

# Lesson 6

## Protection of Rights within the Judicial System



### Key Terms

acquitted  
bail  
capital punishment  
cruel and unusual punishment  
double jeopardy  
felony  
indicted  
right to counsel

### What You Will Learn to Do

- Compare positions on capital punishment to rights protected in the Fifth through Eighth Amendments

### Linked Core Objectives

- Do your share as a good citizen in your school, community, country, and the world
- Apply critical thinking techniques

### Skills and Knowledge You Will Gain Along the Way

- Identify how provisions in the Fifth Amendment protect your rights after arrest
- Explain how the Sixth Amendment is intended to provide fair hearing for accused criminals
- Look at issues and controversies over the right to counsel
- Examine historic and current positions pertaining to types of punishment
- Define key words contained in this lesson

# Chapter 6

## Introduction

In this lesson, you will examine how provisions of the Fifth through Eighth Amendments protect the rights of people accused of crimes and put on trial. You will review the importance and history of each right and learn about the right to counsel and its role in the American judicial system. Additionally, you will take a close look at the Supreme Court rules concerning the death penalty and issues involved in allowing capital punishment.

## Provisions of the Fifth Amendment Protect an Individual's Rights after Arrest

After a person has been arrested for a crime, the next step is usually to charge the person formally in a judicial proceeding. In the federal system, anyone who is to be tried for a crime must be **indicted** by a grand jury. The military, however, is an exception to this rule. (The following lesson takes a look at military justice.) A grand jury, unlike a trial jury, does not decide whether someone is innocent or guilty, but instead decides whether there is enough evidence to go to trial. This is an important safeguard, because it ensures that the government cannot bring formal charges against people on the basis of weak evidence, or no evidence. A similar purpose lies behind the **double jeopardy** provision of the Fifth Amendment.

The government cannot wear someone out with repeated charges and trials. Usually, someone who is **acquitted** by a jury may not be tried for that crime again.

## Limitations the Sixth Amendment Place on the Government

The Sixth Amendment contains a number of additional procedural rights that are part of due process of law. Almost all the protections of the Sixth Amendment have been incorporated into the Fourteenth Amendment, making them applicable to the states. The amendment's provisions are intended to provide a fair hearing in court for persons accused of crimes. Briefly examine each of these provisions before looking at their history and focusing on the **right to counsel**.

- **Speedy trial.** The federal government cannot hold you in jail for a long period of time without bringing you to trial if you demand that the trial be held as soon as possible.
- **Public trial.** The government cannot try you in secret. Your trial must be open to the public and there must be a public record of the proceedings.
- **Impartial jury.** The government must try you before a jury. It cannot try you before a jury that is prejudiced. For example, if you were on trial for a drug-related crime and jurors admitted to having angry and violent reactions because they had been victims of similar crimes, the jury could not be impartial.

### Key Note Term

**indicted**—to charge with a crime by the finding or presentment of a grand jury in due form of law

**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

**acquitted**—to discharge completely

**right to counsel**—the government cannot prevent you from having a lawyer defend you from the time you are named as a suspect. If you are charged with a serious crime and cannot afford a lawyer, the government must provide one free of charge

- **Location of the trial.** The government must try you in the state, district or community where the crime was committed. You may, however, have the right to have the trial moved if you can show that the community is prejudiced.
- **Information on charges.** The government cannot arrest you and hold you for trial without telling you why it is doing so. Government lawyers also must present in open court enough evidence to justify holding you for trial.
- **Confronting witnesses.** You and your lawyer have the right to confront and cross-examine all witnesses against you. The government cannot present the testimony of secret witnesses who do not appear in court against you.
- **Favorable witnesses.** The government cannot prevent you from presenting witnesses who might testify for you. In fact, if such witnesses do not want to testify and you want them to, the court must force them to appear.
- **Assistance of counsel.** The government cannot prevent you from having a lawyer defend you from the time you are named as a suspect. If you are charged with a serious crime and cannot afford a lawyer, the government must provide one free of charge.

### The Right to Counsel

The American criminal justice system is an adversary system as opposed to the inquisitorial system used in some other countries. In an adversary system there are two sides that present their positions before an impartial third party—a jury, a judge, or both. The prosecuting attorney presents the government's side; the defense attorney presents arguments for the accused person.

The complexity of our adversary system requires the use of lawyers to represent defendants. Even well-educated people as well as many lawyers who do not specialize in criminal law, are not competent to conduct an adequate defense in today's courts.

In the twentieth century, the Supreme Court and Congress have extended the right to counsel to people to whom it had not been provided in the past. This right is now interpreted to guarantee that:

- **every person accused of a felony may have a lawyer**
- **those too poor to afford to hire a lawyer will have one appointed by the court**

The right also has been extended by decisions in such cases as *Miranda v. Arizona* (1966) to apply not only to criminal trials, but to other critical stages in the criminal justice process, such as questioning of suspects by police.



### Key Note Term

**felony**—a crime for which the punishment in federal law may be death or imprisonment for more than one year

*Why is the right to counsel so important?*

*Courtesy of E.P.G. International, Ron Chapple.*

### Examining Current Controversies about the Right to Counsel

A number of issues are currently raised regarding the right to counsel. Two of the most frequently mentioned are discussed below. Read about these issues and develop positions on the questions they raise.

1. The right to effective counsel. Wealthy people can afford to hire lawyers of their choice; usually the poor must accept the lawyers assigned to them. Lawyers serving the poor may be excellent, but often they are overworked and do not have sufficient time or the resources to prepare the best defense possible.

*Question:* How can the government provide effective counsel to represent the poor? If a poor person is represented ineffectively by a lawyer and found guilty, should this be the basis for a retrial? Explain your position.

2. Limiting the right to counsel for poor defendants. The law requires that poor defendants be provided counsel at public expense. Counsel may be attorneys from the community selected by judges to defend the poor. They may also be volunteers or public defenders employed by the government. Sometimes poor defendants appeal their cases numerous times, costing the taxpayers millions of dollars each year.

*Question:* Should some limit be placed on how many times or under what circumstances poor people should be provided this assistance? Explain your position.

### Enforcing the Rights of the Sixth Amendment

Imagine you are tried in a criminal court, found guilty, and imprisoned. You believe that one or more of your Sixth Amendment rights have been violated by the government during your trial. For example, suppose you believe that the jury was prejudiced against you.

The right to appeal your case to a higher court is available to you if you can show that your constitutional rights have been violated. Each state has a system of appellate courts, and so does the federal government, with the Supreme Court being the highest court of appeals in the nation. If, after reviewing the trial record, an appellate court decides the trial has been unfair, it can overturn the lower court's verdict. If that happens, the prosecution can usually choose whether or not to retry the case.

### Limitations the Eighth Amendment Place on the Government

The Eighth Amendment protects people accused of crimes and awaiting trial, and people found guilty of crimes. Its protections, incorporated by the Fourteenth Amendment, limit the powers of the judicial and legislative branches of federal and state government in the following ways:

- **Limitations on the judiciary.** Judges usually have the power to decide whether a person arrested for a crime should be held in jail or set free on *bail* while awaiting trial. They also have the right to decide how much bail should be required. This amendment says that judges cannot require excessive bail.

#### Key Note Term

**bail**—money or property in the hands of the government to ensure that the accused will appear in court rather than forfeit it

- **Limitations of the legislature.** Congress and state legislatures establish the range of punishments for breaking laws. This amendment says legislatures cannot pass laws that impose excessive fines or inflict *cruel and unusual punishments*. The power of judges and juries to decide punishments is limited by the laws passed by the legislatures that, in turn, are limited by the Eighth Amendment.

### Key Note Term

**cruel and unusual punishment**—the power of judges and juries to decide punishments is limited by the laws passed

### Examining Early Positions on Punishment

The French philosopher Montesquieu greatly influenced Americans' views on law and punishment. The following is a quotation from his writings followed by an excerpt from a letter by Thomas Jefferson. Read the selections and answer the questions that follow.

*Experience shows that in countries remarkable for the leniency of their laws the spirit of the inhabitants is as much affected by slight penalties as in other countries by severer punishments. . . . Mankind must not be governed with too much severity. . . if we inquire into the cause of all human corruptions, we shall find that they proceed from the impunity [exemption from punishment] of criminals, and not from the moderation of punishments. . . . It is [also] an essential point, that there should be a certain proportion in punishments. . . . It is a great abuse amongst us to condemn to the same punishment a person that only robs on the highway and another who robs and murders.*

Baron de Montesquieu, "Of the Power of Punishments," *The Spirit of the Laws*, 1748

*The fantastical idea of virtue and the public good being sufficient security to the state against the commission of crimes, which you say you have heard insisted on by some, I assure you was never mine. It is only the sanguinary [bloodthirsty] hue of our penal laws which I meant to object to. Punishments I know are necessary, and I would provide them, strict and inflexible, but proportioned to the crime. . . . Let mercy be the character of the law-giver, but let the judge be a mere machine. The mercies of the law will be dispensed equally and impartially to every description of men.*

Thomas Jefferson to Edmund Pendleton, August 26, 1776

1. What position does Montesquieu take on the effects of lenient and severe punishments?
2. What does Montesquieu say is a major cause of crime?
3. In what ways do Montesquieu and Jefferson appear to be in agreement?
4. What idea is expressed in Jefferson's statement that is not in Montesquieu's?
5. Do you agree or disagree with the positions stated by Montesquieu and Jefferson? Explain your position.

### The Purposes of the Eighth Amendment Rights

The following sections take a look at the purposes of Eighth Amendment rights. These include the right to be free on bail pending trial, the right to be free from excessive fines, and the right to be free from cruel and unusual punishment.

### *The Right to Be Free on Bail Pending Trial*

Although persons accused of crimes have the right to a speedy trial after they have been arrested, there are usually delays while both the prosecution and defense prepare for trial. Since a person is presumed innocent until proven guilty, one might argue that suspects should go free until the time of their trial. Not all suspects can be trusted to appear in court when they are supposed to. Some suspects may be dangerous, and it is reasonable to think that those accused of crimes for which there are severe penalties might not appear.

The government's main responsibility in this regard is to make sure suspects appear in court to be tried. This may be accomplished by one of two ways:

- **keeping suspects in jail while awaiting trial**
- **having them place bail—money or property—in the hands of the government to ensure that they will appear in court rather than forfeit it**

The right to bail allows suspects to be free while preparing their defense, which is often difficult to do from jail. It also avoids punishing suspects by holding them in jail before they are found guilty or innocent. This is particularly important for innocent persons who would otherwise suffer unfair punishment while awaiting trial. The sentencing of persons found guilty takes into account how much time they have spent in jail awaiting trial.

Problems arising from the implementation of the right to bail include the following:

- ***Unfair treatment of the poor.*** Wealthy people can afford bail; the poor often cannot. Therefore, the poor are more likely to remain in jail awaiting trial, lose income, and not be able to do as much to prepare for their defense.
- ***Punishment of innocent poor.*** Poor people who are innocent and cannot afford bail are kept in jail and then released after their trial. This means that innocent people

*How does the right to bail help protect an accused person's due process right?*



are punished by imprisonment and rarely compensated for the time they have lost or the wrongs done to them.

- **Increased chances of conviction and more severe sentences.** Studies have shown that being held in jail prior to a trial seems to have a negative influence on judges and juries. It results in a greater possibility of convicting such people of crimes and giving them more severe sentences.

One remedy for the inequitable aspects of the bail system is to release defendants without bail on their own recognizance, that is, on their promise to return to court for trial. This procedure is being used more and more when defendants have families or other ties to the community that would make it unlikely they would flee. It is used when a suspect's release would not seem to present a danger to the community.

### *The Right to Be Free from Excessive Fines*

The purpose of this provision is to require courts to levy fines that are reasonable in relation to whatever crime has been committed. If a fine was extremely high in proportion to the seriousness of the crime, a person could claim the excessive fine violates his or her rights under the Eighth Amendment.

### *The Right to Be Free from Cruel and Unusual Punishment*

This right is based on the belief that the law should treat even the most horrible criminal with dignity. Punishments should not violate society's standards of decency. The question raised by this right is to determine what is meant by the terms "cruel" and "unusual."

What the Framers meant by "cruel and unusual punishments" is not at all clear. Part of the problem is that what is considered cruel and unusual has changed over the years. The most difficult issues, however, have been raised by the issue of the death penalty.

### *The History of Capital Punishment in the United States*

**Capital punishment** has been used in the United States from colonial times to the present, and the Supreme Court has never held that it is prohibited by the Eighth Amendment. The Constitution appears to accept the legitimacy of the death penalty.



*What are the major arguments for and against the death penalty?*

*Courtesy of the National Archives.*

#### **Key Note Term**

**capital punishment**—the death penalty

Figure 6.6.1: Some exercise their right to protest by letting their feelings about the death penalty be known.

Courtesy of F. Carter Smith/  
Corbis Sygma.



Both the Fifth and Fourteenth Amendments forbid the government to deprive someone of “life” without due process of law. These clauses seem to suggest that if due process is provided, people may be deprived of their lives by the government.

At one time, execution was the automatic penalty for murder or other serious crimes. By the early twentieth century, most states developed laws that allowed juries a choice between the death penalty and other forms of punishment. In most states, however, the juries were not given much guidance in making these decisions. This policy of allowing juries’ unguided discretion was common until 1972.

### *Opposition to the Death Penalty*

Executions of murderers and rapists were common in the United States until the 1960s when moral and political opposition developed because of a number of factors:

- **Information on how the death penalty was chosen revealed that juries often acted randomly and capriciously in deciding who should be executed and who should not.**
- **Studies showed that the race of the defendant and the victim appeared to be the most important factors in whether a jury inflicted the death penalty.**
- **Studies did not confirm the belief that capital punishment deterred crime.**
- **Often, the cost of capital punishment, considering appeals, is more expensive than sentencing a person to life in prison without parole.**

Many oppose the death penalty on moral and ethical issues, too. At most executions, members of society will protest this form of punishment (see Figure 6.6.1).

### *Issues Involved in Allowing Capital Punishment*

Studies indicating unfairness in the imposition of the death penalty led to widespread debate and increasing opposition to its use. Courts and legislatures faced growing pressure to develop clear, reasonable, and fair standards to be used by juries in making their decisions.

Since 1972 the Supreme Court and legislatures have been attempting to develop such standards. This process resulted from a decision made by the Court in the case of *Furman v. Georgia* (1972). In that case, a five-to-four majority struck down a statute giving juries' unguided discretion in the imposition of the death penalty.

The *Furman* decision did not result in the prohibition of the death penalty. The majority argued that while the death penalty was constitutional, state laws permitting unguided discretion were unconstitutional. The result of this decision was that all executions in the United States were suspended. State legislatures were faced with the task of developing new laws with standards to avoid the arbitrary and discriminatory imposition of the death penalty, which was characteristic of the past.

Some states attempted to solve the problem by going back to the practice of automatic death penalties for certain serious crimes. Others developed new guided discretion laws. These laws called for juries or judges to decide whether to impose life or death sentences at a hearing held for this purpose after the trial in which a person was found guilty.

In 1976, the Supreme Court heard five cases on the new state laws. It upheld the new practice of guided discretion and declared that the automatic sentencing law was unconstitutional. Thus, the Court upheld the constitutionality of the death penalty once again. No clear standards were set to implement the policy of guided discretion, however. As a result, the courts have been flooded with appeals of death penalty sentences claiming that unfair standards have been used.

Recent studies have found that, despite the efforts of state legislatures and the courts to develop fair and reasonable standards, the system may still result in inconsistent and racially biased sentences.

Murderers of whites are far more likely to be sentenced to death than murderers of blacks. Such studies have given new impetus to the question of the constitutionality of the death penalty. It is important to note that whether or not the Supreme Court says the Constitution prohibits the death penalty is an altogether different issue from the question of whether or not society ought to execute individuals who have committed certain kinds of crimes. Even if the death penalty is constitutional, states are free to abolish it. It is quite possible to argue that while the Constitution does not prevent the government from imposing the death penalty, the government should not use it.

## ***Procedural Justice and a Republican Form of Government***

The Framers had personal experience with arbitrary government. They understood that rights would not be secure if the government had an unlimited ability to investigate people, accuse them of crimes, and hold them in jail or punish them in some other way. They also understood that republican or popular governments were capable of acting just as arbitrarily as monarchies. Thus the Framers addressed the Bill of Rights to all three branches of the federal government. The Framers set out a careful process by which the innocence or guilt of a person could be decided.

It is important to remember that procedural due process is designed to protect the innocent. In doing their job, they also can be used as “loopholes” by those who are guilty. Many have argued that this is a small price to pay for the protection we often take for granted. Above all, they argue, it is a reminder of our commitment to the idea that the actions of the government must be limited by the rule of law.

### Conclusion

In this lesson, you examined how provisions of the Fifth through Eighth Amendments protect the rights of people accused of crimes and put on trial. After a brief examination of some provisions of the Fifth Amendment, you surveyed the Sixth Amendment and took a close look at the right to counsel. In addition, you looked at the Eighth Amendment, which protects people who are being held for trial, and protects persons convicted of crimes from receiving unjust treatment. Finally, you examined the continuing controversy about whether the death penalty should be prohibited under the Eighth Amendment.

In the following lesson, you will take a look at the military justice system. You will learn about the differences to as well as the similarities with non-military justice.

### Lesson Review

1. What are some of the procedural rights contained in the Sixth Amendment? How do these rights help guarantee a fair trial for people accused of crimes?
2. How would you explain the right to counsel? Why is this right important in an adversary system of justice?
3. What is “bail”? Why are people charged with crimes allowed to remain free on bail before trial?
4. How would you explain the Eighth Amendment right to be free from “cruel and unusual punishment”?