

Chapter 17

Rights to Life, Liberty, Property

Key Chapter Questions

1. What is due process?
2. How is American citizenship acquired or lost and what are the rights of American citizens?
3. What are the rights of and policies directed toward aliens in America?
4. What are our constitutional protections of property?
5. What are the differences between procedural and substantive due process?
6. How has the Supreme Court defined the "right of privacy" in its rulings?
7. What are the rights of persons accused of crimes?
8. What are major criticisms directed at the American system of justice?
9. Why does the chapter state that "juries are on trial"?
10. Why has the death penalty come under increasing scrutiny?

Chapter Outline

- I. Citizen rights in the United States
 - A. The U.S. provides more procedural rights protection than many other countries.
 1. We have established rules and regulations that restrain governmental abuse of power
 2. Due process is valued in the U.S.
- II. Citizenship rights
 - A. How citizenship is acquired and lost
 1. The basic citizenship right is guaranteed by the 14th Amendment which confers citizenship by being born in the U.S. or of parents who were U.S. citizens
 2. Naturalization
 - a. Collective or individual naturalization confers citizenship upon an alien
 3. Dual citizenship
 - B. Rights of American citizens
 1. Residence is a question of intent
 2. Slaughter House Cases (1873) distinguished between the privileges of U.S. citizens and those of state citizens
 3. Seven privileges included
 4. The right to live in the United States
 5. The right to travel abroad
 - C. Rights of aliens
 1. We are in a period of growing hostility toward aliens
 2. Political reaction resulted in legal restoration of benefits to aliens
 3. Congressional legislation denies, and permits states to deny, most other benefits to illegal aliens, except for emergency medical care, disaster relief, and some nutrition programs
 - D. Admission to the United States
 1. The Immigration Act of 1924 resulted in discrimination against immigrants from Southern

Europe and Southeast Asia

2. The 1965 immigration law provisions (revised in 1990 and modified in 1996)
 - a. Annual ceiling of 675,000 for non-amnesty, non-refugee aliens
 - b. Annual limit on immigrants from any single country
 - c. Preference is given for *family reunification*
 - d. More than 800,000 people enter U.S. each year
 - e. Allows for admission of "millionaire immigrants" to invest in the United States
 - f. Created a "diverse" category to provide visas for 55,000 immigrants from 34 countries, chiefly European
 - g. 55,000 political refugees are allowed annually
 - h. The attorney general may grant asylum
 - i. Legally admitted aliens may be deported for many reasons (terrorism, crimes, illegality, etc.)
- E. Undocumented aliens (2.3 to 2.4 million)
 1. Problems are political and practical (thousands of miles of borders, track aliens)
 2. Employers hire them because they work for less money (vulnerability factor)
 3. Mostly affects relationship with Mexico; Congress faces conflicting pressures

III. Property rights

- A. Constitutional protection of property
 1. Definition – Property rights are the rights of an individual to own, use, rent, invest in, buy, and sell property
 2. The legal tender and contract clauses – Although the contract clause is still invoked occasionally to challenge a state regulation of property, it is no longer a significant limitation on governmental power
- B. What happens when the government takes our property?
 1. National and state governments' power of eminent domain – the power to take private property for public use
 - a. Regulatory takings
 - b. *Taking clause*
 - c. "Just compensation" is not always easy to define (court determines value in a dispute)
- C. Due process: new and old
 1. Procedural due process refers to the methods by which a law is enforced
 - a. Refers not to the law itself but to the way in which a law is applied
 - b. Has taken on new importance with the expanded interpretation of the words "liberty" and "property"
 - c. Whether or not an interest is protected by due process depends on the nature of the interest, not its importance to the individual
 - d. Once it is determined that due process applied, the question remains what process is due; what is due varies with the kind of interest involved, the reliability of the procedures used, and the governmental purposes to be served
 2. Substantive due process
 - a. Places limits on what a government may do; pertains to the content of the law
 - b. Before 1937, substantive due process was used primarily to protect liberty of contract
 - c. Since 1937, the Supreme Court has largely refused to apply the doctrine of substantive due process in reviewing laws regulating the economy; the Court now believes that deciding what constitutes reasonable regulations of business and commercial life is a legislative, not a judicial, responsibility

IV. Privacy rights

- A. Abortion rights
 1. Supreme Court ruling in *Roe v. Wade* (1973)
 2. In 1991-1992 Court term, the Rehnquist Court upheld the view that the due process clauses of the Constitution protect a woman's liberty to choose an abortion prior to viability; however, the Court applied the undue burden test (*Planned Parenthood v. Casey*)

3. Court struck down Nebraska's ban on "partial birth" abortions (*Stenberg v. Carhart*)
- B. Sexual orientation rights
1. In 1986 the Supreme Court refused to extend any protection to relations among homosexuals
 2. Privacy, as part of substantive due process, is on "developing edges" of constitutional law
 3. In *Boy Scouts of America v Dale*, Court ruled that Boy Scouts could not exclude gays from being Scout leaders
 4. In *Romer v. Evans*, Court struck down an anti-homosexual provision of the Colorado constitution
- V. Rights of persons accused of crimes
- A. Freedom from unreasonable searches
1. Found in Fourth Amendment
 2. Seizures are given less protection than searches
 3. The Constitution forbids only "unreasonable" searches
 4. Where the Fourth Amendment applied, the exceptions to the general rule against warrantless searches and seizures of what is found by police and customs officials are as follows:
 - a. The automobile exception
 - b. The Terry exception
 - c. Searches subsequent to valid arrest
 - d. Searches for evidence
 - e. Consent
 - f. Border searches
 - g. Plain-view exception
 - h. Exigent circumstances
 - i. Foreign agents (President can authorize warrantless wiretaps)
 5. Outside of these exceptions, a police search without consent is constitutionally unreasonable unless it has been authorized by a valid search warrant
 6. The Constitution requirements of a specific search warrant
 - a. Must describe what places are to be searched
 - b. Must describe what things are to be seized
- B. The exclusionary rule
1. *Mapp v. Ohio* (1961) - The Supreme Court ruled that evidence obtained unconstitutionally cannot be used in a criminal trial as part of the government's main case against persons from whom it was seized
 2. Adopted mainly to prevent police misconduct
 3. Exclusionary rule covers only trials of those from whom the evidence was unconstitutionally seized
- C. The right to remain silent
1. Fifth Amendment protection against self-incrimination is designed so that the burden is on the government to prove guilt
 2. Grant of immunity – Witness no longer has a constitutional right to refuse to testify; can still be prosecuted for crimes subject to such investigations, but the government cannot use the information derived directly from the compelled testimony in any subsequent prosecution
- D. The Miranda warning
1. *Miranda v. Arizona* (1966) – Supreme Court announced that no conviction could stand if evidence introduced at the trial had been obtained by the police during "custodial interrogation" unless suspects have been:
 - a. Notified that they are free to remain silent
 - b. Warned that what they say may be used against them in court
 - c. Told that they have a right to have attorneys present during questioning
 - d. Informed that if they cannot afford to hire their own lawyer, attorneys will be provided for them
 - e. Permitted to terminate any stage of the police interrogation
 2. Criticisms of the *Miranda* decision
 - a. The Court has unnecessarily and severely limited the ability of the police to bring criminals

- to justice
- b. The Court has modified original ruling in order to deter perjury; in June, 2000, Court reaffirmed constitutionality of Miranda doctrine
- E. Fair Trial Procedures--The preliminary hearing and right to counsel
 1. Judges have an obligation to ensure that all persons subject to any kind of custodial interrogation are represented by lawyers
 2. Right to counsel extends to all hearings for all offenses for which an accused could be deprived of liberty
- F. The indictment
 1. Grand jury indictment is necessary in order to require anyone to stand trial for a serious crime
 2. Grand jurors are concerned with whether there is enough evidence to warrant a trial
 3. Grand jury has wide-ranging investigatory powers
 4. True bill or indictment indicates that a majority of the grand jurors agree that the trial is justified
 5. The Constitution guarantees the accused the right to be informed of the nature and cause of the accusation so that he or she can prepare a defense
 6. Plea bargaining - pleading guilty to a lesser offense in return for not having to stand trial for a more serious charge (about 90% of cases)
- G. The trial
 1. The federal government is obligated to give the defendant a speedy and public trial
 2. An impartial jury, one that meets the requirements of due process and equal protection, consists of persons who represent a fair cross-section of the community
 3. Neither prosecutors nor defense attorneys can use preemptory challenges to keep people off juries because of race, ethnic origin, or sex
 4. The defendant has the constitutional right to obtain witness in his favor
 5. The defendant has the constitutional right against self-incrimination; if the defendant does take the stand, the prosecution would have a right to cross-examination
 6. The Constitution insists that accused persons have the right to be confronted with the witnesses against them
- H. The sentencing and punishment
 1. Eighth Amendment forbids levying of fines and the inflicting of cruel and unusual punishments
 2. In federal courts, judges follow sentencing guidelines as set down by the U.S. Sentencing Commission
- G. The Death Penalty
 1. Court halted capital punishment until states could administer it in "consistent fashion"
 2. Since reinstatement in 1976, 600 executed and more than 3600 now facing death sentence
 3. Fifteen members of EU have outlawed death penalty
 4. Growing concerns over fairness of death penalty—ABA, Governor George Ryan; example of Rubin "Hurricane" Carter; Increasing numbers of inmates released through DNA; two-thirds of all death sentences overturned (see "A Closer Look")
- H. Three Strikes and You're Out
 1. Public concern about crime is up, so show "toughness"
 2. Scholars skeptical that three strikes idea will cut crime (more jails/funding will be needed)
- I. Appeals and Double Jeopardy
 1. Fifth amendment prevents individual from being tried again (if found innocent)
 - a. Still can be tried by both federal and state governments for the same offense (or by two states)
 - b. Double jeopardy does not forbid civil prosecution after acquittal in a criminal trial

VI. How just is our system of justice?

A. Too many loopholes?

1. Some observers argue that under our justice system, by overprotecting the innocent and placing too much of a burden on the government not to make mistakes, criminals may go

unpunished

2. Others argue that each step in the administration of criminal laws has been constructed to protect against particular abuses

B. Too unreliable?

1. Critics of our justice system point to trial by jury as the main problem
 - a. Jury system allows for jury nullification
 - b. Due to unpopular verdicts, states rewriting rules for jury system
2. Defenders of the jury system argue that trial by jury:
 - a. Provides a check by nonprofessionals on the actions of judges and prosecutors
 - b. Do not systematically differ from those of judges
 - c. Educates citizens

C. Too discriminatory?

1. Supreme Court has worked hard to enforce ideal of equal justice under the law
2. Poor people must have attorneys, not be imprisoned because they can't pay fines
3. Even in civil proceedings (divorce), discriminatory fees must be banned

D. Unfair to Minorities?

1. Tension exists between the police and African American and Hispanic communities in the ghettos and barrios of large cities (California study)
2. Blacks consider the police to be enforcers of white law; there is an element of racial prejudice in police shooting at minorities (racial profiling)
3. Action has been taken to recruit more African-Americans, Hispanics, and women as police officers, including appointment to command posts
 - a. Community policing is now replacing traditional police procedures
 - b. Community policing plus working with community organizations to sponsor crime-prevention programs appears to reduce crime/improve minorities' confidence in police

VIII. The Supreme Court and civil liberties

- A. The combination of judicial enforcement and written guarantees of enumerated liberties is one of the basic features of the American system of government
- B. The Supreme Court can do little unless its decisions over time reflect a national consensus