

Imparted by the framers and articulated in the preamble, the most basic mission of the government empowered by the Constitution is to establish justice. As James Madison writes, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”¹ This finality of justice betrays the crucial role of the Fifth Amendment, as the rights it guarantees are paramount towards pursuing justice in society without eroding liberty in the process. Instituting critical individual rights, the Fifth Amendment includes a right to indictment by the grand jury, protection against double jeopardy, the invalidation of extorted self-incrimination, and that no person may be deprived of life, liberty, or property without due process of law.² Believing the sanctity of innocence, the framers provide every opportunity for its defense, with Benjamin Franklin writing, “It is better 100 guilty Persons should escape, than that one innocent Person should suffer.”³ By examining these four rights enumerated in the Fifth Amendment and their application in the United States’ judiciary systems, I will analyze how the amendment fulfills the preamble’s goals, establishing justice and securing the freedoms and liberties of the American people.

The Fifth Amendment’s first measure invokes a grand jury for a felonious or infamous crime, ensuring fairly conducted criminal proceedings by assessing whether there is sufficient basis to indict a suspect.⁴ The grand jury’s detachment from the institutional government ensures its fairness in distributing justice, “serving as a kind of buffer or referee

¹ James Madison, “The Federalist Papers: No. 51,” *The Avalon Project* (2008). https://avalon.law.yale.edu/18th_century/fed51.asp.

² Elvin Egemenoglu, “Fifth Amendment: An Overview,” *Legal Information Institute*, February 2020. https://www.law.cornell.edu/wex/fifth_amendment.

³ Benjamin Franklin, “From Benjamin Franklin to Benjamin Vaughan, 14 March 1785,” *Founders Online, National Archives*, 1785. <https://founders.archives.gov/documents/Franklin/01-43-02-0335#BNFN-01-43-02-0335-fn-0006>.

⁴ “Grand Jury,” *Legal Information Institute*, 2022. https://www.law.cornell.edu/wex/grand_jury.

between the Government and the people.”⁵ This guarantee to a grand jury, “pledged to indict no one because of prejudice and to free no one because of special favor,” is vital towards creating a fair system of justice for the people, revealing the first of many avenues through which the Fifth Amendment fulfills the goals of the preamble.⁶

The subsequent Double Jeopardy Clause, protecting an individual from multiple prosecutions for the same offense, provides a fundamental guarantee against exploitation by the State.⁷ The clause’s design has been well-expressed in *Green v. United States*, where Justice Black describes the subversion of liberties deterred by the Fifth Amendment: “The State ... should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that, even though innocent, he may be found guilty.”⁸ This preservation of innocence and obstruction to repeated harassment and conviction is vital towards maintaining personal liberty for Americans, reflecting the ideals of the framers and preamble alike.

The Fifth Amendment further promotes justice through its protection of a criminal defendant from unwittingly or unwillingly committing self-incrimination, a crucial measure to prevent the injustice of forced or pressured confessions. This concept has been repeatedly affirmed in the Supreme Court, vouching that “A witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances.”⁹ The application

⁵ “*United States v. Williams*, 504 U.S. 36 (1992).” *Justia Law*, 1992: 47. <https://supreme.justia.com/cases/federal/us/504/36/>.

⁶ “*Costello v. United States*, 350 U.S. 359 (1956).” *Justia Law*, 1956: 362. <https://supreme.justia.com/cases/federal/us/350/359/>.

⁷ “*Benton v. Maryland*, 395 U.S. 784 (1969).” *Justia Law*, 1969: 795. <https://supreme.justia.com/cases/federal/us/395/784/>.

⁸ “*Green v. United States*, 355 U.S. 184 (1957).” *Justia Law*, 1957: 187-188. <https://supreme.justia.com/cases/federal/us/355/184/>.

⁹ “*Slochower v. Board of Education*, 350 U.S. 551 (1956).” *Justia Law*, 1956: 557-558. <https://supreme.justia.com/cases/federal/us/350/551/>.

of the Fifth Amendment to subvert self-incrimination can be seen in *Miranda v. Arizona*, where the Supreme Court implemented procedural principles to prevent the abuse of power by authority or otherwise. Clarifying this protection, Chief Justice Warren established that “The prosecution may not use statements ... stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination,” invoking Fifth Amendment rights to advance justice and secure liberty, thereby progressing the nation towards a more perfect union.¹⁰

Finally, the Due Process Clause, an essential decree to conserve justice, promises that no person shall be “deprived of life, liberty, or property, without due process of law,” encompassing both procedural and substantive due process.¹¹ Procedural due process directly establishes justice through guaranteeing that no government nor court may violate proper jurisdiction process, in practice signifying that “some kind of hearing is required at some time before a person is finally deprived of his property interests.”¹² This idea, interpreted by Judge Friendly as protecting the right to a fair trial, includes the right to an unbiased trial, to present evidence, and to communicate with counsel, in whole ensuring that justice may not be circumvented.¹³ Substantive due process, a more nuanced interpretation, determines that legislative actions may face heightened scrutiny if “within a specific prohibition of the Constitution, such as those of the first ten amendments,” utilizing due process to secure implicit rights for the people.¹⁴ Further securing personal liberties against governmental manipulation, the Supreme Court stated that the Fifth Amendment “cannot be so construed as to leave Congress free to make any process ‘due process of

¹⁰ Earl Warren, “*Miranda v. Arizona*, 384 U.S. 436 (1966),” *Justia Law*, 1966: 444.
<https://supreme.justia.com/cases/federal/us/384/436/#444>.

¹¹ United States Constitution, Fifth Amendment.

¹² “*Wolff v. McDonnell*, 418 U.S. 539 (1974),” *Justia Law*, 1974: 557-558.
<https://supreme.justia.com/cases/federal/us/418/539/>.

¹³ Henry J. Friendly, “Some Kind of Hearing,” *Penn Carey Law: Legal Scholarship Repository*, 1975: 13-26.
https://scholarship.law.upenn.edu/penn_law_review/vol123/iss6/2/.

¹⁴ Harlan F. Stone, “*United States v. Carolene Products Co.*, 304 U.S. 144 (1938),” *Justia Law*, 1938.
<https://supreme.justia.com/cases/federal/us/304/144/>.

law,” leaving the ever-changing interpretation of “due process” to the people and overall promoting the establishment of justice assured to Americans.¹⁵

Justice is a principle easily violated, and liberty is a concept which if unprotected, may always remain in jeopardy. Prior to the ratification of the Constitution, the Anti-Federalists argued that these invaluable rights lacked explicit enumeration and may at any time be wrested away, emphatically writing, “Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty.”¹⁶ They asked, if the Constitution were to forgo a Bill of Rights, “Are not provisions of this kind as necessary in the general government, as in that of a particular State?”¹⁷ In response, the Fifth Amendment has served then and now to preserve the illusory justice and liberty required in any respectable society, enabling the innocent to protect themselves from overzealous prosecution, multiple jeopardizations, unjust self-incrimination, and any attempt to deprive them of their livelihood without fulfilling the due process of law. By irrefutably establishing justice and securing personal liberties for our ancestors and descendants alike does the Fifth Amendment fulfill the preamble’s intentions, empowering the people to form a more perfect union.

¹⁵ Benjamin R. Curtis, “*Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272 (1856),” *Justia Law*, 1856: 276. <https://supreme.justia.com/cases/federal/us/59/272/>.

¹⁶ Robert Yates, “Antifederalist No. 84: On the Lack of a Bill of Rights,” *The Antifederalist Papers*, 1787. <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/84.htm>.

¹⁷ Robert Yates, “Antifederalist No. 84: On the Lack of a Bill of Rights,” *The Antifederalist Papers*, 1787. <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/84.htm>.

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