

# UNIT THREE

CIVIL LIBERTIES

AP AMERICAN GOVERNMENT

**CIVIL LIBERTIES**

**LIBERTIES VERSUS RIGHTS**

ITEM	DESCRIPTION
<b>CIVIL LIBERTIES</b>	Personal guarantees and freedoms that the federal government cannot abridge, either by law or judicial interpretation.
<b>CIVIL RIGHTS</b>	Freedom from a host of discriminatory actions and lace the burden of protecting individuals on the government.
Civil Liberties issues often fall to the judiciary, who must balance the competing interests of the government and the people.	

**OUTLINE OF THE BILL OF RIGHTS (FIRST 10 AMENDMENTS)**

AMENDMENT	DESCRIPTION
<b>1-8 Amendments</b>	Specific freedoms (we will cover soon)
<b>9th Amendment</b>	“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”
<b>10th Amendment</b>	Powers not delegated to the national government are reserved to the states or to the people.
-The Bill of Rights were added to the Constitution to please the anti-federalists so they would agree to ratify the Constitution.. The anti-federalists feared the strong central government would not protect individual liberty. (Should be called Bill of Liberties) -The Bill of Rights originally protected citizens from the National Government ( <b>NOT</b> State governments). (On AP test every time)	

**DUE PROCESS**

ITEM	DESCRIPTION
<b>5th Amendment (Due Process Clause)</b>	Ratified in 1791, provides that the NATIONAL GOVERNMENT cannot arbitrarily deny life, liberty, or property.
<b>14th Amendment (Due Process Clause)</b>	Ratified in 1868, provides that STATE GOVERNMENTS cannot arbitrarily deny life, liberty, or property.
<b>Procedural Due Process</b>	The methods of the government must be fair and just.
<b>Substantive Due Process</b>	The policy of the government must be fair and just.
14th Amendment’s Due Process clause allows for Courts to protect liberty from state governments (thru <b>selective incorporation</b> ).	

AP AMERICAN GOVERNMENT  
CIVIL LIBERTIES

## SELECTIVE INCORPORATION TERMS

TERM	DESCRIPTION
<b>INCORPORATION DOCTRINE</b>	An interpretation of the Constitution that holds that the due process clause of the 14th Amendment requires state and local government also guarantee those rights.
<b>SELECTIVE INCORPORATION (Process of Incorporation)</b>	A judicial doctrine whereby most of the protections in the Bill of Rights are made applicable to the states due the <b>Fourteenth Amendment's Due Process Clause</b> .
<b>Fundamental Freedoms:</b> Those rights defined by the Court to be essential to order, liberty, and justice and therefore entitled to the highest standard of review, strict scrutiny.	

## SELECTIVE INCORPORATION CASES

AMENDMENT	LIBERTY	DATE	CASE INCORPORATED
I	Speech	1925	Gitlow v. New York
	Press	1931	Near v. Minnesota
	Assembly	1937	DeJonge v. Oregon
	Religion	1940	Cantwell v. Connecticut
II	Bear Arms	2008	D.C. v. Heller
III	No quartering of soldiers	-	NOT INCORPORATED
IV	No unreasonable searches or seizures	1949	Wolf v. Colorado
	Exclusionary Rule	1961	Mapp v. Ohio
V	Just compensation	1897	Chicago, B&Q RR Co. V. Chicago
	Self-incrimination	1964	Malloy v. Hogan
	Double jeopardy	1969	Benton v. Maryland (overturned by Palko v. Connecticut)
	Grand jury indictment	-	NOT INCORPORATED
VI	Public trial	1963	Gideon v. Wainwright
	Right to counsel	1968	Duncan v. Louisiana
	Confrontation of witnesses	1967	Klopfer v. North Carolina
	Impartial trial	1965	Pointer v. Texas
	Speedy trial	1948	In re Oliver
	Compulsory trial	1967	Washington v. Texas
	Criminal trial	1966	Parker v. Gladden
VII	Civil jury trial	-	NOT INCORPORATED
VIII	No cruel and unusual punishment	1962	Robinson v. California
	No excessive fines or bail	-	NOT INCORPORATED

AP AMERICAN GOVERNMENT  
CIVIL LIBERTIES

**THE FIRST AMENDMENT: RELIGION**

IMPORTANT ITEM	DESCRIPTION	EXAMPLES OF LIMITATIONS
<b>ESTABLISHMENT CLAUSE</b>	It prohibits the government from establishing a national religion. (Wall of Separation)	-Christianity is sometimes found (money) - <b>Lemon Test</b> determines if a policy is constitutional. -Funding to religious schools is often seen as ok if all schools get the money for nondenominational purposes.
<b>FREE EXERCISE CLAUSE</b>	It prohibits the U.S from interfering with a citizen's right to practice his or her religion.	-It is ok to sacrifice animals but not people. -Poisonous snakes have been denied in ceremonies -Islamic services have been banned in some prisons.

**THE FIRST AMENDMENT: SPEECH & PRESS**

PROTECTED/ UNPROTECTED	SEGMENT	DESCRIPTIONS/ EXAMPLES/ LIMITATIONS
<b>PROTECTED SPEECH &amp; PUBLICATIONS</b>	<b>PRIOR RESTRAINT</b>	Allowed only in matters of national security. The court generally denies allowing the government to prohibit speech and publication from being expressed.
	<b>SYMBOLIC SPEECH</b>	-Symbols, signs, and other methods of speech. - Like Wearing an armband to protest a war or burning the U.S. flag.
	<b>HATE SPEECH</b>	-The KKK could legally meet and discuss their feelings on the importance of ending all immigration. But they cannot discuss plans to go around murdering people. -Some universities have created free speech zone (certain places at certain times). Supreme Court has yet to rule on that one.
<b>UNPROTECTED SPEECH &amp; PUBLICATIONS</b>	<b>LIBEL</b>	A false written statement that defames the character of a person. (Much harder for to prove "actual malice"for public figures)
	<b>SLANDER</b>	Untrue spoken words that defame the character of a person.
	<b>FIGHTING WORDS</b>	Speech is not protected that inflicts injury or incites an immediate breach of peace.
	<b>COMMERCIAL SPEECH</b>	False advertising is not protected.
	<b>OBSCENITY</b>	No national standard defines what it is but it isn't protected. The Court often lets a local judge or jury define obscenity by applying local community standards. The Court checks for obscenity by the <b>Miller Test</b> .
	<b>CLEAR AND PRESENT DANGER</b>	-You cannot yell fire in a movie theater if there isn't one. (People get trampled to death. Government must balance freedom of expression and the need to protect a free society by <b>Clear and present danger test</b> )

Students still do not shed their rights at the schoolhouse gates, but neither are they entitled to lewd or offensive speech. Court protects some students speech but denies other. If there is a political message it is usually ok. If you are disrupting class to be funny...then no.

AP AMERICAN GOVERNMENT

**CIVIL LIBERTIES**

**THE FIRST AMENDMENT: ASSEMBLY & PETITION**

ITEM	DESCRIPTION
<b>THE SUPREME COURT'S JOB</b>	To become the arbiter between the freedom of the people to express dissent and government's authority to limit controversy in the name of national security.
<b>MAIN ISSUE</b>	If the words or actions taken at any even cross the line of constitutionality, the people there may be subject to governmental regulation and even criminal arrest, incarceration, or civil fines.
<p>-The freedoms of assembly and petition are related directly to the freedoms of speech and of the press.                      -The five freedoms of the first amendment (religion, speech, press, assembly, and petition) are seen as mandatory to live in a free society and to have a true democracy in which the people are choosing leaders to represent them based on which ideas they agree with the most.</p>	

**THE SECOND AMENDMENT**

ITEM	DESCRIPTION
<b>WORDING OF THE 2ND AMENDMENT</b>	"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."
<b>NATIONAL FIREARMS ACT OF 1934</b>	This was passed as a response to the organized crime that developed during Prohibition.
<i><b>U.S. v Miller</b></i>	In 1939, The Court decided the 2nd amendment was intended to protect a citizen's right to own ordinary militia weapons and not sawed-off shotguns.
<b>BRADY BILL</b>	This imposed a federal mandatory five-day waiting period on the purchase of handguns. (Her husband was left disabled after he was shot on an attempt to assassinate Ronald Reagan)
<b>BAN ON ASSAULT WEAPONS</b>	Bill Clinton signed in 1994. It outlawed assault weapons purchases for 10 years.
<i><b>D.C. v. Heller</b></i>	In 2008 (nearly 70 years after Miller), the Court ruled that the Second Amendment protects individual's right to own a firearm for personal use.
<p>The gun control argument is far from over. It appears that the Supreme Court allows some gun control to exist but not all. Feel free to go to college and write thesis papers over this controversial topic.</p>	

AP AMERICAN GOVERNMENT

**CIVIL LIBERTIES**

**RIGHTS OF CRIMINAL DEFENDANTS: IN ARTICLE I OF CONSTITUTION**

ITEM	DESCRIPTION
<b>WRITS OF HABEAS CORPUS</b>	Court orders in which a judge requires authorities to prove that a prisoner is being held lawfully and that allows the prisoner to be freed if the judge is not persuaded by the government's case.
<b>EX POST FACTO LAW</b>	Laws that apply to actions committed before the laws were passed.
<b>BILL OF ATTAINDER</b>	Legislative acts that inflict punishment on individuals without judicial action.

**RIGHTS OF CRIMINAL DEFENDANTS: THE DUE PROCESS AMENDMENTS**

AMENDMENT	RIGHT/ LIBERTY	DESCRIPTION
<b>4TH AMENDMENT</b>	Search and Seizure	-Warrants will be used to search 1)the person arrested; 2)things in plain view of the accused person; and 3)places or things that the arrested person could touch or reach or are otherwise in the arrestee's immediate control. (Warrant says what will be searched and what they are searching for)  -Cops do not need a warrant if they have <b>probable cause</b> (like if they see you breaking the law)  -Private companies and schools have an easier time forcing mandatory drug testing.
	Exclusionary Rule	It bars the use of illegally seized evidence at trial (Both 4th and 5th amendments protects people from this)
<b>5TH AMENDMENT</b>	Self Incrimination	A person has the right not to incriminate him/herself. Examples: pleading the 5th (refusing to answer) or criminals being read their Miranda rights.
	Double Jeopardy	It protects individuals from being tried twice for the same crime in the same jurisdiction.
<b>6TH AMENDMENT</b>	Right to Counsel	Attorneys are provided to the poor in all federal criminal cases.
	Jury Trials	-A person accused of a crime shall enjoy the right to a speedy & public trial by an impartial jury. -Also the right to confront a witness.
<b>8TH AMENDMENT</b>	Cruel & Unusual Punishment	-The U.S is the only western nation to have the death penalty legal in 34 states. (Must not be unusual) -We can't torture inmates (like stretching out limbs).

**Procedural Due Process:** in that we want to make sure the government follows fair procedures when taking away life, liberty or property.

**CIVIL LIBERTIES**

**THE RIGHT TO PRIVACY**

ISSUE	DETAILS AND COURT DECISIONS
<b>BIRTH CONTROL</b>	<p>In 1965, the Supreme Court ruled in <i>Griswold v. Connecticut</i>, that there are “penumbras” or unstated liberties on the fringes or in the shadow of more explicitly stated rights (1st, 3rd, 4th, 9th, and 14th amendments). Connecticut was the last state banning the sale of contraceptives (since 1879).</p>
<b>ABORTION</b>	<p>-In 1973, the Supreme Court decided in <i>Roe v. Wade</i>, that the decision to carry a pregnancy to term was a woman’s fundamental right:  <b>1st Trimester:</b> A woman can get an abortion with no regulation from the state.  <b>2nd Trimester:</b> States can only regulate abortions to protect the health of the mother.  <b>3rd Trimester:</b> Abortions only allowed to save life or health of the mother.                      -Abortion was one vote from being overturned in 1989.                      -In 2007, the Supreme Court ruled in <i>Gonzales v. Carhart</i> the Partial Birth Abortion Ban Act was constitutional.</p>
<b>HOMOSEXUALITY</b>	<p>-In 2003, <i>Lawrence v. Texas</i> ruled that a Texas law that criminalized private sexual behavior (anti-sodomy laws).                      -Some states start allowing domestic partnerships in the 1990’s.                      -This was the first time the Supreme Court ruled homosexuality was a fundamental privacy right.                      -In 2015, The Supreme Court ruled in <i>Obergefell v. Hodges</i>, that States could not ban same sex marriage.</p>
<b>THE RIGHT TO DIE</b>	<p>-In 1997, the Court ruled that terminally ill persons do not have a constitutional right to physician assisted suicide.                      -In 2006, the Supreme Court decided in <i>Gonzales v. Oregon</i>, that the State of Oregon can have a law allowing physician assisted suicide.                      -In 2008, voters in Washington approved an initiative allowing physician assisted suicide in their state.</p>
<p><b>-Substantive Due Process:</b> The substance (or essence) of the law should not violate some basic right. If it does it can be found unconstitutional by the Supreme Court (Some texts cite that this is even if the right is NOT directly stated in the Constitution).                      -The <b>Right to Privacy</b> is not a term found in the Constitution. The founders intended to have some areas of life to be off limits to government. Of course the founders had no idea what issues would be dividing our nation in the year two thousand whatever.</p>	

AP AMERICAN GOVERNMENT

CIVIL LIBERTIES

CIVIL LIBERTIES AND NATIONAL SECURITY

ITEM	DESCRIPTION
<b>THE ALIEN AND SEDITION ACTS</b>	Federalists party made the publication of any false scandalous writing against the government a criminal offense. Ten democratic-republican newspapers were imposed fines and jail terms, but Jefferson pardoned them when he became president. Congress let the Act expire so the Supreme Court never weighed in on if this broke the 1st amendment.
<b>CIVIL WAR ACTIONS</b>	-Northern and Southern states both made it illegal to publish items that did not reflect their belief in slavery. Southern postmasters refused to deliver northern abolitionist newspapers. -Lincoln suspended the free press (unconstitutional)
<b>ANTI-GOVERNMENT DURING WWI</b>	-Over 30 States had passed laws to punish sedition speech (they were after socialists and communists). -Espionage Act (1917) passed the U.S. Congress to target nearly 2,000 people who were urging the resistance of the draft or distributing anti-war materials.
<b>INTERNMENT CAMPS</b>	During World War II, the government relocated and incarcerated over 100,000 Japanese Americans to internment camps. The Supreme Court found this action constitutional. Congress did say sorry in the 1990's.
<b>COLD WAR</b>	During the Red Scare there were acts (like the Alien Registration Act) passed that made it illegal to overthrow the government. They were used to silence communists, socialists, and pacifists. Joseph McCarthy would accuse people of being communists sympathizers with no proof.
<b>USA PATRIOT ACT</b>	-United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT). This law covers intelligence gathering and sharing by executive agencies. It widened authority on tapping suspects' phones. This act allowed the government to detain illegal immigrants for longer periods, and monitor email communications. -This controversial bill has been recently altered by new legislation. Some say it weakened national security. Others say it did not protect liberty enough. Goldilocks thinks it is just right.
<b>GUANTANAMO BAY</b>	-There is a U.S. military detention camp in Guantanamo Bay, Cuba which exists to hold terror suspects. Administration officials believe that it is located outside the United States so this loosens constitutional restrictions. -In <i>Rasul v. Bush</i> (2004), the Court ruled that they can not suspend habeas corpus in there. -In <i>Hamdi v Rumsfeld</i> (2004), the United State cannot detain a U.S. citizen without a minimal hearing to determine the suspect's charge. -In <i>Hamdan v. Rumsfeld</i> (2006), the United States must follow the Geneva Convention and cannot rely strictly on military commissions in prosecuting terror suspects.
<p>-You can see that during times of war the Court typically sided with government restrictions on liberties that protect national security. -You can also see that deciding between liberty and national security is a very divisive issue of which it appears America is constantly struggling to find the right balance.</p>	