

Lesson 9: The Supreme Court and the Bill of Rights

Background Essay: The Supreme Court and the Bill of Rights

Guiding Question

- How has the Supreme Court decided cases in controversies related to the Bill of Rights?

- I can identify the role of the Supreme Court in protecting civil liberties.
- I can explain how the Supreme Court's role has changed over time.

Essential Vocabulary

civil liberties	freedoms that government is not allowed to restrict
due process clause	a line of the 14th Amendment that reads, "Nor shall any state deprive any person of life, liberty, or property, without due process of law"
enumerated powers	specifically listed powers
excluded	left out
14th Amendment	amendment adopted in 1868 that granted citizenship and equal civil and legal rights to Black Americans and enslaved people
implied powers	powers possessed by the government that are not explicitly listed
incorporation	a constitutional doctrine by which the amendments of the Bill of Rights are applied to state governments
precedents	earlier laws or court decisions to be considered when making future decisions

During the last 60 years, the Supreme Court has become perhaps the central defender of **civil liberties**, or freedoms that government is not allowed to restrict, in the United States. This role has been a relatively recent development that marked a distinct change from the Founding, when the Court mostly addressed government powers. The evolution of this role for the Court has greatly expanded popular expectations of enjoying individual rights. However, it has also been fraught with numerous difficulties, both for the constitutional order and for the Supreme Court itself, as it has become the center of controversy about rights.

Limited Government and the Supreme Court The original Founding understanding of the Bill of Rights was that it limited the powers of the federal government to violate the rights of the people. When originally ratified, the Bill of Rights only applied to the national government, not to state governments. State governments had their own bills of rights to protect their citizens. This reflected the constitutional principle of federalism, or the separation of powers between state and national governments. The Supreme Court endorsed this Founding view that the Bill of Rights applied only to the national government in the case <i>Barron v. Baltimore</i> (1833).	<i>Notes</i>
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<p>Moreover, this also represented the principle of limited government, one of the foundations of protecting liberties. The national government had certain enumerated and implied powers that the three branches—legislative, executive, and judicial—exercised in making, executing, and interpreting the law. Enumerated powers are those listed explicitly in the Constitution. Implied powers are those that government has that are not written in the document. The national government could not exceed these powers to violate the liberties of the people. To further this protection, states had their own bills of rights. The Declaration of Independence asserted that the ultimate protection of the people’s liberties is the overthrow of a tyrannical government after a long train of abuses.</p> <p>The role of the Court was to hear all cases arising under the Constitution. After the case of <i>Marbury v. Madison</i> (1803), the Court’s role expanded to include determining the constitutionality of governmental laws and actions. However, there was debate over whether or not the other branches also had the responsibility of interpreting the Constitution.</p>	<p>Notes</p>
<p>It is important to note that although the Court could rule a law or action unconstitutional, it was not necessarily the final word on the Constitution. In a speech critical of the <i>Dred Scott v. Sandford</i> (1857) decision, Abraham Lincoln quoted Andrew Jackson, saying, “The Congress, the executive and the court, must each for itself be guided by its own opinion of the Constitution.” Lincoln was arguing that the Court’s authority and just precedents, or earlier laws or rulings, should be respected, but the Supreme Court was not necessarily the final word on the meaning of the Constitution and could make errors, as it did in <i>Dred Scott</i>. All the branches must interpret the document in the exercise of their constitutional powers for the ends of liberty, equality, and justice.</p>	<p>Notes</p>

<p>The Supreme Court, Incorporation, and the Bill of Rights from the Twentieth Century to Today</p> <p>The due process clause of the 14th Amendment led to the incorporation of the Bill of Rights, which meant that the Supreme Court applied the Bill of Rights to the states. During the first half of the twentieth century, the Court incorporated the Bill of Rights selectively in a few cases. For example, it extended the First Amendment right of free speech against state violation in <i>Gitlow v. New York</i> (1925) and freedom of the press in <i>Near v. Minnesota</i> (1931). (Watch this BRI Homework Help video on incorporation for help in understanding this concept: https://bit.ly/BRI_NearvMinnesota)</p>	<p>Notes</p>
<p>The popular understanding of the Court as the protector of individual rights became widely accepted during the Warren Court (1953–1969) and after. Many of the decisions were controversial because Americans viewed the issues involved differently. Some Americans questioned whether the Court was the appropriate branch to define rights or whether it should be left to the other branches of government or the amendment process. The Court also controversially overturned the laws and common values of states and local communities for one uniform, national standard.</p>	<p>Notes</p>
<p>The Court expanded the application of the Bill of Rights (incorporated) to the states in several areas and protected civil liberties in new ways. For example, the Court banned school-sponsored prayer and Bible reading in public schools in <i>Engel v. Vitale</i> (1962) and <i>Abington School District v. Schempp</i> (1963), respectively, for violating the establishment clause of the First Amendment.</p>	<p>Notes</p>
<p>The Court protected the rights of students in local public schools in other ways. In <i>Tinker v. Des Moines</i> (1969), the Court decided that students had the right of free speech to protest the Vietnam War under the First Amendment. The students had worn black armbands to protest the war despite a warning not to, and the school suspended them.</p>	<p>Notes</p>

<p>The Court protected the rights of the accused in major cases during the mid-1960s. The Court stated that criminal defendants are entitled to an attorney in <i>Gideon v. Wainwright</i> (1963). The Court excluded, or left out, illegally seized criminal evidence under the Fourth Amendment in <i>Mapp v. Ohio</i> (1964). In <i>Miranda v. Arizona</i> (1966), the Court decided that police officers must provide a “Miranda warning” informing accused people of their rights before questioning them about a crime.</p>	<p><i>Notes</i></p>
<p>The Court also made key decisions on moral issues that were fiercely debated in American society. In <i>Griswold v. Connecticut</i> (1965), the Court asserted that a “right to privacy” exists and is implicit in several amendments of the Bill of Rights. Therefore, the Court declared a state law banning birth control unconstitutional. The decision was a precedent for the use of the right to privacy argument in <i>Roe v. Wade</i> (1973), which established a right to abortion.</p>	<p><i>Notes</i></p>
<p>In recent decades, the Court helped protect gay rights. In <i>Lawrence v. Texas</i> (2003), the Court invalidated state laws banning homosexual acts. In <i>Obergefell v. Hodges</i> (2015), the Court made gay marriage a right when it required states to recognize the same-sex marriages of other states.</p>	<p><i>Notes</i></p>
<p>The Supreme Court has left a mixed record regarding its decisions related to the Bill of Rights. On one hand, Court rulings have protected what seem like reasonable and fundamental individual liberties. On the other hand, the Court has made rulings on cultural, social, and moral disputes that often did little to resolve the wider debate over the issues and maybe even fueled division among Americans. In recent decades, for better or worse, Americans have increasingly looked to the Supreme Court as the protector of civil liberties and the final word on the Constitution.</p>	<p><i>Notes</i></p>