Civil Liberties and Civil Rights

**Articles: National Supremacy**

**Judicial Review** – the US Supreme Court has the power to determine the constitutionality of the laws of a government or the acts of government officials. *(Marbury v. Madison, McCulloch v. Maryland)*

**The Commerce Clause** – refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” *(Gibbons v. Ogden)*

**Civil Liberties: protections against government actions**

**First Amendment:**

**Religion**

- **Establishment Clause** - The government can neither promote nor harm any religion, it must be neutral. Interpreted as calling for the separation of church and state. *(Engel v. Vitale, Murray v. Curlett, Wallace v. Jaffree, Lemon v. Kurzman)*

- **Free Exercise Clause** - absolute right of all citizens to hold any religious belief they want. Cannot include behavior that conflicts with the laws of the land. *(Tinker v. Des Moines, Chandler v. Siegelman, Good News Club v. Milford Central School)*

- **Conscientious Objector** - refusal to perform types of military service because of opposition to war based on religious beliefs.

**Speech/Press**

- **Pure Speech** - using speech only
- **Speech Plus** - using speech plus actions to prove point (picketing/protesting)
- **Symbolic Speech** - using actions or symbols to represent ideas (armbands) – *Freedom of Expression* *(Tinker v. Des Moines, Texas v. Johnson)*

**Exceptions to the rule:**

- **Clear and Present Danger Rule** - cannot create danger to country with speech. The speech or press may not be deemed **Seditious** *(Treason* by advocating the forceful overthrow of the government). *(Schenck v. United States)*

- **Imminent Danger Rule** - **inciting violence** by encouraging or threatening the immediate harm to someone. Additionally, you may not yell “fire” in a crowded building. *(Dennis v. United States)*

- **Prior Restraint** - outlawing spoken or written words before they get out *(Hazelwood School District v. Kuhlmeier, Reno v. A.C.L.U.)*

- **Defamation** - saying or printing something that could hurt someone’s reputation
  - **Libel** - printing or broadcasting lies about someone’s character
  - **Slander** - spoken lies to defame someone else

**Regulating Speech/Press**

- **Censorship** - Radio, TV, Movies are subject to ratings
• **Obscenity** - based on community standards, no set laws
• **Shield Laws** - reporters cannot be protected by the Constitution if they do not reveal their sources (contrary to the movies!) - It is up to state laws.
• **Sunshine Laws** - meetings of government agencies must be open to public and press

**Assembly**
- Assembly on private property is protected if it is peaceful. (meetings)
- Assembly on public property is determined by state/local laws and may need a permit. (demonstrations, parades)
- It is often the onlookers in the crowd, not the protestors causing the problems.

**Second Amendment**: right to **bear arms**
- is intended to preserve the idea of minutemen
- states may regulate ownership and use *(District of Columbia v. Heller)*

**Fourth Amendment**: prohibits unreasonable search and seizure
- **Exclusionary Rule** - if evidence obtained without warrant or probable cause, cannot be used in court *(Mapp v. Ohio)*

**Fifth Amendment**: protects those accused of crime
- Guarantees **Due Process** – all of the rights from suspicion through conviction and punishment.
  - **Procedural Due Process** - rules of conduct for police, lawyers, judges, etc. *(Escobedo v. Illinois, Miranda v. Arizona)*
  - **Substantive Due Process** - sentences must be applied equally to everyone
- **Self-Incrimination** - can’t be forced to confess to crime
  - husbands and wives usually not forced to testify against each other
- **Double Jeopardy** - not more than one trial per crime (offense of law)
- Must be indicted by a **grand jury** that says there is a sufficient evidence to hold a trial.

**Sixth Amendment**: rights during a criminal case
- right to a speedy and public trial (defined as 100 days for first appearance)
- trial by jury - called **petit jury** or **trial jury**
- right to legal counsel (**lawyer**), not until 1963 were you guaranteed **public defender** if you couldn’t afford a lawyer *(Gideon v. Wainwright)*

**Eighth Amendment**:  
- No Cruel and Unusual Punishment *(Gregg v. Georgia)*
  - no denaturalization; death penalty legal if administered equally (capital crime)
  - Two stage trial: Stage one - decide guilty Stage two - decide yes/no on death penalty
- No excessive **fines** or **bail** (money paid to be out until trial)

**Ninth Amendment**: does not deny that there are other rights held by the people and not listed (privacy)
- Rights also cannot be provided in a way that takes away the rights of others.
Civil Rights: equal protections for all people

**Dred Scott Case** - stated that slaves were not citizens and did not have rights.

**Civil War Amendments**
13th - Outlawed slavery

14th - Granted citizenship to all natural born Americans and applied bill of rights to states.

*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** was extended from the 5th amendment for national laws to all citizens in all states.
- **Selective Incorporation** is a constitutional doctrine that ensures states cannot enact laws that take away the constitutional rights of American citizens that are enshrined in the Bill of Rights.

15th - Guaranteed people the right to vote regardless of race or color.

**Segregation Laws** - setting apart or separating people according to some criteria (gender, race, ethnicity, age, etc.)

- **De jure** is segregation that is set up by laws.
- **De facto** is segregation that is based on choice. (Where people choose to live.)
  - *Plessy v. Ferguson* tried to fight segregation on train cars. Supreme Court said if facilities were equal, it was acceptable to separate them. *(Separate But Equal)*

**Civil Rights Movement**
- Led by Martin Luther King Jr.
  - introduced **civil disobedience** – nonviolent resistance to unfair laws
- Thurgood Marshall and NAACP
  - *Brown v. Board of Education* overturned separate but equal policy in schools.

- **Civil Rights Act (1964)** – to end public segregation, job discrimination, etc.; extended to all racial, religious, and ethnic minorities, now also applied to elderly, disabled, etc.
- **Voting Right Act (1965)** - ensured minorities the right to vote; worked to get rid of literacy tests, grandfather clauses, poll taxes, etc.
- **Affirmative Action** - programs put in place to encourage the recruitment of minorities to compensate for past injustices (limits on Affirmative Action- last hired, first fired)
- **Reverse Discrimination** - is discrimination against members of a dominant or majority group, in favor of members of a minority or historically disadvantaged group. *(Regents v. Bakke)*

**Women’s Rights** - to provide equal protection for women.
- Movement began by **Susan B. Anthony**. Women’s Rights Convention held in 1848.
- **19th Amendment** - Guaranteed women the right to vote (1920)
- **E.R.A. (Equal Rights Amendment)** - March 22, 1972, the Senate passed the Equal Rights Amendment to the United States
Constitution, which proposed banning discrimination based on sex. The E.R.A. was sent to the states for ratification, but it fell short of the three-fourths approval needed. (Only 35 states ratified the E.R.A. by the 1979 deadline, three short of the necessary 38.)

- **Comparable Worth**: men and women should receive equal pay when they perform work that involves comparable skills and responsibility.

**Voting Rights (Suffrage)**: extending the right to vote.
- 15th Amendment – races and color
- 19th Amendment – women
- 26th Amendment – 18 year olds


**Marriage Rights** – In 2015 the US Supreme Court ruled that marriage is a Constitutional right making same-sex marriage bans unconstitutional, and stated that same-sex couples can legally marry anywhere in the United States. *(Obergefell v. Hodges)*

- Same-sex couples are also entitled to all of the same state and federal benefits as opposite-sex married couples. However, these rules do not apply to unmarried couples that have established either a domestic partnership or civil union. *(United States v. Windsor)*
Major Supreme Court Cases

Articles

Marbury v. Madison - The Court declared a portion of the Judiciary Act unconstitutional, thereby giving the Court the power of "judicial review" over national laws.

McCulloch v. Maryland - The Court declared the Maryland law of taxing people who use banks, unconstitutional. Saying that "...the power to tax implies the power to destroy." This sets up judicial review over states (National Supremacy) and defined the implied powers through the necessary and proper clause.

Gibbons v. Ogden - The Court held only Congress had the constitutional right to regulate commerce between the states (Article I, Section 8), and that federal law superseded state laws when the two are in conflict (Article VI).

First Amendment

Religion:
Engel v. Vitale – recitation of prayer cannot be made mandatory because it violates the establishment clause. (N.Y. schools made all students recite a prayer.)

Murray v. Curlett & Abington School District v. Schempp - struck down a Pennsylvania statute requiring public schools in the state to begin each school day with Bible readings and recitation of the Lord’s Prayer. Religious activities in schools must be on a voluntarily basis. No school can mandate participation in religious activities.

Wallace v. Jaffree - Schools cannot have a time called “prayer time”. Schools may however have a “moment of silence”. If they elect to have a moment of silence, they must enforce it.

Chandler v. Siegelman - Private student religious speech that occurred at school was not unconstitutional and, therefore, was protected. Additionally, a policy that tolerated religion did not improperly endorse it.

Good News Club v. Milford Central School - Students and clubs have the right to meet before or after school for religious activities. Giving students access does not violate the Establishment Clause and preventing them may be a violation of students free speech rights.

Lemon v. Kurzman - aid to religious schools must pass the lemon test (a secular purpose test) to prevent a violation of the establishment clause (to neither promote nor harm religion) and may not cause excessive entanglement.

Speech, Press, Expression:
Schenck v. United States - produced pamphlets urging men to evade the draft, this was found illegal and not protected under free speech due to the Espionage Act, it falls now under “clear and present danger”.

Dennis v. United States - advocating the overthrow of the government creates “clear and present danger” (in Brandenburg, Ohio). It was redefined that to stop speech not against the government it would have to reach “imminent danger” not just clear and present.

Tinker v. Des Moines School District – states that wearing black armbands for protest was legal under freedom of (symbolic) speech. Freedom of expression is protected in school as long as it does not interfere with the educational process. Students do not shed their constitutional rights at the schoolhouse gate.

Hazelwood School District v. Kuhlmeier - official school publications can be censored by school officials. (students publishing a school newspaper can be censored)
**Texas v. Johnson** - flag burning is protected under freedom of speech. (symbolic) Freedom of expression is protected even if it is offensive. (As long as it does not infringe on other’s rights.)

**Reno v. A.C.L.U.** - tested the Communications Decency Act that made it a crime to distribute “indecent” material over computer online networks. The Court said the protecting children from pornography did not supersede the right to freedom of expression, adding that the act was unenforceable with the current technology.

**Second Amendment**

**District of Columbia v. Heller** - protects an individual’s right to possess a firearm unconnected with service in a militia for traditionally lawful purposes, such as self-defense within the home.

**Fourth Amendment**

**Mapp v. Ohio** - precedent to exclusionary rule, evidence obtained illegally cannot be used in a count of law against a person. (Due process of law)

**Fifth Amendment**

**Escobedo v. Illinois** - overturned the murder conviction of Danny Escobedo, when his 6th amendment right of right to counsel was violated. It might have prevented his self-incrimination. While being questioned, suspects have the right to a lawyer. As an extension to the exclusionary rule, any evidence obtained while a suspect has been denied a lawyer, is inadmissible in court.

**Miranda v. Arizona** - as part of due process of law the Miranda Rights must be read to you. If they fail to read the suspect their rights, then any evidence obtained until a lawyer is present is inadmissible under the exclusionary rule.

**Sixth Amendment**

**Gideon v. Wainwright** - set precedent that anyone who could go to jail for a crime should be given a lawyer regardless if they can’t afford one. This extended past federal crimes to all capital crimes.

**Eighth Amendment**

**Gregg v. Georgia** - Capital punishment is a state’s prerogative as long as it is administered fairly and equally.

**Ninth Amendment**

**Griswold v. Connecticut** – ruled that the Constitution implies a fundamental right to privacy. Connecticut’s law prohibiting the use of birth control violated the "right to marital privacy", establishing the basis for the right to privacy with respect to intimate practices and "protection from governmental intrusion”.

**Roe v. Wade** - set privacy standards that women have the private right to abortion within the 1st trimester.

**Webster v. Reproductive Health Services** - barred public funds for going toward abortion and ordered doctors to do viability tests after 20 weeks or more.
Fourteenth Amendment

Dred Scott v. Sanford - set precedent that slaves are not citizens and so they had no rights in the court of law. Dred Scott was made to return with his master to the south, after living in the north for several years.

Plessy v. Ferguson - Established the doctrine of Separate But Equal. As long as facilities and rights were equal, then separation was allowed.

Brown v. Board of Education of Topeka - overturned Plessy and stated that separate is not equal and that schools would have to desegregate and Jim Crow Laws started becoming outlawed. Separate educational facilities were held to be “inherently unequal.”

Swann v. Charlotte-Mecklenburg County Board of Education - Forced busing students in order to integrate public schools is constitutional.

University of California Regents v. Bakke - set standards for reverse discrimination, minority quotas alone cannot be used in determining job and school preferences. Admission policies can take race into account in order to diversify students, but it cannot be the only factor taken into consideration.

Obergefell v. Hodges – ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.

United States v. Windsor – A Federal statute excluding same-sex couples from the definition of marriage to prevent them from receiving federal benefits is unconstitutional.