

Civil Liberties

Name: _____

Wilson chapter 18

Period: _____

The politics of civil liberties

- The objectives of the Framers
 - _____ federal powers
 - Constitution: a list of “_____’s,” not a list of “_____”
 - Bill of Rights: specific “do nots” that applied only to the _____ government, and not to the state governments

Politics, culture, and civil liberties

- Liberties become a major issue for three reasons
 - Rights in conflict
 - Policy entrepreneurs
 - Cultural conflicts

Rights in conflict

- Bill of Rights contains _____ rights (interest group politics)
- _____ case (free press versus fair trial)
- *New York Times* and the _____ Papers (common defense versus free press)
- Kunz anti-Jewish _____ (free speech versus public order)
- Struggles over rights follow a similar pattern as interest group politics in economic issues

Policy entrepreneurs 1

- most successful during crises, when efforts are directed at _____ the _____ of some minority (entrepreneurial politics)
- _____ Act of 1798, following the French Revolution
- Espionage and _____ Acts, directed against German-Americans in World War I
- 1917-1918 Anti-_____, Anti-_____, Anti-Communist legislation

Policy entrepreneurs 2

- _____ Act (1940)
- Korean War and Senator _____
- Internal _____ Act of 1950
- _____ Control Act of 1954
- Supreme Court usually _____ this legislation
- Some use is still made of the _____ Act, although the Supreme Court has become more protective of political speech

Cultural conflicts

- Original settlement by white European Protestants meant that “_____” was equated with their values
- Waves of _____ brought new cultures and conflicts about the meaning of some constitutionally protected freedoms
 - Jews offended by _____ at Christmas
 - English-speakers prefer _____ schools
- Differences even within a single cultural tradition (example: _____)

Interpreting & applying 1st Amendment

• Speech & national security

Speech and national security 1

- _____: press should be free of prior restraint, but then must accept the consequences if a publication is improper or illegal
- Sedition Act of _____ followed Blackstone's view, with improvements
 - _____ trial, not a judge's decision
 - Defendant would be acquitted if it could be proved that the publication was _____

Speech and national security 2

- 1917–1918, _____ defines limits of expression
 - _____, _____, forcible resistance to federal laws, encouraging disloyalty in the armed services not protected by the First Amendment
 - Upheld in _____ (1919) via "clear and present _____" test
 - Holmes _____ in cases that subsequently applied this test, believing that its conditions had not been met

Speech and national security 3

- Fourteenth Amendment "_____ " clause
 - Supreme Court initially denied that this clause made the Bill of Rights _____ to the states
 - _____ (1925): "_____ personal rights" are protected from infringement by the states, because of the Fourteenth Amendment due process clause

Speech and national security 4

- Supreme Court moves toward more free _____ after WWI but with some deference to Congress during times of crisis
 - Supreme Court upheld the convictions of _____ under the Smith Act
 - By 1957: to be punished, the speaker must use words "calculated to _____" the overthrow of the government
 - By 1969 (_____): speech calling for illegal acts is protected, if the acts are not "imminent"
 - 1977: American _____ march in _____, Illinois is held to be lawful
 - _____ is permissible, but not a hate crime that results in direct physical harm

What is speech? 1

- Some _____ of speech are not fully protected
 - _____ of Character
 - _____: written statement defaming another by false statement
 - Defamatory oral statement: _____
 - Variable _____ awards
 - Public figures must also show the words were written with _____

What is speech? 2

- _____
 - No enduring and comprehensive definition
 - 1973 definition: judged by the average person, applying _____ community standards "to depict in a patently offensive way, _____ conduct specifically defined by state law" and lacking "serious _____, artistic, political, or scientific _____"
 - Balancing competing claims remains a problem

What is speech? 3

- Obscenity (continued)
 - Localities decide whether to tolerate _____ but must comply with strict constitutional tests if they decide to regulate it
 - Protection is extended to almost all forms of _____;
 - example: nude dancing is somewhat protected
 - Indianapolis statute: court ruled the legislature cannot show _____ for one form of expression
 - _____ ordinances for adult theaters and bookstores have been upheld
 - _____ regulation ruled unconstitutional by the Supreme Court

What is speech? 4

- _____ speech
 - Cannot claim protection for an illegal act on the grounds that it conveys a political message (example: _____ a _____ card)
 - Flag burning is protected speech (_____ v. _____)

internettrash.com/users/therail/flagburn.html

Who is a person?

- _____ and organizations usually have same rights as _____
 - Examples: Boston bank, anti-abortion group, liquor dealers, casinos, California utility
- More restrictions can be placed on _____ speech; however, the regulation must be _____ tailored and serve the public interest
- Young people may have fewer rights
 - _____ (1988): school newspaper can be restricted

Church and state

- _____
- _____

The free exercise clause

- Relatively clear meaning: no state _____, similar to speech
 - Law may not impose special _____ on religion
 - But there are no religious _____ from laws binding all other citizens, even if that law oppresses your religious beliefs
 - Some conflicts between religious _____ and public policy continue to be difficult to settle
 - Conscientious objection to war, _____ service
 - Refusal to work _____ (Seventh-Day Adventists)
 - Refusal to send children to public _____ beyond eighth grade (Amish)

The establishment clause 1

- _____'s view: there is a "_____ of separation" between church and state
- _____ phrasing of First Amendment requires Court interpretation

The establishment clause 2

- Supreme Court interpretation: no governmental _____, even if the involvement would be nonpreferential
 - 1947 New Jersey case regarding school _____
 - Later struck: school _____, "_____" in-school _____ time for religious instruction
 - But allowed some kinds of aid to _____ schools and denominational colleges

The establishment clause 3

- Government _____ in religious activities is constitutional if it meets the following tests:
 - _____ purpose
 - Primary effect neither _____ nor _____ religion
 - No excessive government _____ with religion
- Supreme Court rulings, however, remain _____ and shifting in regard to the establishment clause

Crime and due process

- _____ Rule
- Search and Seizure
- Confessions & Self-Incrimination
- Relaxing the Exclusionary Rule

The exclusionary rule 1

- Most nations let all _____ into trial, later punishing any police misconduct
- United States _____ improperly obtained evidence from trial
- Exclusionary rule: evidence gathered in violation of the _____ cannot be used in a trial
- Implements the _____ (freedom from unreasonable searches and seizures) and _____ Amendments (protection against self incrimination)

The exclusionary rule 2

- Supreme Court rulings
 - 1949: declined to use exclusionary rule but noted unreasonable searches were prohibited by the Fourth Amendment
 - 1961: changed, adopted the exclusionary rule in _____ v. *Ohio* in order to enforce constitutional guarantees

Search and seizure 1

- When can _____ searches of individuals be made?
 - With a properly obtained search warrant (_____)
 - _____ to an arrest
- What can the police search, incident to a lawful arrest?
 - The _____ being arrested
 - Things in _____
 - Things under the immediate _____ of the individual

Search and seizure 2

- What about an arrest of someone in a _____?
 - Answer changes almost yearly and recent cases have allowed the _____ to do more searching
- Court attempts to protect a “reasonable _____ of _____”
- Supreme Court has refrained from developing a _____ right to privacy
 - Ruled that the right to privacy does not protect homosexual sexual _____

Testing for AIDS and drugs

- Concern for public safety can justify mandatory _____ testing, even without a search warrant or _____ suspicion
- Lacking a threat to public safety, the Supreme Court has been skeptical about drug testing

Confessions and self-incrimination

- Constitutional ban originally was intended to prevent torture or _____
- Extension of rights in 1960s
 - _____ *v. Illinois*
 - _____ *v. Arizona* case—Miranda rules were designed to prevent involuntary confession
 - Miranda warnings must be given if two conditions are satisfied.
 - First, a person must be _____. Neither a formal arrest nor custody is required. A person is “detained” if unable to “_____ and _____” as he or she pleases.
 - Second, a person must be _____. Statements made without police questioning are admissible in court despite the absence of Miranda warnings.

Relaxing the exclusionary rule

- Positions taken on the rule:
 - Any evidence should be _____
 - Exclusionary rule has become too _____ to effectively deter police misconduct
 - Rule is a vital _____ for liberties
- Courts began to adopt the second position, allowing some _____ to the rule
 - Limited coverage—police with greater freedom to question _____
 - _____ - _____ exception
 - “_____ considerations of public safety”
 - Evidence that would “_____” have been found is admissible

The End