

The common law background of the fourth amendment essay sample

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Executive Summary

The fourth amendment is the part of America's bill of rights that protects the citizens against invasion of their by the authorities without a court search warrants. It originated from a series of court decisions and tribunals (precedents) rather than the actions of the executive or the statutes of the legislature. It also has a common law background dating to the 1600s when America was part of the British colonies .

In 1765, Judge Lord Camden established that the government was not allowed to carry out search and seizure unless specified by law. Ruling in a case (Entick vs. Carrington) where Entick was suing for damages following an indiscriminate raid of his private home by royal representatives in search of material critical of the king and his policies; the judge cited that the warrants were without reasonable cause and were issued to cease all of the papers rather than the specific papers that may be considered relevant to the accusations. He therefore declared that both the warrant and the actions of the King's agent were improper and in so doing established the importance of safeguarding one's right to protect private property.

In a bid to maximize revenue collection from the American colonies, the British crown violated this right so far established by granting unlimited general search powers to British law enforcement officials in the form of Writs of Assistance. The officials could therefore invade any American home or business and for any imaginable reason at will to search for and confiscate property. To protect citizens from injustices such as those brought by the writs, the post-independence American constitution entrenched that " the

right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" as the fourth amendment.

References

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