Chapter 4: Civil Liberties and Public Policy

1. The Bill of Rights
   1. The Bill of Rights – Then and Now
      1. The Bill of Rights
         1. known as the first 10 amendments to the US Constitution, which defines basic liberties as freedom of religion, speech, and press and guarantee defendants’ rights.
      2. Civil Liberties
         1. The legal constitutional protections against government. Although our civil liberties are formally set down in the Bill of Rights, the courts, police, and legislature define their meaning.
      3. The Bill of Rights is often a source of hypocrisy. For example, we support free speech, but don’t want KKK members walking down our streets.
   2. The Bill of Rights and the States
      1. The First Amendment
         1. The constitutional amendment that establishes the four great liberties; freedom of the press, of speech, of religion, and of assembly.
         2. “Congress shall make no law…”
            1. The Founders were limiting the power of the newly formed national government
         3. Barron v. Baltimore
            1. Declared that the first amendment only restrained the national government and not states and cities.
         4. Gitlow v. New York
            1. The 1925 Supreme Court decision holding that freedoms of press and speech are “fundamental personal rights and liberties protected to the due process of the Fourteenth Amendment from impairment by the states” as well as by the federal government.
            2. Due Process Clause

Part of the 14th Amendment guaranteeing that persons cannot be deprived of life, liberty, or property by the US government or states government without due process of the law.

* + - * 1. Incorporation doctrine

The legal concept under which the Supreme Court has nationalized the Bill of Rights making most of its provisions applicable to the states through the 14th amendment.

* + - 1. Fourteenth Amendment
         1. The amendment adopted after the Civil War that declares “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 any person within its jurisdiction the equal protection of the laws”

1. Freedom of Religion
   1. The Establishment Clause
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         1. Part of the First Amendment stating “Congress shall make now law respecting an establishment of religion”
      2. Jefferson argued that the First Amendment created a wall of separation between church and state
      3. Lemon v. Kurtzman
         1. Supreme Court ruling that stated aid to church related schools must do the following
            1. Have a secular legislative purpose
            2. Have a primary effect that neither advances nor inhibits religion
            3. Not foster an excessive government “entanglement” with religion
      4. Zelman v. Simmons-Harris
         1. The 2002 Supreme Court decision that upheld a state program providing families with vouchers that could be used to pay for tuition at religious schools
      5. School prayer is still an issue
      6. Engel v. Vitale
         1. The 1962 Supreme Court decision holding that state official violated the First Amendment when they wrote a prayer to be recited by New York’s schoolchildren.
      7. School District of Abington Township, Pennsylvania v. Schempp
         1. A 1963 Supreme Court decision holding that a Pennsylvania law requiring Bible reading in schools violated the establishment cause of the First Amendment.
   2. The Free Exercise Clause
      1. The Free Exercise Clause
         1. A First Amendment provision that prohibits government from interfering with the practice of religion.
      2. Individuals have the right to believe and practice what ever they like.
2. Freedom of Expression
   1. Americans can believe whatever they want to believe.
   2. Prior Restraint
      1. 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 as confirmed in the 1931 court case of Near v. Minnesota
      2. Matters of national security can defy this restraint
   3. Free Speech and Public Order
      1. Government can only retain free speech if it distrupts order
      2. Schenck v. United States
         1. 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.
      3. For example, one cannot yell “FIRE” in a crowded theatre.
   4. Obscenity
      1. Roth v. United States
         1. A 1957 ruling that “obscenity is not within the area of constitutionally protected speech or press”
      2. Miller v. California
         1. 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 value.
   5. Libel and Slander
      1. Libel
         1. The publication of false or malicious statements that damage someone’s reputation.
      2. Slander
         1. Spoken defamations, libel is a written defamation
      3. New York Times v. Sullivan
         1. Decided in 1964, this case established the guidelines for determining whether public officials and other public figures could win damage suits for libel. To do so, individuals must prove that the defamatory statements were make with “actual malice” and reckless disregard for the truth.
      4. Private individuals have lower standards for winning libel lawsuits.
   6. Symbolic Speech
      1. Symbolic Speech
         1. Nonverbal communication, such as burning a flag or wearing an armband. The Supreme Court has accorded some symbolic speech protection under the First Amendment
      2. Texas v. Johnson
         1. A 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.
      3. Freedom of Speech can go beyond spoken word
   7. Free Press and Fair Trials
      1. Court has never upheld a restriction on the press in the interest of a fair trial.
      2. The press can impact the outcome of a trial; we saw this with the Trayvon Martin case
      3. Zurcher v. Stanford Daily
         1. A 1978 Supreme Court decision holding that a proper search warrant could be applied to a newspaper as well as to anyone else with out necessarily violating the First Amendments rights to freedom of the press.
   8. Commercial Speech
      1. Commercial Speech
         1. Communication in the form of advertising. It can be restricted more than many other types of speech but has been receiving increased protection from the Supreme Court.
      2. FTC ensures that advertisers do not make false claims.
      3. In 1999 Supreme Court ordered that regulation of commercial speech is allowed when the speech concerns unlawful activity.
   9. Regulation of Public Airwaves
      1. The Federal Communications Commission regulates the content, nature, and very existence of radio and television broadcasting.
      2. Miami Herald Publishing v. Tornillo
         1. 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.
      3. Red Lion Broadcasting v. FCC
         1. A 1969 Supreme Court case which upheld restrictions on radio and television broadcasting. These restrictions on the broadcast media are much tighter than those on print media because there are only a limited number of broadcast frequencies available.
3. Freedom of Assembly
   1. Right to “peacefully assemble” is protected under the First Amendment
   2. Right to Assemble
      1. People literally have the right to assemble.
      2. There is no limitation on the content of a groups message
      3. Protest that verges on harassment, however, can be terminated
   3. Right to Associate
      1. The right to associate with people who share a common interest is another protected aspect of the First Amendment
      2. NAACP v. Alabama
         1. The Supreme Court protected the right to assemble peaceably in this 1958 case when it decided the NAACP did not have to reveal its membership list and thus subject its members to harassment.
4. Right to Bear Arms
   1. The Supreme Court has rarely dealt with the 2nd Amendment despite its controversy.
   2. Critics argue the right to bear arms only has to do with the ability of a state to create a militia.
   3. District of Colombia v. Heller
      1. Individual has right to posses a firearm unconnected with a militia.
   4. McDonald v. Chicago
      1. Second Amendment is extended down to the state and local governments.
   5. There are still restrictions on who can buy firearms and what types.
5. Defendants’ Rights
   1. Defendants’ Rights
      1. Crime is followed by an arrest with is followed by a prosecution with is followed by a trial which is followed by a verdict.
   2. Interpreting Defendants’ Rights
      1. Bill of Rights is not very specific on the details. The Supreme Court has helped extend specific provisions to citizens.
   3. Searches and Seizures
      1. Probable cause
         1. 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.
      2. Unreasonable search and seizures
         1. 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,
      3. Search warrant
         1. A written authorization from a court specifying the area to be searched and what the police are searching for.
      4. Exclusionary rule
         1. The rule that evidence cannot be introduced into a trial if it was not constitutionally obtained. The rule prohibits use of evidence obtained through unreasonable search and seizures.
      5. Mapp v. Ohio
         1. The 1961 Supreme Court ruling that the Fourth Amendment’s protection against unreasonable search and seizures must be extended to the states.
      6. The War on Terrorism
         1. The USA Patriot Act gave the government unprecedented ability to obtain evidence.
            1. Gave government the ability of the government to monitor internet and telephone calls.
   4. Self Incrimination
      1. Self Incrimination
         1. The situation occurring when an individual accused of a crime is compelled to be a witness against their self in court. The Fifth Amendment forbids involuntary self-incrimination.
      2. Fifth Amendment
         1. 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 the law.
      3. Miranda v. Arizona
         1. 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.
   5. The Right to Counsel
      1. Sixth Amendment
         1. A constitutional amendment designed to protect individuals accused of crimes. It includes the right to counsel, the right to confront witnesses, and the right to a speedy and public trial.
      2. Gideon v. Wainwright
         1. 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.
   6. Trials
      1. Plea bargaining
         1. 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.
         2. Right to a speedy trial with an impartial jury.
         3. Constitution does not specify number of people on a jury, but the federal government has settled on 12 members and a unanimous vote for a criminal conviction.
         4. Supreme Court has increasingly defended the role of a jury and limited the judges say in the criminal justice process.
      2. The War on Terrorism
         1. Pushed the boundaries after many were detained after 9/11.
         2. These people were detained in jails for months with no rights.
         3. Supreme Court ruled this the be unconstitutional.
   7. Cruel and Unusual Punishment
      1. Eighth Amendment
         1. The constitutional amendment that forbids cruel and unusual punishment, although it does not define this phrase. Though the Fourteenth Amendment this provision applies to states.
      2. Cruel and Unusual Punishment
         1. 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 unusual punishment.
      3. Gregg v. Georgia
         1. The 1976 Supreme Court decision that upheld the constitutionally of the death penalty, stating, “It is an extreme section, suitable to the most extreme of crimes.” The court did not, therefore, believe that the death sentence constitutes cruel and unusual punishment.
      4. McCleskey v. Kemp
         1. The 1987 Supreme Court decision that upheld the constitutionally 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.
      5. There has been a decline in executions since 1999 because of the gray nature of todays landscape.
6. The Right to Privacy
   1. Is There a Right to Privacy?
      1. Right to privacy
         1. The right to a private personal life free from the intrusion of the government.
      2. Private property is protected against intrusion by the government and cannot be seized.
   2. Controversy over Abortion
      1. Roe v. Wade
         1. The 1973 Supreme Court decision holding that a state ben 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 to man abortion during the third trimester.
      2. More than 50 million abortions since Roe. V. Wade
      3. Federal funds cannot be used to fund abortions.
      4. Planned Parenthood v. Casey
         1. A 1992 case which the Supreme Court loosened its standard for evaluating restrictions on abortions from one of “strict scrutiny” of any restraints on a “fundamental right” to one of “undue burden” that permits considerably more regulation.
7. Understanding Civil Liberties
   1. Civil Liberties and Democracy
      1. US has individual participation and rule of ideas
      2. US has done a good job in protecting the rights of diverse interest to express themselves. There is little danger that a political or economic elite will muffle dissent.
   2. Civil Liberties and the Scope of Government
      1. Government is huge. It is virtually impossible to hide form the police, the FBI, or the IRS.
      2. An expansion of freedom meant an expansion of government.