

The United States Constitution: Safeguarding Individual Rights

The Framers of the U.S. Constitution wanted to create a national government that was effective and powerful, but one that did not step on the rights of the individual or the powers of the states. By ensuring that the rights of individuals and the powers of states would be protected, this created a system where the powers of the national government also became limited.

In Article 1, Section 9 of the U.S. Constitution, there are three key individual rights that are protected, or safeguarded:

The first is contained in this statement:

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Habeas corpus is an important individual right. This statement in Article I, Section 9 means that an authority has to prove to a court why it is holding someone. If the government cannot show why a person is being held in jail, that person must be released.

The second and third are in this statement:

"No Bill of Attainder or ex post facto Law shall be passed."

A bill of attainder is a bill written to punish only one person or one group of people. An ex post facto law is one that makes an act a crime after it has been committed.

1. Using complete sentences, define the term *habeas corpus*. Highlight the text that helps you define these terms.
2. Using complete sentences, define the term *ex post facto*. Highlight the text that helps you define these terms.
3. Based on Article I, Section 9 and your knowledge of the Bill of Rights, why do you think the Framers determined that these were important rights to include in the U.S. Constitution?

The Role of the Judicial Branch

The judicial branch plays an important role in how the U.S. Constitution is interpreted and the ways in which individual rights are safeguarded (protected) and limited. The Framers of the U.S. Constitution designed an independent judiciary where the judicial branch would have freedom from the executive and legislative branches. The U.S. Constitution guaranteed that judges would serve “during good behavior” and would be protected from any decrease in their salaries. Both of these features prevent the other two branches from removing judges or decreasing their salaries if they don’t like a judge’s opinion or rulings on a case. This gave the judicial branch the freedom to make decisions based on the law and not based on pressure from the other two branches.

4. In a complete sentence, define the term independent judiciary. Highlight the text that helps you define this term.

How can individual rights be limited?

In the Supreme Court case *Schenck v. U.S.* in 1919, the court created the “balancing test.” The balancing test focuses on individual rights and the public interest and allows rights to be restricted, or limited, when the public interest is threatened. The public interest is something that has common benefit to the community or public. Justice Oliver Wendell Holmes stated in his opinion that “the most stringent [strict] protection of free speech would not protect a man from falsely shouting fire in a theatre and causing a panic. [...]”

5. What was Justice Holmes’ rationale for stating that shouting “fire!” in a theatre would not be covered by the First Amendment?

6. What might be the impact of this decision?

The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit individual rights. In general, there must be a balance of individual rights, the rights of others, and the common good.

Listed below are additional criteria used to limit rights and freedoms, specifically freedom of speech and freedom of the press.

- ✓ Clear and Present Danger – Will this act of speech create a dangerous situation?
- ✓ Fighting Words – Will this act of speech create a violent situation?
- ✓ Obscene Material – Is this material inappropriate for adults and children to see in public?
- ✓ Conflict with Government Interests – During times of war the government may limit rights due to national security.

7. Choose two of the above criteria. What is the rationale for limiting rights in the situation?

8. What is the impact of limiting these rights?