How Does the Constitution Protect Liberty?

BACKGROUND ESSAY

Americans value their freedom to make important choices every day. The diverse society we enjoy is possible because each of us has personal liberty. Personal liberty is the freedom to do the things you want to do so long as these things don’t violate other people’s rights: get a certain job, listen to music you enjoy, or travel to places you want to see. Allowing you to make choices, personal liberty makes possible the right to have some control over your own destiny. At the same time, personal liberty must be balanced against the rights of others. For instance, your personal liberty does not give you the right to blast music on someone else’s property or try to force an unwilling person to be your best friend.

Do You Have a Right to Force Others to Act?

You have a right to free speech. You do not, however, have the right to force anyone to listen to you. The right to speak does not include the right to be heard. Similarly, you have the right to write songs and record them. Without violating a person’s rights, it is not possible for one adult to stop another from making his or her own music. Yet no one has the right to be given a record contract. You don’t have a right to have your album produced and distributed since this would force an obligation onto someone else.

There is no right to force a record label to do these things for you. This demonstrates how personal liberty goes together with personal responsibility. There are many rights that guarantee that people are free to follow their own dreams and goals. This fulfills the inalienable right to pursue happiness described in the Declaration of Independence.

What Rights Does the Ninth Amendment Protect?

The Bill of Rights was added to make sure the federal government did not take away citizens’ rights. But adding the amendments was debated greatly. It would be impossible to list every right. Federalists of the 1780s worried that listing some rights might mean that others would be thought of as less important. To prevent this, the Ninth Amendment was included in the Bill of Rights.

The Ninth Amendment states that people have unenumerated rights, or rights not listed in the first eight amendments or elsewhere in the Constitution. Of course, this often creates as many questions as it answers.
Among the rights listed in the first eight are speech, religion, property and others. What rights does the Ninth Amendment protect? It does not say. The Ninth Amendment’s broad scope helps defend personal liberty. Many people believe that where the Constitution does not specifically list a particular right, it should be left to the people and their elected officials to determine whether a right exists. This raises the issue of balancing personal liberty with democracy.

How Do the First Eight Amendments Protect Personal Liberty?

Sometimes the Supreme Court decides that the listed rights imply the existence of a right that is not specifically listed. A famous example of this is the right to privacy. The First Amendment guarantees that you can associate with whomever you choose. The Third and Fourth Amendments promise that the government cannot intrude into your home without legal cause. The Fifth Amendment assures that you can keep silent if accused of a crime. Together, these rights protect citizens’ private actions. The Supreme Court first identified and labeled this right “privacy” in *Griswold v. Connecticut* (1965). The right to privacy is involved in many issues of personal liberty including contraception, abortion, gay rights, and drug testing of students, athletes, and workers.

What Does Due Process Mean?

The Ninth Amendment alone has rarely been used to claim unenumerated rights. The Fifth and Fourteenth Amendments are important to protecting personal liberties like property and contracts. The Fifth and Fourteenth Amendments protect the individual’s right to due process. Due process entitles all citizens to fair treatment by the government. For instance, the government cannot skip part of a trial or take your property away.
Comprehension Questions

1. How do the rights in the Bill of Rights protect liberty? Why did the Founders list these rights in the Bill of Rights?

2. Why is due process protected in more than one amendment? What due process rights are protected?

3. Explain why the limits on rights in the following passage are important and how they are related to liberty:

   “You have a right to free speech. You do not, however, have the right to make anyone listen to you. The right to speak does not include the right to be heard…This principle demonstrates how personal liberty goes hand in hand (goes together) with personal responsibility. There are no rights in the Bill of Rights that require others to act on your behalf.”


**Pierce v. Society of Sisters (1925) Brief**

**Case Background:** In 1922, the state of Oregon passed the Compulsory Education Act. The law stated that all children between the ages of eight and sixteen must attend public school. The Society of Sisters of the Holy Names of Jesus and Mary, nuns who ran a local Catholic school, and Hill Military Academy, a private school, sued the governor, attorney general, and district attorney. Both groups argued that the state was violating their Fourteenth Amendment rights. The Sisters argued the state was violating parents’ rights to choose where their children went to school, and the Academy argued that the policy violated their right to due process by taking the school’s property in money made through contract with parents, employees, and for supplies and equipment.

**Comprehension Questions**

1. What did the Compulsory Education Act require? Why were religious and private schools concerned about this law?

2. What other constitutional arguments could have been made in this case? Why do you think these arguments were not made?
The Supreme Court agreed that the Oregon law requiring children to attend public schools was unconstitutional. The majority opinion stated that the liberty that the United States was established to protect does not allow “any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.” The Court also said that “the right to conduct schools was property, and that parents and guardians, as a part of their liberty, might direct [control] the education of children by selecting reputable [responsible] teachers and places,” and, “children are not mere creatures of the state.” The Court believed that parents have a right to decide whether their children will be home-schooled or go to a public, private, or religious school. It is not up to the government to decide.

Do you agree with the Court’s ruling? Explain your answer. What is the importance, if any, of the fact that the ruling in this case was unanimous?

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Newspaper Story Guideline

**Directions:** You are a reporter for the award-winning newspaper The Daily American. As the Supreme Court hears the case of the Pierce v. Society of Sisters (1925), you have been assigned to write a story about the Fourteenth Amendment because most readers don’t know that much about it. The story should answer the question: “What rights are protected by the Fourteenth Amendment?”

**Headline** – An attention-grabbing headline

**Paragraph 1/Grabber** – Explain what rights are protected by the Fourteenth Amendment.

**Body** – Explain the difference between enumerated and implied rights and give an example of each.

**Conclusion** – Explain how Fourteenth Amendment might be interpreted in the future.