Government Study Guide Chapter 4

❖ Civil vs. natural rights
  ➢ Natural rights
    ▪ Rights given to you by nature
    ▪ Inalienable
    ▪ Locke: life liberty property
      • Government created to better protect these three
  ➢ Civil rights
    ▪ Rights given to you by the government
      • Each nation will be different
    ▪ Rights that are essential to better protect men’s natural rights
    ▪ Government protects your civil rights by the citation and upholding of criminal law

❖ Responsibilities and duties
  ➢ Locke’s 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

❖ notes: civil liberties protect you from the government

❖ equality
  ➢ the government has to treat citizens equally
  ➢ the government must protect man’s life liberty and property
  ➢ if government tries to benefit citizen A at the expense of citizen B it has violated citizen 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 peruse 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

❖ bill of rights then and now
  ➢ Madison’s opposition to
    ▪ 1) constitution is a general bill of rights
      • Writ of habeas corpus
      • Constitution organizes how the government behaves towards you
2) historically a bill or rights have been issues 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 was over this right

- The bill of rights and the states
  - Written to restrict the national government
  - Congress shall make no law
  - Burnham v. Baltimore

- Incorporation doctrine: bill of rights applies to state and local governments
  - Done through the 14th amendment
  - Guarantee of the process and the US constitutional privileges and immunities cannot be prohibited by the states
  - First amendment protection of speech first incorporated to states in Giltow v. New York (1925)
  - Court announced that freedom 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”

- 14th amendment
  - History
    - Post-reconstruction: southern states were not allowing freed blacks to have the same civil liberties as whites
    - Republican congress creates to guarantee blacks equal status as whites
  - Three clauses
    - Sue process
    - Equal protection clause
    - Privileges and immunities
  - Due process clause
    - Refers to any citizen or foreigner in the country
    - General rule to take away life liberty an property
    - It must be a set procedure that all charged with a crime experience
  - 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
  - Privileges and immunities clause
    - Only applies to citizens
    - Minimum legal rights that exist for members of the political community

- Original meaning
  - Incorporation doctrine is controversial
    • Conservative argument
- 14th amendment means what it says
- Individuals are entities to the procedure of sue 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 all cases individually and apply the 14th amendment through this approach

- Freedom of religion
  - The establishment clause
    - Congress shall make no law respecting the establishment of religion
    - Wall of separation between the church and state
      - Thomas Jefferson (personal letter 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
      - The clause refers to congress
    - What does it mean to have an established church
      - You have to be a member of the church set by congress
    - Disestablishment
      - There will be no established national church set by congress

- Religion and government
  - The 1st amendment creates a free market system for religion
    - Why de Tocqueville believes religion is strong in the US

- The lemon test
  - Lemon v. Kurtzmen (1971)
  - The lemon test – how the court decides if the action has violated the establishment clause
    - It has a secular purpose
    - The principle affect neither advances nor inhibits religion (implies neutrality)
    - It does not foster an excessive government arrangement with religion

- Freedom of religion
  - Establishment clause
    - Are school couches constitutional
    - Organized prayer in public schools violates establishment clause
      - Engel v. Vitale (1962)
      - School district of Abington township, Pennsylvania v. Schempp
    - What about displays of the 10 commandments
The free excise clause
  - Prohibits government from interfering with the practice of religion
    - 1) no punishment for the absence of belief
    - 2) religious beliefs that are dangerous to call society are not protected
  - Does the government have a compelling interest in banning the behavior
    - Compelling interest – actively violates the safety of civil society
      - Human sacrifice, drug use, polygamy
  - Come religious practices may conflict with other rights and then be denied or punished
    - Sherbert v. Verner
      - 7th day was Saturday – say of rest who was ineligible for unemployment benefits sue to religious conviction of not working on Saturday
    - Employment division v. Smith (1990)
      - Native American tribe who wants to smoke peyote in religious ceremonies
  - Religious freedom restoration act (1993)
    - Passed in response to the Oregon v. Smith case
    - Restored the compelling interest argument
    - Has been found unconstitutional in regards to the states and local governments

Freedom of expression
  - Prior restraint
    - A government preventing material from being publishes censorship, unconstitutional
      - Near v. Minnesota
      - New York times v. Unites States (1971)
    - Ma 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
      - Shneck v. US (1969)
    - Speech in generally protected in public places but usually not on another’s private property
  - Libel and slander
    - Libel: publication of false or malicious statements that damage someone’s reputation
    - Slander – the same thing only spoken instead of printed
      - New York times v. Sullivan (1964) statements about public figure are libelous only if made with reckless disregard for truth
    - Private individuals have lower standard to meet to win libel lawsuits
  - Citizens united v. FEC (2009)
- Issues concerning campaign finance reforms from McCain Feingold and McConnell v. FEC

- Can political speech of or corporation be limited
  - Political speech is protected under the 1st 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

- Free press and fair trials
  - Is extensive press coverage of high profile trials permissible
  - The public has a right to know what happens trial must be open to the public
  - The press’ own information about a trial might not be protected
    - Come states have passed shield laws to protect reporters

- Obscenity
  - No clear definition on what constitutes obscenity
    - Justice Potter: “I know it when I see it”
  - Miller v. California (1973) states that materials were obscene if they were
    - Appeals to an interest in sex
    - Allowed “potentially offensive” sexual conduct
    - Lacks serious literary artistic political or scientific value
  - Decisions on obscenity are based on local community standards

- Symbolic speech
  - Nonverbal communication such as burning a flag or wearing an armband
  - Generally protected along with verbal speech
    - Texas v. Johnson (1989) burning the American flag is symbolic speech protected by 1st amendment

- Newspapers highest written protection

- Commercial speech
  - Definition: communication in the form of advertising
  - Generally the most restricted and regulated form of speech (FTC)
  - Regulation of the public airwaves
    - Broadcast stations must follow federal communication commission rules
    - Regulation must be narrowly tailored to promote a compelling governmental interest
      - States v. Playboy entertainment group (2009)

- Freedom of assembly
  - Generally permissible to gather a public place but must meet reasonable local standards, such as fire does and apply for permits
    - Balance between freedom and order
  - Right to assemble
    - Freedom to join groups or associations without government interference
      - NAACP v. Alabama
Right to bear arms
- Common national state and local gun laws
  - Restrictions on owning and carrying hand guns
  - Background checks
  - Limited the sales of certain weapons
  - Requirement that guns be stored in a fashion to prevent them theft or children from accessing and firing them
- Courts have usually upheld these
- Militia clause
  - Many advocates of gun control argued that the 2nd amendment opposed only to the right of states to create militias
  - Individual right to process a firearm unconnected with service in the militia
  - Use that arm for traditionally lawful purposes such as self-defense within the home
- Incorporation
  - Does not directly incorporate the second amendment D.C. is not a state
  - Signals a likely future incorporation against the states

Defendants’ rights
- Much of the bill of rights (amendments 4-8) apply to defendants’ rights
- Interpreting defendants’ 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 police have reason to believe that a person would be arrested
  - Unreasonable searches and seizures evidence is obtained is a haphazard a 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 v. Ohio (1961)
- Self-incrimination
  - Definition – when an individual accused of a crime is compelled to be witness against himself/herself in court
  - Police must inform suspects of these and other 5th amendment rights upon arrest
    - Miranda v. Arizona (1966)
  - Protection from coerced confessions and entrapments
- The right to counsel
  - The state must provide lawyers in most criminal cases (6th Amendment)
    - Gideon v. Wainwright (1963)
 Trials
  - 7th amendment right to a jury
  - 6th amendment also guarantees a speedy and public trial
 Cruel and unusual punishment
  - The English amendment forbids cruel an unusual punishment
  - The death penalty is not cruel and unusual punishment it is “an extreme sanction suitable to the most extreme cases”
    - Gregg v. Georgia (1976)
  - The death penalty’s use and application varies by state
 Right to privacy
  - Undue burden test – burden of a mother for abortion, what makes it too hard to get an abortion
  - Is there a right to privacy
    - Definition – the right to a private personal life free from the intrusion of government
    - Not explicitly states in the constitution bit implied by the 4th amendment
      - Griswold v. Connecticut (1965)
 Controversy over abortion
  - Roe v. Wade (1973)
  - Planned Parenthood v. Casey (1992)
  - Protections of those seeking an abortion
  - Rights of protestors
 Understanding civil liberties
  - Civil liberties and democracy
    - Rights ensured by the bill of rights are essential to democracy
    - Courts typically protect civil liberties from exercises of majority rule
    - Civil liberties and the scope of government
      - In deciding between freedom and order the united states generally chooses liberty
      - Civil liberties limit the scope of government even though government efforts are needs to protect rights
 Summary
  - Civil liberties are expressed in the bill of rights
  - These are individuals protections for religious expression assembly and the accused against the government
  - Legislature and courts constantly define what the bill pf rights protects in practices
 Vocabulary
  - Civil Liberties: The legal constitution protections against government. Although our civil liberties are formally set down in the Bill of Rights, the courts, policies, and legislatures define their meaning
Bill of Rights: The first 10 amendments in the U.S. Constitution, which define such basic liberties as freedom of religion, speech, and press, and guarantee defendants' rights

First Amendment: The Constitutional amendment that establishes the five great liberties: freedom of the press, of speech, of religion, assembly and petition

Barron v. Baltimore: The 1833 Supreme Court decision holding that the Bill of Rights restrained only the national government, not the state governments

Gitlow v. New York: The 1925 Supreme Court decision holding that freedoms of press and speech are "fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states" as well as by the federal government. Overturned Barron v. Baltimore

Fourteenth Amendment: The constitutional amendment adopted after the Civil War that states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of liberty, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Due Process Clause: Part of the Fourteenth Amendment guaranteeing that persons cannot be deprived of life, liberty, or property by the United States or state governments without due process of law.

Incorporation Doctrine: The legal concept under which the Supreme Court has nationalized the Bill of Rights by making most of its provisions applicable to the states through the Fourteenth Amendment

Establishment Clause: Part of the First Amendment stating that "Congress shall make no law respecting an establishment of religion"

Free Exercise Clause: A First Amendment provision that prohibits government from interfering with the practice of religion

Lemon v. Kurtzman: The 1971 Supreme Court decision that established that aid to church-related schools must 1. Have a secular purpose, 2. Have a primary effect that neither advances nor inhibits religion; 3. not foster excessive government entanglement with religion

Engel v. Vitale: The 1962 Supreme Court decision holding that state officials violated the First Amendment when they wrote a prayer to be recited by New York's school children

School District of Abington Township, Pennsylvania v Schempp: A 1963 Supreme Court case holding that a Pennsylvania law requiring Bible reading in schools violated the establishment clause of the First Amendment

Prior Restraint: A government preventing material from being published. This is a common method of limiting the press in some nations, but it is usually unconstitutional in the United States, according to the First Amendment and confirmed in the 1931 Supreme Court case Near v. Minnesota

Near v. Minnesota: The 1931 Supreme Court decision holding that the First Amendment protects newspapers from prior restraint
Schenck v. United States: A 1919 decision upholding the conviction of a socialist who had urged young men to resist the draft during World War I. Justice Holmes declared that government can limit speech if the speech provokes a "clear and present danger" of substantive evils. This case included the analogy of shouting fire in a crowded theater.

Zurcher v. Stanford Daily: A 1978 Supreme Court decision holding that a proper search warrant could be applied to a newspaper as well as to anyone else without necessarily violating the First Amendment rights to freedom of the press.

Roth v. United States: A 1957 Supreme Court decision ruling that "obscenity is not within the area of constitutionally protected speech or press."

Miller v. California: A 1973 Supreme Court decision that avoided defining obscenity by holding that community standards be used to determine whether material is obscene in terms of appealing to a "prurient interest" and being "patently offensive" and lacking in value.

Libel: The publication of false or malicious statements that damage someone's reputation.

New York Times v. Sullivan: Decided in 1964, this case established the guidelines for determining whether public officials and public figures could win damage suits for libel. To do so, individuals must prove that the defamatory statements were made with "actual malice" and reckless disregard for the truth.

Texas v. Johnson: The 1989 case in which the Supreme Court struck down a law banning the burning of the American flag on the grounds that such action was symbolic speech protected by the First Amendment.

Symbolic Speech: Nonverbal communication, such as burning a flag or wearing an armband. The Supreme Court has accorded some symbolic speech protection under the First Amendment.

Commercial Speech Communication in the form of advertising: It can be restricted more than many other types of speech but has been receiving increased protection form the Supreme Court.

Miami Herald Publishing Company v. Tornillo: A 1974 case in which the Supreme Court held that a state could not force a newspaper to print replies from candidates it had criticized, illustrating the limited power of government to restrict the print media.

Red Lion Broadcasting Company v. Federal Communication Commission: A 1969 case in which the Supreme Court upheld restrictions on radio and television broadcasting. The restrictions on the broadcast media are much tighter than those on the print media because there are only a limited number of broadcasting frequencies available.

NAACP v. Alabama: The Supreme Court protected the right to assemble peaceably in this 1958 case when it decided the NAACP did not have to revel its membership list and thus subject its members to harassment.

Probable Cause: The situation occurring when the police have reason to believe that a person should be arrested. In making the arrest, police are allowed legally to search for and seize incriminating evidence.
o Unreasonable Searches and Seizure: Obtaining evidence in a haphazard or random manner. A practice prohibited by the Fourth Amendment. Probable cause and/or a search warrant are required for a legal and proper search for and seizure of incriminating evidence.

o Search Warrant: A written authorization from a court specifying the area to be searched and what the police are searching for.

o Exclusionary Rule: The rule that evidence, no matter how incriminating, cannot be introduced into a trial if it was not constitutionally obtained. The rule prohibits use of evidence obtained through unreasonable search and seizure.

o Mapp v. Ohio: The 1961 Supreme Court decision ruling that the Fourth Amendment's protection against unreasonable searches and seizure must be extended to the states as well as to the federal government.

o Fifth Amendment: A constitutional amendment designed to protect the rights of persons accused of crimes, including protection against double jeopardy, self-incrimination and punishment without due process of law.

o Self-Incrimination: The situation occurring when an individual accused of a crime is compelled to be a witness against himself or herself in court. The Fifth Amendment forbids self-incrimination.

o Miranda v. Arizona: The 1966 Supreme Court decision that sets guidelines for police questioning of accused persons to protect them against self-incrimination and to protect their right to counsel.

o Sixth Amendment: A constitutional amendment designed to protect individuals accused of crimes. It includes the right to counsel, the right to confront witness, and the right to a speedy and public trial.

o Gideon v. Wainwright: The 1963 Supreme Court decision holding that anyone accused of a felony where imprisonment may be imposed, however poor he or she might be, has a right to a lawyer. (Sixth Amendment)

o Plea Bargaining: A bargain struck between the defendant's lawyer and the prosecutor to the effect that the defendant will plead guilty to a lesser crime (or fewer crimes) in exchange for the state's promise not to prosecute the defendant for a more serious (or additional crime).

o Eighth Amendment: The constitutional amendment that forbids cruel and unusual punishment, although it does not define this phrase. Though the Fourteenth Amendment, this Bill of Rights provision applies to the states.

o Cruel and Unusual Punishment: Court sentences prohibited by the Eighth Amendment. Although the Supreme Court has ruled that mandatory death sentences for certain offenses are unconstitutional, it has not held that the death penalty itself constitutes cruel and usual punishment.

o Gregg v. Georgia: The 1976 Supreme Court decision that upheld the constitutionality of the death penalty, stating, "It is an extreme sanction, suitable to the most extreme of crimes." The court did not, therefore, believed that the death sentence constitutes cruel and usual punishment.

Abby Carroll 10
- **McCleskey v. Kemp**: The 1987 Supreme Court decision that upheld the constitutionality of the death penalty against charges that it violated the Fourteenth Amendment because minority defendants were more likely to receive the death penalty than were White defendants.

- **Right to Privacy**: The right to a private personal life free from the intrusion of government.

- **Roe v. Wade**: The 1973 Supreme Court decision holding that a state ban on all abortions was unconstitutional. The decision forbade state control over abortions during the first trimester of pregnancy, permitted states to limit abortions to protect the mother's health in the second trimester, and permitted states to protect the fetus during the third trimester.

- **Planned Parenthood v. Casey**: A 1992 case in which the Supreme Court loosened the standard for evaluating restrictions on abortion from one of "strict scrutiny" of any restraints on a "fundamental right" to one of "undue burden" that permits considerably more regulation.