



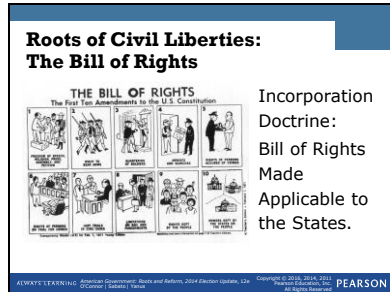
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Chapter 4
Civil Rights & Liberties:
2nd Amendment & Criminal Rights

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The first ten Amendments make up the Bill of Rights and were added to the U.S. Constitution in response to fears that the Constitution had failed to provide adequate legal protection for individuals.

The Federalists felt a Bill of Rights would be unnecessary as the Constitution guarantees popular sovereignty. The Anti-Federalists, on the other hand, feared that the new national government would become too powerful. Without spelling out the protections offered to citizens, the Anti-Federalists would most likely not have ratified the Constitution.

Later, the Fourteenth Amendment added state governments to the equation and provided individuals the right to 'due process.'



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Second Amendment: Right to Keep and Bear Arms

- Included to prevent Congress from disarming state militias
- DC v Heller [self defence](#)

5-4 DECISION
MAJORITY OPINION BY ANTONIN SCALIA
Oyez.org

Stevens Kennedy Thomas Breyer
Roberts Sotomayor Kagan Ginsburg Alito

Through the early 1920s, few state laws were enacted to regulate firearms. In 1934, Congress passed the National Firearms Act during Prohibition, in response to the explosion of organized crime and the increase in automatic weapons. However, despite controversy over gun control, the Court has upheld the right of citizens to own firearms for personal use.

The most recent Supreme Court case was District of Columbia v. Heller which held that the 2nd Amendment allows citizens to own hand guns for self defense. Provisions of the District of Columbia Code made it illegal to carry an unregistered firearm and prohibited the registration of handguns, though the chief of police could issue one-year licenses for handguns. The Code also contained provisions that required owners of lawfully registered firearms to keep them unloaded and disassembled or bound by a trigger lock or other similar device unless the firearms were located in a place of business or being used for legal recreational activities.

The ban on registering handguns and the requirement to keep guns in the home disassembled or nonfunctional with a trigger lock mechanism violate the Second Amendment. Justice Antonin Scalia delivered the opinion for the 5-4 majority. The Court held that the first clause of the Second Amendment that references a “militia” is a prefatory clause that does not limit the operative clause of the Amendment. Additionally, the term “militia” should not be confined to those serving in the military, because at the time the term referred to all able-bodied men who were capable of being called to such service.



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The Rights of Criminal Defendants

- The Fourth Amendment and Searches and Seizures
- The Fifth Amendment: Self-Incrimination and Double Jeopardy
- The Fourth and Fifth Amendments and the Exclusionary Rule (*Mapp v. Ohio*)

8-3 DECISION FOR DOLLREE MAPP
MAJORITY OPINION BY TOM C. CLARK

Oyez.org

Black Douglas Harlan Whiteaker
Warren Brandeis Clark Brennan Stevens

The Fourth Amendment:

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

As with many civil liberties, there are exceptions to the rule. Law enforcement officials do have the right to search an individual's pockets, purse, or car as long as what they obtain was within the view or reach of the individual at the time of the arrest.

The Fifth Amendment:

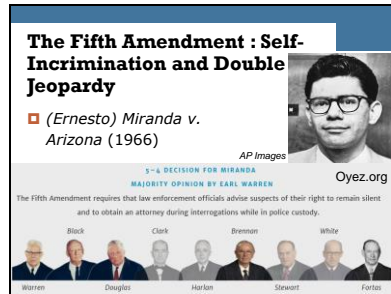
“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence 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.”

In *Mapp v. Ohio*, Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court."



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The Fifth Amendment protection against self-incrimination means that the burden of proof is on the prosecution. If you are accused of a crime, you cannot be compelled to testify against yourself. You are innocent until the state proves that you are guilty, and you don't have to help the prosecution prove their case against you.

This case represents the consolidation of four cases, in each of which the defendant confessed guilt after being subjected to a variety of interrogation techniques without being informed of his Fifth Amendment rights during an interrogation.

Chief Justice Earl Warren delivered the opinion of the 5-4 majority. The Supreme Court held that the Fifth Amendment's protection against self-incrimination is available in all settings. The Court held that, in each of the cases, the interrogation techniques used did not technically fall into the category of coercive, but they failed to ensure that the defendant's decision to speak with the police was entirely the product of his own free will.

In addition to the previously mentioned protections, someone cannot be tried twice for the same crime. This is known as double jeopardy.



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The Sixth Amendment and Jury Trials

- Speedy and public trial by impartial jury
- Right to confront witnesses
- Jury of peers
 - Racial peers
 - Gender



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When cases do go to trial, defendants have the right to an impartial jury that is not racially biased.

Defendants also have the right to confront witnesses to prevent false testimony and to be informed of evidence that may exonerate them.


In 1954, the Supreme Court ruled that Hispanics were entitled to a jury trial that included Hispanic peers. Gender discrimination was often a question, especially concerning cases regarding rape and murder. Ultimately, the Court determined that the equal protection clause prohibits discrimination on the basis of gender.

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The Sixth Amendment

- Sixth Amendment right to attorney
 - Gideon v. Wainwright* (1963)
 - State must provide attorney for indigent
 - Right to counsel begins with first appearance before a judge

UNANIMOUS DECISION FOR CLARENCE EARL GIDEON
MAJORITY OPINION BY HUGO L. BLACK



Oyez.org

The Sixth Amendment guarantees the right to counsel in federal courts. But most trials happen in state courts and most defendants cannot afford an attorney. It was not until 1932 that this right was incorporated, and the state required to pay for an attorney for the indigent, and then only for capital crimes. In 1963, in the famous case of *Gideon v. Wainwright*, the Court extended this right to anyone accused of a felony, and subsequent rulings have extended it to crimes in which imprisonment could be imposed.

In 2008, the Court ruled that the right to counsel began at the time of the individual's first appearance before a judge.



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The Eighth Amendment

- Cruel and unusual punishment not defined
- *Furman v. Georgia* (1972)

DECISION FOR FURMAN
PER CURIAM OPINION

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The Constitution forbids cruel and unusual punishment but it does not define it. It is up to the sensibilities of the age. The Court has not ruled that the death penalty is in itself cruel and unusual punishment, but has upheld restrictions on its use.

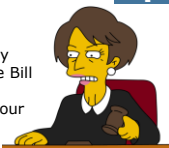
In *Furman v. Georgia*, the Court ruled that because the death penalty had been unfairly applied to African Americans, it was cruel and unusual punishment. However, the Court later ruled that the death penalty was not unconstitutional unless it could be proved that racial discrimination applied to the particular case.

In recent cases, the Court has upheld the use of lethal injection as a method of execution, and made it more difficult for death row inmates to appeal their sentences.

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Exit Questions

Why do you think specific rights for those accused by crimes were included in the Bill of Rights? Use two amendments to support your answer?



Do you think they help provide justice in our society or do you think they give too many rights to criminals? Why?

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