

Daily Lecture Notes

Lesson
13-1

Did you know?

The Fourteenth Amendment, which grants citizenship and fundamental rights to African Americans, was intended to protect the rights of freed African Americans in the South. The amendment was passed in June 1866, but was not ratified by the states until July 1868. The ratification process took so long because many southern states were against equal rights for African Americans. The federal government encouraged ratification of the Fourteenth Amendment by making it a requirement for southern states that wanted to be readmitted into the Union.

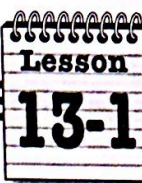
Outline

I. Constitutional Rights (pages 355–357)

- A.** The Constitution guarantees the basic rights of United States citizens in the Bill of Rights.
- B.** Today, the Bill of Rights protects the rights of individuals not only from actions of the federal government but also from actions of state and local governments.
- C.** The Bill of Rights was intended to protect against the actions of the federal government.
- D.** A process called incorporation extended the Bill of Rights to all levels of government.
- E.** The Fourteenth Amendment, added in 1868, paved the way for a major expansion of individual rights by the due process clause, which Supreme Court rulings have interpreted as applying to all levels of government.

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- I. Constitutional Rights (pages 355–357, continued)
 - B. The Supreme Court's interpretation of the Fourteenth Amendment nationalized the Bill of Rights, thus giving citizens in every part of the United States the same basic rights.
 - C. The incorporation of the Bill of Rights has meant that, in practice, citizens who believe state and local governments have denied them their constitutional rights can take their cases to federal courts, including the Supreme Court.

Discussion Question

How was the Bill of Rights expanded so that citizens in all parts of the United States now enjoy the same basic rights? (By a process called incorporation.)

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Did you know?

The Supreme Court in 1962 ruled 6 to 1 against allowing prayers in public schools. The specific case dealing with this issue was *Engle v. Vitale*, for which Justice Hugo Black wrote the Court's opinion, finding that school prayers violated the establishment clause of the First Amendment.

Outline

- I. The Establishment Clause: (pages 358–363)
 - A. forbids Congress from passing legislation to establish a single religion for the United States.
 - B. The First Amendment's guarantee of the free exercise of religion forbids Congress from passing laws limiting the practice of religion.
 - C. In practice, religion is important to public life in the United States, and defining separation between church and state has been difficult.
 - D. Establishment clause cases often involve religion and education.
 - E. Since the *Everson* ruling in 1947, the Court has ruled some forms of state aid to parochial schools constitutional but has rejected others.
 - F. The Court has ruled state aid to parochial schools constitutional:
 1. if the aid has a clear nonreligious purpose;
 2. if its main effect is to neither advance nor inhibit religion;
 3. if it avoids excessive government entanglement with religion.
 - G. The Court has allowed released time for religious instruction during the school day if the instruction is provided away from the public schools.
 - H. The Court has struck down organized school prayers but has allowed student religious groups to hold meetings in public schools; debate on the Court's rulings involving religion has been heated and sharply divided.
 - I. The Court also has ruled that states cannot ban the teaching of evolution in public schools or require the teaching of creationism.

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(continued)

- I. The Establishment Clause: (pages 358–363, *continued*)
 - J. Other interpretations of the establishment clause have involved Christmas nativity displays in public places and prayers at government meetings.

Discussion Question

Why has the Supreme Court upheld some kinds of state aid to parochial schools and struck down other kinds of aid? (Because of its interpretation of the free exercise and establishment clauses.)

- II. The Free Exercise Clause's Landmark Rulings (pages 363–364)
 - A. The Supreme Court makes an important distinction between religious belief and practice.
 - B. Religious freedom cannot justify behavior or practices that violate laws protecting the health, safety, or morals of the community.
 - C. Amish parents could not be forced to send their children to public school beyond eighth grade; children of Jehovah's Witnesses could not be required to salute the flag in the classroom.

Discussion Question

Compare the effects of the establishment clause and the free exercise clause of the First Amendment on the freedom of religion that United States citizens enjoy. (Answers will vary. Students should use specific examples.)

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Did you know?

More than 2,000 years ago, a Greek philosopher named Diogenes said, "The most beautiful thing in the world is free speech." Just as ancient Greece valued freedom of speech, United States citizens also regard it as one of their most fundamental rights. In fact, the nation's founders included this freedom as a basic part of the first amendment they added to the Constitution.

Outline

I. The Supreme Court Rules on Types of Free Speech (pages 366–367)

- A. Free speech includes verbal expression of thought and opinion and symbolic speech, using actions and symbols.
- B. Because symbolic speech involves action, it may be limited by government restrictions that do not apply to free speech.
- C. Government can regulate or forbid symbolic speech if it falls within the constitutional power of government, if it is narrowly drawn to further a government interest not related to suppressing speech, or if it leaves open enough other channels of communication.

Discussion Question

Compare pure speech and symbolic speech. In what ways are they similar? In what ways are they different? (Pure speech is verbal expression; symbolic speech is actions and symbols; both are protected by the First Amendment.)

II. The Supreme Court Rules on Regulating Speech (pages 367–369)

- A. The rights of free speech must be balanced against the need to protect society.
- B. Free speech may be limited when it clearly presents an immediate danger, as in the *Schenck* case (1919).
- C. Free speech can be restricted even if it only tends to lead to illegal action (the bad tendency doctrine), given society's need to maintain public order.

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II. The Supreme Court Rules on Regulating Speech (pages 367–369, continued)

- D.** The Court has ruled that the First Amendment freedoms have a preferred position because they are more fundamental than other freedoms; laws limiting them are presumed unconstitutional.
- E.** The Court has held that people are free to speak out in support of political objectives; however, free speech does not protect those who advocate immediate and specific acts of violence.

Discussion Question

What three constitutional tests has the Supreme Court used when deciding whether limits on free speech are permissible? (“Clear and present danger” rule, bad tendency doctrine, preferred position doctrine.)

III. Other Speech Not Protected (pages 369–370)

- A.** The First Amendment does not protect defamatory speech.
- B.** Defamatory speech includes slander, or spoken words, and libel, or written words, in false and damaging statements about someone.
- C.** Public officials and public figures in general are excluded from the right to sue for slander, in order to preserve an individual’s right to criticize the government.
- D.** Fighting words, or speech intended to provoke violence, are not protected.
- E.** School authorities can regulate students’ free speech at school events and during activities.

Discussion Question

Do you agree or disagree with limits on students’ freedom of speech in public schools? Use examples of these limits to explain your opinion. (Answers will vary. See cases on text page 370.)

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Did you know?

In ruling on *Near v. Minnesota*, Chief Justice Charles Evans Hughes declared that prior restraint was “the essence of censorship” but acknowledged four possible circumstances in which he felt censorship might be allowed: when something printed was obscene, weakened national security, invaded “private rights,” or incited violence.

Outline

I. Prior Restraints Forbidden (pages 371–372)

- A. Prior restraint, or censorship in advance, is permissible only in cases directly related to the national security.
- B. In *Near v. Minnesota* (1931) the Court ruled that states could not stop the publication of a newspaper, because that action involved prior restraint.
- C. In the *Pentagon Papers* case in 1971, the majority ruled that the government could not stop the publication of secret government documents, because it would involve prior restraint.

Discussion Question

Why were the justices of the Supreme Court divided in their decision in the *Pentagon Papers* case in 1971? Explain the issues that caused the Court to split in this ruling. (See the case and decision on text page 372.)

II. Fair Trials and Free Press (pages 372–374)

- A. The First Amendment rights of a free press sometimes conflict with the Sixth Amendment’s guarantee of a fair trial.
- B. After the *Sheppard* case (1966), the Supreme Court described measures that courts might take to restrain press coverage, including moving the trial site, limiting the number of reporters in the courtroom, controlling reporters’ conduct in court, keeping witnesses and jurors isolated from the press, and sequestering the jury.
- C. Gag orders barring the press from publishing certain types of information are illegal and are allowed only in unusual circumstances.

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II. Fair Trials and Free Press (pages 372–374, continued)

- D.** After the Court ruled that reporters, like all citizens, must testify in cases if called and cannot refuse to reveal their sources of information, some states passed shield laws to protect the media from being forced to disclose confidential information in state courts.

Discussion Question

Do you favor or oppose state shield laws to protect news reporters? Explain your reasons. (Answers will vary. Most states have passed shield laws.)

III. Free Press Issues (pages 374–375)

- A.** The Founders viewed the press strictly as printed material; electronic media had not yet been invented.
- B.** Radio and television do not enjoy as much freedom as other press media because they use the public airways.
- C.** The Federal Communications Commission (FCC) regulates radio and television. That agency cannot censor broadcasts but may set standards.
- D.** Movies and the Internet are protected by free press guarantees.
- E.** Communities may regulate obscenity within limits acceptable to the courts.
- F.** Advertising is commercial speech and thus receives less protection than purely political speech.

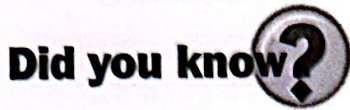
Discussion Question

How has the Supreme Court applied different tests to the news media invented since the Constitution was adopted? (See standards for radio, television, motion pictures, and the Internet on pages 374–375.)

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Did you know?

Burning an American flag during a demonstration protesting some action or policy of the government may be unpopular, but it is not illegal. Why? The Supreme Court has ruled that flag burning is protected by the First Amendment because it is symbolic speech.

Outline

I. Protecting Freedom of Assembly (pages 376–378)

- A.** Freedom of assembly is a right closely related to freedom of speech.
- B.** The Supreme Court, in *DeJonge v. Oregon* (1937), ruled that free assembly is as important as free press and free speech and that free assembly is protected from state and local governments.
- C.** Freedom of assembly includes the right to parade and hold demonstrations in public places, but those who organize the events must get a permit.
- D.** Demonstrations at public facilities may be limited.
- E.** Demonstrations are not allowed on private property, such as shopping malls and abortion clinics, because they interfere with property rights.

Discussion Question

When might freedom of assembly conflict with the public's right to order and safety, and which do you think is more important? (Answers will vary. For examples of this conflict see text pages 376–377.)

II. Public Assembly and Disorder (pages 378–380)

- A.** When people assemble to advocate unpopular causes, police may have difficulty protecting them from violence and disorder.
- B.** The Nazi party march in Skokie, Illinois, in 1977 illustrated the heckler's veto: the public vetoes the rights of free speech and assembly of an unpopular group.
- C.** Police may disperse a demonstration in order to keep the peace, but in the *Gregory* case (1969), the Court upheld the right of assembly by persons peacefully demonstrating in support of an unpopular cause.

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Discussion Question

How effective do you think the heckler's veto would be in your community?

(Answers will vary. Heckler's veto is defined on text page 379.)

III. Protection for Labor Picketing (pages 380–382)

- A.** Labor picketing is different from other demonstrations; it seeks to persuade customers not to deal with a business whose workers are on strike.
- B.** Before 1940 the Supreme Court supported restraints on labor picketing, but in that year it ruled that picketing was a form of free speech; in the years since, forms of picketing have been limited in several key rulings.

Discussion Question

Compare labor picketing with other kinds of demonstrations. In what ways are they the same and different? (Picketing is a form of free speech, but it includes a picket line which may deprive a business of customers or workers.)

IV. Freedom of Association (page 382)

- A.** The right of free assembly includes the right of free association, including joining a political party, interest group, or other organization.
- B.** Membership in groups advocating the use of force to overthrow the government, the Court has ruled, is not illegal; when members of such groups actually prepare to use such force, however, the acts are punishable.

Discussion Question

How did the Supreme Court apply the clear and present danger doctrine to membership in subversive groups? (In the 1950s the Court upheld convictions against Communist Party members. Later it ruled that merely advocating a belief did not show a "clear and present danger.")

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