

THE 3RD 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.

"A man's home is his castle." This Amendment protects homes against the invasion of the army. Not one single Supreme Court case has ever been brought under the 3rd Amendment.

THE 4TH 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; 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 has become the privacy amendment. In addition to its clear intent, it has been used by the Supreme Court to under gird the abortion right found in *Roe v. Wade* and similar, non-specified rights determined in other cases. [See also the Ninth Amendment.] The Fourth Amendment is enforced by the so-called "exclusionary rule" of the Supreme Court. This was first applied to the states in the landmark case of *Mapp v. Ohio*.

THE 5TH 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, 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.

This Amendment has a separate constitutional history for each of its clauses, like the First Amendment:

1) right to a grand jury indictment - The goal here is to prevent citizens from being held by the government for no real reason. A grand jury is a group of fellow citizens whose role it is to review the evidence against a detainee and decide if the evidence is sufficient to hold them over for a trial. In Texas, we call a decision to hold the detainee over for trial a "true bill" instead of an indictment. This means that the police's list (bill) of charges is a true one instead of a false one. If the grand jury decides that the police don't have enough evidence to justify a trial, they issue a "no bill."

2) no "double jeopardy" - No person can be tried twice for the same offense. This has the same goal as the 1st clause of this amendment: to prevent people from being harassed by government.

3) no compelled self-incrimination - When someone "pleads the fifth," this is what is meant. You may not be forced to testify against yourself in a criminal case. Because the law views the husband and wife combination as one person, spouses need not testify against one another. Sometimes, the government grants immunity from prosecution for whatever crimes may be revealed by your testimony. In that case, the common law rule that "the King is entitled to every man's testimony" prevails; you must testify.

4) the "due-process clause" - This is the heart of the Fifth, and the Fourteenth, Amendment. The government may not take your life, your liberty (put you in jail), or your property without giving you due process. This means, of course, that it can take these things from you if it does give you "due process." A great deal of the litigation in our nation's history is over the meaning of the phrase "due process of law." It has been deemed to include the right to a speedy trial and a court-paid attorney, among other things. "Due process means that process which is due." - the late Bernie Ward, Professor of Law, University of Texas School of Law

5) the compensation clause - The government has the privilege of taking your property, real estate and other wise, from you if the use to which the government puts it is more important, in its judgement, than your private use. This is the doctrine of "superior use" and the power of "eminent domain." But when the government does this, it must pay you the fair market value of the property ("just compensation").

THE 6TH 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, 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 defence.

This Amendment gives you right when you are charged with a criminal offense. It also is composed of several separate clauses:

1) You have the right to a speedy trial, open to the public. What constitutes speedy trial is the subject of continuing debate. Basically, the Court says that speedy means that the prosecution is not intentionally delaying the trial. So a "speedy trial" may be held two years after the arrest.

2) An impartial jury means a jury that has not already decided your case due to pre-trial publicity or prejudice. If your jurors have heard television reports of you alleged crime, they are not impartial. If you are Black, you are entitled to a jury composed of a representative number of Black and Caucasian citizens.

3) The trial must be held in the district where the crime was committed. This is because otherwise the government could hold the trial in Oregon and force you to drag your witnesses there; this isn't fair.

4) You must be told about the crimes with which you are being charged so that you may present an effective defense.

5) You have the right to cross-examine the witnesses which the government has against you. This has been called "the greatest engine for the discovery of truth" in the history of the law. People often have a difficult time lying in open court, under oath, under the questioning of an effective attorney.

6) You have the right to have the court subpoena witnesses in your favor when those witnesses won't appear voluntarily.

7) You have the right to have an attorney represent you. This is supplemented by the Court's decision in *Gideon v. Wainwright* that you have the right to a government-paid attorney if you cannot afford one; this decision, however, is based upon the Fifth Amendment's due process clause, and the same clause in the Fourteenth Amendment.

How does it work? *Escobedo v. Illinois*, 1964:

Danny Escobedo was picked up by Chicago police for questioning in the death of his brother-in-law. On the way to the police station, and later during his questioning, he asked repeatedly to see his lawyer. These requests were refused. During his questioning, Danny Escobedo made several statements which were used in court to convict him of the murder of his brother-in-law.

In the Supreme Court of the United States, Danny Escobedo claims that his 6th Amendment right to "the assistance of counsel" has been violated. He asks the Court to set aside his conviction and release him from prison. How do you suppose the Court ruled?

THE 7TH AMENDMENT

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.

Notice that the 7th Amendment applies on to CIVIL cases.

Unfortunately, it is not as simple as it sounds. The "right of trial" "in suits at common law" was being "preserved." But English common law did then, so American common law must now, recognize only certain types of civil law questions as common law questions. English law had two types of civil cases: suits at common law and cases in equity. Unfortunately, there is no logical distinction between the two types of cases; they are merely the result of historical accident (or Providence, depending upon your religious belief).

For example, let's say the Feds have just condemned your house under its power of eminent domain for the construction of a new army base. If you want to sue them to get more money than they are offering you for your property, then you have a "suit at common law," because you are asking for money damages. But if you want to sue them to stop them from taking your house, then you have a "case in equity," because you are asking for a court injunction. Both are civil cases, but in the former you get a jury; in the latter one, you don't.

"The Seventh Amendment is the board in the bed that forever prohibits the true marriage of law and equity." (Some Supreme Court justice said that, although I don't remember which one.)

The second guarantee of the 7th Amendment is the legal doctrine that goes by the Latin name of *res judicata*. The two Latin words mean "a thing decided." Once a jury decides that something is a fact, that decision may not be tampered with by any other court. This is a guarantee that judges won't mess with your jury's decisions.

THE 8TH AMENDMENT

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

What is bail? What is the purpose of bail? Then that will determine whether a bail is excessive.

What is the purpose of a fine? Why are some fines larger than others? How could we determine if some fines are "excessive" and therefore unconstitutional?

What is the purpose of a punishment? Why are some punishments more severe than others? How could we determine if some punishments are "cruel and unusual?" Do we use the standards of cruelty when these words were written and constitutionalized (1791) or do we use today's standards?

THE 9TH AMENDMENT

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

This was considered a statement of the obvious. The government was one of limited powers and it therefore could not interfere where not specifically authorized by the Constitution to do so. This was put in to ease fears that the Bill of Rights would be read to change the meaning of the Constitution so that anything not prohibited by it would be allowed.

In recent years the Court has turned the 9th from a shield against federal power into a sword used to extend federal power by striking down state laws. The Court has enunciated certain "privacy" rights which it is enforcing against the states under the authority of the Ninth Amendment.

THE 10TH 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.

This was also considered a statement of the obvious. Article I, Section 1 of the Constitution gives Congress only certain powers ("All legislative powers herein granted"). Since the states made the Constitution, it should be obvious that any power they didn't delegate to Congress in the Constitution, they retained. So not much attention has been paid to the 10th Amendment. Many people, however, now argue that this has been a mistake because it has allowed the national government to gradually expand its sphere of power well beyond that authorized by the Constitution. Bob Dole made "restoring the 10th Amendment" the rallying cry of his 1996 presidential campaign. Of course, he lost.