The Constitution guarantees many types of civil liberties, including freedom of speech and the press, freedom of religion, and the rights of the accused. Over time, Americans have expanded their civil liberties to include the right to privacy.

**Freedom of Speech and the Press**

The First Amendment grants citizens freedom of speech, press, petition, and assembly, all essential for citizens to communicate freely in a democracy. Citizens must have the right to criticize the government for democracy to function properly. The courts have granted Americans wide-ranging freedoms of speech and expression.

**Unprotected Speech**

Not all speech is protected, however. In some cases, the government has the legal right to regulate what Americans say and print. Free speech must first pass a number of tests:

* **Clear-and-present-danger test:** Speech that has the potential to cause harm or that constitutes a clear-and-present danger to the government is not protected.
* **Bad-tendency rule:** Speech that might lead to some sort of “evil,” such as the violent overthrow of the government, is not protected.
* **Obscenity test:** Speech that is considered obscene is not protected, even though Americans have different opinions on what material might be considered obscene.
* **Slander test:** Speech that states something about a person or group that is known to be false is not protected because such speech (known as **slander**) can damage people’s otherwise good reputations.
* **Libel test: Libel,** or printed material that slanders others, is also not protected; one important exception relates to public figures: People are free to print anything they want about public figures so long as they do not demonstrate **actual malice** (a reckless disregard for the truth with the aim of hurting the person).

**Symbolic Speech**

Any action that demonstrates a particular political viewpoint is known as **symbolic speech.** Generally, the courts have protected symbolic speech, such as the burning of draft cards or of the American flag, under the First Amendment.

**Restrictions**

In some trials, judges issue **gag orders,** which restrict what journalists can report about the trial. **Prior restraint** is a governmental act that stops the publication of materials thought to be damaging or slanderous; in recent years, the government has had a difficult time exercising prior restraint.

**Example:** In 1971, the Nixon Administration tried to prevent the New York Times from publishing classified documents called the Pentagon Papers that detailed how the government waged the Vietnam War. The Supreme Court argued that the government could not block the publication of the Pentagon Papers because otherwise the government would be determining what newspapers can and cannot publish.

**Freedom of Religion**

The First Amendment includes two clauses that ensure freedom of religion:

1. The **free exercise clause:** Congress cannot forbid the practice of any religions.
2. The **establishment clause:** Congress cannot make laws that establish specific religions as state religions.

**Separation of Church and State**

Thomas Jefferson interpreted the establishment clause to mean that there needs to be a “wall of separation between Church and State.” The courts have interpreted the clause to mean the following:

* The government cannot set up a church.
* The government cannot aid one religion or prefer one religion over another.

**Government Aid to Religious Schools**

Many of the recent conflicts over the establishment clause have concerned the role of religion in government-funded schools. In Lemon v. Kurtzman (1971), the Supreme Court held that the government cannot give money directly to religious schools. The Court developed the three-part **Lemon test** to determine the situations in which the government may give money to religious institutions. The government can only fund religious schools if the aid money follows these three conditions:

1. It will be used for secular purposes.
2. It will not be used to advance or inhibit religion.
3. It will not be used to encourage the government to become involved with the religion.

**School Vouchers**

A recent controversy over the establishment clause concerns **school vouchers,** government money given to parents to help pay for tuition at private schools. Some states and municipalities have created voucher programs to help parents get their children out of poorly performing public schools. Opponents of the program argue that voucher programs violate the Lemon test by inadvertently funding religious schools, because many parents choose to send their children to private religious schools. In a 2002 case, the Supreme Court ruled that voucher programs do not violate the establishment clause because parents could use them to send their children to secular private schools.

**School Prayer**

In the landmark Engel v. Vitale case in 1962, the Supreme Court ruled that school-sponsored prayer in public schools violates the establishment clause and is therefore illegal. The Court rejected all school prayer, even general prayers that do not name a specific deity or propose a particular belief. Nevertheless, the Court has also ruled that religious clubs and organizations can meet on school property, as long as no student is required to attend. The Court has also held that schools cannot begin graduation ceremonies or school events with a prayer.

**School Prayer Today**

Despite the Supreme Court’s decisions, school prayer continues in some public schools, largely due to lack of complaint or protest. If no one objects to a school’s prayer, then the courts will not order the school to stop. Moments of silence also fall under the category of “school prayer.”

**Free Exercise of Religion**

The Bill of Rights does not protect all forms of religious expression. For example, murder in the name of religion is still murder and is therefore illegal. Similarly, the government sometimes overrules parents whose religious beliefs conflict with certain medical practices by requiring the parents to have their children vaccinated. The government has gone back and forth over the extent to which it can restrain religious activities.

**Example:** The Religious Freedom Restoration Act in 1993 required the government to accommodate religious behavior unless there is a compelling reason not to. The Supreme Court struck down parts of the act in 1997, claiming that Congress overstepped its authority. In fact, the Court has upheld the rights of some religious groups to use illegal substances, such as peyote, during religious ceremonies.

**The Right to Gather**

The Bill of Rights forbids the government from preventing the peaceful assembly of people, regardless of why those people have gathered. In a famous example, in 1978, the Supreme Court held that the neo-Nazi Nationalist Socialist Party of America (NSP) had the right to march through Skokie, Illinois, home to a sizable Jewish population. The American Civil Liberties Union argued on behalf of the NSP.

**The Rights of the Accused**

The Constitution gives many rights to people accused of crimes. The Founding Fathers sought to protect citizens of the United States from a government that would arrest and detain them without cause or trial, which is what Great Britain often did to American colonists before the Revolutionary War. According to the Constitution, a person accused of a crime has these rights:

* **Writ of habeas corpus,** or the right to be presented to a judge and hear charges as to why he or she is being held; the government cannot hold people for no reason (Article I, Section 9)
* Protection against searches and seizures without probable cause (Fourth Amendment)
* Protection from self-incrimination (Fifth Amendment)
* Quick arraignment and a speedy trial (Sixth Amendment)
* Legal counsel (Sixth Amendment)
* Not be tried more than once for the same crime (Sixth Amendment)
* Trial by jury (Sixth Amendment)
* Protection from cruel or unusual punishment (Eighth Amendment)

**The Warren Court and the Rights of the Accused**

Chief Justice Earl Warren, appointed by President Dwight D. Eisenhower in 1953, led the Supreme Court through many landmark civil rights and civil liberties cases. Some of the rights that the Warren Court established have been scaled back, but most of the basic principles have remained:

* **The exclusionary rule:** In Mapp v. Ohio (1961), the Court ruled that all evidence must be submitted to the judge before the jury sees it in all state and federal criminal trials. If the judge decides that the evidence has been obtained illegally, the prosecution will not be able to use the evidence during the trial.
* **The right to an attorney:** In **Gideon v. Wainwright** (1963), the Court ruled that the government must provide for an attorney to represent those defendants in all criminal cases who cannot afford an attorney on their own.
* **The right to a Miranda warning:** In **Miranda v. Arizona** (1966), the Court ruled that police must inform the accused of his or her rights, including the right to remain silent during interrogation.

**Exceptions to the Exclusionary Rule**

Since the 1980s, the Court has admitted some illegally obtained evidence under two exceptions to the exclusionary rule:

* **Inevitable discovery:** Evidence is admissible at trial if the police would have eventually discovered the illegally obtained evidence through the course of their investigation anyway.
* **Good faith:** Evidence is admissible from police officers who honestly believe that they acted in compliance with the law.

**The Right to Privacy**

Privacy is never explicitly mentioned in the Constitution, yet many Americans believe that they have an inherent right to privacy. In practice, Americans today believe their right to privacy includes access to birth control, the freedom to have abortions, freedom from persecution for some sexual behaviors, and the right to die as one chooses.

**Birth Control and Abortion**

In Griswold v. Connecticut (1965), the Supreme Court ruled that states could not ban the use of contraception because such a ban violated the right to privacy. Justice William O. Douglass argued that several amendments implied a right to privacy, particularly the Ninth Amendment, which states explicitly that the list of rights in the Constitution is not exhaustive.

In 1973, the Supreme Court ruled in the case **Roe v. Wade** that the government cannot ban abortion within the first trimester. The Court’s ruling is rooted in the woman’s right to privacy, which gives her the right to decide what to do with her body. Since Roe, the courts have limited abortion in a number of cases. In Webster v. Reproductive Health Services (1989), the Supreme Court ruled that states could ban the use of public funds for abortion. Three years later, in Planned Parenthood v. Casey, the Court ruled that states could require pre-abortion counseling, a waiting period of twenty-four hours, and parental permission for girls under eighteen years old.

**Rights of Abortion Protesters**

In 1994, Congress passed the Freedom of Access to Clinic Entrances Act, which created a buffer zone around clinics in which no one could protest or harass the health care providers or patients on their way into and out of the clinics. Despite claims that the law violated free speech rights, the Supreme Court upheld the law in 1997.

**Dying and Death**

Many people now argue that the right to privacy extends to the right to choose one’s death. According to this view, people can choose to end their lives as they see fit. A decision in 1976 by the New Jersey Supreme Court held that a person could choose to refuse treatment for a terminal illness. Most courts have held, though, that people do not have a constitutional right to suicide, on their own or with a doctor’s assistance.

**Dying with Dignity**

In 1997, Oregon passed the Death with Dignity Act, which legalized physician-assisted suicide under certain conditions. Texas passed a similar law in 1999.

Slavery was legal in roughly half of the states up until the Civil War. After the war ended, the Constitution was amended three times to end slavery and ban discrimination against blacks. But discrimination and segregation did not end until the significant Supreme Court cases of the 1950s.

**Reconstruction Amendments (1865–1870)**

Adopted between 1865 and 1870, the Reconstruction Amendments to the Constitution form the legal basis for the protection of civil rights:

* **The Thirteenth Amendment** (1865) makes slavery and involuntary service illegal.
* **The Fourteenth Amendment** (1868) declares that anyone born in the United States is a citizen of both the United States and of the state in which the person resides; it also contains three key clauses:
1. The **privileges and immunities clause** states that no state can be deprive a citizen of the privileges and immunities of citizenship.
2. The **due process clause** states that no person can be deprived of life, liberty, or property without due process of law.
3. The **equal protection clause** declares that all citizens have the equal protection of the law.
* The **Fifteenth Amendment** (1870) declares that no person, including former slaves, can be denied the right to vote on the basis of race

**Early Civil Rights Laws (1860s–1870s)**

To supplement the Reconstruction Amendments, Congress passed several civil rights laws in the 1860s and 1870s. These laws gave the president the authority to use the military to enforce civil rights for blacks and made it illegal for states to restrict voting along racial lines.

**The Jim Crow Laws and Supreme Court Decisions (1880s–1900s)**

After the federal troops withdrew from the South at the end of Reconstruction in 1877, white southerners quickly took over state governments and openly flouted the recent laws designed to protect the rights of former slaves. Several state governments in the South went so far as to legalize discrimination of blacks; these laws are known as the **Jim Crow laws.**

Even though the Fifteenth Amendment gave all men the right to vote, the southern states employed a variety of tactics to prevent blacks from voting, including the following:

* **Whites-only primaries:** Nonwhites were barred from primaries because Democrats argued that political parties were private organizations and thus not subject to antidiscrimination laws.
* **Literacy tests:** Blacks were required to pass complex tests that were graded by white election officials in order to vote.
* **Poll taxes:** Some states required people to pay a fee in order to vote.
* **Grandfather clause:** If a person could prove that his grandfather was eligible to vote prior to 1867, he could bypass the literacy tests and other barriers; because no blacks could vote at that time, they had to pass the difficult literacy tests.

Several Supreme Court decisions also weakened the civil rights amendments. In **Plessy v. Ferguson** (1896), the Court held that the state government could segregate public transportation and thus established the **separate but equal** doctrine: Blacks could be forced into separate accommodations, including theater seats and hotels, as long as the accommodations were equal to those given to whites.

**The NAACP (1909–1940s)**

The National Association for the Advancement of Colored People (NAACP) was founded in 1909. Energetic and talented lawyers such as Thurgood Marshall (later the first African American Supreme Court justice) began fighting racial segregation and discrimination via the courts.

**Brown v. Board of Education and Desegregation (1950s)**

Encouraged by the NAACP, several black families around the country challenged school segregation laws by demanding that their children be allowed to attend white schools. These cases eventually reached the Supreme Court, where they were then consolidated into a few cases. In 1954, the Court issued a landmark ruling in **Brown v. Board of Education of Topeka, Kansas,** that overturned Plessy v. Ferguson by stating that the separate but equal doctrine was unconstitutional and that segregation in public schools was illegal.

In 1955, the Court issued another ruling (sometimes called Brown 2) that ordered lower courts to enforce integration “with all deliberate speed.” The phrase was intentionally vague, however. Brown 2 was an attempt to force an end to segregation without creating mass unrest. Many white southerners angrily protested the Brown decision, and many schools remained segregated. Although the courts ended **de jure segregation** (segregation imposed by law), **de facto segregation** (segregation due to residential patterns and economic factors) persisted.

**The Bus Boycott (1955–1956)**

In 1955, an African American woman named Rosa Parks refused to move to the colored section of a bus in Montgomery, Alabama. Her act of civil disobedience set off a yearlong boycott of the Montgomery bus system led by Dr. Martin Luther King, Jr. In 1956, a federal court ordered the end of segregation of the Montgomery bus system.

**King and Nonviolence (1957–1960s)**

In 1957, King formed the Southern Christian Leadership Conference to organize campaigns to end segregation and discrimination. King advocated nonviolent tactics and encouraged peaceful marches, protests, and other acts of civil disobedience to achieve his goals. King’s peaceful approach had a tremendous impact on the nation because it contrasted so strongly with white southerners’ violent responses to his campaigns. In 1963, for example, the police commissioner of Birmingham, Alabama, ordered that his officers attack black protesters with dogs, fire hoses, and cattle prods. Many Americans saw this on television and were horrified by southern police brutality. King’s civil rights campaign culminated in the 1963 March on Washington. Speaking to several hundred thousand people on the national mall—and millions more watching on television—King delivered the “I Have a Dream” speech, calling for a color-blind society and an end to discrimination.

**Civil Rights Legislation (1960s)**

In the mid-1960s, Congress passed several laws in an attempt to end discrimination:

* **The Civil Rights Act of 1964,** which banned discrimination on the basis of race, religion, color, gender, and national origin. The act outlawed segregation in all public facilities, authorized the federal government to force desegregation in schools, and established equal rights in the workplace.
* **The Voting Rights Act of 1965,** which outlawed discriminatory exam requirements for voter registration and allowed the federal government to take over the registration process in states with a history of discrimination. Both measures dramatically increased voter registration by African Americans in the South.
* **The Civil Rights Act of 1968,** which eliminated discrimination in housing and made it easier for minorities to secure loans and mortgages.

**Affirmative Action (1970s–Present)**

**Affirmative action** programs try to rectify past discrimination by giving minorities and women special consideration when employees are hired and students are admitted into universities. Proponents argue that affirmative action rights past wrongs and helps erase the effects of racism and other bias. Critics argue that affirmative action unfairly discriminates against whites, a phenomenon known as **reverse discrimination.**

**The Bakke Case**

In 1978, the Supreme Court ruled in its first affirmative action case, **Regents of the University of California v. Bakke.** The Court upheld affirmative action but argued that although race could be a factor in admissions decisions, it could not be the only factor.

Recent Equal Rights

The late twentieth century and early twenty-first century witnessed many groups agitating for equal rights, including women, seniors, the disabled, and gays and lesbians.

**Women**

Like African Americans, women have had to struggle to win equal protection under federal law. The Constitution explicitly gives men power and rights that were not given to women, including the right to vote.

**The First Women’s Movement (1840s–1920s)**

In 1848, a group of women met in Seneca Falls, New York, to organize the **suffrage movement.** The Seneca Falls activists were disappointed when the Fifteenth Amendment extended the right to vote to black men, but not women. Women did not win the right to vote until the **Nineteenth Amendment** was ratified in 1920.

**The Second Women’s Movement (1960s)**

The civil rights movement of the 1950s galvanized many women to create their own movement for civil rights. **Feminism,** the movement that seeks social, political, and legal equality for women, gained strength. In 1966, several feminists formed the National Organization for Women (NOW) to promote their goals, including the Equal Rights Amendment.

**ERA**

The **Equal Rights Amendment (ERA)** was proposed to amend the Constitution to ensure that everyone had equal rights regardless of gender. After Congress approved the ERA in 1972, it was sent to the states for ratification. Not enough states ratified it, however, which killed the amendment.

In the 1960s, several court cases argued that **gender discrimination** violated the Fourteenth Amendment’s equal protection clause. In many cases, the courts have struck down discriminatory laws. The 1964 Civil Rights Act forbids gender discrimination in the workplace, and some women have used this law to fight **sexual harassment,** which is unwanted and inappropriate physical or verbal conduct of a sexual nature that creates an uncomfortable work environment or interferes with a person’s ability to do his or her job.

**Seniors**

In 1967, Congress passed the Age Discrimination in Employment Act (ADEA), which prohibits any age discrimination unless age is a clear and necessary qualification for the job. In 1978, Congress amended the ADEA to ban **mandatory retirement** rules for most employees.

**The Disabled**

The Civil Rights Act of 1964 did not protect people with disabilities. Congress has since passed several laws prohibiting discrimination against the disabled:

* **The Rehabilitation Act** (1973), which banned discrimination against the disabled in any program receiving government funding. A 1978 amendment to the act required buildings constructed with federal money to accommodate the disabled with ramps, elevators, and other special equipment.
* **The Education for All Handicapped Children Act** (1975), which required public schools to make provisions for students with disabilities.
* **The Americans with Disabilities Act** (1990), which required all public buildings to be handicapped accessible and forced employers to make all reasonable accommodations for disabled workers. Employers also cannot discriminate against the disabled when hiring.

**Gays and Lesbians**

Throughout much of the twentieth century, many states had laws that criminalized homosexual acts. In 2003, the Supreme Court declared such laws against sodomy illegal in Lawrence v. Texas, because they violate the due process clause of the Fourteenth Amendment. The Court decided that state governments cannot criminalize consensual adult sexual behavior.