SUMMARY
In 1787, delegates from twelve of the thirteen states gathered for a second time to come up with a different structure for the federal government. The first plan under the Articles of Confederation had failed to give the federal government enough power to do its job.

After three months of debate, arguing and compromise, the Constitution was ready for a vote. Those opposing adoption voiced their concerns loudly and with great passion. The power of the government had been well defined, but what about the rights of the people? They were not protected in the Constitution. Had the framers miscalculated? It didn’t take long to realize the survival of the Constitution was at risk.

After the Constitution was adopted, it had to be ratified by the states. Would the people ratify if the Constitution didn’t protect individual rights? Opposition was growing quickly.

James Madison and other Federalists didn’t believe a bill of rights was needed, but to get the Constitution ratified he made the states a campaign promise – he would add a bill of rights after ratification. They believed him and the Constitution was ratified in 1788. On December 15, 1791, the first ten amendments known as the Bill of Rights were added. Madison had kept his promise.

This lesson is based on a two-part video about one of the toughest political fights in American history and the outcome that became a symbol of liberty and freedom in America – the Bill of Rights.

Notes and Considerations
- This lesson presupposes that students are familiar with the Bill of Rights and much of the vocabulary contained in the lesson.
- Technology is relied on to facilitate learning.
- This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.
Lesson: Our Heritage of Liberty

TOPICS

• Bill of Rights
• constitutional conflicts
• constitutional rights
• democracy
• enumerated rights
• federalism
• first ten amendments

• individual rights
• limited government
• natural rights
• political compromise
• power and limits of government
• states rights
• U.S. Constitution

NATIONAL STANDARDS

http://new.civiced.org/national-standards-download

Grades 5-8 Organizing Questions

The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   C. What is American political culture?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   E. What is the place of law in the American constitutional system?
   F. How does the American political system provide for choice and opportunities for participation?

V. What are the roles of the citizen in American democracy?
   C. What are the responsibilities of citizens?
   D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?
Grades 9-12 Organizing Questions

The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   C. How are state and local governments organized and what do they do?
   D. What is the place of law in the American constitutional system?

V. What are the roles of the citizen in American democracy?
   C. What are the responsibilities of citizens?
   D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at end of this lesson plan.
COMMON CORE STANDARDS

Document:  *English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects*

Standards: Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects

http://www.corestandards.org/ELA-Literacy

Note: The activities in this lesson support learning related to the following standards. For more specifics, please refer to the Standards section of this lesson.

**Reading in History/Social Studies 6-8**

**Key Ideas and Details**
- CCSS.ELA-Literacy.RH.6-8.1
- CCSS.ELA-Literacy.RH.6-8.2
- CCSS.ELA-Literacy.RH.6-8.3

**Craft and Structure**
- CCSS.ELA-Literacy.RH.6-8.4
- CCSS.ELA-Literacy.RH.6-8.6

**Integration of Knowledge and Ideas**
- CCSS.ELA-Literacy.RH.6-8.7
- CCSS.ELA-Literacy.RH.6-8.8
- CCSS.ELA-Literacy.RH.6-8.9

**Range of Reading and Level of Text Complexity**
- CCSS.ELA-Literacy.RH.6-8.10

**Writing 6-8**

**Text Types and Purposes**
- CCSS.ELA-Literacy.WHST.6-8.1

**Production and Distribution of Writing**
- CCSS.ELA-Literacy.WHST.6-8.4
- CCSS.ELA-Literacy.WHST.6-8.6

**Research to Build and Present Knowledge**
- CCSS.ELA-Literacy.WHST.6-8.7
- CCSS.ELA-Literacy.WHST.6-8.8

**Range of Writing**
- CCSS.ELA-Literacy.WHST.6-8.10

**Reading in History/Social Studies 9-10**

**Key Ideas and Details**
- CCSS.ELA-Literacy.RH.9-10.1
- CCSS.ELA-Literacy.RH.9-10.2
- CCSS.ELA-Literacy.RH.9-10.3

**Craft and Structure**
- CCSS.ELA-Literacy.RH.9-10.4

**Integration of Knowledge and Ideas**
- CCSS.ELA-Literacy.RH.9-10.7
- CCSS.ELA-Literacy.RH.9-10.9

**Range of Reading and Level of Text Complexity**
- CCSS.ELA-Literacy.RH.9-10.10

**Writing 9-10**

**Text Types and Purposes**
- CCSS.ELA-Literacy.WHST.9-10.1

**Production and Distribution of Writing**
- CCSS.ELA-Literacy.WHST.9-10.4
- CCSS.ELA-Literacy.WHST.9-10.6

**Research to Build and Present Knowledge**
- CCSS.ELA-Literacy.WHST.9-10.7
- CCSS.ELA-Literacy.WHST.9-10.9

**Range of Writing**
- CCSS.ELA-Literacy.WHST.9-10.10

**Reading in History/Social Studies 11-12**

**Key Ideas and Details**
- CCSS.ELA-Literacy.RH.11-12.1
- CCSS.ELA-Literacy.RH.11-12.2

**Craft and Structure**
- CCSS.ELA-Literacy.RH.11-12.4
- CCSS.ELA-Literacy.RH.11-12.5

**Integration of Knowledge and Ideas**
- CCSS.ELA-Literacy.RH.11-12.7
- CCSS.ELA-Literacy.RH.11-12.9

**Range of Reading and Level of Text Complexity**
- CCSS.ELA-Literacy.RH.11-12.10

**Writing 11-12**

**Text Types and Purposes**
- CCSS.ELA-Literacy.WHST.11-12.1

**Production and Distribution of Writing**
- CCSS.ELA-Literacy.WHST.11-12.4

**Research to Build and Present Knowledge**
- CCSS.ELA-Literacy.WHST.11-12.7
- CCSS.ELA-Literacy.WHST.11-12.9

**Range of Writing**
- CCSS.ELA-Literacy.WHST.11-12.10
STUDENT OUTCOMES

Knowledge, skills, and dispositions
Students will . . .
• Learn about rights from the colonist’s perspective.
• Consider the role historical context played in determining the rights in the Bill of Rights.
• Identify and discuss the arguments for and against the addition of a bill of rights to the Constitution.
• Identify enumerated rights in the Bill of Rights and explain the meaning of each.
• Analyze the process of compromise that led to the Bill of Rights.
• Gain understanding and appreciation for the political struggle that resulted in the Bill of Rights.

Integrated Skills

1. Information literacy skills
Students will . . .
• Extract, organize and analyze information from different sources.
• Use skimming and research skills.
• Organize information into usable forms.
• Build background knowledge to support new learning.
• Use technology to facilitate learning.

2. Media literacy skills
Students will . . .
• Gather and interpret information from different media.
• Use online sources to support learning.

3. Communication skills
Students will . . .
• Write and speak clearly to contribute ideas, information, and express own point of view.
• Write in response to questions.
• Understand diverse opinions and points of view.
• Interpret visual models.
• Develop interpretive skills.

4. Study skills
• Manage time and materials.
• Complete a graphic organizer

5. Thinking skills
Students will . . .
• Describe and recall information.
• Make personal connections.
• Explain ideas or concepts.
• Draw conclusions.
• Analyze and evaluate issues.
• Use sound reasoning and logic.
• Evaluate information and decisions.
• Critique arguments.

6. Problem-solving skills
Students will . . .
• Discuss issues and facts.
• Analyze cause and effect relationships.
• Examine reasoning used in making decisions.
• Evaluate proposed solutions.

7. Participation skills
Students will . . .
• Contribute to small and large group discussion.
• Work responsibly both individually and with diverse people.
• Express own beliefs, feelings, and convictions.
• Show initiative and self-direction.
• Interact with others to deepen understanding.
ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

- Class-Prep Assignment
- Responses to each section in the video guide
- Class discussion and daily assignments

VOCABULARY

<table>
<thead>
<tr>
<th>Term</th>
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<tr>
<td>Alexander Hamilton</td>
<td>federal government</td>
<td>promise</td>
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<td>Federalists</td>
<td>ratify/ratification</td>
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<td>Fifth Amendment</td>
<td>Revolutionary War</td>
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<td>Fourth Amendment</td>
<td>right/rights</td>
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<td>Framers</td>
<td>Second Amendment</td>
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<td>Articles of Confederation</td>
<td>George Mason</td>
<td>Seventh Amendment</td>
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<td>bill (as in a bill of rights)</td>
<td>George Washington</td>
<td>Sixth Amendment</td>
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<td>Bill of Rights</td>
<td>honor</td>
<td>small-mindedness</td>
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<td>British</td>
<td>individual liberties</td>
<td>state government</td>
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<td>campaign promise</td>
<td>James Madison</td>
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<td>Thomas Jefferson</td>
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<td>yoke of tyranny</td>
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<td>European powers</td>
<td>preordained</td>
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<tr>
<td>Father of the Constitution</td>
<td>principled document</td>
<td></td>
</tr>
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</table>

Resources for Definitions

- Findlaw—Law Dictionary

- National Standards for Civics and Government: Glossary

- Merriam-Webster Online

- Annenberg Classroom – Glossary
  [http://www.annenbergclassroom.org/terms](http://www.annenbergclassroom.org/terms)
LESSON OVERVIEW

Goals:
Students will . . .
• Recognize the role historical context played in determining the rights in the Bill of Rights.
• Learn about rights from the perspective of the colonists.
• Identify and discuss the arguments for and against the addition of a bill of rights to the Constitution.
• Identify enumerated rights in the Bill of Rights and explain the meaning of each.
• Analyze the problem-solving process of compromise that led to the Bill of Rights.
• Develop an appreciation for the risks, costs, and benefits involved in the political struggle for adding a bill of rights to the Constitution.

Class-Prep Assignment:
Students complete an independent assignment to build background knowledge for the video they will watch and study during the first in-class session.

DAY 1: The Fight for Rights
Students watch the video segment on The Story of the Bill of Rights and learn about the hard-fought political fight to protect individual liberties that put ratification of the Constitution at risk.

DAY 2: Ten Amendments. How Many Rights?
Students watch the video segment The Ten Amendments, then analyze the amendments to identify the enumerated rights, highlight supporting text, explain the meaning, and make comparisons to another list of rights.

“The Bill of Rights is at the very heart of the American experience, because it provides a protection to each and every citizen in each and every aspect of their lives, and it confines government to its proper role, with a protection against unreasonable government action that might otherwise ensue. If there’s any one characteristic of the American system of government that can be identified as absolutely essential to our national character, it is the Bill of Rights.”

—Richard Thornburgh, FMR United States Attorney General
The Story of the Bill of Rights Video Documentary, Annenberg Classroom
Class-Prep Assignment

This assignment provides important background knowledge and context for the video on the Bill of Rights. Students should complete it as an independent activity before the first in-class session.

Materials/Technology Needed:
- Handout: Class-Prep Assignment Sheet
- Computer with Internet access
- Access to these resources:
  - Readings on Rights (included with the lesson)
  - Understanding Democracy (available online) [http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide](http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide)

Student Assignment:
After reading, students respond to these tasks and questions.

1. Define “rights” as understood and used by the colonists.
2. Discuss the heritage of rights colonists brought with them to the new world.
3. List examples of rights brought to this country by the colonists.
4. Identify sources for rights held by the colonists.
5. Explain the restraining power of individual rights.
6. Give several reasons independence from Britain was declared.
7. Explain the significance of writing rights into the law.
8. Define *tyranny* from the perspective of the colonists. Give examples of how they experienced tyranny in the new world.
   Definition:
   Examples of tyranny:
9. Explain the purpose of the Constitutional Convention in 1787 and the big problem it had to overcome.
10. When the draft of the Constitution was completed. . .
    What limits did it place on government power?
    What rights did it contain?

Remind students to bring their Class-Prep Assignment Sheet to class.
**DAY 1: The Fight for Rights**

**Overview:** Students watch the video segment on *The Story of the Bill of Rights* and learn about the hard fought political fight to protect individual liberties that put ratification of the Constitution at risk.

**Goal:** Students gain information, understanding, and appreciation for the struggle to add a bill of rights to the Constitution that would guarantee individual liberties.

**Materials/Equipment:**
- **Technology**
  - Computer lab with internet connection
  - Annenberg Classroom: Online Video Documentaries
    - Video: *Bill of Rights*
      - Part 1: *The Story of the Bill of Rights* (16:20)
- **Resources** (Included)
  - Video Transcript: *Bill of Rights*
  - Readings on Rights
- **Student Materials** (Included)
  - Class-Prep Assignment (completed before class)
  - Student’s Video Guide
  - Graphic Organizer: Diagram It: Problem-Compromise-Solution
- **Teacher Materials** (Included)
  - Teacher’s Video Guide
  - Teacher Resource: Class-Prep Assignment
  - Teacher Resource: Historical Background and Context

**Procedure:**
1. Write “rights” on the board. Lead a class discussion on the different meanings for “rights.” Point out how the meaning was different for the founding generation than it is today. Settle on a definition that reflects the beliefs of the founders. (Refer to the Readings on Rights in the resource section.)

2. Review the Class-Prep Assignment as background and context for the video.

3. Show the first video segment on *The Story of the Bill of Rights* (16:20 minutes).

4. Distribute and review the Student’s Video Guide.

**Homework:**
DAY 2: Ten Amendments. How Many Rights?

Overview: Students watch the video segment *The Ten Amendments* then analyze the amendments to identify the enumerated rights, highlight supporting text, explain the meanings, and make comparisons to another list of rights.

Goal: Students extract information from the video and other sources to name all enumerated rights in the Bill of Rights, identify supporting text, and explain the meaning of each right.

Materials Needed:
- Technology
  - Computer with internet connection
  - Video Segment: *The Ten Amendments* (16:02)
    - Available from Annenberg Classroom
- Resources (Included)
  - The Bill of Rights – A Transcription (pdf)
- Student Materials (Included)
  - Student’s Video Guide (Part 2)
  - Student Activity: Ten Amendments. How Many Rights?
  - Handout: A Collection of Rights
- Teacher Materials (Included)
  - Teacher’s Video Guide (Part 2)
  - Teacher Reference: Ten Amendments. How Many Rights?

Procedure:
1. Provide each student with copy of The Bill of Rights – A Transcription and the Student Activity page. Review the instructions.

2. Near the end of the activity students will request copies of A Collection of Rights. They will compare their list of rights to the unique rights identified on the handout. Students also fill in missing information on the handout and may use it to re-adjust their charts. Students then analyze how their responses compare to the collection of rights. Did they miss any rights? Did they group some rights for a particular reason?

3. Make observations, ask questions, and have a discussion about all ten amendments. For example:
   - Identify related amendments and explain why they go together.
   - Determine how many rights dealt with legal matters? Civil trials? Criminal trials?
   - Which amendments have no enumerated rights?
   - Which two rights do students consider most important? Explain.
   - Why did the founders put Amendments IX and X in a Bill of Rights?
   - Draw conclusions about the concerns of the framers from the nature and distribution of rights contained in the Bill of Rights. Do we share the same concerns today?
EXTENSION ACTIVITIES

Have more time to teach?

1. **Read and respond to a Speak Out! issue on Annenberg Classroom that relates to the Bill of Rights.**  
   Examples:  
   Is requiring students to wear a school’s logo unconstitutional?  
   Do students in charter schools have First Amendment rights?  
   How should the U.S. balance privacy with national security in NSA spy programs?  
   Should prisoners be allowed to have beards based on religious grounds?

2. **Why do we have such resistance to compromise in Washington today? Could it be that the mindset for compromise has changed? Read and respond to this article:**  
   “The Mindsets of Political Compromise” by Amy Gutmann and Dennis Thompson  
   [http://www.upenn.edu/president/meet-president/Mindsets-Political-Compromise](http://www.upenn.edu/president/meet-president/Mindsets-Political-Compromise)  
   “The uncompromising mindset--marked by principled tenacity and mutual mistrust--is well-suited for campaigning. The compromising mindset--characterized by principled prudence and mutual respect--is more appropriate for governing.”—Gutmann and Thompson

3. **Read and respond to a news article related the Bill of Rights.**  
   - New York Times  
   - Bill of Rights Institute – Teaching with Current Events  
     [http://billofrightsinstitute.org/resources/educator-resources/headlines/](http://billofrightsinstitute.org/resources/educator-resources/headlines/)

4. **Consider the different approaches used to interpret the Constitution.**  
   - Supreme Court Justice Antonin Scalia is an originalist in the way he interprets the Constitution.  
     He uses an approach that seeks to give the text the original meaning it had when it was adopted. Thinking about the Bill of Rights from the perspective of a colonist requires the same kind of thinking.
     
     Read and reflect on what Justice Scalia has to say about his originalist approach in this article:  
     Constitutional Interpretation the Old Fashioned Way  
     [http://www.cfif.org/htdocs/freedomline/current/guest_commentary/scalia-constitutional-speech.htm](http://www.cfif.org/htdocs/freedomline/current/guest_commentary/scalia-constitutional-speech.htm)

   - Learn more about decision-making and judicial interpretation at the Supreme Court.  
     View the video: *Conversation: Judicial Interpretation* (37 min.)  
     Justices Stephen G. Breyer and Antonin Scalia and a group of students discuss the different theories of how to interpret and apply the Constitution to cases  

   - Theories of Constitutional Interpretation  
     [http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html](http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html)
5. **Research to trace changes to the meaning and use of “rights” over time.**

6. **Discuss/debate timely topics:**
   - Is the word “rights” overused today? Explain.
   - Do juveniles have the same constitutional rights as adults?
   - Are there limits to whom the protections of the Constitution apply?
   - Should terrorists who are arrested abroad be afforded the protection of our Bill of Rights?
   - How should the U.S. balance privacy with national security in NSA spy programs?
   - Where is “compromise” in Washington politics today?
   - Disagreement and debate are part of our national DNA, but when does it become too much?
   - Is it important to keep campaign promises?
   - When a government threatens the rights of the people, how can the problem be fixed?
   - Gridlock in Washington: What does the public feel about compromise?
     Analyze the questions and results of recent polls to make observations and draw conclusions.

7. **Play an educational game.**
   - iCivics Game (for students)
     http://www.icivics.org/games
     Select Do I Have a Right? Bill of Rights Edition
     iCivics Resources for Teachers
     https://www.icivics.org/curriculum/constitution
   - Bill of Rights Match Game
     http://www.texaslre.org/BOR/billofrights.html
   - The Bill of Rights Game
     http://www.annenbergclassroom.org/page/the-bill-of-rights-game
   - Exploring Constitutional Law: Bill of Rights Golf!
     http://law2.umkc.edu/faculty/projects/ftrials/conlaw/golf.htm

8. **Explore how rights relate to juveniles.**
   - Constitutional Rights in Juvenile Cases
   - Rights and Protections Afforded to Juveniles
   - Rights of Juvenile Defendants
     http://www.annenbergclassroom.org/issue/rights-of-juvenile-defendants
   - National Juvenile Defense Center: Know Your Rights
     http://www.njdc.info/gaultat40/nowyourrights.php
**RELATED RESOURCES**

**Online Books from Annenberg**


- *Our Constitution*—Donald Ritchie and Justicelearning.org  

- *Our Rights*—David J. Bodenhamer  

- *The Pursuit of Justice*—Kermit L. Hall and John J. Patrick  

**Bill of Rights Resources**

- National Archives: Bill of Rights  

- Cornell University Law School: U.S. Constitution Bill of Rights  
  [http://www.law.cornell.edu/constitution/billofrights](http://www.law.cornell.edu/constitution/billofrights)

- Bill of Rights Institute  

- 10 amendments  
  Findlaw: U.S. Constitution  
  [http://constitution.findlaw.com/amendment1/amendment.html](http://constitution.findlaw.com/amendment1/amendment.html)

  [http://www.loc.gov/rr/program/bib/ourdocs/billofrights.html](http://www.loc.gov/rr/program/bib/ourdocs/billofrights.html)

- Madison’s Copy of the Proposed “Bill of Rights”  

- Congress for Kids: Bill of Rights  
  [http://www.congressforkids.net/Constitution_billofrights.htm](http://www.congressforkids.net/Constitution_billofrights.htm)

- Bill of Rights Institute: Documents of Freedom - Equal and Inalienable rights  

- Exploring Constitutional Conflicts: The Bill of Rights: Its History and Significance  
  [http://law2.umkc.edu/faculty/projects/ftrials/conlaw/billofrightsintro.html](http://law2.umkc.edu/faculty/projects/ftrials/conlaw/billofrightsintro.html)

- Constitution Facts  
“[The Constitution] is an enabling (and a constraining) document. It sets forth a mechanism for making and applying law, and it creates a framework for representative government. It protects our basic freedoms, such as our rights to speak and to worship freely. It protects the basic fairness of our system, so that majorities cannot unfairly and systematically oppress minorities. It gives us the freedom to choose community, to choose democratically how we will solve our Nation’s problems.”

—Justice Stephen Breyer, commencement address, New School University, New York City, May 20, 2005
As quoted in Our Rights, pg. 23
Student Materials

- Class Prep Assignment Sheet
- Student’s Video Guide: *The Constitution Project: Bill of Rights*
  - *The Story of the Bill of Rights*
  - *The Ten Amendments*
- Graphic Organizer: Diagram It: Problem-Compromise-Solution
- Activity: Ten Amendments. How Many Rights?
- Handout: A Collection of Rights
Lesson: Our Heritage of Liberty

Class-Prep Assignment Sheet

The following assignment provides important background knowledge and context for the two-part video documentary on the Bill of Rights.

Readings
- Readings on Rights (Word document included)
- Chapter 1: Our Rights in American History, Our Rights (pdf included)
  The full book may be accessed from Annenberg Classroom at http://www.annenbergclassroom.org/page/our-constitution
- Chapter 3: What Rights Does Our Constitution Protect? Our Constitution (pdf included)
  The full book may be accessed from Annenberg Classroom at http://www.annenbergclassroom.org/page/our-rights
- Understanding Democracy (available online)
  http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

Respond to Reading
Consult the above resources to respond to each of the following questions and tasks. Provide at least one supporting quote and cite the source.

1. Define “rights” as understood by the colonists.

2. Discuss the heritage of rights colonists brought with them to the new world.

3. List examples of rights brought to this country by the colonists.

4. Identify sources for rights held by the colonists.

5. Explain the restraining power of individual rights.

6. Give several reasons independence from Britain was declared.

7. Explain the significance of writing rights into the law.

8. Define tyranny from the perspective of the colonists. Give examples of how they experienced tyranny in the new world.
   Definition:
   Examples of tyranny:

9. Explain the purpose of the Constitutional Convention in 1787 and the big problem it had to overcome.

10. When the draft of the Constitution was completed... What limits did it place on government power? What rights did it contain?

** REMEMBER: Bring your responses to class. **
Lesson: Our Heritage of Liberty

Student’s Video Guide
Bill of Rights

The Bill of Rights (33 min) video documentary from Annenberg Classroom contains 2 video segments.
- The Story of the Bill of Rights
- The Ten Amendments

The video is available from Annenberg Classroom:

First Video: The Story of the Bill of Rights
Time: 16:20 minutes

Introduction:
On July 4, 1776, the colonies declared independence from British rule. In the next year, a plan for organizing the new federal government of the United States of America was put together and adopted – the Articles of Confederation. By 1786, it was obvious the plan wasn’t working and had to be modified. Concerns about giving the federal government too much power had resulted in the Articles not giving it enough power to be effective. A constitutional convention was called, and fifty-five delegates from 12 states (Rhode Island didn’t attend) gathered in Philadelphia to come up with a new structure for the government. Their challenge: How to give the federal government enough power to do its job without giving it the power to threaten individual liberties.

Several delegates came with competing plans and all delegates had something to say. It took three months and multiple compromises before a version was ready for a vote. Those opposing adoption voiced their concerns loudly and with great passion. The power of the government had been well defined, but what about the rights of the people? In the end, thirty-nine of the fifty-five delegates supported adoption of the new Constitution. Now it had to be ratified by the states. Would the people ratify if the Constitution didn’t address specific individual rights? The survival of the Constitution was now at risk.

Background Knowledge

Briefly review the questions in the Class-Prep Assignment (listed below):

1. Define “rights” as understood and used by the colonists.
2. Discuss the heritage of rights colonists brought with them to the new world.
3. List examples of rights brought to this country by the colonists.
4. Identify sources for rights held by the colonists.
5. Explain the restraining power of individual rights.
6. Give several reasons independence from Britain was declared.
7. Explain the significance of writing rights into the law.
8. Define tyranny from the perspective of the colonists. Give examples of how they experienced tyranny in the new world.
   Definition:
   Examples of tyranny:
9. Explain the purpose of the Constitutional Convention in 1787 and the big problem it had to overcome.
10. When the draft of the Constitution was completed. . .
What limits did it place on government power?
What rights did it contain?

**Words and Phrases**

- amend/amendment
- Declaration of Independence
- principled document
- American Revolution
- enumerated rights
- promise
- Anti-Federalists
- federal government
- ratify/ratification
- Articles of Confederation
- Federalists
- right/rights
- bill (as in a bill of rights)
- Framers
- small-mindedness
- Bill of Rights
- honor
- state government
- campaign promise
- individual liberties
- states rights
- compromise
- local government
- tyrant
- concessions
- nationalism
- unalienable rights
- Congress
- localism
- yoke of tyranny
- Constitution
- nationalist
- politics/political
- unalienable rights
debate
- preordained

**Preparation for Viewing and Study**

1. Complete the Class-Prep Assignment before watching the video.
2. Review the words and phrases listed above.

**During the Video**

For the first viewing, stay focused and attentive to the whole story. You will have a chance to revisit it and use a transcript to answer questions.

**After Viewing:**

- **Describe and Discuss**
  1. Your teacher will give you 3 minutes to generate as many words or phrases as possible that describe the “political fight” and those involved. At the end of three minutes, there will be an opportunity to share and discuss the descriptors as a class. Be prepared to provide examples to justify your word choices.

  2. There is significance in the use of capital letters. Explain the meaning conveyed to the reader when they encounter these terms:
     - bill of rights
     - Bill of Rights

- **Diagram It**
  After the Constitution was drafted, the founders were faced with another problem: Should a bill of rights be added to the Constitution?
Student’s Video Guide
Bill of Rights

Obtain a copy of the graphic organizer Diagram It: Problem-Compromise-Solution from your teacher to complete.

➢ **Respond to Questions**
Refer to the video transcript and other resources as needed to answer assigned questions.

1. What did the Founders want to accomplish by writing a constitution when they already had the Articles of Confederation?

2. Explain the point of view presented in the following quote. Which side held this view? “The federal government is going to be able to protect us against the British and against other European powers. But they’ll also protect us against the small-mindedness of state governments and make sure that the states don’t do unfair things to individuals.”

3. Discuss the relationship between federal power and state power before the Constitution.

4. Why didn’t the original Constitution contain rights for the people? What did it contain?

5. When people use hyperbole they do so to make a point. What they say can have a powerful effect on those listening. Quote two hyperboles in the video. Identify the speakers and explain the impact of their words.

6. Compare and contrast James Madison and George Mason.

7. At the time of the Constitution, eight of the thirteen states had bills of rights of their own. Explain the significance of this fact.

8. In your opinion, which was the best argument offered by each side in the debate about adding a bill of rights to the Constitution? Explain.

9. Without the Bill of Rights, the Constitution was incomplete. Which side (Federalist or Anti-Federalist) held this view and why?

10. The Bill of Rights was a campaign promise that Madison made and kept. If he didn’t believe a bill of rights was needed, why did he keep his promise?

11. Explain the connection between the Bill of Rights and the American Revolution.

12. James Madison is often referred to as the Father of the Constitution. Explain the meaning and significance of the title.

13. If rights were so important to the people, why wasn’t there any sentiment for adding a bill of rights to the Constitution?

Lesson: Our Heritage of Liberty

Student’s Video Guide

Bill of Rights

15. What is the significance of having a Bill of Rights written in plain language?

16. What does it take to amend the Constitution?

17. The Federalists and Anti-Federalists were opposing sides. Without the leadership and influence of James Madison, they could have remained gridlocked. How did Madison intervene and manage the situation?

18. Discuss the importance of leadership in arriving at a compromise between two opposing sides. What beliefs and qualities are important for a leader to possess? What qualities are important for all participants to possess?

19. In a democratic government of the people, by the people, and for the people, how are decisions made and problems solved?

20. What did the colonists gain by adding a bill of rights to the Constitution? What did you gain?

Video: Ten Amendments

Time: 16 minutes

Introduction:
A very brief overview of each amendment is presented in this part of the video. The amendment is quoted first, then followed up by a short explanation.

The amount of time spent on each amendment is indicated below.
- The First Amendment (1:41)
- The Second Amendment (1:03)
- The Third Amendment (0:51)
- The Fourth Amendment (1:38)
- The Fifth Amendment (3:07)
- The Sixth Amendment (1:26)
- The Seventh Amendment (1:16)
- The Eighth Amendment (1:45)
- The Ninth Amendment (1:17)
- The Tenth Amendment (1:50)

Follow-up Activity: Ten Amendments. How Many Rights?

1. After watching the video, you will need copies of the following from your teacher.
   - Student Activity: Ten Amendments. How Many Rights?
   - Resource: The Bill of Rights – A Transcription

2. Complete the Student Activity.
   Near the end of the activity you will need this handout from your teacher – A Collection of Rights.
Diagram It: Problem-Compromise-Solution
Video Segment: The Story of the Bill of Rights

Setting: ______________________ Year: ______ Location: ______________________

<table>
<thead>
<tr>
<th>Participants:</th>
<th>Objective:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shared Commitments/Beliefs:</th>
</tr>
</thead>
</table>

<table>
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<tr>
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<th>Side:</th>
</tr>
</thead>
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<tr>
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<td>Political Beliefs:</td>
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<tr>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>People:</th>
<th>People:</th>
</tr>
</thead>
</table>

State the Problem:

<table>
<thead>
<tr>
<th>Federalist Position:</th>
<th>Anti-Federalist Position:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arguments:</td>
<td>Arguments:</td>
</tr>
<tr>
<td>Shared Concerns:</td>
<td></td>
</tr>
</tbody>
</table>

Outcome:  

New Problem:  

Solution:  

Result:  
Ten Amendments. How Many Rights?

Students will . . .
1. Analyze the first ten amendments to identify how many unique rights each amendment contains.
2. Name each right and tell what it means.
3. Identify the specific language in the amendment associated with the right.
4. Count up the number of rights per amendment.
5. Compare and contract their list of rights to another collection of rights.

Materials & Technology Needed:
- The Bill of Rights: A Transcription (pdf included)
  The National Archives and Records Administration
- Computer and Internet access
- Handout: A Collection of Rights (Request this handout after completing the activity.)

Instructions:
1. To ensure you are reviewing all language contained in the original document, copy and paste text for each amendment from the transcription of the Bill of Rights from the National Archives.
2. Reproduce a chart similar to the one below for each amendment.
3. Follow the italicized instructions for completing each row in the chart.
4. After completing all amendments, add up all the rights. How many did you identify?
5. After examining each amendment, request the handout A Collection of Rights. Compare your list to the collection of rights on the handout. Fill in the information needed on the handout and readjust your charts as needed.
   Note: Some rights may be identified by different names.
6. Analyze how your responses compared to the collection of rights. Did you miss any, did you group some rights?

<table>
<thead>
<tr>
<th>First Amendment (Name the amendment in this row.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text of the Amendment: (Copy/paste the full text of the amendment. No highlighting in this row.)</td>
</tr>
<tr>
<td>1. (Name and number the right) (Copy/paste the full text of the amendment again. Highlight all relevant words in the text for this right only.)</td>
</tr>
<tr>
<td>Meaning of the Right: (Explain what the right means in your own words. Consult dictionaries and glossaries as needed.)</td>
</tr>
<tr>
<td>2. (Name and number the right) (Copy/paste the full text of the amendment again. Highlight all relevant words in the text for this right only.)</td>
</tr>
<tr>
<td>Meaning of the Right: (Explain what the right means in your own words.)</td>
</tr>
</tbody>
</table>

Resources to Consult:
- The Annenberg Guide to the United States Constitution
- Cornell University Law School – Bill of Rights
  [http://www.law.cornell.edu/constitution/billofrights](http://www.law.cornell.edu/constitution/billofrights)
- Bill of Rights Institute
  [http://billofrightsinstitute.org/resources/educator-resources/headlines/](http://billofrightsinstitute.org/resources/educator-resources/headlines/)
### A Collection of Rights

<table>
<thead>
<tr>
<th>Freedom of assembly</th>
<th>Freedom of religion (establishment clause)</th>
<th>Freedom of religion (free exercise clause)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Freedom of speech</td>
<td>Freedom of the press</td>
<td>Protection against cruel and unusual punishment</td>
</tr>
<tr>
<td>(________ Amendment )</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Protection against double jeopardy</td>
<td>Protection against excessive bail and fines</td>
<td>Protection against general search warrants</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Protection against self-incrimination in a criminal case</td>
<td>Protection against unreasonable searches and seizures</td>
<td>Limits to quartering of troops in time of peace</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Limits to quartering of troops in time of war</td>
<td>Reexamination protection reexamination clause</td>
<td>Right of the people to bear arms</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Right to a fair trial</td>
<td>Right to a grand jury in criminal trials</td>
<td>Right to a private life without government interference</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Right to a public trial</td>
<td>Right to a speedy trial</td>
<td>Right to confront witnesses</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Right to just compensation by the government</td>
<td>Right to legal counsel in federal prosecutions</td>
<td>Right to obtain favorable witnesses</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
</tr>
<tr>
<td>Right to petition the government</td>
<td>Right to trial by an impartial jury</td>
<td>Right to trial by jury in civil cases</td>
</tr>
<tr>
<td>(________ Amendment)</td>
<td>(________ Amendment)</td>
<td></td>
</tr>
</tbody>
</table>
Teacher Materials

- Teacher’s Video Guide: *The Constitution Project: Bill of Rights*
  - *The Story of the Bill of Rights*
  - *The Ten Amendments*

- Historical Background and Context

- Graphic Organizer (KEY): Diagram It: Problem-Compromise-Solution

- Teacher Reference: Ten Amendments. How Many Rights?
The *Bill of Rights* (33 min) video documentary from Annenberg Classroom contains 2 video segments.  

**First Video: The Story of the Bill of Rights**

**Time:** 16:20 minutes

**Introduction:**
On July 4, 1776, the colonies declared independence from British rule. In the next year, a plan for organizing the new federal government of the United States of America was put together and adopted – the Articles of Confederation. By 1786, it was obvious the plan wasn’t working and had to be modified. Concerns about giving the federal government too much power had resulted in the Articles not giving it enough power to be effective. A constitutional convention was called, and fifty-five delegates from 12 states (Rhode Island didn’t attend) gathered in Philadelphia to come up with a new structure for the government. Their challenge: How to give the federal government enough power to do its job without giving it the power to threaten individual liberties.

Several delegates came with competing plans, and all delegates had something to say. It took three months and multiple compromises before a version was ready for a vote. Those opposing adoption voiced their concerns loudly and with great passion. The power of the government had been well defined, but what about the rights of the people? In the end, thirty-nine of the fifty-five delegates supported adoption of the new Constitution. Now it had to be ratified by the states. Would the people ratify if the Constitution didn’t address specific individual rights? The survival of the Constitution was now at risk.

**Background Knowledge**

Briefly review the questions in the Class-Prep Assignment. (Refer to the teacher resource page on Historical Background and Context.)

1. Define “rights” as understood and used by the colonists.
2. Discuss the heritage of rights colonists brought with them to the new world.
3. List examples of rights brought to this country by the colonists.
4. Identify sources for rights held by the colonists.
5. Explain the restraining power of individual rights.
6. Give several reasons independence from Britain was declared.
7. Explain the significance of writing rights into the law.
8. Define *tyranny* from the perspective of the colonists. Give examples of how they experienced tyranny in the new world.
   - **Definition:**
   - **Examples of tyranny:**
9. Explain the purpose of the Constitutional Convention in 1787 and the big problem it had to overcome.
10. When the draft of the Constitution was completed. . .
    - What limits did it place on government power?
    - What rights did it contain?
Lesson: Our Heritage of Liberty

Teacher’s Video Guide
Bill of Rights

Words and Phrases

- amend/amendment
- Declaration of Independence
- principled document
- American Revolution
- enumerated rights
- promise
- Anti-Federalists
- federal government
- ratify/ratification
- Articles of Confederation
- Federalists
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- bill (as in a bill of rights)
- Framers
- small-mindedness
- Bill of Rights
- honor
- state government
- campaign promise
- individual liberties
- states rights
- compromise
- local government
- tyrant
- concessions
- nationalist
- unalienable rights
- Congress
- localism
- willingness to compromise
- Constitution
- nationalist
- contentious
debate
- politics/political

Preparation for Viewing and Study

1. Students complete the Class-Prep Assignment before watching the video.
2. Review the words and phrases listed above.

During the Video

For the first viewing ask students to stay focused and attentive to the whole story. They will have a chance to revisit it again to answer questions. Make the transcript of the video available to students as well.

After Viewing:

> Describe and Discuss

1. Give students 3 minutes to generate as many words or phrases as possible that describe the “political fight” and those involved. Share and discuss as a class. Ask students to provide examples to justify their word choices.

   Answers will vary, but may include:
   - two opposing sides
   - each side has different values
   - there are shared concerns – concern about protecting rights
   - strong opinions
   - principles are at stake -
   - rules of decorum are in place
   - vocal – yelling, boisterous
   - use of hyperbole – rather cut off my right hand than sign the Constitution (George Mason)
   - argumentative
   - willingness to compromise
   - contentious
different perspectives on government struggle debate

2. There is significance in the use of capital letters. Explain the meaning conveyed to the reader when they encounter these terms:
   “bill of rights”
   “Bill of Rights”
A bill of rights is proposed legislation addressing rights. The Bill of Rights is the formal title given to the first ten amendments after ratification. The colonists wanted a bill of rights added to the Constitution and debated what rights should appear in the bill. After the bill of rights they proposed was adopted, it became known as the Bill of Rights. Capitalization of the words conveys historical timing and significance.

What considerations must a writer make when using the terms?
A writer must know if they are referring to the final, adopted version or the version under development.

➢ **Diagram It**
After the Constitution was drafted, the founders were faced with another problem: Should a bill of rights be added to the Constitution?
Distribute the graphic organizer Diagram It: Problem-Compromise-Solution.
Review and discuss the structure. Ask students to complete the diagram. They may revisit the video as needed and consult other resources as well.

➢ **Respond to Questions**
Students may refer to the video transcript and other resources as needed to answer assigned questions.
   *Notes in red font are added to assist the teacher. Quotes are from the video.*

1. What did the Founders want to accomplish by writing a constitution when they already had the Articles of Confederation? They wanted to strengthen the federal government so it could be more effective. It was too weak under the Articles.

2. Explain the point of view presented in the following quote. Which side held this view? “The federal government is going to be able to protect us against the British and against other European powers. But they’ll also protect us against the small-mindedness of state governments and make sure that the states don’t do unfair things to individuals.”
   Federalists held this view. They envisioned a strong federal government as the protector against any other governments that might act in unfair ways – foreign and state.

3. Discuss the relationship between federal power and state power before the Constitution. Federal power was weak under the Articles of Confederation; states had more power
4. Why didn’t the original Constitution contain rights for the people? What did it contain? The purpose of the original Constitution was to define the powers and limits of the federal government. The Federalists felt that adding rights wasn’t necessary because the new government only had the power explicitly given to it by the Constitution.

5. When people use hyperbole, they do so to make a point. What they say can have a powerful effect on those listening. Quote two hyperboles in the video. Identify the speakers and explain the impact of their words.

George Mason said, “I would rather cut off my right hand than sign the Constitution as it is currently written.” He probably didn’t mean it but said it to show how important it was to him to have the Constitution include rights. He also knew that rights were important to other people as well. If he voiced his opposition, others might follow. Patrick Henry: “Give me liberty or give me death.” It became the rallying cry for freedom during the American Revolution.

6. Compare and contrast James Madison and George Mason.

James Madison was a Federalist who believed that a bill of rights wasn’t necessary to add to the Constitution.

George Mason was an Anti-Federalist who believed rights should be protected by the Constitution.

Both were outspoken about their beliefs and commitments.

7. At the time of the Constitution, eight of the thirteen states had bills of rights of their own. Explain the significance of this fact.

This was an argument for not adding rights to the Constitution. If states had their own sets of rights, why were they needed in the federal Constitution?

8. In your opinion, which was the best argument offered by each side in the debate about adding a bill of rights to the Constitution? Explain.

Answers will vary, but should include a response for Federalist and Anti-Federalist.

9. Without the Bill of Rights, the Constitution was incomplete. Which side (Federalist or Anti-Federalist) held this view and why?

The Anti-Federalists because they believed in making sure that the federal government didn’t overstep its power.

10. The Bill of Rights was a campaign promise that Madison made and kept. If he didn’t believe a bill of rights was needed, why did he keep his promise? Madison was an honorable man who believed in following through on his promises. He wasn’t opposed to rights, just not adding them to the Constitution. He also realized that the Constitution may not get ratified if he didn’t act as promised. It was a risk he didn’t want to take.

11. Explain the connection between the Bill of Rights and the American Revolution.

The American Revolution was fought for liberty, freedom from the yoke of a tyrannical king. Adding rights to the Constitution would guarantee that liberty.
12. James Madison is often referred to as the Father of the Constitution. Explain the meaning and significance of the title.  
   Answers will vary but may include: author, helped create, helped guide development of

13. If rights were so important to the people, why wasn’t there any sentiment for adding a bill of rights to the Constitution?  
   “...most of them thought that spelling out certain rights, or what we call “enumerating” them, was a bad idea, and they didn’t want to spend another month in Philadelphia trying. Which rights do you choose to protect? And if you leave out certain rights, does that mean that the government can trample them? Or that the people won’t have them because they weren’t on the list?”

   It was up to the states to ratify the Constitution after it was drafted and adopted by the delegates at the convention. Because the people had strong feelings about needing a bill of rights, they were likely to vote against ratification.

15. What is the significance of having a Bill of Rights written in plain language?  
   “The Bill of Rights came from the people. It wasn’t something hatched in the mind of one person – James Madison, or anyone else – it came from a national conversation. It’s written in very crisp, compact language so that ordinary people could actually memorize it, the same way that people at the time memorized Scripture passages, or memorized a favorite song. It’s supposed to get into your head. It’s not written in legalese precisely because it’s a text from the people, for the people, addressed to the people.”

16. What does it take to amend the Constitution?  
   “to amend the Constitution, . . . [it takes] two-thirds of the House of Representatives to say yes, then two thirds of the Senate, and then go back to the states all over again to get three-quarters of them to approve.”

17. The Federalists and Anti-Federalists were opposing sides. Without the leadership and influence of James Madison, they could have remained gridlocked. How did Madison intervene and manage the situation?  
   Answers will vary but may include: He didn’t quit, he put forth amendments, he worked with the system, he negotiated, he made concessions, he directed, he made a promise and kept it

18. Discuss the importance of leadership in arriving at a compromise between two opposing sides. What beliefs and qualities are important for a leader to possess? What qualities are important for all participants to possess?  
   Answers will vary

19. In a democratic government of the people, by the people, and for the people, how are decisions made and problems solved?
Lesson: Our Heritage of Liberty

Teacher’s Video Guide
Bill of Rights

Through the unique and shared powers of three branches of government, elected representatives, and the willingness to compromise.

20. What did the colonists gain by adding a bill of rights to the Constitution? What did you gain? The colonists now had a federal government that was obligated in writing to protect the liberties they cherished. Personal answers will vary.

Video: The Ten Amendments
Time: 16 minutes

Introduction:
A very brief overview of each amendment is presented in this part of the video. The amendment is quoted first, then followed up by a short explanation.

The amount of time spent on each amendment is indicated below.

- The First Amendment (1:41)
- The Second Amendment (1:03)
- The Third Amendment (0:51)
- The Fourth Amendment (1:38)
- The Fifth Amendment (3:07)
- The Sixth Amendment (1:26)
- The Seventh Amendment (1:16)
- The Eighth Amendment (1:45)
- The Ninth Amendment (1:17)
- The Tenth Amendment (1:50)

Follow-Up:
After completing this video, provide students with copies of the following.

- Student Activity: Ten Amendments. How Many Rights?
- Resource: The Bill of Rights – A Transcription

Note: Students will request this additional handout near the end of the activity: A Collection of Rights
In the Class-Prep Assignment, students respond to the following ten questions/tasks. Briefly discuss each as background and context for the video. Quotes are provided to assist with discussion.

1. **Define “rights” as understood and used by the colonists.**
   "Rights are expressions of individual liberty. The history of America is, on the whole, a story of individual liberty and rights. In 1776, the signers of the Declaration of Independence boldly proclaimed their belief in the right of equality – ‘all men are created equal’ – and in the inalienable rights of life, liberty, and the pursuit of happiness.” (Our Rights, pg. 9)

   “. . . it would be a mistake to draw a direct line of descent from the colonial understanding of rights to our understanding today. The words are similar but not their substance. . . . Personal rights were important, but the good order of society took precedence over individual liberty.” (Our Rights, pg. 11)

   “. . . the colonial contribution to modern ideas about rights was significant, not as much as a list of rights but as a set of attitudes about individual liberty.” (Our Rights, pg. 11)

2. **Discuss the heritage of rights colonists brought with them to the new world.**
   “When English settlers migrated to the New World, they came with a royal guarantee that they would continue to have the ‘rights and privileges of Englishmen.’ The pledge was important. It promised continued ownership of a long tradition of English liberty that was thought to stretch at least to the Magna Carta (or Great Charter) in 1215, when English noblemen forced King John to abide by the ‘law of the land,’ or as it was known later, ‘due process of law.’ Embodied in these phrases were two core contributions to the English understanding of rights: the idea of fairness and the concept that no one, not even the king, was above the law.” (Our Rights, pg. 9-10)

3. **List examples of rights brought to this country by the colonists.**
   “Much of the early history of rights centered on protections for property and for individuals accused of crimes, because in these areas the state most often exercised arbitrary power.” (Our Rights, pg. 9-10)

   “Ratified in 1791, the first ten amendments are collectively known as the Bill of Rights. Some of their provisions date back to the English Bill of Rights of 1689, which included freedom to petition the government and freedom of assembly, as well as prohibitions against cruel and unusual punishment and against taxation without representation. Having long considered themselves British subjects, Americans claimed all the rights of ‘freeborn Englishmen.’ The first state constitutions limited government from performing arbitrary acts that would deprive people of their freedom of speech, their freedom of religion, their right to bear arms, and their right to assemble peacefully and to petition. Madison thought that the greatest danger to individual liberties came from the states ...” (Our Constitution, pg. 21)

4. **Identify sources for rights held by the colonists**
   “Much of what the English settlers to the New World considered to be rights was found in the common law, the case law of English courts, not in statutes or state documents. Common law contained what had become customary practice in English society. As with the Magna Carta, it emphasized rights of the accused: the promise of a speedy and public trial by jury; prohibition of ex
post facto laws, or laws that criminalized behavior after it had occurred; and the guarantee of habeas corpus, a procedure that required government to bring a person under detention before a court to determine if legal reason existed to hold him. Common law also offered some protection for the rights of widows and children, the right of compensation for the taking of private property, and the openness of courts to all citizens. Not only did colonial assemblies and courts adopt common law, but colonists looked as well to English law books for further instruction on their rights and privileges.” (Our Rights, pg. 10)

“The colonists declared independence to save their liberty and the rights that made it possible . . . . The founding generation set out not only to build a new frame of government, but also to identify what rights were necessary to protect liberty. . . . They discovered rights not in English history alone but in the laws of nature, or natural law. These rights went beyond the common law, and because they existed before societies were formed, they belonged to individuals, not communities.” (Our Rights, pg. 11-12)

5. Explain the restraining power of individual rights.
“Colonists entered the struggle for independence with a view that individual rights restrained the exercise of arbitrary power, especially by the central government; by restraining power, rights protected liberty. Three rights were especially important to the colonial understanding of liberty: trial by jury, the right to property, and due process of law. Representative government also was significant. These rights and this form of government above all protected local communities from tyranny exercised by a government far removed from them. The colonial view of liberty, after all, centered on the community first. The belief that rights belonged to individuals was the product of a later age.” (Our Rights, pg. 11)

6. Give several reasons independence from Britain was declared.
“In seeking greater control over the colonies, Great Britain threatened the local autonomy that all English colonists had come to consider their birthright. The list of grievances that poured from colonial pens from 1763 to 1776 – and captured in a long litany in the Declaration of Independence – reveals how valuable the colonists considered self-government and how closely it was tied to their notion of rights. Taxation without representation was an interference with their right to property. Trials of alleged smugglers, such as Boston merchant John Hancock, by a judge alone violated the right to a public jury trial by members of the local community. Suspension of local courts denied due process of law.” (Our Rights, pg. 11)

7. Explain the significance of writing rights into the law.
“New state constitutions and later, the federal Bill of Rights, contained more expansive safeguards of liberty than had been listed in colonial protests. The founding generation also put these rights in writing and gave them the force of fundamental law, protections that could not be changed easily.” (Our Rights, pg. 12)

8. Define tyranny from the perspective of the colonists. Give examples of how they experienced tyranny in the new world.
Definition:
“During the founding era of the United States, James Madison expressed the importance of separated powers in a constitutional government. In the 47th paper of The Federalist, Madison wrote, ‘The accumulation of all powers, legislative, executive and judiciary, in the hands of one, a
**Historical Background and Context**

**Video: Bill of Rights**

few, or many, and whether hereditary, self-appointed, or elected, may justly be pronounced the very definition of tyranny." (*Understanding Democracy*, pg. 92)

**Examples of tyranny**

“The list of grievances . . . in the Declaration of Independence – reveals how valuable the colonists considered self-government and how closely it was tied to their notion of rights. Taxation without representation was an interference with their right to property. Trials of alleged smugglers, such as Boston merchant John Hancock, by a judge alone violated the right to a public jury trial by members of the local community. Suspension of local courts denied due process of law.” (*Our Rights*, pg. 11)

9. **Explain the purpose of the Constitutional Convention in 1787 and the big problem it had to overcome.**

“. . . the Constitutional Convention, . . . met in Philadelphia in 1787 to replace the inadequate Articles of Confederation, the nation’s first constitution. The fifty-five delegates faced a critical problem: how to grant government enough power to do its job without also giving it the power to threaten liberty?” (*Our Rights*, pg. 12)

10. **When the draft of the Constitution was completed. . . What limits did it place on government power?**

“First, they based all power or sovereignty (the right to rule) in the people, not the government, an idea known as popular sovereignty. Government had only the authority granted to it in a written constitution ratified by the people. To restrain government even more, the framers divided power in two fundamental ways. They created three separate and coequal branches of government – legislative, executive, and judicial – and required the cooperation of each to exercise power fully. Then they divided power further between the states and the national government. This principle, federalism, entrusted the central government, the one they feared most, with only the power necessary to serve truly national functions, such as defense and regulation of commerce between the states. The powers not granted to the central government, including the critical authority to define and prosecute crimes, would remain with the states, which by definition were closer to the people. The delegates believed that these restrictions on government – popular sovereignty, a written constitution, separation and balance of powers, and federalism – would be sufficient protection for the rights of individuals. The Constitution contained no bill of rights, but it did not need one, its advocates reasoned, because the new government could not exercise any power not granted to it explicitly.” (*Our Rights*, pg. 12)

What rights did it contain?

“In reading the original U.S. Constitution, one finds very few specific rights mentioned, and those that are deal primarily with legal practices. Article I, section 9 protects the right of ‘habeas corpus’ (a Latin term meaning ‘you may have the body’). To keep suspects from lingering indefinitely in prison, habeas corpus literally commands a jailer to produce the person jailed. This means that a prisoner has the right to challenge wrongful imprisonment, and the right to a speedy trial before a civilian court. The same section of the Constitution outlaws ‘bills of attainder,’ the practice by which some governments convict citizens using legislation rather than a jury trial. It forbids ‘ex post facto’ laws (Latin for ‘after the fact’), making something a crime after an action had been committed. It also bans any religious requirements for candidates for public office. Beyond these few prohibitions, the Constitution of 1787 remained silent on citizens' specific rights.” (*Our Constitution*, pg. 20-21)
Lesson: Our Heritage of Liberty

Diagram It: Problem-Compromise-Solution
(Use with The Story of the Bill of Rights video.)

Setting: Constitutional Convention  Year: 1787  Location: Philadelphia, PA

Participants: Framers, 55 delegates from 12 of the 13 states (Rhode Island didn’t attend)

Objective: Create a better plan for government—a Constitution

Shared Commitments/Beliefs:
• Power of government needs to be limited.
• All men were born with unalienable rights that no government or king could take away. (Declaration of Independence)
• Individual rights should be protected.

Side: Federalists

Political Beliefs: Belief in a strong national government with power over the states. Wanted to make sure states didn’t do unfair things to individuals. Would protect citizens against the British and against other European powers.

People: James Madison
General George Washington
Alexander Hamilton

Side: Anti-Federalists

Political Beliefs: Believed in strong local government. Wanted states to have most of the power, not the national government. Feared that a powerful government would threaten their rights

People: Thomas Jefferson
George Mason
Patrick Henry
Most people who lived through the Revolutionary War

Problem: Should a bill of rights be added to the Constitution?

Federalist Position: Adding a bill of rights is not necessary.
Arguments: The government only has the power explicitly given to it in the Constitution. It can’t regulate rights unless we give it the power to do so. States had bills of rights of their own. (list more on the back of the page)

Anti-Federalist Position: Adding a bill of rights is necessary
Arguments: Need to be sure federal government would protect rights by requiring them to do so in the Constitution. (list more on the back of the page)

Shared Concerns
• What should the government control
• Which rights should people have
• How to decide which rights to protect

Outcome: Constitution was adopted in the convention, but needed ratification by the states.

New Problem: Concern that states would not ratify the Constitution without a bill of rights.

Solution: Madison promised to add a Bill of Rights if the states ratified the Constitution.

Result: Constitution was ratified by the states. First ten amendments (Bill of Rights) added to the Constitution.
The Bill of Rights enumerates specific individual rights, freedoms, protections, and guarantees for American citizens. The following chart identifies the rights embedded in each of the amendments and highlights the supporting words and phrases. The total number of distinct rights indicated in this chart is 27.

### The Bill of Rights

<table>
<thead>
<tr>
<th>Amendment I (Religion, Speech, Press, Assembly, Petition)</th>
</tr>
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<tbody>
<tr>
<td>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.</td>
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<td><strong>6. Right to petition the government</strong></td>
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### Amendment III (Quartering of Troops)
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.

1. **Limits to quartering of troops in time of peace**
   - 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.

2. **Limits to quartering of troops in time of war**
   - 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.

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### Amendment IV (Search and Seizure)
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.

1. **Right to a private life without government interference**
   - 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.

2. **Protection against unreasonable searches and seizures**
   - 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.

3. **Protection against general search warrants**
   - 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.
**Ten Amendments. How Many Rights?**

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<th>Amendment V (Grand Jury, Double Jeopardy, Self-Incrimination, Due Process—constitutional limits on police procedure)</th>
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<td>No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.</td>
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1. **Right to a grand jury in criminal trials**
   - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. **Protection against double jeopardy**
   - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. **Protection against self-incrimination in a criminal case**
   - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

4. **Right to a fair trial**
   - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

5. **Right to just compensation by the government**
   - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
Ten Amendments. How Many Rights?

Amendment VI (Criminal Prosecutions - Jury Trial, Right to Confront and to Counsel)
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 defense.

1. **Right to a speedy trial**
   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 defense.

2. **Right to a public trial**
   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 defense.

3. **Right to trial by an impartial jury**
   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 defense.

4. **Right to confront witnesses**
   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 defense.

5. **Right to obtain favorable witnesses**
   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 defense.

6. **Right to legal counsel in federal prosecutions**
   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 defense.
### Ten Amendments. How Many Rights?

**Amendment VII** *(Common Law Suits - Jury Trial)*

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

1. **Right to trial by jury in civil cases**
   
   In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

2. **Reexamination protection** *(reexamination clause)*
   
   In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

**Amendment VIII** *(Excess Bail or Fines, Cruel and Unusual Punishment)*

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

1. **Protection against excessive bail and fines**
   
   Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

2. **Protection against cruel and unusual punishment**
   
   Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX** *(Unenumerated rights)—Umbrella amendment*

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

- **Unenumerated rights retained by the people**

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

**Amendment X**

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.

- **Reserved powers**

   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.
Ten Amendments. How Many Rights?

A List of Rights in the Bill of Rights

Amendment I
1. Freedom of speech
2. Freedom of the press
3. Freedom of religion (establishment clause)
4. Freedom of religion (free exercise clause)
5. Freedom of assembly
6. Right to petition the government

Amendment II
7. Right of the people to bear arms

Amendment III
8. Limits to quartering of troops in time of peace
9. Limits to quartering of troops in time of war

Amendment IV
10. Right to a private life without government interference
11. Protection against unreasonable searches and seizures
12. Protection against general search warrants

Amendment V
13. Right to a grand jury in criminal trials
14. Protection against double-jeopardy
15. Protection against self-incrimination in a criminal case
16. Right to a fair trial
17. Right to just compensation by the government

Amendment VI
18. Right to a speedy trial
19. Right to a public trial
20. Right to trial by an impartial jury
21. Right to confront witnesses against him/her
22. Right to obtain favorable witnesses
23. Right to legal counsel in federal prosecutions

Amendment VII
24. Right to trial by jury in civil cases
25. Reexamination protection (reexamination clause)

Amendment VIII
26. Protection against excessive bail and fines
27. Protection against cruel and unusual punishment
Readings & Resources

- Video Transcript: *The Constitution Project: Bill of Rights*
  - *The Story of the Bill of Rights*
  - *The Ten Amendments*

- The Bill of Rights: A Transcription—The U.S. National Archives & Records Administration

- Readings on Rights

- Chapter 1: Our Rights in American History from *Our Rights* by David J. Bodenhamer

- Chapter 3: What Rights Does the Constitution Protect?, *Our Constitution* by Donald A. Ritchie and JusticeLearning.org
The Bill of Rights: A Transcription

The Preamble to The Bill of Rights

Congress of the United States
begun and held at the City of New-York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

Amendment I
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.

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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.

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

Amendment X

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.

Amendments 11-27

Note: The capitalization and punctuation in this version is from the enrolled original of the Joint Resolution of Congress proposing the Bill of Rights, which is on permanent display in the Rotunda of the National Archives Building, Washington, D.C.


U.S. National Archives & Records Administration
8601 Adelphi Road, College Park, MD, 20740-6001, • 1-86-NARA-NARA • 1-866-272-6272
In their simplest form, individual rights are legally enforceable claims to personal freedom or liberty. A right allows a person to do something—or to avoid doing it—and that action can be enforced by an order from a court of law. The claim of a right may be made either against government—for example, forbidding government to interfere with freedom of press—or may be enforced through government, as when courts forbid a hotel from racially discriminating against guests. An assertion of individual freedom, if it is truly a right, cannot be denied; it has to be granted; it is based on a duty to respect the right.

The language of rights can be confusing. We use the word itself—right or rights—in many different ways: a right to life, a right to vote, a right to choose, a right to counsel, a right to believe one’s own eyes, a right to declare a couple married, a right to do what we please. Of course, not all of these uses of the word mean the same thing. The founding generation believed certain rights—life, liberty, and the pursuit of happiness—were inalienable; they were natural, or universal, rights and could never be surrendered. At other times, the word refers to fundamental rights found in the U.S. Constitution; they cannot be changed unless two-thirds of both houses of Congress and three-fourths of the states agree to the change. The right to vote for citizens aged eighteen and older is a fundamental right; so is the right to assemble peacefully and to enjoy freedom of press or religion. Other rights are entitlements granted by the legislature and may be changed by a simple majority vote: the right to drive a car, for example, is available to anyone who meets the minimum age and performance criteria set by the state, which can change the eligibility requirements at any time. Other common uses of the word right do not address a legal claim at all. “Children have the right to have a doctor close to home,” as a recent ad announced, expresses a personal opinion and a moral judgment, not a legal claim; you cannot ask the legal system to act on it or make other people accept it.

When we talk about individual rights, we usually mean guarantees of liberty contained in federal and state constitutions or in laws made to enforce these guarantees. We sometimes divide these rights into the two categories of civil rights and civil liberties. The term civil rights refers to the legal protection we have against injury, discrimination, and denial of rights by private individuals, groups, or government
because of a categorical bias, such as a denial of service based on race or gender. Civil rights may be contained in the Constitution or they may be defined by laws made under constitutional authority. Civil liberties are the legal guarantees, especially under the First Amendment, that protect us from government interference with our political actions, such as freedom of speech, press, assembly, and the like. These categories, civil rights and civil liberties, reflect contemporary usage. Earlier generations used the terms privileges, franchises, and immunities, as well as rights, and these terms still have special meaning for lawyers.

Regardless of the language we use, rights are not self-interpreting, self-enforcing, or absolute. The definition of a right not only has changed over time, but its modern meaning may differ from one situation to another. The First Amendment protects freedom of the press, but what does this phrase mean? At one point in the late 1790s, a person could be punished for printing criticisms of the government. Today, you have a right to publish your political views, no matter how extreme or how critical, although you still do not have the right to publish obscenity. Clearly, this claim of individual freedom has had different meanings throughout our history. Also, rights do not enforce themselves. They must be demanded, usually through a court order. Finally, rights are not absolute. People have a right to speak freely without fear of punishment, but they do not have a right to yell “fire!” falsely in a crowded theater. Under this circumstance, the public has a stronger claim to safety than an individual has to freedom of speech. We recognize the limits on our rights in common language when we say that our right to swing our arms ends where another person’s nose begins. Individual rights are creations of our history. In almost every instance, they have arisen out of a struggle against the abuse of power by government and oppressive majorities. In our democracy, written constitutions and access to open courts make it possible for claims of rights to come from any citizen, and throughout American history cases have arisen from every quarter by all sorts of individuals. At times, courts have chosen to follow precedent, or previous interpretations, even in the face of apparent injustice; at other times, these challenges have led to an expansion of rights, often by fitting old meanings to new conditions. No single answer exists to the question of where our rights come from, but in a democracy, there ultimately is one answer to how we maintain rights—through our own understanding of and attention to them. For this reason, we must first know the history that gave birth to our individual liberties.
The Constitution Project

The Bill of Rights: Video Transcripts

Source: Annenberg Classroom

- The Story of the Bill of Rights: 16:20
- Ten Amendments: 16:02

Video: The Story of the Bill of Rights
Time: 16:20

00:00 NARRATOR: The Bill of Rights was not something the Framers always knew they wanted...

00:05 ACTOR: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or the press...

00:17 NARRATOR: Okay, okay. Stop. That was the First Amendment, which wasn’t part of the original Constitution, it wasn’t even originally first. To get the Bill of Rights and make the Constitution whole, James Madison and the Framers put each other through one of the toughest political fights in American history.

00:37 RICHARD LABUNSKI: There was nothing preordained about it. There were so many things that could’ve gone wrong.

00:41 JOANNE FREEMAN: They have no idea if in the next year, that government is going to still be there. You can take nothing for granted in this time period.

00:47 VINCENT WARREN: The Framers got into huge, very, very difficult arguments about what rights people should have, what the government could do, what the government could be in control over.

00:57 NARRATOR: The Bill of Rights was actually the result of a hard-fought compromise to save the Constitution. It became a bitter political struggle, yet out of that fight came one of the most principled governing documents the world had ever seen. On one side, the Federalists. They believed in a strong national government that would have power over the states...

01:20 AKHIL AMAR: The federal government is going to be able to protect us against the British and against other European powers. But they’ll also protect us against the small-mindedness of state governments and make sure that the states don’t do unfair things to individuals.
And they included some of the best-known leaders of the day – General George Washington, Alexander Hamilton and James Madison. On the other side, the Anti-Federalists. They included Thomas Jefferson, George Mason and Patrick Henry. They believed in strong local government – that the states should have most of the power. See, back then people didn’t fly places or have satellite TV. To them, their state was their country.

And so I think we can understand the localism of someone like Patrick Henry, who could say Virginia is my country, better if we understand that Patrick Henry only left Virginia three times in his entire life.

Among the Anti-Federalists were most Americans who had lived through the Revolutionary War.

The Bill of Rights is a product of the American Revolution.

Americans had fought a war arguing that their rights as Englishmen had been taken away. It is that the king had become a tyrant, and so the idea of rights was very much on their mind.

The men who signed the Declaration of Independence, asserting that all men were born with unalienable rights that no government – or king – could take away, those men were fugitives from the British crown who would be executed if caught. Washington, Hamilton and many of the men who were leaders of the new nation starved, froze, lost limbs and fortunes and risked their own lives for this moment.

What was that war about? Well, that war was about self-determination, and it was about guaranteeing that no one would ever take your rights away again.

You look at photos of the Civil War you see cadavers, killed soldiers all over the fields and you get some sense of the barbarism of it. Well, there are no photos from the Revolutionary War, that went on for so long, but it was equally barbaric. Their feeling was, we just threw off the yoke of tyranny after eight years of bloodshed. We are now not going to create a new government that is going to tyrannize us all over again.

What was that war about? Well, that war was about self-determination, and it was about guaranteeing that no one would ever take your rights away again.

Everyone believed those rights should be protected, but how? No one wanted another king, but holding 13 states together was proving to be impossible with a weak central government. Remember, they already had the Articles of Confederation, and it was a disaster. So when the Framers met in Philadelphia that was their second attempt at a constitution. And they might never have agreed to one had it not been for James Madison.

James Madison is often referred to as the Father of the Constitution.
04:22  SUSAN HERMAN: He had a tremendous understanding of all the forces at work and was one of the people who was really navigating through all the crosscurrents to enable everybody to get together and really form a government.

04:34  CAROL BERKIN: A hypochondriac, very, very high-strung, very smart.

04:40  RICHARD LABUNSKI: And he is also the most underappreciated, without a doubt, of any of the Founders from the early years of this country.

04:49  NARRATOR: Madison came to Philadelphia in May of 1787 with a plan for a strong national government that, after four grueling months of heated arguments and compromises, essentially became the Constitution we know today. By September, the men were exhausted and absolutely ready to go home.

05:09  RICHARD LABUNSKI: Then George Mason stands up.

05:11  NARRATOR: George Mason was a delegate from Madison’s Virginia, and he was about to start a huge fight.

05:17  CAROL BERKIN: George Mason says, We ought to have a bill of rights.

05:21  RICHARD LABUNSKI: We have fought this long, bloody, brutal war and we are now going to create this new federal government, and where is freedom of speech and freedom of the press and right to a fair trial? And he said something that was shocking to people. He said, I would rather cut off my right hand than sign the Constitution as it is currently written.

05:42  NARRATOR: Everyone in the room understood Mason’s desire to protect those rights, but they voted him down anyway.

05:48  RICHARD THORNBURGH: There wasn’t any sentiment for a bill of rights.

05:51  JOANNE FREEMAN: I think it’s really hard to think of the Bill of Rights as something that not only isn’t necessary, but maybe is a bad thing, right? How can rights be bad?

06:01  NARRATOR: Believe it or not, at that moment, most of them thought that spelling out certain rights, or what we call, “enumerating” them, was a bad idea, and they didn’t want to spend another month in Philadelphia trying. Which rights do you choose to protect? And if you leave out certain rights, does that mean that the government can trample them? Or that the people won’t have them because they weren’t on the list?
06:24 CAROL BERKIN: Madison is opposed to a bill of rights in the Constitutional Convention. He can’t understand what the point of it is. He says, Look, we’ve written a Constitution that spells out very clearly what the government can do.

06:41 THEODORE OLSON: Take freedom of the press, for example. It doesn’t say anywhere in the Constitution that the government – the federal government – can regulate the press. If the government wasn’t given that power, the government didn’t have that power.

06:54 NARRATOR: And there was one other reason they decided a bill of rights wasn’t necessary.

06:59 RICHARD THORNBURGH: Everybody took note of the fact that many of the states – eight states – had bills of rights of their own.

07:06 NARRATOR: Including Virginia, which had been drafted a month before the Declaration of Independence by George Mason. In the end, the Framers signed a Constitution that had no Bill of Rights, thinking that was the right thing to do.

07:20 AKHIL AMAR: George Washington has endorsed it, Ben Franklin has endorsed it, but it’s not law in any way, shape or form. It’s just a plan. And what happens over the next year is that that plan is going to be debated in every state, up and down the continent.

07:40 NARRATOR: The new Constitution had to be ratified by the states, and it became clear almost immediately that the Federalists had a big problem.

07:49 RICHARD LABUNSKI: Once people got to see the new Constitution, because it started to appear in newspapers, people asked:

07:54 NARRATOR: What protections does your Constitution offer for the people’s liberties? Yes, where is the bill of rights?

08:02 RICHARD LABUNSKI: And the Federalists realized that they had badly miscalculated. They were so wrong about that that it imperiled the ratification of the Constitution.

08:11 CAROL BERKIN: There were men who were aghast. This went against everything they thought they’d fought the Revolution for.

08:18 AKHIL AMAR: And they think James Madison has created a bit of a Frankenstein...

08:02 NARRATOR: It’s alive! It’s alive! It’s alive!
AKHIL AMAR: That the federal government is actually too strong. They want some restrictions on the federal government. They want a bill of rights.

NARRATOR: The fight was on. They needed nine states to ratify, and five came through in the first few months, but North Carolina refused to ratify the new Constitution without a bill of rights. In Massachusetts, only a last-minute compromise allowed it to pass. Federalists promised to amend the new constitution with a bill of rights. Massachusetts ratified, then other states got on board, but only after they proposed amendment after amendment – hundreds of them. In Virginia, James Madison receives a letter from his good friend, Thomas Jefferson, who was in France this whole time as the U.S. ambassador. Jefferson tells him there has to be a bill of rights.

CAROL BERKIN: And he writes this attack on the Constitution, why you should not ratify it. Jimmy Madison must have been apoplectic, I mean, he finally actually writes Jefferson a letter that, if we boiled it down to its essence said, Would you please shut up? Would you please stop doing this? I’m trying to get this Constitution passed.

FLOYD ABRAMS: The Bill of Rights was adopted because Thomas Jefferson and others said, We won’t support the Constitution unless it makes very clear that there are certain rights that the government can’t take away.

NARRATOR: Virginia is in danger, too, with both Mason and old Patrick Henry thundering against us.

ROGERS SMITH: There was major opposition to the Constitution in Virginia, led especially by Patrick Henry, who was an ardent champion of states’ rights.

NARRATOR: You might remember Patrick Henry from the Revolution.

ACTOR: Give me liberty, or give me death!

NARRATOR: Now, when you have someone who’s going to put up this much of a fuss...

ACTOR: Give me liberty, or give me death!

NARRATOR: ...you’re probably going to make concessions.

ROGERS SMITH: Madison and other supporters of the Constitution could only win Virginia’s support for ratification by promising a bill of rights.
10:45 NARRATOR: And here’s the thing: Madison kept his promise. He still didn’t believe that the bill of rights was necessary, but the promise became a central part of his campaign for Congress. Really. That’s right; the Bill of Rights was a campaign promise.

11:02 CAROL BERKIN: And Madison being Madison, once he made that promise, Madison believed that his honor was important. He had made a promise, and so he was going to do it.

11:13 NARRATOR: James Madison won election to the very First Congress...

11:17 RICHARD LABUNSKI: New York City was chosen to be the nation’s capital.

11:21 NARRATOR: ... where he almost immediately proposed a bill of rights. After years of work to write and then ratify the Constitution, Madison turns right around to amend it. Now, to amend the Constitution, he’s got to get two-thirds of the House of Representatives to say yes, then two-thirds of the Senate, and then go back to the states all over again to get three-quarters of them to approve. The same states that had just proposed some 200 amendments. Madison weeds through them, writes some of his own, and submits 19 to Congress.

11:57 RICHARD LABUNSKI: Madison chose the amendments that he did because he wanted to protect individual rights and not damage the Constitution. Many of the suggested amendments would have made structural changes.

12:09 CAROL BERKIN: Here’s where Madison being wily and a nationalist is really important. A lot of the suggestions for the bill of rights were not about what we consider our rights, individual liberties. A lot of what the Anti-Federalists wanted was to weaken the national government.

12:31 NARRATOR: Madison was not going to let that happen, but he also had to find amendments everyone could agree upon because if he couldn’t get the bill of rights ratified, the states might call a second Constitutional Convention.

12:45 RICHARD LABUNSKI: And what Madison said to his colleagues is, a second convention, it’s going to redo this Constitution, it’s going to be a disaster, and the nation’s very survival is at stake.

12:54 CAROL BERKIN: And he says, I’m not going to put any of those things in the bill of rights. I’m going to make sure the bill of rights is just about personal liberties. He saves the Constitution!
13:08 NARRATOR: Madison’s amendments protect individual rights, not only from the new federal government, but also from popular majorities who might use their power to abuse the minority. He addresses his own earlier concerns about enumerating rights, and he even tries to take on the power of the states. In the end, the first Congress reworks and passes only 12 of Madison’s 19 amendments; the Senate was not ready to take on the power of the states. That didn’t happen until 77 years later.

13:38 AKHIL AMAR: Madison wasn’t able to sell that idea successfully to the first Congress and so that idea doesn’t become, really, a deep part of our Constitution until after the Civil War.

13:49 CAROL BERKIN: What is remarkable about the Bill of Rights is that they are written in plain language.

13:55 VINCENT WARREN: The most important thing to the Framers was that this was a document for the people. There was a real push to have the people, the folks that lived in this country, understand and be able to participate in their own democracy.

14:12 AKHIL AMAR: The Bill of Rights came from the people. It wasn’t something hatched in the mind of one person – James Madison, or anyone else – it came from a national conversation. It’s written in very crisp, compact language so that ordinary people could actually memorize it, the same way that people at the time memorized Scripture passages, or memorized a favorite song. It’s supposed to get into your head. It’s not written in legalese precisely because it’s a text from the people, for the people, addressed to the people.

14:49 And the people responded. Madison’s work creates a document that is ratified much more easily than the Constitution just two years before, but the states whittled the 12 amendments passed by Congress down to 10. The first two amendments don’t make it – one about expanding the House of Representatives, and the other about congressional salaries. As a result, what was Madison’s third amendment becomes what we know today as the First Amendment, and those 10 amendments are what we know as the Bill of Rights. On December 15, 1791, the state that puts the bill of rights over the top is James Madison’s Virginia.

15:29 RICHARD THORNBURGH: In my view, it’s accurate and fair to say that the Bill of Rights is at the very heart of the American experience, because it provides a protection to each and every citizen in each and every aspect of their lives, and it confines government to its proper role, with a protection against unreasonable government action that might otherwise ensue. If there’s any one characteristic of the American system of government that can be identified as absolutely essential to our national character, it is the Bill of Rights.
Video: Ten Amendments

Time: 16:02

First Amendment

00:04 NARRATOR: 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.”

00:23 RICHARD LABUNSKI: The First Amendment is absolutely vital.

00:26 THEODORE OLSON: One of the reasons why there is a United States is freedom of religion, but there’s two parts of that. One is the liberty to believe what you want to believe. The other part of that is the Framers did not want a government to establish a religion, so, it’s right there, First Amendment, Congress shall make no law abridging free exercise of religion or in respect to the establishment of religion.

00:54 CAROL BERKIN: Freedom of the press, freedom of assembly, freedom of petition.

00:59 MARIA ECHAVESTE: Different activities that all ultimately are about the same thing: the right to express yourself, the right to say what you want in whatever form you want, the right to be able to be critical of your government and not be punished for it.

01:13 FLOYD ABRAMS: In England, there had been a good deal of prosecution of individuals for their beliefs, that’s why we needed the religious freedom clause. For what they said, that’s why we needed the freedom of speech clause.

01:31 AKHIL AMAR: The deep idea of the First Amendment is that the people should tell government what to do and not the other way around.

Second Amendment

01:46 NARRATOR: 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.”

01:59 RICHARD LABUNSKI: The Second Amendment is so poorly written.
02:01  FLOYD ABRAMS: Even the Framers sometimes didn’t do a very good job of writing down what they meant. And the problem with the Second Amendment and reading it is that you can’t quite tell from reading it whether what it means to say is, we want to protect the states that have a National Guard or a state militia from the federal government, or it means everybody’s entitled to have a gun.

02:32  THODORE OLSON: We created the defense of the rights of this country and the Revolution out of the militias in the states or the colonies coming together to fight against tyranny.

Third Amendment

02:49  NARRATOR: 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.”

03:02  JOANNE FREEMAN: It’s kind of weird to think about an amendment that talks about quartering troops. But this is a generation of people who experienced an army that came from overseas and planted themselves in their homes and took over. So it makes perfect sense that one of the things they would say in the Bill of Rights is, okay, that whole quartering army thing, that whole thing about our property being able to be taken over by this army, it was very bad. We had no rights. We watched our property, our lives, our cities get taken away.

Fourth Amendment

03:41  NARRATOR: 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.”

04:08  THEODORE OLSON: There is a provision in the Fourth Amendment to protect all of us from the government coming in, invading our privacy, looking through our things, finding evidence that might be used against us to convict us of crimes and so forth. So, the colonials put in the Fourth Amendment rights to be free from unreasonable searches and seizures. Now we have come to understand that an unreasonable search and seizure is something that’s done without warrant.
04:36   FLOYD ABRAMS: And so they wrote it and you’ll notice the word “unreasonable” in there. The word “unreasonable” is not in the First Amendment. The First Amendment doesn’t say Congress shall pass no law with respect to unreasonable publication by the press. But in the Fourth Amendment, it says no unreasonable searches and seizures, and that meant, and the courts have said this, that our courts would become involved in the process of deciding what sort of search is reasonable and what not.

Fifth Amendment

05:19   NARRATOR: 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.”

06:03   AKHIL AMAR: The Fifth Amendment is really a grab bag, so at least three different ideas here: the idea of a jury, the idea of fair procedures, and the idea of protecting private property.

06:16   RICHARD LABUNSKI: Double jeopardy is extremely important. Can you imagine if the state or federal government has the authority to put you on trial over and over again until they get a guilty verdict, or until they get the verdict that they want?

06:30   RICHARD THORNBURGH: The grand jury is designed to prevent the government, the prosecutor, from bringing charges willy-nilly against an individual.

06:39   FLOYD ABRAMS: And the idea there was, we would have real people like you sitting on a jury deciding if you did something wrong, not just a judge in a red gown or a black outfit, as they are now, but a jury of people.

07:00   VINCENT WARREN: One of the aspects of the Fifth Amendment, which is a very important piece, is the right against self-incrimination. In our court system, you are innocent until proven guilty. And so, if the court is going to assume that you are innocent until a prosecutor can come up with evidence that shows that you are guilty, the government cannot make you say that you are guilty against your will.

07:23   SUSAN HERMAN: The due process clause is certainly the most important part of the Fifth Amendment.
07:26 THEODORE OLSON: Life, liberty and property cannot be taken from you without due process of law.

07:33 GEOFFREY STONE: The Framers were very aware that the criminal justice system and the legal system generally could be the source of all sorts of abuse. It’s a setting in which the government is authorized to really take complete control over an individual’s life, and giving the government that kind of authority is both necessary to have an ordered civilized society, but extremely dangerous. And so the idea is to figure out how do you create a system that gives the government the power it needs to have to punish wrongdoers and to settle private disputes without giving the government the power to be abusive.

Sixth Amendment

08:28 NARRATOR: The 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 a Counsel for his defense.”

09:00 VINCENT WARREN: I’m most passionate about the Sixth Amendment.

09:03 FLOYD ABRAMS: Well, the Sixth Amendment has a lot of protections of people when they go to a trial.

09:09 THEODORE OLSON: You’ve got a right to a speedy trial. You’ve got a right to be prosecuted where you committed the crime, so that the jury can be brought from the area where you’ve chosen, if you allegedly committed a crime. You have a right to confront the witnesses against you.

09:25 ROGERS SMITH: You get the assistance of counsel.

09:28 CAROL BERKIN: You must have legal counsel.

09:30 VINCENT WARREN: What is so amazing to me about the Sixth Amendment is that it is a document that is really designed to protect people against the awesome power of government, in that, in terms of prosecution, and moreover it’s designed to protect the people with the least amount of money.
Seventh Amendment

09:54 NARRATOR: 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.”

10:14 RICHARD THORNBURGH: One of the characteristics of civil trials, of course, is that the government is not a party.

10:20 THEODORE OLSON: The Seventh Amendment takes the protection of the other amendments that give you a trial by jury in a criminal case, and applies the right to a trial by jury in a civil case.

10:31 FLOYD ABRAMS: You don’t go to jail if you lose. You pay money if you lose.

10:36 ROGERS SMITH: It reflects again the pattern in so much of the Bill of Rights that there are provisions designed to make sure that local communities retain power to check the operations of the new national government, and it does so by insisting that if the federal government is hearing a civil suit, the local community has to have a voice in how that issue is resolved by use of a jury.

Eighth Amendment

11:10 NARRATOR: The Eighth Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

11:22 SUSAN HERMAN: The Eighth Amendment prohibits excessive bail, excessive fines, and cruel and unusual punishment. This language is word for word what was in the English Bill of Rights in 1689.

11:33 RICHARD THORNBURGH: The Framers’ experience under British rule indicated the potential for abuse in excessive bail, which would have the effect of imprisoning someone without even being charged.

11:47 FLOYD ABRAMS: The Eighth Amendment is one of the very live amendments. Lots of cases come up under the Eighth Amendment.
11:58 THEODORE OLSON: At the time of the founding of our Constitution there was lots of punishment that was very cruel. The Framers of our Constitution didn’t want to be too specific about it because they didn’t know all of the things, the cruel, awful things that government officials could dream up. Now over the years the Supreme Court has changed its view from time to time as to what constitutes cruel and unusual punishment. And the Court has looked to the evolution of our society – our civilized society.

12:32 AKHIL AMAR: A judge alone often is involved in sentencing, setting the punishment. And where judges are acting alone, without juries, we want and need additional safeguards against them. That’s the Eighth Amendment idea. Judges acting alone need some special safeguards.

Ninth Amendment

12:55 NARRATOR: The Ninth Amendment: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

13:07 KENJI YOSHINO: So the Ninth Amendment is, from my perspective, the most important amendment in the Bill of Rights.

13:12 CAROL BERKIN: Amendment 9 in the Bill of Rights is, for Madison and for many of the Federalists, the most important one, because it says, if we left something out, if we didn’t make explicit every right that the citizen has, this covers that. So, this is the, kind of, umbrella amendment. It says we can’t infringe upon a right just because we forgot to mention it in the Bill of Rights.

13:43 ROGERS SMITH: The Ninth Amendment is directly responsive to the concern that James Madison and others had in opposing a bill of rights in the first place.

13:53 RICHARD LUBINSKI: They did not want to say to the American people, This is it. All you get is what is in the Bill of Rights. What the Ninth Amendment tried to do is say that there are other rights that you are going to enjoy that may not be enumerated in the Constitution.

Tenth Amendment

14:14 NARRATOR: 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.”
14:26  KENJI YOSHINO: What the Tenth Amendment says is that if a power is not explicitly granted to the federal government, then it falls back to either the states or to the people, generally.

14:37  RICHARD THORNBURGH: The Tenth Amendment is a bit of an anomaly in the Bill of Rights, because it doesn’t deal with rights as such. It deals with powers.

14:15  JOANNE FREEMAN: If you think about the fact that people were very nervous about this new government that was being set in motion, and that they were afraid that it was going to take more power than it deserved, and that they were afraid that it was going to take away rights, it makes sense. When you look at the Bill of Rights, particularly at the last two, Article IX and Article X, both of them in one way or another are saying, okay, the Constitution can only do what it says it’s going to do and we get all the rights that we have, even if they’re not in the Bill of Rights.

15:16  AKHIL AMAR: The bill of rights that emerged, that was drafted by Madison, was a Federalist, a centralizer, but he drafted it in a way to appease Anti-Federalists. From the beginning to the end, states’ rights are an important part of the Bill of Rights. The First Amendment says, Congress shall make no law restricting the federal government. Not the states, the federal government. And the Tenth Amendment, which is the end of the Bill of Rights, is doing the same thing. It’s imposing some limits on the federal government and it reminds everyone that the federal government is a government of enumerated powers. That the federal government’s power isn’t complete and total, that state governments have important powers as well.

16:02  End
Rights are expressions of individual liberty. The history of America is, on the whole, a story of individual liberty and rights. In 1776, the signers of the Declaration of Independence boldly proclaimed their belief in the right of equality—“all men are created equal”—and in the inalienable rights of life, liberty, and the pursuit of happiness. The founding generation considered individual rights so critical to freedom that only a promise to add them to the new Constitution ensured ratification of the nation’s fundamental law. Almost ninety years later, as the Civil War threatened the nation’s existence, President Abraham Lincoln used the same language of rights and liberty to remind his fellow citizens about the importance of their campaign to save the Union. So has every President in every war called upon Americans to defend what we all identify as our heritage of freedom and the rights that protect it. Even when we disagree most with each other about what course the nation should take, we often express our choices in the language of rights.

We usually associate our rights with the Bill of Rights, the first ten amendments to the Constitution. It is our touchstone to what the revolutionary generation defined as a “great experiment in liberty.” But its guarantees were, in many ways, a listing of rights the framers considered to be their own inheritance from countless generations that preceded them. Now, we judge the Bill of Rights to be our gift from the past. Only when we look carefully do we recognize how this legacy of rights has changed in response to new conditions. Our rights, like our understanding of liberty, are not static. They are dynamic expressions of freedom. What is most constant in the history of individual rights is how each successive generation has contributed to defining the liberties we claim today.

When English settlers migrated to the New World, they came with a royal guarantee that they would continue to have the “rights and privileges of Englishmen.” The pledge was important. It promised continued ownership of a long tra-

“There is something back of the [Constitution and the Union], en- twining itself... closely about the human heart. That something, is the principle of ‘Liberty to all’—the principle that clears the path for all—gives hope to all—and, by consequence, enterprise, and industry to all.”

—President Abraham Lincoln, “Fragment on the Constitution and the Union” (1861)
dition of English liberty that was thought to stretch at least to the Magna Carta (or Great Charter) in 1215, when English noblemen forced King John to abide by the “law of the land,” or as it was known later, “due process of law.” Embodied in these phrases were two core contributions to the English understanding of rights: the idea of fairness and the concept that no one, not even the king, was above the law. Although the document applied only to the king and barons, the most powerful class in English society, over time its guarantee of rights became understood as a commitment to all English citizens.

Much of the early history of rights centered on protections for property and for individuals accused of crimes, because in these areas the state most often exercised arbitrary power. Rights of the accused offer the clearest example of what Englishmen understood to be their heritage. By the time the earliest North American colonies were established, numerous guarantees already existed to ensure a fair criminal trial for Englishmen. The Massachusetts Puritans included many of these protections in their first law code, the Body of Liberties, in 1641: the promise of speedy trial and equal justice, protection against being tried twice for the same crime (double jeopardy), and the prohibition of torture, among others. The long seventeenth-century struggle between king and Parliament for supremacy further limited the power of government and added to the rights of Englishmen, including the right of petition, a limited form of freedom of speech, a right to release the accused from detention upon a guarantee to appear at trial (bail), and prohibition against excessive fines. The Bill of Rights of 1689, which Parliament adopted after ousting King James II in the Glorious Revolution, put these rights in written form. Unlike the Magna Carta, it extended them to the English population as a whole, including the colonists.

Much of what the English settlers to the New World considered to be rights was found in the common law, the case law of English courts, not in statutes or state documents. Common law contained what had become customary practice in English society. As with the Magna Carta, it emphasized rights of the accused: the promise of a speedy and public trial by jury; prohibition of ex post facto laws, or laws that criminalized behavior after it had occurred; and the guarantee of habeas corpus, a procedure that required government to bring a person under detention before a court to determine if legal reason existed to hold him. Common law also offered some protection for the rights of widows and children, the right of compensation for the taking of private property, and the openness of courts to all citizens. Not only did colonial assemblies and courts adopt common law, but colonists looked as well to English law books for further instruction on their rights and privileges.

The colonists were not satisfied with reliance on their charters alone because they could be changed too easily. Early on, they put their liberties into writing as a way to prevent imperial encroachment. The Massachusetts Body of Liberties in 1641 summarized these rights and added a few additional safeguards; it was, in effect, the first bill of rights in American history. The Pennsylvania Charter of Liberties and Frame of Government, both written in 1682, also protected the rights of colonists from government interference, as did the New York Charter of Liberties and Privileges enacted the following year. Most colonies adopted this practice of converting customary rights and privileges into written protections, and they often extended these liberties beyond those claimed by their cousins in the mother country.

By the eve of the Revolution, these safeguards had become part of a shared
language about liberty that guided colonial resistance to British attempts to tighten control over the empire. But it would be a mistake to draw a direct line of descent from the colonial understanding of rights to our understanding today. The words are similar but not their substance. Due process of law, for example, held a sharply different meaning in the seventeenth and eighteenth centuries than it does in the twenty-first. Then, it referred to a fair process only; now it also means a fair result. Personal rights were important, but the good order of society took precedence over individual liberty. Still, the colonial contribution to modern ideas about rights was significant, not as much as a list of rights but as a set of attitudes about individual liberty. The colonists by necessity had adapted English laws and customs to a new world and, in the process, claimed full ownership in the great tradition of English liberty. But they went further than mere imitation. They had simplified the law and made it accessible in written form to all settlers. They had been willing to reform the law and had added rights not recognized in the British Isles. Their biggest contribution, however, was an acceptance of legal change and a willingness to mold law to social needs and circumstances. This flexibility became a trait that defined American society and allowed the ancient maxim of due process to become as expansive as the continent itself.

Colonists entered the struggle for independence with a view that individual rights restrained the exercise of arbitrary power, especially by the central government; by restraining power, rights protected liberty. Three rights were especially important to the colonial understanding of liberty: trial by jury, the right to property, and due process of law. Representative government also was significant. These rights and this form of government above all protected local communities from tyranny exercised by a government far removed from them. The colonial view of liberty, after all, centered on the community first. The belief that rights belonged to individuals was the product of a later age.

In seeking greater control over the colonies, Great Britain threatened the local autonomy that all English colonists had come to consider their birthright. The list of grievances that poured from colonial pens from 1763 to 1776—and captured in a long litany in the Declaration of Independence—reveals how valuable the colonists considered self-government and how closely it was tied to their notion of rights. Taxation without representation was an interference with their right to property. Trials of alleged smugglers, such as Boston merchant John Hancock, by a judge alone violated the right to a public jury trial by members of the local community. Suspension of local courts denied due process of law.

Grievances are rights in reverse—they identify rights under threat—and by this measure the Declaration of Independence is an important gauge of what the colonists believed was at stake. British actions, the document charged, robbed Englishmen of their heritage. Each action of the imperial government mocked an essential ingredient of English liberty; collectively, they proved an intention to deprive the colonists of their freedom. “We are obliged,” the people of Newburyport, Rhode Island, petitioned Parliament, “to submit to a Jurisdiction. . . where the Common Law, the collected wisdom of the British Nation for Ages, is not admitted.” Other revolutionaries were more blunt. In A Summary View of the Rights of British America (1774), Thomas Jefferson alleged that the British were pursuing nothing less, than a “deliberate, systematic plan of reducing us to slavery,” a condition that left individuals with no rights and no freedom. The
colonists declared independence to save their liberty and the rights that made it possible, but in the process they became revolutionaries intent on creating what they called “a new order for the ages.” The founding generation set out not only to build a new frame of government, but also to identify what rights were necessary to protect liberty. Their search led them to a different understanding of the nature of government itself. They focused on republicanism, a form of government that rested clearly on the consent of the governed and thus, by definition, exercised limited power. They discovered rights not in English history alone but in the laws of nature, or natural law. These rights went beyond the common law, and because they existed before societies were formed, they belonged to individuals, not communities.

New state constitutions and later, the federal Bill of Rights, contained more expansive safeguards of liberty than had been listed in colonial protests. The founding generation also put these rights in writing and gave them the force of fundamental law, protections that could not be changed easily. The most important model was the Virginia Declaration of Rights in 1776. Written by George Mason, the declaration contained sixteen articles, with seven enumerating the rights of citizens, including the right of religious belief. Other states followed suit, usually listing the rights as part of the state constitutions. At first, revolutionary legislatures did not seek popular ratification of their actions, which raised questions about whether or not the constitutions restrained the legislatures themselves. In 1780, however, Massachusetts submitted its new constitution for voter approval, thus placing rights beyond the reach of legislative majorities. All other states soon adopted this innovation, as did the new federal constitution in 1787. Rights now existed as fundamental law.

The importance of this development became clear during and after the Constitutional Convention, which met in Philadelphia in 1787 to replace the inadequate Articles of Confederation, the nation’s first constitution. The fifty-five delegates faced a critical problem: how to grant government enough power to do its job without also giving it the power to threaten liberty? Their answer revealed how far the revolutionaries had advanced in their understanding of the relationship between power and liberty. First, they based all power or sovereignty (the right to rule) in the people, not the government, an idea known as popular sovereignty. Government had only the authority granted to it in a written constitution ratified by the people. To restrain government even more, the framers divided power in two fundamental ways. They created three separate and coequal branches of government—legislative, executive, and judicial—and required the cooperation of each to exercise power fully. Then they divided power further between the states and the national government. This principle, federalism, entrusted the central government, the one they feared most, with only the power necessary to serve truly national functions, such as defense and regulation of commerce between the states. The powers not granted to the central government, including the critical authority to define and prosecute crimes, would remain with the states, which by definition were closer to the people.

The delegates believed that these restrictions on government—popular sovereignty, a written constitution, separation and balance of powers, and federalism—would be sufficient protection for the rights of individuals. The Constitution contained no bill of rights, but it did not need one, its advocates reasoned, because the new government could not exercise any power not granted to it explicitly. But when the Federalists, or supporters of the Constitution, submit-
ted it to state conventions for ratification, they learned that a large number of voters were not convinced by this argument. Thomas Jefferson, for example, believed the absence of a bill of rights was a serious defect. A listing of rights, he explained, “is what the people are entitled to against every government on earth.” The absence of a declaration of rights, Anti-Federalists protested, made the Constitution unacceptable because it was in the nature of government, especially central government, to infringe on the rights of the people. It soon became apparent that ratification would not occur without a promise to address his deficiency. Led by James Madison, the Federalists pledged to amend the Constitution to include clear safeguards for individual liberty.

As a newly elected member of the House of Representatives, Madison submitted nine amendments to the first Congress in 1788. The proposals borrowed heavily from the Virginia Declaration of Rights and the various state bills of rights. Madison listed two types of guarantees: rights necessary for representative government, such as freedom of speech, press, and peaceable assembly, and rights of the accused, including protections against double jeopardy and self-incrimination as well as the right to trial by jury. In all, his proposals covered twenty-six paragraphs. Over the next month, these safeguards were molded into twelve amendments; by 1791, the states had ratified ten of them. These ten became known as the Bill of Rights.

During the debates over the ratification of the Constitution, Madison at first had resisted a declaration of rights because he feared it would be only a “parchment barrier,” a mere paper incapable of protecting liberty. He came to believe instead that written constitutional guarantees were necessary because they would remind people of “the fundamental maxims of free government,” especially the close link between individual rights and personal liberty. They would serve as “good ground for an appeal to the sense of community,” he concluded, if states or oppressive majorities threatened liberty. He worried much about majorities running roughshod over the rights of minorities, especially in matters of conscience, and he feared states would not be able to resist this kind of tyranny. In fact, Madison initially had proposed that the Bill of Rights apply to the states as well as the central government, a result not achieved, even in part, until the twentieth century. Who would enforce the Bill of Rights on behalf of individuals whose rights were threatened? Here, Madison believed the answer was more certain. An independent judiciary, operating through courts open to all citizens, would come to consider themselves “the guardian of these rights,” he argued. They would “resist every encroachment on rights expressly stipulated for in the constitution,” forming an “impenetrable bulwark against every assumption of power in the legislative or executive.”

Madison’s views are instructive for understanding our rights under the Constitution. Although most of his contemporaries viewed the Bill of Rights as a standard that enabled people to judge their government, Madison believed it promoted self-government by enabling citizens to resist any impulse—fear, selfishness, and prejudice, among others—that threatened America’s great experiment in liberty. Enforcement of rights by an independent judiciary, he argued, provided a means to correct injustices that were sure to occur in any human society but which could not be allowed to exist in a society dedicated to liberty. The federal Bill of Rights resulted from a rich mix of English history, colonial experience, and revolutionary ideas. It was the product of a society far different from our own, and no one at the time seriously believed that its protections
benefited American Indians, African Americans, or even white women. But for all the flaws of its creators, the list of rights was far advanced for its time. The legacy of liberty the Bill of Rights gave to the new nation became the envy of the rest of the world. Since 1791 we have been debating exactly what this legacy means.

Almost from the moment of their passage, the rights promised in the new constitutional amendments came under dispute. The desire to safeguard individual liberty did not disappear—if anything, it became stronger—but when faced with practical problems, people disagreed about what government could and could not do. The 1790s, for example, witnessed a ferocious debate between Secretary of the Treasury Alexander Hamilton and Secretary of State Thomas Jefferson about the power of the central government. The debate became intensely partisan, and when it appeared to threaten national security, Congress passed a law, the Sedition Act of 1798, forbidding anyone to criticize the government or government officials. Although the law expired three years later, it was clear that the founding generation had sharp differences of opinion about what freedom of speech or freedom of the press meant in practice.

On the whole, however, the concern for rights became more intense in the decades following the Revolution, although the focus shifted from the federal to the state governments. The United States was becoming more democratic, with most states removing property qualifications for voting and officeholding by the 1820s to allow all adult white males to participate in government. The nation had also embraced capitalism, which emphasized individual risk and reward. Both developments reinforced the notion of individual rights, especially property rights, and they strengthened as well a demand for fair procedure, or due process, to ensure equal opportunity in the political arena and the marketplace.

Ensuring these protections of liberty was primarily the responsibility of the states. In 1833, the U.S. Supreme Court ruled, in Barron v. Baltimore, that the Bill of Rights restrained the federal government alone. Most individual rights, then, were protected by state constitutions and state judiciaries. In some ways, this decision had a limited effect because almost every state constitution included the set of rights contained in the federal amendments, and some exceeded the federal safeguards. But the decision also meant that the interpretation and enforcement of rights could vary widely from state to state.

Rights of the accused occupied much of the nineteenth-century attention to individual liberty. No other part of the law had a more intimate relationship to everyday life than did criminal justice. Judges at first interpreted their state constitutions to offer significant protections to anyone accused of crimes. They insisted on following procedure strictly, such as requiring that indictments, or formal accusations of crime, use precisely the words required by law. The goal of such precision was twofold: the defendant needed to have exact knowledge to prepare his defense, and the indictment’s precise language ensured that the state could not use the alleged facts to support a second trial for the same offense. Judges resisted any pressure to loosen these safeguards. “The harmless decision of today becomes the dangerous precedent for tomorrow,” an Indiana court warned. The regard for proper procedure was no “idle technicality”; “the people have no better security than in holding officers of the state to a reasonable degree of care, precision, and certainty in prosecuting the citizen for a violation of the law.”

An insistence on strict adherence to procedure diminished by the mid-nine-
teenth century, as fear of crime increased in tandem with the growth of cities. Public demands for order and security had profound implications for rights of the accused. By the end of the century, states were, in effect, running as many as three different criminal systems, each with its own standard of due process, as illustrated by Alameda County, California, home to Oakland. At the bottom was assembly-line justice. It was a highly bureaucratic process that used plea bargains—negotiated sentences in exchange for a plea of guilty—to move people accused of minor crimes swiftly from arrest to imprisonment. The handling of ordinary but serious property crimes was only marginally less routine, with fewer than half the cases going to trial and the vast majority of defendants being found guilty. Only for the most serious crimes—murder and robbery chief among them—did rights of the accused play any part in the criminal process. These cases grabbed public attention, and the duel of lawyers acted to educate citizens on an idealized version of American justice and the rights of defendants. Of course, for immigrants and blacks even the most routine administration of due process was often a mirage, a constitutional pledge they could not redeem.

Still, the promise of individual rights maintained a powerful hold on Americans. The nineteenth century witnessed numerous reform movements designed to extend the Bill of Rights and other democratic safeguards of liberty, some of them newly invented, to excluded groups. Women made one of the strongest demands, and at the Seneca Falls Convention in New York State in 1848, they put their case for voting rights and property rights in a Declaration of Sentiments, Grievances, and Resolutions that borrowed language from the Declaration of Independence. Workingmen used Jefferson’s term, “inalienable rights,” to lobby for fair wages and the ability to use their free time as they saw fit, which they wanted to include in the list of individual rights. Both of these movements succeeded after decades of struggle, but it was another nineteenth-century campaign that had the most profound effect on our rights as we know them today. This movement sought the abolition of slavery.

Union victory in the Civil War effectively ended slavery and led to three new amendments, each adding new rights, and one, the Fourteenth Amendment, containing within it the seeds of a veritable revolution in our conception of rights. The fruit of the Thirteenth Amendment was the right to freedom through the abolition of slavery; the Fifteenth Amendment guaranteed the right to vote to the freedmen. But it was the Fourteenth Amendment that changed the traditional relationship of national and state governments. Previously, Americans were citizens of their states; they looked primarily to their state constitutions for protection of their rights. The Fourteenth Amendment established national standards for citizenship and made every person born in the United States both a citizen of his state and a citizen of the nation. Equally important, it declared that “equal protection of the laws” and “due process of law” were guarantees for all citizens.

For the first time, the federal government had the responsibility to protect the rights of citizens—at least in theory. On the whole, however, federal courts did not interpret the amendment in this fashion during the last half of the nineteenth century, in part because the framers of the amendments did not define what they meant by such general phrases as “due process of law.” Contrary to the expectations of the framers, the Supreme Court held that the amendment did not require states and local governments to respect the guarantees of the Bill of Rights. The justices instead followed traditional practice and allowed
states wide discretion to protect individual liberty as they saw fit. For example, in *Plessy v. Ferguson* (1896), the Court held that state-mandated racial segregation of railroad cars did not violate the equal protection clause of the Fourteenth Amendment. The doctrine, known as “separate but equal,” justified the wide-spread racial segregation and discrimination that finally ended as a matter of law in the 1960s. The *Plessy* decision, although repugnant to us today, reflected a much different view of rights and the role of states than we hold in modern America. It implied that the right to associate was a social right, subject to regulation by democratic majorities though legislative acts. Separating the races by law did not deny individuals their political rights, or so many people believed. Now we understand that racial discrimination prevents the enjoyment of other rights, such as equal protection of the laws. This view, however, became accepted only in the twentieth century.

The Fourteenth Amendment initially became a bulwark not for the civil rights of individuals but for the property rights of monopolistic corporations. From the late nineteenth century through the first three decades of the twentieth, big business dominated the American economy as never before. The U.S. Supreme Court proved to be its strong ally, first by declaring in 1886 that a corporation was a person for purposes of the Fourteenth Amendment and then by reading the amendment as protecting freedom of contract, but not other individual rights, such as freedom of speech, from government interference. In effect, this stance prevented most state and federal regulation of economic activity in the name of protecting individual liberty.

The late nineteenth and early twentieth centuries witnessed reform movements to reconcile the promise of American life with its harsher realities. The rapid growth of industry, emergence of a national market, the closing of the frontier, and rise of big cities following the Civil War had changed forever the earlier vision of a republic of small farmers and independent shopkeepers. These developments created great national wealth and moved the United States from a third-class nation to a world power, but they also brought many social ills, from child labor to massive urban poverty. In response, reformers lobbied against the prevailing notion that property rights limited the government’s power to regulate the marketplace; they argued instead for an expanded view of governmental power sufficient to ensure fair competition and equal justice.

They were aided in these efforts by a new way of thinking about law and the role of judges. In a series of lectures in 1881, Justice Oliver Wendell Holmes, Jr., suggested that “the life of the law is not logic but experience.” By this, he meant that social and economic change influenced the way we interpret the law; reaching the right decision in a case was not simply a matter of reasoning from abstract principles but also recognizing how to apply the law to changing circumstances. Advocates of “legal realism” argued that judges had to look beyond legal rules, including precedent (how previous judges had interpreted the law), to understand how the law would work in the world outside the courtroom. Legal realism also assumed that courts had a responsibility to keep law abreast of the times. This new understanding of law and courts was instrumental in the move to strengthen protection for individual rights in the twentieth century.

The first step was to challenge the traditional view that individual property rights were sacred. The Supreme Court had adopted an exalted view of the marketplace, seeing it as the ideal arrangement for securing the utmost economic liberty. The prevailing notion was that, without any interference or aid from
government, individuals freely bargained with each other in an unregulated, open market. They sold their labor to the highest bidder, accumulated and exchanged their property as they wished, and used their talents and energies to create wealth for themselves and their families. The result of this unrestrained competition benefited the nation, as when railroad builders risked bankruptcy to develop a transportation network that was the envy of the world. This view, of course, was fantasy. Ordinary shop owners in no way competed equally with millionaire industrialists; common laborers had no ability to set their own wages; poor people had no money to invest in a business. It was an idealized picture of an economy that, in fact, valued monopoly over competition and in which government routinely devoted public assets to private gain, as when it gave land to railroad magnates. But the Court based its ideas of economic liberty on theory more than reality, so its decisions were hostile to any attempt to regulate the outcome of private economic arrangements. One decision, since discredited, even discovered in the due process clause a “liberty of contract” that protected corporations from state laws, even though the Constitution never mentions such a right.

What had happened was a change in the meaning of due process. Initially, the term meant only that government had to follow its own laws or procedures when making decisions or taking actions. If it did, then the result was thought to be fair. The new interpretation of due process looked instead to the result of the decision-making process: was it fair, and if not, who decided the right result—legislatures or judges? The answer under the new view was that government could follow all its established procedures and still deprive citizens (or corporations) of their rights because the result of the decision-making process was unfair. Judges would decide when this occurred. The idea that due process meant an acceptable result and not simply a fair process was called substantive due process. It represented a shift in interpretation that came to a head when states sought to regulate the monopolistic practices of corporations, for example, by establishing the rates railroads could charge. The Supreme Court usually struck down these laws because, even if the state followed its procedures to the letter, the result of the regulation was an infringement on the corporation’s property rights. Regulation had resulted in a loss of freedom by the corporation to set its rates at whatever price the market would bear. Significantly, the Court did not apply this same logic to individual rights, which remained under state protection—or, too often, as in the case of racial minorities, were not protected at all.

Ultimately, this stance disappeared when monopolistic practices and market excesses resulted in the economic collapse known as the Great Depression of the 1930s. After initial resistance to economic reforms, the Court retreated from its belief in the supremacy of economic rights and accepted government regulation of property as a reasonable exercise of congressional power to regulate interstate commerce. But the justices’ attempt to shield property rights from state regulation under the due process clause of the Fourteenth Amendment suggested that individual rights might be protected in similar fashion. Were the guarantees of free speech, fair trial, rights to counsel, and other safeguards of the Bill of Rights included in the meaning of the Fourteenth Amendment’s due process and equal protection clauses?

The aftermath of World War I presented an opportunity to test this idea. Free speech was at issue. After the United States entered the war, the federal government sought to suppress dissent as harmful to the war effort. Much of the

“Of the freedom of thought and speech... one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom.”

—Justice Benjamin Cardozo, Palko v. Connecticut (1937)
concern focused on attempts by union organizers, many of them self-proclaimed communists, to use wartime labor shortages to force concessions from business, even if it harmed military production. State courts had long refused to protect radical or offensive speech, and they also suppressed speech if it was accompanied by action that threatened public order, such as might occur at a union rally. At first, the Supreme Court followed this line of reasoning: it upheld convictions under state laws of antiwar protestors, including a candidate for U.S. President (*Debs v. United States*, 1919), because their speech presented “a clear and present danger” to the war effort. The First Amendment right of free speech did not protect individuals from state laws designed to ensure public order. By 1925, however, the Court had changed its mind, not about the meaning of free speech but about the role of the First Amendment. It ruled for the first time, in *Gitlow v. New York* (1925), that the freedoms of speech and press “are among the fundamental personal rights protected by the due process clause of the Fourteenth Amendment from impairment by the states.” It would be several years before the full impact of this decision became apparent, but it marked the beginning of a new era for individual rights.

By the late 1930s, the Court was marching under the banner of incorporation for First Amendment freedoms. In 1937, the justices rejected an argument that the Fourteenth Amendment’s due process clause incorporated, or included, the Fifth Amendment’s ban on double jeopardy, but Justice Benjamin Cardozo, writing for the majority, ruled that it did incorporate all the provisions of the First Amendment. These rights—speech, press, religion, and assembly—were freedoms of expression, which Cardozo called “the matrix, the indispensable condition” for nearly all other freedoms. Other rights, however, were subject to selective incorporation, or inclusion one by one in the meaning of due process: the Court would apply only those rights that are, in Cardozo’s words, “of the very essence of a scheme of ordered liberty” and could be considered fundamental because they were so deeply rooted in American traditions.

This standard meant the Court would consider individual rights on a case-by-case basis. It was a position that divided the justices; some argued that all of the Bill of Rights applied to the states under the Fourteenth Amendment, a view known as total incorporation.

The debate over selective versus total incorporation had barely begun when successive international crises, World War II and the Cold War, plunged the Court once more into a debate about how to reconcile liberty and security. It was a problem as old as the Constitution itself, and it centered on how far individual rights extended in times of threat. The first cases to test the limits came from an unlikely source, Jehovah’s Witnesses, a religious group that claimed First Amendment protection for their children’s refusal to salute the flag in school, as required by state laws. The law infringed upon their right to the free exercise of their religious beliefs, they argued, since they owed allegiance only to God. Initially, the justices deferred to legislative judgments: the need to encourage patriotism, they concluded, was sufficiently important to justify a minor infringement of religious belief. But when accounts of public attacks on the Witnesses reached Court chambers, several justices reversed course and held in 1943 that the First Amendment protected freedom of religion from state interference.

Generally, the fascist assault on liberty during World War II, as seen in Nazi Germany, renewed American belief in the necessity of individual rights. President Franklin Roosevelt used his fireside radio chats to remind the nation
of the need to protect “essential human freedoms.” He called for a “second Bill of Rights” to include new guarantees, such as the right to a home, adequate medical care, and old age insurance, among others. But this expansive talk was not always consistent with rights in action. With the Japanese attack on Pearl Harbor, the federal government ordered the relocation of Japanese Americans into internment camps. Scholars today agree that the executive order violated the equal protection clause of the Fourteenth Amendment; it treated one group of citizens differently based solely on their ethnicity. But in 1943, the U.S. Supreme Court decided otherwise. It was not willing to challenge the President’s order that internment was necessary in time of war, even when the government could produce no evidence of a real threat. In times of crisis, concerns about national security trumped individual rights, at least for certain groups of Americans.

The Cold War, the struggle between democracy and communism, as embodied by the United States and the Soviet Union, also raised challenges to individual rights, especially First Amendment freedoms of speech and association. The exposure of domestic spy rings and the communist takeover of Eastern Europe and China persuaded national and state governments to launch massive loyalty programs to purge communist sympathizers. At first, the Supreme Court supported convictions under laws designed to punish anyone who belonged to an organization that merely advocated the overthrow of the government. These decisions represented a setback in protection for individual rights because they punished beliefs, not actions, which departed from the Court’s movement toward a broader view of First Amendment freedoms. Once public hysteria subsided in the mid-1950s, however, the justices reverted once again to a more liberal interpretation of these safeguards. They operated under the increasingly accepted view that the due process and equal protection clauses of the Fourteenth Amendment applied to the states as well as the federal government. What remained to be decided were what liberties these clauses included under their protection.

In the 1950s, the Court began a dramatic expansion of individual rights that lasted through the 1960s, and its decisions created a rights consciousness that remains strong today. In some ways, the new attention to rights was simply a continuation of a prominent theme in American history. Each decade since the nation’s founding had brought some new assertion of rights—a right to freedom, woman’s right to vote, a right to organize. Some of the claims resulted in fundamental law: both the right to freedom and woman suffrage were products of constitutional amendments. Other rights, such as the right to organize, were recognized by statute. What was different in mid-century was the leadership of the Supreme Court in applying the Bill of Rights creatively to new situations.

One explanation for the Court’s newfound aggressiveness was the appointment of Earl Warren as chief justice. Warren was a former California district prosecutor, attorney general, and governor who became chief justice in 1953. His tenure signaled a shift in judicial style from restraint to activism. He rejected the belief that judges should make decisions based on narrow case facts rather than broad constitutional principles. He specifically dismissed as “fantasy” the notion that justices should be impartial. “As a defender of the Constitution,” he wrote in his memoirs, “the Court cannot be neutral.” He sought a broad and active role for the high bench: the “Court sits to decide cases, not to avoid decision.” More important, Warren believed the Constitution contained moral truths that were essential to enlightened government. It was the Court’s duty to apply
these principles, even if it overturned laws favored by a large majority of citizens. The Court’s role, he believed, was to champion individual liberty, especially for people without a meaningful political voice.

Nowhere was this judicial philosophy more evident than in his attitude toward the Bill of Rights. It codified the “sense of justice” humans were born with and provided the basis for bringing American law “more and more into harmony with moral principles.” These views required the “constant and creative application” of the Bill of Rights to new situations. “The pursuit of justice,” Warren said in a Fortune magazine article in 1955, “is not the vain pursuit of remote abstraction.” It was an active search for a fundamental moral guide to the problems of daily life, led by an independent judiciary. This process suggested continual revision of the catalog of rights, leaving “a document that will not have exactly the same meaning it had when we received it from our fathers” but one that would be better because it was “burnished by growing use.”

Other justices were ready to embrace Warren’s judicial philosophy, and the emerging civil rights movement provided a ripe test bed for their new activism. African Americans protested the nation’s continuing segregation and its failure to live up to the promise of equality contained in the Thirteenth, Fourteenth, and Fifteenth Amendments. The Court had taken hesitant steps toward enforcing equal protection of the laws against actions of state governments in the 1930s and 1940s, especially in cases of extreme and overt use of government power in support of racial discrimination, but it was the Warren Court’s willingness to address segregation in public schools that advanced the cause of equal rights most dramatically. In Brown v. Board of Education (1954), the Court rejected the Plessy doctrine of “separate but equal” and mandated an end to educational segregation “with all deliberate speed.” The Brown decision marked a victory for legal realism—the Court considered sociological evidence of the harmful effects of segregation on black children—and it effectively ended the Court’s tendency to accept legislative judgments on such issues. Over the next decade, the justices gave new life to the equal protection clause as a means of protecting the rights of African Americans and, later, the rights of women. Despite strong resistance from southern states, the nation was ready to follow the Court’s lead, as evidenced by congressional passage of new civil rights acts in 1964, 1965, and 1968, all designed to erase racial discrimination from American life.

Acting with unprecedented boldness, the majority of justices on the Warren Court promoted a new understanding of individual rights, one that restrained the abuse of governmental power and, in their view, promoted a just society. The reforms came so swiftly that many commentators labeled them as revolutionary—and in a sense, they were. What had changed was the willingness to broaden individual rights aggressively in areas where traditionally legislatures had set standards. There were sweeping reforms of the electoral process, political representation, school desegregation, government support of religion, obscenity, and free speech, among others, all based on new interpretations of constitutional rights. New rights were inferred—invented, critics complained—from the Constitution’s language, and chief among these implied rights was the right to privacy.

Rights of the accused were also fertile ground for the expansion of individual liberties, and they were by far the most controversial actions of the Warren Court. Between 1961 and 1969, the Court accomplished what previous courts
had stoutly resisted: it applied virtually all the procedural guarantees of the Bill of Rights to the states’ administration of criminal justice. Adopting the strategy of selective incorporation, the justices explicitly defined the Fourteenth Amendment phrase “due process of law” to include most of the rights outlined in the Fourth, Fifth, and Sixth Amendments. The result was a national standard that governed all criminal proceedings at both federal and state levels. The justices even extended these rights beyond the courtroom to the nation’s police stations and jailhouses, places previously thought to be subject to local control only. The Court claimed not to diminish states’ rights but instead to elevate inadequate state practices to a higher national standard. In the process, however, it ignited a firestorm of criticism that the expansion of these rights favored criminals at the expense of public safety.

By the late 1960s, the remarkable expansion of individual rights was nearing an end. Americans were increasingly uneasy about the course of reform charted by the Warren Court. Critics complained that the rights of individuals had taken precedence over the order and security of society. The decade’s turbulent history appeared to support this conclusion: urban riots, political violence, and increased crime were cited as evidence. Conservatives also charged that judges had upset the constitutional balance by making law, which was a legislative function, and that, in turn, subverted democracy. The Warren Court record became a major issue in the 1968 Presidential election. The winning candidate, Richard Nixon, promised to appoint law-and-order judges who would interpret the Constitution strictly, as he believed the founders intended, and halt, if not reverse, the trend toward greater liberalization of individual rights. Subsequent elections also featured this theme, with Ronald Reagan making a similar pledge to stop the creation of “judge-made rights.”

Two successive chief justices, Warren Burger and William Rehnquist, both appointees of conservative Republican Presidents, held similar views, but the Courts they led during the last three decades of the twentieth century left much of the Warren Court’s legacy in place. The justices did not abandon the newfound catalog of individual rights but focused instead on what these rights meant in practice. On occasion, their decisions brought the same public opposition that had greeted the more controversial cases from the 1960s, as in Texas v. Johnson (1989), when the justices upheld flag burning as protected speech under the First Amendment. In some instances, the Court reaffirmed explicitly what had once been viewed as a radical decision. In 2000, for example, the justices upheld the Miranda warning—“you have the right to remain silent”—in an opinion written by Chief Justice Rehnquist, once a vocal critic of the Warren Court case that mandated this rule. In other areas, the justices went beyond the 1960s decisions to expand or affirm individual liberties, especially the rights of women and affirmative action programs designed to remedy past racial discrimination.

Concern about whether the Supreme Court had overstepped its proper role by its aggressive expansion of Bill of Rights protections was not new in American history. It was the same criticism levied by progressive reformers early in the twentieth century against judges who cited a right to economic liberty as a shield against regulatory laws passed by democratic majorities. What made this challenge especially contentious in the late twentieth century, however, was a resurgence of what came to be known as “rights consciousness,” or a widespread willingness on the part of individuals and groups to push for the recognition of new rights. The awareness of rights to be asserted against government and oth-
ers has long been a hallmark of our national culture. It is in fact a legacy of our revolutionary beginnings, but rights consciousness has rarely been stronger in our past than it has been since the 1960s. Not only has it led to claims of new rights to fit the needs of a modern age, but it has raised again questions about the role of rights in American democracy.

It is difficult to know whether decisions of the Warren Court led to the growth of rights consciousness or whether the justices simply were responding to a renewed awareness of rights. The demand for individual freedom came from many quarters. The American Civil Liberties Union, founded in 1920 to protect constitutional rights, led many of the fights for greater individual liberty. So, too, did the National Association for the Advancement of Colored People (NAACP), a significant number of national labor unions, the National Rifle Association, and a host of other interest groups. Courts can act only when someone presents a claim for a legal decision, so in some sense, the growing culture of rights arose from the demands of countless litigants. But it is also true that Supreme Court decisions during the 1960s spurred the growth of rights consciousness, if for no other reason than they influenced lower courts, which settle most cases, to be more receptive to rights claims.

When a citizen asks the courts to enforce a right, the lawsuit often results in an application that goes far beyond what he or she sought. In the early 1960s, for instance, a poor defendant, Clarence Earl Gideon, believed he had been denied his right to an attorney in his criminal trial, so he appealed his conviction. The Supreme Court agreed with him in 1963, but its decision went further and announced a right for all indigent defendants to be represented at state expense in felony trials. Later this right was extended to all criminal cases where the potential loss of liberty was at stake, even for minor crimes. The same result was true of the right to privacy, a right not found by name in the Constitution but legitimately inferred from other rights. In 1965, the Warren Court supported the argument that this right prevented a state from prohibiting the use of birth control by a married couple, but later decisions led to its application in new areas, including the right of a woman to have an abortion and protection of consenting gay adults from arrest under state laws.

As a society, we have often debated how far to extend individual rights, but some of the decisions of the 1960s and later, especially those involving civil rights, introduced a new concept, group rights, into American constitutional law. After the Supreme Court’s landmark rulings mandating equal treatment regardless of race in schools and public facilities, questions arose about how to remedy or correct racially discriminatory practices. One answer was affirmative action, which focused attention on an individual’s membership in a racial or ethnic group and allowed race to be used as a positive factor in decisions about employment and admission to higher education. These programs, which the Court has accepted as constitutional under the equal protection clause, reflected a shift from rights as a protection against government to rights as a way to change social relations. What began as an effort to correct long-standing discrimination against blacks soon moved into new rights claims for other groups that have suffered discrimination—women, gays and lesbians, ethnic minorities, and the disabled, among others.

Significantly, some of these claims are pursued in the political arena and through the legislative process, both at state and federal levels, and not through the courts alone. The Americans with Disabilities Act of 1990, for example,
“[The Constitution] is an enabling (and a constraining) document. It sets forth a mechanism for making and applying law, and it creates a framework for representative government. It protects our basic freedoms, such as our rights to speak and to worship freely. It protects the basic fairness of our system, so that majorities cannot unfairly and systematically oppress minorities. It gives us the freedom to choose. But it does not tell us what to choose. It forces us, as a community, to choose democratically how we will solve our Nation’s problems.”

—Justice Stephen Breyer, commencement address, New School University, New York City, May 20, 2005

established legal rights for physically and mentally handicapped citizens. Not all claims are accepted by courts, legislatures, or voters, however. In the 1970s, women’s rights advocates pushed hard for an Equal Rights Amendment—which says that equality under the law shall not be denied on the basis of one’s sex—but fell heartbreakingly short in the ratification process.

We may be more rights conscious today than at other times in our history, but we remain divided over how far our rights extend. The eruption of new claims to rights and organizations dedicated to promoting them historically has been met with resistance and angry backlash. In many ways, this conflict has made rights talk even more contagious. Rights claims, after all, are made by someone who alleges a denial of liberty against the government or someone else. It is hard to think in terms of common values or community when engaged in rights talk; too much focus on individual liberties can skew our sense of the interests we hold in common. Still, what is most striking about the conflict over rights has been its democratic character. Rights are now a matter of public debate. When we confront each other over our individual rights, we are doing the work of democracy. Like the founding generation, we are trying to figure out what rights and liberties are required for a just and free society.

It is up to each of us to claim our rights and to engage in the work of a free people. Fortunately, our history is full of individuals who have demanded their constitutional protections and, in the process, advanced liberty for us all. In the twenty-three cases discussed in this book, it is ordinary citizens, for the most part, who have sought rights they believed were lawfully theirs. The claimants represent a cross section of Americans—young, old, well known, obscure, middle class, poor, respectable, and disreputable. One of the best ways we can protect our rights and our liberty is to understand what they demanded as their right—and why. They made history when they received an answer to their claim of individual liberty, but in these instances, as the novelist William Faulkner reminded us, the past is not dead, it is not even past. The rights these individuals sought remain vital, changing expressions of freedom. As members of a democratic society, we must always decide whether they moved the nation closer to the ideals established by the founding generation and whether they still represent the values the Constitution should protect today.
“All Men Are by Nature Equally Free”

The Virginia Declaration of Rights was the first written listing of the rights of citizens in the newly independent United States. Drafted by George Mason, a wealthy planter and political leader, the declaration set forth principles of government and individual rights of citizens. Adopted unanimously by the Virginia Convention of Delegates on June 12, 1776, it served as the model for other state declarations of rights as well as the federal Bill of Rights.

I That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

II That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

III That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration; and that, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

IV That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

V That the legislative and executive powers of the state should be separate and distinct from the judicative; and, that the members of the two first may be restrained from oppression by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

VI That elections of members to serve as representatives of the people in assembly ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

VII That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people is injurious to their rights and ought not to be exercised.

VIII That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vici-nage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgement of his peers.

IX That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.
X That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.

XI That in controversies respecting property and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.

XII That the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments.

XIII That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and be governed by, the civil power.

XIV That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

XV That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.

XVI That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Private Property and Public Use

In 1822, a wharf owner in Baltimore sued the city for economic loss caused when the city diverted several streams and lowered the water level around his dock. He claimed a taking of his property without just compensation, in violation of the Fifth Amendment. Chief Justice John Marshall, writing for a unanimous Supreme Court in Barron v. Baltimore (1833), concluded that the Bill of Rights restrained only the federal government, not the states. This view no longer prevails. Today, almost all of the guarantees of the Bill of Rights have been incorporated by the Fourteenth Amendment as restraints on the states.

The plaintiff in error contends that it comes within that clause of the fifth amendment to the constitution, which inhibits the taking of private property for public use, without just compensation, He insists that this amendment, being in favour of the liberty of the citizen, ought to be so construed as to restrain legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause...

The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated...
In their several constitutions they have imposed such restrictions on their representative governments as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no farther than they are supposed to have a common interest. . . .
We are of opinion that the provision of the fifth amendment to the constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states.
What Rights Does the Constitution Protect?

“The First Amendment does not speak equivocally. It prohibits any law ‘abridging the freedom of speech, or of the press.’ It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow.”

—Justice Hugo L. Black, majority opinion in Bridges v. California (1941)

Newspapers have gained possession of highly classified government documents that shed an unfavorable light on an ongoing war. Should they be allowed to publish what they found? A poor man has been arrested on a criminal charge but cannot afford a lawyer. Should he stand trial without the benefit of legal counsel? Facing reapportionment, the representatives of rural districts in a state legislature argue that because their districts cover so much more territory than city districts, it should not matter that they have fewer residents than the urban districts. Is that fair to the city dwellers? Home owners confront a local government that requires them to sell their property and move to make way for economic development. Do the needs of the community outweigh those of the individual property owners? These are real issues that involve fundamental constitutional rights. The decisions made in these and many other cases of human rights, liberty, and equality have significantly affected the lives of every American citizen.

Yet, surveys show that alarming numbers of Americans are unaware of the full extent of their constitutional rights. Some people readily admit that they do not know what rights are included in the Constitution and its first ten amendments, the Bill of Rights. Other Americans have expressed the opinion that the Constitution went too far in granting such rights as free speech and free press and that society should be able to restrict opinions and behavior with which the majority disapproves. These are perilous attitudes, because those who remain unaware or unappreciative of their rights run the risk of losing them.

In reading the original U.S. Constitution, one finds very few specific rights mentioned, and those that are deal primarily with legal practices. Article I, section 9 protects the right of “habeas corpus” (a Latin term meaning “you may have the body”). To keep suspects from lingering indefinitely in prison, habeas corpus literally commands a jailer to produce the person jailed. This means that a prisoner has the right to challenge wrongful imprisonment, and the right to a speedy trial before a civilian court. The same section of the Constitution outlaws “bills of attainder,” the practice by which some governments convict citizens using legislation rather than a jury trial. It forbids “ex
post facto” laws (Latin for “after the fact”), making something a crime after an action had been committed. It also bans any religious requirements for candidates for public office. Beyond these few prohibitions, the Constitution of 1787 remained silent on citizens’ specific rights.

When the Constitution was submitted to the states, the absence of a bill of rights generated more controversy than any other aspect of the document and nearly derailed its ratification. Most of the delegates to the Constitutional Convention felt it was unnecessary to spell out people’s rights in the national Constitution. They argued that the state constitutions already protected those rights. A few dissenters among the delegates refused to sign the document because it lacked a guarantee of individual rights. When James Madison campaigned for the Constitution’s ratification in Virginia, he encountered such intense popular dismay over the missing bill of rights that he pledged to support amendments to the Constitution as soon as the new government got under way. Elected to the House of Representatives, he kept his word.

Madison studied all of the two hundred amendments the states proposed during their debates over ratification of the Constitution. He pared these down to nineteen, which he introduced in the new Congress in 1789. Some of the other members protested that it seemed too soon to change the new Constitution, which had barely gotten started and had yet to prove itself. Yet, Madison felt committed to honoring the pledges that he and other supporters of the Constitution had made during the ratification campaign.

The House and Senate remolded Madison’s proposals into twelve amendments. The states swiftly ratified ten but allowed the other two to languish. Two centuries later, in response to public complaints over a large pay increase that Congress voted for itself, the states revived and ratified one of Madison’s amendments not included in the Bill of Rights. This amendment prohibits any raise in congressional salaries from going into effect until after the next election, giving the voters a chance to express their approval or disapproval at the polls. That left only one of the original twelve amendments unratified. This one would have pegged the number of people in a congressional district at fifty thousand. If that amendment had been approved, the U.S. House of Representatives would now contain several thousand members, rather than 435. The national population has grown far greater than the first members of Congress ever anticipated.

Ratified in 1791, the first ten amendments are collectively known as the Bill of Rights. Some of their provisions date back to the English Bill of Rights of 1689, which included freedom to petition the government and freedom of assembly, as well as prohibitions against cruel and unusual punishment and against taxation without representation. Having long considered themselves British subjects, Americans claimed all the rights of “freeborn Englishmen.” The first state constitutions limited government from performing arbitrary acts that would deprive people of their freedom of speech, their freedom of religion, their right to bear arms, and their right to assemble peacefully and to petition. Madison thought that the greatest danger to individual liberties came from the states, so he originally drafted the First Amendment to read: “No state shall violate . . .” In its final version it became: “Congress shall make no law . . .” For many years, the courts interpreted the Bill of Rights as applying only to the federal government, not to the states. Added just after the Civil the Fourteenth Amendment seemed to extend the Bill of Rights to the states by prohibiting the states from abridging people’s “privileges or immunities” or depriving them of
life, liberty, or property without due process of law. It further guaranteed “equal protection of the laws.” But, for decades after the Fourteenth Amendment was ratified in 1868, the federal courts interpreted it narrowly. Not until the 1920s did the courts begin to apply the provisions of the Bill of Rights, one by one, to the states. (Although, it has not yet been used to apply the Second and the Seventh Amendments.) Liberal justices have argued that the Fourteenth Amendment “incorporates” the Bill of Rights, or extends the rights guaranteed to the state level. Conservative justices have been more skeptical of this argument and more restrained in their application of the Bill of Rights to the states.

The most sweeping provisions of the Bill of Rights are contained in the First Amendment. It embodies a host of fundamental rights, from freedom of religion, speech, and the press, to the right to assemble and to petition the government with complaints. In just a few words the First Amendment captures the essence of being an American. The First Amendment bars the federal government from formally recognizing any religion as the official state religion, no matter how many citizens follow that faith. At the same time, it guarantees all citizens the right to exercise their individual religious beliefs. When the first state governments were established, some tried to recognize a particular church or Protestant Christianity in general as an established religion, and barred non-Christians from holding public office. Some states taxed religious minorities differently than others. The First Amendment followed Thomas Jefferson’s advice that a “wall of separation” be erected between church and state. Jefferson believed that the separation of church and state would protect government and organized religion from each other. Under the First Amendment, the government cannot favor one religion over others, aid any religions, or stop people from exercising their religious beliefs.

To improve morality, various groups have frequently advocated religious practices in the public sphere. For instance, some states required that all public school students begin the day by reciting a prayer. The New York State legislature drafted what it considered a neutral prayer that made no references to any specific religion, but in the 1962 case of Engel v. Vitale the Supreme Court struck down the practice on the grounds that it was not “part of the business of government to compose official prayers.” Similar disputes later developed over the placing of the Ten Commandments in courtrooms and on other public property. In two narrow decisions in 2005 the Supreme Court split the difference, concluding that displaying the Ten Commandments on government property was only unconstitutional if it seemed that government was promoting religion. The Court ruled against displaying the Commandments in a Kentucky courthouse, where their religious content was emphasized, but let a monument to the Commandments stand on the grounds of the Texas capitol as an acceptable tribute to the nation’s religious history.

The right of free speech has been just as controversial as the separation of church and state, because it involves freedom of expression, freedom of thought, and freedom to criticize the government. One person’s free speech may be offensive to another. The government has acted to restrict speech in radio and television broadcasting if it involves obscenity. During wartime, the government has also suppressed speech that it considers subversive, such as urging citizens to refuse to be drafted into military service. During the First World War, the Supreme Court concluded that the government could restrict such speech if it demonstrated that the speech posed a “clear and present danger” to the na-
tion. In his opinion in *Schenck v. United States* (1919), Justice Oliver Wendell Holmest used the example of someone falsely crying “fire” in a crowded theater—simply to cause a panic and injure people—as an example of speech not protected by the Constitution.

Free speech sometimes involves symbolic action. The courts ruled that when protesters burn an American flag, the act is a legitimate extension of their right of free speech, no matter how much it offends people’s patriotism. In the case of *Buckley v. Valeo* (1976) the Supreme Court also extended the concept of “speech” to political campaign contributions. It ruled out any limit on the amount of money that candidates can contribute to their own campaigns as an infringement of their right to free speech.

An important corollary to free expression is freedom of the press. Newspapers have fiercely criticized government leaders and their policies since the Presidency of George Washington. The news media has developed into an unofficial “fourth branch of the government” that provides additional checks and balances by scrutinizing what government is doing and exposing corruption. One significant restraint on reporting for many years was the threat of libel suits brought by the public officials whom the media criticized. Then, in the case of *New York Times Co. v. Sullivan* (1964), the Supreme Court ruled that the media could not be convicted of libeling public officials, unless their accusers could prove malicious intent, not simply criticism or inaccuracies. This ruling substantially reduced the media’s liability for libel, which enabled reporters to question and criticize government officials more freely.

During the Vietnam War the New York Times, Washington Post, and other newspapers obtained and published still classified government documents, known as the Pentagon Papers. These documents detailed the history of how the United States entered the war. President Richard Nixon asked the courts to issue injunctions to stop the papers from publishing any more of these documents, an action called prior restraint. The Nixon administration argued that release of the documents would gravely harm national security. Yet, when the administration cited specific examples of such vital secrets, the newspapers were able to demonstrate that the information was already publicly available through other sources. The most damaging revelation in the Pentagon Papers was not classified information but evidence of the government’s poor decisionmaking. Through the course of the trial, it became apparent that the administration’s primary motivation for suppressing publication was to avoid the perception of weakness in allowing the material to leak out. In the case of *New York Times v. United States* (1971), the Supreme Court ruled in favor of the newspapers, responding that the government had failed to show a “compelling interest” in restricting the right of a free press. “The press was to serve the governed, not the governors,” wrote Justice Hugo Black for the majority of the Court.

The First Amendment also protects people’s freedom to gather peacefully and to petition the government with their requests. These rights permitted the picketing and other protests during the civil rights and antiwar movements of the 1950s and 1960s, so long as they remained nonviolent. Americans have also made much use of the right to sign petitions. In the nineteenth century, anti-slavery groups sent Congress countless petitions demanding an end to the slave trade, and to other aspects of human slavery. Women’s groups also used petitions as a tactic in their long campaign to win the right to vote.

The Second Amendment guarantees the rights of citizens to “bear arms,” or
TAKING THE FIFTH

During the Cold War, when congressional investigators were trying to root out subversives in the government, many witnesses refused to answer their questions, citing their rights under the Fifth Amendment. Some people suggested repealing the amendment but Harvard law professor (and later solicitor general of the United States) Erwin Griswold reminded them of the necessity of the amendment in a 1955 booklet called “The 5th Amendment Today.”

I would like to venture the suggestion that the privilege against self-incrimination is one of the great landmarks in man’s struggle to make himself civilized... The establishment of the privilege is closely linked historically with the abolition of torture. Now we look upon torture with abhorrence. But torture was once used by honest and conscientious public servants as a means of obtaining information about crimes which could not otherwise be disclosed. We want none of that today, I am sure. For a very similar reason, we do not make even the most hardened criminal sign his own death warrant, or dig his own grave, or pull the lever that springs the trap on which he stands. We have through the course of history developed a considerable feeling of the dignity and intrinsic importance of the individual man. Even the evil man is a human being. If a man has done wrong, he should be punished. But the evidence against him should be produced, and evaluated by a proper court in a fair trial. Neither torture nor an oath nor the threat of punishment should be used to compel him to provide the evidence to accuse or to convict himself.

own guns. Writing in The Federalist, Madison assured Americans that they need not fear the new government because of “the advantage of being armed, which you possess over the people of almost every other nation.” The amendment couples the right of individuals to own guns with the responsibility of forming state militias, to be called on in times of emergency. Today these militias are known as the National Guard. Congress and the courts have reasoned that the Second Amendment does not limit the federal government from enacting certain forms of gun control, such as requiring registration and a waiting period when purchasing firearms, prohibiting children and convicts from owning guns, or declaring certain weapons illegal.

The next six amendments in the Bill of Rights deal with legal rights. They protect one’s home from being taken over by the military—outlawing a practice that the British had employed during the American Revolution, when they quartered military troops in private homes. They further protect people’s homes, as well as their persons, papers, and other property, against unreasonable search and seizure by the authorities. The Fourth Amendment requires that police first obtain search warrants when hunting for incriminating evidence. It does not define “unreasonable,” however, and left the term for the courts to determine. In the twentieth century, electronic eavesdropping was deemed a violation of the Fourth Amendment, so that authorities must obtain legal permission to conduct wiretapping in criminal investigations. The Fourth Amendment assumes that people have a right to privacy and has been cited in many instances where people believe their privacy has been violated.

The Fifth Amendment safeguards the rights of anyone accused of a crime. It prohibits defendants from being tried again twice for the same crime if they have already been acquitted (a practice called “double jeopardy”). Nor can people be forced to give damaging testimony against themselves (“self-incrimination”). Such rights protect the innocent as well as the guilty, and some critics have complained that they hamper law enforcement. In the 1940s and 1950s, when congressional committees conducted investigations into Communist subversion and espionage, many witnesses “took the Fifth.” They refused to testify whether they had been members of the Communist Party or to name others who might have been involved. Government employees, including teachers, were fired from their jobs if they cited the Fifth Amendment when they declined to answer questions. The Supreme Court later in Watkins v. United States (1957) ruled that witnesses before congressional committees retained all their constitutional protections, including that against self-incrimination.

The Watkins ruling came too late for the popular writer Dashiell Hammett, whose crime novels included The Maltese Falcon (1930) and The Thin Man (1934). During the Great Depression, in 1937, Hammett had joined the Communist Party and was the trustee of a bail fund established by the Civil Rights Congress, later identified as a Communist dominated organization. Called to testify before the House UnAmerican Activities Committee in 1947, Hammett was asked to “name names” of those who had contributed money to the fund. He refused to provide information that might jeopardize people’s reputations and careers. Despite his prominence, Hammett was convicted of contempt of Congress for not answering these questions, and spent six months in a federal prison in 1951.

The Sixth Amendment upholds a defendant’s right to a speedy and fair trial. The Seventh ensures that in civil cases (those not involving criminal charges)
both the plaintiff (who makes the charges) and the defendant have the right to a trial by jury, so long as one side demands it. The Eighth Amendment requires that bail and fines should not be set excessively high, and that “cruel and unusual” punishment not be inflicted on those found guilty. This amendment has given rise to a debate as to whether the death penalty can be considered cruel and unusual punishment.

Following this list of specific prohibitions, the Ninth and Tenth Amendments added some broad generalizations. One reason why James Madison had initially opposed a Bill of Rights was his concern that not all rights could be anticipated and enumerated. The Ninth Amendment maintains that the people have other rights that cannot be suppressed simply because they are not mentioned in the Bill of Rights. For many years the Ninth Amendment went essentially unused. It was revived in the 1965 case of Griswold v. Connecticut, when the Supreme Court struck down a state law banning contraceptives. The justices cited the Bill of Rights collectively in asserting people’s right to privacy in marital relations, and noted that the Ninth Amendment protected rights not specifically guaranteed in the Constitution. As Louis D. Brandeis wrote in an 1890 Harvard Law Review article (before he joined the Supreme Court), “the right to life has come to mean the right to enjoy life—the right to be let alone.”

The Tenth Amendment stated that those powers not delegated to the U.S. government belonged to the states. Those who advocate a “strict construction” of the Constitution—that is, applying exactly what is written in it and no more—insist that the federal government may not perform any functions that are not specifically enumerated in the Constitution. Defenders of states rights complain that the growth of the federal government consumed many responsibilities that should have been left to the states. Yet, Chief Justice John Marshall reasoned in the case of McCulloch v. Maryland (1819) that the Constitution could not an-

A CONSUMER ADVOCATE DEFENDS THE RIGHT OF TRIAL BY JURY

Consumer advocate Ralph Nader described the value of jury trials in civil cases in his article “The Individual as Citizen,” which was published in 1992 in The United States Constitution: Roots, Rights, and Responsibilities.

The Seventh Amendment to the federal Constitution preserves the right of trial by jury “in suits at common law.” In recent years, that amendment has extended some remarkable benefits to the public. It was a worker sickened by asbestos who began the massive litigation that exposed the product’s health risks as well as the lengthy and very extensive cover-up of those risks by certain of its manufacturers. In this case one man succeeded in humbling a large corporation into disclosing its illegal practices and compensating its victims. Also alerted into action and precaution were the long-indifferent regulatory agencies and society at large. But the litigant would not have had a chance had he been unable to secure his right to jury trial. Juries are instruments of law that reduce the disparity of power between the haves and the have-nots. At present, a mounting attack on juries and the jury system in civil liability cases is being waged by insurance companies, trade associations, and other corporations. Recently one of their lobbies offered legislation to Congress that would preempt or limit various decisions made by juries in state courts. This lobby is testing the waters, for it has a long history of favoring replacement of the jury system with compensation boards operated by political appointees. The core word they use is “predictability”; the real word is “controllability.”
participate all the powers that the national government would need to meet future circumstances, and that therefore the provision that Congress could make all laws “necessary and proper” to carry out its responsibilities implies additional powers.

Tensions between these two positions reappear throughout American history. For instance, when the federal government tried to prohibit child labor, the Supreme Court in *Hammer v. Dagenhart* (1918), struck down these efforts as something that was more proper for the states to determine. A generation later, the Fair Labor Standards Act of 1938 again abolished child labor, and this time the courts accepted the law as constitutional.

Wartime fears have often strained the guarantees of the Bill of Rights. Responding to emergency situations, the government has argued for limiting individual rights to protect the national security. During the Civil War, President Abraham Lincoln suspended the right of habeas corpus to hold Confederate sympathizers without trial. By this method he prevented Maryland legislators from voting to secede, which would have isolated the capital of Washington, D.C., from the North. Lincoln explained that it was necessary for him to stretch the Constitution in order to save it. Not until after the war had been won did the Supreme Court uphold habeas corpus in the 1866 case of *Ex Parte Milligan*. During the First World War, the government prosecuted those who made public speeches against the war and the draft. During the Second World War, it sent thousands of Japanese Americans on the West Coast to inland internment centers. The Supreme Court ruled the internment camps unconstitutional in 1994.

In 1990, the U.S. government formally apologized and paid reparations to the surviving internment camp prisoners. Following the terrorist attacks on September 11, 2001, Congress quickly passed the U.S.A. Patriot Act, which among other provisions vastly expanded the government’s access to private records, from medical records to books that people check out of libraries.

The Bill of Rights protects people’s civil liberties, which allow them to live their own lives according to their own consciences. Civil rights, by contrast to liberties, generally refer to matters of equality. Just before the Civil War, in the 1857 case of *Dred Scott v. Sandford* the Supreme Court had ruled that slaves were not citizens and, therefore, had no constitutional rights. Following the war, the Thirteenth, Fourteenth, and Fifteenth Amendments outlawed slavery, forbade racial discrimination in voting, and guaranteed all citizens equal protection of the laws. Yet the civil rights embodied in these amendments went largely unenforced for the next century. When the southern states adopted racial segregation, the Supreme Court upheld the notion of “separate but equal” in the 1896 case of *Plessy v. Ferguson*. Later in *Brown v. Board of Education* (1954) the Court concluded that in education, separate was not equal. Congress further struck down racial segregation with the Civil Rights Act of 1964.

The argument then switched when affirmative action programs offered racial minorities an advantage in college enrollment, government contracts, and other areas. Critics complained that these programs amounted to “reverse discrimination.” In *Regents of the University of California v. Bakke* (1978) the Supreme Court ruled in favor of a white student who had not been admitted into medical school despite having higher test scores than some of the minorities who had been accepted. The Court did not strike down all affirmative action plans, but said that universities could not set fixed enrollment quotas specifically for minority students. Otherwise, the Supreme Court has recognized that diver-
sity in education is constitutionally permissible, and that race can be considered as a factor in admissions.

An important right not guaranteed by the Bill of Rights was the right to vote. At the time that the first ten amendments were ratified, most of the states limited voting to white men who owned property. The states eventually dropped property requirements for voting, but it took several constitutional amendments to extend voting privileges to African Americans, women, and those between the ages of eighteen and twenty-one. In a democracy, the right to vote is as critical as any others guaranteed in the Constitution, and the responsibility of every citizen to exercise.
Lesson: Our Heritage of Liberty

Standards

**National Civics and Government Standards**
*National Standards for Civics and Government (1994)* Center for Civic Education

- Grades 5-8
- Grades 9-12

**Common Core State Standards**
*English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects*
Source: http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf

Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects
(Reading for Literacy in History/Social Studies and Writing)

- Grades 6-8
- Grades 10-11
- Grades 11-12
Grades 5-8 Content Standards Alignment
The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 5-8</th>
<th>Lesson: Our Heritage of Liberty</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.A.2. Necessity and purposes of government. Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</td>
<td>The colonists were successful in making sure that one purpose of the federal government would be to protect the rights of individuals. This limited what the government could do to people.</td>
</tr>
<tr>
<td>I.B.1. Limited and unlimited governments. Students should be able to describe the essential characteristics of limited and unlimited governments.</td>
<td>The powers of a limited government are restricted to those in its constitution.</td>
</tr>
<tr>
<td>I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes constitutions serve.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights. It also gives certain powers and responsibilities to the states.</td>
</tr>
<tr>
<td>II.A.1. The American idea of constitutional government. Students should be able to explain the essential ideas of American constitutional government.</td>
<td>The Bill of Rights was added to the Constitution to limit the power of the federal government and make it responsible for protecting certain rights. The People are the ultimate source of the power in American constitutional government.</td>
</tr>
<tr>
<td>II.B.1. Distinctive characteristics of American society. Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</td>
<td>The tyranny and abuse of power experienced by the colonists contributed greatly to the struggle to add a bill of rights. Anti-Federalists wanted rights written into the Constitution.</td>
</tr>
<tr>
<td>II.C.1. American identity. Students should be able to explain the importance of shared political values and principles to American society.</td>
<td>The Bill of Rights and the rights it contains are central to the concept of liberty in America.</td>
</tr>
<tr>
<td>II.D.1. Fundamental values and principles. Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</td>
<td>Values fundamental to American civic life include individual rights, liberty, justice. Principles fundamental to American constitutional democracy include federalism, individual rights, separated and shared powers.</td>
</tr>
<tr>
<td>National Standards for Civics and Government</td>
<td>Lesson: Our Heritage of Liberty</td>
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<tr>
<td>---------------------------------------------</td>
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</tr>
<tr>
<td><strong>Gr. 5-8</strong></td>
<td><strong>Understanding Reinforced by the Lesson</strong></td>
</tr>
<tr>
<td><strong>Specific Content Standards</strong></td>
<td><strong>II.D. 2. Conflicts among values and principles in American political and social life.</strong> Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles are in conflict.</td>
</tr>
<tr>
<td></td>
<td><strong>II.D.3. Disparities between ideals and reality in American political and social life</strong> Students should be able to evaluate, take, and defend positions on issues concerning ways and means to reduce disparities between American ideals and realities.</td>
</tr>
<tr>
<td></td>
<td><strong>III.A.1. Distributing, sharing, and limiting powers of the national government.</strong> Students should be able to explain how the powers of the national government are distributed, shared, and limited.</td>
</tr>
<tr>
<td></td>
<td><strong>III.A.2. Sharing of powers between the national and state governments.</strong> Students should be able to explain how and why powers are distributed and shared between national and state governments in the federal system.</td>
</tr>
<tr>
<td></td>
<td><strong>III.E.3. Judicial protection of the rights of individuals.</strong> Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.</td>
</tr>
<tr>
<td></td>
<td><strong>V.C.2. Civic responsibilities.</strong> Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</td>
</tr>
</tbody>
</table>
| | **V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy.** Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy. | Traits that enhance citizen effectiveness and support a well functioning constitutional democracy:  
- respect for the rights of other individuals  
- courage  
- civility  
- honesty  
- open mindedness  
- critical mindedness  
- persistence  
- negotiation and compromise  
- patriotism |
<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 5-8</th>
<th>Lesson: Our Heritage of Liberty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>V.E.3. Forms of political participation.</strong> Students should be able to describe the means by which Americans can monitor and influence politics and government.</td>
<td>Early in this country, citizens were concerned about rights and “fought” to get them protected by the Constitution. They argued, debated, and voted to ratify, or not. Their voice mattered.</td>
</tr>
<tr>
<td><strong>V.E.5. Knowledge and participation.</strong> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</td>
<td>A constitutional democracy relies on its citizens to keep the power of the government in check. The voice of the people ratified the Constitution and the Bill of Rights.</td>
</tr>
</tbody>
</table>
Grades 9-12 Content Standards Alignment
The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 9-12</th>
<th>Lesson: Our Heritage of Liberty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.A.3. The purposes of politics and government.</strong> Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.</td>
<td>The colonists were successful in making sure that one purpose of the federal government would be to protect the rights of individuals. This limited what the government could do to people.</td>
</tr>
<tr>
<td><strong>I.B.1. Limited and unlimited governments.</strong> Students should be able to explain the essential characteristics of limited and unlimited governments.</td>
<td>The powers of a limited government are restricted to those in its constitution.</td>
</tr>
<tr>
<td><strong>I.C.2. Purposes and uses of constitutions.</strong> Students should be able to explain the various purposes served by constitutions.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights. It also gives certain powers and responsibilities to the states.</td>
</tr>
<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the central ideas of American constitutional government and their history.</td>
<td>The Bill of Rights was added to the Constitution to hold the federal government responsible for protecting certain rights. The People are the ultimate source of the power in American constitutional government.</td>
</tr>
</tbody>
</table>
| **II.D.3. Fundamental values and principles.** Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy. | Values fundamental to American civic life include
  - individual rights
  - liberty
  - justice

Principles fundamental to American constitutional democracy include
  - federalism
  - individual rights
  - separated and shared powers |
<p>| <strong>III.A.1. Distributing governmental power and preventing its abuse.</strong> Students should be able to explain how the United States Constitution grants and distributes power to national and state government and how it seeks to prevent the abuse of power. | The Constitution limits the power of government. The only power the government has is specifically named in the Constitution. |</p>
<table>
<thead>
<tr>
<th><strong>Specific Content Standards</strong></th>
<th><strong>Understandings Reinforced by the Lesson</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>III.C.3. Major responsibilities of state and local governments.</strong> Students should be able to identify the major responsibilities of their state and local governments and evaluate how well they are being fulfilled.</td>
<td>States also have a role concerning rights. According to 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.”</td>
</tr>
<tr>
<td><strong>III.D.1. Judicial protection of the rights of individuals.</strong> Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.</td>
<td>The Constitution ensures judicial fairness and protection of individual rights. Students identify amendments that provide for the judicial protection of rights.</td>
</tr>
<tr>
<td><strong>V.C.2. Civic responsibilities.</strong> Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</td>
<td>Civic responsibilities were taken seriously by the founders. They monitored that way government was functioning and realized a new plan was needed. The met to form a new structure and adopted the Constitution.</td>
</tr>
</tbody>
</table>
| **V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs.** Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs. | Traits that facilitate thoughtful and effective participation in public affairs include:  
- respect for the rights of other individuals  
- courage  
- tolerance of ambiguity  
- civility  
- honesty  
- open mindedness  
- critical mindedness  
- negotiation and compromise  
- patriotism  
- persistence |
<p>| <strong>V.E.1. The relationship between politics and the attainment of individual and public goals.</strong> Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals | Participation in the judicial process is not only a way to resolve current disputes, but a way to affect our way of life in the future by bringing justice to the people by way of the Constitution. |
| <strong>V.E.3. Forms of political participation.</strong> Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy. | Early in this country, citizens were concerned about rights and “fought” to get them protected by the Constitution. They argued, debated, and voted to ratify, or not. Their voice mattered. |
| <strong>V.E.5. Knowledge and participation.</strong> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy. | A constitutional democracy relies on its citizens to keep the power of the government in check. The voice of the people ratified the Constitution and the Bill of Rights. |</p>
<table>
<thead>
<tr>
<th><strong>Reading in History/Social Studies 6-8</strong></th>
<th><strong>Lesson: Our Heritage of Liberty</strong></th>
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<tbody>
<tr>
<td><strong>Key Ideas and Details</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.1 Cite specific textual evidence to support analysis of primary and secondary sources.</td>
<td>Students highlight text from an amendment that supports a particular right.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.</td>
<td>Students read a transcription of the Bill of Rights to identify specific rights then determine the meaning of the right.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.3 Identify key steps in a text’s description of a process related to history/social studies (e.g., how a bill becomes law, how interest rates are raised or lowered).</td>
<td>A graphic organizer is provided to identify steps in the problem-solving process that led to the addition of a bill of rights to the Constitution.</td>
</tr>
<tr>
<td><strong>Craft and Structure</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.4 Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.</td>
<td>History and civics terms are provided for review and study. Students define “rights” from the perspective of the colonists.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.6 Identify aspects of a text that reveal an author’s point of view or purpose (e.g., loaded language, inclusion or avoidance of particular facts).</td>
<td>Language in the Bill of Rights is used to determine what rights were valued by the founders.</td>
</tr>
<tr>
<td><strong>Integration of Knowledge and Ideas</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.7 Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.</td>
<td>Students synthesize information from print and online sources (e.g., videos, books, excerpts)</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.8 Distinguish among fact, opinion, and reasoned judgment in a text.</td>
<td>Students recognize the use fact, opinion, and reasoned judgment used by those arguing for and against a bill of rights.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.9 Analyze the relationship between a primary and secondary source on the same topic.</td>
<td>Students read the Bill of Rights in the original language and consult sources about what it means.</td>
</tr>
<tr>
<td><strong>Range of Reading and Level of Text Complexity</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.6-8.10 By the end of grade 8, read and comprehend history/social studies texts in the grades 6–8 text complexity band independently and proficiently.</td>
<td>Students engage informational text that includes material appropriate for this grade band. (See text exemplars in Appendix B of the ELA standards)</td>
</tr>
<tr>
<td><strong>Writing 6-8</strong></td>
<td><strong>Lesson: Your Right to Remain Silent</strong></td>
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<tr>
<td><strong>Text Types and Purposes</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.1 Write arguments focused on discipline-specific content.</td>
<td>Questions and issues are presented that require written responses.</td>
</tr>
<tr>
<td><strong>Production and Distribution of Writing</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.6-8.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</td>
<td>Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer questions, reflect, analyze and interpret.</td>
</tr>
</tbody>
</table>
### Common Core State Standards
**Lesson: Our Heritage of Liberty**

| CCSS.ELA-Literacy.WHST.6-8.6 Use technology, including the Internet, to produce and publish writing and present the relationships between information and ideas clearly and efficiently. | Students use highlighting capabilities of appropriate software to identify specific words in an amendment right that supports the identified right. |
| Research to Build and Present Knowledge | Extension activities provide prompts for short research projects, including debates. |
| CCSS.ELA-Literacy.WHST.6-8.7 Conduct short research projects to answer a question (including a self-generated question), drawing on several sources and generating additional related, focused questions that allow for multiple avenues of exploration. | Students use information from informational texts to support answers to questions and their opinions. |
| CCSS.ELA-Literacy.WHST.6-8.9 Draw evidence from informational texts to support analysis, reflection, and research. | |
| Range of Writing | |
| CCSS.ELA-Literacy.WHST.6-8.10 Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences. | Students write for a variety of purposes (e.g., to explain, describe, list, answer questions, report, reflect). |
| Reading in History/Social Studies 9-10 | Lesson: Your Right to Remain Silent |
| Key Ideas and Details | Support from the Lesson |
| CCSS.ELA-Literacy.RH.9-10.1 Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information. | Students provide quotes from primary and secondary textual sources to support their responses. |
| CCSS.ELA-Literacy.RH.9-10.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text. | Students identify unique rights from a transcription of all ten amendments in the Bill of Rights. |
| CCSS.ELA-Literacy.RH.9-10.3 Analyze in detail a series of events described in a text; determine whether earlier events caused later ones or simply preceded them. | Students explore the role of historical context and the order of events in determining the rights contained in the Bill of Rights. |
| Craft and Structure | History and civics terms are provided for review and study. Students define “rights” from the perspective of the colonists. |
| CCSS.ELA-Literacy.RH.9-10.4 Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science. | |
| Range of Reading and Level of Text Complexity | Students will engage informational text that includes material appropriate for this grade band. (See text exemplars in Appendix B of the ELA standards) |
| Writing 9-10 | Lesson: Your Right to Remain Silent |
| Text Types and Purposes | Support from the Lesson |
| CCSS.ELA-Literacy.WHST.9-10.1 Write arguments focused on discipline-specific content. | Questions and issues are presented that require written responses. |
| Production and Distribution of Writing | Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer questions, reflect, analyze and interpret. |
| CCSS.ELA-Literacy.WHST.9-10.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience. | |
### Common Core State Standards

**Lesson: Our Heritage of Liberty**

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<th>Standards</th>
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<tr>
<td><strong>Research to Build and Present Knowledge</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.6</td>
<td>Use technology, including the Internet, to produce, publish, and update individual or shared writing products, taking advantage of technology’s capacity to link to other information and to display information flexibly and dynamically. Links to Internet sources are included throughout the lesson. Electronic versions of resources are included to facilitate study.</td>
</tr>
<tr>
<td><strong>Extension activities provide prompts for short research projects, including debates.</strong></td>
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<tr>
<td><strong>Range of Writing</strong></td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.9-10.7</td>
<td>Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.</td>
</tr>
<tr>
<td><strong>Students use information from informational texts to support answers to questions and their opinions.</strong></td>
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</tr>
<tr>
<td><strong>Reading in History/Social Studies 11-12</strong></td>
<td><strong>Lesson: Your Right to Remain Silent</strong></td>
</tr>
<tr>
<td><strong>Key Ideas and Details</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.1</td>
<td>Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole. Students highlight appropriate text in a transcript of the Bill of Rights to support the right they identified.</td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.2</td>
<td>Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas. Students read a transcription of the Bill of Rights to identify specific rights then determine the meaning of the right.</td>
</tr>
<tr>
<td><strong>Craft and Structure</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.4</td>
<td>Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines faction in Federalist No. 10). History and civics terms are provided for review and study. Students define “rights” from the perspective of the colonists.</td>
</tr>
<tr>
<td><strong>Integration of Knowledge and Ideas</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.5</td>
<td>Analyze in detail how a complex primary source is structured, including how key sentences, paragraphs, and larger portions of the text contribute to the whole. Students analyze the original language of the first ten amendments to identify and explain the unique rights in each. Key words and phrases that support explain the right are highlighted.</td>
</tr>
<tr>
<td><strong>Students synthesize information from print and online sources (e.g., videos, articles, books, excerpts)</strong></td>
<td></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.9</td>
<td>Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources. Students use information from multiple sources to gain a deeper understanding of the risks, costs, and benefits involved in the struggle to get rights added to the Constitution.</td>
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</tbody>
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<tr>
<th>Range of Reading and Level of Text Complexity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CCSS.ELA-Literacy.RH.11-12.10 By the end of grade 12, read and comprehend history/social studies texts in the grades 11–CCR text complexity band independently and proficiently.</td>
<td>Students will engage informational text that includes material appropriate for this grade band. (See text exemplars in Appendix B of the ELA standards)</td>
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<table>
<thead>
<tr>
<th>Writing 11-12</th>
<th>Lesson: Your Right to Remain Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Text Types and Purposes</strong></td>
<td><strong>Support from the Lesson</strong></td>
</tr>
<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.1 Write arguments focused on discipline-specific content.</td>
<td>Questions and issues are presented that require written responses.</td>
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<tr>
<td><strong>Production and Distribution of Writing</strong></td>
<td></td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</td>
<td>Students have different writing tasks and write for different purposes. These include writing to explain, describe, outline, convey personal opinion, answer questions, reflect, analyze, and interpret.</td>
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<tr>
<td><strong>Research to Build and Present Knowledge</strong></td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.7 Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.</td>
<td>Extension activities provide prompts for short research projects, including debates.</td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.9 Draw evidence from informational texts to support analysis, reflection, and research.</td>
<td>Students use information from multiple texts to support their answers to questions and use as evidence when giving reasons for a position.</td>
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<tr>
<td><strong>Range of Writing</strong></td>
<td></td>
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<tr>
<td>CCSS.ELA-Literacy.WHST.11-12.10 Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.</td>
<td>Students write for a variety of purposes (e.g., to explain, describe, outline, answer questions, reflect).</td>
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