

# The Bill of Rights

## The First Ten Amendments to the Constitution

UPDATED EDITION

BY DAVID L. HUDSON JR.



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to the Constitution

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BY DAVID L. HUDSON JR.

THE FIRST AMENDMENT PRESS™

*This book is dedicated to  
John Seigenthaler and Ken Paulson*

The Bill of Rights:  
*The First Ten Amendments to the Constitution*  
Updated Edition  
by David L. Hudson Jr.

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# Foreword

The National Archives, based in our nation's capital, houses parchment and principles.

It's there that you'll find the Declaration of Independence, which in 1776 essentially served as a bill of divorce from England and cited "Life, liberty and the pursuit of happiness" as unalienable rights.

Also prominent in the archives is the United States Constitution, ratified in 1788. It provided this young nation with structure, organizational principles and a system of checks and balances.

It was the promise of another document, however, that ensured ratification of the Constitution.

The Federalists were unable to secure enough states to approve the Constitution until a commitment to the Bill of Rights eased fears and led to support by nine of the 13 colonies, permitting ratification.

It was then left to James Madison to draft the Bill of Rights, which was ratified on Dec. 15, 1791.

In this updated edition of Professor David L. Hudson Jr.'s *The Bill of Rights: The First 10 Amendments*, the importance and impact of these key liberties are explained in detail. Collectively, the Bill of Rights made an extraordinary commitment to the residents of this new nation in surprisingly concise fashion. Perhaps it is its relative brevity that has allowed it to remain timely and apply to circumstances never foreseen by the nation's founders.

Yet while a majority of Americans embrace the Declaration of Independence on the 4th of July with a combination of cookouts and explosive devices, the anniversary of the Bill of Rights is little noted. Why do Americans appear to know little about the Bill of Rights?

One factor is that it was not until 1925 that the U.S. Supreme Court concluded that elements of the Bill of Rights would apply to the states through a doctrine of incorporation. Until then, our core rights were only protected against the actions of the federal government. Another reason for the lesser visibility of the Bill of Rights: a happenstance of history.

On Aug. 21, 1941, with much of Europe and the Soviet Union under siege by German troops, Congress passed a joint resolution urging President Franklin Delano Roosevelt to establish a national day to honor the Bill of Rights.

As the *Los Angeles Times* reported on Nov. 28 of that year, “President Roosevelt today called on the American people to observe December 15 as ‘Bill of Rights Day,’ to cherish the immeasurable privileges which the charter guaranteed.” Roosevelt urged Americans to “observe the day with appropriate ceremonies and prayer” and asked government officials to fly the American flag.

Just nine days after Roosevelt’s proclamation, the Japanese attacked Pearl Harbor. The holiday largely dissipated as we entered World War II. There’s some irony to this. In an era in which our liberties were under attack around the globe, we lost sight of a holiday that celebrated those freedoms.

In the 80-plus years since that initial call for commemoration, the Bill of Rights has largely been taken for granted by the American people. Yes, Bill of Rights Day is still on the books, but it is rarely acknowledged, let alone celebrated.

The downside of this lack of interest and knowledge is twofold: We tend to take these liberties for granted, and if we’re not aware of their true import, then we won’t be vigilant when these core liberties are in danger. Of course, the best avenue for transforming a vague understanding of the Bill of Rights into a real appreciation is the classroom.

That’s why the First Amendment Press is pleased to publish Professor Hudson’s accessible and thoughtful *Bill of Rights*.

This book is written in a clear and concise manner and should hold special appeal to young citizens in the making.

This nation does an extraordinary job of celebrating its independence from England. It’s unfortunate, though, that we don’t expend similar energy on a document that essentially declared our independence from our own government. This entire country would benefit from lessons in liberty that illuminate these essential rights and elevate our appreciation of what truly makes America special.

*Ken Paulson*

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# Introduction

**T**oo often we in the United States take our precious individual liberties for granted. All students and citizens should stop and think for a moment about how the world would be without these liberties.

Consider the following example. A public junior high school teacher assigns her students a creative writing project. The teacher instructs the students that the poem must contain a theme arising out of a major current event that has had a major impact on the students. One student decides to write a poem about school violence in the wake of several recent school shootings, including the 2018 tragic school shooting at Marjorie Stoneman Douglas High School in Parkland, Fla. The student posts her poem on social media.

The poem expresses the inner demons of a student who feels alienated by his peers. In his mind, the student's fictional character debates whether he should become the bully and lash out violently against his tormentors. Another student downloads the poem and shows it to a teacher at school. The teacher



mistakenly believes the poem to be a threat. The teacher shows the poem to the principal and school resource officer. The three officials then collectively decide that the student poses an immediate risk to himself and others.

The school officials strip-search the student, interrogate him for several hours, and call the police. The school officials then expel the student permanently, citing a “zero tolerance” policy against violence.

The police interrogate the student for several hours without reading him his rights or allowing him to call his family. They lock the student in a juvenile detention center cell, where he remains incarcerated until an emergency court hearing.

In the meantime, the police enter the student's home, search his room, and seize his home computer without a warrant. The police then force the student to reveal the passwords to his social media accounts to search for more information and perhaps other violent-themed posts.

In this scenario, the public school officials and the police violated the student's constitutional rights. They infringed on his freedom of speech, freedom from unreasonable searches and seizures, and freedom from self-incrimination.

What if the police could enter your home at any time for no stated reason and search through your personal possessions? What if you could be imprisoned merely for writing an article that criticizes a local politician?

Imagine if you could be put to death for a minor criminal offense, such as shoplifting a candy bar. Imagine if you could be thrown into jail, denied an attorney, and not be able to confront your accusers.

Imagine if the government could command that you practice a certain religion or could banish you out of the country. Consider if you could be declared guilty without a jury trial.

Such was—and is—the plight of millions of people in countries all over the globe. Fortunately, in America we have individual liberties ensured by law. Sometimes, government officials violate people's constitutional rights. But at least in this country we usually have a remedy in our United States Constitution.

Our Constitution—and particularly the first Ten Amendments—provide us with what our fourth president, James Madison, called “the great rights of mankind.” These Ten Amendments are called the Bill of Rights.

In his book *The Life of the Law*, attorney Alfred M. Knight argues that our “legal system” is the most important and unique part of our culture. He writes: “Nothing like it has ever been seen before on this planet so far as we know. It is distinguished above all else by its breathtaking generosity to the individual.”<sup>1</sup>

The Bill of Rights symbolizes this “breathtaking generosity.” It safeguards our constitutional rights. United States Supreme Court Justice Hugo Black wrote that the Bill of Rights “protect(s) and safeguard(s) the most cherished liberties of a free people.”<sup>2</sup>

**My hope is that the pages that follow will serve as a ready reference and quick explanation for anyone who holds that these rights are so basic, and so crucial, to our life as American citizens.**

*David L. Hudson Jr.*

<sup>1</sup> Alfred H. Knight, *The Life of the Law*, (New York: Crown Publishers, Inc. 1996) p. 4.

<sup>2</sup> *Gault, Application of*, 387 U.S. 1, 62-63 (1967)(J. Black, concurring).

## CHAPTER 1

# The Bill of Rights: What Are They?

**T**he United States Constitution sets out the structure of our government. It divides various powers among the three branches of the federal government — the executive, legislative and judicial.

The Bill of Rights was added to the Constitution in part to ensure that the powers of the federal government would not trample upon individual liberty.

The first eight amendments to the United States Constitution are designed to protect individuals from abuse by federal government officials. The ninth and tenth amendments set out the division of powers between the federal government and various state governments. The Fourteenth Amendment ensures that most of the rights contained in the first eight amendments of the Bill of Rights apply to state and local government officials.

## The First Amendment

**“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”**

The First Amendment serves as our blueprint for personal freedom. It ensures that we live in an open society. The First Amendment contains five freedoms: religion, speech, press, assembly and petition.

Without the First Amendment, religious minorities could be persecuted or the government could establish a single, national religion. The press could not criticize government and citizens could not mobilize for social change. This would mean we would lose our individual freedom.

## Freedom of Religion

The first two clauses of the First Amendment — “respecting an establishment of religion or prohibiting the free exercise thereof” — are the religion clauses. The first is the Establishment Clause. The second is the Free Exercise Clause. Together, these clauses require that the government act in a neutral manner when it comes to religion.

The Establishment Clause provides that church and state remain separate to a certain degree. In a letter to the Danbury Baptists in 1802, President Thomas Jefferson spoke of a “wall of separation between church and state.” The U.S. Supreme Court used Jefferson’s “wall of separation” metaphor to describe the meaning of the Establishment Clause.<sup>1</sup>

James Madison, Jefferson and some of our other Founding Fathers desired to place some distance between church and state to prevent American political leaders from acting like English monarchs who were intolerant of other religious views.

King Henry VIII was a prime example. He broke away from the Catholic Church in 1531 after the pope refused to support his divorce from Catherine of Aragon. Henry established the Protestant Church of England. In 1534, the English Parliament passed the Act of Supremacy establishing Henry as the head of the Church of England.

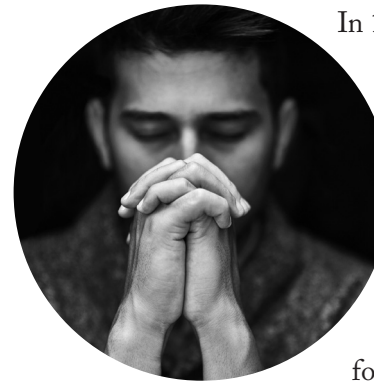
Later, Parliament passed the Treason Act, which effectively silenced anyone who spoke out against the King. The act was used to silence religious dissenters. Religious intolerance seemed to be the standard in much of Europe, including England. Many people fled England to settle in America and the New World because of religious persecution. Religious dissenters in England were ostracized, punished and imprisoned.

In the 1960s, the United States Supreme Court ruled that public school officials violated the Establishment Clause when they led students in prayer. The Court explained that a reasonable observer would believe that the school officials were advancing or endorsing a certain religion over other religions. Members of religious minorities would be coerced to conform to the majority religion.

Historians, judges and members of the public dispute the meaning of the Establishment Clause. Some believe the clause only meant to prohibit the government from setting up a national church. Others apply the “wall of separation” theory more vigorously and disagree with any state involvement

with religion. They argue that the state cannot grant aid to religious institutions. So-called strict separationists oppose school-voucher programs in which parents are given tuition monies for their kids to attend certain schools, including parochial (or religious) schools.

The second religion clause of the First Amendment is the Free Exercise Clause. It protects a person’s right to practice religion freely. In 1963, the United States Supreme Court ruled that South Carolina officials violated the free-exercise rights of Adele Sherbert, a Seventh-day Adventist who was fired from her job and denied unemployment benefits because she would not work on Saturday.<sup>2</sup> Seventh-day Adventists believe that the day of worship is Saturday, not Sunday.



In 1990, the Supreme Court decided a case involving a similar issue. Two Native American drug counselors claimed their First Amendment rights were violated when they were denied unemployment benefits after they were fired for drug use. The individuals had ingested peyote — a hallucinogenic drug — for religious reasons. The two individuals argued that, like Ms. Sherbert, they were being punished for exercising their religious rights.<sup>3</sup>

The Court ruled in favor of the state and against the two former drug counselors. The high court wrote that the state’s criminal law against drug use was a neutral law of general applicability. The Court found there was no religious exemption to fail to comply with the state’s drug laws.

## Freedom of Speech

The First Amendment protects the right of free speech, even offensive speech. Our early leaders, known as the Founding Fathers, spoke out mightily against arbitrary actions by the king of England and the English Parliament, such as tax increases. They wanted to ensure that Americans would have the right to criticize their government.

Shortly after World War I, many socialists and anarchists, who disagreed with the United States’ system of government, were punished for their anti-war speeches and writings. Justice Oliver Wendell Holmes developed



the so-called “clear and present danger” test. Under this theory, a person could not be punished for his or her speech, unless that speech caused a “clear and present danger.” For example, the government could prohibit speech that caused an immediate riot.

Freedom of speech also applies to more than just oral speech. Certain forms of symbolic speech, or expressive conduct, also receive protection. In the 1960s, public high school students in Iowa wore black armbands to school to protest United States’ involvement in the Vietnam War. The Supreme Court determined in 1969 that the students’ act of wearing the armbands was “closely akin” to pure speech.<sup>4</sup>

Similarly, in 1984, Gregory “Joey” Johnson burned an American flag outside the Republican National Convention in a form of political protest. In a 1989 decision, the Supreme Court said the act of burning the flag was a form of free expression.

The Court held that burning the flag, like wearing the black armbands, was an effective means of communicating a certain message.

Not all speech, however, receives protection. Certain forms of speech receive no protection. These categories include obscenity and fighting words. Obscenity refers to speech that depicts hard-core sexual activities in a graphic way. “Fighting words” refers to face-to-face insults that cause an immediate violent reaction. The Supreme Court has determined that these types of speech are harmful and do not contribute meaningfully to the marketplace of ideas.

Some people claim that hate speech — speech that targets a particular group because of race or religion — should also be prohibited. Even hateful speech receives protection under the First Amendment unless it incites imminent, or immediate, lawless action or qualifies as a true threat.

## Freedom of the Press

Thomas Jefferson once said that if he had to choose between a government without newspapers, or newspapers without government, he would not hesitate to “choose the latter.”<sup>5</sup>

A free press is the heart of the First Amendment. The press has historically served as a check upon the government. The press is sometimes referred to as the “Fourth Estate” because of its important position in society in examining the three branches of government — the executive, legislative and judicial. The press in England was not free. English officials passed licensing laws that

forced writers and publishers to obtain prior approval of their works from the Crown before publication.

The English monarchy established this system of prior restraint in order to prevent criticism of the king. English courts, including the secret court known as the Star Chamber, punished those who engaged in seditious libel.

## A free press is the heart of the First Amendment.

In theory, seditious libel referred to speech that called for treason against the government. In practice, seditious libel referred to speech criticizing the king.

In this country, the tradition of press freedom began with the

celebrated case in 1735 of John Peter Zenger, who was prosecuted for criminal libel for criticizing the royal governor of New York, William Cosby. In a landmark legal moment, a jury ignored the prevailing law at the time and decided that truth was a defense to a libel action. Under current law, a statement cannot be considered libelous if it is true.

More than two hundred years later, in 1964, the United States Supreme Court afforded the press much greater freedom in *New York Times Co. v. Sullivan*.<sup>6</sup> In this case, *The New York Times* printed an editorial advertisement by the “Committee to Defend Martin Luther King and the Struggle for Freedom in the South.”

The ad criticized the actions of certain “Southern violators” and accused them of violating the civil rights of African-American students in Montgomery, Ala. The ad read: “Again and again the Southern violators have answered Dr. King’s peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times.”<sup>7</sup>

Even though he was not named specifically in the ad, L.B. Sullivan, the Montgomery city commissioner in charge of the police, sued the newspaper for libel (publishing false statements of facts about someone) in the amount of \$500,000. The ad contained certain misstatements. For example, Dr. King had been arrested only four times, not seven.

An Alabama jury awarded Sullivan \$500,000. However, the United States Supreme Court reversed the jury verdict against the newspaper. The decision “transformed American libel law.”<sup>8</sup> The Court wrote that “debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”<sup>9</sup>

Now, the press faces lawsuits for allegedly violating people's right to privacy. Celebrities and private individuals sometimes contend that the press went too far in disclosing private information. Caroline Kennedy and Ellen Alderman describe this phenomenon as "a clash between the right to be let alone and the right to know, a clash between privacy and the press."<sup>10</sup>

## Freedom of Assembly and Petition

The last two freedoms of the First Amendment ensure that citizens can assemble together and directly petition the government to call public attention to a certain cause.

Over the course of American history, striking workers, civil rights advocates, anti-war demonstrators, and Ku Klux Klan marchers have sought the protections of the First Amendment. They sought the right to assemble freely and petition the government for a redress of grievances. Sometimes these efforts have galvanized public support or changed public perceptions. The freedom of assembly was essential to both the Civil Rights Movement of the 1950s and 1960s and the women's suffrage movement.<sup>11</sup>

Citizens also have a right to petition the government to correct injustices, or in the words of the First Amendment, for a "redress of grievances." Though probably the least-known clause of the First Amendment, it arguably has deeper historical roots than any other First Amendment freedom. Consider that two of history's most venerated documents — the Magna Carta and the Declaration of Independence — were petitions to kings of England. Each document petitioned the ruler with various complaints.

## The Second Amendment

**"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

Most of the provisions of the Bill of Rights can be traced to freedoms first developed in England. The English Bill of Rights in 1689 declares that individuals should have the right to bear arms.

The great English legal historian William Blackstone wrote in his Commentaries that the right to bear arms was necessary "to protect and maintain inviolate the three great and primary rights of personal security, personal liberty, and private property."<sup>12</sup>

Americans in the late eighteenth century viewed the right to bear arms as necessary for liberty. Colonists needed firearms for hunting. They also needed weapons when they confronted hostile strangers or foreign enemies in the New World. The right to bear arms was explicitly mentioned in the early state constitutions of Pennsylvania, North Carolina, Vermont, and Massachusetts.<sup>13</sup>

Legal historians debate whether the amendment applies to a collective or individual right. In other words, historians differ on whether the right to bear arms applies to a militia or to each individual. The dispute occurs because the wording of the amending begins with a preamble mentioning "a well regulated militia."<sup>14</sup>

The Supreme Court ruled 5-4 in *District of Columbia v. Heller* (2008) that the Second Amendment protected the individual right to keep and bear arms.<sup>15</sup> The majority rejected the collective-right interpretation of the Second Amendment.

Today, many Americans still own guns for recreation and personal safety. They view the federal government and its laws regulating the sale of handguns and other firearms as infringing on personal freedom. The National Rifle Association (NRA), for instance, is a powerful group that lobbies against many gun-control laws and on behalf of citizens' Second Amendment rights.

The downside for many government officials is the high number of handgun deaths each year in the United States — more than any other country not at war in the world. Recent school shootings have increased public awareness about firearms. Many believe that we must limit firearms in the stream of commerce.

## The Third Amendment

**"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."**

The Founding Fathers adopted this amendment to prevent the federal government from housing troops in individuals' homes. In colonial times, the British government would house (or quarter) troops in colonists' homes without their consent. The Quartering Act of 1765 allowed the English to house troops in colonists' homes.

This imposed a tremendous burden upon colonists. Imagine if the government could require you to house military troops in your own home.

This is the least-significant provision of the Bill of Rights. Today members of the armed forces live in communities and on military bases, not in the private homes of nonmilitary citizens.

## The Fourth Amendment

**“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.”**

A popular saying is a man’s home is his castle. The Constitution safeguards this concept of privacy in the Fourth Amendment. This amendment protects people from government invasions into their homes and bodies.

During the colonial period, British customs officials would obtain search warrants called writs of assistance. These writs allowed the officials to inspect all of a colonist’s cargo to prevent smuggling of goods that were to be taxed. These writs of assistance allowed the officials to search and seize whatever property they desired without prior approval by a judge or magistrate.

In response, the Founding Fathers adopted the Fourth Amendment. This amendment generally requires that the police obtain a warrant from a judge before conducting a search and seizure.



The warrant must explain why the police believe a search is necessary. The warrant must also state what material is being targeted in the search. The British would often use so-called “general warrants” when searching colonists’ property. A general warrant allowed authorities to search all of person’s property. The Fourth Amendment generally forbids the use of general warrants. It requires the police to state specifically what items they expect to find.

In order to obtain a warrant and search a person, the police must have what is known as “probable cause.” Probable cause means more than just a hunch.

The police must point to specified evidence showing that the person likely is carrying certain material.

Controversy surrounds the Fourth Amendment because sometimes the police will violate the rights of a person who is carrying contraband, such as illegal drugs. A common example is when a police officer discovers drugs on a person — but only after an unreasonable search or seizure.

Our Constitution allows a person illegally searched to file a motion to suppress the evidence. This is called the exclusionary rule. Judge Benjamin Cardozo

expressed this concept when he said that “the criminal is free to go because the constable has blundered.”<sup>16</sup> The rationale behind the exclusionary rule is to require law enforcement officials to obey the law.

Public school students do not possess the same

## Controversy surrounds the Fourth Amendment because sometimes the police will violate the rights of a person who is carrying contraband, such as illegal drugs.

level of Fourth Amendment rights as adults in their homes. In 1985, the United States Supreme Court limited the level of Fourth Amendment protection for students.<sup>17</sup> Normally, police must have probable cause to search a person and his or her belongings. However, the high court determined that “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.” In that case, the Court found that it was reasonable to search a student’s purse after a teacher discovered two girls smoking in the bathroom.<sup>18</sup>

In recent times, courts have examined numerous Fourth Amendment cases involving the searching of people who are suspected of trafficking in drugs. The epidemic of illegal drug use has led some courts to relax the standards of the Fourth Amendment.

However, the Supreme Court in 2001 ruled unconstitutional a South Carolina state hospital’s practice of drug testing pregnant women and then turning positive results over to the police for prosecution. The hospital argued that its program was justified because there is a special need to stop drug use. The

majority of the Supreme Court disagreed, finding that the policy led to unreasonable searches.<sup>19</sup>

Fourth Amendment rights are fragile because some people are not willing to protect the constitutional rights of those whom they feel have committed crimes.

## The Fifth Amendment

**“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 offence 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.”**

The Fifth Amendment provides protections for criminal defendants and the general public in several provisions. The freedoms in the Fifth Amendment include the right to be charged with a serious crime by a grand jury, protection against double jeopardy, the right to remain silent, the right of due process and the right not to have property taken by the government without just compensation.

### Grand Jury

A grand jury consists of a group of everyday citizens who hear a prosecutor's evidence in a secret proceeding. The grand jury then determines whether there is sufficient evidence to indict or present charges against someone. This group of persons is known as a grand jury because there are more people in this body than in the ordinary trial jury, or petit jury.

The right to a grand jury serves to protect citizens from aggressive prosecutors.<sup>20</sup> The theory is that an individual's peers will make sure that there is a valid basis for the criminal charges. During colonial times, grand jurors would often refuse to indict fellow colonists on trumped-up charges by British authorities.<sup>21</sup>

## Double Jeopardy

The right of protection against double jeopardy ensures that a person cannot be prosecuted for the same crime more than once. If a jury acquits a criminal defendant of charges, a prosecutor cannot try again with a different jury. The principle dates back to early legal systems, such as Roman law.<sup>22</sup>

There are exceptions to the principle against double jeopardy. A person can be charged in separate criminal and civil trials. For example, football star O.J. Simpson faced criminal murder charges in the 1994 deaths of his ex-wife Nicole Brown Simpson and companion Ronald Goldman. A jury found Simpson not guilty of the charges. After the completion of the criminal case, the victims' families sued Simpson in civil court for damages and won.

In a criminal case, the state brings charges against an individual to punish that person with fines or confinement. In a civil suit, normally one private party sues another private party for money. Another exception, as shown in the trial of four Los Angeles Police Department officers for beating motorist Rodney King, is that a criminal defendant can sometimes be charged criminally in state court and then in federal court. The officers were charged with different crimes. In state court they faced assault charges. In federal court they faced civil rights charges.<sup>23</sup> This is not double jeopardy because the state and federal governments are separate sovereigns.

## The Right to Remain Silent

One of the more important rights contained in the Fifth Amendment is the privilege against self-incrimination, or the right to remain silent. This right means that the state has the burden of proving that a person committed a crime. In court, the criminal defendant does not have to testify. He or she can say: “I take the Fifth.”

In a criminal trial, the defendant faces the loss of his or her freedom. Because the burden facing the individual is so great, our Constitution demands that the government prove that the person committed the crime on the basis of evidence rather than force it from the individual it seeks to punish.

The United States Supreme Court has extended the privilege against self-incrimination, or right to remain silent, to outside the courtroom settings.

When a police officer arrests a suspect, the officer is supposed to read the suspect his or her rights. The officer warns the suspect: “You have the right to remain silent. Anything you say can and will be used against you.”

The Supreme Court in its 1966 decision *Miranda v. Arizona* set up certain procedural safeguards to ensure that suspects retain the constitutional right to remain silent while in police custody. The court wrote that in the past some law enforcement officials used physical or psychological coercion to obtain confessions. In the lead case, the Court voided the conviction of a young Latino man in part because the police had not informed him of his right to remain silent while they kept him in custody.<sup>24</sup>

“Despite the scorn that has been heaped upon it, the privilege against self-incrimination seems neither irrational nor silly when viewed objectively,” writes attorney and author Alfred Knight. “Its essence is a citizen, arms folded, confronting the state and saying, ‘Prove it.’”<sup>25</sup>

## The Right to Due Process

Due process is one of the greatest rights Americans possess. One legal historian has said the right of due process has “served as the basis for the constitutional protection of the rights of Americans.”<sup>26</sup> Due process has often been divided into two basic categories: procedural due process and substantive due process.

### Due process is one of the greatest rights Americans possess.

Procedural due process means that the government must guarantee a fair process before taking away an individual’s life, liberty, or property. The basic elements to procedural due process are notice and the

right to a fair hearing. This prevents the government from arbitrarily taking away someone’s job or freedom.

The protection of due process is written into both the Fifth Amendment and Fourteenth Amendments. The Fourteenth Amendment is the amendment that applies to the states and extends many of the protections of the Bill of Rights to the states.

The Supreme Court found that Ohio public school officials violated the procedural due-process rights of several public school students by suspending them from school for 10 days without prior notice and a hearing. “The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school,” the Court wrote.<sup>27</sup>

Substantive due process means that laws must advance a legitimate government objective — such as protecting children. Normally, a law must be justified on a rational basis, which means it must be reasonably related to a legitimate goal.

In 1977, the Supreme Court struck down a Cleveland zoning law that limited an extended family from living together. A grandmother occupied a house with one of her sons and two of her grandsons. The city had sent the grandmother a notice saying that one of her grandsons was an “illegal occupant” because the grandson was not the child of the son at the house.<sup>28</sup>

When the grandmother refused to comply with the order, the city brought criminal charges against the elderly woman. The Supreme Court determined that the law violated the right to substantive due process. The Court wrote that “the Constitution prevents East Cleveland from standardizing its children and its adults by forcing all to live in certain narrowly defined family patterns.”<sup>29</sup>

## Right to Just Compensation When Property Is Taken

The last clause of the Fifth Amendment, called the Takings Clause, says that “nor shall private property be taken for public use without just compensation.” This means that the government cannot simply take a citizen’s property without paying for it.

The government does possess the power of eminent domain, or the right to take private property for public use. For example, the government sometimes takes land to build highways. However, the Due Process Clause of the Fifth Amendment and Fourteenth Amendment requires that the government give “just compensation” before invoking this sovereign power.

In 1987, the Supreme Court ruled that California coastal officials violated the due-process rights of the owners of a beach home.<sup>30</sup> James and Marilyn Nollan sought a permit to rebuild their home on the beachfront property. The officials would grant the permit only if the Nollans granted public access to certain portions of their land.

The Court concluded that the actions were so unfair as to violate due process. If the government “wants an easement across the Nollans’ property, it must pay for it.”<sup>31</sup>

## Sixth Amendment

**“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.”**

Similar to the Fifth Amendment, the Sixth Amendment provides numerous protections to persons accused of crimes. Most fundamentally, the Sixth Amendment ensures that criminal defendants receive fair trials. The amendment attempts to provide a fair trial by guaranteeing numerous rights.

The Sixth Amendment ensures that criminal defendants receive a speedy and public trial before an impartial jury. It provides that criminal defendants receive proper notice of the charges they are facing. The amendment also provides that criminal defendants can confront their accusers and compel certain witnesses to testify. And the amendment says criminal defendants have a constitutional right to an attorney.

The right to a speedy trial ensures that a criminal defendant will not sit in jail for too long before having a trial. A public trial ensures that an individual will not be subject to the closed-door justice of the infamous Star Chamber in England.

The Star Chamber was an English court dissolved by Parliament in 1641 that was known for its secretive judicial meetings and harsh sentences. It would convict and punish individuals without providing them with any protections comparable to those found in our Bill of Rights.

An impartial jury must also judge every person charged with a crime. Sometimes, a judge will pick a jury from a county other than the one in which the defendant allegedly committed the crime. In our legal system, this is called a change of venue. A judge will change venue if a defendant would be treated in a prejudiced way. Judges consider changing venue when they believe that a

defendant could not receive a fair trial in the city or county where the alleged crime took place. This potential problem occurs when a high-profile criminal case receives a lot of pretrial publicity. Judges have a duty to ensure that a defendant will not be pre-judged by the jury.

The Sixth Amendment also provides that a defendant must have notice of the charges filed against him. Individuals need to know what charges they face so that they can prepare a defense to those charges. The next clause of the amendment, called the confrontation clause, ensures that a criminal defendant can cross-examine those who testify against him. Supreme Court Justice Antonin Scalia has written: “The perception that confrontation is essential to fairness has persisted over the centuries because there is much truth to it. . . . It is always more difficult to tell a lie about a person ‘to his face’ than ‘behind his back.’”<sup>32</sup>

The Sixth Amendment also provides that a criminal defendant can force witnesses to testify in the trial. Often, people do not want to get involved in a criminal trial. The compulsory-witness clause provides that a defendant can try to prove his or her case whether the witnesses want to get involved or not.

Finally, the Sixth Amendment ensures that a criminal defendant can have a defense attorney. In 1963, the Supreme Court ruled that a criminal defendant charged with any felony had the right to counsel even if he or she could not afford an attorney.<sup>33</sup> That decision led to the adoption of public-defender offices in the federal and state court systems. Public defenders represent people charged with state or federal crimes who do not have the money to pay for their own attorney.

## The 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 re-examined in any Court of the United States, than according to the rules of the common law.”**

The Sixth Amendment provides a jury trial to a criminal defendant. The Seventh Amendment extends this right of jury trial in federal civil cases. Employees who sue their employers in federal court for discrimination can have their case heard by a jury. The Seventh Amendment safeguards the right

of a person in a federal civil suit to have his or her case heard by a jury of peers. In our legal system, the jury decides questions of fact, while the judge decides questions of law.

This does not mean that any time one person or business sues another in federal court, the lawsuit will go before a jury. Many cases never reach a jury because the parties settle their dispute or the judge dismisses the case, finding there are no material factual disputes.

## The Eighth Amendment

**“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”**

The English 1689 Bill of Rights also contained a provision prohibiting excessive bail and fines and cruel and unusual punishment. Several states contained provisions in their constitutions that established that penalties should be proportional to the charged offense.

The Eighth Amendment was added to the Bill of Rights to protect people from being locked up in jail because they could not pay costly fines. In

England, some defendants were financially burdened on trumped-up charges and could not pay the fines to get out of jail. For example, in 1631 Puritan clergyman Alexander Leighton was fined ten thousand pounds for

**The most controversial aspect of the Eighth Amendment is the “cruel and unusual punishment” clause.**

libeling the leaders of the Anglican church, the country’s official church.<sup>34</sup>

The most controversial aspect of the Eighth Amendment is the “cruel and unusual punishment” clause. The question that continues to divide citizens of our country is whether the death penalty constitutes cruel and unusual punishment.

In 1972, the United States Supreme Court ruled 5-4 in *Furman v. Georgia* that state laws giving juries unlimited discretion in the administration of the

death penalty were unconstitutional.<sup>35</sup> The majority of the justices reasoned that the state had failed to provide sufficient guidelines for a jury in death-penalty cases. This decision led to the suspension of all executions in the United States for several years.

Many state legislatures amended their death-penalty laws to give more guidance to judges and juries in capital cases. Several of these new laws were challenged, and in 1976, the Supreme Court ruled in *Gregg v. Georgia* that the death penalty itself does not violate the Constitution.<sup>36</sup> The majority of the Court reasoned that the state of Georgia had changed its statute to give juries enough guidance that death sentences would not be arbitrary.

Today, close to one hundred inmates are executed each year. In 2019, 22 people were executed in the United States.

## The Ninth Amendment

**“The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”**

One common objection to the Bill of Rights when it was first considered was that listing, or enumerating, certain rights would mean that those were the only rights the people possessed.

To answer this concern, Congress adopted the Ninth Amendment. It implies that people retain other rights not specifically listed in the Bill of Rights. Historian Leonard Levy writes that “the Ninth Amendment could also serve to draw the sting from any criticism that the catalog of personal freedoms was incomplete.”<sup>37</sup>

For 175 years, the Ninth Amendment “lay dormant” and was a “constitutional curiosity.”<sup>38</sup> In 1965, several members of the United States Supreme Court ruled that the Ninth Amendment provided a right of marital privacy. In *Griswold v. Connecticut*, the Supreme Court struck down a Connecticut law prohibiting the use of contraceptives.<sup>39</sup>

## The Tenth Amendment

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Anti-Federalists, a political party opposed to a strong central government, opposed the Constitution because they feared a federal government could swallow up the rights of states and individuals. Those who think the federal government is invading the decision making of state officials will cite the Tenth Amendment and “states’ rights.”

Before and during the Civil War and the civil rights movement, some Southern politicians committed to slavery and segregation claimed the federal government was infringing on states’ rights. These officials argued that it was up to state officials to determine the policies of the state.

Recently, challenges to several federal gun-control laws have been argued on Tenth Amendment grounds. The argument advanced by opponents of the laws is that the states, not the federal government, should regulate the sale of handguns.

### ***A difficult process to achieve individual freedom***

The freedoms in the Bill of Rights are second nature to many Americans. Nearly all citizens realize that the Constitution gives us the right to free speech and the right to be free from unreasonable searches and seizures.

However, the development of the Bill of Rights was not an easy process. No other country has a Constitution and Bill of Rights that safeguard personal liberty to the extent our country does. In the next few chapters, we will see the historical background of the Bill of Rights and the difficult political battle that led to the Constitution and the Bill of Rights.

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## CHAPTER 2

# Ancestry of the Bill of Rights

### Precedents for the Bill of Rights

As great as the Founding Fathers were, they did not create the Bill of Rights out of a vacuum. Our leaders were greatly influenced by other great documents in English and colonial history.

It should come as no surprise that the roots of American law and several concepts of the Bill of Rights came from England. One legal scholar writes that “the slightly embarrassing fact was that the liberties Congress proposed in 1789 had mostly been created and defined by America’s great oppressor, England.”<sup>40</sup>

Most of the colonists came from England, many fleeing to the new land in pursuit of religious and personal freedom.

### Magna Carta

Many historians trace the origins of the Bill of Rights to the great English document known as the Magna Carta. This Latin phrase means great charter. Attorney and author Alfred Knight writes: “This charter is the source of many of the provisions of the American Bill of Rights, which were adopted more than five hundred years later in a more civilized environment.”<sup>41</sup>

In the early thirteenth century, many barons, or leading noblemen in England, were upset with the actions of King John. They felt the king was exerting too much power and not respecting their rights. In June 1215, King John was forced to recognize that the nobility and freemen of England were entitled to certain rights. These rights were set down in the Magna Carta. The document was not a ringing endorsement for equality. It was designed only to provide protection for certain feudal lords. Nevertheless, it remains an important source for the American Bill of Rights.

A few provisions in the Magna Carta remain important today. The most-cited provision of the document is Chapter 39, which declares: “No free man shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed ... except by the lawful judgment of his peers and by the law



of the land.” The key parts of this phrase are “by the lawful judgment of his peers” and “by the law of the land.” These phrases are early expressions of what would later become trial by jury and due process of law.

The most important principle of the document was that the king had to obey and was not above the law.

## **Petition of Rights**

The kings of England acted arbitrarily, ignoring the spirit of the Magna Carta. When Charles I took the throne in 1625, he acted without regard to the rights of his subjects. He imprisoned people for refusing to pay him monies. He also forced people to house troops in their homes.

Believing the actions of the king to be arbitrary and unlawful, Sir Edward Coke, a former jurist and well-known writer, called on his fellow members of Parliament to respond to the king’s abuses. Parliament passed a declaration known as the Petition of Right of 1628.

This document provided that Parliament, the English legislative body, had to consent to taxes. It also barred the king from forcing people to house troops in their homes.

Though the Petition does serve as an antecedent for the English Bill of Rights and the United States Bill of Rights, it did not fulfill its promise. Charles continued to violate civil liberties throughout his reign, which ended in civil war and his execution in 1649.

## **English Bill of Rights of 1689**

The Petition of Right did not solve the power struggle between the monarchy and Parliament. Charles’ son, Charles II, took the throne in 1660. After Charles II died, his brother King James II became king.

The power struggle between the king and many of his subjects continued. In 1688, James II was forced to leave England. Parliament revolted against the king’s attempts at grasping power. When King William and Queen Mary assumed power in the Glorious Revolution of 1688, they took the throne on the condition imposed by Parliament that they abide by a statute that came to be known as the English Bill of Rights of 1689.

The document established that no king of England could dominate Parliament as Charles I and James II tried to do. It increased the power of Parliament

and declared that its members could speak and debate freely without fear of retribution by the monarchy.<sup>42</sup>

One provision in the English Bill of Rights provides that “excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” This provision served as the model for the Eighth Amendment. Another provision provided for the right to bear arms.

The English Bill of Rights did not provide as much protection as the United States Bill of Rights. The English Bill of Rights could be changed by Parliament. It was designed to increase the power of Parliament and reduce the power of the king. However, the English Bill of Rights served as an important foundation for the U.S. Bill of Rights, by expanding on the notion first expressed in the Magna Carta that the government must obey the rule of law.

## **Colonial Charters and Laws**

Many people fled England to the New World to escape religious persecution. For centuries, conflict between Protestants and Roman Catholics disrupted the lives of people.

These colonists set up governments that provided for basic human liberty. In 1639, the Maryland General Assembly approved the Act for the Liberties of the People. Legal historian Bernard Schwartz wrote that this basic document “may be considered the first American bill of rights.”<sup>43</sup>

A provision in the Maryland law holds that a colonist or his property cannot be infringed upon except “according to the Laws of this province.” The colonies set up charters headed by a royal governor who still answered to the king of England. This provision provides an “American link” between the Magna Carta and the due-process clause of the U.S. Constitution.<sup>44</sup>

In 1641, the leaders of the Massachusetts colony passed the Massachusetts Body of Liberties. This provision served as the model for later colonial charters in both New York and Pennsylvania. The document contained provisions allowing for freedom of speech at public meetings, the right to counsel, jury trials, and freedom from cruel and unusual punishment.

However, the Puritans of Massachusetts required its residents to conform to their religious faith. Those who disagreed with the Puritan leaders were declared dissidents and some were banished from the colony. One religious leader banished from the Massachusetts colony was Roger Williams.

Williams was a true pioneer of religious freedom. He believed that church and state should remain separate or else religious persecution would result.

Williams founded the colony of Rhode Island. In 1663, he ensured that the colony's charter would provide religious freedom to the colonists. Schwartz wrote that "the Rhode Island charter was the first to contain a grant of religious freedom in the all-inclusive terms that are familiar in American constitutions."<sup>45</sup>

Though the colonial charters provided protection to colonists, they pale in comparison to the protections of our Bill of Rights. Colonial charters could be changed much more easily than the United States Constitution. Also, the colonies were still subject to the whims of the English king and Parliament.

Yet Colonial leaders enjoyed a good deal of self-government. They gradually became more assertive of their rights with respect to the far-away English monarchy. The colonists would eventually break free of the Crown after the Declaration of Independence and the Revolutionary War, or the War of Independence.

## Revolutionary Documents

Though the early colonial charters foreshadowed the U.S. Bill of Rights, the revolutionary period led to the establishment of American — not English — law. The king imposed a variety of measures designed to tax the colonists to raise revenue for the Crown. These included the Stamp Act of 1765 and the Tea Act of 1773.

After the uprising known as the Boston Tea Party, the British government responded with the Intolerable Acts, which closed the Boston harbor for trading. These measures gave greater power to the royal governor.

These experiences caused colonial leaders, such as Thomas Jefferson, to revolt against injustice. In 1775, the tensions between the colonists and the British escalated into war. While the war was being fought, Richard Henry Lee of Virginia introduced a measure in the Continental Congress on June 7, 1776, calling for a revolutionary declaration of independence.

This call led to Jefferson's drafting of the famous revolutionary declaration in American history — the Declaration of Independence.

## Declaration of Independence

The Declaration of Independence was the blueprint and justification for the colonists' uprising and the Revolutionary War. It established a moral authority against the unjust and arbitrary laws of King George III. Though the Declaration of Independence is not a bill of rights, it protested the king's violation of several basic rights, including trial by a jury of one's peers and quartering of royalist troops in colonists' homes. The document cited numerous abuses of George III and declared him a tyrant. It accused the king of "quartering large Bodies of Armed Troops among us" and said he had "obstructed the Administration of Justice."

The Continental Congress endorsed the document on July 4, 1776, which is why July 4 is known as Independence Day.

Perhaps the most well-known phrase of the document is the provision about certain "self-evident" principles. The document reads: "all Men are created equal, that they are endowed by their Creator with certain unalienable Rights ... Life, Liberty, and the Pursuit of Happiness."

By the time of the Declaration of Independence, many colonists believed strongly that a government must operate according to certain fundamental laws. Colonists believed they were fit to govern themselves under their own forms of government. In May 1776, the Second Continental Congress issued a resolution calling for each colony to establish its own government. John Adams, the second president of the United States, once referred to this resolution as "the most important Resolution that was ever taken in America."

This resolution urged the colonists to draft constitutions that would provide protections for individual liberties. Rights protected in a constitution are far more powerful and long-lasting than rights granted in a colonial charter or even measures passed by a legislative body.



## Virginia Declaration of Rights

In 1776, the Second Continental Congress adopted a resolution urging every colony to set up its own government and reject royalist authority. Virginia responded with a constitution and a declaration of rights that protected many of the same individual freedoms later protected in the Federal Bill of Rights.

Legal historian Bernard Schwartz wrote that “the Virginia Declaration was the first document that may truly be called an American bill of rights.”<sup>46</sup>

The Virginia Declaration of Rights contained articles protecting the right to free exercise of religion, a free press, right to be free from unreasonable searches and seizures, the right against self-incrimination, the rights to due process, just compensation, speedy trial, and jury trial, the right to confront one’s accusers, the right to be free from cruel and unusual punishment, and the right to a jury trial in civil cases.

The document was drawn up by George Mason, a planter without formal legal training. However, Mason managed to be the leading advocate for a Bill of Rights among all of our Founding Fathers. He also created in the Virginia Declaration of Rights a model for eight of twelve other states that formed new constitutions during the revolutionary era.

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## CHAPTER 3

# How the Constitution and the Bill of Rights Developed

The colonists began setting up their own governments during the revolutionary period. Each colony drafted its own constitution to govern its people. The system of government was a state-centered or colony-centered government. The English experience convinced our Founding Fathers that the primary evil was a strong, central government. This central government led to the evil excesses of the English monarchy. For this reason, our early leaders wanted to create a limited national government.

The colonies eventually prevailed in the Revolutionary War in 1783 after seven years. In 1781, the colonies formed a central government under the Articles of Confederation. Though the Articles of Confederation were designed to bind the 13 states into a union, the result was anything but successful.



From 1781 until the adoption of what we call the U.S. Constitution, the states fought over trade and commerce issues, boundaries and the creation of new states in the western territories. The Articles of Confederation created a weak government that was unable to raise revenue, raise troops, regulate commerce, settle disputes between different states or enforce its own laws.

Under the Articles of Confederation, the Confederation Congress could not force state governments to raise monies for the federal government.

Leaders in various states began to see the need for a stronger national government. George Washington believed deeply in a strong central government after he found that he lacked funds for basic supplies for his troops during the Revolutionary War.

In 1786, an uprising of farmers in Massachusetts called Shays’ Rebellion convinced many other leaders of the need for a strong national government.

In July 1785, the Massachusetts legislature passed a measure calling for amendments to the Articles of Confederation. Other states began to recognize the problems associated with a weak central government.

In March 1785, representatives from Maryland, Virginia, and later Pennsylvania met at George Washington's estate, Mount Vernon, to discuss thorny issues involving fishing and navigation rights along the Potomac River. The conference showed that individual states could work together to pursue common good.

The Mount Vernon meeting led to the so-called Annapolis Convention in September 1786. At this meeting delegates from five states discussed interstate commercial and trade issues. Concerned that only five states sent representatives, the leaders at the Annapolis meeting adopted a resolution that representatives from all thirteen states would convene at Philadelphia the next May to discuss alterations to the Articles of Confederation.<sup>47</sup> Alexander Hamilton drafted a letter to the various states calling for the meeting that would discuss political as well as commercial issues.

The Confederation Congress endorsed the movement to revise the Articles of Confederation in February 1787. The Congress did not endorse the drafting of an entirely new Constitution, but that is what happened.

## Philadelphia Convention

Our Founding Fathers, or Framers, created our Constitution at the Philadelphia Convention. Though 74 delegates were named to the convention, only 55 showed up in Philadelphia to establish a better form of government, or, in the words of the resulting document, “a more perfect union.”

The efforts of the 55 delegates in creating the legal document known as the U.S. Constitution have been called by one scholar the “Miracle at Philadelphia.” The efforts of the delegates focused upon creating a stronger, more functional central government. The delegates were not concerned with individual rights but with government “functions and interests.”<sup>48</sup>

As one scholar writes, “the original intent of the Founding Fathers was to have no bill of rights at all.”<sup>49</sup> Toward the end of the Constitutional Convention in September, George Mason, the author of the Virginia Declaration of Rights, proposed the idea of a bill of rights. Mason said:

“I wish that a bill of rights had been included in the preface to the plan. It would be a great quiet to the people.”

A motion by Eldridge Gerry and Mason was soundly rejected. “In its historic debut, the American Magna Carta was dead on arrival.”<sup>50</sup> Many Founding Fathers apparently believed that a bill of rights was unnecessary either

because individual rights were provided for in state constitutions or in the Constitution as it was written. “No delegate had been against such rights,” writes Catherine Drinker Bowen. “Merely, they considered the Constitution covered the matter as it stood.”<sup>51</sup>

Most leaders at the Philadelphia Convention believed that a Bill of Rights was unnecessary, useless and maybe even dangerous. Or maybe the Framers just wanted to go home after months of deliberation.<sup>52</sup> One argument advanced was that the enumeration, or listing, of the rights of the people to be free from government abuse would imply that no other rights existed. In other words, a bill of rights would expressly limit the federal government's power. But would it imply that the government had all powers that were not expressly limited?

After the Philadelphia Convention, Richard Henry Lee of Virginia made a motion in the Confederation Congress to add a bill of rights to the Constitution before submitting it to the states for ratification. The Confederation Congress rejected Lee's motion.

## Ratification of the U.S. Constitution

On Sept. 17, 1787, 39 delegates at the Constitutional Convention in Philadelphia signed the U.S. Constitution. The Constitution contains seven sections called articles. Article VII provides: “The ratification of the conventions of nine states shall be sufficient for the establishment of the Constitution between the states so ratifying the same.”

Ratification was not an easy process. Political leaders were split on the issue of ratification. Supporters of the new Constitution with its strong central government called themselves Federalists. Opponents of the Constitution were known as Anti-Federalists.

Many of the Anti-Federalists opposed the Constitution because it failed to provide for a bill of rights and gave too much power to the federal government at the expense of the state governments. Some said the members of the Philadelphia Convention had exceeded their authority in creating this bold new document. They were particularly concerned with the so-called “necessary and proper” clause of the new Constitution. Article I, Section 18 provided Congress with the power to “make all Laws which shall be necessary and proper” for executing its powers vested in the Constitution.

On Sept. 28, the Congress directed the state legislatures to call ratification conventions to approve the new document.

In the key states of New York and Virginia the Anti-Federalists fought a hard political battle over ratification. After the Philadelphia Convention, James Madison co-wrote a series of articles with Alexander Hamilton and John Jay that became known as The Federalist Papers. These 85 essays written under the pen name Publius are still considered the definitive work on the Constitution. Thomas Jefferson once called them “the best commentary on the principles of government which ever was written.”

These articles discussed the framework of the Constitution, including the principles of checks and balances and separation of powers among three branches of government.

## The Federalist Papers written under the pen name Publius are still considered the definitive work on the Constitution.

The battle between the Federalists and Anti-Federalists was intense. However, the Federalists possessed several advantages. First, their selection of the name “Federalist” was important for their campaign for the Constitution. It left their opponents with the “weak and negative label ‘Anti-Federalists.’”<sup>53</sup>

The Federalists also enjoyed most of the newspapers’ support, as the large newspapers from Boston, New York and Philadelphia took up the Federalist cause.<sup>54</sup> Finally, the Federalists seemed to have the best ammunition — the detailed document known as the Constitution. The Anti-Federalists could only criticize the new document.<sup>55</sup>

Delaware became the first state to ratify the Constitution, on Dec. 7, 1787. Not only was it the first, but it ratified the Constitution unanimously. Pennsylvania ratified the Constitution a few days later on Dec. 12. The delegates voted 46 to 23 in favor of the Constitution.

The Pennsylvania delegates also considered fifteen amendments proposed by Anti-Federalist Robert Whitehill. These proposed amendments were similar to what would later become the U.S. Bill of Rights.<sup>56</sup>

The delegates voted against the amendments by the same two-to-one ratio. The Anti-Federalists then issued “The Address and Reasons of Dissent of the Minority of the Convention.” This document spread the push for a bill of rights.<sup>57</sup>

New Jersey ratified the Constitution unanimously on Dec. 18, 1787. Georgia also ratified it unanimously on Jan. 2, 1788.

However, ratification of the Constitution was a tremendous struggle in several of the more populous states, including Massachusetts and New York. On Feb. 6, 1788, Massachusetts voted 187 to 168 in favor of the Constitution only after the Federalists agreed to recommend amending the Constitution to include protections for individual liberties.

Massachusetts became the first state to officially recommend amendments to the Constitution during the ratification process. Though the nine proposed amendments bear little resemblance to the final U.S. Bill of Rights, their importance lies in the fact that Massachusetts started a pattern of attaching amendments.<sup>58</sup>

New Hampshire became the required ninth state on June 21, 1788, voting 57 to 46 in favor of the Constitution. Although the Constitution was technically in effect after New Hampshire ratified it, the support of Virginia was essential.

Virginia was the home of James Madison, George Washington and Thomas Jefferson, all of whom supported the Constitution. However, the state was also the home of a group of well-known Anti-Federalists, including Patrick Henry and George Mason.

On June 25, 1788, James Madison managed to gather enough support for the Constitution in the Virginia state convention. The delegates narrowly approved the Constitution. Two days later, a committee at the convention proposed a bill of rights to be added to the Constitution.

The Virginia-proposed bill of rights was detailed, and nearly every one of the twenty rights eventually found a place in the Bill of Rights. These proposals from Virginia were of “decisive significance in the history of the Federal Bill of Rights, both because it was the first state proposal for a detailed bill of rights and because it was recommended by Virginia.”<sup>59</sup>

After the pro-Constitution victory in Virginia, Congress declared the new Constitution to be the law of the land on July 2, 1788.

The majority of the state ratification conventions accepted the new Constitution but recommended the additions of certain amendments. “It was at the state ratifying conventions that the popular demand for a bill of rights found practical expression.”<sup>60</sup>

However, in several of the states were another set of amendments that dealt not with individual liberties but with altering the balance of power between the state and federal government.

Many of the Anti-Federalists were concerned about the powers of the new Congress to levy direct taxes, maintain a standing army and to control elections. “To the Anti-Federalist, the threat to religion, speech, and press, and to all liberty, came from a powerful central government that was able to tax from a distance, was in control of elections, and had a standing army at its disposal.”<sup>61</sup>

In other words, many Anti-Federalists opposed the Constitution more because it gave too much power to the federal government than that it failed to include a bill of rights.

The Anti-Federalist position for a bill of rights had great appeal to most people. Most Americans had just fought a bloody revolutionary war for freedom. The Anti-Federalists argued that the people should have their individual liberties protected in the new Constitution. Richard Henry Lee, an Anti-Federalist who refused to serve as a delegate at the Constitutional Convention, wrote *Letters from the Federal Farmer to the Republican*. Lee criticized the new government as undemocratic.

Most of the states had protections for individual liberties in their state constitutions. It stood to reason that the people would need these same protections in the federal constitution against a much more powerful central government.

These arguments seemed to sway the general population. There was much opposition to the document because it contained no bill of rights. The Anti-Federalists fanned the flames of public opinion by demanding a Bill of Rights.

Federalist James Madison, who later became known as the Father of the Bill of Rights, understood the difficult and fragile position of the new Constitution. However, even he needed some convincing of the need for a bill of rights. This persuasion came from his political mentor and the author of the Declaration of Independence, Thomas Jefferson.

## CHAPTER 4

# The Father of the Bill of Rights

The leading figure in the adoption of the Bill of Rights was the future fourth president of the United States, James Madison. This Virginia man was small in stature but looms large in American history.

Historians and all Americans who are interested in the past owe a huge debt to James Madison. It was he who wrote daily notes on what happened at the Philadelphia Convention. Without these notes, we would know little about the closed-door proceedings.

Americans also owe a great deal to Madison because it was he who convinced a majority of Congress and his fellow Federalists to amend the Constitution. However, Madison himself originally did not support a bill of rights.

In fact, as mentioned in the last chapter, Madison had helped write *The Federalist Papers*, which advocated against amending the Constitution. In *Federalist No. 84*, Alexander Hamilton had argued that bills of rights “are not only unnecessary in the proposed Constitution but would even be dangerous.”<sup>62</sup>

Hamilton had also advanced at least two other arguments that persuaded many Federalists. One argument was that a bill of rights, by implying protection from the federal government, would also imply that the government had more power than it really should have. “Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?”<sup>63</sup>

Hamilton also noted that “the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS.”<sup>64</sup>

Madison originally subscribed to these views. He later referred to a bill of rights a “paper barrier” that would not offer any real protection to the people and might even expand the power of the government.

However, another great Founding Father convinced Madison of the importance of a bill of rights. This was none other than the future third president of the United States, Thomas Jefferson.

The two engaged in a correspondence across the Atlantic Ocean because Jefferson was serving his country as minister to France. Thus, while Madison took a leading role at the Philadelphia Convention, Jefferson could only wait to hear from overseas.

The two men engaged in a series of letters about a bill of rights. The correspondence began with Madison's letter of Oct. 24, 1787, in which he informed Jefferson that the legal blueprint that came out of Philadelphia contained no bill of rights.

Madison also informed Jefferson that a leading Virginian, George Mason, the draftsman of the Virginia Declaration of Rights, had considered the absence of a bill of rights a "fatal objection." In colorful language, Mason had said that he would "sooner chop off his right hand" than sign the Constitution without a bill of rights.

Jefferson responded to Madison's doubts from Paris in a letter dated Dec. 20, 1787, in which he criticized the omission of a bill of rights. Jefferson wrote:

**"Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."**

Jefferson persuaded Madison that the inclusion of a bill of rights was necessary to secure popular support for the new Constitution. Madison wrote to Jefferson in October 1788 that "My own opinion has always been in favor of a bill of rights." However, Madison also wrote in his letter that he believed a bill of rights would be a mere "parchment barrier" that could not protect citizens from an oppressive majority.

Madison believed that the real danger to individual liberty lay not in the government "but from acts in which the Government is the mere instrument of the major number of the Constituents."<sup>65</sup> In other words, the real danger came not from the government but from what French observer Alexis de Tocqueville called "the tyranny of the majority."

Madison supported the inclusion of a bill of rights because he thought it was essential for popular support for the Constitution. Madison believed that the bill of rights would not be very effective in protecting liberties against the will of the majority. In his letter to Jefferson, historians have seen that Madison viewed the bill of rights with lukewarm support: "I have favored it [the bill of

rights] because I have supposed it might be of use and if properly executed could not be of disservice."

On March 15, 1789, Jefferson responded to Madison's October letter by stressing the importance of a bill of rights. Jefferson disagreed with Madison's assessment about the effectiveness of a bill of rights. Jefferson pointed out that a declaration of rights would provide the judicial branch of government with a "legal check" to ensure the protection of individual rights.

Jefferson emphasized that the inclusion of a bill of rights would have more of a positive effect beyond simply pleasing the people. "Half a loaf is better than no bread," he wrote. "If we cannot secure all our rights, let us secure what we can."<sup>66</sup>

Jefferson warned that omitting a bill of rights would pose a far greater problem than any problems caused by a bill of rights. He wrote:

"The inconveniences of the declaration are that it may cramp government in its useful exertions. But the evil of this is short lived, moderate, and reparable. The inconveniences of the want of a declaration are permanent, afflicting, and irreparable; they are in constant progression from bad to worse."

Jefferson's appeals to Madison transformed the latter from an ambivalent supporter into the man who was later to become known as the "Father of the Bill of Rights."

Madison determined that a bill of rights was necessary for two reasons: (1) to establish public opinion in favor of the new Constitution, and (2) to guard against the possibility of the abuse of power that is a natural danger with any government.

Madison clearly saw that the general populace greatly desired a bill of rights. The people were mistrustful of the new powerful central government established by the Constitution.

Historian Robert Goldwin argues that James Madison used the bill of rights to "save the Constitution." During the meeting of the First Congress

**Jefferson persuaded Madison that the inclusion of a bill of rights was necessary to secure popular support for the new Constitution.**

## Amending the U.S. Constitution to Include the Bill of Rights

in 1789, some political leaders were calling for a Second Constitutional Convention to amend the Constitution. Madison feared that these calls would lead to drastic revisions of the Constitution and drastically reduce the power of the federal government. Madison considered these calls a serious threat to the Constitution.

Opponents of the Constitution were concerned over the power of the new federal government. They were fearful that the federal government would swallow up the power of individual states.

Madison used the public demand for a bill of rights “to thwart all efforts to weaken the Constitution.”<sup>67</sup> He had many proposed amendments to draw upon from the various state conventions. He knew he had to propose amendments to the Constitution.

His genius lay in knowing which amendments to introduce and which to exclude. He included provisions protecting individual liberty and left out those amendments that would have taken away power from the federal government. Nearly all of Madison’s proposed amendments dealt with issues of individual liberties. He avoided the demand for structural amendments to the Constitution.

Therefore, on June 8, 1789, Madison delivered what one historian has called “one of the most consequential political orations in American history.”<sup>68</sup> Madison, a representative of the House, passionately argued for the inclusion of a bill of rights.

Madison told his colleagues that they should consider a bill of rights “in order to quiet that anxiety which prevails in the public mind.”<sup>69</sup> He said that the inclusion of a bill of rights would show the people that no one wishes “to deprive them of the liberty for which they valiantly fought and honorably bled.”<sup>70</sup>

“You ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes and declare the great rights of mankind secured under the Constitution.”

“Madison saw that the proposed amendments could make the Constitution universally revered.”<sup>71</sup> The more moderate Anti-Federalists would support the Constitution with sufficient protection for individual liberties.

Other more fervent Anti-Federalists continued to oppose the Constitution because they felt that it encroached too much on states’ rights. The Anti-Federalists proposed much more radical amendments to the Constitution that would have significantly limited the power of the federal government.



Madison had a tough political assignment in diplomacy in persuading the Congress to support a bill of rights. Madison had to clear two high hurdles. First, he had to convince his fellow Federalists that a bill of rights was necessary. Secondly, he had to introduce moderate amendments that would protect individual liberty without taking away too much power from the federal government.

Madison had to act quickly because Anti-Federalists from New York and Virginia were urging a Second Constitutional Convention to discuss amendments to the Constitution. Madison wanted to avoid a second convention, fearing that it would radically change the Constitution.

Madison believed that by carefully selecting amendments dealing with individual liberty he could take the popular support currently enjoyed by the Anti-Federalists.

Fortunately, for Madison, he had one overriding advantage: the composition of the Congress. The First Congress was overwhelmingly Federalist. There were only ten Anti-Federalists in the House and two in the Senate. This ensured the defeat of the Anti-Federalist amendments.

However, he still had to convince a majority of his fellow Federalists of the need for a bill of rights. This was no small task because many Federalists had adopted a position similar to that expressed by Alexander Hamilton in Federalist No. 84. They viewed it as either unnecessary, improper or dangerous.



In his June 8, 1789, speech, Madison appealed to this fellow Federalists, saying that the adoption of a bill of rights would cause the people “to join their support to the cause of federalism, if they were satisfied on this one point.”<sup>72</sup>

Madison recognized that many of his fellow congressmen and Federalists were against amending the Constitution that they had worked so hard to craft.

Madison recognized these arguments of Hamilton and his fellow Federalists. He even remarked that “these arguments are not entirely without foundation.”<sup>73</sup> However, Madison repeatedly emphasized the favorable reaction to the public about declaring “the great rights of mankind.”

He added that “if there was reason for restraining the state governments from exercising this power, there is like reason for restraining the federal government.”<sup>74</sup> Madison also noted that the different rights mentioned in the state bills of rights were different and some were “defective.”

Madison concluded that the addition of a bill of rights “will be proper” and “highly politic, for the tranquility of the public mind and the stability of the government.”<sup>75</sup>

## Madison was able to prevail in his quest for a bill of rights.

After addressing the arguments, Madison then introduced his particular provisions. He proposed nine amendments to the Constitution. Madison’s initial proposals differ in style from the resulting Bill of

Rights. He proposed that his amendments would be incorporated into the body of the Constitution.

The first amendment would be added to the beginning of the Constitution and would declare that “all power is originally vested in, and consequently derived from, the people.” His other proposed amendments would be added to the text of the Constitution.

Amendment two dealt with the number of representatives per population, and the third amendment dealt with congressional pay raises.

Madison’s original amendment four contained provisions for religious freedom, free speech, right to bear arms, due process, and freedom from cruel and unusual punishment. Madison’s Amendment number five provided that “no state shall violate the equal rights of conscience, or freedom of the press, or trial by jury in criminal cases.”

Amendment six dealt with appeals to the U.S. Supreme Court. Amendment seven provided for unanimous jury verdicts in criminal cases. Amendment eight specifically said each branch of government could exercise powers of the other branch. Madison’s Amendment nine would have renumbered Article VII to Article VIII.

Even though the style and form was different, the substance of Madison’s original amendments survived in the eventual Bill of Rights. Madison took his proposed amendments from the various suggestions by the states at their ratifying conventions.

Some members of Congress immediately opposed Madison’s idea. For example, Representative James Jackson from Georgia, a Federalist, echoed an argument from Hamilton’s Federalist No. 84 that listing certain rights of the people would imply greater powers to the government. He reasoned that “those omitted are inferred to be resigned to the discretion of the government.”<sup>76</sup>

Another representative, Anti-Federalist Elbridge Gerry from Massachusetts, argued that there were simply more important matters for the Congress than a bill of rights. He argued that “the great wheels of the political machine should first be set in motion ... lest she lays by the wharf till she beats off her rudder, and runs herself a wreck on shore.”<sup>77</sup>

Despite these powerful arguments, Madison was able to prevail in his quest for a bill of rights. In July, a House Select Committee approved of Madison’s amendments in virtually the same form as Madison had proposed.

Representative Roger Sherman proposed on Aug. 13 that the amendments be placed at the end of the Constitution. “We ought not to interweave our propositions into the work itself, because it will be destructive of the whole fabric,” he said. “The constitution is the act of the people and ought to remain entire.”<sup>78</sup>

Madison responded that there was a “neatness” to adding the amendments to the body of the Constitution, but ever the diplomat he conceded, saying: “I am not, however, very solicitous about the form, provided the business is but well completed.”<sup>79</sup>

On Aug. 19, the House accepted Sherman’s proposition and voted to place the amendments at the end of the Constitution — which is where they reside today — rather than incorporate them into the text separately.

Some Anti-Federalists, such as Elbridge Gerry and Thomas Tudor Tucker, still tried to persuade Congress to adopt more amendments to the Constitution. These amendments would have drastically reduced the power of Congress.

On Aug. 18, Tucker introduced 17 amendments. These amendments would have dramatically reduced Congress' taxing powers and ability to oversee congressional elections. Tucker also proposed limiting the term of the president.<sup>80</sup>

In speaking about Congress' power to control congressional elections, Gerry said, "farewell to the rights of the people, even to elect their own representatives."<sup>81</sup> Gerry remained an avowed Anti-Federalist concerned over the power of the new federal government.

The House rejected Tucker's proposed amendments. On Aug. 22, Tucker introduced several other amendments, again attacking the power of the federal government to levy taxes.<sup>82</sup>

Tucker chastised his colleagues, saying: "I do not see the arguments in favour of giving Congress this power in so strong a light as some gentleman do: It will be to erect an imperium in imperio" (Latin for "a state within a state.").

Jackson of Georgia, who earlier had opposed taking up the bill of rights issue, came to Madison's defense on the taxation issue. "Without the power of raising money to defray the expenses of government, how are we to secure against foreign invasion?"<sup>83</sup>

This process was not easy. James Madison even wrote to a friend that amending the Constitution and amending the Bill of Rights had become a "nauseous project."

However, on Aug. 24, the House approved seventeen amendments "by way of appendix" to the Constitution. This means that the amendments would be added to the end of the Constitution.

The Senate passed its version of the amendments on September 9. This version included twelve amendments. The Senate operated behind closed doors until February 1794. Therefore, historians do not have as much information about the Senate debates as the House debates.

However, one of the most important actions the Senate took was the deletion of Madison's original Amendment 5: "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases." Madison considered this "the most valuable amendment in the whole list."

Both Houses of Congress agreed to the Senate version on September 25. The final Congressional version mirrors the current version of the Bill of Rights with the exception of the first two amendments.

The first proposed amendment provided that there shall be one representative for every thirty thousand people. The second proposed amendment provided that "no law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Thus, the original Congress originally considered what we know as the First Amendment to be its Third Amendment.

## Ratification of the Bill of Rights

On Oct. 2, 1789, President Washington officially sent the proposed amendments to the states for ratification. In order to take effect, three-fourths of the

### The ten ratified amendments that became known as the Bill of Rights took effect on Dec. 15, 1791.

state legislatures would have to approve of the amendments.

The contemporary news coverage of government bodies in the 1790s is nothing like what we have today. Therefore, historians know little about what occurred in the various

legislatures. Schwartz writes that "even the contemporary newspapers are virtually silent on the ratification debates in the states."<sup>84</sup>

The necessary number of states ratified ten of the twelve amendments. The first two original amendments dealing with the number of congressional representatives and congressional pay raises were not ratified by enough states.

On Nov. 20, 1789, New Jersey became the first state to ratify the Bill of Rights.

The ten ratified amendments that became known as the Bill of Rights took effect on Dec. 15, 1791, when Virginia ratified them. This date is considered the birth of the Bill of Rights. Contemporary accounts show that little attention was paid to the official ratification of the Bill of Rights.

After both Houses had approved of the amendments, the public's worries were relieved. Goldwin writes: "By the time they were ratified, the amendments were the solution to a problem that had ceased to exist."<sup>85</sup>

## When the Bill of Rights didn't apply to states

The Bill of Rights provided written guarantees of individual liberty. These guarantees assured that the federal government would not infringe on certain rights, such as the right to practice one's religion freely.

However, remember that the First Congress failed to approve of James Madison's original amendment number five, the one that he had called the "most valuable." Madison's proposed amendment would have ensured that the different state governments could not infringe on certain individual liberties, such as "the right of conscience, freedom of the press, or trial by jury in criminal cases."

Madison proposed this amendment because he thought there needed to be a "double security" because state officials were "as liable to attack these invaluable privileges" as the federal government. Only one member of the House spoke against the measure. Representative Tucker said it was more prudent "to leave the State Governments to themselves."



Unfortunately, Madison's measure was dropped in the Senate.

The upshot of this was that the protections in the U.S. Bill of Rights did not apply to state governments. The United States Supreme Court made this clear in its 1833 decision *Barron v. Baltimore*.<sup>86</sup>

Chief Justice John Marshall rejected the claim of John Barron, who alleged that the city of Baltimore had violated his constitutional rights by

ruining his wharf. The city had engaged in construction activities that had damaged Barron's property. He argued that the city had violated his Fifth Amendment rights by depriving him of his property without due process and just compensation. The Fifth Amendment provides that private property shall not be "taken for public use, without just compensation."

Marshall rejected this claim. He reasoned that the Bill of Rights applied only to the federal government. He concluded that the just-compensation principle in the Fifth Amendment was "intended solely as a limitation on the exercise

of power by the government of the United States, and is not applicable to legislation of the states."<sup>87</sup>

The theory behind applying the Bill of Rights only to the federal government was that the federal government was the greatest threat to individual liberty. Citizens' control over state governments served as an adequate shield against state and local governments.

This ruling would have a devastating impact on individual liberty. The protections of the Bill of Rights did not begin to apply to state and local governments until the adoption of the Fourteenth Amendment in 1868 and later United States Supreme Court decisions. That Fourteenth amendment provided in part:

**"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

The primary author of the Fourteenth Amendment, Representative John Bingham of Ohio, had argued that the Fourteenth Amendment made the Bill of Rights applicable to the states. However, it was many years until the United States Supreme Court took this position.

The Supreme Court began a process of selective incorporation in which different protections of the Bill of Rights were applied to the states through the Fourteenth Amendment. Beginning in the twentieth century, the Court "has used selective incorporation to make almost all the specific guarantees of the bill of rights applicable to the states."<sup>88</sup>

## The Bill of Rights in Action

The protections of the Bill of Rights apply to protect citizens from invasions of their constitutional rights by government officials — federal, state or local. The protections of the Bill of Rights apply to public school students.

### The Right of Free Speech in Public Schools

In 1965, several public school students in Iowa decided to wear black armbands to school to protest U.S. involvement in the Vietnam War. When school officials learned of the plan, they quickly passed an anti-armband rule.

However, Christopher Eckhardt, John Tinker and Mary Beth Tinker wore the armbands to school. School authorities suspended the students. The students responded with a federal lawsuit that went all the way up to the United States Supreme Court.



In its 1969 decision *Tinker v. Des Moines Independent Community Sch. Dist.*, the high court ruled 7-2 in favor of the students.<sup>89</sup> The Court determined that the students' act of wearing the black armbands was a form of symbolic speech entitled to First Amendment protection.

The high court wrote that schools are not “enclaves of totalitarianism.”<sup>90</sup> The Court determined that school officials could not censor peaceful student expression unless they could reasonably forecast that the expression would cause a substantial disruption of school activities or invade the rights of others.

Many public schools now are embroiled in controversies over school uniforms, dress codes, rock band T-shirts and Confederate-flag garb. Many courts tend to side with school officials, especially in cases involving the Confederate flag.

The new battleground over student speech concerns the extent of school authority over students' social media posts. In other words, the question is whether school officials can punish students for social media posts they make in their own home.<sup>91</sup>

## Unpopular Speech: Burning the Flag as a Form of Political Protest

In 1994, Gregory “Joey” Johnson burned an American flag outside the Republican National Convention in Dallas. Johnson said he engaged in this obnoxious act in order to protest policies of the Reagan administration and certain Dallas-based corporations.

Johnson doused the flag in front of the Dallas City Hall while other protesters chanted: “America, the red, white, and blue, we spit on you.” Texas officials charged Johnson with violating a state law prohibiting desecration of “venerated objects.” The statute defined “desecrate” as damaging or mistreating a venerated object, such as the American flag, knowing that it will seriously offend someone.

Johnson contended that the charge by Texas officials violated his First Amendment right to express himself on political matters.

The Supreme Court ruled 5-4 in *Texas v. Johnson* that the state could not convict Johnson and remain consistent with the First Amendment.<sup>92</sup> The majority first noted that Johnson's obnoxious act of burning the flag was a form of “expressive conduct” similar to pure speech.

Justice William Brennan determined that state officials cannot create a “separate judicial category” for the flag. The majority said that our Founding Fathers “were not known for their reverence of the Union Jack.”<sup>93</sup>

In a passage that symbolizes the meaning of the First Amendment, Brennan wrote: “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea, simply because society finds the idea itself offensive or disagreeable.”<sup>94</sup>

Several members of the U.S. Congress reacted to the decision by introducing a bill to amend the Constitution to prohibit burning the flag. Though the measure did not receive the required number of votes, Congress passed the Flag Protection Act. This law made it a federal crime to desecrate the American flag.

In 1990, the U.S. Supreme Court ruled 5-4 in *United States v. Eichmann* that the federal law violated the U.S. Constitution.<sup>95</sup> “Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering.”

For many years, Congress has considered proposals to amend the Constitution to prohibit flag burning. Several times such a measure has passed the House of Representatives but has fallen a few votes short in the Senate.

## Free Speech on the Internet

The First Amendment applies to different modes of communication, including newspapers, radio, television and now the internet.

In 1996, Congress passed a federal law known as the Communications Decency Act. Parts of that law were designed to protect children from “patently offensive” and “indecent” online speech.

However, the American Civil Liberties Union and numerous other groups challenged the law, contending that the ban on “indecent” speech would infringe on the rights of adults and older minors.

The government argued that the law was necessary to protect minors. The government also argued that it should have more power to regulate speech on the internet than in the print medium.

In 1997, the Supreme Court sided with the ACLU, ruling in *Reno v. ACLU* that speech on the internet deserves the highest degree of First Amendment protection. The Court recognized that in many ways the internet is the ultimate First Amendment fantasy because it empowers the average citizen to become both publisher and pamphleteer.

Legislators continued to pass laws to regulate harmful material on the internet. They justify these laws on the basis of the protection of minors. Opponents of these laws contend that the laws fail to distinguish between older and younger minors. For instance, some free-speech advocates say that older minors should have access to online information about birth control, date rape and other issues that may affect their daily lives.

The latest scourge of online speech addressed by lawmakers concerns the phenomenon of cyberbullying. Twenty-five states have passed laws addressing cyberbullying.<sup>96</sup>

## Prayer in Public Schools

In 1962, the U.S. Supreme Court held in *Engel v. Vitale* that school-sponsored prayer violated the Establishment Clause of the First Amendment.<sup>97</sup> This

was one of the most controversial decisions in the history of the Supreme Court. It remains a controversial issue.

The *Vitale* case concerned a procedure adopted by the New York Board of Regents to require students to say a prayer out loud in their classrooms at the beginning of each day.

The state officials said the prayer would help school officials instill morality and spiritual training in their students.

However, the parents of ten students sued in federal court, contending the forced prayer violated the Establishment Clause and the principle of separation between church and state. Parent Steven Engel reflected that he did not think the school officials should be introducing a “one-size-fits-all prayer” in the schools.<sup>98</sup>

The Supreme Court ruled 6-1 that the practice violated the Establishment Clause.<sup>99</sup> The majority wrote that the government has no business composing “official prayers for any group of the American people” — even students.

The Court’s majority opinion did not cite a single case in its opinion. Instead, it spoke about the history of religious persecution suffered by the early colonists:

**“It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America.”<sup>100</sup>**

Justice Potter Stewart dissented, writing that the Court had “misapplied a great constitutional principle.” Stewart pointed out that in 1954 Congress had added the phrase “one Nation under God, indivisible, with liberty and justice for all.” He noted that since 1865 our coins have carried the message “In God We Trust.”

The debate over school prayer continues to divide Americans and even Supreme Court justices. In 2000, the Supreme Court ruled 6-3 in *Santa Fe Independent School Dist. v. Doe* that the practice of allowing students to lead a prayer over the loudspeakers at high school football games violates the Establishment Clause.<sup>101</sup>

The Court was concerned about those students who attended the game who did not subscribe to the religious beliefs of the majority. The majority of

justices found that the policy “does nothing to protect minority views but rather places the students who hold such views at the mercy of the majority.”<sup>102</sup>

The high court reasoned that the audience would perceive the pregame prayer as an expression endorsed by the school administration. Chief Justice William Rehnquist dissented. He wrote that the Court’s opinion “bristles with hostility to all things religious in public life.”<sup>103</sup>

Other contentious issues involving the Establishment Clause in public schools include the posting of the Ten Commandments, the teaching of creationism or intelligent design, school vouchers, and the distribution of religious literature or items.

### The Right to Keep and Bear Arms

For decades, the U.S. Supreme Court had interpreted the Second Amendment as providing for the right of militia to keep and bear arms, not individuals. But that changed in a case brought by Dick Heller, a special police officer who carried a gun in his security duties at the Federal Judicial Center. However, the District of Columbia, which is under federal control, had an ordinance that essentially banned operable handguns even in homes. Thus, Heller could carry a handgun at work but not at home.

Heller sued, alleging that the D.C. ordinance violated the Second Amendment. This amendment is oddly worded. It provides:

**“A well regulated militia, being necessary to the security of a free state, the right to keep and bear arms shall not be infringed.”**

For years, the Supreme Court and lower courts focused on the Second Amendment’s first clause involving a “well regulated militia.” However, the *Court in D.C. v. Heller* referred to this as a “prefatory clause” and called the “right of the people to keep and bear arms” as the “operative clause.”

Justice Scalia, for the majority, concluded: “In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.”<sup>104</sup>

The *Heller* decision technically only limited the federal government from infringing on the right to keep and bear arms. But two years later, the

Supreme Court ruled in *McDonald v. City of Chicago* that the Second Amendment also limited state and local governments from infringing on this individual right.<sup>105</sup>

### The Right to be Free from Unreasonable Searches and Seizures

The Fourth Amendment protects us from unreasonable searches and seizures by government officials. In its 1967 decision in *Katz v. United States*, the Supreme Court had to determine whether Katz’s constitutional rights were violated when he was convicted of interstate gambling based on wiretaps placed in a public telephone booth.<sup>106</sup>

The law enforcement officials had bugged the public telephone without obtaining a warrant from a magistrate. The Fourth Amendment provides that the police must have probable cause to obtain a warrant to search a person.

In the *Katz* case, the government argued that the Court should create an exception to the general rule requiring a warrant for conversations over a public telephone. The majority of the Supreme Court disagreed, writing: “Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures.”

Justice John Harlan agreed with the majority, but wrote a separate opinion, called a concurring opinion, that set the standard for search-and-seizure cases.

According to Harlan, the question is whether a person has a “reasonable expectation of privacy.” A person must show an actual, subjective expectation of privacy, and society must recognize this expectation as reasonable.

Fourth Amendment cases still cause a lot of controversy. Locker searches, drug testing, electronic surveillance and sobriety checkpoints on the highway are just a few of the current hot-button issues.

This “reasonable expectation of privacy” test is the one that the Supreme Court applies to numerous Fourth Amendment cases.

We have the most protection from unreasonable searches and seizures in our own homes. The Founding Fathers took to heart the famous English common-law maxim that “a man’s home is his castle.”



In 1961, the U.S. Supreme Court extended Fourth Amendment protection to apartment renters even though they do not own their residences.<sup>107</sup> Nearly thirty years later, the Supreme Court ruled that overnight guests enjoy the same expectation of privacy as homeowners.<sup>108</sup>

In 2000, the Court issued several Fourth Amendment rulings. For example, the high court threw out gun-possession charges against a juvenile because of an unlawful search in *Florida v. J.L.*<sup>109</sup> In that case, an anonymous person called the police, telling them that a young African-American male in a plaid shirt standing at a particular bus stop was carrying a gun. The police went to the bus stop and spotted a black male in a plaid shirt. The individual was carrying a gun. However, the Supreme Court ruled unanimously that the police did not have enough reasonable suspicion to stop and frisk the defendant. “All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.,” the Court wrote.<sup>110</sup>

Earlier this year, the Court determined that Indianapolis police officers violated the Fourth Amendment by randomly stopping people to determine if they were carrying illegal drugs. The Court noted that the basis of the Fourth Amendment was “individualized suspicion.”

## **Fifth Amendment The Right to Remain Silent**

In 1966, the U.S. Supreme Court ruled in *Miranda v. Arizona* that law enforcement officers violated a criminal defendant’s Fifth Amendment rights by failing to tell him of his right to remain silent and right to have an attorney present during interrogation.<sup>111</sup>

On March 23, 1963, police arrested a young Latino named Ernesto Miranda on charges of kidnapping and raping a teenager in Phoenix. Though the victim could not identify Miranda, Miranda signed a confession after two hours of police questioning. The Supreme Court reversed his conviction in a controversial 5-4 decision. The Court ruled that the confession could not be introduced into evidence because Miranda had not been warned that he had a right not to incriminate himself.

The majority noted that “custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.”<sup>112</sup>

The majority ruled that the Fifth Amendment privilege against self-incrimination “is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves.” The majority established certain safeguards to guard against the police forcing people to confessing to crimes that they possibly did not commit.

The majority established the following rule: “At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.” This warning of the right to remain silent must be accompanied with the statement that “anything said can and will be used against the individual in court.”<sup>113</sup>

The *Miranda* decision created great controversy, much like the exclusionary rule in Fourth Amendment cases. Critics argued that a guilty person should not be allowed to go free because of police mistakes.

Two years after the *Miranda* decision, Congress passed a federal law that applies a balancing test to determine whether statements made during interrogations can be admissible in court.<sup>114</sup>

In 2000, the Supreme Court struck down this federal law, ruling that Congress had attempted, by passing this law, to overrule the *Miranda* decision.<sup>115</sup> The Supreme Court ruled 7-2 against overruling *Miranda*, writing that it “has become embedded in routine police practice to the point where the warnings have become part of our national culture.”

## **Due Process**

The Fifth Amendment contains one of the most important protections in the U.S. Constitution: due process. The amendment provides that we cannot “be deprived of life, liberty, or property without due process of law.” Many constitutional cases decided by the Supreme Court deal with whether a person’s due-process rights have been violated.

Normally, people cannot lose their property or lose property interests if the government follows proper procedure. If a person is not given notice and a hearing, then we say his or her procedural due-process rights have been violated.

In 1970, the Supreme Court determined that welfare benefits are a “property” interest that cannot be taken away without due process.

In 1975, the Supreme Court ruled in *Goss v. Lopez* that public school students could not be suspended without notice of the charges and a chance to

present their side of the story. The high court determined that public school students possess a property interest in their education.

Many due-process claims are brought by people convicted of a crime. In 2000, the U.S. Supreme Court struck down a New Jersey hate-crime law that allowed a judge, rather than a jury, to enhance a defendant's sentence if he was convicted.

## Sixth Amendment Fair Trial

The Sixth Amendment guarantees criminal defendants a fair trial. In *Sheppard v. Maxwell* (1966), the U.S. Supreme Court ruled that excessive pretrial publicity could compromise a defendant's fair-trial rights.

The Court noted that the behavior of the news media at the trial unfairly influenced the jury and created "bedlam" in the courtroom. The Court determined that judges have several options to ensure a fair trial. These include changing the location, or venue, of

**Some attorneys and judges say that cameras distort the judicial process, particularly in criminal cases.**

the trial, and sequestering, or isolating, jurors from the community.

The constitutional rights of a defendant to a fair trial can sometimes clash with the First Amendment rights of a free press. The debate over cameras in the courtroom highlights the tension between these two rights.

Some attorneys and judges say that cameras distort the judicial process, particularly in criminal cases. Others say cameras serve an important function of informing the public about the criminal justice system. They argue that trials such as the O.J. Simpson criminal case and other cases televised on Court TV allow more people to learn about our judicial system.

## The Right to a Speedy Trial

The Sixth Amendment also gives defendants the right to a "speedy" trial. This clause prevents officials from keeping a defendant imprisoned for a lengthy

period before trial. If there was no provision for a "speedy" trial, an accused's defense could suffer. People's memories could fade and exculpatory evidence (evidence showing a defendant's innocence) could be lost.

In 1992, the Supreme Court ruled in *Doggett v. United States* that an accused's Sixth Amendment right to a speedy trial was violated by an eight-and-a-half-year gap between his indictment and arrest.<sup>116</sup> The Court said the defendant would be prejudiced in trying to defend himself against charges filed years ago of which he was unaware.

## The Right to Confront One's Accusers

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."

The U.S. Supreme Court has recognized that face-to-face confrontation ensures greater reliability by reducing the risk that an innocent person will be convicted. The Confrontation Clause ensures that a witness must face cross-examination — a process by which a witness must answer questions from an attorney from the other side. The Court has referred to cross-examination as the "greatest legal engine ever invented for the discovery of truth."

However, the Court has relaxed the requirements of the Confrontation Clause in child-abuse cases. In *Maryland v. Craig*, the Supreme Court ruled constitutional a Maryland law allowing child-abuse victims to testify via one-way closed circuit television.<sup>117</sup> The Court reasoned that the state's interest in the physical and psychological well-being of children could outweigh a defendant's Sixth Amendment rights.

## The Right to an Attorney

On Aug. 4, 1961, a Florida man named Clarence Earl Gideon was tried and convicted for breaking into a pool hall to commit robbery. Before the trial, Gideon, who was too poor to afford a lawyer, had asked the court to appoint him counsel. Gideon said that "the United States Supreme Court says I am to be represented by counsel."<sup>118</sup>

The Sixth Amendment seemed to support Gideon's position. It provides that in criminal prosecutions, the accused should "have the assistance of counsel for his defence."



However, the Sixth Amendment was held to apply only in federal courts. Gideon had been tried and convicted in a Florida state court. Gideon argued in vain that the protections of the Sixth Amendment should also apply in state courts via the Fourteenth Amendment.

The U.S. Supreme Court had ruled in its 1942 decision *Betts v. Brady* that the appointment of counsel was not a fundamental right for those tried in state court.<sup>119</sup> Gideon had to argue that the *Betts* case should be overturned.

In its 1963 decision *Gideon v. Wainwright*, the Supreme Court overruled the holding of *Betts*.<sup>120</sup> The Court wrote that “the right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

The Court concluded that “this noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

## **Eighth Amendment**

### **Excessive Bail**

The first clause of the 8<sup>th</sup> Amendment provides protection from “excessive bail.” Bail is defined as security given to release an accused person pending his or her trial.

Too often in our history, persons accused of crimes remained in jail until their trial because they could not afford to pay enough money — or bail — to be released. In its 1951 decision *Stack v. Boyle*, the U.S. Supreme Court noted that people charged with non-capital crimes should be allowed affordable bail. “Unless this right to bail is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.”

In the *Boyle* case, twelve individuals accused of violating a federal law had bail set at \$50,000 each. However, the trial judge had set bail at a much higher rate than normal for such offenses. The judge had acted without conducting a hearing to determine the likelihood of the defendants’ fleeing to avoid prosecution.

To set bail at a high amount without a hearing “would inject into our own system of government ... totalitarianism,” the Supreme Court wrote.



## **Excessive Fines**

The second clause of the Eighth Amendment prohibits “excessive fines.” In 1998, the Supreme Court ruled that federal law enforcement officials violated this clause when they said a defendant had to forfeit more than \$300,000 for refusing to report that he was carrying more than \$10,000 in currency overseas.

Because Hosep Bajakajian failed to disclose that he was carrying well over \$10,000 in money, violating a federal law. So the government argued that he had to forfeit all the monies he was carrying, which turned out to be \$357,144.

In a 5-4 decision, the Supreme Court ruled that the “amount of the forfeiture was grossly disproportionate to the gravity of the defendant’s offense.” The Court determined that the defendant’s only crime was a reporting offense. The majority also reasoned that if the crime had not been detected, the only harm to the government would have been that it would not have known that “\$357,144 had left the country.”

## **Cruel and Unusual Punishment**

By far the most contentious Eighth Amendment issue is whether the death penalty constitutes “cruel and unusual punishment.” In several states, such as Texas, many inmates are executed each year.

Social scientists and others debate whether the death penalty serves as a deterrent to violent crime. Others question whether the death penalty is administered fairly. For example, several studies have shown that the killers of whites are far more likely to receive the death penalty than the killers of blacks.

In 1986, the U.S. Supreme Court confronted a case in which there was statistical evidence that the killers of white victims were far more likely to receive the death penalty than those who murdered black victims.<sup>121</sup> Warren McClesky, a black man convicted of killing a white police officer in Georgia, argued that the state’s capital punishment system was unconstitutional because of racial bias.

The Supreme Court rejected McClesky’s claim by a narrow 5-4 vote. The majority recognized that the statistical evidence appeared to show sentencing discrepancies based on race. But the majority reasoned that McClesky could not show that impermissible racial factors affected his particular case. The

majority also wrote that “apparent discrepancies in sentencing are an inevitable part of our criminal justice system.”<sup>122</sup> In effect, the majority said that no punishment system was perfect.

Justice William Brennan and three other justices dissented, writing that racial considerations of the defendant or victim in making a death-penalty determination “is completely at odds with this concern that an individual be evaluated as a unique human being.”<sup>123</sup>

## The majority of the Supreme Court still believes that the death penalty does not violate the Eighth Amendment.

penalty case.<sup>124</sup> “From this day forward, I no longer shall tinker with the machinery of death,” Blackmun wrote.<sup>125</sup> He said the death-penalty system was too fraught with “factual, legal and moral error.”

The majority of the Supreme Court still believes that the death penalty, fairly administered, does not violate the Eighth Amendment for those convicted of murder. However, the Court has ruled it an Eighth Amendment violation to sentence someone to death for other crimes. In *Coker v. Georgia*, the Court ruled that it violated the Eighth Amendment to sentence a person to death for the crime of rape.<sup>126</sup>

In later decisions, the Court ruled that it was cruel and unusual punishment to execute inmates who were intellectually disabled<sup>127</sup> or who committed murder when they were juveniles.<sup>128</sup> The Court reasoned that these groups of defendants lacked the same level of cognitive functioning to appreciate the gravity of their wrongdoing as fully functioning adults.

The Court has also considered the Eighth Amendment’s prohibition on “cruel and unusual punishment” outside of the death-penalty context. For example, in a 1992 decision the justices ruled that prison officials could violate the Eighth Amendment if they used excessive force against prisoners in a malicious manner.<sup>129</sup>

The death penalty remains a tough and troubling issue. In 1994, Justice Harry Blackmun, who formerly supported the death penalty in cases in the 1970s, wrote a passionate dissent in a death-

The Court has also considered the issue in public schools. In *Ingraham v. Wright* (1977), the Court ruled 5-4 that “the Eighth Amendment does not apply to the paddling of children as a means of maintaining discipline in public schools.”<sup>130</sup>

## The Ninth Amendment Creating the Right of Privacy

The Constitution and the Bill of Rights do not explicitly provide a right of privacy. However, the U.S. Supreme Court, beginning in the 1960s, has held that the Ninth Amendment creates a privacy right.

Remember that the Ninth Amendment says that the people possess more rights than those specifically enumerated, or listed, in the Constitution and the Bill of Rights. In the 1965 decision *Griswold v. Connecticut*, three justices determined that the Ninth Amendment protected a general right of privacy for married people.<sup>131</sup>

Justice Arthur Goldberg, joined by Justices Earl Warren and William Brennan, wrote that “the right of privacy in the marital relation is fundamental and basic — a personal right that is ‘retained by the people’ within the meaning of the Ninth Amendment.”

Justice Harry Blackmun extended the Ninth Amendment’s right to privacy to cover “a woman’s decision whether or not to terminate her pregnancy” in the controversial *Roe v. Wade* decision in 1973.<sup>132</sup>

## The Tenth Amendment

The Tenth Amendment is the only part of the Bill of Rights that does not refer to individual rights. This amendment limits the power of the federal government with respect to state governments.

The Tenth Amendment signifies the principle of federalism — the distribution of power between a central authority and its supporting units. Many members of the Supreme Court — such as the late Chief Justice William Rehnquist, the late Justice Antonin Scalia and Justice Clarence Thomas — have been considered protectors of state rights.

In the 1995 decision *United States v. Lopez*, the majority struck down a 1990 federal law that created gun-free school zones.<sup>133</sup> The majority determined

that Congress had not demonstrated a strong enough connection with interstate commerce to pass the law under the Commerce Clause.

In 1997, the Supreme Court again struck down a federal law in part on Tenth Amendment grounds. In *Printz v. United States*, the Court examined the so-called Brady Act, which required local law enforcement officials to conduct background checks on people wanting to buy handguns.<sup>134</sup>

The Court ruled 5-4 that the federal government could not force states to run a federal program. According to the majority, the “mandatory obligation” to run background checks “plainly runs afoul of that rule.”<sup>135</sup>

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## Conclusion

The Bill of Rights guarantees us “the great rights of mankind.” The freedoms in the Bill of Rights ensure that we have the right to criticize the government and practice our own religious faiths.

They ensure that the government may not infringe on our rights arbitrarily without fairness through due process. They ensure that law enforcement officials cannot invade our privacy without very good reason.

The Bill of Rights and the three amendments passed during Reconstruction – the Thirteenth, Fourteenth and Fifteenth amendments – have provided a legal framework under which social progress has been able to evolve to fulfill the promise of liberty to all.

When the Constitution and the Bill of Rights were adopted, only privileged white males were granted any protections. African-Americans and women did not make substantial advancements until the twentieth century.

However, it was only through the protections of the Bill of Rights that women and minorities were able to effect social change. The First Amendment was essential to the women’s suffrage movement of the 1910s and the civil rights movement of the 1950s and 1960s.<sup>136</sup>

Furthermore, the Founding Fathers created a legal system that has been able to adapt and create a more equal society.

The Bill of Rights should be especially valued by the nation’s youth. More than fifty-five years ago, U.S. Supreme Court Justice Robert Jackson noted that school board officials must ensure that public school students learn the lessons of the Bill of Rights. Jackson wrote:

**“That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of government as mere platitudes.”<sup>137</sup>**

Concerned citizens must take an active role to ensure that our government officials do not infringe on these precious liberties. Too often we take these rights for granted. Justice William Brennan reportedly said that “the Bill of Rights never gets off the page and into the lives of most Americans.”<sup>138</sup>

Polls show that many Americans do not support many of the freedoms in the Bills of Rights. Oftentimes, civil liberties are viewed as a shield for criminals or those with repugnant views.

However, we must remember that the Bill of Rights is in large part designed to protect the rights of those whose ideas conflict with the majority.

Many of our constitutional freedoms have arisen in cases brought by criminal defendants, members of minority religions, and those with viewpoints we may consider repugnant. Justice Felix Frankfurter once said, "It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people."<sup>139</sup>

Protecting the rights of those with whom we disagree or those who are most powerless ensures that the rights of all Americans will be protected. And that is the real lesson of the Bill of Rights.

The civil libertarian Nat Hentoff wrote, "Unless more Americans know the Constitution and live the Bill of Rights, the future of the nation as a strongly functioning constitutional democracy will be at risk."<sup>140</sup>

As the future leaders of our nation, young people must understand and appreciate the fragility of our precious freedoms. The United States Supreme Court is constantly making decisions that affect on our fundamental freedoms in the Bill of Rights.

The Founding Fathers started a revolution to establish a country free from the shackles of the English monarch. They declared their independence. Millions of Americans have died on fields of battle to preserve our freedom.

But threats to freedom come not only from external enemies, but also from well-intentioned people in our own country. Louis Brandeis, a great former justice of the U.S. Supreme Court, once wrote: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."<sup>141</sup>

These dangers to liberty are even greater for young people. Students live in a time when some government leaders have sought to regulate rock and rap music, violent video games, and social media posts to protect minors.<sup>142</sup> The efforts are often well-meaning but do affect your fundamental freedoms.

The Bill of Rights are too precious and too important to be sacrificed for other goals. **They are truly the "Great Rights of Mankind."**

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