

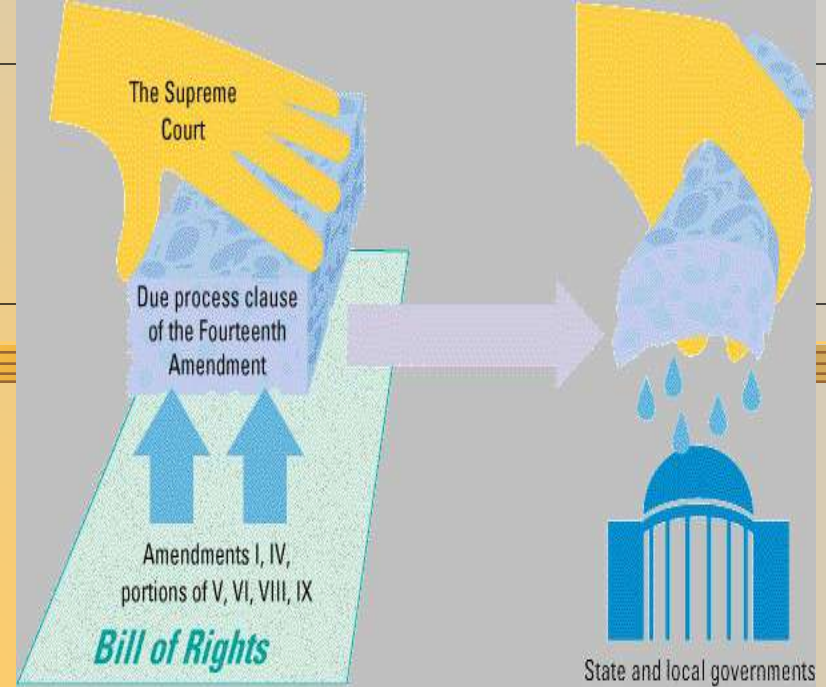
AP Government: Chapter 4

Civil Liberties and Public Policy

Safeguarding Our Freedoms



Civil Liberties



Individual legal and constitutional protections
against the government

Set down in the Bill of Rights

But the courts, police, and legislatures define
their meaning

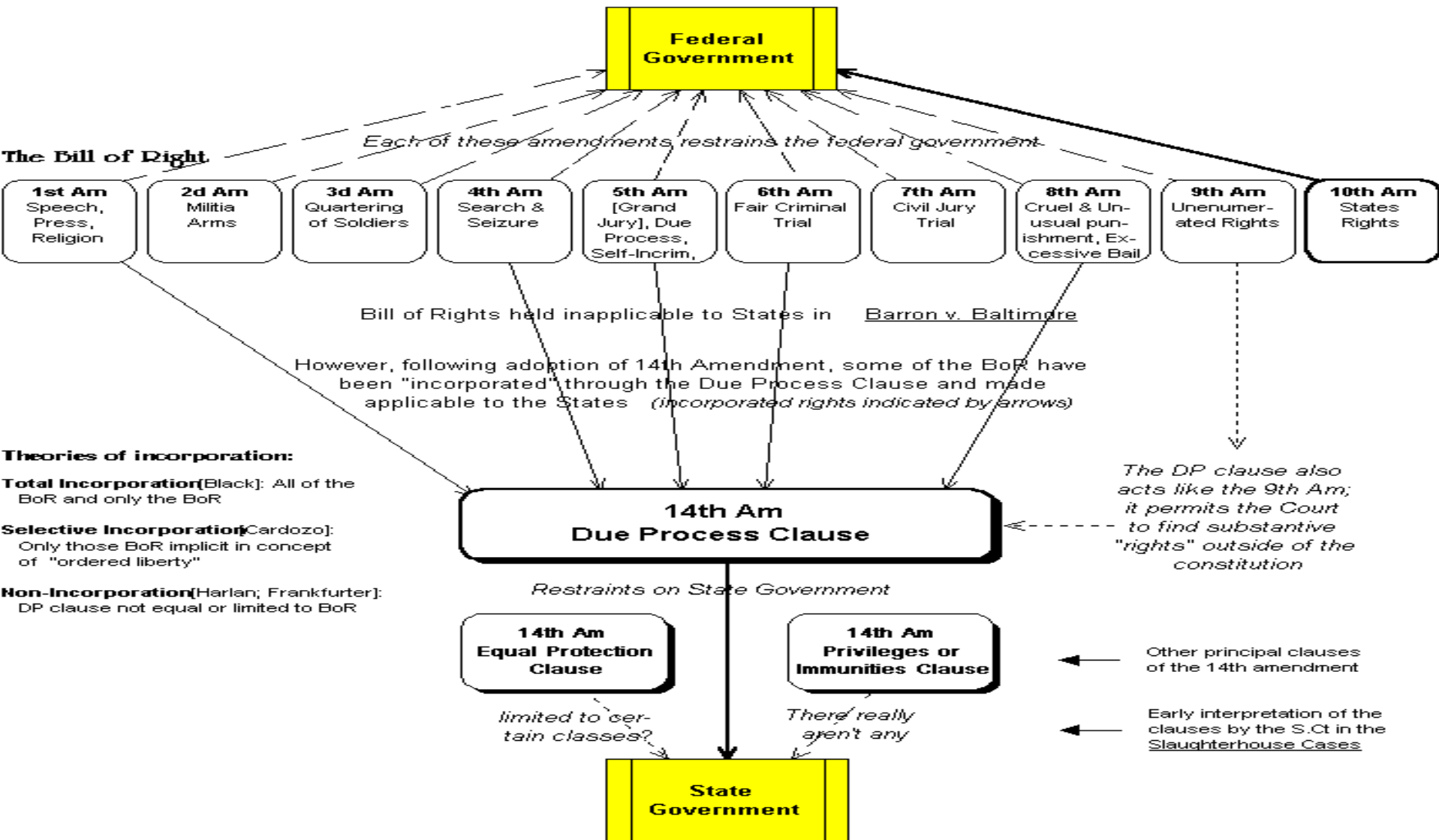


INCORPORATION DOCTRINE

- ★ Nationalizing the Bill of Rights
- ★ Making most of its provisions applicable to the states through the 14th Amendment
- ★ *Barron V. Baltimore (1833)*
- ★ *Gitlow V. New York (1925)*



INCORPORATION OF THE BILL OF RIGHTS



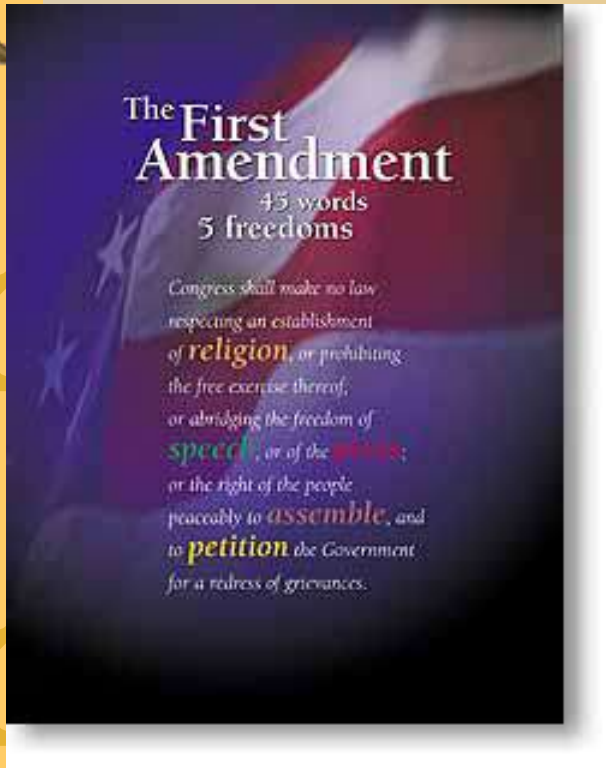


1st Amendment FREEDOMS

- ★ Petition
- ★ Religion
 - (establishment and free exercise clause)
- ★ Assembly
 - Interest groups
 - Political Parties
 - Professional associations
 - Picketing and protesting
- ★ Press
 - Libel
 - Prior Restraint
 - Shield Laws
- ★ Speech
 - Slander
 - Hate speech
 - Symbolic/Expression

THE FIRST AMENDMENT
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.
PROTECT THE FIRST AMENDMENT, SUPPORT THE GBLDF

Freedom of Religion



- ★ An established religion is prohibited
- ★ Jefferson’s “wall of separation” forbid any support for religion at all
- ★ 1st amendment

- ★ Establishment Clause: “Congress shall make no law respecting the establishment of religion”
- ★ Free Exercise Clause: “or the free exercise thereof”



Freedom of Expression



★ Prior Restraint

★ Free Speech and Public Order

★ Free Press and Fair Trials



★ Obscenity

★ Libel and slander



★ Symbolic Speech

★ Commercial Speech



Free Speech

★ DOES NOT mean that you can “say anything you want”... but pretty close

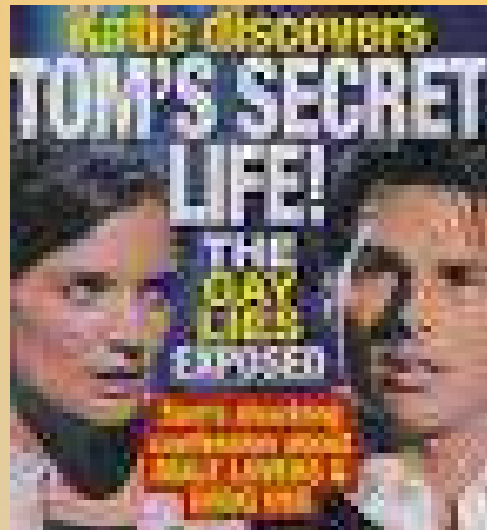
Restrictions

- ★ Threat to national security
- ★ Libel – false written statement attacking someone’s character, with intent to harm
- ★ Obscenity – not protected, hard to define – Ex. Pornographic material
- ★ Symbolic speech – action to convey a message



Freedom of Press...freest!!

★ Prior Restraint refers to a government's actions that prevent material from being published (censorship)





Symbolic Speech

- ★ Guarantee of freedom of expression
- ★ The right to freedom of speech goes beyond the spoken word (*Tinker V. Des Moines*, 1969)
- ★ Wearing an arm band, burning a flag, marching in a parade...(express an opinion)





Freedom of Expression: Speech and Public Order

1919- clear and present danger

**Smith Act of 1940:
forbade advocating
the violent overthrow
of the American
government**

**1950's and 1960's were
less strict on limiting
this kind of speech**





Free Press and Fair Trials

- ★ Does media coverage compromise the fairness of a trial?
- ★ Shield Laws: “protect sources” exempt them from revealing notes from confidential informants
- ★ Court has NEVER upheld a restriction on the press in the interest of a fair trial (sequester the jury)



1st, 5th, 6th amendments



Obscenity



- ★ 1957: “obscenity is not within the area of constitutionally protected speech or press” (Roth V. US)
- ★ 1973: Materials are obscene 3 circumstances (p. 116)





Libel and Slander



- ★ Slander: spoken defamation
- ★ Libel: written defamation (not protected by Constitution)
- ★ It is difficult for public figures to win libel cases. Public figures will likely lose even if they can show that the defendant made defamatory falsehoods about them. This may not be fair, but it is essential for people to feel free to criticize public officials.





Commercial Speech

- ★ Advertising is restricted far more extensively than expression of opinion on religious, political or other matters
- ★ Federal Trade Commission (FTC) decides what kinds of goods may be advertised on the radio and television and regulates content of such advertising
- ★ Federal Communications Commission (FCC) regulates content, nature and very existence of radio and television broadcasting
- ★ 1996 Congress passed Communications Decency Act which banned obscene material and criminalized transmission of indecent speech or images on the internet to anyone under 18
- ★ In 1997, the Supreme Court overturned Decency Act because it was vague and overly broad (viewed internet similar to print media)
- ★ 1st amendment



Freedom of Assembly



★ **Basis for forming interest groups, political parties, and professional associations, as well as picketing and protesting 1st amendment**



Defendant's Rights: Due Process

- ★ 4: No illegal search or seizure
 - Probable cause
 - Search Warrant
 - Exclusionary Rule
- ★ 5: No self-incrimination, due process, imminent domain,
- ★ 6: Right to counsel, etc.
- ★ 7: Civil Suits
- ★ 8: No cruel or unusual punishment; no excessive bail
- ★ 14th: due process





Search and Seizure

★ 4th Amendment

★ Freedom from “unreasonable search and seizure”

★ Exclusionary Rule

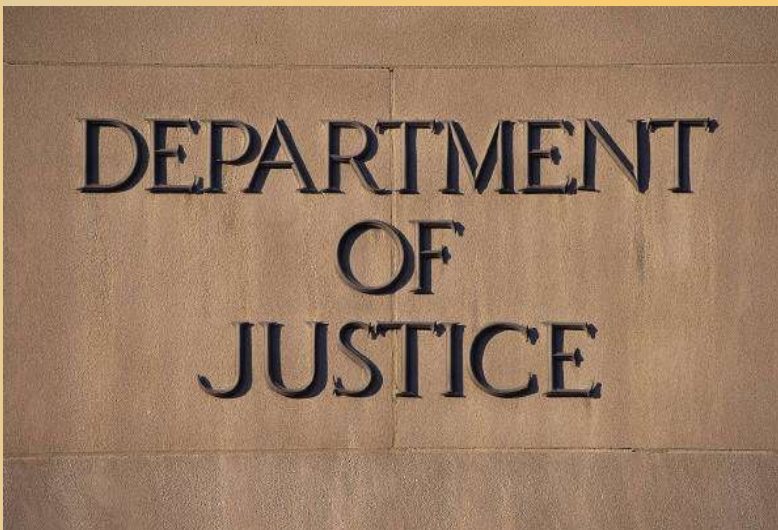
★ Prevent police abuse

★ Ex. *Mapp v. Ohio*



Searches and Seizures

4th Amendment



Probable Cause: Reasonable grounds to believe that someone is guilty of a crime

4th amendment is quite specific in forbidding unreasonable searches and seizures

Search Warrant: specify the area to be searched and the material sought in the police search



Legal V. Illegal Searches

- ★ However, most searches take place without warrants because 1. Probable cause or 2. Necessary to protect officer's safety and/or 3. Limited to material relevant to suspected crime or within suspect's immediate control
- ★ Exclusionary Rule: Prevents illegally seized evidence from being introduced in court
- ★ *Mapp V. Ohio*





Self-Incrimination & Right to Counsel

- ★ Self-Incrimination: (5th Amendment) Burden of proof rests on the police and prosecutors
- ★ Immunity: Exemption from prosecution in exchange for suspect's testimony regarding their own and others misdeeds

- ★ Right to Counsel: (6th Amendment) Extended to people tried in state courts in 1960's

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Yes, you're in my "legal custody".
No, that doesn't entitle you to a
Miranda warning before I question
you about your report card.



Right to Privacy



★ Not in the Constitution

★ Griswold v. Connecticut (1965)



★ Roe v. Wade (1971)

★ Yahoo and Google – search and e-mails?





Self-incrimination

- ★ 5th Amendment
- ★ No one “shall be compelled to be a witness against himself.”
- ★ Miranda v. Arizona 1966





Trial by Jury

- ★ Most cases do not go to trial
- ★ 90% of all cases begin and end with a guilty plea
- ★ Plea bargaining: Bargain struck between defendant and prosecutor to plead guilty and receive a lesser sentence
- ★ Reasons: save money, time, and lesser sentence



5th and 7th amendments



Cruel and Unusual Punishment (8th Amendment)



The Court upheld capital punishment, concluding that it was “an expression of society’s outrage at particularly offensive conduct...It is an extreme sanction, suitable to the most extreme of crimes.”



Right to Privacy

**DO NOT
ENTER**



Nowhere does the Bill of Rights say that Americans have a right to privacy

Amendments...1, 3, 4, 9
Began with *Griswold V. Connecticut* (1965)