

The Bill of Rights: Our First Ten Amendments

In the debate over ratification of the Constitution, Elbridge Gerry of Massachusetts, Patrick Henry of Virginia, and other Anti-Federalists loudly raised the criticism that the Constitution needed a bill of rights to protect the American people from a central government that might abuse its power. Massachusetts, Virginia, and New York voted for ratification but only on the condition that suggested amendments protecting individual and states' rights be added to the Constitution. Rhode Island and North Carolina refused to ratify unless such amendments were made beforehand. By June 1788, the approval of the nine states needed for ratification was obtained. A year later, on June 8, 1789, James Madison, one of the leading Federalists, introduced 22 amendments in Congress. After some deletions and with many changes, these became the first ten amendments to the Constitution, known as the **Bill of Rights**.

The First Amendment

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

The First Amendment set the tone for the Bill of Rights. It was a constitutional command telling Congress what it could **not** do. This amendment placed a limit on the new government's exercise of power. The amendment actually establishes **five freedoms**:

1. Congress cannot establish a state religion. At a time when England and other countries in Europe had established churches, this was interpreted to mean that there could be no law creating a national religion.
2. Congress also cannot prohibit the free exercise of religion by individual citizens. Americans are free to worship any faith or religion, or to have no religion at all.

3. Congress cannot **abridge** (*cut short*) freedom of speech or freedom of the press. People may express themselves in any manner they choose: by speaking, making signs, or putting words in print. Even symbolic speech is protected, such as wearing armbands or burning the American flag to protest American foreign policy. However, there are limits to free speech where public safety and civil disorder are involved. As Supreme Court Justice Oliver Wendell Holmes said in the case of *Schenck v. United States* (1919), one cannot "falsely shout fire in a crowded theatre." Speech is limited where it poses a clear and present danger.

4. Congress also cannot prevent people from exercising their right to **assemble** peaceably. Without this right, the value of free speech is greatly diminished. It is especially with an audience that political speech can maximize its effectiveness. Speakers can influence others, such as in election campaigns, or when public policies are challenged. Of course, there are again limits to this right, especially if angry crowds threaten to riot and pose a danger to other people and themselves.

5. Government cannot deny people the right to **petition** their government to seek **redress** (*remedy*) for their grievances. If the government is to serve the people, the people must be able to communicate their concerns to government officials and leaders.

The Second Amendment

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

The Second Amendment gives individuals the right to own and carry firearms. Some have asserted that this right is older than the Constitution itself. In the

case of *the District of Columbia v. Heller* (2008), the U.S. Supreme Court ruled that the Second Amendment confirmed the right to use arms for “traditional purposes,” such as the defense of one’s home.

The Third Amendment

No soldier shall, in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

The Third Amendment was prompted by bitter memories of the British government’s practice of sheltering British troops in the homes of American colonists without their consent before and during the Revolutionary War. This grievance was one of those listed in the Declaration of Independence.

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This amendment involves people’s reasonable expectation of privacy. It seeks to protect their homes, the places where they work, their possessions, and their persons from unreasonable searches and seizures by police and other government authorities. Should police officers seek to make a search or seizure, they must first apply, under oath, to obtain a **warrant**. This is a document, signed by a judge, that permits police officers to conduct a search. Their request for the warrant must show “**probable cause**”— reasonable grounds for having suspicions and making the request. The Fourth Amendment protects citizens against “unreasonable” searches and seizures, but not against reasonable ones.

There are some exceptions, where searches and seizures are permitted without a warrant. For example, if a policeman is in “hot pursuit,” chasing a suspect

who is fleeing the scene of a robbery in a car, it would be unreasonable to expect the policeman to find a judge and obtain a warrant before continuing the chase.

If evidence in a criminal case is gathered by the police in violation of this amendment, that evidence cannot be used in a court of law. This is called the “Exclusionary Rule.”

The Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Like the First Amendment, the Fifth Amendment actually provides five separate rights. Four of these concern the rights of the accused:

1. A person cannot be charged for murder without an indictment by a **grand jury**. The grand jury, usually made up of 16 to 23 jurors (in Florida, 15 to 21), provides a screening process to determine if there is sufficient evidence to make criminal charges and send a case to trial. The grand jury can call witnesses, examine evidence, and make an investigation to assist in its determination. If there is insufficient evidence, the case is dropped.
2. No person can be tried twice for the same crime. This is known as “**double jeopardy**” because the accused’s liberty and life would be placed in danger twice.
3. No one can be forced to testify against himself or herself. This is known as **self-incrimination**. People accused of crimes have the right not to testify against themselves. This is to prevent authorities from using pressure to

intimidate suspects into false confessions or false testimony. Refusing to answer questions because the answers may be self-incriminating is sometimes called "pleading the Fifth."

4. No one can have life, liberty, or property taken away by government without "due process of law." Due process means fairness. It means that one cannot lose life, liberty or property unless the procedures in the case and the law applied to the case are both fair. Among other things, this means that a person's rights under the Bill of Rights have not been violated.
5. The last part of the Fifth Amendment is also related to "due process" but focuses on **property rights** (*the right to be secure in the possession of property*) rather than the rights of the accused. This provision states that government can take private property for a valid public use (such as building a major highway), but the property owner must be fairly compensated. "Just compensation" means that the property owner is paid what the property is truly worth. The process by which government takes over private property for public purposes is called **eminent domain**.

The Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.

The Sixth Amendment again provides a person accused of a crime several rights. In this case, these rights are focused on the trial itself:

1. The right to both a **speedy** and **public trial**.
The key words here are, "speedy and public."

If one is accused of a crime and placed in jail, unless the case proceeds quickly to trial, the accused may have to wait in jail a long time before guilt or innocence is determined.

The accused must not be tried in an isolated, secret court, but in a place where the public can see that the accused is fairly treated. Too often in dictatorial regimes, innocent people are detained while their cases are delayed for years without trial. Even if there is a trial, it is held in a hidden or secret place where no one can witness the unfair procedures that may result in sentencing the accused to long years of imprisonment or even death.

2. The right to trial by an **impartial jury**.
The accused is entitled to a trial by a group of "**peers**" or equals, known as **jurors**. They should be impartial and not biased (*prejudiced*).
3. The right "to be informed of the nature and cause of the accusations."

In some countries, people are arrested for political reasons or because government officials may profit in some way from their arrest. No charges or reasons are given for the arrest or their **forced internment** (*captivity or imprisonment*). This part of the Sixth Amendment forbids this practice.

4. The right to "**confront**" witnesses against the accused.
We have the right to face and question our accusers, in order to prove our innocence.
5. The right to compel witnesses to appear in court for the accused.
We also have the right to use the power of the court to require our witnesses to come forward.
6. The right to have the assistance of **counsel** (*attorney*) for the **defendant** (*the person accused of committing the crime*).

In Chapter 10, you will learn how the U.S. Supreme Court interpreted this right in two cases: *Gideon v. Wainwright* and *Miranda v. Arizona*.

The Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

This amendment guarantees the right to a jury trial in many civil (non-criminal) cases.

The Eighth Amendment

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

There are three parts to this amendment:

1. The first part deals with the right of an individual accused of crime who does not want to remain in jail while awaiting trial. In most cases, a defendant may remain outside of prison before trial by posting **bail** (*some thing of value, usually money, that the defendant*

places with the court to guarantee the defendant's appearance when the court requires it). The Eighth Amendment requires that the bail not be "excessive" (too high in proportion to the criminal charges against the defendant).

2. The second part provides that any fines on the defendant should also not be excessive.
3. The third part establishes the right of an individual not to have to suffer any "**cruel and unusual punishments**" for having committed a crime. The U.S. Supreme Court has ruled that the execution of a mentally retarded man and the execution of a man who committed a capital crime when he was a minor were prohibited as examples of "cruel and unusual punishment." Some courts have argued that the use of the death penalty under any circumstances now constitutes "cruel and unusual punishment"; others courts disagree.

The Active Citizen

Do you think that capital punishment should be prohibited as a "cruel and unnatural punishment" in today's society? Write a persuasive essay with four paragraphs giving your point of view. In the first paragraph, write your introduction. In the second and third paragraphs, give your arguments with evidence to back them up. In the fourth paragraph, write your conclusion. Then exchange your persuasive essay with a partner from your class. After you read each other's papers, see if you influenced your partner's point of view. Which arguments did you both feel were most persuasive? Which arguments needed more support?

The Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

When someone makes a list, others may think that whatever is not on the list is deliberately excluded. The Ninth Amendment makes it clear that this is not the case for the individual rights listed in the Constitution and Bill of Rights. Other rights **not** listed or

enumerated in the Constitution may still exist and remain with the people. In cases concerning the "right to privacy," the Supreme Court has cited the Ninth Amendment as one basis for this right.

The Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.