**Bill of Rights & Amendments to the Constitution**

Background - Constitutional Convention (1787):

*Not everyone* was in a hurry to ratify the Constitution! Opponents to the Constitution (Anti-Federalists) believed a separate “Bill of Rights” was necessary to protect the rights of the people from the new federal government. Federalists responded that a Bill of Rights was unnecessary because the federal government only possessed “enumerated powers” (see Article 1, Section 8). Indeed, enumerating a bunch of “rights” was dangerous for two reasons: 1) They seem to imply that they are *the sum total of rights* an individual has …and 2) They seem to imply that the federal government possessed some unwritten powers – otherwise, why would you need to list a bunch of “rights”? Anti-Federalists retorted that the proposed national government *already possessed* too many powers, and thus a separate Bill of Rights was necessary.

In the end, a *bargain was struck* in which the states agreed to ratify the Constitution, subject to the understanding that Congress would create specific amendments in the form of a Bill of Rights. You can see this “political compromise” reflected in Amendments 9 & 10.

The Civil War (1861-1865):

The Bill of Rights is a power-limiting device. The founding generation believed that liberty was achieved by limiting the government’s control. However, the Civil War forever changed the relationship between the federal and state governments by the enactment of the 13th, 14th, and 15th Amendments (the Civil War Amendments). The 13th and 15th Amendments (ending slavery and racial voting laws) removed at one stroke institutions/laws which had been entirely within the states’ authority. Even more so, the 14th Amendment (due process and equal protection) amounted to a *gigantic power grab* by the national government, because it made federal laws (The Constitution, for example) *applicable to the states*. After the Civil War, people started to develop a national consciousness, and began to say, “*The United States is*…”, rather than, “*The United States are*…” In other words, people were getting used to the idea of a *national power* gradually taking over individual states’ powers.

The New Deal (circa 1936): “FDR versus the Nine Old Men”

The Great Depression (1929-1939), together with President Franklin Roosevelt’s “New Deal” caused yet another transformation in the Constitution. The Supreme Court struck down most of Roosevelt’s New Deal legislation because it wasn’t within the *enumerated powers* (see Article 1, Section 8) of the national government to set up a welfare state and start financing large “works” projects, start monkeying with prices and wages, interfere in railroad workers’ pensions, set wages and hours of coal miners… all under the banner of “interstate commerce”. However, following his mammoth 1936 reelection bid (FDR won in 1936 by 523-to-8!!!) he threatened to “pack the court” with 6 additional Justices who would side with him! The Supreme Court got the message and began finding New Deal legislation valid. Today, we rarely see the Court strike down Congress. We have moved from having a national government with *limited powers* to a national government of almost *unlimited power* – which is checked by guarantees of individual rights. In other words, over the past 200 years we have moved from a government limited by *enumerated powers*, to a government limited by *enumerated rights*.

**Amendment 1
*- Freedom of Religion, Speech, Assembly, and the Press***

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Free expression of ideas: Rationales

1. Self-governance. We govern ourselves. Free flow of ideas is essential if we are to choose the best ideas.
2. The search for truth. “The best test of truth is the power of the thought to get itself accepted in the marketplace of ideas”
3. Moral virtue. To opt for good and reject evil we must be free to choose. This requires expression of views.
4. Peaceful society. A society that guards and protects free speech cultivates the virtues of tolerance and self-restraint.
5. Letting off steam. “…people are more ready to accept decisions that go against them if they have a part in the decision-making process.”
6. Checking government abuse. Free speech gives citizens the information needed to exercise their “veto power when the decisions of public officials pass certain bounds”.

Note that the 1st Amendment doesn’t address the speech of *citizens* at all. All it says is, “Congress shall make no law…”

* Hateful and offensive speech is *protected speech*, unless it incites imminent violence or rises to the level of “fighting words”.

As recently as 2017, in *Matal vs. Tam*, the U.S. Supreme Court affirmed that there is *no hate speech exception to the First Amendment.*

* *"...the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate".*

*Unprotected* categories of speech:

1. Inciting immediate lawlessness
2. Fighting words
3. Obscenity
4. Defamation of a private party
5. Deceptive commercial speech

Defamation - Making false statements impugning another’s character

* Defamation of a public figure is protected speech, unless made with actual malice.
* Defamation of a private figure is more complicated, but the injured party can often sue you for damages, so be careful.

“Commercial speech” – a huge area of law (and very interesting)

Speech on public school campus – freedom is balanced with the duty of the administrators to maintain order.

“Freedom of Association”

If an *individual* has a right to expression, then a *group* has the same right!

Mere membership in a group (a trade union, a religious group, a political action group) may not be made criminal (as long as the group is lawful)

“Freedom of the Press”

A huge area of law, and very interesting!

“The Religion Clauses”

* Establishment Clause: The government may not create an official state church, or endorse or coerce religion or nonbelief, or prefer one religion to another. Courts have used the classic “Lemon Test”. Lately, courts have moved to an “accommodation” approach. The government can aid religion as long as there’s no
1. Preferential treatment
2. Coercion
3. Endorsement

This is a huge area (and very interesting!) which quickly gets into such things as: posting the Ten Commandments in a Courthouse, displaying a Christmas Scene in a public building, giving tuition assistance to private school children, allowing public teachers to lead off-site religious clubs, giving financial aid to private colleges, having public prayers, saying the Pledge of Allegiance (one nation under God), allowing voluntary prayer in schools, requiring bars and taverns to close on Sundays, exempting churches from property taxes, displaying menorahs and crosses in public buildings, and on and on!

* Free Exercise Clause: The government may not interfere with religious belief, and must provide *limited accommodation* to religious practices. Prevents government from outlawing or seriously burdening a person’s pursuit of religion.

People usually sue for two main reasons: 1) they feel *burdened*, or 2) they feel *compelled*

1. Not allowing me to smoke peyote is a burden to my religion; therefore it violates my 1st amendment rights as incorporated under the 14th amendment…
2. Making me pay taxes – which are used to support the military – compels me to violate my religious belief in nonviolence…

**Amendment 2***- The Right to Bear Arms*

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.

* The debate today usually centers on the word, “Militia”. In other words, “What was a Militia? Do we still have a Militia?”
* *Opponents* of the 2nd Amendment will usually argue that we don’t have (or need) a Militia of private citizens anymore. Therefore, private ownership of guns should be very limited. Guns in the hands of private citizens poses a danger to themselves and others.
* *Supporters* of the 2nd Amendment will usually argue that we still have a *de facto* citizen-Militia in the form of 25-30 million trained ex-military personnel and around 300,000,000 legally-owned guns. They will argue:
1. An armed populace is the best guarantee of freedom against tyrants and overreaching government. Keep in mind, the writers of the Constitution had just fought – and won - an armed conflict with a hostile government, relying mostly on a citizen-army.

James Madison famously presented this very argument in *The Federalist, No. 46*. If this argument appeals to you – and you want to ‘win your arguments’ - then go and read, “*How the second amendment prevents tyranny*”, which is posted on the student portal.

1. Gun ownership is needed for private protection
2. Guns are used for other reasons: sport, hunting, etc

**Amendment 3***- The Housing of Soldiers*

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

**Amendment 4***- Protection from Unreasonable Searches and Seizures*

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.

**Amendment 5***- Protection of Rights to Life, Liberty, and Property*

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

**Amendment 6**- Rights of Accused Persons in Criminal Cases

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

**Amendment 7***- Rights in Civil Cases*

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

**Amendment 8***- Excessive Bail, Fines, and Punishments Forbidden*

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendments 9 and 10 contain the great *political compromise* over the Bill of Rights, mentioned in the second paragraph to this handout.**

**Amendment 9***- Other Rights Kept by the People*

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

**Amendment 10***- Undelegated Powers Kept by the States and the People*

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

**Amendment 11** *- Authority of Federal Courts Restricted*
(Ratified February 7, 1795)

The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

**Amendment 12** *- Election of the President and Vice President*
(Ratified June 15, 1804)

1. The electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.]amd
2. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

**Amendments 13, 14 and 15 are the “Civil War Amendments”**

**Amendment 13***- Slavery Outlawed*
(Ratified December 6, 1865)

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
2. Congress shall have power to enforce this article by appropriate legislation.

**Amendment 14***- Rights of Citizenship*
(Ratified July 9, 1868)

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, 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, nor deny to any person within its jurisdiction the equal protection of the laws.

The 14th Amendment changed forever the balance of power in the United States.

* It meant you were now a citizen of the United States, besides being a citizen of Virginia or Massachusetts. It had the audacity to directly limit the power of states! (read it for yourself)
* It meant that the Constitution and Amendments (and all other federal laws!) applied with equal force to each of the states! This was a gigantic power grab by Washington! But… how else could you pass Amendments 13 and 15? You need Amendment 14 to make them stick.

Due Process Clause

Due Process means the government must use fair procedures before depriving you of life, liberty, or property.

* At a minimum, this means “you were given notice” and “you have an opportunity to be heard”.

Today, when you hear “Due Process”, think “Invasion of Privacy” – because that’s what it usually involves. The government is infringing on your right of privacy.

* You say, “The law in question violates my Due Process rights (usually to privacy), in that it infringes on my Constitutionally-protected right to privacy.”

But where in the Constitution does it say, “Right to Privacy”? It was developed in the courts, the landmark case being *Griswold v. Connecticut* (1965), which established a fundamental right to use contraceptives. (These were outlawed in Connecticut).

* Your fundamental rights here have to do with marriage, family relationships, child-bearing and rearing, and death (developing).
* Landmark cases cover contraceptives, abortion, publicly funded abortion, abortion counseling, family relationships, right to marry, consensual sexual behavior, and so on.
* Hotly-debated areas right now are “freedom from data collection” and “the right to die”.

Equal Protection Clause

We have equality, as in, “all men are created equal”. A law can’t be unfair, or pick on the weak, or unfairly discriminate against you.

* When you hear, “Equal Protection”, think “Discrimination”.
* You say, “The law is racially discriminatory and a violation of Equal Protection”.
* Your fundamental rights here are related to: commerce, access to employment, pursuit of a trade, voting, interstate mobility, access to courts, etc.
1. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, [excluding Indians not taxed]amd. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.
2. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.
3. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.
4. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

**Amendment 15***- Voting Rights for All Races*
(Ratified February 3, 1870)

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States *or by any state* on account of race, color, or previous condition of servitude.
2. The Congress shall have power to enforce this article by appropriate legislation.
* Note: Voting for women was not guaranteed until the 19th Amendment (1920)!

**Amendment 16***- Federal Income Taxes*
(Ratified February 3, 1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

* The 16th Amendment paved the way for big government! Note that the Federal Reserve was also created in 1913. The 16th Amendment and the Central Bank go hand-in-hand in creating a large central government with broad powers to tax and spend. Many have pointed out that the First World War broke out the following year – giving Washington and the Military Establishment the first testing ground for its new taxing and borrowing powers.

**Amendment 17***- Election of Senators by Popular Vote*
(Ratified April 8, 1913)

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies, provided that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

* The 17th Amendment was yet more erosion of states’ powers! Senators were supposed to represent “states’ interests” by being appointed by each state legislature. As the Constitution was written, they were not elected by popular vote (on purpose)! This shifts power to the big cities in each state.
* The *House of Representatives* was elected by popular vote. It was intended to be the “peoples’ house”. The Senate was intended to be a “source of stability”, by contrast.

**Amendment 18***- Liquor Outlawed*
(Ratified January 16, 1919)

1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.]amd

**Amendment 19***- Voting Rights for Men and Women*
(Ratified August 18, 1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

**Amendment 20***- Terms of the President and Congress; Replacing the President*
(Ratified January 23, 1933)

1. The terms of the President and Vice President shall end at noon on the twentieth day of January, and the terms of Senators and Representatives at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.
2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.
3. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.
4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.
5. Sections 1 and 2 shall take effect on the fifteenth day of October following the ratification of this article.
6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three- fourths of the several states within seven years from the date of its submission.

**Amendment 21***- Control of Liquor Returned to the States*
(Ratified December 5, 1933)

1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.
2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

**Amendment 22***- Presidents Limited to Two Terms*
(Ratified February 27, 1951)

1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.
2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three- fourths of the several states within seven years from the date of its submission to the states by the Congress.

**Amendment 23***- Presidential Electors for the District of Columbia*
(Ratified March 29, 1961)

1. The district constituting the seat of government of the United States shall appoint, in such manner as the Congress may direct, a number of electors of President and Vice President equal to the whole number of Senators and Representativesin Congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.
2. The Congress shall have power to enforce this article by appropriate legislation.

**Amendment 24***- Voting Rights Protected from Taxes*
(Ratified January 23, 1964)

1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.
2. The Congress shall have power to enforce this article by appropriate legislation.

**Amendment 25***- Replacing the President and Vice President*
(Ratified February 10, 1967)

1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.
2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President, who shall take office upon confirmation by a majority vote of both houses of Congress.
3. Whenever the President transmits to the president pro tempore of the Senate and the speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as acting President.
4. Whenever the Vice President and a majority of either the principal officers of the executive departments, or of such other body as Congress may by law provide, transmit to the president pro tempore of the Senate and the speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as acting President. Thereafter, when the President transmits to the president pro tempore of the Senate and the speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department, or of such other body as Congress may by law provide, transmit within four days to the president pro tempore of the Senate and the speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as acting President; otherwise, the President shall resume the powers and duties of his office.

**Amendment 26***- Voting Rights for All Citizens Eighteen or Older*
(Ratified July 1, 1971)

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age.
2. The Congress shall have power to enforce this article by appropriate legislation.

**Amendment 27***- Changes in Salaries of Senators and Representatives*
(Ratified May 7, 1992)

No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.