Unit VI - Judicial Branch, Civil Liberties, and Civil Rights

I) Judicial Branch

A) Terms to know:
   1) Amicus curiae brief - briefs written by interest groups on behalf of litigants to the SC. Jurisdiction (original and appellate), district courts, circuit courts of appeal, precedent or stare decisis

B) Supreme Court appointments are life-time appointments, which mean the President’s appointments can influence public policy far beyond their terms in office. This is why SC judges are likely to have political experience so the President knows their views on certain issues.
   1) Senatorial Courtesy is often used in selecting justices. Senators in the state where the district is located recommend a person to the President, who, usually, concedes. This does NOT happen in Supreme Court nominations.

C) The Supreme Court is unlikely to hear a case on appeal from a lower court. They only hear about 100 out of 8000 appeals per year.

D) Original intent seeks to determine the meaning of the Constitutional according to the intentions of the framers. Many “originalists” believe that the judicial branch has become too powerful and favor judicial restraint. Judicial activists wish to allow justices the freedom to forge new policies, especially concerning people underrepresented in the political process.

E) Checks on Judiciary (ways judges are accountable to the people)
   1) Impeachment, Congress can clarify “legislative intent” or pass laws regarding jurisdiction, executive enforcement of judicial interpretations, and amendments to the Constitution.

F) John Marshall: initiated the practice of judicial review in Marbury v. Madison and expanded the power of the Supreme Court significantly

G) The Warren Court became actively involved in expanding civil rights and liberties
H) The Burger Court was more conservative but still upheld allowed abortion in Roe v. Wade.
I) The Rehnquist Court became more conservative and began to limit some of the liberal rulings from the previous two courts.

II) Civil Liberties. The legal constitutional protections against the government

A) REVIEW ALL THE SC CASES FROM THE LIST GIVEN OUT IN CLASS. While reviewing, ask self: In what ways were the following incorporated to the states? rights of criminal defendants, First Amendment, privacy rights

B) Define selective incorporation, gradual interpretation, one case at a time, that interpreted the Fourteenth Amendment as extending most of the requirements of the Bill of Rights to the states, as well as the federal government.

C) First Amendment (religion)
   1) 5 components: speech, press, religion, assembly, petition
   2) 2 parts of freedom of religion: establishment clause (“wall of separation” principle) and free exercise clause (no one may interfere with one’s right to practice religion of choice).

D) First Amendment (Speech) Know: prior restraint, symbolic speech
   1) The Supreme Court has taken the following positions with regard to freedom of speech:
      a) a restriction of freedom of speech will always be viewed with skepticism
      b) government has an obligation to try to ensure citizens the right to be heard
      c) the right of free speech is a fundamental natural right
      d) the first amendment protects free speech from incursions of both the federal and state governments. (due to what doctrine?)
   2) Some have argued that the legislature may make “no law” bridging freedom of speech or the press, there has been at least 4 forms of speaking and writing not automatically granted full protection:
      a) Libel (b) Obscenity (c) Symbolic speech (d) False advertising
   3) Speech is limited if it presents a “clear and present danger."
   4) Permissible to advocate the violent overthrow of government in abstract, but not to incite anyone to imminent lawless action
   5) Speech is generally protected in public places, but usually not on another’s private property
   6) Obscenity: The SC has made it clear that nudity and sex are not, by definition, obscene, and that they will provide First Amendment protection to anything that has political, literary, or artistic merit, allowing the government to punish only the distribution of “hard-core pornography”
      a) Decisions on obscenity are based on local community standards.

E) Fifth Amendment, etc - Due Process of Law (Part III) KNOW: 4th, 5th, 6th, and 8th Amendment, self-incrimination
   1) Miranda v. Arizona declared that police must inform criminal suspects of their constitutional rights before questioning suspects after arrest.

F) Fourteenth Amendment Equal Protection under the Law (Part IV)
   1) The principle that the government must respect ALL of the legal rights that are owed to a person according to the law.
   2) Conceptions of Equality
      a) Equal opportunity: same chances
      b) Equal results: same rewards
G) Right of Privacy (Part V)
   1) Roe v. Wade and Griswold v. Connecticut were based on the right to privacy implied in the Bill of Rights

III) Civil Rights- policies that extend basic rights to protect people against arbitrary or discriminatory treatment by government or by other individuals
   A) Know: 24th Amendment, 19th Amendment
   B) Civil Rights Act of 1964
      1) Made racial discrimination illegal in hotels, restaurants, and other public accommodation
      2) Forbade employment discrimination based on race
      3) Created Equal Employment Opportunity Commission (EEOC)
   C) Prevention tactics designed to keep Blacks from voting in South: Literacy tests, Poll taxes, Grandfather clauses, Dilution of voting strength through redistricting. White primaries, Election procedures (notification, access)
   D) Tactics of African Americans to achieve equality: Demonstrations/protests/public rallies/civil disobedience (sit-ins, “freedom rides”), Organized interest-group activity (e.g., NAACP), “Civil Rights, eventually, became less a matter of gaining entry into the political system and more one of waging interest group politics within that system”, Courts/litigation, Boycotts, Election activities other than voting (campaigning, donating)
   E) Voting Rights Act of 1965 was one of the best implemented acts because it had a well-defined mission and contained sufficient support to carry out its provisions. It resulted in a greater participation of voter registration by African American voters in the South.
   F) Title IX of the Education Amendments Act of 1972 “No person in the United States shall, on the basis of sex, be excluded from..."  an education program or activity receiving Federal financial assistance..."
   G) Most visible in high school and college athletics.

Key Cases to Know:
1) Baker v. Carr- “one person one vote”
2) Barron v. Baltimore- In this ruling, the Supreme Court ruled that the Bill of Rights did not apply to the states
3) Betts v. Brady- Betts was indicted for robbery in Maryland. An indigent, he was unable to afford counsel and requested one be appointed for him. The judge in the case denied the request, and Betts subsequently pled not guilty while maintaining he had a right to counsel and arguing his own defense. The Court ruled that the previously discovered right to counsel provided by the fourteenth amendment does not compel states to provide counsel to any defendant. Justice Owen Roberts’ opinion asserted that the right to counsel merely prevented the state from interfering in a defendant’s request for representation rather than requiring a state to offer counsel.
4) Brown v. Board of Education- This Supreme Court ruling held that segregated schools violated “separate but equal” and was unconstitutional
5) Brown v. Board of Education II- This case laid out how desegregation would take place. “with all deliberate speed.”
6) Engel v. Vitale- This ruling declared state sponsored prayer to be unconstitutional (even non-denominational). Firmly committed state to neutrality.
7) Eversen v. Board of Education- announced “wall of separation” principle. Decision upheld a New Jersey program that established the precedent that a state may provide, with public money, bus transportation services to and from school to students in parochial schools.
8) Gideon v. Wainright- This Supreme Court case required that attorneys be provided to citizens as part of their due process rights. Extended right of attorney to ALL felony charges, not just federal crimes. Overturned Betts v. Brady.
9) Gitlow v. New York- This was the first Supreme Court case to nationalize part of the Bill of Rights (nationalized the first amendment). Used 14th Amendment to justify.
10) Griswold v. Connecticut- This was the first Supreme Court case that established a Constitutional right of privacy, and paved the way for the landmark ruling on abortion. Privacy embedded in Bill of Rights.
11) Heart of Atlanta Motel v. US - Title II of the Civil Rights Act of 1964 forbade racial discrimination by places of public accommodation if their operations affected commerce. The Heart of Atlanta Motel in Atlanta, Georgia, refused to accept Black Americans and was charged with violating Title II. The Court held that the Commerce Clause allowed Congress to regulate local incidents of commerce, and that the Civil Right Act of 1964 passed constitutional muster.
12) Lemon v. Kurtzman- In this ruling, the Supreme Court Justices created a three prong test to better evaluate separation of church and state issues
13) Mapp v. Ohio- Incorporated exclusionary rule, which prevents illegally seized evidence from being used in court. Dolree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression. The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court.” Mapp had been convicted on the basis of illegally obtained evidence.
14) Marbury v. Madison- This decision established the principle of the court’s power of Judicial Review
15) McCulloch v. Maryland- This ruling allowed for the expansion of federal power over the states through new interpretation of the “necessary and proper” clause of the Constitution. In a unanimous decision, the Court held that Congress had the power to
incorporate the bank and that Maryland could not tax instruments of the national government employed in the execution of constitutional powers. Writing for the Court, Chief Justice Marshall noted that Congress possessed unenumerated powers not explicitly outlined in the Constitution. Marshall also held that while the states retained the power of taxation, "the constitution and the laws made in pursuance thereof are supreme. . .they control the constitution and laws of the respective states, and cannot be controlled by them."

16) Miller v. California- Clarified what could be obscene. This case established a three prong test for Justices to use when faced with questions of obscenity. No serious artistic intent, offensive, and adapted to local standards/communities.

17) Miranda v. Arizona- This Supreme Court ruling established the requirement that criminal suspects be read their rights at the time of their arrest. Remain silent and right to an attorney.

18) Planned Parenthood v. Casey- The Pennsylvania legislature amended its abortion control law in 1988 and 1989. Among the new provisions, the law required informed consent and a 24 hour waiting period prior to the procedure. A minor seeking an abortion required the consent of one parent (the law allows for a judicial bypass procedure). A married woman seeking an abortion had to indicate that she notified her husband of her intention to abort the fetus. These provisions were challenged by several abortion clinics and physicians. A federal appeals court upheld all the provisions except for the husband notification requirement. The Court again reaffirmed Roe, but it upheld most of the Pennsylvania provisions. For the first time, the justices imposed a new standard to determine the validity of laws restricting abortions. The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." Under this standard, the only provision to fail the undue-burden test was the husband notification requirement. The opinion for the Court was unique: It was crafted and authored by three justices.

19) Plessy v. Ferguson- established "separate but equal"

20) Roe v. Wade- made abortion legal and essentially forbade any restrictions during the 1st trimester.

21) Schenck v. US- government can limit speech if it provides "clear and present danger" of evils Congress has a right to prevent.

22) Swann v. Charlotte-Mecklenburg- This ruling established that bussing to overcome de facto segregation was unconstitutional

23) University of California Regents v. Bakke- This landmark ruling on affirmative action declared the use of quotas to be unconstitutional

24) Texas v. Johnson- In this ruling the Supreme Court justices declared that symbolic speech (like flag burning) should be the most protected form of speech.

25) Tinker v. Des Moines- public school students may wear armbands to protest Vietnam as long as not disruptive to instructional process.

26) US v. Nixon- This Supreme Court ruling upheld the principle of executive privilege, but declared that the right was not unqualified

27) Wallace v. Jaffree- An Alabama law authorized teachers to conduct regular religious prayer services and activities in school classrooms during the school day. Three of Jaffree's children attended public schools in Mobile. Yes. The Court determined the constitutionality of Alabama's prayer and meditation statute by applying the secular purpose test, which asked if the state's actual purpose was to endorse or disapprove of religion. The Court held that Alabama's passage of the prayer and meditation statute was not only a deviation from the state's duty to maintain absolute neutrality toward religion, but was an affirmative endorsement of religion. As such, the statute clearly lacked any secular purpose as it sought to establish religion in public schools, thereby violating the First Amendment's Establishment Clause.

28) Webster v. Reproductive Health- Upheld Missouri law severely restricting abortions. Specifically forbid use of state funds on employees to have an abortion. The court agreed they were constitutional, but The Court emphasized that it was not revisiting the essential portions of the holding in Roe v. Wade.

29) West Virginia Board of Education v. Barnette- compelling school children to salute the flag is unconstitutional.

30) Wesbury v. Sanders - “one person, one vote”

Possible FRQ’s for Unit VI- Judicial Branch, Civil Rights, & Civil Liberties

1. The judicial branch is designed to be more independent of public opinion than are the legislature or the executive. Yet, the United States Supreme Court rarely deviates too far for too long from prevalent public opinion.
   a. Describe two ways in which the U.S. Supreme Court is insulated from opinion.
   b. Explain how two factors work to keep the United States Supreme Court from deviating too far from public opinion.

2. Political institutions can present both obstacles and opportunities to racial minority groups in their efforts to gain political influence.
   a. Identify one feature of one of the following and explain how that feature has presented obstacles to racial minority groups in their efforts to achieve political goals.
      - federalism
      - the United States political party system
      - The United States electoral system
b. Identify one feature of one of the following and explain how that feature might present opportunities to racial minority groups in their efforts to achieve political goals.

- federalism
- the United States political party system
- The United States electoral system

3. Initially, the United States Constitution did little to protect citizens from actions of the states. In the twentieth century, the Supreme Court interpreted the Constitution to protect the rights of citizens from state governments in a process referred to as incorporation.
   a. Define selective incorporation.
   b. For two of the following, explain how each has been incorporated. Each of your explanations must be based on a specific and relevant Supreme Court decision.
      - rights of criminal defendants
      - First Amendment
      - privacy rights

4. The First Amendment includes two clauses relating to the freedom of religion.
   a. Select one of the following cases and identify the First Amendment clause upon which the United States Supreme Court based its decision.
      - Engel v. Vitale (school prayer)
      - Lemon v. Kurtzman (state funding for private religious schools)
   b. Describe the Supreme Court’s decision in the case that you selected in (a).
   c. Select one of the following cases and identify the First Amendment clause upon which the Supreme Court based its decision.
      - Reynolds v. U.S. (polygamy)
      - Oregon v. Smith (drug use in religious ceremonies)
   d. Describe the Supreme Court’s decision in the case that you selected in (c).
   e. Many of these decisions have caused controversy in the U.S. Describe two ways in which other political institutions might limit the impact of Supreme Court decisions.

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”

Fifteenth Amendment to the United States Constitution, 1870

5. Despite the ratification of the Fifteenth Amendment, voter turnout among African American citizens was very low throughout the first half of the twentieth century. Over the past 50 years, civil rights policies have changed substantially, along with a significant increase in African American voter turnout.
   a. Explain how two measures taken by some states prior to the 1960s affected voter turnout among African American citizens.
   b. Facing discrimination at the voting booth, many African American citizens turned to alternative forms of political participation. Describe two alternative forms of participation that helped bring about changes in civil rights policies.
   c. Choose one of the forms of participation you described in (b) and explain why it was effective in changing civil rights policies.
Principles from Released MC’s and FRQ’s (Judicial Branch, Civil Rights, and Civil Liberties)

Judicial Branch

- The Courts generally have tried to avoid deciding conflicts between Congress and the President.
- Agreement among four justices on the Supreme Courts is always sufficient to accept a case for consideration.
- Those who believe that the Supreme Court in its rulings should defer to the elective institutions of government are advocating judicial restraint.
- The tendency of judges to interpret the Constitution according to their own views illustrates the term judicial activism.
- The Supreme Court is insulated from public opinion by:
  - Appointed but not elected.
  - Serve life-terms.
  - Court’s ability to control its own docket/set its own agenda.
  - Salaries cannot be reduced.
  - Limited access to Court proceedings.
- They do not deviate too far from public opinion, though because:
  - The appointment and/or confirmation process (no point ifs given if the response says that the House confirms, but if the response says Congress confirms, this is acceptable). If the appointment and confirmation both processes are fully discussed as two SEPARATE processes, the response may earn points for both.
  - Reliance on other public officials to execute decisions.
  - The fact that the Supreme Court can be overruled with new laws or constitutional amendments. (“New laws” do not include Congress’s general power to write legislation)
  - The concern for reputation-individual reputation and/or that of the Supreme Court concern for credibility/legitimacy of the institution falls into this category.
  - The potential for the impeachment of judges.
  - Congressional control of the Supreme Court’s appellate jurisdiction and/or changing the number of justices on the Court.

Civil Rights and Civil Liberties

- The exclusionary rule in the court system has been detrimental to the maintenance of law and order, according to many.
- Due process protects a citizen from imprisonment without a trial.
- The federal Constitution guarantees all of the following rights to a person arrested and charged with a serious crime: remain silent, be represented by a lawyer, demand a writ of habeas corpus, and receive a speedy and public trial.
- Literacy tests in the South were designed to prevent Black people from exercising their right to vote.
  - Example: “The Constitution limits the size of the District of Columbia to _______."
- In U.S. v. Nixon, the Supreme Court ruled that there is no constitutional guarantee of unqualified executive privilege.
- The Miranda Rights were a result of the following Supreme Court decision: Miranda v. Arizona. It attempted to protect criminal suspects against unfair police interrogation.
- First Amendment: The Supreme Court has taken the following positions with regard to freedom of speech. A restriction of freedom of speech will always be viewed with skepticism, government has an obligation to try to ensure citizens the right to be heard, the right of free speech is a fundamental natural right, the first amendment protects free speech from incursions of both the federal and state governments.
  - Engel v. Vitale
    - Struck down state-sponsored prayer in school
    - State-sponsored or state-organized prayer to get credit.
    - The prayer in the case had some type of official government backing/sponsorship/sanction.
    - Do not have to specify “public schools” to get credit.
  - Lemon v. Kurtzman
    - Struck down state funding for private religious schools. (more specifically, it struck down state funding to pay parochial teachers to give instruction in secular subjects.)
    - There are certain conditions or criteria that are used in determining if a government practice does not violate the establishment clause. Conditions/criteria may include:
      - Secular purpose
      - Neither enhances nor inhibits religion.
  - No excessive entanglement between government and religion.
● **Reynolds v. United States:**
  ○ The decision restricted/banned/disallowed polygamy.

● **Oregon v. Smith** is:
  ○ The decisions restricted/banned drug use in religious ceremonies.

● The Establishment clause of the First Amendment prohibits the setting up of a state church.

● “separate but equal” was upheld by **Plessy v. Ferguson, 1896.** Initially affected only schools where segregation was mandated by law.

● The Amendments to the Constitution ratified during Reconstruction were primarily designed to protect the rights of Black citizens against infringement by state governments.

● **Baker v. Carr** involves the principle of “one person, one vote.”

● To enforce the Fourteenth Amendment more clearly, the Congress passed the Civil Rights Act of 1964. Discrimination in public accommodations was made illegal in the U.S. as a direct result of the Civil Rights Act of 1964.

● In the U.S., most criminal cases end in a plea bargain negotiated by the defense and prosecution.

● The Fourteenth Amendment to the Constitution has been interpreted by the Supreme Court to make most rights contained in the Bill of Rights applicable to the states.

● The Freedom of Information Act was designed primarily to give citizens access to information from the executive branch.

● In upholding federal statues outlawing segregation in public accommodations the Supreme Court argued that such segregation affected interstate commerce, and Congress therefore had the authority to outlaw it.

● The Supreme Court’s decision about abortion in **Roe v. Wade** was based on the right to privacy **implied** in the Bill of Rights. **Griswold v. Connecticut** and **Roe v. Wade** are similar Supreme Court cases in that both cases are based on the right of privacy.

● Protection of the legal rights of women has been facilitated by the passage of the Equal Pay Act of 1963, the Civil Rights Act of 1964, and the Education Amendments Act of 1972.

● The Supreme Court decision declaring state-mandated school segregation to be unconstitutional did the most to expand civil rights in the 1950’s.

● Decisions reached by the Supreme Court under the leadership of Chief Justice Earl Warren (1953-1969) did all of the following: rule against malapportionment in state legislatures, void state statutes that permitted school segregation, expand the rights of criminal defendants, and increase protection for first amendment freedoms.

● Selective incorporation has been used to expand civil rights/liberties. **Definition:** Selective- the fact that the process has been piecemeal and not a sudden change. Incorporation- the fact that some liberties listed in the Bill of Rights have been applied to the states using the Fourteenth Amendment/due process clause.

● Know how the following have been incorporated into our legal system by judicial systems (and know the cases that did it):
  ○ rights of criminal defendants
  ○ First Amendment
  ○ privacy rights

● The Supreme Court is limited in its decision making by other political institutions by:
  ○ Congressional/state/local legislation.
  ○ Executive branch/state government refusal to enforce a Supreme Court decision; ignoring a Supreme court decision.
  ○ Judicial appointments
  ○ Constitutional amendment
  ○ Change in appellate jurisdiction.

● The following are steps taken to limit participation among African American voters (after the 15th Amendment):
  ○ Literacy tests
  ○ Poll taxes
  ○ Grandfather clauses
Released ?’s for Judicial Branch, Civil Rights, and Civil Liberties

- Dilution of voting strength through redistricting
- White primaries
- Election procedures (notification, access)

They participated in alternative forms of participation as a result of voter discrimination. These acts include:
- Demonstrations/protests/public rallies/civil disobedience
- Organized interest-group activity (e.g., NAACP)
- Courts/litigation
- Boycotts
- Election activities other than voting (campaigning, donating)