

THE BALANCE OF SAFETY AND RIGHTS

“BIG IDEA: Governmental laws and policies balancing safety and rights/liberties are based on the U.S. Constitution and have been interpreted differently as the squo changes.”

CAPITAL PUNISHMENT

First thing to note: the AM8 forbids cruel and unusual punishment as well as excessive bail, both of which the people writing the amendments found to be major problems in their former government. Under this definition the death penalty is not explicitly forbidden (under AM5 or AM8), however, the issue is up to states currently.

Many support the use of capital punishment in the case of premeditated murder, as well as in cases of murder, rape, treason, etc. The majority of executions stem from murder charges.

Second thing to note: capital punishment is not universally supported.

- In **Furman v. GA of 1972**, Furman was breaking and entering in order to rob the house, however, he was spotted, and in an attempt to flee, his gun managed to fire and kill someone accidentally. The question was “does this violate AM8 and AM14?”, and the answer, according to 5 of the 9 justices, was YES, since
 - The death penalty could be considered a violation of AM8 always.
 - Even without that, the death penalty is applied randomly, meaning that certain groups are targeted,the sentence was unconstitutional and thus Furman would not be executed.
- In **Gregg v. GA of 1976**, Gregg was convicted of murder and armed robbery. He appealed several times before reaching the SC. He once again argued that the capital punishment he had been given violated AM8 and AM14. The court ruled that since:
 - Intentional killings may justify the ending of the killer’s life for safety/retribution.
 - The justice system had a separate phase for determining whether or not capital punishment was suitable through careful consideration of precedent and the circumstances,these set of circumstances did not violate AM8, although they did say that:
 - No state can make capital punishment required by law
 - States should carefully consider the option before using it.

9/11

After 9/11, a prison was established in Guantanamo Bay in order to house suspects. It was eventually found that techniques resembling torture were used to get information from prisoners. The lack of habeas corpus (basically right to be tried and heard before punishment) was also a problem.

The counterarg to this was the idea that these tools were needed in order to keep the country safe in the wake of 9/11.

GUN VIOLENCE / SEARCH SEIZURE

After a series of shootings that went nationwide such as VA Tech and Newtown, laws became restrictive towards firearms by broadening the definition of assault weapons, imposing magazine capacity, etc.

This is not a universal response however, and some states have widened gun rights by allowing open carry and generally the inverse of the above. What action is taken can and usually does depend on party alignment.

Furthermore, there is the search and seizure. The British government let soldiers have writs of assistance which enable them to search any vessel, building, vehicle, etc, which tended to result in lots of conflict between soldiers and people getting searched. AM4 specifically protects against this (specifically, “unreasonable searches and seizures”). To add, seizure can refer to detainment/arrest.

AM4 provides a number of permissible reasons for searching and seizing, such as probable cause. There are other reasons too, such as law enforcement needing to maintain safety, that allow them to violate some rights in exchange for preservation of safety, or the fact that some situations may require heightened security and thus searches.

The SC often passes judgement as to when a warrant is required and when one is not. This has come into question after 9/11, after an XO allowed the government to ask telecommunications operators for information, which has asked the question, “Is this a violation of no unreasonable search and seizure.”

KEY TERMS

civil liberties/233

something you can do that the government cannot take away from you, such as criticizing the govt.

public interest/235

“this is good for the public enough to warrant the diminishing of some rights”

due process/236

the right to processing under the justice system (refers to trials, etc.)

Fifth Amendment/236

Contains the Due Process Clause and protects right to trial, protection from 2x jeopardy and self incrimination.

Fourteenth Amendment/236

Contains the equal protection clause and the other due process clause

Selective incorporation/236

Technically, the amendments apply only to the federal govt, however, some have been seen as important enough to apply to states as well, such as AM1.

Compelling governmental interest/239

an interest or issue important enough to justify the diminishing of some fundamental right.

prior restraint/239

the stopping of an act of expression before it happens (legally or illegal)

clear and present danger test/240

a test to see if some dangerous effect would result from act of expression. the criteria is basically: would there be some immediate, provable harm that outweighs the diminishing of some right, given the current circumstances? this was established in Schenck i believe.

Schenck v. United States (1919)/240

Charles S. distributed pamphlets urging people to not fight in WWI. found that this action was posing a clear and present danger as this publication, during wartime, would jeopardize safety.

symbolic speech/242

acts of expression that are not necessarily speech but still agreed upon to be protected by AM1, such as clothing choice.

Tinker v. Des Moines (1969)/243

kids wear armbands to protest something. school suspends them, parents challenge it. court found that their expression did not cause any disruption or damage and furthermore the action may have been to silence some political viewpoint and thus it was unconstitutional.

obscene speech/247

speech deemed so offensive to the general public that it is justifiable to make it illegal.

libel/248

false statements that are intended to defame someone. not protected by AM1. in order to qualify it has to be intentional, proven false and shown to have caused damage.

Miller v. California (1973)/248

Miller distributes adult materials through the mail. He is stopped by the authorities and he challenges this, and in the end these criteria are established:

- 1. The average person would find it repulsing.**
- 2. It depicts something sexual in a way defined by law.**
- 3. It lacks any legitimate value (i.e. scientific).**

Miller did not pass the Miller test.

New York Times v. United States (1971)/250

the Pentagon had some info leaked by one of its workers and that was subsequently published. the administration, knowing that the information detailed how the government deceived the people about their involvement in Vietnam, tried to stop its publication saying that it threatened national security. The SC disagreed, saying that no clear and

provable danger existed and thus the NYT was well within their rights to publish the leaked information.

wall of separation/252

the idea that church and state should be separated.

Establishment clause/253

prevents the government from establishing an official religion

free exercise clause/253

prevents the government from inhibiting the practice of religion.

Engel v. Vitale (1962)/254

case in which a voluntary prayer was instituted in NY state and was found to be unconstitutional because state funds were used to promote religion, amongst other reasons such as “the prayer was in practice involuntary”.

Lemon v. Kurtzman (1971)/257

this was when the state gave funds to private and potentially religious schools so they could meet state educational requirements. found to be unconstitutional because it entangled the state and church. the Lemon test set out these criteria to find out if something violated the ESTC:

- 1. The action must have a secular purpose that does not approve or disapprove of religion.**
- 2. The action must not have the effect of approving or disapproving religion.**
- 3. The action must not have the effect of establishing a relationship between governmental body and religious organization in which either or both are involved in each others' business.**

Wisconsin v. Yoder (1972)/257

the time when an Amish parent filed suit against the state for requiring the child to remain in secondary school despite it being against their beliefs, practices and religion. the argument that “compulsory school is the only way to make children into functioning adults” was also thrown out and deemed a not legitimate interest.

McDonald v. Chicago (2010)/264

Several suits were filed against Chicago and Oak Park in Illinois challenging their gun bans after the Supreme Court issued its opinion in District of Columbia v. Heller. In that case, the Supreme Court held that a District of Columbia handgun ban violated the Second Amendment. There, the Court reasoned that the law in question was enacted under the authority of the federal government and, thus, the Second Amendment was applicable. Here, plaintiffs argued that the Second Amendment should also apply to the states. The district court dismissed the suits. On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed.

Does the Second Amendment apply to the states because it is incorporated by the Fourteenth Amendment's Privileges and Immunities or Due Process clauses and thereby made applicable to the states?

The Supreme Court reversed the Seventh Circuit, holding that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states. With Justice Samuel A. Alito writing for the majority, the Court reasoned that rights that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment. The Court recognized in *Heller* that the right to self-defense was one such "fundamental" and "deeply rooted" right. The Court reasoned that because of its holding in *Heller*, the Second Amendment applied to the states. Here, the Court remanded the case to the Seventh Circuit to determine whether Chicago's handgun ban violated an individual's right to keep and bear arms for self-defense.