

The bill of rights

Law



1776 brought a declaration of and a war for independence to Britain's

North American colonies. While they had all acted in concert to reach this

decision, their memories of colonial life under the centralized British monarchy

had lasting effect upon their views of what the federal government of their new

republic would have the power to do. In the years following the Declaration of

Independence, Congress came up with the Articles of Confederation to loosely

govern the new republic at the federal level. 1781 found all 13 states ratifying the

Articles of the Confederation as well as the conclusion of the War for

Independence, with the signing of the Treaty of Paris. Already, the

weaknesses of the Articles of the Confederation were beginning to show.

Every one of the 13 colonies suffered economic setbacks as a result of the

War for Independence. Devalued American currency as a result of the Congress'

habit of printing new paper money to cover the new republic's war debt and the

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British blockade created high prices for goods. The end of the war hardly helped

the situation as Congress found itself powerless to levy taxes to pay off the war

debt, powerless to regulate trade with other nations, and powerless to regulate

workers wages and the price of goods.

This unregulated economic climate provoked citizens who were

shouldering much of the debt as a result. Farmers of western Massachusetts

who saw banks moving to foreclose on the mortgages of their farms demanded

that the government do something to protect them in their time of financial need.

They saw the lower legislative house of Massachusetts draft and approve a

measure, which included relief measures for them. Under the influence of the

farmers' creditors, the upper house blocked the actions of the lower house, which

further enraged these local farmers. In 1786, a captain of the old Continental

army Daniel Shays, led 2000 armed farmers against the state government.

They

shut down county courts to prevent foreclosure proceedings on their farms,
and

marched on the Federal Arsenal at Springfield, evidently to properly arm
themselves.

Eventually in 1787, the Massachusetts state militia put down the rebellion.

Both sides in the mess were unhappy with the new republic's role (or lack
thereof) in the crisis. Farmers were unhappy that the government wasn't
taking

steps to protect their property from creditors, and creditors were unhappy
that the

government wasn't taking steps to protect what was now their property due
to

foreclosure proceedings. The whole situation served to further emphasize
the

federal governments lack of capability to help either side.

With 13 states, and 13 differing opinions, diplomacy that was acceptable
to all between the Confederation and neighboring nations was difficult to

negotiate. Southwestern states had an independent streak of their own, and in

order to placate them and draw them closer to the other states of the

Confederacy, Congress dispatched their secretary of foreign affairs, John Jay to

negotiate a treaty with Spain regarding American rights in navigating the

Mississippi river. The Spanish emissary, Don Diego de Gardoqui managed to

convince Jay to sign an agreement for the new republic to give up all its rights to

the Mississippi river for 25 years, in return for trading privileges for American trading houses based in Jay's home state of New York. When the southwestern

states got wind of this proposed treaty, it further deepened the rifts between them

and the other states, as the trading privileges did not benefit them directly, and

the treaty did the exact opposite of what they wanted regarding navigation of the

Mississippi river. Needless to say, the treaty was never ratified, and only served

to foreshadow the hostility the South was capable of when sufficiently antagonize

as would be further illustrated by the events preceding the Civil War.

This situation was just one more that the framers of the Constitution had in mind as they convened in Philadelphia to amend the Articles of the

Confederation. These 55 delegates from all over the new republic were aware of

the lack of support for an Army or Navy for the national defense, and lack of power to tax and manage trade enough to pull itself out of its current economic

woes. A change to the powers given to the federal government by the Articles of

Confederation was definitely in order.

Part I, Question II

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The first phrase of the preamble to the Constitution of the United States

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'We the People' is a very powerful statement, in that it brings the reader to the

immediate awareness of the perspective from which this document is written.

This document is from the people, for the people, and while this is easy to take

for granted in today's worldwide political climate, during the 1780's, this was a

shocking statement. The concept of being part of a citizenry with a collective

voice was foreign to the average peasant or craftsman, used to an authoritarian

political culture.

The framers of our Constitution were aware of what absolute power does

to people; it corrupts. They recognized that their government had to be powerful,

yet split the distribution of the said power up with an integrated system of checks

and balances.

The main body of the Constitution outlines this system. The job of the

executive, or President, is to implement laws, make cabinet appointments, and act as

the head of state, not to mention act as the commander in chief of the armed forces in

time of war. The President proposes laws to Congress to pass, and approves or

veto bills that Congress has passed and presents back for approval, which is one of

the checks the executive has over the power of Congress.

Congress in turn controls how money is spent, regulates internal and external commerce, and approves cabinet appointees and foreign treaties. The

Congress can check the Presidents power by refusing to pass bills the President

proposes, overriding the Presidents veto by a 2/3 majority vote, refusing to approve of cabinet appointees or treaties, and can even remove a President with

impeachment!

The third branch of government is the Judicial branch, made up of Judges residing for life in the Supreme Court. Judges have the power to declare an
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executive order unconstitutional, which is their check on executive power, and

they cannot be removed from the court once they are appointed. They can declare laws unconstitutional once they have passed through Congress, checking the power of the Legislature. The President can grant pardons towards

people who have been sentenced by the judicial system, and has the power to

appoint new members of the Supreme Court. Congress has the power to eliminate federal courts, impeach judges if it so chooses, and can refuse to approve of Executive appointees to the Supreme Court.

At the root of all this structure dictating how the power triangle works, is the fact that no branches of government have power without the approval of the

people. If the people are unhappy with the performance of any branch of the government, they are (usually! What a bad voting decade for the Left!) quick to

rectify the situation at the next opportunity they have to vote. While they cannot

effect the Supreme Court directly, they elect members of Congress who hold the

rights impeach justices of the Court, and they elect the President who appoints

new members of the Court.

Power is not only shared by the 3 branches of the federal government, it is also shared between the states, and the federal government. Power is granted to

the states that is not granted the federal government, with regards to such matters as law enforcement, marriage, and education. On the opposite side of

the same coin, the federal government can do things that no state can do, such

as mint new money, control interstate trade, or declare war on an outside force.

States and the federal government share power with such issues as taxation, trying criminals, and building new roads.

It's a wonder that anything gets done at all in our federal government and accompanying bureaucracy with all of its divisions of power! However, longevity

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is definitely an indicator of something that works, and our form of democracy based on the US Constitution has been around for over 225 years.

Part II

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 to peaceably assemble, and to petition the government for a redress of grievances.

1. Immediately prior to the Declaration of Independence, there had been much civil strife between the colonial public and the authority of the British Crown. Unaware that their consideration for colonists' rights were expected at all,

George III and Parliament had no qualms about stripping away various freedoms

while trying to suppress the colonial rebellion. Obviously censorship

accompanied this event as a free press corps would cry out against the

occupation. The occupying British Army wanted to avoid large groups of citizens

gathering, for reasons of security. Speaking out against the empire in the manner

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that many colonialists did incited the rest of the population to rebel as well, so

that couldn't be tolerated either.

The right to assemble, the press, and of general speech, not to mention petition government, are all expressive rights that were not considered by the

British Crown, and James Madison made it clear that everyone's voice would be

heard in the new republic with the 1st Amendment.

Religion was initially only a freedom included on the charter for Maryland, but was included in the 1st Amendment.

An interesting note: while many groups such as the Puritans emigrated to the

New World for the freedom to practice their religion, they made it a sin and against their laws to have different religious beliefs in their colony.

2. In 1943 during the height of World War II, the Supreme Court ruled in *West Virginia State Board of Education v. Barnette* that students could not be forced to recite the pledge of allegiance. While I can understand the viewpoint of

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the Board of Education, especially during a war where the gravity of this sort of

thing is magnified, I can understand some parents and students not being happy

with being forced to go through some morning routine to show their allegiance as

well. In what it truly means and represents, freedom of speech as outlined and

implied in the Constitution also includes the freedom to refrain from speaking if

one so chooses.

3. There are so many controversial issues regarding this amendment, so

I will just include a few here:

Flag-burning as freedom of speech Texas v. Johnson 1989

Free Exercise regarding Polygamy Reynolds v. United States 1879

Teaching of Evolution in schools versus freedom of speech Epperson v.

Arkansas 1968

Internet Child Pornography versus freedom of speech Ashcroft v. Free Speech

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Coalition 2002

Bill of Rights, 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.

1. Warfare in the late 18th century was much different than it is now. It was a

comparatively easier venture to support an army in those days, and in addition to

a regular army, nations would also count citizen militias within their military ranks.

Referred to as Minutemen' in the colonies, these citizen militias were used to great effect during the War for Independence. Afterwards, the new republic found

itself responsible for its own national defense, and again relied heavily on these

militia groups as defense forces. and deemed it necessary to include rights regarding arms in the Bill of Rights in the interest of maintaining these militias. I

feel that this referred more to the citizen's obligation to bear arms in defense of

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the nation, than making sure every man can own a firearm if he pleases.

2. In *United States v. Miller* 1939, The Court ruled that requiring registration

of sawed off shotguns in the National Firearms Act of 1934 was not

unconstitutional. A sawed off shotgun is a close range weapon meant to kill at

close quarters, yet be easily concealable. However, it has never been considered

as a weapon for the military. No well regulated militia' would have anything to do

with a sawed-off shotgun. This is not the way this case is argued nowadays

though. Gun enthusiasts say that only a particular weapon, a sawed off shotgun,

was unprotected by the 2nd Amendment due to its lack of relation to a militia.

Gun-control advocates argue that this case shows that use of guns should be

limited to the militia refuting completely that people should be allowed to use

guns for self defense or recreation.

3. Controversial Issues follow:

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Registration of Firearms United States v. Miller 1939

Legality of Handguns Quilici v. Morton Grove 1982

Brady Bill (Interesting in that the Court ruled that the bill was unconstitutional on

the grounds that a federal program could not force state law enforcement officials

to cater to its needs.) Printz v. United States 1997

Bill of Rights, 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.

1. One of the Intolerable Acts' put forth by George III and Parliament

preceding the War for Independence, was the Quartering Act, stating that

colonists would be responsible for quartering and feeding British troops stationed

in their area, later amended to actually require that British troops be quartered in

colonists' homes. This had a profound effect on colonist thought, who could have

a rebellion with British troops quartered right there in their community,
amongst

their women and children?

2. There has only been one case looked at to interpret the 3rd amendment,
and this was in a lower court, the US Court of Appeals. Engblom v. Carey
1982

dealt more with the issue of privacy than the actual quartering of US troops
amongst citizens. In 1982, prison guards in New York state went on strike.
Some

of these guards were housed in dormitories on the grounds of the prison, for
which they paid rent. For some guards, this was their only home. When
guards

went on strike, the state brought in the National Guard to guard the prison,
and

housed them in the guards' dormitories. There was a question whether this
amendment came into play with such a dwelling. Even though Engblom did
not

own the room she lived in, she was still entitled to privacy and the Court
interpreted the 3rd amendment to protect that privacy (She went on to lose
the

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case on other grounds).

3. The 3rd amendment is used to interpret the issue of one's privacy more than troop quarters. In 1833, Justice Joseph Story noted that the 3rd Amendment's plain object is to secure the perfect enjoyment of that great right of

the common law, that a man's home shall be his own castle, privileged against all

civil and military intrusion'.

Griswold v. Connecticut 1965 the Court ruled that the 3rd, along with the 1st, 4th,

5th, and 9th Amendments protect the rights of married couples to use

contraceptives. The 3rd amendment may be outdated but reminds us that there

are places the government should not go in regards to the privacy of it's citizens.

Bill of Rights, 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 probably cause, supported by oath or

affirmation, and particularly describing the place to be searched and the persons or things to be seized.

1. During the period of time preceding the War for Independence, in the interests of suppressing the rebellion, the King and Parliament allowed British troops to search anyone, anywhere, for whatever reason. They also allowed customs inspectors to search anyone, and any premise to look for smuggled goods. Suspect goods were to be seized, but to give anyone that kind of power almost invites someone to abuse it.

2. In *Kyllo v. United States* 2001, the Court ruled on a case regarding Kylo, suspected drug dealer. Using heat sensing thermal imaging hardware, police detected unusual amounts of heat emanating from Kylo's residence. Based on this information, a warrant was obtained and they raided his house finding an indoor marijuana farm lit with hot lamps. The Court ruled that this type of sense enhancing devices by law enforcement without a warrant is

unconstitutional. While there is a war on drugs, even this type of unannounced

peek into a citizen's residence is going too far.

3. Controversial Issues follow:

Searching juveniles in school *New Jersey v. T. L. O.* 1985

Limiting who can be involved during a warranted search *Wilson v. Layne* 1999

Legality of aerial surveillance *California v. Ciraolo* 1986

Searching trash for evidence *California v. Greenwood* 1988

Bill of Rights, 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

1. The efforts of the British to squash the rebellion included ignoring what was accepted judicial procedure in the colonies at that time. British authorities in

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the colonies had no qualms about violating the rights of citizens in bringing rabble rousers' to justice. This violation of rights included periods of interrogation

where what was revealed by someone in custody could be then used against them in court.

2. Miranda v. Arizona 1966 was a case that the Court dealt with in regards to Ernesto Miranda. Miranda, was coerced into confessing to a murder and rape after being interrogated by law enforcement officials for 2 hours. Miranda was not

informed of his rights to an attorney, nor his rights to remain silent. Since his confession was not considered to be voluntary, his conviction was overturned by

the Court. For a confession to be termed voluntary, a suspect must know of his

rights before he can give them up. Because of this landmark case, an arresting

officer must now make an arrestee aware of the following rights.

1. You have the right to remain silent
2. Anything you say can and will be used against you in court.

3. You have the right to an attorney, and to have an attorney present while you are being questioned.

4. If you cannot afford an attorney, one will be appointed for you before any questioning begins.

3. Controversial Issues follow. Since there are so many rights referred to by this amendment, I will include 1 for each right:

Grand jury indictments at the state level *Hurtado v. California* 1884

Sentencing a habitual sexual predator to a mental health facility without violating

double jeopardy *Kansas v. Hendricks* 1997

Self Incrimination *Miranda v. Arizona* 1966

Due process versus police procedures *Rochin v. California* 1952

Just compensation regarding private land use *Hawaii Housing Authority v. Midkiff* 1984

Bill of Rights, 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.

1. As stated in the analysis of the previous amendment, British authorities had no qualms about sidestepping what was accepted as proper judicial proceedings in the colonies in their interests of squashing the rebellion.

British

authorities made it a practice to either a. let suspects rot in prison for awhile before starting judicial proceedings against them or b. whisked them off to Britain

to be tried by an Admiralty Court, who were not their peers, nor particularly sympathetic to the plight of the suspect. These proceedings would be held in private, with no input by any peers of the suspect on behalf of the suspect.

In

short, these judicial proceedings were a mockery of what they should have been,

and such actions left the colonists shocked at the possible consequences.

2. In Taylor v. Louisiana 1975, the Court examined a case regarding a Louisiana state law stating that women would be excluded from jury selection

unless they specifically asked. The basis for this law was that selecting women

on juries would upset their family life. This law was struck down by the Court on

the grounds that to have a jury pool that accurately represented the community,

women must be included.

3. Controversial Issues follow:

Speedy trial versus following proper legal procedure *Barker v. Wingo* 1972

Pretrial publicity *Sheppard v. Maxwell* 1966

Fair and impartial jury *Parker v. Gladden* 1966

Confronting witnesses against him versus the defendant's court room behavior *Pointer v. Texas* 1965

Bill of Rights, 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 re-examined in any Court of the United States, than according to the rules of common law

1. Their treatment at the hands of the British authorities led the founding

fathers to include references to proper trial by a just and impartial jury in 3
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different amendments. British authorities were evidently heavyhanded in their

procedures for dealing with civil disputes, playing favorites amongst the parties

involved, to ignoring the findings of previous juries.

2. *Colgrove v. Battin* 1973 was a case looked at by the Court regarding the proper size of a civil-case jury. The Supreme Court came to the conclusion that a

6 person jury is more efficient than a 12 person jury, and the smaller size of the

jury had no effect on the actual verdict of the jury. This affected the standards of

civil court versus criminal court, although a civil jury must still come to a unanimous decision the same as a criminal jury.

3. This amendment has no controversial issues!

Bill of Rights, Amendment VIII.

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

1. In 1791, punishments measured out by courts of the time for offenses

could be grisly and quite draconian. Our text quotes such punishments as drawing and quartering', which was judged to be cruel and unusual for the time,

as well as death by hanging, or cutting off a defendants ears, which were not. In

pursuing a more civil society, The founding fathers sought to create limits on the

spectacle that punishment could entail. They also meant to allow defendants to

bail themselves out in order to find the means which to defend themselves with in

court (such as finding an attorney willing to represent them)

2. Nowadays, our interpretation of cruel and unusual punishment' has one central issue at heart: the death penalty. Gregg v. Georgia 1976 is a case regarding the death penalty and its legality. Justice William Brennan puts forth

the point even the vilest criminal remains a human being possessed of common

human dignity. the law has progressed to the point where we should declare

that the punishment of death, like punishments on the rack, the screw, and the

wheel, is no longer morally tolerable in our civilized society. In favor of the death

penalty, Justice Potter Stewart observed that retribution was one benefit from an

active death penalty, not to mention providing a deterrence from homicides being

committed in the first place. Collectively, the Court stated that the punishment of

death does not invariably violate the Constitution.'

3. Controversial Issues follow:

Excessive bail versus a defendants rights United States v. Salerno 1987

Excessive use of the death penalty, with the issue of the defendant's race in mind Furman v. Georgia 1972

The legality of the death penalty Gregg v. Georgia 1976

Use of the death penalty in crimes other than murder Enmund v. Florida 1982

Corporal punishment in schools Ingraham v. Wright 1977

Bill of Rights, Amendment IX.

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

1. In the society of the day, political authorities generally acted on the premise that if a right was not specifically documented, then it did not exist.

Unhappy with this state of affairs, the founding fathers wanted to be sure that it

would be the opposite way around, in that people would be assumed to have rights unless specifically stated otherwise.

2. Enumerated rights, as in rights which are not specifically listed in the Bill of

Rights, are covered here in the 9th Amendment. The enumerated right to privacy

is the subject of the Court's decisions regarding *Griswold v. Connecticut* 1965.

This case was in reference to an 1979 Connecticut state law prohibiting the use

of contraceptives. The Court agreed that an enumerated right, the right to marital

privacy, is covered under the 9th Amendment.

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3. Controversial Issues follow:

Laws regarding the use of contraceptives versus marital privacy *Griswold v.*

Connecticut 1965

Laws prohibiting sodomy versus sexual privacy *Lawrence v. Texas* 2003

overturning a similar case *Bowers v. Hardwick* 1986

Bill of Rights, 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.

1. One of the reasons behind the Revolution was the lack of regard for the power of local government by the British authorities governing from Britain.

When

local government refused to uphold the letter of the law as dictated by Parliament

and George III, British troops were sent in to enforce the law. Our forefathers recognized the power that federal government held over local governments due

to the military power wielded by federal government. The 10th Amendment is their

way of striking the appropriate balance of power between federal and state governments.

2. Civil Rights were at the heart of the case *Brown v. Board of Education*

1954. The Court ruled that certain states practices of racially segregating public

schools was unconstitutional under the 14th Amendment. The States countered

with the protection of States Rights under the 10th Amendment. This issue of the

power struggle over Civil Rights between federal and state governments even

included a potential military showdown, with National Guard units preventing black students from enrolling in a high school, and units from the 101st Airborne

protecting the rights of the said students by decree of the Court.

3. Controversial Issues follow:

The line between States power and federal government power is drawn in *United States v. Darby Lumber Company* 1941

Civil Rights versus States rights *Brown v. Board of Education* 1954

The Brady Bill is referred to again, as in whether the Federal government can require state law enforcement agencies to follow its decrees. *Printz v. United States* 1997