

A history



of the Bill of Rights

IT'S YOUR *Right*



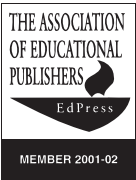
IT'S YOUR
Right



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What Is the Bill of Rights?

Can you imagine being forced by the government to attend a certain church?

How about being arrested and sent to prison without a trial? Or knowing that police could come to your house without a warrant, even in the middle of the night, and take one of your family members away?

People in other countries and at other times in history have suffered under systems that allowed things like this to happen. But Americans are protected from such occurrences, thanks to our Bill of Rights — a single document that comprises the first 10 amendments to the U.S. Constitution. *

The Bill of Rights guarantees that U.S. citizens can enjoy certain freedoms — without the threat of interference. You're probably familiar with many of them: freedom of speech and of the press; freedom of religion; and freedom from unreasonable searches and seizures. Americans also have such guarantees as the right to a jury trial and to legal counsel (a lawyer) when accused of a crime, as well as protection against cruel and unusual punishment.

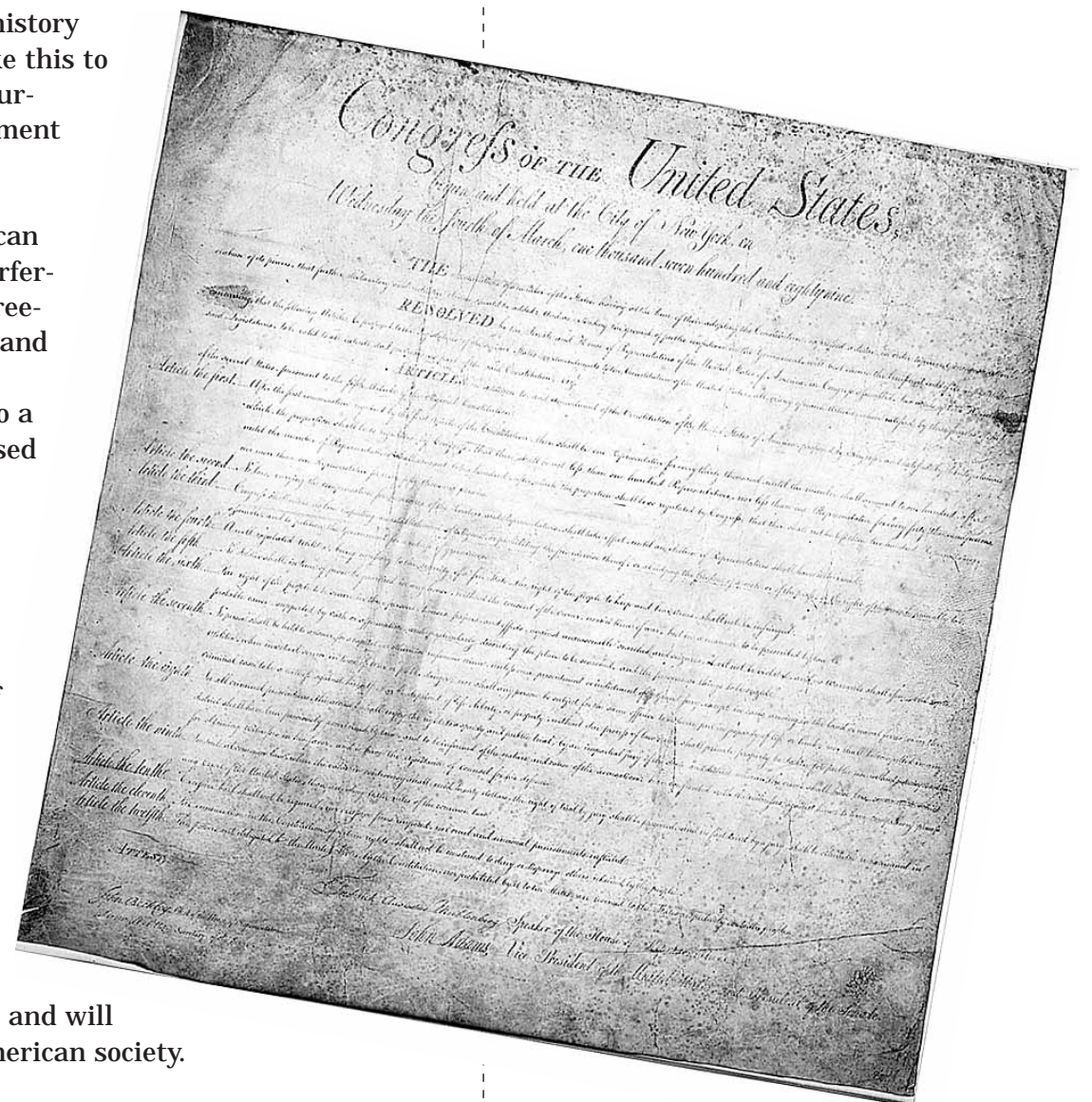
None of this sounds remarkable to us today; we are so accustomed to our constitutional rights that we tend to take them for granted. But there was a time when these rights weren't guaranteed. It took a long time and a lot of hard work before the Bill of Rights was established.

Following is the story of the struggle to create a Bill of Rights and the effects this important document has had and will continue to have on American society.

A right is something to which a person has a just claim by law or nature.

ACTIVITIES

1. Discuss the rights you have as members of a family, as students in school, and as citizens in the United States. Then create an "It's MY Right" chart using words and pictures cut out of the newspaper. Divide the chart into three parts — one for family rights, one for school rights, and one for the rights of citizenship. Are your rights similar in each situation? Discuss.
2. A guarantee is a promise or assurance that something will be done. The U.S. Constitution guarantees that American citizens will have certain rights and that those rights will be protected by law. Look through your newspaper for advertisements for products and services that are guaranteed. Then create a newspaper ad that tells people about the United States and its guarantee of basic rights (the Bill of Rights).
3. Write a Bill of Rights for your classroom. As a class, discuss the rights to include in the document, then vote on whether to "ratify" each one.



* The 10 amendments that comprise the Bill of Rights are listed on pages 8 and 9.

“ (A) bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse. ”

— Thomas Jefferson

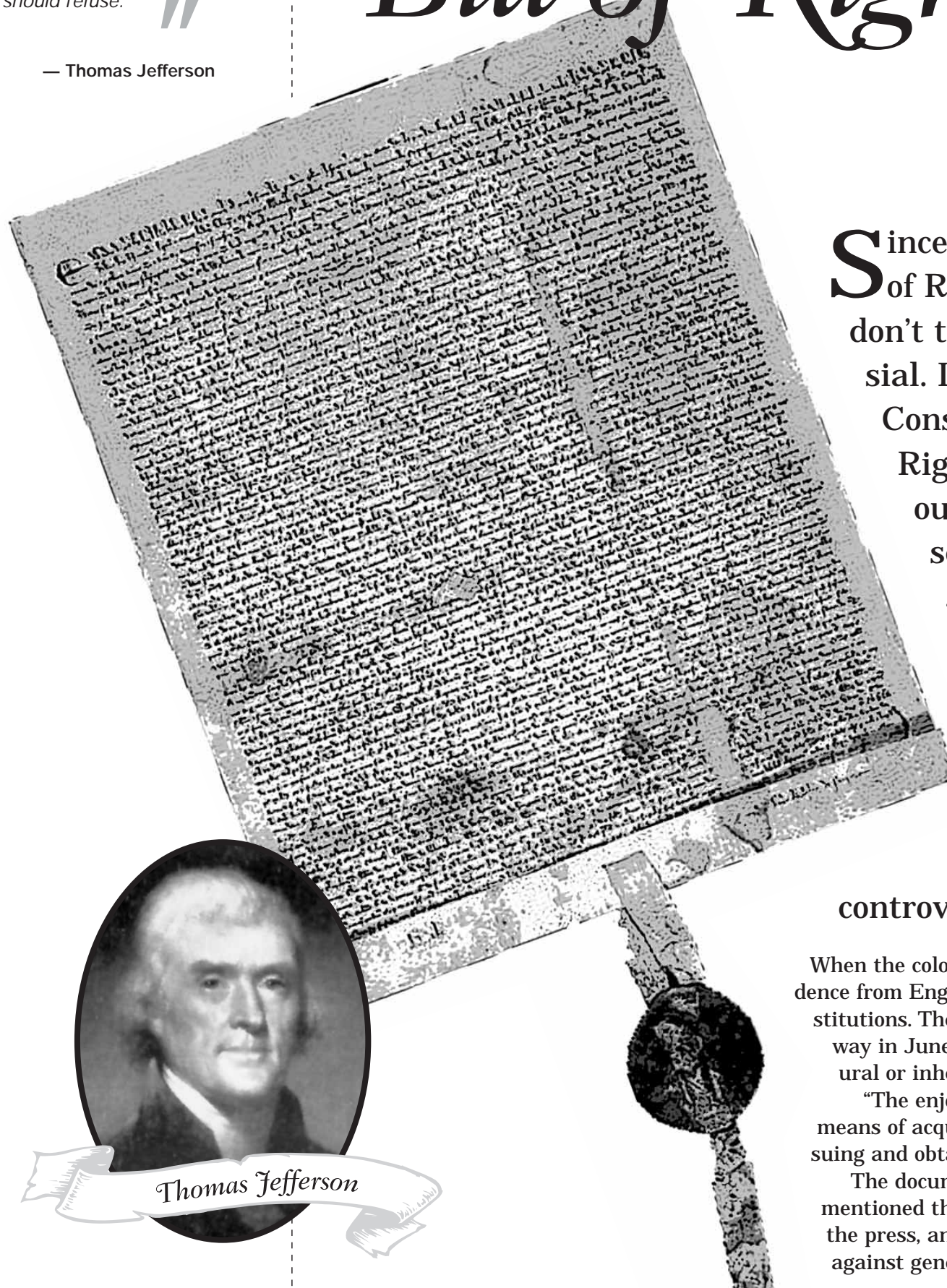
Before the Bill of Rights

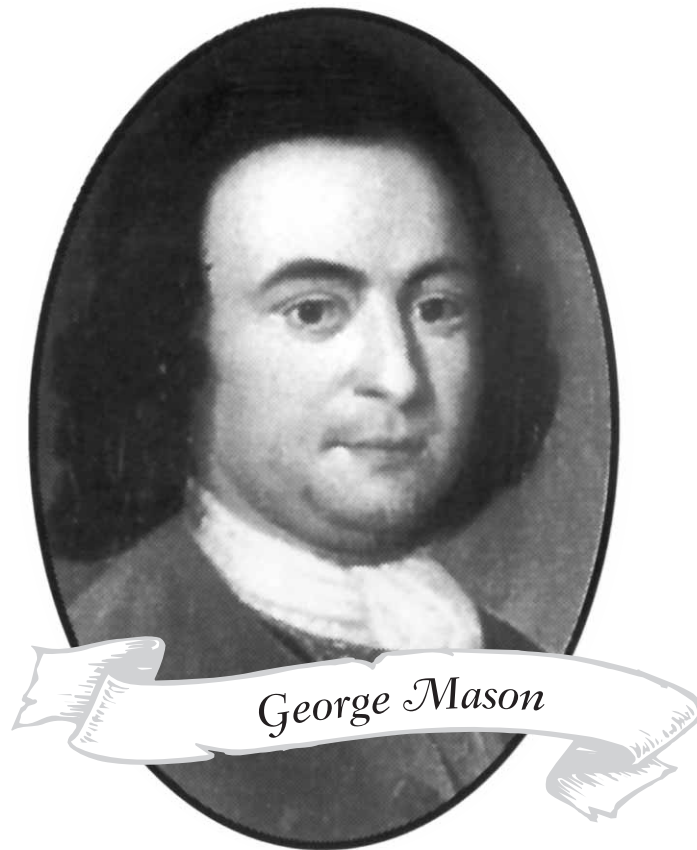
Since many of us take the Bill of Rights for granted, we don't think of it as controversial. Like the rest of the Constitution, the Bill of Rights is so much a part of our heritage that it almost seems written in stone. Just over 200 years ago, though, the nation was in the difficult process of being born, and the issue of a Bill of Rights was at the center of a heated controversy.

When the colonies began their move toward independence from England, they started developing state constitutions. The Virginia Declaration of Rights led the way in June of 1776 with its insistence on the natural or inherent rights of man:

“The enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”

The document, written mainly by George Mason, mentioned the rights of accused persons, freedom of the press, and freedom of religion. It also spoke out against general warrants and standing armies.





George Mason

The Virginia Declaration influenced the constitutions of the other states — most of which included some mention of personal rights and the means to safeguard them, and helped pave the way for the Declaration of Independence.

The men who were putting these constitutions together were also influenced by their English heritage. The tradition of personal rights recognized by law in England went back as far as 1215, when the Magna Carta was signed. Over time, English common law evolved to include protection of the life, liberty, and property of every free person from arbitrary action by the government.

So there were precedents to the Bill of Rights, both in England and in the colonies. In America, however, the concept of rights was carried much further than it had ever

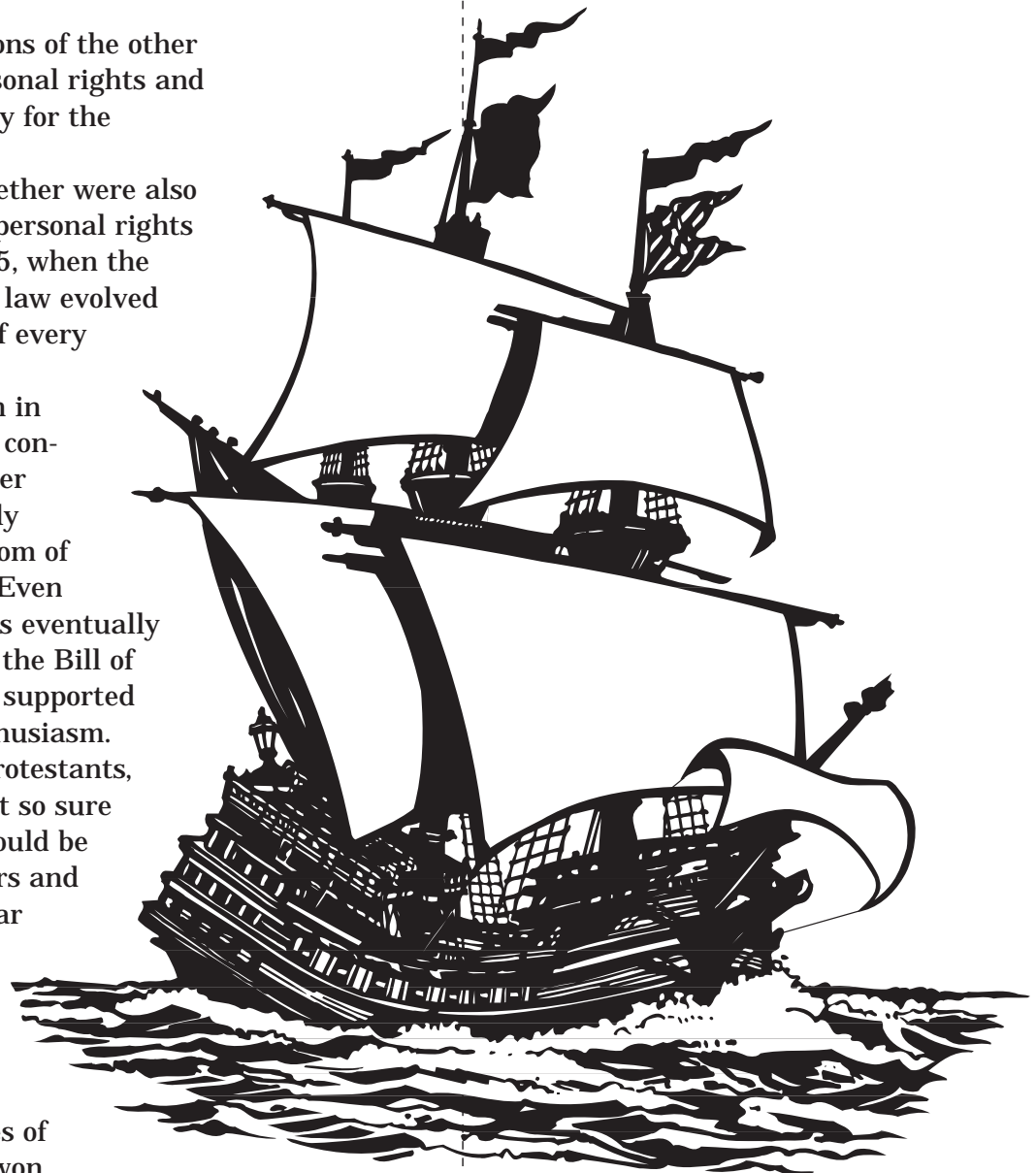
been before, especially with respect to freedom of speech and religion. Even though these liberties eventually found their way into the Bill of Rights, not everyone supported them with equal enthusiasm. Some mainstream Protestants, for instance, were not so sure religious freedom should be extended to dissenters and members of unpopular religions.

Far from being written in stone, the rights we consider “basic” today faced a difficult series of hurdles before they won official recognition.

The American Bill of Rights traces its roots to the English Magna Carta. Even the term “Bill of Rights” was English — England’s Bill of Rights was established in 1689. When English settlers came to the New World, they brought with them firmly established ideas on rights.

ACTIVITIES

4. Do research to find out more about the Magna Carta and how it is related to the American Bill of Rights. Write a brief report.
5. To better understand the colonists’ desire to have their basic rights protected, conduct research to find out what it was like to live in a monarchy — the form of government under which many of them lived before coming to America. What conclusions can you draw? Following discussion, pair up with a classmate and role-play an interview between a newspaper reporter and a person who lives in a monarchy.
6. For people to live in freedom, they must not be denied their basic rights. Search the newspaper for a story about someone who has been denied his rights. Identify the right(s) denied, who denied them, and the consequences. Did the government follow through on its guarantee to protect the victim? Discuss.

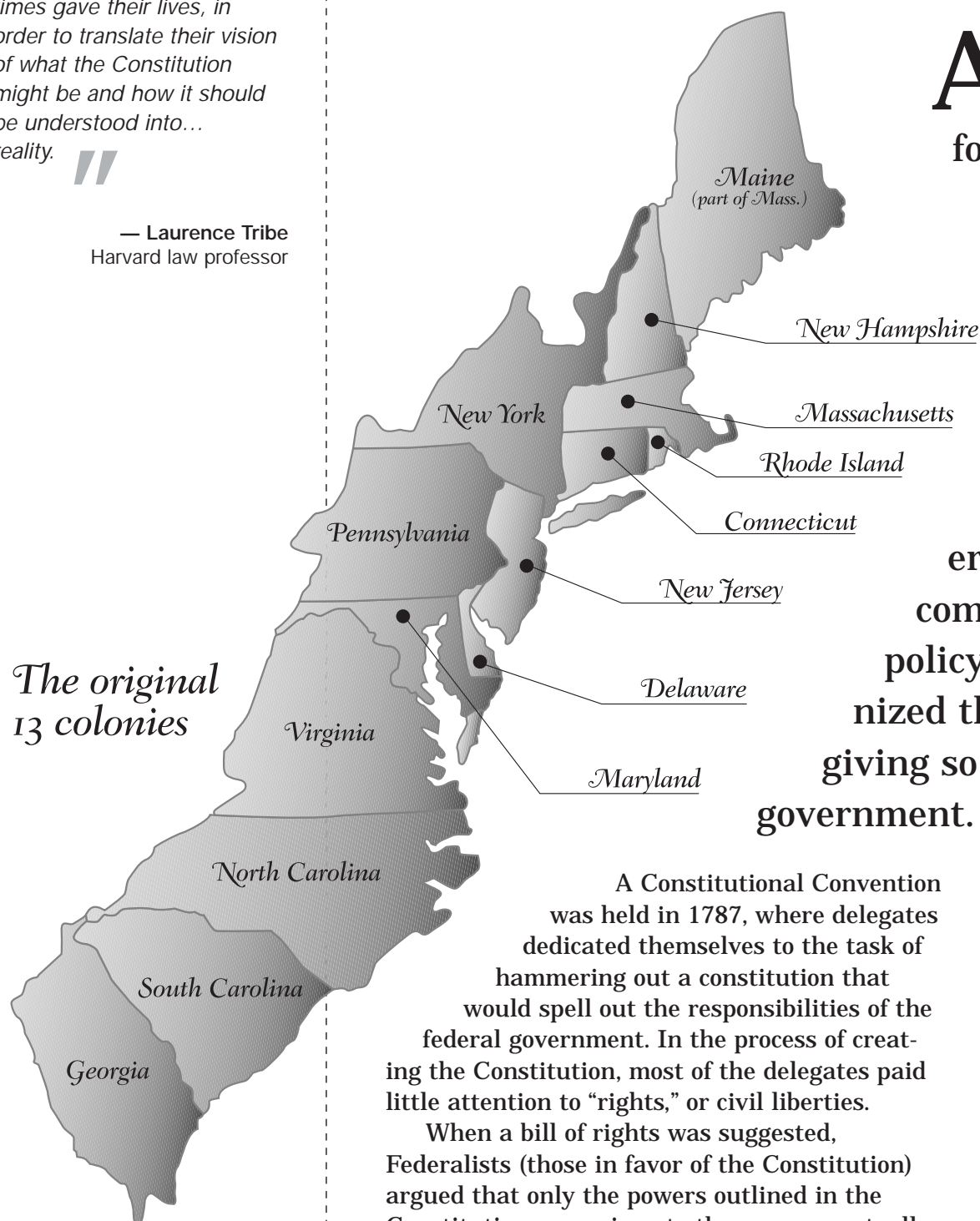


"I think the real framers (of the Constitution) were not only the gentlemen who met in Philadelphia and those who drafted and ratified the crucial amendments ...but also the many people who, often in the roles of dissent and rebellion, sat in, or marched or sang, or sometimes gave their lives, in order to translate their vision of what the Constitution might be and how it should be understood into... reality."

— Laurence Tribe
Harvard law professor

How Our Rights Were Won

After America won the war for independence, the now former colonists set about establishing their own system of government. It was soon clear that the confederation of states as it existed then was weak and inadequate. The young nation needed a strong central government to levy taxes, regulate commerce, and conduct foreign policy. Though many people recognized this need, some didn't trust giving so much power to a central government.



A Constitutional Convention was held in 1787, where delegates dedicated themselves to the task of hammering out a constitution that would spell out the responsibilities of the federal government. In the process of creating the Constitution, most of the delegates paid little attention to "rights," or civil liberties.

When a bill of rights was suggested, Federalists (those in favor of the Constitution) argued that only the powers outlined in the Constitution were given to the government; all other rights would be retained by the people. Most of these rights were mentioned in the state constitutions already, so, they said, a bill of

rights was unnecessary. Some Federalists even thought too much discussion of "rights" could damage the prospects of getting the Constitution ratified. They thought the most urgent task was to get the framework of government in place, and they did not want to get bogged down arguing about rights.

Antifederalists, on the other hand, believed that it was dangerous not to include a bill of rights in the Constitution. Their experience under British rule had made them wary of the possibilities of governmental abuse. If everyone agreed that certain rights and liberties were retained by the people, they reasoned, why not go ahead and spell them out in the Constitution?

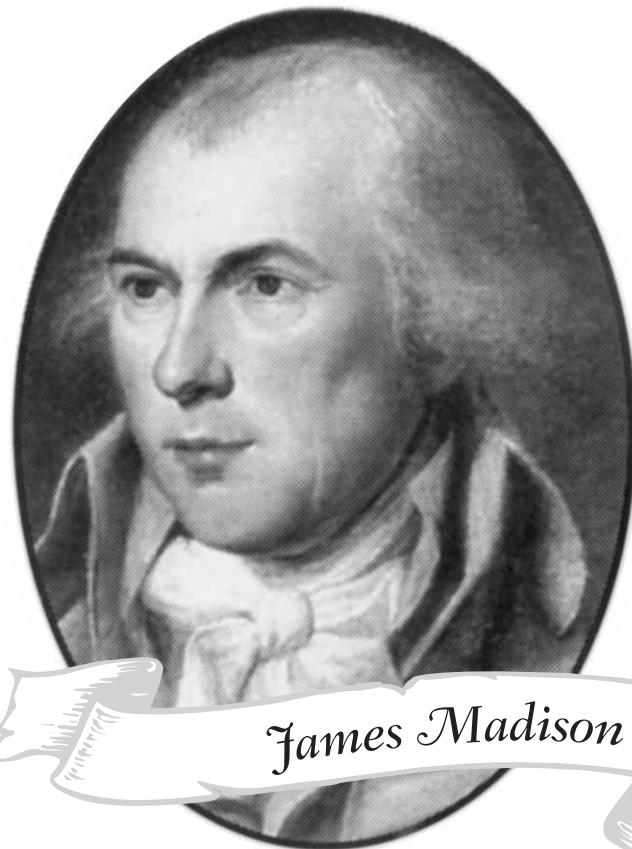
In the end, the Federalists prevailed, and the Constitution was sent to the states for ratification without a bill of rights. This victory, however, was short-lived. It soon became apparent that in addition to the Antifederalist politicians, the people themselves were concerned there was no bill of rights. Most of the states ratified the Constitution only with the understanding that a bill of rights would be added to it. Rhode Island and North Carolina refused to ratify it at all.

James Madison was one Federalist who realized there needed to be a compromise. During the first Congress, Madison championed the cause for including a bill of rights and had even prepared his own version based on extensive study of American and English thinking on the topic of liberties. Although few shared his commitment at first, his persistence eventually brought other Congressmen around.

In 1789, Madison presented his plan for a bill of rights. A House committee, which included Madison, was appointed to prepare a formal proposal. After much discussion, 17 articles, in the form of amendments to the Constitution, passed by the House. The Senate then whittled the amendments down further. A conference committee eventually proposed a final set of 12 amendments, which were passed in September 1789.

Once Congress had passed them, it was up to the states to ratify the amendments. Eventually, 11 states did, though the first two amendments, which dealt with congressional apportionment and pay, were dropped by most of them. After the 11th state, Virginia, ratified the amendments on Dec. 15, 1791, the Bill of Rights became a part of the U.S. Constitution.

At that time, it was considered a *Federal* Bill of Rights only. It wasn't until the early 20th century that the Supreme Court began to rule that the states, too, must abide by the Bill of Rights.



James Madison

The rights that James Madison and others wanted to protect from government abuse were referred to in the Declaration of Independence as "unalienable rights."

In other words, they are rights that governments may not take away from people. These rights are considered part of a "higher law" and are superior to governmental laws.

ACTIVITIES

7. Pretend you are a reporter present during the debate over the Bill of Rights and its subsequent approval in Congress. Write a news story about this event, including such information as WHO was present, WHAT the issues were, WHEN approval took place, WHERE it happened, and WHY events turned out as they did.

8. Now, assume the role of newspaper editor in 1789. Write an editorial in support of or against the Bill of Rights, being sure to include the reasons for your position.

9. For discussion: The Bill of Rights was written in such broad language that it appeared no one was excluded. That was not the case, though. In fact, whole groups of people were left out, including Native Americans, blacks, and women. It would take years — and three more amendments to the Constitution — before these groups would be granted the rights of full citizens. Why do you think this occurred? If you were a member of one of these groups, what effect would this exclusion have had on you?

A history



The Bill of Rights

The first 10 Amendments to the Constitution

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.

(People have the right to practice the religion of their choice and to express their opinions freely; the press cannot be controlled by the government; people may meet freely and may ask the government to address their complaints.)

Amendment II

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.

(State militias are important to the security of the states, so the government may not interfere with the right of the people to have guns. Interpretations of this amendment are controversial. Does this amendment mean anyone may have guns, or does it only refer to members of state militias?)

Amendment III

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

(The government cannot force any homeowner to house a soldier in his house, except when authorized by Congress during times of war.)

Amendment IV

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.

(People are protected from having themselves or their property searched or seized without good reason. A warrant must be issued for a search that specifies who or what is to be searched or seized; that warrant must be issued for a good reason, for example, when there is strong evidence linking a person to a crime.)

Amendment V

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.

(People have a right to a grand jury hearing when accused of a crime; the jury must decide if there is enough evidence against a person to require him or her to stand trial. A person cannot be tried twice for the same crime, forced to testify against himself, or put in jail or a mental hospital without a fair hearing. Private property cannot be taken by the government without fair payment.)

Amendment VI

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.

(People are entitled to fair jury trials and are to be told exactly what they are accused of. They are entitled to see their accusers face to face in court, to call witnesses on their own behalf, and to have the help of a lawyer for their defense.)

Amendment VII

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.

(In noncriminal cases, people have the right to a jury trial when the value in question exceeds \$20. This applies only to cases in federal courts. Juries have the final word.)

of the Bill of Rights

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tution as ratified by the states

Amendment VIII

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

(Bail and fines must be set at reasonable levels. Punishment for crimes must not be excessively harsh. A big question today: Is the death penalty a cruel and unusual punishment?)

Amendment IX

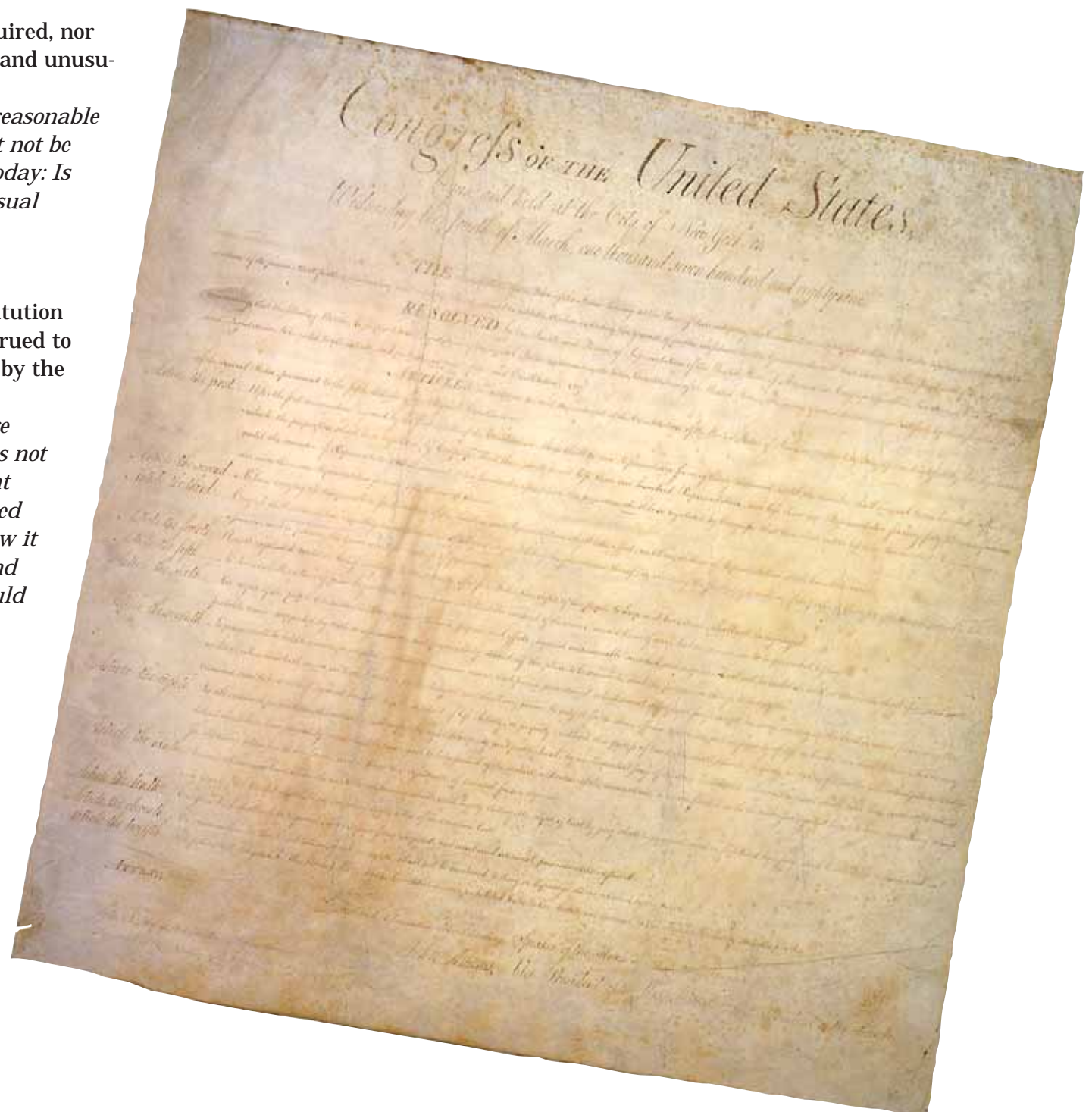
The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

(The fact that specific rights are listed here doesn't mean that rights not listed do not exist. This amendment was an answer to those who opposed the Bill of Rights because they knew it couldn't list every possible right and were afraid that those omitted would not be recognized.)

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.

(The U.S. government has only those powers given to it by the people. The states retain some governing power of their own, also subject to the will of the people.)



“ They could not have imagined, nor would they have accepted, that the document they were drafting would one day be (interpreted) by a Supreme Court to which had been appointed a woman and the descendant of an African slave. ”

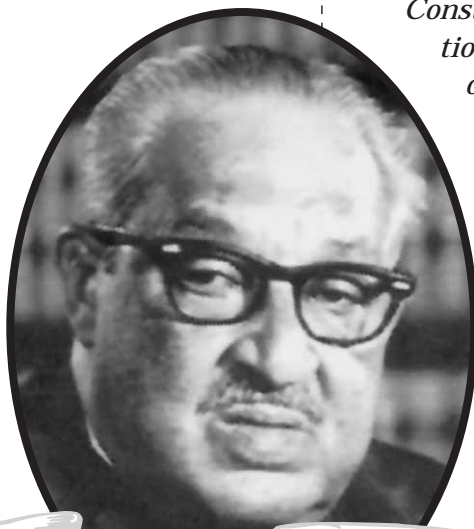
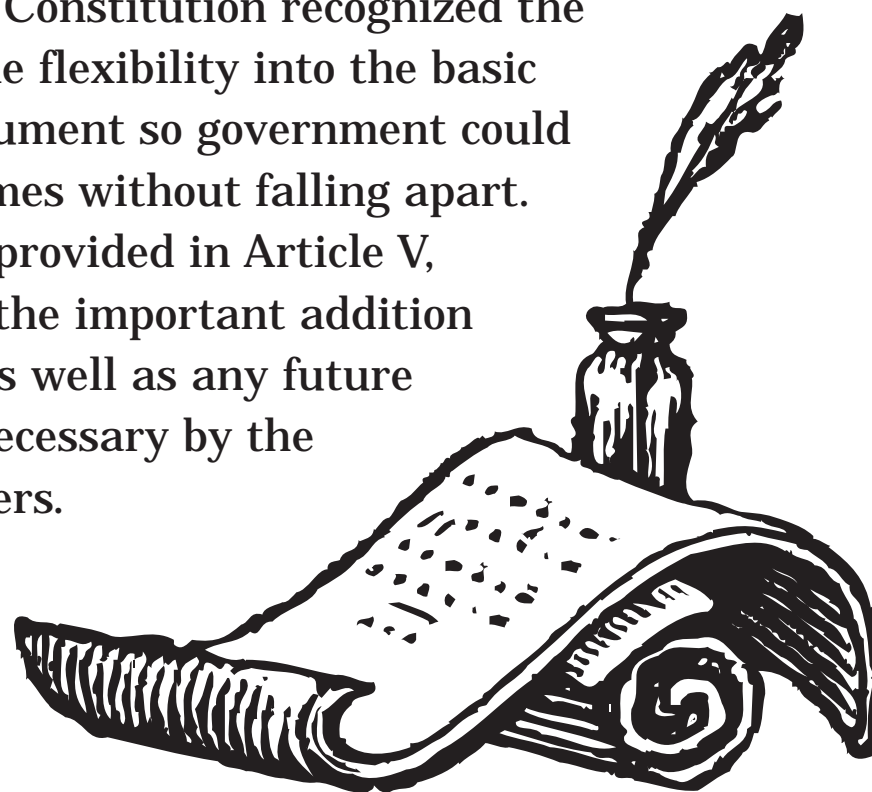
— Justice Thurgood Marshall
(referring to those who wrote the Constitution and the Bill of Rights)

Paving the Way for Change

The authors of the Constitution recognized the need to build some flexibility into the basic framework of the document so government could adjust to changing times without falling apart. This “flexibility” was provided in Article V, which made possible the important addition of the Bill of Rights as well as any future changes considered necessary by the people and their leaders.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.



Thurgood Marshall

Over the years there have been many amendments to the Constitution in addition to the first 10 that make up the Bill of Rights. Today, there are 27 amendments in all.

Some of the best-known amendments are the 13th through the 15th. The 13th Amendment abolished slavery in 1865. In 1868, the 14th Amendment required states to give citizens due process and equal protection under the law. And the 15th Amendment, ratified in 1870, said that race or color could not bar citizens from voting. Also famous is the 19th Amendment, which, in 1920, gave women the right to vote.

With these amendments, the United States was able to correct some injustices in its system without having to rebuild the Constitution from scratch.

ACTIVITIES

10. Find out more about the amendments that came after the first 10, which make up the Bill of Rights. How many are concerned with rights? Write newspaper headlines that might have appeared as each amendment was added. Remember: A headline summarizes a newspaper story and draws readers to it.

11. Some people have suggested that an amendment be passed outlawing burning or otherwise desecrating the American flag. Do you think such an amendment is needed? Would it clash with the right to self-expression? Write a letter to the editor explaining your thoughts about such an amendment.

12. Can you think of other ways in which the Constitution should be amended? Write your own constitutional amendment and be prepared to defend it in class. Does your amendment expand on the application of rights already expressed in the Bill of Rights (as does the 14th Amendment) or does it narrow them? Do you think the ability to amend the Constitution is a good thing? Discuss.



Important Dates

Sept. 17, 1787

The Constitution of the United States is signed by 39 delegates to the Constitutional Convention. Three delegates decide not to sign because no bill of rights is included.

June 21, 1788

The Constitution becomes law when New Hampshire, the ninth state to do so, ratifies it.

May 4, 1789

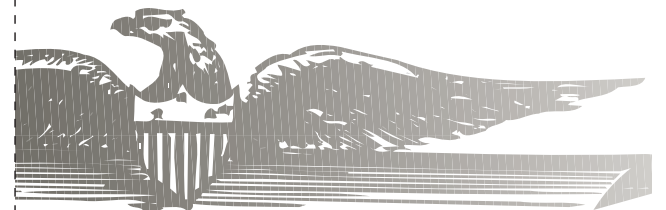
James Madison, representative from Virginia, calls for debate on constitutional amendments concerning rights during the first Federal Congress.

Sept. 25, 1789

After much debate, the House and Senate agree on 12 proposed amendments, which are sent to the states to be ratified.

Dec. 15, 1791

Virginia becomes the 11th state to ratify 10 of the proposed amendments, thereby making them law. The Bill of Rights becomes official.



“ People think the Bill of Rights just protects criminals. But it protects all of us. It protects you when you pick up the paper and read it, when you go home and close your door, when you go to church, when you watch what you want on TV or your VCR. ”

— Caroline Kennedy Schlossberg,
co-author of *In Our Defense: The Bill of Rights in Action*

Does the Bill of Rights Protect Criminals?

Several of the amendments in the Bill of Rights concern the rights of people accused of crimes. Why would the authors of the Bill of Rights be so concerned over the rights of criminals? The answer is that the laws are designed to protect everyone. Simply being accused of a crime does not mean a person is guilty.

At the time the Bill of Rights was written, history had shown that rulers often used accusations to persecute people unfairly. Torture had been used to force people to confess to crimes they didn't commit. People were thrown in prison without a trial just for displeasing the government. Secret “trials” were held in which a person had no opportunity to defend himself or herself.

The authors of the Bill of Rights were keenly aware of the possibilities for such abuses when any government had strong powers. For that reason, they addressed the issue of justice in the Bill of Rights. Amendments IV, V, VI, and VIII focus on

various guarantees of protection for persons suspected of, charged with, or convicted of crimes.

According to the Bill of Rights:

- People are protected against illegal searches and seizures (and evidence obtained in this way cannot be used against them).
- A person cannot be forced to testify against himself or herself.
- People are entitled to an impartial jury, to counsel, and to witnesses in their favor, and they have the right to confront their accusers in court.
- Excessive fines and cruel and unusual punishment are prohibited.



Caroline Kennedy Schlossberg

The Bill of Rights Today

It's unusual to pick up a newspaper and find no evidence of the role the Bill of Rights plays in our lives. In fact, by the very act of picking up the paper, you are participating in one of the most valued rights — the guarantee of a free press, as provided in the First Amendment. If the government controlled the press, the news you read every day might come to you in a much different form.

Almost every day, there are news stories and editorials regarding issues raised by the Bill of Rights:

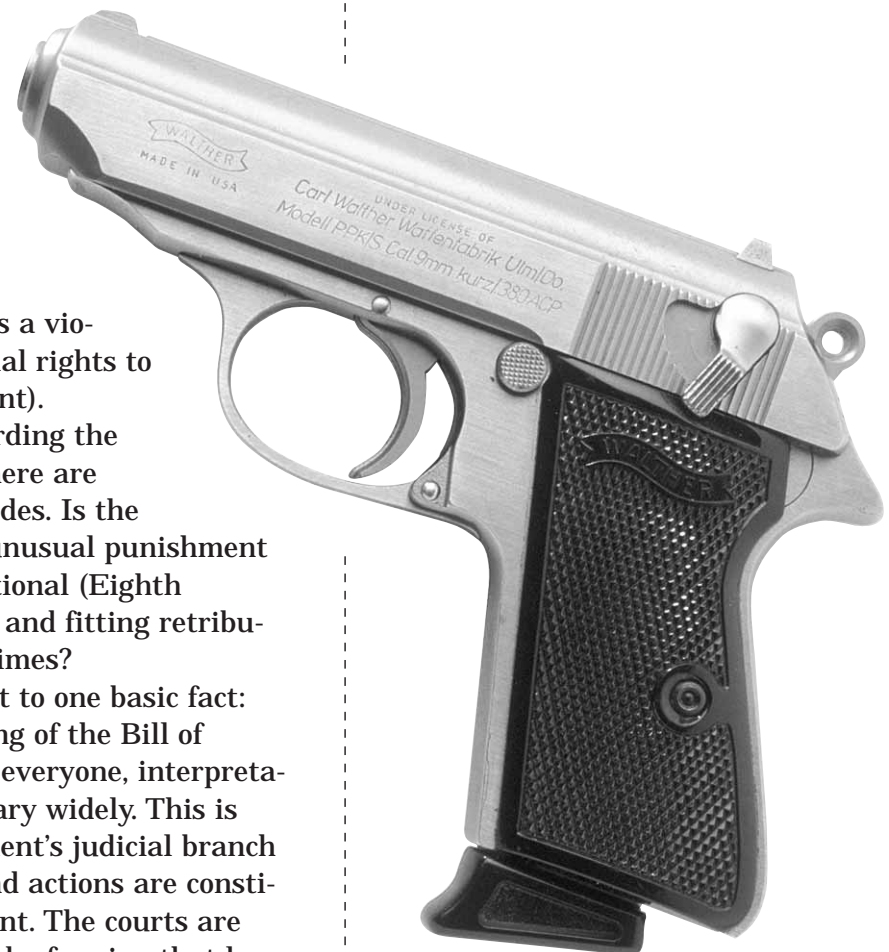
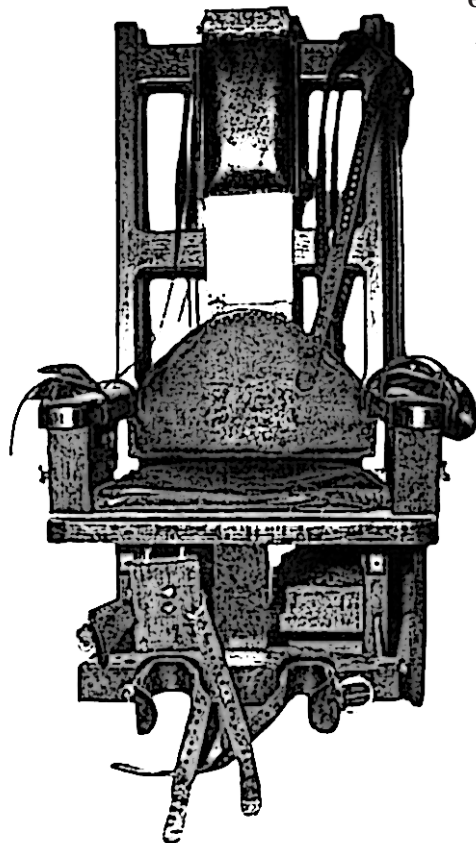
The Supreme Court upholds a law banning nude night-club dancing; opponents argue that the ruling interferes

with the right of self-expression (First Amendment).

Editorials appear calling for stricter gun control laws. Others denounce such laws as a violation of citizens' constitutional rights to bear arms (Second Amendment).

Letters to the editor regarding the death penalty pour in, and there are strong opinions on both sides. Is the death penalty cruel and unusual punishment and therefore unconstitutional (Eighth Amendment), or is it just and fitting retribution in the case of some crimes?

These examples all point to one basic fact: Although the general meaning of the Bill of Rights is accepted by nearly everyone, interpretation of specific clauses can vary widely. This is why the task of our government's judicial branch — to decide whether laws and actions are constitutional — is vitally important. The courts are charged with the difficult task of seeing that laws are applied fairly and that the laws themselves are just.

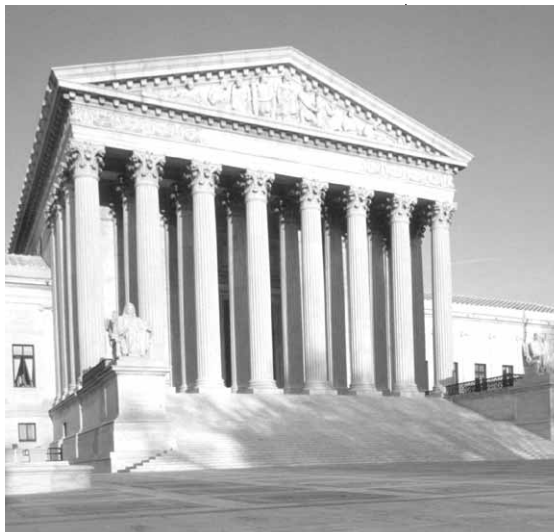


ACTIVITIES

- 13.** Clip and label items from your newspaper that illustrate the Bill of Rights in action today. Make a bulletin board display.
- 14.** Watch your newspaper for articles, letters to the editor, and editorials about Bill of Rights issues (e.g., death penalty, gun control). For each example, identify the Bill of Rights amendment involved and the different views taken. Discuss one example with your classmates.
- 15.** As a class, pick a Bill of Rights issue making headlines today. Use your newspaper, the Internet, and other resources to get as much information as possible on both sides of the issue. Then divide your class into two groups and stage a debate.
- 16.** Look at the comics section of your newspaper. Do any of the comics refer to current events or government? What point does the comic strip make? Discuss.

Decisions made by the Supreme Court have far-reaching effects. Once it makes a decision on a constitutional question, all other courts throughout the United States are required to follow the decision in similar cases. This helps guarantee equal legal justice to all Americans.

The justices of the Supreme Court are appointed by the President with the approval of the Senate. Because of the effects their decisions have on American society, Presidents often pick justices who have views on the Constitution much like their own.



The Supreme Court and the Bill of Rights

The Supreme Court, the highest judicial authority in the United States, has interpreted the intent of the Bill of Rights in different ways at different times. Some of its decisions have resulted in enormous social changes throughout history. Some of the most famous cases include:

Barron v. Baltimore, in which the court ruled that the Bill of Rights applied only to the national government, not the states. (1833) (Amendment V)

Dred Scott v. Stanford, in which the court held that blacks, whether slave or free, were not citizens and therefore not entitled to the rights of citizens. (1857) (Amendment XIV)

Plessy v. Ferguson, in which the court upheld a Louisiana segregation law and established the doctrine of “separate but equal.” (1896) (Amendment XIV)

Berea College v. Kentucky, in which the court affirmed the conviction of this private college that violated Kentucky law requiring racial separation in education. (1908) (Amendment XIV)

Gitlow v. New York, in which the court first applied the Bill of Rights to the states by ruling that the 14th Amendment protected freedom of speech from state as well as national laws. This highly significant decision led to a series of rulings applying more Bill of Rights guarantees to the states. (1925) (Amendment I)

Brown v. Board of Education, in which racial segregation in public education was declared unconstitutional. (1954) (Amendment XIV)

Mapp v. Ohio, in which the court ruled that evidence obtained by police without a warrant could not be used against a suspect. (1961) (Amendment IV)

Schempp v. Abington, in which the court banned Bible reading in public schools. (1963) (Amendment I)

Pointer v. Texas, which established the right of a criminal defendant to confront opposing witnesses. (1965) (Amendment VI)

Miranda v. Arizona, in which the court ruled that police must inform a suspect of his or her constitutional right to remain silent and right to an attorney. (1966) (Amendment V)

Katz v. United States, in which the court held that the government’s action of listening to and recording a suspect’s conversations in a telephone booth constituted a “search and seizure.” (1967) (Amendment IV)

Furman v. Georgia, in which the court declared that administration of the death penalty was unconstitutional because it was not fairly and evenly applied. (1972) (Amendment VIII)

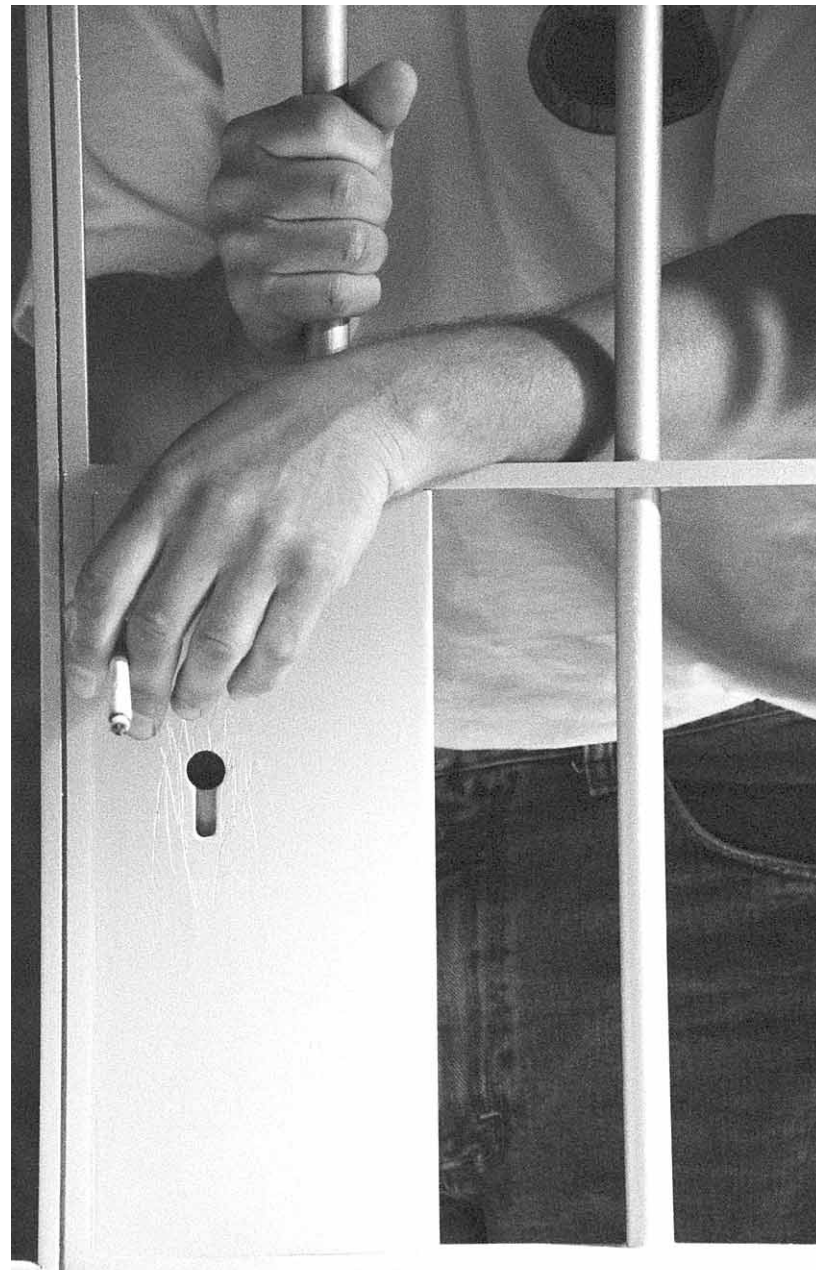
Roe v. Wade, in which the court ruled that the right to privacy included decisions on whether to have an abortion. (1973) (Amendment XIV)

Webster v. Reproductive Health Services, in which the court expanded the states’ authority to limit abortion rights. (1989) (Amendment XIV)

Rights in Action

Examine each of the following fictional cases and decide which Bill of Rights amendment is most closely concerned. Write your answers in the spaces provided, then discuss your thoughts with the rest of the class.

1. The government learns that a newspaper has obtained information on covert U.S. operations in an unstable nation. The paper is planning to print an article on the efforts of undercover U.S. agents to remove the leader of that nation, including the names of the agents. The government tries to prevent publication of the article.
Amendment No. _____
2. The Wobblers, members of a religious sect that believes in hard work, piety, and isolation from the world, have built a small, self-sustaining community a few miles from Libertyville. Although they have virtually no contact with outsiders, their neighbors are complaining. In particular, the neighbors object to the group's teaching on the purity of the body, which prohibits them from wearing clothes. The neighbors have never actually seen a Wobbler, but they think the authorities should force them to get dressed.
Amendment No. _____
3. You have joined an organization, the Student Alliance for Environmental Change. SAFEC has earned many enemies in your town because of its campaign against the local chemical plant, the largest employer in town. Some people say SAFEC has ties to anarchist and other subversive groups, although no one has any evidence of this. One day, the sheriff appears at your front door without a warrant to search your house for unspecified evidence of subversive activity.
Amendment No. _____
4. A man has been accused of murdering his wife. During his trial, evidence indicates he had beaten his wife for years prior to her death. The man is found guilty of murder and sentenced to prison. He later appeals his conviction, saying that three of the women jurors were in the process of divorcing their husbands during the time of the trial.
Amendment No. _____
5. A town manages to come to terms with an international computer firm that wants to build a factory. The factory will bring in badly needed jobs. The firm wants to build its plant on a site at the edge of town that includes land currently belonging to several small farms; a new road will cut through the farms. The farmers are unwilling to leave. They say that no amount of money the town or firm is willing to offer them can make up for the loss of their land.
Amendment No. _____





This publication incorporates the following Florida Standards for Social Studies: SS.5.C.3.5; SS.7.C.2.4; SS.912.C.2.6; SS.7.CG.2.3; SS.5.C.1.5; SS.8.C.1.5; SS.8.CG.2.5; SS.7.CG.2.4; SS.5.CG.1.4; SS.5.CG.3.2; SS.912.CG.1.1; SS.912.CG.3.2; SS.2.C.2.3; SS.912.A.7.8; SS.1.C.2.1; SS.1.C.1.3; SS.7.C.2.5; SS.7.C.3.6; SS.912.A.5.7; SS.912.C.2.7; SS.912.C.2.9; SS.912.C.3.11; SS.912.CG.2.6; SS.912.S.2.10; SS.912.S.5.10; SS.912.CG.3.11; SS.5.CG.2.6; SS.1.CG.2.1; SS.5.CG.1.1; SS.912.CG.2.2; SS.912.CG.2.5; SS.2.CG.1.2; SS.3.CG.1.1; SS.912.CG.1.5; SS.7.CG.3.11

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