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American Government, Period 5

### **Fifth Amendment**

The fifth amendment states that: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, 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; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; 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; nor shall private property be taken for public use, without just compensation. This paper will be addressing the self-incrimination clause of the fifth amendment.

The fifth amendment is where the famous Miranda Rights come from. These statements in their entirety are not often repeated in television or movies, but a more compact version of them. The statements in their entirety are as follows: You have the right to remain silent and refuse to answer questions. Do you understand? Anything you do say may be used against you in a court of law. Do you understand? You have the right to consult an attorney before speaking to the police and to have an attorney

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present during questioning now or in the future. Do you understand? If you cannot afford an attorney, one will be appointed for you before any questioning if you wish. Do you understand? If you decide to answer questions now without an attorney present you will still have the right to stop answering at any time until you talk to an attorney. Do you understand? Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

It is important to know that the Supreme court has stated that the Miranda rights are “not themselves rights protected by the constitution”, but are merely a way of proving that the fifth amendment has not been violated. This is because the fifth amendment forbids “compelled” self-incrimination, but a confession purely from one’s own guilt and remorse is acceptable, even if not given in the presence of an attorney. Alternative methods to the Miranda rights have been suggested to congress, and in 1966 Chief Justice Earl Warren’s opinion in Miranda encouraged Congress to develop alternative methods.

One of the most important questions to ask about law is: Why? If the point of the law is to achieve justice, then why is self-incrimination not allowed? Why is it that one cannot

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give evidence to serve justice if they are the offender? And the answer is fairly simple, to avoid false confessions. Evidence gotten from third parties is looked at more critically than a confession, so this keeps the police from forcing a confession out of an innocent person.

A very interesting example of the fifth amendment is *Twining v. the State of New Jersey*. Albert Twining and David Cornell were convicted of showing false banking papers to a New Jersey state Bank auditor. They refused to state whether the papers were false or not when put on the stand, pointing out the protection from self-incrimination. The courts rejected their claim though. The courts stated that Twining and Cornell confirming or denying the validity of the statements was part of the “due process of law” in the fifth amendment and fourteenth amendment.

Another interesting case was that of a confession that was later regretted.

Unfortunately I do not have the name of the case. A person was picked up near Christmas Eve for the abduction and murder of a young girl. Because of the emotional time, the officers were instructed to not even attempt to interrogate the suspect. However, the suspect confessed out of his own guilt and regret. He told the officers

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where the body was. There was already a search team near the area, and the body was near the search area. They found the body and jailed the suspect. Later, the suspect claimed that the confession was coerced because his attorney was not present. However, his argument was rejected because the body would have been found in an hour or two based on the obviousness of the grave and the strategy of the search.