

The First Amendment to the U.S. Constitution (Or, one will get you five.)

“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.”

Summary and explanation

Within the first amendment are five freedoms considered the very basis for running a democratic and free government: Religion, Speech, Press, Assembly and Petition.

While Americans are guaranteed the **freedom of religion** to follow the tenants of any religion the government is also restrained from forming or imposing any religion upon the people.

Freedom of speech is more than just opening your mouth and stating your beliefs. It has evolved to mean freedom to give money to a political cause or to do virtually any action to advertise your opinions, like wearing a political hat. All that’s fine as long as you are not promoting violence, obscenity or defamation. It is the court’s duty to define those categories.

The **freedom of the press** has to do with being able to write about your beliefs without government interference. But you may be restricted if the court decides that your writing involves, “obscenity, child pornography, defamatory words, false advertising, true threats and fighting words”. Stay away from those and your news story or political pamphlet are good to go.

The peoples’ right to peacefully protest or gather in groups to discuss just about anything are guaranteed by the **freedom of assembly**. In a way it is the extension of the freedom of speech to more than one person at a time while on public property.

The **freedom of petition** means that any American can complain to the government about a perceived error in the law being applied to them and ask for a review. The catch, or fine print, is that the government does not have to respond to your grievance.

The big caveat to understanding the power of the First Amendment is that it applies to the citizen's right in respect to dealing with the government only. Dealing with your employer may have a very different outcome.

Sources:

Cornell.edu

Amercanacorner.com

The Bill of Rights Primer by Les Adams and Akhil Reed Amar

This is the first of ten amendments that formed the Bill of Rights, all ratified on December 15, 1791.

Corrections and comments are always welcome.

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The Second Amendment to the U.S. Constitution (Or, don't touch my gun.)

“A well-regulated Militia being necessary to the security of a free State, the right to bear arms, shall not be infringed.”

Summary and explanation

This amendment was instituted to bar the federal government from infringing upon the rights of the citizen to own a gun. It is a natural right to be able to defend yourself, your family and your property.

The militia at that time could use any weapon the private citizen could bring to the fight. In modern times the military needs trained warriors not an individual's weapons. But the natural right to self-defense remains even if it is “just” to be able to target shoot, hunt or ultimately to defend against a totalitarian state.

For the record, the United States is the only country to incorporate this right, with no restrictions, in its federal constitution. This right was most recently affirmed in 2008 in the U.S. Supreme Court case of *The District of Columbia vs. Heller*. However, it is also the right of the individual state to regulate that right if it so chooses. It is a fine line, sometimes, when the definition of “regulate” crosses “restriction” within the various American states.

Sources:

NRA-ILA.org
businessinsider.com
constitutioncenter.org

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###

The Third Amendment to the U.S. Constitution (Or my house is not your house.)

“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.”

Summary and explanation

Prior to the American Revolution colonialists were subject to British rules, most of which offended them. One such rule was the Quartering Act of 1765 which the British parliament enforced on private home and property owners. It stipulated that private and public property owners had to house, supply and feed the British military that occupied their town.

Property owners obviously hated this act. As a result, the colonial legislatures had no choice but to raise taxes to pay for their housing and other expenses. This was an example of “Taxation without representation”.

It was also an example of heavy-handed British authority forcing people to accept in their midst the standing army of a country they were increasingly antagonistic towards. In addition to that inconvenience the property owners had to, at times, put up with the rowdy behavior of the soldiers.

After the American Revolution the Third Amendment was seldom used to restrain the military. However, in 1952 President Harry Truman seized control over the steel mills in order to continue their operation prior to a threatened 600,000 union member strike during the Korean war.

The Supreme Court subsequently denied that power referencing in part, the third Amendment. Recent concerns surfaced when 50,000 National Guardsmen were sent into areas badly hurt by hurricane Katrina in 2005 and 8,200 US Military members (National Guardsmen, Army and Marines) were sent to cover the destruction caused by the Los Angeles riots in 1992.

Future interpretations of the Third Amendment will undoubtedly arise when the terms, “house”, “owner” and “soldier” may well have added meanings and definitions.

Sources:
law.ua.edu/

dsc.duq.edu/
alphahistory.com/

This is the third of ten amendments that formed the Bill of Rights, all ratified on December 15, 1791.

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###

The Fourth Amendment to the U.S. Constitution (Or we don't need no stinking warrants.)

“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.”

Summary and Explanation

What is unreasonable? What is probable cause? What does the term “people” mean? The answers depend upon the evidence offered to the judge who issues the search warrant or the jury when a search warrant was not obtained.

Over the decades this amendment has undergone continual scrutiny with various ways of interpretation depending upon the court system involved.

“What about” situations have involved the legality of electronic eavesdropping, thermal imaging through walls, helicopters with cameras, “open fields” searches, surprise safety inspections, random vehicle inspections, to hospital surgical rooms.

“Knock and announce” vs. “No knock entries” are difficult for the police to choose. Even instances when the citizen waives his or her rights to consent to a search invites a lawyer’s perusal.

In life-or-death situations warrants can be exempted. Different rules exist for inspecting cars, boats, planes, private property and commercial property. Anyone crossing the international border is not protected by the Fourth Amendment as long as the border patrol agent is considered performing a “reasonable” search.

What about drug testing students in school, prisoners in jail, employees on the job?

The lawyer who specializes in the Fourth Amendment will have work for life. The police are subject to immense pressure. The judges have great responsibility in their interpretations of the law.

To paraphrase a line in the movie The Treasure of the Sierra Madre..."Sometimes you need to show the stinking warrants but sometimes you don't."

Sources:

constitution.congress.gov/
uscourts.gov/
law.justia.com

This is the fourth of ten amendments that formed the Bill of Rights, all ratified on December 15, 1791.

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###

The Fifth Amendment to the U.S. Constitution

(Or on the advice of my counsel I plead the 5th.)

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence 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.”

Summary and Explanation

This amendment breaks down into five rights or protections against federal overreach or abuse.

1. Felony (major) crimes, destined to be tried in a federal court, require grand juries.
2. Misdemeanors, must offer a jury trial and Due Process.
3. The accused cannot be tried for the same crime twice (double jeopardy).
4. The accused cannot be forced to testify against him or herself (or taking the fifth)
5. If government sees fit to take your property for public use it must pay for it as valued at the time of taking.

As in much of America’s constitutional writings the founding fathers borrowed legalities already in existence in pre-Revolutionary War England. In 1215 King John signed the Magna Carta that insured protection against an authoritarian government.

Trivia:

1. America is the only country that offers grand juries which some view as “focus groups” to decide whether there is enough support for a trial.
2. The Double Jeopardy clause was in part introduced to keep the federal government that has unlimited funds away from hounding the accused, over and over again.

3. The Self-Incrimination clause was enacted to end torture which had a history of extracting fake guilty pleas just to stop the pain and suffering.

4. It is possible for the accused to be tried for the same crime twice if both the federal government and the state (or states) can show that the criminal violated separate offenses.

Sources:

constitutioncenter.org/
constitution.congress.gov/
law.cornell.edu/

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###

Sixth Amendment to the U.S. Constitution (Or, I want to call my lawyer.)

“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, which district shall have been previously ascertained by law, 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 defense.”

Summary and Explanation

Okay, let's dissect this run-on sentence.

A criminal is a person who has broken a major law, like murder, rape, or robbery. A civil prosecution is administered to someone who has been involved in a less violent infraction or lawsuit involving divorce, foreclosure, loss of money, causing property or personal harm.

A “speedy trial” was officially set up in the “Speedy Trial Act” of 1974. An indictment is officially required 30 days from the time of arrest and a trial is supposed to commence within 70 days of indictment. However, both the defense and the prosecution have many legal ways to bend those time limits. The “Speedy Trial” then is a guideline at best.

The accused has the right to face his accusers in a public trial although the identity of the accuser can be hidden and a public trial can have some or all of the public excluded under certain circumstances.

The judge can deem the offense as “petty” and disregard the jury unless the offense can be punished with a sentence longer than six months.

The court can compel a witness for the defense (compulsory process) to be questioned in court. The accused also has the right to be defended by an attorney appointed and paid for by the court regardless as to whether the accused can afford one or not.

All the above is for the benefit of the accused who can still waive away all the above rights, plead guilty and accept his or her fate.

Sources:

law.cornell.edu

constitution.congress.gov/

www.findlaw.com/

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The Seventh Amendment to the U.S. Constitution (Or, I demand a jury trial.)

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

Summary and Explanation

First of all, while the Sixth Amendment to the U.S. Constitution was focused on Criminal law, which governs the handling the major crimes such as murder, this Seventh Amendment is meant for legal matters involving civil law having to do with lawsuits for more than \$20.

Civil suits are settled in state courts while criminal trials are held in federal courts.

The dollar amount is the same as it was when the amendment was signed December 15, 1791 as part of the Bill of Rights, but inflation has deflated its value. \$20 back then when corrected for inflation, would be about \$500 in 2024.

So, what is the subject of this amendment? It is mostly about the right to have a jury trial to settle the suit against you. First, let's define a jury.

A jury is a group of your peers picked at random. For criminal trials usually 12 are selected. For civil trials the number can vary from 6 to 12. Both the prosecution and the defense ask questions of the prospective juror and both have to agree on seating that juror. There are often two additional jurors selected as replacements should one or two have to leave.

Conviction in a criminal trial is determined by a unanimous decision except for two states: Louisiana and Oregon. In civil trials one-third of the states only require a majority.

The law to guarantee a jury trial traces back into ancient Greece which continued into English law books. Why a jury trial and not a decision from the judge? Because judges can be biased and not be trusted to deliver a

correct decision. In medieval England the judge was the king who welded enormous power. Today the judge explains the case, discusses the law and manages the court room proceedings.

Common law means laws based upon precedence, customs and “rules” instead of “statute” laws based upon written law from legislation. When the Sixth Amendment was written there was concern that it unnecessarily assumed that civil trials were to be included. The Seventh Amendment corrected that assumption.

Sources:

sccourts.org

constitution.congress.gov

reaganlibrary.gov

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The Eighth Amendment to the U.S. Constitution (Or, “Are there no prisons?... Are there no workhouses?” - Ebenezer Scrooge in A Christmas Carol)

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

Summary and Explanation

The three clauses of the Eight Amendment are “Excessive bail”, “Excessive fine”, and “Cruel and unusual punishment”.

In the beginning of the interpretation of this amendment the Supreme Court basically said that the term “Excessive” will evolve as case law takes shape in our new republic. But the third clause fell into the lap of the Supreme Court to determine.

While the Eight Amendment was seen as applying only to federal criminal cases the Fourteenth Amendment signed 77 years later in 1868 expanded this and allowed it to apply to civil cases within the states as well.

The bail clause was a holdover from the English Bill of Rights from 1689 which had roots in prior English law since the year 1275. From then until America’s Bill of Rights signing in 1791 both Excessive Bail and Excessive Fine were used and abused by the King and the English courts due to the same sense of ambiguity-which continues into modern American times.

Bail is offered for two reasons. Firstly, to ensure that the accused won’t flee when released and secondly, our system guarantees (as much as possible) the presumption of innocence until proven guilty. An innocent person does not deserve imprisonment prior to a determination of jury trial or a judge’s decision. In essence the imposition of bail is a compromise between getting tossed in prison or be allowed to roam free until the court date.

But the offer of bail does not apply in all instances. In cases involving deportation bail is not a choice and must be imposed.

Regarding levying “Excessive fines” it took until 1998 for the Supreme Court to “inject some vitality” into this ambiguous power by requiring the study of three considerations: The facts of the case, the character of the

accused and the harm caused by the infraction in order to determine the amount of the fine. Still ambiguous but better than before.

And that brings us to the big interpretation of “Cruel and unusual punishment”. It deals only with criminal punishment, not lesser crimes such as a truant child in school. And it limits the severity and the proportionality of the punishment to fit the crime.

What about the death penalty? Again, the judge or jury needs to consider the facts, the character and the harm caused by the offense. Those parameters vary from state to state.

But please know that thumb screws or torture chairs are not allowed...anymore. Whew!

Sources:

constitution.congress.gov

constitutioncenter.org

britannica.com

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###

Ninth Amendment to the U.S. Constitution (Or, just because I said you couldn't do it, doesn't mean that you can, or vice versa.)

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” It can also mean that this right protects “rights” not in the Constitution.

Summary and Explanation

The ratification of the Constitution of the United States was not a done deal as eight out of 13 states insisted that a Bill of Rights be added after the signing. Indeed, George Mason and James Madison, (both from Virginia) debated about there being too much power awarded to the federal government.

George Mason, argued on behalf of the “anti-federalists” that there was too much left to interpretation what may or may not be construed as a right if it was not explicitly entered in the Constitution.

James Madison countered for the federalist side that if you insist upon including a bill of rights the separate states could argue that other rights might not be considered.

(It's interesting to note that all 13 colonies had their own bill of rights but hesitated to give the federal government its own Bill of Rights.)

Subsequent to the ratification in 1790, the states debated 11 days about the inclusion of 12 rights to be included in the Constitution. Two of those were defeated and 10 remained and approved. Those 10 became the official Bill Of Rights and were signed on the same day, December 15, 1791. Yay!

The Ninth Amendment was the “savings clause”, meaning that rights not specifically listed in the Constitution were not necessarily excluded. In other words, the Bill of Rights was understood to not only protect those rights listed but also others that fell in their shadows, not to be ignored but considered in future court cases.

That was a fortunate compromise for everyone. The states that wanted a Bill of Rights included, succeeded. The states that felt that a Bill of Rights would weaken the power of the federal government, never-the-less, won approval for the final Constitution with the Bill of Rights attached.

But wait – there's more.

The vote to ratify the Constitution only needed 9 of the 13 states (3/4) to approve. Three states did not sign it until, drum roll please, 1939, the 150th anniversary of the final approval. Those three were Massachusetts, Connecticut and Georgia who had not actually sent their written approvals to Congress. Why? Because the Constitution was already law so why bother. It took them 150 years to join the crowd.

Sources:

archives.gov

digitalhistory.uh.edu

constitution.congress.gov

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###

The Tenth Amendment (Or, whose got the power?)

“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.”

On the surface this one sentence directive seems fairly clear. But we will use two paragraphs to help explain that “clear” sentence.

If the Constitution does not award a power to the federal government, then the federal government cannot claim it. If the Constitution does not prohibit a state to claim a particular power the state can claim that power. If neither can claim it then that power defaults to the state or the people in general to claim.

Put another way, the federal government cannot claim a power that the Constitution didn't give it. However, that power can be claimed by the state if the Constitution didn't prohibit it. But if that power was prohibited to the state, then the next entity in line that can wield that power are the people if they so choose or just ignore it.

It took decades for lawyers and judges to apply it until a few cases helped to clarify it... a little at a time. That murkiness continues to this day.

The writers of the Constitution were wary of future attempts to grab powers that weren't there. For instance, James Monroe and his staff specifically did not use the word “expressly” to describe the word “delegated” so as to leave no doubt that a sneaky federal government could not invent a power just because it was not “expressly delegated.”

The interpretation of the Tenth Amendment varied from court to court as our country's legal system became more and more complicated. A ruling on one case at times would be overturned by a subsequent judge presiding over a similar case.

Sources:
constitution.congress.gov
constitutioncenter.org
archives.gov

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