

**DEPARTMENT OF POLITICAL SCIENCE
AND
INTERNATIONAL RELATIONS**

Posc 105

MAJORITY RULE VERSUS MINORITY RIGHTS

- I. THIS MORNING:
 - A. Interpreting rights
 - B. Film: Search and Seizure
- II. GENERAL PROPOSITIONS ABOUT RIGHTS:
 - A. Read these comments on your own. We will discuss some next Monday and during the remainder of the semester.
 - B. Comment: foreigners often remark about America's commitment to rights; its willingness to protect them even at the expense of the common good.
 - 1. An example: gun control?
 - C. Proposition: rights inevitably conflict with at least one of democracy's main assumptions, majority rule.
 - D. The very idea of a "right" implies disagreement over its meaning and range of application.
 - 1. After all, discussion of a right implies a claim one sort or another on someone or some agency.
 - E. Proposition: Each generation must redefine and reestablish rights:
 - 1. Rights are never permanent but must be won again and again and again.
 - F. Proposition: dissidents, criminals, malcontents, and the like serve the interests of ordinary law-abiding citizens. Why? Because they constantly force the political system to think about and reaffirm its commitment to freedoms. Hence, the "dregs" of society--the people we sometimes detest the most--are the very ones who do the most to help preserve liberty. After all, they force public authorities to play by the rules and these rules make us all safer.
 - 1. Think about some of the people in today's film. Although they may be unsavory, their behavior forces society to think about how far rights should be extended.
 - 2. Another example: Larry Flynt, *Hustler*, and obscenity
 - a. He was the subject of a film "The People Versus Larry Flint."
 - G. Two issues arise when discussing political liberties.
 - 1. First how do we reconcile individual rights with majority preferences?
 - a. For example, does a majority have the proper or just power to outlaw certain kinds of speech (e.g., pornography)?
 - 2. Second, since statements about rights are inherently and inevitably ambiguous, how do we interpret them?

- H. Another point: people in different social and economic strata are better able to assert and take advantage of rights than are those in different locations.
 - 1. Isn't this one of the points raised in discussions of O. J. Simpson's trial?

III. SEARCH AND SEIZURE:

- A. Some of these are the issues raised by the documentary, "Search and Seizure."
- B. Film deals with the Fourth Amendment.
 - 1. For the text see Patterson, Appendix page 18 or for a hypertext version:
 - 2. <http://www.law.cornell.edu/constitution/constitution.text.html>
 - a. Also, Patterson, *We the People*, Chapter 4.
 - 3. Keep main terms in mind.
 - a. What were the colonial merchants trying to hide?
 - b. What is a "writ of general assistance?"
 - c. Selective incorporation (Patterson, pages 107, 117 to 123).
 - d. What is the "exclusionary rule?"
 - (1) Patterson, pages 120 to 122.
 - e. "The constable blundered"
 - f. Note the important court decisions, especially Mapp v. Ohio.
 - (1) A copy is available at:
www.fedworld.gov/supcourt/index.htm
- C. Equally important, what do you think about the exclusionary rule? Does it hinder the police too much? Should it be kept as it is or limited?

IV. NEXT TIME:

- A. Political Culture: General Welfare Liberalism
- B. Reading:
 - 1. Patterson, *We the People*, Chapter 4.
 - a. Read for general understanding and pay attention to the material on the Fourth Amendment (search and seizures) as indicated above.
 - 2. Optional: for a collection of Supreme Court cases dealing with the Fourth Amendment go to: <http://supct.law.cornell.edu/supct/cases/topic.htm>
 - 3. Optional: for an interesting discussion of the Fourth Amendment, privacy, and the internet go to: <http://www.cdt.org/privacy/guide/basic/index.html>

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