

American Government & Politics: A Christian Worldview
Article: “The Fifth Amendment Protects Everyone, Not Just Citizens”
(15–20 Minutes)

TEACHER INSTRUCTIONS/KEY

Goal

Students see that the Fifth Amendment is specifically worded to protect anyone who might be oppressed or even killed by government, regardless of whether they are citizens or not.

Instructions

1. Instruct students to read the article and take notes/underline key passages. (Give them 6–8 minutes.)
2. Have students discuss their thoughts on the article in pairs/groups. (Give them 3–5 minutes.)
3. Ask for volunteers to share their takeaways from the article.
4. Ask the class the below questions, and get volunteers to answer.

Questions/Key

1. Whose rights are protected by the Fifth Amendment—i.e., what word specifically is used?
“Persons”—not just citizens.
2. How does the author define “due process”?
It is “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.”
3. The author says, “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.” If someone were to say, “That killer doesn’t deserve a trial; we just need to execute him,” how could you respond?
AWV, but often we need a trial to know for sure that someone is actually a killer. We can’t just go around killing those accused of crimes, especially when many times a person who’s “absolutely guilty” turns out to be truly innocent. In any case, we certainly don’t want the government, which can be horribly corrupted, to have the power to execute someone without a public, speedy trial.
4. What facts in this article did you already know?
AWV.

The Fifth Amendment Protects Everyone, Not Just Citizens

The Future of Freedom Foundation
Jacob G. Hornberger • August 8, 2012

When defenders of civil liberties condemn President Obama's assassination program [the President was using the U.S. military to assassinate those he claimed were "terrorists"], 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....[O]ur 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 limiting 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—enslaving them, confiscating their money and property, taking them into custody, torturing them, and killing them.

Many Americans were opposed to calling the federal government into existence precisely for those 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....

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.