

American Government

Since the advent of civilization, humans have had an impulse to form governments. It is an experiment thousands of years in the making.

This course asks a lot of fundamental questions about the nature of government and society. Among them:

- What is the purpose of government?
- What types of governments are there? What is a democracy?
- Where is the center of governmental power? Is it national or local?
- Is America's government too big? Too small? Constantly shifting with the times?
- What are the rights and responsibilities of each American citizen?

We do not answer these questions; that is up to you. Defining the role of government has been thousands of years in the making. Welcome to the laboratory of democracy.

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10. Civil Liberties and Civil Rights



Justice Felix Frankfurter was a huge influence on the Supreme Court in the years he sat on the bench, 1939 — 62. He is noted for his civil rights and anti-trust decisions.

"It is a fair summary of constitutional history that the landmarks of our liberties have often been forged in cases involving not very nice people." -Supreme Court Justice Felix Frankfurter

Protection of civil liberties and civil rights is perhaps the most fundamental political value in American society. And yet, as former Justice Frankfurter explained in the quote above, the people who test liberties and rights in our courts are not always ideal citizens. Consider some of these examples:

- A pick ax murderer on death row who found God and asked for clemency
- A publisher of magazines, books, and photos convicted for sending obscene materials through the United States mail
- A convict whose electrocution was botched when 2,000 volts of electricity rushed into his body, causing flames to leap from his head
- A university student criminally charged for writing and publishing on the internet about torturing and murdering women

Each of these people made sensational headline news as the center of one of many national civil liberties disputes in the late 20th century. They became involved in the legal process because of behavior that violated a law, and almost certainly, none of them intended to become famous. More important than the headlines they made, however, is the role they played in establishing important principles that define the many civil liberties and civil rights that Americans enjoy today.

Liberties or Rights?

What is the difference between a liberty and a right? Both words appear in the Declaration of Independence and the Bill of Rights. The distinction between the two has always been blurred, and today the concepts are often used interchangeably. However, they do refer to different kinds of guaranteed protections.

Civil liberties are protections against government actions. For example, the First Amendment of the Bill of Rights guarantees citizens the right to practice whatever religion they please. Government, then, cannot interfere in an individual's freedom of worship. Amendment I gives the individual "liberty" from the actions of the government.



Civil rights, in contrast, refer to positive actions of government should take to create equal conditions for all Americans. The term "civil rights" is often associated with the protection of minority groups, such as African Americans, Hispanics, and women. The government counterbalances the "majority rule" tendency in a democracy that often finds minorities outvoted.

Right vs. Right



The Chicago Defender, an African-American newspaper, trumpets the desegregation of the military. The right to participate in public institutions is a key component of civil rights.

Most Americans think of civil rights and liberties as principles that protect freedoms all the time. However, the truth is that rights listed in the Constitution and the Bill of Rights are usually competing rights. Most civil liberties and rights court cases involve the plaintiff's right vs. another right that the defendant claims has been violated.

For example, in 1971, the New York Times published the "Pentagon Papers" that revealed some negative actions of the government during the Vietnam War. The government sued the newspaper,

claiming that the reports endangered national security. The New York Times countered with the argument that the public had the right to know and that its freedom of the press should be upheld. So, the situation was national security v. freedom of the press. A tough call, but the Court chose to uphold the rights of the press.

The Bill of Rights and 14th Amendment

The overwhelming majority of court decisions that define American civil liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791. Civil liberties protected in the Bill of Rights may be divided into two broad areas: freedoms and rights guaranteed in the First Amendment (religion, speech, press, assembly, and petition) and liberties and rights associated with crime and due process. Civil rights are also protected by the Fourteenth Amendment, which protects violation of rights and liberties by the state governments.



14th Amendment

Section 1.

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.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age [Changed by the 26th Amendment], and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Protection of civil liberties and civil rights is basic to American political values, but the process is far from easy. Protecting one person's right may involve violating those of another. How far should the government go to take "positive action" to protect minorities? The answers often come from individuals who brush most closely with the law, whose cases help to continually redefine American civil liberties and rights.

Civil Liberties and Civil Rights

10a. Rights and Responsibilities of Citizens



Following the "Stonewall Riots" of 1969 in New York City, American homosexuals began an aggressive campaign for their civil rights.

As much as the founders talked and wrote about liberty, they didn't have much to say about equality.

Thomas Jefferson's famous phrase in the Declaration of Independence proclaimed that "All men are created equal." By today's standards, that statement is problematic because it says nothing about women. The word "equality" is used

nowhere in the Constitution or in the Bill of Rights. The goals of the early United States were much more centered on liberty, but over the years equal rights have come to be more and more important.

Civil Rights in Early National History

Civil rights — such as voting and owning property — in early America were mostly restricted to white men. Most African Americans were brought to America as slaves who, under the Constitution, were only counted as three-fifths of a person. After the Civil War slavery was abolished by the 13th Amendment, and voting rights were granted to African Americans in the 15th Amendment. But the most important change of the post-Civil War era was the 14th Amendment's famous clause: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws."



One afternoon in 1955 Rosa Parks sat in the front of a bus and became a symbol of the civil rights movement, after she was booked and fingerprinted for violating Montgomery, Alabama's segregation laws.

The search for equal rights was far from over with the passage of the 14th Amendment in 1868. State and local Jim Crow laws were enacted all over the South to segregate black and white Americans. The constitutionality of these laws was questioned in 1896 with the famous Plessy v. Ferguson case.

Homer Plessy challenged a Louisiana state law that required the races to ride in "equal but separate" railroad cars. He claimed that the law violated the equal protection clause of the 14th Amendment. The Supreme Court fatefully ruled that segregation was not unconstitutional as long as the facilities were equal. The decision effectively prevented the application of the 14th Amendment for more than a half a century.



Modern Civil Rights Movement

The movement for equal rights gained its momentum in 1954 with the Supreme Court's decision in *Brown v. Board of Education of Topeka*. The case overturned Plessy's separate but equal doctrine and declared that separate but equal public facilities were unconstitutional. The decision alone was not enough to begin the civil rights movement. The case was argued by the National Association for the Advancement of Colored People, an interest group whose cause was validated by the Court's decision.

The focus of the early movement was on African Americans, with many citizens and organizations joining in. Martin Luther King's charismatic leadership helped to propel the movement to the forefront of the nation's agenda. Nonviolent protests, demonstrations, sit-ins, and boycotts sparked Presidents to act, and finally Congress passed two significant laws — the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Together they virtually ended *de jure* segregation — separation by law. But much *de facto* segregation — separation by fact — has remained.

Civil Rights for Women



This colorful invitation to join a suffragist parade was a bold call to action in 1913, when women didn't have voting rights nationwide. This changed with ratification of the 19th Amendment in 1920.

The civil rights movement reawakened another major effort for equal rights — civil rights for women. Women had won the right to vote in 1920 after a struggle that effectively had begun in 1848 with a historic organizational meeting in Seneca Falls, New York. The movement lost momentum after its main goal was reached, but during the 1960s, new leaders emerged who demanded women's "liberation."

New organizations, such as the National Organization for Women (NOW), focused on eliminating gender discrimination in the work force and school. They demanded equal legal rights, such as owning property and easier access to divorce, for women. They fought for economic equality in the form of equal pay for equal work and broader admission into male-dominated professions. Although the movement failed in its push to add the Equal Rights Amendment to the Constitution, it brought about many legal and social changes that supported more equal rights for women.

Equal Rights for All Americans

Many groups in American society were encouraged by the successes of the movements for African Americans and women, and much has happened in recent years to ensure equal rights for all. Major movements for Latinos, the elderly, the disabled, and homosexuals have heightened American awareness of discrimination against many other minorities.



The 14th Amendment guaranteed "equal protection of the law" more than 130 years ago. The fact that it took so many years for its effects to be felt is testimony to the complexity of the decision-making process in a democracy. It took all three branches, active interest groups, and concerned individual citizens to bring the country closer to the ideal of equal rights for all.

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10b. First Amendment Rights



The Newseum, located in Arlington, Virginia, is a museum of news and press freedom. Thanks to the guarantees of the First Amendment, Americans have freer access to news than people in most countries.

"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." -First Amendment to the Constitution

A careful reading of the [First Amendment](#) reveals that it protects several basic liberties — freedom of religion, speech, press, petition, and assembly. Interpretation of the amendment is far from easy, as court case after court case has tried to define the limits of these freedoms. The definitions have evolved throughout American history, and the process continues today.

Freedom of Religion



Deborah Weisman was a Jewish student who successfully sued her public-school district in Rhode Island over a Christian graduation prayer in 1986. In her case, Weisman cited the First Amendment's clause against the state establishing any religion.

The First Amendment guarantees freedom of religion in two clauses — the "establishment" clause, which prohibits the government from establishing an official church, and the "free exercise" clause that allows people to worship as they please. Notice that the phrase "separation of church and state" does not appear in the First Amendment, nor is it found anywhere else in the Constitution. Most people do not realize that

the phrase was actually coined later by Thomas Jefferson. In 1802, when he was President, he wrote the opinion that the First Amendment's freedom of religion clause was designed to build "a wall of separation between Church and State."

Court cases that address freedom of religion have dealt with the rejection of prayer in public schools, the denial of aid to parochial schools, the banning of polygamy (the practice of having more than one

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wife), the restriction of poisonous snakes and drugs in religious rites and limiting the right to decline medical care for religious purposes.

Freedoms of Speech and of the Press

Free speech is one of the most cherished liberties, but free speech often conflicts with other rights and liberties. The courts have had to consider the question, "What are the limits of free speech?"

The "clear and present danger" test is a basic principle for deciding the limits of free speech. It was set by the famous *Schenck v. the United States* case from World War I. Antiwar activist Charles Schenck was arrested for sending leaflets to prospective army draftees encouraging them to ignore their draft notices. The United States claimed that Schenck threatened national security, and the justices agreed. The principle was established that free speech would not be protected if an individual were a "clear and present danger" to United States security.



Manet's Olympia was considered obscene in 1865, but today is considered a masterpiece. As tastes in the arts change, the legal definitions of obscenity and free expression change as well.

What is free speech? The definition is not easy, and the courts have identified three types of free speech, each protected at a different level:

- Pure speech is the verbal expression of thoughts and opinions before a voluntary audience. The courts have generally provided strong protection of pure speech from government regulation.
- Speech-plus involves actions, such as demonstrating or protesting, as well as words. Speech-plus is not generally protected as strictly as is pure speech, because actions can be physically dangerous. The courts have ruled that demonstrators may not obstruct traffic, endanger public safety, or trespass illegally.
- Symbolic speech technically involves no speech at all, but it involves symbols that the courts have judged to be forms of free expression. Symbolic actions such as wearing black armbands in school and draft-card burning fit this category. Symbolic speech is highly controversial, and as a rule, the courts have sometimes considered it to be beyond the limits of free speech. However, the Supreme Court did uphold the right of an individual to burn an American flag in the 1989 *Texas vs. Johnson* decision.



Many of the same principles that apply to freedom of speech apply to the press, but one with special meaning for the press is prior restraint. The courts have ruled that the government may not censor information before it is written and published, except in the most extreme cases of national security.

Freedom of Assembly and Petition

Freedom of assembly and petition are closely related to freedom of speech, and have been protected in similar ways. Former Chief Justice Charles Evans Hughes wrote, "Peaceable assembly for lawful discussion cannot be made a crime." Generally, that point of view has prevailed. Freedom of assembly has to be balanced with other people's rights if it disrupts public order, traffic flow, freedom to go about normal business or peace and quiet. Usually, a group must apply for a permit, but a government must grant a permit provided that officials have the means to prevent major disruptions.

For over 100 years after the ratification of the Constitution, the First Amendment protected these freedoms only in theory. As individuals in the 20th century have challenged the government in the courts when they believed their rights were assaulted, the First Amendment has taken on a stronger meaning. It remains the single most powerful instrument for protecting the sacred freedoms of religion, speech, press, assembly, and petition for modern Americans.



10c. Crime and Due Process



Some Americans feel so strongly about their Fourth Amendment rights that they're willing to demonstrate dramatically in favor of them. Pat Barber of Texas was ordered by the state to destroy this sign on his ranch, an order he is appealing on First Amendment grounds.

Inherit the Wind. The Practice. The People vs. O.J. Simpson.

Whether a trial is depicted in a movie, on television, or in real life, Americans cannot seem to turn away. From the crime itself, to the arrest, to the jury's verdict, Americans have been fascinated by the justice system.

What rights can Americans claim if they are accused of crimes? The 4th, 5th, 6th, and 8th Amendments provide much of the constitutional basis of these rights.

The Principle of Due Process

Due process means that laws must be applied fairly and equally to all people, especially to a citizen accused of a crime. The Constitution uses the phrase in the 5th and 14th Amendments, declaring that the government shall not deprive anyone of "life, liberty, or property, without due process of law..." The 5th Amendment protects people from actions of the federal government, and the 14th protects them from actions by state and local governments.

Searches and Seizures

The purpose of the 4th Amendment is to deny the national government the authority to make general searches and seizures of property. A major issue over the years has been the interpretation of "unreasonable" searches and seizures. The rules can be complicated. They also change often, but the general principle is that searches are valid methods of enforcing law and order, but unreasonable searches are prohibited.

Fourth Amendment

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

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Over the years, the Supreme Court has interpreted the 4th Amendment to allow the police to search the following:

- The person arrested
- Things in plain view of the accused person
- Places or things that the arrested person could touch or reach or are otherwise in the person's "immediate control"
- Property where there is strong suspicion that a person could be in immediate danger

The Fifth Amendment

The 5th Amendment requires that a citizen cannot be accused of a serious crime without a grand jury investigation. It also forbids double jeopardy — the act of bringing a person to trial a second time for the same crime.

Fifth Amendment



'NOW, TELL THE JURY WHAT YOU DID WITH THE KNIFE, MRS. BOBBITT...'

Juries like the one in this political cartoon are required by the Seventh Amendment in federal cases

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 offense 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.

The Fifth Amendment also grants the right to a defendant to refrain from testifying against himself or herself. Probably the most famous modern interpretation of this provision is the right to remain silent. The famous *Miranda v. Arizona* (1966) case required that individuals arrested for a crime must be advised of their right to remain silent and to have counsel present. This intended to prevent forced or involuntary confessions under police pressure. Although the Supreme Court had long held that involuntary confessions could not be used in federal courts, state courts did not always comply. Now local police departments must issue warnings known as "Miranda Rights" to people that they arrest.



A very important principle related to the 4th and 5th Amendments is the exclusionary rule, which upholds the principle that evidence gathered illegally cannot be used in a trial.

The 6th Amendment and Right to Counsel

The 6th Amendment guarantees that an individual accused of a crime has the right "to have the assistance of counsel for his defense."

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been 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 defense.

What if a person can't afford to have a lawyer for his or her defense? Until the 1963 ruling in *Gideon v. Wainwright*, many states did not ensure this right. Clarence Earl Gideon could not afford counsel when he went to trial for breaking into a poolroom in Bay Harbor, Florida. He was convicted and sent to prison, where he spent years researching his rights. Finally, he successfully petitioned the Supreme Court to hear his case, and they ruled in Gideon's favor, ensuring the right to counsel in state as well as federal courts.

The 8th Amendment and Cruel and Unusual Punishment

The 8th Amendment prohibits "cruel and unusual punishments," a concept rooted in English law. But again, what does the phrase really mean? By far, the most controversial issue that centers on the 8th Amendment is capital punishment, or the practice of issuing death sentences to those convicted of major crimes.

Eighth Amendment

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

In general, states are allowed to pursue their own policies regarding capital punishment. The Supreme Court did not challenge the death penalty until 1972 in *Furman v. Georgia*. Even then, it did not judge capital punishment to be cruel and unusual punishment. It simply warned the states that the death penalty was to be carried out in a fair and consistent manner.

Rights of those accused of crimes are protected in other parts of the Constitution. For example, Article I affirms the right of a writ of habeas corpus, a court order that requires a judge to evaluate whether there is sufficient cause for keeping a person in jail. However, the most extensive protections are found in the 4th, 5th, 6th, and 8th Amendments.

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10d. Citizenship Rights



The INS is charged with handling all immigration cases and issues within the United States, including the Border Patrol. It is a branch of the Department of Justice.

All countries have rules that determine who is a citizen, and what rights and responsibilities come with citizenship. In the United States, the 14th Amendment gives constitutional protection of the basic rights of citizenship: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." So, citizenship is conferred on the basis of place of birth and the process of naturalization.

Native-born Citizens

Any individual born within the boundaries of the United States or its territories is eligible for citizenship. If a foreign woman travels to the United States and gives birth to the child before leaving, the child is an American citizen, but the mother is not. Also, children born to American citizens abroad are also native-born citizens. The Constitution affords but one advantage to native-born citizens over those who are naturalized — the right to run for President of the United States. People may have dual citizenship — being citizens of two countries — if they are born to parents living outside the United States, or if they born in the United States to foreign citizens.

Citizenship by Naturalization



The American Immigration Law Foundation fights for immigrants' rights in the United States and advocates continued immigration as healthy for the society and economy.

Naturalization is the conferring of citizenship to an alien — a non-citizen living in the United States. An applicant for citizenship must be at least 18 years old, must be able to read, write, and speak English, and must have lived in the United States for five continuous years, or three years if he or she is married to a citizen. An alien must file a petition requesting citizenship. The Immigration and Naturalization Service then holds a hearing in which the applicant is asked about his or her background and character. The applicant must also answer questions about American government and history. If the application is successful, the individual attends a final hearing to swear an oath of allegiance to the laws and Constitution of the United States.



Loss of Citizenship

Americans may lose their citizenship in three ways:

- Expatriation, or giving up one's citizenship by leaving the United States to live in and becoming a citizen of another country
- Punishment for a federal crime, such as treason
- Fraud in the naturalization process

Admission to the United States

The United States has long been known as a haven for immigrants — a place people come to seek a better life. However, some Americans believed and still believe that too many people are crowding the United States and that immigrants will dilute American traditions and values. Throughout American history, debates have flared among those wishing to open the borders and those wishing to close them.



The concept of the "Great American Melting Pot" is that the American people have been created from diverse groups of immigrants forming a culture with a unique character.

Congress has the power to regulate immigration by setting restrictions on who may be admitted to live in the United States. Until the late 19th century, no limitations were in place. The first immigration limitation acts were passed in the late 1800s, and eventually quotas — or limits — were placed on how many people could come from each country. During the 1960s quotas from individual countries were eliminated, but Congress does set a ceiling — currently 675,000 — on the number who are allowed to enter the United States each year.

The Rights of Aliens

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The wording of the Constitution allows aliens to have many constitutional rights. The founders referred most often to "persons" rather than "citizens," and so the Supreme Court has allowed aliens the following rights:

- Property ownership
- Business ownership
- Enrollment in public schools
- First Amendment freedoms
- Due process rights



The Elian Gonzalez case put illegal immigration into the United States in the spotlight. Of the millions who wish to enter the country, who should be allowed to stay?

welfare benefits to illegal aliens, with the exceptions of emergency medical care, disaster relief, and some nutrition programs.

All United States citizens are protected by the Bill of Rights and the Constitution, as well as by the state and national laws. Even though laws govern overall immigration and residents from other countries must go through the naturalization process in order to become citizens, many rights extend to aliens as well.