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** |  |