

"Taking the Fifth" and "Due Process of Law"

The Fifth Amendment

The Fifth Amendment protects an individual from the arbitrary exercise of the power of government during legal proceedings.

A well-known provision of the Fifth Amendment is the clause against forced "self-incrimination," whose origin goes back to the days when persons accused of crimes before ecclesiastical courts were forced to take an oath: "That is, they had to swear to answer all questions even if the questions did not apply to the case at trial.

One of the victims of the oath was a printer and book distributor named John Lilburne, charged in 1637 with treason for importing books "that promoted Puritan dissent." Lilburne refused to answer questions unrelated to the charges against him. He told his accusers, "I am not willing to answer you any

more of these questions because I see you go about by this examination to ensnare me...and therefore if you will not ask me about the thing laid to my charge, I shall answer no more."

One notorious instance of forced self-incrimination in the American colonies occurred in the Salem witch trials. In 1692, Giles Corey, an elderly Massachusetts farmer, was accused of witchcraft. He knew that whether he pleaded guilty or not guilty, he would be convicted, executed and his property confiscated. Determined to save his property for his heirs, Corey refused to plead and thus could not be convicted. The judges ordered him strapped to a table and stones were loaded on his chest to force a plea. Corey's final words were "more weight."

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The right to "take the Fifth" to avoid forced self-incrimination reinforces the idea that one is innocent until proven guilty, and it means that the prosecution must find evidence other than testimony forced from the accused before the government can convict. To the charge that the Fifth Amendment is only a shield for the guilty, Justice William O. Douglas answered, "...if government is to be civilized in its relation to the citizen, no form of compulsion should be used to exact evidence from him that might convict him."

Other provisions of the Fifth Amendment have proved to be less controversial. For example, the amendment specifies that an individual cannot be charged by the federal government with a capital or

other serious crime unless a "Grand Jury" of fellow citizens has found sufficient evidence to warrant an indictment. Government is thus prevented from harassing citizens with serious but unfounded charges.

The "double jeopardy" provision in the Fifth Amendment means that a person cannot be tried twice for the same offense in the same jurisdiction, once a verdict of acquittal has been made. Under certain circumstances, however, a second trial can be held.

The guarantee of "due process of law" reflects a principle at least as old as the Magna Carta of 1215 which prohibited the king from imprisoning or harming a person "except by the lawful judgment of his peers by the law of the land." The phrase "due process of law" establishes the procedures that insure that principles of fairness and justice will prevail in legal proceedings.

The Rights of the Accused

The Sixth, Seventh, and Eighth Amendments

The Sixth, Seventh, and Eighth Amendments combined with the Fourth and Fifth Amendments form a "Bill of Rights" for accused persons. In many respects, the Framers of the Constitution considered these rights the most important "because experience had shown that the greatest potential for tyranny lay in the way government administered the law."

The successful struggle in England to limit the absolute authority of courts and kings had a profound effect on American thinking. The English Bill of Rights of 1689, one of the key sources for the American Bill of Rights, provided certain guarantees for trial by jury and prohibited excessive bail and fines, as well as "cruel and unusual punishment."

From the earliest settlements, American colonists had practiced trial by jury. Although the British government appointed royal judges to the colonies, their salaries were provided by local legislatures. When relations between the colonies and the crown worsened, London curtailed judicial autonomy, made colonial judges subservient to the Crown, and decreed that certain crimes colonists could be taken to England for trial. Such measures could mean prolonged imprisonment before trial and the denial of supporting witnesses and a proper jury. The Framers recognized the importance of the right to trial by jury by including it in the Constitution. However, many omitted the provision of this guarantee spelled out in detail in the Sixth Amendment.

There had been disagreement, however, over whether or not the guarantee of trial by jury should be extended to civil cases. In the modern world, the case, the Seventh Amendment was drafted to provide for trial by jury in civil cases in amounts over \$20.

The meaning of the phrase "cruel and unusual punishment" in the Eighth Amendment has evolved over time. In the past, torture and use of the pillory were accepted, but today these punishments are outlawed. The use of physical punishment is restricted and must be appropriate to the crime.

Opponents of the death penalty and of corporal punishment have attempted to invoke the Eighth Amendment in their case without too much success. But the amendment has been used successfully to force improvements in prisons.

Limited Government

The Ninth and Tenth Amendments

The first eight amendments in the Bill of Rights contain specific prohibitions on the manner in which the federal government may exercise its powers. The Ninth and Tenth Amendments hint that there may be limits beyond those specified.

The Ninth Amendment recognizes personal rights that may be infringed by government interference. The Tenth acknowledges the political principle that all powers belong to the people. Only those powers delegated by the people may be exercised by the government, either federal or state. Thus the Bill of Rights ends on the note sounded at the Constitution's beginning, affirming the sovereignty of "We, the People."

Taken together, these Amendments are a cautious compromise between the arguments of the Anti-Federalists and Federalists concerned about the protection of rights. Such measures could mean prolonged imprisonment before trial and the denial of supporting witnesses and a proper jury. The Framers recognized the importance of the right to trial by jury by including it in the Constitution. However, many omitted the provision of this guarantee spelled out in detail in the Sixth Amendment.

By adapting ancient principles and institutions such as the jury system to the changing circumstances of the modern world, the Framers of the Constitution secured the most fundamental and surest guarantee of our freedom: equal justice under law.

The Turning Point in Woman's Rights

The Nineteenth Amendment, Women and the Ballot Box

The Nineteenth Amendment contains fewer than 50 words, yet, when it was ratified, it affected the lives of half the population of voting age and heralded victory in a struggle waged since colonial days.

The question of allowing women a vote in government was first raised by the Puritan theologian in Boston on its position that a woman could have a vote in church affairs. Following a trial, she was banned from the colony. Voting restrictions against women continued throughout the colonial period.

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Extending the Power of the Ballot Box

The Twenty-third, Twenty-fourth, & Twenty-sixth Amendments

Of the three final amendments to the voting rights saga, the Twenty-third Amendment granting suffrage to 18-year-olds won the quickest acceptance.

For many political leaders had called for the measure, Congress believed the way to do it was through an amendment to the Voting Rights Act of 1965. But there was a question about the power of Congress to pass a law that would change state-established age qualifications for voting. Article I, Section 2 of the Constitution states that electors in each state for House of Representatives "shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

Many believed that this clause delegated to the states the right to determine voting age qualifications. Congress approved a lower voting age in the Voting Rights Act with the understanding that its constitutionality would be judged by the Supreme Court. The Act was immediately challenged, and the Court ruled in 1970 that although Congress had the power to lower the voting age in federal elections, this power did not extend to state and local elections.

When Congress passed the Twenty-sixth Amendment, which was ratified by the states in just 107 days, the shortest time ever required to complete the amending process. As a result, 11,000,000 Americans between the ages of 18 and 21 were enfranchised.

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Carrie Chapman Catt

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mat on July 19-20, 1848, and issued a Declaration of Sentiments modeled after the Declaration of Independence. It read in part "We hold these truths to be self-evident that all men and women are created equal."

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