**Chapter 5: Civil Liberties**

1. The politics of civil liberties
   1. The objectives of the Framers
      1. Limited federal powers
      2. Constitution: a list of dos, not don'ts
      3. Bill of Rights: specific do nots
         1. Not intended to affect states
         2. A limitation on popular rule
2. Politics, culture, and civil liberties
   1. Liberties become a major issue for three reasons
   2. Rights in conflict: Bill of Rights contains competing rights
      1. *Sheppard*case (free press versus fair trial)
   3. Policy entrepreneurs most successful during crises, especially war, by arousing people
   4. Cultural conflicts
      1. Original settlement by white European Protestants produced Americanism
      2. Waves of immigration brought new cultures, conflicts
         1. Non-Christians offended by government-sponsored creches at Christmas
         2. English speakers prefer monolingual schools
         3. Boy Scouts of America exclude homosexuals from being scout leaders
3. Interpreting and applying the First Amendment
   1. Speech and national security
      1. Original Blackstone view: no prior press censorship
      2. By 1917-1919, Congress defines limits of expression
         1. Treason, insurrection, forcible resistance
         2. Upheld in *Schenck*via test of "clear and present danger"
      3. Fourteenth Amendment "due process" not applied to states originally; *Gitlow*elicits "fundamental personal rights"
      4. Supreme Court moves toward more free expression after WWI
         1. But communists convicted under Smith Act under "gravity of evil"
         2. By 1957, test of "calculated to incite"
         3. By 1969 (*Brandenburg*), "imminent" unlawful act
         4. 1977 American Nazi march in Skokie, Illinois, held lawful
         5. "Hate" speech permissible but not "hate crime"
   2. What is speech?
      1. Some forms of speech not fully protected; four kinds
      2. Libel: written statement defaming another by false statement
         1. Oral statement: slander
         2. Malice needed for public figures
      3. Obscenity
         1. 1973 definition: patently offensive by community standards of average person
         2. Protection extended: nude dancing only marginally protected
         3. Zoning ordinances upheld
         4. Regulation of electronic Internet (computer-simulated child pornography)
      4. Symbolic speech
         1. Acts that convey a political message: flag burning, draft card burning
         2. Not generally protected
         3. Exception is flag burning: restriction of free speech
4. Who is a person?
   1. Corporations, etc., usually have same rights as individuals
      1. Boston bank, antiabortion group, California utility
      2. More restrictions on commercial speech
      3. Young people may have fewer rights; Hazelwood; school newspaper can be restricted
5. Church and state
   1. The free exercise clause: no state interference, similar to speech
      1. Law may not impose special burdens on religion
      2. But no religious exemptions from laws binding all
      3. Some cases difficult to settle
         1. Conscientious objection to war, military service
         2. Refusal to work Saturdays; unemployment compensation
         3. Refusal to send children to school beyond eighth grade
   2. The establishment clause
      1. Jefferson's view: "wall of separation"
      2. Congress at the time: "no national religion"
      3. Ambiguous phrasing of First Amendment
      4. Supreme Court interpretation: "wall of separation"
         1. 1947 New Jersey case (reimbursements)
            1. Court: First Amendment applies to the states
            2. Court: State must be neutral toward religion
         2. Later decisions struck down
            1. School prayers (voluntary, nonsectarian, delivered by a rabbi or minister or student elected by others students)
            2. Teaching of creationism
            3. In-school released time programs
         3. Public aid to parochial schools particularly controversial
            1. Allowed: aid for construction of buildings, textbook loans, tax-exempt status, state deductions for tuition, computers, and sign language interpreters
            2. Disallowed: teacher salary supplements, tuition reimbursements, various school services, money to purchase instructional materials, special districts
         4. Development of a three-part test for constitutional aid
            1. It has a strictly secular purpose
            2. It neither advances nor inhibits religion
            3. It involves no excessive government entanglement
         5. Failure of the Court's test to create certainty in our law
            1. Nativity scenes, menorahs, and Christmas trees
            2. Seeming anomalies: Prayer in Congress, chaplains in the armed services, "In God We Trust" on currency
6. Crime and due process
   1. The exclusionary rule
      1. United States punishes it by excluding improperly obtained evidence
      2. Supreme court rulings
         1. 1961: *Mapp*case
   2. Search and seizure
      1. When can "reasonable" searches of individuals be made?
         1. With a properly obtained search warrant with probable cause
      2. What can police search incident to an arrest?
         1. The individual being arrested
         2. Things in plain view
         3. Things under the immediate control of the individual
   3. Confessions and self-incrimination
      1. Constitutional ban originally against torture
      2. Extension of rights in the 1960s
         1. *Escobedo*
         2. *Miranda*case: "Miranda rules" to prove voluntary confession
   4. Terrorism and Civil Liberties
      1. USA Patriot Act
         1. Telephone and internet taps, voice mail seizure
         2. Detainment of non-citizens and deportation of aliens

**Chapter 6: Civil Rights**

1. Introduction
   1. Civil rights issue
      1. Group is denied access to facilities, opportunities, or services available to other groups, usually along ethnic or racial lines
      2. Issue is whether differences in treatment are "reasonable"
         1. Some differences are: progressive taxes
         2. Some are not: classification by race subject to "strict scrutiny"
2. The black predicament
   1. Perceived costs of granting black rights not widely shared
      1. Concentrated in small, easily organized populations
      2. Blacks at a disadvantage in interest group politics because they were not able to vote in many areas
   2. Majoritarian politics worked against blacks
      1. Lynchings shocked whites, but little was done
      2. General public opinion was opposed to black rights
      3. Those sympathetic to granting black rights opposed the means
   3. Progress depended on
      1. Finding more white allies or
      2. Shifting policy-making arenas
   4. Civil rights movement both
      1. Broadened base by publicizing grievances
      2. Moved legal struggle from Congress to the courts
3. The campaign in the courts
   1. Ambiguities in the Fourteenth Amendment
      1. Broad interpretation: Constitution color-blind
      2. Narrow interpretation: equal legal rights
      3. Supreme court adopted narrow view in *Plessy*case
   2. "Separate but equal"
      1. NAACP campaign objectives in education through courts
         1. Obviously unequal schools
         2. Not so obviously unequal schools
         3. Separate schools inherently unequal
   3. Can separate schools be equal?
      1. *Brown v. Board of Education*(1954)
         * 1. All deliberate speed
      2. The rationale
         1. Detriment to pupils by creating sense of inferiority
         2. Social science used because intent of Fourteenth Amendment unclear; needed unanimous decision
      3. Desegregation versus integration
         1. Ambiguities of *Brown*
            1. De jure or de facto segregation?
         2. 1968 rejection of "freedom of choice" plan settles matter; mixing
         3. *Charlotte-Mecklenburg,*1971
            1. Proof of intent to discriminate
            2. Remedies can include quotas, busing, redrawn lines
4. The campaign in Congress
   1. Legislative politics
      1. Opponents' defensive positions
         1. Senate Judiciary Committee controlled by southern Democrats
         2. House Rules Committee controlled by Howard Smith
         3. Senate filibuster threat
         4. President Kennedy reluctant
      2. Four developments broke deadlock
         1. Change of public opinion
         2. Violent white reactions of segregationists became media focus
         3. Kennedy assassination
         4. 1964 Democratic landslide
      3. Five bills pass, 1957-1968
         1. 1957, 1960, 1965: voting rights laws
         2. 1968: housing discrimination law
      4. 1964 civil rights bill: the high point--employment, public accommodations
      5. Effects since 1964
         1. Dramatic rise in black voting
         2. Mood of Congress shifted to pro-civil rights; 1988 overturn of Reagan veto of bill that extended federal ban on discrimination in education
5. Women and equal rights
   1. Supreme Court's position altered after the 1970s
      1. Somewhere between reasonableness and strict-scrutiny standard
      2. Gender-based differences prohibited by courts
         1. Age of adulthood
         2. Drinking age
         3. Arbitrary employee height-weight requirements
         4. Little League exclusion
      3. Gender-based differences allowed by courts
         1. All-boy/all-girl schools
         2. Widows' property tax exemption
         3. Statutory rape
   2. The military
      1. *Rostker v. Goldberg*(1981): Congress may draft men only
   3. Sexual harassment
      1. Requesting sexual favors as condition for employment
         1. "quid pro quo" rule
         2. Employer "strictly liable"
      2. Hostile or intimidating work environment
         1. Employer not strictly liable
         2. Employer can be at fault if "negligent"
   4. Abortion
      1. Until 1973 regulated by states
      2. 1973: *Roe v.Wade*
         1. Woman's freedom to choose protected by Fourteenth Amendment ("right to privacy")
            1. First trimester: no regulations
            2. Second trimester: no ban but regulations to protect health
            3. Third trimester: abortion ban
         2. Critics claim life begins at conception
            1. Pro-life versus pro-choice
      3. 1973-1989: Supreme Court withstood attacks on *Roe v. Wade*
      4. *Casey*decision lets *Roe*stand but permits more restrictions: twenty-four-hour wait, parental consent, pamphlets
6. Affirmative action
   1. Equality of results
      1. Racism and sexism overcome only by taking them into account in designing remedies
      2. Equal rights not enough; people need benefits
      3. Affirmative action should be used in hiring
   2. Equality of opportunities
      1. Reverse discrimination to use race or sex as preferential treatment
      2. Laws should be color-blind and sex neutral
      3. Government should only eliminate barriers
   3. Targets or quotas?
      1. Issue fought out in courts
         1. Court is deeply divided; affected by conservative Reagan appointees
         2. Law is complex and confusing
            1. *Bakke:*numerical minority quotas not permissible
      2. Emerging standards for quotas and preference systems
         1. Must be "compelling" justification
         2. Must correct pattern of discrimination
         3. Must involve practices that discriminate
         4. Federal quotas are to be given deference
         5. Voluntary preference systems are easier to justify
      3. Congressional efforts to defend affirmative action not yet successful
      4. "Compensatory action" (helping minorities catch up) versus "preferential treatment" (giving minorities preference, applying quotas)
         1. Public supports former but not latter
         2. In line with American political culture
            1. Support for individualism
            2. Support for needy
      5. Courts divided
         1. Supreme Court ruled that racial classifications subject to strict scrutiny
7. Gays and the Supreme Court
   1. State laws could ban homosexual activities
   2. *US v. Windsor* and *Hollingsworth v. Perry*