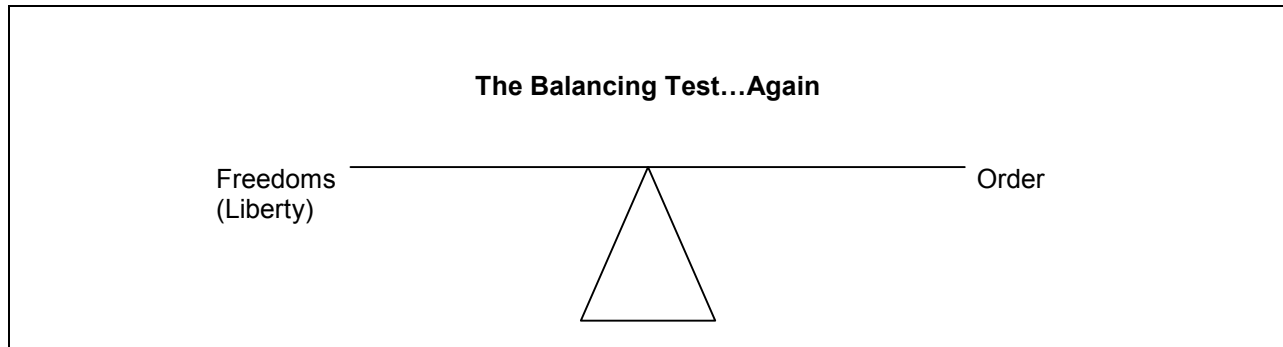


Understanding the 5th through 8th Amendments



How do you balance the desire for freedom with the need to maintain order?

- The Warren Court—1953-1969—in general this court gave a new emphasis to the personal rights of citizens in the field of civil rights, first amendment freedoms, the individual in society especially in terms of restricting states' use of criminal procedures to deny fair trials and political rights.
- Combination of 4th, 5th, 6th, and 7th amendments comprise of most rights given to the accused

Elements of the 5th Amendment (GEDDS)

Grand jury not incorporated

Eminent domain—the power to acquire private property for public use with just compensation

- Sometimes government use of the land renders land unusable even if they have not come into ownership of it. In this case the gov't must compensate as well

Due Process—applies to federal government (clause in 14th as well) but does not grant any specific rights such as the right to counsel. It means that gov't must "play fair"

- Substantive Due Process
- Procedural Due Process

Double Jeopardy—cannot be tried twice for the same crime, designed to prevent the unfair harassment of a citizen by repeated attempts to convict him/her of a crime already found not guilty

- If a defendant is convicted, appeals his conviction, individual may not claim double jeopardy (in this case he is the one who initiated the appeal)
- If the defendant has been convicted of a lesser offense at his first trial, he may only be tried for that crime at the second (convicted for manslaughter, appeals, tried for manslaughter not murder on second time through, but judges may impose longer sentences)
- If there is a mistrial, the defendant may be tried again without violating double jeopardy
- Can be tried in both state and federal court without violating double jeopardy (i.e. bank robbery)

The 5th Amendment

By 1969, only five states' constitutions did not prohibit double jeopardy. With the incorporation case of ***Benton v. Maryland***, however, it was applied to all states through the 14th Amendment.

- Benton tried in MD court for burglary and larceny—was convicted on burglary but found innocent of larceny (10 yr. Sentence)
- Second trial Benton again charged with both larceny and burglary—this time convicted of both (15 year sentence)
- Maryland Court of Special Appeals rejected claim, Court of Appeals denied review
- Supreme Court rules that 5th is applicable to states and that larceny conviction cannot stand

Self Incrimination—philosophy behind this is that the state and federal governments should be required to establish guilt of criminal acts by independent evidence, since no one should be required to convict himself out of his own mouth

Miranda v. Arizona

- March 1963 Phoenix, AZ
- 18 yr. old female walking home from job at movie theatre kidnapped and raped in a desert outside of Phoenix
- After investigating the crime for 10 days, police arrested 23 yr. old Ernesto Miranda
Miranda had a police record (stolen car) and a history of sexual problems
Miranda later said officers would not tell him of why he was going downtown to the police station
- The Confession—the 18 yr. old victim had somewhat of an inconsistent testimony
Her brother in law said she had the IQ of a 12 or 13 yr. old.
Miranda when brought to the station was placed in a line up—victim did not identify Miranda in the line up but rather said he had a rather similar build and features
Miranda was led to believe that she had identified him as police questioned him all night (two hours?)
Police said Miranda could be charged with another rape and robbery but that they would drop the charges if he would confess to this one
Police brought the girl into the interrogation room and asked him if this was the girl and he indicated it was, signing a confession which would be used to convict him in June 1963
- Miranda said he repeatedly asked for a lawyer during the questioning but was refused
At a preliminary hearing he again said his requests fell on deaf ears
At his arraignment he was appointed a 73 yr old attorney who had not practiced criminal law in 16 yrs.
He told Miranda to plead insane.
- Miranda did not appeal to the Supreme Court on the basis that his confession was false or coerced, but rather that had he known he had a right to remain silent and of a right to an attorney he would not have confessed.

Supreme Court ruled that one must be informed of your rights before questioning.

- The now famous Miranda Rights
- In February 1967, at the 2nd trial for kidnapping and rape, while Miranda was in prison his common law wife, Twila Hoffman, testified that he had admitted to her that he had indeed committed the crime
- Miranda sentence to 20-30 yrs—served about 8 yrs
- Jan 31, 1976 in Phoenix
- Miranda gets in a fight with two illegal immigrants at a poker game—Miranda stabbed and killed
- The suspects in this crime are ironically read their Miranda rights

5th Amendment (continued)

Arizona v. Fulminante (1991)

- Coercion of confession does not always automatically taint a conviction
- If other evidence is enough for a conviction, coerced confession is a “**harmless error**” that does Mesa, AZ—Fulminante (4th grade education, nice criminal record—6 felony convictions) reports daughter missing.
- Inconsistencies in report lead police to believe he is a suspect when girl found strangled and shot in the desert
- No charges filed, Fulminante goes to NJ where he is imprisoned for felony weapons possession
- Inmate Anthony Sarivola former cop gone bad now in jail but on the payroll of the FBI as a paid informant asks Fulminante about the crime (offers protection from those in jail who don't take kindly to child murderers)
- Fulminante confesses to Sarivola but appeals this evidence upon release saying that he was coerced
- Although the Fulminante granted new trial without coerced evidence, Supreme Court decision ruled / reinforced the idea that forced confessions do not always violate the due process clauses

Dickerson v. US (2000)

- During questioning about a robbery he was connected to, Charles Dickerson made statements to authorities admitting that he was the getaway driver in a series of bank robberies. Dickerson was then placed under arrest. The timing of his statement is disputed.
- The FBI and local detectives testified that Dickerson was advised of his Miranda rights, established in *Miranda v. Arizona*, and waived them before he made his statement. Dickerson said he was not read his Miranda warnings until after he gave his statement. After his indictment for bank robbery, Dickerson filed a motion to suppress the statement that he made on the ground that he had not received Miranda warnings before being interrogated.
- The government argued that even if the Miranda warnings were not read, the statement was voluntary and therefore admissible under 18 USC Section 3501, which provides that "a confession shall be admissible in evidence if it is voluntarily given." The District Court granted Dickerson's motion, finding that he had not been read his Miranda rights or signed a waiver until after he made his statement, but the court did not address section 3501.
- In reversing, the Court of Appeals acknowledged that Dickerson had not received Miranda warnings, but held that section 3501 was satisfied because his statement was voluntary.
- The court held that "Congress enacted section 3501 with the express purpose of legislatively overruling *Miranda* and restoring voluntariness as the test for admitting confessions in federal court."
- May Congress legislatively overrule *Miranda v. Arizona* and its warnings that govern the admissibility of statements made during custodial interrogation?
- Supreme Court Decision--No. In a 7-2 opinion delivered by Chief Justice William H. Rehnquist, the Court held that *Miranda* governs the admissibility of statements made during custodial interrogation in both state and federal courts. "Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture," wrote Rehnquist. "Miranda announced a constitutional rule that Congress may not supersede legislatively. We decline to overrule *Miranda* ourselves," concluded the Chief Justice. Dissenting, Justice Antonin Scalia, joined by Justice Clarence Thomas, blasted the Court's ruling, writing that the majority opinion gave needless protection to "foolish (but not compelled) confessions."

The 6th Amendment

- Right to secure counsel, specific procedural rights granted to persons charged with crimes
- Speedy trial clause to prevent indefinite imprisonment before trial
- If not so restricted gov't could dispose of critics by arresting them on bogus charges and holding them in jail for years
- Right to speedy trial only abridged when the prosecuting attorney deliberately delays a trial, mere delay in reaching trial due to an overcrowded court docket was not a violation of rights
- Public trial—assures justice must be carried out in front of the citizens
- Issue of the media in the court room
- All federal criminal trials held before jury (12 members) yet certain states require less than 12
- Jury trial must be allowed in any case where there is a possibility of imprisonment for more than six months
- All persons charged with felonies are entitled to have a free, court appointed attorney if they cannot afford their own, in state as well as federal trials
- Prior to Gideon a defendant in state court was automatically granted counsel only in a capital case or if he were illiterate, very young, or otherwise unable to defend himself

Gideon v. Wainwright (1963)

- Clarence Gideon convicted of robbing pool hall of beer, wine, spare change from a vending machine
- Gideon asked for a lawyer but was refused one (Florida law asserted that an indigent accused of a crime was entitled to counsel only if charged with a capital offense)
- Gideon had to present his own case against prosecution (who also didn't have a very strong case) and was convicted of robbery sentenced to five years
- Gideon, who had spent most of his life in jail and thus knew the system, sent pauper's petition to Supreme Court and Court rules that defendants in all federal cases have right to counsel (Gideon retried and acquitted)
- "lawyers in criminal courts are necessities, not luxuries" Justice Black
- 1972—applies to misdemeanors as well and courts must provide an attorney for one appeal

Escobedo v. Illinois (1964)

January 1960

- Danny Escobedo questioned from 2:30 am to 5 pm about the fatal shooting of his brother in law
- After questioning another man told police Escobedo had fired the shots and was picked up for questioning again
- Escobedo called his attorney but was not allowed to see Escobedo until police were finished with their questioning (4 hrs later)
- Escobedo confronts other man "I didn't shoot Manuel, you did it."
- First time Escobedo admitted to knowing anything about the crime
- Indicated that he was involved and that statement was used against him at his trial
- Supreme Court rules 5 to 4 that you have a right to counsel to act as "a guiding hand" to advise you during police questioning
- Ordered Escobedo freed after 4 yrs in prison

The 8th Amendment

- Court had interpreted it as torture or punishment grossly disproportionate to the offense
- 1970s— capital punishment is a major issue during the decade
- Death penalty assumed to be constitutional—19th century the Court ruled that two methods of execution (firing squad and electrocution) were not so inhumane as to be deemed torture.

Furman v. Georgia(1972)

- Such a divisive issue all justices wrote their own opinion
- Georgia's penalty ruled unconstitutional because of random nature as well as issues of race and wealth (those white and with money were seldom sentenced to death in convictions)
- Court rules there was too much discretion for those who administered the punishment and too much arbitrariness and discrimination for those who received the punishment
- After ruling 3/4 of states adopted new laws to be less arbitrary and discriminatory

Gregg v. Georgia(1976)

- "Capital punishment "is an expression of society's outrage at particularly offensive conduct."

Texas law—

Under a new review process, the state must spare the life of a murderer found mentally incompetent at the time of his scheduled execution.