

# A

## How Do Due Process Protections for the Accused Aim to Protect Us All?

### BACKGROUND ESSAY

Imagine living in a society in which your government can do the following things to you:

- A. Demand to enter your home for no particular reason and forcibly enter if you object.
- B. Ignore your demands to know why your home or property is being searched.
- C. Charge you with a crime without telling you and then force you to confess your guilt.
- D. Find you guilty in secret a very long time after your arrest.
- E. Keep putting you on trial over and over until a jury decides you are guilty.
- F. Take your property without paying you for it.

If you lived in such a society, would you be free? If government could do these kinds of things, would there be any real limit on its powers??

### Why Did the Founders Include So Many Provisions Regarding the Rights of the Accused?

People are often surprised to find how much of the Bill of Rights involves protections for those who have been accused of a crime. Five amendments in the Bill of Rights deal with some

aspect of criminal procedure—the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments. The Founders knew from history and experience that if there were not protections for citizens who are accused of crimes and clear rules of due process for the government to follow, then the government would have unlimited power and citizens could not live freely. The idea was that it was better for guilty people to go free than for the judicial system to wrongly punish even one innocent person.

### Gathering Evidence: What Does the Fourth Amendment Protect?

One of the most common ways the British violated the rights of American colonists was the use of “general” search warrants. These warrants were easy to get and did not list a particular person or place to be searched. Any official who held a general warrant could search for anything he wanted, and British officers often used these warrants to unjustly search colonists. The Founders wanted to stop this type of abuse with the Fourth Amendment. The Fourth Amendment requires that warrants be specific about the person and place to be searched. It also requires that law enforcement officers must show probable cause to receive a warrant, meaning that they must show a



*Jury duty is part of a citizen's responsibility to protect due process rights.*

judge evidence that the person or place may be involved in a crime. The Fourth Amendment demands that government officials go beyond simple suspicion and balance citizens' rights with proper enforcement of laws.

### **Government Power: What Does the Fifth Amendment Protect?**

The Fifth Amendment contains a number of protections for individuals after a search has been conducted or an arrest has been made. One of the most important of these is protection from selfincrimination. Also known as "pleading the Fifth" or "the right to remain silent," this protection means

the government cannot force someone to give evidence against him or herself. A person may refuse to answer police questions that might make him or her seem guilty, and, at trial, the accused person cannot be required to take the stand and testify under oath.

The Fifth Amendment also guarantees that the government cannot try an accused individual for the same crime more than once, a practice known as double jeopardy. Without a ban on double jeopardy, the government could try an individual over and over until it got the verdict it wanted.

### **Determining Guilt or Innocence: What Does the Sixth Amendment Protect?**

The Sixth Amendment guarantees a jury trial for all individuals accused of a crime. Trials must be speedy, public, and be held in the locale where the crime took place. It also requires that citizen juries, not a judge, decide the guilt or innocence of the accused. (This protection is also in the body of the Constitution.) Accused individuals have the rights to know the crimes they are accused of committing, to see all evidence the government has against them, to face their accusers, to call witnesses in their defense, and to have a lawyer to assist in their defense. Because the Sixth Amendment defends individuals from the huge power and resources of the government, it is essential to the preservation of liberty.

## **Jury Overruled? What Does the Seventh Amendment Protect?**

The Seventh Amendment to the Constitution guarantees a right to trial by jury in common law cases involving amounts over \$20. It also states that cases decided by a jury cannot be overturned unless there was a factual error. A judge can set aside a jury's verdict, but he or she cannot make a verdict or call a new trial. The Supreme Court upheld this clause in *Slocum v. New York Insurance Co.* (1813). The Court said that while an appeals court could set aside a jury verdict "for error of law" and order a new trial, "it may not itself determine the issues of fact."

## **Guilty: What Does the Eighth Amendment Protect?**

The Founders knew that individual rights do not end when someone is found guilty of a crime. The Eighth Amendment requires that fines and penalties for guilty persons are not excessive. Most people understand this as the idea that the punishment must fit the crime. While the Bill of Rights does not define what is "excessive," the Supreme Court has defined it as punishment that is

extremely out of balance with the offenses committed in *United States v. Bajakajian* (1988).

Perhaps more challenging to define is the Eighth Amendment's ban on "cruel and unusual punishments" for guilty individuals. Generally, this protection was meant to prevent punishments like whipping or other methods common throughout history. The definition of "cruel and unusual" punishment is often hotly debated.

## **Criminal Procedure Protections and You**

Most citizens obey laws, but due process does not just protect those people who break the law. It is important for us all. The Founders wrote the Constitution to "establish justice" and "to secure the blessings of liberty" for themselves and future generations. A big part of that was protecting minorities (including suspected criminals) from the "tyranny of the majority." The protections of the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments all help balance individual rights and the powers of government.



## Comprehension and Critical Thinking Questions

1. Which amendments in the Bill of Rights protect people who are accused of crimes? Why did the Founders include these amendments in the Bill of Rights?
2. What specific protections for the accused are contained in the Fourth Amendment? In the Fifth Amendment?
3. In what ways does the Sixth Amendment protect an accused individual after he or she has been charged with a crime?
4. *"The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe [obey] its own laws, or worse, its disregard [ignoring] of the charter [rules] of its own existence."*

How does this quote from the Supreme Court's ruling in *Mapp v. Ohio* (1961) show the importance of protections for those accused of crimes? Do you think the Founders would agree with this statement? Why or why not? (Answer in 2-3 sentences.)

5. Imagine you were talking to someone who said that she didn't worry about protecting the rights of the accused because she never planned to commit a crime. How would you respond?