

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

The Retroactivity Scorecard

The Supreme Court more often than not refused to apply retroactively decisions protecting the rights of persons suspected of convicted of crimes. Below is a list of major decisions on retroactivity (the decision whose retroactivity was considered is indented). What explains the difference between the many decisions not applied retroactively and the few that were?

Decisions Finding Retroactivity

Self-incrimination

U.S. v. U.S. Coin and Currency (1971)

Right not to register as a gambler. *Marchetti v. United States* (1968).

Double Jeopardy

Price v. Georgia (1970)

Incorporation of the double jeopardy clause. *Benton v. Maryland* (1969).

Robinson v. Neil (1973)

State and municipal prosecutions for same offense violate double jeopardy. *Waller v. Florida* (1970).

Right to Counsel

Arsenault v. Massachusetts (1968)

Right to counsel in any proceeding in which a criminal suspect pleads guilty. *White v. Maryland* (1963).

McConnell v. Rhay (1968)

Right to counsel at parole revocation hearing. *Mempa v. Rhay* (1967).

Kitchens v. Smith (1971)

Right to counsel at trial. *Gideon v. Wainwright* (1963).

Berry v. City of Cincinnati, Ohio (1973)

Right to counsel in any case in which the defendant is found guilty and sentenced to prison.
Argersinger v. Hamlin (1972).

Confrontation

Roberts v. Russell (1968)

Jury may not consider statements of a codefendant that implicate the defendant. *Bruton v. United States* (1968).

Berger v. California (1969)

Right to cross-examine witness whose testimony at preliminary hearing was introduced at trial.
Barber v. Page (1969).

Juries

Brown v. Louisiana (1980)

Six person juries must be unanimous. *Burch v. Louisiana* (1979).



Cruel and Unusual Punishment

Schick v. Reed (1974)

Procedures for imposing the death penalty are unconstitutionally arbitrary. *Furman v. Georgia* (1972).

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Due Process

Eskridge v. Washington State Bd. of Prison Terms and Paroles (1958)

Right to a free transcript when one is necessary to make an appeal of right. *Griffin v. Illinois* (1956).

Ivan V. v. City of New York (1972)

Criminal offenses must be proven beyond a reasonable doubt. *In re Winship* (1970).

Hankerson v. North Carolina (1977)

All elements of crime must be proved beyond a reasonable doubt. *Mullaney v. Wilbur* (1975).

Decisions Rejecting Retroactivity

Search and Seizure

Linkletter v. Walker (1965)

Exclusionary rule. *Mapp v. Ohio* (1961).

Desist v. United States (1969)

Warrants for wiretapping. *Katz v. United States* (1967).

Williams v. United States (1971)

Right that searches incident to an arrest be limited to the immediate area surrounding the criminal suspect. *Chimel v. California* (1969).

Bowen v. U.S. (1975)

Warrantless searches by border patrol. *Almeida-Sanchez v. U.S.* (1973).

Self-Incrimination

Tehan v. U.S. ex rel. Schott (1966)

Prosecutor may not comment on the defendant's failure to testify. *Griffin v. California* (1965).

Johnson v. State of N.J. (1966)

Right to Miranda warnings. *Miranda v. Arizona* (1966).

Right to Counsel

Stovall v. Denno (1967)

Right to counsel during line-up. *United States v. Wade* (1967).

Adams v. Illinois (1972)

Right to counsel at preliminary hearing. *Coleman v. Alabama* (1970).

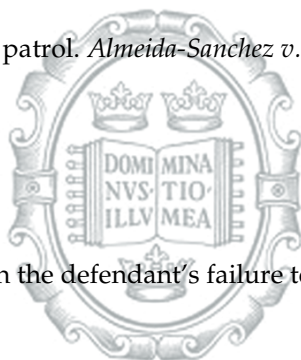
Jury

DeStefano v. Woods (1968)

Right to trial by jury for serious offenses. *Duncan v. Louisiana* (1968).

Daniel v. Louisiana (1975)

Right to have jury panels represent fair cross-section of the community. *Taylor v. Louisiana* (1975).



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Due process

Gosa v. Mayden (1973)

Right of military personal to civil trials for non-service related crimes. *O'Callahan v. Parker* (1969).

Michigan v. Payne (1973)

Right against prosecutorial vindictiveness after conviction is overturned on appeal. *North Carolina v. Pearce* (1969).

Cox v. Cook (1975)

Right to a hearing for violation of prison disciplinary rules. *Wolff v. McDonnell* (1974).



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