



Civil Liberties


Wilson chapter 18

Klein Oak High School



The politics of civil liberties

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

The background of the slide is a composite image. The top half shows a close-up of an American flag with its stars and stripes. The bottom half shows a large, intense fire with bright orange and yellow flames. The text is overlaid on a semi-transparent white background.

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

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes. The flag is draped and appears to be part of a larger display or ceremony.

Policy entrepreneurs 1

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



Policy entrepreneurs 2

- [Smith Act](#) (1940)
- Korean War and Senator Joseph McCarthy
- [Internal Security Act of 1950](#)
- Communist Control Act of 1954
- Supreme Court usually upheld this legislation
- Some use is still made of the Sedition Act, although the Supreme Court has become more protective of political speech

The background of the slide is a photograph of the United States flag. The top portion shows the stars and stripes, while the bottom portion is obscured by bright, orange and yellow flames, suggesting a burning flag. The text is overlaid on a semi-transparent white rectangular area.

Cultural conflicts

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



Interpreting & applying 1st Amendment

- Speech & national security



Speech and national security 1

- Blackstone: press should be free of prior restraint, but then must accept the consequences if a publication is improper or illegal
- Sedition Act of 1798 followed Blackstone's view, with improvements
 - Jury trial, not a judge's decision
 - Defendant would be acquitted if it could be proved that the publication was accurate

The background of the slide is a composite image. The top portion shows a close-up of the American flag's stars and stripes. The bottom portion shows a bright, intense fire, likely from a protest or a historical event, with flames rising and consuming what appears to be a structure or ground. The text is overlaid on a semi-transparent white rectangular area.

Speech and national security 2

- 1917–1918, Congress defines limits of expression
 - Treason, insurrection, forcible resistance to federal laws, encouraging disloyalty in the armed services not protected by the First Amendment
 - Upheld in [Schenck](#) (1919) via “clear and present danger” test
 - Holmes dissented in cases that subsequently applied this test, believing that its conditions had not been met

The background of the slide is a photograph of the American flag. The top portion shows the stars and stripes of the flag, while the bottom portion is dominated by bright, intense orange and yellow flames, suggesting the flag is being burned. The text is overlaid on a semi-transparent white rectangular area.

Speech and national security 3

- Fourteenth Amendment “due process” clause
 - Supreme Court initially denied that this clause made the Bill of Rights applicable to the states
 - [Gitlow](#) (1925): “fundamental 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 expression after WWI but with some deference to Congress during times of crisis
 - Supreme Court upheld the convictions of Communists under the Smith Act
 - By 1957: to be punished, the speaker must use words “calculated to incite” the overthrow of the government
 - By 1969 ([*Brandenburg*](#)): speech calling for illegal acts is protected, if the acts are not “imminent”
 - 1977: American Nazi march in Skokie, Illinois is held to be lawful
 - Hate speech is permissible, but not a hate crime that results in direct physical harm

The background of the slide is a photograph of an American flag. The flag is draped and appears to be waving. At the bottom of the image, there is a bright, orange and yellow fire that seems to be burning over the lower portion of the flag. The overall tone is serious and dramatic.

What is speech? 1

- Some kinds of speech are not fully protected
 - Defamation of Character
 - Libel: written statement defaming another by false statement
 - Defamatory oral statement: slander
 - Variable jury awards
 - Public figures must also show the words were written with actual malice



What is speech? 2

- Obscenity

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



What is speech? 3

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

What is speech? 4

- Symbolic speech
 - Cannot claim protection for an illegal act on the grounds that it conveys a political message (example: [burning a draft card](#))
 - Flag burning is protected speech ([Texas v. Johnson](#))



Bonus! Take this quick flag-loyalty test!

Look at the image below...



...If your eyes do not well up with tears, you are a communist. Seek professional help immediately.

internettrash.com/users/therail/flagburn.html

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes. The flag is draped and appears to be part of a larger scene, possibly a ceremony or a public display. The colors are vibrant, with the red, white, and blue stripes and stars clearly visible.

Who is a person?

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



Church and state

- Free Exercise
- Establishment



The free exercise clause

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

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The establishment clause 1

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

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The establishment clause 2

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



The establishment clause 3

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

The background of the slide features a large American flag with its stars and stripes. Overlaid on the bottom portion of the flag is a bright, intense fire, with orange and yellow flames rising upwards. The text is presented in a clean, black, sans-serif font against a semi-transparent white background.

Crime and due process

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

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The exclusionary rule 1

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

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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 [Mapp v. Ohio](#) in order to enforce constitutional guarantees



Search and seizure 1

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



Search and seizure 2

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



Testing for AIDS and drugs

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

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Confessions and self-incrimination

- Constitutional ban originally was intended to prevent torture or coercion
- Extension of rights in 1960s
 - [*Escobedo v. Illinois*](#)
 - [*Miranda 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 detained. Neither a formal arrest nor custody is required. A person is “detained” if unable to “come and go” as he or she pleases.
 - Second, a person must be questioned. 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 admissible
 - Exclusionary rule has become too technical to effectively deter police misconduct
 - Rule is a vital safeguard for liberties
- Courts began to adopt the second position, allowing some exceptions to the rule
 - Limited coverage—police with greater freedom to question juveniles
 - Good-faith exception
 - “Overriding considerations of public safety”
 - Evidence that would “inevitably” have been found is admissible

The End

