

AP GOV CIVIL LIBERTIES & PUBLIC POLICY REVIEWED!

Government in America (Pearson) Chapter 4
American Government: (Wilson) Chapter 5
Institutions & Policies

CIVIL LIBERTIES

What are **civil liberties**?

- Protections of individuals/groups against the government
- Civil liberties are **NOT absolute**; there are limitations
 - Balance between protecting public order and individual freedom
- **Bill of Rights** added to the Constitution to appease concerns of Anti-Federalist
 - First 10 Amendments to the Constitutions
- Originally the Bill of Rights applied strictly to the relationship to the **federal** government
 - 1st Amendment says, “Congress shall make no law...”
- Process of **incorporation**: most of the Bill of Rights applies to citizens relationship with state & local gov’t

These amendments were passed by Congress on September 25, 1789, and ratified by the states on December 15, 1791.

Amendment 1—Religion, Speech, the Press, Assembly, Petition
Congress and the states shall respect the establishment of religion, prohibiting any law respecting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 2—Right to Bear Arms
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.

Amendment 3—Quartering of Soldiers
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

Amendment 4—Search and Seizure
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5—Grand Jurors, Double Jeopardy, Self-Incrimination, Due Process, Eminent Domain
No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in the States which may waive that requirement; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall any person be compelled in any criminal case to be a witness against himself; nor shall any person be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6—Criminal Case Procedures
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime shall have been committed, or where the facts shall have been so ascertained by the judge, and the assistance of counsel for his defense; to be informed of the nature and cause of the accusation; to confront the witnesses against him; to cross-examine the witnesses; to have the assistance of counsel; to demand the compulsory process for obtaining witnesses in his favor, and to have the trial conducted by a jury.

Amendment 7—Civil Case Procedures
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact shall be taken by a judge, unless the law shall so require; and the judgment shall not be reversed, except on the basis of the facts.

Amendment 8—Bills, Fines, and Punishments
Excessive bail shall not be required, excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9—Rights Reserved to the People
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10—Rights Reserved to the States
The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people.

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THE BILL OF RIGHTS & THE STATES

- **Barron v. Baltimore (1833)**: Bill of Rights applied **ONLY** to the federal government
- **Gitlow v. New York (1925)**: due process clause of the 14th Amendment meant states could not violate freedom of speech.
 - **Incorporation doctrine**: application of some rights to state government

TABLE 42 THE INCORPORATION OF THE BILL OF RIGHTS

Date	Amendment	Right	Case
1655	First	Freedom of speech	Whitney v. New York
1803	First	Freedom of the press	Whitney v. New York
1807	First	Freedom of assembly	Ex parte Chagrin
1840	First	Free exercise of religion	Cantwell v. Connecticut
1847	First	Establishment of religion	Everson v. Board of Education
1939	First	Freedom of association	NACAP v. Alabama
1952	First	Right to petition government	NACAP v. Alabama
1955	Second	Right to bear arms	McDonald v. Chicago
1961	Fourth	No quartering of soldiers	Not incorporated
1961	Fourth	No unreasonable searches and seizures	Mapp v. Ohio
1961	Fourth	Exclusionary rule	Mapp v. Ohio
1967	Fifth	Compensation of public employees	Chicago, Burlington, and Quincy RR v. Chicago
1968	Fifth	Immunity from self-incrimination	Miranda v. Arizona
1969	Fifth	Immunity from double jeopardy	Benton v. Maryland
1970	Fifth	Right to grand jury indictment	Not incorporated
1970	Sixth	Right to counsel in capital cases	Forrest v. Alabama
1970	Sixth	Right to public trial	Id. v. Ohio
Date	Amendment	Right	Case
1961	Seventh	Right to counsel in felony cases	Madden v. Baltimore
1968	Seventh	Right to compensation of witnesses	Reiner v. Bair
1968	Seventh	Right to impartial jury	Reiner v. Bair
1967	Seventh	Right to speedy trial	Klopfer v. North Carolina
1967	Seventh	Right to compulsory process for obtaining witnesses	Washington v. Texas
1968	Seventh	Right to jury trial in civil cases	Chauffeur v. Louisiana
1972	Seventh	Right to counsel for all crimes involving jail terms	Argersinger v. Hamlin
1970	Seventh	Right to jury trial in civil cases	Not incorporated
1962	Eighth	Prohibition from cruel and unusual punishment	Robinson v. California
1962	Eighth	Prohibition from excessive fines or bail	Not incorporated
1962	Ninth	Right of privacy	Griswold v. Connecticut

*The striking of a case has not occurred under the Constitution.

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FREEDOM OF RELIGION

- 1st Amendment contains two parts protecting religion
- Part 1) The **Establishment Clause**:
 - Can't make an official religion
 - Favor one religion over another
- Part 2) The **Free Exercise Clause**: prohibits the denial of a citizens' freedom to worship (or NOT to worship) as they want.
- Debate continues over the interpretation of these two clauses

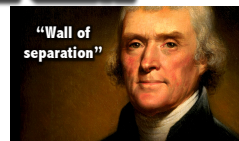
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"



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ESTABLISHMENT CLAUSE

- Conflicting interpretations of **Establishment Clause**.
- Examples:
- Should prayer be allowed in public school?
 - **Engel v. Vitale**: a public school cannot sponsor prayer- unconstitutional
 - Students may pray in school, but it can't be led by a school employee
 - **Equal Access Act** (1984): students must be allowed to use school grounds for religious worship if they allow other groups to host meetings
- Can religious symbols be posted on government property?
 - Banned if displayed to put forward religion
 - Allowed if they serve a legitimate historic purpose
- What about holiday decorations such as menorahs and nativity scenes?
 - Inconsistent rulings



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ESTABLISHMENT CLAUSE

- Can a state prohibit the teaching of evolution in public schools?
 - Butler Act in Tenn.- Scopes Trial
 - 1968 SC said states can't ban teaching of evolution or require teaching creationism
 - Rebranding- "intelligent design"
- Are religious schools eligible for government aid?
 - **Lemon v. Kurtzman (1971)**: issue of fed \$ to parochial schools
 - Court ruled yes, but with some conditions (**Lemon Test**);
 - Aid must have a secular legislative purpose
 - Primary effect of aid must neither advance nor inhibit religion
 - Must not foster excessive gov't "entanglement" with religion
 - **Zelman v. Simmons-Harris (2002)**: ruled vouchers could be used to pay tuition at religious schools



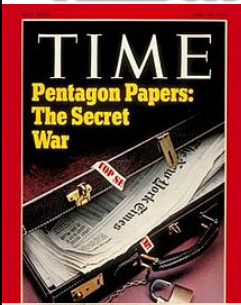
FREE EXERCISE CLAUSE

- Conflicting interpretations of **Free Exercise Clause**.
- What happens when a religious practice violates norms and laws in society?
- **Wisconsin v. Yoder** (1972): forcing Amish students to attend school past 8th grade violates the free exercise clause.
- **Strict scrutiny**: to restrict religious practices the state must show a compelling state interest in restricting the activity
 - Must be narrowly tailored



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FREEDOM OF EXPRESSION



The New York Times
SUPREME COURT, 6-3, UPHOLDS NEWSPAPERS
ON PUBLICATION OF THE PENTAGON REPORT;
TIMES RESUMES ITS SERIES, HALTED 15 DAYS
When New York Times began 1965-66 "The Pentagon Papers" series, it was halted for 15 days by a federal court order. The Supreme Court, in a 6-3 decision, ruled in favor of the newspaper's right to publish the information.

The Courts have defined certain types of speech as not having Constitutional protection

Prior restraint is basically censorship by the gov't

- Stop publication of material in advance
- **Near v. Minnesota** (1931): SC ruled **prior restraint** unconstitutional

New York Times Co. v. United States (1971): established a "heavy presumption against prior restraint" even in cases involving national security

Exceptions: public school newspapers and exceptions for national security

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FREE SPEECH & PUBLIC ORDER



- Supreme Court has restricted speech during times of war or national security threats
- **Schenck v. U.S.** (1919) speech could be restricted if it poses a "clear & present danger"
- **Smith Act**: forbid advocating the violent overthrow of the gov't
- Evolution of restrictions on freedom of speech
- **Brandenburg v. Ohio** (1969): established the "imminent lawless violence" standard
 - Gov't cant punish inflammatory speech

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FREE SPEECH & OBSCENITY

WARNING UNCENSORED CONTENT

- **Obscene:** offensive or disgusting by accepted standards of morality or decency
- **Roth v. United States (1957)** obscene material is not always constitutionally protected
- **Challenge:** What is obscene?
- **Miller v. California (1973):** Supreme Court sought to clarify obscenity standards
- Materials are obscene if:
 - Lacked “serious literary, artistic, political, or scientific value”
 - Showed “patently offensive” sexual conduct
 - Appealed to a “prurient interest”
- Obscene materials lack constitutional protection, but most Americans do not want all obscene materials to be banned to consenting adults
 - Regulation of adult content, video games, music, etc.

FREE SPEECH: LIBEL & SLANDER

- Malicious false statements that hurt a individuals reputation are **NOT** protected speech
 - **Libel:** written defamation
 - **Slander:** spoken defamation
- Both can be prosecuted, but standards for conviction are high.
- **New York Times v. Sullivan:** comments about public figures are only libelous if the person knew they were untrue and had malicious intent to harm the person



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FREE SPEECH: SYMBOLIC SPEECH

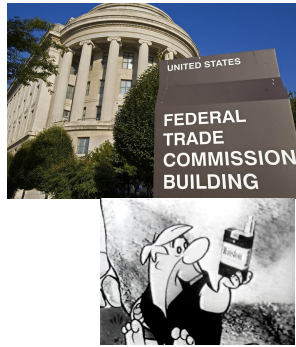
- Symbolic speech is an action that expresses an opinion
- Supreme Court has ruled that symbolic speech is protected by the 1st amendment
 - **Tinker v. Des Moines Independent School District (1969):** Wearing an armband to protest the Vietnam War
 - **Texas v. Johnson (1989):** Burning the U.S. flag
- Symbolic speech is **NOT** absolute:
 - Can't burn draft cards
 - Threats



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FREE SPEECH: OTHER AREAS

- **Commercial speech is regulated by the Federal Trade Commission (FTC)**
 - Cant make false claim
 - Prohibits advertising of items such as cigarettes
 - Restrictions of bad words on public airwaves
- **Federal Communications Commission (FCC):** regulates radio, TV, cable, & other media broadcasts
- **Citizens United v. Federal Election Commission (2010):**



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FREEDOM OF ASSEMBLY

- Right of citizens to gather together to make a statement
 - Forms: protest, picket, parade
- Not absolute:
 - Permit needed
 - time, place, manner restrictions
 - Must stay on public property
 - Local gov't cant discriminate against a group because of their views
- Right to associate with similarly minded people is protected
 - NAACP v. Alabama (1958): Alabama could not require NAACP to turn over its membership lists



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SECOND AMENDMENT

- "The rights to bear arms" remains one of the most debated constitutional rights
 - Right of states to create militias vs individual right to bear arms.
- District of Columbia v. Heller (2008): right to bear arms isn't connected to service in a militia
 - Laws that restrict a citizens ability to use a gun for self-defense are unconstitutional
- McDonald v. Chicago (2010): 2nd amendment is applicable to the states through the 14th amendment

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

Second Amendment to the United States Constitution



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DEFENDANTS' RIGHTS

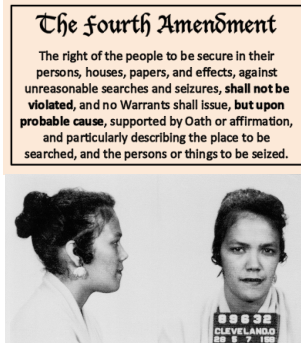
- Individuals accused of a crime in the U.S. have a wide variety of constitutional protections
 - Protection for the rights of the accused at every stage
- Various interpretations of these rights:
 - “cruel and unusual punishment”



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SEARCHES & SEIZURES

- **4th Amendment** provides protection against unreasonable searches and seizures-
 - Need a **warrant**
 - To obtain a warrant must have **probable cause**: a good reason to suspect person is guilty
 - **Exclusionary rule**: illegally obtained evidence cannot be used by the prosecution
 - **Mapp v. Ohio (1961)**: evidence seized illegally, without a warrant may not be used
- Courts have made lots of exceptions for the need of a warrant
 - Example: somebody is injured inside a home
 - Debate: “technicality”, too easy on criminals



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Defendants' Rights

- **5th Amendment**: protects against self incrimination & burden of proof on prosecution
 - Cannot be forced to testify against yourself
 - Innocent until proven guilty
 - “due process of law”
- **Miranda v. Arizona (1966)**: ruled that the police must inform a accused person of their rights
 - Right to remain silent, what you say can be used against you, right to attorney during questioning, right to attorney provided if cannot afford one
- **6th Amendment**:
 - Right to speedy and public trial
 - Right to a impartial jury trial
 - Right to be informed of all charges
 - Right to confront accusers in court
 - Right to producing supporting evidence and witnesses
 - Right to legal counsel (an attorney)
- **Gideon v. Wainwright (1963)**: states must provide an attorney for indigent or poor
- Cannot be held indefinitely without charge (**habeas corpus**)

The Sixth Amendment

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

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

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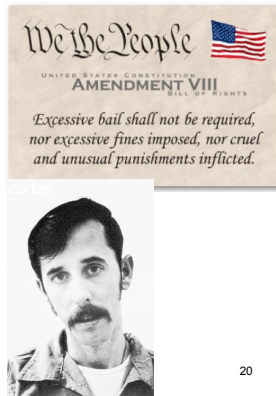
POST 9/11: War on Terror

- **Patriot Act (2001)** gave the government new power of surveillance to stop potential terrorist attacks
 - No warrant needed: wiretap, searching library records, etc.
- **Guantanamo Bay Naval Base:** U.S. naval base where prisoners are being held
- 6th amendment “right to a speedy trial”



Defendants' Rights

- **8th Amendment:** forbids cruel and unusual punishment
 - Cruel & unusual punishment not defined
- **Gregg v. Georgia (1976):** death penalty / capital punishment NOT cruel and unusual punishment
 - Exceptions:
 - Juveniles
 - Mentally ill
 - Mentally retarded



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RIGHT TO PRIVACY

- No explicit mention of the right to privacy in the Constitution or Bill of Rights
 - Inferred from other constitutional rights
- **Griswold v. Connecticut (1965):** court ruled that the right to privacy is implied
- **Roe v. Wade (1973):** the right to privacy protects a woman's decision to end a pregnancy
 - Not an absolute right
 - Recognized state interests in potential life and maternal health
- **Planned Parenthood v. Casey (1992):** restrictions on abortion were unconstitutional only if they placed an “undue burden” on a woman seeking an abortion



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UNDERSTANDING CIVIL LIBERTIES

- **The Constitution stops the democratic majority from trying to curtail the civil liberties of minorities**
- **1st Amendment freedoms of speech, press, and assembly are core aspects of a democratic society**
- **“Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals”**

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