

THE LAW

THE SUPREME COURT

A Doughty Dean's Defense

Why does the Supreme Court go on reversing state criminal decisions? Is it really soft on criminals? Is it unlawfully amending the Constitution? Harvard's Law School Dean Erwin N. Griswold told the Cleveland Bar Association last week that if anything, the court has been remarkably restrained in exercising its "clear responsibility" to make states follow the national standard set by the 14th Amendment under which "no state . . . shall deprive any person of life, liberty or property without due process of law."

"These words are not merely empty vessels," said Griswold. They go back 750 years to Magna Carta; yet the states so ignored them that in 1905 the highly conservative William Howard Taft, who later became Chief Justice, called U.S. state criminal justice "a disgrace to our civilization." As recently as 1923, the Supreme Court confronted the fact that Arkansas' highest court had upheld death sentences meted out in a trial "dominated by mob violence" (*Moore v. Dempsey*). Was the Supreme Court wrong in reversing that decision? What about confessions "obtained by brutality or by fraud?" asked the dean. Since 1936, the court has faced 30 such cases—all affirmed by state courts. Did the Supreme Court overreach in overruling them?

Sound & Salutory. For 172 years, noted Griswold, most state police acted as if they never heard of the Fourth Amendment ban against "unreasonable searches and seizures." Most of them never even used search warrants. In

1949, the court tolerantly ruled (*Wolf v. Colorado*) that states could enforce the Fourth Amendment as they saw fit. For example, they did not necessarily have to exclude illegally seized evidence (despite the rule to that effect in federal courts since 1914). Yet the states so abused even *Wolf* that in 1961 the court finally applied the "exclusionary rule" to all states (*Mapp v. Ohio*). "If a citizen's home is his castle," asked Griswold, "can there be any doubt that this decision is a sound and salutary one?"

The court's critics argue that *Mapp* handcuffs the police. But, asked Griswold, "Is this not a better country when the police cannot break down doors without a warrant and make use of any evidence they may seize?"

Responsibility & Realization. As Griswold sees it, the court has simply "decided that the time has come to enforce the high standards that we have long professed." To be sure, this makes life harder for law-enforcement agencies. "We must do more to help and upgrade the police. They should be better paid and better educated. They should have much more instruction on their duties than is now available to them." When the states fully meet such responsibilities, said Griswold, "we will all be better off and we will have more nearly realized the potentialities of our great federal form of government."



HARVARD'S GRISWOLD
Is overruling overreaching?

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