

American Government
Chapter 20
Civil Liberties: Protecting Individual Rights

Notes:

Section 1

- a. Due Process of Law

B. The Meaning of Due Process

- a. Constitution contains two statements about due process
 - i. 5th Amendment
 - 1. Federal Government cannot keep any person from “life, liberty, or property, without due process of law.”
 - ii. 14th Amendment
 - 1. State Governments have the same limit on power as the federal government
- b. Due Process is generally determined by the supreme court on a case-by-case basis
- c. Generally Due Process means:
 - i. Government must act fairly and within established rules
 - ii. Substantive Due Process
 - 1. Government must create fair policies and laws
 - iii. Procedural Due Process
 - 1. Government must use fair procedures and methods
- d. The 14th Amendment and the Bill of Rights
 - i. Bill of rights apply to the National Government only
 - ii. 14th Amendment applies the Bill of Rights to States

C. Police Power

- a. Authority of each state to act to protect and promote the public health, safety, morals, and general welfare
 - i. In other words to help people live well
- b. Often protecting people, creates a conflict with civil rights
 - i. Courts then have to maintain a balance between the two
 - 1. Example: Drunk Driving
- c. Search Warrant
 - i. A court order authorizing a search
- d. Courts have held that public well-being was the most important
 - i. Promote health, limit sale of alcoholic beverages
 - ii. Promote safety, forbid concealed weapons, use of seat belts, punish drunk drivers
 - iii. Promote morals, outlawing gambling, sale of obscene materials, prostitution
 - iv. Promote the general welfare, education laws, limit profits of public utilities

D. The Right of Privacy

- a. Not specifically mentioned in constitution, however courts have continually held it to be “the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one’s privacy.” (Stanley v. Georgia, 1969)
- b. Roe V. Wade
 - i. Most controversial case involving the right of privacy
 - ii. The Supreme Court found a Texas law unconstitutional
 - 1. The law made abortion a crime

- c. Later Reproductive Rights Cases
 - i. The Courts have made many revisions since Roe V. Wade, but the basic constitutional right still stands

Notes:

Section 2

- d. Freedom and Security of the Person

E. Slavery and Involuntary Servitude

- a. Amendment 13 was added to the Constitution in 1865, outlawing slavery or involuntary servitude
 - i. The courts have held that the draft and imprisonment are not classified as involuntary servitude
- b. The 13th Amendment: Section 2
 - i. With support of the 13th Amendment, Civil Rights Act of 1866, and Civil Rights Act of 1964, outlaw racial discrimination
 - 1. Bias, Unfairness

F. The Right to Keep and Bear Arms

- a. 2nd Amendment states “ A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed” Constitution
 - i. Many politicians argue that the amendment also supports an individual’s right to “bear arms”
 - ii. State’s have the right to limit arms

G. Security of Home and Person

- a. The 3rd Amendment
 - i. Forbids the housing of soldiers in private homes
 - 1. Never been the subject of a Supreme Court case

- b. The 4th Amendment
 - i. Designed to prevent the use of writs of assistance
 - 1. Blanket search warrants
- c. Probable Cause
 - i. Police officers cannot search for evidence unless they have a warrant
 - 1. Must be based on probable cause
 - a. A reasonable suspicion of crime
- d. Arrest
 - i. The Seizure of a person
 - ii. Do not need a warrant to arrest an individual
- e. Automobiles
 - i. The Court has held that officers do not need search warrants for vehicles
 - 1. Just need probable Cause
- f. The Exclusionary Rule
 - i. Evidence gained as the result of an illegal act by police cannot be used at the trial of the person from whom it was seized
 - 1. Adopted by the Courts, even though not explicitly stated in the 4th amendment
 - ii. Rule was laid down in *Weeks v. United States*, 1914
- g. *Map v. Ohio*
 - i. 1961 case expanded the Exclusionary rule to states based on the 14th Amendment
- h. Cases Narrowing the Scope of the Exclusionary Rule
 - i. Multiple cases through the years have allowed some police mistakes regarding evidence
- i. Drug Testing
 - i. The Court has held that they can be conducted without either warrants or even any indication of drug use by those who must take them

Notes:

- j. Wiretapping
 - i. *Kratz v. United States*, 1967 found evidence found through wiretapping was not eligible in court
 - 1. However, recent cases involving cell phone wiretapping has not been found unconstitutional

Notes:

Section 3

- k. Rights of the Accused

H. Habeas Corpus

- a. Writ of habeas corpus
 - i. Intended to prevent unjust arrests and imprisonments
 - ii. Commands that the prisoner be brought before the court and that the office show cause why the prisoner should not be released
 - 1. Cannot be suspended “unless when in cases of Rebellion or Invasion the public Safety may require it”
 - a. Abraham Lincoln suspended the writ in 1861
 - 2. Also suspended in Hawaii after Pearl Harbor

I. Bills of Attainder

- a. Legislative act that inflicts punishment without a court trial
 - i. England’s parliament during the colonial period pass many bills of attainder

J. Ex Post Facto Laws

- a. A Law passed after the fact
 - i. A criminal law, defining a law or providing for its punishment

- ii. Applies to an act committed before its passage
- iii. Works to the disadvantage of the accused
- b. Neither Congress or the State Legislatures may pass such laws

Notes:

K. Grand Jury

- a. Formal device by which a person can be accused of a serious crime
 - i. A body of 16-24 persons from the federal district court
 - ii. Used to determine indictment or to drop the charges
 - 1. A formal complaint that the prosecutor lays before a grand jury
- b. Grand Jury is provided by the 5th Amendment
 - i. However only provision not covered in the 14th Amendment
 - ii. Thus states are not required to provide a grand jury

L. Double Jeopardy

- a. 5th Amendment guarantee against being tried for the same crime twice
- b. Cannot be convicted on the same crime in both federal and state courts
 - i. Sex Predators however can be confined after being released from prison
 - 1. The courts have considered that the protection of the public from harm

M. Speedy and Public Trial

- a. Speedy Trial
 - i. 6th Amendment guarantee that ensures that the government will try a person accused of a crime without unnecessary delay

1. Most cases must be within 100 days of their arrest
- b. Public Trial
 - i. 6th Amendment also guarantees that the trial must be public
 1. However a trial cannot be too speedy or too public
 2. Major battle between freedom of press and the protection of a fair trial from undue media speculation

N. Trial by Jury

- a. 6th Amendment guarantee that says an accused person must be tried “by an impartial jury”
 - i. However states may not us trial by jury on minor cases
 - ii. A defendant may seek a “change of venue” due to prejudice in the state and federal district in which the case is to be held
 1. Defendant can waive their right to trial by jury
 - a. Called Bench trial

O. Right to An Adequate Defense

- a. 6th Amendment also provides the defendant:
 - i. “to be informed of the nature and cause of the accusation”
 - ii. “Be confronted with the witnesses against” them and question them in open court
 - iii. “To have compulsory process for obtaining witnesses in their favor”
 - iv. “To have the Assistance of Counsel for his defense”
- b. Intended to prevent the cards from being stacked in favor of the prosecution

P. Self-Incrimination

- a. 5th Amendment provides protections for defendants, that for the burden of proof on the prosecution
- b. Applying the Guarantee
 - i. A person can “claim the fifth”
 - 1. Ability to not testify or answer questions that might incriminate oneself
 - ii. Does not include fingerprinting, photography, submitting a handwriting sample, police lineup, etc.
 - 1. Must also be allowed to have counsel
 - 2. If counsel is denied, then confession can not be used in court
- c. Miranda v. Arizona
 - i. The court said that it would no longer uphold convictions in any cases in which suspects have not been told of their constitutional rights before police questioning
 - ii. Miranda Rule
 - 1. Told of his or her right to remain silent
 - 2. Anything they say can be used in court
 - 3. Right to have an attorney present during questioning
 - 4. If unable to hire an attorney, one will be provided
 - 5. they may bring police questioning to an end at anytime

Section 4

- d. Punishment

Q. Bail and Preventative Detention

- a. Bail
 - i. Sum of money that accused may be required to post (deposit with the court) as a guarantee that he or she will appear in court

1. Not guaranteed bail, just that it won't be excessive
- b. Preventive Detention
 - i. A federal judge can order that the accused be held, without bail, when there is good reason to believe that he or she will commit another serious crime before trial

R. Cruel and Unusual Punishment

- a. 8th Amendment forbids "cruel and unusual punishment"
 - i. Capital Punishment is not necessarily considered cruel and unusual punishment
 - ii. Court has held that punishment should fit the severity of the crime
 1. Also cannot be denied medical treatment in jail

S. Capital Punishment

- a. Punishment by death
- b. Court has avoided the charged issue, however has made a couple decisions in regard to capital punishment
 - i. Can be imposed for crimes resulting in the death of the victim
 - ii. Cannot be imposed on mentally retarded criminals

T. Treason

- a. Only crime that is defined in the Constitution
- b. Can consist of only two things
 - i. Levying war against the United States
 - ii. "Adhering to their Enemies, giving them Aid and Comfort"

- c. Not one can be punished, unless
 - i. Testimony of two witnesses to the same action
 - ii. Confession in open Court
- d. States also have treason laws

Notes: