

Government in America: People, Politics, and Policy  
Thirteenth Edition, and Texas Edition  
Edwards/Wattenberg/Lineberry

Chapter 4  
**Civil Liberties and Public  
Policy**

# The Bill of Rights— Then and Now

- Civil Liberties: the legal constitutional protections against the government
- The Bill of Rights: first 10 amendments, which protect basic liberties, such as religion and speech

# The Bill of Rights—Then and Now

**Table 4.1 The Bill of Rights**

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

**Amendment I—Religion, Speech, Assembly, Petition**

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

**Amendment II—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 III—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 IV—Searches and Seizures**

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 persons or things to be seized.

**Amendment V—Grand Juries, Double Jeopardy, Self-Incrimination, Due Process, Eminent Domain**

No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled

in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI—Criminal Court 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 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.

**Amendment VII—Trial by Jury in Common-Law Cases**

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 tried by a jury, shall be otherwise reexamined in any Court of the United States.

**Amendment VIII—Bails, Fines, and Punishment**

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

**Amendment IX—Rights Retained by the People**

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

**Amendment X—Rights Reserved to the States**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

# The Bill of Rights—Then and Now

**Table 4.2 The Nationalization of the Bill of Rights**

DATE	AMENDMENT	RIGHT	CASE
1925	First	Freedom of speech	<i>Citlow v. New York</i>
1931	First	Freedom of the press	<i>Near v. Minnesota</i>
1937	First	Freedom of assembly	<i>De Jonge v. Oregon</i>
1940	First	Free exercise of religion	<i>Cantwell v. Connecticut</i>
1947	First	Establishment of religion	<i>Everson v. Board of Education</i>
1958	First	Freedom of association	<i>NAACP v. Alabama</i>
1963	First	Right to petition government	<i>NAACP v. Button</i>
	Second	Right to bear arms	Not incorporated <sup>a</sup>
	Third	No quartering of soldiers	Not incorporated <sup>b</sup>
1949	Fourth	No unreasonable searches and seizures	<i>Wolf v. Colorado</i>
1961	Fourth	Exclusionary rule	<i>Mapp v. Ohio</i>
1897	Fifth	Guarantee of just compensation	<i>Chicago, Burlington, and Quincy RR v. Chicago</i>
1964	Fifth	Immunity from self-incrimination	<i>Mallory v. Hogan</i>
1969	Fifth	Immunity from double jeopardy	<i>Benton v. Maryland</i>
	Fifth	Right to grand jury indictment	Not incorporated
1932	Sixth	Right to counsel in capital cases	<i>Powell v. Alabama</i>
1948	Sixth	Right to public trial	<i>In re Oliver</i>
1963	Sixth	Right to counsel in felony cases	<i>Gideon v. Wainwright</i>
1965	Sixth	Right to confrontation of witnesses	<i>Pointer v. Texas</i>
1966	Sixth	Right to impartial jury	<i>Parker v. Gladden</i>
1967	Sixth	Right to speedy trial	<i>Klopfer v. North Carolina</i>
1967	Sixth	Right to compulsory process for obtaining witnesses	<i>Washington v. Texas</i>
1968	Sixth	Right to jury trial for serious crimes	<i>Duncan v. Louisiana</i>
1972	Sixth	Right to counsel for all crimes involving jail terms	<i>Argersinger v. Hamlin</i>
	Seventh	Right to jury trial in civil cases	Not incorporated
1962	Eighth	Freedom from cruel and unusual punishment	<i>Robinson v. California</i>
	Eighth	Freedom from excessive fines or bail	Not incorporated
1965	Ninth	Right of privacy	<i>Griswold v. Connecticut</i>

<sup>a</sup>The Supreme Court has upheld limits on the rights of private citizens to bear arms.

<sup>b</sup>The quartering of soldiers has not occurred under the Constitution.

# The Bill of Rights—Then and Now

- The Bill of Rights and the States
  - Written to restrict the national government
    - “Congress shall make no law...”
    - *Barron v. Baltimore* (1833)
  - Most have been “incorporated” through the 14<sup>th</sup> Amendment, and now restrict state and local governments
    - First Amendment protection of speech first incorporated to states in *Gitlow v. New York* (1925)

# Freedom of Religion

- The Establishment Clause
  - “Congress shall make no law respecting the establishment of religion...”
  - *Lemon v. Kurtzman* (1971)
    - Secular legislative purpose
    - Neither advance nor inhibit religion
    - No excessive government “entanglement”

# Freedom of Religion

- The Establishment Clause (continued)
  - Are school vouchers constitutional?
    - *Zelman v. Simmons-Harris* (2002)
  - Prayer in public schools violates Establishment Clause.
    - *Engle v. Vitale* (1962)
  - What about displays of the Ten Commandments?

# Freedom of Religion

- The Free Exercise Clause
  - Prohibits government from interfering with the practice of religion
  - Some religious practices may conflict with other rights, and then be denied or punished
    - *Employment Division v. Smith* (1988)
    - Religious Freedom Restoration Act (1993)



# Freedom of Expression

- Prior Restraint
  - Definition: a government preventing material from being published; censorship; unconstitutional
    - *Near v. Minnesota* (1931)
  - May be permissible during wartime
  - One may be punished *after* something is published.

# Freedom of Expression

- Free Speech and Public Order
  - Speech is limited if it presents a “clear and present danger.”
    - *Schenck v. US* (1919)
  - Permissible to advocate the violent overthrow of government in abstract, but not to incite anyone to imminent lawless action
    - *Brandenburg v. Ohio* (1969)
  - Speech is generally protected in public places, but usually not on another’s private property.

# Freedom of Expression

- Free Press and Fair Trials
  - Is extensive press coverage of high profile trials (OJ Simpson; Martha Stewart) permissible?
    - The public has a right to know what happens; trial must be open to the public.
    - The press' own information about a trial may *not* be protected.
      - Yet, some states have passed shield laws to protect reporters.

# Freedom of Expression

- Obscenity
  - No clear definition on what constitutes obscenity
    - Justice Potter Stewart: “I know it when I see it.”
  - *Miller v. California* (1973) stated that materials were obscene if the work:
    - appeals “to a prurient interest in sex”
    - showed “patently offensive” sexual conduct
    - lacks “serious literary, artistic, political or scientific value”
  - Decisions on obscenity are based on local community standards.

# Freedom of Expression

- Libel and Slander
  - Libel: the publication of false or malicious statements that damage someone's reputation
  - Slander: the same thing, only spoken instead of printed
    - *New York Times v. Sullivan* (1964): statements about public figures are libelous only if made with reckless disregard for truth.
  - Private individuals have lower standard to meet to win libel lawsuits.

# Freedom of Expression

- Symbolic Speech
  - Definition: nonverbal communication, such as burning a flag or wearing an armband
  - Generally protected along with verbal speech
    - *Texas v. Johnson* (1989): Burning the American flag is symbolic speech protected by the First Amendment.

# Commercial Speech

- Definition: communication in the form of advertising
  - Generally the most restricted and regulated form of speech (Federal Trade Commission)
- Regulation of the Public Airwaves
  - Broadcast stations must follow Federal Communication Commission rules.
  - Regulation must be narrowly tailored to promote a compelling governmental interest.
    - *United States v. Playboy Entertainment Group* (2000)

# Freedom of Assembly

- Right to Assemble
  - Generally permissible to gather in a public place, but must meet reasonable local standards, such as fire codes and apply for permits
  - Balance between freedom and order
- Right to Associate
  - Freedom to join groups or associations without government interference
    - *NAACP v. Alabama* (1958)



# Defendants' Rights

- Much of the Bill of Rights (Amendments 4, 5, 6, 7, and 8) apply to defendants' rights.
- Interpreting Defendants' Rights
  - Criminal Justice personnel are limited by the Bill of Rights and failure to follow constitutional protections may invalidate a conviction.
  - Courts continually rule on what is constitutional and what is not.

# Defendants' Rights

**Table 4.3 The Constitution and the Stages of the Criminal Justice System**

Although our criminal justice system is complex, it can be broken down into stages. The Constitution protects the rights of the accused at every stage.

STAGE	PROTECTIONS
1. Evidence gathered	"Unreasonable search and seizure" forbidden (Fourth Amendment)
2. Suspicion cast	Guarantee that "writ of habeas corpus" will not be suspended, forbidding imprisonment without evidence (Article I, Section 9)
3. Arrest made	Right to have the "assistance of counsel" (Sixth Amendment)
4. Interrogation held	Forced self-incrimination forbidden (Fifth Amendment)
5. Trial held	"Excessive bail" forbidden (Eighth Amendment)
	"Speedy and public trial" by an impartial jury required (Sixth Amendment)
	"Double jeopardy" (being tried twice for the same crime) forbidden (Fifth Amendment)
6. Punishment imposed	Trial by jury required (Article III, Section 2)
	Right to confront witnesses (Sixth Amendment)
	"Cruel and unusual punishment" forbidden (Eighth Amendment)

# Defendants' Rights

- Searches and Seizures
  - Probable Cause: when the police have reason to believe that a person should be arrested
  - Unreasonable searches and seizures: evidence is obtained in a haphazard or random manner, prohibited by the Fourth Amendment
  - Exclusionary Rule: the rule that evidence, no matter how incriminating, cannot be introduced into trial if it was not constitutionally obtained
    - *Mapp v. Ohio* (1961)

# Defendants' Rights

- Self-Incrimination

- Definition: when an individual accused of a crime is compelled to be a witness against himself or herself in court
- Police must inform suspects of these and other Fifth Amendment protections upon arrest.
  - *Miranda v. Arizona* (1966)
- Protection from coerced confessions and entrapments

# Defendants' Rights

- The Right to Counsel
  - The state must provide lawyers in most criminal cases (Sixth Amendment).
    - *Gideon v. Wainwright* (1963)
- Trials
  - Plea bargaining: a bargain between the prosecution and defense for a defendant to plead guilty to a lesser crime; 90 percent of cases end here and do not go to trial
  - Juries generally consist of 12 people, but unanimity is not always needed to convict.
  - The Sixth Amendment also guarantees a “speedy and public” trial.

# Defendants' Rights

- Cruel and Unusual Punishment
  - The Eighth Amendment forbids cruel and unusual punishment.
  - The death penalty is not cruel and unusual. It is “an extreme sanction, suitable to the most extreme crimes.”
    - *Gregg v. Georgia* (1976)
  - The death penalty's use and application varies by state.

# The Right to Privacy

- Is There a Right to Privacy?
  - Definition: the right to a private personal life free from the intrusion of government
  - Not explicitly stated in the Constitution, but implied by the Fourth Amendment
    - *Griswold v. Connecticut* (1965)

# The Right to Privacy

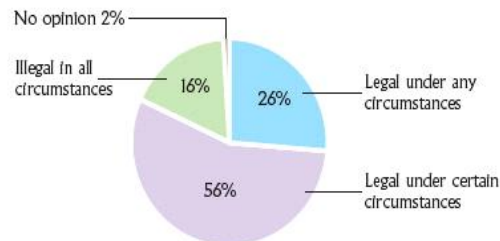
- Controversy over Abortion

- *Roe v. Wade* (1973)
- *Planned Parenthood v. Casey* (1992)
- Protections of those seeking an abortion
- Rights of protesters

**Figure 4.1 The Abortion Debate**

In few areas of public opinion research do scholars find more divided opinion than on abortion. Some people feel very strongly about the matter, enough so that they are "single-issue voters" unwilling to support any candidate who disagrees with them on abortion. Most take a middle position, one that supports the principle of abortion but that also accepts restrictions on access to abortions.

Now, on the issue of abortion: Do you think abortions should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?



Source: Gallup Poll, November 11–13, 2005.



# Understanding Civil Liberties

- Civil Liberties and Democracy
  - Rights ensured in the Bill of Rights are essential to democracy.
  - Courts typically protect civil liberties from excesses of majority rule.
- Civil Liberties and the Scope of Government
  - In deciding between freedom and order, the United States generally chooses liberty.
  - Civil liberties limit the scope of government, even though government efforts are needed to protect rights.

# Summary

- Civil liberties are expressed in the Bill of Rights.
- These are the individual's protections—for religion, expression, assembly, and the accused—against the government.
- Legislatures and courts constantly define what the Bill of Rights protects in practice.