

TOPIC 3.1 The Bill of Rights

3.1 BILL OF RIGHTS AND THE STATES

- Added to the original Constitution to appease states. Demanded by the A_____ -Federalists
 - Rights of the individuals and states listed to protect them from the f_____ government
 - Bill of Rights only applied to the f_____ government and did not include protections against s_____ governments (*Barron v. Baltimore*, 1833)
- Belief was that people could protect themselves against the state governments that were in their own backyards, but they needed additional protection against a new, powerful, and d_____ national gov't. Each s_____ had its o_____ bill of rights to protect their citizenry from the s_____ govt.

3.2 First Amendment Freedom of Religion

1st Amendment US Constitution Church & State

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Religion

Assembl

y

Press

Petition

Speech



RAPPS

TWO CLAUSES THAT YOU MUST KNOW

- | | |
|--|---|
| <ul style="list-style-type: none"> The Establishment Clause <ul style="list-style-type: none"> The S_____ of Church and State “Congress shall make no law respecting the e_____ of religion...” <i>Engle v. Vitale</i>, 1962 | <ul style="list-style-type: none"> The Free Exercise Clause <ul style="list-style-type: none"> Free to p_____ your religion “... or prohibiting the free e_____ thereof” <i>Wisconsin v. Yoder</i>, 1972 |
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1st Amendment- FREEDOM OF RELIGION - THE ESTABLISHMENT CLAUSE

- No Government “Establishment of Religion”**
 - A “w_____ of s_____” - Separation of church and state (words of Jefferson; it is implied within 1st Amendment, but not stated – kind of like “fair trial”)
- Basic meaning of establishment clause: government may not e_____ an o_____ r_____.**
 - “Accommodationist View”: Government should bend a bit and allow a certain degree of church/state blending (allowing nativity scenes on city property, and allowing a non-denominational prayer in public school)
 - “Separationist View”: Government should allow virtually no blending of church and state. There should be a “wall of separation” between the two.
- Lemon v. Kurtzman*: Established a 3-part test (the Lemon test) to determine the constitutionality of a statute or practice:**
 - Laws should have a s_____ (non-religious) purpose
 - Laws should be n_____ toward religion (neither a_____ nor i_____ religion)
 - Laws should not be e_____ with religion. If any is present, the statute or practice is u_____

SCHOOLS and RELIGION

Activities not permitted:

- State-sponsored, recited p_____ in p_____ school is unconstitutional
- T_____-led prayer is unconstitutional
- S_____-led prayer for any event is unconstitutional
- Devotional B_____-reading in public school Graduation p_____ is u_____
- Prohibiting the teaching of evolution in public school is unconstitutional
- Posting of the _____ Commandments in public school is unconstitutional
- S_____-led prayer using _____ system is unconstitutional
- Requiring all students to say the p_____ is unconstitutional
- S_____ money to pay for Bibles, chapels, field trips, etc. for p_____ schools is unconstitutional

Activities permitted:

- Moment of s_____ in public school is constitutional (as long as the purpose is not stated as being for p_____).
- Purchasing textbooks, lunches, bus transportation for private schools is constitutional
- Allowing students to meet on campus for r_____ groups (such as Christian Club) is constitutional
- Use of public-school building by r_____ groups is constitutional
- Voluntary after-school B_____ study in public school is constitutional
- R_____ time for students is constitutional
- Public money to private schools as long as it does not violate the L_____ Test

FREEDOM OF RELIGION – FREE EXERCISE CLAUSE

- **Provides Freedom of Worship**
- **Religious practices that have been restricted:**
 - Polygamy (*Reynolds v. U.S.*)
 - Drug use (*Oregon v. Smith*)
 - Not vaccinating children of Christian Scientists before they enter school
 - Not paying Social Security taxes (Amish)
 - Wearing a Jewish skullcap (Yarmulke) in the military
- **Religious practices that have been permitted:**
 - Not saluting flag in public school (Jehovah's Witnesses)
 - Not sending children to school past the 8th Grade for Amish (*Wisconsin v. Yoder, 1972*)
 - Animal Sacrifice (Santeria case)
- **Article ____ bans religious tests/oaths as qualifications to hold public office.**

***Engle v. Vitale* (1962) AMSCO pg. 268**

Issue: Does the recitation of a prayer in public schools violate the Establishment Clause of the First Amendment?

Majority: The Court ruled that the school-sponsored prayer was unconstitutional because it violated the Establishment Clause. The prayer was a religious activity composed by government officials (school administrators) and used as a part of a government program (school instruction) to advance religious beliefs. The Court rejected the claim that the prayer was nondenominational and voluntary. "There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings. . . in the Regents' prayer is a religious activity," Justice Black wrote. "We think that by using its public-school system to encourage recitation of the Regents' Prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause."

This is the prayer that was found to be unconstitutional

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our
parents, our teachers and our Country."

Wisconsin v. Yoder (1972) YOU NEED TO KNOW THIS CASE, AMSCO pg. 271

Issue: Under what conditions does the state's interest in promoting compulsory education override parents' First Amendment right to free exercise of religion?

Majority: The Supreme Court held that the Free Exercise Clause of the First Amendment, as interpreted by the 14th Amendment, prevented the state of Wisconsin from compelling the respondents to send their children to formal secondary school beyond the age of 14.

The Court ruled that the families' religious beliefs and practices outweighed the state's interests in making the children attend school beyond the eighth grade. The Court first satisfied itself that, according to expert testimony in the record, the requirement to send their children to school beyond the eighth grade would actually interfere with well-established and deeply held religious convictions. The Court then rejected the state's arguments for overriding the parents' religious beliefs. The Court commented that an additional one or two years of high school (until the required age of 16) would not produce enough educational benefits for the Amish to constitute a "compelling government interest."

Discuss the two religion cases and two religion clauses using the cases below as in your answer.

1. *Pierce v. Society of Sisters*, 1925
2. *Lukumi Babalu Aye v. City of Hialeah*, 1993

Do YOU have to say the Pledge of Allegiance? Cite the case in your answer: *West Virginia Board of Education v. Barnette*, 1943

Why are we allowed to have a Christian Club on campus? Cite the case in your answer: *Good News Club v. Milford Central School*, 2001

The Church of the Lukumi-Babalu Aye, Inc. was a Florida not-for-profit organization that practiced the Santeria religion. The Santeria religion is considered by some to be a "fusion" between the religion of the Yoruba people of Western Africa, who were brought as slaves to Cuba, and significant elements of Roman Catholicism. The Cuban Yoruba express their devotion to spirits, called orishas, through the iconography of Catholic saints; Catholic symbols are often present at Santeria rights; and Santeria devotees attend the Catholic sacraments. One of the principal forms of devotion in Santeria is animal sacrifice. Sacrifices are performed at birth, marriage, and death rites; for the cure of the sick; for the initiation of new members and priests; and during an annual celebration. The sacrificed animal is cooked and eaten at some ceremonies.

The church leased land in the City of Hialeah, Florida, and announced plans to build a complex that included a house of worship, a school, a cultural center, and a museum. The prospect of a Santeria church was distressing to many members of the Hialeah community. In response, the city council held an emergency public session and subsequently passed several resolutions and ordinances aimed at preventing religious animal sacrifice. The local laws prohibited Santeria sacrifices; however, the laws contained exceptions for animal killings under comparable circumstances and for other religion-related purposes, including kosher slaughter.

The Supreme Court held that the city of Hialeah ordinances were neither neutral nor generally applicable. The ordinances had to be justified by a compelling governmental interest and they had to be narrowly tailored to that interest. The core failure of the ordinances were that they applied exclusively to the church. The ordinances singled out the activities of the Santeria faith and suppressed more religious conduct than was necessary to achieve their stated ends. Only conduct tied to religious belief was burdened. The ordinances targeted religious behavior, therefore they failed to survive the rigors of strict scrutiny. The Supreme Court ruled in favor of the church of Lukumi-Babalu Aye, Inc.

<https://www.uscourts.gov/educational-resources/educational-activities/exercise-religious-practices-rule-law>

"Church of Lukumi Babalu Aye, Inc. v. City of Hialeah." <https://www.oyez.org/cases/1992/91-948>

(A) Identify the constitutional provision that is common in both Lukimi Babalu Aye case and the Yoder case.

(B) Based on the constitutional provision identified in part A, explain how the facts of Yoder v Wisconsin led to a similar holding in the Lukimi Babalu Aye v. Hialeah case.

Explain how the holding in Lukumi-Babalu Aye v. Hialeah affected the balance of power between the states (city of Hialeah) and the national government.

To what extent does the Supreme Court's interpretation of freedom of religion reflect a commitment to individual liberty?

Explanation of the Free Exercise Clause	Explanation of the Establishment Clause
These cases examine whether or not the government has inhibited the free-exercise of religion. A related ruling came with the <i>Wisconsin v. Yoder</i> case when the Court ruled that a state requirement for Amish students to attend school past the eighth grade violate the free exercise clause.	The clause was created to prevent the federal government from establishing a national religion. More recently, the clause has come to mean that governing institutions—federal, state, and local—cannot sanction, recognize, favor, or disregard any religion. A related ruling came in the <i>Engel v. Vitale</i> case when the Court ruled school-sponsored prayer violates the establishment clause. <i>AMSCO pg. 275</i>

3.3 FIRST AMENDMENT: FREEDOM OF SPEECH

Is All Speech Free?

You are not free to publish obscene materials. You are not free to lie, or s_____ others nor can you write falsely (l_____). There are numerous court precedents that define when and where our free speech can and cannot be limited.

Schenck v. United States, 1919, AMSCO pg. 281

- Ruled that the First Amendment guarantees are not absolute and must be considered in the light of the setting in which supposed violations occur
- Established the c_____ and p_____ danger test; Created a precedent that 1st Amendment guarantees of free speech are not absolute and dangerous speech can be limited
- "...Free speech would not protect a man in falsely shouting fire in a theater"
- Speech may be restricted when it incites violent action (imminent threat to society)

Brandenburg v. Ohio, 1969

- SCOTUS limited the clear and present danger test
- Ruled that the government could p_____ the advocacy of i_____ action only if "such advocacy is directed to inciting or producing i_____ l_____ action and is likely to incite or p_____ such a_____"

Schenck v. United States (1919) AMSCO pg. 281

Issue: Did Schenck's conviction under the Espionage Act for criticizing the draft violate his First Amendment free speech rights?

Majority: Justice Oliver Wendell Holmes delivered the unanimous opinion for the Court in favor of the United States. Holmes accepted the possibility that the First Amendment did not only prevent Congress from exercising prior restraint (preemptively stopping speech, censorship). He said that the First Amendment could also be interpreted to prevent the punishment of speech after its expression.

Yet, according to Holmes, “the character of every act depends upon the circumstances in which it is done.” In the context of the U.S. effort to mobilize for entry into World War I, the Espionage Act’s criminalization of speech that caused or attempted to cause a disruption of the operation of the military was not a violation of the First Amendment. According to Holmes, “when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.”

Holmes held that some speech does not merit constitutional protection. He said that statements that create a “c_____ and p_____ d_____” of producing a harm that Congress is authorized to prevent, fall in that category of unprotected speech. Just as “free speech would not protect a man in f_____ shouting f_____ in a theatre and causing a panic,” the Constitution does not protect efforts to induce the criminal act of resisting the draft during a time of war.

Free Expression

1. guarantees to each person the right of free expression in the spoken and written word and by other means of communication
2. guarantees all persons a full wide-ranging discussion of public affairs

You have the right to have your say and you have the right to hear what others have to say

Hearing people say things you don’t like and saying things other people don’t like to hear, that’s what living in a free society means”.

First the guarantees of free speech and press are intended to protect the expression of u_____ views clearly the opinions of the m_____ need little or n__ constitutional protection Second, some forms of expressions are n__ p_____ by the constitution as we shall see in the next section.

NON-PROTECTED SPEECH

Supreme Court holds that all speech is protected unless it falls into one of the four narrow categories:

1. F_____ words
2. L_____ and s_____
3. O_____ and p_____
4. C_____ speech=ads on TV or radio

- **Libel and slander**

- Libel is a w_____ defamation that falsely attacks a person’s good name and reputation
- Slander is a s_____ defamation that falsely attacks a person’s good name and reputation
- Limits on student speech
 - *Bethel v. Fraser (1986)* – school can s_____ a student from school for making a speech full of sexual double entendres or innuendos.

- **Obscenity (i.e. pornography)**

- *Miller v. California (1973)* gave constitutional definition of obscenity

1. Appeals to p_____ interest in sex,
2. Patently offensive, and
3. Must lack s_____ l_____/a_____/p_____/s_____ value.

- If not meeting all three criteria, then not obscene

- Sexually explicit materials about or aimed at minors are not protected by the First Amendment

- **Commercial speech**

- Commercial speech (such as a_____) is more restricted than are expressions of opinion on religious, political, or other matters.
- The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising.
- **Commercial speech on radio and television are regulated by the FCC. The broadcast media has less freedom than does print media, because airwaves are P_____.**

- **Fighting words**

- Governments may punish certain well-defined and narrowly limited classes of speech that by their very utterance inflict injury or tend to incite an immediate breach of peace

PROTECTED SPEECH

- **Prior restraint /c_____**

- B_____ speech before it is given.
- Such action is presumed by courts to be u_____.
- In the Pentagon Papers case (*New York Times v. U.S.*), the court refused to impose prior restraint: the revelations may have embarrassed the government, but they did not endanger national security.

Symbolic speech- *Symbolic speech is limited compared to verbal speech.*

- *Tinker v. Des Moines (1969)* – wearing black armband at school at protest Vietnam War
- *Texas v. Johnson (1989)* – f_____ burning

***Tinker v. Des Moines (1969)* MUST KNOW SUPREME COURT CASE**

Issue: Does a prohibition against the wearing of armbands in public school, as a form of symbolic speech, violate the students' freedom of speech protections guaranteed by the First Amendment?

Majority: The justices said that students retain their constitutional right to freedom of speech while in public schools. They said that wearing the armbands was a form of speech, because they were intended to express the wearer's views about the Vietnam War. The Court said, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...."

The Court stressed that this does not mean that schools can never limit students' speech. If schools could make a reasonable prediction that the speech would cause a "material and substantial disruption" to the discipline and educational function of the school, then schools may limit the speech. In this case, though, there was not evidence that the armbands would substantially interfere with the educational process or with other students' rights.

Symbolic speech is limited compared to verbal speech.

3.3 FIRST AMENDMENT: FREEDOM OF THE PRESS

Freedom Of The Press - Controversial Areas

- **Executive Privilege**

- Right of p_____ to withhold i_____ from the c_____.
- *U.S. v. Nixon (1974)*: A President generally does have executive privilege, but not in c_____ cases. Even the President is not a_____ the law.

- **Shield laws**

- Protect r_____ from having to reveal their s_____.
- The press claims that without them, their sources would "dry up," and they would be unable to provide information to the public.

- **Courts have protected press's right to publish**

- The 1966 Freedom of Information Act
 - Liberalized access to non-classified government records
 - Electronic Freedom of Information Act of 1996 requires most federal agencies to put their files online and to establish an index of their records - NASA a leader (UFO documents!)
- **Student Press**
 - *Hazelwood v. Kuhlmeier (1988)*

- High school newspaper can be regulated by the school if the school has a legitimate pedagogical concern in regulating the newspaper.

Hazelwood v. Kuhlmeier (1988) NOT a required case but you SHOULD know this case. STUDENT PRESS

Students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri wrote stories about their peers' experiences with teen pregnancy and the impact of divorce. When they published the articles in the school-sponsored and funded newspaper *The Spectrum*, the principal deleted the pages that contained the stories prior to publication without telling the students.

Claiming that the school violated their First Amendment rights, the students took their case to the U.S. District Court for the Eastern District of Missouri in St. Louis. The trial court ruled that the school had the authority to remove articles that were written as part of a class.

The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed the lower court, finding that the paper was a "public forum" that extended beyond the walls of the school. It decided that school officials could censor the content only under extreme circumstances. The school appealed to the Supreme Court of the United States.

Decision and Reasoning

In a 5-3 ruling, the U.S. Supreme Court held that the principal's actions did not violate the students' free speech rights. The Court noted that the paper was sponsored by the school and, as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might appear to have the imprimatur of the school.

Specifically, the Court noted that the paper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles, subject to school editing, that met the requirements of their Journalism II class.

FREEDOM OF THE PRESS

Commercial speech on radio and television are regulated by the FCC. The broadcast media has less freedom than does print media, because airwaves are p_____.

EXAMPLE OF PRIOR RESTRAINT

In the famous case of *New York Times v. United States* (1971), the U.S. government sought a court order to keep the newspaper company, *New York Times*, from printing "The P_____ Papers." These documents entailed U.S. secret missions and involvement in the Vietnam War, which were stolen and leaked to the press.

The Nixon Administration, battling the Watergate Scandal at the same time, tried to prevent (prior restraint) the documents from being published.

The Burger Court found that the government couldn't show the papers endangered national security enough to justify p_____ r_____.

New York Times v. U.S. (1971) MUST KNOW SUPREME COURT CASE AMSCO pg. 250

Issue: Did the government's efforts to prevent two newspapers from publishing classified information given to them by a government leaker violate the First Amendment protection of freedom of the press?

Majority: The Supreme Court ruled, 6-3, for the newspapers. The Court issued a short majority opinion not publicly attributed to any particular justice—called a *p_____ c_____* (or "by the Court") opinion—and each of the six justices in the majority (Justices Black, Douglas, Stewart, White, Brennan, and Marshall) wrote a separate concurring opinion. Chief Justice Burger and Justices Harlan and Blackmun each filed a dissenting opinion. It is one of the few modern cases in which each of the nine Justices wrote an opinion.

Per Curiam

The Court reaffirmed its longstanding rule that “[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” “The Government thus carries a h_____ b_____ of showing justification for the imposition of such a restraint.” The *per c*_____ opinion concluded, without analysis, that “the Government had not met that burden” in these cases.

FREEDOM OF ASSEMBLY

PUBLIC FORUMS AND TIME, PLACE, AND MANNER REGULATIONS

- Governments may not specify what can or cannot be said, but they can make reasonable time, place, and manner regulations for the holdings of assemblies, protests, or gatherings
- Police must have right to order groups to disperse (public order)
- Problem of “heckler’s veto”: if govt. restricted assembly every time an opposing group claimed that there might be “violence or disorder” there would be very few assemblies. Courts are therefore reluctant to impose prior restraint (censorship).
- The extent to which governments may limit access depends on the kind of forums involved:
 - Public forums (historically associated with free exercise such as streets, parks)
 - Limited public forums (public property such as city hall or school’s after-hours)
 - Nonpublic forums (libraries, courthouses, government offices) - cannot interfere with normal activities in order to stage a public protest
 - C_____ d_____ is not a p_____ right