

**3.6: Amendments: Balancing Individual Freedom with Public Order and Safety**  
**Explain how the Supreme Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety.**

The Bill of Rights contains many diverse protections. In addition to political rights like speech and press they also protect us from oppressive police powers. Criminal due process, just treatment, is a fundamental guarantee found in our Bill of Rights. Throughout our history there have been a number of landmark court cases that have defined the meaning of these rights. In doing so the Court has attempted to balance claims of individual freedom with laws and enforcement procedures that promote public order and safety.

The Fourth Amendment protects

*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...*

This right can be traced as far back as the *Institutes of the Laws of England (1628)* that stated, "For a man's house is his castle [and each man's home is his safest refuge]." The castle doctrine, as it is called, has teeth. The exclusionary rule, applied to the states in *Mapp v. Ohio (1961)*, disallows in court any illegally obtained evidence. The exclusionary rule provides a safeguard for our Fourth Amendment right to be free from unreasonable searches and seizures. The exclusionary rule protects our castle. Today that castle has been extended to our cars and even our cell phones. In the case *Riley v. California (2014)* the Supreme Court argued

*Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life". The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.*

Privacy rights would appear to be one of our basic freedoms even when challenged by those who feel such rights make us more vulnerable to terrorist attacks. To a certain extent the Patriot and USA Freedom Acts have attempted to compromise our commitment to individual privacy rights.

Certain rights protect the accused each step before, during and after a criminal trial. Many of these rights are found in the Fifth Amendment. The Fifth Amendment states

*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 offence 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.*

“Pleading the Fifth” has become almost cliché. The government cannot compel confessions. Furthermore, in the case *Miranda v. Arizona* (1966), the Supreme Court held that any suspect put in custody by authorities must first be informed of their rights. The Miranda warning, hence, has become standard at the point of any legal detention – “You have the right to remain silent. Anything you say can and will be used against you. You have the right to an attorney. If you cannot afford an attorney one will be provided for you.” The takings clause of the Fifth Amendment, sometimes called eminent domain, protects our private property from being taken without fair payment. Private property is considered one of our most fundamental rights.

The Sixth Amendment protects the rights of the accused ever further. It says

*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.*

*Gideon v. Wainwright* (1963) made certain the right to an attorney. The government must provide legal counsel, even to those who cannot afford it. One commonly misunderstood criminal law practice is the plea bargain. Courts have frequently upheld their validity. A plea bargain allows the state and its prosecutors to offer a reduced sentence if the accused agree to plea guilty to a lesser offense. The intent of a plea bargain is to reduce the heavy workload of the court system. Plea bargains ultimately mean fewer trials and more defendants doing time for their offences.

Finally, the Eighth Amendment protects all of us from cruel punishment. The Eighth Amendment appears to be clear when it states

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

But a long trail of Court precedent can be found attempting to unpack the practical meaning of these words. The Court, in the case *Atkins v. Virginia* (2002), ruled that it would be unconstitutional to execute someone with certain mental handicaps. So too would it be unconstitutional, the Court argued in *Roper v. Simmons* (2005), to execute someone who committed a capital offense under the age of eighteen. In more recent cases the Court has upheld various methods of execution, including lethal injection. As more and more states limit capital punishment, pressure is building on the Supreme Court to follow suit.

The point here is simple but no less controversial. We have imposed limits on government, and they have returned the favor. So too are there limits on our personal freedoms. Alexander Hamilton said it best in Federalist 51:

*If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A*

*dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.*

The events of 9/11 have triggered a number of healthy debates over government authority and how strong it needs to be to promote public order and safety. Similar debates took place in Philadelphia in the summer of 1787. We are all founders now.

**Clearly provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**