

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

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

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**The Retroactivity Scorecard**

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*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)

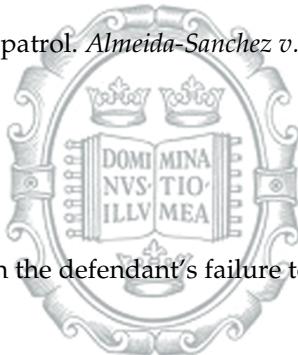
Warrants for wiretapping. *Katz v. United States* (1967).

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).

## 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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