

Chapter 4

CIVIL LIBERTIES AND CIVIL RIGHTS

CHAPTER REVIEW

Learning Objectives

After studying Chapter 4, you should be able to do the following:

1. Describe the major features of the Bill of Rights and understand how and why it applies to the states as well as the national government.
2. Explain how the First Amendment rights of free speech, press, and assembly have evolved and comment on the controversies surrounding these rights.
3. Explain how the Supreme Court has interpreted the religion clauses of the Constitution, citing key cases as examples.
4. Describe how the Constitution protects the rights of the accused and how the Supreme Court has interpreted these rights through key court cases.
5. Discuss the controversy over the right to privacy, particularly as it relates to abortion.
6. Differentiate between the various concepts of equality and the constitutional interpretation of equality.
7. Trace the history of racial discrimination in America and the legal attempts to reduce discrimination.
8. Explain how the franchise has been extended in the United States, particularly in terms of the Voting Rights Act of 1965.
9. Describe the efforts to eliminate sex discrimination in the United States.
10. Compare and contrast how discrimination has affected American Indians, Latinos, immigrants, the elderly, the poor, and Americans with disabilities in the United States.

Chapter Outline and Summary

I. Introduction

- A. The framers of the Constitution wanted not only a strong and effective government but also one that would guard the rights of a free people.
- B. A civil liberty is a legally protected freedom to act or not to act, and to be free from unwarranted governmental intrusion.
- C. Civil rights encompass participatory rights, which are citizens' legal rights to participate in society and politics on an equal footing with others.
- D. Civil rights embrace the rights protected by the three Civil War amendments, especially the equal protection clause of the Fourteenth Amendment, and subsequent laws and court cases.

II. The Bill of Rights: Securing the Blessings of Liberty

- A. Applying the Bill of Rights to the States
 - 1. Individual liberties are protected in the Bill of Rights.
 - 2. The Bill of Rights at first did not apply to the states.
 - 3. Through a process of incorporation the Supreme Court used the Fourteenth Amendment as a vehicle for making the Bill of Rights applicable to the states.
- B. The Fragility of Civil Liberties
 - 1. Civil liberties have meant more in some years than in others.
 - 2. Americans do not agree on the rights the Constitution should protect.
 - 3. Maintenance of civil liberties rests on rules and institutions and the attitudes and values of the people.

III. Free Speech, Press, and Assembly

- A. Introduction
 - 1. Freedoms of speech, press, and assembly are found in the First Amendment.
 - 2. These liberties all involve forms of expression.
- B. The Value of Free Expression
 - 1. It is necessary to the political process.
 - 2. It allows the dominant wisdom of the day to be challenged.
 - 3. It aids self-development.

4. Free expression may not produce the wisest policy and can threaten social and political stability.

C. The Tests of Freedom

1. Examples of free speech suppression included the Sedition Act of 1798 and instances during the Civil War, World War I, and the red scare that followed.
2. The Supreme Court's clear and present danger test prohibited speech only when it would result in imminent harmful consequences (Holmes/Brandeis).
3. The bad tendency test, used for a short time, would prohibit speech even if it did not result in an immediate harm.

D. Gags

1. The Court is unlikely to approve a prior restraint, censorship before publication.
2. The Court only rarely approves a pretrial gag even if it protects the right to a fair trial.

E. Obscenity and Libel

1. The Court regards obscenity as unprotected speech because of the public view that it is deleterious.
2. The Court has applied the "contemporary community standards" test (*Miller v. California*) to define obscenity.
3. Libel, which involves character defamation, is not generally protected by the First Amendment.
4. In *New York Times v. Sullivan*, the Court stated that premeditated malice must be proved before libel exists.
5. Some argue that the threat of libel makes journalists wary and keeps them from doing a thorough job, while others believe it keeps journalists honest and acts as a check on their power.

F. Freedom of Assembly and Symbolic Speech

1. Symbolic speech, such as a sit-in, has been held as unconstitutional when the mode of expression (not the ideas) is considered harmful.
2. The Court has upheld the right of individuals to deface the flag as a symbol of protest and barred Congress from criminalizing flag burning.

IV. Religious Freedom

A. Religion and the Constitution

1. The United States is very diverse religiously.
2. The free exercise clause preserves religion free of government interference.
3. The establishment clause keeps government from becoming the tool of one religious group against others.

B. Aid to Sectarian Schools

1. The Court has allowed some public aid to sectarian schools if they pass certain requirements under the *Lemon* test.

C. Prayer in the Public Schools

1. *Engel v. Vitale* outlawed mandatory prayer in public schools.
2. The Court has been firm in its opposition to state sponsored religious activities, although such action creates controversy.

D. Religious Observances in Official Settings

1. Outside of schools, the Court has been more willing to allow religious practices in official settings.
2. The Court has placed some limits on official observances of religious holidays, not permitting any implication of endorsement of a religion.

E. Free Exercise of Religion

1. Problems occur when application of a law is counter to a religious tenet (as in the Amish and compulsory education).
2. When actions based on religious belief run afoul of criminal law, the latter prevails (as in the American Indian Church's use of peyote).

V. Fundamentals of American Criminal Justice

A. A Government of Laws

1. The American criminal justice system requires that legal guilt be proven and that proper criminal procedure be followed.
2. Conflict often occurs when attempting to balance the values of individual fairness and crime control.

B. Presumption of Innocence

1. Presumption of innocence lays the burden of proving guilt on the government.
2. The prosecution must also demonstrate *mens rea*, or criminal intent, allowing insanity as a defense.

C. Notice of Charges

1. A suspect is entitled to know precisely what charges the state intends to level or prove so he or she can present a defense.
2. Ex post facto laws and bills of attainder are forbidden by the Constitution.

D. Limits on Searches and Arrests

1. In many searches and some arrests, the Fourth Amendment requires a judge-issued warrant based on probable cause.
2. The exclusionary rule disallows evidence gained as a result of violating the suspect's rights.

E. Protection Against Self-incrimination

1. The Fifth Amendment prohibits the use of interrogations to coerce confessions and protects suspects from having to testify at their own trials.
2. *Miranda v. Arizona* excluded all confessions, unless police informed the suspect of their Miranda rights.
3. Many suspects decide to plea bargain, by which they confess to obtain a lighter sentence.

F. Assistance of Counsel

1. Although the Sixth Amendment guarantees the right to counsel, until the 1970s defendants who could not afford a lawyer often went unrepresented.
2. Today, the court appoints counsel when a defendant cannot afford one.
3. Public defenders and less expensive lawyers have heavy caseloads, resulting in a large number of plea bargains.

G. Limits on Punishment

1. The Eighth Amendment prohibits "cruel and unusual punishment."
2. Although the Court does not consider the death penalty unconstitutional, states vary widely in how they use it.
3. Many argue that the death penalty is racially discriminatory and the process is flawed.

VI. A Right to Privacy

A. Introduction

1. The Ninth Amendment provides the basis for civil liberties not specifically mentioned in the Constitution.

B. The Abortion Cases

1. *Roe v. Wade* recognized a woman's right to abortion in the first and second trimesters, allowing states to ban abortions only in the third trimester.
2. Since *Roe*, attempts to limit abortion failed until *Webster v. Reproductive Health Services* gave states greater power to restrict abortion without overturning *Roe*.

C. Controversy continues regarding government's right to rule on people's choices about sexual relations.

VII. Equality: A Concept in Dispute

- A. Policies promoting equality of opportunity would remove barriers of discrimination that existed in the past.
- B. Policies promoting equality of condition would reduce or eliminate handicaps caused by lingering effects of past discriminations.
- C. Policies promoting equality of result, such as affirmative action programs, would guarantee equal outcomes.
 1. Suspect classifications that discriminate against racial or ethnic minorities.
 2. Laws that burden or penalize someone in exercising what the Court considers a "fundamental right."

VIII. Racial Discrimination

- A. The Legacy: Slavery, Civil War, and Reconstruction
 1. The Civil War ended slavery (Thirteenth Amendment) and ushered in several civil rights acts during Reconstruction.
 2. *Plessy v. Ferguson* legitimized segregation through the separate-but-equal doctrine.
- B. Formalizing Third-Class Citizenship
 1. Every aspect of life in the South (and much in the North) became racially segregated by law.
 2. Southern politicians systematically excluded African Americans from the political process.
 3. African Americans were shortchanged in the delivery of public services, especially education.

C. The Counterattack

1. The NAACP and its legal defense fund pressed for desegregation through the courts.
2. *Brown v. Board of Education of Topeka* overturned *Plessy* and the separate-but-equal doctrine.

D. Putting *Brown* to Work: The Law and Politics of Integration

1. Several factors hampered *Brown's* implementation.
 - a. Some federal judges in the South opposed integration.
 - b. Local school boards opposed *Brown*.
 - c. Many feared a hostile reaction from whites.
 - d. The Court lacked initial support from Congress, the White House, and much of the legal community.
2. The Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965 furthered integration.

E. The Continuing Effects of *Brown*

1. Until the 1970s the Court focused on eliminating *de jure* segregation (by law).
2. After 1971 the Court focused on *de facto* segregation (unofficial) through controversial policies such as redrawing school attendance zones and busing.
3. Social segregation, especially in terms of residence, remains a fact in many areas of the nation.

F. Affirmative Action

1. No firm consensus exists on the merits of affirmative action.
2. *Regents of the University of California v. Bakke* outlawed racial quotas but permitted the use of race as one factor in admissions.
3. The legal limits to affirmative action remain a subject of debate. (See “Contemporary Controversies: How Much Affirmative Action?”)

IX. Voting Rights

A. The Voting Rights Act

1. The Voting Rights Act of 1965 is the most important voting legislation ever enacted by Congress.
2. Advance clearance is required prior to any change in a locale's electoral system, protecting changes in African American voting power.

B. The 1982 Amendment

1. An *existing* electoral arrangement that has a racially discriminatory effect also violates the law.
2. African American voter registration has increased dramatically since 1965.

X. Sex Discrimination

A. The Legacy

1. In the nineteenth century, the wife had no legal existence apart from her husband.
2. The suffrage movement resulted in the Nineteenth Amendment giving women the right to vote in 1920.

B. Gender to the Forefront

1. Sex discrimination became an issue in the 1960s and 1970s as more women increased their education and career opportunities.
2. Several laws were passed outlawing sexual discrimination.
3. Comparable worth in wage scales would mandate equal pay for jobs of equal value and require congressional or state action.

XI. Other Americans and Civil Rights

A. American Indians

1. Although few in number, American Indians suffer high rates of sickness, poverty, illiteracy, and unemployment.
2. American Indians have been granted more rights and greater control over their own affairs reflecting a heightened ethnic pride and political awareness.

B. Latinos

1. Latinos are the nation's fastest-growing minority.
2. Where necessary, ballots must be printed in Spanish and bilingual education must be provided.
3. Latinos have become an important political force.

C. Immigrants

1. Legal immigration has been limited since 1921.
2. Illegal aliens are a target for discrimination and violence.
3. The Immigration Reform and Control Act gave legal residence to many illegal aliens and required employers to verify legal status but has resulted in discrimination against Latinos and Asians.

D. Disabled Americans

1. Disabled Americans are the nation's largest (over 43 million) minority group.
2. The Americans with Disabilities Act (1990) bans discrimination in employment and places of public accommodation.

XII. Rights and Liberties in the Constitutional Framework

- A. Civil rights and liberties are part of the framework of American constitutional government.
- B. Much of what government and people have done in recent decades has been driven by an intolerance of inequality.

Key Terms, Concepts, and Personalities

After studying Chapter 4, you should be able to identify and describe the significance of:

civil liberty
Fourteenth Amendment
incorporation
First Amendment
clear and present danger test
bad tendency test
incitement test
prior restraint
Smith Act
obscenity
libel
symbolic speech
free exercise clause
establishment clause
Lemon test
Engel v. Vitale
legal guilt
criminal procedure
presumption of innocence
mens rea
ex post facto laws
bill of attainder
Fourth Amendment
warrant

probable cause
exclusionary rule
Fifth Amendment
Miranda v. Arizona
Miranda rights
plea bargain
Sixth Amendment
capital case
misdemeanor
felony
public defenders
Eighth Amendment
cruel and unusual punishment
Ninth Amendment
Roe v. Wade
Webster v. Reproductive Health Services
civil rights
participatory rights
equal protection clause
Fourteenth Amendment
equality of opportunity
equality of condition
equality of result
Thirteenth Amendment
Plessy v. Ferguson
separate-but-equal doctrine
white primary
NAACP
Legal Defense Fund
Brown v. Board of Education of Topeka
Civil Rights Act of 1964
Elementary and Secondary Education Act of 1965
de facto segregation
de jure segregation
affirmative action
Regent's of the University of California v. Bakke
Voting Rights Act of 1965
Nineteenth Amendment
National Organization for Women
Equal Pay Act
comparable worth
Immigration Reform and Control Act
Americans with Disabilities Act of 1990

TESTING YOUR UNDERSTANDING

Completion

1. The purpose of protecting _____ is to place certain practices beyond government's reach.
2. The Fourteenth Amendment laid the groundwork to make the Bill of Rights applicable to the _____.
3. Of the possible restrictions on speech today, the Supreme Court is least likely to approve a _____.
4. A sit-in is an example of _____ speech.
5. The _____ clause keeps government from becoming the tool of one religious group against others.
6. The _____ denies government the use of evidence gained as a result of violation of the suspect's rights.
7. A deal with a prosecutor to obtain a lighter sentence in exchange for a guilty plea is called a _____.
8. The landmark case that recognized abortion as part of the constitutionally protected right to privacy was _____ *v.* _____.
9. Affirmative action programs are often aimed at achieving equality of _____.
10. "Unofficial" segregation is often called _____ segregation.
11. _____ in wage scales would mandate equal pay for jobs of equal value.
12. An unintended consequence of the Immigration Reform and Control Act has been discrimination against persons of _____ and _____ descent.

Compare and Contrast

1. Clear and present danger test and bad tendency test
2. Obscenity and libel
3. Free exercise clause and establishment clause
4. Ex post facto laws and bill of attainder
5. Warrant and probable cause
6. Miranda rights and plea bargain
7. Capital cases, misdemeanors, and felonies
8. *Roe v. Wade* and *Webster v. Reproductive Health Services*
9. Equality of opportunity, equality of condition, and equality of result
10. Civil Rights Act of 1964 and Elementary and Secondary Education Act of 1965
11. *De jure* segregation and *de facto* segregation
12. Affirmative action and *Regents of the University of California v. Bakke*
13. Voting Rights Act of 1965 and the 1982 Amendment

True/False

1. The language of the Fourteenth Amendment clearly states that the Bill of Rights is applicable to the states. T F
2. For the most part the Supreme Court considers obscenity as unprotected speech. T F
3. The Court has ruled that libel is specifically protected by the First Amendment. T F
4. The establishment clause forbids the creation of an official state religion. T F
5. When action based on religious belief runs counter to criminal law, the latter prevails. T F

6. A police officer must always present a warrant before any search is made. T F
7. Indigent people have no constitutional right to have state-appointed counsel in civil cases T F
8. The Supreme Court has required the states to formulate uniform policies toward capital punishment. T F
9. *Roe v. Wade* prohibited virtually all restrictions on a woman's right to have an abortion during her first trimester of pregnancy. T F
10. Civil rights refers exclusively to one's specific constitutional rights. T F
11. The separate-but-equal doctrine was struck down by the Supreme Court in *Plessy v. Ferguson*. T F
12. Shortly after the Supreme Court case of *Brown v. Board of Education of Topeka* schools in the South were desegregated. T F
13. Public opinion polls have shown overwhelming popular support for affirmative action programs. T F
14. The Voting Rights Act of 1965 requires that any change in a locale's electoral system must be first cleared by the U.S. attorney general or the U.S. District Court for the District of Columbia. T F
15. Very few American Indians still live in reservations. T F
16. Much of what government and private citizens have done in recent decades has been driven by an intolerance of inequality. T F

Multiple-Choice

1. The Fourteenth Amendment _____.
 - a. is directed to state governments
 - b. is precise about what is meant by liberty
 - c. was passed after the case of *Gitlow v. New York*
 - d. required another amendment to incorporate the Bill of Rights
2. Which of the following statements does not reflect an important objective of free expression?
 - a. It is necessary to the political process set up by the Constitution.
 - b. It contributes to social and political stability.
 - c. It allows the dominant wisdom of the day to be challenged.
 - d. It aids self-development.
3. Regarding the issue of obscenity, the Supreme Court has _____.
 - a. required scientific evidence that obscene materials are harmful
 - b. clearly defined its meaning
 - c. set a national standard for judging obscene materials
 - d. regarded it as unprotected speech
4. Which of the following is an example of symbolic speech?
 - a. a sit-in
 - b. libel
 - c. obscenity
 - d. defamation of character
5. Using the *Lemon* test criteria, the Supreme Court has approved aid to sectarian schools in the form of _____.
 - a. transportation for field trips
 - b. state tax credits for tuition
 - c. textbook loans to pupils
 - d. teacher salary supplements
6. The Supreme Court has approved all of the following *except* _____.
 - a. paying a state legislature's chaplain out of public funds
 - b. letting the Amish take their children out of school after the eighth grade
 - c. the formation of a religious club at a public high school
 - d. letting members of the American Indian Church ingest peyote as part of a religious ritual

7. *Mens rea* refers to which of the following?

- criminal procedure
- criminal intent
- presumption of innocence
- legal guilt

8. The exclusionary rule _____.
a. allows retroactive application of criminal laws in certain cases
b. bypasses the procedural safeguards of the legal process when meting out punishment
c. denies government the use of evidence gained as a result of violation of the suspect's rights
d. allows the police to search a suspect without a warrant

9. Miranda rights do not include the right to _____.
a. remain silent
b. refuse a search if not presented with a warrant
c. have a lawyer present during interrogation
d. have a lawyer free of charge if the suspect cannot afford one

10. The right to counsel is guaranteed in all cases *except* _____.
a. capital cases
b. misdemeanors
c. felonies
d. civil cases

11. Which of the following statements about capital punishment is false?
a. The Court had declined to view capital punishment as inherently cruel and unusual.
b. States vary widely in terms of the minimum age of a defendant who may be sentenced to death.
c. All fifty states allow capital punishment under certain conditions.
d. States may execute a convicted murderer who is mentally retarded.

12. Which of the following is true of the Ninth Amendment?
a. It suggests that people have certain rights that are not specifically stated in the Constitution
b. It explicitly creates a right to privacy
c. It extends the rights granted in the Constitution to the states
d. It prohibits cruel and unusual punishment

13. *Roe v. Wade* _____.
a. voided a state law prohibiting the use of birth control devices
b. outlawed the practice of abortion
c. prohibited virtually all restrictions on abortions during the first trimester
d. required the states to have their own policies on abortion

14. Which of the following did *Webster v. Reproductive Health Services* do?
a. It voided a state law prohibiting the use of birth control devices.
b. It made it clear that states could place restrictions on abortions.
c. It overturned *Roe v. Wade*.
d. It outlawed the practice of abortion.

15. “If life is like a marathon, the government may have to carry some runners to the finish line if they are to get there at all,” reflects the idea of _____.
a. equality of opportunity
b. equality of condition
c. equality of result
d. none of the above

16. To get around the Fifteenth Amendment, Southern legislatures often turned to discriminatory devices such as _____.
a. poll taxes
b. the grandfather clause
c. the white primary
d. all of the above

17. Early attempts to undermine racial segregation took the form of _____.
a. lawsuits to challenge the constitutionality of discrimination
b. legislative action led by liberal members of Congress
c. pressure on local city councils and state governments
d. widespread demonstrations and boycotts

18. Quick implementation of the Brown decision was hampered by _____.
a. opposition by federal judges in the South
b. opposition by local school boards
c. fear of hostile reaction by the local white community
d. all of the above

19. According to the Supreme Court, when is segregation between school districts unconstitutional?

- Each district is composed of over 85 percent of one race.
- It is accompanied by large economic inequalities between the districts.
- There is evidence that school boards have caused the segregation between districts.
- Educational opportunities are substantially different between the districts.

20. The Voting Rights Act of 1965 has had the effect of _____.

- creating federal review of changes in voting procedures in some states
- dramatically increasing African American voter registration in the South
- preventing efforts to dilute minority voting power in the South
- all of the above

21. Sexual bias in employment and promotion practices was outlawed by _____.

- the Equal Pay Act of 1963
- Title VII of the 1964 Civil Rights Act
- Title IX of the 1972 Educational Amendments
- the Equal Rights Amendment

22. Comparable worth _____.

- is required by the Equal Pay Act
- would become national policy under the Equal Rights Amendment
- would mandate equal pay for jobs of equal value
- involves preferential treatment for minorities

23. Which of the following statements about American Indians is false?

- They compose less than one percent of the population.
- They suffer high rates of poverty and unemployment.
- They live primarily in large urban areas.
- They did not become American citizens until 1924.

24. The nation's fastest growing minority group consists of _____.

- Latinos
- American Indians
- Asians
- the poor

25. The Immigration Reform and Control Act of 1986 _____.

- extended legal resident status to illegal aliens who arrived before January 1, 1982
- requires employers to verify the citizenship or legal status of all job applicants
- resulted in discrimination against persons of Latino or Asian descent
- all of the above

26. Which of the following is true of the Americans with Disabilities Act of 1990?

- It does not include individuals with mental disorders.
- It bans discrimination only in programs receiving federal financial assistance.
- It bans discrimination in employment and places of public accommodation.
- It classifies individuals with drug addiction as disabled Americans.

Essay

1. Explain how and why civil liberties are “fragile.” Give examples to illustrate your answer.
2. Why is the right to free expression so important in a democracy, and how might free expression be detrimental? Use examples involving controversies over such issues as prior restraint, obscenity, libel, and symbolic speech to illustrate your answer.
3. How have the two religion clauses been interpreted in regard to the issue of religion and schools, both sectarian and public?
4. Comment on the argument that criminal suspects have too many protections under the Bill of Rights. In what ways does the Bill of Rights protect accused persons and does this place too many restrictions on the ability of the police to do their job?
5. Explain what is meant by the exclusionary rule. Why has the exclusionary rule been a controversial issue? Use examples to illustrate the controversy.
6. Explain the different definitions of the term “equality.” What is the equal protection clause and how has the Supreme Court interpreted it?
7. Explain what is meant by “third-class” citizenship for African Americans and how it was established after the Civil War.
8. How has racial segregation and discrimination been reduced in the United States. Explain the significance of key Supreme Court cases and acts of Congress in the fight against discrimination. Has racial discrimination been eliminated? What issues remain?
9. Summarize the pros and cons of the comparable worth issue. Present an argument for or against comparable worth.

Research Topics and Practical Applications

1. Choose a Supreme Court case discussed in this chapter involving a particular civil liberty. Read the majority and minority decisions in the case, and summarize the arguments presented. What were the conflicting social values involved in the case? Do you agree or disagree with the decision? How might you have decided differently?
2. Using the *Statistical Abstract of the United States* and other sources collect crime statistics on the number of felonies and capital cases over the past ten years. What do the statistics tell you about the caseload in the courts? How have convictions changed over time? Are conviction rates different between African Americans and whites, men and women, or different locales? Comment on how certain groups of people seem to have more civil liberties than others.
3. Choose two prominent civil rights leaders, such as Martin Luther King, Jr., Malcolm X, Jesse Jackson, or Louis Farrakhan. Research their lives and activities with regard to the civil rights movement. Write a paper that compares and contrasts their philosophy, teachings, political activities, and constituents. Which leader do you believe has been most effective and why? What challenges face civil rights leaders today?