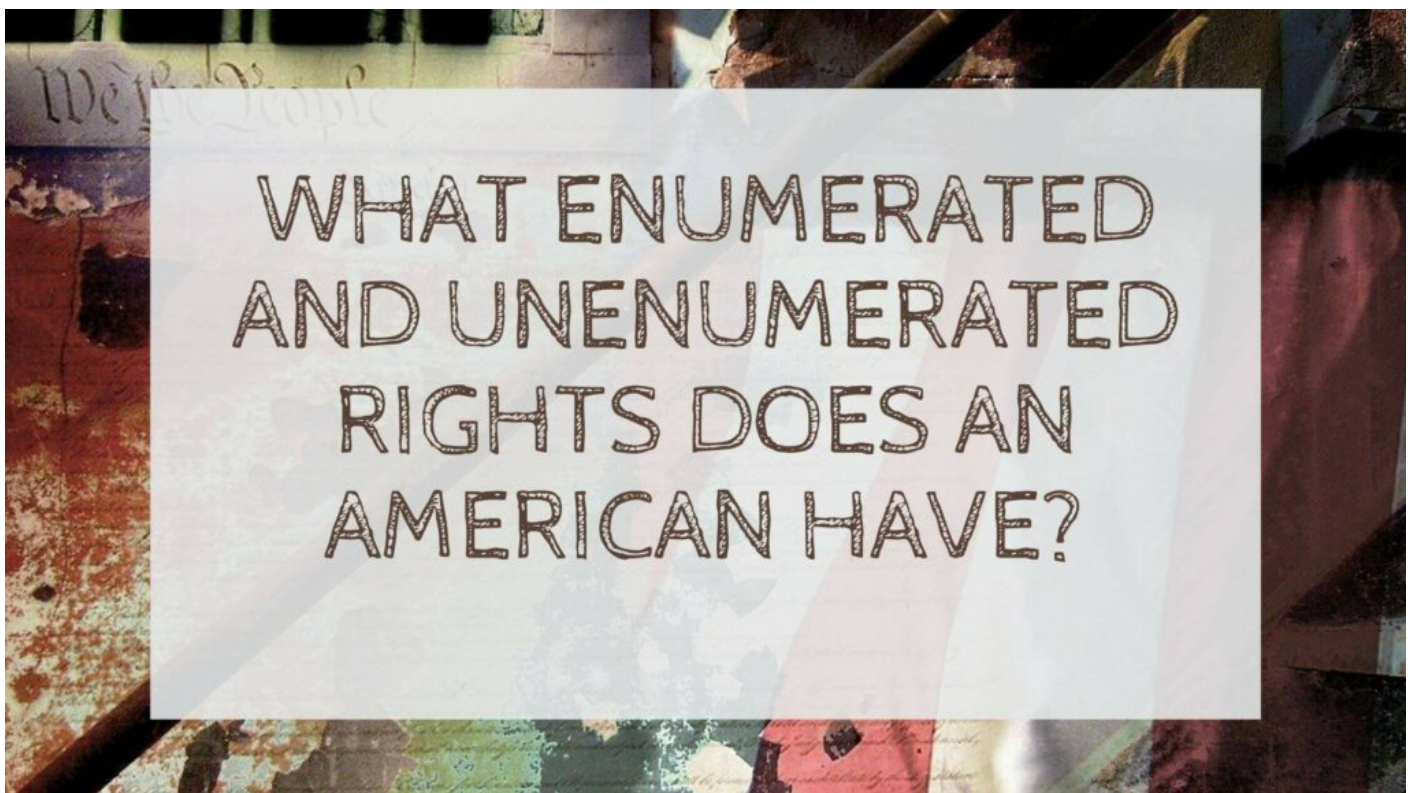




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What Enumerated and Unenumerated Rights Does an American Have?

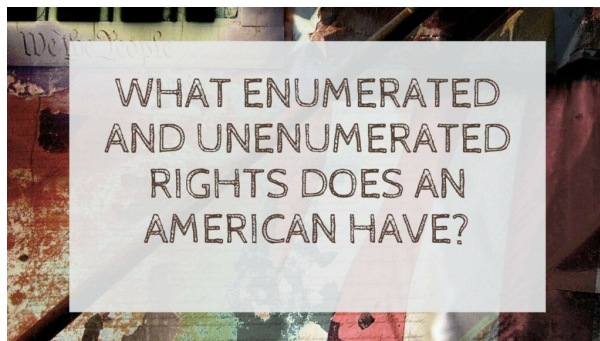


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Enumerated vs Unenumerated Rights

In the United States, enumerated rights are written down in the constitution, especially the first eight amendments. People in the United States also have unenumerated rights, which are not written down in the constitution but are still legally relevant.

The Supreme Court makes decisions based on unwritten rights and what is written in the constitution. Unenumerated (unwritten) rights include the right to travel, privacy (<https://constitutionus.com/constitution/rights/the-right-to-privacy-in-the-constitution/>), autonomy, dignity, and the right to have an abortion. None of these rights are specifically stated in the constitution, but the Supreme Court defends these rights.



While unenumerated rights include the right to travel or privacy, enumerated rights include:

- Freedom of speech.
- Freedom of religion.
- The right to bear arms.
- The right to a fair trial.

Those rights come from early amendments to the constitution (<https://constitutionus.com/constitution/what-is-the-constitutional-amendment-process/>).

No One Knows Exactly What Rights an American Has

You cannot make a comprehensive list of unenumerated rights because they are, by definition, unwritten. Other unenumerated rights may exist but have not been tested by the Supreme Court.

Unenumerated rights can become enumerated rights if they are added to the constitution. There is certainty surrounding enumerated rights, while unenumerated rights are uncertain.

There is also no way to know precisely what rights an American does not have. However, the Supreme Court clearly rejects some unenumerated rights. For example, in 1997, the Supreme Court ruled that you do not have an unwritten right to die in the United States.

What Enumerated Rights Does an American Have Under the Constitution?

Most enumerated rights come from the Bill of Rights (<https://constitutionus.com/bill-of-rights/when-was-the-bill-of-rights-ratified/>), which is almost as old as the constitution. After Americans realized they needed a stronger federal government, they also decided on a bill of rights to protect them from government abuses. Since then, the anti-slavery and women's suffrage amendments have greatly improved the rights of people in the United States (<https://constitutionus.com/constitution/the-constitutional-rights-of-the-people-of-the-united-states/>).

The First Amendment

The first amendment (<https://constitutionus.com/constitution/amendments/the-first-amendment-to-the-united-states-constitution-explained/>) protects freedom of speech. It allows you to express unpopular ideas through what you say and the print media.

It also allows for peaceful assembly and demonstration. Americans can organize a group that disapproves of the government and publicly demonstrates against them to get them to fix problems.



Freedom of speech is protected by the 1st Amendment.

The first amendment also protects religious beliefs and prevents the government from choosing an official religion. The constitution does not specify the limits on free speech.

The Second Amendment

The second amendment is the right to bear arms. It is nowhere near an absolute right to bear arms, and it does not protect ownership of all small arms. However, it does make gun laws in the United States significantly more lenient than in most countries.

The second amendment refers specifically to militias. It says that a “well-regulated militia” is necessary for a state’s security and that the government shall not infringe on the right of people to bear arms.

Many Americans are upset if any laws that weaken the second amendment or the first amendment pass. The first and second amendments are two of the most important and defended parts of the bill of rights.

The Third Amendment

The third amendment states that soldiers do not have the right to force homeowners to let them use their homes. Before the revolutionary war, British soldiers had the right to use citizens’ homes.

The third amendment is also not an absolute right. During peacetime, a soldier cannot use a person’s home without the consent of the owner. They can only use a person’s home during wartime within legal limitations that the constitution does not specify.

Why Was the Third Amendment Considered Important?

The third amendment has never been brought before the Supreme Court and tested. Today, it may seem to be unimportant. However, at the time, the amendment was considered significant.



The forced quartering of British soldiers was one of the factors that drove the colonists to war.

In 1774, the British government passed the second quartering act, which allowed British soldiers to stay anywhere, including in the homes and not only the barns and alehouses of the colonists. This angered the colonists, and the practice continued during the revolutionary war. It was part of what pushed the colonists towards war.

The Fourth Amendment

The government protects citizens' private property from the government. The government cannot unreasonably search an individual, search their property, or take anything from them.

It specifies that warrants are necessary for search and seizure. The government needs a warrant that specifies what place is to be searched and what property or people are to be seized. Like the third amendment, it is not an absolute right.

The Fifth Amendment

The fifth amendment protects people charged with crimes. It explicitly protects people against double jeopardy (<https://constitutionus.com/constitution/amendments/what-is-double-jeopardy/>) or being charged twice for the same crime.

It also requires a grand jury if someone is being charged with a serious criminal offense. Before anyone can be tried with a felony, they must appear before a grand jury.

A grand jury decides whether or not there is enough evidence to send the case to trial. They can decide that the accused should be charged with a felony, that their charge should be reduced due to insufficient evidence for a felony trial, or that the charge should be dropped.

The Sixth Amendment

The sixth amendment also helps defendants. It requires trials to be public and to be done without unnecessary delay. It also requires an impartial jury.

The sixth amendment also requires the defendant to know who their accusers are, what their charges are, and what evidence there is against them. A defendant must also have a lawyer who will defend them, and any witnesses who speak in their defense must be found.

The Seventh Amendment

The seventh amendment is the right to a jury trial in many but not all civil cases. If a civil suit is heard in federal court, a defendant usually has the right to a jury trial. This comes from English common law.



The 7th Amendment guarantees a trial by jury in many civil cases as well as criminal cases.

Unlike most countries, the United States often requires jury trials in civil and not only criminal cases. Even countries like Canada, Britain, and Australia no longer require juries for civil cases. The seventh amendment also makes it hard for federal judges to overturn jury verdicts in some situations.

The Eighth Amendment

The eighth amendment forbids cruel and unusual punishment. It also forbids excessive fines or making bail excessively expensive. Like other parts of the bill of rights, it has limitations. It does not make executions illegal.

The Thirteenth Amendment

Most amendments passed since the bill of rights have increased the power of congress (<https://constitutionus.com/constitution/what-are-expressed-powers/>) and have not given citizens additional rights.

However, the 13th amendment, which ended slavery, is a major exception to this rule. It also forbids involuntary servitude (<https://constitutionus.com/constitution/rights/involuntary-servitude-and-the-constitution/>) except as a punishment for a crime.

The Nineteenth Amendment

This is the women's suffrage amendment. It ensures that all of the rights of American citizens (<https://constitutionus.com/constitution/what-rights-do-americans-have-under-the-constitution/>) apply to both sexes. The rights must be given fully and not partly denied.

Do the Ninth and Tenth Amendments Deal With Enumerated Rights?

Many of the enumerated rights Americans have had since 1791 are in the Bill of Rights, ten early amendments passed to protect citizens from an overly powerful government.

Only the first eight of the amendments give Americans enumerated rights. The ninth amendment states that Americans have other, unwritten rights that are not spelled out in the constitution. The tenth amendment limits the federal government's powers to the constitution's written laws.

Many Rights Americans Have are Unenumerated

Some would assume that "innocent until proven guilty" is in the constitution, but it is actually an unenumerated right based on legal tradition.

A person has an enumerated right to due process, mentioned in the constitution. However, the constitution does not define due process. Instead, courts always believe that a defendant is innocent until proven guilty because courts have always interpreted due process that way.

Freedom of Speech Usually Protects Offensive Speech

Freedom of speech also protects offensive symbolic actions such as flag burning because courts assume it does. The first amendment does not define the limits of freedom of speech.

One right that Americans do not have is the right to die. Nothing in the constitution mentions a right to die, and the Supreme Court rejects the idea that it is an unenumerated right. Laws against doctor-assisted suicide are not unconstitutional.

(<https://constitutionus.com/congress/what-is-th>) (<https://constitutionus.com/law/prove-your-inn>)

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3 Responses



Daniel

Hall says:

May 5, 2022 at 2:27 am (<https://constitutionus.com/constitution/rights/what-enumerated-and-unenumerated-rights-does-an-american-have/#comment-4881>)

Aren't unenumerated rights limited to those rights that been practiced and accepted as a routine part of the culture for generations: Parental rights and duties are enumerated in the Bible as rights given to man by God [Natural Law]. As are "right to life" and "liberty" "thou shalt not kill" create right to self defense. Prostitution on the other hand, although practiced for generations [mostly under cover] and reputed by the culture generally and criminalized and certainly prostitution although practiced for generations has never be considered a "natural right"

Abortion had no history of being an accepted practice within our culture and had been criminalized for hundreds of years in our culture -so it was a great stretch to try to list abortion as an unenumerated right.

Reply



JHV

says:

May 6, 2022 at 1:12 pm (<https://constitutionus.com/constitution/rights/what-enumerated-and-unenumerated-rights-does-an-american-have/#comment-5018>)

I disagree. First of all, it was absolutely legal here or at least not illegal from the time the settlers came here. The only restrictions were once the fetus could be felt moving. That is until in 1827 Illinois made laws banning so called abortion pills. These pills caused the deaths of many women. Between 1860-1880 states started making abortions criminal at the urging of the newly formed AMA (American Medical Association) to do away with abortion practitioners (many who were Midwives) who became competition to the AMA doctor's. The Catholic Church also jumped on board with this. (Hmmm I thought we were supposed to have a separation of Church and State: also not specifically listed in the Constitution but is considered a right) Freedom of Religion also means also means Freedom From Religion (which would stand all the tests of the 14th Amendment as well as the 9th) The laws however weren't strictly enforced and any woman with money could get one if she wanted. The country started to strictly enforce starting in the 1930's and most states has restrictions or complete bans. CA made abortion legal in 1967 and the law was signed by....Governor Ronald Regan. NY adopted legal abortion in 1970 and a handful of other states did too. Roe v Wade wasn't decided until 1973 so obviously the tide was already turning beforehand and is still has a bigger percentage of Americans supporting than not supporting. Roe was assented using precedent cases stating per the 9th and 14th regarding Contraceptions are a part of the right to privacy and to Due Process. See 1965 Griswold v Connecticut. In that case the state made a law that married people could not counseling or obtain prescriptions for contraceptions. The law was overturned and ruled unconstitutional stating the right to privacy (including family planning, and medical decisions) and due process. No where in the Constitution does it state that any changes has to go through the test of time and accepted beliefs. The Justices came up with that so they don't have to fully make those decisions. In 1967 when interracial marriage was became law, the long time acceptance rule was definitely not used. The world and beliefs change over time and that really is a ridiculous argument. Now let's take a look at long time standards, women haven't had any rights really in this country until the 19th finally gave us the right to vote

women haven't had any rights really in this country until the 19th century gave us the right to vote. Previously, women couldn't own land, could not vote had no real say in anything and were pretty much treated as her husband's property. A bunch of men deciding what a woman can/can't do regarding the medical decisions of her body or family planning is ludicrous and just an example of males trying to dominate women. The same really goes for Prostitution. Furthermore, when these people start actually making laws to keep kids fed, educated, a roof over their heads etc, they are just making right to birth laws, not right to life.

Reply



John

May 8, 2022 at 5:05 pm (<https://constitutionus.com/constitution/rights/what-enumerated-and-unenumerated-rights-does-an-american-have/#comment-5103>)

S says:

Amen!

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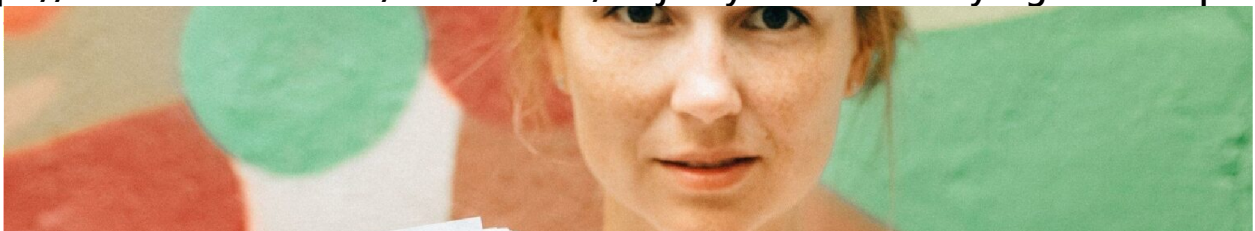
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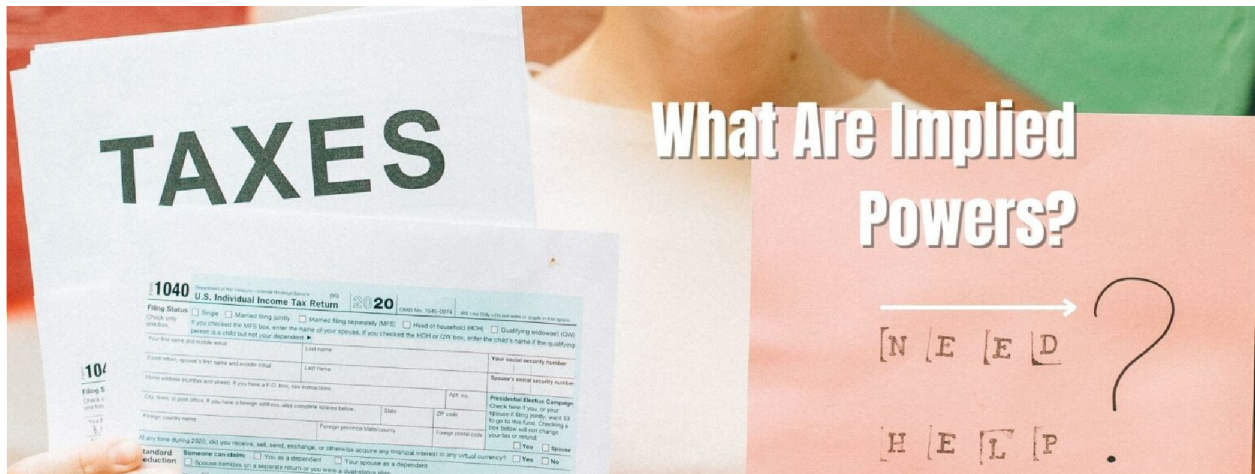


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