on legislative and executive remedial action, affecting affirmative action and race conscious steps in the electoral process, with the equal protection clause being used to cabin political discretion.

SECTION V

Criminal law and criminal procedure during the 1960s and 1970s has been doctrinally unstable. The story of the 1960s was largely one of the imposition of constitutional constraint upon federal and state criminal justice systems. Application of the Bill of Rights to the States was but one aspect of this story, as the Court also constructed new teeth for these guarantees. For example, the privilege against self-incrimination was given new and effective meaning by requiring that it be observed at the police interrogation stage and furthermore that criminal suspects be informed of their rights under it. The right was also expanded, as was the Sixth Amendment guarantee of counsel, by requiring the furnishing of counsel or at least the opportunity to consult counsel at "critical" stages of the criminal process—interrogation, preliminary hearing, and the like—rather than only at and proximate to trial. An expanded exclusionary rule was applied to keep material obtained in violation of the suspect's search and seizure, self-incrimination, and other rights out of evidence.

In sentencing, substantive as well as procedural guarantees have come in and out of favor. The law of capital punishment, for instance, has followed a course of meandering development, with the Court almost doing away with it and then approving its revival by the States. More recently, awakened legislative interest in the sentencing process, such as providing enhanced sentences for "hate crimes," has faltered on holdings that increasing the maximum sentence for a crime can only be based on facts submitted to a jury, not a judge, and that such facts must be proved beyond a reasonable doubt.

During the last two decades, however, the Court has also redrawn some of these lines. The self-incrimination and right-to-counsel doctrines have been eroded in part (although in no respect has the Court returned to the constitutional jurisprudence prevailing before the 1960s). The exclusionary rule has been cabined and redefined in several limiting ways. Search and seizure doctrine has been revised to enlarge police powers, and the exception for "special needs" has allowed such practices as suspicionless, random drug-testing in the workplace and at schools. But, a reformation of the requirements for confronting witnesses at trial has, in some cases, increased the complexity and effectiveness of prosecutions. Further, a realist view of modern criminal process led to a willingness to consider the adequacy of defense counsel beyond representation at trial.

An expansion of the use of *habeas corpus* powers of the federal courts undergirded the 1960s procedural and substantive development, thus sweeping away many jurisdictional restrictions previously imposed upon the exercise of review of state criminal convictions. Concomitantly with the narrowing of the precedents of the 1950s and 1960s Court, however, came a retraction of federal *habeas* powers, both by the Court and through federal legislation.

SECTION VI

The past decade saw the Court's most extensive examination of gun rights under the Second Amendment, with five Justices holding that, at a minimum, the amendment constitutionally enshrines an individual's right to possess an operational handgun in one's home for self protection. This finding mostly was regarded as unremarkable: it largely comported with the expectations and realities of gun ownership in the U.S. and was not expected to lead to wholesale loosening of government regulation, or even to weigh heavily in political debate. Most initial scholarly interest focused more on the Court's interpretational methodology.

"Originalism"—the notion that the meaning of constitutional text is fixed at the time it is proposed and ratified—found favor as an interpretational method in the nineteenth century, fell out of favor beginning in the Progressive era, but regained some currency in the 1980s. The paucity of judicial precedent on constitutionally protected gun rights made "originalism" appear a particularly apt approach as the Court considered the Second Amendment during its 2007–2008 term. The result was a thorough airing of the merits and variations in originalist analysis. Is the "plain meaning" of the words of the original text as it would have been understood at