

The following internet site provides good information about the history of the Bill of Rights as well as other documents:

<http://www.re-quest.net/g2g/historical/documents/index.htm>

[http://www.archives.gov/exhibit\\_hall/charters\\_of\\_freedom/bill\\_of\\_rights/bill\\_of\\_rights.html](http://www.archives.gov/exhibit_hall/charters_of_freedom/bill_of_rights/bill_of_rights.html)

Directions: Use the above websites and the following information (from the ACLU) to deliver your lecture about the history of the Bill of Rights and what its purpose is.

## The Bill of Rights: A BRIEF HISTORY

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**"[A] bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse."**

**--- Thomas Jefferson December 20, 1787**

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In the summer of 1787, delegates from the 13 states convened in Philadelphia and drafted a remarkable blueprint for self-government -- the Constitution of the United States. The first draft set up a system of checks and balances that included a strong executive branch, a representative legislature and a federal judiciary.

The Constitution was remarkable, but deeply flawed. For one thing, it did not include a specific declaration – or bill – of individual rights. It specified what the government could do but did not say what it *could not do*. For another, it did not apply to everyone. The "consent of the governed" meant propertied white men only.

The absence of a "bill of rights" turned out to be an obstacle to the Constitution's ratification by the states. It would take four more years of intense debate before the new government's form would be resolved. The Federalists opposed including a bill of rights on the ground that it was unnecessary. The Anti-Federalists, who were afraid of a strong centralized government, refused to support the Constitution without one.

**INDIVIDUAL RIGHTS ARE THE  
OLDEST AND  
MOST TRADITIONAL OF  
AMERICAN VALUES**

In the end, popular sentiment was decisive. Recently freed from the despotic English monarchy, the American people wanted strong guarantees that the new government would not trample upon their newly won freedoms of speech, press and religion, nor upon their right to be free from warrantless searches and seizures. So, the Constitution's framers heeded Thomas Jefferson who argued: "A bill of rights is what the people are

entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."

The American Bill of Rights, inspired by Jefferson and drafted by James Madison, was adopted, and in 1791 the Constitution's first ten amendments became the law of the land.

### LIMITED GOVERNMENT

Early American mistrust of government power came from the colonial experience itself. Most historians believe that the pivotal event was the Stamp Act, passed by the English Parliament in 1765. Taxes were imposed on every legal and business document. Newspapers, books and pamphlets were also taxed. Even more than the taxes themselves, the Americans resented the fact that they were imposed by a distant government in which they were not represented. And they were further enraged by the ways in which the Stamp Act was enforced.

Armed with "writs of assistance" issued by Parliament, British customs inspectors entered people's homes even if they had no evidence of a Stamp Act violation, and ransacked the people's belongings in search of contraband. The colonialists came to hate these "warrantless" searches and they became a rallying point for opposition to British rule.

From these experiences came a uniquely American view of power and liberty as natural enemies. The nation's founders believed that containing the government's power and protecting liberty was their most important task, and declared a new purpose for government: the protection of individual rights.

The protection of rights was not the government's only purpose. It was still expected to protect the community against foreign and domestic threats, to ensure economic growth, and to conduct foreign affairs. It was not, however, the government's job to tell people how to live their lives, what religion to believe in, or what to write about in a pamphlet or newspaper. In this sense, the idea of individual rights is the oldest and most traditional of American values.

### "CERTAIN UNALIENABLE RIGHTS"

Democracy and liberty are often thought to be the same thing, but they are not. **Democracy** means that people ought to be able to vote for public officials in fair elections, and make most political decisions by majority rule. **Liberty**, on the other hand, means that even in a democracy, individuals have rights that no majority should be able to take away.

The rights that the Constitution's framers wanted to protect from government abuse were referred to in the Declaration of Independence as "unalienable rights." They were also called "natural" rights, and to James Madison, they were "the great rights of mankind." Although it is commonly thought that we are entitled to free speech because the First Amendment gives it to us, this country's original citizens believed that as human beings,

they were entitled to free speech, and they invented the First Amendment in order to protect it. The entire Bill of Rights was created to protect rights the original citizens believed were naturally theirs, including:

**FREEDOM OF RELIGION –**

The right to exercise one's own religion, or no religion, free from any government influence or compulsion (see [ACLU Briefing Paper #3](#)).

**FREEDOM OF SPEECH, PRESS, PETITION & ASSEMBLY –**

Even unpopular expression is protected from government suppression or censorship (see [ACLU Briefing Paper #10](#)).

**PRIVACY –**

The right to be free of unwarranted and unwanted government intrusion into one's personal and private affairs, papers, and possessions.

**DUE PROCESS OF LAW –**

The right to be treated fairly by the government whenever the loss of liberty or property is at stake.

**EQUALITY BEFORE THE LAW –**

The right to be treated equally before the law, regardless of social status (see [ACLU Briefing Paper #17](#)).

"AN IMPENETRABLE  
BULWARK" OF LIBERTY

The Bill of Rights established soaring principles that guaranteed the most fundamental rights in very general terms. But from the beginning, real live cases arose that raised difficult questions about how, and even if, the Bill of Rights would be applied. Before the paper rights could become actual rights, someone had to interpret what the language of the Bill of Rights meant in specific situations. Who would be the final arbiter of how the Constitution should be applied?

At first, the answer was unclear. Thomas Jefferson thought that the federal judiciary should have that power; James Madison agreed that a system of independent courts would be "an impenetrable bulwark" of liberty. But the Constitution did not make this explicit, and the issue would not be resolved until 1803. That year, for the first time, the U.S. Supreme Court struck down an act of Congress as unconstitutional in a case called *Marbury v. Madison*. Although the facts of this case were fairly mundane (a dispute over the Secretary of State's refusal to commission four judges appointed by the Senate), the principle it established – that the Supreme Court had the power to nullify acts of Congress that violated the Constitution – turned out to be the key to the development and protection of most of the rights Americans enjoy today. According to one eminent legal scholar, the independent judiciary was "America's most distinctive contribution to constitutionalism."