Chapter 4
Civil Liberties
Civil Liberties and Civil Rights Are Not the Same

• Civil liberties are protections of citizens from improper governmental action—what government must not do.
• Civil rights are the legal or moral claims that citizens are entitled to make on the government—how government must treat you.
Basis of Civil Liberties: The Bill of Rights

• Remember that to get the Constitution ratified, Federalists had pledged to amend the Constitution by adding a Bill of Rights.

• Adopted by late 1791, the ten amendments that now make up the Bill of Rights include both substantive and procedural restraints on governmental power.
Ninth Amendment: Bill of Rights Not Exhaustive

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

• This addressed the Federalist concern that a list of rights would suggest that the list was exhaustive and that there were no other liberties people enjoyed.
Delegates to the Constitutional Convention did not include a Bill of Rights in the Constitution because

A. the Constitution was already too long.
B. the delegates believed that the federal government already had too much power.
C. the delegates believed that the federal government could not abuse power not already given to it.
D. the delegates did not believe that the people should have these liberties.
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Dual Citizenship

- The First Amendment says, “Congress shall make no law respecting an establishment of religion . . . .”
- This is the only amendment that addresses itself to Congress only.
- For instance, the Fifth Amendment says simply that “no person” shall be denied due process of law.
Clicker Question

Does the Bill of Rights restrain only the federal government or does it also restrain state governments?

A. The Bill of Rights restrains only the federal government.

B. State governments are also restrained.
Dual Citizenship and 
*Barron v. Baltimore* (1833)

- The city of Baltimore had been disposing of sand and gravel near a wharf owned by John Barron, rendering the wharf commercially useless.
- Barron sued the city of Baltimore on the Fifth Amendment grounds that he had been deprived of property without compensation.
- The Supreme Court ruled against Barron, stating that “the Fifth Amendment must be understood as restraining the power of the General Government, not as applicable to the States.”
Dual Citizenship and *Barron v. Baltimore* (1833)

- The Court confirmed the idea of “dual citizenship”—that each American is a citizen of the federal government and, separately, a citizen of one of the states.
- Dual citizenship means that citizens have liberties that protect them against action by the federal government and a separate set of liberties that protect them against action by state governments.
The Fourteenth Amendment seems to apply the Bill of Rights to the states:

- All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside.

- No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.
Selective Incorporation

- As early as 1873, the Court ruled that the Fourteenth Amendment did NOT apply the Bill of Rights to the states.
- In 1897, the Court held that the just compensation clause of the Fifth Amendment would be applied to the states.
- This began a long, slow process of “selective incorporation”—the application of the liberties in the Bill of Rights, one by one, to the states.
# Selective Incorporation

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Selective Incorporation: Still Selective

• Some parts of the Bill of Rights are still not incorporated into the Fourteenth Amendment.
• The most recent incorporated right is the Second Amendment’s right to bear arms.
• In McDonald v. Chicago (2010), the Court ruled that the right to defend oneself is “fundamental to the Nation’s scheme of ordered liberty.”
The Bill of Rights Today: Freedom of Religion

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”
- The first clause is the Establishment Clause. This is sometimes referred to as the separation of church and state.
- The second clause is the Free Exercise Clause. This protects a citizen’s right to believe and practice whatever religion he or she chooses.
The Lemon test and the Establishment Clause: Government can be involved with religion if

- it has a secular purpose.
- its effect is neither to advance nor inhibit religion.
- it does not create excessive entanglement.

Discussion: Does prayer time in a public school violate the Lemon test?
The Bill of Rights Today:
Freedom of Speech

• “Congress shall make no law…abridging the freedom of speech.”
• The Westboro Baptist Church (Topeka, Kansas) pickets the funerals of American soldiers killed in action with signs reading “Thank God for Dead Soldiers” because they believe these deaths are punishment from God for America’s tolerance of sin.
• Does the Constitution protect this speech?
The Bill of Rights Today: Freedom of Speech

- Freedom of speech is not absolute.
  - Clear and present danger test—does the speech present a “clear and present danger” to society?
  - Libel and slander are not protected.
- *Morse v. Frederick* (2007)—A student holds up a “Bong Hits 4 Jesus” sign as the Olympic torch goes by.
- The Court rules that this is not protected speech.
The Bill of Rights Today: Freedom of Speech

• In general, one’s speech rights go only as far as not to infringe on someone else’s rights.
  – Speech that directly incites damaging conduct is labeled “fighting words” and may be regulated.
  – But what constitutes “fighting words” is not fully settled.
• Political speech is the most protected kind of speech.
Speech Plus

• Speech plus is speech accompanied by activities such as sit-ins, picketing, and demonstrations.
• Protection of this speech is conditional and is acceptable only if balanced by considerations of political order.
Clicker Question

Is it constitutional for your school to ban the use of racial epithets in the classroom?

A. Yes
B. No
The Bill of Rights Today: Freedom of the Press

• The First Amendment also provides for freedom of the press.
• The Court has ruled that this means, among other things, no prior restraint—an effort by a government agency to block the publication of material it deems harmful or libelous.
The Bill of Rights Today: Search and Seizure

• The Fourth Amendment offers protection against unreasonable searches and seizures.

• Exclusionary Rule: Developed in the 1961 case *Mapp v. Ohio*, it is the ability of the courts to exclude evidence obtained in violation of the Fourth Amendment.
The Bill of Rights Today: Rights of the Accused

• Various amendments and rulings guarantee the rights of the criminally accused.
• The Fifth Amendment provides protection against self-incrimination and double jeopardy.
• Miranda rights
The Bill of Rights Today: Rights of the Accused

- The Sixth Amendment provides for:
  - a speedy and public trial
  - an impartial jury
  - the right to confront one’s accusers
  - the right to counsel

- *Gideon v. Wainwright* (1961) incorporates the right to counsel into the Fourteenth Amendment.
• The Eighth Amendment prohibits “excessive bail,” “excessive fines,” and “cruel and unusual punishment.”

• The ban on cruel and unusual punishment has served as a lightning rod for debate over the death penalty and, more recently, over torture.
The Bill of Rights Today: Right to Privacy

• The right to privacy is not expressly stated in the Bill of Rights.
  – Connecticut had a statute forbidding the use of contraceptives.
  – In *Griswold v. Connecticut* (1965), the Court invalidated the law based on a “zone of privacy” in the Third, Fourth, and Fifth Amendments.

• *Roe v. Wade* (1973) cemented the right to privacy.
Civil Liberties, History, and Collective Action

• As we have seen, the application of the Bill of Rights to specific cases yields rulings from the Court that become fixed rules, at least for long periods of time.
• This is a good example of the History Principle at work—how we got here matters.
• It is also a good example of the Collective Action Principle at work, as civil liberties are limitations on collective action.
The process of selective incorporation

A. is complete. The entire Bill of Rights has been applied to the states.
B. was rejected by the Supreme Court in favor of total incorporation.
C. has applied almost all of the liberties in the Bill of Rights to the states over time.
D. was employed by the Supreme Court in *Barron v. Baltimore*. 
Clicker Question: Review

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The Right to Die

• The right to die is a relatively unexplored area for the Court.

• In 2006, in *Gonzalez v. Oregon*, the Court upheld an Oregon law that allowed doctors to assist terminally ill patients seeking to end their lives.

• On what constitutional grounds can the Court’s decision be supported?