

# CONSTITUTIONAL LAW FOR KIDS

DISCOVERING THE RIGHTS AND PRIVILEGES  
GRANTED BY THE U.S. CONSTITUTION

**Ursula Furi-Perry**



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# INTRODUCTION TO AMERICAN GOVERNMENT

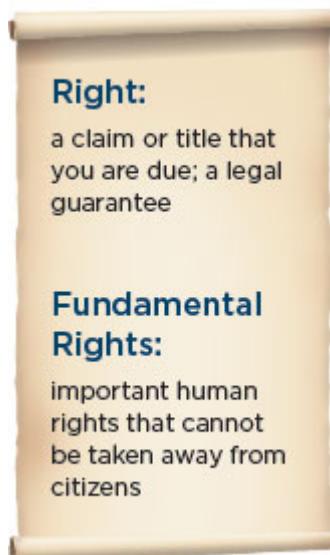
## What Is a Right?

A right is a claim or title that you are due. It is a legal guarantee.

The United States Constitution and the Bill of Rights contain fundamental rights which are granted to ALL of the citizens of the United States. Fundamental rights are important human rights that cannot be taken away from citizens.

## How Do Rights Differ from Privileges?

Rights are not absolute. They have exceptions and limits. Also, some rights are not really rights, but rather privileges.



Rights have limits. For example, a key component to being an individual is the freedom to express yourself—to state your

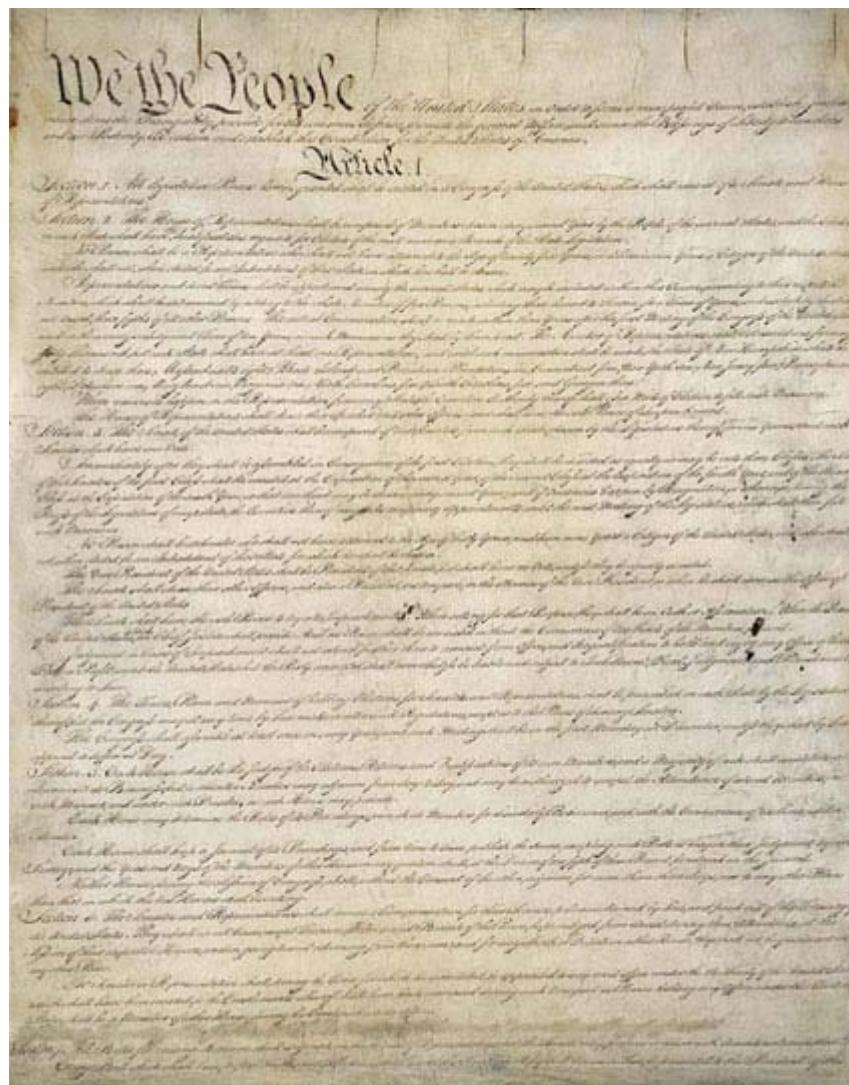
beliefs, to say what is on your mind, and to communicate your ideas and beliefs to other people. The idea of freedom of speech, protected by the First Amendment, guarantees this right. However, freedom of speech has limits. For example, students at school are subject to different rules regarding freedom of speech. If a student significantly disrupts the classroom by speaking, then that student is NOT entitled to the protections of the freedom of speech, according to the US Supreme Court.



Rights also have exceptions. For example, you cannot say something false about another person, and you cannot say something that would cause violence to happen.

Finally, some rights are not really rights, but rather privileges. A privilege is a special status, opportunity, or license that is given to a qualified person. For example, getting your driver's license is a privilege, not a right. You may get your license only after you pass a driver's test. Your license (a privilege) could be taken away if you do not observe traffic laws. At

home, playing a video game or using the computer might be a privilege that is afforded to you. You may only use this privilege if you obey your parents' rules, and the privilege may be taken away from you if you fail to do so.



*The US Constitution, Source: National Archives website.*

[http://www.archives.gov/exhibits/charter/charter\\_downloads.html](http://www.archives.gov/exhibits/charter/charter_downloads.html)

## **What Is the Constitution? What Is the Bill of Rights?**

The US Constitution is the supreme law of the land. It contains the basic beliefs of our nation, and it establishes the powers and duties of the US Government. It also contains the rights guaranteed to citizens.

### US Constitution:

supreme law of the land; contains the basic beliefs of our nation and the rights guaranteed to citizens; describes the powers and duties of the United States Government



### Bill of Rights:

first ten amendments to the US Constitution

The Bill of Rights includes the first ten amendments to the US Constitution. Amendments are changes. The Bill of Rights explains and guarantees some of the most important and fundamental rights that are afforded to citizens.

## The United States System of Government

The United States system of government has several important characteristics:

- Our governments operate at three levels: the federal, state, and local levels.
- At each of those levels, laws are created and carried out by three branches of government: the legislative, executive, and judicial branches.
- Under our system of checks and balances, each branch is on equal footing with the other two branches.

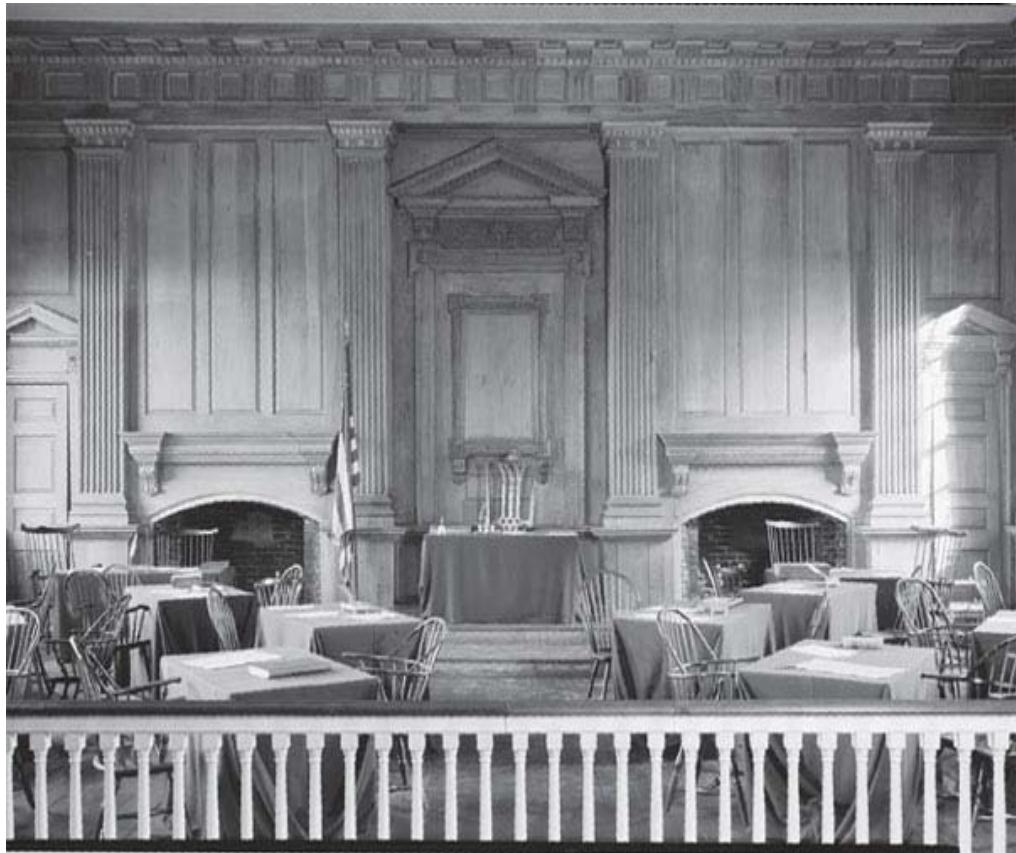
## **What Is Federalism?**

Federalism describes a system of government in which power is purposely divided. Our nation has a central unit of government, known as the federal government. Our nation also has smaller units of government in the form of state and local governments. Each of the fifty states gets to make and enforce its own laws. Each city gets to make and enforce its own local laws. Of course, all states and local units (also called municipalities) must work within the bounds of the federal government.

In American federalism, the federal and state governments share power. While each state is considered sovereign unto itself, it must still operate under the penumbra, or umbrella, of the federal government. In other words, each state may make its own laws and have its own court system, but no state laws can conflict with certain federal laws, such as a decision by the United States Supreme Court, a conflicting federal statute, or a provision of the United States Constitution.



Colorado, for example, is a state with its own court system and statutory codes. The statutes of Colorado are binding on the residents of Colorado; the cases that emanate from Colorado's highest court are likewise binding on Colorado residents. But Colorado's laws are not binding on New Mexico's residents. New Mexico is sovereign unto itself and can enact its own statutes and decide its own cases that will bind its own residents. However, neither Colorado nor New Mexico's laws can conflict with most federal laws, as both states operate under the umbrella of the federal government.



***Independence Hall, Source: Library of Congress***

In turn, each of the many local or municipal governments can set its own laws—such as ordinances and charters. The city of Boston, Massachusetts, for example, can enact its own parking regulations, which will be binding on Boston residents.

Likewise, the city of Worcester, Massachusetts, can set its own parking ordinances, as well. Both cities operate under Massachusetts's laws and cannot conflict with state or federal regulations.

### **What Are the Three Branches of Government?**

The government is comprised of all of our leaders, the people who run our nation. Our government has three branches:

1. The legislative branch has the power to make the laws. At the federal level, the legislative branch consists of Congress, which includes the House of Representatives and the Senate. Most states have a similar system of a state legislature.

2. The executive branch has the power to enforce laws. At the federal level, the executive branch is led by the president. States have governors. Most municipalities have mayors.
3. The judicial branch interprets the laws. It consists of the courts, which are presided over by judges and justices.





*The United States Supreme Court, Source: Library of Congress*

### **What Is the Supreme Court?**

The United States Supreme Court is the highest court of law in the nation. It is comprised of nine justices. It determines legal issues and questions that are of utmost importance to the American people.

# QUESTIONS

**1.1** What unique characteristics make up the United States system of government?

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**1.2** With fifty different states in place, why is it important to allow each state to be “sovereign unto itself” and to make and enforce its own laws?

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**1.3** Why is it important to have fundamental rights guaranteed to citizens? Why is it important to have a Bill of Rights, which guarantees those fundamental rights?

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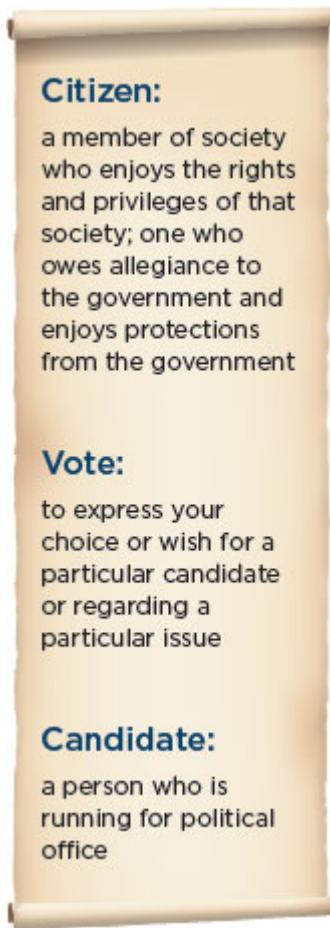
FUNDAMENTAL RIGHTS

## THE RIGHT TO VOTE

### **Fundamental Rights—the Right to Vote**

All citizens of the United States have a right to vote. A citizen is a member of society who enjoys the rights and privileges of that society. Citizens owe allegiance to the government and enjoy protections from the government.

To vote means to express your choice or wish. Many positions, known as elected offices, require an election, or vote, by citizens. Candidates are the people who are running for a particular office. Each citizen may choose the candidate whom he or she believes is the best person for that office.



For example, citizens vote for the president, each state's governor, and even each city's mayor. Citizens also vote for members of Congress, called senators and representatives, who are chiefly in charge of making laws for the United States and its citizens.

Citizens also vote on issues, which are questions of law that will govern our lives. Each state's citizens get to vote on issues that govern their state. For example, only citizens of Massachusetts can vote on whether they would like to make the lobster the official crustacean of Massachusetts!

During elections, citizens receive a ballot, which is the document listing all of the candidates or issues.

But what if you choose not to vote for any of the candidates on the ballot? What if you would prefer to vote for someone else

instead, by writing the name of another person onto the ballot? What if, for example, you chose to vote for Donald Duck? Should you have the right to do so?

In the case of *Burdick v. Takushi*, the Supreme Court said no.

That case involved voting in the state of Hawaii. In 1986, there was only one candidate for the office of representative. Alan Burdick did not want to vote for that candidate, so he asked the Hawaiian government whether he could vote for someone else instead. Burdick wanted to write in another name on the ballot. The Hawaiian government sent Burdick an opinion letter, stating that write-in votes were not allowed in Hawaii.

Burdick filed a lawsuit against Hawaiian elections officers. He claimed that he had a constitutional right to vote for the candidate of his choice. He also claimed that Hawaii violated that right because it did not allow write-in votes. In essence, Burdick argued, his vote did not count at all.



*This is the US Capitol Building, which serves as the meeting place for Congress (both the House of Representatives and the Senate).*

The US Supreme Court disagreed with Burdick. The judges noted that some structure and organization are necessary to the voting process. The Court said, “The right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.” So, for example, if a state chooses not to allow write-in votes for the sake of organization and efficiency, that is not a violation of citizens’ constitutional rights.

# QUESTIONS

**2.1** Should every citizen have the right to vote? For example, should people who have not paid all of their required taxes be able to vote? What about people who are in jail? What about people who cannot read or write? Why or why not?

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## **2.2 Argument-Counterargument Exercise:**

Currently, people must be eighteen years old to vote in elections.

State three reasons why children under eighteen should be allowed to vote.

1.

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2.

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3.

State three reasons why children under eighteen should NOT be allowed to vote.

1.

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2.

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3.

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### **2.3 Hypothetical Exercise:**

Pretend that your state enacts a new law that provides the following:

- a. that citizens who wish to vote in state elections must present a valid photo identification card or driver's license at the polls;
- b. that citizens who wish to vote must pay a "voting fee" of \$1.50; and
- c. that citizens who wish to vote for the office of state governor must show that they have lived in the state of Confusion for at least one year.

Do you think each of the three parts of this law is constitutional? Why or why not?

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### **2.4 Research Exercise:**

Look up the following amendments to the US Constitution and summarize them below.

Amendment 15:

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Amendment 19:

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Amendment 24:

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Amendment 26:

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**BONUS QUESTION:** After reading the Twenty-fourth Amendment, did your response to Question 2.3 above change? Why or why not?

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### **2.5 Writing Prompt:**

What are the essential traits of a good leader? If you were voting for a candidate, what qualities would you look for in that person? Write a short paragraph discussing those characteristics and traits.

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THE POWERS OF  
GOVERNMENT

## FEDERAL AND STATE LEVELS

As you have previously read, federalism means a system of government in which power is purposely divided. The power is shared between a central unit (the federal government) and various political units (the state and local governments).

The supremacy clause of the Constitution establishes the Constitution, federal statutes, and US treaties as “the supreme law of the land.” In other words, the Constitution and federal laws will prevail over other laws, such as state laws or city and local ordinances. The supremacy clause states:

### **Federalism:**

a system of government in which power is purposely divided and shared between a central unit and various other political units

### **Supremacy Clause:**

establishes the Constitution, federal statutes, and US treaties as “the supreme law of the land”

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.”



*Writing the Declaration of Independence, source:  
Library of Congress Archives*

Along similar lines, there is a constitutional doctrine called preemption. Preemption means that where Congress has enacted a federal statute on a particular matter, that federal statute will be controlling over any conflicting state laws. For

example, say there is a federal statute regarding environmental pollution requirements for car manufacturers. Now, say there is an additional California statute that requires less from auto manufacturers and therefore contradicts the federal statute. Here, the federal statute will govern over the California statute under preemption. Note, however, that states may pass laws that simply “add on” or expand upon federal regulations, and those laws will not be preempted. As an example, if the California statute makes those pollution requirements more stringent, then the law would stand, because it would be possible to satisfy both the federal and the state statute.

#### **Preemption:**

The doctrine of preemption holds that where Congress has enacted a federal statute on a particular matter, that federal statute will be controlling over any conflicting state laws.



*Writing the Declaration of Independence*

In addition, the doctrine of preemption precludes states from enacting laws on the same subject if Congress has “occupied the field” in that subject. As an example, Congress has the power to make laws regarding immigration. So, if a state

attempted to enact a conflicting law on immigration, a federal court would likely find that Congress's statute would control over the state statute under the doctrine of preemption.

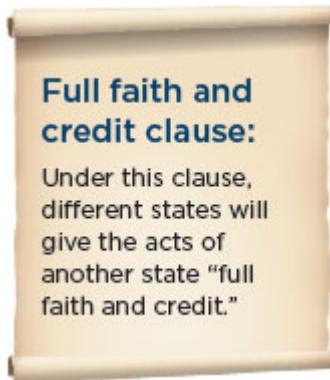
States do have some sovereignty, however, which means they have some powers of their own. The Tenth Amendment states:

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

Under the Tenth Amendment, a state may regulate for the health, safety, welfare, aesthetics, and morals of its citizens. This idea is sometimes referred to as the "police power." The states reserve this power under the Tenth Amendment.

Historically, matters that involve family law, such as custody and divorce; regulation of professionals, such as doctors and lawyers; the laws of education; civil tort laws; and many criminal laws have all been left to the states to decide and enforce.

The Constitution also includes the full faith and credit clause, which states:



"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

This means that different states will give the acts of another state "full faith and credit." If, for example, a Florida court issues a judgment in a case, then that judgment will be binding

and enforced in the other forty-nine states under the full faith and credit clause.



Several cases have addressed the balance of powers between the federal government and its state and local counterparts. For example, in the case of *Lorillard Tobacco Co. v. Reilly*, the US Supreme Court addressed a Massachusetts regulation regarding the advertising and promotion of cigarette products. The Court held that the state regulations were preempted by federal regulations, because Congress specifically chose to set federal laws regarding tobacco advertisements.

Conversely, in the case of *Florida Lime and Avocado Growers v. Paul*, the Supreme Court upheld a California law regarding avocado products that was more restrictive than similar federal laws. The Court noted that it was possible to satisfy both laws and therefore federal law did not preempt state law.

# QUESTIONS

**3.1** What does the Tenth Amendment mean when it says that powers are reserved for the states “or to the people”? In what ways can the “people” enforce the powers and rights that are reserved to them?

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## **3.2 Hypothetical Questions:**

Consider the following situations. Do they pass muster under the doctrine of preemption? Why or why not?

A. A state wants to pass a minimum hourly wage that is lower than the federal hourly wage currently in place.

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B. A state wants to pass a minimum hourly wage that is higher than the federal hourly wage currently in place.

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C. A state wants to pass a law that would make it a crime to sell spoiled milk to others. Assume that there is no such federal law in place.

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D. A state wants to pass new requirements for milk producers regarding pasteurization of milk, which deals with making milk safe to drink. The new requirements would be more stringent than the existing federal laws.

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E. A state wants to pass new pasteurization requirements that would be less stringent than the existing federal laws.

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### **3.3 Writing Prompt:**

If each state is “sovereign unto itself,” with its own powers, laws, and regulations, then why is a federal government still necessary? What are the benefits and drawbacks of having a centralized government? What are the benefits and drawbacks of having several (in our case, more than fifty) different sources of power and laws?

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## THE POWERS OF GOVERNMENT

# THE THREE BRANCHES

The three branches of government all play unique roles and have unique powers in our system. As you have read previously, each branch has a specific function in our system of government:

Branch	Function
legislative . . . . .	to enact laws
executive . . . . .	to enforce laws
judicial. . . . .	to interpret laws

## The Legislative Branch

At the federal level, Congress is the legislative branch of government. The main function of Congress is to enact, or make, laws. Congress consists of the House of Representatives and the Senate. The official website of the House of Representatives explains the House of Representatives in this way:



Also referred to as a congressman or congresswoman, each representative is elected to a two-year term serving the people of a specific congressional district. Among other duties, representatives introduce bills and resolutions, offer amendments and serve on committees. The number of representatives with full voting rights is 435, a number set by Public Law 62-5 on August 8, 1911, and in effect since 1913. The number of representatives per state is proportionate to population.

Article I, Section 2 of the Constitution provides for both the minimum and maximum sizes for the House of Representatives. Currently, there are five delegates representing the District of Columbia, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. A resident commissioner represents Puerto Rico. The delegates and resident commissioner possess the same powers as other members of the House, except that they may not vote when the House is meeting as the House of Representatives.

To be elected, a representative must be at least 25 years old, a United States citizen for at least seven years and an inhabitant of the state he or she represents.



*Source: <http://www.house.gov/content/learn/>*

Senators are also elected. The official website of the Senate describes the Senate in the following way:

Article I, section 3 of the Constitution requires the Senate to be divided into three classes for purposes of elections. Senators are elected to six-year terms, and every two years the members of one class—approximately one-third of the senators—face election or reelection. Terms for senators in Class I expire in 2019, Class II in 2015, and Class III in 2017.

### **Enumerated Powers of the Legislature**

Article I, Section 8 of the US Constitution sets out certain enumerated—meaning named or specifically stated—powers of Congress. These powers give Congress the authority to act and make new laws.

*Source:*

*[http://www.senate.gov/pagelayout/reference/g\\_three\\_sections\\_with\\_teasers/reference\\_home.htm](http://www.senate.gov/pagelayout/reference/g_three_sections_with_teasers/reference_home.htm)*



*The Old Senate Chamber, source: Architect of the Capitol*

Enumerated powers are as follows:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and

Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

**Legislative branch:**

branch of government that enacts laws; includes Congress, which consists of the Senate and the House of Representatives

**Enumerated powers:**

powers, established in the Constitution, under which Congress may act and make new laws

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The federal government is not the only place you will find a legislature. The fifty states also have legislatures, most of which mirror the federal model and include a state Senate and a state House of Representatives. These state legislatures enact state statutes or laws. On the local and municipal levels, the legislative bodies are often called city councils or selectmen. They enact local laws and city ordinances.

### **The Commerce Clause**

Congress finds most of its power to act under the commerce clause, which is contained in Article I, Section 8. The commerce clause and its powers only apply when the activities being regulated by Congress involve one of three things:

1. channels of commerce,
2. instrumentalities of commerce, and
3. activities that have a substantial relation to interstate commerce.

Channels of commerce include anything to do with sale or exchange of goods in the interstate marketplace. For example, Congress can regulate a business that serves mostly interstate travelers, such as a motel or restaurant.

Instrumentalities of commerce involve a variety of things, such as planes, trains, and automobiles—even roads, airways, railways, and waterways.

Activities that have a substantial relation to interstate commerce are any activities that greatly affect interstate commerce. For example, Congress has used the commerce clause to regulate civil suits for the commission of violent crimes against women. Clearly, this regulation does not directly derive from interstate commerce. However, because the activity can affect interstate commerce, Congress may use its commerce clause powers to regulate it.



***The White House, source: Library of Congress Archives***

## **The Executive Branch**

The president, who heads the executive branch, has some powers of his or her own.

Article II, Section 2 of the US Constitution states the following:



“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for

Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

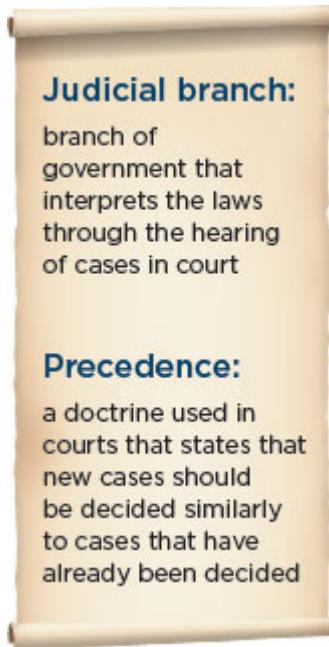
The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.”

In addition to the president, the executive branch includes the vice president, the president's cabinet members, and the many federal administrative agencies. Administrative agencies pass and enforce various regulations that deal with specific examples of the law. As one example, the Internal Revenue Service is in charge of regulations that affect taxes. Another example is the Environmental Protection Agency, which deals with regulations regarding environmental protections.

Various state and local governments also have functioning executive branches. State governors, lieutenant governors, and various state administrative agencies all fall under the executive branch. On local and municipal levels, the various mayors' offices and related players also represent the executive branch.

## **The Judicial Branch**

Finally, the judicial branch, which is comprised of judges, also has some powers—namely, the power to hear, interpret, and decide court cases.



Different levels of courts decide specific cases. In federal courts, lawsuits begin in the district courts, which is where cases are first tried. From there, a case can be appealed to the courts of appeals, also known as the circuit courts. From an appellate decision, a party to a case may ask the US Supreme Court to hear his or her case through a process called writ of certiorari. However, the Supreme Court rarely hears cases. From the many thousands of cases presented to it each year, the Supreme Court only hears a select few.

Courts operate at the state and local levels, as well. Under the United States Constitution, both criminally accused persons and persons involved in civil disputes have the right to “have their day in court,” meaning they may litigate their cases under our adversarial system of justice.

Our system of jurisprudence relies heavily on past precedent. This means that courts look at cases that were previously decided when analyzing a newly brought case. The courts will resolve cases with similar facts in the same way that the past

precedent—meaning, the case that came before—was resolved.

The courts follow legal authority when deciding cases. Both common law, such as court opinions, and enacted law, such as statutes and ordinances, play important parts in the United States' system of justice.

Article III, Section 2 of the Constitution details the powers of the judicial branch by stating the following:





***Photo of the US Supreme Court, from the Library of Congress***

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; –to all Cases affecting Ambassadors, other public Ministers and Consuls; –to all Cases of admiralty and maritime Jurisdiction; –to Controversies to which the United States shall be a Party; –to Controversies between two or more States; – between a State and Citizens of another State; –between Citizens of different States; –between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate jurisdiction, both as

to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

## Checks and Balances



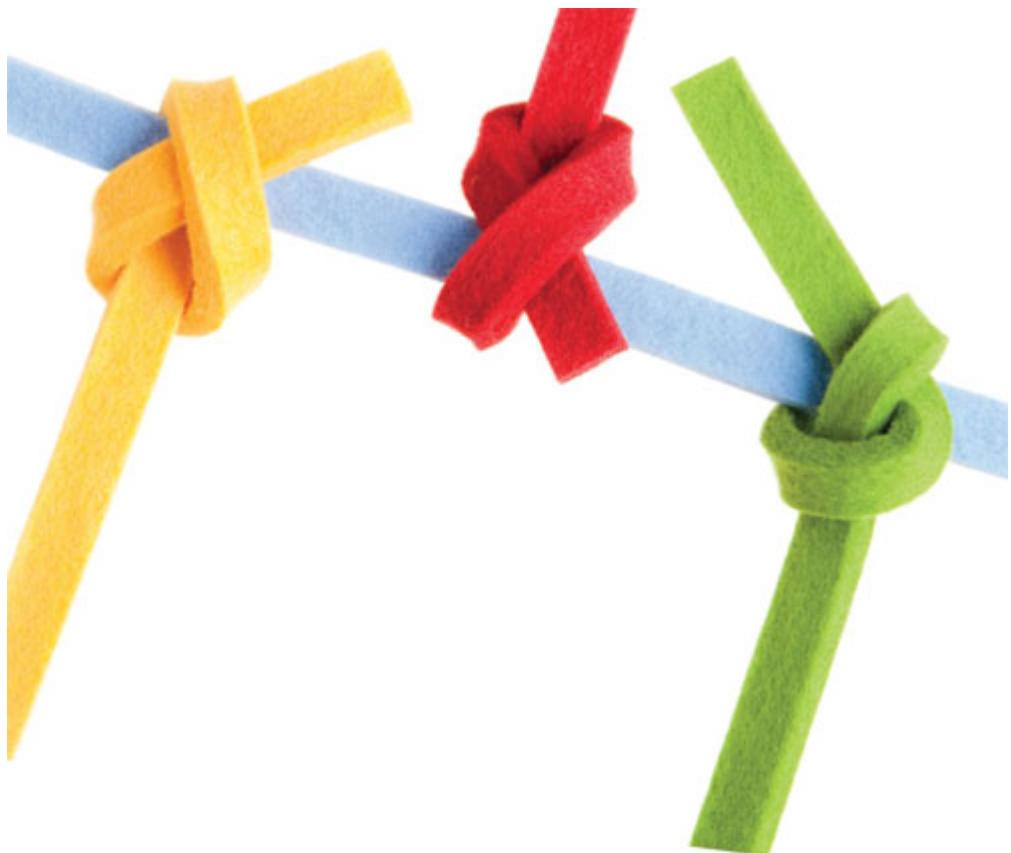
Imagine a house where there are three siblings. Imagine that each of the three siblings gets to decide certain issues in the household, such as where to go on vacation, what to eat for dinner, and what movie to watch. What would happen if one of the siblings had too much input in decisions? For example, what would happen if one sibling got to decide entirely which sibling will be responsible for which chores, without any input from the other two siblings? It's not difficult to see that the one sibling would end up with A LOT of power. It's not a far stretch to think that the sibling with all (or even most) of the power could potentially abuse his or her powers, to the detriment of the other siblings. To make sure this does not happen, each of the siblings must be able to have certain "checks and balances" on the other two, in order to ensure that the powers in the house remain well-balanced.

Similarly, various important checks and balances protect the three branches of government. These checks and balances help to ensure that none of the three branches become too powerful.

The National Center for Constitutional Studies lists the following examples of checks and balances:

- HOUSE (peoples' representatives) is a check on SENATE—no statute becomes law without its approval.
- SENATE is a check on HOUSE—no statute becomes law without its approval. (Prior to 17th Amendment, SENATE was appointed by State legislatures as a protection for states' rights—another check the Founders provided.)
- EXECUTIVE (President) can restrain both HOUSE and SENATE by using Veto Power.
- LEGISLATIVE (Congress—Senate & House) has a check on EXECUTIVE by being able to pass, with 2/3 majority, a bill over President's veto.
- LEGISLATIVE has further check on EXECUTIVE through power of discrimination in appropriation of funds for operation of EXECUTIVE.
- EXECUTIVE (President) must have approval of SENATE in filling important posts in EXECUTIVE BRANCH.
- EXECUTIVE (President) must have approval of SENATE before treaties with foreign nations can be effective.
- LEGISLATIVE (Congress) can conduct investigations of EXECUTIVE to see if funds are properly expended and laws enforced.
- EXECUTIVE has further check on members of LEGISLATIVE (Congress) in using discretionary powers in decisions regarding establishment of military bases, building & improvement of navigable rivers, dams, interstate highways, etc., in districts of those members.
- JUDICIARY is check on LEGISLATIVE through its authority to review all laws and determine their constitutionality.
- LEGISLATIVE (Congress) has restraining power over JUDICIARY, with constitutional authority to restrict extent of its jurisdiction.
- LEGISLATIVE has power to impeach members of JUDICIARY guilty of treason, high crimes, or misdemeanors.

- EXECUTIVE (President) is check on JUDICIARY by having power to nominate new judges.



*Source: National Center for Constitutional Study,  
<http://www.nccs.net/articles/ril31.html>*

- LEGISLATIVE (Senate) is check on EXECUTIVE and JUDICIARY having power to approve/disapprove nominations of judges.
- LEGISLATIVE is check on JUDICIARY - having control of appropriations for operation of federal court system.
- LEGISLATIVE (Peoples' Representatives) is check on both EXECUTIVE and JUDICIARY through power to initiate amendments to Constitution subject to approval by 3/4 of the States.
- LEGISLATIVE (Senate) has power to impeach EXECUTIVE (President) with concurrence of 2/3 of members.
- The PEOPLE, through their State representatives, may restrain the power of the federal LEGISLATURE if 3/4

of the States do not ratify proposed Constitutional Amendments.

- LEGISLATIVE, by Joint Resolution, can terminate certain powers granted to EXECUTIVE (President) (such as war powers) without his consent.
- It is the PEOPLE who have final check on both LEGISLATIVE and EXECUTIVE when they vote on their Representatives every 2 years, their Senators every 6 years, and their President every 4 years. Through those selections, they also influence the potential makeup of the JUDICIARY.

As you can see, various important checks and balances exist in order to ensure that none of the three branches become too powerful.

Perhaps the most important—and certainly the oldest—high court case that dealt with the system of checks and balances was the case of *Marbury v. Madison*. That case came about after the election of 1800, when John Adams lost his bid for reelection to Thomas Jefferson. After the election, Adams and his officers sought to fill judge positions with Federalist judges—in effect, he attempted to confirm these judges through “midnight appointments.” When some of those appointments were not confirmed in time before Jefferson took office, the new president refused to deliver the remaining appointments.

One of the intended appointees was William Marbury. He, of course, wanted his appointment to be delivered. He sued James Madison, who was then Secretary of State, and asked the Court to order Madison to deliver his appointment.

The Supreme Court refused to grant Marbury’s request. The Court held that the judicial branch had the power to review a law and declare it unconstitutional. Essentially, this landmark case gave teeth to the checks and balances system. As a result, *Marbury v. Madison* came to influence numerous historical decisions in the future.



# QUESTIONS

**4.1** If you could work in any of the three branches of government, which one would you choose? Why?

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**4.2 Argument-Counterargument Exercise:**

In what way do the people have the final check on their government representatives? What important fundamental right is involved?

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**4.3 Writing Prompt:**

Discuss the importance of the system of checks and balances. What would happen if no such system were in place? In what ways might the system be improved?

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# Unit 1 Test



## Multiple Choice Questions:

*Circle the correct answer.*

1. 1. Which of the following powers does Congress have?
  - A. to regulate commerce
  - B. to declare war
  - C. to establish taxes
  - D. all of the above
6. Which of the following powers does the president have?
  - A. to sign treaties with other nations
  - B. to nominate ambassadors
  - C. to serve as commander in chief of the army and navy
  - D. all of the above
11. Which of these terms means “a member of society who enjoys the rights and privileges of that society”?
  - A. vote
  - B. citizen
  - C. right
  - D. privilege
16. What is the highest court in the United States?

- A. US Supreme Court
  - B. federal circuit courts
  - C. federal courts of appeals
  - D. federal district courts
21. Which of the following is included under the commerce clause?
- A. channels of commerce
  - B. instrumentalities of commerce
  - C. activities that have a substantial relation to interstate commerce
  - D. all of the above
26. Which of the following branches of government has the power to interpret the laws?
- A. legislative
  - B. executive
  - C. judicial
  - D. none of the above
31. Which of the following branches of government has the power to enforce the laws?
- A. legislative
  - B. executive
  - C. judicial
  - D. none of the above
36. Which of the following is NOT a level at which the United States Government operates?
- A. federal
  - B. municipal
  - C. commercial
  - D. state

41. Which of these terms means that courts will resolve cases in the same way as past cases, where similar facts have been resolved?
- A. privilege
  - B. precedence
  - C. judicial
  - D. executive
46. Which of these terms means “named or specifically stated powers of Congress”?
- A. enumerated
  - B. enamored
  - C. enticed
  - D. encouraged

**True or False Questions:**

*Circle the correct answer.*

1. **True or false:** Each of the fifty states gets to make and enforce its own laws.
2. **True or false:** Rights have no limitations or exceptions.
3. **True or false:** The three branches of government all play unique roles and have unique powers in our system.
4. **True or false:** The United States Supreme Court is comprised of seven justices.
5. **True or false:** The US Constitution is the supreme law of the land.
6. **True or false:** All citizens of the United States have a right to vote.
7. **True or false:** Having a driver’s license is a right.
8. **True or false:** The Bill of Rights includes the first fourteen amendments to the US Constitution.

9. **True or false:** Courts only operate at the federal level of government.
10. **True or false:** The US Constitution contains the basic beliefs of our nation, and it establishes the powers and duties of the United States Government.

**Short Answer Questions:**

1. What does “federalism” mean?

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2. Explain the concept of “checks and balances.”

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3. List the three branches of government, along with the chief function or role of each branch.

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[Chapter 5](#)

[Fundamental Rights—Substantive Due Process](#)

[Chapter 6](#)

[Equal Protection of the Law](#)

[Chapter 7](#)

[Procedural Due Processs](#)

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[UNIT 2 TEST](#)







FUNDAMENTAL RIGHTS

## SUBSTAnTIVe DUE PROCESS

Due process under the Fifth and Fourteenth Amendments stands for the principle that the government must respect the fundamental rights owed to citizens according to the law. Think of it this way: some rights are so important and fundamental that to take them away by some action of the government would warrant the strict standard of review and explanation, if it were to be allowed at all.

Fundamental rights include the following: privacy rights, such as the right to marry, the right to live together as a family unit, and the right to refuse medical care; the right to travel; the right to vote; and access to the courts.

### **Substantive due process:**

the principle that the government must respect the fundamental rights owed to citizens according to the law; protected by the Fifth and Fourteenth Amendments

### **Strict scrutiny:**

the highest standard of review, under which the government must prove a compelling state interest, and the law must be narrowly tailored to the goals sought to be achieved

Fundamental rights under the due process clauses require the highest standard of review, which is called strict scrutiny.

Under that standard, the government must prove a compelling state interest, and the law must be narrowly tailored to the goals sought to be achieved. This means that in order for the government to limit one of the rights considered

“fundamental,” it must be protecting an interest that is of utmost importance—for example, the safety or security of its citizens. Also, whatever limits the government imposes must be “narrowly tailored,” meaning that the limits must present the least possible infringement upon citizens’ rights.

### **Fundamental Rights—Privacy**

What does “family” mean, and who should have the right to live together as a family?

Clearly, the term “family” includes parents and their children. But what about other extended family members? What about grandparents who raise their grandchildren, due to the parents

not being ready or able to do so? Do grandparents have a fundamental right, in that situation, to live together as a close family unit with their grandchildren?

In the case of *Moore v. City of East Cleveland*, the Supreme Court said yes.

That case involved a City of East Cleveland ordinance (a local law) that held that only members of a close family unit could live together. The ordinance defined “family” very narrowly, including, for the most part, husbands, wives, and children. Inez Moore, a resident of East Cleveland, was living with her son and her two grandsons, who were cousins. The city tried to compel Moore to remove the occupants from her house. When she refused, she was charged with a criminal violation. Moore sued the city, claiming that the ordinance violated her fundamental privacy right to live together with her extended family.

The US Supreme Court agreed. It held:

“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural. Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”

*Moore v. City of East Cleveland* dealt with the important constitutional topic of privacy rights. The Constitution does not specifically include the “right to privacy,” yet that right has been designated by the courts to be a fundamental right that

must be afforded to all citizens. Privacy rights, like other fundamental rights, warrant a strict scrutiny analysis.

The right to privacy encompasses various rights. Some of them include the right to marry, the right to have children, the right to live together as a close family unit, and the right of a parent to direct the upbringing and education of his or her children. Some of these rights were not always provided. For example, there was a time when interracial marriage (marriage between people of different races) was illegal in many states. It took several landmark cases, such as the Supreme Court case of *Loving v. Virginia*, to guarantee the right to marry.



***Marriage Certificate, from the Library of Congress***

*Loving v. Virginia* involved a Virginia couple, Richard and Mildred Loving, who left the state to be married in Washington, DC. At the time, Virginia prohibited marriage between a white and a non-white person—Richard Loving was white, and Mildred Loving was African-American—and punished those who engaged in interracial marriage. The Lovings were charged criminally with breaking the law. They pled guilty and were sentenced to one year in prison. Their

sentence was suspended for twenty-five years on the condition that the two leave the state of Virginia.

On appeal, the United States Supreme Court overturned the conviction. The Court held that the Virginia statute violated both the due process and the equal protection clauses of the Fourteenth Amendment to the US Constitution.

The Court noted:

“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.... To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.”

# QUESTIONS

## 5.1 Argument-Counterargument Exercise:

As shown by the *Loving* case, marriage (and the right to marry) has been deemed by the courts to be a fundamental right. Should all persons have the right to marry under all circumstances? Currently, states have the right to impose limitations on people's right to marry—for example, the states can set a minimum age limit, prohibit persons who are closely related from getting married, and impose marriage licensing requirements.

State three reasons why states should be able to set reasonable limitations on the fundamental right to marry.

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State three reasons why states should NOT be allowed to curtail the fundamental right to marry.

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## 5.2 What does the right of privacy mean to you?

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5.3 In the *Moore* case, the Court noted that decisions regarding child rearing (decisions of parents and parental figures about raising their children) are subject to constitutional protections and fall under the “privacy rights” category of fundamental rights. Why is this right to parent one’s children so

fundamental? Are there any limitations that should be placed upon this right?

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**5.4 Writing Prompt:**

In what ways do fundamental rights differ from other rights? How do you define “human rights”? Are those the same as fundamental rights or different? Explain your answer.

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# 6

## equal PROTECTION OF THE LAW

The Fifth Amendment provides citizens with the equal protection of the law. Equal protection, essentially, protects us from discrimination by the government. Equal protection prohibits any governmental regulation that involves a particular class of persons being treated differently from others. Say, for example, that a state passes a law that restricts the sale of firearms to men only. Because the law treats different classes (men and women) on different terms, it violates the equal protection clause of the Constitution.

### Equal protection:

an important doctrine that protects us from discrimination by the government by prohibiting any governmental regulation that involves a particular class of persons being treated differently from others

In many cases, the federal government, through the protections offered by the Fifth Amendment, may take action against those who discriminate. In some other cases, the state governments may do the same, under the governance of the Fourteenth Amendment. In essence, the Fourteenth Amendment serves to apply the provisions of due process and

equal protection to the state governments. Section 1 of the Fourteenth Amendment reads as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.”



### **Protected Classes**

Three standards of review apply to equal protection problems: strict scrutiny, intermediate scrutiny, and rational basis. The standard of review that applies depends on which class of persons is being discriminated against or treated differently from others.

If the protected class involves race, alienage, or national origin, the court will apply the strict scrutiny standard of review. In other words, if the government regulation involves one of those classes, such as race, then the court will impose the strictest standard of review when analyzing whether the regulation passes muster under the Constitution.

## **Equal Protection—Race**

### *Brown v. Board of Education*

In the landmark case of *Brown v. Board of Education*, in 1954, the Supreme Court abolished the so-called “separate but equal” doctrine. According to that doctrine, schools could segregate by race, as long as each school had equal facilities and resources for its students. Of course, separate but equal did not actually provide equality to all students, and the famous case resulted.

In *Brown v. Board of Education*, thirteen parents from Topeka, Kansas, filed suit against the Topeka Board of Education. The parents argued that state laws that had established separate public schools for black students and white students were unconstitutional and unequal. For instance, one plaintiff noted that his daughter had to walk six blocks to her school bus stop in order to be taken to her segregated “black” school a mile away—even though a “white” school was just seven blocks from her home.

The Court in this landmark case held that separate educational facilities were, in fact, inherently unequal. To separate students on the basis of race, the Court said, would serve to create “a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” After all, education, the Court noted, is perhaps the most important right that a society might bestow. Education includes both tangible and intangible benefits, such as being able to learn a profession.

## **Equal Protection—Gender**

To issues involving gender or legitimacy, the court will apply an intermediate scrutiny standard of review. Under the intermediate scrutiny standard of review, the government must prove that the regulation is substantially related to important governmental interests. This is not as difficult to prove as the strict scrutiny standard. However, it is still a significant challenge.

Today, it may seem unthinkable that a school would have certain classes, sports, student activities, or other programs only for students of a certain gender. Yet decades ago, there were several important cases that dealt with schools that discriminated against students on the basis of their gender.

Can an all-male military academy refuse to admit women cadets? What if the academy proposes to establish a similar, yet separate leadership program for women—but what if that program is not nearly as rigorous and does not have the same financial resources and reputation as the program for male students? In the case of *United States v. Virginia*, in 1996, the Supreme Court applied the equal protection clause to the Virginia Military Institute (VMI) and struck down the Institute's longstanding, male-only admissions policy.

VMI's policy of excluding women violated the equal protection clause of the US Constitution. The Supreme Court held that VMI failed to show “exceedingly persuasive justification” for its gender-based admissions policy. In other words, VMI provided no reason good enough to allow it to have separate classes for its female students. Even though the separate leadership program for women would have allowed female cadets to take classes similar to those of the men, the classes were not equal. Therefore, the policy failed scrutiny under the equal protection clause.

All other classifications receive the rational basis standard of review—including juveniles, age, education, public housing, welfare, unrelated people living together, and disability. Under the rational basis standard, the plaintiff must prove that the regulation is not rationally related to a conceivable governmental interest. This is a significantly lesser burden for the government, and it is much more difficult for a plaintiff in these classifications who claims discrimination to win his or her case.



# QUESTIONS

## **6.1 Argument-Counterargument Exercise:**

Does having different classifications, and different standards of review that apply to those classes, imply that certain classes, groups of people, or rights are more important than others?

State three reasons IN FAVOR of having different classifications, and different standards of review, apply to different groups of people.

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State three reasons AGAINST having different classifications, and different standards of review, apply to different groups of people.

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**6.2** Should the number of “protected classes” be increased? Why or why not? If yes, what other classes should be added to the list of “protected classes”?

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**6.3** What does “discrimination” mean?

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#### **6.4 Writing Prompt:**

Can you think of any examples where different people are treated unequally, yet the laws allow such unequal treatment? Consider, for example, the ways in which children are treated differently from others. Under what circumstances is unequal treatment a good idea? Explain your answer.

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## PROCEDURAL **DUE PROCESS**

The Constitution protects against a deprivation of life, liberty, or property without due process of law. To put it simply, questions of procedural due process involve a situation where someone had something which was then taken away through some government action.

For example, questions involving procedural due process very often involve public employment, benefits, or licenses. If a citizen is being deprived of an entitlement (a right), then some form of notice and a hearing are due.

How much notice and what kind of hearing are due? Those answers depend on the type of entitlement involved. Typically, the greater the right, the more process is required.

### Procedural due process:

a doctrine that protects against a deprivation of life, liberty, or property without due process of law; for example, if a citizen is being deprived of an entitlement (a right), then some form of notice and a hearing are due

Some of the examples of “process” that may be due to the citizen include the following:

- a formal hearing
- notice to the citizen regarding the right being taken away
- the opportunity to present witnesses and evidence in support of one’s case
- the opportunity to confront the government’s evidence and witnesses against oneself
- a written final decision
- the right to appeal the final decision

An important area of procedural due process might have special personal significance to you: it deals with the rights of students in school. Can a school suspend or expel a student or exact a similar disciplinary punishment without providing adequate procedural safeguards?

In the 1975 case of *Goss v. Lopez*, the US Supreme Court said no. That case involved nine students who were suspended from their Ohio schools for destruction of property and other misconduct. Ohio law, at the time, allowed principals to suspend students for ten days without a hearing. The students sued, claiming that the schools (and thereby, the state) had

deprived them of their right to an education without giving them procedural due process.

The Court noted that the right to an education was indeed a fundamental right, and that before a school could take that right away (by suspending or expelling a student, for instance), it must provide notice and a hearing in order to comply with procedural due process requirements. The Court noted that the most fundamental requirement of due process is notice and the opportunity to be heard, which can only be made meaningful by granting some sort of hearing to students before depriving them of their right to an education. (Of course, the Court recognized that there are instances in which an immediate hearing cannot be given, such as situations where a student is posing an immediate danger or disruption; in those instances, reasonable exceptions may be allowed.)





Another important area of procedural due process is the government’s “taking” power, also known as “eminent domain.” Eminent domain applies to situations where the government attempts to occupy or otherwise take away a person’s land. When the government attempts to take a person’s land for public use, like for building a highway, that obviously counts as a taking. The government must provide “just compensation” to the landowner when a physical occupation occurs.

Of course, procedural due process also applies to the rights of persons who are accused of committing a crime. This topic is covered in greater detail in [Chapter 10](#).

# QUESTIONS

## 7.1 Argument-Counterargument Exercise:

State three reasons why the government should have the right to take people's land for public purposes.

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State three reasons why the government should NOT have the right to take people's land for public purposes.

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7.2 To what extent should students in middle and high school be entitled to procedural due process protections? Consider the following examples. For each of them, identify what type of process should be due.

- in-school detention
  - out-of-school suspension
  - expulsion from school
  - taking away of a student's personal property, such as cell phones which are being used in the classroom
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## 7.3 Writing Prompt:

Imagine that you are a high school principal. Write a short notice to students detailing the types of behavior that are against your school's policies. Then, provide an explanation of how you will deal with behaviors that violate the school's policies, and what type of procedures take place to provide students with due process.

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## Unit 2 Test



### Multiple Choice Questions:

*Circle the correct answer.*

1. Which of the following is a fundamental right?
  - A. privacy
  - B. the right to vote
  - C. access to the court system
  - D. all of the above
6. Which of the following protects us from discrimination by the government?
  - A. fundamental rights
  - B. the equal protection clause
  - C. procedural due process
  - D. none of the above
11. Which of the following is an example of property rights involving procedural due process?
  - A. licenses
  - B. public employment
  - C. welfare benefits
  - D. all of the above
16. Which of the following is an example of the various types of safeguards, or processes, which may have to be afforded to a citizen whose rights are being taken away?

- A. notice
  - B. hearing
  - C. appeal
  - D. all of the above
21. What is the proper standard of review for classifications that involve race or national origin?
- A. strict scrutiny
  - B. mid-level scrutiny
  - C. rational basis
  - D. safeguards
26. What term describes a right that is of utmost importance?
- A. fundamental
  - B. rational
  - C. strict
  - D. due process
31. Which of the following is true about the strict scrutiny standard of review for fundamental rights?
- A. The law must be narrowly tailored to the goals sought to be achieved.
  - B. In order for the government to limit one of the rights considered fundamental, the government must be protecting an interest that is of utmost importance—for example, the safety or security of its citizens.
  - C. Whatever limits the government imposes must be narrowly tailored, meaning that the limits must present the least possible infringement upon citizens' rights.
  - D. all of the above
36. From where does the right to privacy originate?

- A. the Constitution
  - B. the First Amendment
  - C. the Fifth Amendment
  - D. the courts, specifically the United States Supreme Court
41. In which of these landmark cases did the Supreme Court strike down a school's all-male admissions policy?
- A. United States v. Virginia
  - B. Goss v. Lopez
  - C. Brown v. Board of Education
  - D. Loving v. Virginia
46. In which of these landmark cases did the Supreme Court guarantee to citizens the right to marry?
- A. United States v. Virginia
  - B. Goss v. Lopez
  - C. Brown v. Board of Education
  - D. Loving v. Virginia

### **True or False Questions:**

*Circle the correct answer.*

1. **True or false:** The Fifth Amendment provides citizens with the equal protection of the law.
2. **True or false:** Regulations involving the classes of race or alienage are afforded strict scrutiny.
3. **True or false:** Regulations involving the class of gender are afforded strict scrutiny.
4. **True or false:** The rational basis standard is a significantly lesser burden for the government, and plaintiffs who claim discrimination have much more difficulty winning their cases.
5. **True or false:** The government must provide "just compensation" to the landowner when a physical

occupation occurs.

6. **True or false:** Fundamental rights warrant the strict scrutiny standard of review.
7. **True or false:** The Supreme Court has abolished the so-called “separate but equal” doctrine.
8. **True or false:** The Constitution protects against a deprivation of life, liberty, or property without due process of law.
9. **True or false:** Fundamental privacy rights include the right to marry and the right of a family to live together as a unit.
10. **True or false:** Due process and equal protection are not only found in the same amendment to the US Constitution, they are also essentially the same thing.

**Short Answer Questions:**

1. What does “fundamental right” mean?

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2. List and explain the three standards that apply to various equal protection issues.

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3. List five examples of procedural safeguards that may be required in the event of a deprivation of a right.

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[Chapter 8](#)

[First Amendment Freedoms—Freedom of Religion](#)

[Chapter 9](#)

[First Amendment Freedoms—Free Expression](#)

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[UNIT 3 TEST](#)







## FIRST AMENDMENT FREEDOMS

# FREEDOM OF RELIGION

An important freedom provided by the First Amendment is the freedom of religion.

This freedom has two parts. First, the free exercise clause allows all Americans to practice freely their chosen religious beliefs. Second, the establishment clause states that the government must not enact any laws that aid one or all religions, or give a preference to one religion over another.

Let's look at both of these two important clauses separately.

### Free exercise clause:

a clause that allows all Americans to practice freely their chosen beliefs

### Establishment clause:

a clause that states that the government must not enact any laws that aid one or all religions, or give a preference to one religion over another

## **The Free Exercise Clause**

The free exercise clause protects against any law “prohibiting the free exercise of religion.” This means that government may neither prohibit nor seriously burden a person’s ability to practice whatever religion he or she chooses. In effect, this clause seeks to bar the government from getting in the way of people practicing their religious beliefs.

The free exercise clause protects both religious beliefs and religious conduct; it applies to a person’s right to *believe* in any particular higher power or religious conviction, as well as the person’s right to *practice* those beliefs freely. Any governmental regulation that infringes on a person’s right to do so is subjected to review by the highest standard—strict scrutiny.



*Contemplation of Justice* by James Earle Fraser

Of course, it's easy to see that an outright ban on the practice of religion goes against the First Amendment. But some governmental regulations are simply "incidental" burdens on the practice of religion. For example, say that a city passes an ordinance (a local law) that prohibits all forms of animal cruelty and animal sacrifice. If a particular religion believes in sacrificing animals in the name of that religion, could members claim that the city ordinance infringes on their First Amendment freedom of religion? The Supreme Court said yes.

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, the city of Hialeah passed a series of ordinances that prohibited the killing of animals in a public or private ritual ceremony if not for the purpose of food consumption. The

church of a religious group that sometimes engaged in rituals of animal sacrifice sued the city. The Supreme Court held that the ordinance was not narrowly tailored to meet a compelling governmental interest by the city. The Court said that the ordinance repressed more religious conduct than was necessary. The ordinance was found to be unconstitutional.

### **The Establishment Clause**

The establishment clause says that the government “shall make no law respecting an establishment of religion.” In other words, the government cannot make any one religion “official,” nor can it compel people to practice certain religious beliefs.



An important part of the establishment clause deals with its application to schools. Different families practice different religions. In most circumstances, a student whose family practices a particular religion cannot be compelled, or made, to practice other religions at school. For example, if you or your family does not believe that lighting candles is a part of your religion, then your public school cannot make you light candles for religious reasons.

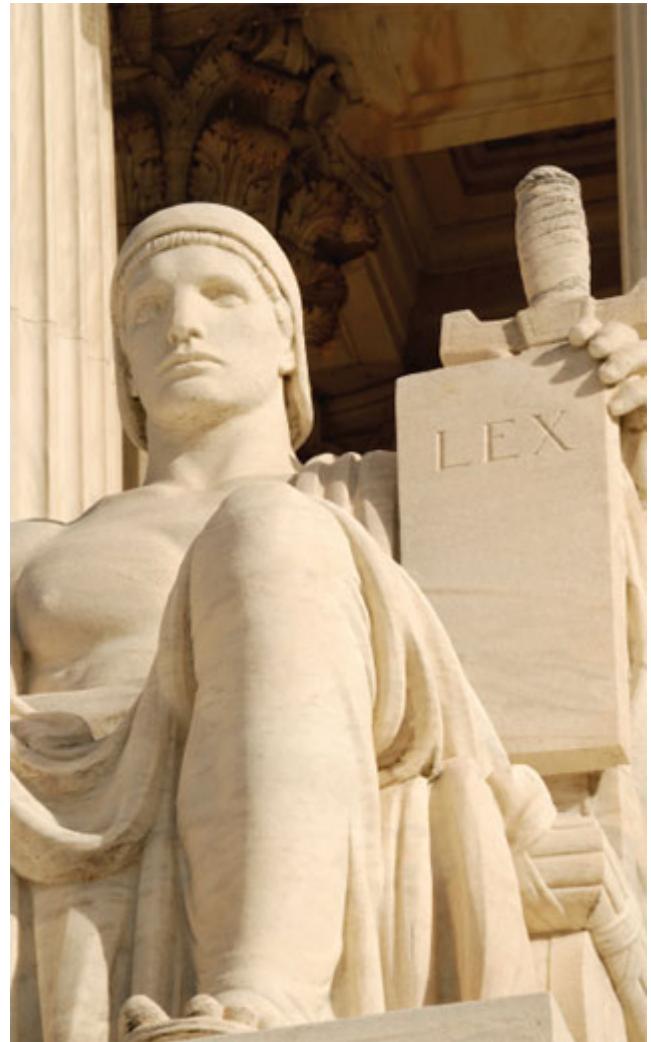
Now that you know what the establishment clause means, consider the following scenario.

You go to a public high school. You are attending a football game at your home stadium. You are ready to cheer on your team and are hoping for a big win. You can't wait for the game to start. Before the teams take to the field, a student begins to speak on the loudspeaker. This student holds the post of "student council chaplain" in your school. The student delivers a short prayer—which he calls an "invocation"—for a successful game and victory for the team. You do not share the religious beliefs of this student. You'd prefer not to have to participate or even listen to the prayers offered before the games.

In the name of school spirit, do you think this "invocation" is permissible?

In *Santa Fe Independent School District v. Doe*, the Supreme Court said no. The Court held that the Santa Fe School District's policy, which allowed student-led and student-initiated prayer, violated the establishment clause. While the school district claimed that it attempted to be neutral in allowing the prayers, that it never required student participation, and that the prayers were supposed to represent sportsmanship rather than religion, the Supreme Court disagreed. The Court reasoned that the district's policy of allowing prayers constituted an actual or perceived endorsement of religious messages.

"[T]he District has established a governmental electoral mechanism that turns the school into a forum for religious debate. It further empowers the student body majority with the authority to subject students of minority views to constitutionally improper messages," the Court stated. "Such a system encourages divisiveness along religious lines and threatens the imposition of coercion upon those students not desiring to participate in a religious exercise."



*Authority of Law* by James Earle Fraser

# QUESTIONS

**8.1** Is religious freedom a fundamental human right? Why or why not?

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**8.2 Argument-Counterargument Exercise:**

State three reasons why your local town should allow its citizens to erect religious holiday displays in public parks.

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State three reasons why your local town should NOT allow its citizens to erect religious holiday displays in public parks.

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**8.3** Which of the following do you believe constitutes a violation of the establishment clause? State why for each.

a. having religious clubs on a public school campus and allowing students to be members of those clubs and to use school grounds to hold meetings and events

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b. having weekly religious services on a public school campus and encouraging students to attend those services

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c. having a public school teacher say a short prayer before his or her students take a test

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d. giving low-income public school students tuition vouchers to use at parochial or religious private schools

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e. busing religious, private-school students from home to school and back, using public school funds

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#### **8.4 Writing Prompt:**

Should every citizen have the right to practice his or her religion without any restrictions? What if a person's religious beliefs jeopardize the safety of another human or the safety of the public at large? For example, what if a practitioner believes that striking children with an olive branch is cleansing to their souls? To what extent should government regulate the conduct of religious practitioners who may pose a threat to others?

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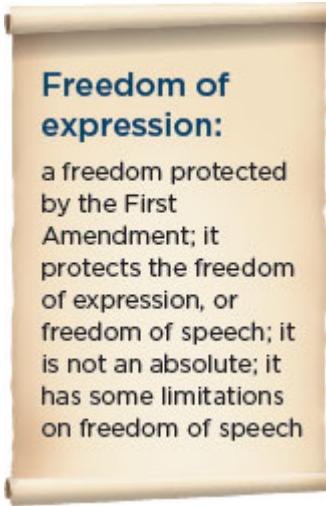
FIRST AMENDMENT  
FREEDOMS

## FREE EXPRESSION

Have you ever heard the expression that individuality is what makes the world go around? It means that the world is a better—and certainly more interesting—place because people act differently, have different tastes, and like different things. Just imagine how plain our world would be if we required everyone to believe, wear, say, and do the same things!

A key component to being an individual is the freedom to express yourself—to state your beliefs, to say what is on your mind, and to communicate your ideas and beliefs to other people.

The First Amendment provides Americans with the freedom of expression, or freedom of speech. If you disagree with a particular tax that the government has established, for instance, you have the right to protest against that tax by speaking out, wearing a T-shirt that denounces the tax, or staging a protest in a public place.



### Freedom of expression:

a freedom protected by the First Amendment; it protects the freedom of expression, or freedom of speech; it is not an absolute; it has some limitations on freedom of speech

Freedom of speech is not an absolute right; the freedom has some limitations. For example, a person cannot use the First Amendment's protections to cheat others (such as by telling another person a lie in order to gain that person's trust and have access to the person's money) or to defame others (such as by spreading nasty, false rumors about another person). In addition, the government may set certain limitations of time, place, and manner on speech. For example, the government may require people to obtain a permit—written permission by the government—before the people stage a protest or organize a parade. The government may also designate certain “public places,” such as parks, in which protests or parades may be held.

To what extent are public school students allowed to express themselves under the First Amendment? Should that right be limited even more—simply because school is a serious place with a serious purpose? Should it be limited because allowing students to say and do anything would undermine the teachers' and principals' ability to teach?

In the case of *West Virginia State Board of Education v. Barnette*, the Supreme Court addressed an interesting question: may a state compel school children to salute the United States flag every day, even if a student claims that doing so goes against his or her religious beliefs?



West Virginia had passed a statute, or law, that made it mandatory for all school children to salute the flag and pledge allegiance to it. Some parents and children practiced a religion that prohibited them from bowing to or serving any “images” other than the God in which they believed. The parents and children considered the United States flag to be such an image, and refused to salute it.

As a result, children were expelled or threatened with expulsion from school. Parents were prosecuted. Children were threatened with being sent to juvenile reformatories. The parents of the school children filed suit against the West Virginia Board of Education. The parents asked that the state be restrained from enforcing the law in question. They also claimed that the statute infringed upon their and their children’s First Amendment freedoms.



*The Statue of Liberty, from the Library of Congress Archive*

The Supreme Court agreed with the parents. It held that the West Virginia statute compelling the flag salute “transcended” the state government’s constitutional limitations of power. In other words, the Court held that the state had overstepped its boundaries in enacting the statute. Also, the Court said that the statute “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”

In another case, *Tinker v. Des Moines School District*, the Supreme Court addressed the right of public school students to express themselves through clothing—clearly, an important

issue for teenagers and young adults! In that case, three students were suspended from school: two from high school and one from junior high. The case took place during the war in Vietnam, which was an international conflict that lasted from 1954 to 1975 and involved United States troops.

The three students in question did not agree with the United States' involvement in the Vietnam War. To show their protest, the students wanted to wear black armbands to school. When the school heard of the students' plans, it forbade any student from wearing black armbands. The students wore the armbands anyway, and they were suspended.

The Supreme Court held that the school violated the students' First Amendment freedom of expression. First Amendment rights, the Court said, were not limited to telephones or pamphlets. Here, the students were exercising "symbolic" speech when they wore the armbands to show their disagreement with the war. Furthermore, the Court held that the school had no valid reason not to allow the armbands—after all, there was no evidence that the students disrupted the learning process by wearing them.

# QUESTIONS

**9.1** Should middle or high school students have the right to wear the following pieces of clothing:

- extremely short cut-off shorts
- a T-shirt that reads “Drugs are Dope”
- a T-shirt that reads “All Murderers Should Be Hung”
- jewelry with spikes on it

Why or why not?

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**9.2 Argument-Counterargument Exercise:**

State three reasons why school uniforms are a **GOOD** idea.

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State three reasons why school uniforms are a **BAD** idea.

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**9.3** In the *Barnette* case, the Court noted the following:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.”

What do you think this quote means?

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## 9.4 Hypothetical Exercise:

Sal, a high school student, started a blog titled “100 Reasons Why Principal Smith Sucks.” On his blog, Sal discussed the work of Principal Smith, the principal at Sal’s high school, whom Sal believes to be a terrible principal. When Principal Smith found out about the blog, he immediately suspended Sal indefinitely. Sal’s parents filed a suit against Principal Smith and the high school in federal court, claiming First Amendment violations. How should the court rule? Why?

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## 9.5 Hypothetical Exercise:

Suppose that the following is an excerpt from the dress code at High School, a suburban public school:

“High School strictly prohibits any gang-related clothing, attire, and other items. Examples of gang-related clothing, attire, and other items include, but are not limited to, the following items:

- visible tattoos of ANY kind
  - untied or dangling belts
  - pant legs which are longer than the tops of the shoes
  - steel-toed shoes or boots
  - sagging pants or shorts
  - socks that touch the bottom hem of shorts

- ANY head gear, including hats, caps, scarves, or bandannas (unless worn for medical or religious reasons with prior permission)
- ANY sports jerseys or shirts with professional or collegiate sports logos or names

Students who violate these standards will be sent home to change their clothing. Repeat violators will be suspended or expelled.”

Do you think this dress code infringes upon students' First Amendment rights? Why or why not?

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# Unit 3 Test



## Multiple Choice Questions:

*Circle the correct answer.*

1. Which of the following says that the government “shall make no law respecting an establishment of religion”?
  - A. the free exercise clause
  - B. the establishment clause
  - C. freedom of expression
  - D. none of the above
6. Which of the following protects both religious beliefs and religious conduct?
  - A. the free exercise clause
  - B. the establishment clause
  - C. freedom of expression
  - D. none of the above
11. Which of the following deals with free speech under the First Amendment?
  - A. the free exercise clause
  - B. the establishment clause
  - C. freedom of expression
  - D. none of the above
16. Which of the following is an example of a “time, place, and manner” regulation?
  - A. permits required by the government

- B. the government's decision to designate certain public places
  - C. reasonable time limits on when a person may speak in a public place
  - D. all of the above
21. Which of the following cases addressed the right of public school students to express themselves through clothing?
- A. West Virginia State Board of Education v. Barnette
  - B. Tinker v. Des Moines School District
  - C. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah
  - D. none of the above
26. When may a school place limits on or regulate the speech of its students?
- A. if a student is on academic probation
  - B. if a student is speaking loudly
  - C. if a student's speech is sufficiently disruptive to the classroom
  - D. if a student is speaking about a teacher or the principal
31. Which of the following is an example of the free exercise clause being properly used by a citizen who is unhappy about a tax?
- A. protesting against that tax by speaking out
  - B. wearing a T-shirt that denounces the tax
  - C. staging a protest in a public place
  - D. all of the above
36. Which of the following is an example of how the free exercise clause applies to the protection of our citizens?

- A. Government may not prohibit a person's ability to practice whatever religion he or she chooses.
  - B. Government is prohibited from getting in the way of people practicing their religious beliefs.
  - C. Government may not make people practice religion.
  - D. all of the above
41. Which of these examples is NOT protected by the First Amendment?
- A. speaking out against your school system
  - B. speaking out against your government
  - C. saying something negative about another person that is not true
  - D. saying something about another person that reflects your opinion of that person
46. The First Amendment is a part of what important document?
- A. the Declaration of Independence
  - B. the Bill of Rights
  - C. the United States Code
  - D. the US Supreme Court Reports

### **True or False Questions:**

*Circle the correct answer.*

1. **True or false:** Freedom of speech is an absolute right.
2. **True or false:** The government may set certain limitations on time, place, and manner of speech.
3. **True or false:** The free exercise clause and the establishment clause are two concepts that deal with freedom of speech.
4. **True or false:** Freedom of expression and freedom of religion are both First Amendment freedoms.

5. **True or false:** First Amendment freedoms are subject to the highest level of scrutiny in court.
6. **True or false:** The establishment clause does not apply to school students.
7. **True or false:** Some governmental regulations are simply “incidental” burdens on the practice of religion.
8. **True or false:** The government may, if it so chooses, make a particular religion the “official religion” of the United States.
9. **True or false:** The government cannot compel people to practice any religion, nor can it prevent people from practicing a particular religion.
10. **True or false:** The free exercise clause extends to “symbolic speech.”

### **Short Answer Questions:**

1. What does “freedom of expression” mean?

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2. Explain what the free exercise clause states.

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3. Explain what the establishment clause states.

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[Chapter 10](#)  
[Criminal Protections](#)

[Chapter 11](#)  
[Current Events](#)

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[UNIT 4 TEST](#)







CRIMINAL

# PROTECTIONS

**Picture this:** your mom angrily calls you downstairs one afternoon. She demands to know why you broke your video game console. You quickly explain to her that you do not know anything about how the console broke, and you did not do anything to it. Your mom says she does not want to hear any excuses. She explains that the console is definitely broken. Then, she points out that you were the last person in the house to play video games, so it must follow that the console broke because of your actions. Even though you swear to your mom that you have not done anything wrong, she punishes you by grounding you for two weeks.



Do you think there is something wrong with that scenario? Should you have the right to make your case, to explain what did or did not happen? Or should you be punished automatically?



**Now think about this:** A woman is arrested by a police officer just outside a department store. The police officer says that the woman took an expensive necklace and walked out of the store without paying for it. The woman swears that she was going to pay for the necklace, but forgot that she had put it inside her shopping bag. Should the woman have the right to explain her actions? Should she be punished automatically? What do you think?

Several provisions in the Bill of Rights give protections to people who are accused of committing a crime. Some of the most important examples are the following:

#### **Unreasonable searches and seizures:**

The Fourth Amendment protects against "unreasonable searches and seizures." In order for a search to be in effect, the person searched must have a "reasonable expectation of privacy." There are many valid "warrantless searches."

- The Fourth Amendment protects against “unreasonable searches and seizures.” This means that the police cannot stop citizens without a valid reason to do so, nor can the police search citizens and their belongings without a valid reason. In order for a search to be in effect, the person searched must have a “reasonable expectation of privacy.” For example, a person can expect that his or her home will be kept largely private; however, a person cannot expect to remain private if he does something illegal in a public place. Of course, the police can have many valid reasons to stop someone—for example, if the person is speeding while driving a car. In order to search a person, or his or her house or belongings, police must have a valid search warrant. A search warrant is a document, issued by a judge or a court, that notes the reasons for conducting a search, describes the proper ways in which the search must be conducted, and gives the police authority to perform the search. Police also may have many valid reasons for conducting a valid, warrantless search, or a search for which no search warrant is required. Some examples of valid, warrantless searches include searches:
  - a. where the police see “in plain view” that a person is doing something illegal, such as selling drugs;
  - b. where the police believe that there exists an emergency, such as when they are chasing a suspect in “hot pursuit”;
  - c. where the police tow an automobile and want to perform an “inventory” search of the car;
  - d. where the police believe that a suspect will try to destroy evidence within the time the police might spend securing a warrant, such as a situation where a drug dealer will flush drugs down the toilet;
  - e. at borders and airports, where national security issues are highly important;
  - f. where the police lawfully arrest a suspect for committing a crime, and search the suspect’s clothing

and belongings;

g. where the person being searched gives permission (“consent”) to the search.

- The Fifth Amendment provides the “privilege against self-incrimination.” This privilege means that citizens cannot be compelled to say or do anything that would incriminate them, which means putting them in a position that could subject them to be accused of a crime. Say, for example, that a policeman stops a citizen and asks a question regarding the citizen’s involvement or knowledge about a recent burglary. The citizen can invoke his “right to remain silent” and does not have to answer the question.
- The Sixth Amendment provides for a public and speedy trial and a trial by jury. This means that, if a person is accused of committing a crime, he or she has the right to a trial in court, to tell his or her side of the story, to defend him or herself, and to have the final decision made by a jury of his or her peers.
- The Sixth Amendment also provides for the right to counsel, or the right to have assistance by an attorney during your case. If you cannot afford an attorney, one is provided for you.
- The Eighth Amendment protects against cruel and unusual punishment. For example, a citizen who is found guilty of a crime cannot be beaten, or hit with sticks or canes, or tortured. Instead, that citizen is punished by some legal means, such as jail time, paying fines, or serving probation. In some cases of very serious crimes, such as killing another human being, some states may impose capital punishment, which means punishment by the death penalty.
- The Eighth Amendment also protects against “double jeopardy.” This means that a person cannot be tried for the same crime twice.

**Privilege  
against self-  
incrimination:**

a privilege protected by the Fifth Amendment; the privilege states that citizens cannot be compelled to say or do anything that would incriminate them, which means putting them in a position that could subject them to be accused of a crime

# SEARCH WARRANT

THE (STATE) \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY, \_\_\_\_\_ ACTION-LAW.

Plaintiff/Petitioner: \_\_\_\_\_ Number: \_\_\_\_\_

vs  
Defendant/Respondent: \_\_\_\_\_

QUALIFIED ORDER

Day of \_\_\_\_\_





The following two famous cases deal with important criminal protections.



Clarence Earl Gideon was accused of breaking and entering in Florida, after a pool hall was burglarized and a witness claimed that he had seen Gideon leaving the pool hall with a wine bottle and money in his pockets. When Gideon's case was tried in court, he asked that an attorney be provided, since he was too poor to afford one himself.

The trial judge denied Gideon's request. He said that the assistance of an attorney was only required in "capital" cases, or cases which could result in the death penalty. Because Gideon's case could only result in jail time, the judge ruled that he was not entitled to the assistance of an attorney.

The jury found Gideon guilty of breaking and entering. He was sentenced to five years in jail. While in jail, Gideon appealed his case to the United States Supreme Court. He acted as his own attorney (a process called *pro se* representation), researched his own case, and wrote to the Court on prison stationery.

The Supreme Court sided with Gideon. The

Court ruled that the assistance of counsel is a fundamental right and is essential for a fair trial. In essence, the Court said that no one—regardless of wealth or other factors—should have to face a criminal trial without the assistance of an attorney.

"[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him," the Court noted. "This seems to us to be an obvious truth."

In the end, Gideon received a second, new trial. He was acquitted of the crime.



The police arrested Ernesto Miranda at his home and then took him to a room at the police station for questioning on whether he had committed a crime. The police never advised Miranda that he had a right to have an attorney present prior to questioning. Miranda signed a confession, where he admitted to the crime with which he was charged. Miranda's confession form said his confession was made voluntarily, with "full knowledge of my legal rights, understanding any statement I make may be used against me."

In court, Miranda objected to the introduction of his "voluntary" confession into evidence. He claimed that he did not understand his rights at the time of signing, and that his confession was not voluntary after all.

The Supreme Court ruled that under the Constitution, police must provide certain protections. When the police conduct a "custodial interrogation," the police must advise the person that he or she has the right to remain silent, that anything the person says may be used against him or her in a court of law, that the person has the right to an attorney during questioning, and that if the person cannot afford an attorney and desires one, one will be appointed for him or her prior to questioning.

The mere fact that Miranda signed the confession stating he had knowledge of his legal rights is not enough. An individual cannot knowingly and intelligently waive his or her rights without being told of the right to remain silent, that anything said could be used against them, that they have a right to an attorney, and if they cannot afford one, a lawyer would be appointed for them. Since Miranda was not specifically advised of these rights, he was not afforded his Fifth Amendment right to prevent compelled self-incrimination or his Sixth Amendment right to counsel. The US Supreme Court reversed the Arizona Supreme Court's decision in which Miranda was originally convicted of his crime.

## QUESTIONS

**10.1** Should every citizen have the right to the presence of an attorney at all stages of a criminal trial? Currently, the law says that an attorney's presence is only required at critical stages of the criminal process—for example, at important hearings before a judge, at a criminal trial, and at sentencing. The presence of counsel is not required in some instances. For example, a person accused of a crime may be fingerprinted, or the police, without the presence of counsel, may take his or her DNA sample. (Note: DNA is short for deoxyribonucleic acid, which is a long molecule that carries a person's genetic code. DNA may be found in a person's saliva, hair, and nail clippings, as some examples.) Do you think it is proper not to have counsel at "non-critical" stages? Why or why not?

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### **10.2 Argument-Counterargument Exercise:**

Some states have passed laws called "Three Strikes Laws," which require a judge to impose a life sentence (life in jail) on people who have committed three serious crimes. For example, in some states, a criminal who has been convicted of two burglaries and then is convicted of a third burglary can receive a life sentence.

State three reasons why Three Strikes Laws can be effective:

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State three reasons why Three Strikes Laws should NOT be allowed:

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**10.3** Do you know what the terms “burden of proof” and “standard of proof” mean? During a trial, certain parties must bear the burden of proving their case. For example, in a civil case (where one party sues another party on the basis of a private wrong), the plaintiff, the person who filed the lawsuit, bears the burden of proving his or her case against the defendant. In criminal cases, the prosecution (the state or federal government) has the burden of proof against the criminal defendant who has been charged with a crime. The standard of proof in a criminal trial is “beyond a reasonable doubt.” What does “beyond a reasonable doubt” mean, in your words?

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**10.4** Should children and teens expect to have the same “reasonable expectation of privacy” as adults do? For example, if an adult’s locker at work is not subject to a search, should the same exclusion apply to a student’s locker at school? Why or why not?

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**10.5** Currently, many states make “juvenile” crimes separate from “adult” crimes. If one commits a crime while he or she is under the age of majority (eighteen, or seventeen in some states), then he or she is not subject to the same trial or punishments as adult criminals would be. Do you think this is a good idea? Why or why not?

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**10.6 Writing Prompt:**

Under what circumstances, if any, is it permissible to impose the death penalty upon a convicted criminal? Under what circumstances, if any, is it permissible to impose a life sentence in prison upon a convicted criminal?

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11

CURRENT

# events

## DEBATE #1:

Is public humiliation an acceptable punishment for criminals?



1. Introduce your claim about this issue.

Your claim:

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2. Support your claim with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic and rely on credible sources.

Support:

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Support:

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Support:

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3. Acknowledge alternate or opposing claims, and distinguish them from your claim by using well-thought-out, relevant counterclaims.

Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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4. Provide a conclusion that follows from and supports your claim presented.

Conclusion:

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**DEBATE #2:**

**Should junk food be banned from schools?**





1. Introduce your claim about this issue.

Your claim:

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2. Support your claim with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic and rely on credible sources.

Support:

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Support:

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Support:

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3. Acknowledge alternate or opposing claims, and distinguish them from your claim by using well-thought-out, relevant counterclaims.

Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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4. Provide a conclusion that follows from and supports your claim presented.

Conclusion:

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### **DEBATE #3:**

**Should animal testing be legal or illegal?**



1. Introduce your claim about this issue.

Your claim:

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2. Support your claim with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic and rely on credible sources.

Support:

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Support:

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Support:

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3. Acknowledge alternate or opposing claims, and distinguish them from your claim by using well-thought-out, relevant counterclaims.

Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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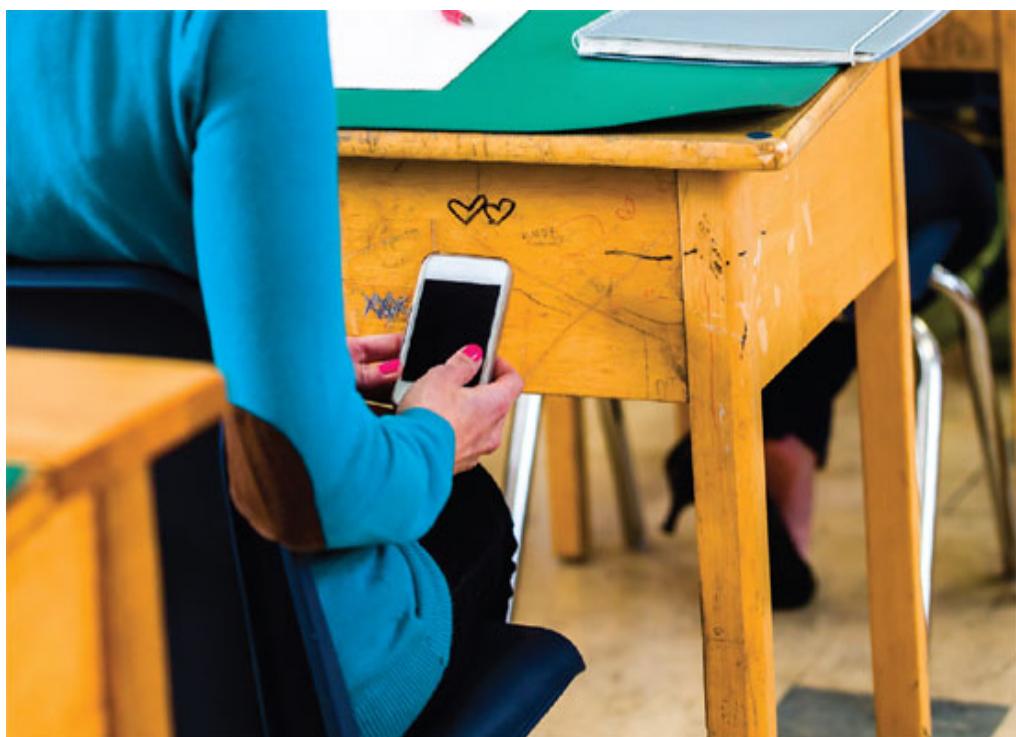
4. Provide a conclusion that follows from and supports your claim presented.

Conclusion:

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**DEBATE #4:**

**Should cell phones be allowed in public schools?**



1. Introduce your claim about this issue.

Your claim:

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2. Support your claim with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic and rely on credible sources.

Support:

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Support:

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Support:

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3. Acknowledge alternate or opposing claims, and distinguish them from your claim by using well-

thought-out, relevant counterclaims.

Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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4. Provide a conclusion that follows from and supports your claim presented.

Conclusion:

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#### **DEBATE #5:**

**Should the driving age be raised in every state to eighteen years old?**



1. Introduce your claim about this issue.

Your claim:

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2. Support your claim with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic and rely on credible sources.

Support:

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Support:

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Support:

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3. Acknowledge alternate or opposing claims, and distinguish them from your claim by using well-thought-out, relevant counterclaims.

Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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Alternate claim and counterclaim:

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4. Provide a conclusion that follows from and supports your claim presented.

Conclusion:

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## Unit 4 Test



### Multiple Choice Questions:

*Circle the correct answer.*

1. Which of the following is defined as a governmental intrusion into a person, paper, or effects?
  - A. seizure
  - B. search
  - C. counsel
  - D. Miranda
  
6. Which of the following is NOT a valid warrantless search?
  - A. where the police see “in plain view” that a person is doing something illegal, such as selling drugs
  - B. where the police believe that there exists an emergency, such as when they are chasing a suspect in “hot pursuit”
  - C. where the police tow an automobile and want to perform an “inventory” search of the car
  - D. where the police believe that the person has done something wrong
  
11. Which of the following is the proper term for the person who is being searched giving permission to search?
  - A. consideration
  - B. counsel

- C. consent
  - D. Miranda
16. Which of the following is NOT one of the Miranda rights afforded to accused persons?
- A. the right to remain silent
  - B. the right to an attorney
  - C. the right to a private trial
  - D. the right to have an attorney provided free of charge if the person cannot afford one
21. Which of the following did Gideon (the defendant in *Gideon v. Wainwright*) do as part of his appeal?
- A. He acted as his own attorney.
  - B. He researched his own case.
  - C. He wrote to the Supreme Court on prison stationery.
  - D. all of the above
26. Which amendment to the United States Constitution protects against unreasonable searches and seizures?
- A. the Fourth Amendment
  - B. the Fifth Amendment
  - C. the Sixth Amendment
  - D. the Eighth Amendment
31. Which amendment to the United States Constitution provides for the right to counsel?
- A. the Fourth Amendment
  - B. the Fifth Amendment
  - C. the Sixth Amendment
  - D. the Eighth Amendment

36. Which amendment to the United States Constitution protects against cruel and unusual punishment?
- the Fourth Amendment
  - the Fifth Amendment
  - the Sixth Amendment
  - the Eighth Amendment
41. Which of the following is the proper term for punishment that allows for the death penalty?
- cruel and unusual punishment
  - capital punishment
  - death punishment
  - none of the above
46. Which case provided suspects with the right to remain silent?
- Miranda v. Arizona
  - Gideon v. Wainwright
  - Loving v. Virginia
  - none of the above

**True or False Questions:**

*Circle the correct answer.*

- True or false:** Criminal protections arise from the Bill of Rights, which encompasses the first ten amendments to the Constitution.
- True or false:** A person can expect a right to privacy even if he or she does something illegal in a public place.
- True or false:** The government may conduct a search on anyone whom the police believe to be guilty of a crime.

4. **True or false:** A person cannot be tried for the same crime twice.
5. **True or false:** Acting as your own attorney is allowed in court, and it is done through a process called *pro se* representation.
6. **True or false:** The Fifth Amendment provides the “privilege against self-incrimination.”
7. **True or false:** A citizen must always answer every question that is asked by a police officer.
8. **True or false:** Citizens have the right to a speedy and public trial, and a right to a trial by a jury.
9. **True or false:** In order for a search to be in effect, the person searched must have a “reasonable expectation of privacy.”
10. **True or false:** An accused person has the right to counsel in all parts of the proceedings at trial.

### **Short Answer Questions:**

1. List five criminal procedure protections afforded by the Bill of Rights.

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2. List five “warrantless search” exceptions in the area of searches and seizures.

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3. Explain the concept of Miranda rights.

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# APPENDIX

## **The Bill of Rights—**

### **The First Ten Amendments to the US Constitution**

#### **Amendment I**

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

#### **Amendment II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

#### **Amendment III**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

#### **Amendment IV**

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.

#### **Amendment V**

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.

### **Amendment VI**

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

### **Amendment VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

### **Amendment VIII**

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

### **Amendment IX**

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

### **Amendment X**

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

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# NOTES