

American National Government
POL 140
Sections 3-6
Civil Liberties

Drew Seib

September 12, 2012

Announcements

- ▶ How are papers going? (Due soon)
- ▶ Exam is coming up in two weeks
- ▶ Constitution Day
- ▶ Email

Current Events

- ▶ What's going on in the world?
- ▶ Email

Goals

- ▶ Civil Liberties
- ▶ Bill of Rights
- ▶ Religion
- ▶ Speech
- ▶ Press
- ▶ Assembly

Basics

Civil Liberties: Individual rights that are constitutionally protected against infringement by government.

Bill of Rights: First 10 Amendments to the Constitution that outline our basic rights and protections from government.

Basics

Due process clause: “nor be deprived of life, liberty, or property without due process of law.”

- ▶ 5th Amendment
- ▶ 14th Amendment

Selective Incorporation: The absorption of certain provisions of the Bill of Rights into the Fourteenth Amendment so that these rights and freedoms are protected from infringement by the states.

Freedom of Expression

Freedom of Expression The ability to hold and communicate one's views of their choosing.

- ▶ Most basic of democratic rights.
- ▶ Why is freedom of expression so important to democracy?
- ▶ Can a democracy exist without freedom of expression?

First Amendment

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.

Establishment Clause

Congress shall make no law respecting an establishment of religion...

- ▶ Government may not favor one religion over the other
- ▶ “Wall of Separation” (good guide, but out of date)
- ▶ Lemon Test-Lemon v. Kurtzman(1971)
 1. “must have a secular legislative purpose”
 2. “must not have the primary effect of either advancing or inhibiting religion”
 3. “must not result in an ‘excessive government entanglement’ with religion”

Establishment Clause

- ▶ Vouchers
- ▶ Teacher Salary
- ▶ Text Books
- ▶ School Prayer
- ▶ Student organized prayer at a football game
- ▶ Creationism
- ▶ Intelligent Design
- ▶ 10 Commandments in school or public building

Establishment Clause

- ▶ Vouchers-Zelman v. Simmons-Harris
- ▶ Teacher Salary-Limon v. Kurtzman
- ▶ Text Books
- ▶ School Prayer-Engel v. Vitale
- ▶ Student organized prayer at a football game
- ▶ Creationism
- ▶ Intelligent Design
- ▶ 10 Commandments in school or public building

Free Exercise Clause

...or prohibiting the free exercise thereof...

- ▶ Americans can hold any religious belief they choose.
- ▶ Sherman Test
 - ▶ Sincere religious belief
 - ▶ Government places a substantial burden on the person to act on that belief
 - ▶ Does the government have a compelling interest?
 - ▶ Government action is the least restrictive/burdensome to religion

Free Exercise Clause

- ▶ Children with life-threatening illness
- ▶ Animal Sacrifice
- ▶ Snake Handling
- ▶ Peyote
- ▶ Wine

Free Exercise Clause

- ▶ Children with life-threatening illness
- ▶ Animal Sacrifice-Church of Lukumi Babuli Aye
- ▶ Snake Handling
- ▶ Peyote-Employment Division v. Smith
- ▶ Wine

Freedom of Speech

... or abridging the freedom of speech...

- ▶ Clear and Present Danger Test (Schenk v. United States)–Again out of date, but a good guideline
- ▶ Imminent Lawless Action Test-Brandenburg v. Ohio (1969)
- ▶ Symbolic Speech (flag burning and campaign contributions)

Freedom of Press

- ▶ No prior restraint
 - ▶ New York Times Co. v. United States
 - ▶ Near v. Minnesota
- ▶ Military/Wartime?



Libel vs. Slander

Slander: Spoken words that falsely damages a person's reputation.

Libel: Publication of material that falsely damages a person's reputation.

- ▶ Remember: Slander and spoken both begin with "S."

Standards for Libel and Slander

- ▶ Libel for public official, requires actual malice (knowing or reckless disregard for the truth).
- ▶ Libel has a much higher standard for private citizens.
- ▶ Why are there different standards?
- ▶ Parodies of public figures-Hustler Magazine, Inc. v. Falwell



Obscenity

- ▶ Supreme Court has struggled to set a usable standard for obscenity.
- ▶ "I shall not today attempt further to define the kinds of material I understand to be embraced . . . [b]ut I know it when I see it . . . " (Justice Potter, 1964).
- ▶ Miller Test-Miller v. California (1973)
 - ▶ Contemporary community standards of a reasonable person.
 - ▶ Depicts or describes, in a patently offensive way, sexual conduct or excretory functions.
 - ▶ Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value
- ▶ Public vs private differences- Stanley v. Georgia (1969)



Freedom of Assembly

- ▶ National Socialist Party of America v. Village of Skokie
- ▶ Clark v. Community for Creative Nonviolence (1984)-Sleeping in a park
- ▶ OWS
- ▶ other demonstrations

The Right to Keep and Bear Arms

- ▶ D.C. v Heller (2008)
- ▶ McDonald v. Chicago (2010)
- ▶ Why the two different cases?
- ▶ Natural right of self-defense
- ▶ Traditionally lawful purposes, such as self-defense within the home
- ▶ “in common use at the time”
- ▶ Other restrictions possible



Due process

Due Process: Legal protections that have been established to preserve the rights of individuals.

- ▶ Appears in both the 5th and 14th Amendments

Procedural Due Process: Legal procedures that the government must follow before a person can legitimately be punished for an alleged offense.

4th Amendment

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 the persons or things to be seized.

- ▶ Exclusionary rule: Items obtained from an illegal search are excluded from being used in a case.
- ▶ Selective incorporation- *Mapp v. Ohio*
- ▶ Good faith exceptions- *United States v. Leon* (1984)
- ▶ Searching in the wrong place-*Kentucky v. King* (2011)
- ▶ Plain view doctrine- *Whren v. United States* (1996)
- ▶ Fly-overs- If the flight is in legal airspace, search is legal
- ▶ Thermal imaging- *Kyollo v. United States* (2001)-require a warrant
- ▶ Drug Sniffing Dogs-*Illinois v Caballas* (2005) and *Florida v. Jardines*

5th Amendment

...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.

Double Jeopardy

...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...

- ▶ Benton v. Maryland-selective incorporation
- ▶ Dual sovereignty doctrine- Abbate v. United States (1959)

The Takings Clause

...nor shall private property be taken for public use, without just compensation.

- ▶ This is the due process clause of the 5th Amendment
- ▶ Kelo v. City of New London



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...to be confronted with the witnesses against him...and to have the Assistance of Counsel for his defense.

- ▶ Sheppard v. Maxwell-Public trial not absolute when publicity would undermine the defendant's right to due process.
- ▶ Petty offenses (less than six months) don't require a jury
- ▶ Powell v. Alabama (1932)-Scottsboro Boys-Right to Counsel
- ▶ Gideon v. Wainwright-selective incorporation of council

8th Amendment

..nor cruel and unusual punishment inflicted.

- ▶ Furman v. Georgia (1972)
- ▶ Gregg v. Georgia (1976)
- ▶ Insanity-Ford v. Wainwright (1986)
- ▶ Younger than 16-Thompson v. Oklahoma (1988)
- ▶ Not categorically unconstitutional to execute mentally retarded- Penry v. Lynaugh (1989)
- ▶ Kennedy v. Louisiana-No death penalty for excessive child rape when the victim's life was not taken.
- ▶ Three strikes laws- Ewing v. California (2003)
- ▶ evolving standards of decency- Trop v. Dulles (1958)

Miranda v. Arizona(1966)

Found in the 5th and 8th Amendments

- ▶ right to remain silent
- ▶ an explanation that anything they say could be used against them in court
- ▶ their right to counsel
- ▶ and their right to have counsel appointed to represent them if necessary

The Right to Privacy

- ▶ Griswold v. Connecticut (1965)
- ▶ Roe v. Wade (1973)
- ▶ Lawrence and Garner v. Texas (2003)-reversed a prior court ruling
- ▶ Where is the right to privacy found in the Bill of Rights?
 - ▶ 9th Amendment
 - ▶ In Roe v Wade-First, Fourth, Fifth, Ninth, and Fourteenth Amendments
 - ▶ a zone of privacy

A few take away points

- ▶ Civil liberties are not absolute
- ▶ The 14th Amendment incorporates some, but not all of our civil liberties to the states.
- ▶ The limits of our civil liberties is still being defined.

Journal Entry: Civil Rights

- ▶ What area of civil rights still needs working on today?