Chapter 6
Civil Liberties and Civil Rights

CONCEPTS

- Why would Justice Thurgood Marshall blame the Supreme Court for the racial policies practiced in the United States before the *Brown* decision?
- Why did the Supreme Court allow the use of affirmative action programs?
- Why is it said that the Warren Court took the handcuffs off the criminals and put them on the police?
- What mechanism did the Supreme Court use to ensure the rights of defendants in state criminal prosecutions?
- What impact has the interpretation of speech as a preferred right had on the government's power to censure?
- How does the Supreme Court interpret the right to privacy on matters dealing with human reproduction?
- How has the Supreme Court changed its reasoning in dealing with religious activities in schools financed by the public?

THE BILL OF RIGHTS (DECEMBER 15, 1791)

The first 10 amendments were added to the Constitution within three years of its ratification. These amendments are known collectively as the Bill of Rights. Originally written by James Madison, many provisions of the Bill of Rights have been expanded and clarified over the years.

The term **civil liberties** generally applies to those protections (enjoyed by all Americans) from the abuse of government power. The term **civil rights** is used specifically to describe protections from discrimination based on race, gender, or other minority status. Often, the term is used to refer specifically to the struggles of African Americans for equal status (for example, the Civil Rights Movement).

THE EXTENSION OF CIVIL LIBERTIES THROUGH AMERICAN HISTORY

In *Barron v. Baltimore* (1833), the Supreme Court determined that the Bill of Rights restricted the national government but not the state governments. It was not until 1925 that the court overturned this ruling, citing Fourteenth Amendment restrictions on the states ("no state shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"). That case, *Gitlow v. New York*, concerned freedom of speech and freedom of the press. The court ruled that state limits on speech and the press could not exceed the limits allowed by the national government.

Since then, the court has applied the Bill of Rights to state law on a case-by-case basis. This process is called **selective incorporation.** Currently, the following rights have NOT been incorporated and may thus be restricted by the states:

- the Third Amendment protection against forced quartering of troops in private homes
- the Fifth Amendment right to **indictment** by a grand jury
- the Seventh Amendment right to a jury trial in civil cases
- the Eighth Amendment protection against excessive bail and fines

All other provisions of the Bill of Rights, however, apply equally to the states and the national government. In defining individual rights, the court has consistently weighed the rights of individuals against the needs of society at large. Therefore, none of the rights guaranteed in the Bill of Rights is absolute.

FIRST AMENDMENT RIGHTS AND RESTRICTIONS

Supreme Court Justice Benjamin Cardozo said that the First Amendment of the Bill of Rights contains "the fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions." The **First Amendment** guarantees **freedom of speech, freedom of the press, freedom of petitioning the government, freedom of assembly,** and **freedom of religion.** None of these important rights, however, is absolute. Throughout the nation's history, the Supreme Court has ruled that these rights may be limited in the interest of the greater public good. It has also ruled, however, that such restrictions must be well justified, well defined, and limited only to those few instances in which the public welfare is genuinely threatened.

Freedom of Speech

Congress may not pass a law that prevents citizens from expressing their opinions, either in speech or in writing. Nevertheless, the Supreme Court has placed some limits on these freedoms. The most famous limit on free speech is the **clear and present danger test.** In the case of *Schenck v. United States* (1919), Justice Oliver Wendell Holmes argued that a person may not falsely scream "fire!" in a crowded theater, because doing so would likely result in panic. The court has also ruled that there is no constitutional protection for false defamatory speech (called **slander** when it is spoken and **libel** when it is in a more permanent form, such as print), **obscenity**, or speech intended to incite violence.

Since the 1940s, the court has followed the **preferred position doctrine** in determining the limits of free speech. The doctrine reflects the court's belief that freedom of speech is fundamental to liberty; therefore, any limits on free speech must address severe, imminent threats to the nation. They must also be limited to

constraining those threats; any restriction that fails to meet this test would probably be overturned by the Supreme Court. The court continues to protect offensive but nonthreatening speech such as flag burning (usually undertaken by protesters, who burn the flag as a symbolic indication that the country has failed to protect American values such as democracy and freedom for all).

Essential Case: *Schenck v. United States* (1919)

Facts: During the First World War, the United States prosecuted thousands of dissenters. Near the end of the war, Charles Schenck, a Socialist, was arrested in Philadelphia for handing out leaflets calling on men not to enlist. Schneck was arrested and convicted of violating the Espionage Act of 1917. He appealed to the Supreme Court.

Issue: Schneck's attorney argued that the Espionage Act of 1917 violated the First Amendment.

Although *Schenck* has never been formally overturned, the court loosened its stance on what defined a clear and present danger in *Brandenburg v. Ohio* (1969). It ruled that for speech to be "a clear and present danger," the speaker must be making a specific threat, and not just advocating violence in general.

Holding: In a unanimous decision, the Supreme Court ruled that Schneck's conviction was constitutional and that his speech posed "a clear and present danger" to the United States.

Essential Case: *Tinker v. Des Moines* (1969)

Facts: The mid-1960s saw the beginnings of anti-Vietnam War protests throughout the United States. In 1965, teenagers John and Mary Beth Tinker wore black armbands to school as a form of silent anti-war protest. After multiple warnings, the Tinkers were suspended for their actions. The ACLU helped the Tinker family take their case to the Supreme Court.

Issue: In *West Virginia State Board of Education v. Barnette* (1943), the Supreme Court had ruled that the First Amendment protects minors at school under certain circumstances. However, the court needed to consider whether the First Amendment and *West Virginia State Board of Education* applied to the Tinkers' protest.

Holding: In a 7-2 decision, the Supreme Court ruled that children in public schools were protected fully by the First Amendment as long as their speech did not violate specific, constitutional regulations. The dissenting justices argued that although the speech was constitutional, specific locations, such as schools, were not an appropriate venue for anti-war protests.

Important Cases

Gitlow v. New York (1925). This case created the "Bad Tendency Doctrine," which held that speech could be restricted even if it has only a tendency to lead to illegal action. Though this element of the decision was quite restrictive, Gitlow also selectively incorporated freedom of speech to state governments.

Bethel School District v. Fraser (1986). This case gave public school officials the authority to suspend students for speech considered to be lewd or indecent.

Hustler Magazine v. Falwell (1988). In this much-publicized case, the court held that intentional infliction of emotional distress was permissible First Amendment speech—so long as such speech was about a public figure and could not reasonably be construed to state actual facts about its subject. In other words, parody is not an actionable offense.

Texas v. Johnson (1989). *Johnson* established that burning the American flag is an example of permissible free speech, and struck down numerous anti-flag-burning laws.

Morse v. Frederick (2007). This case was known as the "Bong Hits 4 Jesus" case, in which the Supreme Court limited students' free speech rights. The justices ruled that Frederick's free speech rights were not violated by his suspension over what the majority's written opinion called a "sophomoric" banner.

Gitlow v. New York, Bethel School District v. Fraser, Hustler Magazine v. Falwell, Texas v. Johnson, and *Morse v. Frederick,* while important to understanding the limits to free speech, are not on the list of required cases.

Freedom of the Press

Criticism of the government and its politics is protected. When it comes to censoring the press, there are few instances in which the government can use **prior restraint**—crossing out sections of an article before publication. On occasion, the government has tried to control the press, usually claiming national security interests. This occurred during the 1990 Persian Gulf War, when the Pentagon limited media access to the war zone and censored outgoing news reports. The media objected to these limitations. Such conflicts usually end up in the courts, where judges are forced to weigh conflicting national interests: the need to be informed versus security concerns.

An even more contentious issue involves the media's responsibility to reveal the sources of their information. The Supreme Court has ruled that reporters are not exempt from testifying in court cases and that they can be asked to name their sources. Reporters who refuse to do so, as many have, can be jailed. A number of states have enacted **shield laws** to protect reporters in state cases, but in other states and in federal cases reporters have no such protection.

As mentioned above, libel and obscenity are not protected by the First Amendment. In the case of *Miller v. California* (1973), the court established a **three-part obscenity test.**

- Would the average person, applying community standards, judge the work as appealing primarily to people's baser sexual instincts?
- Does the work lack other value, or is it also of literary, artistic, political, or scientific interest?
- Does the work depict sexual behavior in an offensive manner?

Essential Case: *New York Times v. United States* (1971)

Facts: In 1971, Daniel Ellsberg leaked the Pentagon Papers, a top-secret report on the country's role in Vietnam, to *The New York Times.* When the *Times* began summarizing the finding of the report in a series of articles, the government sued and sought a restraining order. When *The Washington Post* began publishing the Pentagon Papers, the government filed a lawsuit that went to the Supreme Court.

Issue: The government claimed that the release of the Pentagon Papers violated the Espionage Act of 1917 and that it had the right to use prior restraint—the suppression of harmful information.

Holding: In a 6-3 decision, the Supreme Court ruled that the newspapers could publish the Pentagon Papers, as the government had not met the burden of proof necessary to enact prior restraint. Dissenting justices noted that the court did not have enough time to adequately research information relevant to the case, as the Pentagon Papers spanned over 7,000 pages.

The Pentagon Papers

A previous similar case involved the Pentagon Papers (1971), a secret report on American involvement in Vietnam. The report was leaked to *The New York Times*, which published excerpts from the report. The government tried to halt further publication, claiming that national security was at stake. In that case, the court rejected the government's efforts to prevent publication (called **prior restraint**), ruling that the public's need to be well informed outweighed the national security issues raised. The Pentagon Papers case demonstrates the preferred position doctrine.

Important Cases

Near v. Minnesota, New York Times v. Sullivan, and *Hazelwood School v. Kuhlmeier,* while important to understanding limits of freedom of the press, are not on the list of required cases.

Near v. Minnesota (1931). *Near* established that state injunctions to prevent publication violate the free press provision of the First Amendment and are unconstitutional. This case is important in that it selectively incorporates freedom of the press and prevents prior restraint.

New York Times v. Sullivan (1964). If a newspaper prints an article that turns out to be false but that the newspaper thought was true at the time of publication, has the newspaper committed libel? This case said no.

Hazelwood School v. Kuhlmeier (1988). In *Hazelwood*, the court held that school officials have sweeping authority to regulate free speech in student-run newspapers.

Freedom of Assembly and Association

The First Amendment protects the right of people to assemble peacefully. That right does not extend to violent groups or to demonstrations that would incite violence. Furthermore, the government may place reasonable restrictions on crowd gatherings, provided such restrictions are applied equally to all groups. Demonstrators have no constitutional right, for example, to march on and thereby close down a highway. They may not block the doorways of buildings. In short, crowd gatherings must not unnecessarily disrupt day-to-day life. That is why groups must apply for licenses to hold a parade or street fair.

The court has also ruled that the combined rights of freedom of speech and freedom of assembly imply a **freedom of association**. This means that the government may not restrict the number or type of groups or organizations people belong to, provided those groups do not threaten national security.

You can read "Letter from a Birmingham Jail" in full at billofrightsinstitute.org/primary-sources/letter-from-birmingham-jail.

When Assembly Was Persecuted: Martin Luther King Jr.'s "Letter from a Birmingham Jail"

In April 1963, Martin Luther King, Jr., was arrested in Birmingham, Alabama, for his role in helping to organize a series of marches and sit-ins to protest racial segregation. From his jail cell, King wrote an open letter to the city's African American religious leaders. This letter outlined many of his key ideas regarding the importance of nonviolent resistance in the form of peaceful assembly. His letter convinced many, and African Americans and their supporters continued to use nonviolent resistance to dismantle legal segregation throughout the South.

Important Cases

Thornhill v. Alabama (1940). Labor unions have been controversial since the dawn of the Industrial Revolution—did their strikes constitute a form of unlawful assembly? In *Thornhill*, the court held that strikes by unions were not unlawful.

Cox v. New Hampshire (1941). When a group of Jehovah's Witnesses was arrested for marching in New Hampshire without a permit, they claimed that permits themselves were an unconstitutional abridgment of their First Amendment freedoms. In *Cox*, the court held that cities and towns could legitimately require parade permits in the interest of public order.

Lloyd Corporation v. Tanner (1972). This case allowed the owners of a shopping mall to throw out people protesting the Vietnam War. The key element here is that malls are private spaces, not public. As a result, protesters have substantially fewer assembly rights in malls and other private establishments.

Though *Thornhill v. Alabama*, *Cox v. New Hampshire*, *Lloyd Corporation v. Tanner*, and *Boy Scouts of America v. Dale* are important to understanding the limits of freedom of assembly, they are not on the list of required cases.

Update: The Boy Scouts removed the ban for youth effective January of 2014, and for adults in July of 2015.

Boy Scouts of America v. Dale (2000). Private organizations' First Amendment right of expressive association allows them to choose their own membership and expel members based on their sexual orientation even if such discrimination would otherwise be prohibited by antidiscrimination legislation designed to protect minorities in public accommodations. As a result of this case, the Boy Scouts of America were allowed to expel any member who was discovered to be homosexual.

Freedom of Religion

The Constitution guarantees the right to the **free exercise** of religion, meaning that the government may not prevent individuals from practicing their faiths. This right is not absolute, however. Human sacrifice, to give an extreme example, is not allowed. The courts have ruled that polygamy is not protected by the Constitution, nor is the denial of medical treatment to a child, regardless of individual religious beliefs. However, the court has ruled that Jehovah's Witnesses cannot be required to salute the American flag and that Amish children may stop attending school after the eighth grade. In all cases, the court weighs individual rights to free religious exercise against society's needs.

The Constitution also prevents the government from establishing a state religion (**the establishment clause**). The establishment clause has been used to prevent school prayer, government-sponsored displays of the Christmas nativity, and state bans on the teaching of evolution (because such bans were religiously motivated). However, the wall between church and state is not rock solid. The court has allowed government subsidies to provide some aspects of parochial education (such as lunches, textbooks, and buses). It has also allowed for tax credits for non-public school costs. In deciding whether a law violates the establishment clause, the court uses a three-part test, called the **Lemon test** after the case *Lemon v. Kurtzman* (1971).

Lemon v. Kurtzman is not on the list of required cases.

- Does the law have a secular, rather than a religious, purpose?
- Does the law neither promote nor discourage religion?
- Does the law avoid "excessive entanglement" of the government and religious institutions?

Essential Case: *Engel v. Vitale* (1962)

Facts: In the early 1960s, a group of Jewish families in New York brought suit against their children's school district for imposing prayer in the classroom. The New York Court of Appeals upheld school prayer before the families took the case to the Supreme Court.

Issue: The families argued the school prayer violated the First Amendment's establishment clause.

Holding: In a 6-1 decision (one justice was ill and another recused himself based on the fact he was not a member of the court during oral arguments), the court ruled that school prayer violated the First Amendment's establishment clause. The lone dissenting justice argued that forbidding prayer in school denied children the nation's "spiritual heritage."

Essential Case: *Wisconsin v. Yoder* (1972)

Facts: The Amish faith discouraged higher education so as to preserve the Amish way of life. In the early 1970s, Wisconsin fined three Amish families $5 for taking their children out of school after the eighth grade. The Amish families appealed the case, and after the state supreme court ruled in the families' favor, the state took the case to the Supreme Court.

Issue: In a conflict between the free expression of religious belief and state laws regarding compulsory education, who wins?

Holding: In an 8-1 decision, the Supreme Court ruled that Amish families taking their children out of school after the eighth grade was protected by the First Amendment's free exercise clause. The single dissenting justice argued that allowing parents to take their children out of school sets a dangerous precedent.

Important Cases

Abington School Dist. v. Schempp (1963). Given the court's ruling in *Engel*, it's not surprising that in *Abington* they decided that the establishment clause of the First Amendment forbids state-mandated reading of the Bible, or recitation of the Lord's Prayer in public schools.

Epperson v. Arkansas (1968). In line with the establishment clause, *Epperson* prohibited states from banning the teaching of evolution in public schools.

Employment Division v. Smith (1990). This case determined that the state could deny unemployment benefits to a person fired for violating a state prohibition on the use of peyote, even though the use of the drug was part of a religious ritual. In short, states may accommodate otherwise illegal acts done in pursuit of religious beliefs, but they are not required to do so.

Though *Abington School Dist. v. Schempp*, *Epperson v. Arkansas*, and *Employment Division v. Smith* are important for understanding limits on freedom of religion, they are not on the list of required cases.

THE SECOND AMENDMENT

The Second Amendment to the Constitution, which protects citizens' rights to keep and bear arms, has led to a debate over whether the Constitution protects citizens' rights to bear arms under all circumstances, or only when those citizens serve in "well-regulated militias." Thus far, the Supreme Court's rulings on the Second Amendment have upheld the individual right to keep and bear arms, while allowing for wide variations in gun laws from state to state and in large cities. Future court decisions are likely to revolve around concerns about public safety and the ways in which governmental regulation of firearms may promote or interfere with public safety and individual rights.

THE SECOND AMENDMENT GOES TO COURT

Essential Case: *McDonald v. Chicago* (2010)

Facts: In 2008, Otis McDonald, a Chicago resident, wanted to purchase a handgun for self-defense. However, he could not buy one due to the city's laws restricting new handgun registrations. McDonald and a group of other Chicago residents sued the city.

Issue: Lawyers representing McDonald argued that Chicago's laws violated the Fourteenth Amendment's due process clause. As McDonald had not committed a crime, the city had no right to deny him the right to own a handgun.

Holding: In a 5-4 decision, the Supreme Court used the Fourteenth Amendment to incorporate the Second Amendment to the states, striking down gun control laws in Chicago and other cities. Dissenting justices argued that the case was not the right vehicle for incorporation, as self-defense is not mentioned in the Second Amendment.

Essential Case: *United States v. Lopez* (1995)

Facts: In 1992, high school senior Alfonso Lopez was arrested for taking a gun to school. He was tried and convicted for violating the Gun-Free School Zones Act of 1990. He appealed the decision to the Supreme Court.

Issue: Lopez argued that the Gun-Free School Zones Act of 1990 violated the Constitution, as the federal government did not have the power to regulate public schools. The federal government argued that the law was constitutional based on the commerce clause—firearms were interstate commerce.

Holding: In a 5-4 decision, the Supreme Court struck down the Gun-Free School Zones Act of 1990. The majority argued that merely carrying a gun did not

qualify as commerce. The dissenting justices argued that school shootings violently disrupt children's education, education being a crucial component for financial success later in life. In this way, they believed that guns in schools interrupted interstate commerce.

THE THIRD AMENDMENT

The most antiquated of all the amendments—though important at the time of its creation—the Third Amendment forbids the quartering of soldiers and the direct public support of armed forces. It was a direct reaction to the British practice of using civilian support to conduct military operations.

THE FOURTH AMENDMENT

The Fourth Amendment places restrictions on government agencies regarding criminal or civil procedural investigations and does much to protect an individual's "person, house, papers, and effects against unreasonable searches and seizures." When the police want to search private property, in most circumstances they must first go before a judge and justify the search. If the judge is convinced that the search is likely to uncover evidence of illegality—called **probable cause**—the judge issues a **search warrant**, which limits where the police may search and what they may take as evidence. Evidence found by police who disregard this procedure may not be admitted as evidence in trial. This is called the **exclusionary rule**. Questions regarding probable cause, traffic stops, stop-and-frisk searches, and search warrants have led to challenges regarding the interpretation of the **exclusionary rule** regarding evidence seized without proper procedures. In its original form, the exclusionary rule holds that all evidence unlawfully gathered must be excluded from judicial proceedings.

As with all constitutional rights, however, there are exceptions to this rule. In 1984, the Supreme Court established the **objective good faith** exception, which allows for convictions in cases in which a search was not technically legal (either because it violated the warrant or because the warrant itself was faulty) but was conducted under the assumption that it was legal. The court has also determined that illegally seized evidence that would eventually have been found legally is also admissible in court. This principle is known as the **inevitable discovery rule**. There are also circumstances under which the police may conduct a search without a warrant. Police may conduct an immediate search following a legal arrest, for example. Police may also conduct an immediate search of private property if the owner consents to that search. Evidence found in plain view may be seized immediately; if, for example, a person is growing marijuana on his or her front lawn, the police may seize that evidence without first acquiring a search warrant. Finally, police may conduct an immediate search if they have probable cause to believe they will find evidence of criminal activity, especially when there are **exigent circumstances**, or reason to believe evidence would disappear by the time

they received a warrant and returned. The police would later have to demonstrate in court that they had probable cause.

In recent times, the primacy of the Fourth Amendment has been challenged by the ease with which government agencies can gather data on citizens digitally through such methods as wiretapping, bulk collection of phone records, and computer hacking. Fears of internal and external terrorism have led some Americans to support the Patriot Act, USA Freedom Act, and warrantless searches at airports, while others fear that government intrusion into privacy may confer too much power to an anonymous elite.

THE FIFTH AMENDMENT

The Fifth Amendment does the most to protect an individual from the broad powers of the federal government. It provides a guarantee of a **grand jury** when a suspect is held for a capital or other "infamous" crime. It eliminates the possibility of a person being maliciously prosecuted for the same crime again and again by prohibiting **double jeopardy**. It establishes the right of the government to seize property for public use under the auspices of **eminent domain** but only if such seizure can be "justly compensated." The most significant attribute of the Fifth Amendment is its mandate that the federal government not deprive an individual of "life, liberty, or property by any level unless **due process of law** is applied." **Rights granted to the accused** are a fundamental protection against governmental abuse of power. Many of these rights are found in the Fifth Amendment. Without them, the government could imprison its political opponents without trial or could guarantee conviction through numerous unfair prosecutorial tactics. However, these rights are also controversial. Anticrime organizations and politicians frequently decry these protections when arguing that it is too difficult to capture, try, and imprison criminals. These accusations have grown louder and more frequent since the 1960s, when the Warren Court (the Supreme Court under Chief Justice Earl Warren) greatly expanded those protections that are granted to criminal defendants. *Miranda v. Arizona* (1966) is the most dramatic and well-known of the Warren Court decisions. The court found that all defendants must be informed of all their legal rights before they are arrested. (It is thanks to *Miranda* that we all know the phrase "You have the right to remain silent..." and you can't get through an episode of *Law & Order* without hearing it at least once.)

Capital crimes are those in which, if the defendant is found guilty, a jury can sentence that person to death.

Essential Case: *Gideon v. Wainwright* (1963)

Facts: In 1961, Earl Gideon was accused of breaking-and-entering, destruction of property, and theft. During the trial, the judge did not appoint him an attorney, as the crimes Florida charged him with were non-capital offenses. A jury convicted Gideon of the crime. From prison, Gideon studied constitutional law and drafted a handwritten appeal to the Supreme Court.

Issue: Gideon argued that Florida had violated his Sixth Amendment right to an attorney.

Holding: The Supreme Court unanimously ruled that Florida had violated Gideon's right to an attorney. This ruling had the effect of incorporating the Sixth Amendment to the states. Since *Gideon*, all defendants in jury trials must have the option of having an attorney represent them.

Important Cases

Weeks v. United States (1914). Though the Constitution is unequivocal when it forbids unlawful search and seizure, such ill-gotten evidence was still commonly used to prosecute defendants. Weeks established the exclusionary rule, which held that illegally obtained evidence could not be used in federal court.

Powell v. Alabama (1932). The Constitution is clear in the Sixth Amendment when it guarantees all those accused of a federal crime the right to have a lawyer. But what about those accused of state crimes? Should they get a lawyer if they can't afford one? In *Powell*, the court ruled that state governments must provide counsel in cases involving the death penalty to those who can't afford it.

Betts v. Brady (1942). The *Betts* case established that state governments did not have to provide lawyers to indigent defendants in capital cases.

Mapp v. Ohio (1961). By 1961, the exclusionary rule meant that any unlawfully gathered evidence could not be introduced in federal court, but such evidence was introduced all the time in state courts. The *Mapp* case extended the exclusionary rule to the states, increasing the protections for defendants.

Escobedo v. Illinois (1964). *Escobedo* is another important Warren Court decision. Here, the court held that any defendant who asked for a lawyer had to have one granted to him—or any confession garnered after that point would be inadmissible in court.

Although *Weeks v. United States, Powell v. Alabama, Betts v. Brady, Mapp v. Ohio, Escobedo v. Illinois, and Miranda v. Arizona* are important cases to understand the rights of the accused, they are not on the list of required cases.

Protection from Self-Incrimination

The Constitution protects individuals from **self-incrimination.** A defendant cannot be forced to testify at trial, and the jury is not supposed to infer guilt when a defendant chooses to not testify. Furthermore, a defendant must be notified of his or her right to remain silent, his or her right to a lawyer, and his or her protection against self-incrimination at the time of his arrest.

For years, the courts rarely admitted into evidence confessions from arrestees who had not been properly "Mirandized." In recent years, however, the Supreme Court has defined some situations in which such confessions are admissible. In 1991, the court ruled that a coerced confession does not automatically invalidate a conviction. Rather, an appeals court may consider all evidence entered at trial. If the court decides that a conviction was probable even without the confession, it may let the guilty verdict stand.

THE SIXTH AMENDMENT

This amendment allows persons accused of a crime to be prosecuted by an impartial jury. Individuals have the right to be informed of their charges, to confront witnesses, to subpoena witnesses for their defense, and to have a lawyer for their defense. The Sixth Amendment forms the basis for **habeas corpus**, which protects against unlawful imprisonment and ensures that a person cannot be held indefinitely without being formally charged before a judge or in a court, or without a legal reason to extend his or her detention. In 1932, the Supreme Court used the Fourteenth Amendment to incorporate this right in capital cases ("the Scottsboro boys" case). In the 1963 case *Gideon v. Wainwright*, the court ruled that all criminal defendants in state courts were entitled to legal counsel. In both cases, the court ruled that the state must provide a lawyer to defendants too poor to hire a lawyer. The court has since extended this protection to misdemeanor cases, provided those cases could result in jail time for the defendant. However, the court has held that states are not required to provide a lawyer to litigants in civil cases.

The Sixth Amendment also guarantees defendants **the right to a speedy trial.** The courts have become so overburdened with cases that the Supreme Court recently imposed a 100-day limit between the time of arrest and the start of a trial. The limit has had little practical effect, however, because both prosecutors and defense attorneys can request an extension to prepare their cases. Courts have generally granted such extensions. As a result, it is not unusual for a defendant to wait a year or more between his or her arrest date and a trial.

THE SEVENTH AMENDMENT

Although statutory, or written, law has come to replace or supersede common law, which is based on past court decisions, the Seventh Amendment allows for trial by jury in common-law cases.

THE EIGHTH AMENDMENT

The **Eighth Amendment** states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The government is not required, however, to offer bail to all defendants. In 1984, Congress passed the Bail Reform Act to allow federal judges to deny bail to defendants considered either dangerous or likely to flee the country. The protection from excessive bail has *not* been incorporated, and states are therefore free to set bail as high as state law permits.

The **cruel and unusual punishment** clause of the Constitution lies at the heart of the debate over the death penalty. The court has placed limits on when the death penalty can be applied; however, it has upheld the constitutionality of the death penalty when properly applied. Critics point to statistics that those convicted

of killing Black people are far less likely to receive the death penalty than those convicted of killing white people. The court has rejected this argument. In recent years, the court has moved to make it easier for states to carry out the death penalty by limiting the number and nature of appeals allowed by convicted murderers on death row. Recently too, however, some states have enacted moratoriums on the death penalty for reasons including methodology problems, flawed trial processes, and ethical objections.

Important Cases

Furman v. Georgia (1972). Here, the court looked at the patchwork quilt of nationwide capital punishment decisions and found that its imposition was often racist and arbitrary. In *Furman*, the court ordered a halt to all death penalty punishments in the nation until a less arbitrary method of sentencing was found.

Woodson v. North Carolina (1976). North Carolina tried to satisfy the court's requirement that the imposition of the death penalty not be arbitrary—so they made it a mandatory punishment for certain crimes. The court rejected this approach and ruled mandatory death penalty sentences as unconstitutional.

Gregg v. Georgia (1976). Georgia was finally able to convince the court that it had come up with a careful and fair system for trying capital offenses. As a result, the court ruled that under adequate guidelines the death penalty did not, in fact, constitute cruel and unusual punishment. Thus *Gregg* allowed the resumption of the death penalty in the United States.

Atkins v. Virginia (2002). Here, the United States lined up with most other nations in the world by forbidding the execution of defendants who are mentally handicapped.

Roper v. Simmons (2005). Building on *Atkins*, the court declared the death penalty unconstitutional for defendants whose crimes were committed as minors, even if they were charged as adults.

Although *Furman v. Georgia, Woodson v. North Carolina, Gregg v. Georgia, Atkins v. Virginia,* and *Roper v. Simmons* are important to understand limits on protections from cruel and unusual punishment, they are not on the list of required cases.

THE NINTH AMENDMENT

The Ninth Amendment reaffirms the principles of a limited federal government. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" means that rights not specifically mentioned in the Constitution are still protected—everyone has the right to brush their hair, for example—even though that right is mentioned nowhere in the Bill of Rights. Although somewhat vague in its premise, the Ninth Amendment has led to the implied right to privacy and other questions regarding individual rights not identified or even understood at the time of the creation of the Constitution.

THE RIGHT OF ALL AMERICANS TO PRIVACY

The right to privacy is not specifically mentioned in the Constitution. However, in the 1965 Supreme Court case of *Griswold v. Connecticut,* the court ruled that the Bill of Rights contained an **implied right to privacy.** The court ruled that the combination of the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments added up to a guarantee of privacy. The *Griswold* case concerned a state law banning the use of contraception; the Supreme Court decision overturned that law. *Griswold* also laid the foundation for the landmark *Roe v. Wade* case of 1973, which legalized abortion.

Griswold v. Connecticut (1965). The Constitution never explicitly grants Americans a right to privacy, but the court discovers one in this landmark and controversial case. Writing for the majority, Justice William O. Douglas noted that amendments like the Third, Fourth, and Ninth all cast "penumbras and emanations" which showed that the Founders really had intended for a right to privacy all along.

Essential Case: *Roe v. Wade* (1973)

Facts: "Roe" was the alias of Norma McCorvey, a young Texas mother of two. In 1969, she unsuccessfully tried to have an abortion in Texas, a state that forbid the practice except in the cases of incest and rape. After having the child, McCorvey sued Dallas County.

Issue: The Supreme Court faced two issues when deciding the case. Was abortion a medical procedure, and was the practice covered by the right to privacy established in *Griswold v. Connecticut*?

Holding: In a 7-2 decision, the court ruled that abortion was protected by the right to privacy established in *Griswold,* supported by the Ninth and Fourteenth Amendments. The dissenting justices claimed that the majority opinion created constitutional rights out of thin air.

Important Cases

Webster v. Reproductive Health Services (1989). This case did not overturn *Roe v. Wade*, but it did give states more power to regulate abortion.

Planned Parenthood v. Casey (1992). A Pennsylvania law that would have required a woman to notify her husband before getting an abortion was thrown out, but laws calling for parental consent and the imposition of a 24-hour waiting period were upheld. All in all, the message was that states *can* regulate abortion but not with regulations that impose an "undue burden" upon women.

Lawrence v. Texas (2003). With this ruling, the Supreme Court struck down a sodomy law that had criminalized homosexual sex in Texas. The court had previously addressed the same issue in *Bowers v. Hardwick* (1986), in which it did not find constitutional protection of sexual privacy. *Lawrence* explicitly overruled *Bowers* saying that consensual sexual conduct was part of the liberty protected under the Fourteenth Amendment.

Although *Griswold v. Connecticut, Webster v. Reproductive Health Services, Planned Parenthood v. Casey,* and *Lawrence v. Texas* are important to understand the right to privacy, they are not on the list of required cases.

CIVIL RIGHTS

The AP U.S. Government and Politics Exam occasionally tests your knowledge of key civil rights legislation. Here is what you need to know about civil rights for the test.

Civil Rights and African Americans

Prior to the Civil War, most of the African American population in the United States consisted of enslaved pople who were denied virtually any legal rights whatsoever. Free Blacks were also denied basic civil rights such as the right to vote and the right to equal protection under the law. Because the Supreme Court had ruled in 1833 that the Bill of Rights applied to the federal government only, states were free to enact discriminatory and segregationist laws. Many did so to ensure the oppression of African Americans.

The Civil War began the long, slow development toward equality of the races before the law. Here is a list of key events in that process.

- **The Civil War (1861–1865).** The Civil War began, at least in part, over the issue of slavery (the debate over the relative powers of the federal and state governments was also a major cause of the war). The war was more clearly defined as a war about slavery in 1863, when President Lincoln issued the **Emancipation Proclamation,** which declared the liberation of enslaved people in the rebel states. The Civil War also influenced the civil rights process in a less direct and less immediate way, as it resulted in an increase in the power of the federal government. One hundred years later, the increased power vested in the federal government would be the means of imposing and enforcing equal rights laws in the states.
- **Thirteenth Amendment (1865).** The Thirteenth Amendment, ratified after the Civil War, made slavery illegal.

Although the *Dred Scott* case is important to understand the background for the Fourteenth Amendment, it is not on the list of required cases.

- **Fourteenth Amendment (1868).** The Fourteenth Amendment, ratified during Reconstruction, was designed to prevent states in the South from depriving newly freed Blacks of their rights. Its clauses guaranteeing **due process** and **equal protection** were later used by the Supreme Court to apply most of the Bill of Rights to state law. However, in the 1880s, the Supreme Court interpreted the amendment narrowly, allowing the states to enact segregationist laws. The Fourteenth Amendment also made African Americans citizens of the nation and of their home states, overruling the ***Dred Scott* case** (1857), which had ruled that enslaved people and their descendants were not citizens.
- **Fifteenth Amendment (1870).** The Fifteenth Amendment banned laws that would prevent African Americans from voting on the basis of their race or the fact that they previously were enslaved people.
- **Civil Rights Act of 1875.** The Civil Rights Act of 1875 banned discrimination in hotels, restaurants, and railroad cars, as well as in selection for jury duty. The Supreme Court declared the Act unconstitutional in 1883.
- **Jim Crow laws and voting restrictions.** As the federal government exerted less influence over the South, states, towns, and cities passed numerous discriminatory and segregationist laws. The Supreme Court supported the states by ruling that the Fourteenth Amendment did not protect Blacks from discriminatory state laws, and that Blacks would have to seek equal protection from the states, not from the federal government. In 1883, the court also reversed the Civil Rights Act of 1875, thus opening the door to legal segregation. These segregationist laws are known collectively as **Jim Crow laws.** The states also moved to deprive Blacks of their voting rights by imposing **poll taxes** (a tax that must be paid in order to vote) and literacy tests. To allow poor, illiterate whites to vote, some states passed **grandfather clauses** that exempted from these restrictions anyone whose grandfather had voted. Grandfather clauses effectively excluded Blacks whose grandparents had been enslaved people and therefore could not have voted.
- **Equal Pay Act of 1963.** This federal law made it illegal to base an employee's pay on race, gender, religion, or national origin. The Equal Pay Act was also important to the women's movement and to the civil rights struggles of other minorities.
- **Twenty-Fourth Amendment (1964).** This outlawed poll taxes, which had been used to prevent Blacks and poor whites from voting.
- **Civil Rights Act of 1964.** The Civil Rights Act of 1964 was a landmark piece of legislation. It not only increased the rights of Blacks and other minorities, but also gave the federal government greater means of enforcing the law. The law banned discrimination in public accommodations (public transportation, offices, and so on) and in all federally funded programs. It also prohibited discrimination in hiring based on color and gender. Finally, it required the government to cut off funding from any program that did not comply with the law, and it gave the federal government

the power to initiate lawsuits in cases of school segregation. States that had previously ignored federal civil rights mandates now faced serious consequences for doing so.

- **Voting Rights Act of 1965.** The Voting Rights Act was designed to counteract voting discrimination in the South. It allowed the federal government to step into any state or county in which less than 50% of the population was registered to vote, or in areas that used literacy tests to prevent voting. In those areas, the federal government could register voters (which is normally a function of the states).
- **Civil Rights Act, Title VIII (1968).** This banned racial discrimination in housing.
- **Civil Rights Act of 1991.** This law was designed to address a number of problems that had arisen in civil rights law during the previous decade. Several Supreme Court decisions had limited the abilities of job applicants and employees to bring suit against employers with discriminatory hiring practices; the 1991 act eased those restrictions.

Essential Case: *Brown v. Board of Education* (1954)

Facts: In 1951, a group of 20 families from Topeka, Kansas, filed suit against the city's board of education for enforcing school segregation. A District Court upheld school segregation as it did not violate *Plessy v. Ferguson* (1896). The families appealed the case to the Supreme Court where the case was heard alongside four other school segregation cases.

Issue: Did the Fourteenth Amendment's equal protection clause apply to school segregation?

Holding: In a unanimous decision, the Supreme Court struck down school segregation nationwide. In fact, many justices had made up their minds long before hearing the case, as racial segregation was tarnishing America's image abroad. The ruling overturned the precedent set by *Plessy*.

Important Cases

Plessy v. Ferguson (1896). This case famously allowed southern states to twist the equal protection clause of the Fourteenth Amendment by allowing "separate but equal" facilities based on race.

Brown v. Board II (1955). One year after *Brown v. Board of Education,* the Warren Court saw that segregation was still ubiquitous. So in *Brown II,* they ordered schools to desegregate "with all due and deliberate speed."

Heart of Atlanta Motel, Inc. v. United States (1964). Did the Federal Civil Rights Act of 1964 mandate that places of public accommodation are prohibited from discrimination against African Americans? Yes, said the court.

Although *Plessy v. Ferguson, Brown v. Board II, Heart of Atlanta Motel, Inc v. United States, Katzenbach v. McClung, Regents of the University of California v. Bakke, Grutter v. Bollinger, Gratz v. Bollinger, and Shelby County v. Holder* are important to understanding the history of civil rights, they are not on the list of required cases.

Katzenbach v. McClung (1964). The Civil Rights Act of 1964 prohibited discrimination in public places, but what about in private businesses? The *Katzenbach* case established that the power of Congress to regulate interstate commerce extends to state discrimination statutes. This ruling made the Civil Rights Act of 1964 apply to virtually all businesses.

Regents of the University of California v. Bakke (1978). Alan Bakke was a white applicant who was rejected from medical school because of an affirmative action plan to boost the number of Black students. The court ruled that Bakke had been unfairly excluded and that quotas requiring a certain percentage of minorities violated the Fourteenth Amendment. But the court also held that race-based affirmative action *was* permissible so long as it was in the service of creating greater diversity.

Grutter v. Bollinger (2003) and *Gratz v. Bollinger* (2003). These cases involved the University of Michigan Law School and the University of Michigan undergraduate school. Both used affirmative action, but the undergraduate school did so by giving minority applicants a large boost in the score used by officers deciding on admission. The court threw out the undergraduate system of selection, but generally upheld *Bakke.*

Shelby v. Holder (2013). The Supreme Court struck down Section 4 of the Voting Rights Act, which required federal pre-clearance of voting law changes for states with a history of voter discrimination. The ruling spurred fear among minorities, as concern about voter suppression rose.

Although the number of major new civil rights laws has decreased in the past decades, the fight for civil rights for African Americans and other minority groups is far from over. Although legally enforced segregation of public facilities no longer exists, racial segregation remains a national concern. Most public school systems remain essentially segregated because the neighborhoods that feed them are segregated. The impact of this ***de facto* segregation** (as opposed to ***de jure* segregation,** which is segregation by law) is increased by the disparity in average incomes between white people and Black people. Because many local school systems are supported by property taxes, lower-income neighborhoods end up with poorly funded, overcrowded schools.

Attempts at Integration

In the 1970s, the Supreme Court ruled that the government could bus children to different school districts to achieve the goal of integration, provided the affected districts had been intentionally segregated. Busing plans failed, however, due to public protest and the abandonment of cities by whites.

Furthermore, discrimination continues in employment, housing, and higher education. Because such discrimination is subtler—few employers tell job applicants, "I won't hire you because you're Black"—it is more difficult to enforce antidiscrimination laws and punish offenders in these areas. **Affirmative action** programs, which seek to create special employment opportunities for minorities, women, and other victims of discrimination, address these questions but have become increasingly controversial and politically unpopular in recent years. In *Regents of the University of California v. Bakke* (1978), the Supreme Court ruled that affirmative action programs could not

use quotas to meet civil rights goals; however, it did say that gender and race could be considered among other factors by schools and businesses practicing affirmative action. Opponents of affirmative action programs argue that such programs penalize whites and thus constitute **reverse discrimination,** which is illegal under the Civil Rights Act of 1964.

Civil Rights and Women

The granting of equal rights for women in the United States is a relatively recent phenomenon. Women were not given the right to vote in all 50 states until 1920. Employment discrimination based on gender was not outlawed until 1964. As recently as the early 1990s, women were not guaranteed 12 weeks of unpaid leave from work after giving birth (this finally changed with the **Family and Medical Leave Act of 1993,** which gives this right to both mothers and fathers). Those who fought for the failed **Equal Rights Amendment** to the Constitution (1972–1982) continue to argue that women do not yet have a full guarantee of equality under the law from the federal government.

Here is a list of events of the women's rights movement that the AP U.S. Government and Politics Exam sometimes tests.

- **Nineteenth Amendment (1920).** Granted women the right to vote.
- **Equal Pay Act of 1963.** This federal law made it illegal to base an employee's pay on race, gender, religion, or national origin. Prior to this bill, many businesses and organizations maintained different pay and raise schedules for their male and female employees. In fact, many continued to do so after the bill passed. Federal enforcement of the law, however, has helped narrow the gap between the salaries and wages of the genders.
- **Civil Rights Act of 1964.** The provision pertaining to gender discrimination was included in the Civil Rights Act of 1964 by an opponent of the bill. Representative Howard Smith of Virginia believed his proposal was ridiculous and would therefore weaken support for the bill. Much to his surprise, the bill passed with the gender provision—prohibiting employment discrimination based on gender—included. The Ledbetter Fair Pay Act of 2009 enhanced those protections.
- **Title IX, Higher Education Act (1972).** This law prohibits gender discrimination by institutions of higher education that receive federal funds. Title IX has been used to force increased funding of women-only programs, such as women's sports. The **Civil Rights Restoration Act of 1988** increased its potency by allowing the government to cut off all funding to schools that violate the law (and not just to the specific program or office found in violation). As a result of these laws mandating equity in college athletics spending, colleges have eliminated many less popular men's sports, resulting in a backlash against Title IX and the Civil Rights Restoration Act.

- **Lilly Ledbetter Fair Pay Act of 2009.** This law closed a loophole that limited suits on discriminatory pay based on the timing of the issuance of the first discriminatory paycheck. The Ledbetter Act expanded those limits to allow suits based on any discriminatory paycheck, an important adjustment for employees who learn of inequities in wages or salary only after they have persisted for some time.

As women have entered the workplace in greater numbers, the issue of sexual harassment at work has gained prominence. **Sexual harassment** is defined as any sexist or sexual behavior—physical or verbal—that creates a hostile work environment. It can range from suggestive remarks to attempts to coerce sex from a subordinate. Like other forms of discrimination, it is difficult to prove legally. Efforts to combat it range from public-awareness programs to sensitivity training to increased legal penalties for harassers.

Abortion has remained a controversial and prominent political issue since the Supreme Court affirmed a woman's right to an abortion in *Roe v. Wade* (1973). In that case, the court ruled that a woman's right to an abortion could not be limited during the first three months of pregnancy (increased limits are allowed as the development of the fetus progresses). Opponents of abortion, who call themselves *pro-life*, argue that the procedure is murder and should be criminalized. Those who support women's right to abortions (dubbed the *pro-choice* movement) argue that women should ultimately decide the ambiguous moral issues for themselves. Because of the very personal, life-and-death issues involved in the abortion debate, advocates on both sides of the issue feel very strongly, and as a result abortion is a major political issue. The decision in *Roe v. Wade* has influenced every election and Supreme Court nomination since; as a result of this case, candidates' opinions about the abortion issue are often the first thing the public learns about them. In most European countries, abortion rights were established legislatively (by laws). Many legal scholars believe that the judicial solution (left up to the courts) applied by the United States has opened the door to ideologues.

Other Major Civil Rights Advances

- **Age Discrimination Act of 1967.** As its name states, this law prohibits employment discrimination on the basis of age. The law makes an exception for jobs in which age is essential to job performance. An amendment to this law banned some mandatory retirement ages and increased others to 70.
- **Twenty-Sixth Amendment (1971).** Extended the right to vote to 18-year-olds.
- **Individuals with Disabilities Education Act (1975).** Ensured that children with disabilities have the opportunity to receive a free, appropriate public education, just like other children.

- **Voting Rights Act of 1982.** This law requires states to create congressional districts with minority majorities in order to increase minority representation in the House of Representatives. The law has resulted in the creation of numerous strangely shaped districts, such as one in North Carolina that was 160 miles long and, at points, only several hundred yards wide. The Supreme Court nullified the district just described, leaving it unclear how the government may both achieve the goals of the Voting Rights Act and maintain the regional integrity of congressional districts.
- **Americans with Disabilities Act of 1990.** This law requires businesses with more than 24 employees to make their offices accessible to the disabled. It also requires public transportation, new offices, hotels, and restaurants to be wheelchair-accessible whenever feasible. Finally, it mandated the development of wider telephone services for the hearing-impaired.

Other Important Cases

Federalism

Marbury v. Madison (1803). This most important of all decisions established **judicial review**—the Supreme Court's power to strike down acts of United States Congress that conflict with the Constitution.

McCulloch v. Maryland (1819). This case is important because it established that states could not interfere with implied powers of the federal government.

Gitlow v. New York (1925). *Gitlow* began the process of selective incorporation—the practice of transferring protections that Americans had from the federal government and applying them to state governments.

South Dakota v. Dole (1987). The federal government mandated the 21-year-old drinking age by threatening to withhold federal highway funds from all states that did not comply. In this case, such withholding was held to be constitutional.

Although *Gitlow v. New York* and *South Dakota v. Dole* are important cases to understanding federalism, they are not on the list of required cases. *Marbury v. Madison* and *McCulloch v. Maryland,* however, ARE required cases.

Executive Power

Korematsu v. United States (1944). This case was not the Supreme Court's finest hour, as it ruled that American citizens of Japanese descent could be interned and deprived of basic constitutional rights due to executive order.

United States v. Nixon (1974). In this case, Congress claimed that there was no such thing as executive privilege as it went after tapes that President Nixon had made of all his conversations in the Oval Office. The court disagreed and allowed for executive privilege, but it forbade its usage in criminal cases, which meant that Nixon ultimately did have to turn over the tapes.

Clinton v. City of New York (1998). This case banned the presidential use of a line-item veto as a violation of legislative powers.

Although *Korematsu v. United States, United States v. Nixon,* and *Clinton v. City of New York* are important to understand executive power, they are not on the list of required cases.

CHAPTER 6 KEY TERMS

Civil liberties
Civil rights
Selective incorporation
Indictment
First Amendment
Freedom of speech
Freedom of the press
Freedom of petitioning the government
Freedom of assembly
Freedom of religion
Clear and present danger test
Slander
Libel
Obscenity
Preferred position doctrine
Prior restraint
Shield laws
Three-part obscenity test
Freedom of association
Free exercise
The establishment clause
Lemon test
Probable cause
Search warrant
Exclusionary rule
Objective good faith
Inevitable discovery rule
Exigent circumstances
Grand jury
Double jeopardy
Eminent domain
Due process of law
Rights granted to the accused
Self-incrimination
Habeas corpus
The right to a speedy trial
Eight Amendment
Cruel and unusual punishment
Implied right to privacy
Emancipation Proclamation
Due process
Equal protection
Dred Scott case
Jim Crow laws
Poll taxes
Grandfather clauses
De facto segregation
De jure segregation
Affirmative action
Reverse discrimination
Family and Medical Leave Act of 1993
Equal Rights Amendment
Civil Rights Restoration Act of 1988
Sexual harassment
Abortion
Judicial review

Chapter 6 Drill

See Chapter 9 for answers and explanations.

Questions 1 and 2 refer to the passage below.

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

—Martin Luther King, Jr., "Letter from a Birmingham Jail"

1. Which of the following statements best reflects King's message in this passage?
   (A) Nazi Germany and the suppression of Hungarian freedom fighters were both cruel events.
   (B) All laws are corrupt.
   (C) A law does not automatically mean that something is right or wrong.
   (D) The law can be a dangerous tool when used by dictators.

2. Which of the following statements best explains why King included this passage in "Letter from a Birmingham Jail"?
   (A) To claim that the United States was as bad as Nazi Germany and Communist Hungary
   (B) To show how segregationist laws were no different than unjust laws in oppressive states
   (C) To promote himself as an activist who would work under the harshest conditions
   (D) To educate readers on the horrors of Nazi Germany and Communist Hungary

3. Which of the following is an accurate comparison between civil liberties and civil rights?

	Civil Liberties	**Civil Rights**
(A)	Enshrined in the Bill of Rights	The equal application of the law to all Americans
(B)	Have never been restricted	Supreme Court has always ruled to expand civil rights
(C)	Supreme Court has changed the scope of Americans' civil liberties	Only applies to African Americans
(D)	Can be amended at the state level	Legislation, Supreme Court decisions, and constitutional amendments have expanded civil rights

4. Which Supreme Court case established the right to always have counsel present in court cases?
   (A) *Powell v. Alabama*
   (B) *Betts v. Brady*
   (C) *Gideon v. Wainwright*
   (D) *Miranda v. Arizona*

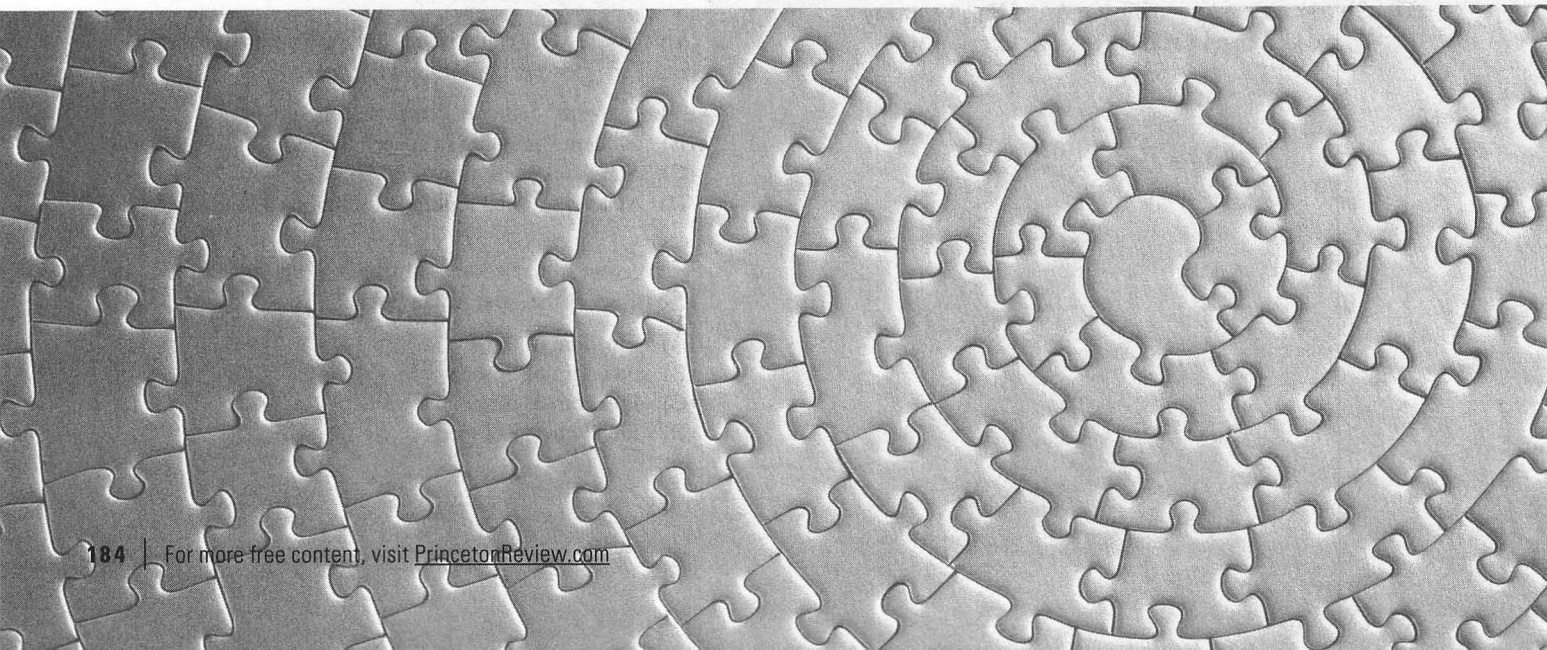
5. The "right to privacy" established by *Griswold v. Connecticut* was further enhanced by which Supreme Court case?
   (A) *Roe v. Wade*
   (B) *Citizens United v. Federal Elections Commission*
   (C) *McDonald v. Chicago*
   (D) *New York Times Co. v. United States*

6. Which of the following issues did the Supreme Court consider when deciding *Engel v. Vitale?*
   (A) Students' ability to protest in school
   (B) Students' freedom of speech in school
   (C) State-sponsored prayer in school
   (D) State-sponsored funding of religious schools

7. *Wisconsin v. Yoder* addressed which of the following provisions of the First Amendment?
   (A) Freedom of Press
   (B) Freedom of Speech
   (C) Freedom of Assembly
   (D) Freedom of Religion

Summary

- It is very important to remember that the Bill of Rights protects Americans only from the federal government. It wasn't until the passage of the Fourteenth Amendment and the advocacy of the 20th-century Supreme Court that these freedoms were selectively incorporated to the states.
- Know about freedom of speech, clear and present danger, and the preferred position doctrine.
- Freedom of the press is protected by the ban on prior restraint, but has limits (as in the case of slander or libel).
- The rights of the people to assemble generally can't be limited, though there are some exceptions to this rule.
- The Constitution forbids the creation of an official religion through the establishment clause, but also prevents the government from infringing on religious freedom through the free exercise clause.
- We have seen a steady expansion of the rights of the accused, particularly since the decisions of the Warren Court.
- Rising from the disgrace of slavery and Jim Crow laws, the court has acted in the latter half of the 20th century to protect racial minorities from discrimination. Today, most controversy swirls around the issue of affirmative action and whether it constitutes a form of reverse racism and thus constitutes a violation of the Fourteenth Amendment.



REFLECT

Respond to the following questions:

- For which content topics discussed in this chapter do you feel you have achieved sufficient mastery to answer multiple-choice questions correctly?
- For which content topics discussed in this chapter do you feel you have achieved sufficient mastery to discuss effectively in an essay?
- For which content topics discussed in this chapter do you feel you need more work before you can answer multiple-choice questions correctly?
- For which content topics discussed in this chapter do you feel you need more work before you can discuss effectively in an essay?
- What parts of this chapter are you going to re-review?
- Will you seek further help, outside of this book (such as a teacher, tutor, or AP Students), on any of the content in this chapter—and, if so, on what content?