Introduction

I. Rights

A. The idea of rights

B. The role of rights (Federal and State)

C. The role of courts (Federal and State)

D. The written rights
   i. Original Constitution (structure and rights) (Article I, sections 9-10)
   ii. The Bill of Rights (Amendments 1-10) (Article V provides for amendment)
   iii. The post Civil War amendments (Amendments 13-15) [Articles XII-XV]

E. Principal rights not specifically related to the process of criminal law
   i. Freedom of religion and of speech (Amendment 1)
   ii. Due process (Amendment 5; Amendment 14); just compensation (Amendment 5)
   iii. Jury trial in common law (civil) cases
   iv. The end of slavery (Amendment 13)
   v. Equal protection (Amendment 14)
   vi. Rights related to voting (Amendments 15, 19, 24, 26)

F. Principal rights specifically related to the process of criminal law
   i. Habeas corpus (Article I, section 9)
   ii. Searches, seizures, and warrants (Amendment 4)
   iii. Grand jury indictment, double jeopardy, self-incrimination (Amendment 5)
iv. In criminal prosecution: speedy trial, impartial jury, notice, confrontation with witnesses, power to obtain witnesses, representation by a lawyer (Amendment 6)

v. Bail, no cruel and unusual punishment (Amendment 8)

Rights and Courts

II. The open-ended rights: a brief summary

A. Privileges and Immunities
   i. Article IV, section 2
   ii. Amendment 14, section 1

B. Equal Protection: Amendment 14, section 1
   ii. Equity
      a. The difference between “law” and “equity”
      b. Legal remedies: imprisonment, fines, money damages
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III. The Role of Courts: Interpretation and Standards of Review

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   i. Carolene Products v. United States, footnote 4 (1938)
   ii. Standards of review
   iii. Suspect Classifications (race, ethnic origin, and gender, for example)
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B. The example of Due Process: “Substantive” due process

i. What does “due process of law” mean?

a. “Fundamental fairness,” “Implicit in the concept of ordered liberty”

b. Implied fundamental rights: the example of the right of privacy

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iv. The difference between implied fundamental rights in Due Process and Equal Protection jurisprudence

C. The example of Due Process: “Procedural due process”


ii. Criminal law

a. Amendment 5; Amendment 14, section 1

B. Federal and State criminal law

b. The “incorporation” of Federal rights as applicable to the States

IV. Selected stages in the criminal process and selected rights

A. See “A general view of The Criminal Justice System” (attached)

B. Investigation: Warrants and probable cause (Amendment 4)

C. Interrogation and confession (and trial): Privilege against self-incrimination (Amendment 5) [Miranda v. Arizona (1966)]

D. Interrogation / confession / critical stages (and trial and appeal): Right to Counsel (Amendment 6) [Gideon v. Wainwright (1963)]

E. Trial: Exclusion of evidence taken in violation of Amendments 4-6 and 14 [Mapp v. Ohio (1961)]

G. Trial: Other trial rights (and negotiated pleas)