Chapter 15
Freedom:
The Struggle for Civil Liberties

The expansion of our civil liberties
• America is governed by the rule of law, not the rule of men such as kings or tyrants and not the rule of force.
• The process in history of American democracy has been to expand the Founder’s idealistic statements to their literal application.

One example is suffrage
• (the right to vote).
• Including white men without property.
• Including black men (former slaves).
• Including women.
• Removing obstacles imposed within regions to all black voters.
• Including all 18-21.

The Next Level for Suffrage
• Removing anachronistic obstacles not necessary to maintaining voter integrity
• Allow voter registration to be easy and not restricted by artificial deadlines.
• Resist imposition of so-called reforms which really intend to inhibit suffrage
• Term limits stop electorate from picking who they want freely
The Bill of Rights

• The Bill of Rights was written as safeguards against government power and action.
• In *Barron v. Baltimore* (1833) the Supreme Court ruled that the Bill of Rights did not apply to the states.
• Initially when law interpreted by the elite, the rights associated with property were considered paramount.
• Originally, the quote was “life, liberty and property” was changed to “life, liberty, and the pursuit of happiness.”

Changes in Supreme Court Interpretations

• Gradually, the Supreme Court has applied the Bill of Rights to the states.
• The composition of the Supreme Court, that is, when the people who comprise it change the opinions of the institution change.
• Generally, the Supreme Court has translated the values of a previous generation into legal precedent

Supreme Court rulings on freedom of speech

• Dissent is suppressed during WWI
• *Gitlow v. New York* (1925)- The 1st Amendment applies to states.
• *Schenck v. United States* (1919)- To exercise prior restraint the government must show that a speech poses a “clear and present danger.”
• *Near v. Minnesota* (1931)- a state law is ruled unconstitutional because it violates 1st Amendment.
• *New York Times v. Sullivan* (1964) - public figures have a higher threshold in libel cases.
• Interpretation is becoming more literal.

**Pornography and the 1st Amendment**
• The legal term is obscenity not pornography
• *Miller v. California* (1973)- Court establishes 3 part test to define obscenity.
• Community standards play a role.
• What are community standards?
• Who decides for the community? A vocal minority? An intolerant majority?

**Supreme Court reversals**
• *Plessy v. Ferguson* (1896) - Segregation is Constitutional.
• *Brown v. Board of Education* (1954) - Segregation is unconstitutional.
• Society was questioning the justice of segregation.
• Pres. Eisenhower said he would not have appointed Justice Earl Warren had he known.

**Reversals in Freedom of Religion**
• *West Virginia v. Barnette* (1943) - Reverses *Gobitis* on freedom of religion grounds.
• Until the reversal freedom of religion means freedom to practice conventional mainstream Christianity.

**Patriotism**
• What is patriotism? Is it affirmation of the majorities’ opinion, or is it any expression of caring, including criticism (i.e. dissent)?
• Is it loyalty to ignore that a loved-one is making a serious mistake or is not living up to his or her potential?
The Warren Court
(1953-1969)

- Expands civil rights.
- Applies due process provision to law enforcement.
- *Brown v. Board of Education of Topeka, Kansas.*
- Segregation is unconstitutional
- It was clearly immoral and unjust.

Criminal Law & Due Process

- Evidence obtained illegally cannot be used in trial.
- The exclusionary principle
- The only way to prevent violations in due process is to exclude evidence secured improperly.

The Miranda Decision

- *Miranda v. Arizona* (1966) - The arrested must be informed of legal rights and options.
- The right to remain silent while being questioned.
- The right to have an attorney present.
- The right to have an attorney provided if you cannot afford one.

The Burger Court (1969-1986)

- Keeps Warren Court provisions but begins to allow exceptions.
- Allows “good faith” violations or omissions in criminal due process.
- Modifies exclusionary rule if done unintentionally.
• *Furman v. Georgia* (1972) - Death penalty violates cruel and unusual punishment clause.
• Split decision with Warren Court holdover exercising majority.
• Burger appointed by President Nixon.
• *Gregg v. Georgia* (1976) - Reverses *Furman*.
• Burger uses authority as Chief Justice to revisit issue.

**The Rehnquist Court**

*(1986-Present)*

• Reverses many due process exclusions of evidence.
• Retroactive probable cause.
• *Murray v. United States* (1988) - Evidence obtained in illegal searches is legal if evidence might have warranted the search.
• If police look when they didn’t have a right to and find something it’s okay.

**Bush v. Gore** *(2000)*

• Supreme Court rules 5 to 4 to stop hand counting ballots when outcome of election was unclear and hand-counted ballots could impact on outcome.
• Majority cites due process precedents
• Rehnquist, Scalia, and Thomas had written earlier that due process only applies to race.
• They reversed themselves