

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

- *Minersville School District v. Gobitis* (1940) – Jehovah's Witness expelled for not saluting the flag during the Pledge of Allegiance.
- *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

- *Mapp v. Ohio* (1961) - Exclusionary rule is applied to evidence.
- 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