CHAPTER 20

Civil Liberties: Protecting Individual Rights

"Most of all, we have got to remember that the law is people. . . . What we are trying to do is solve people's problems and protect their freedoms and protect their interests."

—Janet Reno (1995)

As Attorney General Reno pointed out, the goal of the law is to serve people, to protect both the rights of individuals and the rights of those accused of crimes. Judges and lawmakers thus constantly debate the spirit of the law and how it applies in real life.

◆ Courtroom with a trial in session

★ You Can Make a Difference

FOR CORY KADAMANI, "real life" once meant drugs, dropping out, and run-ins with the New York City police. Then he turned his life around, earning a high school equivalency diploma and joining Youth Force, a community group. At age 17, Cory helped create the group's South Bronx Community Justice Center to resolve neighborhood issues before they led to crimes. Young people—including former gang members—worked with lawyers, community leaders, and probation officers. Cory also advised younger kids awaiting trial at a South Bronx detention facility. He hoped his story would keep them from making the same mistakes he had made.

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Chapter 20 in Brief

SECTION 1

Due Process of Law *(pp. 564–568)*

- ★ The 5th and 14th amendments guarantee that the government cannot deprive a person of "life, liberty, or property, without due process of law."
- ★ The States' reserved powers include the police power—the power to protect and promote public health, public safety, public morals, and the general welfare.
- ★ The exercise of the police power can produce conflicts with individual rights.
- ★ The constitutional guarantees of due process create a right of privacy.
- ★ The most controversial applications of the right of privacy involve abortion.

SECTION 2

Freedom and Security of the Person *(pp. 569–574)*

- ★ The 13th Amendment was added to the Constitution in 1865 to end slavery and involuntary servitude.
- ★ The 2nd Amendment was added to the Constitution to preserve the right of States to keep a militia.
- ★ The 4th Amendment prohibits unreasonable searches and seizures, not those which are reasonable. The amendment has given rise to the controversial Exclusionary Rule.

SECTION 3

Rights of the Accused *(pp. 576–583)*

- ★ Rights of the accused include the writ of habeas corpus and a constitutional ban on bills of attainder and ex post facto laws.
- ★ The 5th Amendment says that one may be accused of a serious federal crime only by grand jury indictment.
- ★ Accused persons are guaranteed a speedy and public trial. They cannot, however, be tried twice for the same crime.
- ★ The accused also have the right to a trial by jury.
- ★ The right to an adequate defense and the guarantee against self-incrimination help safeguard the rights of the accused.

SECTION 4

Punishment *(pp. 585–588)*

- ★ A person accused of a crime is presumed innocent until proven guilty.
- ★ The accused must not face excessive bail or fines.
- ★ The Constitution prohibits cruel and unusual punishment.
- ★ The Supreme Court has consistently held that the death penalty is constitutional if it is applied fairly.
- ★ The crime of treason is specifically defined in the Constitution to prevent its use for political purposes.

1 Due Process of Law

Section Preview

Objectives

1. **Explain** the meaning of due process of law as set out in the 5th and 14th amendments.
2. **Define** police power and understand its relationship to civil rights.
3. **Describe** the right of privacy and its origins in constitutional law.

Why It Matters

The guarantees of due process mean that government must act fairly and in accordance with established rules. The States possess the power to safeguard the well-being of their people through the police power. But in doing so, they must observe due process rights, including the right of privacy.

Political Dictionary

- ★ **due process**
- ★ **substantive due process**
- ★ **procedural due process**
- ★ **police power**
- ★ **search warrant**

Are you familiar with the riots that took place in Tulsa, Oklahoma, on May 31–June 1, 1921? Are you aware of the conduct of some officers in the Ramparts Division of the Los Angeles police department much more recently? Both of these matters have been the subject of extensive and ongoing news coverage. Learn what happened in Tulsa in 1921 and what some LAPD officers did much more recently, and you will understand why the concept of due process of law is so very important to you and to everyone in this country.

© ▲ ***A Failure of Due Process*** Injured and wounded prisoners are taken to the hospital by the National Guard in the aftermath of the 1921 Tulsa riots.

The Meaning of Due Process

The Constitution contains two **due process** clauses. The 5th Amendment declares that the Federal Government cannot deprive any person of "life, liberty, or property, without due process of law." The 14th Amendment places that same restriction on the States, and, very importantly, on their local governments, as well. A thorough grasp of the meaning of these provisions is absolutely essential to an understanding of the American concept of civil rights.

It is impossible to define the two due process guarantees in exact and complete terms. The Supreme Court has consistently and purposely refused to give them an exact definition. Instead, it has relied on finding the meaning of due process on a case-by-case basis. The Court first described that approach in *Davidson* v. *New Orleans,* 1878, as the "gradual process of inclusion and exclusion, as the cases presented for decision require."

Fundamentally, however, the Constitution's guarantee of due process means this: In whatever it does, government must act fairly and in accord with established rules. It may not act unfairly, arbitrarily, capriciously, or unreasonably.

The concept of due process began and developed in English and then in American law as a procedural concept. That is, it first developed as a requirement that government act fairly, use fair procedures.

Fair procedures are of little value, however, if they are used to administer unfair laws. The Supreme Court recognized this fact toward the end of the nineteenth century. It began to hold that due process requires that both the ways in which government acts *and* the laws under which it acts must be fair. Thus, the Court added the idea of **substantive due process** to the original notion of **procedural due process.**

In short, procedural due process has to do with the *how* (the procedures, the methods) of governmental action. Substantive due process involves the *what* (the substance, the policies) of governmental action.

Examples of Due Process

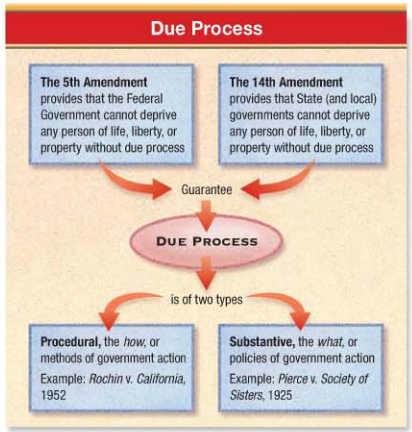
Any number of cases may be used to illustrate these two elements of due process. Take a classic case, *Rochin* v. *California,* 1952, to exemplify procedural due process.

Rochin was a suspected narcotics dealer. Acting on a tip, three Los Angeles County deputy sheriffs went to his rooming house. They forced their way into Rochin's room. There the deputies found him sitting on a bed, and spotted two capsules on a nightstand. When one of the deputies asked, "Whose stuff is this?" Rochin popped the capsules into his mouth. Although all three officers jumped him, Rochin managed to swallow them.

The deputies took Rochin to a hospital, where his stomach was pumped. The capsules were recovered and found to contain morphine. The State then prosecuted and convicted Rochin for violating the State's narcotics laws.

The Supreme Court held that the deputies had violated the 14th Amendment's guarantee of procedural due process. Said the Court:

> PRIMARY Sources *"This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw. . . ."*
>
> —Justice Felix Frankfurter, Opinion of the Court



Interpreting Diagrams The 5th and 14th amendments ensure that neither the Federal nor State and local governments can deprive any person of "life, liberty, or property, without due process of law."
Why are procedural and substantive due process both necessary?

Take *Pierce* v. *Society of Sisters,* 1925, to illustrate substantive due process. In 1922, Oregon's voters had adopted a new compulsory school-attendance law that required all persons between the ages of 8 and 16 to attend public schools. The law was purposely drawn to destroy private, especially parochial, schools in the State.

A Roman Catholic order challenged the law's constitutionality, and the Supreme Court held that the law violated the 14th Amendment's Due Process Clause. The Court did not find that the State had enforced the law unfairly. In fact, the State's courts had found the law unconstitutional, and it had never been put into effect. Rather, the Court held that the law itself, in its contents, "unreasonably interferes with the liberty of parents to direct the upbringing and education of children under their control."

The 14th Amendment and the Bill of Rights

Recall these crucial points from Chapter 19:

1. The provisions of the Bill of Rights apply against the National Government *only.*

Interpreting Political Cartoons **Can you assume that the prisoner's complaint is justified? Explain your answer.**

2. However, the Supreme Court has held that the 14th Amendment's Due Process Clause includes within its meaning most of the protections set out in the Bill of Rights.

In a long series of decisions dating from 1925, the Court extended the protections of the Bill of Rights against the States through the 14th Amendment's Due Process Clause. The landmark cases in which this occurred are set out in the table on page 536—and with them the few (four) provisions in the Bill of Rights that have *not* been incorporated.

The key 1st Amendment cases were discussed in Chapter 19. Those involving the 4th through the 8th amendments are treated in Sections 2–4 of this chapter.

The Police Power

In the federal system, the reserved powers of the States include the broad and important **police power.** The police power is the authority of each State to act to protect and promote the public health, safety, morals, and general welfare. In other words, it is the power of each State to safeguard the well-being of its people.

The use of the police power often produces conflicts with civil rights protections. When it does, courts must strike a balance between the needs of society, on the one hand, and of individual freedoms on the other. Any number of cases can be used to illustrate the conflict between police power and individual rights. Take as an example a matter often involved in drunk-driving cases.

Every State's laws allow the use of one or more tests to determine whether a person arrested and charged with drunk driving was in fact drunk at the time of the incident. Some of those tests are simple: walking a straight line or touching the tip of one's nose, for example. Some are more sophisticated, however, notably the breathalyzer test and the drawing of a blood sample.

Does the requirement that a person submit to such a test violate his or her rights under the 14th Amendment? Does the test involve an unconstitutional search for and seizure of evidence? Does it amount to forcing a person to testify against himself or herself (unconstitutional compulsory self-incrimination)? Or is the requirement a proper use of the police power?

Time after time, State and federal courts have come down on the side of the police power. They have upheld the right of society to protect itself against drunk drivers and rejected the individual rights argument.

The leading case is *Schmerber* v. *California,* 1966. The Court found no objection to a situation in which a police officer had directed a doctor to draw blood from a drunk-driving suspect. The Court emphasized these points: The blood sample was drawn in accord with accepted medical practice. The officer had reasonable grounds to believe that the suspect was drunk. Further, had the officer taken time to secure a **search warrant**—a court order authorizing a search—the evidence could have disappeared from the suspect's system.

Legislators and judges have often found the public's health, safety, morals, and/or welfare to be of overriding importance. For example:

1. To promote health, States can limit the sale of alcoholic beverages and tobacco, make laws to combat pollution, and require the vaccination of school children.

2. To promote safety, States can regulate the carrying of concealed weapons, require the use of seat belts, and punish drunk drivers.

3. To promote morals, States can regulate gambling and outlaw the sale of obscene materials and the practice of prostitution.

4. To promote the general welfare, States can enact compulsory education laws, provide help to the medically needy, and limit the profits of public utilities.

Clearly, governments cannot use the police power in an unreasonable or unfair way, however. In short, they cannot violate the 14th Amendment's Due Process Clause.

The Right of Privacy

The constitutional guarantees of due process create a right of privacy—"the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy," *Stanley* v. *Georgia,* 1969.[1] It is, in short, "the right to be let alone."[2]

The Constitution makes no specific mention of the right of privacy, but the Supreme Court declared its existence in *Griswold* v. *Connecticut,* 1965. That case centered on a State law that outlawed birth-control counseling and prohibited all use of birth-control devices. The Court held the law to be a violation of the 14th Amendment's Due Process Clause—and noted that the State had no business policing the marital bedroom.

Roe v. *Wade*

The most controversial applications of the right of privacy have come in cases that raise this question: To what extent can a State limit a woman's right to an abortion? The leading case is *Roe* v. *Wade,* 1973. There, the Supreme Court struck down a Texas law that made abortion a crime except when necessary to save the life of the mother.

In *Roe,* the Court held that the 14th Amendment's right of privacy "encompass[es] a woman's decision whether or not to terminate her pregnancy." More specifically, the Court ruled that:

1. In the first trimester of pregnancy (about three months), a State must recognize a woman's right to an abortion—and cannot interfere with medical judgments in that matter.

2. In the second trimester a State, acting in the interest of women who undergo abortions, can make reasonable regulations about how, when, and where abortions can be performed, but cannot prohibit the procedure.

3. In the final trimester a State, acting to protect the unborn child, can choose to prohibit all abortions except those necessary to preserve the life or health of the mother.

Later Reproductive Rights Cases

In several later cases, the Court rejected a number of challenges to its basic holding in *Roe.* As the composition of the Court has changed, however, so has the Court's position on abortion. That shift can be seen in the Court's decisions in recent cases on the matter.

In *Webster* v. *Reproductive Health Services,* 1989, the Court upheld two key parts of a Missouri law. Those provisions prohibit abortions, except those to preserve the mother's life or health, (1) in any public hospital or clinic in

[1] *Stanley* involved the possession of obscene materials in one's own home. In the most recent right to privacy case, the Court struck down a Texas law that made sexual relations between consenting gay adults a crime, *Lawrence* v. *Texas,* 2003.

[2] Justice Louis D. Brandeis, dissenting in *Olmstead* v. *United States,* 1928.

Government Online

Fighting Prejudice You don't have to be an expert in constitutional law to look out for the rights of others. Take the case of Tristan Coffin.

The soccer teams of Franklin and Dudley, two towns south of Boston, Massachusetts, were preparing to play for their league championship one summer Sunday. As Franklin took the field, however, Coffin, 12, was pulled aside by a referee and told to remove a bandanna covering his head. Coffin respectfully declined, explaining that he was a devout Sikh, a member of an Indian religion that requires followers to cover their heads in public. The referee, citing tournament rules, again ordered Coffin to remove the bandanna or leave the field.

When Coffin's teammates learned that he wouldn't be allowed to play, they walked off the field. Franklin's coaches pleaded with the referee and tournament officials, as did Dudley's coach. When the ref didn't budge, the Franklin coaches refused to send their team back on the field, thereby forfeiting the game. Afterwards, Dudley's coaches and players had misgivings about accepting their first-place trophies. So they presented one to Coffin.

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that State, and (2) when the mother is 20 or more weeks pregnant and tests show that the fetus is viable (capable of sustaining life outside the mother's body).

Two cases in 1990 addressed the issue of minors and abortion. In those cases, the Court said that a State may require a minor (1) to inform at least one parent before she can obtain an abortion, *Ohio* v. *Akron Center for Reproductive Health,* 1990, and (2) to tell both parents of her plans, except in cases where a judge gives permission for an abortion without parental knowledge, *Hodgson* v. *Minnesota,* 1990.

The Court's most important decision on the issue since *Roe* v. *Wade* came in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* in 1992. There the Court announced this rule: A State may place reasonable limits on a woman's right to have an abortion, but these restrictions cannot impose an "undue burden" on her choice of that procedure.

In *Casey,* the Court applied that new standard to Pennsylvania's Abortion Control Act. It upheld sections of that law that say:

- A woman who seeks an abortion must be given professional counseling intended to persuade her to change her mind.
- A woman must delay an abortion for at least 24 hours after that counseling.
- An unmarried female under 18 must have the consent of a parent, or the permission of a judge, before an abortion.
- Doctors and clinics must keep detailed records of all abortions they perform.

Those four requirements do not, said the Court, place "a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." That is, they do not impose an "undue burden" on a woman.

The Court did strike down another key part of the Pennsylvania law, however. That provision required that a married woman tell her husband of her plan to have an abortion.

The Court has decided only two abortion cases since 1992. Its 5–4 vote in the most recent one effectively overturned its 5–4 decision in the earlier case. Together, the two cases underscore the impact that changes in the composition of the Court can have on the outcome of cases that come before it.

In *Gonzales* v. *Carhart,* 2007, the justices applied *Casey's* "undue burden" rule to a federal law, the Partial Birth Abortion Ban Act of 2003, and found it to be unconstitutional. That statute prohibits a particular method of abortion, a medical procedure that opponents of abortion call "partial birth abortion." In fact, that operation had been performed only infrequently. In the earlier case, *Stenberg* v. *Carhart,* 2000, the Court had applied *Casey* to strike down a Nebraska law that banned partial birth abortion in language nearly identical to that used in Congress in 2003.

Section 1 Assessment

Key Terms and Main Ideas

1. Explain what is meant by **due process.**
2. How do **procedural due process** and **substantive due process** differ?
3. **(a)** Define **police power. (b)** How have State and federal courts usually ruled on cases involving the police power and drunk driving suspects?
4. **(a)** What is the right of privacy? **(b)** The most controversial application of the right occurs in cases involving what?

Critical Thinking

5. **Checking Consistency** Considering the constitutional right of privacy, do you think it is proper for a State to use its police power to protect and promote morals among its citizens? Explain your answer.
6. **Identifying Central Issues** Why do you think the Supreme Court has refused to offer an exact definition of due process?
7. **Drawing Conclusions** What would you reply to someone who argues that the use of seat belts is a matter of individual choice?

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2 Freedom and Security of the Person

Section Preview

Objectives

1. **Outline** Supreme Court decisions regarding slavery and involuntary servitude.
2. **Explain** the intent and application of the 2nd Amendment's protection of the right to keep and bear arms.
3. **Summarize** the constitutional provisions designed to guarantee security of home and person.

Why It Matters

Various constitutional provisions protect Americans' right to live in freedom. The 13th Amendment and subsequent civil rights laws prohibit slavery and involuntary servitude. The 2nd Amendment aims to preserve the concept of the citizen-soldier, while the 3rd and 4th amendments protect the security of home and person.

Political Dictionary

- ★ **involuntary servitude**
- ★ **discrimination**
- ★ **writs of assistance**
- ★ **probable cause**
- ★ **exclusionary rule**

Several of the Constitution's guarantees are intended to protect the right of every American to live in freedom. This means that the Constitution protects your right to be free from physical restraints, to be secure in your person, and to be secure in your home.

Slavery and Involuntary Servitude

The 13th Amendment was added to the Constitution in 1865, ending over 200 years of slavery in this country. Section 1 of the amendment declares, "Neither slavery nor involuntary servitude, . . . shall exist within the United States, or any place subject to their jurisdiction." Importantly, Section 2 of this amendment gives Congress the expressed power "to enforce this article by appropriate legislation."

Until 1865, each State could decide for itself whether to allow slavery. With the 13th Amendment, that power was denied to them, and to the National Government, as well.

The 13th Amendment: Section 1

As a widespread practice, slavery disappeared in this country more than 140 years ago. There are still occasional cases of it, however. Most often, those cases have involved **involuntary servitude**—that is, forced labor.

The 13th Amendment does not forbid all forms of involuntary servitude, however. Thus, in 1918, the Court drew a distinction between "involuntary servitude" and "duty" in upholding the constitutionality of the selective service system (the draft).[3] Nor does imprisonment for crime violate the amendment. Finally, note this important point: Unlike any other provision in the Constitution, the 13th Amendment covers the conduct of private individuals as well as the behavior of government.

[3] *Selective Draft Law Cases (Arver* v. *United States),* 1918.

► Slave tags serve as a reminder of a time before the passage of the 13th Amendment.

The 13th Amendment: Section 2

Shortly after the Civil War, Congress passed several civil rights laws based on the 13th Amendment. The Supreme Court, however, sharply narrowed the scope of federal authority in several cases, especially the *Civil Rights Cases,* 1883. In effect, the Court held that racial **discrimination** (bias, unfairness) against African Americans by private individuals did not place the "badge of slavery" on them nor keep them in servitude.

Congress soon repealed most of the laws based on the 13th Amendment. The enforcement of the few that remained was, at best, unimpressive. For years it was generally thought that Congress did not have the power, under either the 13th or 14th Amendment, to act against private parties who practice race-based discrimination.

In *Jones* v. *Mayer,* 1968, however, the Supreme Court breathed new life into the 13th Amendment. The case centered on one of the post-Civil War acts Congress had not repealed. Passed in 1866, that almost-forgotten law provided in part that

PRIMARY Sources

"[All] citizens of the United States, . . . of every race and color, . . . shall have the same right, in every State and Territory of the United States, . . . to inherit, purchase, lease, sell, hold, and convey real and personal property . . . as is enjoyed by white citizens. . . ."

—Civil Rights Act of 1866

Jones, an African American, had sued because Mayer had refused to sell him a home, solely because of his race. Mayer contended that the 1866 law was unconstitutional, since it sought to prohibit private racial discrimination.

The Court upheld the law, declaring that the 13th Amendment abolished slavery and gave Congress the power to abolish "the badges and incidents of slavery." Said the Court:

PRIMARY Sources

"At the very least, the freedom that Congress is empowered to secure under the 13th Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live."

— Justice Potter Stewart, Opinion of the Court

The Court affirmed that decision in several later cases. Thus, in *Runyon* v. *McCrary,* 1976, two private schools had refused to admit two African American students. By doing so, the schools had refused to enter into a contract of admission—a contract they had advertised to the general public. The Court found that the schools had violated another provision of the 1866 law:

PRIMARY Sources

"[All] citizens of the United States, . . . of every race and color, . . . shall have the same right, . . . to make and enforce contracts . . . as is enjoyed by white citizens. . . ."

—Civil Rights Act of 1866

The Court has also ruled that the Civil Rights Act of 1866 protects all "identifiable groups who are subject to intentional discrimination solely because of their ancestry or ethnic characteristics"—for example Jews (*Shaare Tefila Congregation* v. *Cobb,* 1987) and Arabs (*St. Francis College* v. *Al-Khazraji,* 1987).

More recently the Court has backed off a bit. In *Patterson* v. *McLean Credit Union,* 1989, it declared that while the 1866 law does prohibit racial discrimination in a contract of employment, any on-the-job discrimination should be handled in accord with the Civil Rights Act of 1964 (see Chapter 21). Nevertheless, the Court has several times held that the 13th Amendment gives Congress significant power to attack "the badges and incidents of slavery," from whatever source they may come.

The Right to Keep and Bear Arms

The 2nd Amendment reads this way:

FROM THE Constitution

"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."

—United States Constitution

These words excite as much controversy as any words in all of the Constitution. The 2nd Amendment was added to the Constitution to protect the right of each State to keep a militia. The Amendment's aim was to preserve the concept of the citizen-soldier.

Many—including the Bush administration today—insist that the 2nd Amendment also sets out an individual right. They say that it guarantees a right to keep and bear arms just as, for example, the 1st Amendment guarantees freedom of speech.

The Supreme Court has never accepted that interpretation of the 2nd Amendment. The only important 2nd Amendment case is *United States* v. *Miller,* 1939. There, the Court upheld a section of the National Firearms Act of 1934. That section made it a crime to ship sawed-off shotguns, machine guns, or silencers across State lines, unless the shipper had registered the weapons with the Treasury Department and paid a $200 license tax. The Court could find no valid link between the sawed-off shotgun involved in the case and "the preservation . . . of a well-regulated militia."

The 2nd Amendment is not covered by the 14th Amendment's Due Process Clause. Thus, each State can limit the right to keep and bear arms—and all of the States do so, in various ways.

Security of Home and Person

The 3rd and 4th amendments say that government cannot violate the home or person of anyone in this country without just cause.

The 3rd Amendment

This amendment forbids the quartering (housing) of soldiers in private homes in peacetime without the owner's consent and not in wartime but "in a manner to be prescribed by law." The guarantee was added to prevent what had been British practice in colonial days. The 3rd Amendment has had little importance since 1791 and has never been the subject of a Supreme Court case.

The 4th Amendment

The 4th Amendment also grew out of colonial practice. It was designed to prevent the use of **writs of assistance**—blanket search warrants with which British customs officials had invaded private homes to search for smuggled goods.

Each State constitution contains a similar provision. The guarantee also applies to the States through the 14th Amendment's Due Process Clause. Unlike the 3rd Amendment, the 4th Amendment has proved a highly important guarantee. The text of the 4th Amendment reads:

FROM THE Constitution

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

—United States Constitution

Probable Cause

The basic rule laid down by the 4th Amendment is this: Police officers have no general right to search for evidence or to seize either evidence or persons. Except in special circumstances, they must have a proper warrant (a court order). Also, the warrant must be obtained with **probable cause**—that is, a reasonable suspicion of crime.

Florida v. *J. L.,* 2000, illustrates the rule. There, Miami police had received a tip that a teenager was carrying a concealed weapon. Immediately, two officers went to the bus stop where the tipster said the young man could be found. The police located him, searched him, pulled a gun from his pocket, and arrested him.

The Supreme Court held that the police acted illegally because they did not have a proper warrant. All they had was an anonymous tip, unsupported by any other evidence. Their conduct amounted to just the sort of thing the 4th Amendment was intended to prevent.

Police do not always need a warrant, however—for example, when evidence is "in plain view." Thus, the Court recently upheld a search and seizure involving two men who were in a friend's apartment bagging cocaine. A policeman spotted them through an open window, entered the apartment, seized the cocaine, and arrested them. The Court rejected their claim to 4th Amendment protection, *Minnesota* v. *Carter,* 1999.

Many 4th amendment cases are complicated. In *Lidster* v. *Illinois,* 2004, for example, the Court upheld the use of so-called "informational roadblocks." In 1997, police had set up one of those barriers on a busy highway near Chicago, hoping to find witnesses to a recent hit-and-run accident.

Voices on Government

Ruth Bader Ginsburg joined the Supreme Court in 1993. Earlier in her career, she had appeared before the Court several times in cases involving women's rights. She was also a law professor and then a federal judge. When asked about America's greatest challenge, Justice Ginsburg had this answer:

"I thought of Justice Thurgood Marshall's praise of the evolution of the concept 'We the People' to include once excluded, ignored, or undervalued people, then of our nation's motto: E Pluribus Unum *("of many, one"). The challenge, I responded, is to make and keep our communities places where we can tolerate, even celebrate, our differences, while pulling together for the common good. 'Of many, one' is the main challenge, I believe; it is my hope for our country and world."*

Evaluating the Quotation

How might Justice Ginsburg's feelings about inclusion and tolerance affect her decisions on cases involving individual rights and civil liberties?

When Robert Lidster was stopped, an officer smelled alcohol on him. Lidster failed several sobriety tests and was arrested on a drunk-driving charge. Lidster's attorney filed a motion to quash (set aside) that arrest. The lawyer argued that Lidster was forced to stop by officers who, before they stopped him, had no reason (probable cause) to believe that he had committed any crime.

Lidster lost that argument. The Court upheld both his conviction and the use of informational roadblocks. In short, Lidster had simply run afoul of the long arm of coincidence.

Arrests

An arrest is the seizure of a person. When officers make a lawful arrest, they do not need a warrant to search "the area within which [the suspect] might gain possession of a weapon or destructible evidence."[4] In fact, most arrests take place without a warrant. Police can arrest a person in a public place without one, provided they have probable cause to believe that person has committed or is about to commit a crime.[5]

Illinois v. *Wardlow,* 2000, illustrates this point. There, four police cars were patrolling a high-crime area in Chicago. When Wardlow spotted them, he ran. An officer chased him down an alley, caught him, and found that Wardlow was carrying a loaded pistol. The Court held, 5–4, that Wardlow's behavior—his flight—gave the police "common sense" grounds on which to believe that he was involved in some criminal activity. (Note, however, that the Court did not hold that police have a blanket power to stop anyone who flees at the sight of a police officer.)

When, exactly, does the 4th Amendment protection come into play? The Court has several times held that this point is reached "only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen," *Terry* v. *Ohio,* 1968.

Automobiles

The Court has long had difficulty applying the 4th Amendment to automobiles. It has several times held that an officer needs no warrant to search an automobile, a boat, an airplane, or some other vehicle, when there is probable cause to believe that it is involved in illegal activities. This is because such a "movable scene of crime" could disappear while a warrant was being sought.

Carroll v. *United States,* 1925, is an early leading case on the point. There, the Court emphasized that "where the securing of a warrant is reasonably practicable it must be used. . . . In cases where seizure is impossible except without a warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause."

The Court overturned a long string of automobile search cases in 1991. Before then, it had several times held that a warrant was usually needed to search a glove compartment, a paper bag, luggage, or other "closed containers" in an automobile. But, in *California* v. *Acevedo,* 1991, the Court set out what it called "one clear-cut rule to govern automobile searches." Whenever police lawfully stop a car, they do not need a warrant to search anything in that vehicle that they have reason to believe holds evidence of a crime. "Anything" includes a passenger's belongings, *Wyoming* v. *Houghton,* 1999.

Most recently, the Court held that when police make a traffic stop, the Constitution protects passengers as well as drivers against an illegal search or seizure, *Brendlin* v. *California,* 2007. When a car is stopped, said the Court, both driver and passenger are in police control and, therefore, cannot be searched without probable cause.

The Exclusionary Rule

The heart of the guarantee against unreasonable searches and seizures lies in this question: If an unlawful search or seizure does occur, can that "tainted evidence" be used in court? If so, the 4th Amendment offers no real protection to a person accused of crime.

To meet that problem, the Court adopted, and is still refining, the **exclusionary rule.** Essentially, the rule is this: Evidence gained as the result of an illegal act by police cannot be used at the trial of the person from whom it was seized.

The rule was first laid down in *Weeks* v. *United States,* 1914. In that narcotics case, the Court held that evidence obtained illegally by federal officers could not be used in the federal courts. For decades, however, the Court left questions of the use of such evidence in State courts for each State to decide for itself.

Mapp v. *Ohio*

The exclusionary rule was finally extended to the States in *Mapp* v. *Ohio,* 1961. There, the Court held that the 14th Amendment forbids unreasonable searches and seizures by State and local officers just as the 4th Amendment bars such actions by federal officers. It also held that the fruits of an unlawful search or seizure cannot be used in the State courts, just as they cannot be used in the federal courts.

In *Mapp,* Cleveland police had gone to Dollree Mapp's home to search for gambling evidence. They entered her home forcibly, and without a warrant. Their very extensive search failed to turn up any gambling evidence, but they did find some obscene books. Mapp was convicted of possession of obscene materials and sentenced to jail. The Court overturned her conviction, holding that the evidence against her had been found and seized without a warrant.

Cases Narrowing the Rule

The exclusionary rule has always been controversial. It was intended to put teeth into the 4th Amendment, and it has. It says to police: As you enforce the law, obey the law. The rule seeks to prevent, or at least deter, police misconduct.

Critics of the rule say that it means that some persons who are clearly guilty nonetheless go free. Why, they ask, should criminals be able to "beat the rap" on "a technicality"?

The High Court has narrowed the scope of the rule somewhat over the years—most notably in four cases.

- In *Nix* v. *Williams,* 1984, it found an "inevitable discovery" exception to the rule. The Court ruled that tainted evidence can be used in court if that evidence would have turned up no matter what—"ultimately or inevitably would have been discovered by lawful means."
- In *United States* v. *Leon,* 1984, the Court found a "good faith" exception to the rule. There, federal agents in Los Angeles had used what they thought was a proper warrant to seize illicit drugs. Their warrant was later shown to be faulty, however. The Court upheld their actions nonetheless. It said: "When an officer acting with objective good faith has obtained a search warrant . . . and acted within its scope . . . there is nothing to deter."
- In *Maryland* v. *Garrison,* 1987, the Court gave police room for "honest mistakes." There, it allowed the use of evidence seized in the mistaken search of an apartment in Baltimore. Officers had a warrant to search for drugs in an apartment on the third floor of a building. Not realizing that there were two apartments there, they entered and found drugs in the wrong apartment—the one for which they did not have a warrant.
- In *Hudson* v. *Michigan,* 2006, the Court held that the exclusionary rule does not apply to evidence seized after police violate the "knock-and-announce" rule. That rule is centuries old. It requires police to announce their presence before they serve a warrant, and so give residents an opportunity to open the door and admit them. The Court found that the rule is not intended to

[4]This rule was first laid down in *Chimel* v. *California,* 1969.

[5]A person arrested without a warrant must be brought promptly before a judge for a probable cause hearing. In *County of Riverside* v. *McLaughlin,* 1991, the Court held that "promptly" means within 48 hours.

shield evidence from police view or seizure. It is meant, instead, to protect persons and property from any violence that might occur if, unannounced, police break into a person's home.

Drug Testing

Federal drug-testing programs involve searches of persons and so are covered by the 4th Amendment. To date, the Court has held that they can be conducted without either warrants or even any indication of drug use by those who must take them. It did so in two 1989 cases. They involved mandatory drug testing for (1) drug enforcement officers of the United States Customs Service who carry firearms, *National Treasury Employees Union* v. *Von Raab,* and (2) railroad workers following a train accident, *Skinner* v. *Federal Railway Labor Executives Association*.

The Court has also upheld an Oregon school district's drug-testing program, *Vernonia School District* v. *Acton,* 1995. The program required all students who take part in school sports to agree to be tested for drugs. That ruling was extended in *Board of Education of Pottowatomie County* v. *Earls* in 2002. There, the court upheld the random testing of students who want to participate in any competitive extracurricular activity.

Wiretapping

Wiretapping, electronic eavesdropping, videotaping, and other more sophisticated means of "bugging" are now quite widely used in the United States. They present difficult search and seizure questions that the authors of the 4th Amendment could not have begun to foresee.

The Supreme Court decided its first wiretap case in 1928. In *Olmstead* v. *United States,* federal agents had tapped a Seattle bootlegger's telephone calls. Their bugs produced evidence that led to Olmstead's conviction. The High Court upheld that conviction. It found that although the agents had not had a warrant, there had been no "actual physical invasion" of Olmstead's home or office—because the phone lines had been tapped *outside* those places.

The leading case today is *Katz* v. *United States,* 1967. There, the Court expressly overruled *Olmstead.* Katz had been convicted of transmitting gambling information across State lines. He had used a public phone booth in Los Angeles to call his contacts in Boston and Miami. Much of the evidence against him had come from an electronic tap planted on the roof—outside—the phone booth.

The Court held that the bugging evidence could not be used against Katz. Despite the fact that Katz was in a public, glass-enclosed phone booth, he was entitled to make a *private* call. Said the Court: the 4th Amendment protects "persons, not just places." It did go on to say, however, that the 4th Amendment can be satisfied in such situations if police obtain a proper warrant before they install a listening device.

Section 2 Assessment

Progress Monitoring *Online*
For: Self-quiz with vocabulary practice
Web Code: mqa-5202

Key Terms and Main Ideas

1. In what sense has the Supreme Court "breathed new life" into the 13th Amendment?
2. Why was the 2nd Amendment added to the Constitution?
3. Define **probable cause.**
4. **(a)** What is the **exclusionary rule? (b)** What is its basic purpose?

Critical Thinking

5. **Expressing Problems Clearly** Consider this question: Does the exclusionary rule serve the interests of justice? Explain how you might answer this question if you were **(a)** the defendant in a criminal trial; **(b)** a police officer.
6. **Identifying Assumptions** In 1918, the Court ruled that the 13th Amendment's prohibition of involuntary servitude does not prevent Congress from launching a military draft. What assumptions about the importance of individual rights and civic duty lie behind that decision?

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Skills for Life

Citizenship
ACTIVITY PACK
For: Activities on serving on a jury
Web Code: mpp-1910

Serving on a Jury

Someday you may receive a notice ordering you to appear for jury duty. This is a rare opportunity to observe the United States justice system at work. That system relies on the participation of ordinary citizens in the judicial process.

Potential jurors are most often selected from voting lists and summoned to appear at court. How long they must serve varies from place to place. People with certain hardships, such as health, language, or job problems, may be excused from jury duty.

When you arrive at the courthouse, you might be dismissed without having served at all. Or you might be chosen to appear for jury selection. In this phase, lawyers for both sides question potential jurors and select those they think will be favorable to their side. Many people are rejected at this stage.

If you are chosen for a jury, you and the other jurors will receive instructions prior to the start of trial. The following steps are adapted from those instructions:

1. Do not be influenced by bias. Your decision should not be affected by any sympathies or dislikes you might have for either side in the case. How might you avoid biased thinking?

2. Follow the law as it is explained to you. Your job is to determine whether or not someone broke the law, regardless of whether you approve of the law. Would you find this requirement difficult? Explain.

3. Remember that the defendant is presumed innocent. The government has the burden of proving a defendant guilty beyond a "reasonable doubt." If it fails to do so, the jury verdict must be "not guilty." What does "reasonable doubt" mean to you?

4. Keep an open mind. Do not form or state any opinion about the case until you have heard all the evidence, the closing arguments of the lawyers, and the judge's instructions on the applicable law. Why is it important for jurors to base their opinions on evidence and testimony alone?

5. During the trial, do not discuss the case. Do not permit anyone to talk about the case with you or in your presence, except your fellow jurors in the secrecy of the jury room. Avoid media coverage of the case once the trial has begun. What is the reason for this rule?

Test for Success

Under "three strikes" laws in several States, a person who commits a third felony can be jailed for 25 years to life. Such laws are aimed to keep violent, habitual criminals behind bars. But the laws are also being applied to nonviolent crimes, such as stealing a bicycle. Some juries have resisted convicting people they know are guilty because the possible penalties are so harsh. If you were a juror on such a case, would you vote to convict? Consider the instructions to jurors given on this page.

3 Rights of the Accused

Section Preview

Objectives

1. **Define** the writ of habeas corpus, bills of attainder, and ex post facto laws.
2. **Outline** how the right to a grand jury and the guarantee against double jeopardy help ensure the rights of the accused.
3. **Describe** issues that arise from the guarantee of a speedy and public trial.
4. **Determine** what constitutes a fair trial by jury.
5. **Examine** the right to an adequate defense and the guarantee against self-incrimination.

Why It Matters

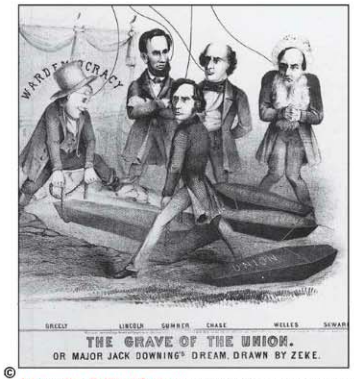
In the American judicial system, any person who is accused of a crime must be presumed to be innocent until proven guilty. The Constitution, especially in the 5th, 6th, and 14th amendments, contains a number of provisions guaranteeing rights to people accused of a crime.

Political Dictionary

- ★ **writ of habeas corpus**
- ★ **bill of attainder**
- ★ **ex post facto law**
- ★ **grand jury**
- ★ **indictment**
- ★ **double jeopardy**
- ★ **bench trial**
- ★ **Miranda Rule**

Think about this statement for a moment: "It is better that ten guilty persons go free than that one innocent person be punished." That maxim expresses one of the bedrock principles of the American legal system.

Of course, society must punish criminals in order to preserve itself. However, the law intends that any person who is suspected or accused of a crime must be presumed innocent until proven guilty by fair and lawful means.



© ***Interpreting Political Cartoons*** This detail from an 1860s cartoon is critical of President Lincoln's 1861 suspension of the writ of habeas corpus. ***Why is a coffin labeled "Constitution" being lowered into the ground?***

Habeas Corpus

The **writ of habeas corpus,** sometimes called the writ of liberty, is intended to prevent unjust arrests and imprisonments.[6] It is a court order directed to an officer holding a prisoner. It commands that the prisoner be brought before the court and that the officer show cause—explain, with good reason—why the prisoner should not be released.

The right to seek a writ of habeas corpus is protected against the National Government in Article I, Section 9 of the Constitution. That right is guaranteed against the States in each of their own constitutions.

The Constitution says that the right to the writ cannot be suspended, "unless when in Cases of Rebellion or Invasion the public Safety may require it." President Abraham Lincoln suspended the writ in 1861. His order covered various parts of the country, including several areas in which war was not then being waged. Chief Justice Roger B. Taney, sitting as a circuit judge, held Lincoln's action unconstitutional, *Ex parte Merryman,* 1861.

Taney ruled that the Constitution gives the power to suspend the writ to Congress alone. Congress then passed the Habeas Corpus Act of 1863. It gave the President the power to suspend the writ when and where, in his judgment, that action was necessary. In *Ex parte Milligan,* 1866, the Supreme Court ruled that neither Congress nor the President can legally suspend the writ where there is no actual fighting nor the likelihood of any combat.

The right to the writ has been suspended only once since the Civil War and the Reconstruction Period that followed it. The territorial governor of Hawaii suspended the writ following the Japanese attack on Pearl Harbor, December 7, 1941. The Supreme Court later ruled that the governor did not have the power to take that action, *Duncan* v. *Kahanamoku,* 1946.

Bills of Attainder

A **bill of attainder** is a legislative act that inflicts punishment without a court trial. Neither Congress nor the States can pass such a measure (Article I, Sections 9 and 10).

The ban on bills of attainder is both a protection of individual freedom and part of the system of separation of powers. A legislative body can pass laws that define crime and set the penalties for violation of those laws. It cannot, however, pass a law that declares a person guilty of a crime and provides for the punishment of that person.

The Supreme Court has held that this prohibition is aimed at all legislative acts that apply "to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial," *United States* v. *Lovett,* 1946.

The Framers wrote the ban on bills of attainder into the Constitution because both Parliament and the colonial legislatures had passed many such bills. Bills of attainder have been rare in our national history, however.

United States v. *Brown,* 1965, is one of the few cases in which the Court has struck down a law as a bill of attainder. There it overturned a provision of the Landrum-Griffin Act of 1959. That provision made it a federal crime for a member of the Communist Party to serve as an officer of a labor union.

Ex Post Facto Laws

An **ex post facto law** (a law passed after the fact) has three features. It (1) is a criminal law, one defining a crime or providing for its punishment; (2) applies to an act committed before its passage; and (3) works to the disadvantage of the accused. Neither Congress nor the State legislatures may pass such laws.[7]

For example, a law making it a crime to sell marijuana cannot be applied to someone who sold it before that law was passed. Or, a law that changed the penalty for murder from life in prison to death could not be applied to a person who committed a murder before the punishment was changed.

Ex post facto cases do not come along very often. The Court decided its most recent one, *Carmell* v. *Texas,* in 2000. There, the Court overturned a man's sexual abuse conviction because of a change in State law. That change had made it easier for the prosecution to prove its charge than was the case when the abuse was committed.

Retroactive civil laws are *not* forbidden. Thus, a law raising income tax rates could be passed in November and applied to income earned through the whole year.

Grand Jury

The Constitution provides that:

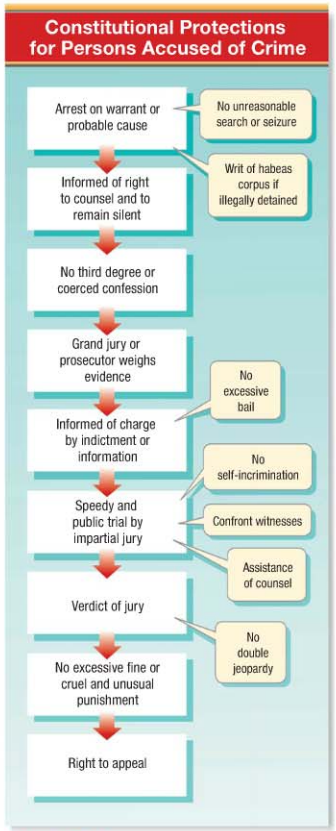
> FROM THE Constitution
> *"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . ."*
> —5th Amendment

The **grand jury** is the formal device by which a person can be accused of a serious crime.[8] In federal cases, it is a body of from 16 to 23 persons drawn from the area of the federal district court that it serves. The votes of at least 12 of the

[6] The phrase *habeas corpus* comes from the Latin, meaning "you should have the body," and those are the opening words of the writ.

[7] Article I, Sections 9 and 10. The phrase *ex post facto* is from the Latin, meaning "after the fact."

[8] The 5th Amendment provides that the guarantee of grand jury does not extend to "cases arising in the land or naval forces." The conduct of members of the armed forces is regulated under a code of military law enacted by Congress.



Interpreting Charts Any person accused of a crime is presumed innocent until proven guilty. ***What protections does the Constitution extend to those convicted of crime?***

grand jurors are needed to return an indictment or to make a presentment.

An **indictment** is a formal complaint that the prosecutor lays before a grand jury. It charges the accused with one or more crimes. If the grand jury finds that there is enough evidence for a trial, it returns a "true bill of indictment." The accused is then held for prosecution. If the grand jury does not make such a finding, the charge is dropped.

A presentment is a formal accusation brought by the grand jury on its own motion, rather than that of the prosecutor. It is little used in federal courts.

A grand jury's proceedings are not a trial. Since unfair harm could come if they were public, its sessions are secret. They are also one-sided—in the law, *ex parte*. That is, only the prosecution, not the defense, is present.

The right to grand jury is intended as a protection against overzealous prosecutors. Critics say that it is too time-consuming, too expensive, and too likely to follow the dictates of the prosecutor.

The 5th Amendment's grand jury provision is the only part of the Bill of Rights relating to criminal prosecution that the Supreme Court has not brought within the coverage of the 14th Amendment's Due Process Clause. In most States today, most criminal charges are not brought by grand jury indictment. They are brought, instead, by an information, an affidavit in which the prosecutor swears that there is enough evidence to justify a trial (see Chapter 24).

Double Jeopardy

The 5th Amendment's guarantee against double jeopardy is the first of several protections in the Bill of Rights especially intended to ensure fair trial in the federal courts.[9] Fair trials are guaranteed in State courts by each State's own constitution and by the 14th Amendment's Due Process Clause.

The 5th Amendment says in part that no person can be "twice put in jeopardy of life or limb." Today, this prohibition against **double jeopardy** means that once a person has been tried for a crime, he or she cannot be tried again for that same crime.

A person can violate both a federal *and* a State law in a single act, however—for example, by selling narcotics. That person can then be tried for the federal crime in a federal court and for the State crime in a State court. A single act can also result in the commission of several crimes. A person who breaks into a store, steals liquor, and sells it can be tried for illegal entry, theft, and selling liquor without a license.

In a trial in which a jury cannot agree on a verdict, there is no jeopardy. It is as though no trial had been held. Nor is double jeopardy involved when a case is appealed to a higher court.[10] Recall that the Supreme Court has held that the 5th Amendment's ban on double jeopardy applies against the States through the 14th Amendment, *Benton* v. *Maryland*, 1969.

Several States allow the continued confinement of violent sex predators after they have completed a prison term. The Court has twice held that that confinement is not punishment—and so does not involve double jeopardy. Rather, the practice is intended to protect the public from harm, *Kansas* v. *Hendrick*, 1987, and *Seling* v. *Young*, 2001.

[9]See the 5th, 6th, 7th, and 8th amendments and Article III, Section 2, Clause 3. The practice of excluding evidence obtained in violation of the 4th Amendment is also intended to guarantee a fair trial.

[10]The Organized Crime Control Act of 1970 allows federal prosecutors to appeal sentences they believe to be too lenient. The Supreme Court has held that such appeals do not violate the double jeopardy guarantee, *United States* v. *Di Francesco*, 1980.

Interpreting Political Cartoons The term "media circus" applies to trials that generate a great deal of publicity. ***What are the dangers of a trial becoming too public?***

Speedy and Public Trial

The Constitution commands

FROM THE Constitution

> *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ."*
>
> —6th Amendment

Speedy Trial

The guarantee of a speedy trial is meant to ensure that the government will try a person accused of crime within a reasonable time and without undue delay. But how long a delay is too long? The Supreme Court has long recognized that each case must be judged on its own merits.

In a leading case, *Barker* v. *Wingo*, 1972, the Court listed four criteria for determining if a delay has violated the constitutional protection. They are (1) the length of the delay, (2) the reasons for it, (3) whether the delay has in fact harmed the defendant, and (4) whether the defendant asked for a prompt trial.

The Speedy Trial Act of 1974 says that the time between a person's arrest and the beginning of his or her federal criminal trial cannot be more than 100 days. The law does allow for some exceptions, however—for example, when the defendant must undergo extensive mental tests, or when the defendant or a key witness is ill.

The 6th Amendment guarantees a prompt trial in *federal* cases. The Supreme Court first declared that this right applies against the States as part of the 14th Amendment's Due Process Clause in *Klopfer* v. *North Carolina*, 1967.

Public Trial

The 6th Amendment says that a trial must also be public. The right to be tried in public is also part of the 14th Amendment's guarantee of procedural due process.

A trial must not be *too* speedy or *too* public, however. The Supreme Court threw out an Arkansas murder conviction in 1923 on just those grounds. The trial had taken only 45 minutes, and it had been held in a courtroom packed by a threatening mob.

Within reason, a judge can limit both the number and the kinds of spectators who may be present at a trial. Those who seek to disrupt a courtroom can be barred from it. A judge can order a courtroom cleared when the expected

▲ ***Cameras in the Courtroom?*** Friends and family watch the televised trial (above) of nanny Louise Woodward for the murder of a child in her care. In trials in which cameras are not allowed in the courtroom, lawyers and the public may "view" the trial through courtroom sketches (right).

testimony can embarrass a witness or someone not a party to the case.

Many of the questions about how public a trial should be involve the media—especially newspapers and television. The guarantees of fair trial and free press, however, often collide in the courts. On the one hand, a courtroom is a public place where the media have a right to be present. On the other hand, media coverage can jeopardize the right to a fair trial.

Champions of the public's right to know hold that the courts must allow the broadest possible press coverage of a trial. The Supreme Court has often held, however, that the media have only the same right as the general public to be present in a courtroom. The right to a public trial belongs to the defendant, not to the media.

What of televised trials? Television cameras are barred from all federal courtrooms. Most States do allow some form of in-court television reporting, however. Does televising a criminal trial violate a defendant's rights?

In an early major case, *Estes* v. *Texas,* 1965, the Supreme Court reversed the conviction of an oil man charged with swindling billions of dollars. Radio and television coverage of his trial had been allowed from within the courtroom, over his objection. The Court found that the media coverage had been so "circus-like" and so disruptive that Estes had been denied his right to a fair trial.

Sixteen years later, the Court held in *Chandler* v. *Florida,* 1981, that nothing in the Constitution prevents a State from allowing the televising of a criminal trial. At least, televising is not prohibited as long as steps are taken to avoid too much publicity and to protect the defendant's rights.

Trial by Jury

The 6th Amendment also says that a person accused of a federal crime must be tried "by an impartial jury." This guarantee reinforces an earlier one set out in Article III, Section 2. The right to trial by jury is also binding on the States through the 14th Amendment's Due Process Clause, but only in cases involving "serious" crimes, *Duncan* v. *Louisiana,* 1968.[11] The trial jury is often called the petit jury. *Petit* is the French word for "small."

The 6th Amendment adds that the members of the federal court jury must be drawn from "the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." This clause gives the defendant any benefit there might be in having a court and jury familiar with the people and problems of the area.

A defendant may ask to be tried in another place—seek a "change of venue"—on grounds that the people of the locality are so prejudiced in the case that an impartial jury cannot be drawn. The judge must decide whether a change of venue is justified.

A defendant may also waive (put aside or relinquish) the right to a jury trial. However, he or she can do so only if the judge is satisfied that the defendant is fully aware of his or her rights and understands what that action means. In fact, a judge can order a jury trial even when a defendant does not want one, *One Lot Emerald Cut Stones and One Ring* v. *United States,* 1972. If a defendant waives the right, a **bench trial** is held. That is, a judge alone hears the case. (Of course, a defendant can plead guilty and so avoid a trial of any kind.)

In federal practice, the jury that hears a criminal case must have 12 members. Some federal civil cases are tried before juries of as few as six members, however. Several States now provide for smaller juries, often of six members, in both criminal and civil cases.

In the federal courts, the jury that hears a criminal case can convict the accused only by a unanimous vote. Most States follow the same rule.[12]

In a long series of cases, dating from *Strauder* v. *West Virginia,* 1880, the Supreme Court has held that a jury must be "drawn from a fair cross section of the community." A person is denied the right to an impartial jury if he or she is tried by a jury from which members of any groups "playing major roles in the community" have been excluded, *Taylor* v. *Louisiana,* 1975.

In short, no person can be kept off a jury on such grounds as race, color, religion, national origin, or sex. As the Court has put it in several recent decisions on the point: Both the 5th and the 14th amendments mean that jury service cannot be determined by "the pigmentation of skin, the accident of birth, or the choice of religion," *Miller-El* v. *Dretke,* 2005.

Right to an Adequate Defense

Every person accused of a crime has the right to the best possible defense that circumstances will allow. The 6th Amendment says that a defendant has the right (1) "to be informed of the nature and cause of the accusation," (2) "to be confronted with the witnesses against him" and question them in open court, (3) "to have compulsory process for obtaining witnesses in his favor" (that is, favorable witnesses can be subpoenaed, or forced to attend), and (4) "to have the Assistance of Counsel for his defense."

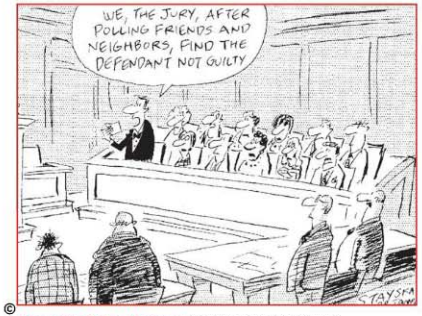
These key safeguards apply in the federal courts. Still, if a State fails to honor any of them, the accused can appeal a conviction on grounds that the 14th Amendment's Due Process Clause has been violated. Recall from Chapter 19 that the Supreme Court protected the right to counsel in *Gideon* v. *Wainwright,* 1963; the right of confrontation in *Pointer* v. *Texas,* 1965; and the right to call witnesses in *Washington* v. *Texas,* 1967.

These guarantees are intended to prevent the cards from being stacked in favor of the prosecution. One of the leading right-to-counsel cases, *Escobedo* v. *Illinois,* 1964, illustrates this point.

Chicago police picked up Danny Escobedo for questioning in the death of his brother-in-law. On the way to the police station, and then while he was being questioned there, he asked several times to see his lawyer. The police denied these requests. They did so even though his lawyer was in the police station and was trying to see him, and the police knew the lawyer was there. Through a long night of questioning, Escobedo made several damaging statements. Prosecutors later used those statements in court as a major part of the evidence that led to his murder conviction.

The Supreme Court ordered Escobedo freed from prison four years later. It held that he had been improperly denied his right to counsel.

In *Gideon* v. *Wainwright,* 1963, the Court held that an attorney must be furnished to a defendant who cannot afford one. In many places, a judge still assigns a lawyer from the local community, or a private legal aid association provides counsel.



Interpreting Political Cartoons ***Would a poll of friends and neighbors produce a fair verdict? Explain your answer.***

[11]In *Baldwin* v. *New York,* 1970, the Court defined serious crimes as those for which imprisonment for more than six months is possible.

[12]The 14th Amendment does not say that there cannot be juries of fewer than 12 persons, *Williams* v. *Florida,* 1970, but it does not allow juries of fewer than six members, *Ballew* v. *Georgia,* 1978. Nor does it prevent a State from providing for a conviction on a less than unanimous jury vote, *Apodaca* v. *Oregon,* 1972. But if a jury has only six members, it may convict only by a unanimous vote, *Burch* v. *Louisiana,* 1979.

Since *Gideon,* however, a growing number of States, and many local governments, have established tax-supported public defender offices. In 1970, Congress authorized the appointment of federal public defenders or, as an alternative, the creation of community legal service organizations financed by federal grants.

Self-Incrimination

The guarantee against self-incrimination is among the protections set out in the Fifth Amendment. That provision declares that no person can be "compelled in any criminal case to be a witness against himself." This protection must be honored in both the federal and State courts, *Malloy* v. *Hogan,* 1964.

In a criminal case, the burden of proof is always on the prosecution. The defendant does not have to prove his or her innocence. The ban on self-incrimination prevents the prosecution from shifting the burden of proof to the defendant. As the Court put it in *Malloy* v. *Hogan,* the prosecution cannot force the accused to "prove the charge against" him "out of his own mouth."

Applying the Guarantee

The language of the 5th Amendment suggests that the guarantee against self-incrimination applies only to criminal cases. In fact, the guarantee covers any governmental proceeding in which a person is legally compelled to answer any question that could lead to a criminal charge. Thus, a person may claim the right ("take the Fifth") in a variety of situations: in a divorce proceeding (which is a civil matter), before a legislative committee, at a school board's disciplinary hearing, and so on.

The courts, not the individuals who claim it, decide when the right can be properly invoked. If the plea of self-incrimination is pushed too far, a person can be held in contempt of court.

The guarantee against self-incrimination is a personal right. One can claim it only for oneself.[13] It cannot be invoked in someone else's behalf; a person *can* be forced to "rat" on another.

The privilege does not protect a person from being fingerprinted or photographed, submitting a handwriting sample, or appearing in a police lineup. And, recall, it does not mean that a person does not have to submit to a blood test in a drunk driving situation, *Schmerber* v. *California,* 1966.

A person cannot, however, be forced to confess to a crime under duress, that is, as a result of torture or other physical or psychological pressure. In *Ashcraft* v. *Tennessee,* 1944, for example, the Supreme Court threw out the conviction of a man accused of hiring another person to murder his wife. The confession on which his conviction rested had been secured only after some 36 hours of continuous, threatening interrogation. The questioning was conducted by officers who worked in shifts because, they said, they became so tired that they had to rest.

The gulf between what the Constitution says and what goes on in some police stations can be wide indeed. For that reason, the Supreme Court has come down hard in favor of the defendant in many cases involving the protection against self-incrimination and the closely related right to counsel.

Recall, for example, the Court's decision in *Escobedo* v. *Illinois,* 1964. There it held that a confession cannot be used against a defendant if it was obtained by police who refused to allow the defendant to see his attorney and did not tell him that he had a right to refuse to answer their questions.

Miranda v. *Arizona*

In a truly historic decision, the Court refined the *Escobedo* holding in *Miranda* v. *Arizona,* 1966. A mentally retarded man, Ernesto Miranda, had been convicted of kidnapping and rape. Ten days after the crime, the victim picked Miranda out of a police lineup. After two hours of questioning, during which the police did not tell him of his rights, Miranda confessed.

The Supreme Court struck down Miranda's conviction. More importantly, the Court said that it would no longer uphold convictions in any cases in which suspects had not been told of their constitutional rights before police questioning. It thus laid down the **Miranda Rule.** Under the rule, before police may question a suspect, that person must be

[13]With this major exception: A husband cannot be forced to testify against his wife, or a wife against her husband, *Trammel* v. *United States,* 1980. One can testify against the other voluntarily, however.

(1) told of his or her right to remain silent;

(2) warned that anything he or she says can be used in court;

(3) informed of the right to have an attorney present during questioning;

(4) told that if he or she is unable to hire an attorney, one will be provided at public expense;

(5) told that he or she may bring police questioning to an end at any time.

The Miranda Rule has been in force for 40 years now (and made famous by countless television dramas over that period). As the Court put it in *Dickerson* v. *United States,* 2000, the rule "has become embedded in routine police practice to the point where the warnings have become part of our national culture."

The Supreme Court is still refining the rule on a case-by-case basis. Most often the rule is closely followed. But there are exceptions. Thus, the Court has held that an undercover police officer posing as a prisoner does not have to tell a cell mate of his Miranda rights before prompting him to talk about a murder, *Illinois* v. *Perkins,* 1990.

Missouri v. *Seibert*, 2004, centered on what lately had become fairly common police practice: two-step interrogations, also known as "rehearsed confessions." Here, police officers had questioned Patrice Seibert, drawing out details of the fire she had set to cover up the murder of her son. *Then,* she was told of her Miranda rights—and questioned again. That second round was taped, and she was asked questions based on the incriminating statements

▲ In 1966, the Court struck down the conviction of Ernesto Miranda (right), who had confessed to a crime without being told of his rights. ***Critical Thinking*** ***What were the long-term effects of the Miranda decision on police procedures?***

she had made in the first—untaped, unwarned—round. She confessed again.

The Supreme Court found that her confession had been coerced and so was invalid. It struck down the two-step practice, saying that it threatened the very purpose of Miranda.

The Miranda rule has always been controversial. Critics say that it "puts criminals back on the streets." Others applaud the rule, however. They hold that criminal law enforcement is most effective when it relies on independently secured evidence, rather than on confessions gained by questionable tactics from defendants who do not have the help of a lawyer.

Section 3 Assessment

Progress Monitoring *Online*
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Key Terms and Main Ideas

1. What does the **writ of habeas corpus** seek to prevent?
2. Why are **bills of attainder** and **ex post facto laws** forbidden?
3. What guarantees does the 5th Amendment offer to the accused?
4. List the provisions of the 6th Amendment concerning the rights of the accused.

Critical Thinking

5. **Drawing Inferences** The Constitution denies to both Congress and the State legislatures the power to enact bills of attainder. How does this fact illustrate the principle of separation of powers?
6. **Expressing Problems Clearly** Should television cameras be allowed in the courtroom? Why or why not?
7. **Predicting Consequences** If the ban on double jeopardy were removed from the Constitution, what might be the effect on the criminal justice system?

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CLOSE UP FOUNDATION

on Primary Sources

The Right to an Attorney

Clarence Gideon was an uneducated man who had to defend himself in a Florida court because he could not afford an attorney and the trial judge refused to provide one at public expense. Here, Gideon writes from prison to the attorney assigned to handle his Supreme Court appeal. Fourteen months after this letter, the Court ruled in **Gideon** *v.* **Wainwright** *that every defendant has a right to an attorney.*

Clarence Gideon
1910–1972

On June 3rd 1961 I was arrested for the crime I am now doing time on. I was charged with Breaking & Entering to comitt a misdemeanor and was convicted in a trial August 4th 1961 [and] sentenced to State Prison August 27th 1961.

This charge growed out of gambling. . . . I worked in this place and did run a Poker game there. . . . I did not break into this building nor did I have to [because] I had the keys to the building. . . . The State witness Cook who was supposed to identify me. Had a bad police record and the Court would not let me bring that out. Nor that one time I had at the point of a pistal made him stop beating a girl[.]

I always believed that the primarily reason of a trial in a court of law was to reach the truth. My trial was far from the truth. One day when I was being arraigned [brought to court to be formally charged] I seen two trials of two different men tried without attorneys. One hour from the time they started they had two juries out and fifteen minutes later they were found guilty and sentenced. Is this a fair trial? This is common practiced through most of this state. . . . I am an electrician here [in prison] and one of my fellow workers has two years for drunk and resisting arrest. Most city Police courts would give a citizen a twenty-five dollar fine for the same charge he was tried without an attorney and convicted. . . .

There was not a crime committed in my case and I don't feel like I had a fair trial. If I had a attorney[,] he could brought out all these things in my trial.

When I was arrested I was put in solitary confinement and I was not allowed the papers not to use the telephone or write to everyone I should. I did get a speedy arraignment and . . . was allow more time to try and obtain a attorney[,] which I could not do. You know about the rest of my trial. . . .

I hope that [this letter] may help you in preparing this case. I am sorry I could not write better[.] I have done the best I could.

I have no illusions about the law and courts or the people who are involved in them. I have read the complete history of law ever since the Romans first started writing them down and[,] before[,] of the laws of religions. I believe that each era finds a improvement in the law[.] Each year brings something new for the benefit of mankind. Maybe this will be one of those small steps forward. . . .

Analyzing Primary Sources

1. What "proof" does Gideon offer to support his innocence?
2. In what three ways, according to Gideon, are defendants harmed by not having an attorney?
3. What attitude does Gideon show toward the law and the legal system?
4. What point is Gideon trying to make in the last paragraph of his letter?

4 Punishment

Section Preview

Objectives

1. **Explain** the purpose of bail and preventive detention.
2. **Describe** the Court's interpretation of cruel and unusual punishment.
3. **Outline** the history of the Court's decisions on capital punishment.
4. **Define** the crime of treason.

Why It Matters

The 8th Amendment addresses the issue of punishment for crime. It bans excessive bail and cruel and unusual punishment. The Court has ruled that the death penalty does not constitute cruel and unusual punishment, although the question of capital punishment continues to be hotly debated.

Political Dictionary

- ★ **bail**
- ★ **preventive detention**
- ★ **capital punishment**
- ★ **treason**

Once again, think about this statement: "It is better that ten guilty persons go free than that one innocent person be punished." What do you think of that notion after reading the previous section? Turn now to those guilty persons who do not go free but are instead punished. How should they be treated? The Constitution gives its most specific answers to that question in the 8th Amendment.

Bail and Preventative Detention

The 8th Amendment says, in part:

FROM THE Constitution

"Excessive bail shall not be required, nor excessive fines imposed. . . ."

—United States Constitution

Each State constitution sets out similar restrictions. The general rule is that the bail or fine in a case must bear a reasonable relationship to the seriousness of the crime involved.

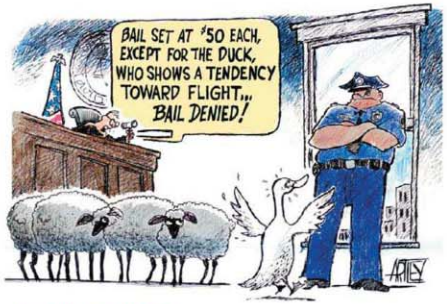
Bail

Bail is a sum of money that the accused may be required to post (deposit with the court) as a guarantee that he or she will appear in court at the proper time. The use of bail is justified on two grounds: (1) A person should not be jailed until his or her guilt is established. (2) A defendant is better able to prepare for trial outside of a jail.

Note that the Constitution does not say that all persons accused of a crime are automatically entitled to bail. Rather, it guarantees that, where bail is set, the amount will not be excessive.

The leading case on bail in the federal courts is *Stack* v. *Boyle*, 1951. There the Court ruled that "bail set at a figure higher than the amount reasonably calculated" to assure a defendant's appearance at a trial "is 'excessive' under the 8th Amendment."

A defendant can appeal the denial of release on bail or the amount of bail. Bail is usually set in accordance with the severity of the crime



Interpreting Political Cartoons ***Under what circumstances may bail actually be denied?***

▶ Supporters for (right) and against (left) capital punishment make their views known. ***Critical Thinking*** ***Briefly summarize arguments for and against the death penalty.***

charged and with the reputation and financial resources of the accused. People with little or no income often have trouble raising bail. The federal and most State courts thus release many defendants "on their own recognizance," that is, on their honor. Failure to appear for trial—"jumping bail"—is itself a punishable crime.

Preventive Detention

In 1984, Congress provided for the **preventive detention** of some people accused of federal crimes. A federal judge can order that the accused be held, without bail, when there is good reason to believe that he or she will commit another serious crime before trial.

Critics of the law claim that preventive detention amounts to punishment before trial. They say it undercuts the presumption of innocence to which defendants are entitled.

The Supreme Court upheld the 1984 law, 6–3, in *United States* v. *Salerno,* 1987. The majority rejected the argument that preventive detention is punishment. Rather, it found the practice a legitimate response to a "pressing societal problem." The Court held that, "There is no doubt that preventing danger to the community is a legitimate regulatory goal." More than half the States have recently adopted preventive detention laws.

Cruel and Unusual Punishment

The 8th Amendment also forbids "cruel and unusual punishment." The 14th Amendment extends that prohibition against the States, *Robinson* v. *California,* 1962.

The Supreme Court decided its first cruel and unusual case in *Wilkerson* v. *Utah,* 1879. There a territorial court had sentenced a convicted murderer to death by a firing squad. The Court held that this punishment was not forbidden by the Constitution. The kinds of penalties the Constitution intended to prevent, said the Court, were such barbaric tortures as burning at the stake, crucifixion, drawing and quartering, "and all others in the same line of unnecessary cruelty." The Court took the same position a few years later when, for the first time, it upheld the electrocution of a convicted murderer, *In re Kemmler,* 1890.

Since then, the Court has heard only a handful of cruel and unusual cases, except for those relating to capital punishment. More often than not, the Court has rejected the cruel and unusual punishment argument.[14] *Louisiana* v. *Resweber,* 1947, is fairly typical. There the Court found that it was not unconstitutional to subject a convicted murderer to a second electrocution after the chair had failed to work properly on the first occasion.

The Court also denied the cruel and unusual claim in a recent case involving California's "three strikes" law, *Lockyer* v. *Andrade,* 2003. That law provides that any person convicted of a crime for a third time must be sent to prison for at least 25 years. Leonard Andrade had received 50 years for stealing $153.54 worth of children's

[14]The prohibition of cruel and unusual punishment is limited to criminal matters. It does not forbid paddling or similar punishments in the public schools, *Ingraham* v. *Wright,* 1977.

videos from two K-Mart stores. The K-Mart thefts were treated as separate offenses and he had an earlier burglary conviction on his record.

However, the Court has held some punishments to be cruel and unusual, although only a few. It did so for the first time in *Weems* v. *United States,* 1910. There, the Court overturned the conviction of a Coast Guard official convicted of falsifying government pay records. He had been sentenced to 15 years at hard labor, constantly chained at ankle and wrist. In *Robinson* v. *California,* 1962, the Court held that a State law defining narcotics addiction as a crime to be punished, rather than an illness to be treated, violated the 8th and 14th amendments.[15] In *Estelle* v. *Gamble,* 1976, it ruled that a Texas prison inmate could not properly be denied needed medical care.

Interpreting Graphs In 1976, the Supreme Court upheld the constitutionality of the death penalty. ***Summarize the data shown on the graph.***

Capital Punishment

Is **capital punishment**—punishment by death—cruel and unusual and therefore unconstitutional?[16] For years, the Supreme Court was reluctant to face that highly charged issue.[17]

The Court met the issue more or less directly in *Furman* v. *Georgia,* 1972. There it struck down all of the then existing State laws allowing the death penalty, but not because that penalty as such was cruel and unusual. Rather, the Court voided those laws because they gave too much discretion to judges or juries in deciding whether to impose the death penalty. The Court noted that out of all the people convicted of capital crimes, only "a random few," most of them African American or poor or both, were "capriciously selected" for execution.

Since that decision, Congress and 38 States have passed new capital punishment laws. At first, those laws took one of two forms. Several States made the death penalty mandatory for certain crimes, such as killing a police officer or murder committed during a rape, kidnapping, or arson. Other States provided for a two-stage process in capital cases: first, a trial to settle the issue of guilt or innocence; then, for those convicted, a second hearing to decide whether the circumstances justify a sentence of death.

In considering the scores of challenges to those State laws, the Supreme Court found the mandatory death penalty laws unconstitutional. In *Woodson* v. *North Carolina,* 1976, it ruled that such laws were "unduly harsh and rigidly unworkable." It saw the laws as attempts simply to "paper over" the decision in *Furman.*

The two-stage approach to capital punishment *is* constitutional, however. In *Gregg* v. *Georgia,* 1976, the Court held, for the first time, that the "punishment of death does not invariably violate the Constitution." It ruled that well-drawn two-stage laws can practically eliminate "the risk that [the death penalty] will be inflicted in an arbitrary or capricious manner."

The death penalty can be imposed only for "crimes resulting in the death of the victim," *Coker* v. *Georgia,* 1977. That penalty cannot be imposed on those who are mentally challenged, *Atkins* v. *Virginia,* 2002, or on those who were under the age of 18 when their crimes were committed, *Roper* v. *Simmons,* 2005.

The question of whether the death penalty is to be imposed in a case must be decided by the

[15]But, notice, that does not mean that buying, selling, or possessing narcotics cannot be made a crime. Such criminal laws are designed to punish persons for their behavior, not for being ill.

[16]The phrase "capital punishment" comes from the Latin *caput,* meaning "head"; in many cultures, the historically preferred method for executing criminals was beheading (decapitation).

[17]The Court did hold that neither death by firing squad (*Wilkerson* v. *Utah,* 1878) nor by a second electrocution (*Louisiana* v. *Resweber,* 1947) is unconstitutional. But in neither of those cases, nor in others, did it deal with the question of the death penalty as such.

jury that convicted the defendant, not the judge who presided at the trial, *Ring v. Arizona,* 2002. A person who has been convicted of murder but is delusional and so cannot understand why he has been sentenced to death cannot in fact be executed, *Uttecht v. Brown,* 2007.

Opponents of capital punishment continue to appeal cases to the Court, but to no real avail. The sum of the Court's many decisions over the past 30 years is this: The death penalty, fairly applied, is constitutional.

A sizable majority of the American people support capital punishment. Still, many who favor it have misgivings about the fairness with which death sentences are applied.

Governor George Ryan of Illinois ignited controversy when he ordered a suspension of executions in his State in 2000. He did so, he said, because the death penalty process is "fraught with error." From 1977 to 2000, 285 people were sentenced to die in Illinois. By 2000, 12 of them had been executed, but 13 others had been released from prison because they had been wrongly convicted.

In 2003, Governor Ryan commuted the sentences of all the inmates then on death row in Illinois. He justified that extraordinary action by citing a State investigation that uncovered corruption and racial bias in the State's death penalty process. The legislature has since passed several reform measures, but current governor Rod Blagojevich has refused to lift the suspension. He says the State's problems continue.

The death penalty statutes in New York and Kansas were held unconstitutional by those States' highest courts in 2004. Efforts to revive those laws continue.

Treason

Treason against the United States is the only crime that is defined in the Constitution. The Framers provided a specific definition of the crime because they knew that the charge of treason is a favorite weapon in the hands of tyrants.

Treason, says Article III, Section 3, can consist of only two things: either (1) levying war against the United States or (2) "adhering to their Enemies, giving them Aid and Comfort." No person can be convicted of the crime "unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

Congress has set death as the maximum penalty for treason against the United States, but no one has ever been executed for the crime. Note that a person can commit treason only in wartime. However, Congress has made it a crime, during times of either peace or war, to commit espionage or sabotage, to attempt to overthrow the government by force, or to conspire to do any of these things.

Most of the State constitutions also provide for treason. John Brown was hanged as a traitor to Virginia after his raid on Harpers Ferry in 1859. He is believed to be the only person ever to be executed for treason against a State.

Section 4 Assessment

Key Terms and Main Ideas

1. What constitutes excessive **bail?**
2. In cases involving cruel and unusual punishment, how has the Court generally ruled?
3. What is the Supreme Court's view of **capital punishment?**
4. Why does the Constitution specifically define **treason?**

Critical Thinking

5. **Demonstrating Reasoned Judgment (a)** What two forms did State laws allowing capital punishment take after the Court's decision in *Furman v. Georgia?* **(b)** Why did the Court find one of those forms "unduly harsh and rigidly unworkable"?
6. **Identifying Assumptions** What assumptions underlie the Court's decision that preventive detention is constitutional?

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CLOSE UP FOUNDATION *on the Supreme Court*

Does a Suspect's Flight From Police Justify a Stop and Search?

The 4th Amendment prohibits "unreasonable searches and seizures," but it does not define the term "unreasonable." In a leading case,* Terry v. Ohio*, 1968, the Supreme Court held that police officers may stop and frisk a person when they have good reason to believe that that person is armed and dangerous. May police stop and search a person simply because that person flees when the police approach?

Illinois v. *Wardlow* (2000)

William Wardlow was holding a white bag while in an area of Chicago known for heavy drug trafficking when he saw a caravan of police cars approaching. He fled, and the police pursued. When they caught up with him, one of the officers conducted a "pat-down" search for weapons. (In the police officer's experience, weapons were usually found in the vicinity of narcotics transactions.) The officer squeezed the bag Wardlow was carrying and felt a heavy, hard object shaped like a gun. He opened the bag and discovered a .38-caliber handgun with five live rounds of ammunition.

At his trial, Wardlow argued that he should not be prosecuted for possession of the gun because the officer did not have reasonable suspicion to stop and search him. The Illinois trial court ruled against him, and he was convicted of unlawful use of a weapon by a felon. The Illinois Appellate Court then reversed his conviction. The Illinois Supreme Court affirmed that ruling, holding that both the stop and the arrest violated the 4th Amendment. The case then went to the Supreme Court.

Arguments for Illinois

1. The fact that a person fled from a police officer strongly indicates criminal behavior and provides reasonable grounds for stopping the suspect in order to conduct a brief investigation.
2. Even if flight alone is not sufficient to justify stopping and searching a suspect, the fact that the suspect was in a high-crime area, combined with the fact that the suspect fled upon the arrival of the police, provide reasonable grounds for stopping the suspect.
3. The standard that must be met to justify stopping a suspect, "reasonable suspicion," is less demanding than the standard of "probable cause" that must be met to justify arresting a suspect.

Arguments for Wardlow

1. There can be many reasons for fleeing from police; the fact that a person fled does not by itself mean that he is guilty of a crime.
2. Even the combined circumstances of being in a high-crime area, carrying a white bag, and running from the police do not create reasonable suspicion to justify a search.
3. An individual has the right to ignore the police unless and until the police have sufficient grounds under the Constitution to detain or arrest him. No one is required to cooperate with the police.

Decide for Yourself

1. Review the constitutional grounds on which each side based its arguments and the specific arguments each side presented.
2. Debate the opposing viewpoints presented in this case. Which viewpoint do you favor?
3. Predict the impact of the Court's decision on the conduct of police investigations and on relations between minority groups and the police. (To read a summary of the Court's decision, turn to pages 799–806.)

Go Online PHSchool.com **Use Web Code mqp-5208 to register your vote on this issue and to see how other students voted.**

CHAPTER 20 Assessment

Political Dictionary

due process (p. 564)
substantive due process (p. 565)
procedural due process (p. 565)
police power (p. 566)
search warrant (p. 566)
involuntary servitude (p. 569)
discrimination (p. 570)
writs of assistance (p. 571)
probable cause (p. 571)
exclusionary rule (p. 573)
writ of habeas corpus (p. 576)
bill of attainder (p. 577)
ex post facto law (p. 577)
grand jury (p. 577)
indictment (p. 578)
double jeopardy (p. 578)
bench trial (p. 580)
Miranda Rule (p. 582)
bail (p. 585)
preventive detention (p. 586)
capital punishment (p. 587)
treason (p. 588)

Practicing the Vocabulary

Matching *Choose a term from the list above that best matches each description.*

1. A group convened by a court to determine whether or not there is enough evidence against a person to justify a trial
2. A constitutional guarantee that a government will not deprive any person of life, liberty, or property by any unfair, arbitrary, or unreasonable action
3. The power of each State to act to protect and promote the public health, safety, morals, and general welfare
4. A sum of money that an accused person may be required to post as a guarantee that he or she will appear in court at the proper time
5. A legislative act that inflicts punishment without court trial

Fill in the Blank *Choose a term from the list above that best completes the sentence.*

6. During colonial times, British officials used _____ in order to search private homes for smuggled goods.
7. According to the _____, suspects must be advised of their rights before police questioning.
8. If a person is tried twice for the same crime, he or she may have been subjected to _____.
9. Police generally need a _____ in order search someone's house.
10. An _____ is a law applied to acts performed before the law was passed.

Reviewing Main Ideas

Section 1

11. What is the difference between procedural and substantive due process?
12. Describe the relationship between the States' police power and due process of law.
13. The States may exercise the police power to protect and promote what?
14. What right did the Court first articulate in *Griswold* v. *Connecticut,* 1965?

Section 2

15. Use the examples of the *Civil Rights Cases,* 1883, and *Jones* v. *Mayer,* 1968, to illustrate how the Court's interpretation of the 13th Amendment changed over the years.
16. What are the roots of the 3rd Amendment, and why is it not significant today?
17. What is the aim of the 4th Amendment?
18. What does the exclusionary rule exclude?

Section 3

19. For what reason does the Constitution protect the rights of those accused of a crime?
20. In what ways does the Constitution protect the rights of the accused?
21. What are the key constitutional guarantees of a fair trial?
22. What is the Miranda Rule?

Section 4

23. What are the key constitutional guarantees regarding punishment of the guilty?
24. Under what circumstances has the Supreme Court found death penalty laws to be unconstitutional?
25. What was the significance of *Furman* v. *Georgia,* 1972, in the history of the Supreme Court's rulings regarding capital punishment?
26. **(a)** What is the only crime defined in the Constitution? **(b)** What requirements must be met in order for a person to be convicted of this crime?

Critical Thinking Skills

27. ***Applying the Chapter Skill*** If you are summoned for jury duty, would you rather serve on a grand jury or a trial jury? Why? On a jury that hears a civil or a criminal case? Why?
28. ***Checking Consistency*** Recall that an accused person can be held without bail when there is good reason to believe that he or she will commit another crime. In your opinion, does this rule violate the principle of presumed innocence until proven guilty? Does it violate the guarantee of due process?
29. ***Identifying Assumptions*** At first, criticisms of the Miranda Rule were widespread in the law enforcement community. How have the Court's stance and the public's response over the years resulted in the virtual disappearance of those criticisms in the last several years?
30. ***Determining Relevance*** Why may it be said that the 2nd, 3rd, and 4th amendments are a reflection of colonial experience?
31. ***Identifying Central Issues*** **(a)** Why did the Supreme Court adopt the exclusionary rule? **(b)** Do you think the rule should be retained or abandoned?

Analyzing Political Cartoons

Use your knowledge of American history and government and this cartoon to answer the questions below.

©

32. **(a)** Who are the people in the cartoon? **(b)** What are they watching on television?
33. What does the cartoon suggest about television cameras in the courtroom?

You Can Make a Difference

What agencies in your community confront crime? Some might target alcohol or other substance abuse, or provide counseling or legal assistance; others emphasize crisis intervention or youth services or give aid to those in need. Set up an interview with a representative from one of these groups and get his or her opinion about what students can do within the school setting to help combat crime. If possible, make a tape recording of your interview to play for the class.

Participation Activities

34. ***Current Events Watch*** Scan the newspaper for stories concerning any guarantees of the rights of the accused shown on the chart on page 578. Be prepared to give an oral report of your findings.
35. ***Time Line Activity*** Choose an issue discussed in this chapter (for example, the constitutionality of the death penalty or abortion). Based on both the information in this chapter and your own research, make a list of the key Supreme Court decisions regarding the issue. Present these decisions in a time line that demonstrates the development of the Court's position on this issue.
36. ***It's Your Turn*** Create a survey to gauge opinions on the Constitution's protections of individual rights. First, list the several rights discussed in this chapter. Then note some of the controversies associated with some of those rights. Construct a list of questions designed to prompt the expression of opinions on those matters. Ask a number of people to respond to your survey and compile the results. **(Conducting a Survey)**

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As a final review, take the *Magruder's* Chapter 20 Self-Test and receive immediate feedback on your answers. The test consists of 20 multiple-choice questions designed to test your understanding of the chapter content.