



American Government and Politics Today

Chapter 4 Civil Liberties




Freedom of the Press

Freedom of the Press

- *Libel*, a written defamation of character
 - Public figures must meet higher standards than ordinary people to win a libel suit.
- A Free Press versus a Fair Trial
 - Gag orders: the right of a defendant to a fair trial supersedes the right of the public to “attend” the trial.
- Films, Radio, and TV
 - Freedom of the press is no longer limited to just the print media, though broadcast media do not receive the same protection as print media.



NEW YORK TIMES V SULLIVAN

NYT V SULLIVAN

- January 6, 1964
- Full page ad in the Times asking for money to defend MLK against perjury charges
- Ad said that MLK had been arrested 7 times, which was untrue (actually 4)
- L.B. Sullivan, Montgomery Safety Commissioner, considered the ad defamatory, as he was in charge of the police (libel)

SULLIVAN, CONTD

- Sullivan asked the Times to retract the ad
- They refused, but later acquiesced upon request from Alabama governor John Patterson
- Case went to Supreme Court, where they ruled 9-0 in favor of the Times
- No “actual malice” was found, so, under the 1st and 14th amendments, no damages can be awarded
- Term “actual malice” was adopted, was given meaning and importance

What is, or who is, the "Press"?



In today's world the press includes magazines, radio, and television along with newspapers.

Prior Restraint Forbidden

In many nations prior restraint, censorship of information before it is published, is a common way for the government to control information and limit freedom.

The Supreme Court has ruled that the press may be censored in advance only in cases relating directly to national security.



Near v. Minnesota (1931)

This case involved a law prohibiting the publication of "malicious, scandalous, or defamatory" newspapers or magazines. The Court ruled the law unconstitutional because it involved prior restraint. The Court stressed that a free press means freedom from government censorship.



New York Times Co. v. United States (1971)

This case involves leaked U.S. involvement in the Vietnam War from the Pentagon. It is also known as the Pentagon Papers case. The Court ruled that the government cannot stop further publication of the papers by arguing that national security would be endangered. The Court determined that stopping publication would be prior restraint.



"Pentagon Papers," 1971



- ⌘ Former defense analyst **Daniel Ellsberg** leaked govt. docs. regarding war efforts during Johnson's administration to the *New York Times*.
- ⌘ Docs. → Govt. misled Congress & Amer. People regarding its intentions in Vietnam during mid-1960s.
 - ↳ Primary reason for fighting not to eliminate communism, but to avoid humiliating defeat.
 - ↳ *New York Times v. United States* (1971) ⚡

New York Times v. United States (1971)



- What happened???
- Former Pentagon employee
- Secret Government info
- LEAKED to PRESS!!!!
- U.S. officials were LIARS!!!
- Government mad ☹
- Court Ruled ☺

Fair Trials & Free Press

Is it possible????

• 1st vs. 6th

Public Trial

- Guaranteed by Sixth Amendment—made applicable to the states by the Fourteenth Amendment.
- One that is not secret
- One that the public has a right to attend
- No requirement that members of the public attend

Judges take VIP actions!!!!

Sequester



Other methods...

- Moving the trial
- Limiting reporters in courtrooms
- Isolating witnesses and jurors from the press

Gag orders unconstitutional



- Judge prevents press from publishing certain types of info about a pending court case

Richmond Newspapers v. Virginia

- Press under First Amendment has a right to attend a trial.
- The constitutionally protected right to free discussion of governmental affairs embraces the right of access.
- Judge for "good cause" may close a portion of a trial.

Gag Orders

- Trial judge has authority to limit information that the parties and counsel may provide to the media.
- *Sheppard v. Maxwell*
 - The movies and television series of the fugitive
- Violation of gag order punished by contempt.

SHEPPARD V MAXWELL

An 8-1 Supreme court ruling on a case reviewing freedom of press

THE FACTS

- He was accused →  of Killing Her → 
- because they →  became too influential

THE PROBLEM...

- The press got too involved during the court case and freedom of press came into question.
- According to oyez.com the press had "repeated broadcasts of Sheppard confessing in detail to crimes he was later charged with, the blatant and hostile trial coverage by Cleveland's radio and print media, and the physical arrangement of the courtroom itself"
- Due to the media's influence, convicted of second degree murder.
- trial was unfair because:
 - the press had interfered with his right in the 5th amendment
 - They had overstepped their privileges given by the 1st amendment

THE REASONING

- 1st amendment states the freedom of the press, overstepping of boundaries.
- the media overstepped their boundaries by interfering with Sheppard's 5th amendment.
- The press had influenced the jurors instead of participating in an objectionable, unbiased, calm, courtroom. (oyez.com)
 - Papers told police to bring him in and they did.

THE RULING

- The final ruling was an overwhelming 8 votes to 1 ruling for Sheppard, stating that the media did create an unfair trial for him.
- So this case showed that the press did overstep their privilege from the 1st amendment.

Fair Trials and Free Press

In recent years the 1st Amendment right of free press and the 6th Amendment right to a fair trial have sometimes conflicted.

Sheppard v. Maxwell (1966)

Pretrial and courtroom publicity and news stories about a crime can make it difficult to secure a jury capable of fairly deciding a case. The Court overturned the conviction of Samuel Sheppard because press coverage had interfered with his right to a fair trial. The Court described measures to ensure a defendant has a fair criminal trial:

- Move the trial to reduce publicity
- Limit number of reporters in the room
- Place controls on reporters conduct in the room
- Keep the jury isolated or sequestered



Gannett Co. v. DePasquale

- Press and public may be excluded from pretrial hearings.
- Adverse publicity prior to trial may hinder right of defendant to a fair trial.
- General rule, no closed hearings without a strong showing of prejudice to the requesting party (defendant or prosecutor).

Gag Orders Unconstitutional

After the *Sheppard* case, a number of trial judges began to use gag orders to restrain the press.

A gag order is an order by a judge barring the press from publishing certain types of information about a pending case.

The Court has ruled that vague or broad gag orders are unconstitutional.

Press Access to Trials

The Court ruled in the late 1970s that the public and the press could be barred from certain pretrial hearings.

The press can be barred only if the trial judge found a "reasonable probability" that publicity would harm the defendant's right to a fair trial.

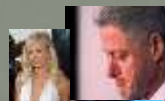


KEEP OUT



Free Press Issues

- If the Founding Fathers only knew....
- Email
- Motion Pictures
- Advertising
- FCC
- Government regulation of radio and TV



Protecting News Sources

Many reporters argue that they have the right to refuse to testify in order to protect confidential information and its source. The Court has determined that reporters do not have such a right.

40 U.S. states, including California, have shield laws.

Shield laws give reporters some means of protection against being forced to disclose confidential information or sources in state courts.

Free Press Issues

In writing the 1st Amendment, the Founders thought of the press as printed material. They could not foresee the growth of technology and the new issues regarding the freedom of the press.



Radio and Television

Because radio and broadcast television use public airwaves, they do not enjoy as much freedom as other press media.

Stations must obtain a license from the Federal Communications Commission (FCC), a government agency that regulates their actions.

The FCC may punish stations that broadcast obscene or indecent language.

The Court determined in the late 1990s that cable operators are not entitled to maximum 1st Amendment protections because there is typically only one cable operator in a community.

Motion Pictures

The Court decided in the early 1950s that "liberty of expression by means of motion pictures is guaranteed by the 1st and 14th Amendments."



E-Mail and the Internet

Congress passed the Communications Decency Act to try to prevent children from having access to indecency.

The Court in the late 1990s struck down portions of this law and stated that speech on the Internet was entitled to 1st Amendment protection.

Obscenity

In *Miller v. California* (1973) the Court ruled that, in effect, local communities should set their own standards for obscenity.

The Court may still overrule specific acts made by local authorities.



Advertising

Advertising is considered "commercial speech" and is given less protection under the 1st Amendment than pure speech.

Since the mid-1970s the Court has relaxed controls for advertising for abortion clinics, prescription drug pricing, legal services, and medical services.

It has also limited regulation of billboards, "for sale" signs, and lawyer's advertisements.



Freedom of Assembly

- Freedom of Assembly = Freedom of Speech ??????



=



Mall Bans Teens



- 3,000 Saturday night
- Under 16??
- No go, without adult

The Right to Assemble and Petition the Governor

- The Supreme Court has held that state and local governments cannot bar individuals from assembling. State and local governments can require permits for such assembly so that order can be maintained. However the government cannot be selective as to who receives the permit.
 - Street Gangs.
 - Online Assembly

The 1st Amendment guarantees “the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

It protects the right to make views known to public officials and others by such means as petitions, letters, lobbying, carrying signs in a parade, or marching.



Protecting Freedom of Assembly

Freedom of assembly is a right closely related to freedom of speech because most gatherings involve some form of protected speech.



DeJonge v. Oregon (1937)

Dirk DeJonge was convicted for conducting a public meeting sponsored by the Communist party.

The Court ruled that the Oregon law was unconstitutional.

The *DeJonge* case established two principles:

The right of assembly was as important as the rights of free speech and free press.

The due process clause protects freedom of assembly from state and local governments.

Without freedom of assembly there would be no political parties or interest groups to influence the actions of government.



Assembly on Public Property

Freedom of assembly includes the right to parade and demonstrate in public. Because these forms of assembly usually occur in parks, streets, or on sidewalks, it makes it possible that they could interfere with the rights of others to use the same facilities.

Conflict may also arise during demonstrations for unpopular causes.

For such reasons, they are subject to greater government regulation than exercises of pure speech.



Limits on Parades and Demonstrations

Currently, the Court maintains that states or cities may require permits and other restrictions for parades and demonstrations. The decision is not intended to silence unpopular ideas but to provide for public order and safety.



Additional Limits on Public Assembly

In the mid-1960s the Court decided that:

Demonstrators could not enter the grounds of a county jail without permission.



Demonstrations and parades are not allowed near courthouses if they could interfere with the trial.

In the early 1970s the Court voided a city law that banned all demonstrations near school buildings except in the case of picketing by labor unions. Picketing is patrolling an establishment to convince workers and the public not to enter it.



Assembly and Property Rights

The right to assemble does not allow a group to convert private property to its own use, even if the property is open to the public. For example, protesters cannot gather in shopping malls and pro-life protestors cannot block the entrance to abortion clinics.



Public Assembly and Disorder

Police sometimes have difficulty protecting our right to assemble when public assemblies threaten public safety.



Rightness to Peaceably Assemble Challenged: The Skokie March

Who is this??



What was this event??



The Nazis in Skokie

In 1977 the American Nazi Party planned to have a rally in the largely Jewish suburb of Skokie, Chicago.

This outraged the residents of which many were Holocaust survivors.

To prevent the march, the city required the American Nazi Party to post a \$300,000 bond and get a permit.

The Nazis claimed the high bond interfered with their freedoms of speech and assembly.

The federal court of appeals ruled that no community could use parade permits to interfere with free speech and assembly.

The Skokie case illustrates the heckler's veto problem.

A heckler's veto is when the public vetoes the free speech and assembly rights of unpopular groups by claiming demonstrations will result in violence.



Rightness to Peaceably Assemble Challenged: The Skokie March

Illinois, Chicago is largest city



Village of Skokie, in Chicago



Sadness in Skokie

Frank Joseph Collin



Skokie residents, Holocaust survivor



Skokie Ruling

NATIONAL SOCIALIST PARTY v. SKOKIE (1977)

- The Supreme Court ruled they were allowed to march without wearing Swastika Armbands.
- First Amendment freedoms must apply to EVERYONE, if those with whom we disagree!



Freedom of Assembly does NOT allow...

- Assembly on Private property



- Parade or Demonstration

without a **permit**



Feiner v. New York (1951)

The Court ruled that the police can limit freedom of assembly to preserve public order.

Gregory v. City of Chicago (1969)

The Court overturned the disorderly conduct conviction of Gregory and ruled that the demonstrators had been peaceful and had not done more than exercise their 1st Amendment rights. It was the neighborhood residents, not the marchers, that caused the disorder.



Protection for Labor Picketing

The Court has decided:

- Peaceful picketing is a form of free speech (1940)
- Cannot picket to force a business to hire African American workers (1950)
- Cannot picket unless there is a labor dispute (1957)



Freedom of Association

In the *DeJonge v. Oregon* (1937) case, the Court extended the right to freely assemble to protect the right of individuals to freedom of association.

Individuals may freely join a political party, interest group, or other organization.

Whitney v. California (1927)

The Court ruled that the government must show a clear and present danger exists to limit Constitutional freedoms. In later cases, the Court ruled that only actual preparations for the use of force against the government were punishable.



???? Questions ????

- A local policeman arrests you and your friends for driving four wheelers on the highway in Midland. To get back at him you hold an assembly on his lawn you hold an assembly on private property, even if he did confiscate your four wheelers.
 - Can you do this???
 - NO!!! You can't hold an assembly on private property, even if he did confiscate your four wheelers.



???? Questions ????

- Lee starts the "America Against Old Ladies" group. This group is VERY unpopular with the public, but continues to exist and dislike old ladies, especially their driving. Lee's group decides to have a demonstration in Ft. Lauderdale, Florida, an old folks community. The old folks oppose this event.
 - Can Lee's group have this demonstration?
 - Yes, even unpopular groups have the right to assemble!



???? Questions ????

- Danielle and Jodie skip school to hold a parade on Main Street. Although the parade is just the two of them, a large crowd forms to watch them march. Several cars veer off the road to avoid hitting the two girls, unfortunately the car takes out a Pizza shop (RELAX, there are 10 more) and part of the crowd of onlookers.

– What document could the girls have gotten to avoid this mess???

– A Permit!



???? Questions ????

- Your uncle's wife's brother's step-son's dog was found digging up questionable smoking materials in your best friend's yard. Your friend is arrested and charged with possession. The next day the Cumberland Times News has an article about the incident on the front page. Your friend is released from jail, but is fired from his job.

– Did the newspaper have the right to print the arrest and charges so that all local readers would see???

– Yes!!! Freedom Of Press!!!



Privacy Rights

- There is no *explicit* Constitutional right to privacy, but rather the right to privacy is an interpretation by the Supreme Court.
- From the First, Third, Fourth, Fifth, and Ninth Amendments.
- The right was established in 1965 in *Griswold v. Connecticut*.

Privacy Rights and Abortion

- *Roe v. Wade*. In *Roe v. Wade* (1973) the court held that governments could not totally prohibit abortions because this violates a woman's right to privacy. Government action was limited depending on the stage of the pregnancy.
- The controversy continues

Privacy Rights and The Right to Die

- *Cruzan v. Director, Missouri Department of Health* (1997): a patient's life support could be withdrawn at the request of a family member if there was "clear and convincing evidence" that the patient did not want the treatment. This has led to the popularity of "living wills."
- What If There Is No Living Will? For married persons, the spouse is the relative with authority in this matter.

Privacy Rights and The Right to Die (cont.)

- Physician-Assisted Suicide. The Constitution does not include a right to commit suicide. This decision has left states much leeway to legislate on this issue. Since that decision in 1997, only the state of Oregon has legalized physician-assisted suicide.

Privacy Rights vs. Security Issues

- Privacy rights have taken on particular importance since September 11, 2001. For example, legislation has been proposed that would allow for “roving” wiretaps, which would allow a person (and his or her communications) to be searched, rather than merely a place. Such rules may violate the Fourth Amendment.
- The USA Patriot Act
 - Civil liberties concerns

Rights of the Accused

- Fourth Amendment
 - No unreasonable or unwarranted search or seizure.
 - No arrest except on probable cause.
- Fifth Amendment
 - No coerced confessions.
 - No compulsory self-incrimination.

Rights of the Accused (cont.)

- Sixth Amendment
 - Legal counsel.
 - Informed of charges.
 - Speedy and public jury trial.
 - Impartial jury by one’s peers.
- Eighth Amendment
 - Reasonable bail.
 - No cruel or unusual punishment.

The Bill of Rights and the Accused

- *Miranda v. Arizona*: requires the police to inform suspects of their rights (*Miranda v. Arizona* 1966).
- Exceptions to the *Miranda* Rule. These include a “public safety” exception, a rule that illegal confessions need not bar a conviction if other evidence is strong, and that suspects must claim their rights unequivocally.



The Bill of Rights and the Accused (cont.)

- Video Recording of Interrogations. In the future, such a procedure might satisfy Fifth Amendment requirements.
- The Exclusionary Rule. This prohibits the admission of illegally seized evidence (*Mapp v. Ohio* 1961).

The Death Penalty

- Is the death penalty cruel and unusual punishment or is it a useful method for dealing with the worst criminals?



The Death Penalty Today

- 37 states allow the death penalty.
- Time Limits for Death Row Appeals.
- The 1996 Anti-Terrorism and Effective Death Penalty Act limits appeals from death row.
- Recently, DNA testing has led to the freeing of about a hundred death row inmates who were wrongly convicted, throwing doubt on the death penalty.

Questions for Critical Thinking

- What do you think is the historical basis for civil liberties? Are people as concerned today about the protection of their civil liberties as were the founders?
- Do you think the libel laws restrict a free press? Should the press be allowed to publish anything it wants about a person? Should the press have to prove that everything published is absolutely true?

Questions for Critical Thinking

- Why are the rights of the accused so important? Is there any way to strike a balance between the rights of victims and the rights of the accused?