RIGHTS MATTER

The Story of the **Bill of Rights**

Nancy Murray is Director of the Bill of Rights Education Project at the American Civil Liberties Union of Massachusetts. The Bill of Rights Education Project encourages teachers and students to think critically about the difficult issues being debated in society and the courts, seeing this as essential to the well-being of our democracy.

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Cover: Massachusetts students sing Civil Rights Movement songs with the 21st Century Leadership Movement in Selma, Alabama
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RIGHTS MATTER:
The Story of the Bill of Rights

by

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American Civil Liberties Union of Massachusetts

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Rights Matter: The Story of the Bill of Rights is reproduced on **www.rightsmatter.org.**

This website contains additional information, short biographies, primary source material, cases, personal stories, films, slide shows, activities, lesson plans, and interactive features.

What do these people have in common?

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"They have rights who dare maintain them."
From the poem "The Present Crisis" by James Russell Lowell, 1844

As students, they believed rights matter. They took action to make rights real.

When you read their stories in these pages and on the web, you will find that it is not always easy to stand up and stand out. It takes courage, and can involve personal risk.

You will also learn that there are many ways to stand up for rights, and success is by no means guaranteed. Some of those pictured here took their cases to the courts, and won victories that expanded rights for everyone. Some went to court – and lost. Some found other ways to make their voices heard. They all realized the importance of doing something, and in so doing, they have helped keep the Bill of Rights a living document.

They dared.

INTRODUCTION

"I left school feeling like half a person. The incidents had stripped me down to nothing. Every vibrant, unique and exciting trait had been squeezed out of me. I felt totally defenseless. What was the shield that had protected me from such abuses before? What had given me the courage to do what I had previously been doing on my own? What was this protection I had carried around all my life without even knowing it? The Bill of Rights had lost its strength and I became weak along with it." [1]

A student's description of an imaginary day in school without the Bill of Rights

Lady Liberty will guide you through the story of the Bill of Rights, its high points and low points. She is based on the giant copper statue "Liberty Enlightening the World" that was built in France and erected in New York Harbor in 1886. The "Statue of Liberty" was designed by the French sculptor Frederic Bartholdi to commemorate the friendship between France and the United States and their alliance during the American Revolution.

Back in 1991, as the Bill of Rights turned 200 years old, Massachusetts high school students gave these examples of what life might be like without it:

"The government would control what is seen on TV and read in the news."

"Police would be able to come into your house without a warrant and start tearing everything apart."

"People would no longer be considered innocent before being proven guilty."

"People who couldn't afford an attorney would not be able to get one."

"Someone could be tortured if suspected of a crime."

"Segregation could again be the law of the land."

These students, like the drafters of the Bill of Rights, thought there needed to be a brake on government power. But the power the Framers had in mind was that of the *federal* government. They would be surprised at how the Bill of Rights had evolved to become a brake on the power of state and local governments and their agents, such as public school officials.

What would a school day be like without the Bill of Rights? Students in 1991 imagined a dreary routine of drug testing, dog sniffs, increasingly strict dress codes, censored newspapers, and snap suspensions which could not be challenged.

Much has changed since the Bicentennial of the Bill of Rights. Many rights have been put aside in the name of "safety" in schools and "national security" in society. This is a familiar story, as *Rights Matter* will demonstrate. Although more than two hundred years have passed since the Bill of Rights was added to the U.S. Constitution, it only really came alive a few generations ago, during the lifetimes of your grandparents.

In these pages you will learn why that was, and what it took to make rights real. The information presented here, and the background material, case histories, stories and activities that supplement *Rights Matter* on www.rightsmatter.org, will help you understand that for much of our history, the Bill of Rights was little more than a piece of paper. It is up to you and your generation to decide what shall be its future.

I. FIGHT THE POWER

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government...."

Declaration of Independence, July 4, 1776

Q: Do you think revolution can ever be justified today?

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- the history of rights
- definitions
- biographies
- activities

Think of what it means to make a revolution.

In May 1775, representatives from the thirteen American colonies began meeting as the Second Continental Congress to address the growing crisis with Great Britain. The British army had recently engaged the colonial militias in Lexington, Concord and Boston. Still, many Americans remained loyal to Great Britain, and thought a wider war was not inevitable.

The fifty-six members of the Continental Congress who signed their names to Thomas Jefferson's defiant words in the Declaration of Independence were taking a giant risk. If the attempt to shake off British rule failed, they could be executed for treason.

Fast-forward 175 years. John Patrick Hunter was a young reporter for the *Capital Times* of Madison, Wisconsin. On July 4, 1951, he put the preamble to the Declaration of Independence and part of the Bill of Rights on a petition and asked 112 members of the public to sign it. Only one person did.

The rest refused. Some thought that signing the petition would get them in trouble. Some thought it was "subversive" and aimed at the overthrow of the government. Some believed Hunter might be some kind of a "communist."

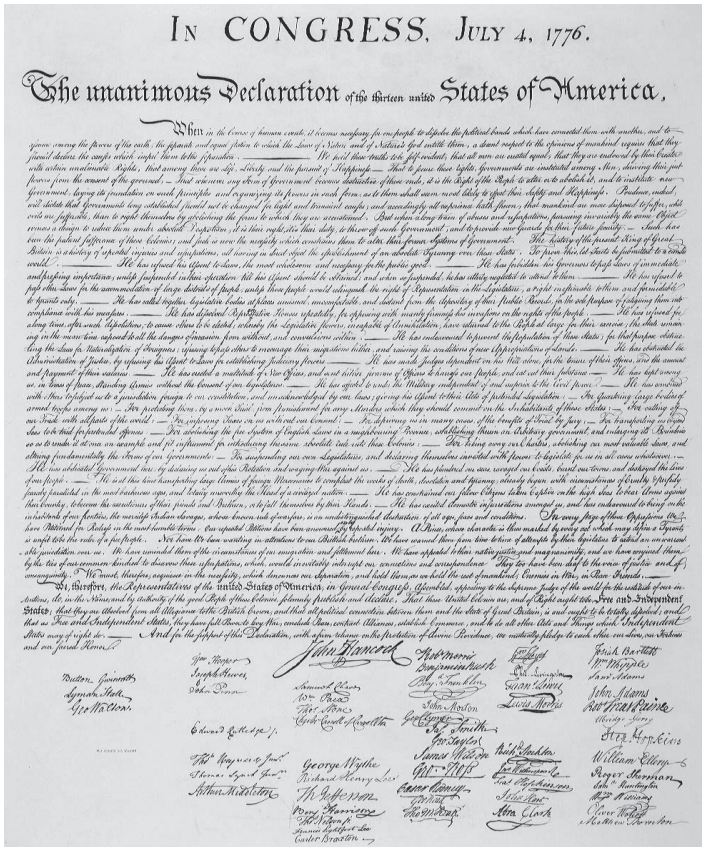
How do you think people would react if you asked them to sign such a petition today? Do you think they would recognize where the language of the petition came from?

The people who refused to sign were right in one sense – the Declaration of Independence *was* subversive. It was intended to be a call to arms against existing authority. The Declaration denounced the British king for "repeated injuries" inflicted on the American colonists. It declared that the king wanted to establish "an absolute tyranny over these states" and invade the rights

of "a free people." (Today, instead of the word "tyranny" we use terms like "dictatorship," "police state" or "totalitarian regime" to refer to governments that deprive people of their rights.)

The notion that people have certain rights is often taken for granted in the United States. "It's a free country," we say, without giving much thought to what this actually means. We may not be aware of how often rights have been ignored, or suppressed, or voluntarily given up in times of fear. One such time was the early 1950s, when people in Madison, Wisconsin were apparently willing to give up their First Amendment rights out of fear of getting in trouble.

This kind of fear seems more familiar today than the mindset of the fifty-six men who signed the Declaration of Independence and their felow revolutionaires. They risked everything for "right" or "rights." Rights were never clearly defined, but were associated with the broad themes of "life, liberty and the pursuit of happiness."


IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,

In thinking about rights, the American colonists did not start from scratch. They took as their starting point the "rights and customs of Englishmen" which were the product of a 500-year-long power struggle between the king and the people. By the late seventeenth century, the elected branch of government in England – Parliament – was "supreme." The king no longer had absolute power. Parliament, in turn, guaranteed certain rights to the English people, such as the right not to be imprisoned unjustly without access to a court, and the right not to be taxed without the consent of Parliament.

But what if Parliament did not protect the people? What if it joined with the king in oppressing them? This was the American experience. The American colonists resented the taxes and regulations imposed on them by a legislature thousands of miles away. They could not vote for members of Parliament, which meant they were not represented in it. "No taxation without representation!" became their rallying cry.

Their discontent was fed by the ideas of an eighteenth-century movement in Europe called the Enlightenment. Its thinkers questioned existing attitudes toward authority. Applying these ideas to the "New World" context, the colonists decided they should go their own way instead of remaining "subjects" of King George III and the Parliament of Great Britain. But how could they justify throwing off British rule?

They did so by taking a very radical step. They put the notion of rights and the freedom to enjoy those rights – what they called "liberty"

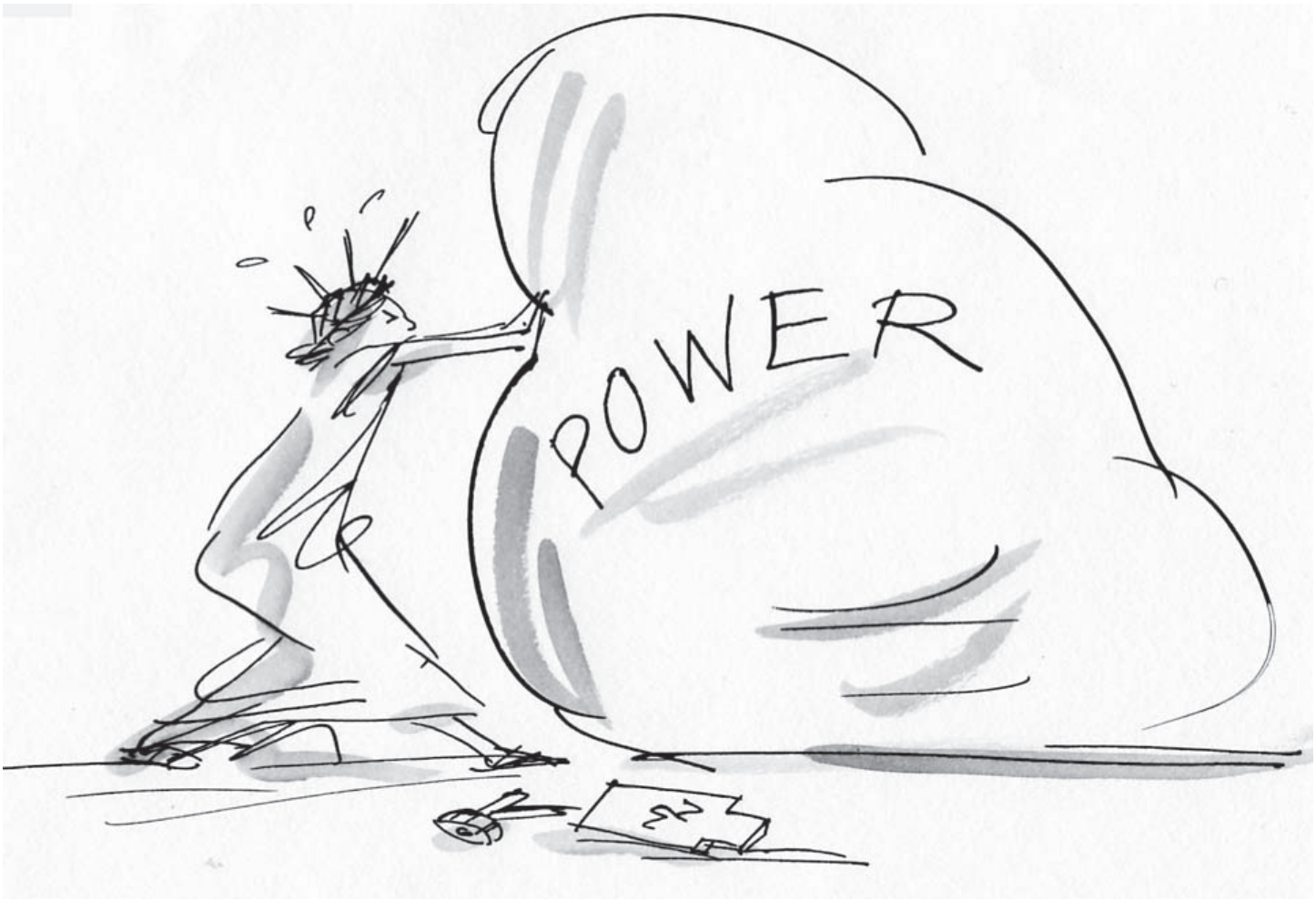
– at the very heart of their revolution. They declared these rights to be a permanent, "unalienable" part of human nature that could not be taken away from the individual, either by the government or by a majority of the people. When government failed to protect these basic rights, it should be changed or overthrown. When rights and power collided, rights had to prevail. The notion that rights belong to the individual was *the* basic value of the American Revolution.

The fifty-six signers of the Declaration of Independence won their big gamble. They and their fellow revolutionaries fought the power, and were victorious.

During the period 1776 to 1791, they set up new governments, and defined exactly what they meant by rights in state constitutions, the U.S. Constitution and the Bill of Rights. These were considerable achievements.

But after the stirring words of the Declaration of Independence, it is ironic that the new state and federal governments paid little attention to them. Even worse, the "self-evident" truth that "all men are created equal" did not stop the harshest tyranny that human beings could devise – slavery – from continuing to disfigure the American landscape.

The consequences are with us today.



2. THE FATAL FLAW

"History, despite its wrenching pain,
Cannot be unlived, and if faced
With courage, need not be lived again."

Maya Angelou, "On the Pulse of Morning,"
a poem delivered at the Inauguration of President William Jefferson Clinton, January 20, 1993

Q: What does Maya Angelou mean? Do you agree with her?

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- more on the impact of Columbus' voyages
- more on the biology of race
- more on racism
- definitions
- biographies
- activities

History seldom moves in a straight line. It is like a family, which starts out with dreams and plans that get lost along the way. Things may get back on track for awhile, but then comes another loss of momentum and a change of direction. This is the pattern of American history. It has been a long struggle, with repeated setbacks, to live up to the promise of its founding documents.

One of the basic lessons this history teaches us is that rights have got to be for *everyone* in order to work at all. As we shall see in these pages, the Bill of Rights meant little before it began to be applied to *all* people – and that didn't happen until the middle of the twentieth century.

Back in the eighteenth century, the words "all men are created equal" and the language of natural rights were never intended to be applied to *all* people, just some. The words ignored women, who were about half of the population. No one at the time thought women were the equal of men. And the words ignored enslaved people of African descent. They numbered more than 600,000, or twenty percent of the population, at the time of the Revolution.

In the years leading up to the Revolution, colonial leaders repeatedly condemned England for imposing slavery upon the colonies. But they were not referring to the real "absolute tyranny" of the time, which was the institution of "chattel slavery." When they talked about the "evils of slavery," they were considering *themselves* as slaves of an unjust system. These men – many of whom were slave owners – complained of being "enslaved" by being taxed without their consent.

Black people in the colonies who were not enslaved were determined to make the language of natural rights extend to them too. They

played an important role in the resistance to British rule. Crispus Attucks, an African American who lived in Boston, was among the first to die for the cause of liberty during the Boston Massacre of 1770. Black patriots took part in the Stamp Act protests, and five thousand eventually enlisted in the revolutionary army. "We have in common with all other men a natural right to our freedom," declared a petition sent by African Americans to the Massachusetts legislature in May 1774.[2]

Most patriots of European descent disagreed. We cannot understand their mindset without knowing something about the history of racism.

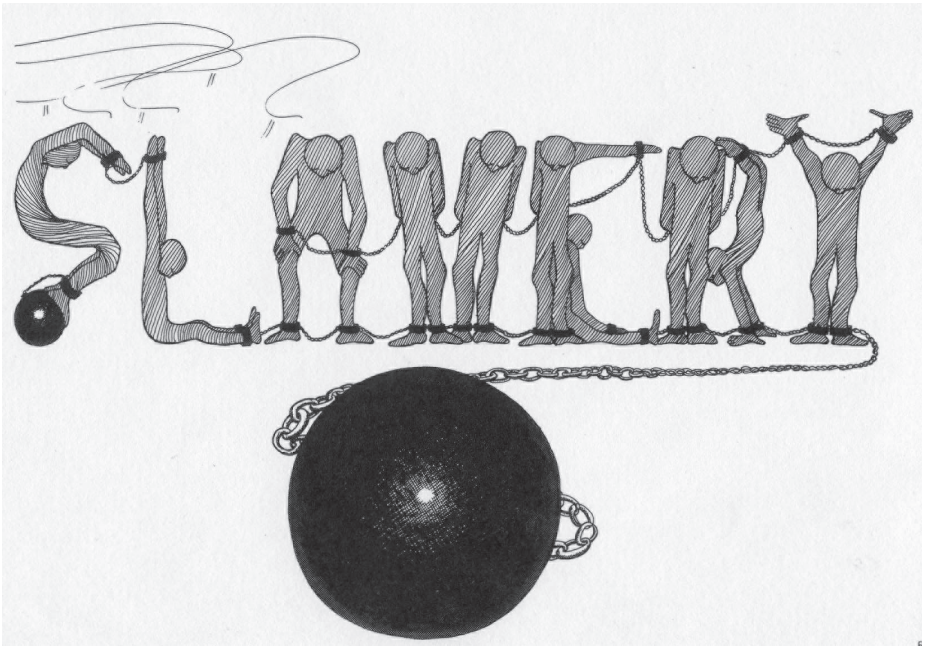
The word "racism" first appeared in the English language in the 1930s to describe how Nazi Germany used the "science of race" to decide who was inferior and who was superior. Today, many people think of it as another term for "bigotry" or "prejudice." A "racist" is someone who doesn't like people of a different color or "race." When the word is used this way, fighting racism becomes a matter of changing that person's attitudes and behavior.

But for some people, including Dr. Martin Luther King, Jr., there was more to racism than the likes and dislikes of individuals. "The roots of racism are very deep in America," Dr. King told his staff in 1966. "Our society is still structured on the basis of racism."[3]

What did he mean? For Dr. King, racism was not just about attitudes or behavior. By saying our society was "structured on the basis of racism," he meant that society was set up to keep one particular "race" in a dominant position. The notion that one race was superior was part of an "ideology" or outlook that was used to justify unequal social, economic and political structures. To get rid of racism, you could not just work on changing personal attitudes. You also had to transform the way society was run, since its institutions, political system, courts, media, and schools all helped perpetuate "white" domination.

But where did "white" domination come from? Prejudice and fear of people who look different are as old as recorded history. So is slavery. But before the fifteenth century, no single "race" or ethnic group was identified with slavery. There were European slaves and slaves from all over the world. Slaves were not seen as essentially inferior beings. And slavery was not regarded as a condition that lasted forever and was handed down from generation to generation.

But Christopher Columbus'



From *How Racism Came to Britain* **(Institute of Race Relations, UK)**

voyages to the "New World" changed everything. When Columbus in 1492 first encountered the island that is today divided between Haiti and the Dominican Republic, an estimated eight million "Indians" (as they were called by the invaders) lived there. By 1530, they had virtually all been exterminated or died of disease. To replace them, enslaved Africans were brought by the Europeans to work in the gold mines and on the sugar cane plantations.

European participation in the African slave trade began before 1492. But with the growing demand for labor in the "New World," the slave trade swiftly expanded. To justify what they were doing, Europeans developed the argument that African slaves were somehow less than human because of the color of their skin.

From *How Racism Came to Britain* **(Institute of Race Relations, UK)**

The African slave trade would eventually consume an estimated 200 million lives. And chattel slavery would shape the laws, social order and institutions that were developed in the American colonies.

The notion that there are fundamental racial differences has shaped our history and our mentality. But today, scientists tell us that there are *no* significant biological differences between "races" of people. Only a tiny fraction of our genetic material accounts for differences in skin color.

"The central fact of our history," declared civil rights movement veteran Anne Braden, "is not its democratic tradition, but its racist one. The country was founded on racism – on the assumption that it should be run by whites for the benefit of whites and that the lives of people of color did not matter."[4] She called this the nation's "fatal flaw."

3. WHO WERE "WE THE PEOPLE?"

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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."

Preamble to the U.S. Constitution

If you have ever been part of a group drawing up rules for a new club or organization, you know that it isn't easy. You have to balance different views and try to get everyone on board, or things may not go smoothly. Another thing you may have to decide is who gets to join the club.

Imagine how difficult it must have been to decide the rules for a whole new country. In drawing up a plan of government for the young United States, the revolutionaries were entering new territory. They regarded themselves as citizens of thirteen different states. Each of these states created its own written constitution and form of government. These constitutions were similar in that they declared "the people" to be the source of government power and authority.

During the revolutionary war the states came together in what they called a "league of friendship" or "confederation." They agreed to certain rules – the "Articles of Confederation" – but insisted on remaining sovereign and independent states. Under the Articles of Confederation, the states elected delegates to a Congress, which had limited powers. Congress had no control over trade between the states or between the states and foreign countries, and could not directly raise taxes. There was no president, and an army of only 750 men had to defend the whole country. Any one state could veto any attempt to change the Articles of Confederation. This meant it was very difficult to fix basic weaknesses.

In 1786, an uprising of poor farmers in western Massachusetts convinced some influential former revolutionaries that the powers of government had to be strengthened. The farmers included many men who had fought for the Revolution in the name of liberty. One of them, Daniel Shays, had been a captain

Q: Why do you think the Constitution did not mention slavery directly?

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- Native Americans
- slavery and slave trade
- definitions
- biographies

in the revolutionary army. Declaring "one moment of Liberty to be worth an eternity of Bondage," they defied efforts by the state of Massachusetts to seize property from people who had refused or were unable to pay their taxes.

Thomas Jefferson, who was then the American ambassador in France, took Shays' Rebellion (as it was called) in stride. He wrote from Paris: "What country can preserve its liberties, if its rulers are not warned from time to time that their people preserve the spirit of resistance?...The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure."[5]

But ten years after the Declaration of Independence, most leaders who had once urged crowds to rise up against the tyranny of the British no longer agreed with Jefferson. Now that the country had to govern itself, an uprising by "the rabble" – as wealthy people called them – was not seen as a legitimate means of changing government policy. Liberty was all very well, but what about security? What about government authority?

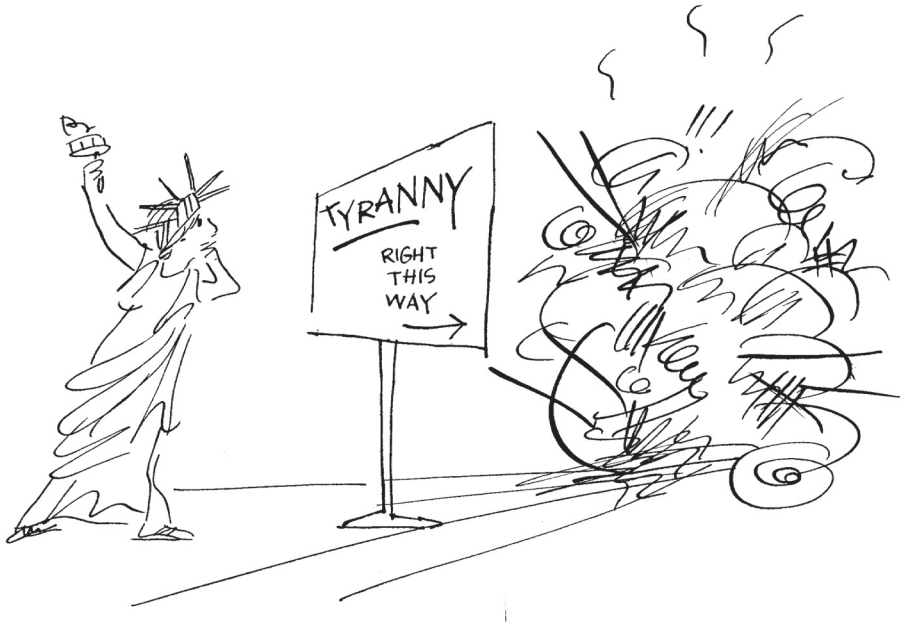
In February 1787, the Continental Congress agreed that it was time to find a new balance between liberty and government power. The states selected delegates who traveled to Philadelphia in May of that year to write a constitution for "We the people."

But who were "We the people"? Unrepresented at the Constitutional Convention were the majority of Americans, who at the time numbered nearly four million people. One out of every five people in the country – some 700,000 – was enslaved. "We the people" did not apply to them. Neither did it apply to a further 200,000 people who were "indentured servants," only a few steps up from slavery, or to the indigenous "Indian" population.

When it came to Black men who were *not* enslaved (nearly 60,000 people), and to women (half the population), things were more complicated. Five of the original thirteen states gave some Black freemen the vote, which at the time was considered a privilege, not a right.

As for white women, they were considered the "weaker sex" who – like children – should be excluded from public life. A married woman was deprived of ownership of her personal property – even her clothes! If her husband died, his relatives could take legal control of her children.

Not all women accepted their subordinate position. As the American Revolution got underway, Abigail Adams wrote as follows to her husband, who later became the second president of the United



States: "Remember all Men would be tyrants if they could. If particular care and attention is not paid to the Ladies, we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice or representation." [6]

A few years later, in 1779, Judith Sargent Murray, the young self-taught daughter of a merchant from New England, wrote an essay entitled, "On the Equality of the Sexes." It foreshadowed some of the arguments made by feminists two centuries later.

Women like Abigail Adams and Judith Sargent Murray no doubt hoped they would steadily gain more political rights in the young Republic. In fact, they lost ground.

In some places during the 1770s and 1780s, some women could vote. For instance, unmarried women and widows who possessed sufficient property could vote in New Jersey in the 1780s because the state constitution defined voters as "all free inhabitants" who met a property qualification.

But this did not last for long. By the early nineteenth century, white women and free African-American males had been stripped of the vote in states where they once possessed it. The fight to get it back, expand it, and ensure that all Americans have a political voice is ongoing today.

The delegates who traveled to Philadelphia in 1787 had plenty to lose if the new experiment in self-rule went wrong. The fifty-five white men who wrote the U.S. Constitution ("the Framers") were mostly successful merchants, plantation owners, governors, lawyers and physicians. Nearly half of them owned slaves. Their number included the richest men in the country, one of whom was George Washington.

In Philadelphia at that time, the top one percent of the city's taxpayers owned more property than the bottom seventy-five percent. The gap between rich and poor may have been greater than it is in the country today, when it is the widest in the industrial world.

Given this social reality, it is not surprising that the document drafted by the Framers made no mention of equality. Gone was the democratic promise of the Declaration of Independence that "all men are created equal."

Neither did the Constitution mention slavery. Only two delegates to the Constitutional Convention had spoken out against it. As part of the compromise between the interests of Northern and Southern states, the Framers crafted a document protecting slavery – without once mentioning the word.

In roundabout language, the Constitution defined a slave as three-fifths of a person for purposes of representation, guaranteed that the slave trade would not be interfered with for a further twenty years, enabled the federal government to tax every African who survived the Middle Passage, permitted the use of federal troops to suppress insurrections, and allowed slave owners to track fugitives across state lines. Without using the word "slavery," the Constitution enshrined human beings as property.

Seventy years later it became clear that the U.S. Constitution had failed to achieve the aims of its preamble. Instead of creating a "more perfect union" and establishing justice, the Constitution permitted a brutal tyranny to flourish, and paved the way to civil war.

4. THE "BLESSINGS OF LIBERTY"

"The preservation of the sacred fire of liberty and the destiny of the republican model of government are...staked on the experiment entrusted to the hands of the American people."

George Washington, First Inaugural Address, April 30, 1789

Q: Do you think voting should be a privilege or a right?

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- more on checks and balances
- the separation of powers
- voting
- definitions
- biographies
- activities

All sorts of things have been said about the U.S. Constitution. It has been termed a "sacred" document, and the "miracle" crafted at Philadelphia. It has also been called "a Covenant with Death and an Agreement with Hell" by the anti-slavery crusader William Lloyd Garrison. On May 24, 1854, Garrison burned a copy of the Constitution while proclaiming, "So perish all compromises with tyranny!"

By condoning slavery, the U.S. Constitution did indeed compromise with tyranny. In that sense, it betrayed the "rights" rhetoric of the American Revolution and the language of equality in the Declaration of Independence.

But the U.S. Constitution was also faithful to the spirit of the Revolution and its insistence that liberty was the fundamental value which government was set up to protect. Faced with the weakness of the Articles of Confederation, the Framers wanted to increase the authority of the national government. But at the same time, they recognized that *too much* power in the hands of government was dangerous. Power had to be confined for the "sacred fire of liberty" (in George Washington's words) to burn brightly.

To keep individual rights from being overwhelmed by government power, the Framers devised a system of "separation of powers" and "checks and balances." Power was split among three different branches of government – the executive branch headed by a president, the legislature or Congress, with its House and Senate, and the judiciary headed by the Supreme Court. Each branch had different functions. The way they interacted with each other was meant to prevent any single branch of government from getting too strong or from acting independently from the other branches. With the Constitution "the supreme law of the land," the Framers insisted that no one person could be above the law or assume the powers of a king.

Authority was further

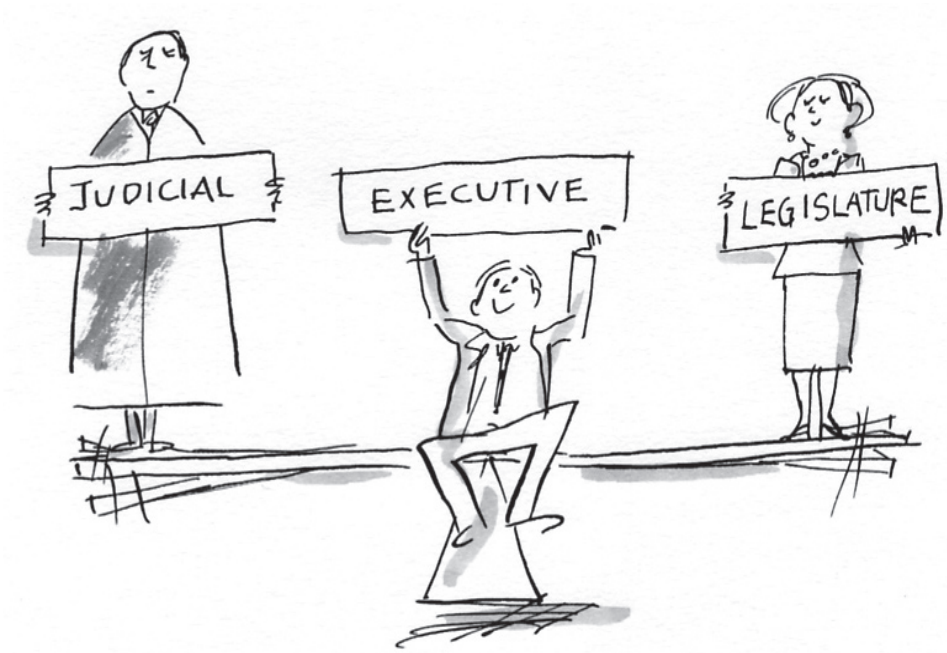
divided between the federal (or national) government and the state governments. The states were regarded as a further check on the potential of the new federal government to become tyrannical and assert absolute power over the people. This fragmentation of power led to endless disputes and eventually to the Civil War.

The Framers claimed that power came from the people. The people were the source of sovereignty for the new Constitution. But this did not mean that they favored "democracy," or rule by the people. Instead, they were worried that masses of people could easily be manipulated in times of danger or fear by men who were out to seize power for themselves. Remembering Shays' Rebellion, they wanted to guard against "mob rule" which could endanger stability and would trample individual freedoms.

Power, then, came from the people – but the people couldn't be allowed to wield power directly for themselves. The Framers created a republican form of government headed by a president, not a king, in which voting was a privilege, not a right. States would decide which of their citizens were entitled to elect representatives. States would also decide how much property men needed to possess in order to run for office. People with voting privileges would elect members of the House of Representatives every two years. But they could not directly elect members of the U.S. Senate and the president. Instead, the legislatures of each state would elect their two U.S. senators, and electors appointed by the states would choose the president.

Through these means – separation of powers, checks and balances, division of authority between the federal government and the states, and checks on direct rule by the people – the Framers sought to guard against tyranny and protect liberty. But what exactly did they mean to protect?

If you read the Constitution that was submitted to the states for ratification in September 1787, you will think their notion of rights was very limited. Section 9 of Article I sets down what Congress cannot do. After first stating that Congress cannot interfere with the trade of "such persons" (slaves) before the year 1808, this section bars Congress from suspending the "writ of habeas corpus" except in times of "rebellion or invasion" or when "the public safety may require it." The writ of habeas corpus, part of English Common Law, ensured that people could not just be buried alive in prison, but could challenge their imprisonment in court. The section also bars *Congress* from passing any "bill



of attainder" (legislation that would punish an individual or group without a trial), or an "ex post facto law" (declaring something to be a crime which was not a crime when it was committed).

Section 10 of Article I forbids *state legislatures* from passing a bill of attainder or ex post facto law. Section 2 of Article III says there must be jury trials for all crimes "except in cases of impeachment" (when public office holders are charged with crimes). Section 3 of Article IV gives certain protections to those accused of the crime of treason (betraying the country) and Article VI states that "no religious test shall ever be required as a qualification to any office or public trust under the United States." In other words, one religion could never be favored over others.

That's it. For all the talk of the importance of "natural rights," no other rights were spelled out in the U.S. Constitution.

There were several reasons for this. Many of the delegates felt that the protection of rights was best left to the states and state constitutions. State constitutions like that adopted by Massachusetts had their own "Declaration of Rights." Other delegates thought the "checks and balances" of the U.S. Constitution would be enough to preserve the balance between power and liberty. Charles Pinckney from South Carolina said it would be hypocritical to have a declaration emphasizing that "all men are by nature born free" since "a large part of our property consists in men who are actually born slaves." Still others argued it would be dangerous to draw up a list of rights since this would imply that no other rights existed. Just before the Philadelphia Convention ended on September 17, 1787, two delegates proposed appointing a committee to draw up a "bill of rights." Their proposal was defeated.

But as states debated whether to ratify the new Constitution, public anger grew over the absence of a bill of rights. Remember, the country was full of people who had participated in a revolution against tyranny just a decade before. They read what had been produced in secret by a few dozen wealthy men and did not find any reference to the rights they cared most about.

They found allies among the "Anti-Federalists." Anti-Federalists maintained that

too much power was being handed over to the national government by the states. They opposed the pro-Constitution group, known as the "Federalists." For several months, it appeared that the document would not get sufficient support to become the law of the land.

Thomas Jefferson was then ambassador to Paris. He wrote to James Madison late in 1787 that "a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse."[7]

Madison had been a key player in the Philadelphia drafting process, and had kept a written record of the debates among the delegates. A leader of the pro-Constitution "Federalists," he did not immediately agree with Jefferson. He wrote back that such a bill of rights would be a useless "parchment barrier" that would not prevent Congress from violating the rights of people. But when states led by Massachusetts agreed to ratify the Constitution on the understanding that a bill of rights would be added later, the Federalists decided it was time to give in.

In June 1790, Madison drafted amendments taken mainly from various state constitutions and proposed that Congress adopt them. Some of his suggestions were rejected, including an amendment that read, "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases." The majority felt that the amendments should apply to the national government, *not* to the states.

On December 15, 1791, Madison's home state of Virginia became the eleventh state to ratify the Ten Amendments known as the *Bill of Rights*, making them part of the Constitution, and therefore, "the supreme law of the land."

5. THE BILL OF RIGHTS

"Congress shall make no law ...." **First Amendment to the US Constitution**

Q: Would you like to see other rights included in the Bill of Rights? Which ones?

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- rights in state constitutions
- human rights
- biographies
- activities

With the adoption of the Bill of Rights, the spirit of the Declaration of Independence was revived. Again, rights were put at the center of the American experiment, and this time they were spelled out. Now we can see more clearly what the revolutionaries meant by "liberty."

The First Amendment

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

The Bill of Rights begins by reinforcing Article VI of the Constitution. There would be no "established" religion favored by government, and people would be able to worship as they saw fit.

Given the colonial experience, it is not hard to see why the Bill of Rights begins with this guarantee of freedom of religion. The early colonies were founded by Puritans and Pilgrims who fled religious persecution. But once they established their own communities, the Puritans did not extend freedom of worship to others. People such as Anne Hutchinson, a midwife who held prayer meetings in her home, were driven away from the Massachusetts Bay colony for "heresy." The courageous Mary Dyer, who was expelled to Rhode Island with Anne Hutchinson and later became a Quaker, was executed for her religious beliefs on the Boston Common in 1660.

However, as the number of different religious groups in the country grew, so did religious tolerance. In colonies like Virginia, where the Church of England was the official or "established" religion, other religious groups resented having to pay taxes to support it. By the time the Constitution was adopted, people had come to believe that religious liberty could only be preserved if the government had nothing to do with promoting religion.

The second part of the First Amendment guarantees the freedom to speak, exchange and publish ideas, to gather together and to criticize the government. These rights grew out of a centuries-long struggle in England against censorship of the press. Before the printing press was invented in the fifteenth century, it was difficult to spread new ideas. The printing press enabled ideas critical of the government and the church to be spread rapidly through the printed word. The English government insisted on having the right to "censor," or approve documents before they were published. Writers and publishers could be physically tortured for violating the censorship rules.

Gradually the government controls were eased, and by the end of the seventeenth century it was possible to publish without having the government approve everything. However, an author or publisher could still be tortured and even executed for "seditious libel" (being critical or making fun of the king, church or other government official).

In 1735, in colonial New York, American freedom of the press took a big step forward when a jury found John Peter Zenger not guilty of "seditious libel." He had criticized the colonial governor in his newspaper, the *New-York Weekly Journal*. Zenger's lawyer argued that he should not be found guilty if what he published was *true,* and the jury agreed. Following this ruling, colonists became more outspoken against the colonial government, and met together to plan resistance to taxes and other acts of Parliament. The American Revolution was made possible through the exercise of those freedoms of expression and assembly later enshrined in the First Amendment.

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."

During the colonial period each colony had its own militia. Citizens were required to serve as part-time soldiers and spend a certain number of days doing military drills. They had to provide their own guns and ammunition. Many of the state militias fought in the American Revolution.

Afterwards, independent state militias were seen as a way of protecting liberty if the new federal government became power hungry and used its national army against the states and the people. And so the Second Amendment was added to the Bill of Rights. Today, the state militias have been folded into the National Guard.

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."

In the tense years before the American Revolution, one out of every four residents of Boston was a British soldier. Local people were forced to "quarter" them in their homes, providing them with beds and food. The Declaration of Independence cites this experience as one of the grievances justifying the break with England. The amendment was meant to ensure that the army of the federal government would not act in a similar way.

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."

Imagine what it was like before the Revolution. British officials or soldiers carrying documents called "writs of assistance" could barge into private homes whenever they felt like it, looking for smuggled goods, or political troublemakers, or pamphlets critical of the government.

Colonial anger over this invasion of privacy was a major grievance in the Declaration of Independence. According to this amendment, "persons, houses, papers, and effects" could only be searched if there was a specific reason – backed by evidence ("probable cause") – for suspecting a particular person of criminal activity. Instead of general writs of

assistance, police had to carry a specific warrant from a judge or magistrate if they wanted to conduct a search.

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."

This amendment lays down some of the procedures or rules for how a person is to be treated

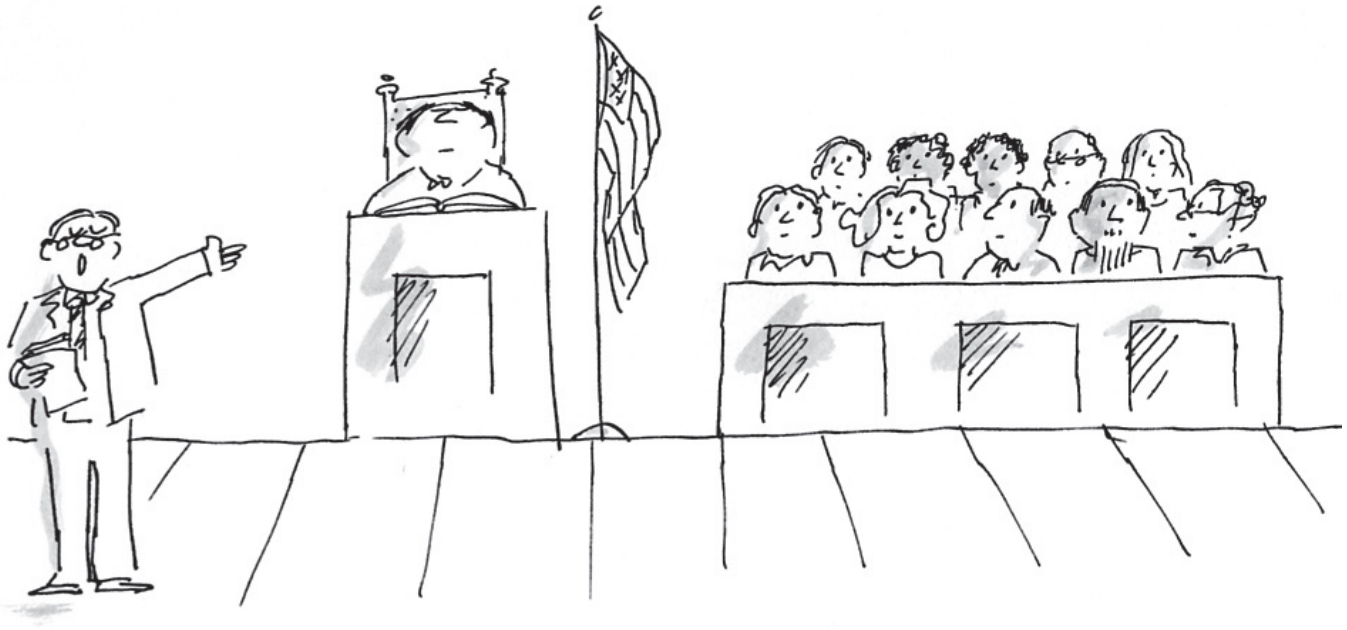
if charged with a crime. Behind it lies a long struggle against the practice of torture, which was used to force confessions of guilt until the eighteenth century. The amendment says people cannot be "compelled" (by torture or other harsh treatment) to confess to a crime. They cannot be arrested on little or no evidence and repeatedly tried by the government for the same offense. A group of citizens known as a "grand jury" must be assembled to determine whether there is enough evidence to hold a trial. Fair procedures ("due process of law") must be followed before a person can be found guilty and punished.

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 counsel for his defense."

It is the middle of the night and you are at home. Suddenly a group of men burst into your house and drag you from your bed. You are thrown in jail for months – you don't really know how long. Eventually you are hauled into a court where, behind closed doors, a judge finds you guilty – you are not entirely sure of what.

This is the kind of arbitrary "justice" many colonial Americans experienced at the



hands of British officials. The further "due process of law" procedures laid down in this amendment – including the right to examine witnesses and be assisted by an attorney – were supposed to ensure the new national government could not act in the same way.

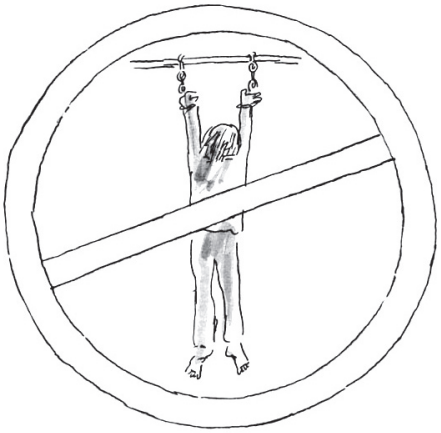
The Seventh Amendment

"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 reexamined in any court of the United States, than according to the rules of the common law."

Being deprived of trial by jury was a colonial grievance that featured in the Declaration of Independence and was barred by Article III of the Constitution. Americans felt that holding trials in public before juries made up of fellow citizens was an important safeguard of liberty. People could too easily be victimized by government officials if trials were closed to the public or juries were not involved.

The Eighth Amendment

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



Gruesome forms of physical torture were used to punish people and to force confessions out of them until the early eighteenth century, when these methods began to be regarded as barbaric. This amendment was supposed to make sure these methods would never be used again. It also was meant to prevent the government from keeping people in prison indefinitely by making the bail impossibly high or imposing fines they could not possibly pay.

The Ninth Amendment

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

Framers who opposed adding a bill of rights to the Constitution said that one document could not possibly summarize all the rights possessed by the people. By including this amendment, James Madison spoke to those concerns. It implies that people did have more rights than those listed in the first eight amendments to the Constitution, and that the Bill of Rights could expand with the times.

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."

This final amendment was meant to guard against the new national government getting so much power that it overwhelmed the authority of the states and personal liberty. Like the Ninth Amendment, it opens the way for "We the people" to obtain more power and rights than those set down in the Constitution, and for the United States to become a fully functioning democracy.

6. JUST WORDS ON PAPER

"Liberty is meaningless where the right to utter one's thoughts and opinions has ceased to exist. That, of all rights, is the dread of tyrants. It is the right which they first of all strike down. They know its power."

Frederick Douglass, "A Plea for Free Speech in Boston," 1860

Q: Why did Frederick Douglass think that freedom of speech was so important?

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- the court system
- court cases
- the fight against slavery
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The rights set down in the first Ten Amendments to the U.S. Constitution are called civil liberties. The Framers considered them to be fundamental values for which the Revolution was fought. These rights were guaranteed to "all persons" – not just citizens – and were intended to be a "parchment barrier" (in Madison's words) against tyranny.

But there was one big problem with the Bill of Rights. As Madison had feared, it didn't work.

There were three main reasons for this. First, it had no enforcement mechanism. Even with a functioning judicial branch, there was still no way of getting violations of rights in front of the courts. And besides, no one was sure what the language of the document actually meant.

More than a century would pass before the U.S. Supreme Court even began to rule in First Amendment cases. It took courts applying the language of the Bill of Rights to particular situations to define what rights meant in practice.

Second, it only applied to the actions of the *federal* government ("Congress shall make no law..."). It did not apply to the states, which could (and did) violate the civil liberties of their populations. It did not apply to local police, who used brutal methods to uphold the absolute tyranny of slavery.

Third, it did not apply to "We the people," but only to some of the people. The great majority in the country had no civil rights. One thing we learn from U.S. history is that *when some people are denied rights, the rights of all are threatened.* It took more than 170 years for civil rights to be extended to *all* citizens, guaranteeing them the right to be treated equally under the law, to be free from discrimination, and to participate in the political process.

Only then, in the 1960s, did the courts rule that most

of the Bill of Rights applied to the states as well as the federal government. Only when people organized to demand their rights did the Bill of Rights become more than a piece of paper, and the United States begin to realize the full promise of the Declaration of Independence.

But even if the Bill of Rights *had* possessed an enforcement mechanism, and even if it had applied to all levels of government and to all people in the 1790s, it still might have been ineffective in the young Republic because of the role played by fear.

Certainly, there were reasons to be fearful. Imagine what it was like to launch the world's first federal system, with power shared between two *levels* of government and among different *branches* of government. No one knew if it would really work. And pretty soon, much of the world would be at war. What protection did the fragile young country have against the armies of Europe if they decided to invade?

The Bill of Rights was only seven years old when President John Adams got his Federalist Party supporters in Congress to pass the Alien and Sedition Acts. For Adams, the late 1790s

was a "time of crisis."

He worried that revolutionary France might attack the United States, and he feared that French immigrants and refugees might be spies. But he also wanted to get the upper hand over Thomas Jefferson's Democratic-Republican Party. And so he ignored the First Amendment's command that "Congress shall make no law" abridging the freedoms of speech and the press.

The Alien and Sedition Acts of 1798 gave President Adams the power to imprison immigrants without due process of law, and to deport those he thought suspicious. "Aliens" (non citizens) were among the "persons" who were supposed to have Bill of Rights protections. But foreigners were blamed for problems at home since the Republic's early days.

Writing anonymously against legislation he thought was "unconstitutional," Thomas Jefferson warned his countrymen that once the "friendless alien" has been deprived of rights, "the citizen will soon follow, or rather, has already followed, for already has a sedition act marked him as its prey." [8] The Sedition Act provided that any person writing, publishing or uttering anything "false, scandalous or malicious" against the government, the Congress, or the president could be imprisoned for up to two years and fined up to $2,000.

Dozens of citizens were arrested and seventeen of them, including a Member of Congress, were prosecuted under the Sedition Act. One man was convicted for saying that "he did not care if someone fired a cannon shot at the President's ass." Many

newspapers critical of the Federalist Party were driven out of business.

When Thomas Jefferson became president, he pardoned those who had been convicted under the Sedition Act. The Act itself had expired by the end of Adams' presidency.

But once he was in office, Jefferson too came to believe that the young Republic was in peril. He too thought that newspapers that published "seditious libel" should be prosecuted. As president, he took actions which today might be called violations of the First and Fourth Amendments. Jefferson, like many later presidents, argued that these actions were necessary on "national security" grounds. But his political opponents thought he was using fear as a way of getting more power for his own party.

The greatest threat to the rights guaranteed by the U.S. Constitution came from the nation's "fatal flaw" – slavery. While the Revolution was still underway, there was some reason to hope that the "spirit of liberty" would transform the social order. "Mumbet" – later known as Elizabeth Mumbet Freeman – certainly thought so. She was an enslaved woman in Sheffield, Massachusetts, whose husband died in the Revolutionary War.

After hearing talk about the Declaration of Rights in the new Massachusetts Constitution, she decided that if the Declaration said all people were born free and equal, she was too. She asked attorney Theodore Sedgwick if he could win her freedom and that of a fellow slave, named Brom, by representing them in the county court. In August 1781, a jury ordered their master to set them free and pay them each thirty shillings.

In 1783, Massachusetts became the first of the newly-independent states to abolish slavery officially. By 1830, slavery had been brought to an end in all of the Northern states. The following decades saw a groundswell of activism. The power of the First Amendment – the right to hold public meetings, to demonstrate, to publish newspapers like William Lloyd Garrison's *The Liberator* - was used to fight for racial equality in the North, for an end to slavery in the South, and for political and social rights for women.

In Massachusetts, African Americans used boycotts and court cases to challenge segregation in schools and public transport, pioneering many of the strategies that would be used by the Civil Rights Movement in the following century. Boston, Philadelphia and New York became leading centers of anti-slavery organizing. Women such as the inspirational Grimke sisters and Lydia Maria Child fought for an end both to slavery and to male domination. Frederick Douglass, who was born into slavery, participated in the 1848 Seneca Falls Convention that devised a program for the equality of women using the language of the Declaration of Independence.

As Douglass realized, free speech - "the right to utter one's thoughts and opinions" – was an essential tool for social change. Southern states realized this too, and responded by punishing expression they

didn't like. Jefferson's home state of Virginia, the first state to pass a declaration of rights, made it a crime to criticize slavery. Other states outlawed any expression that could "promote discontent."

In 1836, the U.S. Congress directly violated the First Amendment by banning Congressional debate on anti-slavery petitions. Congress had received a flood of such petitions containing hundreds of thousands of signatures. In an effort to restore "tranquility to the public mind," the federal executive branch barred abolitionist pamphlets from being sent through the mails. It was becoming increasingly obvious that liberty could not exist side by side with slavery.

Which would prevail? In the short term at least, the betting was on slavery. Slavery was an absolute tyranny, governed by codes drawn up by the states that affected *all* Americans – free and unfree. While the Bill of Rights was often just a piece of paper with no enforcement mechanism, the slave codes were rigorously enforced. They harshly restricted the behavior and movement of slaves, and also governed what white people and free African Americans could say and do - and not just in the South! Although only one quarter of whites in the South owned slaves, everyone, North and South, was implicated in the institution's preservation.

Slave codes detailed relations between the enslaved and free Black people, and the duties of whites. Whites were required to participate in slave patrols, and to inflict a certain number of lashes on slaves found violating codes restricting their movement. In some states, slave owners were discouraged from freeing slaves, or hiring them out. White people who taught enslaved Blacks to read, or helped them escape, or forged a pass for them, or "incited" them to rebel, were fined, imprisoned and socially shunned.

While the First Amendment guaranteed religious liberty and freedom of speech and assembly, slave codes barred slaves from holding religious meetings without white people present, and from assembling in groups of more than five away from their plantations. While the Fourth Amendment promised freedom from unreasonable searches and seizures, slave patrols were

empowered to enter and search slave cabins and demand passes from African-American travelers, and punish those found without them.

As for due process, it had no role in such an oppressive system. The 1850 Fugitive Slave Law provided that *any* Black person, no matter how long he or she had been free, could be arrested and returned to slavery without any kind of a judicial process. The due process rights claimed by free Black people were obliterated by a law that made no provision for an alleged fugitive to testify on his or her own behalf. In addition, anyone who helped someone who had escaped from slavery, or did not aid in that person's capture, was liable to be arrested, imprisoned and heavily fined.

In Boston, there were huge mass meetings as people organized to protect runaways and repel the slave catchers. Sometimes they were successful. But in 1854, Bostonians failed in their attempt to rescue a young runaway from his captors. As many as 50,000 people yelling "Shame!" reportedly lined the streets as Anthony Burns was taken by federal troops and armed local militiamen and put on a ship to be sent back to slavery in Virginia.

In order to protect slavery, state legislatures also sought to restrict the movement and behavior of African Americans who were *not* enslaved. They made up thirteen percent of the Black population in the early nineteenth century. As we have seen, states that had initially extended the vote to free African-American males who met the property qualification took those voting privileges away and even called their status as citizens into question.

Even the U.S. Supreme Court was enlisted in defense of the slave system. In the 1857 case of *Dred Scott v. Sandford,* the court, for only the second time in its history, declared a law unconstitutional. Dred Scott was a Missouri slave who had sued his owner for freedom after being taken by him into the Wisconsin Territory. Slavery had been banned from that region by the Missouri Compromise of 1820.

Dominated by justices from the South, the court ruled 7-2 that the Missouri Compromise was unconstitutional and Dred Scott was still enslaved. Its chief justice, Roger Taney, asserted that Black people, slave and free, had never possessed legal standing in U.S. courts. He argued that "they had no rights which the white man was bound to respect." The highest court in the land had emerged as the defender of property, not of personal rights.

7. WHOSE LAND IS THIS LAND?

"As a nation, we began by declaring that 'all men are created equal.'...When the Know-Nothings get control, it will read 'all men are created equal, except negroes and foreigners and Catholics.' When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty."

Abraham Lincoln to Joshua Speed, Letter, August 24, 1855

By the time Abraham Lincoln wrote these words in 1855, both the Constitution and that basic American value, liberty, were in bad shape. The Founders had hoped to protect liberty and what they called "unalienable rights" by dividing power between the federal government and the states. That formula was rapidly breaking down.

Calling the federal government the new tyranny, Southern states insisted that they could override federal laws that conflicted with their own. In return, the federal government said the Southern doctrine of "states' rights" was threatening the Union. Both sides argued they were upholding the Constitution and preserving liberty.

But what did they mean by "liberty"? The mid-nineteenth century notion of what it meant to be "free" and have "rights" shows how the existence of slavery had warped these fundamental values. In the South – called the "Slave Power" by anti-slavery abolitionists – slavery was now seen as essential to *preserve* liberty and what the Virginia governor Henry Wise called "the great democratic principle of equality among men" (that is, white men). Without slavery, the argument went, liberty and equality would perish, as conflict among different classes of whites and between different races tore the society apart.

The Northerners who took a stand for "Free Soil, Free Labor, Free Men" (the slogan of the Free Soil Party in the late 1840s) maintained that liberty and slavery could *not* co-exist. They argued that slavery should be excluded from western lands seized from indigenous inhabitants and Mexico.

But their opposition to slavery did not mean they wanted equal rights for African Americans.

Q: Do you think the nation's attitude toward immigrants is different today than it was in the 19th century?

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- attitudes towards immigrants
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Their main concern was that white people should be free to move west without facing the economic threat posed by slavery, a notion that the abolitionist William Lloyd Garrison denounced as "whitemanism." The racist thinking that justified slavery – the ideology of white supremacy - was too deeply embedded for rights to be seen as universal and "unalienable" for *all* human beings.

In the North and in the South, the United States was regarded as a "white man's country" with a divine mission to settle the land because of the supposed superiority of "white civilization." For years, white Americans had assumed that taking land from the Indians – through what they called "just wars," treaties, or new laws of ownership – was justified on the grounds that they made better use of the land.

"What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns and prosperous farms...and filled with all the blessings of liberty, civilization, and religion?" President Andrew Jackson asked the U.S. Congress in December 1830.[9] After President Jackson forced Indians in the eastern states to sign treaties giving up their land and pushed tens of thousands of them west beyond the Mississippi River, land fever and racist rhetoric both grew more shrill.

Mexico, which was opposed to slavery, was also threatened by the expansion of American "Anglos" into its territory in the southwest of the continent – what is today Texas, California, New Mexico, Nevada, and parts of Colorado, Arizona and Utah. In 1845 this expansion west was termed "Manifest Destiny" by John L. O'Sullivan, a New York newspaper editor. "Manifest Destiny" stood for the "right" of white Anglo-Saxons to spread "democracy, freedom and industry" from sea to sea. The following year, the U.S. annexed Texas, which showed what it meant by "freedom" by entering the Union as a slave state. In 1847, as U.S. military attacks intensified pressure on Mexico to give up more and more of its land, Congressman William Giles from Maryland

declared:

"We must march from ocean to ocean.... We must march from Texas straight to the Pacific ocean, and be bounded only by its roaring wave.... It is the destiny of the white race, it is the destiny of the Anglo-Saxon race."[10]

But who was a member of the "white race" in the mid- nineteenth century? Did you have to be an "Anglo-Saxon" – or person of English descent – to qualify? During the 1840s, nearly two million new immigrants arrived in the United States, mostly from Ireland and the German states. Where did they fit into Congressman Giles' sense of "destiny"? And what about those who were neither seen as "white" nor the descendants of Africans – for instance, Chinese immigrants, who were ten percent of California's population in the early 1850s, and the Mexicans who lived in the southwest? What was their place in what was seen as a "white man's country"?

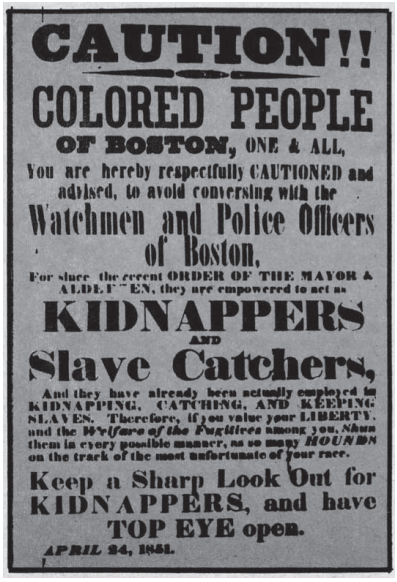
The struggle of various groups of immigrants to gain acceptance and full citizenship in the United States is a complex and ongoing story. The original Naturalization Law of 1790 stated that only "aliens" who were "free white persons" could become citizens. In the decades before the Civil War, states ended their property qualifications for the franchise (the vote), and most adult males of European descent got the right to vote. In some states, white immigrants could vote when they first applied for their citizenship papers.

As democracy expanded, so did fears about immigration. During periods of economic crisis, American working men feared newcomers would take away their jobs or depress their wages. Foreigners were often targeted as "un-American" by anti-immigrant mobs.

Newcomers who were Catholic - especially the Irish - were portrayed as having a secret agenda to destroy the Protestant religion and the American way of life. Despite the First Amendment's protection of religious liberty, several states passed anti-Catholic legislation. The secretive "Know-Nothing Party," which Lincoln scorned in his 1855 letter, had shadowy anti-Catholic roots and strong backing in some states for its call to limit immigration and end foreign influences in the country. In the South, it was pro-slavery. Its members got their name from answering that they "knew nothing" when asked about their party.

In Massachusetts, the "Know-Nothings" did a remarkable thing, and in so doing, demonstrated how complicated it can be to interpret history. In 1854, "Know-Nothing" candidates, who "seemed to have appeared out of nowhere," took over the legislature and nearly every state office, including the governorship.[11]

People in Massachusetts had a variety of reasons for becoming "Know-Nothings," including anti-immigrant sentiment. But during their



CAUTION!!

COLORED PEOPLE

OF BOSTON, ONE & ALL,

You are hereby respectfully CAUTIONED and advised, to avoid conversing with the

Watchmen and Police Officers of Boston,

For since the recent ORDER OF THE MAYOR & ALDE[illegible]EN, they are empowered to act as

KIDNAPPERS AND Slave Catchers,

And they have already been actually employed in KIDNAPPING, CATCHING, AND KEEPING SLAVES. Therefore, if you value your LIBERTY, and the *Welfare of the Fugitives* among you, Shun them in every possible manner, as so many *HOUNDS* on the track of the most unfortunate of your race.

Keep a Sharp Look Out for KIDNAPPERS, and have TOP EYE open.

APRIL 24, 1851.

brief time in power, they proved to be a reform-minded group. In 1855, they passed a Personal Liberty Law that made it difficult for slave owners to use the state courts to reclaim former slaves and guaranteed the rights of habeas corpus and a jury trial to fugitives. They removed a judge who had returned a former slave to the South. And in response to organizing carried out by Boston's free Black community, they passed a law desegregating the Boston schools.

But real racial equality was not so easily achieved. In a society based on white supremacy, newcomers from Europe learned they could gain an economic foothold and social acceptance if they could prove their credentials as "white men." Many immigrant groups did so by adopting a racist mindset. A deepening popular racism was one consequence of the attempt of new groups to be accepted as wholly "white" participants in the "American Dream."

This option was not open to Chinese immigrants who came to the United States in large numbers in the 1840s. Many of them toiled in mining camps in California, where they were resented for the long hours they worked and the low standard of living they were prepared to put up with. By the 1850s, white workers were ganging up against those they regarded as "non whites." Ugly racist stereotypes depicted them as enemies of "free labor" and liberty, who could not be trusted to be part of the "American Dream."

Mexicans were also subjected to ugly racist stereotypes as Americans asserted their "Manifest Destiny" to Mexican land. In 1848, Mexico was pressured to sign the Treaty of Guadalupe Hidalgo and give the United States over a million square miles of territory in exchange for $15 million. According to the treaty, Mexican ranchers would have the right to stay in the U.S. and keep their land.

But that did not happen. Many ranchers lost their land in the courts. Others had their land taken when they could not pay new taxes. Soon people who would later be called Chicanos or Hispanics had become "aliens" in what was once their own country. Some states passed laws that discriminated against them. Forced off the land, they became farm laborers or worked in terrible conditions in mines and building railroads.

The notion that the United States was a "white man's country" - where Native Americans, Chinese immigrants, Spanish-speaking Mexicans and other people who were not regarded as "white" were unwelcome - grew steadily stronger after the Civil War. To deal with what was termed the "yellow peril," Congress in 1882 put a halt to Chinese immigration with the passage of the Chinese Exclusion Act.

By the end of the nineteenth century, a new science of "race" would be turned against other immigrant groups, including those from Eastern Europe who were not regarded as truly "white." As long as "only white men are created equal" remained the national mindset, the promise of the Declaration of Independence was all but forgotten.

8. THE SECOND AMERICAN REVOLUTION

"Our fathers...proclaimed the equality of men before the law. Upon that they created a revolution and built the Republic. They were prevented by slavery from perfecting the superstructure whose foundation they had thus broadly laid....It is our duty to complete their work."

Congressman Thaddeus Stevens, speech in the US House of Representatives, December 18, 1865

Q: Why was the period of Reconstruction called "the second American Revolution"?

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- the women's suffrage movement
- Ku Klux Klan & Black Codes
- court cases
- definitions
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By 1860 the Republic was splitting apart. As the Southern states left the Union, and the North and South moved toward war, each side laid claim to the Constitution.

The South argued that the Constitution protected slavery, and that it gave the states the power to secede if the federal government threatened their rights. Newly-elected President Abraham Lincoln declared that the Union should not be sacrificed because of differences over constitutional interpretation. He argued that both the Union and the Constitution were essential to the preservation of liberty.

On February 22, 1861, Lincoln spoke at Independence Hall in Philadelphia, where the Constitution had been drafted. There he said how committed he was to "the sentiments embodied in the Declaration of Independence." It took half a million war dead to give the nation a second chance to live up to the ideals of liberty and equality expressed in the Declaration.

The period following the Civil War was known as Reconstruction. It was a time of hope and new beginnings. At last it seemed possible to purge the Constitution of the taint of slavery and make America something other than a white man's country. The opportunity was at hand not just to reshape social relations in the South, but to make the nation the guardian of personal rights and freedoms - for African Americans as well as whites, and maybe for women as well as men.

By the end of Civil War in 1865, 180,000 African Americans had served in the Union army as soldiers. They had played a significant role in winning the war, a role that made it unthinkable that slavery would be restored in

the South after the war's end. In 1865, Congress passed the Thirteenth Amendment to the Constitution abolishing slavery and "involuntary servitude." It also stated: "Congress shall have power to enforce this article by appropriate legislation." This was the first time an amendment to the Constitution contained language enlarging the powers of the federal government at the expense of the states.

Four million former slaves were now free. They organized mass meetings and petitions invoking the Declaration of Independence to demand equality and the vote. America, they said, must now live up to its professed ideals.

But Andrew Johnson, who became president after Lincoln was assassinated, permitted the Southern states that re-joined the Union to re-impose slavery on African Americans in all but name. Beginning in 1866, several states passed "Black Codes" which gave "masters" the right to whip "servants" (as former slaves were now called) for "insulting gestures" and seditious speeches, and to use brute force to keep them as a work force on plantations. African Americans and their white allies (known as Radical Republicans) were terrorized by the Ku Klux Klan, a secret organization founded in 1866 by former Confederate soldiers in President Johnson's home state of Tennessee.

Massachusetts students view Ku Klux Klan gear in the Civil Rights Museum in Memphis. Photo James Blackwell

All around the South, there were terrible scenes as mobs attacked African Americans who were seeking to exercise their rights to meet together, to be educated, or to buy land. Nearly fifty African-American veterans were killed in a riot in Memphis led by police.

Incidents such as this finally gave the Radical Republicans in the U.S. Congress the ammunition they needed to challenge President Johnson. In 1867, they initiated the period of national transformation known as "Radical Reconstruction," which lasted until 1877. This was the country's chance to make real the rhetoric of the Declaration of Independence and Bill of Rights.

Already in 1866, Congress had passed a Civil Rights Act, giving citizenship and the equal benefit of the laws to all persons born in the United States "and not subject to any foreign power" - with the exception of Native Americans, who still could not own land, sue in court or make legal agreements. The Civil Rights Act, which was passed over President Johnson's veto, also provided that anyone who deprived former slaves of rights secured by the Act would be guilty of a misdemeanor, with cases heard in federal courts. No longer would Congress leave it up to the states to safeguard the rights of their inhabitants.

The following year, in 1867, Congress passed the Reconstruction Act. It declared that the Southern states had to adopt new state constitutions written by popularly elected conventions.

An astonishing change was taking place. Within a decade from the beginning of the Civil War, African-American males had won the right to vote, to serve on juries, and to hold office in the Republican Party.

They registered to vote in huge numbers and organized their own political groups. They served as delegates to conventions that wrote new state constitutions in the South. They were elected to state legislatures and to Congress. And in 1868, they helped ratify the Fourteenth Amendment to the U.S. Constitution.

This amendment laid the foundation for protecting the fundamental civil rights of citizenship. The source of citizenship was no longer the states, but the nation. The amendment declared that states could not deny "any person" the "equal protection of the laws" or deprive persons of "life, liberty or property without due process of law." Furthermore, Congress was given the power to pass legislation enforcing the Fourteenth Amendment.

As we shall see, the Fourteenth Amendment eventually would be used by the courts to apply most provisions of the Bill of Rights to the states. But that didn't happen until the 1960s.

The amendment had one big limitation – by giving the vote only to newly-freed *males*, it let down its female supporters. For the very first time, the

Constitution became gender-specific. Women had played an important role in the fight against slavery, and they hoped after the Civil War that suffrage would be extended to them too.

Their disappointment grew when the Fifteenth Amendment was ratified in 1870. This amendment extended the vote to African-American males in the North and prohibited the states from restricting voting rights of *men*. Again, women were ignored. In 1874, the U.S. Supreme Court ruled in the case of *Minor v. Happersett* that Virginia Minor (who had tried to vote in Missouri) may be citizen, but suffrage is not necessarily a part of citizenship.

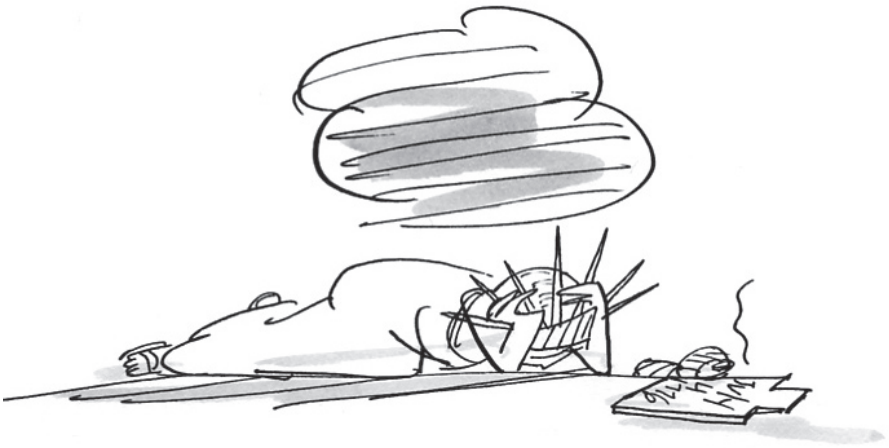
Although women did not benefit from the Fourteenth and Fifteenth Amendments, and former slaves did not get the economic assistance they needed to help them establish new lives, the Reconstruction period was ripe with promise for significant social change. The 1870 Naturalization Act provided that Africans could be naturalized citizens. This was the first departure from the 1790 Naturalization Law, that had restricted naturalization to "free white persons." Legislation was passed to protect African Americans from the Ku Klux Klan, providing federal intervention when local authorities were unwilling or unable to act. The Civil Rights Act of 1875 declared that all persons were entitled to equal enjoyment of public accommodations - trains, ships, theaters, hotels, restaurants, and businesses open to the public. However, schools and churches were left off the list.

By means of constitutional amendments and laws, the Radical Republicans tried to establish a new federalism and a new legal order. The original constitutional division of power between the federal government and states had failed to protect liberty. Under Reconstruction, the national government finally had the power it needed to protect the equal rights of all men.

9. RETREAT FROM RECONSTRUCTION

"The slave went free; stood a brief moment in the sun; then moved back again toward slavery."

W.E.B. DuBois, *Black Reconstruction in America,* 1934



Q: How different might things be today if the courts had acted differently after the Civil War?

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- Jim Crow segregation
- court cases
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Within a decade of the Civil War, what the African-American writer W.E.B. DuBois called the "brief moment in the sun" had passed. By the time the Declaration of Independence turned one hundred years old, in 1876, the nation was in full retreat from justice and equality, as white supremacists resumed control in the South.

And by the time the Bill of Rights turned one hundred years old, in 1891, the era of "Jim Crow segregation" with its separate "whites only" facilities had dawned, and popular racism was more poisonous than ever.

Why did this happen? Here are some of the reasons. In the South, whites deeply resented their loss of status and political power. Many former Southern soldiers created their own armed terrorist groups and used racist myths about "lazy" and "violent" former slaves to try to keep them in "their place."

They initiated a reign of terror. Two thousand people were killed in the period leading up to the 1868 elections in Louisiana alone. Black people were prevented from holding jobs alongside white people. In the North, there were also violent race riots, as white workers feared that African Americans would come into Northern cities in huge numbers to take their jobs.

By the mid-1870s, many one-time supporters of Reconstruction had come to feel that "enough had been done" for the freedmen, and it was time to end federal intervention in the South and "return to normal." Among them were many women, who had joined African Americans to fight for universal suffrage, and felt angry when the Fifteenth Amendment failed to give them the right to vote. The movement to expand

democracy was over, for the time being. In 1877, after a disputed presidential election, a deal between the political parties ended Reconstruction.

The closing decades of the nineteenth century have been called the "Gilded Age." The philosophy of "laissez-faire" – which held that there should be no interference with the "natural laws" that governed the marketplace – led to a period of unprecedented greed and corruption. During this time, the so-called "robber barons" built fortunes in railways, oil, steel and banks, and made war on trade unions.

For many Americans, rapid economic expansion brought nothing but hardship. In the closing decades of the century, one in five workers was totally unemployed, and another three in five could not count on steady work. As cardboard slums, called shanty towns, sprang up in cities and people died from starvation, carrying through on the promises of Reconstruction seemed a marginal concern.

For all these reasons, there was not much opposition when the courts took the lead in rolling back the gains of Reconstruction. The courts did not stand up to public opinion, but rather reflected the public acceptance of injustice. The justices of the Supreme Court were not then, as they are not today, above politics.

Reconstruction had represented an attempt to reconcile the Constitution with the ideals of the Declaration of Independence, and to interpret it afresh as a document that embraced equal rights for all. It was this interpretation that was defeated by the courts.

The history of the post-Civil War period holds important lessons for today. We learn again that constitutional amendments and laws are *not* self-enforcing. Unless individuals know what their rights should be and demand them, civil rights and liberties can be stripped of meaning or be forgotten entirely.

In their interpretation of the Civil War amendments and Civil Rights laws, the courts were able to exploit disagreement over what "equal rights" meant in practice. Appealing to Americans' longstanding distrust of a powerful national government, they ruled that under the Constitution, protection of rights was the job of the states.

The movement toward a more equal society was abandoned as state and federal courts, with remarkable swiftness, took steps to make the Fourteenth Amendment meaningless. The U.S. Supreme Court in 1871 ruled 5-4 that the Fourteenth Amendment did *not* place the rights of citizens under federal protection and that the national government could *not* interfere with a state's jurisdiction over civil rights. If a state chose not to protect its citizens from mob violence, that was its business!

Before long, what was called "Jim Crow segregation" was upheld by the Supreme Court. In 1892, Homer Plessy got on a train in New Orleans to test an 1890 Louisiana law that ordered railways to provide separate carriages for white people. Plessy looked "white" (he later told the court he had "one eighth African blood"). He

informed the train conductor that he was "a Negro" (as Black people were called at the time) before refusing to move from the "whites-only" carriage and then being arrested.

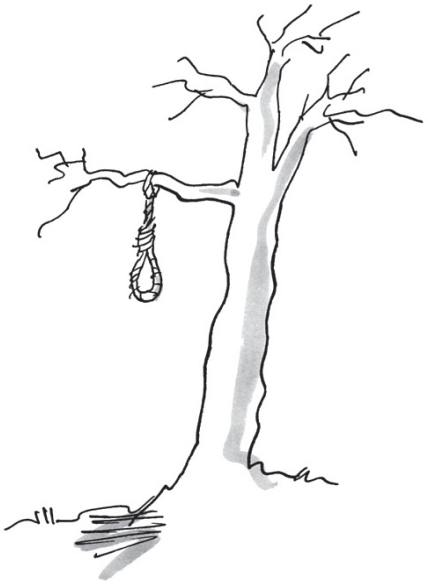
Plessy claimed in court that the Louisiana law violated both the Thirteenth and Fourteenth Amendments to the U.S. Constitution. His lawyer asked, "Will the court hold that a single drop of African blood is sufficient to color a whole ocean of Caucasian whiteness?"[12]

In 1896, with only one dissenting vote, the Supreme Court ruled in *Plessy v. Ferguson* that racial segregation was legal if facilities for the races were "separate but equal." In his brave dissent, Supreme Court Justice John Marshall Harlan, himself a former slave owner, stated that "the thin disguise of 'equal' accommodations...will not mislead anyone, nor atone for the wrong this day done."

These and several other rulings by the Supreme Court entrenched "Jim Crow segregation" in Southern life, and gave a green light to unspeakably brutal racial violence. The "tyranny of the majority" that the Framers hoped to keep in check destroyed the liberties and lives of African Americans. Thousands of African Americans were hanged, beaten, tortured and burned to death by lynch mobs in the closing decades of the nineteenth century, with little public outcry. The great majority of the victims had never been formally charged with any crime.

Under such circumstances, it took considerable courage to continue the struggle for equal rights. Ida B. Wells had a reputation for fearlessness. While still in her early 20s, this African-American teacher and journalist was violently forced off a train in Memphis when she refused to move from a coach reserved for whites. She brought a lawsuit in state court and won, only to have the decision reversed by the Tennessee Supreme Court in 1887, in language that foreshadowed *Plessy v. Ferguson.*

She then became the co-owner and editor of a newspaper in Memphis called *Free Speech and Headlight,* and used it to campaign against racial discrimination and for women's rights. In 1892, after three people in Memphis were murdered by a white mob because their grocery store was taking business away from white-owned stores, she



launched a crusade against the brutal practice of lynching. Wells had to flee Memphis when the *Free Speech* office was attacked by a white mob. Undeterred, she continued the fight against lynching from England and elsewhere in the United States. But vigilante terrorism to enforce African-American subordination had become a "natural" part of the American landscape.

Desperate to awaken the nation's conscience, the National Association for the Advancement of Colored People placed this ad in newspapers in 1922: "Do you know that the United States is the only land on Earth where human beings are BURNED AT THE STAKE?"

It is difficult to conceive of a more thorough betrayal of Reconstruction's promise of a new beginning.

10. FEAR OVERWHELMS

"You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free."

Attorney Clarence Darrow, *People v. Lloyd*, 1920

Q: A British visitor to the United States in the 1920s wrote: "America is the land of liberty – liberty to keep in step." What did he mean? How true is this today?

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- attitudes towards immigrants
- court cases
- definitions
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What do you think would happen if you read the Bill of Rights outdoors before a large audience? Would you get blank looks? Signs of interest? Applause?

Almost certainly you would not be kidnapped by the police. That's what happened in 1923 to a famous writer, Upton Sinclair. He began a speech before a large group of striking workers in San Pedro Harbor, California by reading aloud the Bill of Rights. Before he could finish the First Amendment – guaranteeing the right to freedom of speech and assembly – police surrounded him, removing him from the speaker's platform.

As Sinclair later wrote in a letter to the Los Angeles chief of police, the police officers told him that "this Constitution stuff does not go at the Harbor."[13] He was driven from police station to police station in Los Angeles for many hours, without actually being charged with anything. The Los Angeles police apparently hoped to hold him indefinitely without anyone knowing of his whereabouts.

However, someone tipped off Sinclair's lawyer and he was brought into court after being held in secret for twenty-two hours. He was charged with "discussing, arguing, orating and debating certain thoughts and theories...calculated to cause hatred and contempt of the government of the United States of America, and... detrimental and in opposition to the orderly conduct of affairs of business, affecting the rights of private property and personal liberty...."

In the mind of the local authorities, "personal liberty" and the "rights of private property" went hand in hand. Both appeared threatened when the Bill of Rights was read by someone who sympathized with striking

workers.

We have learned that the civil liberties guaranteed by the Bill of Rights counted for little when the basic civil and human rights of large parts of the population were denied. We have also seen that after the Civil War, there was an opportunity for the country to change direction. If the Fourteenth Amendment to the Constitution had been interpreted differently by the courts, there may have been a different climate in the country by the following century.

But instead, "Jim Crow segregation" replaced slavery, as the federal government retreated from the promise of Reconstruction. And at the same time, more and more people, both immigrants and citizens, experienced the kind of government tyranny that the Founders had tried to prevent. During a time of fear, not unlike the climate surrounding today's "war on terrorism," people were targeted solely because of their ideas and political beliefs.

One hundred years ago, "anarchists" were believed responsible for many violent acts, including the planting of dozens of bombs in public places. Anarchists, who were mostly immigrants from

Europe, maintained that in a just world there would be no government, but people would govern themselves, hold property in common and work for the common good.

When an American-born anarchist assassinated President William McKinley in 1901, Congress passed laws to keep anarchists out of the country and to deport those who were here already – even if they were totally law-abiding and did not advocate violence for political ends. Under these laws, naturalized citizens (those who were not born here) could be deprived of citizenship if it could be shown they were, or had once been, anarchists.

Anarchists were not the only people to be treated as dangerous subversives. Any "political radical" who questioned the American economic system, or helped organize trade unions so workers could demand better pay and conditions, was at risk. Called "communists" or "Reds" because of the red flags they carried, they faced mob violence and government raids. Public fears associated with the first "Red Scare" intensified when, in 1917, there was a successful revolution in Russia, which became the Soviet Union.

This "Bolshevik" or communist revolution occurred shortly after the United States entered the First World War. The war was not popular with the American people, and there were large anti-war demonstrations around the country. The government claimed that communists were stirring up anti-war sentiment.

In June 1917, Congress passed an Espionage Act. It

provided for a $10,000 fine and up to twenty years in prison for disloyal utterances or attempts to obstruct military recruitment. The next year, Congress passed a Sedition Act. It applied the same penalties to "uttering, printing, writing, or publishing" language that was seen as disloyal and which was intended "to cause contempt" towards the "government of the United States, or the Constitution, or the flag." Over 2,000 persons were prosecuted under these acts.

State legislatures and local towns also passed laws barring "seditious expression." There were tens of thousands of prosecutions for distributing literature on the streets, for holding public meetings and for displaying a red flag. So extreme was the fear of dissent and what were called "foreign ideas" that teachers were screened for "loyalty" and several states banned foreign languages in schools.

The attack on dissenting ideas did not end with the end of the war in 1918. In 1919, there was an economic slump and widespread unemployment among returning war veterans. The result was nearly 4,000 labor strikes involving four million workers, feeding fears that society was coming apart, as it had in Russia.

These fears were fanned by the media, especially after bombs went off in eight cities in June 1919. One exploded in the Massachusetts legislature. In September 1919, when the Boston police went on strike for higher pay, the press became nearly hysterical. It depicted the events as "a Bolshevik nightmare" with the city under the control of subversives. In the words of the September 12th *New York Times*, the strike provided "a long look at the fires of anarchy and crime that smolder asleep under civilization."

To inflame fears further, white mobs attacked African Americans in twenty-two cities across the country between April and October 1919. State and local authorities claimed to be powerless in the face of these race riots, which left seventy-eight people dead. But they *were* prepared to arrest those African Americans who defended themselves.

The government seemed less concerned with the *actual* violence directed against African Americans and trade unionists, than with the *imagined* nightmare of a violent attack against the established order. As organizations like the Ku Klux Klan mobilized to "save" American values from dangerous immigrants and radicals, the U.S. Justice Department, under Attorney General A. Mitchell Palmer, ordered raids on homes, meeting places, pool halls and other public places in thirty-three American cities.

The "Palmer raids" of January 1920 resulted in as many as 10,000 arrests of suspected "radicals." Most were made without warrants or probable cause of wrongdoing. Nearly a thousand immigrants were deported without any kind of a fair hearing. Many people agreed with the Massachusetts Secretary of State who said if he could, he would take those who were arrested "out in the yard every morning and shoot them, and the next day would have a trial to see whether they were guilty."[14]

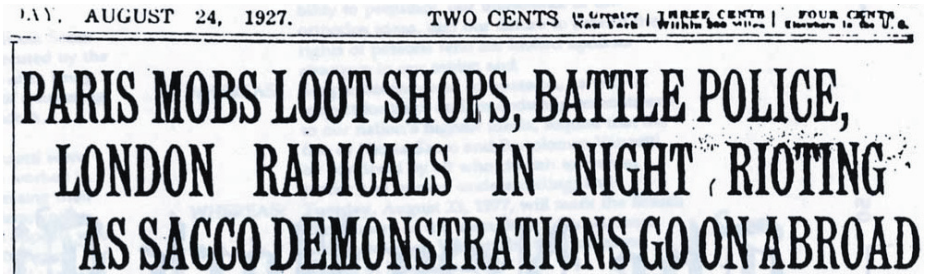
The attack on the rights of

some led to the loss of rights for all. Everyone had to think the same way – or else. As one British journalist put it, "America is the land of liberty – liberty to keep in step."[15]

Against this background, it is easy to see how Upton Sinclair could get arrested for reading the Bill of Rights. But the news was not all bad. The Palmer Raids led to the creation of an organization to challenge violations of rights, and ensure that "liberty" could have its day in court. In 1920, the American Civil Liberties Union (ACLU) was formed by private individuals to be an enforcement mechanism for the Bill of Rights.

In the same year, after more than seventy years of organized struggle, women finally won the vote with the ratification of the Nineteenth Amendment. Their importance in the labor force during the First World War had made it politically impossible to continue to deny them suffrage.

The U.S. Supreme Court was not yet prepared to uphold the First Amendment in the cases it heard involving dissenting ideas. But in this period the court at last took steps to define when speech and ideas *should* be protected, not just from interference by the federal


DAY, AUGUST 24, 1927. TWO CENTS

PARIS MOBS LOOT SHOPS, BATTLE POLICE,
LONDON RADICALS IN NIGHT RIOTING
AS SACCO DEMONSTRATIONS GO ON ABROAD

government, but also from state and local repression.

During the 1920s, the Sacco and Vanzetti case offered a unique opportunity for public education. In May 1920, Nicola Sacco and Bartholomeo Vanzetti, who were Italian immigrant anarchists, were arrested and charged with the robbery and murder of a factory paymaster and guard in Braintree, Massachusetts.

The enormous world-wide publicity given their case focused international attention on America's fear of foreigners and radical ideas, and on possible violations of their due process rights. On the day of their execution, August 23, 1927, *The New York Times* devoted five full pages to the event, and newspapers in several countries gave it front-page headlines. Their deaths in a Massachusetts electric chair sparked huge and angry demonstrations in London, Paris, Geneva and other cities in Europe, South America, Africa and Australia, and the streets of Boston were besieged. Writers and musicians made sure that Sacco and Vanzetti would not be forgotten.

In 1925, the Scopes "monkey trial" in Tennessee got many people thinking for the first time about the importance of the First Amendment and the free exchange of ideas. Nearly a thousand people crammed into a Tennessee courtroom to witness this test of a law passed by the Tennessee legislature, which made it unlawful to teach in public schools "any theory that denies the story of divine creation of man as taught in the Bible." Attorney Clarence Darrow defended the young biology teacher, John Scopes, who taught evolution in the classroom, while William Jennings Bryan, a renowned orator and politician, spoke in defense of the new law.

Scopes lost, and it would be decades before the U.S. Supreme Court would rule in cases involving religion and the public schools. But the Bill of Rights was stirring into life.

11. NEW TIMES OF CRISIS

"History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."

-Justice Thurgood Marshall, *Skinner v. Railway Labor Executives' Association*, 1989

Q: Why do you think "grave threats to liberty" seem to come so often in U.S. history?

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- the Red Scare
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If you attended school in the 1920s or 30s, you would have heard plenty about the Constitution. Through much of that period, September 17 – the day the Constitutional Convention finished its work in 1787 - was celebrated as "Constitution Day." Many states passed laws requiring that the Constitution be taught in public and private schools.

At a time of fear of radical ideas, teaching about the Constitution was seen a way to promote "true Americanism." What the schools did *not* do in this period was teach about the Bill of Rights. Domestic security was regarded as more important than freedom of speech and due process. The free exchange of ideas was seen as a threat to stability. The Bill of Rights was therefore, for the most part, kept out of sight.

That changed as the world moved again toward war, and the U.S. sought to distinguish its system of government from the totalitarianism represented by Nazi Germany. To mark the Sesquicentennial (150th anniversary) of the Bill of Rights in 1941, new educational programs were initiated in schools celebrating the freedoms enshrined in that document. Students were not, however, encouraged to look critically at whether the amendments were in fact being respected and enforced.

In 1940, shortly before the U.S. entered the Second World War, Congress passed the Smith Act. This law made it a crime to advocate the overthrow of the U.S. government by violence, to undermine the loyalty of the military, to refuse to serve in the military, or to join an organization calling for the overthrow of the government. Once again, as under the Sedition Act of 1798 and the Espionage Act of 1917, simple speech could be considered criminal, and critics of government policies were at risk. Cracking down on dissent was beginning to seem like business as usual in "times of urgency" or national crisis.

However, in the middle of the Second World War, when

flag salutes and other displays of patriotism were required expressions of "loyalty," the Supreme Court did a surprising thing. In 1943, it reversed one of its earlier rulings, and declared that Jehovah's Witness students *did* have the right to refuse to salute the flag because of their religious beliefs. In the case of *West Virginia Board of Education v. Barnette*, the Court ruled for the first time that the Bill of Rights applies to students too.

But the same Supreme Court removed constitutional rights from least 112,000 people of Japanese descent, 70,000 of them American citizens who were born in the United States. Without any evidence that they were engaged in acts of disloyalty or sabotage of the war effort, the government ordered everyone of Japanese ancestry on the West Coast to be subjected to a curfew. It then forced them to leave their homes and to be evacuated to remote internment camps (which it first called "concentration camps") in the interior of the country. Most lost their property, and spent two or more years incarcerated behind walls and barbed wire.

The basis for the evacuation was an Executive Order that President Roosevelt signed

used with permission

on February 19, 1942, banning from "military areas" all persons "deemed necessary or desirable" to be excluded from those areas. Although Japanese Americans were not singled out in the Executive Order, due to the prevailing racist mindset it was aimed at them almost exclusively. People of German and Italian descent were not subjected to mass internment, even though the U.S. was also at war with Germany and Italy. According to General John De Witt, chief of the Western Defense Command:

"The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become 'Americanized,' the racial strains are undiluted."[16] General DeWitt also said (illogically) that "the very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken."

In June 1943, the U.S. Supreme Court unanimously upheld the conviction of Gordon Hirabayashi for defying the curfew and refusing to report to an assembly center for evacuation. In its ruling, it accepted the government's claim that evacuation was a "military necessity."

In December 1944, the Supreme Court ruled 6-3 against a 23-year-old American citizen, Fred Korematsu, for refusing to be removed from his home and taken to an internment camp. In the 1980s, a researcher discovered that the government had lied to the Supreme Court and falsified evidence when it claimed "military necessity" for the evacuation.

Gordon Hirabayashi and Fred Korematsu then went back to court and had their convictions overturned. In 1988, Congress apologized to the victims and awarded $20,000 to each of the surviving 60,000 former detainees.

The wholesale disregard of the constitutional rights of Japanese Americans and non citizens of Japanese descent during wartime was one of the low points of our history.

Unfortunately, the end of the war did not see an end to massive civil liberties violations.

When the Soviet Union – our Second World War ally – became our "Cold War" enemy, the stage was set for a huge flare-up of the fears that haunted the U.S. throughout the twentieth century. This new phase of the "Red Scare" was fueled by the belief that the Soviet Union wanted to dominate the world and that "communist sympathizers" were gnawing away at the vitals of the United States.

As they did earlier in the century, federal, state and local authorities, as well as private groups, all engaged in the hunt for "subversives." The president led the way. In 1947, as the Attorney General drew up a list of nearly 300 "subversive" organizations, President Harry Truman ordered that the loyalty of three million government workers be investigated. People were grilled about their reading habits, whether they had African Americans as friends, whether they sympathized with the underprivileged. They lost their jobs if their lifestyles or friends appeared too radical. This kind of "guilt by association" ruined tens of thousands of lives. People were fired on the basis of information fed by anonymous informers which those labeled "disloyal" were not permitted to see or refute. The government used the 1940 Smith Act (which is still law today) to go after known radicals and even their lawyers. The U.S. Supreme Court upheld convictions in decisions that restricted free speech.

This new Red Scare is associated with the name of Senator Joseph McCarthy. But years before McCarthy started to hold circus-like hearings in the Senate to unmask suspected communists, Congress had been engaged in a nation-wide witch hunt. In the late 1940s, the House Un-American Activities Committee (HUAC) interrogated thousands of witnesses in the search for "subversives." Among its list of "un-American" beliefs were notions of racial and social equality, the idea that the government had a duty to support the people, and the belief that God did not exist. All of these ideas could get people who held them – and their friends - in big trouble.

So-called "friendly witnesses" cooperated with HUAC by giving the names of alleged communists or communist sympathizers in a glare of publicity. These people would then be "red-baited" by being hauled before HUAC or any of the "little HUACs" set up by individual states. Many of them had nothing at all to do with the Communist Party. They may have been activists, or outspoken in some way, or simply named by someone to even an old score.

"Unfriendly witnesses" cited their Fifth (or more rarely) their First Amendment right

to refuse to testify before the Committee. Their reluctance to "come clean" or "name names" was given sensational publicity in the media. As a result, thousands lost their jobs, were imprisoned, faced organized mob violence or were forced to leave the country. Among those who were "blacklisted" were hundreds of Hollywood directors, script writers and actors, and thousands of musicians, radio and television artists. By 1949, HUAC had a million individuals on its "subversives" list.

The following year, in 1950, Congress passed the McCarran Act over President Truman's veto. The Act permitted the government to incarcerate innocent citizens during "internal security emergencies" in concentration camps that were set up for mass internment. Under the Act, non citizens could be refused entry or deported based on their political beliefs. Communist or so-called "communist-front" organizations were required to register with the government. Their members could not travel abroad or work in certain jobs, and severe restrictions were placed on their use of the mail. By 1954, Communist Party membership in the U.S. had

dwindled to 25,000 from 80,000 three years before. In that year, Congress made it illegal to belong to the party and passed a law enabling U.S. citizenship to be stripped from persons who violated the Smith Act or committed certain other crimes.

States and towns were not to be outdone. They passed their own loyalty laws and anti-subversion measures, even though the federal government was supposed to be in charge of protecting "national security." School teachers and university professors were made to take loyalty oaths, and many lost their jobs for asserting their constitutional rights. The First Amendment counted for little as textbooks in schools, newspapers and other publications were searched for signs of "un-American" material.

In the early 1950s, Senator McCarthy began to hold televised hearings on "subversion" in the U.S. State Department and other agencies. In 1954, he turned his attention to what he claimed was communist infiltration of the U.S. Army. But when, in an apparently drunken state, he lashed out at a young lawyer for being a member of the supposedly subversive National Lawyers Guild, his effective witch-hunting days came to an end. "Have you no sense of decency, sir?" demanded attorney Joseph Welch, who was serving as counsel for the Army. That simple question seemed to bring the Senate to its senses. It voted to condemn McCarthy, and his power crumbled.

The United States in the mid-1950s was far from the promise of its founding documents. The individual rights guaranteed by the Bill of Rights had again been overwhelmed by government power and manipulated fears. Meanwhile, the tyranny of segregation kept millions of Americans from tasting the "blessings of liberty."

But over the next twenty years the country would be transformed. The Bill of Rights became something *all* Americans could lay claim to, and at last it became a living document that mattered to people's lives.

12. THE CIVIL RIGHTS MOVEMENT

"We live in a society that was actually built on racism; this was a factor that from the beginning contradicted and corrupted our democratic ideals. Therefore, because this is the base, it has always occurred that when a struggle was mounted against racism, a struggle that involved whites as well as people of color, the doors to a better society opened wider for us all."

Movement veteran Anne Braden, January 19, 1990

There is much we can learn today from the actions of committed individuals who, throughout our history, wanted our founding documents to mean what they said. Believing that the country should live up to the promise of liberty and equality, they created movements to demand change.

What did it take to create a movement like the Civil Rights Movement of the 1950s and 60s, which finally overturned the so-called "separate but equal" system of segregation in the South, and also focused attention on racial inequalities in the North? How did people manage to rise above the terror that has been used to control them and keep them in "their place"?

According to Movement veteran and historian Vincent Harding, "The conventional term *civil rights movement* is too narrow a description for the great, Black-led eruption that shook the anti-democratic, white-supremacist foundations of this nation not long ago…. At its deepest and best levels, what we so often call the civil rights movement was in fact a powerful outcropping of the continuing struggle for the expansion of democracy in the United States."[17]

The Civil Rights Movement, then, did not arise out of thin air. The way had been prepared for it by the efforts of abolitionists demanding an end to slavery, by Boston's free Black residents organizing to end segregation in schools and transport in the mid-nineteenth century, and by the work of hundreds of brave activists like Frederick Douglass and Ida B. Wells. The suffragettes who demanded votes for women, and other groups that organized to expand political participation, to fight for better working conditions and to make rights real for *all* Americans, all contributed to the tradition of social change that fueled the Civil Rights Movement.

Q: Why do you think young people played such an important role in the Civil Rights Movement?

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- more on the Movement, its successes and failures
- slide show of Movement history
- film of youth journeying South
- meet Movement veterans
- court cases

The way was also prepared by organized groups like the National Association for the Advancement of Colored People or NAACP (formed in 1909), the Urban League (1911) and the Congress of Racial Equality or CORE (1942). These organizations, and others formed in the 1950s and 60s, developed effective strategies to fight segregation both on the streets and in the courts. Black churches in the South provided an important base for civil rights organizing.

Years before the name Dr. Martin Luther King, Jr. became identified with the struggle for racial justice, students were challenging segregation. In 1941, a racially-mixed group of young people tried out the strategy of nonviolent resistance, which had been pioneered by Mahatma Gandhi in South Africa and India. Gandhi had learned about "civil disobedience" from the nineteenth-century American writer Henry David Thoreau. The students together entered a segregated swimming pool near Cleveland, Ohio, made their point with their presence, and eventually left peacefully.

Other protestors challenged segregation on Birmingham's buses at least fifty times in 1941 and 1942. Techniques of nonviolent resistance and civil disobedience – refusing to obey laws and rules that were believed to be wrong - were taken up by CORE and eventually by the young minister, Dr. Martin Luther King, Jr.

1941 was also the year in which the United States entered the Second World War. Over one million African Americans served in the segregated U.S. army, and risked their lives to defeat Nazism and its pursuit of "racial purity." How could African-American soldiers be expected to fight for freedom and an end to a murderous racism abroad, yet submit to lynchings, segregation, and disenfranchisement at home?

After the war was over, the United States was the dominant power on the world stage and newly-independent nations were emerging in Africa and Asia. The U.S. befriended these new countries – but what about its own racist practices? How could it justify these in the eyes of the world and the new United Nations?

As segregation became an increasing embarrassment to the U.S. politicians, they realized they had to act. In 1948, a year after Jackie Robinson, an African-American baseball player, integrated the major leagues, President Truman issued an Executive Order barring discrimination on the basis of race, color, religion or national origin in federal employment. Change was in the air.

By this time, the cautious legal strategy adopted by the NAACP was showing results. NAACP attorneys included Charles Hamilton Houston and Thurgood Marshall, who later became the first African-American justice on the Supreme Court. They did not immediately ask for the 1896 Supreme Court ruling of *Plessy vs. Ferguson* to be overruled.

This decision had made "separate but equal" the law of the land. Instead, the NAACP asked the courts to decide if racially "separate" facilities such as law schools and state

graduate schools really *were* "equal." The rulings said they were not, and ordered them to be made so.

Only then did lawyers decide to focus on getting the Supreme Court to overturn *Plessy v. Ferguson* by challenging the huge inequalities in funding for schools segregated along racial lines. Five different education cases reached the Supreme Court in 1952 under the name of *Brown v. Board of Education of Topeka, Kansas*. In May 1954, newly-appointed Chief Justice Earl Warren read the court's opinion:

"We conclude, unanimously, that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Fifty-eight years after it became law of the land, *Plessy v. Ferguson*, which sanctioned "Jim Crow" segregation, was ruled unconstitutional.

This was a momentous victory. However, the court did not order desegregation of schools to take place immediately. Instead, it adopted a "go slow" approach and asked local officials to develop plans to end segregation "with all deliberate speed" - whatever that meant. This gave Southern school districts time to figure out how to avoid integrating schools and other facilities.

It would take action in the streets, as well as the courts, to bring segregation to an end.

Massachusetts students at the Civil Rights Memorial in Montgomery, Alabama. Photo Jessica Murray

But for the time being, the "streets" in much of the South still belonged to the Ku Klux Klan. This became brutally clear in August 1955 when Emmett Till, a 14-year-old African American who was visiting Mississippi from Chicago, was killed in a gruesome fashion because he allegedly said "bye baby" to a white woman. An all-white jury acquitted the two white men identified in court as his murderers. They later admitted to the crime.

Till's murder was a defining moment in the South. The acquittal of the murderers, and his mother's insistence on an open casket at the funeral so the world could see the savagery inflicted on the young boy convinced many African-American students that they could no longer submit to segregation. They felt they had to stand up and challenge the system. In the spring of 1955, Claudette Colvin, a 15-year-old high school sophomore, refused to give up her seat in a Montgomery, Alabama bus for a white person. She was arrested, and the police paraded her before her schoolmates while she sat in the back of their car.

Seven months later, Rosa Parks, the founder of the

NAACP's youth branch in Montgomery, did the same thing. She refused to move from her seat in the bus for a white man.

Black residents of Montgomery quickly mobilized in her support. The strategy they used was direct economic action. African Americans would not ride the buses. People walked miles to work, they organized car pools, drove wagons, and even rode mules. But they kept off the buses. They faced physical attacks and all kinds of retaliation from employers, banks and local police. The home of the Dr. Martin Luther King, Jr. was bombed. Then a 26-year-old minister in Montgomery, he was the head of the group that organized the boycott. By the end of a year, after the bus company had lost sixty-five percent of its income and Montgomery's stores had lost $1 million in sales, the U.S. Supreme Court declared bus segregation unconstitutional.

By then the Movement had erupted on many fronts. Campaigns in one state inspired similar protests in another. Soon, what began as local demands for civil rights and equal treatment became a national Movement. Young people, such as members of the Student Nonviolent Coordinating Committee (SNCC), took enormous risks to participate in marches, sit-ins, and the dangerous and sometimes deadly work of trying to register African Americans to vote. They had the courage to demand justice and endure threats, arrests and long periods in jail.

For many white students, participation in the growing Movement was a way to distance themselves from the values their parents stood for. They felt their energies were better spent working for a better world, than working to sustain an old and unjust one.

This civil rights phase of the Movement finally forced action not just from the courts, but from the U.S. Congress. In 1964 Congress passed a Civil Rights Act. It outlawed discrimination "on the grounds of race, color, religion, or national origin" in public places such as hotels and restaurants and in any program that accepted federal funding. It also barred discrimination by most private employers.

The following year, in 1965, Congress passed a Voting Rights Act. It struck down many of the methods that had been used to keep Black people in the South from registering to vote. These included poll taxes, grandfather clauses (which exempted voters from restrictions if their grandfathers could vote), and special tests with questions like "how many bubbles in a bar of soap?" The Voting Rights Act put many

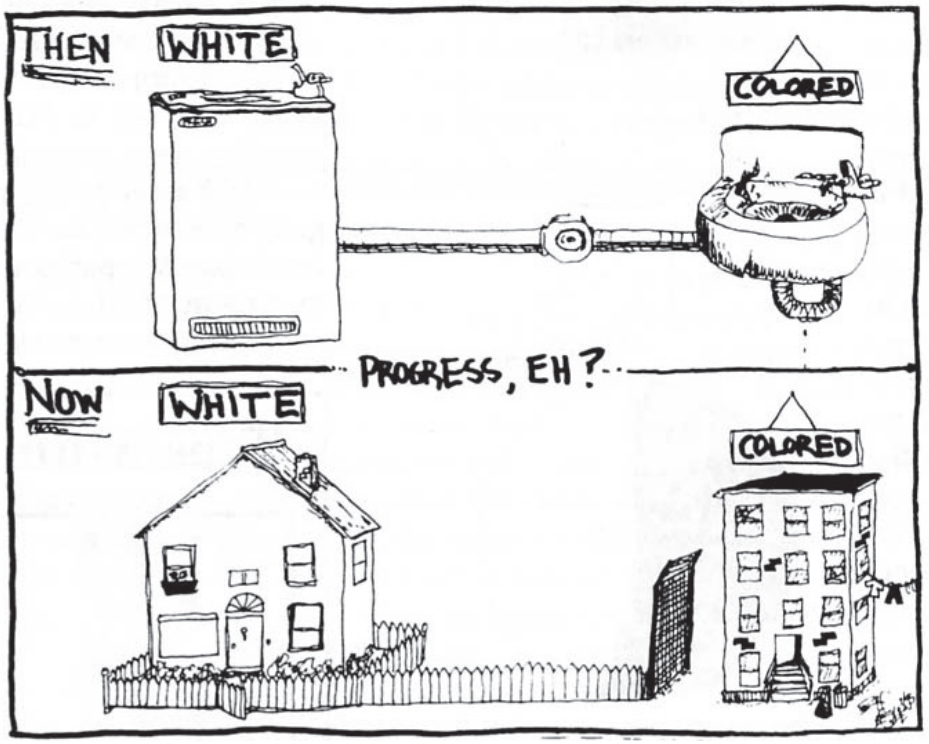
Painting on the Woolworth's building in Greensboro, North Carolina, where a 1960 student-led sit-in sparked similar protests around the South

other protections in place - which Congress voted to renew in July 2006 - to ensure that the vote would not again be denied on account of race.

And so, the "whites only" signs came down, and the numbers of African Americans registered to vote went up. But the work of the Movement was not done.

As Dr. Martin Luther King, Jr. realized, shaking the foundations of white supremacy is not the same thing as taking those foundations apart, brick by brick, and building anew. It wasn't enough just to "dream" about an integrated, color-blind society. The social and economic structures that had been built on racism had to be completely reconstructed. In the last years of his life, Dr. King tried to focus the nation's attention on "all its interrelated flaws – racism, poverty, militarism and materialism" and said that "radical reconstruction of society itself is the real issue to be faced."[18]

In the summer of 1967, high unemployment in African-American neighborhoods, desperate living conditions and incidents of police brutality ignited uprisings in 150 cities, leaving ninety people dead and 40,000 injured.



Cartoon by Eric Leslie, then a high school student

President Lyndon Johnson set up the Kerner Commission to examine why anger had boiled up in so many cities. It produced an unusually honest report that outlined the role played by white racism throughout our nation's history. It traced the Movement's attempts to bring about change, and the reasons why many African Americans embraced more militant demands for "Black Power" when they "could see progress toward equality accompanied by bitter resistance." It documented "the persistent, pervasive racism" that kept African Americans "in inferior segregated schools, restricted them to ghettos, barred them from fair employment, provided double standards in courts of justice... and blighted their lives with a sense of hopelessness and despair."[19]

Despite its achievements, the Movement in its civil rights phase had not gone far enough. In the following decades there would be efforts to roll back many of its gains. But with his sense of history, Vincent Harding was not discouraged. "I look forward," he wrote in his book *Hope and History: Why We Must Share the Story of the Movement*, "to the re-emergence of our large-scale struggle for democracy…filled with participants of many colors, offering creative alternatives for the lives of us all."

13. THE RIGHTS REVOLUTION

"O, let America be America again--
The land that never has been yet--
And yet must be--the land where every *man is free."*

Langston Hughes, "Let America Be America Again," 1938

In our gallop through American history, we have finally arrived at the point where rights matter to the lives of ordinary people.

Originally, as we have seen, the Bill of Rights was intended to apply only to actions of the *national* government. The First Amendment begins with the words: "Congress shall make no law." The Bill of Rights does not say: "The federal, state and local governments shall make no law," although its chief drafter, James Madison, thought it should.

The Fourteenth Amendment of 1868 is often considered part of the Bill of Rights because it asserted that all of the other amendments can be applied to state and local governments. It says that "no State" can take away "the privileges and immunities of citizens," or deprive "any person of life, liberty or property, without due process of law" or deny citizens "the equal protection of the laws."

For the better part of a century, the U.S. Supreme Court refused to take these words at face value. But under pressure from the Civil Rights Movement, the court at last acted to fulfill the original promise of the Fourteenth Amendment. Through a process called "incorporation" it used the Fourteenth Amendment to extend the Bill of Rights almost in its entirety to state and local governments. Supreme Court Justice William Brennan said that by doing so, the Supreme Court "took giant steps in the direction of equality under the law for all races and all citizens."[20]

The U.S. Supreme Court under Chief Justice Earl Warren presided over the greatest growth of the protection of individual rights in U.S. history. The Warren Court, which lasted from

Q: Do you think the "rights revolution" went too far – or not far enough?

Visit **www.rightsmatter.org** *to voice your opinion and discover:*

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- rights rollback
- personal stories
- court cases
- definitions
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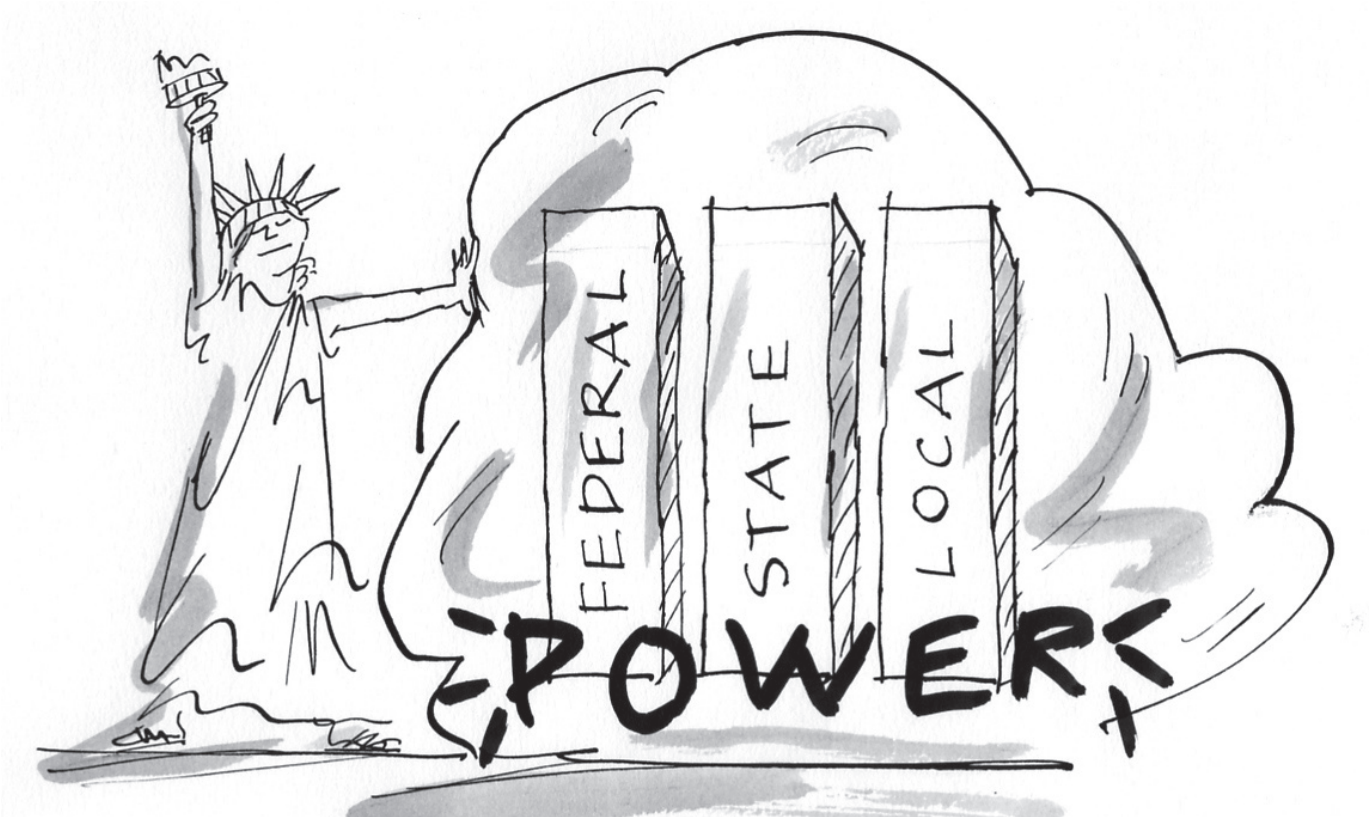
- activities

1953-1969, understood that the Bill of Rights sets limits on the power of *all* levels of the government to interfere in the lives of people, both citizens and non citizens alike.

The Supreme Court moved in this direction because people demanded that their rights be protected. Demonstrators who were beaten and arrested when they tried to organize marches, pickets, and other protests against segregation repeatedly went to court to urge that their First Amendment rights be upheld. Eventually, the Supreme Court ruled that local officials could not violate their rights of peaceful assembly and free expression. Again and again, students who were arrested for staging sit-ins at segregated lunch counters told the courts that the Fourteenth Amendment barred such discrimination. Eventually, the Supreme Court agreed.

The Movement example proved contagious. In the late 1960s and 1970s, women built their own movement to end discrimination based on gender. Other people who never thought the Bill of Rights applied to them now saw the potential of getting organized and going to court to seek equal treatment under the law. Native Americans, Asian Americans, Latinos, gays and lesbians, people with disabilities, poor people, prisoners, immigrants and young people in school and foster care all benefited from the expansion of rights and the limits placed on government power.

The Supreme Court in this period took huge strides in protecting the rights of the politically powerless and vulnerable, and people with unpopular religious or political beliefs. It also used the Ninth Amendment - which says the people have more rights than those written down in the Constitution - to help define a right which was not mentioned in the Bill of Rights, that of personal privacy.



In its 1965 *Griswold v. Connecticut* decision, the Supreme Court by a 7-2 vote struck down a Connecticut law barring married couples from using birth control on the grounds that it violated the fundamental right to privacy. Justice Louis Brandeis had earlier defined privacy as "the right to be left alone." Seven years later, in *Eisenstadt v. Baird,* the Supreme Court extended access to contraception to *all* women – including teenagers – regardless of marital status. And in 1973, in *Roe v. Wade,* the court ruled that the Fourteenth Amendment's protection of privacy extends to a woman's right to choose whether to terminate her pregnancy.

Here are some of the other milestone Supreme Court decisions that helped define exactly what the Bill of Rights means for all Americans:

• The First Amendment and Freedom of Religion

In 1962, in *Engel v. Vitale,* the Supreme Court ruled by a 7-1 vote that organized prayer in public schools violated the First Amendment's separation of church and state. Two years later, in *Abington School District v. Schempp* the court said that required Bible reading and the Lord's Prayer were not allowed in public schools since schools could not favor Christianity over other religions. The government must be neutral in matters of religion.

• The First Amendment and Freedom of Speech

In 1969, the Supreme Court reversed a previous decision, and held in *Brandenburg v. Ohio* that even unpopular speech is protected by the First Amendment, including speech that *advocates* the use of force and violence to bring about change. However, if the speech is likely to *incite immediate criminal behavior,* it is not protected. The court also upheld, in three separate rulings, the expression of dissent by burning the flag. But it ruled in *U.S. v. O'Brien* (1968) that burning a draft card was *not* protected by the First Amendment.

• The First Amendment and Freedom of Assembly

In 1965, the Supreme Court ruled in *Cox v. Louisiana* that the law used to arrest students who were demonstrating against segregated lunch counters was unconstitutional. "We affirm," wrote Justice Arthur Goldberg, "that our constitutional command of free speech and assembly is fundamental and encompasses peaceful social protest."

• The Fourth Amendment and Searches

In 1961, in *Mapp v. Ohio,* the court held that evidence illegally seized by local or state police could not be introduced in court. This is known as the "exclusionary rule."

• The Fourth Amendment and Wiretaps

In 1928, the Supreme Court had ruled in *Olmstead v. United States* that police could wiretap (eavesdrop on a phone) without a warrant. In 1967, the Supreme Court reversed itself in *Katz v. United States*, and declared that a warrant based on evidence of criminal behavior was needed for a wiretap, just as for a physical search.

• The Fifth Amendment

The court ruled in *Miranda v. Arizona* in 1966 that a person being held in police custody must be informed of his or her rights before being questioned. The court said the person in custody must be told that he has the right to remain silent, and that anything he says will be used against him in court. He must be clearly informed that he has the right to consult

with an attorney and to have that attorney present during interrogation, and that, if he is too poor to afford a lawyer, an attorney will be provided at no cost.

- **The Sixth Amendment**

In 1963, in *Gideon v. Wainwright,* the Supreme Court ruled that everyone has the right to a lawyer when being tried for a crime in a state court. After this ruling, Clarence Gideon got a new trial and a lawyer appointed by a Florida court, and his earlier conviction was overturned.

In 1967, minors got due process protections when the court ruled in *In re Gault* that 15-year-old Gerald Gault had been wrongly treated when he was sentenced to state reform school for six years. After being accused of making an obscene phone call, he had been given no opportunity to have a lawyer or to know exactly what he was being charged with. The court decided that minors, like adults, have the right to remain silent, to be represented by a lawyer, to know what the charges are and to cross-examine witnesses who testify against them.

- **The Eighth Amendment**

In 1972, in *Furman v. Georgia*, the Supreme Court held that capital punishment as it was being applied was not a credible deterrent to crime, and that it can constitute cruel and unusual punishment. But in 1976, in its ruling in *Gregg v. Georgia*, the Supreme Court held that states could reintroduce capital punishment if they re-wrote their death penalty statutes to end arbitrary and racially-biased sentencing. Today, only 14 states remain without the death penalty.

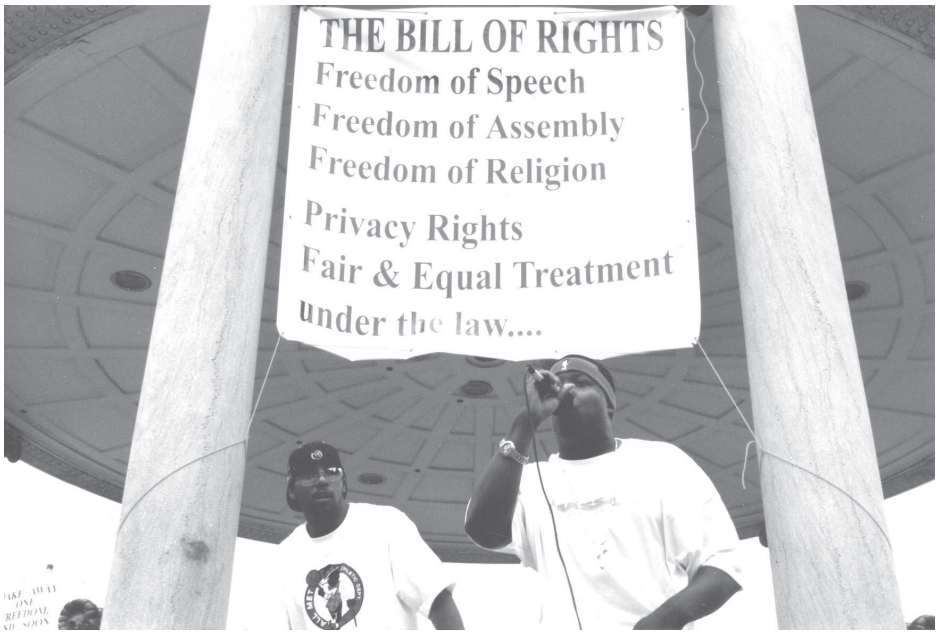
- **The Fourteenth Amendment**

The court ruled in 1967 in *Loving v. Virginia* that a law banning interracial marriage was unconstitutional under the "equal protection" clause.

Through these and many other rulings, the U.S. Supreme Court took an expansive view of rights. As a result, the Bill of Rights became a living document for people across the land.

When the climate of the country and the judges on the courts changed, so did the interpretation of rights. As you can see on www.rightsmatter.org, since the 1980s there has been a rollback of some of the victories for civil liberties and civil rights achieved in the 1960s and 70s.

But the gains of the "rights revolution" remain substantial. It established that the Bill of Rights is for *everyone*. It gave people a way of challenging the power of local and state officials, as well as the federal government. We still have not realized in full the promise of our founding documents, but that is within our grasp.



14. THE RIGHTS OF STUDENTS

"In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect...."

Justice Abe Fortas, *Tinker v. Des Moines*, 1969

What are public schools? Are they an extension of the home? The Latin phrase "in loco parentis" or "in the place of parents" has often been used to describe them. Or are they an extension of the state and local governments that pay for them?

If they are regarded as an extension of the home, then school officials have a parental role. Like parents, they can discipline students, and exert control over how they look, think and act. The Bill of Rights doesn't shield young people from the actions of their parents. So why should it apply in schools?

But if schools are seen as a government agency, then students *should* have Bill of Rights protections. And thanks to the role played by young people themselves, they do.

From the personal stories involving student rights featured here and at www.rightsmatter.org come these "top ten" things you should know about your rights.

1. Students today have constitutional rights because students yesterday demanded them.

Among them were two Pennsylvania students who were expelled from school in 1935 for refusing to salute the flag. They were Jehovah's Witnesses. According to their religious beliefs, they could not worship "graven images," which they felt a flag to be. They went to court, arguing that a compulsory flag salute violated their freedom of religion. In 1940, the U.S. Supreme Court ruled in favor of the school in a case called *Minersville School District v. Gobitis*.

This ruling had a violent aftermath. It was taken as a signal for Jehovah's Witnesses to be

Q: How far would you go to stand up for your rights?

Visit **www.rightsmatter.org** *to voice your opinion and discover:*

- more on expansion and contraction of student rights
- personal stories
- meet people who took a stand
- see how student rights evolved
- court cases
- Know Your Rights information
- activities

targeted as traitors to their country. In more than 300 "patriotic" mob attacks, they were shot at, beaten until they kissed the flag, tarred and feathered, and sometimes permanently injured. Meanwhile, thousands of Jehovah's Witness children were expelled from schools.

Fortunately, as we have already seen, the Supreme Court had second thoughts. In 1943, in the middle of the Second World War, the Supreme Court heard another flag salute case involving two Jehovah's Witness sisters, Marie and Gatha Barnette, who attended school in West Virginia. The West Virginia Department of Education required a "stiff-armed" salute be performed with the palm facing up – it had been modified to distinguish it from the stiff-armed Nazi salute. Children were not just expelled for refusing to participate in the Pledge. Their parents could be prosecuted and jailed or fined.

In *W.Va. Board of Education v. Barnette*, Justice Robert Jackson wrote a stirring opinion upholding the right to dissent. "Freedom to differ," he wrote, "is not limited to things that do not matter much. That would be a mere

shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." Forcing students to salute the flag was unconstitutional because it "invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

With these words, the Supreme Court reversed its earlier decision. The Barnette sisters did not just win a victory for students. The language of the ruling was broad enough to extend protection for unpopular speech to all Americans, even in the middle of a war.

But as we have seen, many backward steps were taken before the forward march to make rights real was resumed. The period of the post-Second World War "Red Scare" was generally hostile to rights, especially the right to dissent. Freedom of thought was not encouraged in either society or schools, and the courts had nothing more to say about student rights.

That changed with the groundswell of youth activism associated with the movements for civil rights and against the Vietnam War.

At the end of 1965, students in Des Moines, Iowa planned to express their opposition to the war by wearing black armbands featuring a peace symbol. Some decided not to wear the armbands to their schools since they were warned they could face disciplinary action for being "disruptive." But 15-year-old John Tinker and

his 13-year-old sister Mary Beth, along with their 16-year-old friend Christopher Eckhardt, decided to defy the taunts of some of their classmates and the disapproval of their principal. They wore the armbands to school and were suspended.

Instead of simply accepting the suspension, they decided to go to court to demand their First Amendment rights. Their case went all the way to the Supreme Court. *Tinker v. Des Moines Independent School District* represents the high watermark of student free speech rights in the United States.

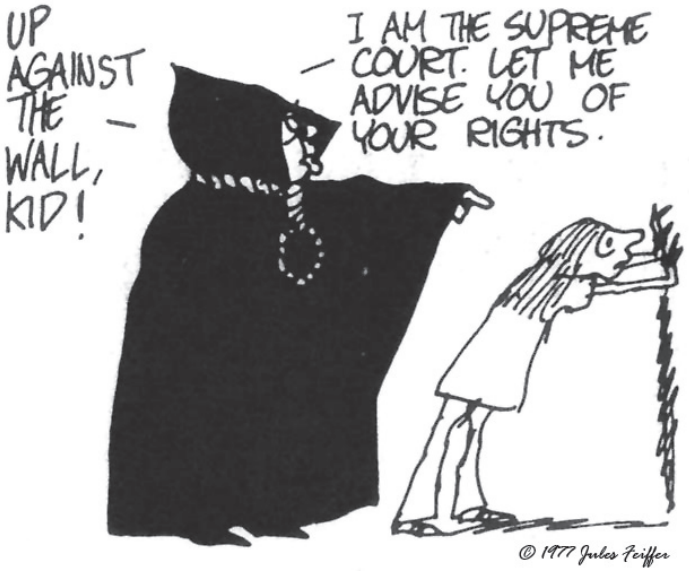
"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," wrote Supreme Court Justice Fortas in the 1969 *Tinker* decision. Censoring student expression, even symbolic expression such as wearing an armband, is not permissible, the court ruled, unless it "materially and substantially" disrupts the educational process or harms the rights of others. This formula for deciding when student expression was protected by the First Amendment is known as the "*Tinker* standard."

The *Tinker* decision launched a decade in which courts around the country struck down censorship of student publications and dress codes, and student rights flourished.

2. Students do not have exactly the same rights everywhere.

The Supreme Court has ruled on some student rights issues but not on all of them. When the Supreme Court has been silent, lower court decisions prevail, and these differ in different parts of the country.

Take the matter of hairstyles for males. In Massachusetts in 1970 the First Circuit Court of



Appeals (the federal court just under the U.S. Supreme Court) ruled in favor of a high school student who had been suspended for violating a school rule against males having "unusually long hair." In states covered by this First Circuit Court ruling, students today have more freedom to wear their hair the way they want than they do in states, including Texas, which are under the Fifth Circuit Court of Appeals. That court ruled in 1972 that hair length is *not* protected by the Bill of Rights, and male students who refuse to cut their hair can be excluded from school.

3. Even when the Supreme Court has made a ruling, rights can differ from state to state.

Take the issue of corporal punishment – the infliction of physical pain as a disciplinary measure. Back in 1970, only two states – New Jersey and Massachusetts – had outlawed the use of corporal punishment in schools. In that year, James Ingraham, an eighth-grade student at Drew High School in Dade County, Florida, was beaten on the buttocks with a heavy wooden paddle at least twenty times while being held across a desk in the principal's office. His offense? Walking too slowly off the auditorium stage. He was bruised so badly that he missed

several days of school and needed medical attention.

Ingraham and another student, who temporarily lost the use of an arm through a beating at Drew High School, went to court. They argued that corporal punishment was a violation of the Eighth Amendment ban on cruel and unusual punishment.

Eventually, *Ingraham v. Wright* reached the Supreme Court. In 1977, the Supreme Court ruled 5-4 that "moderate" (but not excessive) physical punishment in schools was part of a tradition that went back to before the American Revolution and was acceptable when it was seen to be "reasonable and necessary" to discipline a student. The court denied that students had the right to a hearing before the punishment was administered.

Two years before, in the case *Goss v. Lopez*, the Supreme Court had ruled that students *should* have the right to "due process" or a hearing at which they get to explain their version of the facts if they are facing suspension for ten days or less. The justices apparently regarded an in-school paddling as a less severe form of discipline than an out-of-school suspension.

The *Ingraham* decision led legislatures in twenty-five states to pass laws outlawing corporal punishment in public schools. If state legislatures and the U.S. Congress pass laws *taking away* rights that have been endorsed by the U.S. Supreme Court, those laws could be ruled unconstitutional. But there's nothing to stop state legislatures from giving citizens *more* rights than the Supreme Court does.

4. The Bill of Rights does not apply to schools in exactly the same way as it applies outside of school.

Take the Fourth Amendment. Outside of school, law enforcement officers need to obtain a warrant from a magistrate before they can conduct a search. To get a warrant, an officer needs "probable cause" – really solid grounds – to believe that a search will reveal evidence of wrongdoing.

There are obvious difficulties in applying the Fourth Amendment to students in a school setting. During the 1980s, when drugs and weapons were seen as growing problems in schools, officials complained that the need to obtain a warrant before conducting a search made it impossible to keep schools

running smoothly and safely.

In 1985, the Supreme Court ruled for the first time on the subject of school searches, and decided that the Fourth Amendment does apply to students, after a fashion. The case was *New Jersey v. T.L.O.*, involving the search of a purse belonging to a 14-year-old girl accused of smoking in the school bathroom. The court ruled that school officials do *not* need a warrant or probable cause to search a student's belongings. But they cannot just search students randomly. Instead, students could be searched on "reasonable suspicion" – more than a mere hunch, but less evidence than is needed for "probable cause" – that they have violated a law or a school rule. To be constitutional, a search had to meet a "two-pronged test." Authorities must have a sound reason to expect evidence of wrongdoing will be found if they search an individual, and the searches must not be excessively intrusive.

5. Rights do not remain unchanged, but expand – and shrink – with the times.

"Battles for civil liberties never stay won," said Roger Baldwin, the founder of the American Civil Liberties Union. "They must be fought over and over again."

By the mid-1980s, both the climate of the times and the composition of the Supreme Court had changed. Many justices seemed to feel the courts had gone too far in upholding student rights. Having expanded student rights, the Supreme Court now began to narrow them.

In 1986, the Supreme Court decided *Bethel School District v. Fraser* by upholding the punishment of a student who used a sexual metaphor in a speech before a school assembly. The court said school officials could ban expression they considered to be "lewd, indecent or offensive" whether or not it caused "substantial disruption" in the school.

Two years later, in *Hazelwood District v. Kuhlmeier*, the Supreme Court narrowed the *Tinker* standard still further by upholding the right of a Missouri principal to remove articles from a school newspaper about teen pregnancy and divorce. The court ruled that school officials can censor "school-sponsored expressive activities" as long as "their actions are related to legitimate pedagogical concerns."

This ruling may seem to erase all of *Tinker's* protection of unpopular speech. But it only dealt with "school-sponsored expression" that

could reasonably be considered part of the school's curriculum. It did not deal with purely private student expression – such as that found in an unofficial or "underground newspaper" or on a message T-shirt. But still, student rights to freedom of expression received a considerable set back with the *Hazelwood* decision.

6. When the courts narrow rights, students can organize in other ways to expand them.

Remember, the Supreme Court says what rights all students *must* have. It does not stop states from giving students *more* rights.

Following the Supreme Court's *Hazelwood* decision narrowing student First Amendment rights, students in several states organized to get their state legislatures to pass laws to shield them from its impact.

In Massachusetts, students testified in support of a bill introduced by a legislator who was a former high school journalist. After hearing from the students about why freedom of expression was so important to them, the legislature rapidly passed the Student Free Expression Act, which was signed into law in July 1988. This law basically said that in Massachusetts, the *Tinker* standard still prevailed.

7. Making rights real: passing a law may not be enough.

It wasn't enough in Massachusetts, because few schools seem to have heard of the Student Free Expression Act. And no one knew exactly how the courts would interpret it.

Jeffrey and Jonathan Pyle, two brothers in high school in South Hadley, Massachusetts, changed that. In 1993, they were sent home for wearing "Coed Naked" and other T-shirts that school officials thought were "vulgar," "lewd,"

and "demeaning to women," or even a kind of sexual harassment. The Pyle brothers brought a lawsuit against their school, arguing that schools cannot censor student speech simply because it may be "offensive" to others.

They won an important victory at the trial court level. The judge ruled, for the first time anywhere, that schools cannot practice "viewpoint discrimination." Picking which viewpoints will and will not be allowed was unconstitutional. But the judge also ruled that school administrators may censor speech that they regard as "vulgar" or "lewd."

The brothers did not give up. They appealed this part of the decision, which eventually ended up before the highest court in the state of Massachusetts. In 1996, the state Supreme Judicial Court ruled unanimously that the state's Student Free Expression Act protects messages on T-shirts which teachers consider to be "vulgar," but which do not disrupt the educational process. As a result, Massachusetts now has the broadest student free speech law in the country.

8. Standing up for rights is not an easy thing to do.

Lindsay Earls was a sophomore in high school and a member of the National Honor Society

when she decided to challenge her school's drug-testing policy. Her high school in Tecumseh, Oklahoma did not have a big drug problem. But school authorities decided that anyone who wanted to participate in extracurricular activities – like Future Farmers of America, or the chess club, or the marching band – would have to pay $4 to be drug tested before the activities started. After that, they would be tested on a random basis.

At first, Earls went along with everyone else and took the urine test so she could be part of the choir and marching band. She found it humiliating when monitors stood outside the stall door to listen and then checked the sample for "warmth and clarity." But she took it several times, and passed it every time.

Finally, she decided she had enough of her privacy rights being violated. She sued her school to change the policy.

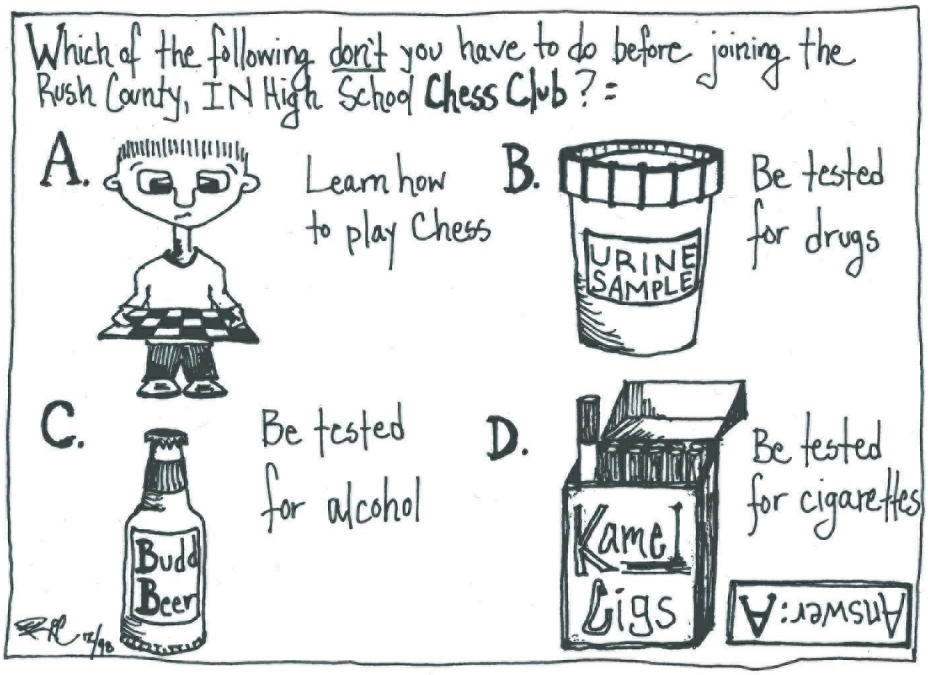
She had few supporters. People thought she must be doing drugs. They said things about her behind her back. Sometimes she was cut dead at school. She felt very lonely.

When Earls lost at the district court level, she thought hard about whether to make an appeal, or just to forget it. She decided to appeal. She was in college by the time her case, *Board of Education v. Earls,* made it to the U.S. Supreme Court. One of the most exciting days of her life was when she sat inside the Supreme Court for the oral arguments. One of the saddest days was when she heard she had lost by a 5-4 vote.

9. It may be better to stand up and lose, than not to stand up at all.

Lindsay Earls was the second student to take a stand to try to prevent schools from narrowing students' Fourth Amendment rights. A drug test is a kind of search, and Earls knew that under the 1985 *T.L.O.* decision, students were not supposed to be searched without "reasonable suspicion" that they as individuals had done something wrong and that the search would find evidence of wrongdoing. So how could a random search which was not based on the suspicion that a student had taken drugs be constitutional?

A few years earlier, James Acton, a seventh-grader in Oregon, wondered the same thing. He had challenged the drug-testing program initiated at his school. It required students to provide a urine sample for drug testing before they could participate in athletics, and to do so on a random basis thereafter. Acton was not permitted to play on the school's football team because he refused to submit to



Cartoon by Eric Leslie, then a high school student

drug testing.

Acton challenged the policy. The *T.L.O*. standard made it likely that the court would strike down the policy as unconstitutional. But he lost. The Supreme Court in 1995 ruled in *Vernonia v. Acton* that athletes could be subjected to drug tests because they were "role models" for their schools. Athletes were also used to getting undressed in locker rooms. Therefore, the justices reasoned, they would not feel their privacy was violated by having to produce a urine sample while a teacher or coach was outside the bathroom stall.

Football players may spend a lot of time in locker rooms, but members of the choir and marching band generally do not. Neither are they seen as "role models" in the same way as athletes. So Earls and her lawyers both thought her case had a good chance of winning. But in June 2002, the Supreme Court significantly expanded its *Vernonia* decision to rule in *Board of Education v. Earls* that students in *all* competitive extracurricular activities could also be drug tested on a random basis.

The four justices who dissented were alarmed by the majority's ruling. They pointed out that students who participated in such extracurricular activities were the least likely students to have drug habits, and that the policy would deter others from getting involved in activities that could steer them away from drugs. They took Lindsay's privacy concerns seriously, and thought the court was fatally undermining students' Fourth Amendment rights.

Some people might say, why did the students bother to go to court in the first place? It just made things worse for everybody, since thanks to those Supreme Court rulings, schools now think they have a green light to start their own drug-testing programs.

Of course there was no way the students could have known in advance that the Supreme Court would backpedal on its *T.L.O.* decision. And keeping quiet and just going along certainly wouldn't have helped keep rights real.

Instead of just accepting things, Lindsay Earls helped raise consciousness about student rights issues during her case, and after it was concluded. Through her public speaking and other outreach efforts, she has focused attention on the problems associated with the drug testing of students, and has helped get a dialogue going about more effective methods of dealing with drug use in schools. And she has also learned an awful lot about the law!

10. Fear can overwhelm rights in school, just as in the broader society.

We have seen how in times of crisis in our country's history, the Bill of Rights has been put in the back drawer. Many people seem to think you can't have security and liberty too.

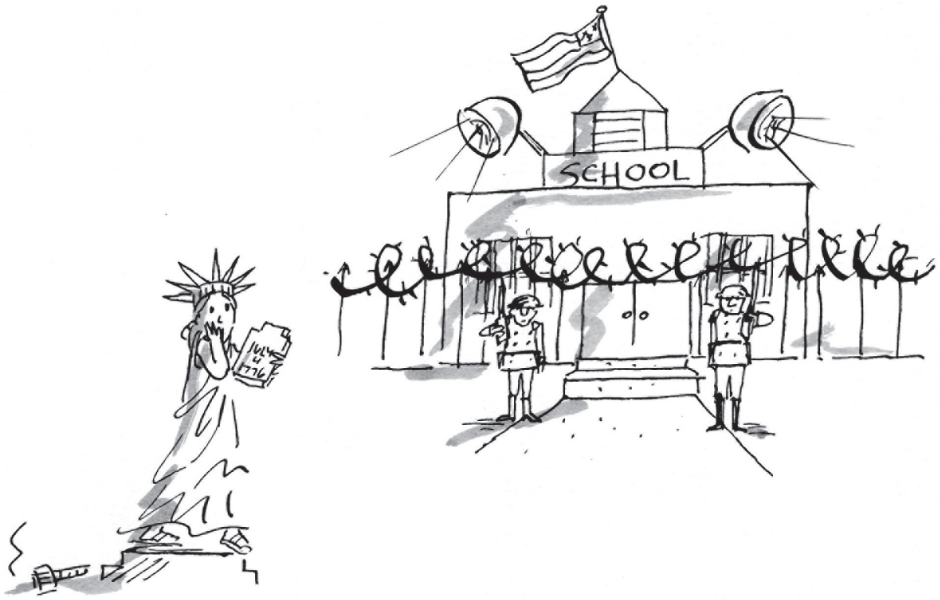
The same thing has happened in schools. In the aftermath of the April 1999 killings at Columbine High School in Littleton, Colorado, there was an unprecedented crackdown on student rights. Around the country, there were reports of students being suspended, expelled and arrested for jokes, doodles, remarks taken out of context or made on home web sites, or for wearing black clothing, trench coats or baggy outfits to school. A 12-year-old middle school student spent more than two weeks in a juvenile detention center in Louisiana for uttering, "If you take all the potatoes, I'm gonna get you," to the student ahead of him on his school's lunch line.

When "zero tolerance" policies ("one strike and you're out") were introduced in the early 1990's, they were aimed at weapons and illegal substances. In the post-Columbine climate, words themselves were often considered weapons, as students were expelled for things they said and the plays and poems they wrote. School authorities meanwhile spent large sums to equip their buildings with metal detectors, surveillance cameras, security fences, new locks and buzzers, transparent lockers, and to hire new security personnel. New restrictions on dress, hair, speech and expression on the Internet and in print were presented as safety precautions.

When students have been asked how to balance school safety and student rights, they have emphasized the role of an open community and trust. Schools, they say, should be communities where students are encouraged to express their opinions about what they see to be problems, and to help formulate solutions. They do not think that making schools more like prisons is the way to prepare young people to participate in our constitutional democracy.

Supreme Court Justice Jackson realized this when he wrote his opinion in the case that initiated the student rights movement, *W.Va. State Board of Education v. Barnette.* Constitutional rights must be protected, wrote Justice Jackson, "if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

What are platitudes? They are statements that really don't matter much. Justice Jackson feared that if students had no direct experience of rights, they would think the vital principles of our government are little more than words on paper.



I5. BALANCING LIBERTY & SECURITY

"The Constitution and the Bill of Rights were designed to get Government off the backs of people – all the people....They guarantee to us all the right to personal and spiritual self-fulfillment. But that guarantee is not self-executing. As nightfall does not come all at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air – however slight – lest we become unwitting victims of the darkness."

Justice William O. Douglas, Letter, 1976

Supreme Court justice William O. Douglas wrote the words above in a letter addressed to the "Young Lawyers Section" of the Washington State Bar Association on September 10, 1976. What do you think he means?

It may help to know the context of his remarks. We have seen that the 1960s and 70s were a time when the Bill of Rights was beginning to work for people who had been excluded from its protections. But something else was going on behind the scenes, in a twilight world unknown to most Americans.

Under its director, J. Edgar Hoover, the FBI was spying on hundreds of thousands of Americans through a secret program called COINTELPRO (Counterintelligence Program). The program was supposed to be looking for "communists" in order to protect "national security." Government agents raided and infiltrated organizations that Hoover didn't like. They carried out "neutralizations" and all kinds of "dirty tricks" to make it difficult for people to trust each other. They spread misinformation, incited gang warfare and created chaos at rallies.

The FBI spied on civil rights groups, anti-Vietnam war protestors, Black nationalists, the ACLU and the Boy Scouts of America. It even spied on Dr. Martin Luther King, Jr., and tried to blackmail him. The FBI had a list of people to be detained in the event of war that contained 200,000 names, including that of a U.S. senator.

The problem was not just the FBI. It turned out

Q: Do we have to give up rights to be safe? How many? Which ones?

Visit **www.rightsmatter.org** *to voice your opinion and discover:*

- more on post 9/11 government actions
- checks and balances
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that other executive branch agencies like the CIA and the Defense Department – including the military's top secret National Security Agency (NSA) - were also spying on Americans, and that President Richard Nixon had been spying on his political enemies. When Justice Douglas wrote his letter, a Congressional Committee chaired by Senator Church was holding an investigation into how Americans' constitutional rights had been violated, and how they could be protected from the far-reaching power of the executive branch.

As a response to revelations about government spying, the U.S. Congress in 1978 passed the Foreign Intelligence Surveillance Act (FISA) to keep the government from spying on Americans without a warrant. Members of Congress believed that the checks and balances in the constitutional system could protect both security and liberty.

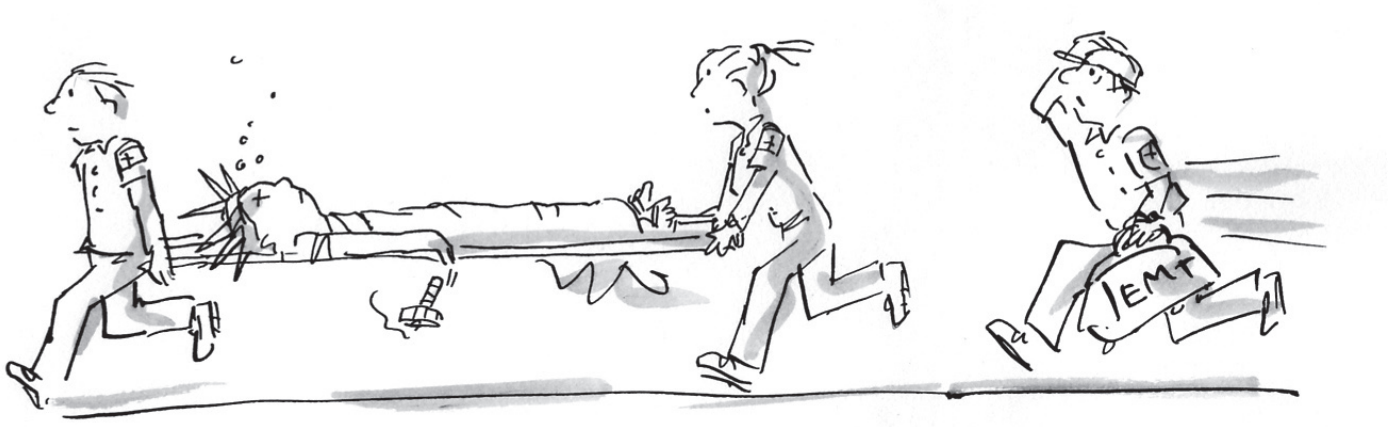
Thirty years later, in the aftermath of the terrorist attacks of September 11, 2001, we again face the questions raised by the Church Committee. How can we balance the rights guaranteed by the Constitution with national security needs? Can this be a safe society whose government operates within the constraints of constitutional law? Or do the dangers that face us require giving up basic freedoms that we often take for granted?

These are questions that have split the country. Many people seem to think that we must give up some freedoms in order to remain safe. Others say that this is a false choice and that we must not become so overwhelmed by fear that we again give up our basic rights.

On the web you can read personal stories about how people have been affected by measures the government has taken in the name of the "war on terrorism." As you think about where *you* would draw the line between freedom and security, be aware that this is a critical time for our constitutional system.

You will recall that the Founders hoped to keep individual rights from being overwhelmed by government power through a system of "separation of powers" and "checks and balances." The three branches of government – executive, legislature and courts – "checked" each other in a way that was meant to keep any one branch from getting too strong or acting completely independently from the other branches.

Since 9/11, that system has broken down. The executive branch has acted in great secrecy, without meaningful oversight from the other two branches. It has claimed the "inherent authority" to do what



it says is necessary to protect Americans, even if that means violating existing law.

The Supreme Court in 2004 attempted to check executive power when it declared in its ruling in the case of *Hamdi v. Rumsfield*: "We have long made clear that a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens....Whatever power the United States Constitution envisions for the Executive in its exchanges with...enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake."

The author of these words, Justice Sandra Day O'Connor, is no longer on the Supreme Court. Her replacement, Justice Samuel Alito, has a record of supporting a strong executive authority, and the court could well take a different approach to presidential power in the future.

Congress, which has largely failed to carry out its "checks and balances" function, gave the executive branch broad new powers when it passed the USA PATRIOT Act in October 2001. The new powers of search, seizure and surveillance are not limited to terrorism investigations. They can be used in all kinds of criminal investigations without a showing of "probable cause."

Critics say that the Fourth Amendment has been undermined by the new USA PATRIOT Act powers. They also are worried about provisions of the USA PATRIOT Act and new FBI guidelines that give government agents the green light to spy on legitimate First Amendment activity. These developments, they say, threaten to take the country back to the days of Hoover's COINTELPRO operation.

Many important Bill of Rights protections have been suspended since 9/11 in the name of "national security." American citizens have been detained for years without trial or access to lawyers and the courts. The Justice Department has permitted prison officials to monitor communications between detainees and their lawyers, without obtaining a court order. Thousands of non citizens, who turned out to be innocent of any connection with terrorism or any other crime, have been swept up and detained, often in solitary confinement, cut off from their families, lawyers and any kind of due process. Overlooked are Supreme Court rulings that say non citizens are among those "persons" referred to by the Fifth and Fourteenth Amendments who are entitled to Bill of Rights protections.

The Founders had risked their personal safety to put liberty at the heart of their Revolution. Although they accepted the institution of slavery (the tyranny in their midst), they feared what they called "absolute tyranny." They set out to create a system in which no government could become so powerful that it would overwhelm individual rights. Towards this end, they placed habeas corpus – which guarantees that people could not be imprisoned indefinitely, but could

challenge their imprisonment in court – in Article I of the Constitution. In the Fifth, Sixth, Seventh and Eighth Amendments they outlawed torture and other forms of arbitrary treatment, and sought to make sure the government used fair procedures in its dealings with individuals.

All of these protections have been undermined since the attacks of September 11, 2001. The kidnapping of people and sending them to countries where they could be tortured, the use of physical abuse in interrogations, and the denial of due process in secret U.S.-run detention facilities around the globe are practices that violate U.S. treaty obligations as well as U.S. law.

This is of course not the first time the government has veered away from the basic principles that guided the Founders when they wrote the Constitution and Bill of Rights. But today new elements are present – such as the power of cutting-edge technology – which make this an especially dangerous time for liberty and the functioning of democracy.

With the click of a computer key, intelligence agencies can now assemble and share files on "suspects," and add names to "watch lists" of suspects. Once your name is added to the 200,000 other names on the "no-fly lists" accessed by airlines, it is very hard to get it off – even if yours is a clear case of mistaken identity or you are a small child.

Government agents have been seizing large quantities of electronic information from Internet service providers, banks and other businesses by issuing "National Security Letters" without any kind of court oversight. National Security Agency satellites and listening devices have been vacuuming up phone calls, emails and faxes. "Data mining" techniques are reportedly being used to try to find suspicious "patterns" of activity among these seized communications and the possibly hundreds of millions of phone call records handed over by telephone companies.

This kind of surveillance, conducted without any kind of warrant or court oversight, does not just erase privacy. It also makes "suspects" of totally innocent people. Their personal data is being stored and shared and used for purposes that are hidden from the public.

The government says it needs to use these methods to keep the country secure. Critics say that intelligence agencies are being overwhelmed with useless information, and that this is wasting law enforcement time and making the country less safe. Does it really make sense, they wonder, to look for a needle in a haystack by making the haystack bigger?

Just as schools shifted the balance between liberty and

security in the aftermath of the 1999 killings at Columbine High School, so has the government shifted the balance in the wider society since 2001. Here are some examples of how students have been affected.

Hala Saadeh, then a Massachusetts high school senior, was studying for an exam on a commuter train. When the train came to a stop, two police officers asked her to get off the train and then searched her. Why? The black Islamic headscarf (hijab) she was wearing apparently made her a "suspicious person."

Rather than remain silent, she spoke out against this kind of religious and ethnic profiling.

Students at another Massachusetts high school posted their Iraq war teach-in and march on a student peace coalition website. The Justice Department faxed the local police to check out the activities at the school, in case they were related to terrorism. The students were "shocked and surprised that they would investigate high school kids exercising their First Amendment right to free speech. To even mention terrorism when we were just protesting going to war was ridiculous," said one of the student organizers.[21]

Students at a North Carolina high school were asked by their teacher to "take photographs to illustrate their rights in the Bill of Rights." One student cut out a photo of the president, and tacked it to the wall. He then had a picture taken of himself standing next to the photo making a thumb's down sign to illustrate the right to dissent. The photo department at the local Wal-Mart where he took the picture to be developed called the police, who called the Secret Service, who came to visit his school. They asked his teacher if she thought the photo was suspicious, and she said, "No, it was a Bill of Rights project!" Fortunately, the U.S. attorney decided not to indict the student.[22]

Many people in the country feel that given the threats of new terrorist attacks, all activity critical of the government must be checked out. Others think these incidents raise troubling questions about how law enforcement is spending its time and scarce resources, and about the chilling impact of the "war on terrorism" on First Amendment rights. If young people decide it is too risky to speak out or stand up, what kind of country will this become in the future?

EPILOGUE: THE FUTURE OF THE BILL OF RIGHTS

"Liberty lies in the hearts of men and women.
When it dies there, no constitution, no law, no court can even do much to help it."

Judge Learned Hand, "The Spirit of Liberty," 1944

The Bill of Rights may be over 200 years old, but it is really quite young. It was made a living document, not just words on paper, because of the persistence of individuals and organized social movements in demanding liberty and justice for all.

Now a new kind of movement – in fact, a national civics lesson - is taking shape across the country. In the years following the 9/11 attacks, people who view themselves as patriots have organized across the land to get their elected officials to stand up for the Constitution and the Bill of Rights. They argue that liberty must not sacrificed in the name of national security. They want this country to be a democracy, not a police state.

Judge Learned Hand and the famous scientist Albert Einstein would be proud of the resolutions upholding basic freedoms that have been passed in New York City and hundreds of other cities and towns. It was Einstein who warned Americans living through the Red Scare in 1954: "The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are constitutional rights secure."[23]

The new movement to defend constitutional rights stretches across the generations. People who experienced the loss of rights in Germany in the 1930s have raised the alarm. People like the late Fred Korematsu, who were forced

into internment camps in the 40s, spoke out eloquently against the erosion of rights and the government's new detention practices. People who lived through the fearful Red Scare of the late 1940s and 50s, and became aware of the massive government spying program in the 1960s and early 70s have been the backbone of the movement. Young people who know they have a critical role to play in keeping rights real have organized to pass resolutions upholding constitutional freedoms on many campuses.

Eventually it will be up to you, the rising generation, to decide what will become of the fundamental values for which the Revolution was fought. Your decision will determine whether the Bill of Rights will remain a living document, or once again become just a piece of paper.

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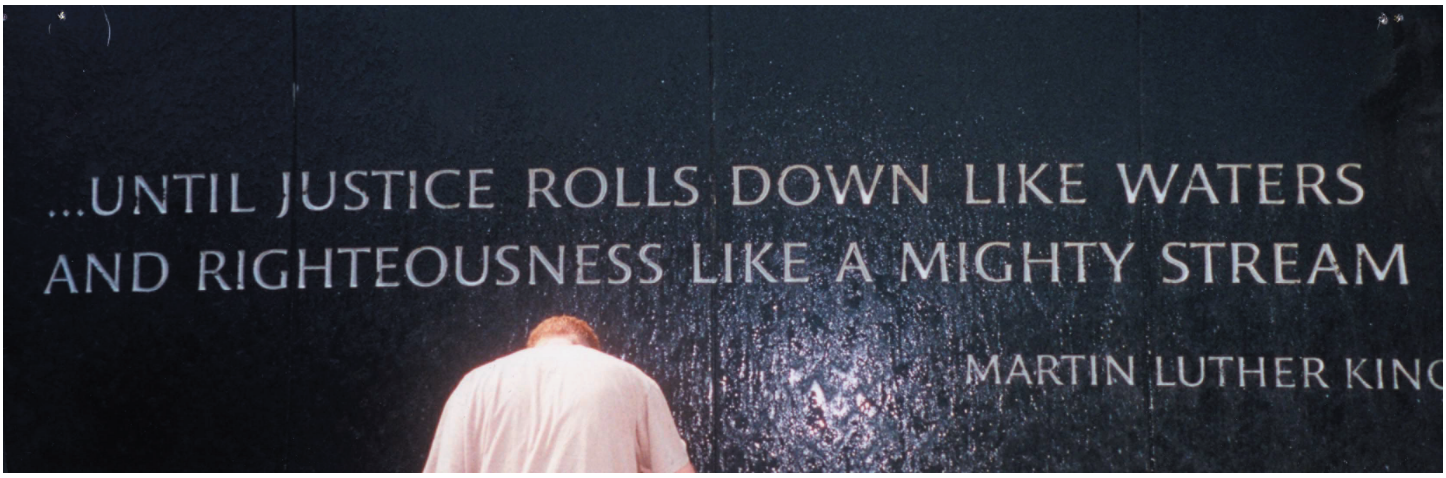

SOME USEFUL RESOURCES FOR THE CLASSROOM

Civics for Democracy: A Journey for Teachers and Students,
by Katherine Isaac (Essential Books, PO Box 19405, Washington DC), 1989

In Defense of Liberty: The Story of America's Bill of Rights,
by Russell Freedman (Holiday House, New York), 2003

Participation in Government: Making a Difference,
by the Center for Instructional Development, Syracuse University
(Copley Publishing Group, Littleton, Massachusetts), 1988

Putting the Movement Back into Civil Rights Teaching, A Resource Guide for K-12 Classrooms,
edited by Deborah Menkart, Alana Murray, Jenice View
(Teaching for Change and the Poverty & Race Research Action Council), 2004
www.civilrightsteaching.org

Roots and Patterns: Educational Resources for High Schools,
a series of four educational booklets produced by the Institute of Race Relations (UK) on the historical roots of racism and the fight against it. The series includes the cartoon book, *How racism came to Britain* (see pages 7 and 8 of this text).
For details and ordering information:
http://www.irr.org.uk/publication/education/index.html

Visions of Liberty: The Bill of Rights for All Americans,
by Ira Glasser (Arcade Publishing, Little, Brown and Company, New York), 1991

We the Students: Supreme Court Cases for and about Students,
by Jamin Raskin, (CQ Press, Washington DC), 2003

Film Series on Civil Liberties

ACLU Freedom Files
This 10 part-series tells the stories of real people in America whose civil liberties have been threatened, and how they fought back. Each DVD is one-half hour long.
Themes: "Beyond the Patriot Act," "Dissent," "Drug Wars," "Gay and Lesbian Rights," "Racial Profiling," "Religious Freedom," "The Supreme Court," "Voting Rights," "Women's Rights," "Youth Speak."
To borrow films for schools in Massachusetts:
contact nancy@aclum.org or telephone (617) 482-3170 x 314.
To purchase films: www.aclu.tv. The DVD set is available in many retail stores.

For information about ordering classroom sets of *Rights Matter: the Story of the Bill of Rights*, contact nancy@aclum.org or visit www.rightsmatter.org. This website features additional resources for teachers, including lessons that accompany this text.

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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. 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. 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. 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. 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 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