

The Right to Remain Silent

“The Common Law Project”
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3rd Period

Where can this be found in the Constitution?

A brief overview of the Fifth Amendment

- The Fifth Amendment
 - Self incrimination
 - Grand juries
 - Double Jeopardy
 - Due Process Clause
 - Just Compensation Clause

Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative, and until such Enumeration shall be made, the State of New Hampshire shall be entitled to three, Massachusetts eight, Rhode Island and Connecticut three, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When Vacancies happen in the Representation from any State, the Electors thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall choose their Speaker and other Officers, and shall have the sole Power of Impeachment. Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Congress, they shall be divided as equally as may be into three Clases. The Seats of the Senators of the first Class shall be vacated at the Expiration of the first Year, of the second Class at the Expiration of the second Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Term of the Legislature of any State, the Governor thereof shall make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. The Vice President of the United States shall have no Vote, unless they be equally divided. The Senate shall choose their other Officers, and also a Secretary, who shall, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments, for that Purpose, they shall be on Oath or Affirmation. When the President of the United States, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be in the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in Person or by their legal Representatives, in such Manner as each House may provide.

How is it presented in the Constitution?

In the Fifth Amendment, the “right to remain silent” is presented as the principle of “self incrimination”.

- What is “self incrimination”?
 - Why is it important that this right is protected?
 - Why is it important that police inform of this right before every arrest?



Congress of the United States,

begin and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty-nine.

THE Convention of members of the States, having at the close of their adopting the Constitution, agreed and directed, in order to give more effect to the ratification of the same, that further declarations and resolutions should be added, the same extending the ground of public confidence in the Government, will best insure the benefit of the Constitution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of the whole concurring, that the following Article be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, with a view to their ratification, when ratification by three fourths of the said Legislatures, be valid to all intents and purposes in part of the said Constitution, viz.

ARTICLE I. In addition to, and amendment of the Constitution of the United States of America, proposed by Congress on the fifth of September of the second State, pursuant to the fifth Article of the original Constitution.

Section the first. After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred. After which the proportion shall be regulated by Congress, so that there shall never be less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than one Representative for every fifty thousand persons.

Section the second. If two, or more States, shall be admitted into the Union, after the first of March, next, the Representatives shall be apportioned to the new States, in proportion to the whole number of free Persons, in each State, as near as may be.

Section the third. 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.

Section the fourth. In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State or Territory where the crime shall have been committed, who shall have the power to demand the presence of witnesses, and to confront the accusers, and to be fully heard in his own defence; and to be assisted by Counsel; and to examine the witnesses for him, and to be fully heard in his own defence; and to be fully heard in his own defence; and to be fully heard in his own defence.

Section the fifth. No person shall be held to answer for a capital or otherwise infamous crime, unless he has 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.

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History

Where did the Fifth Amendment come from?
Why did we feel as if it was necessary in our Constitution?

1791
James Madison, Member of Congress, Speaker of the House of Representatives
John Adams, Vice President of the United States, and President of the Senate

The Fifth Amendment

The Fifth Amendment comes from the British courts. The right is a reaction from the Court of Star Chamber, a court notorious for seeking truth through intense pressure. The burden of evidence was not on the prosecution team, therefore, most of their “evidence” came from confessions. This was a very unreliable and dishonest way of receiving and analysing evidence. The Court of Star Chamber, a court dating back to medieval times, oversaw the operations and decisions of the lower court. It gained most of its power during the reign of Henry VII, and under the Tudors, the sessions were made public.

- Founding Fathers wanted to protect ourselves in court.
- Protection from
 - Cruel questioning
 - False admissions
- *Nemo tenetur*- no man should be bound to accuse himself

Case Timeline

Ashcraft vs. Tennessee

Miranda vs. Arizona

Kastigar vs. United States

Berghuis vs. Thompkins

Salinas vs. Texas

1944

1965

1966

1971

1972

2000

2010

2013

2013

2014

Griffin vs. California

Harris vs. New York

Dickerson vs United States

Kansas vs. Cheever

People vs. Tom

Brief Cases

"You have the right to remain silent. Anything you say can and will be held against you in a court of law."



Ashcraft vs. Tennessee

Was Ashcraft's confession legitimate?



Griffin vs. California

Can silence be used against you?



Harris vs. New York

Should Harris have remained silent?



Kansas vs. Cheever

Did Cheever's mental health restrict his Fifth Amendment right protection?



People vs. Tom

Did the court violate Tom's 5th amendment rights?

Ashcraft vs. Tennessee

In a case involving first degree murder, Mr. Ashcraft was put into questioning for over 36 hours, over his wife, Zelma Ashcraft's, murder.

Unanimous vote

1944

Was the confession Ashcraft made self-incriminating, due to the fact he was questioned for over 36 hours without any rest ?

Yes, because his confession came after 36 hours of questioning, it was determined faulty.

Griffin vs. California

Edward Dean Griffin was on trial for first degree murder. He decided to remain silent throughout trial. That was used against him by the jury.

6-2 vote

1965

The court allowed for jury to use Griffin's act of remaining silent as an indication of being guilty. Was the jury right to do this or was it against the 5th amendment?

No, the Supreme Court reversed the smaller jury's ruling, because having Griffin's silence used against him was in violation of the 5th amendment

Harris vs. New York

Viven Harris was caught selling heroin to an undercover police officer twice. At the time of his arrest he was read his rights. He then made statements at the trial contradicting what he said at the police station.

5-4 vote

1971

Was the prosecution allowed to use the statements made by Harris?

Yes, because he chose to testify at trial and he was never forced to say anything.

Kansas vs. Cheever

Scott Cheever shot and killed Sheriff Matthew Samuels while under the influence of methamphetamines. He was issued a psychiatric examination and that was used against him in court.

Unanimous vote

2013

Was the state allowed to use his mental health as evidence for this case?

Yes, because a professional testified against him, it was not self-incriminating and not against the 5th amendment.

People vs. Tom

Richard Tom, wrecked with Loraine Wong and her two daughters in the car with her. The youngest, Sydney, was killed, and the oldest, Kendall had major injuries.

Unanimous vote

2014

Did the trial court violate the 5th amendment's self-incrimination by releasing pre-miranda warning facts?

Yes, the court did violate Tom's 5th amendment right to self-incrimination.

Detailed Cases

"You have the right to remain silent. Anything you say can and will be held against you in a court of law."



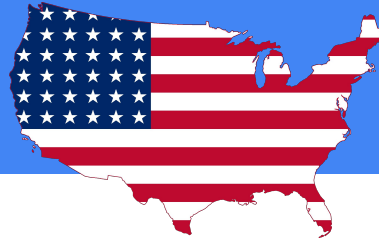
Miranda vs. Arizona

Are police required to read a person's rights?



Kastigar vs. United States

Is a court allowed to use a person's choice to remain silence as evidence against him or her?



Dickerson vs. United States

Is Congress allowed to overrule certain aspects of Miranda vs. Arizona?



Berghuis vs. Thompkins

Can the court Reverse Miranda when the 5th amendment has been violated?



Salinas vs. Texas

Can statements be used against a person that were made voluntarily before they were actually arrested and read their rights?

Miranda vs. Arizona

1996

5-4
vote

**This involved four
different cases, all
involving police
interrogations.**

Ernesto
Miranda
Micheal
Vignera
Carl Westover
Roy Stewart

**All of these cases
brought the
question of:**

Are police
required to
read out the
defendant's
rights?

Kastigar vs. United States 1972

1972

5-2
vote

**Two petitioners
refused to answer
questions at a
grand jury hearing.**

They were
immunized

**Led to the
question:**

Is the
Government
allowed to force
persons even if
they decide to
“plead the 5th”
and remain
silent?

Dickerson vs. United States

2000

7-2
vote

**Statements were
made to a FBI
agent before
Miranda rights
were read.**

Charles
Thomas
Dickerson

**Began the
question of:**

Can
Congress
overrule
certain
aspects in
Miranda vs
Arizona.

Berghuis vs. Thompkins

2010

5-4
vote

**Two men were shot
at, one was killed.
One man was found
and acquitted, the
other was found a
year later.**

Van
Chester
Thompkins

**Two
questions
formed:**

Were Thompkins
rights violated?
Was his
interrogation
period
self-incriminating
?

Salinas vs. Texas

2013

5-4
vote

**Man found
guilty of
murdering two
victims after 15
years.**

Genovevo
Salinas

**The case led
to this
question:**

Was Salinas' 5th
amendment
violated when the
court used how
he was silent
while being
talked to by
police?

Conclusion

Important things to remember:

- You have the right to think before you speak! Think wisely.

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