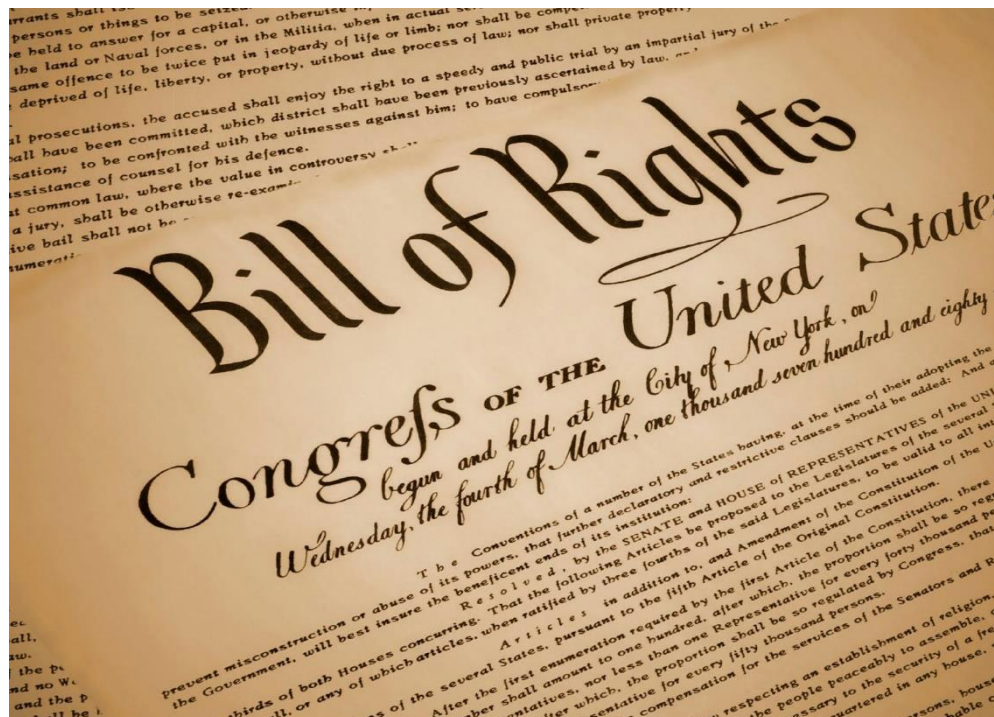


AP GOVERNMENT KEY TERMS

Unit 2: CIVIL LIBERTIES AND CIVIL RIGHTS

1. **Bill of attainder:** An act of a legislature declaring a person or group of persons guilty of some crime and punishing them without a trial
2. **Civil liberties:** Protect individuals from government actions
3. **Civil rights:** Protect groups against discrimination
4. **Civil Rights Act of 1964:** Made racial discrimination against any group in hotels, motels, and restaurants illegal, and forbade many forms of job discrimination
5. **Clear and Present Danger Doctrine:** Judicial interpretation of the 1st Amendment that government may not ban speech unless such speech poses an imminent threat to society..."fire in a crowded theater" analogy used by the Court
6. **De facto segregation:** Segregation "by fact," i.e., segregation resulting from factors such as housing patterns rather than law
7. **De jure segregation:** Segregation by law, i.e., segregation that is required by government such as during the Jim Crow Era
8. **Double jeopardy:** Being prosecuted twice for the same offense. Banned by the 5th Amendment
9. **Due Process Clause:** Prohibits the national government (5th Amendment) and states (14th Amendment) from denying life, liberty, or property without due process of law
10. **Eminent domain:** The right of the government to take private property for the public good. Fair compensation must be paid to the owner of such property
11. **Equal Protection Clause:** 14th Amendment clause that prohibits states from denying equal protection under the law, and has been used to combat discrimination
12. **Equal Rights Amendment:** A constitutional amendment stating that "equality of rights under the law shall not be denied... on account of sex." Despite public support, the amendment failed to acquire the necessary support from 3/4 of state legislatures
13. **Establishment Clause:** Provision of the 1st Amendment that prohibits Congress from establishing an official state religion. This is the basis for separation of church and state
14. **Free Exercise Clause:** Provision of the 1st Amendment stating that Congress may not prohibit the free exercise of religion
15. **Grandfather Clause:** Southern laws that excluded blacks from exercising the right to vote (suffrage) by restricting the right to vote only to those whose grandfathers had voted before 1865
16. **Jim Crow laws:** Southern laws that required racial segregation in places of public accommodation
17. **Literacy test:** Southern method of excluding blacks from voting (suffrage) by requiring that voters prove ability to read & write
18. **Poll tax:** Southern method of excluding blacks from voting (suffrage) by requiring payment of a tax prior to voting
19. **Prior restraint:** When a court stops expression before it is made, e.g., prohibiting publication of a newspaper article critical of the current presidential administration. Determined to be unconstitutional except when threatening national security
20. **Selective incorporation:** Applying the Bill of Rights to the states on a case by case basis via the Due Process Clause of the 14th Amendment
21. **Separate but Equal Doctrine:** Supreme Court doctrine established in the case of Plessy v. Ferguson that allowed state-required racial segregation in places of public accommodation as long as the facilities were equal
22. **Symbolic speech:** An action that consists of no writing or speaking, but still expresses an opinion. Examples of symbolic speech are marching in a parade, burning a flag, or burning a draft card
23. **Title IX:** This law prohibits gender discrimination in educational activities at any institution receiving federal funds. Most commonly known for its effect on athletics, but it prohibits all types of gender discrimination in education
24. **Wall of Separation Doctrine:** An interpretation of the Establishment Clause embraced by the Supreme Court that allows no government involvement with religion
25. **Writ of Habeas Corpus:** Court order that the authorities show cause for why they are holding a prisoner in custody. Deters unlawful imprisonment

UNIT 2: CIVIL LIBERTIES & CIVIL RIGHTS



MAIN TOPICS CIVIL LIBERTIES CIVIL RIGHTS

CIVIL LIBERTIES

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

LIBERTIES VERSUS RIGHTS

ITEM	DESCRIPTION
CIVIL LIBERTIES	Personal guarantees and freedoms that the federal government cannot abridge, either by law or judicial interpretation.
CIVIL RIGHTS	Freedom from a host of discriminatory actions and places the burden of protecting individuals on the government.
Civil liberties issues often fall to the judiciary, who must balance the competing interests of the government and the people.	

OUTLINE OF THE BILL OF RIGHTS (FIRST 10 AMENDMENTS)

AMENDMENT	DESCRIPTION
1st-8th Amendments	Specific freedoms (we will cover soon)
9th Amendment	"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"
10th Amendment	Powers not delegated to the national government are reserved to the states or to the people.
-The Bill of Rights were added to the Constitution to please the Anti-Federalists so they would agree to ratify the Constitution.. The Anti-Federalists feared the strong central government would not protect individual liberty. (Should be called Bill of Liberties) -The Bill of Rights originally protected citizens from the National Government (NOT State governments). (On AP test every time)	

DUE PROCESS

ITEM	DESCRIPTION
5th Amendment (Due Process Clause)	Ratified in 1791, provides that the NATIONAL GOVERNMENT cannot arbitrarily deny life, liberty, or property.
14th Amendment (Due Process Clause)	Ratified in 1868, provides that STATE GOVERNMENTS cannot arbitrarily deny life, liberty, or property.
Procedural Due Process	The methods of the government must be fair and just.
Substantive Due Process	The policies of the government must be fair and just.
14 th Amendment's Due Process clause allows for courts to protect liberty from state governments (thru selective incorporation).	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

SELECTIVE INCORPORATION TERMS

TERM	DESCRIPTION
INCORPORATION DOCTRINE	An interpretation of the Constitution that holds that the Due Process Clause of the 14th Amendment requires state and local governments to also guarantee those rights.
SELECTIVE INCORPORATION (Process of Incorporation)	A judicial doctrine whereby most of the protections in the Bill of Rights are made applicable to the states due to the Fourteenth Amendment's Due Process Clause .
Fundamental Freedoms: Those rights defined by the Court to be essential to order, liberty, and justice and therefore entitled to the highest standard of review, strict scrutiny.	

SELECTIVE INCORPORATION CASES

AMENDMENT	LIBERTY	DATE	CASE INCORPORATED
I	Speech	1925	Gitlow v. New York
	Press	1931	Near v. Minnesota
	Assembly	1937	DeJonge v. Oregon
	Religion	1940	Cantwell v. Connecticut
II	Bear Arms	2008	D.C. v. Heller
III	No quartering of soldiers	-	NOT INCORPORATED
IV	No unreasonable searches or seizures	1949	Wolf v. Colorado
	Exclusionary Rule	1961	Mapp v. Ohio
V	Just compensation	1897	Chicago, B&Q RR Co. v. Chicago
	Self-incrimination	1964	Malloy v. Hogan
	Double jeopardy	1969	Benton v. Maryland (overturned by Palko v. Connecticut)
	Grand jury indictment	-	NOT INCORPORATED
VI	Public trial	1963	Gideon v. Wainwright
	Right to counsel	1968	Duncan v. Louisiana
	Confrontation of witnesses	1967	Klopper v. North Carolina
	Impartial trial	1965	Pointer v. Texas
	Speedy trial	1948	In re Oliver
	Compulsory trial	1967	Washington v. Texas
	Criminal trial	1966	Parker v. Gladden
VII	Civil jury trial	-	NOT INCORPORATED
VIII	No cruel and unusual punishment	1962	Robinson v. California
	No excessive fines or bail	-	NOT INCORPORATED

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

THE FIRST AMENDMENT: RELIGION

IMPORTANT ITEM	DESCRIPTION	EXAMPLES OF LIMITATIONS
ESTABLISHMENT CLAUSE	It prohibits the government from establishing a national religion. (Wall of Separation)	-Christianity is sometimes funded (money) - Lemon Test determines if a policy is constitutional. --Funding to religious schools is often seen as OK if all schools get the money for nondenominational purposes.
FREE EXERCISE CLAUSE	It prohibits the U.S from interfering with a citizen's right to practice his or her religion.	-It is OK to sacrifice animals but not people. -Poisonous snakes have been denied in ceremonies

THE FIRST AMENDMENT: SPEECH & PRESS

PROTECTED/ UNPROTECTED	SEGMENT	DESCRIPTIONS/ EXAMPLES/ LIMITATIONS
PROTECTED SPEECH & PUBLICATIONS	PRIOR RESTRAINT	Allowed only in matters of national security. The court generally denies allowing the government to prohibit speech and publication from being expressed.
	SYMBOLIC SPEECH	--Symbols, signs, and other methods of speech. -- Like Wearing an armband to protest a war or burning the U.S. flag.
	HATE SPEECH	--The KKK could legally meet and discuss their feelings on the importance of ending all immigration. But they cannot discuss plans to go around murdering people. --Some universities have created free speech zones (certain places at certain times). Supreme Court has yet to rule on that one.
UNPROTECTED SPEECH & PUBLICATIONS	LIBEL	A false written statement that defames the character of a person. (Much harder for to prove "actual malice" for public figures)
	SLANDER	Untrue spoken words that defame the character of a person.
	FIGHTING WORDS	Speech is not protected that inflicts injury or incites an immediate breach of peace.
	COMMERCIAL SPEECH	False advertising is not protected.
	OBSCENITY	No national standard defines what it is but it isn't protected. The Court often lets a local judge or jury define obscenity by applying local community standards. The Court checks for obscenity by the Miller Test .
	CLEAR AND PRESENT DANGER	--You cannot yell fire in a movie theater if there isn't one. (People get trampled to death. Government must balance freedom of expression and the need to protect a free society by Clear and Present Danger Test)
Students still do not shed their rights at the schoolhouse gates, but neither are they entitled to lewd or offensive speech. Court protects some students' speech but denies others. If there is a political message it is usually OK. If you are disrupting class to be funny...then no.		

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

THE FIRST AMENDMENT: ASSEMBLY & PETITION

ITEM	DESCRIPTION
THE SUPREME COURT'S JOB	To become the arbiter between the freedom of the people to express dissent and government's authority to limit controversy in the name of national security.
MAIN ISSUE	If the words or actions taken at any level even cross the line of constitutionality, the people there may be subject to governmental regulation and even criminal arrest, incarceration, or civil fines.
<p>-The freedoms of assembly and petition are related directly to the freedoms of speech and of the press.</p> <p>--The five freedoms of the First Amendment (religion, speech, press, assembly, and petition) are seen as mandatory to live in a free society and to have a true democracy in which the people are choosing leaders to represent them based on which ideas they agree with the most.</p>	

THE SECOND AMENDMENT

ITEM	DESCRIPTION
WORDING OF THE 2ND AMENDMENT	"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."
NATIONAL FIREARMS ACT OF 1934	This was passed as a response to the organized crime that developed during Prohibition.
<i>U.S. v Miller</i>	In 1939, The Court decided the 2nd amendment was intended to protect a citizen's right to own ordinary militia weapons and not sawed-off shotguns.
BRADY BILL	This imposed a federal mandatory five--day waiting period on the purchase of handguns. (Her husband was left disabled after he was shot on an attempt to assassinate Ronald Reagan)
BAN ON ASSAULT WEAPONS	Bill Clinton signed in 1994. It outlawed assault weapons purchases for 10 years.
<i>D.C. v. Heller</i>	In 2008 (nearly 70 years after Miller), the Court ruled that the Second Amendment protects individual's right to own a firearm for personal use.
<i>McDonald v. Chicago</i>	In 2010, the Court incorporated the Second Amendment to state and local governments by protecting an individual's right to own a firearm for personal use.
<p>The gun control argument is far from over. It appears that the Supreme Court allows some gun control to exist but not all. Feel free to go to college and write thesis papers over this controversial topic.</p>	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

RIGHTS OF CRIMINAL DEFENDANTS: IN ARTICLE I OF CONSTITUTION

ITEM	DESCRIPTION
WRIT OF HABEAS CORPUS	Court order in which a judge requires authorities to prove that a prisoner is being held lawfully and that allows the prisoner to be freed if the judge is not persuaded by the government's case.
EX POST FACTO LAW	Laws that apply to actions committed before the laws were passed.
BILL OF ATTAINDER	Legislative acts that inflict punishment on individuals without judicial action.

RIGHTS OF CRIMINAL DEFENDANTS: THE DUE PROCESS AMENDMENTS

AMENDMENT	RIGHT/ LIBERTY	DESCRIPTION
4TH AMENDMENT	Search and Seizure	<p>--Warrants will be used to search</p> <p>1)The person arrested;;</p> <p>2)Things in plain view of the accused person</p> <p>3)Places or things that the arrested person could touch or reach or are otherwise in the arrestee's immediate control. (Warrant says what will be searched and what they are searching for)</p> <p>--Cops do not need a warrant if they have probable cause (like if they see you breaking the law)</p> <p>--Private companies and schools have an easier time forcing mandatory drug testing.</p>
	Exclusionary Rule	It bars the use of illegally seized evidence at trial (Both 4th and 5th amendments protect people from this)
5TH AMENDMENT	Self-Incrimination	A person has the right not to incriminate him/herself. Examples: Pleading the 5th (refusing to answer) or criminals being read their Miranda rights.
	Double Jeopardy	It protects individuals from being tried twice for the same crime in the same jurisdiction.
6TH AMENDMENT	Right to Counsel	Attorneys are provided to the poor in all federal criminal cases.
	Jury Trials	<p>--A person accused of a crime shall enjoy the right to a speedy & public trial by an impartial jury.</p> <p>--Also the right to confront a witness.</p>
8TH AMENDMENT	Cruel & Unusual Punishment	<p>--The U.S is the only western nation to have the death penalty legal in 34 states. (Must not be unusual)</p> <p>--We can't torture inmates (Like stretching out limbs).</p>
Procedural Due Process: Making sure the government follows fair procedures when taking away life, liberty or property.		

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

THE RIGHT TO PRIVACY

ISSUE	DETAILS AND COURT DECISIONS
BIRTH CONTROL	<p>In 1965, the Supreme Court ruled in <i>Griswold v. Connecticut</i>, that there are “penumbras” or unstated liberties on the fringes or in the shadow of more explicitly stated rights (1st, 3rd, 4th, 9th, and 14th Amendments). Connecticut was the last state banning the sale of contraceptives (since 1879).</p>
ABORTION	<p>-In 1973, the Supreme Court decided in <i>Roe v. Wade</i>, that the decision to carry a pregnancy to term was a woman’s fundamental right: 1st Trimester: A woman can get an abortion with no regulation from the state. 2nd Trimester: States can only regulate abortions to protect the health of the mother. 3rd Trimester: Abortions only allowed to save life or health of the mother. -Abortion was one vote from being overturned in 1989. -In 2007, the Supreme Court ruled in <i>Gonzales v. Carhart</i> the Partial Birth Abortion Ban Act was constitutional.</p>
HOMOSEXUALITY	<p>-In 2003, <i>Lawrence v. Texas</i> ruled that a Texas law that criminalized private sexual behavior (anti-sodomy laws) was unconstitutional. -Some states start allowing domestic partnerships in the 1990’s. -This was the first time the Supreme Court ruled homosexuality was a fundamental privacy right. -In 2015, The Supreme Court ruled in <i>Obergefell v. Hodges</i>, that states could not ban same sex marriage.</p>
THE RIGHT TO DIE	<p>-In 1997, the Court ruled that terminally ill persons do not have a constitutional right to physician assisted suicide. -In 2006, the Supreme Court decided in <i>Gonzales v. Oregon</i>, that the State of Oregon can have a law allowing physician assisted suicide. -In 2008, voters in Washington approved an initiative allowing physician assisted suicide in their state.</p>
<p>--Substantive Due Process: The substance (or essence) of the law should not violate some basic right. If it does it can be found unconstitutional by the Supreme Court --The Right to Privacy is not a term found in the Constitution. The Founders intended to have some areas of life to be off limits to government. Of course the Founders had no idea what issues would be dividing our nation in the year two thousand whatever.</p>	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL LIBERTIES

CIVIL LIBERTIES AND NATIONAL SECURITY

ITEM	DESCRIPTION
THE ALIEN AND SEDITION ACTS	Federalist party made the publication of any false scandalous writing against the government a criminal offense. Ten Democratic-Republican newspapers were imposed fines and jail terms, but Jefferson pardoned them when he became president. Congress let the Act expire so the Supreme Court never weighed in on if this broke the 1st amendment.
CIVIL WAR ACTIONS	--Northern and Southern states both made it illegal to publish items that did not reflect their belief in slavery. Southern postmasters refused to deliver northern abolitionist newspapers. -Lincoln suspended the free press (unconstitutional)
ANTI-GOVERNMENT DURING WWI	--Over 30 States had passed laws to punish sedition speech (they were after socialists and communists.) -Espionage Act (1917) passed the U.S. Congress to target nearly 2,000 people who were urging the resistance of the draft or distributing anti-war materials.
INTERNMENT CAMPS	During World War II, the government relocated and incarcerated over 100,000 Japanese Americans to internment camps. The Supreme Court found this action constitutional. Congress did apologize in the 1980's.
COLD WAR	During the Red Scare there were acts (like the Alien Registration Act) passed that made it illegal to overthrow the government. They were used to silence communists, socialists, and pacifists. Joseph McCarthy would accuse people of being communists sympathizers with no proof.
USA PATRIOT ACT	--United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT). This law covers intelligence gathering and sharing by executive agencies. It widened authority on tapping suspects' phones. This act allowed the government to detain illegal immigrants for longer periods, and monitor email communications. --This controversial bill has been recently altered by new legislation. Some say it weakened national security. Others say it did not protect liberty enough.
GUANTANAMO BAY	--There is a U.S. military detention camp in Guantanamo Bay, Cuba which exists to hold terror suspects. Administration officials believe that it is located outside the United States so this loosens constitutional restrictions. --In <i>Rasul v. Bush</i> (2004), the Court ruled that they can not suspend habeas corpus in there. --In <i>Hamdi v. Rumsfeld</i> (2004), the United State cannot detain a U.S. citizen without a minimal hearing to determine the suspect's charge. --In <i>Hamdan v. Rumsfeld</i> (2006), the United States must follow the Geneva Convention and cannot rely strictly on military commissions in prosecuting terror suspects.
<p>-You can see that during times of war the Court typically sides with government restrictions on liberties that protect national security. -You can also see that deciding between liberty and national security is a very divisive issue of which it appears America is constantly struggling to find the right balance.</p>	

CIVIL RIGHTS

CIVIL RIGHTS

SLAVERY, CIVIL WAR, & CITIZENSHIP

ITEM	DESCRIPTION
MISSOURI COMPROMISE (1820)	This prohibited slavery north of 36 degrees latitude. It also brought in Maine (free state) and Missouri (slave state) to the United States.
<i>Dred Scott v. Sandford</i> (1857)	The Supreme Court declared it was unconstitutional when the Missouri Compromise prohibited slavery in the North. It also decided that slaves were not citizens and could not bring suits in federal courts.
CIVIL WAR (1861--1865)	Slavery was a key issue for the Civil War. Northern Republicans did not want slavery in the nation. The North had more people and resources and would ultimately win the war.
EMANCIPATION PROCLAMATION	Lincoln issued that on January 1st, 1863 all slaves in the Confederacy would be freed (Only ended slavery in South but the South was at war with the United States so they didn't really listen)
13TH AMENDMENT (1865)	It abolished slavery and involuntary servitude.
14TH AMENDMENT (1868)	--Guaranteed citizenship to all freed slaves. (Anyone born in the United States is a citizen) -- Due Process Clause : No State can deprive any person of life, liberty or property without due process of the law. -- Equal Protection Clause : No State can deny to any person within its jurisdiction the equal protection of the laws.
15TH AMENDMENT (1870)	The right to vote cannot be taken away due to a person's race, color, or condition of previous servitude.
<p>--Following the 13th amendment, southern states passed Black Codes to take away rights from newly freed slaves (such as prevention from voting, sitting on juries, appearing in public, arresting unemployed blacks, and fining for vagrancy...being homeless).</p> <p>--Congress was outraged and passed the Civil Rights Act of 1866 to stop (some of) the Black Codes. Andrew Johnson vetoed the legislation and in a rare moment Congress overrode his veto. The Black Codes would lead the way for the Jim Crow laws.</p>	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

DISENFRANCHISEMENT AND SEGREGATION IN THE SOUTH

ITEM	DESCRIPTION
CIVIL RIGHTS ACT OF (1875)	It was designed to grant access to public accommodations such as theaters, restaurants and transportation. Also prohibited the exclusion of African Americans from jury service. (AKA: Enforcement Act or Force Act)
END OF RECONSTRUCTION (1877)	Federal occupation of the South was from 1865--1877. National interest in the legal condition of African Americans waned so federal troops were pulled in 1877. National troops were no longer there to guard polling places and prevent whites from excluding black voters.
JIM CROW LAWS	Laws enacted by southern states which required segregation in public schools, railroads, restaurants, and theaters ("Whites only" signs). Some laws even barred interracial marriage.
THE CIVIL RIGHTS CASES (1883)	The Supreme Court ruled (on five separate court cases) that Congress could prohibit only state or governmental action and not private acts of discrimination. This meant the Civil Rights Act of 1875 was now considered unconstitutional.
DISENFRANCHISING AFRICAN AMERICANS (ALL NON-WHITES)	<p>--Poll Taxes: You have to pay to vote (many African Americans were sharecroppers and had little money)</p> <p>--Property Qualifications: Must own property in order to vote.</p> <p>--Literacy Tests: Local voter registration officials administered difficult reading-comprehension tests</p> <p>--Grandfather clause: If your grandfather voted before Reconstruction you could be exempt from poll taxes & literacy exams.</p>
<i>Plessy v. Ferguson</i> (1896)	The Supreme Court found that "separate but equal" accommodations did not violate the Equal Protection Clause of the 14th Amendment.
The national government decided to end Reconstruction and let the South have state government control in 1877. Unfortunately for African Americans, the South and the Supreme Court were not interested in giving them the full rights of citizens despite what the 13th, 14th and 15th Amendments guaranteed.	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

THE CIVIL RIGHTS MOVEMENT

ITEM	DESCRIPTION
NAACP (NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE)	Oswald Garrison Villard & W.E.B. Du Bois met in 1909 to discuss the issues faced by African Americans. This group soon formed the NAACP.
BROWN V. BOARD OF EDUCATION (1954)	The Supreme Court ruled that Plessy's separate-but-equal doctrine was unconstitutional. (Although a decade later less than 1% of black children attended integrated schools)
EISENHOWER SENDS IN FEDERAL TROOPS	In 1957, Eisenhower sent in troops to Little Rock, Arkansas to enforce a school desegregation order.
BUS BOYCOTT	In 1955, Rosa Parks refused to give up her seat on a bus to make room for a white man. Martin Luther King took over the bus boycott that started on the first day of Park's trial. In 1956, a federal court ruled that segregated buses violated the Equal Protection Clause of the 14th amendment.
24TH AMENDMENT (1964)	Outlaws the poll tax in any federal, primary, or general election. (Although it did not say anything about taxes in state or local elections the Supreme Court ruled those unconstitutional in 1966)
MARCH ON WASHINGTON	200,000 people gathered in the national's capital (Martin Luther King organized it) to demand the government end discrimination in all states.
CIVIL RIGHTS ACT OF 1964	<ul style="list-style-type: none"> -Banned discrimination in public accommodations --Outlawed discrimination in hiring based on race, color, religion, sex, or national origin. --Cut off federal funding for discriminating organizations, including schools. --Empowered the U.S. Department of Justice to initiate suits against noncompliant programs.
VOTING RIGHTS OF 1965	Aimed to overcome barriers that existed at the state and local levels stopping African Americans from voting.
<i>Swann v. Charlotte--Mecklenburg School District (1971)</i>	<ul style="list-style-type: none"> -Supreme Court ruled to eliminate all state-imposed segregation. --De jure discrimination: racial segregation as a result of law/ policy. --De facto discrimination: racial segregation as results from practice (like housing patterns) (not any government action.)
<p>--The Civil Rights Movement was successful for different reasons. There were groups like Martin Luther King's Southern Christian Leadership Conference that organized boycotts and protest marches. The media assisted by focusing the nation's attention on how blacks were being treated in the South. But the NAACP was monumental for pressuring presidents, lobbying in Congress, and taking cases to the Supreme Court.</p> <p>--These legal decisions and laws helped not only African American but other diverse groups (like Hispanics and Asians).</p>	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

WOMEN'S SUFFRAGE

ITEM	DESCRIPTION
SENECA FALLS CONVENTION (1848)	A women's rights convention in which 300 men and women met and passed resolutions calling for the abolition of legal economic, and social discrimination against women. (Elizabeth Cady Stanton and Lucretia Mott formed this because they were banned from participating in a abolition convention in London focused on ending slavery)
NAWSA (NATIONAL AMERICAN WOMAN SUFFRAGE ASSOCIATION)	It was revitalized in 1890 when the national and American organizations merged and decided to focus on obtaining the right to vote (suffrage). Susan B. Anthony headed this new group. (The suffrage movement : the drive for voting rights for women 1890--1920)
19TH AMENDMENT	Ratified in 1920, guaranteed women the right to vote. (This was 50 years after African American men)
--After the 19th Amendment some women joined numerous groups like the National Consumers League or the Women's Christian Temperance Union to work towards individual group goals. The widespread organized activity on the behalf of women would not reemerge until the 1960's.	

THE WOMEN'S RIGHTS MOVEMENT

ITEM	DESCRIPTION
CIVIL RIGHTS ACT OF 1964	Outlawed discrimination in hiring based on race, color, religion, sex, or national origin. (Southern Democrats added sex to the list so it would kill the bill, but it passed anyway) TITLE VII of this act has helped in sexual harassment & discrimination cases
NOW (NATIONAL ORGANIZATION FOR WOMEN)	Formed in 1966 after the Equal Employment Opportunity Commission failed to enforce the law as it applied to sex discrimination. (Goals: Equality by the passage of the Equal Rights Amendment or judicial decision).
ERA (EQUAL RIGHTS AMENDMENT)	Congress proposed it in 1972. ¾ of state did not ratify. (They were three states short in 1978. Opponents linked it to <i>Roe v. Wade</i> feminists and said it was anti--family. Congress extended ratification deadline by 3 years but no more states voted for it. It was renamed to the Women's Equality Amendment in 2007).
EQUAL PAY ACT OF 1963	Requires employers to pay women and men equal pay for equal work. (As of 2013, women still make about 78 cents for every dollar a man makes).
TITLE IX	Educational Amendments of 1972 law that bars education institutions receiving federal funds from discriminating against female students. (It is a portion of an amendment of national law)

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

HISPANIC AMERICANS

ITEM	DESCRIPTION
LULAC (LEAGUE OF UNITED LATIN AMERICAN CITIZENS)	Still today's largest Latino/a group in the United States was formed in 1929. Original members' families owned land in the Southwest when it was still under Mexico's control.
Hernandez v. Texas (1954)	The Supreme Court ruled that Mexican Americans were entitled to a jury that included other Mexican Americans.
UNITED FARM WORKERS UNION	Cesar Chavez and Dolores Huerta organized the largest farm workers union in the nation and led them to strike and boycott against California growers.
MALDEF (MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND)	MALDEF alongside the Puerto Rican Legal Defense and Education Fund focuses on funding schools with low-income minority students, bilingual education programs, hiring and workers' rights, challenging election rules and apportionment plans that undercount Latino/a voting powers.
IMMIGRATION ISSUES	The United States only allows so many immigrants to enter the United States. Many people want the United States to let their friends and families to legally enter freely. This is met with resistance from some conservatives who support increased border patrol, additional border fences, and more deportations of illegal immigrants
DAY WITHOUT IMMIGRANTS	In 2006, legal and illegal immigrants took a day off in an economic boycott. More than 1 million marchers took to the streets in at least 40 states to draw attention to the plight of immigrants.

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

AMERICAN INDIANS

ITEM	DESCRIPTION
1787--1887	<p>--Population depletion was a huge factor. Estimates of as high as 50--200 million American Indians went down to less than 2 million by 1900. (Today there are approximately 2.8 million)</p> <p>--For years, Congress and the courts manipulated Indian law to promote the westward expansion of the United States. Indian lands were confiscated, they were placed on reservations, and their political rights were denied.</p>
DAWES ACT OF 1887	<p>The government switched policies to promote assimilation over separation. Each Indian family was given land within the reservation (Indian land was reduced from 140 million acres to 47 million). Their children were sent to boarding schools off the reservation where their native language and rituals were banned.</p>
CITIZENSHIP	<p>In 1924, American Indians became U.S. citizens with the right to vote.</p>
NARF (NATIVE AMERICAN RIGHTS FUND)	<p>It was founded in 1970. It was the result of 1960's activists that were mobilizing after being trained by the American Indian Law Center. Their lawsuits focus on hunting, fishing, and land rights.</p>
CASINOS	<p>Today, Indians have a number of casinos across the nation. This has led to billions of dollars for Indian tribes.</p>
CAMPAIGN CONTRIBUTION	<p>Indians new wealth has led to them growing in power in terms of campaign contributions. (Example: The Agua Caliente Band of Cahuilla Indians donated 21 million in one year) Indians claim these large expenditures are legal because as sovereign nations they are immune from federal and state campaign finance disclosure laws.</p>
INDN (INDIGENOUS DEMOCRATIC NETWORK)	<p>Created in 2005, to elect Indians and Democrats at the state and national level.</p>

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

ASIAN & PACIFIC ISLANDERS

ITEM	DESCRIPTION
CHINESE EXCLUSION ACT 1882	The first law to restrict the immigration of any identifiable nationality.
<i>Yick Wo v. Hopkins</i> 1886	Ruled unconstitutional a San Francisco ban on cleaners operating in wooden buildings ($\frac{2}{3}$ owned by Chinese, and it was one of the few industries that Chinese were not barred from).
SEGREGATION	In 1922, the Supreme Court ruled that Asian and Pacific Americans were not white and therefore not entitled to full citizenship rights. States then created more laws that separated races.
<i>Korematsu v. U.S.</i> 1944	The Supreme Court upheld FDR's executive order 9066 which rounded up Japanese Americans ($\frac{2}{3}$ U.S. citizens) and moved them to internment camps. (Congress apologized and gave reparations in 1988 as a result of Japanese Americans lobbying).
ORGANIZED FOR CIVIL RIGHTS	<ul style="list-style-type: none"> --1960's & 1970's groups formed to fight for civil rights. --Filipino farm workers joined with Mexican in the United Farm Workers Union. --In 1973, movement for Free Philippines which later became The Congress Education Project opposed the Vietnam War.
<p>--In 1977, the U.S. government decided to use the nomenclature "Asian and Pacific Islanders". This identity has been challenged by some sub-groups (like Hawaiians requesting to be categorized with Native Americans). Originally Asian and Pacific Islanders were far more likely to identify as Japanese, Chinese, Korean, or Filipino.</p> <p>--Today groups are targeting diverse political venues (like obtaining positions at the national, state, and local level of governments).</p>	

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

LESBIAN, GAY, BISEXUAL & TRANSGENDERED (LGBT)

ITEM	DESCRIPTION
DISCRIMINATION	<p>--In the 1950's, some states and local communities closed gay bars and prevented liquor sales to gays.</p> <p>--In 1973, psychiatrists removed homosexuality as a mental disorder from their chief diagnostic manual.</p>
DON'T ASK DON'T TELL	In 1996, it was a military policy in which you could not ask a person their sexual orientation. But if you revealed you were gay you could be discharged. It was ended in 2010.
DOMA (DEFENSE OF MARRIAGE ACT)	A 1996 law, that keeps the power to define marriage at the state level and barred federal recognition of same-sex marriage for purposes of social security, federal income tax filings, and other points of law. Essentially declared unenforceable under <i>Obergefell v. Hodges</i> in 2015.
<i>Lawrence v. Texas</i> 2003	This ruling ended anti-sodomy laws. It was the first time the Court declared homosexuality was a fundamental privacy right.
SAME-SEX MARRIAGE BACKLASH	<p>--There was a national backlash after Massachusetts allowed same-sex marriage in 2004.</p> <p>--George W. Bush renewed his call for a constitutional amendment to ban same sex marriage in 2006.</p> <p>--Same sex marriage bans were on the ballot in several states in 2006.</p> <p>--Gay people still face issues adopting in some states.</p>
<i>Obergefell v. Hodges</i> 2015	The Supreme Court ruled that States could not ban same-sex marriage. (37 States had allowed same sex marriage before ruling, most added it in 2012-2015. 13 states still had bans.)

AP AMERICAN GOVERNMENT STUDY GUIDE
CIVIL LIBERTIES & CIVIL RIGHTS
CIVIL RIGHTS

AMERICANS WITH DISABILITIES

ITEM	DESCRIPTION
DISCRIMINATION	Many veterans of WWII, Korea, and Vietnam came home disabled and organized to end the discrimination they were facing.
ADA (AMERICANS WITH DISABILITIES ACT)	<p>--The statute defines a disabled person as someone with a physical or mental impairment that limits one or more "life activities," or who has a record of such impairment.</p> <p>--It extends protections from the Civil Rights Act of 1964 to all of those with physical or mental disabilities.</p> <p>--It guarantees access to public facilities, employment, communication services, and it requires employers to acquire or modify equipment, adjust work schedules, and make facilities accessible.</p>
AAPD (AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES)	The largest nonprofit organization lobbying for expanded civil rights for the disabled. It works on behalf of 56 million Americans who suffer from some form of a disability. They work alongside other groups to assure that the ADA is implemented fully.

AFFIRMATIVE ACTION

ITEM	DESCRIPTION
EARLY AFFIRMATIVE ACTION	JFK issued executive orders to federal agencies to hire free of racial bias. LBJ issued orders to hire minority contractors and employees. This idea would exist in the federal government, states, colleges, and private companies in terms of hiring and admissions.
<i>Regents of the University of California v. Bakke 1978</i>	He sued for reverse discrimination in that he was kept out of medical school even though he scored higher than some women and non-whites. The court ruled (5--4) that mandatory quotas were unconstitutional. (Court still ruled in favor of affirmative action, in some instances, following this case)
GRAY AREA OF LAW	The Court allows some forms of affirmative action but not others. Although the use of strict quotas and automatic points is not constitutional, the Court clearly believes that there is a place for some preferential treatment, at least until greater racial and ethnic parity is achieved.
Affirmative Action: The label placed on institutional efforts to diversify by race or gender.	

Unit 2: Civil Liberties and Civil Rights

(2005 Q 3) Initially, the United States Constitution did little to protect citizens from actions of the states. In the twentieth century, the Supreme Court interpreted the Constitution to protect the rights of citizens from state governments in a process referred to as incorporation.

A. Define selective incorporation.

B. For two of the following, explain how each has been incorporated. Each of your explanations must be based on a specific and relevant Supreme Court decision.

- a. Rights of criminal defendants
- b. First Amendment
- c. Privacy rights

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(2007 Q 2) The First Amendment includes two clauses relating to the freedom of religion.

A. Select one of the following cases and identify the First Amendment clause upon which the United States Supreme Court based its decision.

- *Engel v. Vitale* (school prayer)
- *Lemon v. Kurtzman* (state funding for private religious schools)

B. Describe the Supreme Court's decision in the case that you selected in (1).

C. Select one of the following cases and identify the First Amendment clause upon which the Supreme Court based its decision.

- *Reynolds v. United States* (polygamy)
- *Oregon v. Smith* (drug use in religious ceremonies)

D. Describe the Supreme Court's decision in the case that you selected in (3).

E. Many of these decisions have caused controversy in the United States. Describe two ways in which other political institutions might limit the impact of Supreme Court decisions.

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(2008 Q 4) “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” *Fifteenth Amendment to the United States Constitution*, 1870.

Despite the ratification of the Fifteenth Amendment, voter turnout among African American citizens was very low. Over the past 50 years, civil rights policies have changed substantially, along with a significant increase in African American voter turnout.

- Explain how two measures taken by some states prior to the 1960s affected voter turnout among African American citizens.
- Facing discrimination at the voting booth, many African American citizens turned to alternative forms of political participation. Describe two alternative forms of participation that helped bring about changes in civil rights policies.
- Choose one of the forms of participation you described in (b) and explain why it was effective in changing civil rights policies.

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(2015 Q 4) The Fourteenth Amendment protects civil rights and civil liberties.

(a) Describe the difference between civil rights and civil liberties.

(b) Identify the primary clause of the Fourteenth Amendment that is used to extend civil rights.

(c) Describe a specific legislative action that extended civil rights to each of the following.

- Women
- Persons with disabilities

(d) Identify the primary clause of the Fourteenth Amendment that is used to extend civil liberties.

(e) Explain how civil liberties were incorporated by the Supreme Court in two of the following cases.

- Gideon v. Wainwright
- Mapp v. Ohio
- Miranda v. Arizona

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CHAPTER 14

POLITICS AND PERSONAL LIBERTY

CHAPTER OVERVIEW

Individual liberty and the power held by government have long been the source of philosophical discussion and the violence of wars to end governments that threaten or remove personal liberties. The authors of the Declaration of Independence and the Constitution were familiar with these difficulties, both in their extensive readings of political history, and in experiences of their ancestors, and even in their own generation.

Therefore, when they completed the Constitution, the Founders took the next step—not without some objections—to assure freedoms for the citizens of the new nation. The freedoms assured expressed in the Bill of Rights are individual and are examined in some detail in this chapter.

While many students of government may assume that the freedoms identified are absolute, almost without exception the body responsible for interpreting the supreme law of the land has unhesitatingly determined that the freedoms are guaranteed but not absolute. There are exceptions to guarantees found in the First Amendment.

Other amendments in the Bill of Rights have also been regularly brought to the Supreme Court for decision and even policy making. Changes in applications of the law have occurred, but always with the Court's understanding that all Americans, regardless of position in society, are entitled to certain rights. Conflicts have arisen over some of the decisions, but the Constitution's system requiring the Supreme Court to determine what the Constitution actually is has worked.

CHAPTER THEMES

- Government and individual liberty are inexorably linked.
- The Constitution's Bill of Rights guarantees that government will be held accountable to its citizens.
- The First Amendment contains five guaranteed freedoms, often referred to as *preferred freedoms*.
- The guarantees given are not intended, nor are they interpreted, to assume absolute qualities.
- There continue to be regular, ongoing challenges to freedoms identified in the Bill of Rights.
- Guaranteed freedoms are applicable to all citizens, under due process of law.
- Some of the Bill's amendments have been more heatedly debated and challenged than others.
- The Supreme Court has periodically changed its position on policy issues initiated by challenges to the amendments.

CHAPTER OUTLINE

- I. Power and Individual Liberty
 - A. Authors of the Declaration of Independence viewed individual liberty as inherent to the human condition.
 - 1. It is difficult to draw clear-cut lines between government authority and individual liberty.
 - a. People form governments and give them power for the people's protection and self-preservation.
 - b. Governments can become too strong and become the primary threats to the people's security of property and life.
 - 2. Democracy, as a form of government, must have decision-making processes as well as substantive values.
 - a. If decision making is the only cause for democracy, the people are not protected.
 - b. Maintaining the dignity of people as a value of the government better assures the people's security.
 - B. The Bill of Rights is included in the Constitution to provide people with the government's acknowledgement of the values of the people.
 - 1. **The Bill of Rights prevents the federal government from becoming too powerful.**
 - a. With too much power the federal government could take away liberty.
 - b. If liberty were removed, the Constitution would be undermined.
 - 2. State governments had their own constitutions, and though they were directed by the "supremacy clause" they did not specifically have to comply with the federal Bill of Rights.
 - a. **The first step toward nationalization of the federal Bill of Rights occurred with adoption of the Fourteenth Amendment.**
 - b. **In the 1920s the Supreme Court began to incorporate the Bill of Rights to states.**
- II. Freedom of Religion
 - A. Americans are religious, but do not want to have a religion imposed on them by the state.
 - B. Framers of the Bill of Rights sought to prevent imposition of a state religion or interference in religious practices by prohibiting such acts in the Constitution's First Amendment.
 - C. There are two phrases in the First Amendment associated with religious practice.
 - 1. **The free exercise clause of the First Amendment prohibits government from restricting religious beliefs or practices.**
 - a. **Though the clause appears to be absolute, the Supreme Court has never interpreted it to mean that all conduct is acceptable without exception.**
 - b. **In 1879, the Court ruled that the religious practice of polygamy could be outlawed by Congress.**
 - c. **The Court later made the distinction that although beliefs are absolutely protected, religious practices may be restricted.**
 - d. **Challenges to religious practices have been the foundation of many cases, and each has been determined individually by the Court.**
 - 2. "No establishment of religion" [by the state] is the other phrase in the First Amendment associated with religious liberty.
 - a. **One interpretation of the phrase is that the government may not establish a state religion, as settlers did when they came to the colonies.**
 - b. **Another meaning of the phrase is that the state may not favor one religion over another.**
 - c. **The broadest meaning is that government is prevented from becoming involved in any aspect of religious associations because of the "wall of separation" between church and state.**
 - 3. **The Court has established three tests to determine if a government establishes a religion.**
 - a. **Is there a secular purpose to the activity?**
 - b. **Does the activity advance or inhibit religion?**
 - c. **Does the activity foster government entanglement with religion?**
 - D. Responding to these questions testing the solidity of separation of church and state, the Court has taken different positions (see the Court's position on school vouchers).

1. Positions supporting relationships between church and state:
 - a. Permitted educational vouchers to enable parents to send their children to the school of their choice, even if the school is private and religious.
 - b. Upheld tax exemptions for churches
 - c. Allowed states to close stores on Sundays
2. Positions denying relationships between church and state:
 - a. Denied the acceptability of even voluntary school prayers
 - b. Denied states to pay the costs of teachers' salaries or instructional materials in parochial schools..

III. Freedom of Speech and the Press

A. **The Court has never made the interpretation that all speech is protected by the Constitution's First Amendment.**

1. **Several types of speech are regularly denied as acceptable, while other types are periodically accepted and denied.**
 - a. **In *Gitlow v. New York*, two World War I acts of Congress were upheld when the Court said that speech representing a serious and immediate danger was not protected.**
 - b. **Oliver Wendell Holmes dissented, and the Court's decision came to use his words "clear and present danger" to express the doctrine.**
 2. **The Court has, over the years, tended to be reluctant to restrain the freedoms given in the First Amendment, referring to them as "preferred freedoms." or the preferred position doctrine**
 3. **The 1st Amendment's guarantees of speech, press, and assembly are broadly interpreted to mean freedom of expression.**
 4. **Political expression encompasses more than just words:**
 - a. ***Tinker v. Des Moines (1965)***
 - b. **Court rules in *Tinker* that wearing of armbands constituted symbolic speech and was protected by the 1st Amendment**
 5. **In times of national security threats, the Court has tended to be more lenient in allowing Congress to make somewhat more restrictive laws associated with the First Amendment. The Court:**
 - a. **Upheld conviction of communists in the 1951 *Dennis v. United States*, under the 1941 Smith Act**
 - b. **Expanded the meaning of speech to include symbolic actions**
 - c. **Protected flag-burning in *Texas v. Johnson* but not cross-burning**
- B. The Court also debated whether or not speech can be prohibited when it may cause public disorder, even though the speaker is not disorderly.
1. Initially the Court adopted the "fighting words" doctrine.
 - a. Speech that is likely to cause a fight may be prohibited.
 - b. Authorities could end a speech because it met audience hostility.
 2. In recent years the Court has rejected banning speech before it occurred because it might create a disturbance.
- C. Many campuses prohibit speech that is considered racist, sexist, homophobic, and "insensitive," but this practice is probably not constitutional.
- D. Banning "hate speech" is now common. But do government prohibitions on hate speech violate the First Amendment?
- E. Commercial speech is protected by the First Amendment.
1. Advertising provides information and is protected.
 2. Balanced against other interests of the public, certain advertising may be prohibited.
 - a. The Federal Communications Commission banned advertising of liquor and cigarettes on radio and television.
 - b. The Federal Trade Commission enforces truth in advertising of products and claims.
- F. Libel and slander have never been protected under freedom of speech.**
- G. Obscene materials of all kinds are exempt from First Amendment protection.
1. There is, however, difficulty in defining what is obscene.
 - a. States and local governments have defined obscenity by using equally obscure words in the definition—lewd, filthy, etc.
 - b. The Court struggled with a definition, until Justice Stewart's statement "I know it when I see it."
 2. In the 1957 *Roth v. United States* decision the Court's definition was equally laden with obscure and imprecise words.

3. **In *Miller v. California* (1973) the Court created a standard for identifying obscenity as utterly without redeeming merit.**
 - a. **Use of this standard increased conviction rates in obscenity and pornography cases.**
 - b. **Local communities may determine the statement on local standards; many allow X-rated stores in their communities.**
 - H. New technologies (i.e., the Internet) continue to challenge courts in the application of First Amendment principles.
 1. Congress tried to ban offensive material but was overruled by the courts.
 2. The Supreme Court called the Internet “the most participatory form of mass speech yet developed (which) deserves the highest protection from government intrusion.”
 - I. **The idea of a free press is deeply rooted in principles of democratic government.**
 1. **When America was still a colony of England, English law prohibited prior restraint in publication of newspapers.**
 - a. **Publishers may be punished for printing libelous, obscene, or illegal materials, but they may not be stopped prior to publication.**
 - b. **Restraint is the same as censorship.**
 - c. **Courts have regularly upheld no-prior-restraint doctrines, though not without dissent among the justices.**
 2. As movies grew in importance, the Court extended the interpretation of the First Amendment to cover motion pictures, though some restrictions have been accepted, such as:
 - a. A censor has the burden of proof that a film is obscene
 - b. There must be a procedure for judicial determination of the obscenity identification
 - c. Censors must act speedily
 3. To avoid government censorship, movies have adopted film rating systems.
 - J. Because radio and television are government licensed (FCC), they are subject to different rules than private businesses or individuals.
 1. Because government is designed to protect all groups, businesses approved by government to serve such needs must serve all groups.
 2. No one has a First Amendment right to a license or to monopolize a radio frequency.
 3. The government has upheld “equal time” and “fairness” restrictions against broadcasters while striking down similar rules against newspapers.
 4. The Court has generally rejected reporters’ claims of special privileges.
 5. There have been periodic conflicts between reporters’ constitutional rights and their rights as American citizens (shield laws and gag orders).
- IV. Privacy, Abortion, and the Constitution
- A. **A right to “privacy” is not expressly provided for anywhere in the Constitution, but the word “liberty” in the First and Fourteenth Amendments may include a constitutional right to privacy.**
 1. **The U.S. Supreme Court found a right to privacy in the Constitution when it struck down a Connecticut law prohibiting the use of contraceptives in *Griswold v. Connecticut***
 - a. **Planned Parenthood case**
 - b. **Challenged the constitutionality of the statute**
 - c. **The Court upheld the challenge**
 - d. **The justices cited the First, Third, Fourth, Ninth, and Fourteenth Amendments in their 7-2 opinion**
 - B. **In *Roe v. Wade*, the Court ruled that the constitutional right to privacy as well as the Fourteenth Amendment’s guarantee of “liberty” included a woman’s right to bear or not to bear a child.**
 1. **The Court also ruled that a state could not restrict abortions in the first trimester**
 2. **In the second trimester, a state could set standards, but not prohibit abortions**
 3. **Only in the third trimester could a state prohibit or regulate abortion**
 - C. **Abortion has become a polarizing issue.**
 1. **In 1992 the Court upheld *Roe v. Wade* in *Planned Parenthood of Pennsylvania v. Casey*.**
 - D. A number of states have attempted to outlaw “partial birth” abortions.
 1. The Court, again led by O’Connor, declared a Nebraska law prohibiting the procedure to be unconstitutional; in 2003, Congress passed such a ban.
 - E. Does the right of privacy extend beyond the reproductive rights of women?
 1. The Court has left this question open to argument.
 - a. In *Lawrence v. Texas* (2003), the court struck down a state law against homosexual sodomy.
 - b. The Court overturned a conviction for the mere possession of obscene material.

- F. Dr. Jack Kevorkian brought physician-assisted suicides to public awareness.
 - 1. A group of physicians in Washington later filed suit that their state's law against physician-assisted suicides violated the Fourteenth Amendment's "liberty" guarantee.
 - 2. The Court ruled that laws against physician-assisted suicide are not violating the Fourteenth Amendment's guarantee of liberty.
- V. Freedom of Assembly and Petition
 - A. **The First Amendment guarantees people's rights to assemble and petition the government.**
 - 1. **Organization of political parties and interest groups comes from the freedom to assemble.**
 - a. **The right to assemble gives the right to form organizations and associations.**
 - b. The NAACP, the KKK, and student organizations are all associations of interest groups.
 - c. Protests, parades, demonstrations, and picketing are all assemblies of people practicing their guaranteed rights.
 - 2. Freedom to petition protects lobbyists.
 - B. In recent years there have been increased challenges to freedom of assembly.
 - 1. Abortion groups argue they are assembling and even picketing under constitutional protection.
 - 2. Generally, the Courts have accepted the right as long as others are not threatened or otherwise injured.
 - a. Freedom of assembly does not include blocking access to public or private buildings.
 - b. In 1993, the attorney general called on Congress to pass a law guaranteeing access to abortion clinics.
- VI. Protecting Property Rights
 - A. **The Fifth Amendment protects private property against government confiscation without just compensation.**
 - B. **Eminent domain permits governments to take private property against owner's wishes so long as fair compensation is made to the owner.**
 - 1. **Eminent domain takings are valid only for putting property to "public use."**
 - 2. **Eminent domain is broadly defined and permits "takings" for the benefit of private developers. This seemingly undermines the Fifth Amendment's "takings" clause.**
 - C. Government can make laws to protect the health, safety, and welfare of its citizens. Unless the regulation denies a property owner all economically beneficial uses of his land without compensation, regulation may occur.
- VII. The Right to Bear Arms
 - A. **Supreme Court finally decides in *D.C. v. Heller* (2008) that "The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes such as self defense within the home"**
 - B. **However, the Court did go on to warn that "Like most rights the Second Amendment right is not unlimited"**
 - C. **The 2nd Amendment was incorporated via the states in the *McDonald v. Chicago* (2010) decision.**
- VIII. Rights of Criminal Defendants
 - A. **Criminals are also citizens and have rights to protection as does any citizen.**
 - 1. **Protection of the accused is a fundamental right based on English history as well as on experiences of ancestors of the Constitution's framers.**
 - a. **The right to expect evidence to be produced upon charges of guilt is given in the writ of habeas corpus guarantee.**
 - b. **A bill of attainder protects individuals from punishment without judicial trial.**
 - c. **Protection from acts that define a criminal act after it has taken place is guaranteed by prohibition of *ex post facto* laws.**
 - B. Other constitutional guarantees to all citizens, including those accused of criminal activities, are the subject of many Court decisions.
 - 1. **Unreasonable searches and seizures are prohibited by the Fourth Amendment.**
 - a. Judges cannot issue search warrants except with probable cause, which reduces "fishing" expeditions.
 - b. The items to be searched for must be identified, except when some are found in the course of the legal warrant.
 - c. The Foreign Intelligence Surveillance Act of 1978 (FISA) requires all intelligence agencies to obtain a search warrant by showing that surveillance is required to investigate possible attacks against the nation.
 - d. Questions regarding drug testing arise in relation to the Fourth Amendment.

2. Some searches may be reasonable, even without warrants, under certain conditions such as:
 - a. Searches in connections with a valid arrest
 - b. Searches to protect a police officer's safety
 - c. Searches to obtain evidence in the immediate vicinity and under the suspect's control
 - d. Searches with consent of the suspect
 3. The Court permits arrests without warrants, when:
 - a. A crime is committed with an officer present
 - b. Probable cause suggests that a crime was committed by the person apprehended
 4. No police officer may enter a home to arrest an individual without a warrant or consent of the owner.
 5. The Fifth Amendment requires that an indictment be issued by a grand jury before trial on a felony.
 6. Freedom from self-incrimination forces the state to prove guilt, with the burden of proof on the state.
 7. The phrase "taking the Fifth" protects people from coercion.
 - a. Use of the "Fifth" is protection against possible self-incrimination.
 - b. Use of the "Fifth" may not be interpreted as evidence of guilt.
 8. Illegally obtained evidence and confessions are excluded for use in trial, under the exclusionary rule.
 9. The Eighth Amendment prohibits excessive bail from being required.
 - a. Bail is not necessarily required to be given in all cases.
 - b. When it is required, it should be no more than appears necessary to ensure the defendant's later presence at trial.
 10. Failure to receive a fair trial may result in retrial or release despite guilt.
 11. Plea bargaining takes place in over 90 percent of all criminal cases.
 12. The double jeopardy rule can have exceptions, such as being tried in both federal and state court.
- C. The Eighth Amendment prohibits cruel and unusual punishment.
1. The death penalty is the subject of one of the most heated debates in criminal justice.
 - a. Some argue that the death penalty violates the cruel and unusual punishment phrase of the Eighth Amendment.
 - b. A strong argument is made that the penalty is unequally applied because poor criminals are executed more often.
 - c. Advocates of the death penalty argue that justice demands, for example, a life for a life.
 - d. Advocates argue that a jail sentence is not enough punishment, particularly given early releases.
 2. Before 1971, the death penalty existed in about half of the states and with the federal government.
 3. In the 1972 *Furman v. Georgia* case, the Court ruled that capital punishment violated the Eighth and Fourteenth Amendments.
 - a. After the decision many states rewrote their death penalty laws to try to ensure uniformity and fairness.
 - b. Many of the new laws were upheld in a series of cases that went to the Court in 1976.
 4. In 1976, the Court reinstated the death penalty, based upon
 - a. The just, moral outrage by society of a particularly offensive conduct
 - b. States rewriting death penalty law that had been arbitrary and capricious
 - c. Dividing trials into two proceedings as the trial and punishment phases
 - d. An automatic review of all death sentences by state supreme courts
- D. The death penalty has been challenged as a violation of the equal protection clause of the Fourteenth Amendment.
- E. Once imposed, the death penalty is irreversible, so delaying challenges have been allowed regularly.

CHAPTER 15

POLITICS AND CIVIL RIGHTS

CHAPTER OVERVIEW

Civil rights and politics are inexorably intertwined, particularly as the twentieth century has matured to recognize the meanings of Jefferson's statement, "All men are created equal."

The maturing process, however, has taken generations. And still, the battles are not complete, though waged regularly in Congress's lawmaking processes and in the Court's ongoing work to determine the meaning of the Constitution. The public, affected by these ongoing struggles, has slowly begun to recognize rights and obligations due to them by the government. With these recognitions, increased demand has resulted in increased laws protecting to the rights of many ignored by the law in centuries past.

The Founders clearly acknowledged the problem of slavery but, given the era, did not respond to its management. The end of slavery would not take place until the Civil War, and even then, though legally unconstitutional at the national level, states were successful in evading compliance with the new Fourteenth and Fifteenth Amendments. Periodic challenges in the Supreme Court brought unsatisfactory results, including *Plessy v. Ferguson* in 1896, which upheld segregation and maintained the equitability of "separate but equal" facilities for blacks. It was not until 1954 that the *Brown v. Board of Education of Topeka, Kansas* decision overturned the *Plessy* decision.

Following that decision, Congress forced states to comply with desegregation policies advocated by the Supreme Court. The 1964 Civil Rights Act ended legal discrimination against women and blacks. In following years, many cases supported challenges to the act, and, for the most part, laws resulting from the act have been upheld. However, recent challenges furthering causes of women, the poor, Hispanics, Native Americans and the disabled appear to be on the cutting edge of moving the nation into enacting laws that provide for more than equality of opportunity and, instead, stress equality of results. In the twenty-first century, it appears the nation has further battles to wage with government, furthering its work on behalf of its citizens.

CHAPTER THEMES

- Concerns about government's management of civil rights began even before the Constitution was written.
- Issues such as the rights of minorities, women, the poor, and the disabled have engaged government's and American citizen's interests steadily since the middle of the nineteenth century.
- Though legal resolutions to inequalities in the nation have been sought, legal remedies and societal acceptance have often been slowed.
- Thousands of cases concerning civil rights have been filed, reviewed, and decided upon in courts.

CHAPTER OUTLINE

- I. The Irony of Equality
 - A. Equality continues to be a complex political concern.
 - 1. Definitions of equality are cause for conflict because they identify opposing positions:
 - a. Equality is equality of opportunity.
 - b. Equality is equality of results.
 - c. Equality is fair treatment of all individuals.
 - d. Equality is fair treatment of particular groups.
 - 2. At present, equality of results has gained acceptance.
 - B. The politics of civil rights centers on developing and interpreting guarantees of equality.
 - C. Though Thomas Jefferson argued that “All men are created equal,” from 1619 to 1865 slavery was accepted in the United States.
 - 1. **The Constitution of 1787 recognized slavery, and required that slaves be counted as three-fifths of a person for congressional representation.**
 - a. Professing equality, the Founders recognized the contradiction they accepted.
 - b. They did not use the term *slave*, substituting the phrase, “person held to Service or Labor.”
 - 2. **In Chief Justice Roger Taney’s 1857 ruling in *Dred Scott v. Sandford*, slavery was upheld using the “original intent” of the Founders.**
 - 3. By 1860 the slavery issue was central to conflict between northern and southern states, resulting in:
 - a. A four-way race for the presidency, with Abraham Lincoln winning
 - b. The secession of the South from the Union
 - c. The Civil War
 - d. Lincoln’s 1862 Emancipation Proclamation, which freed all slaves
 - e. The Thirteenth Amendment in 1865, which abolished slavery
 - f. The North’s victory in the Civil War
 - g. The Fourteenth Amendment in 1867, which required equal protection of the laws in all states for all citizens
 - h. The Fifteenth Amendment in 1869, which prohibited abridgment of the right to vote because of race, color, or prior condition of servitude
 - D. After the war’s end, political support for reconstruction policies eroded. In the Compromise of 1877:
 - 1. The Union agreed to:
 - a. End efforts to change southern society
 - b. Give tacit approval to white supremacy in the South
 - 2. Southern states agreed to:
 - a. Pledge support to the Union
 - b. Accept national supremacy
 - c. Accept Republican Hayes as president, though Democrat Tilden won the popular vote

- E. The Supreme Court's civil rights cases of 1883 declared federal antidiscrimination laws to be unconstitutional when practiced by private persons.
 - 1. Congress was denied power to protect blacks from individual and business discrimination.
 - 2. Southern states imposed segregation in:
 - a. Public accommodations
 - b. Housing
 - c. Education
 - d. Employment
 - e. Almost all other sectors of private and public life
 - 3. By 1895 southern states passed laws requiring segregation in education and public accommodations.
 - a. Separation of races and exclusion of blacks' rights, an institution known as "Jim Crowism," existed throughout blacks' lives.
 - b. **In the 1896 *Plessy v. Ferguson* case, the Supreme Court upheld segregation as long as facilities were equal.**

II. Equal Protection of the Laws

- A. **The initial goal of the civil rights movement was to eliminate all segregation laws.**
 - 1. **The National Association for the Advancement of Colored People (NAACP) led the fight to abolish legal segregation.**
 - a. Chief Counsel for the NAACP defense fund, Thurgood Marshall—later a Supreme Court Justice—argued that southern states violated the "equal" aspect of the *Plessy v. Ferguson* case.
 - b. **Marshall's efforts continued until the 1954 case of *Brown v. Board of Education of Topeka, Kansas*.**
 - 2. **The *Brown* decision by the Earl Warren Court ended legal segregation.**
- B. Adoption of means to end segregation and to integrate races throughout the nation consumed the nation's efforts.
 - 1. The Court required state and local leaders to end segregation with "all deliberate speed."
 - a. For fifteen years, southern states delayed and resisted desegregation in all their institutions.
 - b. In 1969 the Court rejected a Mississippi appeal for further delay in integrating schools.
 - 2. In *Swann v. Charlotte-Mecklenburg County Board of Education* (1971) the Court upheld:
 - a. Use of racial balance requirements in schools to assign pupils to schools based on race
 - b. Court scrutiny of schools dominated by one race
 - c. Gerrymandering to achieve equal racial balance
 - d. Court-ordered busing to achieve racial balance
- C. *De facto segregation* means that racial imbalances are not directly caused by official actions, but rather by residential patterns.

III. The Civil Rights Acts

- A. Prior to 1964 Congress let courts struggle with the issues of civil rights and equality.
 - 1. In 1957 Martin Luther King, Jr. began advocating nonviolent, direct action through his Southern Christian Leadership Conference.
 - a. In 1963 King led a nonviolent, direct action march to Birmingham, Alabama, to protest segregationist policies.
 - b. Later, in 1963, King led over 200,000 blacks and whites on a march in Washington, D.C., which became associated with King's speech, "I Have a Dream."
 - 2. **Congress passed the Civil Rights Act of 1964, which ranks with the Emancipation Proclamation, Fourteenth Amendment, and the *Brown* case. It included provisions that:**
 - a. **There can be no discrimination in any public accommodations**
 - b. **All federal departments and agencies must end discrimination in any program or face termination of financial assistance.**
 - c. **No employer or labor union could discriminate in any way.**
 - d. **The Equal Employment Opportunity Commission (EEOC) was established to assure compliance with these points.**
 - 3. The Civil Rights Act of 1968 was passed to ensure the end of housing discrimination practices by prohibiting:
 - a. Refusal to sell or rent housing based on race, color, religion, or national origin
 - b. Discrimination associated with terms, conditions, or privileges of sales and rentals
 - c. Advertising or inducing people to buy, sell, or rent housing on account of race, religion, or national origin

- B. The civil rights movements of the 1960s resulted from legal and leadership activities that expanded in the 1950s, in particular:
 - 1. The Supreme Court's activism in seeking to end segregation beginning with the *Brown* case
 - 2. The leadership of the NAACP and then of Martin Luther King, Jr.
- IV. Equality: Opportunity versus Results
- A. Though there have been gains from the civil rights movement, they are more visible in opportunity than in results.
 - 1. Inequalities continue today and are often posed as differences in the life chances of blacks and whites.
 - a. The average income of black families is 62 percent of the average income of white families.
 - b. The average income of Hispanic families is 68 percent of the average income of white families.
 - c. Over 25 percent of black families are below the poverty line.
 - d. Blacks' unemployment rate is two times as high as whites'.
 - 2. Affirmative action could be used to overcome inequities in life chances, but should it?
 - B. Emphasis on equal opportunity has been the government's policy focus since the 1940s, including:
 - 1. Desegregation of the armed forces in 1948
 - 2. Development of affirmative programs as a result of the 1964 Civil Rights Act
 - C. **The issue of reverse discrimination has been a frequent problem with affirmative action policies.**
 - 1. **In 1978's *University of California Regents v. Bakke* case, the Supreme Court struck down special admission programs for minorities as discriminatory against whites.**
 - 2. The University of California agreed it discriminated, but argued it was for purposes of:
 - a. Reducing deficits in minorities attendance in medical schools
 - b. Countering societal discrimination
 - c. Increasing the number of doctors in underserved communities
 - d. Obtaining educational benefits of ethnic diversity
 - D. The Supreme Court has been willing to approve affirmative action programs based on past discriminations.
 - 1. The Court approved a plan to reduce discrimination in the 1979 *United Steelworkers of America v. Weber* case.
 - a. Kaiser Aluminum Corporation and the United Steelworkers Union employed affirmative action programs to increase the number of minorities holding skilled jobs.
 - b. Title VII allows such actions
 - 2. Despite changing membership of the Court, it continues to support affirmative action as a remedy for past discrimination.
 - E. The Court has raised questions about the increased possibilities of reverse discrimination if affirmative action policies continue to be based only on race.
 - F. Do affirmative action and diversity in higher education improve the learning experience?
 - 1. How to achieve diversity (preferences for minority applicants)
 - 2. UM law school case—violation of Equal Protection Clause—Fourteenth Amendment
 - 3. California, Texas, Florida—abandoned racial preferences
 - 4. Use socioeconomic status and recruitment outreach efforts
 - G. The California Civil Rights Initiative ban on preferential treatment of women and minorities was upheld.
- V. Hispanics in America
- A. Hispanic is the term used to refer to those with Spanish-speaking ancestry and cultures.
 - 1. Mexican American populations doubled in size between 1980 and 1990, and their heritage of low pay is closely tied to farm labor.
 - 2. For Puerto Rican citizens of the United States, income is higher than citizens of other Caribbean descent, but living in the United States their income is less than that of other Hispanics.
 - 3. Cuban Americans constitute the smallest Hispanic subgroup in the United States, but they comprise the highest Hispanic income group.
 - B. The nation's Hispanic population is about 15 percent of the national total, but they have only about 6 percent of overall membership in the House of Representatives.
 - 1. Cuban Americans tend to be Republicans.
 - 2. Other Hispanic House members are Democrats.

VI. American Indians: Trail of Tears

- A. It is estimated that 60 to 70 million native people lived in the Western Hemisphere at the time of Christopher Columbus's arrival.
 - 1. About 90 percent of Native Americans died from European diseases.
 - 2. By 1910, many Native Americans had died or been killed, dropping their numbers to about 210,000 in America.
 - 3. Today, Native Americans number about 2.8 million.
- B. Treaties between Native Americans and the United States government regularly occurred as a means for the government to obtain land or to further eliminate Native American cultures.
- C. The "Indian Wars" were fought between the Plains nations and the U.S. Army between 1864 and 1890.
- D. Under President Franklin D. Roosevelt, restoration began as an extension to the New Deal.
 - 1. Land ownership was restored to Native Americans.
 - 2. Forced assimilation was mostly abandoned.
 - 3. The Bureau of Indian Affairs (BIA) became more sensitized to Indian concerns.
- E. The American Indian Movement (AIM) was established in 1968, and has been successful in revitalizing some aspects of native cultures.
- F. Today, states are prevented from regulating or taxing Native peoples unless authorized by Congress.

VII. The Rights of Disabled Americans

- A. **As the Civil Rights Act of 1964 did not address protection of disabled Americans, the Americans with Disabilities Act (ADA) was passed in 1990.**
- B. **The ADA addresses a broad spectrum of issues and problems of America's disabled residents.**
 - 1. **Disabled people cannot be denied employment or promotion if reasonable accommodation will allow job performance.**
 - 2. **Disabled people cannot be denied access to government programs or benefits.**
 - 3. **Public accommodations must allow full and equal access for disabled persons.**
 - 4. **The FCC is to ensure telecommunication access to hearing- and speech-impaired people.**
- C. **The ADA also protects the rights of people with learning and psychiatric disabilities.**

VIII. Gender Equality and the Politics of Sexual Orientation

- A. The Equal Protection Clause of the Fourteenth Amendment applies to any person, and it has been used in response to gender differences in law.
 - 1. Early feminist organizations grew out of women's antislavery beliefs in the middle of the nineteenth century, led by such suffragists as:
 - a. Lucretia Mott
 - b. Elizabeth Cady Stanton
 - c. Lucy Stone
 - d. Susan B. Anthony
 - 2. Women's activities also sought protections:
 - a. In the workplace
 - b. In families
- B. In the early twentieth century the women's movement focused on suffrage.
- C. In 1920, the Nineteenth Amendment gave women the right to vote.
- D. By the 1970s, the Court responded to sex discrimination arguments in a series of cases that invoked the Fourteenth Amendment's protection.
 - 1. In *Reed v. Reed* (1971) the Court ruled that sexual classifications must be fair.
 - 2. The Court upheld rape laws for females under age 18, regardless of consent.
 - 3. The Court appears to have bowed out of cases associated with gender and the military.
- E. **If the Equal Rights Amendment (ERA) had passed in the 1970s, it might have eliminated most gender differences in the law.**
- F. **Title IX prohibits discrimination against women in college and university athletic programs and has been very successful.**
- G. With the rise in women's participation in the labor force, cultural roles of women in society have changed, to include reevaluation of many women's experiences.
 - 1. Title VII of the Civil Rights Act of 1964 prevents sexual discrimination in jobs.
 - 2. **Title IX of the Education Act Amendment of 1972 concerns sex discrimination in education.**

- H. Women today continue to earn only about 80 percent of what men do, on average.
- I. A distinction in job descriptions associated with comparable worth is an increasingly heated debate of women's issues.
 - 1. Stereotyping of male and female jobs is also defineable as "blue collar" versus "pink collar" discrimination.
 - 2. Occupational sex stereotyping is reducing, and it is believed that eventual elimination of such differentiated occupations will end in the near future.
- J. Women's positions in management are much less common than the number of women employed in accessible positions would indicate to be probable.
- K. Women's experience of subtle failures to be promoted is referred to as the "glass ceiling."
- L. The Supreme Court has held that consenting adults engaging in practices common to a homosexual lifestyle are entitled to the rights of privacy.
- M. Various other gay rights issues remain unsettled, particularly laws surrounding same-sex marriage, adoption, employment, and housing discrimination.