

AP Review Highlights: Civil Rights & Civil Liberties

JUDICIAL BRANCH

Article III: says very little (does NOT mention judicial review)

- 1 Supreme Court
- Federal & Supreme Court judges serve “during good behavior” (for life)
- Lists no requirements
- Supreme court has **original jurisdiction** (hear the case first) in:
 - Cases involving ambassadors, ministers, consuls
 - Cases where a state is a party
- Supreme Court has **appellate jurisdiction** (hears case after it goes through other courts) in cases involving a federal question IF it has gone through all the steps in State & Federal courts; does NOT have to choose to hear it – by custom, usually chooses not to decide **political** questions

Checks on Judicial Branch:

- Congress can impeach judges for treason, bribery, & other high crimes & misdemeanors
- President appoints; Senate confirms (simple majority)
- Congress can create more courts & change number of judges & decides salary
- Congress can propose a constitutional amendment if Supreme Court rules a law unconstitutional

Judicial Review:

- Evolved power (not enumerated in Constitution)
- Marbury v Madison (Chief Justice John Marshall)
- Can rule laws passed by Congress & actions of President unconstitutional
- Can rule state laws unconstitutional (ie McCulloch v Maryland, Gibbons v Ogden)
- This essentially allows Supreme Court to “make policy” although it has no enforcement mechanism

Judicial Restraint v Judicial Activism:

- **Restraint** – judges don’t make policy, leaving that to elected officials (Pres, Congress, states); conservatives support this, say we should go by “original intent” of founding fathers; ex – Justice Scalia – “the meaning [of the Constitution] doesn’t change”
- **Activism** – judges make policy decisions by re-interpreting the Constitution in light of modern times; believe it is their responsibility to correct injustices if other branches fail to act (ie school desegregation) & to protect the rights of minorities; liberals support this; ex – Chief Justice Earl Warren & Charles Evans Hughes (“...the Constitution is what the judges say it is.”)

Nomination & Confirmation of Judges:

- **Senatorial courtesy** – applies to federal judges ONLY (not Supreme Court); custom that if senior US senator from the state of the appointed judge objects to him, the president withdraws appt.
- **What influences appointments** – many presidents have nominees “vetted” by: Justice Dept, FBI, Congress, other judges, American Bar Association; Presidents tend to appoint judges (1) with their same political ideology (restraint or activism), (2) from his political party or someone he knows, (3) with judicial experience, (4) of a new race, ethnic group, or gender, (5) who passes a “litmus test” (ie anti-abortion)
- **Senate confirmation process:**
 - **Senate Judiciary Committee** – holds hearings where question nominee; often other witnesses; if committee doesn’t recommend, Senate usually rejects him; then goes to Senate floor for vote
 - **Reasons for conflict** – appts for life; will have impact long beyond Pres; could change existing policy if balance on Court is close; Senators from his party could warn president of possible failure so he can submit a more moderate candidate
 - **Nuclear Option & Gang of 12** – Senate Democrats were a minority in George W Bush’s administration & thought his judicial nominees were much too conservative, so they filibustered and very few of them ever came to the floor for a vote (even though Judiciary Committee had recommended them); Senate Republican leadership wanted an immediate vote & threatened the

“**nuclear option**” (changing Senate rules so that appointments could no longer be filibustered, only legislation); John McCain (R) got 5 other Republican Senators and 6 Democratic ones to work out a compromise – Democrats would only filibuster the few they could not accept and would allow a vote on the vast majority, most of Bush’s nominees were then approved and the filibuster rule remains in place (conservatives still blame McCain for this)

Important Terminology:

- **Stare decisis** - precedent
- **Rule of Four** – 4 Supreme Court judges must agree to hear a case on appeal
- **Writ of Certiorari (cert)** – send up paperwork from lower court so Supreme Court hears case
- **Amicus Curaie brief** – interest groups, governments, etc can file a brief with the Supreme Court on a case giving their viewpoint (even if they are not a part of the case) in attempt to influence
- **Solicitor General** – represents the national government before the Supreme Court
- **Oral arguments** – each side has 30 minutes, questions from judges count as part of that
- **Conference** – SC judges meet privately together & talk about the case, Chief Justice asks which way each is leaning to see if they have a majority, judges speak in order of seniority
- **Majority opinion** – the final decision of the Court; 1 judge in majority chosen to write it
- **Concurring opinion** – agrees with decision but the REASON is different
- **Dissenting opinion** – written by judge/judges disagreeing with decision; often useful in later cases

CIVIL LIBERTIES – *limits on what government can do to you or take away from you; personal freedoms the government can't take away from individual citizens*

In original Constitution:

- no suspension of *habeas corpus* except during rebellion or invasion
- no *ex post facto* laws or *bills of attainder*
- no religious oath for government office

Bill of Rights:

- 1st – religion, speech, press, assembly, petition
- 2nd – right to bear arms
- 3rd – no quartering of troops
- 4th – search & seizure
- 5th – fair compensation for eminent domain, no self-incrimination or double jeopardy, due process
- 6th – trial rights - lawyer, jury trial, speedy trial, confront witnesses
- 7th – trial by jury for civil cases
- 8th – no excessive bail or cruel or unusual punishment
- 9th – individuals have other rights not listed
- 10th – reserved powers; states' rights

Fourteenth Amendment: *protects violation of rights & liberties by states*

- **due process** clause – prohibits abuse of “life, liberty, or property”; guarantees civil liberties
- **equal protection** clause – guarantees civil rights
- **Selective incorporation cases (ONLY THESE – except Barron – COUNT)**
 - Bill of Rights had been determined to only to protect you from Federal Government, not from States (*Barron v Baltimore* 1833) – creates concept of dual citizenship
 - 14th amendment was used in later court cases to **incorporate** the Bill of Rights into the due process clause so states would have to follow them also; it’s **selective** because not all amendments of the Bill of Rights have been incorporated – begins to dissolve dual citizenship.
 - *Gitlow v New York* (1925) – incorporates freedom of speech by applying Schenck “clear & present danger test” to states (that had been a FEDERAL case); assumed protections of free speech & press applied to states
 - *Near v Minnesota* (1931) – incorporates freedom of the press (no prior restraint)

- *DeJonge v Oregon* (1937) – incorporates right to assembly; arrested for attending Communist Party meeting
- *Palko v Connecticut* (1937) – some Bill of Rights guarantees (like freedom of speech) are so important that they must be applied to the states but protection against double jeopardy is not one; by 1969 Palko was overturned in *Benton v Maryland* (1969), incorporating “no double jeopardy” and Supreme Court had incorporated MOST (but not all) of Bill of Rights to the states
- *West Virginia v Barnette* (1943) – incorporates free exercise clause
- *Wolf v Colorado* (1949) – incorporates 4th amendment (search warrant/probable cause) to states but doesn’t require them to use exclusionary rule like federal government did
- *Mapp v Ohio* (1961) – incorporated exclusionary rule to states
- *Gideon v Wainwright* (1963) – incorporates right to counsel (lawyer) part of 6th amendment
- *Griswold v Connecticut* (1965) – incorporates “zone of privacy” (as created by the 1st, 3rd, 4th, & 5th amendments & protected by 9th amendment)
- *Miranda v Arizona* (1966) – incorporates idea that all levels of government have a duty to inform suspect of his constitutional right (right to lawyer, remain silent, not self-incriminate) – 5th
- *Duncan v Louisiana* (1968) – incorporates right to jury trial in criminal cases of 6th amendment
- 2nd, 3rd, & 7th amendments have never been incorporated, nor has excessive bail of 8th

Freedom of Religion:

- **Establishment clause**
 - *Everson v Bd of Ed* (1947) – using states funds to pay for busing to religious schools is constitutional
 - *Lemon v Kurtzman* (1971) – created a 3-pronged test for state aid to religious schools: (1) secular purpose (2) can’t advance or inhibit religion (3) can’t entangle government excessively with religion
 - *Engel v Vitale* (1962) – NY state law reading a state-composed prayer unconstitutional
 - *Wallace v Jaffree* (1985) - Moment of silence for prayer or meditation unconstitutional
 - Other rulings – prayer at official public school graduations unconstitutional (1992); organized, student-led prayer at public high school football game unconstitutional (2000); religious organizations must be able to use public school facilities before/after hours if you let other outside groups (2001)
- **Free exercise clause** –
 - a law burdening “free exercise” of religion must be subject to **strict scrutiny** (government must show law is justified by a “compelling governmental interest” and is the least restrictive means for achieving that interest.
 - Religious practices that endanger public safety or violate existing laws unconstitutional
 - Children of Jehovah’s Witnesses can refuse to salute flag but can’t be denied life-saving medical treatment

Freedom of Speech:

- Ok to limit speech in certain circumstances – political, obscenity
- *Schenck v US* (1919) – “clear & present danger” (speech can advocate violence as long as it does not pose immediate danger)
- *Gitlow v New York* (1925) – speech supporting socialist revolution is illegal even if it doesn’t lead to law-breaking
- During Red Scare, court ruled ok to limit speech of communists; when over return to clear & present danger test
- *Chaplinsky v New Hampshire* (1942) – “fighting words” (speech that incites unlawful action) not protected speech
- *Brandenburg v Ohio* (1969) – government must prove danger from threatening speech is imminent
- *Tinker v Des Moines* (1969) – students wearing black armbands at school to protest Vietnam War is protected speech as long as not disruptive to school learning environment
- *Texas v Johnson* (1989) – laws prohibiting burning of US flag unconstitutional (symbolic speech)

- 2003 – ruled Virginia law prohibiting cross burning with “intent to intimidate” was constitutional
- *Roth v US* (1957) – obscenity is not constitutional protect speech or press
- *Miller v California* (1973) – 3 pronged test for obscenity: (1) violate community standards & appeal to prurient (nasty/disgusting) interests (2) show offensive sexual conduct (3) lacks seriously redeeming social, literary, artistic, political, or scientific merit
- *Reno v ACLU* (1997) – Communications Decency Act (no pornography on Internet) unconstitutional

Freedom of Press:

- *Near v Minnesota* (1931) – prior restraint is unconstitutional; upheld in *New York Times v US* (1971) – Pentagon Papers case (said government had not proved threat to national security)
- **Libel** - false written statement that damages someone’s character is NOT protected speech but hard to prove on public figures – they must prove actual malice (*New York Times v Sullivan – 1964* – freedom of press is more important than damage to public figure’s reputation; also *Falwell v Hustler Magazine - 1988*)

Search & Seizure:

- In most circumstances must have a warrant from a judge, which police obtain by convincing him that they have probable cause (evidence crime has been committed)
- *Mapp v Ohio* (1969)- incorporated **Exclusionary rule** – illegally obtained info (without a warrant) can’t be used in trial
- **Inevitable discovery** – 1984 – police can use illegally obtained evidence if they can prove they would have eventually obtained it in a legal manner
- *US v Leon* (1984) establishes **good faith exception** (if police *believed* they had legal warrant – even if it turns out later it wasn’t – then evidence could be used in court)
- Later exceptions – can search garbage cans; can search ANYWHERE in a moving vehicle that was pulled over for minor traffic violations

Rights of the Accused:

- *Miranda v Arizona* (1966) – police overturn his conviction because he wasn’t informed of his right to remain silent or to have a lawyer; protects against self-incrimination; police now read “Miranda” warning whenever suspect taken into custody (later made some exceptions to this – voluntary confessions allowed; no reading if in public safety interest; coerced confession allowed under “certain circumstances”)
- *Gideon v Wainwright* (1963) – required states to provide lawyer for felonies if can’t afford; no guarantee that it’s a GOOD lawyer

Death Penalty (Capital Punishment):

- *Furman v Georgia* (1972) – death penalty unconstitutional if applied unequally; *Gregg v Georgia* (1976) – death penalty not inherently unconstitutional if applied equally, reinstated; *McClesky v Kemp* (1988) - defendant can’t use trends & broad patterns to prove discrimination, must prove they personally were victims of intentional racial discrimination on part of prosecutor & jury
- Later death penalty rulings allowed it against mentally retarded & minors, & limited appeals of those on death row (reflects that 70% of Americans support death penalty)

Abortion Rulings:

- based on 9th amendment – implied right to privacy
- *Griswold v Connecticut* (1965) – said 1st, 3rd, 4th, & 9th amendments together create a “zone of privacy” & that state had violated it by passing a law against birth control advice
- *Roe v Wade* (1973) – extended “zone of privacy” to a woman’s body and therefore abortion; as a result all states must allow abortion during the first trimester but states can limit after that; set up an on-going debate over abortion ever since
- Further state restrictions on abortion rights:
 - *Webster v Reproductive Health Services* (1989) – States do not have to use taxpayer money to pay for abortions, even if woman qualifies for Medicaid

- *Planned Parenthood v Casey* (1992) – said that laws requiring informed consent, 24 hour waiting period, permission of 1 parent for a minor (or judge’s consent) are not an undue burden for abortion; but requiring wife to notify husband before an abortion WAS an undue burden.
- *Stenberg v Carhart* (2000) – Pa. law against partial birth abortion ruled unconstitutional because didn’t include exception for mother’s health; Congress passed a law outlawing partial birth abortion (without the exception) in 2003 and it was ruled Constitutional by the new conservative majority
- Rulings on abortion clinic access – laws such as Freedom of Access to Clinic Entrances which require anti-abortion protesters to be so many feet away from entrance are constitutional & not a violation on free speech but also can’t prosecute protesters under RICO (federal extortion/racketeering) laws.

CIVIL RIGHTS - Those rights that government MUST guarantee

AFRICAN-AMERICANS

Amendments:

- **13th** – ends slavery
- **14th** – to force states to give rights to newly freed slaves; due process & equal protection clauses
- **15th** – voting rights for black males

Jim Crow laws: laws in Southern states after Civil War meant to keep blacks in their place & denying them civil rights; Grandfather clause, literacy tests, poll taxes, segregation in all areas, denying certain jobs & areas of housing

Plessy v Ferguson (1896): 14th amendment not intended to bring social equality; separate facilities did not imply inferiority; brought on more segregation

Civil Rights Movement – primarily 1950s and 1960s

- involves courts, presidential orders & actions, laws passed by Congress, & activities by interest groups, and publicity by the media
- **NAACP** brought cases to ensure equality of school (first college in 1930s/40s, then public) - **litigation**
- Pres. Truman – Executive Order to desegregate military
- *Brown v Board of Education* (1954) – Supreme Court rules desegregation inherently unequal; must desegregate all public school “with all deliberate speed”
- Central High School (Little Rock, 1957) – Pres Eisenhower sends troops when Governor of Arkansas refuses to comply
- University of Alabama (1963) – Gov George Wallace refuses to allow James Meredith to attend University; Pres Kennedy uses National Guard to force compliance
- **Actions by Civil Rights Interest Groups:**
 - **Montgomery Bus Boycott** (1955) – Rosa Parks, Martin Luther King, Jr, blacks refuse to ride city buses until achieve goal (nearly a year), boycott area businesses also
 - **Greensboro Sit Ins** (1960) – black university students stage sit-in at Woolworth lunch counter in North Carolina to force desegregation; movement spreads to other cities
 - **Southern Christian Leadership Conference** (SCLC) – led by King & other ministers; passive resistance, non-violence, marches on Selma & Birmingham for desegregation & voting rights (include children), local police use violence (dogs & water hoses) & TV films it, country reacts
 - **1963 March on Washington** – organized by King & SCLC & other black leaders; many celebrities attend; many white supporters; media coverage; “I Have a Dream” speech

- **Students for Non-Violence Coordinating Committee** – register blacks to vote in South; freedom summer; killing of 2 white college students & 1 black who were trying to register blacks – FBI investigation; buses brought supporters from North to help
- **Laws Passed by Congress/Amendments:**
 - Reaction to March on Washington, JFK's assassination, LBJ's political skills & commitment
 - **Civil Rights Act (1964)**
 - no discrimination in public accommodation
 - US Attorney General can intervene on behalf of discrimination victims – Equal Employment Opportunity Commission
 - Employers & Unions can't discriminate against minorities & women
 - lets Federal government withhold funding from projects if they discriminate
 - forbids using different standards in registering blacks & whites to vote
 - **Voting Rights Act (1965)** – lets federal government register voters in any area where literacy tests, etc had been used after Civil Rights Act & where less than ½ of eligible voters had been registered & voted in 1964 election (most of South)
 - **24th Amendment (1964)** – bans state use of poll tax
 - **Fair Housing Act (1968)** – banned discrimination in rental & sales of housing
 - **Civil Rights Act of 1988** – Justice Dept (not victims of discrimination) will sue for discrimination in sale or rental of housing
 - **Civil Rights & Women's Equity in Employment Act of 1991** – employers must prove that differences in hiring or promotion are because of requirements of job, not gender/race (response to court rulings putting burden of proof on person discriminated against)
- **De Jure** (by law-illegal) v **De Facto Segregation** (in fact, by circumstance – ie school district)
 - court-ordered busing between school districts in 1970s to address de facto

Affirmative Action:

- Why? – to make up for past discrimination
- **Office of Federal Contract Compliance** created (1965) – bureaucratic agency to make all companies doing business with federal government comply with non-discrimination rules
- A more conservative court since 1990s has restricted quotas & set-asides
- **Education:**
 - *Bakke v Regents of University of California* (1978) – reverse discrimination; unconstitutional unless those who qualify at higher score admitted also, race can be only a PLUS factor
 - *Gratz v Bollinger* 2001 (undergrad) – unconstitutional; too much like quotas
 - *Grutter v Bollinger* 2001 (law school) – constitutional; considered race as 1 of many factors
- **Business:**
 - *US Steelworkers v Weber* (1979) – gov't can't forbid quotas in a private company
 - **1984** – Seniority to protect from lay-offs trumps affirmative action
 - *Richmond v Croson* (1989) – city can't require certain % of business contracts be minority; can't base on past discrimination
 - **1993 decision** – burden of proof for discrimination on employee not employer
 - *Adarand v Peña* (1995) – struck down government-mandated set-aside programs in Dept. of Transportation (no compelling government interest)

WOMEN:

- 19th amendment – women can vote
- **strict scrutiny** (used for race & religion) v **reasonableness standard** (for gender discrimination)
- **Equal Pay Act (1963)** – equal pay for males/females if do same job (comparable worth?)
- **Title VII 1964 Civil Rights Act** – forbids employers or unions from discriminating against women; later extended to cover sexual harassment

- **Equal Employment Opportunity Act (1972)** – extends EEOC protection to women
- **Title IX of Educational Amendments Act (1972)** – forbids gender discrimination in any educational program receiving federal funding (equal number of women’s sports & activities)
- **Equal Rights Amendment** – proposed in 1972 but lacked 3 states to ratify
- Women & draft *Rostker v Goldberg (1981)* – ok not to draft women because military forbids women from combat duty
- *US v Virginia (1996)* since Virginia Military Institute receives state funds, must admit girls
- Interest Groups
 - National Organization for Women -
 - Emily’s List – recruits, trains, & raises money for women to run for political office
 - Results – growing number of women governors, US Senators, US Rep – Speaker of House Nancy Pelosi

NATIVE AMERICANS:

- Originally rights determined by treaty
- Varying policy throughout history: reservations v assimilation v tribal authority
- 1920s – given voting rights; Ben Nighthorse Campbell elected to Congress 1992
- Tribal policies today regulated by Congress & Bureau of Indian Affairs
- **American Indian Movement (AIM)** – interest group staging protests beginning in 1970s; concerned with health care, education, housing, jobs
- New issues
 - **Native American Rights Fund** - Suing for payments from government for tribal members as compensation for lands taken away by broken treaties
 - Casino gambling on Indian reservations

ELDERLY

- **Age Discrimination in Employment Act (1967)** – lose federal funds if discriminate against people over age 40
- **Age Discrimination in Employment Act (1978)** – raised compulsory retirement to age 70
- **American Association of Retired Persons (AARP)** – major interest group
 - lobbies Congress & Bureaucracy on health, housing, social security & disability, taxes, transportation
 - has resisted major changes in Social Security while demanding COLAs (cost of living increases)
 - their support helped pass the 2003 Medicare Prescription Drug Act

DISABLED

- **Education of All Handicapped Children Act (1975)** – renamed IDEA (Individuals with Disabilities Education Act) in 1990; requires free education for all mentally & physically handicapped children; free transportation; requires schools to provide aides & least restrictive environment; requires mediation between parents & schools if dissatisfied; federal government pays only 10% of costs; requires school to do an Individual Education Plan (IEP) each year to evaluate progress
- **Americans with Disabilities Act (1992)** – requires changes in construction codes, public access, & employment opportunities for disabled; guarantees access to employment, transportation, public accommodations, & communication services; has been amended to include AIDS, alcoholism, drug addiction, mental illness, neurological problems; EEOC defines disability as “a physical or mental impairment that substantially limits 1 or more major life activities.”
- Interest Groups
 - Council for Exceptional Children

- American Civil Liberties Union (ACLU)
- National Council on Disabilities
- Paralyzed Veterans of America
- United Cerebral Palsy Association

GAY RIGHTS

- Supreme Court cases
 - *Bowers v Hardwick* (1986) – Constitution does NOT protect homosexual relations between consenting adults even in own home; upheld sodomy laws
 - *Romer v Evans* (1996) – ruled unconstitutional Colorado amendment to their state constitution that banned laws protecting gays (used 14th amendment equal protection)
 - *Lawrence v Texas* (2003) – overturned *Bowers* 6-3 (3 conservatives dissenting); violates due process in 14th amendment (used 9th amendment implied right to privacy)
- Issues
 - AIDS funding – protests, lobbying, to get US government to spend more on AIDS research & AIDS drugs
 - Marriage v civil unions:
 - Congress passes **Defense of Marriage Act** (1996) – defines marriage as between opposite sexes; states don't have to recognize gay marriage (otherwise would be in violation of "Full Faith & Credit" clause of US Constitution)
 - 2000 – Vermont recognizes "civil unions" between same sex but not marriage
 - 2003 – Massachusetts Supreme Court required state legislature to recognize gay marriage as a right protected by state constitution; then in 2006 made an exception that gays in states where such marriage is forbidden can't marry in Massachusetts
 - Sexual Harassment – gays protected by sexual harassment laws also, not just women
 - Hate crimes – response to Matthew Shepard torture & killing; some states have put extra penalties on crimes based on motive (did you attack him because he's gay?)
- Interest Groups
 - ACT UP (massive protests for gay rights & promoting AIDS research funding)
 - GLAD (Gay & Lesbian Alliance)
 - ACLU (American Civil Liberties Union)