

MAJOR SUPREME COURT DECISIONS

By Greg Timmons

Kerry Gordonson, Editor
Justin Coffey, Editor
Dr. Aaron Willis, Project Coordinator
Christina Trejo, Editorial Assistant

Social Studies School Service
10200 Jefferson Blvd., P.O. Box 802
Culver City, CA 90232
www.socialstudies.com
access@socialstudies.com
(800) 421-4246

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10200 Jefferson Boulevard, P.O. Box 802
Culver City, CA 90232-0802
United States of America

(310) 839-2436
(800) 421-4246

Fax: (800) 944-5432
Fax: (310) 839-2249

www.socialstudies.com
access@socialstudies.com

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EXTENSION ACTIVITIES

1. **Writing a Supreme Court Opinion:** The Supreme Court has heard many controversial cases throughout its history. Sometimes society as a whole is not ready for the changes the court has imposed. Other times, the minority justices' dissenting opinions carry enough weight to eventually move the court to reconsider previous rulings for modifications or outright reversals. Divide students into groups of five and assign one of the more controversial cases presented in the PowerPoint® presentation. Have students research the case using both Internet and library resources. Then have students meet in their groups to discuss the assigned cases, to summarize the facts and the court's decision, and explain which aspects of the decision they agree or disagree with, as well as how (if at all) they would have ruled differently. Each student should then write an "opinion"—a statement that summarizing their case's facts, the constitutional issue in question, their group's majority opinion of the actual court ruling, and whether they as individuals agreed or disagreed with the group majority and why.
2. **Juvenile And Adult Rights:** The PowerPoint® presentation shows that the protections originally outlined by the Bill of Rights have been extended and clarified over time. From the beginning, when the Constitution guaranteed protections only to adult white males, to the post–Civil War inclusion of African American men and then of women in the 20th century, and finally to granting certain rights to immigrants both legal and illegal, the Supreme Court has gradually expanded the rights of all people living in the United States. Juveniles have had their rights expanded and clarified as well, but court decisions have also distinguished between the rights of adults and the more limited rights of juveniles. The court eventually upheld Congress's attempts to regulate child labor in the 1940s. At the end of the turbulent 1960s, it established that students have rights to free expression and to be protected from parental abuse. In the past 50 years, the court has defined juvenile rights in the areas of due process, free expression, search and seizure, and cruel and unusual punishment. Have students work in groups to examine the following cases and describe the extent of rights enjoyed by juveniles:
 - *In re Gault* (1967)
 - *Tinker v. Des Moines Independent Community School District* (1969)
 - *New Jersey v. T.L.O.* (1985)
 - *Hazelwood School District v. Kuhlmeier* (1988)
 - *Vernonia School District v. Acton* (1995)
 - *Roper v. Simmons* (2005)

Have students research cases that address similar constitutional issues but that involve adults, and examine the differences in the cases' outcomes and the court's rationale for these differences. Form a discussion group composed of students, teachers, parents, and administrators to discuss these issues. For the other discussion participants, have students

develop briefing papers that include summaries of the cases, the Supreme Court's majority and minority opinions, and the effects of the rulings on juvenile rights. The discussion group's goal can be to compare the impact of these rulings with school policy in order to make comparisons and determine if changes are needed. Alternatively, the discussions can be for general information gathering and dissemination and could be published in the school's paper or on its Web site.

3. **War-Making Powers:** The ultimate power that any government holds is the ability to wage war—to put its fortunes and future on the line in defense of its interests. Owing to their importance, such times may require adjustments and sacrifice in people's lives and liberties. Even the Constitution recognizes this, in allowing for the suspension of habeas corpus "in cases of rebellion or invasion." U.S. history is full of examples where rights of individuals have been set aside for the sake of national security. In recent times, as the United States has had to grapple with war of a different nature, striking a balance between individual rights and security has been difficult. Begin this activity by asking students of the advantages and disadvantages of having only one branch of government (either legislative or executive) hold the power to conduct war. Then ask about the advantages and disadvantages of sharing such power between the two branches. Draw two "T" charts on the board to assist in the brainstorming discussion. Have students review how the Constitution divides war-making power between the two branches. Ask them why they think the Constitution's Framers chose to divide the power between these two branches in the way they did? What positive or negative aspects do they see in this division of power and authority? How does such a division address (if at all) the items on their brainstorm lists?

Next, have students review the following Supreme Court cases examining the extent of government power during times of war:

- *Prize Cases* (1862)
- *Ex parte Milligan* (1866)
- *Hirabayashi v. United States* (1943) (companion case is 1944's *Korematsu v. United States*)
- *Youngstown Sheet and Tube Co. v. Sawyer* (1952)
- *Hamdi v. Rumsfeld* (2004)

Summaries of these cases can be found on the Oyez Web site at www.oyez.org.

Have students work in groups to review one or more of these cases, addressing the following questions:

- How did the court try to balance individual liberties with the government's authority to maintain security?
- Do you agree or disagree with the court's ruling? Why?
- Taking into account the case you reviewed, where do you stand on a continuum between preserving individual liberties and granting the government the power it needed to conduct the war? Be prepared to support your position.

After students have placed themselves on the continuum and discussed their reasoning, have them write a brief "letter to the editor" on the case and their conclusions.

4. **Landmark Decision Poster Activity:** Since the Supreme Court interprets the meaning of the Constitution, many of its decisions have had a historic impact on the lives of all people in the United States. This is most apparent in cases where the court clarifies the extent of and limits rights outlined in the Bill of Rights. Divide students into small groups and assign each group one of the cases described in the Bill of Rights slides in the PowerPoint®. Using the Internet, library resources, and textbooks, have students research the case and record the name, court citation number, and date of the case; a summary of the facts that led to the case coming before the Supreme Court; both the petitioner's and respondent's arguments; the constitutional amendment in question; and the court's decision. Have students place this information on a large piece of poster board or card stock. Students should then present their poster to the class while reviewing the case's main points. Ask students whether they agreed or disagreed with the court's decision on the case they presented and why, and whether they agreed or disagreed with the rulings in any of the other cases presented and why.

QUIZ:

MAJOR SUPREME COURT DECISIONS

Directions: Read each question carefully, then write the letter of the **best** answer in the blank or on your answer sheet.

1. What does it mean to say the Constitution is a “living document?” _____
 - A. The document was created for people who are living today
 - B. The Constitution’s main purpose is to protect people’s rights
 - C. The Constitution can adapt to different times and circumstances
 - D. The Constitution established a government where living monarchs trump logic and reason
2. Within the framework of the separation of powers, the role of the Supreme Court is to _____.
 - A. Pass laws in line with constitutional principles
 - B. Interpret the meaning of and extent of rights defined in the Constitution
 - C. Enforce the decisions it makes concerning the Bill of Rights
 - D. Ensure that people in government don’t break the law
3. Chief Justice John Marshall’s decision in *Marbury v. Madison* is important because it _____.
 - A. Brought Marshall and President Thomas Jefferson closer together
 - B. Gave the court the power to order the president to obey its commands
 - C. Stopped the practice of Supreme Court justices having to travel to circuit courts
 - D. Established the doctrine of judicial review
4. The doctrine of judicial review gives the Supreme Court the role of _____.
 - A. Boundary patrol in border disputes between different states
 - B. Editor in helping Congress rewrite laws
 - C. Definer of what the law says and, when necessary, whether a law or governmental action is unconstitutional
 - D. Enforcer of the executive branch’s policies
5. Though they don’t have legal force, why are dissenting opinions important to the Supreme Court’s work? _____.
 - A. They present an alternative view and can later influence Congress to enact legislation or the Supreme Court to reconsider its earlier position
 - B. They allow the court to rule Congressional acts unconstitutional
 - C. They are an indication that some justices are not in step with public opinion
 - D. Dissenting opinions occur rarely, because most of the time the justices agree with each other

6. Many Supreme Court cases deal with the concept of federalism. These cases involve disputes over jurisdiction between which of the following groups? _____
- A. Congress and the president
 - B. The states and the federal government
 - C. Businesses and private individuals
 - D. Two or more states
7. When reviewing cases involving federalism, such as *McCulloch v. Maryland* and *Gibbons v. Ogden*, the Supreme Court often relies on which provision(s) of the Constitution? _____
- A. Article III (pertaining to the judiciary)
 - B. The necessary-and-proper clause and the supremacy clause
 - C. Article V (on amending the Constitution)
 - D. The Preamble
8. Though generalizations are difficult, the Supreme Court has helped define the powers of the executive branch by _____.
- A. Not allowing the president to exercise power beyond the enumerated powers described in the Constitution's
 - B. Only granting the executive branch power beyond the Constitution when war has been declared
 - C. Acknowledging its authority in times of crisis but limiting its powers when other alternatives were in place
 - D. Regularly granting the executive branch powers not within the scope of the Framers' original intent
9. Although the Supreme Court had struck down several laws designed to address the Great Depression, it reversed itself in the 1937 case of *West Coast Hotel Company v. Parrish* because _____.
- A. President Roosevelt packed the court with six new justices favorable to his "New Deal" programs
 - B. Many other national governments were moving toward a socialist economy, and the court felt the United States should as well
 - C. The court felt the states could no longer handle the economic crisis on their own
 - D. The court acknowledged the legitimate role government could play regulating the economy in times of hardship
10. Congress passed the Flag Protection Act in 1989 in order to counter the Supreme Court's *Texas v. Johnson* ruling permitting flag burning. In *United States v. Eichman*, the court responded, stating that _____.
- A. The Flag Protection Act didn't actually outlaw flag burning and that only a constitutional amendment can overturn a Supreme Court ruling
 - B. Many countries outside the United States allow their citizens to burn the American flag
 - C. Symbolic speech was no longer protected by the First Amendment
 - D. Only states could make laws protecting free expression

11. In two cases involving the free exercise of religion, *Minersville School District v. Gobitis* and *West Virginia Board of Education v. Barnette*, the court reversed itself because _____.
A. It felt that requiring students to salute the flag in peacetime wasn't as important as during wartime
B. The president threatened to pack the court with many of his allies
C. The first case involved a fringe religion, while the second involved Christianity
D. The court felt that one of the reasons the United States was fighting the war was to preserve people's rights
12. In the case of *Schenck v. United States*, the court developed a principle for determining the limits of free speech. For speech to be lawfully censored it must _____.
A. Provide separate but equal accommodations
B. Not violate the supremacy clause
C. Present a clear and present danger to the country
D. Be repulsive to a majority of the people.
13. In *Tinker v. Des Moines School District* and *Texas v. Johnson*, the Supreme Court ruled that symbolic speech _____.
A. Is permissible for adults but not children
B. Is a form of free speech protected under the First Amendment
C. Only allows for passive protest such as black armbands but not aggressive protest such as flag burning
D. Can be outlawed by Congressional action
14. In the case of *Near v. Minnesota*, the Supreme Court determined that a law which prevented the publication of controversial stories _____.
A. Constituted prior restraint on the press and was unconstitutional
B. Were allowed in student newspapers
C. Was permissible if the story criticized a public official
D. Did not violate the First Amendment because it was a state and not a federal law
15. The Supreme Court has limited people's right to freely assemble in *Cox v. New Hampshire* and *Lloyd Corporation v. Tanner* ruling that _____.
A. Only the federal government, not the states, can limit the right to freely assemble
B. Neither states nor the federal government can restrict the right to free assembly
C. Government limits on free assembly must consider time, place, and manner, and public assembly can be prohibited on private property
D. People may only assemble in public places when they have a permit from the city
16. In the case of *Weeks v. United States*, the Supreme Court established the exclusionary rule, which states _____.
A. Evidence obtained in a search where police believed they were acting lawfully is admissible in court
B. The police can enter a private home in pursuit of a suspect
C. Wiretapping a suspect is permissible on a public but not a private phone
D. Evidence obtained in an illegal search is inadmissible in court

17. The cases of *Miranda v. Arizona* and *Gideon v. Wainwright* established what protections for suspects and defendants? _____
- A. The right to be free from interrogation and arrest without bail
 - B. Protection from self-incrimination and the right to a court-appointed attorney
 - C. Suspects would not face cruel or unusual punishment in a court of law
 - D. The death penalty could only be imposed in capital cases
18. In 1958, the case of *Trop v. Dulles* set the standard for determining “cruel and unusual punishments,” stating that _____.
- A. Capital punishment is unconstitutional
 - B. The death penalty could only be administered in cases of murder and rape
 - C. Any punishment must reflect society’s evolving standards of decency
 - D. Judges and not juries could sentence people to death
19. In 2005, in the case of *Stanford v. Kentucky*, the Supreme Court reversed an earlier ruling on juvenile executions, stating that _____.
- A. The standards of decency regarding juvenile executions had changed because society viewed juveniles as less responsible than the average adult
 - B. The decision to impose capital punishment on those under the age of 18 must be made by the states and not the federal government
 - C. A 17-year-old could be as responsible as an adult and that the decision on execution should be left up to the judges or juries
 - D. If suspects were minors when the crime was committed but became adults while awaiting execution, then they could be executed
20. The Supreme Court’s 1857 decision in *Dred Scott v. Sandford* had such a demoralizing effect on the efforts to end slavery because _____.
- A. It allowed for more slaves to be imported into the country
 - B. The court ruled that Congress couldn’t prohibit slavery in any state and that blacks were not citizens and therefore not entitled to Constitutional protections
 - C. Dred Scott was to remain a slave because he returned to Missouri
 - D. The Civil War began the next month
21. The 14th Amendment declared that anyone born in the country was a citizen. Subsequent Supreme Court rulings responded to this amendment by _____.
- A. Declaring it unconstitutional
 - B. Quickly granting African Americans all the rights enjoyed by free whites
 - C. Cautiously and sometimes indirectly applying it to civil rights discrimination
 - D. Ruling that private businesses must stop their discrimination policies

22. In 1896, in the case of *Plessy v. Ferguson*, the Supreme Court established the “separate but equal” doctrine, which stated that _____.
A. Each race was free to voluntarily separate itself from other races
B. Accommodations for different races had to be separate in all facilities, both public and private
C. Equal accommodations only had to be established for those whose race was mixed
D. State-imposed racial segregation was constitutional as long as the facilities were equal
23. The court-sanctioned doctrine of “separate but equal” lasted for nearly 60 years. However, in cases like *Sweatt v. Painter* and *Brown v. Board of Education*, the court determined that _____.
A. “Separate but equal” facilities were inherently unequal because they were never qualitatively equal and thus promoted an image of inferiority
B. The “separate but equal” doctrine only worked in public and not private facilities
C. As long as the facilities were equal in all aspects then a segregated facility was within the law
D. *Plessy v. Ferguson* could only be overturned via a constitutional amendment
24. Breaking down segregation policies in private facilities like restaurants, hotels, and theaters was accomplished in the case of *Katzenbach v. McClung* (1964), when the court ruled that _____.
A. The Civil Rights Act of 1964 was unconstitutional
B. Businesses which received a substantial portion of their supplies through interstate trade must follow federal anti-discrimination policies
C. States had the power to enforce their anti-discrimination laws against private businesses
D. Privately owned facilities fell under the same restrictions as government facilities
25. The essential reasoning behind the Supreme Court’s extending of equal protection to immigrants and illegal aliens was that _____.
A. There were so many already living in the U.S. that it was just easier to grant them the same rights as citizens
B. Most immigrants became citizens within five years, so granting them rights earlier was a good idea
C. Resident aliens are persons in every sense of the word and are thus entitled to the same equal protection as citizens
D. They would be more likely to obey the law if they were granted rights
26. In 1973, the Supreme Court ruled in favor of a women’s right to abort a pregnancy based on what right? _____.
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28. Which of the following statements is *not* true about judicial restraint? _____.
A. Policy decisions should be left to the policy makers
B. The Constitution should be interpreted according to its original meaning
C. It helped keep the balance between federal and state power
D. It defined the power of the Supreme Court in its early days
29. Judicial activism has *not* been responsible for which of the following judicial concepts? _____.
A. Extending Bill of Rights protections to the states
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C. Supporting state laws over federal regulation
D. Bringing about new thinking on social issues
30. One of the Supreme Court's most important contribution to the people of the United States is that _____.
A. It nearly always rules the same way in similar cases
B. It maintains the balance between the branches and levels of government and between the government and the people
C. It tends to rule in favor of the people most of the time
D. It is the only branch that is immune from politics

ANSWER KEY:

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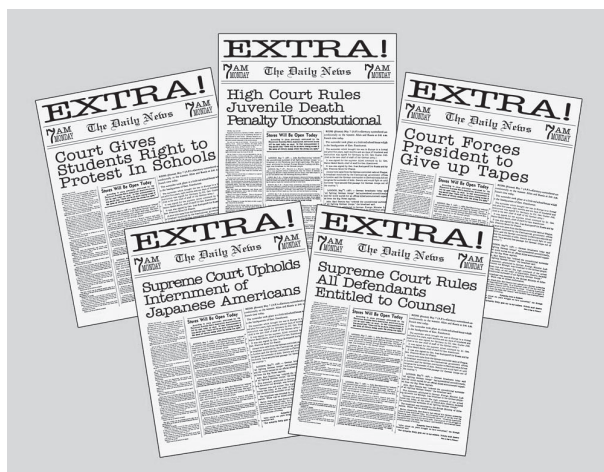
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Major Supreme Court Decisions



Major Supreme Court Decisions



During its history, the Supreme Court has made decisions that have changed not only the lives of the people who brought their cases before it, but also the lives of Americans for generations thereafter. The court steeps its decisions in legal jargon, articulating the judicial philosophies of the justices as well as precedent from previous years. However, these cases stem from real, personal, and sometimes life-altering disputes between common people and others equally passionate about their own position. In *Gideon v. Wainwright* (1963), the court ruled that everyone is entitled to legal counsel—even a convict doing five years for burglary. In *Korematsu v. United States* (1944), the Supreme Court upheld the power of the president during wartime to relocate 120,000 Japanese Americans to internment camps solely because of their ethnicity. The decision in *Tinker v. Des Moines School District* (1969) reversed the suspension of 13-year-old Mary Beth Tinker for protesting the Vietnam War in school. In the case of *Roper v. Simmons* (2005), the court declared unconstitutional the execution of people under 18 years old. In the case of *United States v. Nixon* (1974), the court forced the president of the United States to end the Watergate cover-up and turn over evidence of criminal wrongdoing.

Constitutional Rights

- Declaration of Independence introduced the fundamental rights provided by the Constitution
- Right to life, liberty, and the pursuit of happiness
- Framers saw the government as unfinished and believed that rights would evolve over time
- Who possessed these rights—were they absolute, unlimited, and guaranteed in all cases?



From the the Constitution's inception to the present day, the United States government has been considered a great experiment of liberty under the law. Thomas Jefferson explained in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." In other words, people naturally have liberty; they create a government and grant it powers in order to protect their liberty.

Most of the Constitution's Framers had participated in a revolution to secure these rights and understood that the extent of these rights would continue to evolve over time. History had taught the Framers that different times call for different interpretations of a person's rights, and that such interpretations had changed before and would continue to change even as they wrote, debated, and compromised on the Constitution. The first words of the Constitution clearly state this understanding: "We the People, in order to form a more perfect Union..." Note that it does not say "to form a *perfect* union"; the Framers understood that this would be impossible. In examining Jefferson's words in the Declaration of Independence—that "all men are created equal"—and comparing these with the circumstances at the time, many questions arise. Are all men equal? Were they believed to be at the time? What about the issue of slavery? Does the word "men" mean males only, or is that term used to refer to all humans? Does it apply to all people, or only to U.S. citizens? Though Jefferson cited "inalienable" rights, questions remain as to whether these rights are absolute, unlimited, and guaranteed in all cases.

Constitutional Rights (continued)



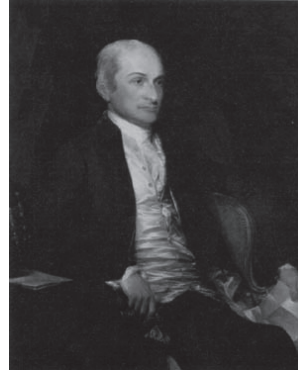
- Constitution is a “living document” — adaptable to the times
- Supreme Court defines the meaning of the Constitution
- Boundaries within the government and between government and the people help safeguard the people’s rights
- The court’s rulings often reflect the times and are subject to change

From the beginning it was understood that since the Constitution would adapt to changing times and circumstances, the judicial system would decide on the meaning and extent of the rights defined therein. Chief Justice John Marshall helped define the power of the Supreme Court to interpret the law as embodied in the Constitution, stating, “This Constitution was intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.” In the spirit of the Enlightenment, the Constitution established a government in which human logic and the power of reason trumped passion, self-interest, and violence. A court of law would settle disputes, not mob rule in the streets or an absolute ruler who only allowed a few to have rights.

To help decide these disputes, the Constitution establishes limits on the government in order to protect individual rights. These boundaries define divisions of power between federal and state governments, between the federal government’s three branches, and between the government and the people. The judicial system acts as a sort of border patrol, determining when and how the government or individuals have exceeded which limits, with the final word on such matters left to the Supreme Court. However, the last word is not always the best word: sometimes the court decides that established boundaries shouldn’t be exceeded, basing its rulings on tradition and precedent. At other times, the court acknowledges changes in the law or in the attitudes of the people and reverses an earlier decision. Similarly, the court may recognize a need for a more equitable society and adjust the boundaries, setting a new course for society.

The Supreme Court: The Early Years

- Origins in the Constitution
- Judiciary Act of 1789
- Early years saw little participation, activity, or interest
- First major case was quickly overturned
- Hearing cases in circuit courts (“riding circuit”) both physically demanding and ethically questionable



John Jay, the first chief justice of the Supreme Court

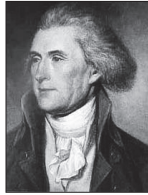
Article III of the Constitution outlines the Supreme Court and mentions lower courts that “Congress may from time to time ordain and establish,” but does not specify who should serve on these courts or how they should function. Congress settled these questions early in its inaugural session with the Judiciary Act of 1789.

During its first ten years, the Supreme Court was hardly noticed by the other branches of government—or even by some of its own members. Only three out of six justices attended the court’s first session in February 1790. The court spent the next ten days organizing itself (there were no cases to be heard) and promptly adjourned its first term. Its second session lasted two days; the court heard no cases between 1791 and 1792. During this time a few justices resigned, and those remaining busied themselves with other endeavors; for example, Chief Justice John Jay was engaged as the chief diplomat for the United States and later ran for governor of New York. When the court finally did hear its first major case in February 1793 (*Chisholm v. Georgia*) the 11th Amendment overturned its ruling within five years.

In addition to the lack of prestige afforded the court, the justices were burdened with the task of “riding circuit” (acting as circuit court judges) throughout the country. This often entailed long and arduous journeys over rutted roads and open terrain. Having justices preside over circuit court cases brought up ethical questions, in that they might hear these same cases later before the Supreme Court. Nevertheless, riding circuit performed an important function for the new nation. By serving on courts at a local level, the justices acquainted the people with the concept of a federal judiciary that resolved disputes between state and federal governments.

The Supreme Court: The Early Years (continued)

- Supreme Court viewed as “least dangerous branch” of government
- Major political parties: Federalists and Democratic-Republicans
- Each party wanted to take the country in a different direction
- 1801: President Adams appoints John Marshall Chief Justice



Thomas Jefferson



John Adams

By 1801, the Supreme Court had the reputation of being not only the “least dangerous” branch of the federal government, but also the least important. Meanwhile, as the country bounded into a new century, a fiercely partisan political system was quickly developing. The two major parties held fundamentally different ideas about the future direction of the country. The Federalists supported a strong national government led by an educated landed gentry and saw the opposing party, the Democratic-Republicans, as promoting unchecked democracy and mob rule. The Democratic-Republicans wanted a more decentralized system in which the federal government would only take a limited role, and viewed the Federalists as budding monarchists.

The Federalists had lost the presidency and their majority in Congress in the election of 1800 to Thomas Jefferson and the Democratic-Republicans. In early 1801, outgoing president John Adams tried to preserve a Federalist foothold in government through judicial appointments, many of which were to serve lifetime terms. Chief Justice Oliver Ellsworth was ailing and wanted to resign, so Adams nominated Secretary of State John Marshall as a replacement. Marshall accepted, and the Senate quickly confirmed him.

John Marshall seemed a unique pick for the Supreme Court. A 45-year-old lawyer from Virginia, he had fought in the Revolutionary War. Like many Federalists, he felt the leadership of the “radical” Jeffersonians would put the young republic in mortal danger. Marshall’s appointment and a hastily passed law reducing the court from six members to five only added fuel to the fire, in that incoming President Thomas Jefferson would not likely make a Supreme Court appointment of his own for some time.

The Supreme Court: The Early Years (continued)

- Partisanship dominated politics
- To extend Federalist influence, President Adams appointed “midnight judges”
- *Marbury v. Madison* (1803)
- The Supreme Court is an appellate court



Federalists and Democratic-Republicans brawl in the House of Representatives, 1798

While in power, the Federalists wanted to make sure their party stayed dominant and passed the Alien and Sedition Acts in 1798 in order to stifle political criticism in the name of “national security.” Federalist judges supported these laws by convicting many Democratic-Republicans accused of breaking them. To ensure continuing control of the judiciary, President Adams made a number of judicial appointments in his final days in office. The beneficiaries of these last-minute appointments became known as “midnight judges.” Most of these appointments were delivered to the appointees, but some, including one to a justice of the peace named William Marbury, lingered on the desk of James Madison, Jefferson’s newly installed secretary of state. Seeing that the appointment was going to a Federalist judge, Madison refused to grant Marbury the commission. Marbury took his case directly to the Supreme Court, seeking a writ of mandamus (an court order specifying that an action be taken) ordering President Jefferson to force Secretary Madison to deliver the appointment.

Chief Justice John Marshall faced a difficult dilemma: If he commanded the president to grant Marbury his commission, Jefferson might simply refuse and leave the court impotent; however, if Marshall ruled in Jefferson’s favor the court would appear simply to be bending to the president’s wishes, which would set a precedent and reduce the Supreme Court’s authority. Instead of merely choosing one of these two options, Marshall came up with a different solution. In his written opinion, he stated that while Marbury was indeed entitled to his commission, the section of the Judiciary Act of 1789 allowing for writs of mandamus was unconstitutional. Marshall reasoned that the Constitution established the Supreme Court as an appellate court, meaning that it could only hear cases previously heard by a lower court, and Marbury had brought his complaint to the Supreme Court before going through any other court. Therefore, while Marshall and the court believed that Marbury deserved his commission (and even chastised Jefferson for not issuing it), he did not receive it because he had not first gone through a lower court.

The Supreme Court: The Early Years (continued)



John Marshall

- Marshall's ruling originated the doctrine of judicial review
- Only the court has the power to declare acts of Congress and the president unconstitutional

More importantly, the Supreme Court's unanimous opinion in the case affirmed that only the judicial branch could declare laws and government actions unconstitutional, a concept now known as "judicial review." This decision immediately gave the entire judicial system tremendous authority and responsibility, contributing greatly to the balance of power between the three branches of government regarding their constitutional duties. Chief Justice Marshall and the justices who have served since then have all recognized the great responsibility that judicial review gives the judiciary. In the years since the decision, the Supreme Court has exercised this power infrequently, having declared acts of Congress unconstitutional only about 150 times.

Marshall's establishment of the doctrine of judicial review (though the Constitution does not specify it) characterizes the experimental nature of government in the country's early days. Not everyone agreed with the *Marbury* decision—least of all Thomas Jefferson, who thought it dangerous to give judges appointed to lifetime terms so much power without their having to answer to the voters. However, he didn't have much choice in the matter, as he obviously wasn't going to give Marbury his commission (his only real alternative).

The Importance of Judicial Review

- Confirms the Framers' intention to create three separate and independent branches of government
- Judicial review established the court's unique ability to interpret the Constitution
- The interpretation may change with the times, as the court makes decisions on a case-by-case basis



Thomas Jefferson believed the court had no authority to declare a law null and void. Within the confines of Article III, he was correct. However, within the mechanics of the separation of powers, the doctrine of judicial review makes sense. The Framers established three branches separate and distinct in their powers, and many (such as Alexander Hamilton) believed the Supreme Court would eventually assume this power anyway. The legislative branch makes the laws, the executive branch enforces them, and the judicial branch determines their meaning.

The power to interpret the Constitution puts the Supreme Court in the unique position of determining the legitimacy of any law or government action. To quote former Chief Justice Charles Evans Hughes, "We are under a Constitution, but the Constitution is what the judges say it is." What the judges say it is may change with the times. When examining Supreme Court decisions, it is important to look into the details of the case in question. At times, it might look like the court issues inconsistent rulings. While the court has made notable reversals in its history, these are few and usually have many years between them. However, the specific circumstances of individual cases may lead the justices to rule a government law or act constitutional one time but not another. Besides just examining the Constitution, the justices have to ask several questions: Was the original intention of the law to restrict rights or protect them? Was the country at war? What standards of decency did society hold at the time? While to some this might seem as if the justices lack discipline, the reality is that the Supreme Court makes each ruling on a case-by-case basis, examining all its parts to make sure the constitutional issues get addressed.

Discussion Questions

1. Explain the statement, “The Constitution is a living document.” What is the Supreme Court’s role as it relates to the Constitution?
2. What were some of the problems the Supreme Court faced during the first ten years of its existence?
3. Describe the differing visions the Federalists and the Democratic-Republicans had for the country, as well as the criticisms each party had of the other.

1. Answers may vary, but students should understand that the term “living document” means that the Constitution can adapt to changes in both society and the law. The Supreme Court’s role is to define the meaning of the Constitution.
2. The Supreme Court had little prestige or importance. There were few cases to be heard, and its justices regularly served as circuit court judges throughout the country and often resigned to follow other ambitions.
3. The Federalists supported a strong national government led by an educated, landed gentry and saw the Democratic-Republicans as promoting unchecked democracy and mob rule. The Democratic-Republicans wanted a more decentralized government with national government taking a limited role and viewed the Federalists as budding monarchists.

Discussion Questions

4. What led President Adams to make his “midnight judges” appointments?
5. What dilemma did Chief Justice Marshall face in deciding *Marbury v. Madison*?
6. What is the importance of judicial review to the Supreme Court and the balance of power among the three branches of government?

4. After losing the presidency in the election of 1800, Adams aimed to retain Federalist influence in government. He appointed several judges at the end of his term in order to preserve Federalist control over the nation’s judiciary.
5. If he ordered Jefferson to grant Marbury’s appointment, Jefferson might simply ignore it and make the Supreme Court look weak. If Marshall ruled in favor of Jefferson, it would look like the court was simply capitulating to the executive branch.
6. Judicial review gives the judicial branch the authority to rule any act of government unconstitutional. It helps support the balance of power among the three branches of the federal government.

The Power of Judicial Dissent

- Supreme Court is an appellate court
- Justices deliver opinions on the cases they review
- Majority opinions carry the ruling on the case
- Minority, or “dissenting,” opinions don’t have legal force but can effect change at a later time
 - Congress may pass a law limiting the court’s ruling
 - Dissenting opinions may influence later court decisions



The Supreme Court room in the Capitol

The Supreme Court hears cases already tried in lower courts, which makes it an appellate court. When the court reviews a case, it hears both sides to determine if the lower court ruled correctly. The justices individually go over the case, with each expressing an opinion on its legal merits. Five or more justices in agreement form a majority, and from this group one is assigned to write the majority opinion. Justices who disagree with the majority file their own opinion, called the minority, or “dissenting,” opinion.

Though dissenting opinions have no legal force, they can over time have a greater impact. For instance, Congress may decide to limit a Supreme Court ruling through legislation because it agrees with a dissenting opinion. Dissenting opinions may also influence the court’s later decisions. While the court will typically follow its own precedents when deciding cases, it has on occasion overturned or significantly modified its own earlier decisions based on those cases’ dissenting opinions.

The Power of Judicial Dissent (continued)



Justice Stephen J. Field

Munn v. Illinois (1877):

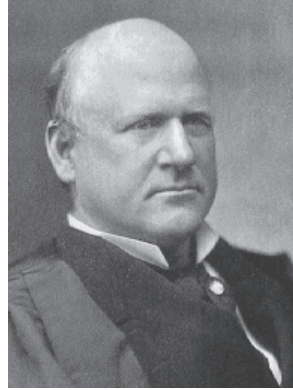
- Majority ruled government could regulate private business
- Justice Field insisted the 14th Amendment only applied to government, not private business
- His dissent later influenced the court not to interfere in private business
 - *Civil Rights Cases* (1883)
 - *Lochner v. New York* (1905)

The legal opinions of Justice Stephen J. Field, who served on the court from 1863 to 1897, provide an early example of the power of judicial dissent. Justice Field believed that the 14th Amendment guaranteed the protection of private property under its due process clause, and that government had no authority to interfere in a business's operation. In *Munn v. Illinois* (1877), Justice Field disagreed with the majority opinion that ruled private business dedicated to public use could indeed be subject to government regulation. Field wrote that the amendment's due process clause didn't apply to owners of private property but only to the states; therefore, the government could not regulate the business. The court eventually accepted this argument (although gradually at first and only on the federal level) in the *Civil Rights Cases* (1883), ruling that the 14th Amendment only prohibited discrimination by the government, not by private-property owners. Thus, privately owned theaters, hotels, and transit companies could refuse admittance to African Americans. Then, in *Lochner v. New York* (1905) the court established the doctrine of "liberty of contract" by striking down a New York law that limited the number of hours that employers could require of workers. The court viewed employment as a private agreement between the worker and the business owner in which the government (state or federal) had no business interfering.

The Power of Judicial Dissent (continued)

Plessy v. Ferguson (1896):

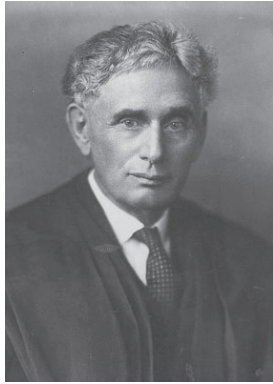
- Louisiana law allowed for “separate but equal” accommodations
- Justice Harlan believed the Constitution was “color-blind”
- His dissent influenced the 1954 *Brown v. Board of Education* decision



Justice John Marshall Harlan

As a result of the ruling that the 14th Amendment’s due process protections only pertained to government, any company that did business with the public (railroads, theaters, and restaurants, for example) could legally provide separate accommodations for blacks and whites. In 1892, Homer Plessy decided to test these regulations by buying a first-class ticket on a Louisiana train. Plessy, who was one-eighth African American, boarded a train car marked “whites only.” After refusing to go to the “colored only” car, he was arrested for violating Louisiana’s Separate Car Act. He sued, and the case made its way to the Supreme Court in 1896 as *Plessy v. Ferguson*. Plessy’s attorney argued that Louisiana’s segregation law violated both the 13th and 14th Amendments. In a 7–1 ruling, the court determined that the 14th Amendment’s equal protection clause allowed for “separate but equal” accommodations for African Americans. Justice John Marshall Harlan wrote the lone dissent. Harlan, a former slave owner who did not believe in inherent racial equality, nevertheless argued that legally imposed segregation denied minorities their political equality and that the Civil War Amendments (13, 14, and 15) were intended to guarantee that equality. In his dissenting opinion, he stated, “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.” While strong, Harlan’s dissent did not prove influential for some time. The United States continued its policy of “separate but equal” for nearly 60 years in facilities such as parks, public restrooms, and schools until the landmark *Brown v. Board of Education* decision in 1954.

The Power of Judicial Dissent (continued)



Justice Louis Brandeis

Olmstead v. United States (1928):

- Electronic surveillance used as a tool for fighting crime
- Justice Brandeis's dissent warned that new technology would continue to pry into people's lives
- His belief that the Fourth Amendment protects people helped reverse *Olmstead* in *Katz v. United States*

In the 20th century, technology began to expand into areas the Constitution's Framers had not envisioned. Authorities fought crime using the same technology that brought Americans radio programs and telephone communication. In 1924, Ralph Olmstead was convicted of dealing in alcoholic beverages, which the 18th Amendment had outlawed (a period called Prohibition). The police gathered evidence against Olmstead by wiretapping his telephone conversations. Since they didn't enter Olmstead's home or business, they didn't obtain a search warrant. Olmstead believed the police had violated his Fourth Amendment rights against unreasonable search and seizure, and that his conversations could not be used in court to, in effect, self-incriminate him. The case (along with two other similar cases) came before the Supreme Court in 1928 as *Olmstead v. United States*.

The court ruled 5–4 that the search of Olmstead's property did not violate his Fourth Amendment rights because the police did not actually enter Olmstead's house or office and seize physical evidence. Justice Louis Brandeis's dissent argued that people have an expectation of privacy on the telephone just as they do in a mailed letter; furthermore, both involve systems that transport information and that are regulated by the federal government. Brandeis stated that the authors of the Bill of Rights could not have envisioned these advances in technology, so the interpretation of its protections needed to adapt to suit the times. Citing that technological advances would only continue to expand, Brandeis provided a glimpse of the future when he wrote, "[Technology] may someday be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home." Justice Brandeis went on further to argue that the "right to be left alone" is the most important right available.

Nearly 40 years later, the Supreme Court embraced Brandeis's arguments and reversed the *Olmstead* decision in the case of *Katz v. United States*, stating that the right to privacy exists anywhere a person has an expectation of privacy, no matter the specific location. The Fourth Amendment, the court affirmed, was intended to protect people—not just places and things.

Discussion Questions

1. What does it mean that Supreme Court is an appellate court? How does this fact relate to Justice Marshall's ruling in *Marbury v. Madison*?
2. What are dissenting opinions? Why are they important?
3. How did Justice Field's dissent differ from the majority's regarding the application of the 14th Amendment to private businesses?
4. Why did Justice Harlan feel the "separate but equal doctrine" was unconstitutional?
5. How did the circumstances in *Olmstead v. United States* lead Justice Brandeis to believe that interpretations of the Constitution needed to adjust to the times?

1. An appellate court only hears cases from lower courts. Marshall ruled that William Marbury should have brought his case to a lower court first, instead of directly to the Supreme Court. Constitutionally, the Supreme Court did not have the power to hear Marbury's case.
2. Dissenting opinions are the opinions of justices who hold the minority view on a particular case. They express opposition to the majority's interpretation of the law and the Constitution; sometimes these opinions become the majority opinions in later cases.
3. The majority ruled that private business dedicated to public use could be subject to government regulation. Field believed that the 14th Amendment's due process clause didn't apply to owners of private property but only to the states. Thus, the government could not regulate private business.
4. Justice Harlan believed the "separate but equal" doctrine denied political equality to minorities, which the Civil War Amendments granted—particularly the 14th Amendment.
5. New technology helped government officials (in this case the police) invade the privacy of citizens without having to physically enter their dwellings. Brandeis argued that since the Framers of the Bill of Rights could not have predicted specific developments in technology, people talking on a telephone had the same expectation of (and right to) privacy as someone using the U.S. mail.

The Boundaries of Federalism

McCulloch v. Maryland (1819):

- Allows Congress to create laws “necessary and proper” for the operation of the country
- Affirmed federal power over states



The Second Bank of the United States

One of the more distinctive aspects of the Constitution is its concept of federalism—a two-tiered system composed of individual states and the national government. The Constitution gives each tier certain responsibilities and authority to govern. At times, either a state or the federal government might exert its authority in areas beyond its responsibility, which can lead to conflict. As John Marshall declared in *Marbury v. Madison*, the Supreme Court acts as the final arbiter in these struggles, determining when one level of government has exercised powers beyond its constitutional boundaries.

One of the earliest cases the Supreme Court heard involving federalism was *McCulloch v. Maryland* in 1819. In 1811, Congress chartered the Second Bank of the United States, an institution that would collect taxes and make loans in order to stimulate economic growth. This bank had certain controls over the state banks: it could regulate federal loans made to the states and limit the size of loans the state banks made. The national bank ran into resistance from states who saw it as a monopoly competing with their own business. In retaliation, several states passed legislation taxing national bank branches within their borders. The Maryland branch of the national bank refused to pay the tax, and the state of Maryland sued, claiming that no provision in the Constitution allowed the federal government to charter a bank. The Supreme Court ruled the national bank constitutional, citing the “necessary and proper” clause of the Constitution (sometimes known as the “elastic clause”), and that the tax that Maryland had imposed on the national bank was not. This decision not only saved the national bank, but also set the precedent that Congress could enact laws to carry out its responsibilities even if the Constitution did not explicitly mention such laws.

The Boundaries of Federalism (continued)



An early 19th-century steamboat unloading

Gibbons v. Ogden (1824):

- Upheld federal law as the supreme law of the land
- Asserted federal power over states

As the early decades of the 19th century unfolded, the Supreme Court continued to define and clarify some of the “mysteries” of the Constitution regarding the powers of the federal and state governments. In 1824, the nation’s economy was growing both within states and across state lines. State governments set up exclusive rights for local steamboat owners to trade within their boundaries and required out-of-state businesses to pay substantial fees to ship within those boundaries. Aaron Ogden was granted a permit to operate a steamboat between New York City and New Jersey. A 1793 act of Congress had licensed Thomas Gibbons to operate a steamboat service in those same waters, but he did not hold a state license. Ogden obtained an injunction from the state of New York to keep Gibbons’s operation out of New York waters, maintaining that a state should regulate navigation within its own boundaries, not Congress. Gibbons sued, and the case made its way to the Supreme Court.

In *Gibbons v. Ogden* (1824), the Supreme Court ruled in favor of Gibbons, allowing him to operate his steamboat business in New York waters. The court deemed the New York law unconstitutional because it conflicted with the Constitution’s commerce clause (which gives Congress the power to regulate interstate trade) as reinforced by its supremacy clause (Article VI, paragraph 2 establishes the Constitution and federal law as the “supreme law of the land”). This case, along with *McCulloch v. Maryland*, confirmed the powers of Congress over the states in areas of finance and trade.

The Boundaries of Federalism (continued)

Barron v. Baltimore (1833):

- Declared that Bill of Rights protections do not apply to the states
- Supported states' power over federal government



Baltimore harbor, around 1830

Although some early Supreme Court rulings had maintained the federal government's supremacy over the states, the court did recognize that the federal government had no jurisdiction in some state matters. Between 1815 and 1820, John Barron was an owner of a profitable wharf in Baltimore's harbor. The city had diverted the flow of certain streams to allow for expansion, and as a result large amounts of sand and sediment filled in the harbor, making it too shallow for most vessels and depriving Barron of his livelihood. He sued the city to recover a portion of his financial losses, basing his argument on the Fifth Amendment's clause that provides for just compensation when the government takes private property; he claimed that the city had essentially taken his property (by diverting the streams) and had not compensated him for the loss of traffic to his wharf. The trial court awarded damages in Barron's favor, but the appellate court reversed the decision. In 1833, the Supreme Court heard the case of *Barron v. Baltimore*. The court acted swiftly, delivering its unanimous decision within five days. Its ruling made the broad assertion that the freedoms guaranteed in the Fifth Amendment restricted the federal government alone and that the Supreme Court had no jurisdiction in this case anyway, since the Fifth Amendment (and the rest of the Bill of Rights) did not apply to the states.

The case is important because it a full century would pass before the court would address any question of the rights of individuals relating to alleged violations on the Bill of Rights; even then it took the court's gradual interpretation of the 14th Amendment to obligate states to adhere to the Bill of Rights.

Discussion Questions

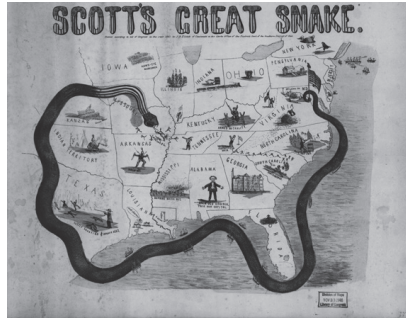
1. Describe the concept of federalism and the role of the Supreme Court in settling disputes over federalism.
2. Explain the Supreme Court's rationale in *McCulloch v. Maryland* for allowing Congress to establish a national bank, and in *Gibbons v. Ogden* for regulating interstate trade.
3. Why did the court rule it had no jurisdiction regarding the alleged violation of rights by the city of Baltimore in the case of *Barron v. Baltimore*?

1. Federalism is the separation and sharing of powers between state and national governments. The Supreme Court determines when one has exercised power over the other beyond its constitutional boundaries.
2. In *McCulloch v. Maryland*, the court said Congress had legitimately exercised the Constitution's "necessary and proper" clause to establish the Second Bank of the United States. In *Gibbons v. Ogden*, the court ruled the commerce and supremacy clauses of the Constitution give Congress supreme authority over interstate trade.
3. The Bill of Rights was established to set limits on the federal government's exercise of power, not the states'. The court's ruling asserted that the freedoms guaranteed by the Fifth Amendment (and the rest of the Bill of Rights) restricted the federal government alone. Since the case concerned a city having allegedly violated an individual's rights, the court claimed it had no jurisdiction.

Limits on the Executive Branch

The Supreme Court has at times defined the powers of the executive branch:

- *Prize Cases* (1863): Permitted Lincoln's exercise of war powers without a congressional declaration of war



1861 cartoon map of the Union blockade of the South

Article II, Section 2 of the U.S. Constitution lists the powers of the executive branch, which on the surface do not seem extensive. The Constitution's Framers took great pains to avoid giving any single person too much authority for fear of creating a monarchy. Thus, the enumerated powers primarily confine the president to the role of commander-in-chief of the armed forces and to granting pardons (except in cases of impeachment). The president also has the responsibility to inform Congress of the "State of the Union," can call Congress to session, and can appoint officers (such as ambassadors, federal and Supreme Court justices, and cabinet members) with the advice and consent of the Senate.

However, presidents over the past 200 years have found that the times and circumstances have required them to expand the executive powers in ways that exceed the scope of the Framers' original intentions. At times, the Supreme Court has been called upon to examine these expansions of power and weigh in on their constitutionality.

The 1863 *Prize Cases* came to the Supreme Court as a bundle of three cases contesting President Lincoln's blockade of Southern ports and the seizure of property that he had called for in April 1861. Congress retroactively ratified all of Lincoln's military actions by August of that year. In a close 5–4 vote, the court ruled that these actions were within Lincoln's presidential powers because a state of war existed following the Confederacy's attack on Fort Sumter in April, before Congress was in session. Therefore, the court surmised, the president was obligated to address the issue as quickly as possible.

Limits on the Executive Branch (continued)



Japanese Americans interned at the Manzanar relocation camp during WWII

The Supreme Court has at times defined the powers of the executive branch:

- *Ex parte Milligan* (1866): Unconstitutional for military courts to try civilians when civilian courts are in session, even during wartime
- *Hirabayashi v. United States* (1943): Upheld racial discrimination in times of war

On the other hand, the Supreme Court took a different view of Lincoln’s suspension of *habeas corpus* and establishment of military courts for trying civilians. A military tribunal in Indiana convicted Lambdin Milligan and four other civilians of planning an insurrection against the United States. The defendants sought release through a writ of *habeas corpus*, arguing that the president didn’t have the authority to hold, try, or sentence defendants by military tribunals. The Supreme Court handed down a unanimous verdict, stating that the president could hold suspects but lacked the power to authorize military tribunals to try civilians when civilian courts are in session—even during times of war.

After the Japanese attack on Pearl Harbor on December 7, 1941, President Franklin Roosevelt ordered a curfew for all persons of Japanese ancestry and issued Executive Order 9066, which called for the removal from the west coast of all persons of Japanese descent in order to prevent acts of espionage and sabotage. In 1942, Gordon Hirabayashi (a college student born in Seattle, Washington) refused to obey the curfew and relocation order; he wanted to get arrested so that he could take the issue to court. He contended that the executive order and curfew discriminated against Americans and resident aliens of Japanese descent in violation of the Fifth Amendment. A federal court convicted him of violating the curfew. In 1943, the Supreme Court unanimously upheld his conviction in *Hirabayashi v. United States*, noting that the “solidarity” that individuals of Japanese heritage felt toward their homeland posed a threat to important military installations and weapons production facilities on the west coast. The court also justified racial discrimination in times of war—even toward American citizens—arguing that “residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.”

Limits on the Executive Branch (continued)

The Supreme Court has at times defined the powers of the executive branch:

- *Youngstown Sheet and Tube Co. v. Sawyer* (1952): The president as commander-in-chief cannot seize private property without congressional approval

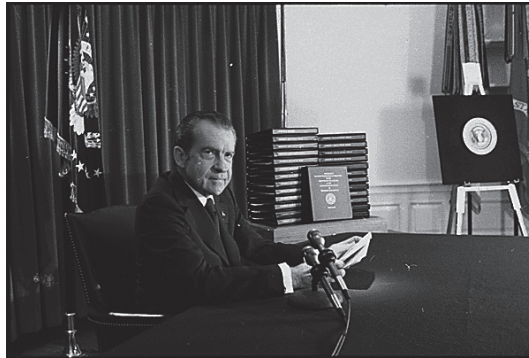


President Truman in 1952 conferring with labor leader Walter Reuther

In April 1952, the United States was involved in an ongoing “police action” in Korea. A UN resolution had initiated U.S. involvement, not a congressional declaration of war. The U.S. had agreed to the resolution in hopes that early engagement in such conflicts would help avoid the catastrophes of the century’s two world wars.

In past wars, the federal government had mobilized industries and citizens for the war effort via presidential orders and acts of Congress. President Harry Truman chose not to impose strict price controls to prevent inflation, but instead established a national board to make recommendations to industry on prices and wages. The major steel producers rejected the board’s recommendations, and the steelworkers’ union threatened a strike. Truman believed a strike would spell disaster for defense contractors gearing up for the war, negatively affect the U.S. economy as a whole, and threaten the war effort. With mediation having failed, Truman ordered Secretary of Commerce Charles Sawyer to seize the steel mills by invoking what he believed to be the inherent powers of commander-in-chief in times of national emergency. Truman felt that going through the courts or Congress would take too long, thus endangering the war effort. The steel companies quickly obtained an injunction preventing the administration from seizing the mills; the steelworkers immediately declared a strike. The government appealed, and the Supreme Court heard oral arguments on Truman’s order to seize the mills. In a 6–3 decision, the Supreme Court held that the executive branch did not have the authority to seize the steel mills. The president’s military power as commander-in-chief therefore did not extend to seizing private property without congressional approval.

Limits on the Executive Branch (continued)



President Nixon at the press conference at which he released the transcripts of the White House tapes

- *United States v. Nixon* (1974)
The president must be accountable to the law

During the Watergate investigation (1973–1974), the special prosecutor investigating the alleged cover-up of illegal activity by high level officials of the Nixon Administration sought and was granted a subpoena for audio tapes made at the White House. President Nixon declined to turn over the tapes, claiming their confidentiality was protected by executive privilege (i.e, the power held by the executive branch to resist certain search warrants and prevent the release of sensitive materials). The special prosecutor sought relief from the Supreme Court, which accepted the case. A majority of the justices believed the subpoena was valid and Nixon should release the tapes, but opinions varied and many had concerns that a split decision would weaken the force of the Court’s authority and might cause Nixon to challenge the Court’s decision—or just ignore it.

The justices managed to arrive at a unanimous decision in *United States v. Nixon* (1974) when it held that the Supreme Court’s power of judicial review not only serves to limit the power of Congress but also the powers of the president. The Court further explained that the Constitution holds the president accountable to the law and that executive privilege does not apply to quashing evidence in criminal cases. The release of the tapes incriminated Nixon, revealing that he blocked the investigation of the Watergate break-in; within two weeks, he resigned the presidency.

Limits on the Legislative Branch



Supreme Court cases that defined the powers of Congress:

- *Schechter Poultry Corp. v. United States* (1935): Congress has the authority to regulate trade between states, but not within states

During the Great Depression, over 25% of the working population became unemployed. This drastically affected people at all levels of society, with many losing their homes and relegated to living in the streets or in shanty towns. In 1932, under newly elected President Franklin Roosevelt, the federal government took extraordinary measures to right the nation's economy, issuing regulations on commerce regarding prices, wages, and the transportation of goods. With congressional approval, President Roosevelt signed into law the National Industrial Recovery Act of 1933. Among its many regulations, the NIRA set requirements regarding the shipment of livestock within states as well as between states.

In 1934, federal officials indicted and convicted the owners of the family-run Schechter Poultry Corporation on several counts of violating the NIRA. The company stood accused of failing to observe the minimum-wage and maximum-hour provisions and of selling chickens of substandard quality. Though the Schechters bought some of their stock from out-of-state companies, nearly all of their business transactions occurred within the state of New York. The Schechters appealed their conviction to the U.S. Supreme Court, arguing that the NIRA's poultry code was unconstitutional and that their intrastate wholesale business was not subject to federal regulation. Due to the company's sale of tainted poultry, the case became disparagingly known as the "sick chicken case." In *Schechter Poultry Corp. v. United States* (1935), the Supreme Court ruled in favor of the Schechters, reasoning that under the commerce clause of the U.S. Constitution, Congress had the power to regulate commerce between states (interstate trade) but not within states (intrastate trade), a power reserved to the states under the Tenth Amendment.

Limits on the Legislative Branch (continued)

Supreme Court cases that defined the powers of the Congress:

- *West Coast Hotel Company v. Parrish* (1937): Government may regulate the economy in times of hardship



President Franklin Roosevelt

Between 1935 and 1937, the Supreme Court appeared to be attempting to decimate President Roosevelt's New Deal legislation when it invalidated ten federal statutes. In line with their decisions over the previous several decades, the court took the position that neither the federal nor the state government had the right to meddle in the economy. Doing so interfered with the "liberty of contract" doctrine promoted by Justice Stephen Field.

Roosevelt contemplated increasing the number of Supreme Court justices through congressional legislation and packing the court with appointees more favorable to his policies. Congress was hesitant, but before the issue became a crisis the court heard the case of *West Coast Hotel Company v. Parrish* (1937). Elsie Parrish was a chambermaid working for less than the legal minimum wage in the state of Washington. She took her case to court, hoping to collect her back pay of \$216, the difference between the wage the hotel paid her and the state's minimum wage. The Supreme Court sided with Parrish, upholding Washington's minimum-wage law and bowing to Roosevelt's New Deal philosophy, acknowledging that the government could play a legitimate role in regulating the economy to better conditions for the people in times of hardship.

Discussion Questions

1. Review the four cases regarding presidential powers during wartime. Do you feel the Supreme Court ruled correctly in each case? Why or why not? What relationship do any of these cases have to more recent presidential actions in times of war?
2. For 30 years the Supreme Court adhered to the “liberty of contract” doctrine, which stated that the federal government had no authority to regulate private businesses. How did the court view this doctrine differently in the two New Deal cases of *Schechter* and *West Coast Hotel Corp.*? Why do you think the Supreme Court changed its position between the two cases?

1. Answers may vary.
2. In *Schechter Poultry Corp. v. United States*, the court ruled that Congress had the power to regulate trade between states but not within states. In *West Coast Hotel Company v. Parrish*, the court declared that government regulation in a state was constitutional when trying to improve people’s economic condition in times of hardship. Answers to the opinion question may vary.

First Amendment Cases: Religion

On the free exercise clause:

- *Minersville School District v. Gobitis* (1940): Ruled that political responsibility supersedes religious freedom
- *West Virginia Board of Education v. Barnette* (1943): Reversed the *Gobitis* decision; religious freedom trumps patriotism



The passage of time has allowed the Supreme Court to revisit and sometimes reverse its past rulings. At other times, the justices have clarified previous rulings in order to further define the extent of the rights protected by the Constitution.

In 1940, the United States witnessed totalitarian regimes dominate national governments in Europe and Asia. Wanting to instill a sense of national pride and patriotism in its students, Pennsylvania (like many states) required its students to salute the flag and recite the Pledge of Allegiance. In Minersville, Pennsylvania, seventh grader Lillian Gobitis and her younger brother William refused to participate in the pledge; as Jehovah's Witnesses, their religious beliefs forbade swearing loyalty to political institutions or symbols. They were subsequently expelled. Their father contested their expulsion in court, charging that the school had violated his children's First Amendment right of religious freedom. In the case of *Minersville School District v. Gobitis* (1940), the Supreme Court upheld the Pennsylvania law, concluding that religious liberty does not relieve citizens from political responsibility.

As the United States became embroiled in World War II, it became clear that a major motivation for fighting was to defend the nation against tyranny and injustice. Three Supreme Court justices privately began to have a change of heart (acknowledged publicly in the dissent of a 1942 case concerning religious freedom), and when another case involving Jehovah's Witnesses and the Pledge of Allegiance came before them, they eagerly accepted. In *West Virginia Board of Education v. Barnette* (1943), the court reversed its *Gobitis* decision and ruled that the First Amendment forbids the government from compelling people to participate in the Pledge of Allegiance when it conflicts with their religious beliefs.

First Amendment Cases: Religion (continued)

On the establishment clause:

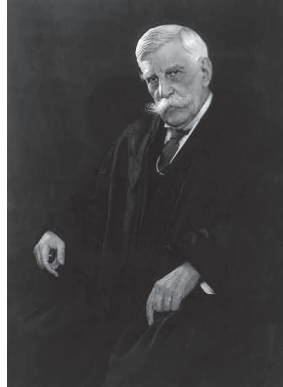
- *Engle v. Vitale* (1962): Any state-sponsored prayer session in public schools violates the establishment clause
- *Lemon v. Kurtzman* (1971): Stated that government support to religious schools:
 1. Must have a legitimate secular purpose,
 2. Must not advance or inhibit religion, and
 3. Must not create an “excessive entanglement” of government and religion

In the atmosphere of the Cold War, certain institutions in the United States sought to clearly distinguish democracy from communism. Many states mandated prayer in their public schools in order to impress upon students that America was a nation that believed in God, and therefore differed from atheistic communist countries such as the Soviet Union. The New York State Board of Regents had prepared a “nondenominational” prayer for use in the public schools, trying to avoid offending any particular religious group. Students who chose not to participate in the prayer could be excused. In *Engle v. Vitale* (1962), the Supreme Court held that the entire idea of a state-mandated or state-sponsored prayer—even a nondenominational and voluntary one—was unconstitutional.

In the 1960s and 1970s, states attempted to ensure that students in both public and private schools received the best education possible. In 1968, the Pennsylvania state legislature passed the Nonpublic Elementary Act, which allowed the state Superintendent of Public Instruction to reimburse nonpublic schools for teachers’ salaries, and for textbooks and instructional materials that presented non-religious topics. In *Lemon v. Kurtzman* (1971), the Supreme Court ruled that such support by a government body to a private religious institution also violated the establishment clause of the First Amendment, even though the funding did not directly support any religious instruction. Anticipating that similar cases would arise, the court established a three-part test to determine whether any government action violated the establishment clause. For government support to be constitutional it (1) must have a legitimate secular purpose, (2) must not advance or inhibit religion, and (3) must not result in an “excessive entanglement” of government and religion.

First Amendment Cases: Speech

- The Framers originally viewed the First Amendment as only protecting political speech
- *Schenck v. United States* (1919): Speech that presents a “clear and present danger” cannot be protected



Justice Oliver Wendell Holmes

The Constitution’s Framers viewed freedom of speech primarily as a protection for political speech, which at best advances thought and discourse on matters of government. But what about speech that criticizes the government and calls for people to take action against it?

In 1917, the United States was at war in Europe, and a national draft was in force. In protest, Charles Schenck distributed a pamphlet that both decried the law and encouraged new draftees not to serve. He was arrested and convicted under the recently passed Espionage Act. In *Schenck v. United States* (1919), Justice Oliver Wendell Holmes wrote the majority opinion, stating that the First Amendment does not absolutely guarantee protection and that speech could be constrained if the words used presented a “clear and present danger” to society. The court’s majority felt that Schenck’s call for resistance adversely affected the war effort and thus was not protected speech. To illustrate, Holmes wrote that the First Amendment cannot protect a man from falsely shouting “fire” in a crowded theater and causing a panic.

First Amendment Cases: Speech (continued)



Even repugnant messages, such as the ones at this segregationist rally from the 1950s, are protected under the Constitution

- *Terminiello v. Chicago* (1949): Though the message may be repugnant, free speech must be preserved to allow for the flow of ideas
- *Feiner v. New York* (1951): Speech cannot be restricted for its content, but it may be legitimately suppressed to preserve the peace

In the 1940s, the court took a different stand on the speech issue. Father Arthur Terminiello had been arrested in Chicago for delivering an angry and vehement denunciation of various political and ethnic groups. Since his speech had nearly started a riot, he was convicted under the city's ordinance against a breach of the peace. In 1949, the Supreme Court overturned his conviction in *Terminiello v. Chicago*, ruling that political institutions depend on free discussion even when the speech invites a negative reaction. In preventing Terminiello from continuing his speech, Chicago police had violated his First Amendment rights.

In 1949, Irving Feiner gave a speech on a street corner in Syracuse, NY, in which he criticized several public officials (including the city's mayor and President Truman) and declared that African Americans should "rise up in arms and fight for their rights." Several people in the crowd eventually became agitated and asked the police to intervene. He refused to stop speaking after several requests by police. As the crowd grew more hostile, the police finally arrested Feiner, who was later convicted of inciting a breach of the peace. The Supreme Court heard his case in 1951 and in an 6–3 decision upheld his conviction. The police, the court reasoned, had arrested Feiner legitimately because of the crowd's reaction and for his continuing even after police had repeatedly asked him to stop—that is, not in order to suppress his message, but to preserve order.

First Amendment Cases: Speech (continued)



Expression as protected speech:

- *Tinker v. Des Moines* (1969): Symbolic speech that does not disrupt or invade the rights of others is protected in a school environment



In 1964, Congress passed the Gulf of Tonkin Resolution, which granted President Lyndon Johnson the authority to increase troop levels and widen the war into North Vietnam. The following year in Des Moines, Iowa, 13-year-old Mary Beth Tinker, her older brother John, and their friend Christopher Eckhardt decided to wear black armbands to school in protest of the war and its escalation. Their actions contravened a school board policy banning the wearing of such armbands, and all three were suspended. In 1969, the Supreme Court heard the case of *Tinker v. Des Moines School District*.

The court ruled that First Amendment protections cover acts of symbolic speech. This ruling set a precedent that student expression is constitutionally protected and may not be censored, unless school officials can show that the expression (1) would result in a material and substantial disruption of normal school activities or (2) invades the rights of others. Under the *Tinker* ruling, schools may not censor student expression simply because school officials dislike the message or find it controversial, or because the expression criticizes the school's administration or policies. As long as the expression is lawful (i.e., not libelous or obscene), it cannot be censored for its content unless it violates the two standards set by *Tinker*.

First Amendment Cases: Speech (continued)



Expression as protected speech:

- *Texas v. Johnson* (1989): Burning the American flag in protest constitutes free expression
- *United States v. Eichman* (1990): Only with a constitutional amendment can Congress reverse a Supreme Court decision

During the 1984 Republican National Convention in Dallas, Texas, Gregory Johnson burned an American flag in protest of the Reagan Administration's policies. Texas authorities arrested Johnson and convicted him of desecrating the flag in violation of Texas state law. The case made its way through the appeals process and in 1989 to the Supreme Court. In *Texas v. Johnson*, the court narrowly struck down the Texas law prohibiting flag desecration, stating that Johnson's action was protected speech. The 5–4 decision held that government may not prohibit the expression of an idea simply because it offends society. Though the Constitution originally intended to protect only the spoken or written word, previous decisions like the *Tinker* case recognized that speech protections did not stop there. The ruling in *Texas v. Johnson* was hotly contested and met with public outcry and eventual congressional action.

In response to the *Texas v. Johnson* decision, Congress passed the Flag Protection Act of 1989, which prohibited any desecration of the flag. In 1990, the court reaffirmed its *Texas v. Johnson* ruling in *United States v. Eichman*, stating that the Flag Protection Act violated the First Amendment because its language outlawed disrespect for the flag, not its actual burning (which is actually the proper way to dispose of an old or damaged flag). The First Amendment protects people's disrespect for the flag as much as it protects their respect for it. The ruling also reminded Congress that it could not reverse a Supreme Court decision merely by passing a law: since the court interprets the meaning of the Constitution, only a constitutional amendment can overturn a decision.

First Amendment Cases: The Press

- *Near v. Minnesota* (1931):
Declared prior restraint unconstitutional in nearly all cases
- *Hazelwood School District v. Kuhlmeier* (1988):
School-sponsored newspapers not protected in the same way as standard press



The court has taken a more evolutionary approach in defining the parameters of press freedom. Originally, the Constitution's Framers believed that Congress's powers didn't extend far enough to restrict freedom of the press and that state constitutions would protect this freedom anyway. The authors of the Bill of Rights held a narrow view as to extent of freedom of the press, limiting the protections to political discourse.

Press protections eventually came into question when publishers no longer confined the printed word to political discussion. In the late 1920s, Jay Near published a "scandal sheet" known as *The Saturday Press* that criticized local officials for failing to act against organized crime. One of the local officials, Floyd Olson, filed a complaint against Near under the so-called Minnesota Gag Law, which issued a permanent injunction against printing any future editions of a paper suspected of libel. Near claimed his right to freedom of the press under the First Amendment. In 1931, the Supreme Court struck down the Minnesota Gag Law in *Near v. Minnesota*, stating that only in rare cases could the government exercise prior restraint (i.e., censor the press before publication).

In 1987, the journalism class at Hazelwood High School in St. Louis, Missouri, published a student newspaper called *The Spectrum*. The school's principal usually reviewed the paper before publication and in this case deleted two articles. The more relevant one covered teen pregnancy and featured interviews with three pregnant students. Though their real names had been replaced by pseudonyms, the principal censored the article, claiming that it insufficiently protected the students' anonymity and that any discussion of birth control was inappropriate for younger students. The student publishers took the issue to court: a trial court sided with the school, but an appellate court agreed with the students. In 1988, the Supreme Court heard *Hazelwood School District v. Kuhlmeier* and ruled that the principal's actions had not violated the students' First Amendment rights because a school-sponsored paper does not count as a public forum. The court went on to say that a school may censor a student publication when the prior restraint is reasonably related to legitimate educational concerns.

First Amendment Cases: Assembly



- *DeJonge v. Oregon* (1937): Extended the right of free assembly to the states via the 14th Amendment
- *Cox v. New Hampshire* (1941): established the doctrine of time, place, and manner for public demonstrations
- *Lloyd Corporation v. Tanner* (1972): freedom of assembly protections do not apply to private property

Over a mere 40-year period, the Supreme Court made several significant clarifications to the right of free assembly. At a Communist Party meeting in Portland, Oregon in 1934, Dirk DeJonge spoke concerning a labor strike and local jail conditions. The Communist Party had repeatedly called for the overthrow of the federal government, so officials constantly monitored party meetings. Police raided DeJonge's meeting and arrested him for violating a state law that made advocating the overthrow of the government through violent means illegal. DeJonge contested he had only spoken on peaceful matters at the meeting. In 1937, in the case of *DeJonge v. Oregon*, the Supreme Court ruled that Oregon's criminal statute violated DeJonge's right of assembly because officials only took into consideration his presence at the meeting and not the nature or content of his speech. The decision is also significant for extending the First Amendment right of free assembly to the states via the 14th Amendment.

In 1941, a group of Jehovah's Witnesses were convicted of staging a parade on the public sidewalks of Manchester, New Hampshire, without a permit. They asserted that their arrests and convictions violated their freedoms of worship and assembly. The Supreme Court upheld the convictions, declaring the ordinance a reasonable means of promoting the safe and orderly use of public streets. The unanimous opinion held that government may impose restrictions on the "time, place, and manner" of public demonstrations so that they don't interfere with other citizens' rights of travel and access.

In 1969, in the Lloyd Center Shopping Mall in Portland, Oregon, five young people passed out handbills announcing a meeting to protest the draft and the Vietnam War. Security guards informed them that they were on private property and that the shopping center had a policy prohibiting visitors from passing out handbills. The guards asked the five to leave, suggesting that they distribute their handbills on the public sidewalk outside of the mall. The young people complied but later filed a suit seeking relief and a settlement, stating that their First Amendment right to free assembly had been violated. In the case of *Lloyd Corporation v. Tanner* (1972), the court supported the mall's owners, declaring that First Amendment protections apply only to public areas and not to private property.

Discussion Questions

1. Compare the cases of *Gobitis* and *Barnette*. Why do you think the court reversed its opinion in just two years?
2. Compare the two cases of *Engle v. Vitale* and *Lemon v. Kurtzman*. Why do you think the court ruled that funding for non-religious instruction in religious schools still supported religion, and therefore violated the First Amendment's establishment clause?
3. Discuss the court's distinctions regarding the limits of free speech in the *Schenck*, *Terminiello*, and *Feiner* cases. What seems to be the common standard for determining whether speech receives First Amendment protections?

1. Students should mention that the two cases involved religious expression by children of Jehovah's Witnesses; also, the former occurred during peacetime and the latter during a time of war. Answers to the reasons for the court's reversal will vary, but students may note that the court felt that a major reason for U.S. involvement in World War II was to preserve the rights of citizens (including freedom of worship).
2. Both cases involved the government support of religion. In the case of *Engle v. Vitale* the issue was school prayer; in *Lemon v. Kurtzman* it was financial support for non-religious instruction and materials. Although the Nonpublic Elementary Act supported only non-religious instruction and educational materials, the court felt that any support of a religious institution was unconstitutional because it provided aid that would otherwise have to be paid by the institution.
3. In the *Schenck* case, the court felt that advocating an end to the draft would endanger the war effort and pose a threat to the country. In *Terminiello*, the court decided that the speech didn't present a "clear and present danger" to the government; harsh criticism, even that with which is distasteful to others, is not sufficient reason to censor speech. In *Feiner*, the court ruled it constitutional to stop a speaker if the intent is to preserve the peace, not to stifle the person's speech or ideas. Whether the act of speaking freely poses a "clear and present danger" to either the government or the people seems to be the common standard.

Discussion Questions (continued)

4. Describe the two kinds of symbolic speech in the *Tinker v. Des Moines School District* and *Texas v. Johnson* cases. Besides reaffirming its earlier ruling in *Texas v. Johnson*, what other message did the court send Congress when it struck down the Flag Protection Act of 1989?
 5. Define the term “prior restraint” and describe why it was used to censor both *The Saturday Press* and *The Spectrum*. Discuss how the court’s decisions in these two cases differed. Do you agree or disagree with the court’s distinction between student and standard publications?
 6. Review the three cases involving freedom of assembly. What were the important points of each case? How did these three cases help define the extent of freedom of assembly?
-
4. The two types of symbolic speech involved wearing black armbands in protest of the Vietnam War (*Tinker*) and burning the U.S. flag (*Texas v. Johnson*). The Supreme Court’s rejection of the Flag Protection Act of 1989 reminded Congress of the power of judicial review. Once the court had ruled the Texas ban on flag burning unconstitutional, Congress didn’t have the power to reinstate the law at the federal level—only a constitutional amendment can overturn a Supreme Court ruling.
 5. “Prior restraint” means censoring information before it is published. It was applied in *The Saturday Press* case (*Near v. Minnesota*) to stop the continued publication of stories unfavorable to government officials. In the *Spectrum* case (*Hazelwood School District v. Kuhlmeier*), the school’s principal used it to prevent the printing of stories he felt to be objectionable and inappropriate for younger readers. The main difference between the two decisions lies in that a student newspaper does not constitute a public forum, but an educational process under the control of school authorities who determine whether the content concerns legitimate educational matters. (During the student discussion on the distinctions between the two cases, help students see both the principal’s and the students’ sides of the issue in the *Hazelwood* decision. Ask where the responsibility for publishing distasteful information fell in each case.)
 6. Important points in each case: In *DeJonge v. Oregon*, the court extended free assembly protections to the states for the first time via the 14th Amendment; *Cox v. New Hampshire* established the doctrine of “time, place, and manner,” stating that the government cannot deny First Amendment protections, but can restrict the how they are exercised in order to protect the rights of others. The *Lloyd Corporation v. Tanner* decision stated that First Amendment protections do not apply to privately held property—even a place frequented by the public.

Fourth Amendment Cases

Protections against
“unreasonable searches
and seizures”:

- *Weeks v. United States* (1914): Established the “exclusionary rule”
- *Mapp v. Ohio* (1963): Extended the exclusionary rule to the states



The Supreme Court has defined the boundaries of an unreasonable search or seizure in several cases over the past century. Various rulings have established and clarified the “exclusionary rule,” which (in most cases) renders evidence gathered in an illegal search inadmissible in court.

In the case of *Weeks v. United States* (1914), police arrested Fremont Weeks at his place of business and searched the premises without a warrant; officers also repeatedly performed warrantless searches on Weeks’s home. The search of his business turned up evidence that Weeks had sent lottery tickets through the mail—a violation of federal law for which Weeks was later tried and convicted. The Supreme Court overturned the lower court’s conviction, ruling that the warrantless searches had infringed upon Weeks’s Fourth Amendment rights against unlawful search and seizure. This set the precedent that evidence obtained unlawfully could not be legally presented in a court of law.

The court extended the exclusionary rule to the states through the 14th Amendment in *Mapp v. Ohio* (1963). In this case, the police entered Dollree Mapp’s home looking for a suspect they believed she was harboring. When the police didn’t produce a search warrant, she refused to let them in. The police forcibly entered the house and a brief confrontation ensued, resulting in Mapp’s handcuffing. The police, claiming they had a warrant (though none was produced) searched the premises and found pornographic materials; Mapp was later tried and convicted for possession of obscenity. The judge knew of the search’s illegality but nonetheless admitted the evidence. Mapp appealed to the Supreme Court, whose justices ruled that the due process clause of the 14th Amendment requires that all illegally obtained evidence be excluded from state as well as federal court proceedings.

Fourth Amendment Cases (continued)



Protections against “unreasonable searches and seizures”:

- *United States v. Leon* (1984): Clarified the exclusionary rule
- Exclusionary rule not intended to protect a suspect’s constitutional rights, but to deter and penalize police misconduct

Controversy surrounds the exclusionary rule, as many suspected criminals have gone free because evidence illegally seized could not be used in the courtroom. In recent years, the courts have further clarified the exclusionary rule and have come up with several exceptions by which evidence acquired without a search warrant can be used in court. One of these early exceptions was the “good faith doctrine,” which the Supreme Court established in *United States v. Leon* and which states that evidence can be admitted in court if police were truly unaware that by collecting it they were violating a suspect’s Fourth Amendment rights.

It is important to point out that the exclusionary rule is not intended to specifically protect the constitutional rights of suspects, but to deter police misconduct and penalize its occurrence. When a court invokes the exclusionary rule, it does so not to excuse a criminal act but to emphasize that police will have to find other evidence to try and convict a suspect.

Other Bill of Rights Cases

Fifth Amendment:

- *Miranda v. Arizona* (1966): Protection against self-incrimination

Sixth Amendment:

- *Gideon v. Wainwright* (1963): Guaranteed a suspect's right to counsel



The 1960s saw a movement to reform police interrogation practices, which in some instances deprived suspects of their legal rights, including the presumption of innocence until convicted. In 1963, Arizona police arrested Ernesto Miranda for robbery, kidnapping, and rape. He confessed to the charges after hours of interrogation during which he was not aware of his constitutional protection against self-incrimination; his subsequent conviction rested entirely upon his confession. After both state and federal appeals, the Supreme Court heard the case and broadened its earlier ruling in *Escobedo v. Illinois* (1964), which required that an attorney be present during a suspect's interrogation. In *Miranda v. Arizona* (1966), the court ruled that Miranda's Fifth Amendment rights had been violated. The decision stated that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" and that "the blood of the accused is not the only hallmark of an unconstitutional inquisition." The court outlined the necessary warnings police must give to suspects, including the rights to remain silent and to have counsel present during interrogations.

In 1961, Clarence Gideon was charged with burglarizing a Florida pool hall and with stealing money from its vending machines. He was too poor to afford his own lawyer, and at the time Florida only paid for counsel in cases involving capital crimes. He defended himself, maintaining his innocence. However, the jury found him guilty and sentenced him to five years in prison. While in the penitentiary, Gideon spent considerable time in the prison's library, where he discovered that he was denied due process by not having been provided with an attorney. In 1963, he appealed his case to the U.S. Supreme Court. The court's unanimous decision found that the right to counsel was fundamental, essential to a fair trial, and applicable to the states through the 14th Amendment. Gideon's case was remanded back to the Florida court, where he was provided an attorney and acquitted of all charges.

Other Bill of Rights Cases: Eighth Amendment

Establishing the standard against “cruel and unusual punishments”:

- *Trop v. Dulles* (1958): Punishment must reflect the evolving standards of decency

Clarifying the standard:

- *Furman v. Georgia* (1972): Death penalty disallowed; more guidance for judge and jury needed
- *Gregg v. Georgia* (1976): Death penalty allowed in cases involving premeditated murder with separate trial and sentencing phases

In 1958, the Supreme Court set the standard for prohibiting cruel and unusual punishment. The court ruled in *Trop v. Dulles* that punishment “must draw its meaning from evolving standards of decency” that reflect a society’s progress; therefore, punishments seen as appropriate at an earlier time may not be now or in the future. This could also mean that different regions of the country may consider certain punishments acceptable and others not.

In *Furman v. Georgia* (1972), the Supreme Court didn’t outlaw capital punishment altogether, but stated that as administered across the country it violated the Eighth Amendment. Moreover, states needed to give judges and juries more guidance when imposing the death penalty. As a result of this ruling, all states temporarily suspended pending executions and began the process of revising sentencing rules for capital cases.

In 1976, the Supreme Court heard arguments concerning the new sentencing laws when it rules on five cases combined under the title *Gregg v. Georgia*. At question was whether imposing the death penalty was “cruel and unusual” punishment that violated the Eighth and 14th Amendments. In a 7–2 decision, the court held that punishment by death violated neither amendment, but only in certain cases: if the defendant was convicted of deliberately killing another individual, and the criminal court had limited the jury’s discretion by dividing the trial into separate conviction and sentencing phases, then the death penalty may apply. In a related case, the court ruled that mandatory death sentences violated the Eighth Amendment. Instead, sentences could only be determined on a case-by-case basis.

Other Bill of Rights Cases: Eighth Amendment (continued)



Permitting the execution of persons under 18 years old:

- *Stanford v. Kentucky* (1989): With no national consensus, juvenile executions left up to states

The court reversed itself on the execution of juveniles:

- *Roper v. Simmons* (2005): Evolving standards of decency had changed; juvenile execution now prohibited

In general, the Supreme Court has held that the death penalty should only be imposed for murder convictions. However, the court's opinion has changed over time regarding the execution of juveniles convicted of murder. In the 1989 case of *Stanford v. Kentucky*, the court, in a 5–4 decision, narrowly upheld the constitutionality of executing 16-year-old offenders. Noting that no national consensus existed on capital punishment for offenders under 18 years old, the court left the decision to execute 16- or 17-year-olds to the states and did not rule that the death penalty constituted cruel or unusual punishment at that time. However, the dissenting justices expressed very strong concerns about applying capital punishment to individuals under 18.

In 2005, the court revisited the issue of juvenile executions in *Roper v. Simmons*. Referring to “the evolving standards of decency,” the court reversed its 1989 ruling in *Stanford v. Kentucky* and outlawed the death penalty for 16- and 17-year-olds. The majority opinion stated that at this time society viewed juveniles as categorically less responsible than the average adult criminal. Those in the minority made two arguments in their dissent: First, they accused the majority of improperly substituting its own judgment for the states’, noting that only four state legislatures had abolished the juvenile death penalty since 1989 and that this did not make a consensus. Second, the minority argued that a 17-year-old could be just as responsible as an adult and that it should be left up to the jury or the state legislatures to ascertain whether this was the case—not the Supreme Court. The debate over the death penalty continues.

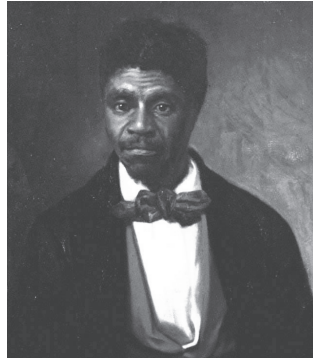
Discussion Questions

1. Describe the purpose of the exclusionary rule. What are some of its advantages and disadvantages?
2. How do the court's decisions in *Miranda* and *Gideon* reflect the due process protections in the "Miranda warning" that police recite during an arrest?
3. Explain how the court clarified the limits of "cruel and unusual punishment" in *Trop v. Dulles*. Do you feel this standard is reasonable in capital cases? Why or why not?
4. Describe how the court applied the above standard to the cases of *Stanford v. Kentucky* and *Roper v. Simmons*. Explain whether you agree or disagree with the court's conclusions, and why.

1. The exclusionary rule states that any evidence seized illegally is inadmissible in court. Answers to the second question will vary, but students should be able to identify its role in keeping police and other authorities honest and not above the law. Some disadvantages include that the rule doesn't protect innocent people or the victims of a crime and that it breeds disrespect for the criminal justice system.
2. Students should be able to identify which portions of the Miranda warning the court's decisions in *Miranda* (protection against self-incrimination) and *Gideon* (right to counsel) helped construct. The warning usually states, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you."
3. The court's doctrine of "evolving standards of decency" means that the question of whether a punishment is cruel or unusual should be compared with society's current position on the subject. Student answers will vary on the opinion question.
4. In *Stanford*, the court ruled that no national consensus on juvenile capital punishment existed, leaving the issue up to the states to decide based on their own standards of decency. However, in *Roper* the majority felt a national standard had emerged that considered executing juveniles cruel and unusual, thus making such executions unconstitutional. Answers will vary on students' views of the standard's application in these two cases.

Key Civil Rights Decisions

- Supreme Court heard few civil rights cases prior to the Civil War
- *Dred Scott v. Sandford* (1857): Since blacks were not and could not be citizens, they had no constitutional protections



Dred Scott

Before the passage of the 13th, 14th, and 15th Amendments, few civil rights cases had come before any court in the United States. However, one case stands out as infamous—as do the repercussions that it brought. From 1833 to 1843, Dred Scott was a slave living in Missouri (a slave state) who was later taken by his master to Illinois and the Wisconsin Territory (both areas where slavery was illegal). Upon his return to Missouri, Scott sued for his freedom, arguing that his time spent in a free state made him free. The Supreme Court ruled in *Dred Scott v. Sandford* (1857) that Congress did not have the authority to prohibit slavery in any state (thus declaring the already repealed Missouri Compromise unconstitutional). Furthermore, the court ruled that slaves and their descendants were not and could not become citizens of the United States and therefore had no claim to any constitutional protections. The ruling generated a firestorm of controversy and played a role in moving the country toward civil war.

In 1868, the passage of the 14th Amendment granted African Americans citizenship. Many hoped it would better protect the civil rights of all citizens regardless of their race, creed, color, or previous condition of servitude. However, the Supreme Court's application of the 14th Amendment to civil rights did not come quickly or consistently. It sometimes moved in fits and starts, backtracking over old ground before again moving forward, eventually solidifying the concept of civil rights for all.

Key Civil Rights Decisions (continued)



- *Hall v. DeCuir* (1878): States could not pass laws barring racial discrimination on passenger carriers involved in interstate commerce
- *Civil Rights Cases* (1883): 14th Amendment protections did not apply to the operation of private enterprises

One of the court's first cases concerning civil rights following the Civil War was *Hall v. DeCuir* (1878). An African American woman, Josephine DeCuir, bought a steamboat ticket in Louisiana for a trip through several states up the Mississippi River. On board, she was denied access to a cabin set aside for white passengers, even though Louisiana state law forbade racial discrimination on passenger carriers. The court declared the state law prohibiting racial discrimination unconstitutional because the steamboat's route made its operation a matter of interstate commerce, which only Congress could regulate. Thus, the court didn't overtly condone or condemn racial discrimination; it instead sidestepped the issue by citing the commerce clause of the U.S. Constitution. This ruling would provide the rationale for the "separate but equal" doctrine 20 years later.

Five years later, the court had another opportunity to support equality for African Americans. Congress had passed the Civil Rights Act in 1875, which provided full and equal access to accommodations such as inns, public transportation, theaters, and other entertainment facilities. The common wisdom held that although privately owned, these businesses were open to the public, performing public services, and therefore were subject to public regulation. In 1883, the Supreme Court disagreed, ruling on a collection of suits called the *Civil Rights Cases* that civil rights protections granted by the 14th Amendment pertained only to the states and not to private enterprises.

Key Civil Rights Decisions (continued)

- *Plessy v. Ferguson* (1896): Instituted the “separate but equal” doctrine
- *Morgan v. Virginia* (1946): Struck down state-mandated discrimination on passenger vehicles engaged in interstate transportation

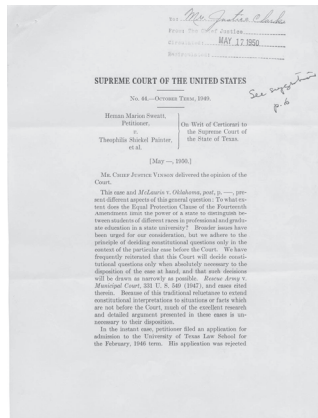


In 1896, the Supreme Court established the “separate but equal” doctrine, which it hoped would clarify once and for all the meaning of equal protection under the 14th Amendment. In the case of *Plessy v. Ferguson* (1896), the court confirmed the constitutionality of state-imposed racial segregation as long as each group had access to facilities of the same quality. The court emphasized that the 14th Amendment was not intended to erase differences between the races nor enforce social equality. This attitude—that some inherent difference existed between the races and that social equality could not be enforced—would prevail in public and private institutions and accommodations for the next 60 years.

By the mid-20th century, the court began to take a more inclusive position on the rights of African Americans. For years, Virginia state law required blacks and whites to be separated on busses traveling both locally and interstate. In 1946, an African American woman named Irene Morgan boarded a bus in Virginia for Baltimore, Maryland. When ordered to sit in the back of the bus, she refused and was arrested, convicted, and fined ten dollars. The NAACP (National Association for the Advancement of Colored People) appealed her case to the Supreme Court. In an interesting twist to the 1878 *Hall v. DeCuir* ruling, the court restated in *Morgan v. Virginia* (1946) that the exclusive responsibility of regulating facilities for interstate transportation fell to the federal government; however, since the states could not legally forbid segregation, to require it was equally illegal. Therefore, the Virginia law violated not the 14th Amendment, but the Constitution’s commerce clause.

Key Civil Rights Decisions (continued)

Draft of the
Supreme
Court's
opinion in the
Sweatt case



- *Sweatt v. Painter* (1950): Segregated facilities differing in quality violate the “separate but equal” doctrine

In 1950, the Supreme Court delivered a decision that didn’t overturn the “separate but equal” doctrine, but did call attention to the inequities it created. Heman Sweatt had been refused admission to the University of Texas’s law school in 1946 based on the state’s constitution, which forbade integrated education. Since Texas had no law schools for African Americans at the time, Sweatt took his case to court. Delaying tactics by the Texas judicial system provided enough time for the state to create a law school for African Americans only, so the Texas courts denied further appeal. The NAACP helped Sweatt with his appeal to the Supreme Court. In *Sweatt v. Painter* (1950), a unanimous court found the facilities of the African American school inferior to those provided for whites, which violated the “separate but equal” doctrine. While the case did not invalidate the policy of racial segregation, the court’s opinion made clear that any separate facilities had to be qualitatively equal.

Key Civil Rights Decisions (continued)

- *Brown v. Board of Education* (1954):
Determined “separate but equal” to be inherently unequal



Thurgood Marshall (center) and fellow NAACP lawyers in the *Brown* case

In 1954, civil rights leaders squarely took on the issue of “separate but equal” by directly challenging the practice of segregation in public schools. They argued that the “separate but equal” doctrine resulted in the poor treatment of African Americans because their separate facilities and services were never truly equal and fostered an impression of inferiority—even to African Americans themselves. Since 1879, Kansas state law had allowed school districts to segregate their facilities. The NAACP-sponsored suit called for the board of education of Topeka, Kansas, to discontinue its policy of racial segregation. After the district court ruled for the school board, the Supreme Court heard the case in 1952 and again in 1953. On May 17, 1954, the court handed down a unanimous ruling stating emphatically that “separate education facilities were inherently unequal,” tearing down the “separate but equal” doctrine once and for all.

Though a landmark case, *Brown* did not result in the immediate desegregation of public schools, nor did it address segregation in public accommodations such as privately owned restaurants or theaters. A Supreme Court decision the following year ordered state compliance with the *Brown* ruling “with all deliberate speed.” It would take Congress’s passage of the Civil Rights Act of 1964, more Supreme Court rulings, and several more years of protest to bring about the total desegregation of public and private facilities throughout the country.

Key Civil Rights Decisions (continued)

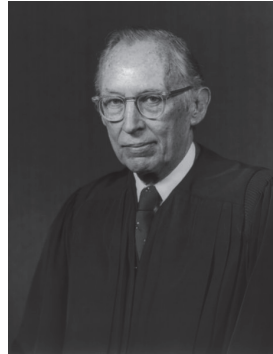


- *Katzbach v. McClung* (1964): Businesses engaged in substantial interstate trade could not discriminate based on race

For decades in Birmingham, Alabama, the restaurant Ollie's Barbecue catered to white families while providing only take-out service to African American patrons. This policy violated the Civil Rights Act of 1964, which barred discrimination by businesses engaged in interstate trade (the restaurant purchased a substantial amount of its meat from out-of-state sources). Owner Ollie McClung argued that this section of the Civil Rights Act was unconstitutional because Congress lacked the authority to regulate the restaurant's policies toward customers and that serving African Americans inside the restaurant would result in a loss of business from white customers. In *Katzbach v. McClung* (1964), the court ruled that the Civil Rights Act's provision was indeed constitutional, stating that racial discrimination at restaurants which received substantial portions of food from out of state had a direct effect on interstate commerce. Such discrimination unfairly limited the customer base for out-of-state businesses and denied African Americans the opportunity to patronize the establishment.

Key Civil Rights Decisions (continued)

- *University of California Regents v. Bakke* (1978): Racial considerations may be one—but not the only—factor in college admissions



Justice Lewis Powell

In the early 1960s, many public institutions created policies to make up for years of discrimination. Public universities in particular established quota systems and affirmative-action policies to boost minority enrollment. Allan Bakke, a white man, had applied to the University of California–Davis Medical School twice and was rejected both times. The school had reserved 16 places (out of 100) in each entering class for qualified minority students. Since his college GPA and test scores far exceeded those of the minority students whom the school admitted, Bakke sued, contending that he had been denied admission based solely on his race. In *University of California Regents v. Bakke* (1978), the Supreme Court ordered the school to admit Bakke but was split in its decision with no majority opinion. Four justices stated that the use of a racial quota system by a government agency contravened the Civil Rights Act of 1964, while four others contended that selection based on race was permissible as long as other criteria were also considered. The ninth justice, Lewis Powell, agreed that race could be one (but never the only) factor in admissions and ruled in favor of Bakke, asserting that the university had denied him equal protection under the 14th Amendment.

Discussion Questions

1. What did the Supreme Court rule in *Dred Scott v. Sandford*? Why do you think the case created such controversy at the time?
2. The 14th Amendment was intended to end racial discrimination and enforce the promises of equal protection and due process. How did the court's rulings in *Hall v. DeCuir*, the *Civil Rights Cases*, and *Plessy v. Ferguson* help to perpetuate such discrimination for another 80 years?

1. The court ruled that blacks were not and could not become citizens of the United States and therefore were not entitled to any constitutional considerations; in addition, Congress's efforts to balance slave and free states via the Missouri Compromise was unconstitutional. Answers to the second question will vary, but students should mention that the court essentially ruled that states could not prohibit slavery.
2. In all three cases the court sidestepped the issue of discrimination and based its decisions on other constitutional grounds. In *Hall v. DeCuir*, the court ignored the discrimination by the steamboat operator, instead ruling that states couldn't regulate interstate trade. In the *Civil Right Cases*, the court held that the 14th Amendment extended only to the states themselves, not to private businesses within the states. In *Plessy v. Ferguson*, the court supported state-imposed segregation, provided that facilities were "equal." In *Plessy*, the court's ruling asserted that the 14th Amendment wasn't intended to force racial equality. Each case ended up focusing on protecting private ownership of businesses and limiting the reach of the 14th Amendment to governmental actions, both at the state and federal levels.

Discussion Questions (continued)

3. Describe how the Supreme Court gradually began to address the issue of segregation in public facilities (including schools and privately owned establishments such as restaurants) between 1946 and 1964.
4. How did *University of California Regents v. Bakke* present a case of “reverse discrimination”? How did the court’s decision side with Bakke but still honor the university’s affirmative-action policy?

3. You may want to have students review the slides that discuss the relevant cases here. Students should recognize that beginning with *Morgan v. Virginia* (in which the court ruled that states couldn’t legally require segregation), the court’s decisions gradually began to address the issue of discrimination. *Sweatt v. Painter* still upheld the doctrine of “separate but equal” but ruled that facilities had to be either equal or integrated. In *Brown v. Board of Education*, the court finally agreed that “separate but equal” was inherently unequal. Finally, in *Katzenbach v. McClung* the court flexed the muscle of the Constitution’s commerce clause by ruling that private businesses substantially engaged in interstate trade could not discriminate based on race.
4. Allen Bakke was a white man denied entrance to the University of California’s medical school solely because he was white. The court’s split decision ruled that while Bakke had indeed been denied his right to equal protection under the 14th Amendment, California’s affirmative-action policy could remain in place as long as it considered other criteria in addition to race.

14th Amendment Cases: Equal Protection



All-male jury, 1920s

Landmark cases have involved gender discrimination and the rights of immigrants and prison inmates

Gender discrimination:

- *Hoyt v. Florida* (1961): State laws may exempt women from jury duty
- *Taylor v. Louisiana* (1975): Reversed *Hoyt*—exempting women from juries violates Sixth Amendment as extended to states by the 14th Amendment

The ratification of the Bill of Rights in 1791 placed limits on the powers of the federal government, not on state governments. Its authors and Congress assumed that state courts would handle cases concerning states' violations of personal liberties. However, it became apparent over time that this arrangement allowed states to discriminate against certain segments of society, granting rights to some but not to others—especially the newly freed slaves. The 14th Amendment articulated further the general constitutional principle of “equal protection under the law.”

To some degree, attaining equal protection under the law has been as difficult a battle for women as it has been for African Americans. Early Supreme Court decisions clearly reflected the “social wisdom” of the times, which confined women to domestic roles (sometimes stated as an effort to “protect” them). A Florida woman, one Mrs. Hoyt, was convicted by an all-male jury of murdering her husband. At the time, Florida law allowed for the exemption of women from jury duty. Though women could serve on juries, they had to actively volunteer for duty; state law, on the other hand, automatically registered men. Hoyt appealed the conviction on Sixth Amendment grounds, claiming that the jury in her case didn't reflect the state's general population and that the 14th Amendment extended Sixth Amendment protections to the states. In the case of *Hoyt v. Florida* (1961), the Supreme Court unanimously ruled that state laws exempting women from jury duty did not violate the 14th Amendment's equal protection guarantee: noting that women were “still regarded as the center of home and family life,” the court held that the Florida law relieving women of the civic responsibility of jury duty was indeed constitutional.

However, in *Taylor v. Louisiana* (1975) the court reversed its earlier ruling and decided that state laws exempting women from jury duty did violate the Sixth Amendment's requirement that juries be drawn from a cross-section of the community. Here, the court felt that women had a compelling responsibility to serve on juries because systematically excluding them could violate a defendant's right to a fair trial. Therefore, the social customs of family life would have to take a backseat to constitutional concerns.

14th Amendment Cases: Equal Protection

Yick Wo v. Hopkins (1886):

- Though constitutional on its face, a law may not be administered in an unconstitutional manner
- Non-citizens entitled to same 14th Amendment protections as citizens



In 1886, a San Francisco ordinance prohibited the operation of a laundry in a wooden building without a permit. At the time, wooden buildings housed about 95% of the city's laundries, and about two-thirds of those had Chinese owners. Although nearly all of the city's wooden-building laundry owners applied for a permit, the city granted no permits to Chinese owners and denied a permit to only one non-Chinese. When Yick Wo, a long-time Chinese laundry owner, was denied a permit, he continued to operate his laundry and was arrested, convicted, and fined for violating the city ordinance. The Supreme Court eventually ruled in favor of Yick Wo, stating that while the ordinance itself might have been constitutional, its administration had been discriminatory, since the city effectively barred only the Chinese from receiving the permits. The court affirmed that even though Yick Wo and most of the other Chinese laundry operators were not U.S. citizens, the 14th Amendment still entitled them to equal protection.

14th Amendment Cases: Equal Protection (continued)



Equal protection for
immigrants and illegal aliens:

- *Graham v. Richardson* (1971): legal immigrants entitled to same benefits and freedoms as citizens
- *Plyler v. Doe* (1982): children of illegal immigrants have the right to public education

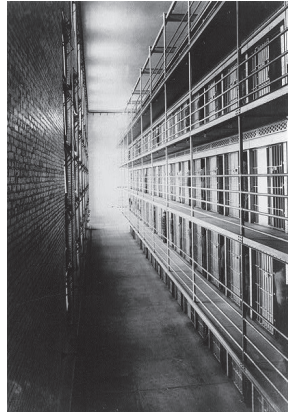
Carmen Richardson was a resident alien who had legally emigrated from Mexico to Arizona in 1956. In 1969, she applied at age 64 for disability and state benefits but was denied for not having met the state's 15-year residency requirement. She filed suit, claiming that Arizona's residency requirement violated the equal protection clause of the 14th Amendment, as well her right to live in other states. In *Graham v. Richardson* (1971), the court decided in favor of Richardson, stating that legal aliens enjoyed the same rights as citizens, since they too pay taxes, can be called into the armed services, and must meet other similar obligations. The court agreed that residency requirements for aliens inhibit their right to travel and live in other states, which the 14th Amendment also protects.

In 1975, Texas law mandated that funds be withheld from school districts that educated children not legally admitted into the United States; the law also authorized school districts to deny them enrollment. The case was brought before the Supreme Court on behalf of these children in *Plyler v. Doe* (1982). In a 5–4 decision, the court struck down the Texas law for violating the children's rights under the equal protection clause of the 14th Amendment. The majority reasoned that the alien children were people "in any ordinary sense of the word" and could not help their illegal status, since their parents had brought them into the country. The court added that the Texas state law denying them the right to an education would contribute to a perpetuation of a "subclass of illiterates...adding to the costs of unemployment, welfare and crime."

14th Amendment Cases: Equal Protection (continued)

Wilson v. Seiter (1991):

- Denied Eighth Amendment protections against cruel and unusual punishment to prisoners
- Inmates must prove “deliberate indifference” by prison officials



Prisoners in state and federal penitentiaries have few rights due to the requirements of their confinement. For the most part, corrections officers honor the basic rights of inmates as part of the rehabilitation process and to preserve order and safety within the facilities. However, questions arise as to how far these rights should be extended to inmates, as well as to whether granting rights to inmates jeopardizes their safety or the safety of others. On these occasions, it has been up to the judicial system to determine whether basic rights of the equal protection clause have been upheld or violated.

In the early 1980s, prison inmate Pearly Wilson had complained about many of the conditions at Ohio’s Hocking Correctional Facility, such as overcrowding, inadequate heating and cooling, unsanitary restrooms and dining facilities, and mixed housing with mentally and physically impaired inmates. He and fellow inmates took their concerns to court, alleging that such conditions constituted cruel and unusual punishment in violation of the Eighth and 14th Amendments. He alleged that the appropriate authorities had been informed of the conditions but refused to take any action. In *Wilson v. Seiter* (1991), the court ruled 5–4 against Wilson and put forth the standard of “deliberate indifference”—that is, a prisoner must prove that they had suffered serious harm and that prison officials knew of the problem and failed to act.

14th Amendment Cases: Equal Protection (continued)



Hudson v. Palmer (1984):

- Denied prisoners Fourth Amendment protection against unreasonable search and seizure
- Prison safety and security outweigh constitutional concerns

In 1983, the Supreme Court heard the case of *Hudson v. Palmer*. Russell Palmer, a Virginia inmate, claimed that prison guard Theodore Hudson had conducted numerous “shakedown” searches of Palmer’s locker and cell for contraband. Hudson was also charged with destroying Palmer’s property during the course of the search. Palmer brought the issue to court, asserting that Hudson had violated Fourth Amendment protections against unreasonable search and seizure and that the destruction of his belongings had violated the 14th Amendment provision of due process of just compensation for property. The court noted first that all Fourth Amendment claims must be examined on a case-by-case basis, stressing that decisions from one case don’t necessarily apply to others. The 5–4 decision stated that Fourth Amendment protections against unreasonable searches did not apply “within the confines of the prison cell,” because prison security and safety outweighed a prisoner’s right to privacy. The court also noted that the destruction of Palmer’s property in this case did not violate the 14th Amendment’s equal protection clause because remedies had been available to Palmer for recouping his loss.

14th Amendment Cases: Equal Protection (continued)

Cutter v. Wilkinson (2005):

- First Amendment guarantees of religious freedom generally apply to prisoners
- Giving special sanction to religion did not violate First Amendment's establishment clause



Congress passed a law in 2000 requiring that prisons receiving federal funding accommodate the religious practices of all prisoners (including lesser-known religions whenever possible) or provide a special justification for restricting a specific religious practice. In 2005, a group inmates in Ohio claimed that prison officials had denied them their religious freedoms by barring them from buying certain texts, displaying symbols, and holding services. The state of Ohio characterized the federal law as unconstitutional for violating the First Amendment's establishment clause by giving special status to religion. The state also noted that many of the prisoners were violent offenders and members of gangs who could take advantage of the law to hold gang meetings or acquire contraband, all in the name of practicing their "religion." Finally, the state argued that matters concerning inmates' religious practices should be left to prison officials, since they have a better ability to assess matters of safety. In *Cutter v. Wilkinson* (2005), a unanimous Supreme Court ruled the federal law constitutional, since it did not favor one religion over another but applied to all religions. Moreover, the court reminded the state of Ohio that the federal law allowed for prison officials to state a compelling reason (such as safety concerns) for banning certain religious practices.

Contemporary Constitutional Issues



Cases that defined the rights of individuals:

- *Roe v. Wade* (1973): Upheld a woman's right to an abortion on privacy grounds
- *Cruzan v. Director, Missouri Department of Health* (1990): Prohibited removing a patient from life support without "clear and convincing evidence" of the patient's wishes

The Supreme Court has at times examined issues that the Constitution's Framers in all likelihood did not foresee, including the often divisive issues of abortion and assisted suicide. In 1973, the court heard the case of a Texas woman (whom her attorneys dubbed "Jane Roe" to preserve her anonymity) who sought to terminate her pregnancy. Texas state law prohibited abortion except in order to save the woman's life. The central question before the court concerned whether the Constitution protects a woman's right to terminate a pregnancy via an abortion. In a 7–2 decision, the court ruled in favor of Ms. Roe, affirming that a woman's right to an abortion fell within her Fourth Amendment right to privacy (a right which case law precedent supported and which the Ninth Amendment did not expressly deny to the people), which the due process clause of the 14th Amendment extended to the states. The court elaborated on its ruling, stating that during the first trimester of pregnancy, the decision fell exclusively to the woman (with advice from her doctor). During the second and third trimesters, a state could regulate abortion if it chose to, for reasons related to the health of the woman.

Severe injuries sustained in a 1983 automobile accident left Nancy Cruzan in a coma, her life artificially sustained by a feeding tube. After several years of efforts to rehabilitate her failed, physicians determined that she lay in a persistent vegetative state and kept her on life support. With virtually no chance of recovery, her parents attempted to terminate her treatment, but state hospital officials refused to do so without court approval. After years of legal wrangling, the Supreme Court ruled in *Cruzan v. Director, Missouri Department of Health* (1990) that although individuals could refuse medical treatment under the due process clauses of the Fifth and 14th Amendments, incompetent persons could not. Without "clear and convincing evidence" that the patient wanted to end treatment, the state hospital's efforts to keep the patient alive were constitutional.

Contemporary Constitutional Issues (continued)

Cases that defined the rights of individuals:

- *Gonzales v. Oregon* (2006): barred the U.S. Attorney General from punishing doctors who participate in physician-assisted suicide



The case of *Gonzales v. Oregon* (2006) involved issues of both federalism and privacy. In 1994, voters in Oregon approved a law that legalized physician-assisted suicide and reaffirmed the law in 1997 by a wide majority. The law allowed doctors to prescribe a lethal dose of medication to a patient suffering from an incurable, fatal condition (i.e., one who is within six months of death). Two doctors must agree on the patient's condition as well as to the prescription. In 2001, U.S. Attorney General John Ashcroft declared that physician-assisted suicide violated the Controlled Substances Act of 1970 and threatened to revoke the medical license of any participating physician. The case brought up several legal questions, including the legitimacy of federal intrusion into state medical matters, federal officers overruling the will of the people of a state, and a patient's right to die. However, the court concentrated on whether the Controlled Substances Act permitted the Attorney General (Alberto Gonzales held the position in 2006) to ban the use of controlled substances for physician-assisted suicide. In a 6–3 ruling, the court held that the Controlled Substance Act did not give the Attorney General the right to deny physicians their licenses for prescribing medicines that were not themselves illegal. The decision avoided questions about the constitutionality of physician-assisted suicide and the power of the federal government over state decisions. These matters would have to be settled at a later time.

Discussion Questions

1. On what constitutional basis did the court in *Taylor v. Louisiana* reverse its ruling in *Hoyt v. Florida*?
2. Review the court's decisions in the cases of *Graham v. Richardson* and *Plyler v. Doe*. What was the court's rationale for granting the rights of citizens to immigrants—even those who are in the country illegally? Do you agree with these rulings? Why or why not?
3. Why did the court deny prisoners' claims to equal protection and to guarantees against unreasonable searches and seizures in the cases of *Wilson v. Seiter* and *Hudson v. Palmer*?

1. In the earlier case of *Hoyt v. Florida*, the court felt a woman's domestic duties could excuse her from jury duty. In *Taylor v. Louisiana*, the court reversed that decision and ruled that exempting women from juries did not provide an adequate cross-section of the community and therefore violated the Sixth Amendment provision for a fair jury trial—a more important consideration than social custom.
2. In both cases, the court cited the equal protection clause of the 14th Amendment as reason to grant the rights of citizens to resident aliens and illegal immigrants. Answers to the opinion questions will vary.
3. The court viewed the need to maintain safety and order in a prison as more pressing than prisoners' constitutional rights. The court also pointed out that inmates' claims of property loss could be remedied through established prison procedures.

Discussion Questions (continued)

4. In *Cutter v. Wilkinson*, why did the court rule against the state of Ohio for abridging prisoners' religious freedoms? Do you agree with this ruling? Why or why not?
 5. What was the constitutional basis of the Supreme Court's decision in *Roe v. Wade*, and how did this ruling apply to the states? What conditions did the ruling place on a woman's right to an abortion?
 6. In the *Cruzan* case, why did the Supreme Court decide in favor of the state of Missouri? Why did the court feel the U.S. Attorney General did not have the power to forbid doctors from dispensing lethal drugs for assisted suicide in *Gonzales v. Oregon*? What other questions arise from both of these cases?
-
4. The court ruled against the state of Ohio primarily because the federal law protecting prisoners' religious freedoms also allowed for prison officials to file for exemptions under special circumstances. Answers to the opinion questions will vary.
 5. The central constitutional rationale was that a woman had an expectation of privacy in matters of pregnancy and its termination (at least in the first trimester). In a 7–2 decision, the court affirmed that a woman's right to an abortion fell within her Fourth Amendment right to privacy (a right which case law precedent supported and which the Ninth Amendment did not expressly deny to the people), which the due process clause of the 14th Amendment extended to the states. The court also held that a state could regulate abortion, if it chose, during the second and third trimesters.
 6. In *Cruzan*, the court felt that while a competent individual had the right to refuse medical treatment, an incompetent or incapacitated person could not exercise (and therefore did not have) that right. In *Gonzales v. Oregon*, the court decided that the Controlled Substances Act of 1970 (the foundation of the government's argument) did not give U.S. Attorney General Gonzales the authority to revoke a doctor's license for dispensing legal drugs used for lethal purposes; the court limited its ruling to this single issue. Other questions raised by *Gonzales* include the constitutionality of physician-assisted suicide and the power of the federal government to overrule the clear will of the people of a state.

Judicial Activism vs. Judicial Restraint

- The study of law and constitutionalism is not an exact science
- Contrasting viewpoints of constitutional interpretation:
 - Judicial restraint—interpreting the Constitution as strictly as possible
 - Judicial activism—interpreting the Constitution in ways that may depart from precedent or supposed intent



Unlike math or chemistry, the study of law and constitutionalism is not an exact science. History's fluid nature makes actions once considered acceptable or within the law later seem repugnant (and vice versa); this same characteristic also makes understanding court decisions difficult—especially those of the Supreme Court. In addition to shifting social attitudes, changes in the court's membership alters its judicial temperament (that is, how it interprets the Constitution). Justices may rule based solely on what the Constitution says, but their experiences and views of the Constitution often vary.

These differing views of interpreting the Constitution fall into two broad classifications: judicial restraint and judicial activism. Supporters of judicial restraint believe that the courts should leave policy decisions to the federal and state legislative and executive branches, or to the lower state or local courts closest to the situation. Judicial restraint therefore advocates interpreting the Constitution as closely as possible to its "original" meaning. Justices who adhere to this philosophy are called "strict constructionists" or "originalists." Judicial activism recognizes that the two elected branches represent the will of the people and usually make fair and just decisions, but also that members of society who lack the resources or political clout to effectively convince the policy-setting branches to see their side sometimes need a voice. Judicial activists assume the responsibility for rejecting harmful actions by government or individuals and for charting new constitutional directions.

Judicial Activism vs. Judicial Restraint (continued)

- Both viewpoints nearly as old as the nation
- Judicial review the first instance of judicial activism
- Judicial activism has been used to:
 - Establish federal power over the states
 - Extend Bill of Rights protections to the states
 - Settle the 2000 presidential election
- Judicial restraint has been used to:
 - Uphold state laws favoring “separate but equal”
 - Support state laws over federal regulations

These two judicial philosophies are often highlighted during the nomination process for federal judges and Supreme Court justices or following the announcement of a controversial Supreme Court decision. At these times, accusations of “activist judges” and “justices who legislate from the bench” often fly. The controversy over judicial activism and judicial restraint is nearly as old as the nation. Thomas Jefferson distrusted several judges because of their activism. He believed that an unelected body whose members have a potential lifetime tenure and the power to overrule the people’s representatives would prove very dangerous for the fledgling republic.

The first example of judicial activism was Chief Justice John Marshall’s assertion of judicial review in *Marbury v. Madison* (1803). The Constitution did not give the courts the power to do this. Chief Justice Marshall asserted this power in the context of the political struggle between Federalists and Democratic-Republicans. In his view (and in the view of many of the Constitution’s Framers) the court’s role was to help balance out the powers of the other two branches and the political factions contained therein.

Since then, Supreme Court rulings taking an activist position have supported federal power over states’ rights, extended the Bill of Rights to the states through the 14th Amendment, and settled the 2000 presidential election. Examples of judicial restraint by the Supreme Court can be seen in decisions that upheld state laws favoring “separate but equal” arrangements, that struck down federal regulations in matters it deemed exclusive to the states, and that rejected the opportunity to create social change by leaving policy making to the legislative branch.

Judicial Activism vs. Judicial Restraint (continued)

Judicial activism has brought about needed change:

- Defined the power of the Supreme Court in its early days
- Brought about new thinking regarding civil rights
- Led to legislation promoting equality

Judicial restraint has helped control federal power:

- Maintained balance between federal and state power
- Limited government influence over the economy
- Provided a gradual transition for social change

In the current political climate, critics accuse judicial activists of being out of the mainstream of public opinion; opponents of judicial restraint call judges a mere “rubber stamp” for the will of the majority at the cost of minority rights. When used this way, these labels make for little more than political criticism and rhetoric.

Recognizing whether a court has exercised judicial activism or judicial restraint becomes difficult when looking only at political ideology (liberal or conservative). However, both are important doctrines for courts when deciding cases and for the public’s understanding of courts’ rulings. Depending on the circumstances of the case, judicial activism has brought about needed changes in the legal system and consequently in the way members of society deal with each other. The judicial activism of the Supreme Court’s civil rights decisions prompted legislation guaranteeing to all segments of society the promises of Bill of Rights protections.

In numerous cases throughout the court’s history, judicial restraint has helped to check the power of the federal government over the states. Judicial restraint exercised by the court against New Deal legislation upheld previous rulings which restrained both the federal and state governments from undue involvement in economic matters. Judicial restraint also helps provide for a steadier transition of social and political ideology, allowing society to gradually accept the changes that come along.

The Legacy of the Supreme Court

- A unique institution among the three branches, with no power to enforce its rulings, yet having the authority to create major shifts in the nation's direction
- All who come to have disputes resolved receive equal justice under the law
- The Supreme Court balances the competing interests of different branches and levels of government, as well as those between government and its citizens



The Supreme Court is a unique institution: Unlike the other two branches, it has no power to enforce its decisions; yet its rulings have created major shifts in the nation's course. Its members cannot actively seek out the job; they come to the court only by presidential nomination and with the Senate's confirmation. The court has a reputation of being austere and removed, yet may be the most human of government institutions. People from all walks of life—rich and poor, all colors and races, those of high stature and the lowest on the social pecking order—come to the court seeking a resolution to their disputes, and all are provided equal justice under the law.

The scales of justice symbolize the act of fairly weighing evidence in a court of law. They also symbolize the delicate balance the Supreme Court strives to keep between the other two branches of government, between the federal government and states, between individual states, and between the rule of the majority and the rights of the individual. The history of the Supreme Court illustrates its efforts at maintaining and preserving that balance in the people's relationship to their government now and in the future.

Discussion Questions

1. Define the terms “judicial restraint” and “judicial activism.”
2. How can it be said that John Marshall was the first judicial activist on the Supreme Court?
3. Identify the types of cases that have followed from judicial restraint and judicial activism. Why do you think both of these philosophies have had a place in Supreme Court rulings?

1. Judicial restraint is the practice of interpreting the Constitution in accordance with the Framers’ original intentions (or as closely as can be ascertained). Judicial activism concerns the belief that while the other two branches are the chief policy makers, oppressed or unheard minorities don’t always have the leverage needed to influence them; therefore, the courts should sometimes depart from precedent in order to reject government actions that violate the rights of minorities.
2. The Constitution does not give the Supreme Court the power of judicial review, but John Marshall asserted this power in *Marbury v. Madison*. The power of judicial review allowed the court to further define its role as arbiter for all segments of government and society.
3. As outlined in the slides, cases where the court exhibited judicial restraint have checked the power of the federal government over the states, limited government regulation of the economy, and provided a gradual transition for political and social change. Cases where the court exhibited judicial activism have asserted federal power over the states, extended equal protection to the states, and prompted new legislation to promote equality.

Major Supreme Court Decisions



Major Supreme Court Decisions



Constitutional Rights

- Declaration of Independence introduced the fundamental rights provided by the Constitution
- Right to life, liberty, and the pursuit of happiness
- Framers saw the government as unfinished and believed that rights would evolve over time
- Who possessed these rights—were they absolute, unlimited, and guaranteed in all cases?



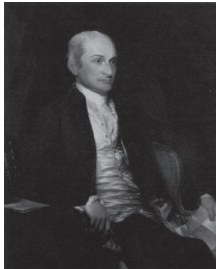
Constitutional Rights (continued)



- Constitution is a “living document” — adaptable to the times
- Supreme Court defines the meaning of the Constitution
- Boundaries within the government and between government and the people help safeguard the people’s rights
- The court’s rulings often reflect the times and are subject to change

The Supreme Court: The Early Years

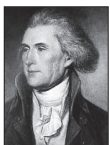
- Origins in the Constitution
- Judiciary Act of 1789
- Early years saw little participation, activity, or interest
- First major case was quickly overturned
- Hearing cases in circuit courts (“riding circuit”) both physically demanding and ethically questionable



John Jay, the first chief justice of the Supreme Court

The Supreme Court: The Early Years (continued)

- Supreme Court viewed as “least dangerous branch” of government
- Major political parties: Federalists and Democratic-Republicans
- Each party wanted to take the country in a different direction
- 1801: President Adams appoints John Marshall Chief Justice



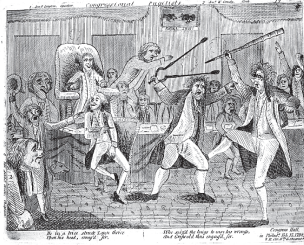
Thomas Jefferson



John Adams

The Supreme Court: The Early Years (continued)

- Partisanship dominated politics
- To extend Federalist influence, President Adams appointed “midnight judges”
- *Marbury v. Madison* (1803)
- The Supreme Court is an appellate court



Federalists and Democratic-Republicans brawl in the House of Representatives, 1798

The Supreme Court: The Early Years (continued)



John Marshall

- Marshall’s ruling originated the doctrine of judicial review
- Only the court has the power to declare acts of Congress and the president unconstitutional

The Importance of Judicial Review

- Confirms the Framers’ intention to create three separate and independent branches of government
- Judicial review established the court’s unique ability to interpret the Constitution
- The interpretation may change with the times, as the court makes decisions on a case-by-case basis



Discussion Questions

1. Explain the statement, "The Constitution is a living document." What is the Supreme Court's role as it relates to the Constitution?
2. What were some of the problems the Supreme Court faced during the first ten years of its existence?
3. Describe the differing visions the Federalists and the Democratic-Republicans had for the country, as well as the criticisms each party had of the other.

Discussion Questions

4. What led President Adams to make his "midnight judges" appointments?
5. What dilemma did Chief Justice Marshall face in deciding *Marbury v. Madison*?
6. What is the importance of judicial review to the Supreme Court and the balance of power among the three branches of government?

The Power of Judicial Dissent

- Supreme Court is an appellate court
- Justices deliver opinions on the cases they review
- Majority opinions carry the ruling on the case
- Minority, or "dissenting," opinions don't have legal force but can effect change at a later time
 - Congress may pass a law limiting the court's ruling
 - Dissenting opinions may influence later court decisions



The Supreme Court room in the Capitol

The Power of Judicial Dissent (continued)



Justice Stephen J. Field

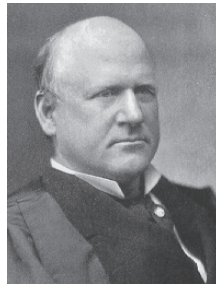
Munn v. Illinois (1877):

- Majority ruled government could regulate private business
- Justice Field insisted the 14th Amendment only applied to government, not private business
- His dissent later influenced the court not to interfere in private business
 - *Civil Rights Cases* (1883)
 - *Lochner v. New York* (1905)

The Power of Judicial Dissent (continued)

Plessy v. Ferguson (1896):

- Louisiana law allowed for “separate but equal” accommodations
- Justice Harlan believed the Constitution was “color-blind”
- His dissent influenced the 1954 *Brown v. Board of Education* decision



Justice John Marshall Harlan

The Power of Judicial Dissent (continued)



Justice Louis Brandeis

Olmstead v. United States (1928):

- Electronic surveillance used as a tool for fighting crime
- Justice Brandeis’s dissent warned that new technology would continue to pry into people’s lives
- His belief that the Fourth Amendment protects people helped reverse *Olmstead* in *Katz v. United States*

Discussion Questions

1. What does it mean that Supreme Court is an appellate court?
How does this fact relate to Justice Marshall's ruling in *Marbury v. Madison*?
2. What are dissenting opinions? Why are they important?
3. How did Justice Field's dissent differ from the majority's regarding the application of the 14th Amendment to private businesses?
4. Why did Justice Harlan feel the "separate but equal doctrine" was unconstitutional?
5. How did the circumstances in *Olmstead v. United States* lead Justice Brandeis to believe that interpretations of the Constitution needed to adjust to the times?

The Boundaries of Federalism

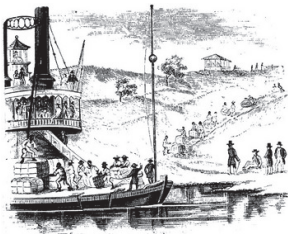
McCulloch v. Maryland (1819):

- Allows Congress to create laws "necessary and proper" for the operation of the country
- Affirmed federal power over states



The Second Bank of the United States

The Boundaries of Federalism (continued)



An early 19th-century steamboat unloading

Gibbons v. Ogden (1824):

- Upheld federal law as the supreme law of the land
- Asserted federal power over states

The Boundaries of Federalism (continued)

Barron v. Baltimore (1833):

- Declared that Bill of Rights protections do not apply to the states
- Supported states' power over federal government



Baltimore harbor, around 1830

Discussion Questions

1. Describe the concept of federalism and the role of the Supreme Court in settling disputes over federalism.
2. Explain the Supreme Court's rationale in *McCulloch v. Maryland* for allowing Congress to establish a national bank, and in *Gibbons v. Ogden* for regulating interstate trade.
3. Why did the court rule it had no jurisdiction regarding the alleged violation of rights by the city of Baltimore in the case of *Barron v. Baltimore*?

Limits on the Executive Branch

The Supreme Court has at times defined the powers of the executive branch:

- *Prize Cases* (1863): Permitted Lincoln's exercise of war powers without a congressional declaration of war



1861 cartoon map of the Union blockade of the South

Limits on the Executive Branch (continued)



Japanese Americans interned at the Manzanar relocation camp during WWII

The Supreme Court has at times defined the powers of the executive branch:

- *Ex parte Milligan* (1866): Unconstitutional for military courts to try civilians when civilian courts are in session, even during wartime
- *Hirabayashi v. United States* (1943): Upheld racial discrimination in times of war

Limits on the Executive Branch (continued)

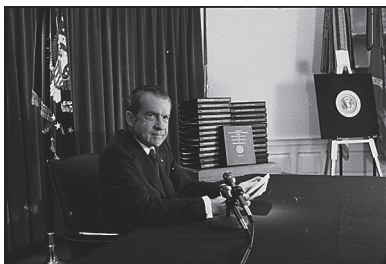
The Supreme Court has at times defined the powers of the executive branch:

- *Youngstown Sheet and Tube Co. v. Sawyer* (1952): The president as commander-in-chief cannot seize private property without congressional approval



President Truman in 1952 conferring with labor leader Walter Reuther

Limits on the Executive Branch (continued)



President Nixon at the press conference at which he released the transcripts of the White House tapes

- *United States v. Nixon* (1974)
The president must be accountable to the law

Limits on the Legislative Branch



Supreme Court cases that defined the powers of Congress:

- *Schechter Poultry Corp. v. United States* (1935): Congress has the authority to regulate trade between states, but not within states

Limits on the Legislative Branch (continued)

Supreme Court cases that defined the powers of the Congress:

- *West Coast Hotel Company v. Parrish* (1937): Government may regulate the economy in times of hardship



President Franklin Roosevelt

Discussion Questions

1. Review the four cases regarding presidential powers during wartime. Do you feel the Supreme Court ruled correctly in each case? Why or why not? What relationship do any of these cases have to more recent presidential actions in times of war?
2. For 30 years the Supreme Court adhered to the “liberty of contract” doctrine, which stated that the federal government had no authority to regulate private businesses. How did the court view this doctrine differently in the two New Deal cases of *Schechter* and *West Coast Hotel Corp.*? Why do you think the Supreme Court changed its position between the two cases?

First Amendment Cases: Religion

On the free exercise clause:

- *Minersville School District v. Gobitis* (1940): Ruled that political responsibility supersedes religious freedom
- *West Virginia Board of Education v. Barnette* (1943): Reversed the *Gobitis* decision; religious freedom trumps patriotism



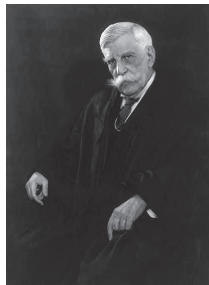
First Amendment Cases: Religion (continued)

On the establishment clause:

- *Engle v. Vitale* (1962): Any state-sponsored prayer session in public schools violates the establishment clause
- *Lemon v. Kurtzman* (1971): Stated that government support to religious schools:
 1. Must have a legitimate secular purpose,
 2. Must not advance or inhibit religion, and
 3. Must not create an “excessive entanglement” of government and religion

First Amendment Cases: Speech

- The Framers originally viewed the First Amendment as only protecting political speech
- *Schenck v. United States* (1919): Speech that presents a “clear and present danger” cannot be protected



Justice Oliver Wendell Holmes

First Amendment Cases: Speech (continued)



Even repugnant messages, such as the ones at this segregationist rally from the 1950s, are protected under the Constitution

- *Terminiello v. Chicago* (1949): Though the message may be repugnant, free speech must be preserved to allow for the flow of ideas
- *Feiner v. New York* (1951): Speech cannot be restricted for its content, but it may be legitimately suppressed to preserve the peace

First Amendment Cases: Speech (continued)



Expression as protected speech:

- *Tinker v. Des Moines* (1969): Symbolic speech that does not disrupt or invade the rights of others is protected in a school environment



First Amendment Cases: Speech (continued)



Expression as protected speech:

- *Texas v. Johnson* (1989): Burning the American flag in protest constitutes free expression
- *United States v. Eichman* (1990): Only with a constitutional amendment can Congress reverse a Supreme Court decision

First Amendment Cases: The Press

- *Near v. Minnesota* (1931): Declared prior restraint unconstitutional in nearly all cases
- *Hazelwood School District v. Kuhlmeier* (1988): School-sponsored newspapers not protected in the same way as standard press



First Amendment Cases: Assembly



- *DeJonge v. Oregon* (1937): Extended the right of free assembly to the states via the 14th Amendment
- *Cox v. New Hampshire* (1941): established the doctrine of time, place, and manner for public demonstrations
- *Lloyd Corporation v. Tanner* (1972): freedom of assembly protections do not apply to private property

Discussion Questions

1. Compare the cases of *Gobitis* and *Barnette*. Why do you think the court reversed its opinion in just two years?
2. Compare the two cases of *Engle v. Vitale* and *Lemon v. Kurtzman*. Why do you think the court ruled that funding for non-religious instruction in religious schools still supported religion, and therefore violated the First Amendment's establishment clause?
3. Discuss the court's distinctions regarding the limits of free speech in the *Schenck*, *Terminiello*, and *Feiner* cases. What seems to be the common standard for determining whether speech receives First Amendment protections?

Discussion Questions (continued)

4. Describe the two kinds of symbolic speech in the *Tinker v. Des Moines School District* and *Texas v. Johnson* cases. Besides reaffirming its earlier ruling in *Texas v. Johnson*, what other message did the court send Congress when it struck down the Flag Protection Act of 1989?
5. Define the term “prior restraint” and describe why it was used to censor both *The Saturday Press* and *The Spectrum*. Discuss how the court’s decisions in these two cases differed. Do you agree or disagree with the court’s distinction between student and standard publications?
6. Review the three cases involving freedom of assembly. What were the important points of each case? How did these three cases help define the extent of freedom of assembly?

Fourth Amendment Cases

Protections against “unreasonable searches and seizures”:

- *Weeks v. United States* (1914): Established the “exclusionary rule”
- *Mapp v. Ohio* (1963): Extended the exclusionary rule to the states



Fourth Amendment Cases (continued)



Protections against “unreasonable searches and seizures”:

- *United States v. Leon* (1984): Clarified the exclusionary rule
- Exclusionary rule not intended to protect a suspect’s constitutional rights, but to deter and penalize police misconduct

Other Bill of Rights Cases

Fifth Amendment:

- *Miranda v. Arizona* (1966): Protection against self-incrimination

Sixth Amendment:

- *Gideon v. Wainwright* (1963): Guaranteed a suspect's right to counsel



Other Bill of Rights Cases: Eighth Amendment

Establishing the standard against "cruel and unusual punishments":

- *Trop v. Dulles* (1958): Punishment must reflect the evolving standards of decency

Clarifying the standard:

- *Furman v. Georgia* (1972): Death penalty disallowed; more guidance for judge and jury needed
- *Gregg v. Georgia* (1976): Death penalty allowed in cases involving premeditated murder with separate trial and sentencing phases

Other Bill of Rights Cases: Eighth Amendment (continued)



Permitting the execution of persons under 18 years old:

- *Stanford v. Kentucky* (1989): With no national consensus, juvenile executions left up to states

The court reversed itself on the execution of juveniles:

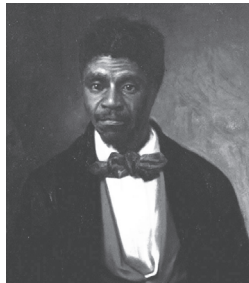
- *Roper v. Simmons* (2005): Evolving standards of decency had changed; juvenile execution now prohibited

Discussion Questions

1. Describe the purpose of the exclusionary rule. What are some of its advantages and disadvantages?
2. How do the court's decisions in *Miranda* and *Gideon* reflect the due process protections in the "Miranda warning" that police recite during an arrest?
3. Explain how the court clarified the limits of "cruel and unusual punishment" in *Trop v. Dulles*. Do you feel this standard is reasonable in capital cases? Why or why not?
4. Describe how the court applied the above standard to the cases of *Stanford v. Kentucky* and *Roper v. Simmons*. Explain whether you agree or disagree with the court's conclusions, and why.

Key Civil Rights Decisions

- Supreme Court heard few civil rights cases prior to the Civil War
- *Dred Scott v. Sandford* (1857): Since blacks were not and could not be citizens, they had no constitutional protections



Dred Scott

Key Civil Rights Decisions (continued)



- *Hall v. DeCuir* (1878): States could not pass laws barring racial discrimination on passenger carriers involved in interstate commerce
- *Civil Rights Cases* (1883): 14th Amendment protections did not apply to the operation of private enterprises

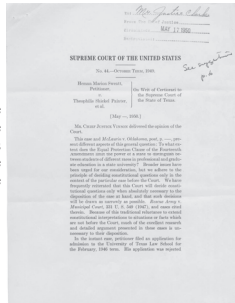
Key Civil Rights Decisions (continued)

- *Plessy v. Ferguson* (1896): Instituted the “separate but equal” doctrine
- *Morgan v. Virginia* (1946): Struck down state-mandated discrimination on passenger vehicles engaged in interstate transportation



Key Civil Rights Decisions (continued)

Draft of the
Supreme
Court's
opinion in the
Sweatt case



- *Sweatt v. Painter* (1950): Segregated facilities differing in quality violate the “separate but equal” doctrine

Key Civil Rights Decisions (continued)

- *Brown v. Board of Education* (1954): Determined “separate but equal” to be inherently unequal



Thurgood Marshall (center) and fellow NAACP lawyers in the *Brown* case

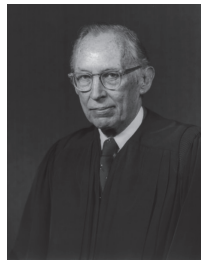
Key Civil Rights Decisions (continued)



- *Katzbach v. McClung* (1964): Businesses engaged in substantial interstate trade could not discriminate based on race

Key Civil Rights Decisions (continued)

- *University of California Regents v. Bakke* (1978): Racial considerations may be one—but not the only—factor in college admissions



Justice Lewis Powell

Discussion Questions

1. What did the Supreme Court rule in *Dred Scott v. Sandford*? Why do you think the case created such controversy at the time?
2. The 14th Amendment was intended to end racial discrimination and enforce the promises of equal protection and due process. How did the court's rulings in *Hall v. DeCuir*, the *Civil Rights Cases*, and *Plessy v. Ferguson* help to perpetuate such discrimination for another 80 years?

Discussion Questions (continued)

3. Describe how the Supreme Court gradually began to address the issue of segregation in public facilities (including schools and privately owned establishments such as restaurants) between 1946 and 1964.
4. How did *University of California Regents v. Bakke* present a case of “reverse discrimination”? How did the court’s decision side with Bakke but still honor the university’s affirmative-action policy?

14th Amendment Cases: Equal Protection



All-male jury, 1920s

Landmark cases have involved gender discrimination and the rights of immigrants and prison inmates

Gender discrimination:

- *Hoyt v. Florida* (1961): State laws may exempt women from jury duty
- *Taylor v. Louisiana* (1975): Reversed *Hoyt*—exempting women from juries violates Sixth Amendment as extended to states by the 14th Amendment

14th Amendment Cases: Equal Protection

Yick Wo v. Hopkins (1886):

- Though constitutional on its face, a law may not be administered in an unconstitutional manner
- Non-citizens entitled to same 14th Amendment protections as citizens



14th Amendment Cases: Equal Protection (continued)



Equal protection for
immigrants and illegal aliens:

- *Graham v. Richardson* (1971): legal immigrants entitled to same benefits and freedoms as citizens
- *Plyler v. Doe* (1982): children of illegal immigrants have the right to public education

14th Amendment Cases: Equal Protection (continued)

Wilson v. Seiter (1991):

- Denied Eighth Amendment protections against cruel and unusual punishment to prisoners
- Inmates must prove "deliberate indifference" by prison officials



14th Amendment Cases: Equal Protection (continued)



Hudson v. Palmer (1984):

- Denied prisoners Fourth Amendment protection against unreasonable search and seizure
- Prison safety and security outweigh constitutional concerns

14th Amendment Cases: Equal Protection (continued)

Cutter v. Wilkinson (2005):

- First Amendment guarantees of religious freedom generally apply to prisoners
- Giving special sanction to religion did not violate First Amendment's establishment clause



Contemporary Constitutional Issues



Cases that defined the rights of individuals:

- *Roe v. Wade* (1973): Upheld a woman's right to an abortion on privacy grounds
- *Cruzan v. Director, Missouri Department of Health* (1990): Prohibited removing a patient from life support without "clear and convincing evidence" of the patient's wishes

Contemporary Constitutional Issues (continued)

Cases that defined the rights of individuals:

- *Gonzales v. Oregon* (2006): barred the U.S. Attorney General from punishing doctors who participate in physician-assisted suicide



Discussion Questions

1. On what constitutional basis did the court in *Taylor v. Louisiana* reverse its ruling in *Hoyt v. Florida*?
2. Review the court's decisions in the cases of *Graham v. Richardson* and *Plyler v. Doe*. What was the court's rationale for granting the rights of citizens to immigrants—even those who are in the country illegally? Do you agree with these rulings? Why or why not?
3. Why did the court deny prisoners' claims to equal protection and to guarantees against unreasonable searches and seizures in the cases of *Wilson v. Seiter* and *Hudson v. Palmer*?

Discussion Questions (continued)

4. In *Cutter v. Wilkinson*, why did the court rule against the state of Ohio for abridging prisoners' religious freedoms? Do you agree with this ruling? Why or why not?
5. What was the constitutional basis of the Supreme Court's decision in *Roe v. Wade*, and how did this ruling apply to the states? What conditions did the ruling place on a woman's right to an abortion?
6. In the *Cruzan* case, why did the Supreme Court decide in favor of the state of Missouri? Why did the court feel the U.S. Attorney General did not have the power to forbid doctors from dispensing lethal drugs for assisted suicide in *Gonzales v. Oregon*? What other questions arise from both of these cases?

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Judicial Activism vs. Judicial Restraint (continued)

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Discussion Questions

1. Define the terms “judicial restraint” and “judicial activism.”
2. How can it be said that John Marshall was the first judicial activist on the Supreme Court?
3. Identify the types of cases that have followed from judicial restraint and judicial activism. Why do you think both of these philosophies have had a place in Supreme Court rulings?
