

**Social Studies Virtual Learning**

# **AP US Gov & Politics**

**Due Process, Civil Liberties, Selective  
Incorporation**

**April 10, 2020**

# AP US Gov & Politics

## Lesson #19: April 10th, 2020

Learning Target (LOR 3.B) : Explain the extent which states are limited by the due process clause from infringing upon individual rights.

# Warm Up:

## 4th Amendment by Alyssa Johnson



www.funnytimes.com



Cartoon on the left: The cartoon on the left was created during the post-9/11 era with President Bush. Why is major government surveillance allowed by citizens since 9/11/01? Why are due process of law protections such as search and seizure, self-incrimination, and the right to an attorney so essential?

Meme on the right: What are your first thoughts about the cartoon on the right? Who are the two men on the right of the picture and the blindfolded lady?

**4th Amendment** by Alyssa Johnson



www.funngtimes.com

Warm Up: **Teacher Thoughts**



Cartoon on the left: The cartoon on the left was created during the post-9/11 era with President Bush. Americans have generally given up some protections in the name of national security as evident by the coronavirus quarantines. However, in national security scenarios, basic limits to government powers still need to apply.

Meme on the right: I know about the story surrounding Ernesto Miranda being intimidated into a confession without the advice of counsel (a lawyer) present. Therefore, this is part of the reason I teach government every day.

# Lesson Activity

Today we will learn about the Due Process Selective Incorporation cases over time encompassing:

## 4th Amendment

5th Amendment

6th Amendment

8th Amendment

Click on this Crash Course Summary video



# Lesson Activity

Today we will learn about the Due Process Selective Incorporation cases over time encompassing:

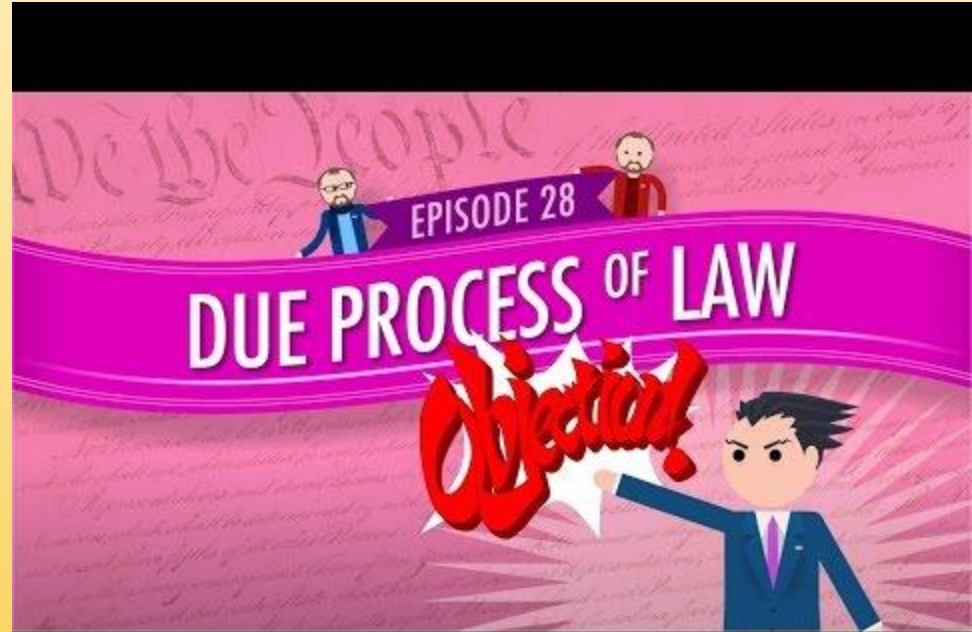
4th Amendment

5th Amendment

6th Amendment

8th Amendment

Click on this Crash Course Summary video



# Selective Incorporation Amendments

Selective Incorporation cases (**Due process in Red**) over time encompassing most of the first 10 Amendments:

1st Amendment

2nd Amendment

4th Amendment

5th Amendment

6th Amendment

8th Amendment

9th Amendment

Click on this  
Summary video

What is incorporation of  
the Bill of Rights?

USLawEssentials

# Notes to Write Down about Legal Process (Due Process)

STAGE	PROTECTIONS
1. Evidence gathered	"Unreasonable search and seizure" forbidden (Fourth Amendment)
2. Suspicion cast	Guarantee that "writ of habeas corpus" will not be suspended, forbidding imprisonment without evidence (Article I, Section 9)
3. Arrest made	Right to have the "assistance of counsel" (Sixth Amendment)
4. Interrogation held	Forced self-incrimination forbidden (Fifth Amendment); "Excessive bail" forbidden (Eighth Amendment)
5. Trial held	"Speedy and public trial" by an impartial jury required (Sixth Amendment); "Double jeopardy" (being tried twice for the same crime) forbidden (Fifth Amendment); Trial by jury required (Article III, Section 2) Right to confront witnesses (Sixth Amendment)
6. Punishment imposed	"Cruel and unusual punishment" forbidden (Eighth Amendment)



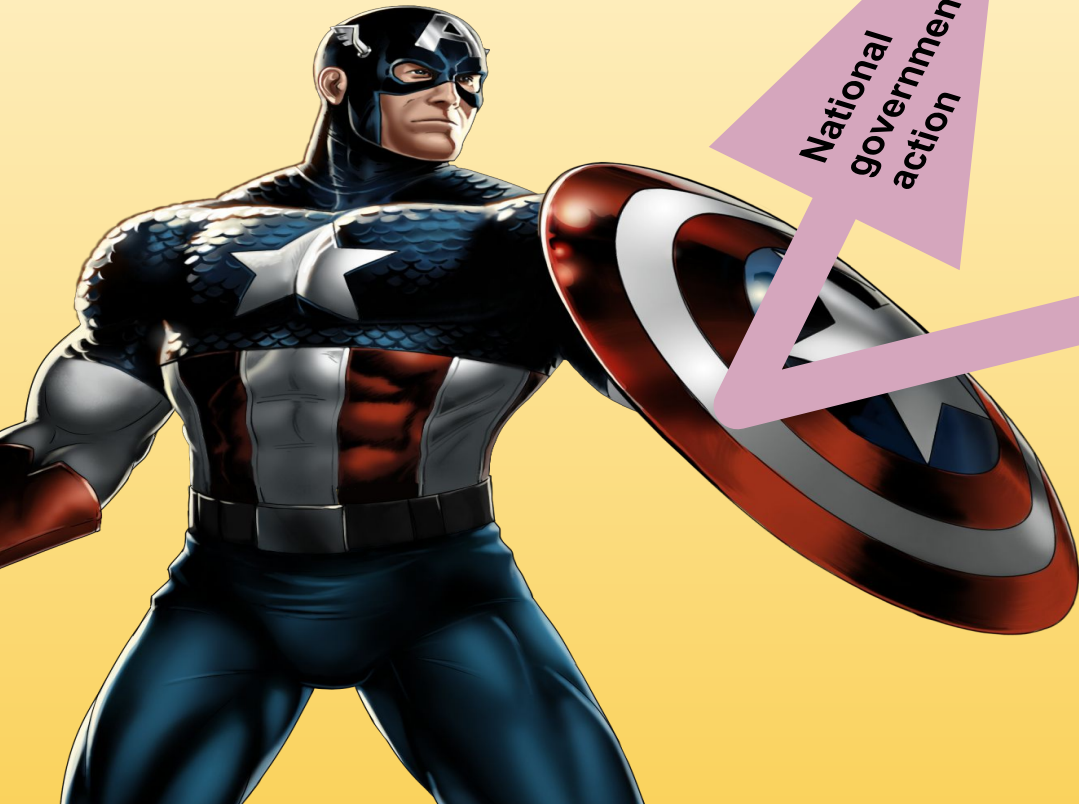
Term	Definition
<b>selective incorporation</b>	The gradual process of applying amendments in the Bill of Rights to state and local governments; only some of the rights in the Bill of Rights have been selectively incorporated.
<b>due process clause</b>	Provisions of the Fifth and Fourteenth Amendments that limit the power of the government to deny people "life, liberty, or property" without fully respecting their legal rights and the correct legal procedure.
<b>Miranda rule</b>	A requirement that law enforcement officers inform a person subject to an interrogation of their right not to incriminate themselves under the Fifth and Sixth Amendments; created after the decision in <i>Miranda v. Arizona</i> (1966).
<b>public safety exception</b>	An exception to the Miranda rule; it allows the police to perform unwarned interrogation and have the findings stand as direct evidence in court, provided the information relates to public safety.
<b>right to legal counsel</b>	The right to have the assistance of a lawyer; protected under the Sixth Amendment.
<b>right to speedy and public trial</b>	The right to speedy and public trial protects a defendant from having a long delay between being arrested and facing trial; protected under the Sixth Amendment.
<b>right to an impartial jury</b>	The right to an impartial jury means that the defendant has the right to face a jury that is not likely to have an opinion about the case already formed; protected under the Sixth Amendment.
<b>exclusionary rule</b>	A requirement that any evidence found during an illegal search or seizure cannot be used to try someone for a crime.
<b><i>Gideon v. Wainwright</i> (1963)</b>	A Supreme Court ruling that guaranteed the right to an attorney for the poor or indigent.



Write me down. I'm important!



# What are Civil Liberties?



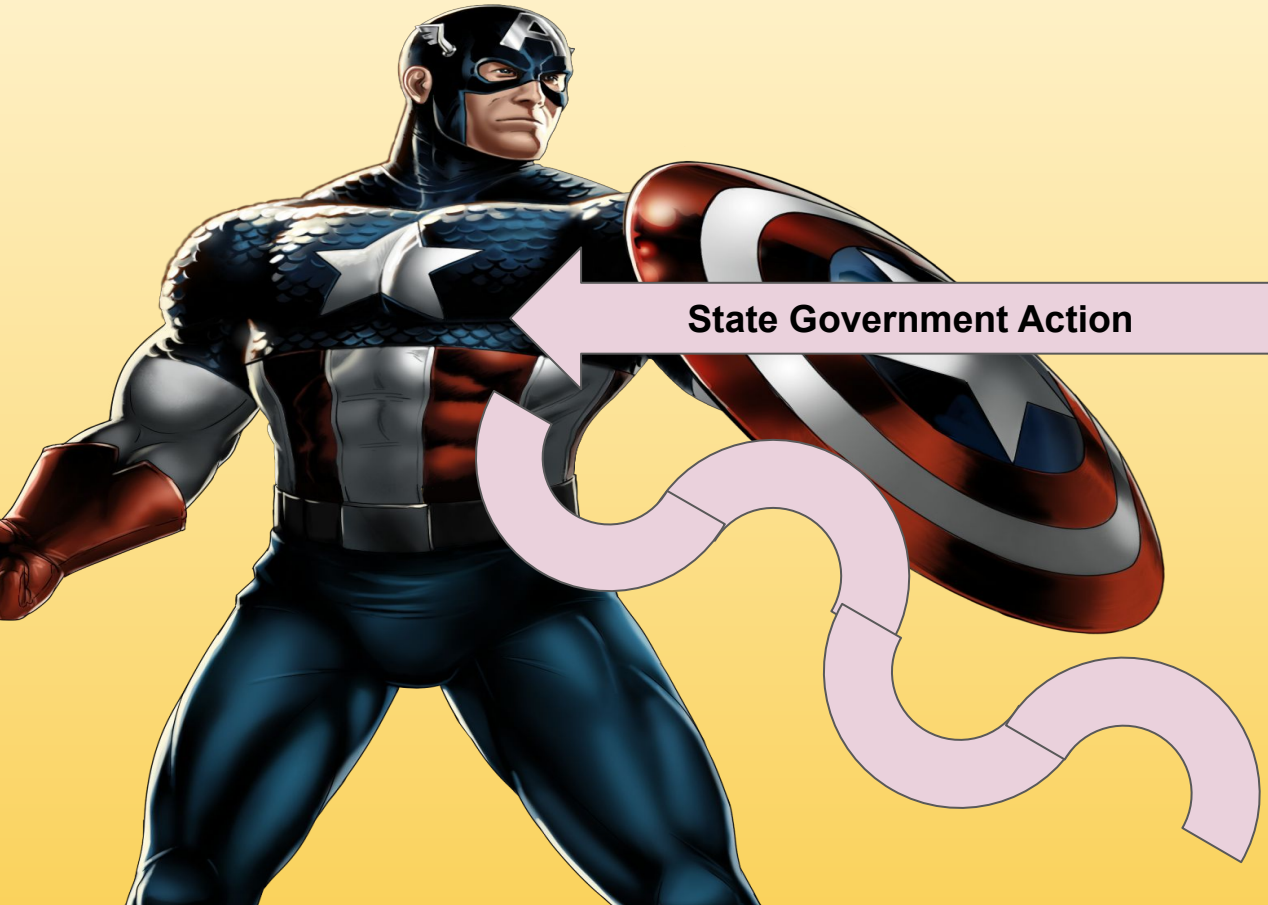
National  
government  
action

4th, 5th, 6th, &  
8th Due Process  
Amendments are  
apart of this

**Civil Liberties are your  
protections, BUT they are  
NOT clearly defined!**

**But what if the shield only  
protected some attacks  
(Amendments 1-10)**

# Guarantees of State Civil Liberties



**Civil Liberties are your protections, BUT they are NOT clearly defined!**

**But what if the shield only protected some attacks (Amendments 1-10) while some went through or around those rights?**

# Guarantees of State Civil Liberties

## Original Cases

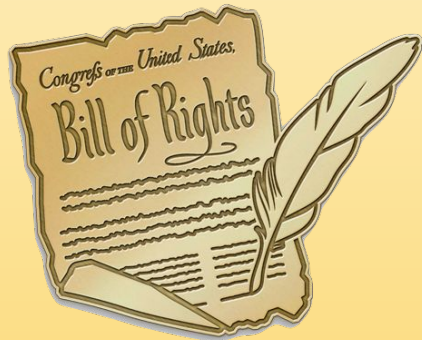
**Barron v. Baltimore (1833)**- ruled that the Bill of Rights did not protect individuals against state governments. (5th Amendment and Eminent Domain)



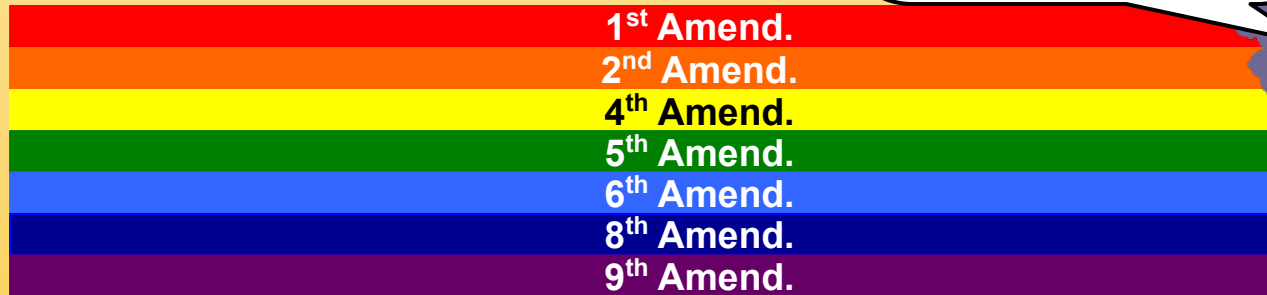
**Gitlow v. New York (1925)**- the Court reversed its earlier decision, citing the due process clause of the 14th Amendment as the reason to protect individuals' free speech and free press rights found in the 1st Amendment OVER states.



# Due Process Protections Applied to States?



Does the protective light of the Bill of Rights shine on me in Missouri and protect me from my **STATE** government?



# Barron v. Baltimore (1833)

## Long Term Effect



1<sup>st</sup> Amend.

2<sup>nd</sup> Amend.

4<sup>th</sup> Amend.

5<sup>th</sup> Amend.

6<sup>th</sup> Amend.

8<sup>th</sup> Amend.

9<sup>th</sup> Amend.

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Because of **Barron**,  
I'm only protected  
against the actions of  
my **STATE** government  
if my **STATE'S**  
constitution says so.  
The BoR does me no  
good.



Bill of Rights only protects you from the FEDERAL gov, not STATE gov's

Write me  
down. I'm  
important!

# 14<sup>th</sup> Amendment

Due Process & ~~Equal Protection~~ Clauses

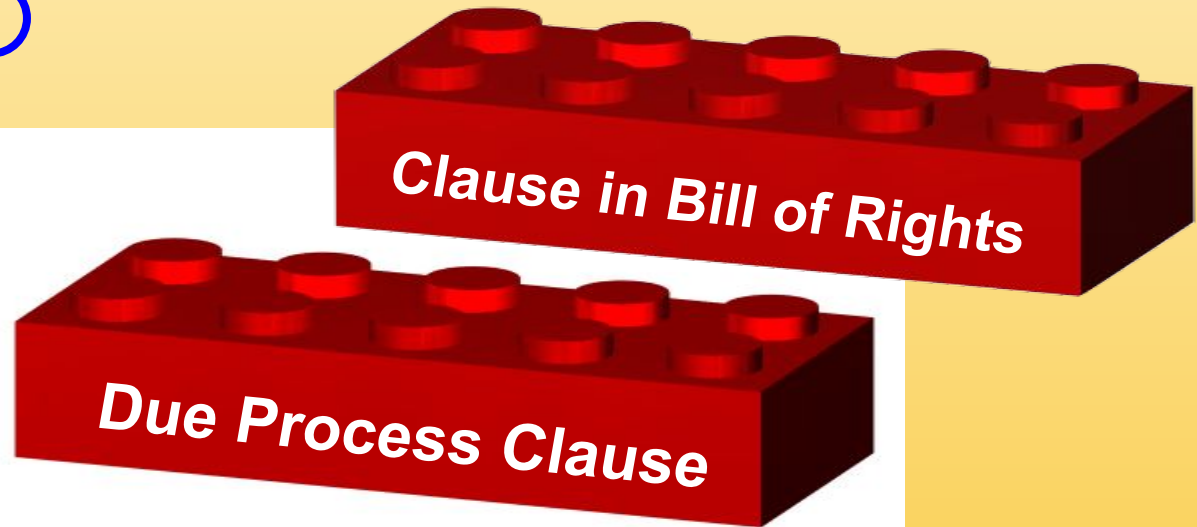
“... nor shall any state deprive any person of life, liberty, or property without due process of law; ~~nor (shall any state) deny any person within its jurisdiction the equal protection of the law.~~”

# “Selective” Incorporation Theory

The court accepts a case where a person was harmed by their state government and they couldn't use the Bill of Rights.

“I declare the 14th Amendment a building block for cases.”

-Mr. Grubb

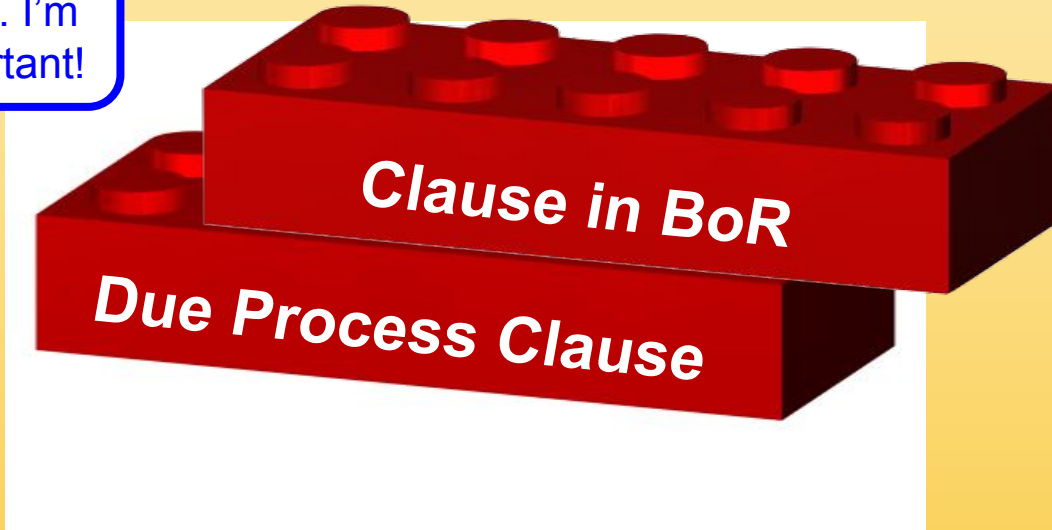




# “Selective” Incorporation Theory

The court incorporates (clicks together) two pieces...the **Due Process Clause (14th)** and something from the **Bill of Rights**

Write me down. I'm important!



After these two pieces are clicked together, citizens of the states can use THAT part of the BoR to protect themselves against actions of their **STATE** government.

Selective Incorporation is  
**NOT** a sledgehammer



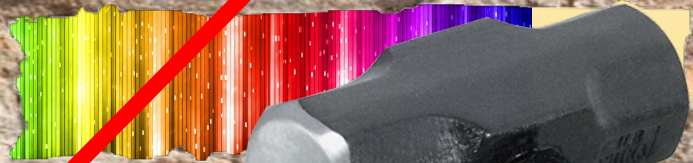
1st

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3rd

4th

5th



7th

8th

9th

10th

Selective Incorporation  
**chips away** at the  
Barron v. Baltimore  
wall (precedent or  
example) that divided  
your rights between  
national and state  
applied



Write me  
down. I'm  
important!

**ESSENTIAL COURT CASE!**

Challenger #1  
Gideon v. Wainwright (1963)

6th



**Gideon v.  
Wainwright (1963)**  
Right to counsel in  
felony cases

# Incorporation Example

## Gideon v. Wainwright (1965)

Write me  
down. I'm  
important!

Click on [HERE](#) for  
Summary video  
23 min to 41:45 min



- Gideon was not allowed an attorney after being arrested for a felony in **STATE** court.
- A Florida **STATE** judge told Gideon that the **6<sup>th</sup> Amend.** didn't apply to him because he wasn't being charged with a **FEDERAL** crime – therefore the state didn't have to honor the right to an attorney.



# Incorporation Example

## Gideon v. Wainwright (1965)

Write me  
down. I'm  
important!

APR 21 1962

DIVISION OF CORRECTIONS  
CORRESPONDENCE REGULATIONS

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clipping, stamp, letters from other people, stationary or cash must not be enclosed in your letters.

No. 2 -- All letters must be addressed to the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages without a Package Permit. Unauthorized packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Order only. In the inmate's complete prison name and prison number.

INSTITUTION \_\_\_\_\_ CELL NUMBER \_\_\_\_\_

NAME \_\_\_\_\_ NUMBER \_\_\_\_\_

In The Supreme Court of the United States  
October Term, 1961  
No. 870 Miss.  
Clarence Earl Gideon, petitioner  
-VS-  
H.G. Cochran, Jr., Director, Division of  
Corrections, State of Florida, respondent.

\*Answer to respondent's response to petition  
for writ of certiorari.\*

Petitioner, Clarence Earl Gideon received  
a copy of the response of the respondent  
in the mail dated sixth day of April, 1962.  
Petitioner, can not make any pretense  
of being able to answer the learned  
attorney General of the state of Florida  
because the petitioner is not a attorney  
or versed in law nor does not have the  
law books to copy down the decisions of  
this court. BUT the petitioner knows  
there is many of them nor would the  
petitioner be allowed to do so.  
According to the book of Revised  
Rules of the Supreme Court of the  
United States sent to me by Clerk of  
the same court the response of the  
respondent is out of time (Rule 24.)

NATIONAL ARCHIVES  
The Bill of Rights  
Division

- From prison, Gideon petitioned the Supreme Court to use the **Due Process Clause** to “soak up” the **6<sup>th</sup> Amendment** and get a new trial – this time with an attorney
- He applied for a **writ of certiorari** (orders the case to go immediately to the SCOTUS “to be made more certain”)

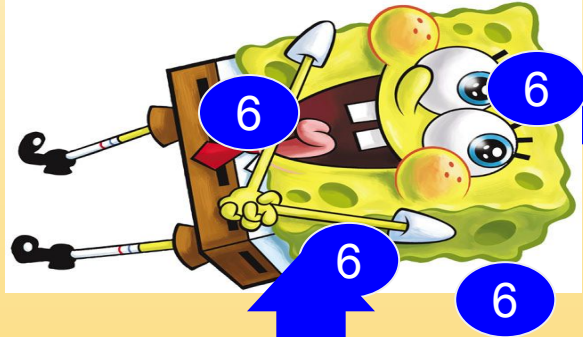
...nor shall any state deprive any person of life, liberty, or property without due process of law

...nor shall FLORIDA deprive CLARENCE EARL GIDEON of [his] liberty, without THE RIGHT TO AN ATTORNEY

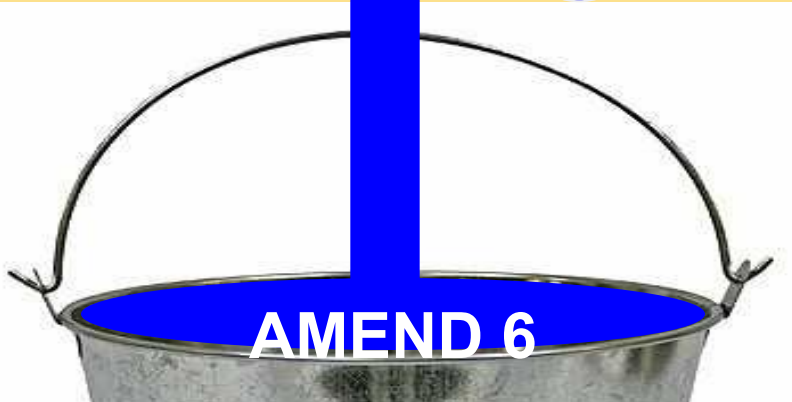
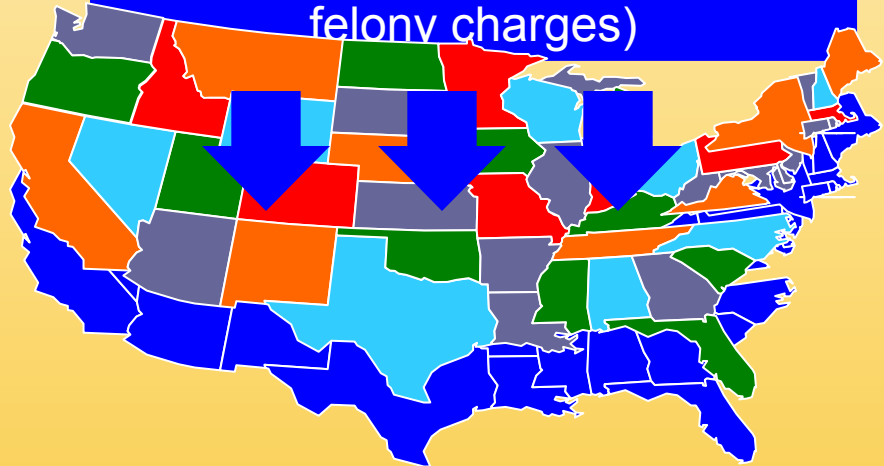
# Incorporation Example

## Gideon v. Wainwright (1965)

14th Amendment Sponge  
w/ Due Process Pores



**GIDEON v.  
WAINWRIGHT**  
All people in the US, whether  
charged in federal or state court,  
have the right to an attorney (for  
felony charges)



# Incorporation of the 6th Amendment

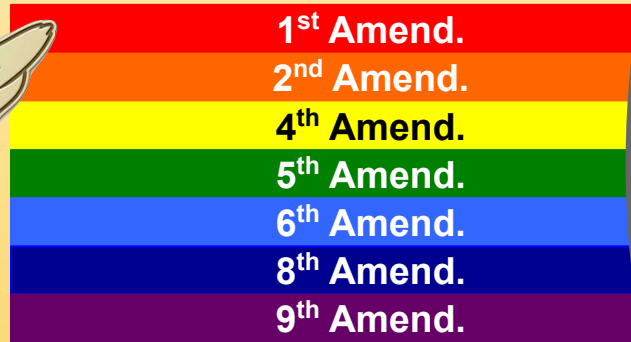
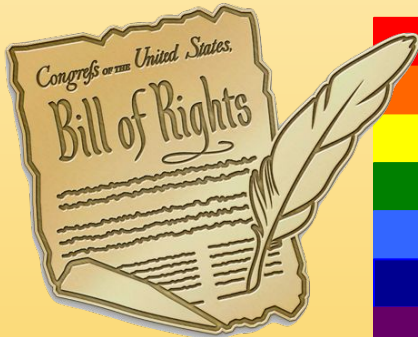
1932	Right to Counsel in Capital Cases	Powell v. Alabama
1948	Right to a Public Trial	In re Oliver
<b>1963</b>	<b>Right to counsel in felony cases</b>	<b>Gideon v. Wainwright</b>
1965	Right to confrontation of witnesses	Pointer v. Texas
1966	Right to an impartial jury	Parker v. Gladden
1967	Right to a speedy trial	Klopfer v. NC
1968	Right to jury trial for serious crimes	Duncan v. LA
1972	Counsel for all crimes w/ prison	Argersinger v. Hamlin

The 6<sup>th</sup> Amendment was incorporated (nationalized) little by little over the course of 40 years.

# Opened Selective Incorporation : Gideon v. Wainwright

## 14<sup>th</sup> Amendment's Due Process Clause + 6<sup>th</sup>

Nor shall any STATE deprive any person of life, liberty, or property (counsel in felony cases) without due process of law.



1<sup>st</sup> Amend.

2<sup>nd</sup> Amend.

4<sup>th</sup> Amend.

5<sup>th</sup> Amend.

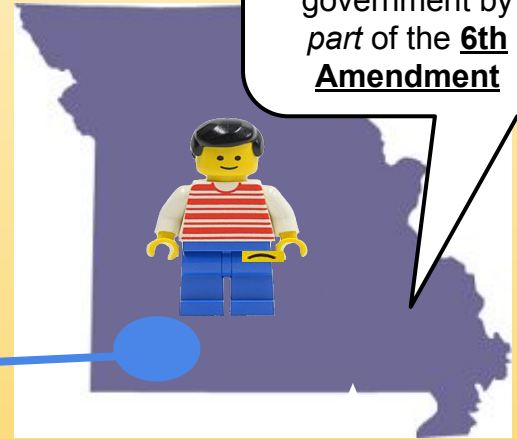
6<sup>th</sup> Amend.

8<sup>th</sup> Amend.

9<sup>th</sup> Amend.

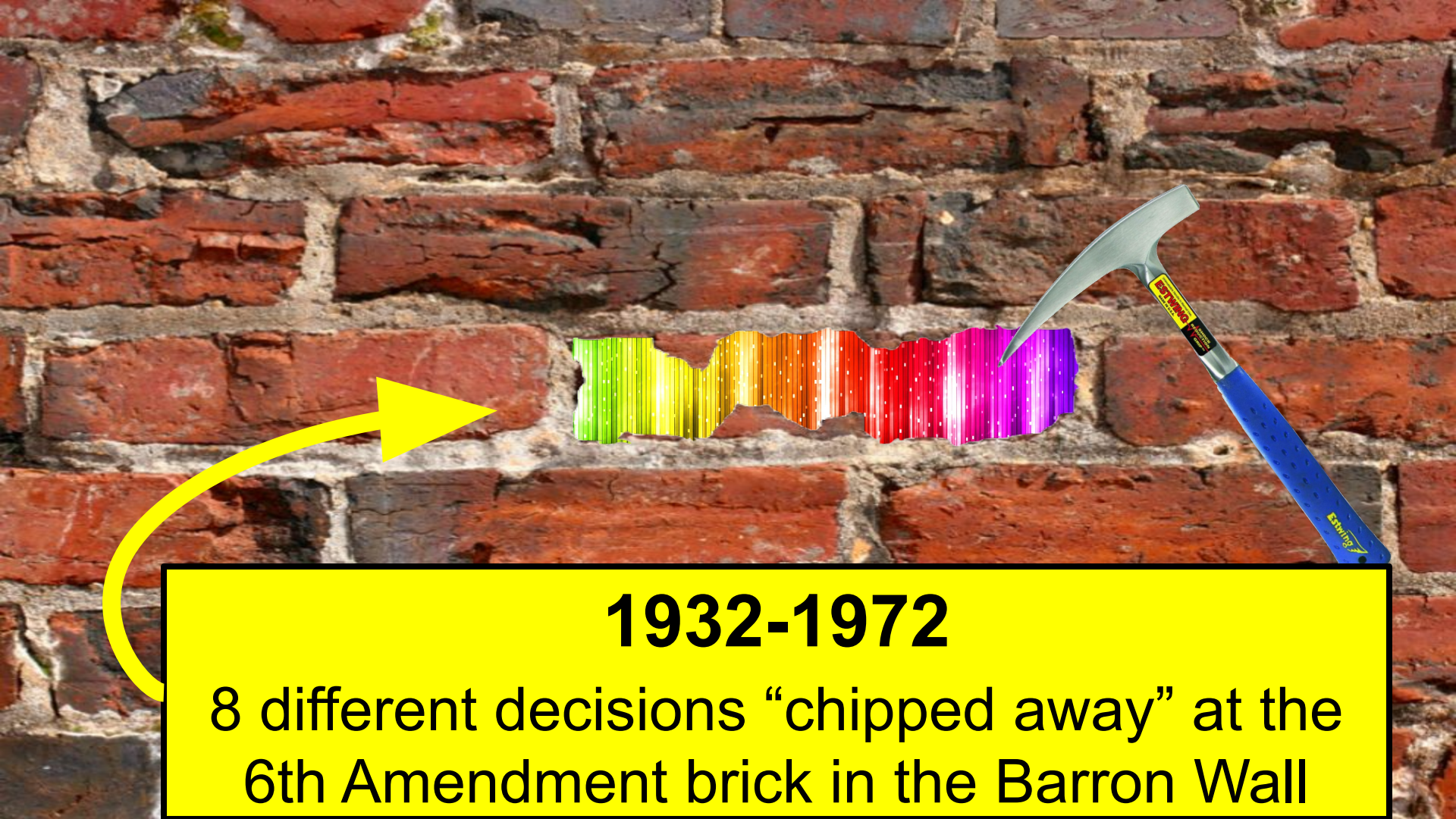
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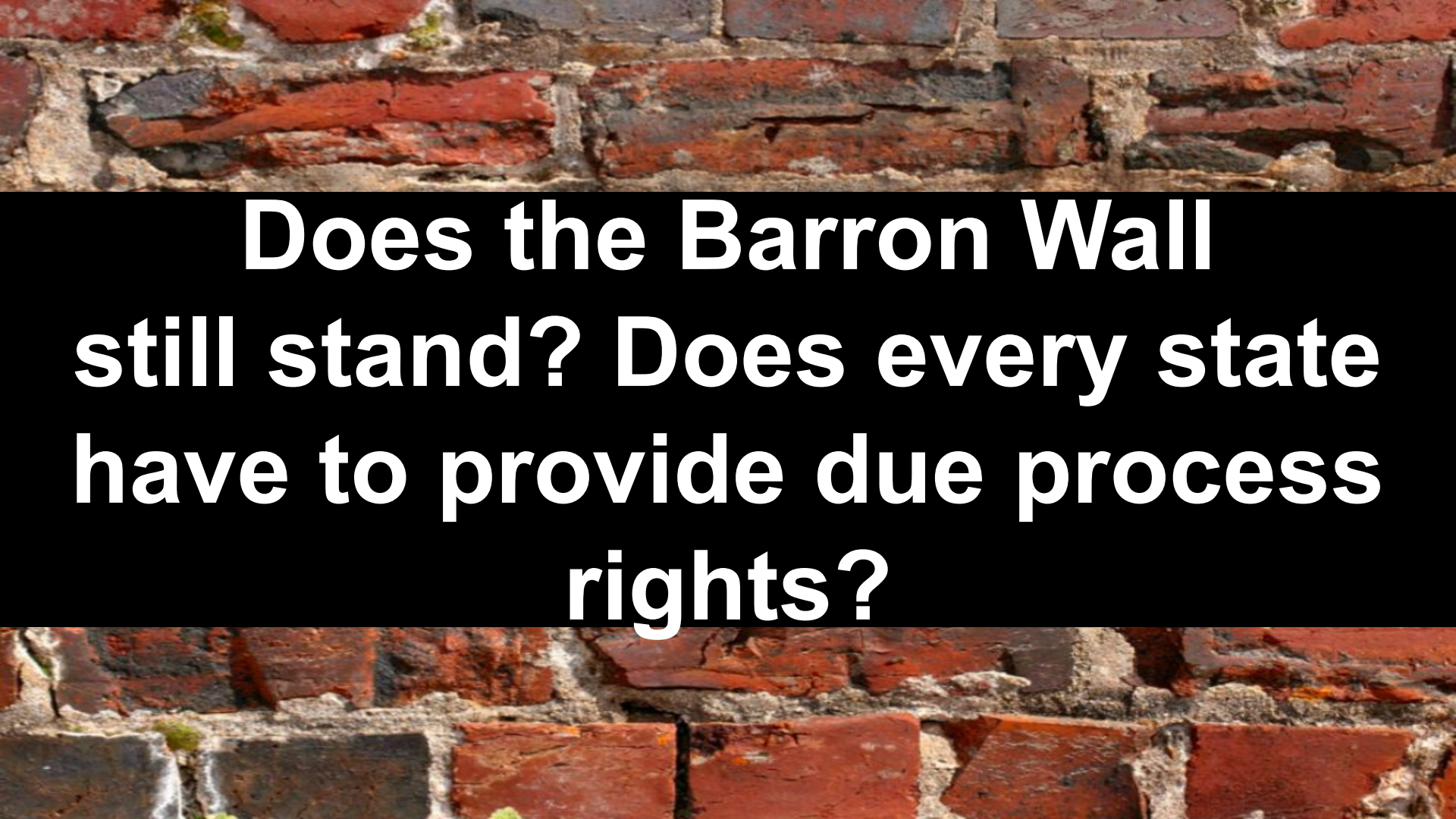
Now I'm protected against actions of my state government by *part of the* 6<sup>th</sup> Amendment

Bill of Rights only protects you from the FEDERAL gov, not STATE gov's



# 1932-1972

8 different decisions “chipped away” at the 6th Amendment brick in the Barron Wall

A close-up photograph of a brick wall with a black text overlay. The bricks are reddish-brown and show signs of weathering and age. The text is white and bold, centered on the black background.

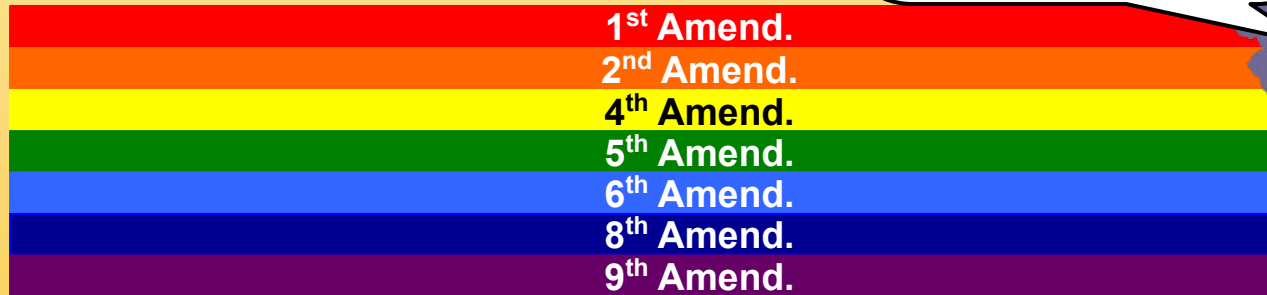
**Does the Barron Wall  
still stand? Does every state  
have to provide due process  
rights?**

# Selective Incorporation Theory

AKA “Nationalizing” the BoR



Does the protective light of the Bill of Rights shine on me in Missouri and protect me from my **STATE** government?





# Selective Incorporation Theory

AKA “Nationalizing” the BoR



1<sup>st</sup> Amend.

2<sup>nd</sup> Amend.

4<sup>th</sup> Amend.

5<sup>th</sup> Amend.

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9<sup>th</sup> Amend.

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Because of **Barron**,  
I'm only protected  
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if my **STATE'S**  
constitution says so.  
The BoR does me no  
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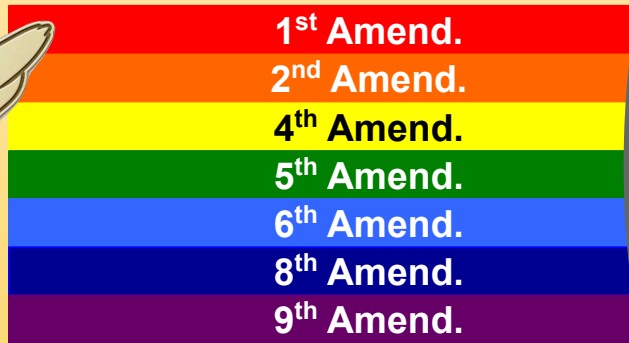
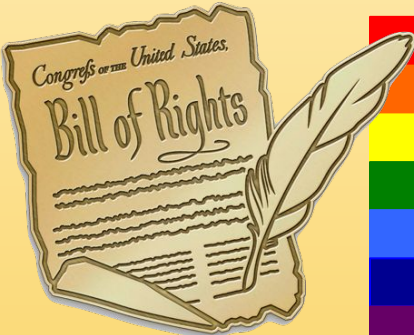
Bill of Rights only protects you from the FEDERAL gov, not STATE gov's

# Selective Incorporation Theory

AKA “Nationalizing” the BoR

## 14<sup>th</sup> Amendment’s Due Process Clause

Nor shall any STATE deprive any person of life, liberty, or property without due process of law.



1<sup>st</sup> Amend.

2<sup>nd</sup> Amend.

4<sup>th</sup> Amend.

5<sup>th</sup> Amend.

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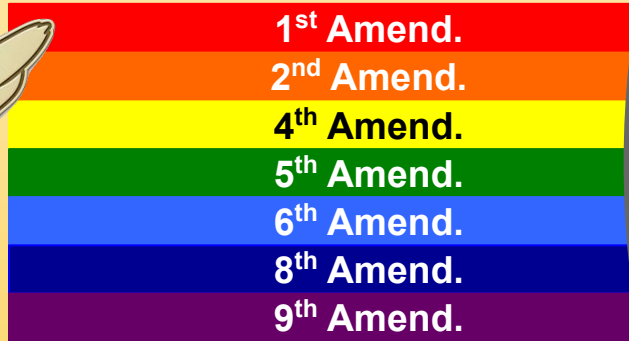
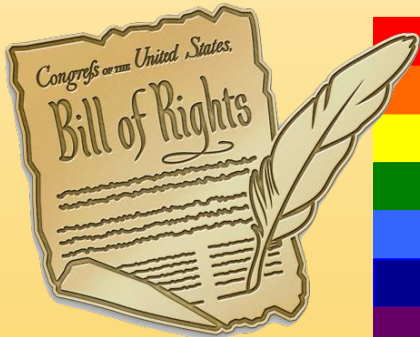


Bill of Rights only protects you from the FEDERAL gov, not STATE gov

# Selective Incorporation : Mapp v. Ohio

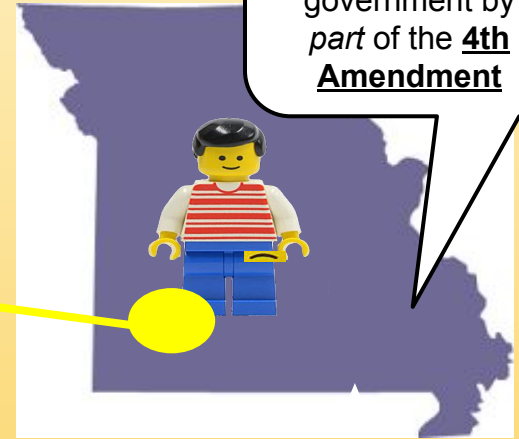
## 14<sup>th</sup> Amendment's Due Process Clause + 4<sup>th</sup>

Ohio tried to use illegally obtained evidence conducted during a search against Mapp. That violated the exclusionary rule (inadmissible).



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Bill of Rights only protects you from the FEDERAL gov, not STATE gov

# Rights of the Accused - 4th Amend.

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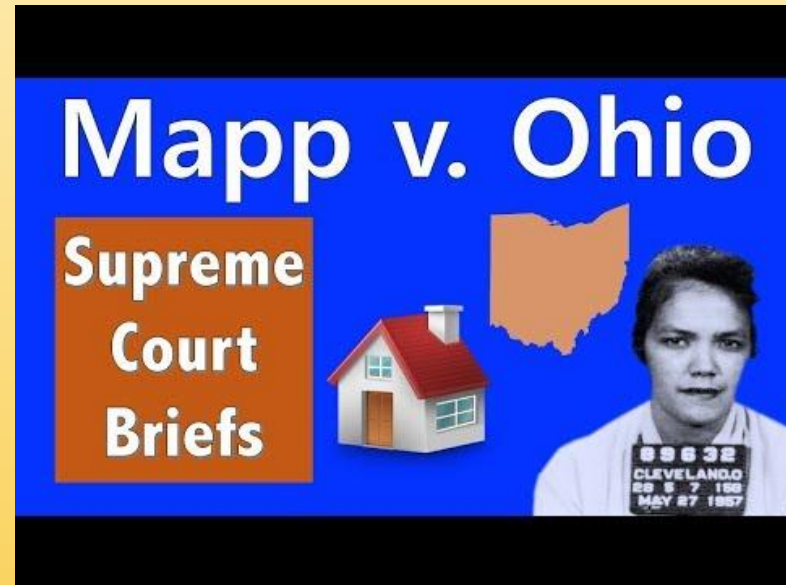
- **4th Amendment: key word = UNREASONABLE**
  - **CAN'T SEARCH** private property without a search warrant
    - Exceptions (hot pursuit, evidence destroyed, safety of all involved)
  - Police **CAN'T** arrest unless there is **PROBABLE CAUSE** to believe they're guilty
    - Reasonable suspicion for stop & frisk (and schools!)

# Rights of the Accused - 4th Amend

## Court Cases

- **Wolf v. Colorado (1949)**-  
incorporates 4th to the states
- **Mapp v. Ohio (1961)**-  
evidence obtained without a  
search warrant was excluded  
from trial in state courts
  - **Exclusionary Rule**
    - **Certain exceptions:**  
good faith, inevitable  
discovery

Click on this  
Summary video



# Rights of the Accused - 4th Amend

## Court Cases

- **New Jersey v. TLO (1985)** - rights in school different from out of school
  - School search rights are less than outside

## USA Patriot Act of 2001

- Expands gov't power for this

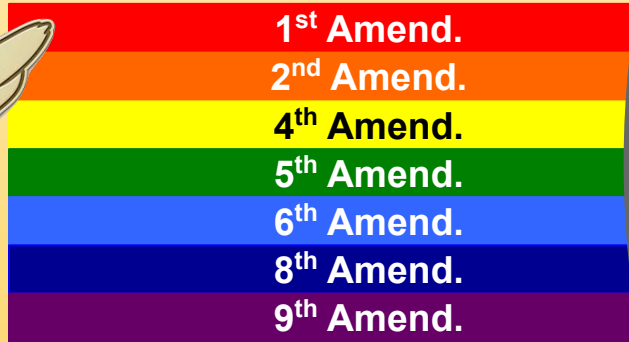
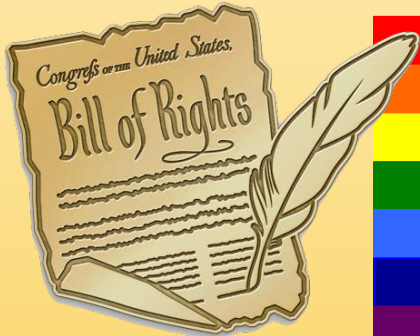
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Summary video



# EXPLODED Sel. Incorporation : Miranda v. AZ

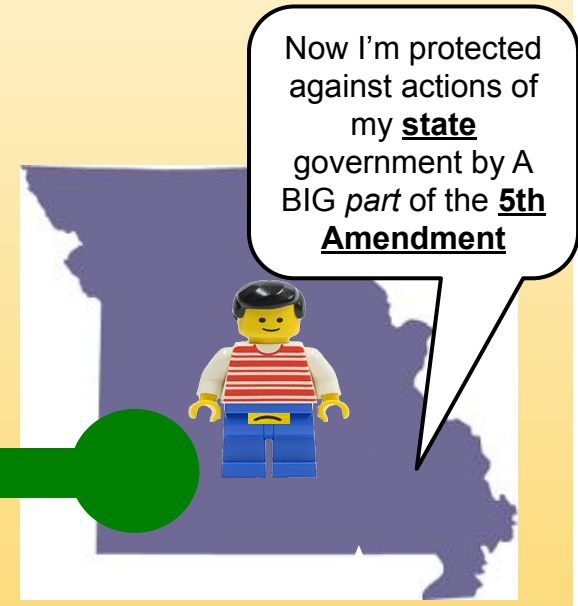
## 14<sup>th</sup> Amendment's Due Process Clause + 5<sup>th</sup>

Nor shall any STATE deprive any person of life, liberty, or property without due process of law.



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Bill of Rights only protects you from the FEDERAL gov, not STATE gov's

# Rights of the Accused - 5th Amend.

- Because a person is INNOCENT UNTIL PROVEN GUILTY, the prosecution is responsible for proving a defendant's guilt
- **Miranda v. Arizona (1966)**- established that suspects must be informed of their constitutional rights before they are questioned by the police

Write me  
down. I'm  
important!





# Rights of the Accused - 5th Amend.

- Ernesto Miranda
  - Arrested for robbery but confessed to the rape of an 18-year old woman
  - Not made aware that he could have counsel or the right to not incriminate himself
  - Re-tried and convicted without his confession (20-30 years)
  - Paroled in 1972; killed in a bar fight and his killer was read his Miranda Rights

Click on this  
Summary video



Click on this  
Summary video

## “Miranda” Rights



# Rights of the Accused - 8th Amend.

- **Gregg v. Georgia (1976)**-  
Confirmed that the death penalty does not violate the Bill of Rights (not cruel and unusual)



# Rights of the Accused - 8th Amend.

- **Restrictions:**
  - Who cannot be executed- mentally ill, mentally handicapped, under 18 at time of crime, crime where victim didn't die
  - Courts require that a jury, not a judge, find death penalty necessary. Defendant's lawyers must make reasonable efforts to represent their client.

\*Number of executions in decline due to DNA proving death row inmates innocent.

# The Nationalization of the Bill of Rights

DATE	AMENDMENT	RIGHT	CASE
1925	First	Freedom of speech	<i>Gitlow v. New York</i>
1931	First	Freedom of the press	<i>Near v. Minnesota</i>
1937	First	Freedom of assembly	<i>De Jonge v. Oregon</i>
1940	First	Free exercise of religion	<i>Cantwell v. Connecticut</i>
1947	First	Establishment of religion	<i>Everson v. Board of Education</i>
1958	First	Freedom of association	<i>NAACP v. Alabama</i>
1963	First	Right to petition government	<i>NAACP v. Button</i>
2010	Second	Right to bear arms	<i>McDonald v. Chicago</i>
	Third	No quartering of soldiers	Not incorporated <sup>a</sup>
1949	Fourth	No unreasonable searches and seizures	<i>Wolf v. Colorado</i>
1961	Fourth	Exclusionary rule	<i>Mapp v. Ohio</i>
1897	Fifth	Guarantee of just compensation	<i>Chicago, Burlington, and Quincy RR v. Chicago</i>
1964	Fifth	Immunity from self-incrimination	<i>Mallory v. Hogan</i>
1969	Fifth	Immunity from double jeopardy	<i>Benton v. Maryland</i>
	Fifth	Right to grand jury indictment	Not incorporated

# The Nationalization of the Bill of Rights

DATE	AMENDMENT	RIGHT	CASE
1932	Sixth	Right to counsel in capital cases	<i>Powell v. Alabama</i>
1948	Sixth	Right to public trial	<i>In re Oliver</i>
1963	Sixth	Right to counsel in felony cases	<i>Gideon v. Wainwright</i>
1965	Sixth	Right to confrontation of witnesses	<i>Pointer v. Texas</i>
1966	Sixth	Right to impartial jury	<i>Parker v. Gladden</i>
1967	Sixth	Right to speedy trial	<i>Klopfer v. North Carolina</i>
1967	Sixth	Right to compulsory process for obtaining witnesses	<i>Washington v. Texas</i>
1968	Sixth	Right to jury trial for serious crimes	<i>Duncan v. Louisiana</i>
1972	Sixth	Right to counsel for all crimes involving jail terms	<i>Argersinger v. Hamlin</i>
	Seventh	Right to jury trial in civil cases	Not incorporated
1962	Eighth	Freedom from cruel and unusual punishment	<i>Robinson v. California</i>
	Eighth	Freedom from excessive fines or bail	Not incorporated
1965	Ninth	Right of privacy	<i>Griswold v. Connecticut</i>



# Practice #1

In 1961, the Supreme Court heard a case in which the police entered into a residence without a warrant looking for a suspect thought to be hiding in the house. While searching for the suspect, the police found illegal pornographic material. The police arrested the homeowner and she was convicted of possessing pornography. The Court decided to throw out the conviction because the police did not have a search warrant.

- A) The Miranda rule
- B) The exclusionary rule
- C) The “public safety” exception
- D) The right to legal counsel

# Practice #1 Answer

In 1961, the Supreme Court heard a case in which the police entered into a residence without a warrant looking for a suspect thought to be hiding in the house. While searching for the suspect, the police found illegal pornographic material. The police arrested the homeowner and she was convicted of possessing pornography. The Court decided to throw out the conviction because the police did not have a search warrant.

- A) The Miranda rule
- B) The exclusionary rule**
- C) The “public safety” exception
- D) The right to legal counsel



## Practice #2

The “public safety” exception to the Miranda rule can best be defined as which of the following?

- A) It allows the police to perform unwarned interrogation to stand as direct evidence in court if the information will help protect the public
- B) It requires that law enforcement officers inform a person subject to an interrogation of his or her Fifth and Sixth Amendment rights
- C) It prohibits the use of any evidence found without a warrant to convict someone in court
- D) It gives officers the right to lie to a suspect in an attempt to get a confession to a crime

## Practice #2

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# Reflection Questions to Consider

[Click on video](#)

1. In the clip from the movie 21 Jump Street, the rookie cops are grilled by their superior about reading a suspect Miranda Rights. What are a few times that reading Miranda Rights to individuals is the officer's secondary concern? (Hint: involves a threat of something :)





**Social Studies Virtual Learning**

**AP Government:**

**Selective Incorporation &**

***McDonald v. Chicago***

**April 10, 2020**



AP Government  
Lesson: April 10, 2020

**Objective: LOR 3.A**

Explain the implications of the doctrine of selective incorporation.

## **Warm Up:** Let's take a look at the 2nd Amendment!

“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.”

What, exactly, does this mean? Do you think it means that a militia has the right to keep and bear arms? Or that regular people (non-militia) have this right? Why? (Hint... there's not right or wrong here...)

# Lesson

Today we're going to look at a Selective Incorporation case *McDonald v. Chicago*, which is a required case for AP Government. You need to be able to explain how this case fits in with selective incorporation, which you'll be able to do after we work through some things. You'll watch a video in just a minute from several experts on this case, and then work through some questions.

# Lesson

As you watch the video ([LINKED HERE](#)), jot down the following in your notes:

- 1) A brief 2-sentence summary of the **background** of the case.
- 2) What **question** the court was being asked to decide.
- 3) What the **court's decision was** and **why**.



## Let's Practice! #1

Which of the following most clearly states the outcome of *McDonald v. Chicago (2010)*?

- A) Municipalities may ban the ownership of handguns within their boundaries without infringing on the 2nd Amendment.
- B) Municipalities may deem state conceal and carry laws non-applicable within their jurisdictions.
- C) Municipalities may not infringe on the 2nd Amendment right to keep and bear arms for self-protection in one's home.
- D) Municipalities may ban shooting ranges within their boundaries.

## Let's Practice! #1 (Check your answer. Can you explain why this is correct?)

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- D) Municipalities may ban shooting ranges within their boundaries.

## Let's Practice! #2

Which of the following best summarizes the debate reflected in *McDonald v. Chicago* (2010)?

- A) Is the 2nd Amendment right to keep and bear arms for self-defense in one's home fully applicable to the states?
- B) May a state enact statutes to control and regulate non-governmental organizations which engage in military drilling and parading?
- C) Does the 2nd Amendment right to keep and bear arms for traditionally lawful purposes apply to federal enclaves?
- D) Can the Federal Government regulate the interstate transport of certain types of firearms?

## Let's Practice! #2 (Check your answer. Can you explain why this is correct?)

Which of the following best summarizes the debate reflected in *McDonald v. Chicago* (2010)?

- A) **Is the 2nd Amendment right to keep and bear arms for self-defense in one's home fully applicable to the states?**
- B) May a state enact statutes to control and regulate non-governmental organizations which engage in military drilling and parading?
- C) Does the 2nd Amendment right to keep and bear arms for traditionally lawful purposes apply to federal enclaves?
- D) Can the Federal Government regulate the interstate transport of certain types of firearms?

## Let's Practice! #3

The City of Chicago's argument in *McDonald v. Chicago* (2010) is most closely associated with which political belief?

- A) Absolutism
- B) Egalitarianism
- C) Originalism
- D) Federalism

## Let's Practice! #3 (Check your answer. Can you explain why this is correct?)

The City of Chicago's argument in *McDonald v. Chicago* (2010) is most closely associated with which political belief?

- A) Absolutism
- B) Egalitarianism
- C) Originalism
- D) Federalism

## Reflection

So the objective for today is to “**Explain the implications of the doctrine of selective incorporation.**” How does this case do this? And why do you think the College Board included this case into their list of required cases?