

# Seventh & Eighth Amendments

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(1791)

## WHAT IT SAYS

[Seventh Amendment] In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

[Eighth Amendment] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### A JURY TRIAL FOR LANDLORDS

In 1969, a social worker in Wisconsin found an apartment for one of her clients, an African American woman named Julie Rogers. However the landlords, Leroy and Mariane Loether and Mrs. Anthony Perez, refused to rent to Rogers. Rogers believed they rejected her because she was African American. She brought a lawsuit under the newly enacted 1968 Fair Housing Act (FHA), a federal statute that makes it illegal to refuse to rent a home to someone because of that person's race, sex, familial status, or national origin.

The landlords asked the federal district court to grant them a jury trial in the case, but the court denied the request. The judge tried the case himself, and ruled that the defendants had violated the FHA and awarded Rogers \$250 in punitive damages. The Court of Appeals for the Seventh Circuit reversed this ruling, and Rogers appealed to the U.S. Supreme Court. Because Rogers had in the meantime married and had taken her husband's last name, Curtis, the case is known as *Curtis v. Loether*. The Supreme Court ruled unanimously that the landlords' request for a jury trial should have been granted. In an opinion written by Justice Thurgood Marshall, the Court reexamined the text of the Seventh Amendment, and considered what "common law" really meant. The justices rejected Mrs. Curtis's argument that the phrase excluded lawsuits brought under statutes. Instead, the Supreme Court found that the FHA's ban on housing discrimination was a rule against inflicting personal injury, which is a "legal" kind of claim, allowable at "common law." The Court additionally found that the monetary damages sought by the plaintiff were also "legal" in nature. Therefore, the Seventh Amendment's protections applied, and either party in an FHA case could demand a jury trial.

## WHAT IT MEANS

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The Seventh and Eighth Amendments add to the Constitution’s protections for individuals in the judicial system. The Seventh Amendment guarantees a jury trial in common law—consisting of centuries of judicial precedents—civil cases such as personal injury cases arising from car accidents, disputes between corporations for breach of contract, or discrimination and employment cases. The parties in a federal civil trial have the right to have their case decided by a jury of their peers. In a civil case a plaintiff (who brings the suit) may obtain money damages or a court order preventing the defendant from engaging in certain conduct, but civil cases cannot send a defendant to jail. The Seventh Amendment has not been extended to the states, which may choose not to employ juries in civil cases.

In addition to defining what kinds of cases require a jury, the Seventh Amendment highlights the jury’s role as “fact finder,” and it imposes limits on the judge’s ability to override the jury’s conclusions. Under the common law, the jury hears the facts and decides the verdict, and the judge sets the penalty based on the jury’s findings.

The Eighth Amendment deals with bail, the money that defendants pay in exchange for their release from jail before trial. This money is returned to the defendants when they appear at trial, but the government keeps the money if a defendant does not appear. Bail is an incentive for a defendant to remain in the area and participate in the trial. Bail also promotes the ideal of being “innocent until proven guilty,” in that defendants are not punished with jail time prior to conviction and sentencing. The Eighth Amendment ensures that bail cannot be excessive, set so high that only the richest defendants can afford it. However, the Supreme Court has identified certain circumstances in which courts can refuse bail entirely, such as when a defendant shows a significant risk of fleeing or poses a danger to the community.

The better-known component of the Eighth Amendment is its prohibition against “cruel and unusual” punishment. The phrase was originally intended to outlaw gruesome methods of punishment, such as torture or burning at the stake, but the courts have broadened it over the years to protect against punishments that are deemed too harsh for the particular crime. Eighth Amendment challenges to the death penalty have often focused on whether certain offenders, such as juveniles or the mentally retarded, should be subject to a sentence of death, and whether death sentences have been decided fairly or have been tainted by racial bias. The “cruel and unusual” provision has also been used to challenge grossly unsanitary or otherwise deficient prison conditions.

# Seventh & Eighth Amendments

## Bail required for all criminal defendants

1789

Through the Judiciary Act of 1789, Congress establishes the federal judicial system. One of its provisions states that whenever an arrest occurs in a criminal case, bail shall be available, except if the crime is punishable by death. In those cases, bail may be available, if a judge decides that it is appropriate under the circumstances.

## Execution by electrocution is not “cruel and unusual” punishment

1890

When New York State allows the use of the newly invented electric chair for executions, the U.S. Supreme Court, in *In re Kemmler*, rules that it is constitutional. Only if the chosen method of execution involves “torture or a lingering death” does it violate the Eighth Amendment.

## Punishment must be appropriate to the crime

1910

An American officer in the government of the Philippines (then a U.S. territory) is found guilty of falsifying an official document and is sentenced to fifteen years in prison, hard labor, lifetime surveillance, and the loss of his civil rights. In *Weems v. United States*, the U.S. Supreme Court finds that this sentence amounts to “cruel and unusual” punishment because its length and harshness are out of proportion to the crime committed.

## The death penalty is reinstated

1976

In three cases known together as *Gregg v. Georgia*, the U.S. Supreme Court rules that death penalty laws are constitutional when they include limitations on jury discretion, such as sentencing guidelines, “bifurcated” trials (meaning that the guilt versus innocence and sentencing phases of the trial are held separately), and a process for immediate appeal of a sentence of death. The ruling upholds many of the newly passed state death penalty laws and permits executions to resume.

## The Eighth Amendment does not cover corporal punishment of students

1977

In *Ingraham v. Wright*, the U.S. Supreme Court refuses to find that the Eighth Amendment bars punishment of schoolchildren by “paddling.” Based on the amendment’s history and its language, the Court concludes that the amendment applies only to punishment of criminal offenses, not civil offenses such as breaking school rules.

## Isolating prisoners can be “cruel and unusual” punishment

1978

Arkansas has a practice of placing prisoners in isolation cells for thirty-day periods as punishment for breaking prison rules. In *Hutto v. Finney*, the U.S. Supreme Court rules that it is “cruel and unusual” punishment. The Court bases its ruling not on the length of time that prisoners are isolated, but on the overall conditions in the prisons.

# TIMELINE

## Trial judges cannot make retrials conditional

1935

A person is injured in an automobile accident in Massachusetts and brings suit against the other driver for negligence. At a jury trial he is awarded \$500. Disappointed with that amount, he asks for a new trial on the grounds that the verdict was inadequate. The trial judge agrees to order a new trial, unless the other driver will consent to an increase in the damages to \$1,500. When the second driver agrees, the judge denies another trial. The injured party then appeals. In the case of *Dimick v. Schiedt* (1935), the Supreme Court holds that, under the Seventh Amendment and the common law, the trial court lacked the power to make a new trial conditional on the consent of the defendant to an increase in the payment for damages.

## Seventh Amendment does not prevent “directed verdicts”

1943

In *Galloway v. United States*, the U.S. Supreme Court rules that federal judges can reject the verdict of the jury and direct that another verdict be entered (known as a “directed verdict”) if the judge concludes that there is insufficient evidence to support the jury’s decision. The minority angrily dissent from this ruling, arguing that it erodes a major portion of the Seventh Amendment’s guarantee of a jury verdict.

## Most death penalty statutes are declared unconstitutional

1972

The U.S. Supreme Court decides three cases known as a group by the name of *Furman v. Georgia*, finding that Georgia’s death penalty statute, which gives juries complete discretion in sentencing, violates the Eighth Amendment, arguing that death penalties had been rendered in an arbitrary and discriminatory manner. This ends Georgia’s death penalty and those in forty other states. Thirty-five states draft new death penalty laws to meet the Supreme Court’s concerns. Some create sentencing guidelines for judges and juries. Some create a specific list of crimes for which the death penalty is mandated, and others draft a list of “aggravating” and “mitigating” factors to help judges and juries decide the appropriateness of the penalty in each case.

## “Preventive detention” is found constitutional

1987

Concerned about an increase in crime, Congress passes the Bail Reform Act of 1984, which for the first time allows suspects to be detained solely on an appearance of dangerousness. In *United States v. Salerno*, the U.S. Supreme Court upholds the Bail Reform Act of 1984, finding that it does not violate the Eighth Amendment’s prohibition against “excessive” bail. The Court rejects the defendant’s argument that the only consideration in setting bail should be figuring out how much money will be enough to prevent a defendant from fleeing before trial. Instead, the Court finds that protection of the public also can be a basis for determining the level of bail, or even for denying bail entirely.

## Jury trials are extended to copyright disputes

1998

When a local television station owner falls behind in payments to broadcast such programs as *Who’s the Boss?* and *T. J. Hooker*, Columbia Pictures ends its agreement with him. The station owner continues to show the programs, and Columbia sues for copyright infringement. Columbia wins this case and seeks payment for damages. The judge denies the station owner’s request for a jury trial and conducts a bench trial (a trial heard by a judge without a jury). Columbia is awarded the damages it seeks. The station owner appeals, and in *Feltner v. Columbia Pictures Television, Inc.* (1998), the Supreme Court rules that the station owner is guaranteed the right to a jury trial under the Seventh Amendment.

## Death penalty ruled out for juvenile offenders

2005

The Supreme Court, in *Roper v. Simmons*, strikes down state death penalty laws for those seventeen and younger as “cruel and unusual” punishment. The majority cites changing public opinion and notes that the United States stands “alone in a world that has turned its face against the juvenile death penalty.” The decision will result in a new sentence for Christopher Simmons and likely new sentences for seventy-two juvenile offenders on state death rows at the time of the ruling.