Many state constitutions limit government and protect individual rights with provisions very similar, if not identical, to those in the federal Constitution. This is not surprising, since many state constitutions were modeled directly upon the federal one. As the prior article demonstrates, however, state constitutions may provide very different protections for individual rights than does the federal document. In drafting their constitutions, some states looked to the documents of their sister states as models and ignored the federal Constitution.

The Supreme Court has interpreted the U.S. Constitution to provide only the minimum—or basic floor—of individual rights. Although states cannot provide less protection than the federal Constitution guarantees, they may provide greater or different protections. The following activities are intended to make students aware of three important ways in which state and federal constitutions may differ and how these differences may affect individual rights:

1. In the first situation, the state constitution may contain language which expressly protects some individual right. The federal Constitution does not state that such a right exists, either expressly or by judicial interpretation. This occurs, for example, in the area of environmental protection, described below.

2. In the second situation, the state constitution may contain language which expressly protects a particular right. Although the federal Constitution does not expressly protect that right, the courts have implied such a right through interpretation. This situation occurs in the area of privacy, discussed below.

3. In the third situation, both the state and the federal Constitution may have provisions which guarantee a particular right, but the courts have interpreted those provisions differently. The right to distribute leaflets at shopping centers, discussed below, illustrates this difference.

**Suggested Activity 1**

**Objective:** By exploring the subject of environmental protection, students will learn that their state's constitution may provide greater protection for individual rights than does the federal Constitution.

**Materials:** A handout containing the Bill of Rights to the federal Constitution, as well as the provisions from state constitutions and hypothetical included in the box on page 31.

**Activity**

1. Have the class read the handouts.
2. Divide the class into small groups, each to be "residents" of one of the states listed on the handout and one to be residents of the nation as a whole.
3. Give each group up to twenty minutes to discuss and decide what arguments it can make up for a right to a clean and safe environment based on the provisions of the constitution they have been assigned.
4. Select a representative from each group to present their arguments to the class.
5. After the arguments have been completed, ask the class to vote on which group had the best argument.
6. Questions for a follow-up class discussion:
   a. Which constitution was the best support to argue that the chemical plant was violating the constitutional rights of citizens in the community?
   b. If you were a judge deciding this case, would you be more persuaded by arguments made under a state or the federal Constitution in favor of a right to a clean environment? Why?
   c. What are some of the costs and benefits of having specific, rather than general, constitutional rights set forth in a constitution?
   d. Can you think of any advantages or problems with general constitutional provisions, such as the Fourteenth Amendment's guarantee of "equal protection," which may not address specific situations, such as whether citizens have a right to a clean environment?
   e. Aside from constitutions, what other ways can you think of to ensure a pollution-free environment?
   f. Do you think laws other than constitutions might be better ways to ensure a clean environment? Why?

**Suggested Activity 2**

**Objective:** Students will understand that an individual's rights to privacy may be given different protection depending on whether the federal or a state constitution is used to enforce those rights.
Privacy has been defined as freedom from observation or intrusion in a person's private affairs; the right to protect certain personal information from being disclosed to others; and the freedom to act without outside interference.

1. Explain to the class that the federal Constitution does not have specific language guaranteeing a right of privacy, although the Supreme Court has interpreted it to protect privacy. Some state constitutions, by contrast, do have an express right of privacy. (These states are Alaska, California, Florida, Hawaii, Louisiana, Massachusetts, Montana, South Carolina and Washington.) The difference may have important consequences, as the following exercise will show.

2. Divide the class into small groups and have them spend five minutes or so brainstorming areas of their lives where privacy is important, like the contents of their lockers, the books they read at home, their medical records, etc. Ask someone from each group to make a list of the ideas generated.

3. Distribute the handout on page 23 describing Supreme Court rulings on the implied right of privacy under the federal Constitution and the express privacy provisions of some state constitutions.

4. After reading the handouts, have the groups discuss whether they think each right on their brainstorming list would be protected by the privacy guarantee as defined by the Supreme Court rulings on the handout list, and why. Have them record their answers on the brainstorming sheet. Then have them go through the list a second time to decide whether each of the items on the list should be among those protected by the privacy rights contained in the state provisions.

5. Have each group draft a "model" privacy provision to be implemented in their state's constitution.

6. After each group has completed its model provision, and written it on a large sheet of paper, pin the provisions up around the classroom.

7. Reconvene the class. Record some of the privacy rights and responses of each group's brainstorming session on the blackboard.

8. Subjects for class discussion:
   a. After reviewing the results of your work, do you think the federal Constitution is an adequate source of protection for privacy rights? If not, why not?
   b. If your state is not among those that have express constitutional protections for privacy rights, do you think it should? If your state's constitution does protect privacy, do you think it goes far enough?
   c. Discuss the similarities and differences between the model provisions. Ask members from each group to report on the reasons for certain aspects of the provisions. Ask the class which of the models best protects the privacy rights that are most important to them. Why?
   d. Discuss whether the language of a constitutional privacy provision should be very general, such as "citizens of this state have the right to privacy as well as to liberty, property, the pursuit of happiness," or define specific situations it is designed to cover, such as the right to have medical information protected from being turned over to police or the FBI? General language may be more readily interpreted by courts to cover new situations not contemplated at the time the provision was drafted. For example, the vast information-sharing possibilities created by computer technology could not have been contemplated at the time the federal Constitution was drafted, even assuming it contained an express privacy provision. On the other hand, specific provisions assure that the right in question will be applied by the courts to the specific situations the legislature determined were important.
   e. Which of the items from the brainstorming sessions are protected by the model provisions? Are some of the important privacy rights left out? If so, how could the language of the model provisions be altered to cover these rights?

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**Protection of the Environment**

**ILLINOIS** (Art. XI, Section 2): "Each person has the right to a healthful environment" and "[e]ach person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation."

**PENNSYLVANIA** (Art. I, section 28): "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment."

**VIRGINIA** (Art. XI, section 1): "The General Assembly may undertake the conservation, development or utilization of natural resources, the acquisition and protection of historic sites and buildings, and the protection of the Commonwealth's atmosphere, lands, and waters from pollution, impairment, and destruction."

**NEW YORK** (Art. XIV, section 4): "The policy of the state shall be to conserve and protect its natural resources and scenic beauty."

**RHODE ISLAND** (Art. I, section 17): "The people shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values."

**Hypothetical**: Imagine that there is a chemical plant located near your school. The plant is polluting the environment through smokestacks which spew poisonous gas into the air and through burying toxic wastes in the ground, which have seeped into the underground wells and infected the neighborhood’s drinking water. Many of the residents in the neighborhood surrounding the school have gotten sick recently and you suspect that the pollution from the plant is to blame. Complaints to local, state and federal government authorities, as well as to management of the chemical plant, have brought no response. You decide to sue the owners of the plant, as well as the county, state and federal governments, for their failure to take action to stop further pollution and remedy the harm that has already taken place.
Suggested Activity 3

Objective: Students will learn that courts may interpret the same constitutional provision differently, leading to different protections.

Distribute the following information to the class in a handout. It contains constitutional provisions and case summaries.

CONSTITUTIONAL PROVISIONS
The First Amendment to the U.S. Constitution provides, in part: “Congress shall make no law ... abridging the freedom of speech....”

Many state constitutions, including California’s, state that its citizens “shall have freedom of speech....”

The Fifth Amendment to the U.S. Constitution provides, in part: “No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation....”

CASE SUMMARIES
Lloyd v. Tanner, 407 U.S. 551 (1972). In this case, the Supreme Court decided that it is permissible under the federal Constitution for a privately owned shopping center to prohibit the distribution of handbils on its property when the handbilling does not relate to the shopping center’s operations.

Prune Yard Shopping Center v. Robins, (447 U.S. 74, 1980). This case involved a shopping center’s refusal to allow a group of high school students to distribute leaflets in the mall. One Saturday afternoon, a group of students set up a card table in the corner of the shopping center’s central courtyard, where they distributed pamphlets opposing a United Nations resolution against Zionism and asked passers-by to sign petitions, which were to be sent to the president and members of Congress. A security guard told them they would have to leave because the activity violated shopping center regulations prohibiting any visitor or tenant from engaging in any publicly expressive activity that is not directly related to the center’s commercial purposes. The group immediately left the premises and later brought suit against the shopping center and its owner seeking the right to circulate their petitions. The Supreme Court held that, even though the First and Fourteenth amendments to the U.S. Constitution permit private shopping centers to prohibit such activities on their property, state constitutions might provide expanded rights of free speech and association.

Since the time the Prune Yard case was decided, California, Washington, Massachusetts, Pennsylvania and New Jersey have allowed leafletting at shopping malls and private universities. New York, Connecticut and Michigan have upheld the rights of owners to prohibit such activities on their property.

In a very recent case decided by New York’s highest court, two anti-nuclear groups had been barred by security guards from distributing literature opposing the Shoreham nuclear power plant at the Smith Haven Mall in Long Island, New York. The groups had not blocked the entrances to the mall nor had they disrupted its operations. The mall had always permitted events that related to consumer interest but had uniformly barred all political activities. The court held that the free speech and assembly guarantees of the New York Constitution only protected people against government action, not restrictions imposed by private property owners. The mall was permitted to retain its ban.

ACTIVITY
1. Divide the class into small groups, and divide these in half, one-half to play the owners of shopping malls and the other to play groups wishing to distribute leaflets. Assign each group a state of residence, based on those listed in the handout above.
2. Give each side 5-10 minutes to determine their “identity” (for example, what those leafletting are protesting or concerned about; where the shopping center is located and what its reasons are for not wanting the protesters on its property are) and their arguments in favor or in opposition to allowing the leafletting.
3. Have the groups debate whether the “leafletters” should be allowed to distribute their handbills under the law of the territory in which they “reside.”
4. Reconvene the class and have each group present its arguments in front of the class. Ask how they think the case would be decided under the federal Constitution and then under the constitution of the state where the group “resides.” Why?
5. Questions for discussion:
   a. Which constitutions provide the greatest protection for the freedom of speech?
   b. Which constitutions provide the greatest protection for the rights of property owners?
   c. Why doesn’t the federal Constitution protect the right of protesters to distribute their pamphlets in shopping centers?
   d. Should the right of free expression mean different things, depending on what constitution the guarantee is found in?
   e. Is it fair that citizens of one state have greater or lesser protection for their individual rights than citizens of another state?
   f. Should there be a difference between state and federal constitutions in the level of protection given to the same individual rights?
   g. Should the federal and state constitutions give different levels of constitutional protections to individual rights or should there just be one uniform standard given to all rights, regardless of what constitution they are found in?
   h. Should shopping centers be considered public places, which would require that they permit free expression, such as the right to leaflet on the premises?

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Privacy Under the Constitution

The oldest privacy right in the federal Constitution is contained in the Fourth Amendment's protection against unreasonable searches and seizures. This guarantee is very specific, however, and is most often used to challenge police searches in criminal cases. The Supreme Court has extended the right to privacy far beyond this express guarantee against unreasonable searches and seizures, yet it has stopped short of saying that the federal Constitution contains a general right to privacy. The late Supreme Court Justice Louis Brandeis once expressed the right to privacy as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man" (dissent in Olmstead v. U.S., 277 U.S. 458 (1928)), but the justices have been selective in finding this right under the Constitution.

They have only found a constitutional right to privacy in certain, specific areas, as the following cases reveal.

Family Matters: The Court has held that the Constitution prevents states from passing laws requiring schools to teach only in English (Meyer v. Nebraska, 262 U.S. 390 (1923)); requiring students to attend public rather than private schools (Pierce v. Society of Sisters, 268 U.S. 510 (1925)); requiring Amish children to attend school after the age of 14 (Wisconsin v. Yoder, 406 U.S. 205 (1972)); prohibiting persons from different races from getting married (Loving v. Virginia, 388 U.S. 1 (1967)); requiring poor people to pay a court fee before being able to get a divorce (Boddie v. Connecticut, 401 U.S. 371 (1971)); or restricting the ability of poor people to get married (Zobel v. Rodak, 433 U.S. 313 (1978)). On the other hand, the Supreme Court upheld a state zoning law which prohibited non-family members from living together in a residential, suburban community (Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)).

Sexual and Reproductive Matters: The Supreme Court has invalidated laws which require that persons sentenced to prison more than twice for "morally offensive" crimes be sterilized (Skinner v. Oklahoma, 316 U.S. 535 (1942)); statutes prohibiting abortion in all cases except when the mother’s life was in danger (Roe v. Wade, 410 U.S. 113 (1973)); statutes requiring parental consent for all abortions of women under aged 16 (Planned Parenthood v. Danforth, 428 U.S. 52 (1976)) and restricting the right of both married persons (Griswold v. Connecticut, 381 U.S. 479 (1965)) and unmarried persons to obtain contraceptives (Eisenstadt v. Baird, 405 U.S. 438 (1972)).

Although the Court has interpreted the constitutional privacy right to protect the sexual activity of married persons, it has refused to extend this protection to cover private homosexual conduct between consenting adults ( Doe v. Commonwealth’s Attorney, 425 U.S. 901 (1976)). It has upheld the right of individuals to read pornographic materials in the privacy of the home (Stanley v. Georgia, 394 U.S. 577 (1969)), although not in public places (Paris Adult Theatre v. Slaton, 413 U.S. 66 (1973)).

Informational Matters: The Court has ruled that the federal Constitution does not provide individuals with a right of privacy in the records, checks and deposit slips kept by their banks (United States v. Miller, 425 U.S. 435 (1976)). Banks can be required to record information about their customers and their banking activities and hand such information over to state and federal authorities (California Bankers Ass’n v. Shultz, 416 U.S. 21 (1974)). Doctors can be required to give state authorities the names of all patients receiving prescriptions containing certain narcotics (Whalen v. Roe, 429 U.S. 688 (1977)). The Supreme Court also upheld as constitutional a search by police (with a warrant) of a newspaper’s offices to look for photographs of demonstrators who had severely beaten police officers (Zurcher v. Stanford Daily, 436 U.S. 547 (1978)).

STATE PRIVACY PROVISIONS

ALASKA (Art. I, Section 22): “The right of the people to privacy is recognized and shall not be infringed.” The Alaska Supreme Court has interpreted this provision to protect the right of an individual to smoke marijuana in the privacy of the home (Ravin v. State, 537 P.2d 494 (1975)).

CALIFORNIA (Art. I, Section 1): “All people are by nature free and independent and have an inalienable right to...pursuing and obtaining...privacy.” The California courts have decided that this provision does not guarantee its residents the privilege of smoking a possibly harmful drug such as marijuana, even in the privacy of their homes (National Organization for Reform of Marijuana Laws v. Gain, 100 Cal. App. 3d 585, 161 Cal. Rptr. 181 (1979)).

FLORIDA (Art. I, Section 23): “Right of Privacy—Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.”

MONTANA (Art. II, Section 10): “The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest.”

Other states which have express protections of privacy in their state constitutions include: Arizona, Hawaii, Louisiana, South Carolina and Washington. Privacy rights which have been upheld under state constitutions include informational privacy, sexuality, bodily integrity (for instance, the right not to be given tests for alcohol or drug use without consent), refusal of life-saving medical treatment for chronically or terminally ill patients, and individual choice for decisions relating to abortion.