AP American Government

Notes: Civil Rights and Civil Liberties

**Q. What are civil rights?**

**Q. What are civil liberties?**

1. The Bill of Rights- a series of ‘thou shall not’s’ restraints addressed to government
2. **Civil Liberties**- protections of citizens from improper government actions
3. **Civil rights**- legal or moral claims that citizens are entitled to make on the government 🡪 this aspect became part of the Constitution in 1868, with the passage of the 14th Amendment
4. Substantive- putting limits on what the government shall and shall not have the power to do
5. Procedural- how the government is supposed to act

-civil liberties issues arise under “due process of law” clause

-civil rights issues arise under “equal protection of the laws” clause

1. The Origins of the Bill of Rights

Argument between the Federalists and Anti-Federalists on the importance and relevance of a Bill of Rights.

In order to guarantee a ratification of the Constitution, a Bill of Rights was added.

1. Civil Liberties: Nationalizing the Bill of Rights

Only the 1st Amendment exclusively limits the national government

**Q. Do the remaining amendments of the Bill of Rights put limits on state governments or only the national government?**

A. Dual Citizenship-

1. *Barron v. Baltimore* (1833): Marshall ruled against Barron. “Dual citizenship” emerges; each American was a citizen of the national government and a citizen of a state. In this case, the Bill of Rights did not apply to state or local governments (even slavery could continue). If the National Government had denied Barron of his rights, then the Bill of Rights would have applied.

B. 14th Amendment-

Provides for TWO (or three) things:

-Defines for a single national citizenship

-equal protection clause”-which would seem to extend the Bill of Rights to the states. (yet not the case for the next 100 years)

-yet this amendment also has allowed for the “incorporation doctrine”, which will permit the federal government the ability to apply all of the Bill of Rights to the states.

1. **Selective incorporation**- the application of the Bill of Rights via the 14th Amendment to the states.

2. *Palko v. CT* (1937)- application of double jeopardy to the states.?

3. This process allowed the states to segregate by race, and other things

1. *Slaughter House cases* (1873)🡪 the ruling stated that the national government was under no obligation to protect “the privileges and immunities” of citizens of a particular state against arbitrary actions of state governments

-Supreme Court ruled that the 14th amendment was to “protect Negroes as a class”

2. Civil Rights Act of 1875 🡪 declared unconstitutional by court, only applied to discriminatory actions by state officials, not by private individuals

-Court was not willing to “nationalize” civil liberties

-table 4.1 Incorporation of Bill of Rights (court cases)

1. The Constitutional Revolution in Civil Liberties (meaning?)

-*Plessy v. Ferguson* (1896)-civil rights case involving the “equal protection” clause

-*Brown v. Board* (1954)-court showed that it was going to be expansive about civil liberties…court became active; hold to strict scrutiny the laws of states

1. Nationalizing the Bill of Rights
2. Commerce clause- Court was passive in allowing Congress to expand power over the states (Art. I, Sec 8)
3. Bill of Rights through 14th Amendment🡪 Court played an active role, which expanded the 14th’s reach; which allowed to Court to review laws and actions of the states (not Congress), and unify laws under the 14th
4. *Mapp v. Ohio* (1961)- “exclusionary rule”
5. *Miranda* rule- requires that persons under arrest be informed of their legal rights (council, self-incrimination, etc)
6. *Benton v. Maryland* (1969)- reversed Palko, coming full circle
7. *Griswold v. Connecticut* (1965)- Court establishes a “zone of privacy”, which was grounded in Constitution 🡪 combo of 3, 4, 5 amendments plus 9th amendment

-Roe v. Wade (1973); extended zone to abortion

\*Roe decision was another case of the tendency of the SC to follow public opinion

III. The Bill of Rights Today

1. The First Amendment and Freedom of Religion
2. Separation between Church and State
3. **Establishment Clause**- this can be interpreted in many ways.
4. That the government is prohibited from establishing an official church
5. A “non-preferentialist” or “accommodationist” view, which holds that the government may not take sides among competing religions, but is not prohibited from providing assistance to religious institutions or ideas as long as it shows no favoritism
6. A “wall of separation” between church and state that cannot be breached by the government
7. This wall is not set, but rather a moving entity.
8. School prayer, the Court has been consistent in not allowing it…
9. Public display of religious symbols has been allowed
10. **Lemon Test**: Case of *Lemon v. Kurtzman* (1971)- the Court established three criteria to guide future cases involving religious aid from government: The aid is fine if:
11. It had a secular purpose
12. Its effect was neither to advance nor inhibit religion
13. It did not entangle govt. and religious institutions in one another’s affairs
14. The Pledge: Issues
15. Free Exercise of Religion: the ‘Free Exercise clause’ protects the right to believe whatever religion one chooses; it also protects the right to be a non-believer
16. *WVA Board of Ed v. Barnette* (1943)- issue of the pledge. Court reversed its ruling and allowed Jehovah’s Witness’ children to not to recite the pledge
17. *Employment Division v. Smith* (1990)- issue of religious practices running against laws (Peyote smoking). Court ruled against Smith. Congress disagreed with decision and passed the Religious Freedom restoration Act (RFRA), which restricted the states, as well as the national government from infringing on certain practices…the Court will later find this Law unconstitutional (violation of separation of powers)
18. The First Amendment and the Freedom of Speech and the Press
19. **Preferred Speech**- 1938, freedom of Speech was given ‘extraordinary constitutional status’ in case of *U.S. v. Caroline Products Co*, when Court ruled that any law restricting speech, “is to be subjected to a more exacting judicial scrutiny…than are most other types of legislation”. The idea is that speech, at least some kinds of speech, will be protected almost absolutely.
20. *Snyder v. Phelps* (2011)- Westboro Baptist Church
21. Political Speech- the area of the greatest concern by the founders, yet within seven years of the ratification of the Constitution,
22. **Alien and Sedition Acts**- made it a crime to say or publish anything that might defame or bring into disrepute the government of the U.S.A.
23. ***Schenck v. United States*** (1919)- the Espionage Acts of 1917 were upheld by the Court on the grounds of a “clear and present danger” to security.
24. *Brandenburg v. Ohio* (1969)- Court struck down law that “advocate, or teach the duty, necessity, or propriety (of violence) as a means of accomplishing industrial or political reform”, due to the vagueness of the law
25. ***Buckley v. Valeo***(1976)- struck down federal campaign finance laws which attempted to place limits on campaign contributions
26. *McConnell v. Federal Election Commission*(2003)- Court narrowly defined the area of speech protected by Buckley decision, which limited the amounts of ‘soft money” that could be spent by corporations and PACs and limits issue advertising prior to election day
27. *Federal Elections Commission v. Wisconsin Right to Life* (2007)- Court struck down more provisions from BCRA, stating limits on ad spending was a violation of speech
28. ***Citizens United v. FEC*** *(2010)*- Court ruled that corporate funding of independent election ads could not be limited under the 1st Amendment
29. Symbolic Speech, Speech Plus, and the Rights to Assembly and Petition
30. Freedoms of assembly and petition go beyond speech because they are speech associated with action.
31. *Stromberg v. California* (1931)- state law that banned the displaying of red flags was struck down
32. *United States v. O’Brien* (1968)- Court allowed for the wearing of black armbands in school as protest 🡪 O’Brien Test: “A statute restricting expressive or symbolic speech must be justified by a compelling government interest and narrowly tailored toward achieving that interest”
33. Again, flag burning incident in Texas in 1984
34. *Virginia v. Black* (2003)- the Court struck down a Virginia law forbidding the burning of a cross. The 1st amendment does not allow for “intimidation”, but does allow for “symbolic expression”
35. Speech plus- speech accompanied by activities such as sit-ins, picketing, and demonstrations. This speech is protected, yet can be curtailed if they jeopardize the health, safety, or rights of others
36. Freedom of the Press- the press is protected under the doctrine known as prior restraint, which is an effort by a government agency to block the publication of material it deems libelous or harmful in some other way; censorship
37. ***Near v. Minnesota*** (1931)- establishes the modern precedent of prior restraint
38. ***New York Times v. United States*** (1971)- “Pentagon Papers”- press could publish top secret documents regarding the Vietnam War
39. Libel and Slander- a written/oral statement made in “reckless disregard of the truth” and considered damaging to the victim because it is “malicious, scandalous, and defamatory”.
40. ***New York Times v. Sullivan*** (1971)- Court ruled that the paper had to ‘deliberately’ print false and malicious material.

-very difficult thing to prove, making politicians open to scrutiny and criticism

-In 1985, the Court held that material printed regarding politicians “was a matter of public concern”.

b*. Hustler Magazine v. Falwell* (1988)- Court upheld the right of the press to create cartoon that were considered outlandish.

1. Obscenity and Pornography- “I know it when I see it.”

-very difficult for the courts to define and judge on these issues

a. In 1973 the Court attempts to define pornography as a work that as a whole is deemed prurient by the “average person” according to “community standards”, depicts sexual conduct in a patently offensive way, and lacks “serious literary, artistic, political, or scientific value”. Meaning? Porn will become defined by the local standards, not a national standard.

b. Pornography on the Internet-

-In 1996, Congress passed the Telecommunications Act. In it was a provision called the Communications Decency Act (CDA)…the Court had a time with that provision

i. *Reno v. ACLU* (1997)- Court struck down the CDA

ii. *U.S. v. American Library Association* (2003)- Court ruled that libraries could filter porn from their computers

iii. *U.S. v. Williams* (2008) –Court upheld law that criminalized effort to pander child porn

iv .*U.S. v. Playboy* (2000)- Court struck down part of the Telecommunications Act that limited broadcast to late night hours

1. Fighting Words- speech that directly incites damaging conduct.
2. *Chaplinsky v. State of New Hampshire* (1942) – Court upheld state law forbidding offensive language
3. *Dennis v. U.S.* (1951)- upheld Smith Act, which outlawed the “willful and knowingly conspire to teach and advocate the forceful and violent overthrow and destruction of the government”.
4. *Bethel SD v. Fraser* (1986)- Court upheld the punishment of a student for making a sexually suggestive speech
5. *Morse v. Frederick* (2007) “Bong Hits 4 Jesus”… Court ruled that the 1st Amendment does not require schools to permit students to advocate illegal drug use
6. Universities have attempted to develop speech codes to suppress utterances deemed to be racial or ethnic slurs 🡪 very difficult
7. “Political Correctness”
8. Sexual harassment- any behavior that creates “a hostile working environment”, which includes “unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature”
9. Hate Speech
10. *R.A.V. v. City of St. Pau*l (1992)-(burning of cross on black family’s property) Court ruled that a law must be content neutral, that is, not prohibiting actions directed at some groups, but not others.
11. Commercial Speech- does not have full protection because it cannot be considered political speech.

-Court has upheld the ban on cigarette commercials on electronic media

-Court has banned most state laws that prohibit the advertisements of certain products (cigs, alcohol, medical services, etc.)

1. The 2nd Amendment and the Right to Bear Arms
2. **District of Columbia v. Heller** (2008)- Court struck down federal law that prohibited individuals from owning guns inside Washington D.C.
3. McDonald v. Chicago (2010)- Court struck down a Chicago fire arms law and applied the 2nd amendment to the states as well.
4. **Rights of the Criminally Accused**

-due process- proceeding according to law and with adequate protection of individual rights

-4th, 5th, 6th, & 8th Amendments are the essence of due process

-“it is far worse to convict an innocent man that to let a guilty man go free”

-civil case- verdicts rest on “the preponderance of the evidence”

-criminal cases- guilt has the proved “beyond a reasonable doubt”

1. **4th Amendment and Searches and Seizures**
2. ***Mapp v. Ohio*** (1961)- established “exclusionary rule”, the ability of courts to use evidence obtained in violation of the 4th. Use of the 14th Amendment to apply.

“the criminal is to go free because the constable has blundered”

1. Since the Mapp decision, the Court has softened its stance. Legality of search is loosely based on the “nature and quality of intrusion”. It is difficult to know the protection of a defendant from an illegal search under the 4th.
2. Mandatory Drug testing- the Court has been fairly consistent in allowing governmental agencies to drug test their employees, including schools in testing athletes. In *Chandler et al. v. Miller* (1997), the Court applied the 4th as a shield when the official in question was not performing high-risk or safety sensitive tasks.
3. *Indianapolis v. Edmund* (2000)- Court found it unconstitutional for police to use trained dogs at roadblocks to look for drugs in cars.
4. *Kyllo v. U.S.* (2001)- Court ruled that police may not use Thermal- imaging devices without a warrant
5. *Safford v.* *Unified School District No 1* (2009)- Court ruled against as Arizona school that strip searched a 13 year old for drugs.
6. The Fifth Amendment
7. Grand jury- a jury that determines whether sufficient evidence is available to justify a trial. This provision of the 5th has not been incorporated to the states.
8. Double Jeopardy- right providing that a person cannot be tried twice for the same crime .
9. Self-Incrimination- the ability of a suspect not to be compelled to give the police evidence that may in fact, implicate them in the crime and aid in their own conviction.

*Berghuis v. Thomkins* (2010)- Court ruled that statements made by suspects who did not expressly waive their rights could still be used against them

1. Eminent Domain- the right of the government to take private property for public use, with reasonable compensation awarded for the property.
2. Rehnquist and Beyond: A De-Nationalizing Trend?

-critics complain about judicial activism; displaced legislatures and state courts

-2000, “victory of state sovereignty”

-*U.S. v. Morrison* and *U.S. v. Lopez*…Court struck down Violence Against Women Act

-Court rules that the Bill of Rights is not carved in stone🡪 history and court interpretations have proven that belief.

\*The Supreme Court has moved in a more conservative, de-nationalizing trend over the last 20 years

**Q. Is that Court activity OR is society moving in that general direction?**

For example: 1st Amendment 🡪 Establishment Clause AKA “Wall of Separation” between church and state

1. *Rosenberg v. University of Virginia* (1995); UVA violated the rights of Christian Student group
2. *Agostini v. Felton* (1997); states could pay public school teachers to offer remedial courses at religious schools
3. Abortion-related cases 🡪 *Webster v. Reproductive Health Services* (1989); Court upheld MO’s law which restricted the use of public medical facilities for abortion… which paved the way for other cases that restrict abortion rights
4. *Planned Parenthood v. Casey* (1992); Court narrowed the scope of Roe, and allows states (PA)to define the right to an abortion as a “limited or qualified right”, and thus regulate abortion more closely

\*\*\*These decisions illustrate that the Rehnquist Court did not **overturn** precedents, but gave more narrower and restrictive interpretations of other decisions.

**“A Court with the power to expand the Bill of Rights also has the power to contract it.”**

1. Civil Rights
2. Equal Protection Clause- provision of the 14th amendment guaranteeing citizens “No state shall make any law or enforce any law which shall…deny the equal protection of the laws”…this has become the basis of the civil rights of African Americans, women, and other groups
3. *Plessy v. Ferguson*(1896): establishes the principle of “separate but equal”
4. Racial Discrimination after WWII
5. *Missouri ex rel. Gaines v. Canada*(1938)- Court rejected MO’s policy of paying out-of-state tuition for blacks rather than admitting to state’s schools
6. ***Sweatt v . Painter*** (1950): Court rejected TX’s law school for blacks
7. ***Smith v. Allwright***(1944): Court struck down “white primaries” could no longer be regarded as the private affairs of the parties
8. *Shelley v. Kraemer*(1948): ruled against “restrictive covenants”, could not be enforced

**NAACP** filed simultaneous law-suits in different federal districts…hoping that an inconsistent ruling would lead to a quicker appeal to the Supreme Court

Brown decision was unanimous… “separate was inherently unequal”. This altered the Constitutional framework in two ways:

1. States could no longer use race a criterion of discrimination of law.
2. National government would then have the Constitutional basis for extending power.
3. Civil Rights after *Brown v. Board of Education* (1954 & 1955)

**De facto**- segregation based on local custom, not written law

**De jure**- segregation based on written law

\*Following Brown decision, the Civil Rights movement gained momentum

-Southern Christian Leadership Conference

-Student Nonviolent Coordinating Committee

Organizations involved in movement, using non-violent tactics, plus the exposure of the media, gradually won over the hearts and minds of Americans

**Q. Why did so many people participate in the Civil Rights movement, when the risks outweighed the potential benefits?**

1**. instrumental**-

2. **experiential**-

1. School desegregation, Part I-

-deep south responded w/ massive resistance , which illustrated that the Courts could not desegregate alone, needed the other branches to help

-Civil Rights Commission investigated problems, led to Civil Rights Act of 1964

2. School desegregation, Busing and Beyond-

-*Swann v. Charlotte-Mecklenburg B. of Ed.(*1971): Court ruled that busing across district lines, as well as **racial quotas**, could be used to integrate the races…

\*In court cases afterward, integration became more difficult due to de facto segregation in the North

3. Gender Discrimination-the universalization of civil rights

-end discrimination in the work place—which joined the women’s movement to civil rights

-Burger Court (1969-1986) began to establish gender discrimination, which allowed for the plaintiff’s an “intermediate level of review” , which was midway between traditional rules of evidence (puts burden of proof on the plaintiff) and the doctrine of “strict scrutiny” (which requires defendant to defend classification); Shifts the burden of proof partially onto the defendant

a. *Franklin c. Gwinnett Co. Schools* (1992)-Court awarded monetary damages in response to **Title IX of the 1972 Education Act** being violated (women’s athletic programs)

b*. U.S. v. Virginia Military Institute*(VMI-1996)-forced VMI to accept women to the college…yet even this did not change behavior to women right away

c. Sexual Harassment🡪 declared a form of employment discrimination…very ambiguous. The Court has attempted to more clearly define this:

If the company has an anti-discrimination policy in place, then it is not liable, if a company does not have a policy in place, then it may be held liable; also the employee does not have to show a tangible loss

**Q. What is sexual harassment and does a company have a policy in place?**

4. Discrimination against other groups:

-**Under Title VII of the 1964 Civil Rights Act**, any group or individual can try to convert goals and grievances into questions of rights and the deprivation of those rights

a. Disabled- American With Disabilities Act of 1990

b. Gay and Lesbian 🡪 1993 “Don’t Ask, Don’t Tell”

1. *Bowers v. Hardwick* (1986)-ruled against a right to privacy

2. *Romer v. Evans* (1996)-extended homosexual rights in CO

3. *Lawrence v. Texas* (2003)-overturned *Bowers* and struck down anti-sodomy law in Texas; this was the equivalent to *Roe v. Wade*

4. 2004 Massachusetts allowed gay marriages-yet 11 other states went other way

**Q. What is affirmative action?**

1. Affirmative Action- compensatory action taken to overcome the consequences of past discrimination and to encourage greater diversity
2. Supreme Court and Burden of Proof- issue of qualification versus minority preference begins to split civil rights advocates
3. *Regents of the University of California v. Bakke* (1978)court allowed schools to take into account minority status BUT limited severely the use of quotas

-a rigid quota is suspect

1. *Wards Cove v. Antonio* (1989) Court further weakened affirmative action, shifting the burden of proof onto the plaintiff, from the defendant
2. *Hopwood v. State of Texas* (1996) Court ruled that race should never be considered in admissions and scholarships to state universities, even to promote diversity