

The Judicial Branch & Your Rights

The judicial branch of government is made up of the court system. The highest court in the land is the U.S. Supreme Court. Article 3 of the Constitution established this Court; all other Federal courts were created by Congress.

Courts decide arguments about the meaning of laws, how they are applied, and whether they break the rules of the Constitution. The judicial branch of the new government was different from the legislative and executive branches in one very important way: the courts did not have the power to initiate action by themselves. Congress could pass laws, and the President could issue executive orders, but courts could not review these actions just because they wanted to, they had to wait until a dispute (a "case or controversy") broke out between the people who had something to gain or lose by the outcome.

The most common constitutional violations went unchallenged because the people whose rights were most often denied were exactly the members of society who were least aware of their rights and least able to afford a lawyer. They basically had no access to the courts. More than a century would pass before the U.S. Supreme Court even had the opportunity to protect individual rights. For its first 130 years, the most notable thing about the Bill of Rights was its almost total lack of implementation by the courts.



Harriet Tubman, far left, with freed slaves. Though slavery was declared unconstitutional under the 13th Amendment, racial segregation was the norm until the Civil Rights Movement and court challenges in the mid-20th century.

By the beginning of the 20th century, racial segregation was legal and pervaded all aspects of American society. Sex discrimination was firmly institutionalized and workers were arrested for organizing labor unions. Legal immigrants were deported for their political views, and the police used physical coercion to get criminal suspects to confess.

In 1920, the American Civil Liberties Union, the National Association for the Advancement of Colored People (NAACP), labor unions and other organizations began to challenge constitutional violations in court on behalf of those who had been previously shut out. This was the beginning of what has come to be known as "public interest law."

Although they had few early victories, these organizations began to create a body of law that made First Amendment freedoms, privacy rights, and the principles of equality and fundamental fairness come alive. Enormous progress was made between 1954 and 1973, when many rights long dormant became enforceable.

Reconstruction Amendments

- 13** Forbids slavery and "involuntary servitude." (1865)
- 14** Forbids states from passing laws depriving any person of life, liberty, or property "without due process of law" or of not giving to each person the equal protection of the law. (1868)
- 15** Forbids the U.S. or any state from preventing a person from voting because of "race, color, or previous condition of servitude." (1870)

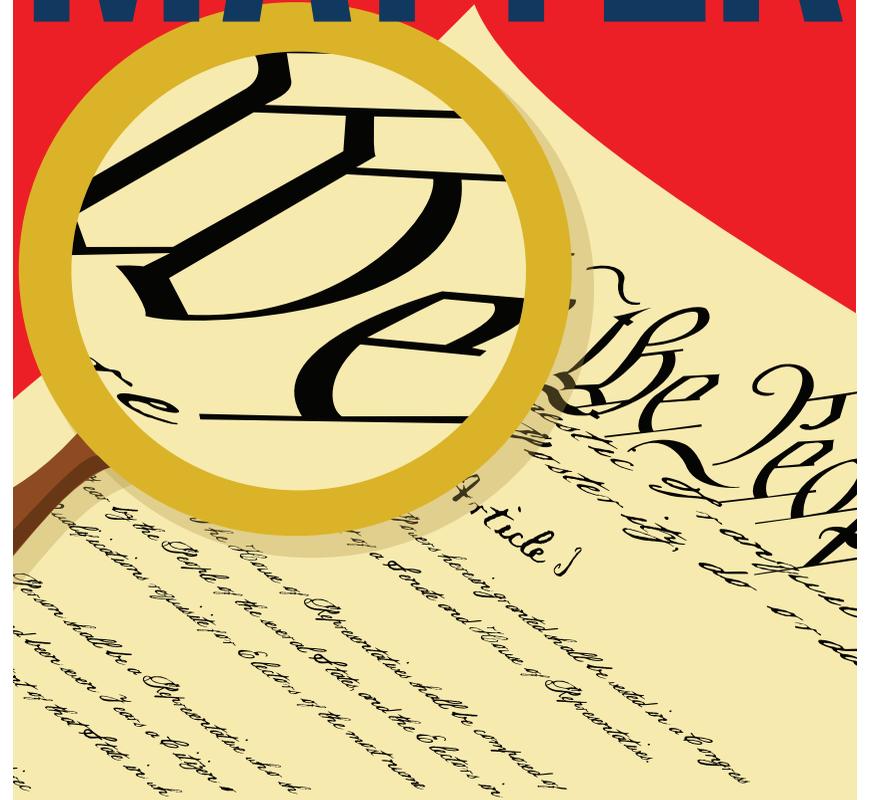
20th Century Amendments

- 16** Permits the income tax. (1913)
- 17** Provides for the election of Senators by the people instead of by state legislatures. (1913)
- 18** Forbids the manufacture, sale, or shipment of intoxicating liquors (this is the Prohibition Amendment). (1919)
- 19** Gives women the right to vote. (1920)
- 20** The term of the President ends on January 20. If the President dies before the term begins, the Vice President becomes President. (1933)
- 21** Repeals the 18th Amendment; once more allowing for the making and sale of liquor. (1933)
- 22** Bars any President from serving more than two terms. When a Vice President succeeds a President (because of a death, resignation or impeachment), and has served more than two years of the President's term, the Vice President shall not be allowed to run for more than one additional term. (1951)
- 23** Gives the District of Columbia three electoral votes for the election of President and Vice President. (1961)
- 24** Forbids the U.S. or any state to abridge or deny any citizen the right to vote for the President or Vice President or any state representative in Congress because of failure to pay a poll or any other tax. (1964)
- 25** Sets up a plan for the Vice President to take over the duties of the President when the latter is unable to perform them. (1967)
- 26** Permits voting by eighteen-year-olds. (1971)
- 27** Limits congressional pay raises. (1992)



SIGNIFICANT SUPREME COURT DECISIONS

RIGHTS MATTER



SIGNIFICANT SUPREME COURT DECISIONS

Some of the milestone Supreme Court decisions that helped define exactly what the Bill of Rights means for all Americans

The **Fourteenth Amendment** is often considered part of the Bill of Rights because it asserts that all of the other amendments can be applied to state and local governments (originally, the Bill of Rights was intended to apply only to actions of the national government). It says that no state can take away “the privileges and immunities of citizens,” or deprive “any person of life, liberty or property, without due process of law” or deny citizens “the equal protection of the laws.”

For most of a century, though, the U.S. Supreme Court refused to take these words at face value. Under pressure from the **Civil Rights Movement of the 1950s and 1960s**, the court at last acted to fulfill the original promise of the Fourteenth Amendment.

The U.S. Supreme Court under Chief Justice Earl Warren presided over the greatest growth of the protection of individual rights in U.S. history. The **Warren Court**, which lasted from 1953-1969, understood that the Bill of Rights sets limits on the power of all levels of the government to interfere in the lives of people, both citizens and noncitizens alike. The Supreme Court took huge strides in protecting the rights of the politically powerless and vulnerable, and people with unpopular religious or political beliefs. It also used the Ninth Amendment—which states that people have more rights than those written down in the Constitution—to help define a right which was not specifically mentioned in the Bill of Rights—**personal privacy**.



Freedom of Religion

In 1962, in *Engel v. Vitale*, the Court ruled by a 6-1 vote that organized prayer in public schools violated the First Amendment's separation of church and state. Two years later, in *School District of Abington Township v. Schempp*, the Court said that required Bible reading and the Lord's Prayer were not allowed in public schools, since schools could not favor Christianity over other religions. **The government must be neutral in matters of religion.**



Freedom of Speech

In 1969, the Supreme Court reversed a previous decision, and held in *Brandenburg v. Ohio* that **even (or especially) unpopular speech is protected by the First Amendment**, including speech that advocates the use of force and violence to bring about change. However, if the speech is likely to incite immediate criminal behavior, it is not protected.



Freedom of Speech

In 1965, the Supreme Court ruled in *Cox v. Louisiana* that the law used to arrest students who were demonstrating against segregated lunch counters was unconstitutional. “We affirm that our [First Amendment] **constitutional command of free speech and assembly is fundamental** and encompasses peaceful social protest.”



Exclusionary Rule

In 1961, in *Mapp v. Ohio*, the Court held that evidence illegally seized by local or state police could not be introduced in court. This is known as the **“exclusionary rule.”**



Searches and Warrants

In 1928, the Supreme Court had ruled that police could wiretap (eavesdrop on a phone) without a warrant. In 1967, that ruling was reversed in *Katz v. United States*, in which the Court declared that a **warrant based on evidence of criminal behavior was needed for a wiretap**, just as for a physical search.



Exclusionary Rule

The Court ruled in *Miranda v. Arizona* in 1966 that a **person being held in police custody must be informed of his/her rights before being questioned**. The court said that the person in custody must be told of their right to remain silent, and that anything said will be used against them in court. They must be clearly informed of their right to consult with an attorney, and to have that attorney present during interrogation, and that, if they are too poor to afford a lawyer, an attorney will be provided at no cost.



Due Process

In 1963, in *Gideon v. Wainwright*, the Supreme Court ruled that **everyone has the right to a lawyer when being tried for a crime** in a state court. In 1967, minors got due process protections when the court ruled in *In re Gault* that 15-year-old Gerald Gault had been wrongly treated when he was sentenced to state reform school for six years.

After being accused of making an obscene phone call, he had been given no opportunity to have a lawyer or to know exactly what he was being charged with. The court decided that **minors, like adults, have the right to remain silent, to be represented by an attorney, to know what the charges are, and to cross-examine witnesses who testify against them.**



Cruel and Unusual Punishment

In 1972, in *Furman v. Georgia*, the Supreme Court held that capital punishment as it was being applied was not a credible deterrent to crime, and that it can constitute cruel and unusual punishment. But, in 1976, in a ruling in *Gregg v. Georgia*, the Court held that states could **reintroduce capital punishment if they rewrote their death penalty statutes to end arbitrary and racially-biased sentencing**. Today, only 14 states remain without the death penalty.



Equality and Privacy

The Court ruled in 1967 in *Loving v. Virginia* that a law banning interracial marriage was unconstitutional under the “equal protection” clause. In 1973, in *Roe v. Wade*, the Court ruled that the Fourteenth Amendment's **protection of privacy** extends to a woman's right to choose whether to terminate her pregnancy.

Support for Constitution Day



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