

AP US Government – Chapter 4

Civil vs. Natural Rights

- Natural Rights
 - Rights given to you by nature
 - Inalienable
 - Locke: life, liberty, and property are the only three natural rights (defined in his document *Second Treatise*)
 - The government is created to protect these 3 rights
- Civil Rights
 - Rights given to you by the government
 - Each nation will be different
 - Rights that are essential to better protect man's natural rights
 - Government protects your civil rights by the creation and upholding of criminal laws

Responsibilities and Duties

- Lockean idea of Liberty:
 - Freedom from the restraint of others
- You have a responsibility to follow the law and respect the natural rights of others
- Many things people view today as rights are actually responsibilities
 - Education, maintaining good health, caring for the old and disabled

Equality

- The government has to treat its citizens equally
 - The government must protect man's life, liberty, and property
 - If the government tries to benefit citizen A at the expense of citizen B, it has violated B's rights

Equality of Opportunity vs. Equality of Outcome

- Equality of Opportunity
 - Government must ensure that all citizens have the opportunity to equally exercise their natural rights
 - All must be able to have the opportunity to pursue property
- Equality of Outcome
 - Government must ensure that all citizens have the *same* outcome in the practice of their natural rights
 - All must end up with the same amount of property

The Bill of Rights – Then and Now

- Civil liberties: the legal constitutional protections against the government
- The Bill of Rights: the first 10 amendments, which protect basic liberties, such as religion and speech

The Bill of Rights

- Madison’s opposition to
 - 1) Constitution is a general bill of rights
 - Writ of habeas corpus
 - Constitution organizes how the government behaves towards its citizens
 - 2) Historically, a bill of rights has been issued by a monarch
 - A king grants his subjects “rights”
 - 3) What if something is left out?
 - If omissions occur, then it implies that the government has sovereignty over this “right”

The Bill of Rights – Then and Now

- The Bill of Rights and the States
 - Written to restrict the national government
 - “Congress shall make no law...”
 - Barron vs. Baltimore (1833)
 - The 1833 Supreme Court decision holding that the Bill of Rights restrained only the national government, not the state governments
- Incorporation Doctrine: Bill of Rights applies to state AND local governments
 - Done through the 14th amendment
 - Guarantees of Due Process and that U.S. constitutional privileges and immunities cannot be prohibited by the states
 - 1st amendment protection of speech first incorporated to states in Gitlow vs. New York (1925)
 - Court announced that freedoms of speech and press “were fundamental personal rights and liberties protected by the due process clause of the 14th amendment from impairment by the states”
 - Overturned Barron v. Baltimore

14th Amendment

- History
 - Post Reconstruction: southern states were not allowing freed blacks to have the same civil liberties as whites
 - Republican congress creates [14th amendment] to guarantee blacks equal status as whites

- Three Clauses
 - 1) Due Process
 - Refers to any citizen or foreigner in the country
 - Part of the 14th amendment guaranteeing that persons cannot be deprived of life, liberty, or property by the U.S. or state governments without due process of law
 - General rule to take away life, liberty, and property
 - It must be a set procedure that all who are charged with a crime experience
 - 2) Equal Protection Clause
 - All citizens are equal under the law
 - Means that the government must treat all citizens equally when they have been legally injured
 - 3) Privileges and Immunities clause
 - Only applies to citizens
 - Minimum legal rights that exist for members of the political community

Original Meaning

- The Incorporation Doctrine is controversial!
 - Conservative argument
 - 14th amendment means what it says
 - Individuals are entitled to the procedure of Due Process
 - Does not include the Bill of Rights
 - Liberal argument
 - Bill of Rights is incorporated entirely into Due Process
 - Selective Incorporation
 - The idea that you need to look at cases individually and apply the 14th amendment through this approach

Freedom of Religion

- Part of the first amendment
- The Establishment Clause
 - “Congress shall make no law respecting the establishment of religion”
 - “Wall of separation btwn Church and state”
 - This phrase from a personal letter of Thomas Jefferson in 1802
 - Not present at the Constitutional Convention or involved in the drafting/ratifying of the first amendment
 - At the time of the ratification of the Constitution, some states did have “state” churches
 - This clause refers to congress
- What does it mean to have an established church?
 - You would have to be a member of the Church to be a full citizen

- Disestablishment
 - There will be no established NATIONAL church set by Congress
- Religion and Government?
 - Can religion, morality, and politics be separate?
 - The first amendment creates a free market system for religion
 - Which is why De Tocqueville believes religion is strong in the U.S.
- The Lemon Test
 - Lemon vs. Kurtzman (1971)
 - The Lemon Test: how the Court decides if an action has violated the Establishment Clause
 - It has secular purpose (secular = nonreligious)
 - The principle affect neither advances nor inhibits religion (implies neutrality)
 - It does not foster an excessive government entanglement with religion
- The Establishment Clause (continued)
 - Are school vouchers constitutional?
 - Zelman vs. Simmons-Harris (2002) upheld school vouchers
 - Organized prayer in public schools violates establishment clause
 - Engel vs. Vitale (1962)
 - School District of Abington Township, Pennsylvania vs. Schempp (1963)
 - What about displays of the Ten Commandments?
 - If it is displayed for a historical purpose it is okay. E.g., if displayed with another historical code of laws like Hammurabi's Code it is fostering education of historical laws
- The Free Exercise Clause
 - Prohibits the government from interfering with the practice of religion
 - 1) No punishment for the absence of belief
 - 2) Religious beliefs that are dangerous to civil society are not protected
 - Does the government have a compelling interest in banning the behavior?
 - Compelling interest: activity violates the safety of civil society
 - E.g., human sacrifice, polygamy, drug use
- Some religious practices may conflict with other rights, and then be denied or punished
 - Sherbert vs. Verner (1988)
 - 7th day Adventist who was ineligible for unemployment benefits due to religious conviction of not working Saturdays
 - Employment Division vs. Smith (1990)
 - Native American tribe who wants to smoke peyote in religious ceremonies
 - Compelling interest?
 - Religious Freedom Restriction Act (1993)
 - Passed in response to the Oregon vs. Smith case
 - Restored the compelling interest argument
 - Has been found unconstitutional in regards to state and local governments

Freedom of Expression

- Prior Restraint
 - Definition: a government preventing material from being published; censorship; unconstitutional
 - Near vs. Minnesota (1931)
 - *New York Times* co. vs. United States(1971)
 - Pentagon papers case
 - May be permissible during wartime
 - One may be punished after something is published
- Free speech and public order
 - Speech is limited if it presents a “clear and present danger”
 - Schenck vs. US (1919)
 - Permissible to advocate the violent overthrow of the government in abstract, but not to incite anyone to imminent lawless action
 - Brandenburg vs. Ohio (1969)
 - Speech is generally protected in public places, but usually not on another’s private property

Free Speech

- Citizens United Vs. FEC (2009)
 - Issues concerning campaign finance reform from McCain-Feingold and McConnell vs. FEC
 - Can political speech of a corporation be limited?
 - Political speech is protected under the first amendment
 - No; the majority maintained that political speech is indispensable to a democracy, which is no less true because the speech comes from a corporation

Freedom of Expression

- Free Press and Fair Trials
 - Is extensive press coverage of high profile trials (OJ Simpson; Martha Stewart) permissible?
 - The public has a right to know what happens; trial must be open to the public
 - The press’ own information about a trial may not be protected
 - Yet, some states have passed shield laws to protect reporters
- Obscenity
 - No clear definition on what constitutes obscenity
 - Justice Potter Stewart: “I know it when I see it”
 - Miller vs. California (1973) stated that materials were obscene if the work:
 - Appeals “to a prurient interest in sex”
 - Showed “patently offensive” sexual conduct

- Lacks a “serious literary, artistic, political, or scientific value”
 - Decisions on obscenity are based on local community standards
- Libel and slander
 - Libel: the publication of false or malicious statements that damage someone’s reputation
 - Slander: the same thing, only spoken, instead of printed
 - *New York Times vs. Sullivan* (1964): statements about public figures are libelous only if made with reckless disregard for truth
 - Private individuals have lower standards to meet to win libel lawsuits
- Symbolic Speech
 - Definition: nonverbal communication, such as burning a flag or wearing an armband
 - Generally protected along with verbal speech
 - *Texas vs. Johnson* (1989): Burning the American flag is symbolic speech and is protected by the first amendment
- Commercial Speech
 - Communication in the form of advertising
 - Generally the most restricted and regulated form of speech; regulated by the FTC
 - Newspapers are the most protected form of speech
 - Regulation of public airwaves
 - Broadcast stations must follow FCC rules
 - Regulation must be narrowly tailored to promote a compelling government interest
 - *U.S. vs. Playboy Entertainment Group* (2000)

Freedom of Assembly

- Right to assemble
 - Generally permissible to gather in a public place, but must meet reasonable local standards, such as fire codes and apply for permits
 - Balance btwn freedom and order
- Right to Associate
 - Freedom to join groups or associations without government interference
 - *NAACP vs. Alabama* (1958)

Right to Bear Arms

- Common national, state, and local gun laws
 - Restrictions on owning and carrying handguns
 - Background checks
 - Limited the sale of certain types of weapons
 - Requirements that guns be stored in a fashion to prevent their theft or children from accessing them

- Courts have usually upheld these laws
- Militia clause
 - Many advocates of gun control argued that the 2nd amendment applied only to the right of states to create militias
- District of Columbia vs. Heller (2008)
 - Individual right to possess a firearm unconnected with service in a militia
 - Use that arm for traditionally lawful purposes, such as self-defense within the home
 - Incorporation?
 - Does not directly incorporate the 2nd amendment: DC is not a state
 - Signals a likely future incorporation against the states

Defendant's Rights

- Much of the Bill of Rights (Amendments 4-8) apply to defendant's rights
- Interpreting defendant's rights
 - Criminal justice personnel are limited by the Bill of Rights and failure to follow constitutional protections may invalidate a conviction
 - Courts continually rule on what is constitutional and what is not
- Searches and seizures
 - Probable Cause: when the police have reason to believe a person should be arrested
 - Unreasonable searches and seizures: evidence is obtained in a haphazard or random manner, prohibited by the 4th amendment
 - Exclusionary Rule: the rule that evidence, no matter how incriminating, cannot be introduced into trial if it was not constitutionally obtained
 - Mapp vs. Ohio (1961)
- Self-Incrimination
 - Definition: when an individual accused of a crime is compelled to be a witness against himself or herself in court
 - Police must inform suspects of these and other 5th amendment protections upon arrest
 - Miranda vs. Arizona (1966)
- The Right to Counsel
 - The state must provide lawyers in most criminal cases (6th amendment)
 - Gideon vs. Wainwright (1963)
- Trials
 - 7th amendment right to a jury
 - 6th amendment guarantees "a speedy and public trial"
- Cruel and Unusual Punishment
 - 8th amendment forbids cruel and unusual punishment
 - The death penalty is not cruel and unusual punishment. It is an "extreme sanction, suitable to the most extreme crimes"
 - Gregg vs. Georgia (1976)
 - The death penalty's use and application varies by state

The Right to Privacy

- Is there a right to privacy?
 - Definition: the right to a private personal life free from the intrusion of the government
 - Not explicitly stated in the Constitution, but implied by the 4th amendment
 - Griswold v. Connecticut (1965)
- Controversy over abortion
 - Roe v. Wade (1973)
 - Planned Parenthood v. Casey (1992)
 - Protection of those seeking an abortion
 - Rights of protesters

Understanding Civil Liberties

- Civil Liberties and Democracy
 - Rights ensured in the Bill of Rights are essential to democracy
 - Courts typically protect civil liberties from excesses of majority rule
- Civil Liberties and the Scope of Government
 - In deciding between freedom and order, the U.S. generally chooses liberty
 - Civil liberties limit the scope of government, even though government efforts are needed to protect rights

Summary

- Civil liberties expressed in the Bill of Rights
- These are the individual's protections – for religion, expression, assembly, and the accused, etc. – against the government
- Legislatures and courts constantly define what the Bill of Rights protects in practice