Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Government In America, Chapter 4

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| Big Idea Questions | Guided Notes | Areas of Concern |
| Do you believe in absolute Freedom of Speech? | **The Bill of Rights*** Civil Liberties:
	+ Protections against the
	+ Examples of Civil Liberties?
		- Bill of Rights
* Many Americans love the idea of rights in theory, but don’t always follow through in practice
	+ Example:

 , etc.* 1st Amendment -­‐ “Congress shall make no law” -­‐ known as the Establishment Clause
	+ Originally in *,* the Supreme Court interpreted the Bill of Rights to only apply to the federal government, NOT THE STATES
	+ In 1925, the Supreme Court, in , ruled that through the 14th amendment, states must respect the 1st amendment
* *\*\*\* \*\*\* -­‐ Supreme Court has applied the Bill of Rights to states, through the 14th amendment*

**Freedom of Religion*** Free Exercise Clause
	+ The government cannot (prohibit or limit) religion or worship
	+ This does not mean one can do something illegal under the guise of religion
* Thomas Jefferson advocated the 1st amendment meant there was a “wall of separation” between church and state forbidding the government favoring a religion
* Can the government provide aid to religious schools?
	+ according to *Lemon v. Kurtzman*, however, aid must:
		- Not advance or inhibit religion
		- Not government with religion
		- Have a purpose
	+ Aid can be used for textbooks, lunches, etc.
* Equal Access Act (1984)
	+ Schools cannot prohibit students from using school grounds for religious worship, provided the school allows for other meetings
* The Ten Commandments cannot be posted on walls of public classrooms
* :
	+ School-­‐sponsored prayer in public schools is illegal
	+ Students CAN pray in school, it cannot be led by school officials
* In 1960, the Supreme Court ruled that states cannot prohibit the teaching of evolution in public schools
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|  | * The Supreme Court has ruled in favor of accommodation of religion and not favoring one
* (1993):
	+ Allowed people to practice certain religious rituals unless the government could show a compelling interest to regulate those rituals
	+ Later declared

**Freedom of Expression*** Prior Restraint: (Government censorship)
	+ The 1st amendment limits the ability of the government to censor material it comes out
	+ Does not apply to school newspapers or national security issues
* During times of war, or crisis, individual liberties decrease
	+ (1919)
		- Free speech could be limited if it poses a “clear and present danger”
		- Cannot yell “fire” in a theater
	+ (1940):
		- Made it illegal to teach or favor the violent overthrow of the
	+ Roth v. US (1957)
		- Obscene material is not always protected by 1st amendment
	+ Miller v. California (1973):
		- Supreme Court helped define obscene material:
			* It encourages an excessive interest in sex
			* It is “patently offensive” in terms of sexual conduct
			* Lacked “

 ”* + What is obscene has changed over time
* Libel and Slander
	+ Libel -­‐ malicious false statements intending to damage a reputation ( )
		- -­‐ public figures have a higher threshold than private individuals
		- Public figures have a harder time proving libel in court
	+ Slander -­‐ making false statement intending to damage a reputation ( )
* The 1st amendment also protects Symbolic Speech
	+ -­‐ burning the American flag
	+ -­‐ protesting the Vietnam War with armbands in a school was ok
* Commercial Speech (advertising) is much more regulated
	+ Federal Trade Commission ( ) can regulate what can be advertised on TV ( )
* Federal Communications Commission (FCC) can regulate what appears on TV and radio

**Freedom of Assembly** |  |

What is another example of rights conflicting?

* What is freedom of assembly?
	+ Right to gather to make a statement or point -­‐ parade, protest, picket, etc.
	+ Oftentimes, a is needed to assemble in public places
* Rights may often conflict:
	+ Right to an and right to

abortions

* The right to assemble also includes the right to associate with other like-­‐ minded individuals
	+ NAACP v. Alabama -­‐ NAACP membership list could not be turned over to authorities
* Right to bear arms:
	+ Amendment -­‐ A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed
	+ District of Columbia v. Heller -­‐ ability to posses firearms are unconnected to service; can use firearms for lawful purposes

**Defendants’ Rights**

* Interpreting Defendants’ Rights:
	+ The Bill of Rights can be vague: what is a “speedy trial?” What is “cruel and unusual punishment?”
* Searches and Seizures:
	+ Probable cause -­‐ reasonable grounds that one is
	+ 4th amendment forbids illegal searches and seizures -­‐ must have a warrant signed by a court
	+ Police can enter homes without warrants if they believe: someone inside is seriously
		- Over the years police have increased warrantless searches through “reasonable ”
		- Rule -­‐ prosecution cannot use illegally seized evidence in a case
			* Originally only applied to the federal government
		- (1961)
			* While searching Dollree Mapp’s for a fugitive, police seized pornographic material, which was illegal
			* The supreme Court declared that the evidence was seized since police did not have a warrant
			* Critics of the exclusionary rule believe it is too lenient to criminals, supporters claim it supports those accused of crimes, not convicted of crimes
* The War on Terrorism:
	+ gave broad powers to the government
		- Government could wiretap and obtain doctor, library, and school records
	+ In 2005, the Bush administration ordered the to monitor international phone calls and emails of people in the US
		- As of 2014, this practice is still occurring
	+ Foreign Intelligence Surveillance Act -­‐ gave the government the ability to eavesdrop on large foreign groups at once, instead of using individual wiretaps
	+

What does double jeopardy mean?

* Self-­‐Incrimination:
	+ Amendment -­‐ no self-­‐incrimination (plead the 5th), no double jeopardy
		- Prohibits coerced, or forced confessions, protects against entrapment (law officials encourage an individual to commit a crime)
	+ (1966) -­‐ suspects MUST be read their rights at time of arrest
* The Right to Counsel:
	+ amendment -­‐ “In all criminal prosecutions, the accused shall enjoy the right to a speedy trial,…. and to have the Assistance of Counsel for his defence.”
	+ Until 1932, some individuals were tried for

crimes in states WITHOUT an attorney

* + (1963) -­‐

right to an attorney was established for any individual accused of a felony in a state court; later applied to any charge where imprisonment could be a result

* + - Trials:
			* Most cases do NOT go to trial; % end with a guilty plea
			* Plea Bargaining -­‐ individuals will confess to a less serious crime
				+ Ex: Speeding ticket -­‐> paid a fine and attend a class
			* Almost all juries have jurors and require unanimous votes to convict
		- The War on Terrorism:
			* After 9/11, over 1,200 people deemed a threat to national security were held without trial and held in jail
				+ US withheld their names
			* Hamdan v. Rumsfeld (2006) -­‐ President Bush procedures at

 violated Uniform Code of Military Justice and the Geneva Conventions

* + - * Supreme Court ruled that detainees in Gitmo were allowed to challenge their holding before a judge or neutral decision maker
			* Again, **IN TIMES OF WAR AND CRISIS, INDIVIDUAL RIGHTS GO DOWN!**
		- Cruel and Unusual Punishment:
			* amendment -­‐ “Excessive shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” -­‐ applies to states as well through the 14th amendment
			* Overturned Georgia’s death penalty law; death penalty cannot be applied in a “freakish” and “random” way -­‐ *Furman v. Georgia* (1972)
			* (1976) -­‐ Supreme Court upheld capital punishment
			* Death penalty cannot be applied to mentally ill, mentally retarded, those under 18, and those convicted of rape that did

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|  | not kill the victim, or intend to cause death**The Right to Privacy*** Is there a right to privacy?
	+ Not listed in the
	+ Griswold v. Connecticut (1965) -­‐ Supreme Court declared a Connecticut law barring the use of unconstitutional, stating a right to privacy
	+ Applied to the legalization of abortion in 1973 (Roe v. Wade)
* Controversy over abortion:
	+ *Roe v. Wade* (1973) -­‐ states could not regulate abortions during the first ; could only regulate to protect the mother’s health in the second semester; could regulate abortion in the third trimester
	+ Planned Parenthood v. Casey (1992) -­‐ states could use

 waiting period before an abortion procedure, parental requirement for a minor* + Act -­‐ made it a federal crime to intimidate abortion providers or women seeking abortions

**Understanding Civil Liberties*** 1st amendment means all ideas should be heard in a democracy
* The individual wins out if the government tries to restrict expression or worship

**Quick Recap***
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