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|  | Patrick Bohan For Congress |  |  |



How did I uncover all those Fundamental Rights listed on the home page of my website? Those in the Constitution are obvious – **the right to free speech, self-defense (Second Amendment), religious liberty, property, justice or due process, and to enter into contracts**. **Voting privileges** were granted for women and African-American men in the *Nineteenth and Thirteenth Amendments* respectively. This, of course, implicitly implies that everyone has the right or privilege to vote since women and African-Americans were excluded from the process in early American history. That being clarified, did I conjure our unenumerated rights from thin air? No, below are valid laws and Supreme Court cases that defend and protect the rights I outlined on the home page of my website.

**The right to work, marry, family, religion or conscience, to obtain knowledge, and contract** without government interference are outlined by Justice James McReynolds in *Meyer v. Nebraska (1923):*

"The Court has never attempted to define, with exactness, the liberty guaranteed by the [Fourteenth Amendment](https://www.thoughtco.com/womens-rights-and-the-fourteenth-amendment-3529473). Without doubt, it denotes not merely freedom 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 common law as essential to the orderly pursuit of happiness by free men."

**The right to work, travel, justice, safety, equality for taxes, profit, life, liberty, happiness, and property** are outlined by Justice Bushrod Washington in the circuit court case *Corfield v. Coryell (1823):*

"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 [to travel], or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise [to work]; 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 justice]; to take, hold and dispose of property [property rights], either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State… [equality]"

**The Right to equity** is more than equal rights among citizens, but it also demonstrates that all rights enumerated or unenumerated are equal. Courts cannot deny one right to one person to protect another right for another person. Unfortunately, providing some rights more preference has been a common practice by Courts since Justice Stone's infamous *Footnote 4* in *Carolene Products v. United States* which protects enumerated rights but neglects unenumerated rights protected by the *Ninth and Fourteenth Amendments.*

Justice George Shiras wrote in *Prout v. Starr* that “The Constitution of the United States, with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity.”  In other words, all rights and clauses within the Constitution are equal. One does not take precedence over another. Common law may provide some crimes higher sentences than others, but within the Constitution there is no hierarchical standing of rights.

*The Northwest Ordinance of 1787* is a forgotten document that protects **the right to obtain knowledge, justice, representation in government, property contracts, and the rights of Native Americans or equality for all:**

"Article 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed."

"Article 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them."

*The Civil Rights Act of 1866* defends **the right to contract, justice, property, equality, and safety:**

"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."

**The right to privacy and family rights** was protected in *Griswold v. Connecticut 1965.* Specifically, Griswold protected marital privacy. William O. Douglas would write “We deal with a right of privacy older than the Bill of Rights — older than our political parties, older than our school system.”

**The Right to profit** from our work was defined by our Founders and expressed best by Thomas Jefferson “There cannot be a stronger natural right than that of a man making the best profit he can.” Similarly, in the 1874 case *Loan Association v. Topeka*, the power to tax was described as the power to destroy because it destroyed profits.

**Family rights, marriage, the right to obtain knowledge, and the right to contract** was protected in *Pierce v. Society of Sisters (1925)* when the Justice James McReynolds wrote that it was a right “of parents and guardians to direct the upbringing and education of children under their control.”

The Constitutional standard set in *Calder v. Bull (1798)*by Justice Samuel Chase was the government should enforce no law “that takes property [money] from A. and gives it to B.” Calder is still good law and protects us from welfare. Or what I refer to as the **antiwelfare right**. Chase’s opinion is consistent with the *takings clause* of the *Fifth Amendment* “Nor shall private property be taken for public use, without just compensation.” In other words, property (money) can be taken from private citizens for public use but not private use or benefit which would include welfare.

**The right to life, liberty, and to pursue happiness** comes directly from the *Declaration of Independence*. Liberty is considered a right, but I think it is more than a right. Liberty is what gives us the right to pursue other rights without government restraint.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

The right to friendships or freedom of association is not listed in the First Amendment, but most courts recognize it as a fundamental right implied in the amendment. For example, in American for Prosperity Foundation v. Bonta, the Court held that states could not demand that charities disclose their major donors fearing it would force many people from further associating with the charity. Freedom of association conflicts with many accommodation laws which greatly restricts this right. This dilemma requires a more thorough explanation that follow below.

Accommodation laws protect customers from being denied service because of discriminatory reasons. In 1883, Justice Bradley, who abhorred slavery, pointed out that the *Civil Rights Act of 1875* compelling store owners to serve everyone, violated the implied *First Amendment’s association clause*. The *Civil Rights Act of 1964* and cases such as *Atlanta Hotel v. United States* and *McClung v. Katzenbach* would reinstate controversial accommodation civil rights instead of focusing on protecting the rights of everyone equally. Now, the Supreme Court is trying to carve out ways around the Atlanta Hotel and Katzenbach rulings by saying, for example, in *Masterpiece Cakeshop v. Colorado* that those businesses that make artistic products can deny service that may conflict with their religious freedom. In this case, a baker was allowed to deny making a gay wedding cake on religious grounds. If every business has the same rights, then why are those that provide artistic services treated differently and have more rights than other businesses? Unfortunately, this is exactly what happens when we apply discrimination laws. Discrimination laws tend to discriminate. Take age discrimination, for instance. Protecting older workers sounds great, but what if tendered workers are not doing a good job? Protecting older workers may in fact, protect less diverse persons over more qualified diverse people. If a law, such as accommodation laws, cannot treat everyone the same or cannot protect the fundamental rights of business owners equally, then the law must fail.

Consider these four examples: Poor persons are denied service at a country club; a person is denied service at a restaurant because of their ideology; a person is denied service at a bakery because of their sexual preference; and a person is denied service because of their skin color. Which of the four examples are discriminatory and which are not? Technically, they are all discriminatory but they are not all treated the same. High membership fees to keep out the poor and denying Trump officials service in a restaurant may seem okay to many. But those same people may find it offensive that a baker would deny making a wedding cake for a gay couple or for any business to deny service because someone is Hispanic or black. That is the problem with accommodation laws, they are not consistent and everyone is treated differently. *If everyone has equal rights then in the four examples listed above everyone should be treated the same, not differently.* That is why I think businesses can discriminate on service. When people are treated the same, they cannot argue, but when they are treated differently than problems arise. This is how conflicts arise between races, genders, and other classes of people. *That is the irony with discrimination prevention laws, they discriminate*! *My point is this, we are making the world more complicated than it needs to be.* Furthermore, discrimination laws do not unite, but instead polarize and fuel *identity politics*. Let the free-market system play out by letting businesses pick its customers and to hire who they deem are the most qualified. Hundreds of discrimination laws are convoluting the system and violating the Constitution.

Yes, unfortunately, this means people can deny accommodations or service for discriminatory reasons. Trump Press Secretary, Sarah Huckabee, was denied service at a restaurant for her ideological beliefs. This is discrimination, but the owner is within their right to accommodate, serve, and contract with whom they please. How can we allow people to discriminate without punishment? Society will judge those businesses that deny service because of sexual preference, ideology, race, or gender. These businesses will lose customers and friendships. I am not condoning discrimination. I am merely suggesting that society must learn to tolerate some hate in order to protect all of our rights so they are applied equally. As hard as we try to eradicate discrimination it will never be eliminated. And it is pointless to try to eradicate a practice while also mitigating or denying fundamental rights to people. This is counterproductive and no one wins. We all lose when this happens.

That leaves three remaining rights that are not found in historical laws or documents: **the right to choose, to pursue health, and to play or enjoy recreation.** Perhaps, these are redundant rights protected by other rights. For instance, if we can pursue happiness one can presume pursuing health could be part of happiness. I thought the right to pursue health was important to add to the list because I wanted to illustrate there is a difference between the right to pursue health and healthcare. The individual controls pursuing health whereas, the economy, private sector, and government regulate and control healthcare which is mostly out of the individual’s authority. Only people have rights. The federal government and states have certain limited powers, but they do not have rights. Since people can pursue rights without government interference, any government meddling in a fundamental right limits its liberty and freedom. The bible supports the right to choose. God provides us with choices. He provided Adam and Eve a choice to stay away from the fruit on the tree of knowledge. In Joshua 6:24 God provides us a choice to pick Him or some other religious avenue. God does not make our decisions; He leaves free-will choices up to us. But we must live with the consequences that come with those decisions. I believe free will or choices are an important aspect of God’s plan and deserving of fundamental right status. I do not think anyone would question that enjoying hobbies and recreation are deep rooted in American society and culture. Playing with your children, going to a museum or ballgame, fishing, hunting, running, cycling, riding an ATV, playing ball, reading, sightseeing, swimming, and so on. These activities can also be considered choices and the right to pursue happiness. They could also encompass our right to health (exercising). Our rights revolve the self, families, work, friends, and recreation. Our rights are symmetrical because they are interconnected and related. Therefore, they must have the same intrinsic value because if one right is taken away, for example, the right to contract or choose, then many other fundamental rights go away such as the right to marriage or to vote. That is why we must protect all rights, equally.