented by a lawyer. The Court went farther in *Gideon v. Wainwright* (1963), ruling that *all* defendants accused of serious crimes have the right to an attorney. Anyone who cannot afford legal help must be given a lawyer at public expense.

In addition, courts have ruled that a lawyer’s failure to meet professional standards when representing his or her clients may violate a defendant’s Sixth Amendment rights. Defendants have the right to act as their own legal counsel, but judges may take away this right if the judge determines that a defendant is incapable of defending him- or herself properly.

**Double Jeopardy** Another protection provided by the Fifth Amendment is that no person shall be “twice put in jeopardy of life or limb.” This means that no person will be subject to **double jeopardy**, or made to stand trial twice for the same offense. This restriction prevents government from trying repeatedly to convict a person for allegedly committing a crime.



**Capital Punishment** The death penalty was practiced in the early days of the United States, at the time the Bill of Rights was written. Some opponents of the practice have argued that it is an inherently cruel and unusual punishment. The Supreme Court, however, has consistently ruled that capital punishment is constitutional.

Still, over the years the federal government and the states have greatly reduced the number of crimes for which capital punishment may be applied. Some states have abolished the practice entirely.

In recent years the Supreme Court has focused on ensuring a just application of the penalty. In *Furman v. Georgia* (1972), the Court found that the application of capital punishment in Georgia was arbitrary. Noting that Georgia executed some criminals while sparing others convicted of similar crimes, Justice Potter Stewart wrote, “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.” Others on the Court noted that the death penalty in Georgia appeared to be applied far more often against African Americans and the poor than against others.

After *Furman*, Georgia reworked its capital punishment system. Four years later, the revised system again came before the

Court in *Gregg v. Georgia* (1976). The new Georgia system involved two steps—the trial itself and a separate sentencing process. Other safeguards, including a review by the highest state court of all death sentences, helped ensure that capital punishment was applied fairly and evenly. The Supreme Court found Georgia’s new system constitutional.

*Gregg* did not end the national debate over capital punishment. Most states still allow the death penalty, but some Americans have concerns over how fairly capital punishment is applied and about the nature of methods of execution. For example, new technology such as DNA analysis has helped prove the innocence of some convicted criminals who had been executed or who were scheduled to be executed. Lethal injection, which is used in 37 of the 38 states that have the death penalty, has also become the subject of controversy. In late 2007, the Supreme Court effectively halted the use of lethal injections as a means of execution until the Court ruled on whether that method constitutes cruel and unusual punishment. The Court’s decision on lethal injection is expected in 2008.

#### ACADEMIC VOCABULARY

**arbitrary** random or unreasonable

**READING CHECK Summarizing** What issues involving capital punishment are controversial?

## SECTION 4 ASSESSMENT

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ONLINE QUIZ

### Reviewing Ideas and Terms

- a. Describe** What is the difference between **civil law** and **criminal law**?  
**b. Elaborate** Why do you think there are so many steps in the civil and criminal processes?
- a. Recall** What is the purpose of the **Miranda warnings**?  
**b. Make Inferences** Why did the Supreme Court rule that police must inform people of their constitutional rights before questioning them?  
**c. Elaborate** How do the constitutional protections for the accused reflect the idea that people are innocent until proven guilty?
- a. Identify** Which amendments help ensure a fair trial?  
**b. Analyze** Why do you think the Constitution seeks to protect the right to an adequate defense at trial?  
**c. Elaborate** How can a jury both help and hurt an accused person’s right to a fair trial?

- a. Identify** Which amendment to the Constitution seeks to ensure fair punishment?  
**b. Summarize** Why was Georgia’s capital punishment system found to be “cruel and unusual” in *Furman v. Georgia*?  
**c. Evaluate** What do you think would make a punishment “cruel and unusual”?

### Critical Thinking

- Analyze** Using a graphic organizer like the one below, analyze the ways in which the Constitution protects people at all stages of the judicial process.



### FOCUS ON WRITING

- Persuasive** Does the Constitution do too much, too little, or just enough to protect the rights of people suspected, accused, or convicted of crimes? Write a newspaper editorial that expresses your opinion on the subject.

21<sup>ST</sup>  
CENTURY

# We the People

THE CITIZEN & THE CONSTITUTION

## Fundamental Rights and the Doctrine of Incorporation

Next to the preservation of the Union and the abolition of slavery, the most important constitutional development of the post-Civil War era was the passage of the Fourteenth Amendment. Originally intended to protect the rights of newly freed African Americans, the amendment has become a principal guarantee of the fundamental rights of all Americans, as important as the Bill of Rights itself.

**What is procedural due process?** Historically, due process of law meant that government officials must follow recognized procedures and not act arbitrarily when they make and enforce laws. This is called procedural due process, which requires government officials to act in certain ways before they regulate or take life, liberty or property. In England due process requirements initially focused on the rights of criminal defendants. For a criminal proceeding to be fair, for example, the laws must be clear. The defendant must know the charges that the government seeks to prove and be given a fair trial by a jury of his or her peers and the right to confront witnesses.

In the United States due process guarantees apply to both criminal and noncriminal (civil) matters. For example, the due process clause of the Fourteenth Amendment addresses property, in addition to life and liberty. Property is a broad term. It refers to everything that a person can own, from tangible things such as land and buildings to intangible things such as copyrights and patents. People also have property interests in other intangibles, such as their jobs, welfare or

unemployment benefits, and their reputations. In addition to constitutional guarantees, many laws enacted by state legislatures and Congress also contain provisions ensuring due process in matters such as public school discipline. Due process guarantees include the requirement of notice, the opportunity for a fair hearing, the opportunity to present evidence, and the opportunity to appeal an initial decision.

**What is substantive due process?** In the United States due process of law has two meanings. Procedural due process, described above, refers to the processes that governments must follow when they make and enforce laws. The second meaning of due process is known as substantive due process. It means that the Constitution usually prohibits some kinds of laws altogether, no matter how popular those laws may be with legislatures, executives, or even the people. Substantive due process is based on the idea that some rights are so fundamental that government must have a “compelling,” or exceedingly important, reason to regulate or interfere with them. It is the role of the courts, interpreting the Constitution, to determine



whether a law is unconstitutional because it violates a fundamental right, and whether a governmental regulation of a fundamental right is justified by a compelling government interest.

The idea of fundamental rights traces to natural rights philosophy. Social contract theorists such as John Locke argued that people have natural rights that predate government. Some of those rights are so fundamental, or basic, that governments may not interfere with them or regulate them. One of the most difficult roles the Supreme Court plays is to identify which rights are fundamental and which are not. The justices' views of fundamental rights have changed over time.

For many years, for example, the Court held that the right to buy and sell a person's labor is so fundamental that state and Congressional laws establishing minimum wages and limiting the number of hours in a workday or work week were unconstitutional. This was known as the era of economic substantive due process. In 1937 the Court abandoned the view that economic rights are fundamental rights.

However, the Court did not abandon its effort to identify other fundamental rights. It has continued to try to identify rights that are so basic that Congress or states must have a "compelling interest" in order to pass laws that interfere with or regulate such rights. The Court has identified the following rights as "fundamental" (note that some but not all such rights are listed in the Constitution or Bill of Rights):

- the right to marry and have children,
- the right to purchase and use birth control,

- the right to custody of one's own children and to rear them as one sees fit,
- the right of mentally competent adults to refuse medical treatment,
- the right to free speech,
- the right to travel interstate,
- the right of legal voters to vote,
- the right to associate, and
- the right to religious freedom.

Whether any or all of these rights are indeed fundamental, and thus prohibit most governmental regulations, remains a topic of intense controversy throughout the United States.

**What is the doctrine of "incorporation"?** For the first few decades after ratification of the Fourteenth Amendment the Supreme Court continued to rely on the states to be the principal protectors of individual rights. All the state constitutions contained bills of rights. The Court was leery of interpreting the Fourteenth Amendment in a way that would upset the balance of power between the national government and the states.

However, not all states interpreted their bills of rights to ensure due process and to protect the fundamental rights of everyone within their boundaries. In 1925 the Supreme Court began to examine the due process clause of the Fourteenth Amendment with an eye to identifying the rights in the Bill of Rights that the states, like the national government, must protect. In *Gitlow v. New York* (1925) the Court recognized that the rights of free speech and free press are among the personal rights to liberty protected by the due process clause. States could not infringe on these rights.

### Reviewing Ideas

- 1. Summarize** How have Supreme Court justices' views of fundamental rights changed over time?
- 2. Identify** What is substantive due process?

### Critical Thinking

- 3. Evaluate** Has incorporation of the Bill of Rights against the states validated the fears of the Antifederalists regarding the power of the national judiciary? Explain.

## Connecting Online

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Go online for review and enrichment activities related to this chapter.



## Quiz and Review

## GOV 101

Examine key concepts in this chapter.

## ONLINE QUIZZES

Take a practice quiz for each section in this chapter.

## Activities

## eActivities

Complete Webquests and Internet research activities.

## INTERACTIVE FEATURES

Explore interactive versions of maps and charts.

## KEEP IT CURRENT

Link to current events in U.S. government.

## Partners

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Learn more about the law, your rights and responsibilities.

## Center for Civic Education

Promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy.

 Online Textbook

## ONLINE SIMULATIONS

Learn about U.S. government through simulations you can complete online.

## Comprehension and Critical Thinking

## SECTION 1 (pp. 280–284)

1. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: civil liberties, civil rights, due process.
- b. Explain** When may government limit civil liberties and rights?
- c. Elaborate** Since state constitutions generally contain the same guarantees as the Bill of Rights, why is the incorporation doctrine important to securing individual rights and liberties?

## SECTION 2 (pp. 285–294)

2. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: establishment clause, free exercise clause, slander, libel, prior restraint.
- b. Draw Conclusions** Does a public school that prohibits prayers in classrooms during the school day deny students their right to a free exercise of religion? Explain your answer.
- c. Predict** Americans' understanding of the First Amendment has changed over the years. How do you think our current interpretations of the Bill of Rights might change in the future?

## SECTION 3 (pp. 296–302)

3. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: probable cause, exclusionary rule, police power, procedural due process, substantive due process.
- b. Interpret** Should the Constitution be interpreted as protecting a right to privacy? Why or why not?
- c. Rank** Which do you think is more important: individual privacy or public security? Explain your answer.

## SECTION 4 (pp. 303–313)

4. **a. Review Key Terms** For each term, write a sentence that explains its significance or meaning: capital punishment, double jeopardy.
- b. Analyze** How do the guarantees of a public trial and a fair trial sometimes conflict?
- c. Rate** Which do you think is worse: An innocent person being punished or a guilty person going free? Explain your answer.

## Critical Reading

Read the passage in Section 3 that begins with the heading “Substantive Due Process.” Then answer the questions that follow.

5. Which of the following is true about substantive due process?
  - A It involves questions about whether legal procedures are fair.
  - B It involves questions about whether the Constitution is fair.
  - C It involves questions about whether duly passed laws are fair.
  - D It involves questions about whether amendments are fair.

6. Substantive due process is based on which of the following ideas?
- A States should have more rights than the federal government.
  - B All people have certain rights.
  - C Inalienable rights can be denied in some cases.
  - D As long as a law follows proper procedures, it is fair.

Read the passage in Section 1 that begins with the heading “When Rights Conflict.” Then answer the questions that follow.

7. When can civil liberties and rights be limited by the government?
- A when the exercise of a liberty or right can harm another person
  - B when the exercise of a liberty or right can harm the common good
  - C when the exercise of a liberty or right can conflict with the liberties and rights of others
  - D All of the above.

#### RESPONSIBILITIES OF LEADERSHIP



8. In a short essay, identify and examine the nature and causes of crime in your community, explaining the effects that these criminal acts have on their victims. Evaluate your local government’s **attempts to prevent crime**. In your opinion, what other steps should the government take to help stop crime? A good source of information on crime is the annual report that many local governments produce; you may be able to find reports for your community online or in a library. You may wish to speak to a local police officer or government official to get their perspective on crime issues.

#### CONNECTING TO THE CONSTITUTION

9. Describe a situation that raises a question of procedural due process affecting young people. For example, the situation might be a story about students who were dismissed without a hearing from a school sports team. The students were reported to have been drinking at a party, thus breaking their team contract, which prohibited smoking and drinking by team players.

#### ANALYZING PRIMARY SOURCES



**Political Cartoon** *The National Security Agency’s warrantless surveillance program led to widespread debate about whether the secret program violated Fourth Amendment guarantees of personal security.*



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10. **Analyze** What is happening in this cartoon?
11. **Draw Conclusions** Does the cartoonist believe that the NSA program is monitoring the right people?

#### FOCUS ON WRITING



Think about the following issue:

**An editorial in a high school newspaper criticizes the principal of the school. In response, the principal announces that all future issues of the newspaper must be approved by school administrators before publication.**

12. **Assignment** Was the principal’s action a violation of the students’ First Amendment rights or a reasonable measure to preserve order in the school? Write a short essay in which you develop your position on the issue. Defend your position with reasoning and examples from your reading and studies.