Civil Liberties: Protecting Freedoms & Challenging Rules

What are civil liberties? Do we take them for granted? How do civil liberties and civil rights differ?

Clace Notes

- individual liberties/freedoms (life, liberty, property) possessed by all human beings; unalienable/ inseparable rights not granted/conveyed by any government or document
- in U.S.—protections are mainly contained in the first 10 amendments to the *Constitution* or The Bill of Rights (passed in 1789 by the first Congress, ratified by 1791)
- basic personal liberties/freedoms ensured in writing (liberties) & how much the government protects or restricts personal liberties/freedoms & do they do so in an equitable manner for all individuals (rights)

Amendments

- 1st— religion, speech, press, assembly, petition
- 2nd—arms
- 3rd—quartering of soldiers
- 4th—search & seizure
- 5th—grand jury, double jeopardy, self-incrimination, due process, eminent domain
- 6th—criminal court procedure
- 7th—trial by jury in common law cases
- 8th—bails, fines, cruel and unusual punishment (the punishment should fit the crime)
- 9th—rights retained by the people; not just limited to first 8 amendments
- 10th—rights reserved to the states and people if not specifically given to the national government in the Constitution
- 14th—no person denied
 "equal protection,"
 "due process," also known as incorporation doctrine

Class Notes			
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Clauses

Due Process—constitutional guarantee that no person shall be deprived of "life, liberty, or property" by either state or national government without due process of law

Establishment—clause refers to the First Amendment's statement that "Congress shall make no law respecting an establishment of religion"

Free Exercise—clause refers to the First Amendment's statement against the national government interfering with any citizen's freedom to worship as they chose

Terms to Remember		Class Notes
\Rightarrow	positive law—laws/rules made by human	
	beings to restrict personal freedoms	
\Rightarrow	natural law—law human beings may	
	discover through rational analysis;	
	preexisting law of nature	
\Rightarrow	common law right—right rooted in legal	
	tradition and past court rulings	
\Rightarrow	unalienable rights—freedoms/liberties	
	that exist outside the laws of the state;	
	inseparable from human existence;	
	protected or restricted by governments/	
	ruling powers	
\Rightarrow	compelling interest—the government	
	may not restrict the freedoms/liberties of	
	an individual without a very good reason	
\Rightarrow	undue burden test—restrictions allowed	
	on abortions that do not present a	
	substantial obstacle or undue burden on	
	women	
\Rightarrow	RFRA or Religious Freedom Restoration	
	Act (1993)—law mandates strict scrutiny	
	before government may violate religious	
	freedoms/free exercise of religious	
	beliefs; especially applicable to Native	
	American rights	
\Rightarrow	Religious Land Use and Institutionalized	
	Persons Act—government may not	
	impose a "substantial burden" and must	
	use "the least restrictive means" of	
	"furtherance of a compelling interest";	
	protection from zoning issues over use of	
	land belonging to religious groups;	
	incarcerated persons have religious exer-	
	cise rights within certain limitations	

habeas corpus issues

Habeas		us issues	
		Ex parte Milligan (1866)—civilians not to be tried in military courts unless civilian courts are not functioning Ex parte Quirin (1942)—foreign nationals may be tried in military courts instead of civilian if enemy agents sent for destructive acts	Class Notes
1st Ame	endn		
250 74111	-	Near v. Minnesota (1931)—censorship of the press prior to printing	
		is unconstitutional except in rare cases	
	\Rightarrow	New York Times v. Sullivan (1964)—public figures must meet a	
		higher standard for libel; malicious intent or "reckless disregard" for	
		the truth must be proved	
	\Rightarrow	Miller v. California (1973)—the Miller Test; free speech does not	
		extend to obscenity; contemporary community standards apply	
	\Rightarrow	Lemon v. Kurtzman (1971)—the Lemon Test; government may not	
		become excessively entangled with religious practice; laws should be	
		neutral on the issue of religion; secular purpose standard	
	\Rightarrow	Gillette v. US (1971)—conscientious objection to military service;	
		how do you determine who will serve when the rule does not apply	
		to all	
	\Rightarrow	Wisconsin v. Yoder (1972)—Amish parents may homeschool their	
		children; government is not allowed to place an undue burden on	
		religious practice; government must demonstrate a compelling	
		interest to limit a religious practice and it must be narrowly defined	
	\Rightarrow	Burwell v. Hobby Lobby (2014)—closely held businesses do not have	
		to provide employees free access to abortifacients if it violates the	
		religious beliefs of the business' owners; SCOTUS determined there	
		were other less restrictive ways to ensure access for these services	
	\Rightarrow	Schenck v. United States (1919)—encouraging the avoidance of the	
		draft for military service during a time of war presents a "clear and	
		present danger" to public order and may result in conviction and	
		imprisonment	
	\Rightarrow	Brandenburg v. Ohio (1969)—SCOTUS refines "clear and present	
		danger" test; only speech or writing that constitutes a direct call or	
		plan to imminent lawless action may be suppressed; advocating a	
		hypothetical revolt does not meet the test	
	\Rightarrow	Texas v. Johnson (1989)—SCOTUS rules flag burning is a form of	
		symbolic speech protected by the 1st Amendment	
	\Rightarrow	NAACP v. Alabama (1958)—governments may not compel	
		associations to release confidential membership records	
	\Rightarrow	BSA et al. v. Dale (2000)—1st Amendment protections for free	
		assembly and expressive association may not be infringed without a	
		compelling interest	

Cases to	Cor	osider	Class Notes
2nd Am	endi	ment	
	\Rightarrow	D.C. v. Heller (2008)—some gun control laws violate	
		2nd Amendment protections; individuals retain the	
		right to keep arms for lawful purposes such as home	
		self-defense	
	\Rightarrow	US v. Miller	
4th Ame	ndn	nent (privacy and procedure cases)	
	\Rightarrow	Griswold v. Connecticut (1965)—SCOTUS strikes down	
		law forbidding married individuals from using	
		contraception	
	\Rightarrow	Roe v. Wade (1973)—abortions may be regulated	
		based on fetus' viability	
	\Rightarrow	Miranda v. Arizona (1966)—suspects required to be	
		informed of the protections of their rights in	
		connection to due process	
5th Ame	ndn	nent	
	\Rightarrow	Kelo et al. v. City of New London (2005)—local	
		government allowed to seize homes to take land for a	
		private corporation; redevelopment	
	\Rightarrow	Mapp v. Ohio (1961)—evidence obtained without a	
		warrant is excluded from criminal trial; exclusionary	
		rule	
6th Ame	endn	nent	
	\Rightarrow	Gideon v. Wainwright (1963)—right to an attorney in	
		felony cases	
14th Am	end		
	\Rightarrow		
		Rights apply only to the federal/national government	
		(14th Amendment now ensures states must also com-	
		ply to protect rights of the people)	
	\Rightarrow	Sherbert v. Verner (1963)—the Sherbert Test; under	
		14th Amendment protections states may not deny	
		unemployment benefits to an individual turning down	<u></u>
		a job requiring them to work on their Sabbath	

Terms to remember	Class Notes
• Expression—speech or action by an individual;	
limited by the rights of other individuals; defined	
by the courts; protected by the Constitution and	
other laws	
• Prior Restraint—to restrain/prevent ahead of	
time; government entities seeking to restrain the	
press from printing/publishing information prior	
to actual publication; government control of	
media	
• Libel—to write untrue statements; to defame or	
disparage another individual in writing	
• Slander—to speak untrue statements; to defame	
or disparage another individual by speech	
Symbolic Speech—activity that expressions	
opinion without verbal speech; flag burning; arm	
bands; etc.	
Commercial Speech—advertising, and there are	
prohibitions against false claims about products	
and services	
Right to Assembly—individuals may gather	
together for various causes and purposes; the	
government may not interfere in such assembling	
without just cause such as the health and safety of	
other individuals and/or property	
- companie liberty, vight to obtain use and trade	
economic liberty—right to obtain, use and trade property for personal benefit	
property for personal benefiteminent domain—government seizure of	
property for public good	
property for public good	

erms to remember	Class Notes
Search Warrant—written authorization from a court	
specifying the area to be searched and what the police are	
searching for	
• Exclusionary Rule—evidence not obtained by authorities	
within the protections of due process will not be admissible in	
court; if evidence is obtained without a proper search warrant	
or probable cause, it cannot be used against a person	
• Self-Incrimination—situation occurring when an individual	
accused of a crime is compelled to be a witness against them-	
selves in court or at any step of procedural due process	
Plea Bargaining—when the lawyer for a defendant and the	
prosecutor make a deal for a guilty plea to a lesser crime that	
is likely to obtain a conviction; with the promise not to pursue	
a conviction for a worse crime with a larger penalty;	
unconstitutional condition placed upon individuals accused of	
a crime—give up your constitutional rights and you will re-	
ceive a benefit	
Habeas Corpus—the right for a citizen to know why they are	
being arrested and/or detained by law enforcement; an	
individual may not be held indefinitely by authorities without	
knowing the accusations	
• Probable Cause—law enforcement officials believe a person	
may be connected to a crime; they must have some evidence;	
evidence must be substantiated by a judge before a search	
warrant is issued; reason to suspect a connection between a	
criminal act and a particular individual	
Unreasonable Search & Seizure—law enforcement or	
government officials search or seize a person or property	
without probable cause and a proper warrant for the search	
or the seizure	
• amicus curiae—friend of the court; legal paperwork filed with	
the court in support of one side or the other in a case	
• ex post facto—after the fact; no law applies retroactively;	
prohibited power	
• bill of attainder—legislature tries, convicts and punishes an	·
individual; prohibited power	
• double jeopardy—right against being tried twice for the same	
crima	