

Edwards, Wattenberg, and Lineberry
Government in America: People, Politics, and Policy
Fourteenth Edition

Chapter 4

Civil Liberties and Public Policy
EQ #32- What are Civil Liberties?
Why are they important?

Monday 3/4/19

- What are Civil Liberties?
- Where are they found?
- How have the Courts viewed basic rights of citizens over time in the U.S.? How has this changed?

HANDOUTS

- New Calendar for Ch 4
- Discuss the Case Brief Assignment. All Case Briefs DUE FRIDAY! I will check for them in class.

What are Civil Liberties?

- Read the article.
- Discuss-
 1. Does the student have a valid point in this dispute? Explain?
 2. Does the School have a valid point in this dispute? Explain.
 3. How should this dispute be decided? Explain.
 4. Is there any speech on a t-shirt that should **NOT** be allowed in public school? Explain several examples.

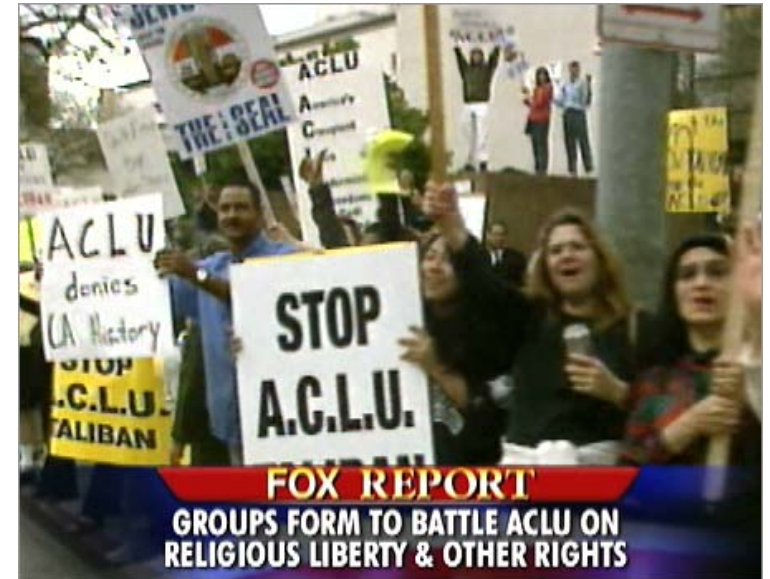


What are the MOST important rights we have in the U.S.?

- Find a partner
- Brainstorm a list of at least 10 rights you are guaranteed as a US citizen
- Which is MOST important from your list?
Why?

The Bill of Rights— Then and Now

- What are Civil Liberties?: Legal constitutional protections against unfair government action.
- A list of DO NOT's for the gov't
- Most are in the Bill of Rights (first 10 amendments) which protect basic liberties, such as religion and speech and the rights of the accused facing serious charges.
- Frequently disputes regarding civil liberties end up in the courts.



The Bill of Rights—Then and Now

TABLE 4.1

The Bill of Rights

These amendments were passed by Congress on September 25, 1789, and ratified by the states on December 15, 1791.

Amendment I—Religion, Speech, Assembly, Petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II—Right to Bear Arms

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Amendment III—Quartering of Soldiers

No Soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

Amendment V—Grand Juries, Double Jeopardy, Self-Incrimination, Due Process, Eminent Domain

No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal

case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI—Criminal Court Procedures

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII—Trial by Jury in Common-Law Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States.

Amendment VIII—Bails, Fines, and Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX—Rights Retained by the People

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X—Rights Reserved to the States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Bill of Rights—Then and Now

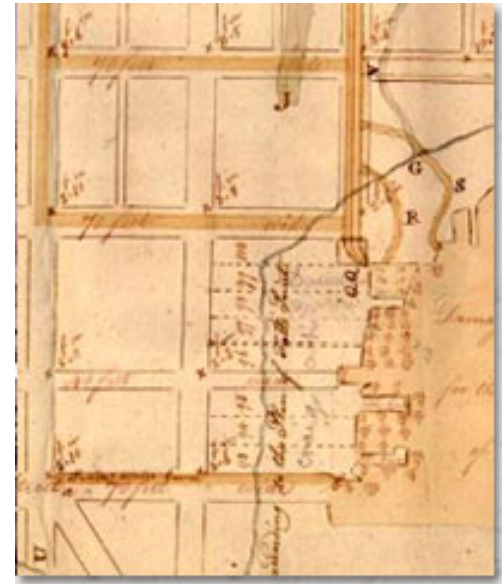
TABLE 4.2

The Nationalization of the Bill of Rights

DATE	AMENDMENT	RIGHT	CASE
1925	First	Freedom of speech	<i>Gitlow v. New York</i>
1931	First	Freedom of the press	<i>Near v. Minnesota</i>
1937	First	Freedom of assembly	<i>De Jonge v. Oregon</i>
1940	First	Free exercise of religion	<i>Cantwell v. Connecticut</i>
1947	First	Establishment of religion	<i>Everson v. Board of Education</i>
1958	First	Freedom of association	<i>NAACP v. Alabama</i>
1963	First	Right to petition government	<i>NAACP v. Button</i>
2008	Second	Right to bear arms	<i>District of Columbia v. Heller</i>
	Third	No quartering of soldiers	Not incorporated ^a
1949	Fourth	No unreasonable searches and seizures	<i>Wolf v. Colorado</i>
1961	Fourth	Exclusionary rule	<i>Mapp v. Ohio</i>
1897	Fifth	Guarantee of just compensation	<i>Chicago, Burlington, and Quincy RR v. Chicago</i>
1964	Fifth	Immunity from self-incrimination	<i>Mallory v. Hogan</i>
1969	Fifth	Immunity from double jeopardy	<i>Benton v. Maryland</i>
	Fifth	Right to grand jury indictment	Not incorporated
1932	Sixth	Right to counsel in capital cases	<i>Powell v. Alabama</i>
1948	Sixth	Right to public trial	<i>In re Oliver</i>
1963	Sixth	Right to counsel in felony cases	<i>Gideon v. Wainwright</i>
1965	Sixth	Right to confrontation of witnesses	<i>Pointer v. Texas</i>
1966	Sixth	Right to impartial jury	<i>Parker v. Gladden</i>
1967	Sixth	Right to speedy trial	<i>Klopfer v. North Carolina</i>
1967	Sixth	Right to compulsory process for obtaining witnesses	<i>Washington v. Texas</i>
1968	Sixth	Right to jury trial for serious crimes	<i>Duncan v. Louisiana</i>
1972	Sixth	Right to counsel for all crimes involving jail terms	<i>Argersinger v. Hamlin</i>
1962	Seventh	Right to jury trial in civil cases	Not incorporated
	Eighth	Freedom from cruel and unusual punishment	<i>Robinson v. California</i>
1965	Eighth	Freedom from excessive fines or bail	Not incorporated
	Ninth	Right of privacy	<i>Griswold v. Connecticut</i>

The Bill of Rights—Then and Now

- The Bill of Rights and the States
 - The BOR was written as guarantee against national government abuses against citizens.
 - It was based on the type that occurred during the American Revolution
 - BOR was written to restrict the national government
 - “Congress shall make no law...”



Should the BOR apply to states, too?

SCOTUS says NO initially...

- *Barron v. Baltimore* (1833)
- Should the BOR apply to state and local laws, too?
 - John Barron sued the city of Baltimore claiming that the city had deprived him of his property in violation of the Fifth Amendment.
 - SCOTUS, ruled that Barron had no claim because **the Bill of Rights does not apply to the state and local laws.**
 - This set legal precedent until the 14th A passed decades later.

Barron v. Baltimore, 1833

Significance

- The Court asserted that the Constitution was created "by the people of the United States" to apply only to the government that the Constitution had created—the NATIONAL government.
- STATE laws do NOT need to afford the same protections as the US Constitution
- This led to some strange state and local laws NOT being overturned
- Example- religious test to run for elected office in some states.

14th A- Game Changer for expansion of Civil Liberties & Civil Rights

14th Amendment-

Passed after the Civil War in 1868

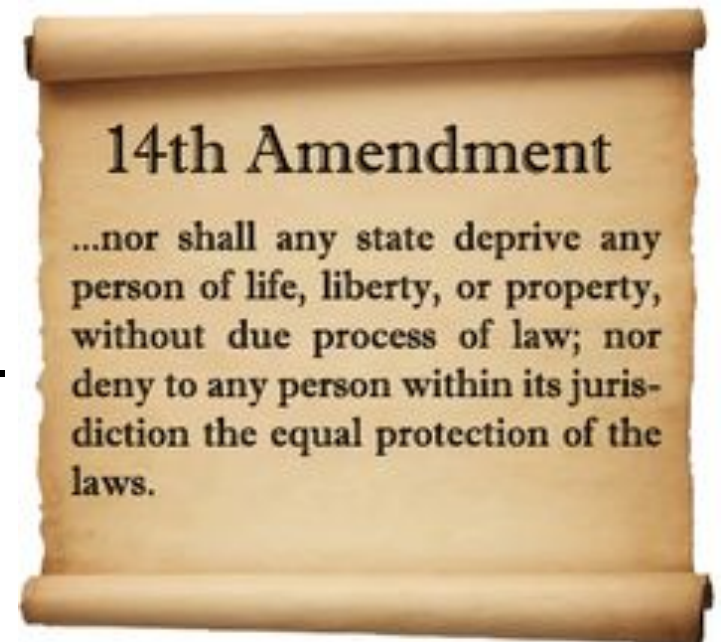
-Has TWO clauses

1. Due Process Clause –

Applies to Civil Liberties

2. Equal Protection Clause-

Applies to Civil Rights



14th Amendment Due Process Clause

- *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 life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
- **DUE PROCESS-** Means citizens are entitled to FAIR treatment in the US judicial system

The Bill of Right and the 14th Amendment

Gitlow v. New York, 1925 – Gitlow sues because a state law has violated his right to free speech

Significance-This is the FIRST time SCOTUS ruled that the BOR applies to the state laws, too.

- Today, most of the BOR protections have been “incorporated” or applied to state and local laws because of the Due Process clause of the 14th A.
 - First Amendment protection of speech first incorporated to states in *Gitlow v. New York* (1925). Other rights have also been protected over time, NOT all at once.
 - ***Selective Incorporation** is the term for the Court’s case-by-case application of the BOR to state laws, too.

Film Clip- Selective Incorporation Review

- <https://sandbox.spcollege.edu/index.php/2015/03/selective-incorporation-the-bill-of-rights-and-the-fourteenth-amendment/>

Selective incorporation cases

TABLE 4-1 Selective Incorporation of Rights of Free Expression In the 1920s and 1930s, the Supreme Court selectively incorporated the free-expression provisions of the First Amendment into the Fourteenth Amendment so that these rights would be protected from infringement by the states.

<i>Supreme Court Case</i>	<i>Year</i>	<i>Constitutional Right at Issue</i>
<i>Gitlow v. New York</i>	1925	First Amendment's applicability to free speech
<i>Fiske v. Kansas</i>	1927	Free speech
<i>Near v. Minnesota</i>	1931	Free press
<i>Hamilton v. Regents, U. of California</i>	1934	Religious freedom
<i>DeJonge v. Oregon</i>	1937	Freedom of assembly and of petition

Selective incorporation cases

TABLE 4-2 Selective Incorporation of Rights of the Accused In the 1960s, the Supreme Court selectively incorporated the fair-trial provisions of the Fourth through Eight Amendments into the Fourteenth Amendment so that these rights would be protected from infringement by the states.

<i>Supreme Court Case</i>	<i>Year</i>	<i>Constitutional Right at Issue</i>
<i>Mapp v. Ohio</i>	1961	Unreasonable search and seizure
<i>Robinson v. California</i>	1962	Cruel and unusual punishment
<i>Gideon v. Wainwright</i>	1963	Right to counsel
<i>Malloy v. Hogan</i>	1964	Self-incrimination
<i>Pointer v. Texas</i>	1965	Right to confront witnesses
<i>Miranda v. Arizona</i>	1966	Self-incrimination
<i>Klopfer v. North Carolina</i>	1967	Speedy trial
<i>Duncan v. Louisiana</i>	1968	Jury trial in criminal cases
<i>Benton v. Maryland</i>	1968	Double jeopardy

Selective Incorporation- SUMMARY

1. What is a civil liberty? Where are most found in our constitution?
2. What is selective incorporation?
3. What was the first case to use selective incorporation?
4. Why is it said to be “selective?”
5. Which Amendment and clause makes selective incorporation possible?

TUESDAY

- First Amendment
 - Religion- Establishment Clause & Free Exercise Clause
 - Speech (begin)

Warm Up

1. What is a civil liberty?
2. How is the 14th A involved? Which clause?
3. Why are these cases significant?
 - Barron v. Baltimore
 - Gitlow v. New York

EQ #33

- **What are the key civil liberties of the First Amendment? How has the SCOTUS interpreted these?**
- Read the First A. Underline EACH freedom within it.

1st Amendment- Freedom of speech, religion, press, right to assemble, right to petition government

FREEDOM OF RELIGION

**DISCUSSION: DO WE HAVE
SEPARATION OF CHURCH AND
STATE IN THE UNITED STATES?**

First Amendment- Freedom of Religion

- Congress shall make no law respecting an *establishment* of religion or prohibiting the *free exercise* there of...
- Free exercise v. Establishment?

1st A- Freedom of Religion

- Has TWO clauses / protections regarding religion

1. The Establishment Clause

- Prohibits government from requiring citizens to follow a specific religion or any religion at all.

2. The Free Exercise Clause

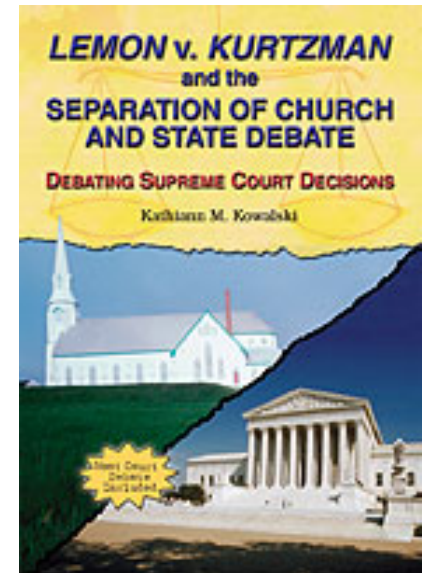
- Prohibits government from unnecessarily interfering with Citizens' **practice** of religion
- Some religious practices may conflict with other rights, and then can be denied or forbidden.

What has SCOTUS said about how to enforce the Establishment Clause?

- The courts use the following general rules-
- Religion must be kept out of public schools and other places where citizens are required to be.
- Religious groups (churches and schools) can access public tax money so long as all religions have similar access and there is not excessive entanglement between religious and secular (public/non-religious) spheres.

Freedom of Religion

- The Establishment Clause Landmark Case
 - *Lemon v. Kurtzman* (1971)
 - FACTS- Local government law reimbursed nonpublic schools (most Catholic) for the teachers salaries who taught secular material and for secular textbooks.
 - Did this violate the First Amendment Establishment Clause?



Lemon v. Kurtzman, 1971

- SCOTUS allows aid to religious schools if...
- The decision created the LEMON TEST which is used by SCOTUS when considering separation of church and state disputes.

Lemon v. Kurtzman, 1971 –What is the Lemon Test?

- **A government law or action violates the Establishment Clause unless it:**

1. Has a significant secular (non-religious) purpose.
2. Does not advance or inhibit religion.
3. Does not foster excessive entanglement between government and religion.

ACTIVITY- Using the LEMON Test, evaluate the state actions...



Establishment Clause

- *Engel v. Vitale* (1962)
 - **FACTS**- State officials wrote a prayer to be recited in NY schools.
 - **Q- Does mandatory prayer in public schools violate Establishment Clause?**
 - **SCOTUS- YES!**



SD Abington Township v. Schempp

- **FACTS**- A Pennsylvania law required Bible reading in public schools.
- **Q**- Does required Bible reading violate the establishment clause?
- SCOTUS- **YES!**

Wallace v. Jaffree, 1985

- **FACTS-** Alabama law requires daily silent meditation for an opportunity to pray in public schools.
- **Q-** Is a required silent meditation time a violation of the Establishment Clause?
- **SCOTUS-** YES!

First Amendment- Free Exercise Clause

- **The Free Exercise Clause**

- Prohibits government from interfering with the practice of religion
- Religious practices that conflict with other rights and laws may be denied or even punished.
- What if your religious beliefs keep you from treating your sick child?
- What if your religious beliefs require sacrificing an animal?
- What if your religious beliefs allow you to marry more than one spouse?

Religion-Free Exercise

- **SCOTUS general rules about Free Ex-**
 - Citizens can believe whatever they like
 - Courts can limited the practice of those beliefs
 - Laws that do not single out a specific religion or its practice are generally constitutional when there is legitimate state interest

Warm Up

1. What are the TWO religious protections listed in the 1st Amendment?
2. List THREE general trends in the way SCOTUS rules on cases for EACH provision.

Activity- Read Cases

1. *Oregon Employment Division v. Smith*, 1988

2. *Reynolds v. U. S.*, 1831

- Read ONE case; mark it up; write its significance. **Pair share your cases.**
- **Facts**
- **Ruling/Holding**
- **Significance**

Free Exercise- *Employment Division v. Smith,*

Employment Division v. Smith (1988)

-FACTS- Oregon drug law prohibited the consumption of illegal drugs for sacramental religious uses. Two drug counselors took peyote on their time off and were fired. When they seek unemployment benefits, Oregon denies them

- **ISSUE-** Does a law prohibiting drug use for spiritual purposes violate the free exercise clause?
- **Significance-** SCOUTS decides state laws interfering with religious practices but NOT aimed at one specific religion are constitutional

Reynolds v. U.S., 1879

- **FACTS**- Mormon religion encouraged marriage to more than one spouse. State laws forbid this.
- Q- Is a religious belief (polygamy) a legal defense to criminal activity?
- **SCOTUS**- NO! If the state/government has compelling reasons for a law, the law is constitutional.

Wisconsin v. Yoder, 1972

- **FACTS-** Wisconsin law requires all parents send their kids to school until age 16. Amish religion says school after 8th grade is against their religious beliefs.
- **Q-** Does state law that criminalizes parents who refuse to send their child to school for religious reasons violate their free exercise?
- **SCOTUS-** YES! Parents' religious beliefs outweighed the state interest in this instance

Wednesday

- Freedom of Speech and Expression
- Commercial Speech
- Right to Assemble

First Amendment- Freedom of SPEECH

- Speech is truly EXPRESSION...
 - Can be nonverbal
 - Can be symbolic
- **General SCOTUS Trends-**
 - SCOTUS has been highly wary of government acts to limit speech that isn't dangerous to others.
 - School environment is different than other public environments—speech can be limited/ more restrictive.

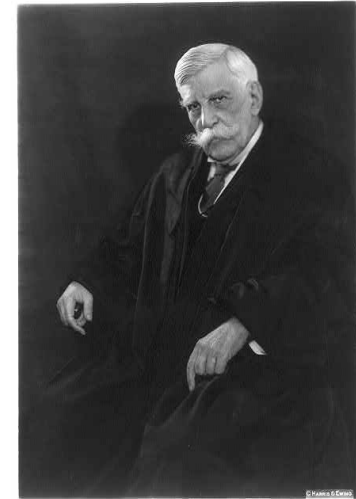
When is Speech NOT protected?

Speech is limited / NOT protected-

1. If speech poses a danger to public

2. If it is defamation=malicious and untrue

3. If it is **obscene / inappropriate**



Freedom of Speech-

What is NOT protected?

1. Threats to Public Order

-Speech that threatens public order and safety is NOT protected!

- ***Schenck v. U.S.***, 1919- Schenck criticized draft and encouraged protest against it.
- **SCOTUS-** Speech can be limited if it presents a “clear and present danger,” i.e. if it causes a risk to public order...especially during war time

Freedom of Speech- What is NOT protected?

2. **Defamation- Libel & Slander NOT protected!**

- **Libel:** the publication of written false or malicious statements that damage someone's reputation
- **Slander-**spoken false statements to a third party that damage reputation
 - *New York Times v. Sullivan* (1964): statements about public figures are libelous only if made with reckless disregard for truth.
- Private individuals have lower standard to meet to win libel lawsuits.

Freedom of Expression- What is NOT protected? **Obscenity**

3. Obscenity is NOT protected speech

- **What is obscenity?** This is subjective and hard to regulate for SCOTUS
- No clear definition on what is obscene



What is Obscenity?

Miller v. California (1973) established a test.

– Expression is considered obscene if it:

- Appeals “to a prurient interest in sex”
- Shows “patently offensive” sexual conduct
- Lacks “serious literary, artistic, political or scientific value”

– Decisions as to what is obscene are based on **local community standards** (NY vs. Iowa may be different)

1st A- Freedom of Press

- What is **Prior Restraint**?
 - **Definition:** when government prevents material from being published; a.k.a. *censorship*;
 - **SCOTUS says prior restraint is nearly always unconstitutional**
 - Est. in *Near v. Minnesota* (1931)



Near v. Minnesota, 1931

FACTS- Newspaper wanted to print editorials implicating members of the City Council with mob activity. City councilors said the stories were untrue and malicious; state had a gag law that allowed for censorship.

- **Issue-** Did Minnesota’s “gag law” violate the 1st Amendment?
- **SCOTUS** – YES! Court rejects censorship /cannot prohibit a publication in advance, even though the communication may be punishable after publication if found to be malicious & untrue

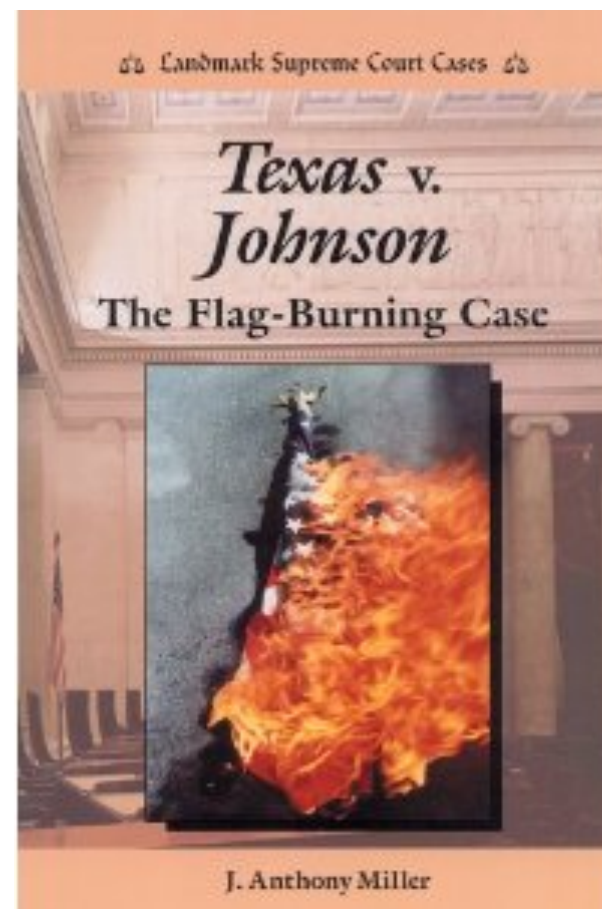
Any exceptions to *Near*?

- **EXCEPTIONS**

- Publications that risk national security may be censored during wartime.
- One may be punished *after* something is published if it was malicious (knowingly false and hurtful).

Freedom of Expression

- What is **Symbolic Speech**?
- Definition: 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 the First Amendment.



Freedom of Expression-

Tinker v. Des Moines, 1969

- **FACTS-** Mary Beth Tinker wears a black armband to school to protest the Vietnam War. She is sent home from school.
- **ISSUE-** Does prohibiting students from wearing armbands to school, as form of protest, violate the student's 1st A rights to free expression?
- **RULING/HOLDING- YES!** This is basic expression and not harmful to others or the school.

What is Commercial Speech?

- **Definition:** communication in the form of advertising
 - Generally the most restricted and regulated form of speech (Federal Trade Commission)
- Regulation of the Public Airwaves
 - Broadcast stations must follow Federal Communication Commission rules.
 - Rules are more lax on cable/ pay per view than broadcast; hours of day matter, too.



Freedom of Assembly

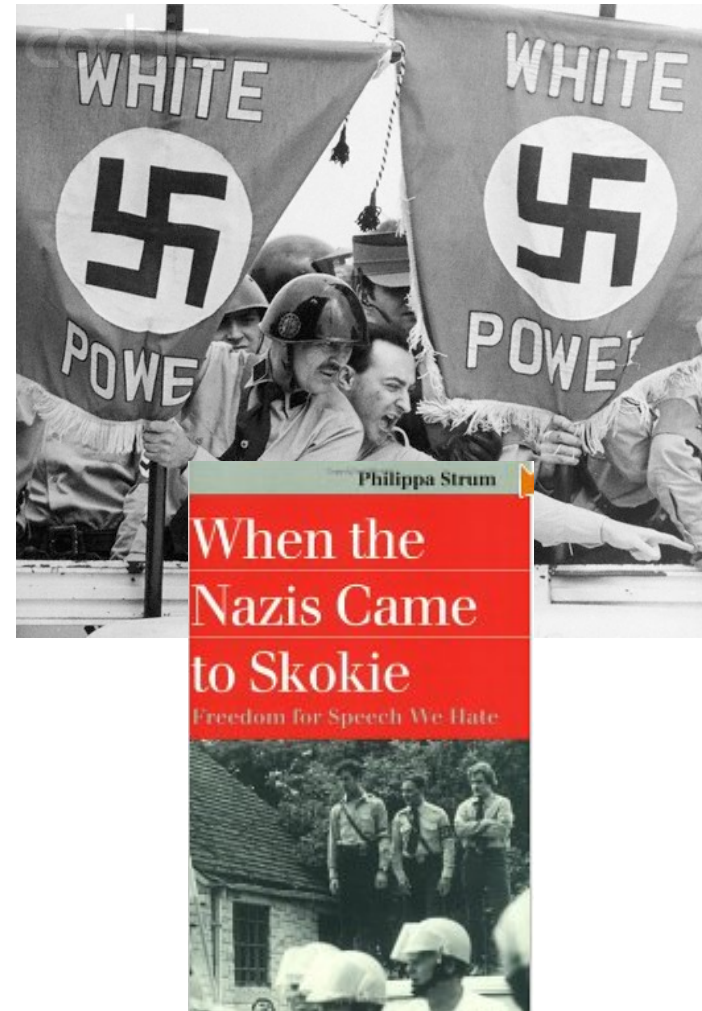
- Right to Assemble
 - Generally permissible to gather in a public place, but must meet reasonable local standards, such as fire codes and apply for permits
 - Balance between freedom and order

- Right to Associate
 - Freedom to join groups or associations without government interference
 - *NAACP v. Alabama* (1958)



Freedom of Assembly

- Nazis march in Skokie
 - Skokie Illinois was heavily Jewish neighborhood with many Holocaust survivors
 - American Nazis wanted to run a parade through this particular neighborhood.
 - The American Civil Liberties Union defends the Nazis' right
 - *Collins v. Smith*
 - The Nazis win
 - The ACLU loses 30,000 members



Thursday

- What is the **Second Amendment**? How has SCOTUS ruled on 2nd A cases?
- What are the **key rights of the accused**?
4th A- Search and Seizure; 5th A – Right to remain silent.

Debrief

- Name EACH of the Five protections from the 1st A
- Cite 1-2 cases for EACH protection you noted.

What is the 2nd Amendment?

- Read the text of the 2nd Amendment in your BOR handout in INB.
- **What do you think it means?** What do you think the Founders intended in 1787 when they wrote this?
- *“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”*

2nd A- Right to Bear Arms

- **Key Question:**
 - **Does the 2nd A ...**
 - Apply only to the right of states to create militias?
(**Gun Control Advocates**)
 - Or does it imply the right of citizens to own guns? (**Gun rights advocates**)



Right to Bear Arms- 2nd A.

- 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 and firing them.
- ***Courts usually uphold***



District of Columbia v. Heller, 2008

- **FACTS**-D.C. passes a law that restricts the licensing of handguns and requires licensed firearms to be kept at home and nonfunctional.
 - **ISSUE**- Is a law that restricts licensure of handguns and forbids them to be functional when kept in homes legal?
 - **RULING / HOLDING**- SCOTUS upheld the idea that individuals have the right to bear arms.
 - Incorporation of the 2nd Amendment (in D.C.)- but another case was needed (in connection with this one) to incorporate to the states
- *McDonald v. Chicago, 2010

McDonald v. Chicago, 2010

- **FACTS-** Chicago passes a law banning handguns in the city due to increased gun violence.
- **ISSUE-** Does the 2nd A apply to the states via the 14th Amendment? Are laws that ban handguns unconstitutional?
- **RULING / HOLDING-** Laws banning gun ownership are unconstitutional.
- Incorporates (applies to states) the right of an individual to "keep and bear arms" from the 2nd A.

Friday

EQ #34

- ***EQ #34- What are the key due process rights of the accused found in the 4th, 5th, 6th 7th and 8th Amendments?***

Defendants' Rights / Rights of the Accused

- Much of the Bill of Rights (Amendments 4, 5, 6, 7, and 8) apply to defendants' rights.
- “Due Process Rights” refers to **Defendants' Rights-**
 - Police and courts are limited by the BOR
 - Failure to follow constitutional protections may invalidate a conviction.



Defendants' Rights

TABLE 4.3

The Constitution and the Stages of the Criminal Justice System

Although our criminal justice system is complex, it can be broken down into stages. The Constitution protects the rights of the accused at every stage.

STAGE	PROTECTIONS
1. Evidence gathered	"Unreasonable search and seizure" forbidden (Fourth Amendment)
2. Suspicion cast	Guarantee that "writ of habeas corpus" will not be suspended, forbidding imprisonment without evidence (Article I, Section 9)
3. Arrest made	Right to have the "assistance of counsel" (Sixth Amendment)
4. Interrogation held	Forced self-incrimination forbidden (Fifth Amendment) "Excessive bail" forbidden (Eighth Amendment)
5. Trial held	"Speedy and public trial" by an impartial jury required (Sixth Amendment) "Double jeopardy" (being tried twice for the same crime) forbidden (Fifth Amendment) Trial by jury required (Article III, Section 2) Right to confront witnesses (Sixth Amendment)
6. Punishment imposed	"Cruel and unusual punishment" forbidden (Eighth Amendment)

4th Amendment

- **Read the 4th Amendment**
- Does it protect you if you're pulled over in your car by police? How so?
- Is your protection greater in your vehicle or your home or is it the same? What do you think and why?
- What do Police need to search you, your home or effects?

4th A – No Illegal Search & Seizure

- Prohibits unreasonable searches and seizures –evidence obtained in a haphazard or random manner
- To search, police must show **Probable Cause** –evidence or strong suspicion of a crime committed.
 - Search Warrant is required for legal search; issued by a judge after compelling evidence is gathered
- **Reasonable Exceptions:**
 - Airplanes
 - Random DUI stops & Drug dogs
 - Hot pursuit (chasing a suspect)
 - Screaming in a home...



4th A- Search & Seizure

- What if police find something illegal without first obtaining a search warrant?
- What if the police have a search warrant and, during the course of their legal search, find a different illegal item?

4th A- Search & Seizure

- 4th Amendment
 - **Exclusionary Rule:** the rule that evidence, no matter how incriminating, cannot be introduced into trial if it was not constitutionally obtained



4th Amendment

- Searches and Seizures
 - *Mapp v. Ohio* (1961)
- Dolree Mapp was convicted of possessing obscene materials after an admittedly illegal police search
- **ISSUE:** May evidence obtained through a search in violation of the 4th A be admitted in a state criminal proceeding?

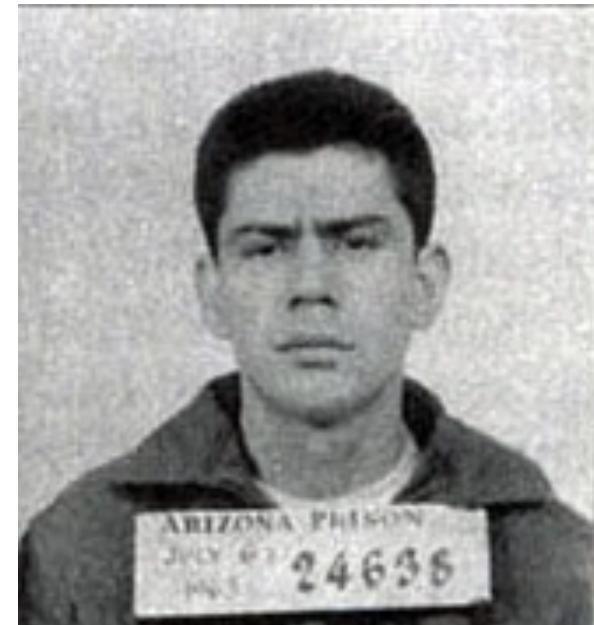


Mapp v. Ohio, 1961

- **RULING / HOLDING- SCOTUS**
incorporates the Exclusionary Rule and applies it to states.
- Materials collected from an illegal search are inadmissible in STATE trials, too.

What are the key 5th A Protections?

- **Self-Incrimination-**
Definition: When an individual accused of a crime is compelled to be a witness against himself or herself in court
- **Grand Jury-** Definition: Defendants accused of serious crimes get grand jury hearing to assess if sufficient evidence for trial.
- **Indictment-** Issued if there is enough evidence to go to trial



5th Amendment

- **Double Jeopardy-** Can't be tried twice for same crime
- **Eminent Domain-** private property can be taken by government with just compensation

5th A- *Miranda v. Arizona*, 1966

**[https://opb.pbslearningmedia.org/
resource/bf09.socst.us.const.miranda/](https://opb.pbslearningmedia.org/resource/bf09.socst.us.const.miranda/)**

5th A- *Miranda v. Arizona*, 1966

FACTS- Ernesto Miranda is arrested for kidnapping and rape. After two hours at the police station, he signs a written confession which is used at trial. Police did NOT inform him of his rights to remain silent and to an attorney.

ISSUE- Does the 5th A's protection against self-incrimination extend to police interrogation of a suspect?

Ruling/Holding-

- Police must inform suspects of 6th and other Fifth Amendment protections **upon arrest.**
- Provides protection from coerced confessions and entrapments

Monday 3/11

- 6th & 8th Amendments
- Right to Privacy
- Review
- Case Brief check off points today
- Ch 4 HW due today (keep if you want for studying)
- Graphic Org work
- Heads-Up- Ch 4 review and Quiz tomorrow; start Ch 5 Civil Rights

Warm-Up

- Name the amendment and significance for each case below...
 1. Lemon v. Kurtzman
 2. Miller v. California
 3. Near v. Minnesota
 4. Wisconsin v Yoder
 5. Tinker v Des Moines
 6. Schenck v. US
 7. Mapp v. Ohio
 8. What clause of which amendment has incorporated these rights?

What does the 6th A Protect?

Rights at Trial

- Read the text of the 6th Amendment-
- “In all criminal prosecutions, the accused shall enjoy the **right to a speedy and public trial**, by **an impartial jury** of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and **to be informed of the nature and cause of the accusation**; to be **confronted with the witnesses against him**; to have compulsory **process for obtaining witnesses in his favor**, and to have the **Assistance of Counsel** for his defence.”

6th Amendment Protections

- The 6th A lists rights and protections at trial
- Right to a speedy trial
- Right to a jury of peers
- Be informed of charges
- Right to confront witnesses against and request witnesses for
- Right to an attorney

6th Amendment- Rights at Trial

Plea Bargain

- Many cases don't reach trial.
- What is a **plea bargain**?
- **Plea bargaining**: A deal between the prosecution and defense for a defendant to plead guilty to a lesser crime; saves prosecution time and risk of losing; ensures defendant reduced prison time.
- **90 % of cases end here** and do NOT go to trial

6th A- Rights at Trial Juries

- **Right to a Jury of Peers**
 - **All serious crimes use juries**, though it's the defendant's choice.
 - **Jury decides guilt or not**
 - **Juries generally consist of 12 people**, but unanimity is not always needed to convict (state criminal case)
 - **Fed juries use 12 (and require unanimous conviction)** for criminal cases)
 - States may be less than 12 people

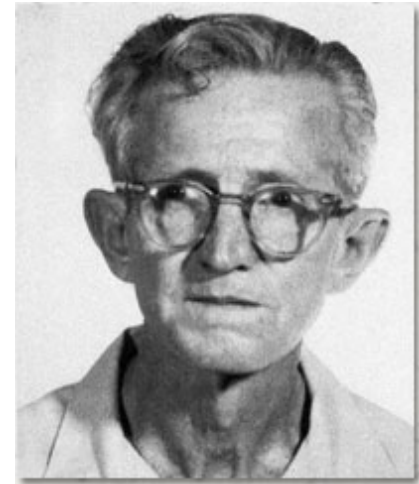
Habeas Corpus & Speedy Trial

- 6th A- guarantees **habeas corpus**- the right to be brought before a judge and informed of accusations against defendant.
- The Sixth Amendment also guarantees a “**speedy and public**” trial. No clear definition of “speedy;” trials can take months to years.
- After September 11th, game changed for accused terrorists. Many detained and not charged nor put on trial. SCOTUS- US gov’t **MUST** allow 6th A protections even to foreign nationals accused of terrorism.

6th Amendment

Gideon v. Wainwright, 1963

- The Right to Counsel / Attorney-
- Considered one of the most basic rights at trial.
- The state must provide lawyers in criminal felony cases (Sixth Amendment).
- Established in
 - *Gideon v. Wainwright* (1963)
 - <https://opb.pbslearningmedia.org/resource/bf09.socst.us.const.gideon/gideon-v-wainwright/>



Defendants' Rights

8th Amendment

- **Protection from Cruel and Unusual Punishment**

- The 8th A forbids cruel and unusual punishment.
- Most key cases involving the 8th A are about the constitutionality of the death penalty



In Attalla, Alabama, one hour outside Birmingham, a local judge, Kenneth Robertson, has handed out more than 20 public-shaming sentences in lieu of fines or jail time to Walmart shoplifters. This is Lisa King Fithian, who stole a pet playpen and a lava lamp, valued at \$26.97:

4 Corners-What do you think?

- The death penalty is cruel and unusual punishment under all circumstances and **should NOT be allowed** as a legal punishment in the U.S.

Strongly Agree

Agree

Disagree

Strongly Disagree

The Death Penalty

- How should SCOTUS decide if and when taking a life for a crime is “cruel and unusual punishment?”



- Are there circumstances when it should NOT be allowed?
- Are there times when the death penalty is appropriate? When/why?

8th A- No Cruel & Unusual Punishment

- SCOTUS temporarily banned the death penalty because it was given arbitrarily (*Furman v. Georgia*, 1972)
- States rewrote laws and it was challenged again.
- *Gregg v. Georgia*, 1976- SCOTUS- The death penalty is NOT cruel and unusual when it is used as “an extreme sanction, suitable to the most extreme crimes.”

8th A- *McCleskey v. Kemp*, 1987

- SCOTUS upheld the constitutionality of the death penalty against charges it was unfair because **minority defendants were more likely to receive the death penalty than were white defendants.**

What limits has SCOTUS placed on the death penalty?

- SCOTUS' limits on Death Penalty-
 - **No execution of mentally ill & mentally disabled; those under 18; rapists (where no murder occurs);**
 - Prosecution must show aggravating circumstances that make crime more violent
 - Defense attorneys must zealously represent the defendant against the death penalty.

Activity- BOR Graphic Org

- Amendment
- Right (list all in each Amendment)
- Cases associated with each right

Is there a Right to Privacy?

- EQ #35- Does the BOR Guarantee a Right to Privacy? How have the Courts ruled?

Is there a Right to Privacy?

- Do citizens have a Right to Privacy?
 - Definition: the right to a private personal life free from the intrusion of government
 - **Though NOT explicitly stated** in the Constitution, SCOTUS says it's implied by the 1st, 3rd, 4th and 9th A.
- ***Griswold v. Connecticut*** (1965)- first case to establish this right



Griswold v. Connecticut, 1965

- **FACTS-** A state law (from 1879) bans the use of contraceptives...even for married couples; could not get contraceptives to prevent pregnancy.
- **ISSUE-** Do laws limiting access to contraceptives violate one's right to privacy? Do citizens have a right to privacy?

Griswold v. Connecticut, 1965

- **RULING / HOLDING-** A right to privacy is inferred from several amendments in the BOR, which makes this law unconstitutional.
- **Significance-** First time SCOTUS acknowledges a constitutional right to privacy.



Roe v. Wade, 1971

- **ISSUE-** Do women have a constitutional right to seek an abortion?
- **RULING / HOLDING-** YES; SCOTUS cites the right to privacy established in Griswold
- State laws that limit access to or criminalize abortion in first trimester of pregnancy are unconstitutional.
- Affects 45 states!



The Right to Privacy

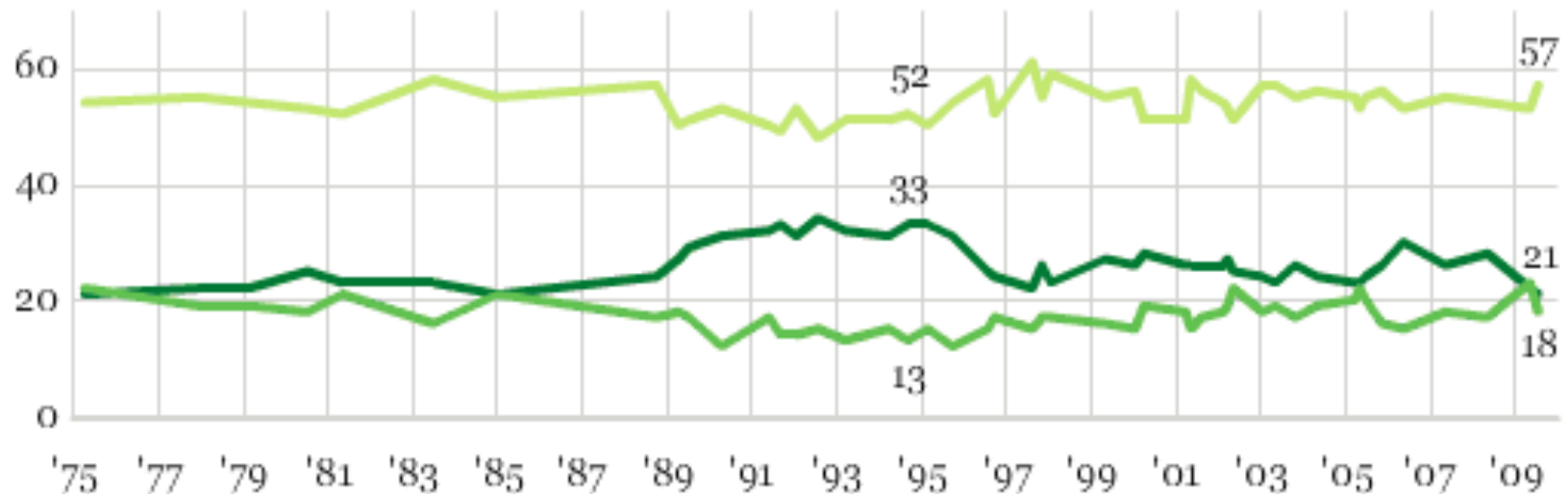
Planned Parenthood v. Casey, **1992**

- ***Planned Parenthood v. Casey*** (1992) Can states restrict a woman's right to abortion, so long as it isn't denied? Do restrictions violate *Roe v. Wade*?
 - The Court creates a new standard to determine the validity of laws restricting abortions. Does the state abortion regulation have the purpose of imposing an "undue burden,?" If not, OK.
 - Laws requiring a Waiting Period, Parental Consent or Informed consent upheld
 - Spousal notification struck down

Attitudes about Abortion- Closely Divided in the US

Do you think abortions should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?

■ % Legal under any ■ % Illegal in all ■ % Legal under certain



GALLUP POLL

Roe v. Wade Today

- *Roe V Wade* 1973 was decided primarily on the 9th Amendment "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," protected a person's right to privacy.
- The alias "Jane Roe" was used for Norma McCorvey,
- More recently, she has spoken out AGAINST abortion



US Patriot Act, 2002

- A federal law passed in response to terrorist attacks of 9/11.
- Allows federal gov't to track and intercept communications for law enforcement and foreign intelligence gathering.
- What does it do?
Does it go too far?
- Read ACLU handout. Discuss.



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 United States generally chooses liberty.
 - Civil liberties limit the scope of government, even though government efforts are needed to protect rights.



Summary

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