

Unenumerated Rights

Fundamental Right Criteria to Garner Constitutional Protection

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In the second article of the series, the existence of several unenumerated fundamental rights were raised such as the right to contract, to travel, to marriage, to raise a family, to obtain knowledge, and the right to work a lawful occupation. The objective of this article is twofold. First, to define all our necessary fundamental rights. In fact, most of our unenumerated fundamental rights can be found in historical legislation or prior court cases. Second, to define the criteria for fundamental rights to obtain constitutional protection. An accurate list of unenumerated fundamental rights is important because unenumerated rights are the easiest rights for congressional legislation to disparage. In other words, mitigating unenumerated rights is the easiest way to transfer sovereignty from "[We the People](#)" to the federal and state governments.

A few of the most significant cases and prior legislation are listed below. All the cases listed below are still valid law and have never been overruled. Other unenumerated fundamental rights found in the below examples include equal taxation or the right to profit from one's labor, to equality, to antiwelfare protection, to protection and safety, to buy and sell property, to justice, to life, to liberty, to pursue happiness, and the liberty of conscience thought (religion).

In the 1798 case [Calder v. Bull](#), Justice [Samuel Chase](#) states the government should enforce no law "that takes property from A. and gives it to B."

The 1823 case [Corfield v. Coryell](#) was a circuit court decision penned by [Justice Bushrod Washington](#) which reads the people have the right to:

Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government must justly prescribe for the general good of the whole. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefits of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State...

[The Civil Rights Act of 1866](#) states people have the right:

To make and enforce contracts, sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefits of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

[Justice James McReynolds](#) penned the magnificent majority opinion in [Meyer v. Nebraska](#) in 1923, which reads in part:

The Court has never attempted to define, with exactness, the liberty guaranteed by the Fourteenth Amendment. Without doubt, it denotes not merely liberty from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at statutory law as essential to the orderly pursuit of happiness by free men.

Justice McReynolds also penned the opinion for *Pierce v. Society of Sisters* in 1925:

Under the doctrine of *Meyer v. Nebraska* [1923] we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.

Aside from the right to free speech, to self-defense, to friendships ([First Amendment's](#) freedom of association or assembly), to hold a public office, to be represented in government, and to vote which are located in the Constitution, many more Supreme Court cases and historical documents protect other unenumerated fundamental rights including the right to privacy ([Griswold v. Connecticut](#)) and to sit on juries ([Civil Rights Act of 1957](#)). Other unenumerated fundamental rights include to make lawful choices which do not harm others, to pursue health (not healthcare), and to pursue lawful recreational activities.

The most important criteria a fundamental right must possess was defined by natural law philosopher [John Locke](#) in his "[Second Treatise of Government](#)." Locke highlights everyone has the same rights which are granted at birth and rights are the "fewest people have dared to deny." In other words, our fundamental rights are those rights which are unanimously supported by the citizens of a nation. Another interesting property of fundamental rights is all rights are symmetrical and interrelated. According to [J. Budziszewski](#), [philosopher Aristotle](#) introduced the concept of symmetry by suggesting there should be no hierarchy of rights. In other words, all rights are equal and by disparaging or mitigating one may negatively affect other rights.

If everyone has the same fundamental rights and fundamental rights must be deep rooted in American culture ([Glucksberg v. Washington](#)), unanimous, protected by historical documents and Court cases, pertain to a legal action, and be equal, by following the laws of mathematics and human nature visualizing a few other properties of fundamental rights can be accomplished. For example, fundamental rights cannot be subdivided or improved, fundamental rights cannot be taken away, and fundamental rights are not a government-created entitlement. Furthermore, fundamental rights are controlled by the individual, the right cannot evolve or change over time, and the right cannot be controversial or a political issue. One point of interest, political issues are different from political rights. Political rights such as the right to vote, sit on juries, or attain public office are protected fundamental rights. On the other hand, political issues refer to subjects such as abortion, illegal immigration, diversity, welfare, and healthcare which are not fundamental rights.

Notice fundamental rights have nothing to do with a person's color, gender, sexual orientation, mental capacity, or socio-economic status. Fundamental rights have nothing to do with identity politics whose purpose is to create conflict and friction by segregating groups of people into categories who are taught to despise each other. Fundamental rights are not about preferential groups of people wanting more rights at the expense of other groups of people. And

fundamental rights are not about political ideologies, cancel culture, critical race theory, bullying, opinion media sources, or other types of propaganda and indoctrination. Instead, fundamental rights are about personal free will decisions and behavior. Life is complicated, but understanding fundamental rights is simple: We are all different, but we all enjoy the same fundamental rights.