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Euthanasia: Court in Session?

By Hadear Abdou, Senior, Political Science/Mass Comm

Euthanasia is one of the most controversial areas in both constitutional law and biology. Time has proven that it is not an issue for scientists to sort out alone, but rather one that has forced biology to sprout into fields beyond medicine. The process does not entail medicine alone, but also law and justice, morality, and religion.

The dictionary defines euthanasia as "mercy killing, the act of putting to death painlessly or allowing to die, as by withholding extreme medical measures, a person or animal suffering from an incurable, esp. a painful, disease or condition." Supporters argue that euthanasia should be a procedure available to all terminally ill patients because each patient has the right to choose when their life should end. Opponents believe that not only is euthanasia prohibited from a religious perspective, but that patients may not play God when choosing to end their life. Both sides have valid points, and a clear answer is hard to determine.

In 1939, Nazi Germany used gas chambers designed by physicians to kill defective patients to purify the German race. By 1945, 300,000 pure-blood Germans were labeled "defectives," and killed. Hitler also sought to exterminate other supposedly flawed peoples like Jews, Gypsies, Russians, and other Central Europeans.

As of November 2008, euthanasia was legal in two states, Oregon and Washington. Certain criteria must be met before a patient may seek euthanasia. Under Oregon law, patients "must be terminally ill," and they "must have six months or less to live. The person must make two oral requests and one written for assistance in dying. They must further convince two physicians that they are sincere and not acting on a whim and that the decision is voluntary. They cannot have been influenced by depression and they must be informed of "the feasible alternatives," including, but not limited to, comfort care, hospice care, and pain control. And finally, they must wait 15 days after making the decision.

A physician in Oregon is not permitted to take the life of a patient by carbon monoxide or an injection. Instead, the physician has to prescribe medicine that will take the patient's life. The numbers are interesting. According to one online news service, "In 2002, a total of 58 prescriptions of lethal doses of medication were written by 33 physicians. The number of prescriptions written has increased over the five years since legalization: 44 prescriptions were

written in 2001, 39 prescriptions were written in 2000, 33 in 1999, and 24 in 1998. Thirty-six of the fifth-year prescription recipients died after ingesting the medication, 16 died from their illness, and six were alive on December 31, 2002."

Two Supreme Court cases cover euthanasia, *Washington v. Glucksberg* and *Vacco v. Quill*. The first was initiated by four physicians who opposed Washington State's ban on physician-assisted suicide. They claimed that if it was not for that ban, they would have assisted many of their terminally ill patients to fulfill their will. Both the district and circuit courts ruled in favor of Dr. Harold Glucksberg, while the Supreme Court had a different opinion. The Court found "that respondents' asserted 'right' to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause." The court held that this right had no roots in traditional American values, because the state possessed several interests in preserving human life. "These interests include prohibiting intentional killing and preserving human life; preventing the serious public health problem of suicide, especially among the young, the elderly, and those suffering from untreated pain or from depression or other mental disorders; protecting the medical profession's integrity and ethics and maintaining physicians' role as their patients' healers; protecting the poor, the elderly, disabled persons, the terminally ill, and persons in other vulnerable groups from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards voluntary and perhaps even involuntary euthanasia." Thus, Court held that physician-assisted suicide was not protected by the Fourteenth Amendment.

In *Vacco*, a number of New York physicians filed a suit against the New York attorney general to reverse a ban on euthanasia. The physicians claimed that the ban violated the Fourteenth Amendment's Equal Protection Clause. They questioned how it can be illegal for patients to request physician-assisted suicide when it was perfectly legal for those same terminally ill patients to refuse key medical treatment. The Court held that "neither the assisted suicide ban nor the law permitting patients to refuse medical treatment treats anyone differently from anyone else or draws any distinctions between persons. *Everyone,* regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment; *no one* is permitted to assist a suicide."

While physician-assisted suicide is one way to die, refusing medical treatment is also another way for patients to end their life. The Court recognized that even if the destination was the same, the journey differed. Refusing treatment is a right guaranteed by the Constitution, while requesting a physician, whose job is to save lives, to take a life is not. These distinctions are crucial both to the case as well as to help us better understand what the Supreme Court's opinion means. The Court unanimously held that New York's ban on physician-assisted suicide did not violate the Equal Protection Clause.

The question now is when the Court will decide whether it is up to terminally ill patients to end their lives with a doctor's help. While many people have compared this debate to the issue of abortion, I disagree. I believe that modern-day medicine is so advanced that it is rare to find a situation where a patient is not well served by medicine. My opposition to euthanasia is also based on the fear of what may happen to terminally ill patients if they are abused by their family and possibly even by their physicians. A doctor treats the sick and promotes life. He does not take it. If euthanasia were legalized in all fifty states, physicians would have powers that are ethically wrong.

A gynecology resident once explained that a twenty-year old female dying of ovarian cancer was experiencing terrible pain. The patient was accompanied by her mother who asked

the resident to "get this over with," meaning the life of the patient. The resident then injected 20 milligrams of morphine into the patient, and in a matter of minutes, the patient's life was over.

Although much controversy erupted over what this resident did, euthanasia advocates have used it to support their case. They claim that not allowing that patient the right to choose to leave this world would be unethical, especially after seeing the degree of pain that the patient suffered. Furthermore, the patient failed to respond to chemotherapy treatments and was merely under hospice care. Proponents claim that it is degrading to a human being to let a patient suffer, especially if medicine no longer helps her.

This brings up another argument that supporters of euthanasia stand for, namely that people should not be forced to live with excruciating pain. They say that "insistence [on life], against the patient's wishes, that death be postponed by every means available is contrary to law and practice." As medicine advances, it is only logical that the demand for euthanasia will decrease, as more treatments for diseases arise. In 2000, a Zogby poll asked the general public this: if you had a disease that was fatal and that caused horrible pain and discomfort, which of the three things would you do: ask for physician-assisted suicide, wait to see what time will bring, or Not Sure. The poll found that only 30.4 percent said that they would rather have a physician painlessly end their life, while 63.5 percent said they would let nature take its course, and 6.1 percent said they were not sure.

The inherent worth of human life is a principle on which the United States was founded. Legalizing euthanasia contradicts our historical values and corrupts the role that physicians and medicine play in our lives.

Overruling *Bowers v. Hardwick*: The Private Should Stay Private

By Celeste Allen, Junior, Law and American Civilization

America has a history of trying to make everyone conform to the ideal societal image. Apparently that ideal involves everyone being heterosexual. Over the years, there have been laws created that have strictly prohibited what couples, both married and single, could do in their homes. The private lives and practices of the citizens of this country should be left to individuals. It is natural for people to pass judgments on one another, but when legislatures actually prohibit people from being themselves, that is crossing the line. The sexual acts between consensual adults, including those of same-sex couples, in the privacy of their own home should be free from government interference.

The United States history of making sodomy illegal goes as far back as to the English common law tradition in the American colonies. Anti-sodomy laws had their roots in English law. Ten of the thirteen original colonies, excluding New York, New Jersey, and Delaware were settled by England. Noted by George Painter in his history of sodomy laws, the prohibition against sodomy came as a way for England to attacks its enemies:

> A late thirteenth-century publication, *Fleta*, a manual of law published along with a condemnation of dealings with Jews, was the first known legal writing in England on sodomy. It recommended death for sodomites, but apparently never was enforced. Instead, ecclesiastical courts dealt with the crime. Charges of homosexuality were "part of the general "smear" campaign employed by the Inquisition against its enemies" and the term "buggery," later to fall within "sodomy," originated from the word for Bulgaria where targeted heretical groups were known to live.

These laws not only made legal judgments, but they also moral ones about groups of people. Unless it was an act of rape, no one was hurt by these activities. The impact of anti-sodomy laws on consenting homosexual adults did not then and does not now protect anyone from anything, which is a common argument made by the laws' proponents. How would the government even know what is going on in your home? A police officer would have to have some extreme reason to be in your home watching you. Carrying out these particular sodomy laws would require officials basically barging into your home.

This is precisely what happened in the 1986 Supreme Court case of *Bowers v. Hardwick.* An unknowing houseguest let in a police officer who witnessed Michael Hardwick engaging in oral sex with another man. Both men were arrested for violating Georgia's anti-sodomy law. "The Georgia statute made it a criminal offense, punishable by up to 20 years' imprisonment, to commit sodomy, which it defined as performing or submitting to any sexual act involving the sex organs of one person and the mouth or anus of another." The police officer who made the arrest was present to serve a warrant on Hardwick for allegedly throwing a beer bottle in a trashcan outside of a gay bar. The prosecutor opted not to present the case to a grand jury until further evidence was presented. Hardwick then sued the then-Attorney General of Georgia, Michael Bowers, because Hardwick believed the statute was unconstitutional.

Taken at face value, any law is unconstitutional when aimed at regulating or even prohibiting certain behavior from being carried out in the privacy of a citizen's home. It is permissible to prohibit the practice of "lewd" behavior in public because of possible harm to society. However, if you are at home and it is consensual, where is the harm? A right to privacy is expected as well as deserved in your own home, and the government has no right to tamper with that right. Statutes such as anti-sodomy laws have a clear discriminative undertone and seem to be aimed at specific groups. Even though Georgia's statute pertained to both homosexuals and heterosexuals, the events described that led up to Hardwick and his partner's arrests mirror discrimination against gay males by the officer involved.

The Supreme Court held the Georgia statute constitutional by a five-to-four vote. Justice Byron White ruled that "the issue presented is whether the US Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal. . . . The case also calls for some judgment about the limits of the Court's role in carrying out its constitutional mandate. . . . Precedent aside, however, respondent would have us announce, as the Court of Appeals did, a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do." He noted that "the Constitution does not confer a fundamental right upon homosexuals to engage in sodomy." The Constitution also does not confer a fundamental right to women to have abortions either. However, the Court has no problem upholding the decision made in *Roe v. Wade* thirteen years earlier. In *Roe,* the Supreme Court decided to create a right to privacy that allowed women to obtain abortions. In *Bowers*, that same right was ignored, and an unconstitutional law upheld.

Justice Harry A. Blackmun, in dissent, argued that "this case is no more about a fundamental right to engage in homosexual sodomy, as the Court purports to declare, than *Stanley* v. *Georgia* was about a fundamental right to watch obscene movies, or *Katz* v. *United States* was about a fundamental right to place interstate bets from a telephone booth. Rather, this case is about," quoting Justice Louis D. Brandeis, "the most comprehensive of rights and the right most valued by civilized men, [namely] the right to be let alone." He closed his dissent by saying that "I can only hope that here, too, the Court soon will reconsider its analysis and conclude that depriving individuals of the right to choose for themselves how to conduct their

intimate relationships poses a far greater threat to the values most deeply rooted in our Nation's history than tolerance of nonconformity could ever do."

Seventeen years after *Bowers*, a similar case was presented to the Supreme Court in 2003's *Lawrence v. Texas*. One major difference between this case and *Bowers* is that Texas's sodomy law only criminalized sodomy between homosexuals. The Texas law strictly discriminated against homosexual males.

In *Lawrence*, John Lawrence and his partner, Tyron Garner, were arrested for breaking the "law" upon being observed by a police officer in Lawrence's apartment. On September 17, 1998, someone had called the Harris County Police department, alleging that there was a man in Lawrence's apartment with a gun "going crazy." When the police responded, they actually found Lawrence and Garner engaging in sodomy and arrested them both. The men spent a night in jail and were fined $200 each. According to political scientist David O'Brien, they appealed and challenged the constitutionality of the statute upon which a three-judge panel ruled two to one that the convictions "impermissibly discriminate on the basis of sex," and violated "the Equal Rights Amendment of the state constitution."

A full Texas Court of Appeals reversed this decision in 2001, and Lawrence appealed to the Supreme Court, which voted six to three to strike down the statute as unconstitutional. *Lawrence* succeeded in overruling *Bowers*. Here, the Court applied the "right to privacy" discovered in *Roe v. Wade* to adult homosexuals engaging in sexual acts in the privacy of their homes without the fear of being thrown in jail. No person or group should have to be punished for behaving in a way that is natural to their lives. Would you arrest a dog for barking?

Justice Anthony M. Kennedy delivered the opinion of the Court, establishing that the Texas statute violated the Fourteenth Amendment's Due Process Clause. He along with the other five justices in the majority recognized the harm in prohibiting a particular group from participating in certain activities just because others disapprove of that activity. He wrote that "the present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives."

Not overruling *Bowers* would send a message that it is okay to discriminate against some people, some of the time. Allowing certain behavior to go on between everyone but one group is blatant discrimination, and keeping laws such as these on the books makes it seem as if the entire country agrees if we do not change them. As Justice Kennedy noted, and I cannot help but agree, "When homosexual conduct is made criminal by the law of the state, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres."

Rights and the War on Terrorism

By James Almon, Junior, Political Science

The issue of one's right to left alone was relatively dormant until the twentieth century when new technology was entered into the society and when items like phone lines could be tapped by the government without a warrant. In 1928, the Supreme Court ruled in *Olmstead v.*

United States that the government could tap telephone conversations because a conversation could not be seized, and privacy was not protected by the Fourth Amendment. The case led to a famous dissent from Justice Louis Brandeis who said that people have the right to be left alone, and the government should not interfere with that right. Almost forty years later, *Katz v. United States* overruled *Olmstead* and introduced a reasonable expectation of privacy rule from governmental searches.

Nearly two centuries after the ratification of the Bill of Rights, the Warren Court established a two-pronged test for determining probable cause after holding that a mere claim of possessing reliable information did not establish sufficient reason to grant a warrant to law enforcement. Then in 1984 in *Gates and Massachusetts v. Upton* the Court ruled that judges may determine the totality of circumstances when issuing a warrant. Those cases set the precedent for the right to due process during peacetime, although wartime was different.

Throughout history, presidents have used their commander in chief powers to gain power over other branches, especially during a time of war. Interestingly, the other two branches have been willing accomplices in granting such power to the president. Presidents Abraham Lincoln and Franklin Roosevelt used their prerogative power not found in the Constitution to fight wars. Lincoln suspended *habeas corpus* during the Civil War, while Roosevelt was delegated power by the Congress in *United States v. Curtiss-Wright Corporation* (1936) because the Court held that the president has plenary power to conduct foreign affairs. In 1944 in the *Korematsu* case, the Court authorized Roosevelt to detain Japanese Americans during World War II.

This trend continued following the attacks of September 11, 2001, when the Bush administration subscribed to the theory of the Unitary Executive. This idea, first introduced by Chief Justice John Marshall and his sole organ theory, holds that the president has unlimited authority in foreign and military affairs, especially in wartime. After the 9/11 attacks, the Bush administration thought it could act in any way it chose to prosecute the War on Terrorism.

President Bush received unprecedented authority from Congress to fight the War on Terrorism by approving the USA Patriot Act and the Authorization of the Use of Military Force (AUMF). The administration then argued that the AUMF delegated power to the president to authorize warrantless wiretaps to protect against terrorist attacks. These executive branch actions have enormous ramifications for the due process amendments, which guarantee American citizens certain rights against their government.

The warrantless surveillance of telephone calls, which was established by the Foreign Surveillance Intelligence Act, allowed for the wiretapping of American citizen phone calls only if the government seeks a warrant before the surveillance. However, the president believed that requesting a warrant was an unnecessary step that interfered with his War on Terrorism. A federal district court in Detroit found that the Bush administration wiretaps violated the Foreign Intelligence Surveillance Act and ordered a halt to the program, ruling that "it was never the intent of the framers to give the president such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights." The court wanted prior judicial approval of a warrant to tap domestic phone calls to satisfy the meaning of the Fourth Amendment. In 2007, a FISA court judge ruled that the Bush administration overstepped its power when monitoring domestic phone calls. In response, Congress enacted the Protect America Act, expanding presidential authority to conduct domestic surveillance without court approval.

In another series of rulings, the Supreme Court held that the president cannot keep foreign detainees locked up in the Guantanamo Bay prison camp without due process. The Court

ruled in *Rasul v. Bush* (2004) that non-Americans have the same due process rights as citizens if they are held in a territory fully controlled by the United States, like the US naval base at Guantanamo Bay. A Court ruling in 2008 in *Boumediene v. Bush* found that a defendant in a military court could appeal a decision to a federal court, overturning part of a congressional law that previously denied such a right.

Throughout American history, many presidents have sought to expand their power in a time of war. Alexander Hamilton wrote in Federalist 70 that there must be "energy in the executive" and a strong president is necessary as head of the government to dispose of the powers to keep his countrymen safe. But at what cost to those liberties that the founders guaranteed to future generations of Americans that make them distinctly American? The Fourth, Fifth, and Sixth Amendments to the Constitution are the due process amendments because they protect the rights of criminal defendants from their government. Those rights granted to citizens must not be infringed even in a time of war. The Supreme Court has said in a number of rulings in both peacetime and wartime that the rights of due process are protected and that there are limits to governmental power, no matter the situation.

Guns in Schools: Who Controls?

By Steven Novotny, Junior, Political Science

Congress's intention in 1990, when it passed the Gun-Free School Zones Act (GFSZA), was noble, but wrongheaded. It simply wanted to protect children and adults in public and private schools. But this is a state, not a federal matter, which I will demonstrate in detail.

On March 10, 1992, Alfonso Lopez Jr., who was a twelfth-grade student at Edison High School in San Antonio, Texas, carried a .38 caliber handgun to school. The weapon was unloaded, but Mr. Lopez also possessed five bullets. After Texas police arrested Lopez for violating a Texas law, federal agents stepped in to charge him under the conditions set forth in the GFSZA. The state charge, in deference to federal jurisdiction, was dismissed.

After Lopez was indicted, tried, found guilty, and sentenced to six months in federal prison, he appealed to the Fifth Circuit of the Court of Appeals, which reversed the district court's conviction. The grounds? Simply that the act itself was an unconstitutional use of Congress's Article I, Section 8, power to legislate under the Commerce Clause. In 1995, the Supreme Court correctly agreed with the circuit court's decision, which returned the Commerce Clause to its original meaning.

Lopez's conduct by carrying a gun into a school was simply not commercial in nature, but rather a criminal activity in an educational setting, two areas that have normally been dealt with by the states. The government's argument that guns in school lead to violent crimes and that violent crime will lead to affecting the national economy and commerce was wholly implausible. That argument holds that violent crimes make insurance rates rise and thus restrict the willingness of individuals to travel to areas where there is a perceived high level of crime, which in turn somehow affects commerce.

The GFSZA seemed to have been the culmination of a sixty-year trend of allowing Congress to have its way with its broad commerce power. A good law requires research, findings and testimony on both sides of an issue. Congress was unable to competently arrange and deliver substantial research on the issue. Instead, even if Congress did "find" that the legislation was intended to be an exercise of its commerce power, the possession of a gun near a school is not an

economic activity that affects commerce, but rather a criminal statute that has nothing to do with commerce.

Federalizing crime undermines a traditional state function of local police power, especially in the area of education. This is a dangerous move because we know that as many as forty state governments already had on their books a similar gun-control measure like the one in Texas. Why then did the federal government feel obligated to intervene between a fully competent Texas criminal justice system through an unconstitutional claim of its commerce power?

Over the last sixty years the Court has been pulled outward so much by making broad interpretations of the word "commerce" that it might be best to come back to the basics. According to law professor Randy Barnett, "commerce [originally] referred predominantly to exchange or trade as distinct from the agricultural or manufacturing production of those things that are subsequently traded." Where in this definition does one see the mentioning of guns? Where does one see the mentioning of schools? Where does one see the mentioning of crime?

The answer to all three questions is nowhere.

It must be said that not even the most able lawyer or connoisseur of jurisprudence could argue for thwarting the expansion of the Commerce Clause power on recent precedent. In fact, if the Court had upheld the lower court's decision, it would have been, according to law professor Randy Barnett, "for the first time in almost sixty years that the Supreme Court of the United States held a statute to be unconstitutional because it exceeded the powers of Congress under the commerce clause." The Court's trend of support for the Commerce Clause found its way in 1824 with the landmark case of *Gibbons v. Ogden*, with Chief Justice John Marshall's broad interpretation of the clause. Though lost in the nineteenth century, that definition was reestablished by the Court in 1937 with *National Labor Relations Board v. Jones & Laughlin Steel Company*. That case broadened the power of Congress to regulate unfair labor practices leading to strikes, which in turn adversely affected commerce. It upheld the National Labor Relations Act.

The reasoning in this case led to other statutes as Congress exercised its commerce power. But the Court noted in 1968 that in *Maryland v. Wirtz* "the power to regulate commerce, though broad indeed, has limits." These limits may not necessarily be defined, but the Court can helped define them. Chief Justice Rehnquist noted in his concurring opinion in *Hodel v. Virginia Surface Mining* in 1981 that "it would be a mistake to conclude that Congress's power to regulate pursuant to the commerce clause is unlimited. Some activities may be so private or local in nature that they simply may not be in commerce." Education and police power have historically been functions of state and local governments for years. Why then must the federal government grow larger and expansive until there is no state regulation on those activities?

James Madison wrote in Federalist No. 45 that "the powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite." The United States is a rare nation in that dual-sovereignty is given to two bodies of government: federal and state. There will always be contention between the two entities to gain more power than the other, and that is acceptable to an extent. But Congress's continual attempts and successes of usurping states' powers in traditionally state-handled areas are unacceptable. For Lawrence Lessig, "there is little doubt that the scope of powers now exercised by Congress exceeds that imagined by the framers."

To relay between the original interpretation of commerce and the questions asked above is not farfetched. There were guns, school, and crime present in the eighteenth-century America.

These facts of life were not regulated by the Commerce Clause and Congress, nor were they mentioned in federal legislation or case law of the time. In the Constitutional Convention, Barnett reminds us, Madison noted that "the term 'commerce' appears thirty-four times in the speeches of the delegates . . . and in no instance is the term 'commerce' clearly used to refer to 'any gainful activity' or anything broader than trade [and exchange]." It would seem commerce again had nothing to do with guns, schools, or crimes and was not seen in that context by the delegates. This was because the delegates knew then that the states were capable entities to regulate each area themselves.

The GFSZA imposed the idea of commerce where commerce was not happening. There was no exchange of goods when the gun was brought onto school premises. Rather, it was a crime occurring intrastate. And Texas was fully capable of carrying out its own state laws to address the issue. Limits must be set on the commerce power of Congress.

To rebuild the balance in our federal form of government, the Court drew a line of demarcation to ensure the protection of state regulations and law enforcement. For Lessig, the Framers may have "struggled over whether the commerce power included the power to build roads; they wouldn't have struggled over its power to reach the possession of guns near schools."

Comparing *Miranda* with *Dickerson*

By John Gannett, Junior, Political Science

What are the Fifth Amendment rights of a criminal defendant? Both *Miranda v. Arizona* (1966) and *Dickerson v. United States* (2000) articulate the Fifth Amendment protections of the individual citizen the Constitution guarantees. In both cases, the Supreme Court upheld the constitutional rights of the individual from oppressive state action. The cases deal primarily with the admissibility of confessions in court, with the primary question being whether an individual has the right to be made aware of his constitutional Fifth Amendment rights prior to police interrogation. The cases established the obligation of the authorities to inform suspects in police custody of their Fifth Amendment rights prior to proceeding with interrogations.

On March 10, 1963, Ernesto Miranda was arrested for the rape of an eighteen-year old girl in Phoenix, Arizona. After being picked out of a police lineup by the girl, Miranda was led to a separate room and interrogated by police officers. At first, he denied all allegations of the crime, but later confessed and signed a brief statement, admitting guilt and describing the facts of the crime. He was later convicted based on his confession. He appealed on the grounds that his confession was coerced by police officers in an unlawful police interrogation. The Supreme Court's decision was five and a half to three and a half in his favor.

Chief Justice Earl Warren, who wrote the opinion of the Court, concluded that the present interrogation techniques of police officers violated the individual's Fifth Amendment rights. "The prosecution may not use statements whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." He noted that current interrogation techniques practiced by police officers encouraged wrongful confessions that may not be true.

Two years after *Miranda*, Congress enacted the Crime Control and Safe Streets Act of 1968. Section 3501 determined that voluntary confessions prior to the reading of the defendant's *Miranda* rights were admissible in federal court. The constitutionality of this act was challenged in *Dickerson v. United States.*

In 1997, Thomas Dickerson was arrested for bank robbery. At a hearing his attorney moved to suppress a confession Dickerson made to FBI agents on the grounds that the agents had not read Dickerson his rights prior to his voluntary confession. On appeal, the Supreme Court ruled that Dickerson's confession could not be used in court because the FBI agents did not read him his rights prior to his confession.

Chief Justice William Rehnquist, who delivered the opinion of the Court, made a couple definitive points. First, the decision prevented Congress from infringing upon the Miranda rights of the individual. This part of his decision promoted *Miranda* to a constitutional ruling. The only way Congress could eliminate *Miranda* rights would be by constitutional amendment. This ruling established that the rights of the Fifth and Sixth Amendment's must be read to the individual prior to interrogation as a constitutional mandate.

Justice Antonin Scalia wrote a scathing dissent in *Dickerson*. His primary complaint was that he did not see how the Court could argue that violations of *Miranda* were equivalent to violations of the Constitution. To him, the Court's decision in *Miranda* was a wrong to begin with. Even more irritating to Scalia was the idea that the Court deemed it to be within its power to overrule an act of Congress based upon a misapplication of the Constitution. He argued that the *Miranda* decision was not a constitutional mandate, but rather a faulty application of the Fifth and Sixth Amendments.

Perhaps it is easiest to analyze the merits of the *Miranda* decision first. In his dissent, Justice White asked whether the language of the Fifth Amendment requires law enforcement to inform a suspect of his rights. The answer is no, because all the Fifth Amendment says is that the individual has the right not to incriminate himself. White argued that that responsibility was on the individual, and it does not include the assistance of law enforcement. The *Miranda* ruling shifted the responsibility from the individual to law enforcement and broadened the original meaning of the Fifth Amendment.

The Constitution confers responsibility on the individual. Although the authorities have a right to ask questions, the individual has a right not to answer them. It should be the responsibility of citizens to know their rights and exercise them as they see fit. Responsibility and liberty are intertwined in all aspects of American society.

Dickerson further reveals the deficiencies of the *Miranda* decision. It in effect threw out a perfectly good confession based solely on the fact that the authorities had not yet read the suspect his rights. This seems to be an unfairly broad interpretation of the Fifth Amendment. The confessions of a criminal defendant should be admissible in court, despite the failure of the police to inform the defendant of his rights. This broad interpretation of the Fifth Amendment allows dangerous criminals to go free.

A second problem with *Dickerson* is that the Court overturned congressional legislation based upon a broad interpretation of the Constitution. The Court did not overturn congressional legislation contrary to the very words of the Constitution, but rather based upon an overreaching judicial interpretation of them. Unless legislation clearly contradicts the original meaning of the Constitution, the Court should defer to the statute. This allows the democratic process to determine what the Constitution means and not an unelected judiciary.

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