

American Studies Seminar

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Part A: American Law, Government and Society

Historical Background

The Birth of Democracy in 17th Century England and America

The first British colony in North America was started in Virginia in 1607, and the last colony was the colony of Georgia (1732); in total there were 13 British colonies in America. These 13 colonies had a system of laws and government modeled on the British system. By the 1760's, many American colonists wanted formal independence from Great Britain. In 1776 the colonies became united and declared independence from England.

Ironically, this desire for political independence was rooted in British political philosophy and culture.

The American legal and political system has roots in 17th century England. In order to understand the basic principles of American law and government we have to go back in time to England in the 17th century. Two, interrelated philosophies were growing in England at this time:

1. The belief in basic human rights which should be protected by law.
2. The belief in a democratic system of government.

Question: What do we mean by human rights or civil rights?

Question: What is democracy?

Human Rights: basic natural rights which all people have: equality, liberty and the right as individuals to prosperity and private property. In a humane society, these human rights should also be civil rights and civil liberties, meaning protected by law and the state. This includes the right of "Habeas

Corpus”—a basic right which any good system of government should protect. This is the right to be able to adequately defend yourself if you are accused of a crime. In European (or any) society, people are often falsely accused of a crime for various reasons (political, economic, personal). The right of *habeas corpus* simply means you have right to face the people who have accused you of a crime, and to know exactly what you are being accused of--- and also that you are given the chance to defend yourself. This would mean that you have the right to have legal council--- a lawyer. A lawyer is someone who has the ability and the authority to represent and defend the person within the legal system.

Key point

In 17th century England we see that the power of kings and of the monarchy is being challenged. They feel the need for a system of laws which will protect their property and their freedoms. Unlike in the feudal period when people were subject to the power of the church or the monarchy, in the 17th century, more and more, people believed that they had individual rights which needed to protected, and they wanted a system of government which would protect them.

Instead of a feudal system based on the rule of kings, who have absolute power, people want to be protected by a system of laws, which they make themselves. This system of government in which people make their own laws is called democracy.

Democracy: a system of laws by the people and for the people

At this time, many people were unhappy with the monarchy system where the king or queen had absolute power. **Parliamentary Democracy** in 17th century England grew. A parliament is a political body which tries to represents the will of the people.¹

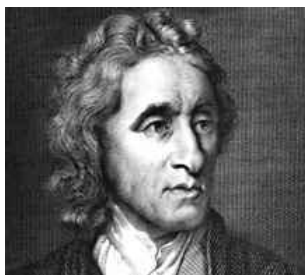
*Since the king (King Charles I) and his supporters did not like this challenge to his authority, he resisted the will of the parliament. The parliament fought back and the result was the English Civil War. This is one of the most important events in British history. It pitted the King against the Parliament and the Parliament won. The kind was executed and as a result England was ruled by Parliament and Oliver Cromwell.

Later on the English people wanted their monarchy restored, but Parliament would always be strong after this, and the power of law to protect people's rights grew stronger.



The Enlightenment: Late 17th Century England and 18th century France:

- New political philosophy: all people born equal with basic natural rights
- individualism, optimism, a belief in progress
- Science and empiricism: the search for natural laws



John Locke

The ideas of British philosopher John Locke were part of the Enlightenment in England. He believed that human beings naturally had basic rights and that the real purpose of government was to protect these liberties.



Thomas Hobbes

Hobbes is best known for his political theory and his idea of social contract. Human beings in a state of nature are wild and unhappy; only a rational system of government formed with the consent of the people will ensure happiness.

***Social Contract:** the idea that society is made up of people who together agree the rules/laws of that society.

[Contract: a legal document which explains the rights, duties and obligations of equal parties.]

The Birth of a New Nation

By the late 18th century, for various reasons, the many people living in British colonial America decided that they wanted independence from Britain. Since Britain did not agree to this, the War for Independence (=the American Revolution) was fought.

The **American Revolution** must be understood in the historical context of 18th century European history; this was the **Age of Enlightenment**¹ in Europe. The 1776 **Declaration of Independence**² was written by a number of American lawyers and other educated and influential men who were students of Enlightenment ideas of

¹ 啓蒙主義

² 独立宣伝

science, rationality and natural human rights. It has been said that the people living in British colonial America (17th and 18th centuries) had embodied British ideas of human rights and democracy even more than British people. From the start of the British colonial America, many democratic systems and ideas were strongly practiced.

After Britain lost the War for Independence, it was necessary to make a new system of government, but this time, without a monarchy.

Constitution: a framework for a democratic system of government based on laws. Explains “how to do” the government.

Bill(s) of rights: documents which legally describe those rights; rights which cannot be taken away by the state.

The U.S. Constitution

The U.S. Constitution was (and is) the framework for the government of the United States of America. It continues to be the framework for the American system of government today.

In order to understand American society, it is necessary to understand this system of laws and government established by the Constitution.

The U.S. Constitution established 3 branches of government:

- 1) The Legislative Branch (with two houses, and upper and a lower)
- 2) The Executive Branch (the President and Vice-President)
- 3) The Judicial Branch (the system of courts with the Supreme Court at the top.

[Japanese translation of the Constitution can be found at the Embassy of the United States website (Japan):

<http://tokyo.usembassy.gov/j/amc/tamcj-071.html>]

Discussion Questions #1: The Constitution

1. What kind of system of government does the U.S. Constitution establish?
2. What powers does the President have?
3. What is the function of the Supreme Court?
4. How is power divided between the federal government³ and the states?

Summary: the U.S. Constitution includes the following:

The Idea of Popular Sovereignty⁴

»»» A system of government created by the people.

Rule of Law

»»» A society in which laws are more important than the demands of any one particular powerful person or institution.

Separation of Powers/ Checks and Balances

»»»The Constitution establishes a system of government with 3 separate branches with different functions:

- (1) **Executive** branch: the President and his cabinet
- (2) **Legislative** branch: The U.S. Congress has two houses, upper Senate and lower House of Representatives; they make all laws
- (3) **Judicial** branch: the court system with the Supreme Court at the top; they interpret the laws

³ 連邦首相

⁴ 主權

Federalism⁵

A federal system is a system of government with two levels--- the national (federal) government and the individual state governments. This is a very complicated system which has had many problems throughout American history.

Judicial Review

The courts have the power to interpret how the laws are to be applied; the Supreme Court decides cases which relate to constitutional issues. They are the final authority on how the laws are used in society.

Individual Rights

Basic human rights are guaranteed in the Bill of Rights which is a document attached to the Constitution. (see the next section below)

The U.S. Bill of Rights (権利章典)

After the Constitution was finished, the writers decided it also needed some additions (called amendments). In 1791 they wrote the **Bill of Rights**.⁶ This part of the Constitution guarantees human rights; it give people basic protections of their rights.

The Bill of Rights guarantees human rights and civil liberties

What rights?

Some important rights which Americans believed in, even before they became independent from Britain, were the **right to a trial by a jury**, and the right to **free speech**. One of the most highly valued rights at this time was the right of someone accused of a crime to know the facts of the case and defend himself in court. (This is called the **right of *habeas corpus*** from Latin). Other basic rights or civil

⁵ 連邦制度

⁶ 権利章典

liberties include: the **right to assemble** into groups and **protest** against the government; the right to **practice one's religion** freely; the right to be protected against unreasonable searches by the police or the government.

SELECTED PARTS OF THE U.S. BILL OF RIGHTS IN THE CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

修正第一条 連邦議会は、国教を樹立し、あるいは信教上の自由な行為を禁止する法律、または言論あるいは出版の自由を制限し、または人民が平穩に集会し、また苦痛の救済を求め
るため政府に請願する権利を侵す法律を制定してはならない

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

修正第八条: 過大な額の保釈金を要求し、または過重な罰金を科してはならない。また残酷で異常な
刑罰を科してはならない。

Over the years, other amendments have been added to the constitution over the years, some related to protecting rights, others to give legal direction on social issues.

- ✧ The 13th Amendment (1865): abolished slavery
- ✧ The 14th Amendment (1868): says that individual states may not take away a person's liberty or property without "due process of law." It is important because it says that no state can make a law which takes away people's rights (life, liberty and property) without "due process of law."
[see Japanese translation below]

[修正第十四条 [一八六八年確定]

第一節 合衆国において出生し、またはこれに帰化し、その管轄権に服するすべての者は、合衆国およびその居住する州の市民である。いかなる州も合衆国市民の特権または免除を制限する法律を制定あるいは施行してはならない。またいかなる州も、正当な法の手続きによらないで、何人からも生命、自由または財産を奪ってはならない。またその管轄内にある何人に対しても法律の平等な保護を拒んではならない。]

The U.S. Supreme Court

In American society, we often use the court system to deal with difficult social problems. The Supreme Court is the final decision maker. Below is a partial list of some of the important ones:

- ◆ Affirmative action (should black people be given special treatment for university admissions or job hiring)
- ◆ Freedom of speech (e.g., can a high school student wear a T-shirt to school which says, “Bush is an idiot”?)
- ◆ Abortion rights (Does a state have the right to outlaw abortion because some religious people don’t like it?)
- ◆ Capital punishment
- ◆ Censorship⁷
- ◆ Religion (Can a school require students to have 10 minutes of prayer every morning?)
- ◆ Discrimination (e.g., can a person be refused a job because they are handicapped?)
- ◆ Gun control: do people have a (constitutional) right to have a gun.



⁷ 検閲

Current Legal and Political Controversies

Modern American society in the 21st century has a number of legal and political controversies⁸ which dominate the legal and political world. By studying these social issues, we can learn a lot about American society and culture. (Economic issues will be discussed in a separate section).

- The right to express one's religion in public places.
- The power of the government to spy on its citizens
- The power of the government to hold suspected terrorists without an open trial
- The right of a state to prohibit abortion
- The right of a gay couple to marry
- Euthanasia/the Right to Die
- Cloning/stem cell research
- Sex discrimination/employment discrimination
- Other: patient's rights, worker's rights,
-

IV. Some Key Supreme Court Cases about Key Social Issues

1. Religion in American society:

The U.S. Constitution in the 1st Amendment says that the government shall make no laws establishing a religion, nor can it prohibit people from practicing their religion freely. This has been interpreted to mean that religion must be kept out of government and public life, including public schools.

⁸ 論争

Recently, however, many Christian groups in America (specifically Evangelicals/fundamentalists)⁹ have tried to promote their religious beliefs in the political sphere. They believe (1) that Christianity is the only true religion, (2) that America a Christian country, and (3) that most social problems are due to lack of faith in the Christian Bible.

These groups have been actively trying to use the legal and political system to promote their religion. Not everyone believes that Christianity should be part of American public life (rather, they believe that it should be a part of private worship only). In America, decisions relating to religion in public schools or other public places have been decided by the courts. Since issues of religion relate to the Bill of Rights in the Constitution, the Supreme Court can hear the case and make a final decision.

Key U.S. Supreme Court decisions relating to religion:

Engel v. Vitale (1962)

New York's requirement of a prayer to begin the school day was declared unconstitutional. It violated the 1st Amendment of the Constitution's Bill of Rights.

Santa Fe Independent School District v. Doe (2000)

A public school district's policy of having a prayer to be read by a student at football games violated the Establishment Clause of the 1st Amendment. Their policy resulted in religious coercion of the minority by the majority.

McCreary County v. ACLU (2005)

Two large, framed copies of the Ten Commandments from the Bible in a courthouse were not "religiously neutral," and therefore violated the constitution.

"Pro-choice" v. "Prolife": the Abortion Issue

This is one of the most controversial areas in American political culture

⁹ 原理主義者

and society. Of the years, mostly Christian religious activists have tried to make abortion illegal. Some conservative states like Texas, passed laws prohibiting abortion. In the most important case (*Roe v. Wade*, 1973), the U.S. Supreme Court decided that the Texas law was unconstitutional because it violated a woman's right to privacy.² They said that a woman has the right to have an abortion in the first trimester of pregnancy; any state law which prohibited abortion in the first 3 months would be unconstitutional. In the second trimester, however, the states (through their legislatures) may regulate a woman's right to have an abortion if the law is reasonable. In the last 3 month of pregnancy, states may make abortion illegal (except for medical emergencies). This decision was a landmark decision from the highest court in the land which protected women's decision to terminate a pregnancy.

Various Christian groups have sought to give legal rights to the fetus, even from the start of pregnancy/conception. This is not because they really believe that the fetus is a legal person, but because they believe it is a God given life which should not be destroyed. Their hope is to outlaw all abortion in America.

Of course many or most Americans don't want this right taken away, but the ant-abortion (or "pro-life") groups are very powerful and have been very successful in making it more difficult to get abortions.

Key Supreme Court Cases

Roe v. Wade (1973)

By a vote of 7-2, the Court struck down a Texas law that prohibited abortion. The Court held that the fundamental **right to privacy** extends to a woman's decision whether or not to continue a pregnancy. Actually, the Constitution does not specifically say anything about a "right to privacy," however the court found language in the Bill of Rights which implies that there is such a right

Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)

The Court struck down a Pennsylvania law that required a woman to notify their husband of their decision to seek an abortion. However, by a vote of 7-2, the Court upheld other provisions of the Act, including a requirement that

women seeking abortions may have to have some counseling, and a mandatory delay of at least 24 hours.

Capital Punishment/death penalty

Capital punishment has been a controversial issue in America in recent history.

The arguments for capital punishment:

- 1) It is necessary for justice/fairness.
- 2) It is necessary to satisfy the human need for revenge.
- 3) It prevents crime.
- 4) It saves money (because we don't have to house criminals for their whole life).

The arguments against capital punishment:

- 1) It is unfair because, in the past, it has discriminated against poor people and minorities, and even today is discriminatory.
- 2) The criminal justice system often makes mistakes. If a mistake is made with the death penalty, it's too late to correct.
- 3) There is no clear sociological evidence that it prevents or deters crime.

In American history, capital punishment was used for crimes other than murder. For example, in the South, rape was punished by the death penalty, but only for black men. White men were never given the death penalty for rape. It is also the punishment for treason, but this is very rare.

Today, the death penalty is primarily for 1st degree murder (premeditated).

Many people believe that the death penalty is wrong, even for cases of 1st degree murder, because it is unfair and excessive; they say it also is

against the 8th Amendment of the Constitution which prohibits “cruel and unusual punishment.” For most of American history it was thought to be acceptable, but now many people argue it is not.³

Key cases/decisions

The issue of capital punishment became an important legal question in America starting in 1962.

Relevant Constitutional Amendments

The 5th amendment— this protects people who are accused of a serious crime by saying that they cannot be executed without “due process of law.”

The 8th amendment—this is very important because it says that there cannot be any “cruel and unusual punishments.”

The 14th amendment—this amendment says that no state can take away a person's life (or property or freedom) without “due process of law.”

The key case which shook up the whole legal system was *Furman v. Georgia* (1972). Furman was burglarizing someone's house when a family member discovered him. When he was trying to escape, he tripped and fell down. The gun went off, killing a member of the family. The jury decided death.

In this case, and two other cases which were decided at the same time, the juries were not given any guidelines, so their decision to give the death penalty was not fair. The Supreme Court basically said that the current system of death penalty in America was unconstitutional because the way it was handled in most states was cruel (a violation of the 8th Amendment). They said that most state laws lacked clarity, and this was unacceptable. After this case, states had to go back and rewrite their laws to make the system fairer. This is what the states did.

Other key Decisions:

In 1977 the Court ruled that the death penalty for rape was excessive (*Coker v. Georgia* 1977). In 1986 they said that it was unconstitutional to execute insane people, but in 1989 it was OK to execute the mentally retarded. This, however, was abolished in 2002. It is now constitutional to execute someone 16 years or older, but not 15 or younger.

Capital Punishment: Sociological points

Most northern states have abolished the death penalty or limited its use. Support for it is highest in the South and most of the executions are carried out in five states: Texas, Georgia, Louisiana, Florida and Virginia.

- **According to the U.S. Department of Justice, in 2007, 41 prisoners were executed, 11 fewer than the year before.**
- **In 2007, 42 persons in 10 States were executed -- 26 in Texas; 3 each in Alabama and Oklahoma; 2 each in Indiana, Ohio, and Tennessee; and 1 each in South Dakota, Georgia, South Carolina, and Arizona.**
- **Of persons executed in 2007:**
 - 28 were white**
 - 14 were black**
- **All 42 inmates executed in 2007 were men.**
- **Lethal injection was used in 41 executions in 2007; 1 execution was by electrocution.**
- **Thirty-eight States and the Federal government in 2006 had capital punishment laws.**

[U.S. Department of Justice, Bureau of Justice Statistics]

The common method of execution in America is lethal injection. This method, however, is now being challenged as perhaps, "cruel and unusual."

Capital Punishment Questions:

- 1) How does America compare with Japan with regard to capital punishment?
- 2) Do you believe it acts as a deterrent (prevents crime)?
What evidence do you have?
- 3) Should it be abolished?

Gay Rights/Gay Marriage

Gay rights, especially the issue of gay marriage is controversial in America. Massachusetts is the first and only state to legalize same sex marriage. Some states have legalized some form of "civil union" where a gay couple can have a legal relationship, but not called "marriage." Same sex marriage is a very controversial issue. Most politicians don't want to talk about it; conservatives are hoping for a constitutional amendment to prohibit it.

Up until the 1960's in America, in many places it was illegal for a black to marry a white person ("interracial marriage"). Now, of course, no state can prohibit such a marriage. However the case of same sex marriage seems to be more complex (e.g., the issue of children).

While many countries around the world are allowing gay marriage, and even a few states in America give gay couples special support, some parts of America are very anti-gay (the South and the Mid-West in particular). These

states have enacted laws prohibiting gay marriage. Some of the relevant cases are listed below:

The Massachusetts Case:

Hillary Goodridge vs. The Department of Public Health (2003)

The Massachusetts State Supreme Court decided that "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution."

Other Key cases related to gay rights:

Boy Scouts of America v. Dale (2000)

Forcing the Boy Scouts to admit a homosexual as a scout leader would violate the private organization's right of "freedom of association."

Lawrence v. Texas (2003)

Two men were arrested for having sex and prosecuted under Texas' anti-sodomy law. The case went all the way to the Supreme Court and the court strongly decided that the Texas law was unconstitutional because it "furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual;" it also violates the Due Process clause of the Fourteenth Amendment.

¹ Of course we should remember that the Parliament at this time really only represented rich upper-class men with lot of land.

² The Constitution does not specifically say anything about a right to privacy, but the judges believed in their interpretation of the Constitution that such a right was implied in certain language in the Bill of Rights.

³ The European Union prohibits capital punishment

Student Presentations on Law, Government and Society:

- 1) Euthanasia / mercy killing
- 2) Guns and gun control
- 3) Anti-trust law (the law relating to monopolies)
- 4) Gender discrimination
- 5) Affirmative action
- 6) Prisoner's rights
- 7) Terrorism and the law
- 8) Government spying and the law
- 9) Other: with teacher's permission