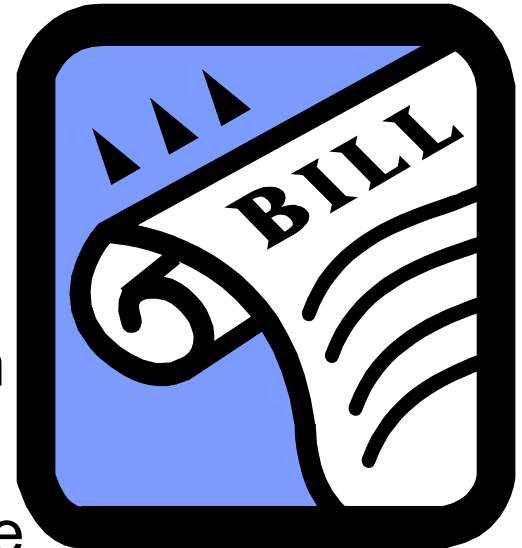


The Bill of Rights

The first ten amendments to the Constitution constitute the Bill of Rights.

- These amendments were designed to protect the basic freedoms of American citizens.
- The meanings and applications of these rights have changed over time as judicial interpretations of these freedoms has changed.



The Bill of Rights

The freedoms included in the Bill of Rights include:

- the right to free speech
- the right to the free exercise of religion
- prohibitions against unreasonable searches and seizures
- guarantees of the due process of law
- the right to privacy

The Bill of Rights: A Charter of Liberties



Although we tend to use the terms interchangeably, a useful distinction can be made between

civil liberties
and
civil rights.

Rights and Liberties

CIVIL LIBERTIES are
protections of citizens
from unwarranted
government action.

CIVIL RIGHTS describe
government's
responsibility to protect
citizens.

The Bill of Rights' emphasis on limiting the powers of the national government makes it arguably more a "bill of liberties."

Civil Liberties

As restraints on government action, there are at least two kinds of **civil liberties**:

1. Substantive liberties are restraints on what the government shall and shall not have the power to do.
2. Procedural liberties are restraints on how the government is supposed to act when it acts; for example, citizens are guaranteed “due process of law” when accused of a crime.

Rights in the Constitution

There were very few explicit rights in the constitution

Rights in the main text of the Constitution:

1. Habeas corpus (Art. I, Sec. 9)
2. Prohibition of bills of attainder and ex post facto laws (Art. I, Sec. 9)
3. Prohibition against titles of nobility (Art. I, Sec. 9)
4. Guarantee of trial by jury (Art. III)
5. Treason defined and limited to the life of the person convicted (Art. III)

9th Amendment

The enumerated rights
are not exclusive, just
because certain rights
are written down, does
not preclude other
rights from being
established

9th Amendment:

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

Nationalizing the Bill of Rights

Throughout American history, the Courts have wrestled with the question of whether the Bill of Rights restrains only the national government or are its protections applicable to the states.



Dual Citizenship



Barron v. Baltimore (1833)

Barron sued Baltimore for rendering his wharf useless on that grounds that it had violated his 5th Amendment rights by taking his property without “just compensation.”

5th Amendment

Establishing the concept of “dual citizenship,” the Supreme Court ruled, in *Barron v. Baltimore*, that the 5th Amendment and the “Bill of Rights” only protected citizens from the national government.

“The fifth amendment must be understood as restraining the power of the general government, not as applicable to the States.”

--Chief Justice John
Marshall, *Barron v.*
Baltimore

14th Amendment

When the 14th Amendment was added to the Constitution in 1868, the question of the Bill of Rights' applicability to the states arose again.



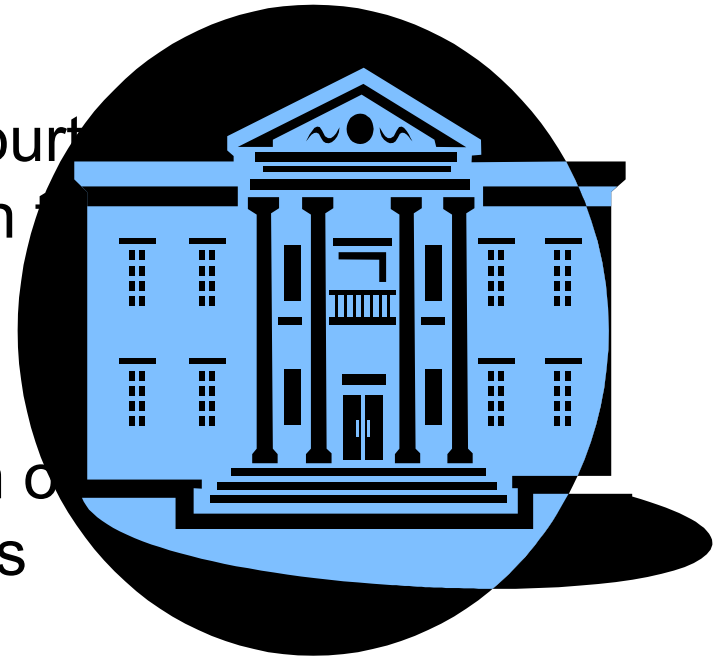
14th Amendment:

“No *state* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any *state* 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.”

14th Amendment

Despite this language in the 14th Amendment, the U.S. Supreme Court re-affirmed the *Barron* precedent in the *Slaughterhouse Cases* in 1873.

Only five years after the ratification of the 14th Amendment, the Court was making decisions as though the amendment had never been adopted.



Selective Incorporation

On a case-by-case basis, the Supreme Court began recognizing a role for the national government to protect citizens from state governments.

Selective incorporation

defined: the process by which different protections in the Bill of rights were incorporated into the 14th Amendment, thus guaranteeing citizens' protection from state as well as national governments

Rights of the Criminally Accused

4th Amendment:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search 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.”

Rights of the Criminally Accused

5th 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.”

Rights of the Criminally Accused

6th Amendment:

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

Rights of the Criminally Accused

Rules upholding Constitutional rights of the accused:

- The **exclusionary rule** excludes evidence obtained in violation of 4th Amendment protections against warrantless searches and seizures.
- The **Miranda rule** ensures that arrested persons must be informed of their rights to “remain silent” and to have legal counsel.

Rights of the Criminally Accused

- 4th Rt. Against unreasonable search and seizure
- 5th No Double jeopardy, no self-incrimination
- 6th Right to counsel
- 8th Rt. Against cruel and unusual punishment