



4. Which Amendment do the authors say is presently "outmoded" and "seemingly unnecessary?"

- a) The Third Amendment
- b) The Seventh Amendment
- c) The Tenth Amendment

5. The authors write that the Fifth Amendment applies to both United States citizens and to non-citizens. Read the Fifth Amendment along with the attached article, "The Fifth Amendment Protects Everyone, Not Just Citizens." Do you agree? Why or why not?

6. The Sixth Amendment's right to a trial by jury was drawn in part from:

- a) the English Magna Charta
- b) John Locke's *Two Treatises on Government*
- c) King Alfred's Law Code

7. "The Seventh Amendment provides the basis for determining when jury trials are constitutionally required."

True or false?

8. The authors mention that the death penalty continues to be debated in light of the Eighth Amendment's prohibition of "cruel and unusual punishment." Do you think the death penalty is cruel and unusual? Read Genesis 9:5-6 and include what you learn from it in your answer.

9. Name one of the "implied rights" the Supreme Court has found via the Ninth Amendment.

10. The authors write that the Tenth Amendment “expresses the fact that the federal government may not claim powers that are not granted to it by the Constitution.” Write down two powers currently exercised by the Federal Government that you do not believe have been given to it by the Constitution. How would you propose getting those powers back to the states?



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# The Fifth Amendment Protects Everyone, Not Just Citizens

by [Jacob G. Hornberger](#)

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When defenders of civil liberties condemn President Obama's assassination program, some of them place a greater emphasis on the constitutional right of American citizens to be protected from assassination as compared to foreigners. However, as much as they might wish that the Constitution limits its protection to citizens, such is simply not the case. In protecting people from being deprived of life, liberty, or property without due process of law, our American ancestors did not distinguish between citizens and non-citizens. Under the express terms of the Fifth Amendment, whatever protections inure to Americans inure equally to non-citizens.

Here's the Fifth Amendment in pertinent part: "Nor shall any person ... be deprived of life, liberty, or property without due process of law."

Notice that the amendment does not say: "Nor shall any *citizen* ... be deprived of life, liberty, or property without due process of law." It says *person*.

Keep in mind that the Constitution was originally enacted without any amendments. Calling the federal government into existence, the idea was that the government would not have the power to do whatever federal officials wanted to do. Instead, the idea was that the federal government's powers would be limited to those enumerated within the document itself. If the power wasn't enumerated, the federal government could not exercise it.

Why were Americans so concerned about limited the powers of the federal government? Because they were concerned about calling into existence a national government that would end up doing bad things to them — such as enslaving them, confiscating their money and property, or taking them into custody, torturing them, and killing them.

Many Americans were opposed to calling the federal government into existence precisely for that reasons. They were content to continue living life under the Articles of Confederation, which had a federal government whose powers were extremely weak.

Finally, Americans went along with the deal, but only on the condition that as soon as the Constitution was adopted, it would be amended to provide for express restrictions on the powers of the federal government.

Some proponents of the Constitution said that such restrictions were unnecessary given the philosophy of the Constitution. That is, the government's powers were limited to those enumerated. If it wasn't enumerated, it couldn't be exercised. Thus, an enumeration of express restrictions on power wasn't necessary, they said.

But Americans weren't satisfied. They simply did not trust government officials. They demanded express restrictions on power as a condition of letting the federal government come into existence.

The Fifth Amendment expressed the concern that Americans had over the possibility that the federal government would enslave people, confiscate their assets, or kill them without due process of law. They understood that this is what governments throughout history had done. They figured that given the right circumstances — like a “crisis” — the U.S. government would be fully capable of doing the same things, both to citizens and non-citizens.

Proponents of the Constitution pointed out that since the powers to do such things weren't enumerated in the Constitution, the federal government wouldn't be doing them. That wasn't good enough for Americans. They wanted an amendment that expressly prohibited the federal government from depriving people of life, liberty, and property without due process of law.

What mattered to them was a principle. It's wrong for government to do these things to anyone and everyone, they believed, not just citizens. That's why they didn't limit the protection against such wrongful actions to American citizens. They wanted to ensure that the federal government that they were calling into existence could never do these things to anyone. That's why they used the term “person” rather than “citizen” in the Fifth Amendment.

Contrary to what President Obama and his assassination team have suggested, the term “due process of law” is not fulfilled simply because Obama consults with a team of advisors before he deprives people of their lives through assassination. Due process of law, a term that stretches all the way back to Magna Carta, has always meant a process of judicial review — that is, a process that involves such things as official notice, hearing, trial, and judgment in a court of law before a person can be deprived of life, liberty, or property.

For example, if a person kills another person, the state cannot just summarily punish the killer. It must indict him, prosecute him, and convict him in a court of law as a prerequisite to punishing him.

The principles set forth in the Fifth Amendment, as well as the principles set forth in the rest of the Bill of Rights, are timeless principles. The fact that our American ancestors demanded that they be made a permanent part of our constitutional order is something every American should be proud of.

Too bad the Obama administration, like the Bush administration, has denigrated and abandoned such principles with a regime of military incarceration without trial, torture, kangaroo military tribunals, denial of due process of law, and, of course, the assassination of citizens and non-citizens alike. And too bad the federal judiciary has abrogated its constitutional responsibility by letting them get away with it.

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Jacob G. Hornberger is founder and president of The Future of Freedom Foundation. He was born and raised in Laredo, Texas, and received his B.A. in economics from Virginia Military Institute and his law degree from the University of Texas. He was a trial attorney for twelve years in Texas. He also was an adjunct professor at the University of Dallas, where he taught law and economics. In 1987, Mr. Hornberger left the practice of law to become director of programs at the Foundation for Economic Education. He has advanced freedom and free markets on talk-radio stations all across the country as well as on Fox News' Neil Cavuto and Greta van Susteren shows and he appeared as a regular commentator on Judge Andrew Napolitano's show *Freedom Watch*. View these interviews at [LewRockwell.com](#) and from [Full Context](#). Send him [email](#).