

Presentation Pro

Magruder's American Government

CHAPTER 19

Civil Liberties: First Amendment Freedoms

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Civil Liberties: First Amendment Freedoms

SECTION 1 The Unalienable Rights

SECTION 2 Freedom of Religion

SECTION 3 Freedom of Speech and Press

SECTION 4 Freedom of Assembly and Petition

Section 1

Unalienable Rights

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The Unalienable Rights

- How did Americans' commitment to freedom lead to the creation of the Bill of Rights?
- What is limited government?
- How does federalism affect individual rights?
- How did the 14th and 9th amendments further guarantee individual rights?



Section 1 Overview

- [Section 1 The Unalienable Rights](#)
- The guarantees in the Bill of Rights reflect Americans' long-held commitment to personal freedom as well as the principle of limited government.
- Individual rights are not absolute; they can be restricted when they come into conflict with the rights of others.
- The Bill of Rights restricts only the National Government, but the Due Process Clause of the 14th Amendment “nationalizes” most of those guarantees.

Section 1 Overview

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A Commitment to Freedom

- The listing of the general rights of the people can be found in the first ten amendments in the Constitution, also known as the **Bill of Rights**.
- The 13th and 14th amendments have also added to the Constitution's guarantees of personal freedom.
- In general, **civil liberties** are protections *against government*.
- They are guarantees of the safety of persons, opinions, and property from arbitrary acts of government.
- The term **civil rights** is sometimes reserved for those *positive acts of government* that seek to make constitutional guarantees a reality for all people.



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Limited Government

- Throughout the Constitution, the extent of governmental authority is strictly limited.
- The rights that the Constitution guarantees to citizens are also limited.
- People in the United States are free to do as they please as long as they do not infringe upon the rights of others. Rights are relative.
- Sometimes, different rights conflict with one another, such as the freedom of the press and the right to a fair trial.
- Not all rights are guaranteed to **aliens**, who are foreign-born residents or non-citizens. For instance, their right to travel is often restricted.



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Federalism and Individual Rights

The Bill of Rights

- The most famous of the Constitution's guarantees apply only to the National Government, not the government of the States.
- The Supreme Court held that the Bill of Rights only restricts the National Government in *Barron v. Baltimore*, in 1833.

The Modifying Effect of the 14th Amendment

- The 14th Amendment's **Due Process Clause** provides that no State can “deprive any person of life, liberty or property, without due process of law...”.
- However, to include rights under that heading, the Supreme Court had to define the rights on a case by case basis, called **the process of incorporation**.



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The 9th Amendment

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

- The Ninth Amendment states that the American people possess rights that are not set out explicitly in the Constitution.
- It has been used to protect rights as various as the rights of the accused to a woman’s right to abortion without undue interference by government.



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Section 2

Freedom of Religion

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Freedom of Religion

- Why can't a free society exist without free expression?
- What is the “wall of separation between church and state”?
- How has the Supreme Court ruled on Establishment Clause cases?
- How has the Supreme Court interpreted and limited the Free Exercise Clause?



Section 2 Overview

- [Section 2 Freedom of Religion](#)
- Free expression, including freedom of religion, is necessary to a free society.
- The Establishment Clause sets up what Thomas Jefferson called “a wall of separation between church and state.” The nature of this “wall,” particularly as it applies to education, has been a matter of continuing controversy.
- The Free Exercise Clause protects individuals’ right to believe—but not to do—whatever they wish.

Freedom of Expression

Two guarantees of religious freedom:

Establishment Clause

- Guards against establishing a mandated religion.
- In effect, freedom from religion

Free Exercise Clause

- Guards against the government interfering in the exercise of any religion.
- In effect, freedom for religion.



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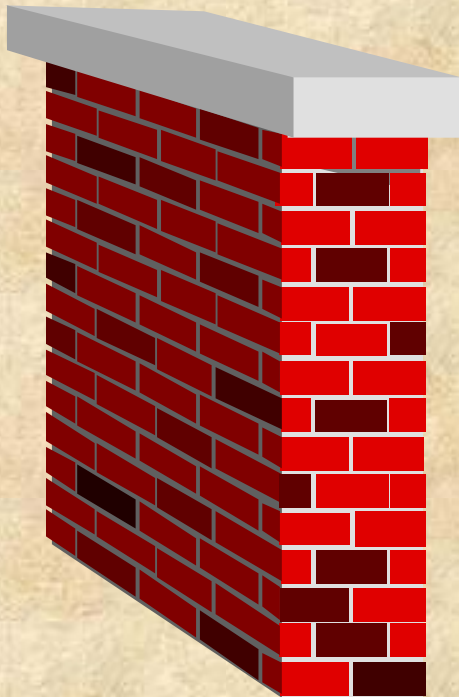
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Separation of Church and State

A wall of separation?

Church and government are constitutionally separated from one another.



However, the government supports churches and religion in a variety of ways, including tax exemption.

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Religion and Education

The Supreme Court has had to consider many Establishment Clause cases that involve religion and education.

Released Time—students can be released during school hours to attend religious classes, as long as the classes do not take place in a public facility

Prayers and the Bible—the use of prayer and the Bible in a religious way is not allowed in school or at school functions

Student Religious Groups—are allowed to meet in the school on the same basis as other student organizations

Evolution—a doctrine can not be preferred or prohibited according to its relation to a religious theory

Aid to Parochial Schools—the Supreme Court uses the *Lemon* test to determine what public funding of church-related schools is acceptable



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The *Lemon* Test

The *Lemon* Test is based on *Lemon v. Kurtzman*, 1971.

- The purpose of the aid must be nonreligious.
- The aid can neither advance nor inhibit religion.
- Aid must not excessively entangle the government with religion.



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Other Establishment Clause Cases

Seasonal Displays

- *Lynch v. Donnelly*, 1984—allowed the display of a nativity scene along with other nonreligious objects on public land
- *County of Allegheny v. ACLU*, 1989—prohibited an exclusively Christian holiday display
- *Pittsburgh v. ACLU*, 1989—allowed a multi-faith holiday display

Chaplains

- The Supreme Court ruled in *Marsh v. Chamber*, 1983 that it was permissible for chaplains to open daily sessions of Congress and State legislatures



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The Free Exercise Clause

Limits

- Actions that violate social duties or disrupt social order are not covered under the Free Exercise Clause.

Examples:

Bigamy

Using poisonous snakes during religious ceremonies

Schoolchildren who have not been vaccinated

Free Exercise Upheld

- The Court has found many government actions to be counter to the Free Exercise Clause.

Examples:

Amish children cannot be forced to go to school after grade 8

Ministers are allowed to hold elective office

Unemployment benefits cannot be denied to someone who quit their job because of religious beliefs



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Section 3

Freedom of Speech and Press



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Freedom of Speech and Press

- How important is the two-way free exchange of ideas?
- How has the Supreme Court limited seditious speech and obscenity?
- What are the issues of prior restraint and press confidentiality?
- What limits have the Court placed on the media?
- What are symbolic speech and commercial speech?



Section 3 Overview

- [Section 3 Freedom of Speech and Press](#)
- The 1st and 14th Amendments' guarantees of free speech and press protect a person's right to speak freely and to hear what others have to say.
- These freedoms are not absolute: the Supreme Court has limited such expressions as seditious speech and obscenity, but seldom allows prior restraint of spoken or written words.
- The media also can be limited: Reporters do not have an unlimited right of confidentiality, and radio and television are subject to more regulation because they use the public airwaves.
- Symbolic and commercial speech enjoy constitutional protection but can be limited under certain circumstances

The Free Exchange of Ideas

Freedom of Speech and Freedom of Press guarantees are meant to:

- Protect each person's right of free expression, whether spoken, written, or communicated in any other way.
- Protect all persons' right to a complete discussion of public affairs.

Freedom of Speech and Press do not protect:

- **Libel**, the false and malicious use of written words
- **Slander**, the false and malicious use spoken words
- Obscenity
- Words that incite others to commit crimes



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Seditious Speech

Sedition is the crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts. **Seditious speech** is speech that urges such conduct.

Congress has enacted three major laws to prevent sedition and seditious speech:

- **The Alien and Sedition Acts**—made scandalous or false criticism of the government illegal. Expired before Thomas Jefferson took office in 1801.
- **The Sedition Act of 1917**—made it a crime to encourage disloyalty or spread anti-government ideas during a time of crisis. Upheld by the Supreme Court in instances of “clear and present danger.”
- **The Smith Act of 1940**—forbade advocating violent overthrow of the government, and belonging knowingly to any group that does. The Supreme Court still upholds the constitutionality of the law, but over time has modified it so that it is difficult to enforce.



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Obscenity

Obscenity laws are enforced under the postal power (Article I, Section 8, Clause 7 of the Constitution).

Obscenity Test laid out in *Miller v. California*, 1973

- 1) The average person finds that the work appeals to “prurient interests” judging from contemporary standards.
- 2) The work describes offensive sexual conduct that is specifically outlawed as obscene.
- 3) The work lacks serious value of any variety.



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Prior Restraint

In most cases, the government cannot curb ideas before they are expressed. It can punish ideas after they are expressed.

- The Supreme Court has held in several cases that the guarantee of a free press does not allow the government to exercise **prior restraint** on publication except in grave circumstances. In *Near v. Minnesota*, the Court protected the rights of even “miscreant purveyors of scandal.”
- In *New York Times v. United States*, 1971, the government sought a court order to keep newspapers from printing “the Pentagon Papers” which had been stolen and leaked to the press. The Supreme Court found that the government couldn’t show that the papers endangered national security enough to justify prior restraint of publication.



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The Media

The Relationship between the Freedom of Speech and Press Amendments and the Media:

- **Confidentiality:** Since the Supreme Court found that the Constitution does not allow members of the news media to keep their sources confidential in a court of law, 30 states have passed **shield laws** to give reporters some protection against having to reveal their sources.
- **Motion Pictures:** In *Mutual Film Corporation v. Ohio*, 1915, the Supreme Court held that motion pictures were a business, not a form of expression, and so were not protected under the freedom of expression guarantees. The Court reversed this decision in *Burstyn v. Wilson*, 1952.
- **Both Radio and Television Media** are subject to more government regulation than other forms of expression because they are transmitted by “public airwaves.”



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Symbolic Speech

- **Symbolic speech** is expression by conduct.
- **Picketing**, the patrolling of a business site by workers on strike, is a prevalent form of symbolic speech.
- Supreme Court rulings show that the blanket of symbolic speech covers only so much. It does not cover destroying draft cards (*United States v. O'Brien*, 1968) but it does encompass flag burning (*Texas v. Johnson*, 1989, and *United States v. Eichman*, 1990).



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Commercial Speech

Commercial Speech is speech for business purposes, usually advertising.

- For many years, it was believed that the 1st and 14th amendment guarantees did not protect advertising.
- In a handful of decisions in the 1970s, the Court held that advertising was protected, but not without exceptions.
- Exceptions include: barring false and misleading advertisement, advertising illegal goods or services, and the promotion of tobacco products on the radio or television.



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Section 4

Freedom of Assembly and Petition



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Freedom of Assembly and Petition

- How does the Constitution guarantee the freedoms of assembly and petition?
- How can the government limit the time, place, and manner of assembly?
- How do public and private property affect freedom-of-assembly issues?
- How has the Supreme Court interpreted freedom of association?



Section 4 Overview

- [Section 4 Freedom of Assembly and Petition](#)
- The 1st Amendment guarantees the right to assemble peaceably and to petition the government for a redress of grievances.
- Government can reasonably regulate the time, place, and manner of assembly, but those regulations must be “content neutral.”
- The right of assembly does not give demonstrators a right to trespass on private property.
- The guarantee of freedom of assembly and petition carries with it a right of association

The Constitution's Guarantees

The Constitution guarantees "...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

- The right to **assemble**, or gather with one another to express views.
- The right to bring views to the attention of public officials.



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Time-Place-Manner Regulations

The government can make and enforce rules regarding the time, place, and manner of assemblies.

- An example of such a rule is that public areas near schools and courthouses are restricted.
- The government's rules must be **content neutral**. They can place restrictions on the basis of the time, place and manner of the assembly, but not on what the assembly is trying to say.



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Public Property

Restrictions on the right to demonstrate:

Cox v. New Hampshire, 1941: the Supreme Court approved a State law requiring a license to hold a parade on a public street.

Gregory v. Chicago, 1969: so long as demonstrators act peacefully, they cannot be held accountable for disturbances that arise because of their demonstration.

Madsen v. Women's Health Services, Inc., 1994, and Hill v. Colorado, 2000: the Supreme Court approved laws creating buffer zones around abortion clinics and people going in and out of them.



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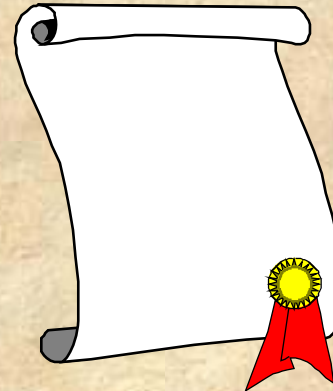
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Private Property

The rights of assembly and petition do not give people a right to trespass on private property.

States can interpret their constitutions to require owners of private property, such as shopping centers, to allow people to petition on their property.



Freedom of Association

- The guarantees of freedom of assembly and petition include a **right of association**—the right to associate with others to promote causes.
- The freedom of association also means that a State cannot force an organization to accept members when that association would contradict what the organization believes in.



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Review Vocabulary



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Section 1

- **Bill of Rights**
- The first ten amendments to the Constitution
- **Civil liberties**
- The guarantees of the safety of persons, opinions, and property from the arbitrary acts of government, including freedom of speech and freedom of religion.
- **Civil rights**
- A term used for those positive acts of government that seek to make constitutional guarantees a reality for all people, e.g., prohibitions of discrimination.

Section 1 Continued....

- **Alien**
- Foreign-born resident, or noncitizen
- **Due Process Clause**
- Part of the 14th Amendment which guarantees that no state deny basic rights to its people.
- **Process of incorporation**
- The process of incorporating, or including, most of the guarantees in the Bill of Rights into the 14th Amendment's Due Process Clause

Section 2

- **Establishment Clause**
- Separates church and state
- **Free Exercise Clause**
- The second part of the constitutional guarantee of religious freedom, which guarantees to each person the right to believe whatever he or she chooses to believe in matters of religion

Section 3

- **Libel**
 - False and malicious use of printed words.
- **Slander**
 - False and malicious use of spoken words.
- **Sedition**
 - The crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts.

Section 3

- **Seditious speech**
- The advocating, or urging, of an attempt to overthrow the government by force, or to disrupt its lawful activities with violence
- **Prior restraint**
- The government cannot curb ideas before they are expressed
- **Shield law**
- A law which gives reporters some protection against having to disclose their sources or reveal other confidential information in legal proceedings

Section 3

- **Symbolic speech**
- Expression by conduct; communicating ideas through facial expressions, body language, or by carrying a sign or wearing an arm band
- **Picketing**
- Patrolling of a business site by workers who are on strike

Section 4

- **Assemble**
- To gather with one another in order to express views on public matters.
- **Content neutral**
- The government may not regulate assemblies on the basis on what might be said
- **Right of association**
- The right to associate with others to promote political, economic, and other social causes

End

Thanks for your attention!

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