

Constitution Class Handout
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Lesson 15

The Legal Amendments

Amendment IV

Warrants, Searches, and Seizures

The 4th Amendment to the United States Constitution was added as part of the Bill of Rights on December 15, 1791. It was written with the purpose of protecting people from the government searching their homes and private property without properly executed **search 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."

What this means is that the federal government, in order to search a person's home, business, papers, bank accounts, computer or other personal items, in most cases, must obtain a search warrant signed by the proper authority, which usually means by a judge.

The issuance of a warrant must accompany reasonable belief that a crime has been committed and that by searching the premises of a particular location, evidence will be found that will verify the crime. The government officer does not have to be correct in his assumption, he just has to have a reasonable belief that searching someone's private property will yield evidence of the crime. The task of determining whether or not the officer's assumptions are a reasonable belief falls on the judge who is considering issuing the search warrant.

The concept that citizens must be protected from unreasonable searches and seizures goes back into English history. The British Crown was known for performing searches and seizures that were unlawfully conducted. Often, these searches were conducted by the king's representatives.

The British government saw the American Colonies as a source of revenue. As a result, taxation against the American colonies was a continuous practice, in the hopes of generating as much money from the colonists as possible. The colonists resented this and engaged in substantial smuggling operations in order to get around the customs taxes imposed by the British government.

The King responded to the Colonist's smuggling activities by using **writs of assistance**, which were search warrants that were very broad and general in their scope. British agents, once obtaining these writs, could search any property they believed might contain contraband goods. They could enter someone's property with no notice and without any reason given. Tax collectors could interrogate anyone about their use of goods and require the cooperation of any citizen. Searches and seizures of private property based on very general warrants became an epidemic in colonial America.

In 1756, the Massachusetts legislature passed search and seizure laws outlawing the use of general warrants. The friction created between the Royal Governor and the people of Massachusetts grew with each passing moment.

In 1760 James Otis, a Boston lawyer, strongly objected to these arbitrary searches and seizures of private property and consequently resigned his position with the government, and then became the lawyer for a group of over 50 merchants who sued the government claiming that the **writs of assistance** were unjust.

James Otis represented these merchants for free. His speech condemning British policies, including writs of assistance and general search warrants, was so powerful and eloquent, that it was heard of throughout the colonies and catapulted him to a place of leadership in the swelling tide of disillusionment toward Great Britain.

Twenty-five year old John Adams, who would become the second president of the United States some time later, was sitting in the courtroom and heard Otis' famous speech that served as a spark that led to igniting the American Revolution.

The 4th Amendment, a part of The Bill of Rights, became law on December 15, 1791.

The 4th Amendment applies only to the federal government. State constitutions are written similarly, and States also have laws that are consistent with the intention of the 4th Amendment. The 4th Amendment provides protection from illegal search and seizure by federal government officials, but not by private citizens. So, if an employer unreasonably searched your possessions at work, the 4th Amendment would not have been violated, but local laws may have been.

In recent history The PATRIOT Act was seen as a breach of the 4th Amendment because it allowed the federal government to pursue a number of strategies in their search for terrorists that includes warrantless phone taps, access to phone logs, and monitoring of online communications such as email. The debate still goes on regarding the constitutionality of The PATRIOT Act, with both sides presenting reasonable arguments, ranging from the constitutional necessity of the law for the purpose of "providing for the common defense," to the argument that the authorities offered by the law allows the federal government to unconstitutionally intrude on the right to privacy of all Americans.

The National Defense Authorization Act (NDAA) of 2014 builds on the powers seized by the federal government through the PATRIOT Act, allowing unrestricted analysis and research of captured records pertaining to any organization or individual "now or once hostile to the United States." The definition of "hostile to the United States" is broad, and can include political opposition. Under NDAA 2014 Sec. 1061(g)(1), an overly vague definition of captured records enhances government power and guarantees indefinite surveillance.

The Internal Revenue Service is another arm of the federal government that routinely violates the 4th Amendment, doing so under the auspice of ensuring all taxes are paid.

Terms:

Search Warrant - The Search Warrant specifically requires that the government demonstrate to a judge the existence of probable cause of criminal activity on the part of the person whose property the government wishes to search. The Fourth Amendment commands that only a judge can authorize a search warrant.

Writs of Assistance - British search warrants that were very broad and general in their scope. British agents, once obtaining these writs, could search any property they believed might contain contraband goods.

Questions for Discussion:

1. What actions by the British prior to the American Revolutionary War inspired the Founding Fathers to include this amendment in the Bill of Rights?
2. How would our legal system act if Search Warrants were not considered necessary?
3. How does the Fourth Amendment influence today's thinking regarding government actions, such as with The PATRIOT Act?

Resources:

How Congress Has Assaulted Our Freedoms in the Patriot Act by
Andrew P. Napolitano, Lew Rockwell.com: <http://www.lewrockwell.com/orig6/napolitano2.html>

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010).

Paul A. Ibbetson, *Living Under the PATRIOT Act: Educating a Society*;
Bloomington, IN: Author House (2007)

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution – Volume Five - Amendments I-XII*; Indianapolis: Liberty Fund (1987).

Amendment V**Due Process and Eminent Domain****Due Process**

The majority of the Fifth Amendment provides additional reinforcement to the concept of **due process**. The language of this Amendment was designed to assure those who feared the potential tyranny of a new centralized government created by the United States Constitution that the federal government would be restrained in such a way as to ensure that the government did not perpetrate bloodshed against its citizens.

The first part of the 5th Amendment reads: “*No person shall be held to answer for a **capital crime**, or otherwise **infamous crime**, unless on a presentment or indictment of a **Grand Jury**. . .*”

The 5th Amendment attests to the Founding Father's understanding that this is a nation of property owners. As a republic of property owners, when in jeopardy of legal trouble, our rights and properties must be safeguarded. Therefore, an American Citizen in the American legal system has a right to a jury, as well as a right to the presentation of evidence. Conviction is not reached with a majority vote, either. Conviction requires a unanimous agreement among all of the members of the jury. These concepts reinforce the concept that one is innocent until proven guilty (A concept found in the Book of Deuteronomy, Chapter 19, Verse 15), and that the United States of America is a **Republic**. **Mob rule** is not allowed, for as the amendment provides, a person cannot be held until given the opportunity of due process.

Not all persons, however, are awarded this opportunity. The next part of the amendment reads: “. . . *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. . .*”

The military does not fall under the U.S. Constitution. Personnel serving in the armed forces are governed by the Uniform Code of Military Justice (UCMJ). Instead of a civilian trial, a military service member is normally afforded a court martial. If a civilian trial is deemed appropriate by the U.S. Military, a service member can still stand trial in a civilian court, but the military has the authority to decide whether or not the member shall stand such a trial.

Having a sense of independence, individuals must be protected, then, from the tyrannical trappings of a governmental system that may try to use the judiciary against them (as the King of England had done often). The protective mechanism, or **the rule of law**, would be the U.S. Constitution and clauses like the 5th Amendment, which were designed to provide protection to the populace from unfair legal practices.

One such protection is provided in the next part of this amendment: “. . . *nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb. . .*”

Protection against **Double Jeopardy** enables us not to be continuously tried for the same offense, which was a technique often used in some parts of Europe during the eighteenth century. The idea was that if a person was prosecuted enough, either they would weary of the process and break down, or the defendant would become unable to financially continue, hence unable to defend themselves.

The next part of the amendment serves as a large influence on today's **Miranda Rights**. The section reads: “. . . *nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property.*”

Miranda Rights are named after the U.S. Supreme Court case, *Miranda v. Arizona* (1966). Miranda Rights are a warning given advising the accused of their right to remain silent, their right to an attorney, and the right to an appointed attorney if they are unable to afford counsel - prior to conducting a custodial interrogation. From the 5th Amendment: “. . . *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.*” Miranda Rights exist to secure the 5th Amendment's privilege against self-incrimination, and to make the individual in custody aware not only of the privilege, but also of the consequences of forgoing it. The judicial opinion from the *Miranda v. Arizona* case also indicated that in order to protect the person's life, liberty or property with the due process of law, the individual must have the right to an attorney. With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the

accused gives a fully accurate statement to the police and that the statement is rightly reported by the prosecution at trial.

The words of the Founders continues to resonate today as the majority of the American people seem to firmly agree with the Founding Father's insistence that no one should be deprived of life, liberty, or property without due process of law. We can take satisfaction that most of our fellow citizens in our republic still hold these truths to be self-evident.

Eminent Domain

The provisions of the 5th Amendment are there to keep our courts honest, and the powers of the government constrained. The last phrase of the 5th Amendment, however, is considered too general by many, and it has been used in a manner by the federal government that is extremely troublesome, because it gives the government the right to take property if there is **just compensation**.

How is just compensation determined? Is it based on the market value of the property? How does the government officials involved in **eminent domain** calculate the non-intrinsic value? How do they compensate for the value on which nobody can put a price?

Just compensation was intended to be based on what the property owner deemed to be just. If the property owner did not deem the offer to be just compensation, then the government, from a constitutional viewpoint, is out of luck.

Terms:

Capital Crime - A crime for which the punishment is death. Punishment for a Capital Crime is called Capital Punishment.

Double Jeopardy - The act of putting a person through a second trial for an offense for which he or she has already been prosecuted or convicted.

Due Process - The essential elements of due process of law are notice, an opportunity to be heard, the right to defend in an orderly proceed, and an impartial judge. It is founded upon the basic principle that every man shall have his day in court, and the benefit of the general law which proceeds only upon notice and which hears and considers before judgment is rendered. In short, due process means fundamental fairness and substantial justice.

Eminent Domain - The power to take private property for public use by a State, municipality, or private person or corporation authorized to exercise functions of public character, following the payment of just compensation to the owner of that property.

Grand Jury - A group of citizens convened in a criminal case to consider the prosecutor's evidence and determine whether probable cause exists to prosecute a suspect for a felony. At common law, a group of persons consisting of not less than twelve nor more than twenty-four who listen to evidence and determine whether or not they should charge the accused with the commission of a crime by returning an indictment. The number of members on a grand jury varies in different States.

Infamous Crime - A crime which works infamy in the person who commits it. Infamous crimes tend to be classified as treason, felonies, and any crime involving the element of deceit.

Just Compensation - The value of a property deemed to be just by the property owner.

Miranda Rights - A warning given advising the accused of their right to remain silent, their right to an attorney, and the right to an appointed attorney if they are unable to afford counsel - prior to conducting a custodial interrogation.

Mob-Rule - A government ruled by a mob or a mass of people; the intimidation of legitimate authorities; the tyranny of the majority; pure democracy without due process.

Republic - Form of government that uses the rule of law through a government system led by representatives and officials voted in by a democratic process. The United States enjoys a Constitutional Republic.

Rule of Law - The restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws; Laws of Nature and of Nature's God; self-evident standard of conduct and law.

Questions for Discussion:

1. How is property rights affected by Due Process?
2. Why do military members not fall under the protections of the U.S. Constitution?
3. Why is protection against Double Jeopardy important?
4. What was the inspiration for our Miranda Rights?
5. Who determines if compensation for one's property is just?
6. How is Eminent Domain being used for environmental reasons?
7. Is Eminent Domain constitutionally in force if a property is rezoned for environmental conservation, forcing the value of the property to be reduced due to the fact that it can no longer be developed?
8. Is it constitutional for government to use Eminent Domain for the use of the land by private development projects?

Resources:

Definition of Due Process, Family Rights Association:

http://www.familyrightsassociation.com/bin/definition_due_process_.htm

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010).

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution – Volume Five - Amendments I-XII*; Indianapolis: Liberty Fund (1987).

U.S. Supreme Court case, *Miranda v. Arizona*, 384 US 436 (1966)
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=384&invol=436>

Amendment VI

Personal Legal Liberties

The 6th Amendment affords criminal defendants seven discrete personal liberties. *“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.”*

Rights afforded in *all* criminal prosecutions are set forth in this amendment. The word “all” at the beginning of this amendment establishes a special characteristic regarding this article of the Constitution. The Constitution applies only to the federal government, unless it states otherwise. The 6th Amendment, by providing the word “all” in the regard to cases, establishes that this amendment is not only to be applied to the federal courts, but to the State, and lower, courts as well.

As for the rights afforded to the accused:

Speedy Trial

The concept of a speedy trial was an English concept of justice. A speedy trial allows for conditions that disallow the powerful from abusing the court system, forcing defendants to languish in jail for an indefinite period while awaiting their trial. Ensuring a speedy trial minimizes the time in which a defendant's life is disrupted and burdened by a criminal proceeding, and reduces the likelihood of a prolonged delay impairing the ability of the accused to prepare a defense.

Historically, when trials are postponed or drag out for long periods of time, witnesses disappear, and evidence is often lost or destroyed. Memories of the incident in question are also not as reliable as time passes.

A person's right to a speedy trial arises *after* the arrest, indictment, or otherwise formal accusation of a crime.

Public Trial

The right to a public trial was inherited by the Americans from Anglo-Saxon jurisprudence. Public criminal proceedings would operate as a natural check against malevolent prosecutions, corrupt judges, and perjurious witnesses. A trial that is out in the open also aids the fact-finding mission of the judiciary by encouraging citizens to come forward with relevant information.

The right to a public trial is not absolute. Persons who may disrupt proceedings may be banned from attending the trial because they present a substantial risk of hindering a trial. A disallowance of the media attending falls under the concept of “potential disruptions,” but otherwise, under normal circumstances, both the public and media have a qualified First Amendment right to attend criminal proceedings. The right to a public trial does not require the presence of media, and because courtrooms have limited seating, judges may attempt to maintain decorum. For media, with today's technology, the media does not have to be in the courtroom to see or hear the proceedings of the case.

Right to Trial by an Impartial Jury

A part of the effort in achieving an impartial jury is the process of determining who will serve on the jury through a series of questions and observations, in an effort to eliminate biased jurors. The concept of protecting the defendant from a biased jury can be traced back to the Magna Carta in 1215. In the United States, the requirement for a trial by an impartial jury does not apply to juvenile delinquency proceedings, or to petty criminal offenses, which consist of crimes punishable by imprisonment of six months or less. In Great Britain, and Canada, a jury is not required for cases with potential penalties of two years or less, and the concept of an impartial jury is not entertained in the same way as in the United States. Canada and Britain choose jurors randomly, and then in an open court the jurors for a specific case are selected from the jury panel by ballot. A juror may be challenged once in the box for bias, but an extensive process to eliminate possible biased jurors before selection through a series of questions and observations is not normal practice.

The Sixth Amendment entitles defendants to a jury that represents “a jury of the defendant’s peers,” which means the jury should be a fair cross section of the community. From the jury pool, the presiding judge, the prosecution, and attorneys for the defense are allowed to ask members of the jury pool a variety of questions intended to reveal any latent biases, prejudices, or other influences that might affect their impartiality. The presence of even one biased juror is not permitted under the Sixth Amendment.

It is possible that the potential bias of a juror may be affected by sources outside the courtroom, so jurors are instructed to not consider newspaper, television, and radio coverage before or during trial, and are instructed not to discuss the trial with even family members, when evaluating the guilt or innocence of the defendant.

Jurors are not permitted to begin deliberations until all of the evidence has been offered. Deliberations do not begin until after the attorneys have made their closing arguments, and the judge has read the instructions. Premature deliberations have shown the potential, historically, to create early biases, or a juror may form a preconceived notion that they will then compare all evidence to, which they may have entertained as a result of premature deliberations.

Notice of Pending Criminal Charges

The 6th Amendment guarantees defendants the right to be informed of the nature and cause of the accusation against them. Defendants must receive notice of any criminal accusations that the government has lodged against them through an indictment, information, complaint, or other formal charge. Defendants may not be tried, convicted, or sentenced for a crime that materially varies from the crime set forth in the formal charge.

The requirement by the 6th Amendment to inform a defendant of the nature and cause of the accusation is an attempt by the Founding Fathers to create fundamental fairness that was not necessarily present in civil and criminal proceedings in England and the American colonies under English common law. Receiving notice of pending criminal charges in advance of trial permits defendants to prepare a defense in accordance with the specific nature of the accusation. In tyrannies, defendants are all too often incarcerated without being apprised of pending charges until the trial begins. Requiring notice of the nature and cause of the accusation against a defendant eliminates confusion regarding the basis of a particular verdict, which in turn decreases the chances that a defendant will be tried later for the same offense.

Confrontation of Witnesses Against Him

The 6th Amendment requires that defendants have the right to be confronted by witnesses who offer testimony or evidence against them, as well as the opportunity to subject them to cross-examination.

Today's courts have established rules that are enforced at the discretion of the judge who forbids questioning that pursues areas that are irrelevant, collateral, confusing, repetitive, or prejudicial. Defendants are also forbidden to pursue a line of questioning solely for the purpose of harassment.

Compulsory Process for Obtaining Witnesses In His Favor

The 6th Amendment recognizes a defendant's right to use the compulsory process of the judiciary to subpoena witnesses that may be favorable to the defense. Courts may not take actions to undermine the testimony of a witness who has been subpoenaed by the defense. Any law that attempts to establish particular persons as being incompetent to testify on behalf of a defendant is not allowed.

Defendants can also testify on their own behalf, a right not afforded in the American Colonies, or Great Britain, prior to the United States dissolving the political bands connecting them to the Crown. Common law presumed all defendants to be incompetent to give reliable or credible testimony on their own behalf. The vested interest in the outcome of the trial, it was believed, would taint the testimony of the defendant. The 6th Amendment does not require, a defendant to testify on his own behalf, but does not prohibit it, either.

Right to Counsel

The 6th Amendment states that criminal defendants have a Right to Counsel. A defendant's right to counsel does not become an issue until the government files formal charges. However, in the 5th Amendment a person has the right not to be compelled to be a witness against himself, allowing him to remain silent until he has counsel present.

In many instances, defendants have the inability to obtain counsel be it because of financial or other reasons. The 6th Amendment, by listing that assistance of counsel for his defense is a right, has compelled the government to institute a program where counsel can be assigned to a defendant if the person is unable to afford counsel, or obtain counsel for any other reason. In the occurrence of a defendant unable to afford counsel, the trial judge appoints one on his behalf. If it turns out that the defendant has financial resources previously unknown to the court, he may be required to reimburse the government for a portion of the fees paid to the court-appointed lawyer.

Defendants are not required to have counsel. Defendants have a *right* to counsel. Defendants also have the right to decline the representation of counsel and proceed on their own behalf. Defendants who represent themselves must present a waiver of the 6th Amendment right to counsel before a court will allow them to do so. The waiver must reveal that the defendant is knowingly making the decision, and understands the potential consequences.

Questions for Discussion:

1. Why is having a speedy trial so important in a free society?
2. How does a public trial better enable the fact-finding mission of the trial?
3. How is the concept of an impartial jury different in the United States than it is in other countries?

4. Why is it important for a defendant to be able to confront the witnesses against him?
5. How is a defendant's right to counsel enabled in today's court system?

Resources:

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010).

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution – Volume Five - Amendments I-XII*; Indianapolis: Liberty Fund (1987).

Amendment VII

Right of Trial by Jury in Civil Suits

“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 reexamined in any court of the United States, than according to the rules of the common law.”

The 7th Amendment guarantees the right to a jury trial in most civil suits heard in federal court. Remember, the Constitution, and the **Bill of Rights**, apply only to the federal government unless the document states otherwise. The 7th Amendment serves to preserve the historic line separating the province of the jury from that of the judge in civil cases by separating cases that should have a jury in federal court, from those that are smaller cases, and may not require a jury. During the time the amendment was ratified, a case requiring a jury was one where “the value in controversy” exceeded twenty dollars. The cutoff in the court system today is \$75,000. Any disputes that involve amounts less than \$75,000, in fact, will not even be handled in a federal court.

State courts don't have to honor this provision in the 7th Amendment, and often don't. People bringing a suit do not have to have a jury trial. Individuals can waive their right to a jury trial if they so choose.

The 7th Amendment also expressly forbids federal judges to re-examine any "fact tried by a jury" except as allowed by the common law. This means that no court, trial or appellate, may overturn a jury verdict that is reasonably supported by the evidence.

Prior to the **Declaration of Rights** in 1689, English judges served the King of England. These judges showed bias towards the King, resulting in unfair rulings. Judges in the American colonies were also biased towards the king, and when King George III got rid of trials by juries in the Colonies, the colonists viewed the decision as more kindling for the fire of independence that had been blazing in the pubs, churches and meeting halls of the Colonies. The Bill of Rights applied what the Framers learned under the rule of Britain to the American System. In the American courts the Framers believed it was important to have a fair court system, so the right to have a trial by jury is mentioned a number of times, and is a fundamental part of the United States legal system.

Together with the due process clause of the 5th Amendment and the right to an impartial jury enumerated in the 6th Amendment, the 7th Amendment guarantees civil litigants the right to not just a jury, but to a jury who is not biased for any reason.

Terms:

Bill of Rights - The first ten amendments of the U.S. Constitution; a formal summary of those rights and liberties considered essential to a people or group of people.

Declaration of Rights - Enacted in 1689, the English Bill of Rights is one of the fundamental documents of English constitutional law, marking a fundamental milestone in the progression of English society from a nation of subjects to a nation of free citizens with God-given rights. The evolution began with the Magna Carta in 1215.

Questions for Discussion:

1. What historic line does the 7th Amendment preserve?
2. Must the States abide by the 7th Amendment?
3. Can a person bringing suit waive the right to a jury trial?

Amendment VIII

Excessive Bail, Cruel and Unusual Punishment

The 8th Amendment reads, *“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”*

As a nation founded on honorable Judeo-Christian principles, the United States legal system is expected to be fair and just. This means that Americans should insist upon a due process that protects individuals from excesses and abuses by the judicial system. Such expectations include that no individual should be singled out, or treated differently, in the eyes of the courts. A fair and equitable judicial system includes no excessive bails or fines, or cruel and unusual punishment, for one person while others guilty of similar crimes do not receive similar treatment.

Today’s definitions attempt to set a limit on where “excessive” or “unusual” lies. When a harsh penalty is applied for a crime, even when it is similar to the punishment received by others for the same crime, challenges are launched regarding if the penalty matches the crime. These challenges are fine, and an important part of the American judicial system seeking to adjust itself in regards to its fairness, but the debates during the Federal Convention and State ratification conventions did not focus so much on where the line between excessive and not excessive, or unusual as opposed to usual, exists as much as *are the bails, fines and punishment consistent with the bails, fines and punishment consistent with others guilty of the same.*

Questions for Discussion:

1. In the context of the time period during which the 8th Amendment was written, what was meant by “cruel and unusual punishment?”

2. How has the original definition of “cruel and unusual punishment” changed since the founding of the United States?
3. How does the 8th Amendment apply the concept of uniformity to cases?
4. Why would the Founding Fathers see the need to enumerate the right of an individual to be protected from cruel and unusual punishment?

Resources:

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010).

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution – Volume Five - Amendments I-XII*; Indianapolis: Liberty Fund (1987).

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