OVERVIEW: PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

This “Lesson Sampler” can be used with any Civics and Law Academy format. For three possible models, go to pages 12-13 of the Resource Guide, “Selecting Your Academy Format.” Organized into 8 sessions, this set of lessons follows the “Pathway to Understanding” on Constitutions and Constitutionalism, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for the Civics and Law Academy. In addition to Constitutions and Constitutionalism (Pathway 3), the other five are: 1--Law and Justice; 2--Power and Empowerment; 4--Rights and Responsibilities; 5--Freedom and Equality; and 6--American Identity and Pluralism. The Resource Guide presents concepts, topics, and suggested court cases for each Pathway.

Concepts and Topics: government under law, limited government, idea of written constitution, ways to interpret the Constitution, amending/changing the U.S. Constitution, comparing U.S. to state constitutions.

Have these items available for each session:
- Handouts required for lessons
- Supplies and equipment: such as AV equipment, flip charts, markers, extra pencils/pens and notepads for participants,
- Refreshments (e.g., soft drinks/water and cookies) and service supplies

Arrange the setting:
- Set up room to facilitate group interaction and movement
- Have tables ready for refreshments, handouts, and other Academy materials
- Have refreshments available as students arrive.

Establish beginning and ending times and stick to them! Sessions that convene later than announced encourage latecomers and dishonor punctual arrivers. Participants will expect sessions to adjourn as announced and are likely to become distracted and disgruntled when sessions go over time.

Plan Ahead

Consider an Off-site Visit

Review the session topics to determine if the session might benefit from being held in some community agency or if an accompanying off-site visit might enrich your program.


Decide on Guest Speakers and Presenters

Review the sessions to determine how guest speakers and presenters would enrich the experience for participants. Identify and invite them well ahead of the date of the session.

## CONTENTS

This “Lesson Sampler” includes 6 lessons organized into 8 sessions that explore the contexts and issues relating to Constitutions and Constitutionalism. Each lesson includes detailed, step-by-step instructions on how to use it as part of an overall Academy curriculum. The times given should be considered approximate and suggestive.

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## PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

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SESSION I - DEMOCRATIC AND OTHER GOVERNMENTS
[Time: 1 hr & 45 min]

Concepts and Topics: government under law, limited government

Lesson
“What is a Democracy?”

Handouts
Handout 1
Handout 2
Chart, p 18

Presenter Preparation
Read the Teacher Background, p 19

[NOTE: This lesson is divided into activities for 2 class periods that can easily be accommodated in one Academy session.]

Procedure
Opening
(1) Welcome [15 minutes]
- Introduce yourselves and participants
- Give brief background on Civics and Law Academies
- Review the curricular focus of this Academy (the Pathway you are following), the topics to be covered, and the schedule of sessions [Distribute handout with this information.]
- Review session agenda

(2) Warm Up [10 minutes]
Start by giving some directives to demonstrate autocracy as suggested in Procedure for Day 1. Follow this with a brainstorm of the term ‘Democracy.’ [See guidelines for Brainstorming on page 14 of the Resource Guide.] Stop when a good size list has been generated.

Curricular Focus
(3) Follow the directions for linking or categorizing brainstormed terms and giving labels. Then distribute copies of Handout 1 and discuss and compare with participants’ list. [20 minutes]

(4) Follow the instructions given for Procedure for Day 2. [45 minutes]

Closing
(5) Debrief and Wrap Up [5 minutes]
Return to the brainstormed list of terms regarding democracy. Do they have additional terms to add or adjustments in listed terms?

(6) Look Ahead
Tell participants that the next session will focus on issues addressed in the formation of our democratic government.

(7) Adjourn – remind participants when and where they will meet next!
There are many definitions of democracy and many countries which claim to have a democratic form of government. The diversity of our world can be very confusing. In this two-day lesson, students will expand their understanding of democracy, and learn of criteria that scholars use to identify democracies. On the second day they will work in small groups to apply these criteria to different fictional countries.

Goals
At the end of this lesson, students will be able to:
1. expand their definition of democracy by considering several new criteria;
2. identify democratic practices in fictional and real countries; and
3. work with others in making decisions.

Procedure for Day 1
Give students an example of unlimited power by making arbitrary and unpleasant changes in the day’s schedule.

"I have decided that there will be no lunch period today."
"Homework tonight will be a ten-page paper on ______.
"No students in my classes can be in after-school sports."

After they have had an opportunity to protest, explain that you have just given them an example of autocratic government, in which one person or group has unlimited power.

Put the word DEMOCRACY on the chalkboard or overhead transparency. Ask students to think about what that word means to them. Invite students to brainstorm about the word “democracy.” Record their ideas on the board. Do not comment on or question their suggestions at this point.

Ask the students if some of the things they have listed under DEMOCRACY go together in some way. Take suggestions for linking words together, and ask what each category has in common. (Example: freedom of speech, religion and press might be grouped and labelled “rights.”)

Ask students to label the categories they have created. This reassessment will let you know what they think about democracy in particular and government in general.

Post their words, groups and labels on the bulletin board. Using an overhead transparency or handouts, show them the list in Handout 1. Explain that these are characteristics of a certain kind of government, a democracy, that have been identified by scholars. These are the characteristics of constitutional government, as opposed to autocratic government. Discuss each and compare this with the students’ list.

Procedure for Day 2
Divide the class into groups of five. Pass out Handout 2 and the chart on page 18. Assign the following roles:
Handout 1: Democratic Government

A government is often called a democracy if the following characteristics are present:

1. Government leaders gained power by legal, peaceful means. They can be removed from office by the people or their elected representatives.

2. Individuals have basic rights such as freedom of speech, freedom of the press, freedom of assembly, and freedom of religion.

3. Individuals and groups are protected from unfair government actions that may take away their lives, property, or freedom.

4. Regular elections with two or more political parties, secret ballots, and majority rule are part of the political process.

5. Individuals have the right to be represented when government passes laws or levies taxes. A legislature of elected representatives meets to make the laws.

6. The media—newspapers, magazines and television—freely report news from around the world, and present favorable and unfavorable views of government actions.

7. The country's courts make rulings for and against the government, and help protect citizens' rights. People are equal before the law.

8. A national constitution, written or unwritten, limits the power of government. It defines what the government may do and how it will be organized.

Handout 2: Deciding about Democracy

Directions: Read each of these examples. Using the chart on page 18, decide which characteristics of democratic government are present or missing. Decide if you consider this country an example of a democracy.

COUNTRY A
The people of Alpha have a prime minister rather than a president as their national leader. The people vote for their representatives in the legislature, but they do not vote for prime minister. The prime minister is chosen by the elected representatives in the legislature. If they lose confidence in their leader, the majority in the legislature choose a new prime minister. Alpha has an unwritten constitution based on many important documents in their history and longstanding customs. Individuals and groups are free to criticize the government. They are free to worship as they please, move freely within the country, change jobs, and travel.

COUNTRY B
Beta has a written constitution that is 25 years old. It states that citizens have the right to freedom of speech and freedom of religion. Even though these rights are in their constitution, the people of Beta are not allowed to criticize their government. People who disagree with the government are arrested. They disappear from many years, sometimes forever. There are elections in Beta, but there is only one political party. The people of Beta are afraid of their government. They do not feel safe.

COUNTRY G
Gamma is a country with a president and legislature elected by the people. The president appoints the governors of Gamma's sixty states. Military leaders (who are not elected) have a great deal of power in Gamma. They decide which candidates can run in an election. They have shut down newspapers that criticize the government. In the old days, a military dictator ruled Gamma. Five years ago, the military gave power to a president and legislature. If the military leaders do not like the government's actions, they can try to take over the government again.

COUNTRY I
The country of Iota has some citizens who are very wealthy. They have the right to vote for president and their representatives. They hold important positions in business, government, and education. They can travel freely, choose their place of worship, their jobs, and schools for their children. Many of their children go to college in other countries. Most people in Iota are poor and have little education. They are not allowed to vote and must live in the area assigned to them by the government. There is no constitution that protects the rights of all of the people of Iota.

COUNTRY K
Kappa is a country where there are many elections. In every part of the nation, leaders, legislators, and judges are elected to office. If the people of Kappa do not like what their government is doing, they can wait for the next election and vote for a new political party or a new candidate. Sometimes the people of Kappa don't wait for the next election. They sign a petition to recall the government official and remove him or her from office. These procedures are written in their constitution. People often discuss and debate government actions. Sometimes citizens take a government
<table>
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<tr>
<th>CHARACTERISTICS</th>
<th>A ALPHA</th>
<th>B BETA</th>
<th>G GAMMA</th>
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<tr>
<td>Peaceful change of leaders</td>
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<td>Basic political freedoms</td>
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<td>Protection of life, liberty, property</td>
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<td>Regular elections, majority rule</td>
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<td>Elected representatives</td>
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<td>Courts—Equality before the law, rule of law</td>
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<td>Constitution—limits government</td>
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<td>Is this country a democracy?</td>
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<td>Yes/No</td>
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<td>Why not?</td>
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(Y = Yes, N = No, ? = No information)
official to court and win their case. Politics is an important part of the daily lives of the people of Kappa.

**Teacher Background**

Many children associate democratic government with attributes such as majority rule and individual rights. Scholars have used a variety of criteria in their studies. G. B. Powell, in his book *Contemporary Democracies* (Cambridge, MA: Harvard University Press, 1982), includes five criteria:

- The government bases its legitimacy on representing the desires of its citizens.
- Leaders are chosen in free elections by at least two viable political parties.
- Most adults can participate in the political process.
- Citizens' votes are secret and are not coerced.
- Citizens, leaders and party officials enjoy basic freedoms of speech, press, assembly, religion, and organization.

In four different studies conducted between 1976 and 1984, 19 nations were consistently rated as democracies: Australia, Austria, Belgium, Canada, Denmark, Finland, France, West Germany, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, and the United States. (This data is summarized in K. Janda, J. M. Berry, J. Goldman, *The Challenge of Democracy: Government in America* (Boston, MA: Houghton Mifflin, 1987). All of these nations are industrialized, democratic societies. Third World countries are not represented.

A more recent study by T.D. Anderson (“Civil and political liberties in the world: a geographical analysis” in J. Norwine and A. Gonzalez, *The Third World* (Boston, MA: Unwin Hyman, 1988) classifies the nations of the world on a six-point scale, with category I composed of countries where all elements of individual rights are specified by law and are extended to all inhabitants without restriction. Category II includes countries in which legal rights are not extended uniformly to some minorities or recent immigrants. Many of the largest Western nations fall into Category II because of their diverse populations and the role of discrimination against racial or ethnic minorities. In this study, based on 1988 data, the following Third World countries are included in Categories I and II: Barbados, Costa Rica, Antigua-Barbuda, Argentina, Bahamas, Belize, Botswana, Columbia, Cyprus, Dominica, the Dominican Republic, Grenada, Jamaica, Kiribati, Mauritius, Nauru, Papua-New Guinea, St. Kitts-Nevis, St. Lucia, St. Vincent, the Solomon Islands, Trinidad-Tobago, Tuvalu, Uruguay, and Venezuela.

Anderson argues that not all democratic nations have an educated population and an advanced economy: “striking exceptions are places like Botswana, Papua-New Guinea, and the Solomon Islands...” This evidence suggests that the premise that mass access to civil and political freedoms is a feature only of Europeanized, middle-latitude countries does not accord with reality.”

Given the changes in Eastern Europe and elsewhere, these studies must be continually updated. Teachers may wish to use countries from these lists as the basis for student research projects.

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SESSION II - THE U.S. CONSTITUTION UNDER CONSTRUCTION
[Time: 1 hr & 45 min]

Concepts and Topics: government under law, idea of written constitution, ratifying/amending/changing the U.S. Constitution

Lesson
“Back to the Future of the Bill of Rights”

Handouts
U.S. Constitution
Background
Handout Questions
Student Handout, p 14-16

Procedure
Opening
(1) Welcome [5 minutes]
   - Refer to some characteristics of democracy discussed last session.
   - Review this session agenda.

(2) Warm Up [10 minutes]
Start this session by raising some provocative questions such as: What rights are right for you? If forced to choose only 3, what would they be? Which would you give up? Are there any you would fight for?

Curricular Focus
(3) Distribute copies of the Background information for participants to read. (5 minutes)

(4) Form 4 small groups to examine the states’ recommendations.
   - Provide each group with one or more copies of the Amendments to the Constitution and the Handout Questions. Distribute a copy of the Student Handout, pp 14-16, to each participant. Assign each group 1 of the four state amendment suggestions to examine as per directions #1 and #2 in Handout Questions. [20 minutes]
   - When they have completed their assignment, bring the groups together and have each group report what they found regarding their state’s recommendations. When all have reported, lead a discussion using the first 3 questions under Debriefing Questions, p. 16. [20 minutes]

(5) A new Bill of Rights?
   - Form new small groups with at least 1 representative from each state-assigned group. Have each group respond to instruction #3 under Handout Questions. The representatives from each state group will be in positions to explain and, perhaps, advocate for their state’s recommendations. [20 minutes]
   - Bring the groups together to present, explain, compare, and evaluate their additions. [20 minutes]
Closing

(6) Debrief and Wrap Up [10 minutes]
Use #4, Debriefing Questions for your debrief and wrap up.

(7) Look Ahead
Inform the participants that the next two sessions will continue the examination of the extension of Constitutional rights through amendments and case law.

(8) Adjourn – remind participants when and where they will meet next!
Teaching Strategy

Back to the Future of the Bill of Rights

Emil Zullo

Objective
To introduce students to the sources of the federal Bill of Rights.

Background
In 1787, each of the original thirteen states had to decide whether to ratify the Constitution. The process pitted two forces against one another: the Federalists, who supported the Constitution as proposed, and the Anti-Federalists, who opposed ratifying the document unless provisions were added to guarantee specific rights to individuals.

Along with notification of their acceptance of the Constitution, several states sent a list of suggested changes. These states indicated that they would have trouble supporting the Constitution in the future unless their suggestions were put into a Bill of Rights. The more than two-hundred suggestions offered by these states contained (after taking into account some duplication of ideas and words) approximately one hundred ideas. A Virginia printer, Augustine Davis, compiled them into a booklet entitled "The Ratifications of the New Foederal Constitution together with the amendments proposed by the several states."

James Madison, a major architect of the Constitution, was initially opposed to any Bill of Rights. He believed all necessary rights could be found in the existing document, and that many of the states had their own bills of rights with which the new federal government could not interfere.

During the time between the ratification conventions of the various states and the meeting of the first federal Congress, however, Mr. Madison changed his mind. The voters in the congressional district for which he was a candidate felt strongly about a need for a federal Bill of Rights. His friend Thomas Jefferson also helped persuade him of the value of such a document. Armed with research from Augustine Davis' booklet, in August of 1789 Mr. Madison submitted to the first federal Congress a proposal for a federal Bill of Rights.

Materials Needed
2. A copy of the present United States Constitution, as amended.

Time Needed
Two class periods.

Procedures
On the first day, students should:
- familiarize themselves with the materials listed above;
- respond in writing to Handout Questions 1 and 2; and
- be assigned Handout Question 3 as homework.

On the second day, students should:
- review their in-class written work from the previous day;
- help their classmates draw up a Bill of Rights (using the lists they were assigned for homework) and provide a rationale for each item.
- discuss Debriefing Questions 1-3;
- be given the option of earning extra credit by writing an essay or research paper in response to Debriefing Question 4.

Emil Zullo is a law instructor and Director of Project C.A.P.A.B.L.E. for the Kingston Consolidated Schools in Kingston, New York.
Student Handout
Suggested Constitutional Amendments

MASSACHUSETTS

First, That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution, are reserved to the several states; to be by them exercised.

Secondly, There shall be one representative to every thirty thousand persons, according to the census mentioned in the Constitution, until the whole number of representatives amount to 200.

Thirdly, That Congress do not exercise the powers vested in them by the 4th sect of 1st art. but in cases when a state neglect or refuse to make regulations therein mentioned, or shall make regulations subversive of the rights of the people, to a free and equal representation in Congress, agreeable to the Constitution.

Fourthly, That Congress do not lay direct taxes but when the monies arising from the import and excise are insufficient for the public exigencies; nor then, until Congress shall have first made a requisition upon the States, to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said Constitution, in such way and manner as the legislature of the state shall think best—and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state’s proportion, together with interest thereon, at the rate of six per cent, per annum, from the time of payment prescribed in such requisition.

Fifthly, That Congress erect no company of merchants, with exclusive advantages of commerce.

Sixthly, That no person shall be tried for any crime by which he may incur an infamous punishment, or loss of life, until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.

Seventhly, The Supreme Judicial Foederal Court shall have no jurisdiction of causes between Citizens of different states, unless the matter in dispute, whether it concerns reality or personality, be of the value of 3000 dollars at the least; nor shall the Foederal judicial powers extend to any actions between citizens of different states, where the matter in dispute, whether it concerns the reality or personality, is not of the value of 1500 dollars at the least.

Eighthly, In civil actions, between citizens of different states, every issue of fact arising in actions at common law shall be tried by a jury, if the parties, or either of them, request it.

Ninthly, Congress shall, at no time, consent, that any person, holding an office of trust or profit, under the United States, shall accept of a title of nobility, or any other title or office, from any king, prince, or foreign state.

NEW YORK

That the enjoyment of life, liberty, and the pursuit of happiness are essential rights which every government ought to respect and preserve.

That the powers of government may be reassumed by the people, whenever it shall become necessary to their happiness; that every power, jurisdiction and right, which is not by the said Constitution clearly delegated to the Congress of the United States, or the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same; and that those clauses in the said Constitution, which declare that Congress shall not have or exercise certain powers, do not imply that Congress is entitled to any powers not given by the said Constitution; but such clauses are to be construed either as exceptions to certain specified powers, or as inserted merely for greater caution.

That the people have an equal, natural and unalienable right, freely and peaceably to exercise their religion according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference of others.

That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural, and safe defence of a free state.

That the militia should not be subject to martial law except in time of war, rebellion or insurrection.

That standing armies in time of peace are dangerous to liberty, and ought not to be kept up, except in cases of necessity, and that at all times the military should be under strict subordination to the civil power.

That there should be once in four years, an election of the President and Vice-President, so that no officer who may be appointed by the Congress to act as President, in case of the removal, death, resignation or inability of the President and Vice-President, can in any case continue to act beyond the termination of the period for which the last President and Vice-President were elected.

That nothing contained in the said Constitution, is to be construed to prevent the legislature of any state from passing laws at its discretion, from time to time, to divide such state into convenient districts, and to apportion its representatives to, and among such districts.

That the prohibition contained in the said Constitution, against ex post facto laws, extends only to laws concerning crimes.

That all appeals in causes, determinable according to the course of the common law, ought to be by writ of error, and not otherwise.

That the judicial power of the United States, in cases in which a State may be a party, does not extend to criminal prosecutions, or to authorize any suit, by any person against a State.
NORTH CAROLINA

8th. That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or dispossessed of his freehold, liberties, privileges or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the law of the land.

10th. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof; and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.

12th. That every freeman ought to find a certain remedy by recourse to the law for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely without delay, completely and without denial, promptly and without delay, and that all establishments, or regulations contravening these are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th. That every freeman has a right to be secure from all unreasonable searches, and seizures of his person, his papers, and property; all warrants therefore to search suspected places, or seize any freeman, his papers or property, without information upon oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive, and all general warrants to search suspected places, or to apprehend any suspected person without specially naming or describing the place or person, are dangerous and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the Legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.
VIRGINIA

9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.

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14th. That every freeman has a right to be secure from all unreasonable searches of his person, his papers, and property; all warrants therefore to search suspected places, or seize any freeman, his papers or property, without information upon oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive, and all general warrants to search suspected places, or to apprehend any suspected person without specially naming or describing the place or person, are dangerous and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition the Legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th. That the people have a right to keep and bear arms, that a well regulated militia composed of the body of the people trained to arms, is the proper, natural and safe defence of a free state. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to and governed by the civil power.

Debriefing Questions

1. What similarities do you see among the states' suggested changes? What differences?
2. After reviewing all of the states' suggestions, what rights and protections are especially emphasized? Why do you think the states believed these rights were so important?
3. Do any of the states' suggested amendments seem unnecessary or old-fashioned to you today? Why?
4. What do you think a "right" is? Who has them? Where do they come from? Do you think they have changed from the days when the Bill of Rights was added to the Constitution in 1791?
### PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

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</table>
SESSION III & IV - AMENDING THE CONSTITUTION
[Time: Session II—1 hr & 45 min, Session III—up to 2 hrs]

NOTE: This is a rich lesson that will easily consume two sessions. The first session provides participants with the background they need to participate in the presentations of the following session.

Concepts and Topics: amending/changing the U.S. Constitution

Lessons
"The Right to Vote: Giving New Meaning to ‘We the People’"

Handouts
- Introductory narrative on the Continental Congress [pp 30-31], beginning with the Morris and Paine quotes and ending with the words "Seven of the twenty-six amendments address the issue." [Do not distribute the list of amendments.]
- Amendments to the Constitution
- Separate copies, information on each of 5 groups denied voting rights [2. a – e]
- Separate copies, information on changing rights for each of the 5 groups [3. a – e]

Material
Selected material for use in the presentations for Session II such as:
- Chart paper/poster paper
- Colored markers

FIRST SESSION [Session III]
[Time: 1 hr & 45 min]
Procedure
Opening
(1) Welcome
- Review the discussions of last session
- Tell participants that in these next two sessions they will explore voting rights throughout the nation’s history

(2) Warm Up [5 minutes]
Start these two sessions by focusing on participants’ views of voting and voting rights. Probe for responses to such questions as: "Of all the rights guaranteed under our Constitution, where would you rank the right to vote?" "Why?" "How do you account for the generally low voter turn outs for elections (local, congressional, presidential)?"

Curricular Focus
(3) Use a "Readers Theatre" strategy to review the background on the Constitutional Convention. [20 min]
- Assign a narrator for each of the paragraphs up to the list of Amendments. [Have the narrator for the fifth paragraph also read the sentence introducing the states.] Tell the
narrators not to read the delegates’ statements or the states’ voter qualifications—they will speak for themselves.

- Appoint one person to speak for each of the following delegates – Morris, Paine, Franklin, Sherman, and Gerry.
- Do the same with each of the states, e.g., Connecticut through Virginia.
- Proceed with the reading beginning with the Morris and Paine quotes and ending with the words “Seven of the twenty-six amendments address the issue.”

(4) Review the Amendments that changed voting rights. [10 minutes]
- Form 7 small groups. Distribute copies of the Amendments to the Constitution and assign each group one of the listed seven amendments dealing with the right to vote. [Do not distribute this list.] Charge the groups to be prepared to tell the others how their Amendment protected or extended the right to vote. Observe that some Amendments are straightforward and easy to understand, others are more complex. If a group is not sure what right their Amendment addresses, they can ask for assistance when they report out. [10 minutes]
- As each group reports, allow for questions and clarification then write the finding on the board [See the listed summary statements in the lesson]. When your list is compiled, review and observe what has been achieved over this century in extending voting rights. Challenge participants to note the ratification dates and explain what may have led to each Amendment becoming part of the Constitution. [20 minutes]
- Lead participants in reflecting on such questions as: What would the Founding Fathers think of these developments? Why do you think that, as the narrative concludes: “No other aspect of the Constitution has been changes as much as provisions protecting the right to vote. Seven of the twenty-six amendments address the issue.” [5 minutes]

(5) Prepare for the next Session. [45 minutes]
Explain that in next session they will look more closely at the continuing process of amending the Constitution. To do this, they will work in small groups to inform the others about their assigned group of Americans.

- Form 8 small groups and distribute the paragraphs as indicated. [Group 1 and Group 8 are assigned 2 groups of people due to the length of one or both of the paragraphs.]
  - **Barriers to the Right to Vote**
    - Group 1—2.a. Non-property Owners & 2.e. Youth
    - Group 2—2.b. Black Americans
    - Group 3—2.c. Women,
  - **Access to the Right to Vote**
    - Group 5—3.a. Non-property Owners
    - Group 6—3.b. Black Americans
    - Group 7—3.c. Women
• Give participants time to get in groups to prepare for next session. Challenge them to be creative in conveying the basic/important information. Tell them to be selective in the information they focus on and not go into all the detail provided. They can use: role plays, graphics/signs/charts, dramatic readings, etc. They will need to keep their presentations to no more than 8 minutes for each group of people for whom they are reporting.

Closing
(6) Wrap Up and Adjourn
Check on participants’ progress and readiness for their presentations.

SECOND SESSION [Session IV, continued]
[Approximately 2 hrs]

Opening
(1) Welcome and Warm Up [10 minutes]
• Have participants meet with their assigned small group and make final preparations for their presentations.

Curricular Focus
(2) Voting Rights of “We the People” [1 hr & 40 min]

• Pair the presentations as follows:

| Non-property Owners       | Group 1 (barriers) | Group 5 (access) |
| Black Americans           | Group 2 (barriers) | Group 6 (access) |
| Women                     | Group 3 (barriers) | Group 7 (access) |
| Native Americans          | (Group 4 (barriers)| Group 8 (access) |
| Youth                     | Group 1 (barriers) |                  |

• Allow approximately 20 minutes for each paired presentation and follow-up discussion. Celebrate the moments!

Closing
(3) Debrief and Wrap Up [5 – 10 minutes]
Use some version of the list of “Concluding Activities” (page 33)

(4) Look Ahead

(5) Adjourn – remind participants when and where they will meet next!
An accurate view... would prove that property is the main object of society... Men don't unite for liberty or life... They unite for protection of property... Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them.

Gouverneur Morris

You require that a man shall have sixty dollars' worth of property, or he shall not vote. Very well, take an illustration. Here is a man who today owns a jackass, and the jackass is worth sixty dollars. Today the man is a voter and he goes to the polls and deposits his vote. Tomorrow the jackass dies. The next day the man comes to vote without his jackass and he cannot vote at all. Now tell me, which was the voter, the man or the jackass?

Thomas Paine

One of the great ironies of history is the fact that a formidable few, many with elitist, exclusionary, antidemocratic views, like Gouverneur Morris, would develop our United States Constitution that is so often embraced as representing and protecting the rights of the masses, of "We the People." The views of the delegates to the Constitutional Convention more often reflected those of Morris than of Paine. Not only was Paine not invited, his name and influence are no where to be found in the records and commentaries on the Convention, except perhaps in the pro-populace sentiments of Paine's long-time friend, Benjamin Franklin. Franklin chastised the elitist views, reminding the delegates, "It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war and which contributed principally to the favorable issue of it." With the exception of Franklin and a handful of other delegates, most of the framers viewed democracy as dangerous, and interpreted "We the People" very narrowly.

Roger Sherman, a lawyer and delegate from Connecticut, said, "The people... should have as little to do as may be about the Government. They lack information and are constantly liable to be misled." Delegate Elbridge Gerry of Massachusetts and of later "gerrymandering" fame warned, "The evils we experience flow from the excess of democracy." Such sentiments abound in the records of the Convention. Even the final draft of the Constitution excluded all but the "whole number of free persons" to be counted for purposes of apportioning representation. The Constitution specifically excluded "Indians" and counted slaves as "three-fifths of all other persons" (see Article I, section 2).

Ask a student or a person on the street, "Does the Constitution guarantee your right to vote?" and the response will likely be "absolutely." If you then ask, did the framers of the Constitution intend to grant this fundamental freedom to your ancestors, the answer becomes much more complex.

As we celebrate the bicentennial of the Constitution, it is important to examine the historic struggle to expand the franchise, to insure the right of "We the People" to make our vote and voice count. When the Constitution was signed, the only people permitted to vote in most states were free (not slave or indentured servants), white, male, property owners over twenty-one years of age. A careful reading of the Constitution and the deliberative debates of the Convention may lead one to conclude that the framers intended to limit this precious right (see the article by the Hon. Thurgood Marshall elsewhere in this issue).

The right to vote is seen as a cornerstone of democracy. Yet the U.S. Constitution contained no broad guarantee of the right to vote. In the absence of any expressed declaration of voting rights, the power to establish qualifications for voting has been basically reserved for the states. Constitutional references to voting qualifications and elections are limited (see Article I, sections 2, 3, 4 and 5; Article II, section 1). The dominant message of these passages is found in Article I, section 4—"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators." Clearly each state legislature has the power to establish its own qualifications for voting. This power meant some states had fewer requirements and more eligible voters than neighboring states with more restrictions.

In addition to being free whites males over twenty-one years of age, the following were the voter qualifications of states participating in the Constitutional Convention:

CONNECTICUT: Owners of 40 pounds of personal property or land bringing an annual income of 40 shillings.

DELAWARE: Owners of 50 acres of land with 12 acres cleared and improved or persons worth 40 pounds.

GEORGIA: Owners of property worth 10 pounds.

MARYLAND: Owners of 50 acres of land or persons worth 30 pounds.

MASSACHUSETTS: Owners of land worth 60 pounds or bringing in an annual income of 3 pounds.

NEW HAMPSHIRE: Property owners and taxpayers.

NEW JERSEY: Persons worth 50 pounds.

NEW YORK: Owners of land worth 20 pounds—an exception gave the vote to all freemen living in Albany and New York City before October 14, 1775.

NORTH CAROLINA: Owners of 50 acres of land to vote for the state senate; taxpayers for the lower house of the legislature.

PENNSYLVANIA: Free male taxpayers.

SOUTH CAROLINA: Owners of 50 acres or person paying the equivalent to taxes on 50 acres of land.

VIRGINIA: Owners of 25 acres of improved land or 50 acres of unimproved land and "certain artisans residing in Norfolk and Williamsburg."

While many of the framers may have intended to limit the right to vote or to reserve that decision to state...
governments, the Constitution provided the means for extending the right to vote to the disenfranchised classes. We the people can amend the Constitution, persuade Congress to pass voting rights laws, seek relief through the courts, or change state laws or constitutions. All of these means have been used to make “We the People” more universal. No other aspect of the Constitution has been changed as much as provisions protecting the right to vote. Seven of the twenty-six amendments address the issue:

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fourteenth Amendment</td>
<td>ratified, 1868</td>
<td>Punished states that denied newly freed slaves the right to vote.</td>
</tr>
<tr>
<td>Fifteenth Amendment</td>
<td>ratified, 1970</td>
<td>Extends the right to vote to black males.</td>
</tr>
<tr>
<td>Seventeenth Amendment</td>
<td>ratified, 1913</td>
<td>Permits voters to directly elect U.S. Senators.</td>
</tr>
<tr>
<td>Nineteenth Amendment</td>
<td>ratified, 1920</td>
<td>Extends the right to vote to women.</td>
</tr>
<tr>
<td>Twenty-Third Amendment</td>
<td>ratified, 1961</td>
<td>Extends the right to vote to qualified persons living in the District of Columbia.</td>
</tr>
<tr>
<td>Twenty-Fourth Amendment</td>
<td>ratified, 1964</td>
<td>Protects the right to vote of persons who cannot afford to pay a poll tax.</td>
</tr>
<tr>
<td>Twenty-Sixth Amendment</td>
<td>ratified, 1971</td>
<td>Extends the right to vote to persons eighteen or older.</td>
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Classroom Strategy

Review the information above and answer the following questions:
1. Identify the groups of persons (e.g., Native American-Indians) denied the right to vote at the time of the adoption of the U.S. Constitution.
2. Why do you believe this group was denied the right to vote?
3. What changes in society may have led to the extension of the right to vote to each group?

Answers to Classroom Strategy

The answers below present a more comprehensive analysis than students are likely to offer. As an enrichment activity, the teacher may wish to assign students to do research on specific disenfranchised groups regarding the group’s struggle and achievement of the right to vote, and to report the findings to the class.

To assist students in answering Question 2, the teacher may wish to ask them to answer the following: Why would some government leaders want to deny this group the right to vote?

In response to Question 3, some students may simply answer “times change.” More appropriate answers should reflect some analysis of these changes. One means of assisting students in answering this question is to ask them to review their responses to Questions 2, and then describe some things that might be necessary in order to change the reasons why the vote was denied to each group.

1. a. Non-property Owners
   b. Black Americans
   c. Women
   d. Native Americans
   e. Youth (Persons under 21)

2. a. Non-property Owners

Many political leaders of the newly formed United States feared “mob rule,” or rule by “democrat.” As John Adams warned, “If you give more than a share in the sovereignty to the democrat, then you give them command of the legislature, and they will vote all property out of the hands of you aristocrats.” Or as John Jay so sharply stated, “Those who own the government ought to run the government.” Many leaders feared what James Madison described in Federalist Paper No. 10, that if those without property became majority rulers, then they would “abolish debts, they would call for an equal division of property, or for any other improper or wicked project.” Other political leaders feared that wealthy, sophisticated people could buy the votes of propertyless, illiterate people. These leaders believed that voting should be limited to those who had the greater investment in the community, state, and nation; in their view, this meant men of property. Many state constitutions of the era reflected these sentiments.

b. Black Americans

Most Black Americans were denied the right to vote because they were not recognized as citizens in most jurisdictions. As a matter of historical record, most black Americans living in slavery were considered property. This was affirmed in the famous Supreme Court decision, *Dred Scott v. Sanford*, 60 U.S. 393. Many historians believed that this case catapulted the nation into the Civil War and passage of the post Civil War Amendments (13, 14 and 15) to reversing this decision. As a result, the status of black Americans changed briefly following the Civil War, during Reconstruction. But with the withdrawal of federal troops from the South in 1877, anti-Reconstruction political forces began to regain power. As these forces became legislative majorities in various states, they began to pass legislation to disenfranchise black voters. In some areas mobs threatened black voters to keep them away from the polls. A congressional committee reported in 1892 that in some southern states, white mobs made blacks swear to vote for the mobs’ candidates “upon pain of being put back into slavery, and their wives made to work on the road.” As more anti-Reconstruction representatives gained power in Congress, the support for and enforcement of the Reconstruction policies and Civil Rights Acts diminished. In 1894, Congress repealed 42 of the 49 sections of the Reconstruction Enforcement Acts. A series of U.S. Supreme Court decisions between 1876 and 1906 effectively stripped black Americans of equal opportunities, including the right to vote. See, for example, *United States v. Harris*, 106 U.S. 629 (1883); *The Civil Rights Cases*, 109 U.S. 3 (1883); *Jedidiah v. Bowman*, 190 U.S. 127 (1903); and *Hodges v. United States*, 203 U.S. 1 (1906). This loss is clearly demonstrated in the following example: In Louisiana in 1896, there were 130,334 blacks registered to vote. In 1900, there were only 5,320. The actions of Congress, the Supreme Court, and the lack of executive support were a reflection of attitudes of many people at the time. A cursory examination of the publications of sociologists and psychologists of the time exemplify these prejudices with phrases such as “Negroes are incapable of governing themselves” and “They need
watching and close supervision." Discussions of intellectual inferiority based on race were common.

c. Women

Like blacks, women were traditionally viewed as property, without a separate legal existence, and incapable of independent thinking. And, as with other examples of unequal treatment in respect to the vote, these attitudes found their way into all branches of government. In 1874, the U.S. Supreme Court held that the denial of voting rights to women was constitutional. Virginia Minor had challenged a Missouri law that permitted only males to vote. Minor claimed that the Missouri law denied her the "privileges or immunities of citizens" as guaranteed by the newly adopted Fourteenth Amendment. Following is an excerpt from the majority opinion in this case.

There is no doubt that women may be citizens. They are persons, and by the Fourteenth Amendment "all persons born or naturalized in the United States and subject to the jurisdiction thereof" are expressly declared to be "citizens of the United States and of the State wherein they reside." If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is, therefore, presented whether all citizens are necessarily voters.

For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage.

Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment of the court below.


d. Native Americans

Many people believed Native American were "uncivilized" because they kept their tribal ways and did not assume a "civilized" way of life. People also felt that Native Americans should not have the right to vote in local or state elections because many of them live on federal reservations and were not subject to state or local jurisdiction. A Minnesota case exemplifies this reasoning. In Opsahl v. Johnson, 138 Minn. 42, 163 N.W. 988 (1917), the court ruled, "The tribal Indian contributes nothing to the state. His property is not subject to taxation, or to the process of its courts. He bears none of the burdens of civilization, and performs none of the duties of its citizens." This argument includes the assumption that until Native Americans adopt the "habits and customs of civilization," they should not reap the privileges of civilized people, which includes the right to vote. Some states and local communities feared what might happen if large numbers of Native Americans were permitted to vote; in some communities, the majority of the voting age population was Native American. Those in power wished to maintain control of government and did not want to contend with a potentially powerful voting bloc of Native Americans. This argument was expressed as recently as 1956 in Allen v. Merrell, 6 Utah 2d 32, 305 P. 2d 490: "It is thus plain to be seen that in a country where the Indian population would amount to a substantial proportion of the citizenry, or may even out number the other inhabitants, allowing them to vote might place substantial control of the county government ... in Indian hands."

e. Youth

Persons under twenty-one were considered too young, too immature, and not responsible enough to vote. People believed that many young people were not well informed about politics, candidates, and the community, and therefore could not cast intelligent votes. Almost all of the government leaders were much older than twenty-one and probably were not very interested in lowering the voting age below twenty-one. Persons under twenty-one were not well organized as a political force and therefore were not very effective lobbyists for lowering the voting age.

3. "Non-property Owners"

Not all early political leaders desired to limit voting to men of property. Gradually states changed their property requirements, and in some instances eliminated them altogether. For example, in 1869, Wyoming became the first state to grant voting rights to women. Other states followed suit, and by 1920, all states had granted women the right to vote. Gradually, the right to vote was extended to other groups as well. In 1957, the U.S. Supreme Court ruled in Reynolds v. Sims that the states were violating the principle of "one person, one vote," which had been established by the U.S. Constitution. This decision helped to ensure that all citizens had an equal voice in the political process.

In addition to the post Civil War amendments, and particularly the Fourteenth and Fifteenth Amendments, the increased participation of all groups in all phases of society began to change attitudes and influence public policy. For example, black Americans fought in two world wars. News of their service and, in some cases, distinguished heroism were reported. Many people thought it was unfair that these Americans did not have equal opportunities, including the right to vote. Black Americans began to become more politically organized, as exemplified by the founding of the National Association for the Advancement of Colored People in 1909. In the 1920s and 1930s, many black Americans moved out of southern states into northern states where they had the right to vote. Black Americans formed political coalitions...
to help elect government leaders who promised to work for laws supporting equal treatment. Mass communications (e.g., television and radio) also presented news that often reported stories of injustices and discrimination against black Americans. These reports repulsed many people. Many people pointed out the inconsistency of black and white Americans fighting against Nazi Germany's racist policies while racist policies were being practiced against black Americans. Sociologists and psychologists also influenced public attitudes, publishing studies demonstrating that the poor conditions and slow progress of black Americans was the result of unequal treatment, of being denied economic and educational opportunities, of a lack of food and medical assistance. As a result of increased public awareness, changing attitudes, and the increased political power of blacks, the decisions of government leaders began to reflect these changes. Congress passed a number of civil rights and voting rights acts. Some presidents lobbied for passage of this legislation, and they used their power to enforce the federal legislation. The U.S. Supreme Court handed down decisions striking down unconstitutional segregation. The changes continued. In 1984, Congress passed another voting rights act to further strengthen the voting rights of nonwhite minority citizens throughout the nation.

c. Women

As early as the Continental Congress in 1776, women began to militate for economic and political rights, including the right to vote (see, for example, *Women of the Republic: Intellect and Ideology in Revolutionary America* by Linda Kerber). Most political leaders did not eagerly endorse these ideas. With westward expansion, the frontier states used suffrage as an inducement for female settlers to move to their communities. The Wyoming territory granted women the right to vote in 1869, and Utah, Colorado, and Idaho soon followed. Wyoming, which extended full suffrage rights to women while a territory, insisted on retaining equal suffrage notwithstanding the possible opposition of Congress to its statehood. The Wyoming legislature announced, “We will remain out of the Union one hundred years rather than come in without suffrage.” Some women organized and worked with other groups, such as the abolitionists, to pursue equal treatment for women and black Americans. Throughout the latter half of the nineteenth century, organizations like the American Women’s Suffrage Association and the National Women’s Suffrage Association worked vigorously for the right to vote. These two organizations became more powerful when they joined in 1890 to form the National American Women’s Suffrage Association. After women’s entry into all aspects of work during World War I, the suffragettes became more militant in their efforts to secure suffrage for women. Finally, in 1919 Congress adopted the Nineteenth Amendment, which was ratified by the requisite number of states within one year.

d. Native Americans (Indians)

The recognition of the voting rights of Native Americans closely parallels the movement supporting civil rights of other minorities. As people became more sensitive to and aware of the plight of the Native Americans, many felt that, as the first Americans, Native Americans should have the same rights as other Americans. And even though they were the first Americans, living here for thousands of years, it was not until Congress passed the Indian Citizenship Act of 1924 that Indians were made citizens and provided an opportunity to vote in most states. Arizona still prohibited Indians from voting by interpreting their status as “persons under disability,” but finally, in 1948, the Arizona Supreme Court struck down this practice, and Native Americans were granted the right to vote, (see *Harrison v. Laveen*, 67 Ariz. 337 (1948)).

e. Youth

At the time of the debate regarding ratification of the Twenty-Sixth Amendment, the nation was witnessing a boom in college attendance by those under twenty-one, and many of the students appeared well informed and took active roles in confronting issues and community problems. Also during the 1960s, eighteen-year-old males had to register for the draft, and many were drafted. Some were sent to combat in Vietnam. Some said it was not fair that a person could be drafted, sent into combat, and maybe even be killed, yet was denied the right to vote. Many of the young people became active in a number of causes (e.g., to end the draft, against United States intervention in Vietnam, for civil rights, etc.). As activists, many learned how to organize and lobby government leaders. They formed coalitions with other groups and older political leaders to assist them in lowering the voting age. There was also historical precedent for reducing the voting age. In 1943, Georgia lowered the voting age to eighteen. In 1955, Kentucky lowered the voting age to eighteen. And the two new states, Alaska and Hawaii, lowered their voting age in 1959 (to nineteen in Alaska and to twenty in Hawaii). Congress also lowered the minimum voting age in state, local, and federal elections from 21 to 18 in the Voting Rights Act Amendment of 1970, although this provision was overturned in *Oregon v. Mitchell*, 400 U.S. 112 (1970).

Concluding Activities

1. Review the class answers to questions 2 and 3 above, and then think about how history might be different 200 years ago. . . .

   What if non-property owners had been granted the right to vote?

   What if Black Americans had been granted the right to vote?

   What if Native Americans (Indians) had been granted the right to vote?

   What if women had been granted the right to vote?

   What if eighteen-year-olds had been granted the right to vote?

2. Review the Twenty-Sixth Amendment. Do states have the power to lower the voting age below eighteen? At what age should persons be eligible to vote, and why? Ask students to research the voting behavior of young people! Why don't more of them vote?

Steve Jenkins is law-related education director of the Bar Association of Metropolitan St. Louis. He was assisted by Nancy Eschmann of the bar association in preparing these activities for publication.
## PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

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SESSION V – PERSPECTIVES ON THE CONSTITUTION
[Time: 1 hr & 45 min]

Concepts and Topics: government under law, ways to interpret the Constitution,

Lesson
“The Constitution: Justice for All”

Handouts
Student Handout 1
Student Handout 2
Student Handout 3
Student Handout 4
Student Handout 5

NOTE: The following is an adaptation of the accompanying lesson.

Procedure
Opening
(1) Welcome
• Refer to previous sessions focusing on changing Constitutional rights.
• Review today’s agenda.

(2) Warm Up [10 minutes]
Ask participants to complete this sentence: “When I think of the Constitution I ___________________.” Give them a minute or two to consider their response then call on volunteers to share their observations. Discuss the range of responses and what values are embraced. Observe that during this session, they will examine others’ views of the Constitution.

Curricular Focus
(3) Use the Jigsaw strategy on pages 14-15 of the Resource Guide for this lesson.
• Form 4 groups assigning each one of the four perspectives. All individuals in each group should have a copy of their relevant perspectives Handout and Handout 5. Provide time for the groups to read and work together to complete their section of Handout 5. Each person must be prepared to summarize the perspective they have read and explain the responses to Handout 5. (20 minutes)

• Assemble new groups with at least 1 person from the original 4 groups in each new group (as per the Jigsaw strategy instructions). Everyone should now have a copy of all 4 perspectives Handouts. As representatives of each original group reports, others’ should ask questions and use the Handout to get further clarification. As each report is given, everyone should complete his or her copy of Handout 5. (40 minutes)
(4) Bring the groups together to share and compare their discussions and observations. Section #2 under Procedures offers an excellent discussion focus. (30 minutes)

Closing
(5) Debrief and Wrap Up (15 minutes)
Pose the question implied in #3 of the lesson Procedures. Explore with participants, “How has the Constitution affected your life or the life of others you know?”

(6) Look Ahead
Tell participants that the during the next few sessions they will examine their state constitution along with the U.S. Constitution and how each protects their rights.

(7) Adjourn – remind participants when and where they will meet next!
Teaching Strategy

The Constitution: Justice for All?

Linda R. Monk and Marcia A. Thompson

Objectives
At the end of this activity, students will be able to:
1. discuss individual perspectives on the Constitution;
2. compare and contrast the various viewpoints on the Constitution;
3. formulate and express their own opinions about the Constitution; and
4. evaluate how well the Constitution guarantees “justice for all.”

Procedures
For millions of Americans the true meaning of the Constitution goes beyond the actual text. Many people have passionate and diverse views about what the Constitution represents and whether it guarantees justice for all. Tell students they are going to read four personal perspectives on the meaning of the Constitution.

1. Distribute Student Handouts 1 through 4, “Perspectives on the Constitution” and Student Handout 5, “Views on the Constitution.” Have each student complete Handout 5 using the readings in Handouts 1 through 4. Then have students work in groups of three or four to reach a consensus on their answers.

2. In a class discussion, explore student responses to each of the authors. Suggested discussion questions for each author are included below. Then have students examine and compare the views with which they agreed and disagreed. Are there any patterns? Have students write their own views on the handouts. What has influenced students’ views? Do they find any correlation between people’s backgrounds and their views? How well has the Constitution provided “justice for all”?

3. Finally, have students articulate their thoughts by writing a one or two-page essay on the topic “Equal Justice and the Constitution.” They should model their essay after the “Perspectives” articles they have read. Their accounts should include a discussion of the personal meaning the Constitution has in their own lives, as well as how it has advanced the goal of “justice for all” in the United States. You might want to compile these articles in a class book with student illustrations.

Questions for Discussion

Ernest Green:
Why does Ernest Green value the right to equal status under the law? What does the Constitution mean to Ernest Green? How did the Constitution change his life? Do you think he did the right thing by attending Little Rock Central? Would you have done the same? Did his attendance there advance equality?

LaDonna Harris:
How does the Constitution protect Native American tribes? Have Native Americans always enjoyed constitutional protection? Do you agree with the notion of dual citizenship and dual entitlement? Why does LaDonna Harris think so many Americans, including Ronald Reagan, misunderstand Native Americans unique status as dual citizens? Do you agree or disagree?

Senator Daniel K. Inouye:
Why does Senator Inouye believe that the constitutional protection of rights for all citizens is important? What was his personal experience during World War II as the son of Japanese immigrants? Is national security ever a justification for denying rights to American citizens? Why or why not?

Norma McCorvey:
Why does Norma McCorvey value the right to privacy? McCorvey says, “The Supreme Court recognized in 1973 that individuals, weighing their individual circumstances, make better decisions than the state.” Do you agree with this view as it applies to abortion? Why or why not? What would opposing groups say about this view? How does the right to privacy apply to other issues?

Linda R. Monk and Marcia A. Thompson are on the publications staff of the Close Up Foundation.
When the U.S. Supreme Court handed down its historic Brown v. Board of Education decision in 1954, I was a student in Little Rock, Arkansas, finishing the eighth grade. Little Rock had one high school for blacks, Horace Mann High School, and one for whites, Little Rock Central High School.

While I may not have understood all of the constitutional issues surrounding the Brown case, I did recognize it as an opportunity for ending segregation in Little Rock and for helping me get a better education. At black schools, for instance, we had to use books that had first been used by white students.

The Brown decision made me feel that the U.S. Constitution was finally working for me and not against me. The Fourteenth Amendment provided for equal protection and due process under the law, but it also meant I could believe I was a full citizen in this country, not a second-class citizen as segregation had made me feel.

In the spring of 1957, I was asked, along with other black students in Little Rock, to consider attending Central High School the following fall. Initially, a number of students signed up to enroll but when fall came, only nine of us had survived the pressure to quit—and our names were published by the school board in the local newspaper. I knew this was my personal opportunity to change conditions in Little Rock. And I knew that if I didn’t go, things would never change.

During the summer, rumors began to circulate that there might be violence if the “Little Rock Nine,” as we became known, tried to attend school in the fall. I didn’t pay much attention to what was going on. I was too busy trying to get ready for school to begin, doing a lot of reading and studying. I believed the world wasn’t going to fall apart because nine black students were going to be admitted to a school with more than 2,000 white students.

But when we tried to attend school, we were met by an angry white mob and armed soldiers. Arkansas Governor Orval Faubus had called out the National Guard to prevent us from enrolling, defying a federal court order to integrate the Little Rock schools. Governor Faubus said he was doing this to protect the peace and tranquility of the community; obviously, my rights were secondary. It seemed strange to me at the time, and still does today, that the governor believed it was important to protect the rights of whites, but not those of blacks.

Finally, President Dwight Eisenhower called out the U.S. Army’s famous 101st Airborne Division to protect us and enforce the federal court’s integration order. “Mob rule cannot be allowed to override the decisions of our courts,” the president declared. It was a powerful symbol that the President of the United States was willing to use his power and his might to protect nine black students and to uphold the Constitution.

When we tried to attend school again, about 1,000 paratroopers were there to protect us. We rode to school in an army station wagon, surrounded by army jeeps that were loaded with soldiers holding machine guns and drawn bayonets. It was an exciting ride to school!

Being kids, we joked about our each having our own personal soldier. When we got to the steps of Central High, the cordon of paratroopers formed a ring around us: they marched; we walked. I turned to Terrance Roberts, another one of the Little Rock Nine, and said, “I guess we’ll get into school today.”

Once we got inside, it was like being in a war zone. We were harassed, our books were destroyed, and our lockers were broken into several times a day. We learned not to keep anything important in them.

I was a senior that year. As graduation neared, I was surprised at the number of students who signed my yearbook, saying they admired my courage in sticking it out. But on the night of graduation, there was an eerie silence when my name was called. I didn’t care that no one clapped for me. I knew that not only had I achieved something for myself, but I had broken a barrier as well.

One of the many life lessons from my high school experience is that you can express and act on unpopular beliefs. Secondly, we must all be willing to make the Constitution a living document, and lastly, you don’t have to be an adult to do it. Only when we stand for what we believe in do we improve life for all Americans.

Ernest Green is managing director at the Washington, D.C. office of Lehman Brothers, an investment firm. He was the first black student to graduate from Central High School in Little Rock, Arkansas.
American Indians are unique in the United States because they have dual citizenship: Indians are U.S. citizens as well as citizens of their tribes. This is because some Indian tribes are inherent units of government with jurisdiction over their own people and land. This sovereignty comes from international treaty law, not from the laws of the United States, although it is reaffirmed by them. As legal scholar Charles F. Wilkinson noted, “Indian tribes are part of the constitutional structure of government, but tribal authority was not created by the Constitution.”

The sovereignty of Indian tribes was defined under federal law by the Supreme Court in the 1830s as the limited sovereignty of “domestic dependent nations.” This sovereignty does not grant absolute power. For example, domestic sovereignty is the power of the tribes to govern their own affairs but not to make international treaties.

With dual citizenship comes dual entitlement. As citizens of the United States and of the state in which they live, Indians are guaranteed equal protection and thus equal entitlement to government services as all other citizens. This right is protected by the Constitution.

Under dual entitlement, Indians are entitled to services of the federal government as well as to additional services provided by treaties. Actually, services for Indian people, especially in health and education, predates by half a century or more to economically disadvantaged people in the United States. Services in health and education should be thought of as payments on contracts to buy land from Indian nations. Honoring the U.S. treaties is more a property right than welfare.

Indian tribes make up approximately .5 percent of the nation’s population, and collectively they govern 2.5 percent of all the land in the United States—an area larger than all of New England, with Pennsylvania and Delaware added. The more than 500 tribal, pueblo, and village governments are a part of the 39,000 governmental units that constitute the U.S. federal system, along with cities, counties, states, the District of Columbia, and the U.S. Trust Territories. American Indian populations increased dramatically between 1970 and 1980, and even greater increases are anticipated in the 1990s.

One of the responsibilities of tribes today is their duty to act as municipalities and provide the services commonly expected from governments. From this duty comes the authority to tax both Indian and non-Indian residents of a reservation to provide these services.

The exact governance of a particular group of Indian or Alaskan Native people is subject to immense variation depending on the tribe or group, their particular treaty or enabling statute, the races of the parties when an issue arises, the location of land, and the narrow tribal or state power involved in a particular issue. Some tribes are federally recognized and are affected by treaty relationships with the federal government, others were recognized by acts of Congress, and still others have state recognition instead of or in addition to federal recognition.

This multiplicity results in very complicated governance situations. On Navajo territory, for example, there are 22 different ways land is held. To understand these various governance situations, each must be considered on a tribe-by-tribe and state-by-state basis.

Because the history taught in U.S. schools is basically the history of European experience in the western hemisphere, it is almost impossible for non-Indians and even some Indians to understand the unique status of Indian tribes in the American system of government. One such example was President Ronald Reagan’s remarks to a student in Moscow in the spring of 1988.

When asked how the United States could justify its Indian policy, President Reagan replied: “Maybe we made a mistake in trying to maintain Indian cultures. Maybe we should not have humored them wanting to stay in the kind of primitive lifestyle. Maybe we should have said, ‘No, come join us. Be citizens along with the rest of us.’”

But American Indians are citizens, and their unique culture is a great gift to the country as a whole. We hope that you, the future leaders of America, will become better informed about the history of the First Americans and become true partners with us in a brighter future for our nation.

LaDonna Harris is a member of the Comanche nation and president of Americans for Indian Opportunity, which works to strengthen tribal governments.
I was a 17-year-old high school student when World War II broke out literally in my backyard—in the skies above Pearl Harbor in Honolulu, Hawaii. My need to become totally involved in the war effort sprang from an insidious sense of guilt, the invisible cross lashed to the back of every “nisei” (those of us born in the United States to immigrants of Japanese ancestry) at the instant when the first plane bearing that rising sun appeared in the sky above Honolulu.

Of course, we had nothing to feel guilty about, and all rational people understood this. But every American of Japanese descent I knew carried this special burden and worked doubly hard because of it.

In December 1991, Americans recognized the sacrifice and bravery of our young men in uniform caught in the surprise outbreak of the war in Hawaii. Early 1992 marked the fiftieth anniversary of another wartime event, one that many Americans may not be aware of, but nevertheless exacted much pain and anguish on thousands who never set foot on a battlefield.

In February 1942, President Franklin Roosevelt signed Executive Order 9066, which authorized the internment of Japanese Americans, an unprecedented experience in the history of American civil rights. These Americans were determined by our government to be security risks, without any formal allegations or charges of disloyalty or espionage. They were arbitrarily branded as such solely on the grounds of their racial ancestry. As a result, loyal citizens lost their livelihoods and their homes, living as virtual prisoners in their own country.

Ironically, the same president who signed his name on the order also uttered these words as he authorized the formation of a combat team of loyal American citizens of Japanese descent: “No loyal citizen of the United States should be denied the democratic right to exercise the responsibilities of his citizenship, regardless of his ancestry. Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry.”

As one who volunteered to fight with this combat team, I proudly exercised my right to defend the Constitution and my country. But across the ocean, in another part of my country, people who shared my Japanese ancestry were denied certain inalienable rights guaranteed by the Constitution.

Their rights were sacrificed under the cloak of national security. Too often, in the name of national security, it has been fashionable to deny Americans their rights. In this case, the Congress supported the president’s policy of removal and detention by making the violation of orders issued pursuant to Executive Order 9066 a criminal offense.

Sadly, the United States Supreme Court upheld the removal and detention in the context of war. But as we know, the Supreme Court has not always been correct. There was a time when the Justices upheld slavery and that was the law of the land. The Supreme Court in this case upheld internment and that was the law of the land at that moment.

But years later, the presidentially-appointed Commission on Wartime Relocation and Internment of Civilians found no documented acts of espionage, sabotage, or fifth column activity by any identifiable American citizen of Japanese ancestry or resident Japanese aliens on the U.S. West Coast. This was supposed to have been the rationale for the mass evacuation and incarceration. In its 1983 report, the commission concluded that the internment was motivated by racial prejudice, war hysteria, and a failure of political leadership.

Although I lost an arm in combat, I consider myself fortunate because I was able to return home. Thousands of my fellow Japanese Americans who were interned volunteered to join the 442nd Infantry Regimental Combat Team—the most decorated World War II unit in the U.S. Army for its size and length of service. However, after the war, these heroes wondered if there ever would be a home for them again in this country.

The federal government’s recent compensation checks and letters of apology for the internment pale against Japanese Americans’ huge loss of pride and property and the many years of pain caused by the stigma of being branded disloyal. While the compensation may be a token amount, my hope is that this government action strengthens our Constitution by reaffirming our commitment to upholding the constitutional rights of all our citizens. We can demand no less of a commitment to preserve the very essence of what defines us as Americans.

Senator Daniel K. Inouye (D-Hawaii) has served in the U.S. Senate since 1963. He fought in World War II as part of a Japanese-American unit.
Student Handout 4

Perspectives on the Constitution: I'm Jane Roe

The Constitution is important to me because it protects the most basic right of all—privacy, including a woman’s right to control her own body. That was not true in 1969, when I sought an abortion. Poor and pregnant, I was already the young mother of a child from a broken marriage. I had no job and no permanent place to live.

I tried to find a doctor who would perform an abortion, but because the procedure was illegal, the level of professionalism among practitioners was less than that of butchers who grind up hamburger. The clinics were filthy. The equipment was antiquated. And the likelihood of life-threatening injury and infection was high. Rather than risk death at the hands of some quack, I decided to have the baby and put it up for adoption.

Through an adoption attorney, I met two young lawyers, Sarah Weddington and Linda Coffee, who were looking for a plaintiff to challenge the Texas abortion law. I was still very young and insecure, and the thought of being in the spotlight scared me to death. Also, I had a 5-year-old daughter whom I did not want to entangle in my politics. So Sarah and Linda came up with the "Jane Roe" pseudonym, and I decided to accept the challenge of seeking a legal abortion.

On March 3, 1970, Roe v. Wade was formally filed in the Dallas court system. I was between six and seven months pregnant. The court system moves very slowly. I honestly had thought that my court case would be settled in time for me to get an abortion, although I didn’t realize that an abortion at that late stage of my pregnancy would have involved major surgery—a Caesarean section.

In June of 1970, I went into labor at two o’clock in the morning. My water broke, and I began hemorrhaging. I asked the hospital staff if the baby was a boy or a girl, but they refused to tell me or let me see it. I became hysterical because of the way they were treating me, and they had me sedated. Later, a nurse brought the baby girl to my room, telling me it was feeding time. When she realized her mistake, she snatched the baby out of my arms.

I am bound by a confidentiality agreement with the adoption court not to speak about this child, but I can say that giving her up was the most agonizing experience of my life. I hope that women who choose adoption today are treated with more sensitivity than I was back then.

Two and a half years later, on January 22, 1973, I read in a short article on the lower right front page of The Dallas Times-Herald that abortion had become legal. My initial reaction was that I had been cheated, because I did not have a choice regarding my reproductive freedom. Because I carried the "Roe baby" to birth, one of the ironies of my life is that I have never had an abortion.

For many years, I remained basically anonymous, except for occasional appearances as Jane Roe. But in 1989 I finally accepted myself as Jane Roe and stepped out of my political closet. I learned very quickly that there was a price to pay for this action. I became the target of vicious attacks. Aside from threatening letters and calls, baby clothes were thrown in my yard, my car was vandalized, and I was constantly afraid to go outside my home. Finally, late one night a car drove by and fired shotgun blasts through my front door. The first shot barely missed my head, and I now have almost no hearing in my right ear.

Decisions concerning childbearing are necessarily intimate, personal, and private. The Supreme Court recognized in 1973 that individuals, weighing their individual circumstances, make better decisions than the state. Although I never got to make that choice for myself, I’m glad that "Jane Roe" made freedom of choice possible for the women who came after her.

Norma McCorvey was the actual Jane Roe in Roe v. Wade, the 1973 case in which the Supreme Court held that the constitutional right of privacy included a woman’s right to choose an abortion.
## Student Handout 5

**Views on the Constitution**

<table>
<thead>
<tr>
<th>Author</th>
<th>View of the Constitution</th>
<th>Basis for this View</th>
<th>Do You Agree or Disagree?</th>
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<td>Ernest Green</td>
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<td>LaDonna Harris</td>
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<td>Daniel Inouye</td>
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<tr>
<td>Norma McCorvey</td>
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</table>
### PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

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<th>SESSION</th>
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<td>VIII</td>
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SESSION VI – STATE and FEDERAL CONSTITUTIONS - Focus on Privacy
[Time: 1 hr & 45 min]

Concepts and Topics: government under law, comparing U.S. to state constitutions

Lesson
Comparing State and Federal Constitutions - Focus on Privacy

Handouts
Privacy Under the Constitution & State Privacy Provisions [box insert, p. 23]
If your state constitution has a right to privacy provision, provide copies for participants.

NOTE: This Session and Session VII, which follows, draw from the same curriculum material. This Session focuses on state and federal rights to privacy as explored in Activity 2 of the accompany material. Session VII treats state and federal protections of the environment (Activity 1) and court interpretations of constitutional provisions (Activity 3).

Procedure
Opening
(1) Welcome [5 minutes]
• Refer the highpoints of the focus on federalism during last session
• Review session agenda

(2) Warm Up [10 minutes]
Start with the brainstorm on privacy described under #2.

Curricular Focus
(3) Focus on Privacy under Activity 2, [80 minutes]
Follow the instructions as given—with some adjustments. For example, it would be highly advisable to review the cases and state provisions with the participants prior to launching into the activity described under #4. It is also possible that students will have questions regarding these cases and provisions so be prepared for such queries.

Before launching Activity 2, determine how much time you plan to allot for each step. However, be prepared to make adjustments as the lesson unfolds keeping your eye on what you want to have covered by the conclusion of this session.

Closing
(4) Debrief and Wrap Up [10 minutes]
Challenge participants with a query such as this: “If someone were to ask you ‘Where does our right to privacy come from?’ What would be your answer?”
Ask a final question about participants’ perspectives such as, “Have your thoughts or ideas about privacy changed? What new information informed your perspective?”
(5) Look Ahead
Inform the participants that the next session will continue their examination of constitutional rights.

(6) Adjourn – remind participants when and where they will meet next!
SESSION VII – STATE AND FEDERAL CONSTITUTIONS: Focus on Environment and Court Interpretations
[Time: 1hr & 45 min]

Concepts and Topics: government under law, comparing U.S. to state constitutions

Lesson
Comparing State and Federal Constitutions (continued)

Handouts
For Activity 1:
• Protection of the Environment [box insert, p. 21]
• Bill of Rights of U.S. Constitution
• If your state constitution has a right to privacy provision, provide copies for participants.
[Suggested addition: Provide copies of any local environmental ordinances to be considered along with your state provision, if available.]

For Activity 3
• Constitutional Provisions & Case Summaries [narrative, p. 22]

Procedure
Opening
(1) Welcome [5 minutes]
• Refer to the treatment of privacy in previous session
• Review session agenda

(2) Warm Up [10 minutes]
Open with a brainstorm session focusing on the environment [see “Brainstorming” rules, Resource Guide, page 14]. Use an open-ended question such as, “What goes into making an environment safe and clean?” or “How can we assure that we have a safe and clean environment?” [Allow time for a range of responses then turn to the activity.]

Curricular Focus
(3) Activity 1: Focus on Protection of the Environment [40 minutes]

• Steps 1 & 2: If you have a copy of your state’s provision [and local ordinance] for protection of the environment, distribute it along with the handout and assign a small group to represent your state.
• Step 3: The students’ arguments should focus on the power plant (e.g., removal, clean up, repair, etc) as an aspect of “a right to a clean and safe environment” under their assigned provision.
• Steps 4 - 6: follow the guidelines given.

(4) Activity 3: Focus on Interpretations of Courts [45 minutes]
• Begin by reviewing the handout with participants. Explore the constitutional provisions, the issues addressed and decisions in the cases, and the states’ provisions.
• Continue with the Activity steps as outlined.

Closing
(5) Debrief and Wrap Up [5 minutes]
Remind the participants that [as noted in the previous Session] “The framers of the Constitution placed sovereignty with ‘We the People of the United States’ as citizens of both the individual states and the United States.” Ask how did the people’s sovereignty express itself in the activities we just completed? What role do people have in determining governmental power?

(6) Look Ahead

(7) Adjourn – remind participants when and where they will meet next!
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 modelled 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 handout, 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 poster 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 be? 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 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 actions to stop further pollution and remedy the harm that has already taken place.
f. Since your state's constitution is for the benefit of the citizens of your state, can you think of reasons why your model provision should or should not also protect non-residents of the state?

**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 handbills on its property when the handbilling does not relate to the shopping center’s operations.

*Pruneyard 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 *Pruneyard* case was decided, California, Washington, Massachusetts, Pennsylvania and New Jersey have allowed leafleting 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?

Lucinda J. Peach is an attorney-educator who is Assistant Staff Director for the American Bar Association's Commission on Public Understanding About the Law.
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. 438 (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 (Zablocki v. Redholl, 434 U.S. 374 (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. Baird, 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, 314 U.S. 535 (1942)); statutes prohibiting abortion in all cases except where 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 age 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, 346 U.S. 559 (1953)), although not in public places (Paris Adult Theatre v. Slaton, 413 U.S. 49 (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 (U.S. 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. 69 (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 23): “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 (Rabin v. State, 507 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. Gainer, 80 Cal. App. 3d 586, 141 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.
### PATHWAY 3: CONSTITUTIONS AND CONSTITUTIONALISM

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<td>VI &amp; VII</td>
<td>Comparing State and Federal Constitutions</td>
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<td>VIII</td>
<td>State and Federal Rights</td>
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SESSION VIII – RIGHTS in STATE AND FEDERAL CONSTITUTIONS
[Time: 1hr & 45 min]

Concepts and Topics: government under law, comparing U.S. to state constitutions

Lesson
“State v. Federal Rights”

Handouts (for every student)
Background and Introduction sections of the lesson
State Bill of Rights worksheet
Your state constitution
U.S. Constitution

Material
Large chart paper & marker for each small group

Procedure
Opening
(1) Welcome
  • Refer to the constitutional rights focused on previously.
  • Review today’s agenda.

(2) Warm Up [5 minutes]
Pose the question: “Where do constitutional rights come from?” After a few responses have been given, note that we are governed by a federal system in which both the U.S. Constitution and state constitutions protect individual rights. Turn to the lesson.

Curricular Focus
(3) Distribute copies of the Background and Introduction sections and review it with the participants. The closing paragraph is a good introduction and enticement for the activity. You may need to explicate the statement “The Fourteenth Amendment creates a ‘floor’…” [10 minutes]

(4) Follow the Procedure as indicated
  • Procedure #2, small groups work (15 minutes)
  • Procedure #3, whole group work (30 minutes)
  • Procedure #4, small group work (20 minutes)
  • Procedure #5, whole group discussion (20 minutes)

Closing
(5) Debrief and Wrap Up
What did they find to be the major strengths and weaknesses of their state constitution? Do they agree with Lindé’s assertion [in Background] that their “state court should always consider its state constitution before the Federal Constitution. . . .”
Freedom Has a Name

State v. Federal Rights/Secondary

Joseph L. Calpin

Background
The First Amendment of the United States Constitution provides that, “Congress shall make no laws . . . abridging the freedom of speech . . .” Article I, section 8 of the Oregon Constitution provides that, “No law shall be passed restraining the free expression of opinion, or restraining the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.” Oregon is by no means unique in having such a “free speech” clause in its state constitution; each of the other 49 state constitutions contain such a clause. As this comparison illustrates, the language used frequently differs, thus giving rise to myriad interpretations from the highest courts of the individual states. The celebration of the Bill of Rights bicentennial offers an opportunity to explore some intriguing questions surrounding the relationship between the federal Bill of Rights and the rights enumerated in the constitutions of the various states.

During this century, the Fourteenth Amendment established the Bill of Rights guarantees as the minimum benchmark of a citizen’s rights. State courts, while bound by this federally imposed minimum standard, have ruled in certain areas that state constitutional bills of rights provide a higher standard of rights and protections than does the federal Bill of Rights. This has led in recent years to an emerging trend by state courts to review both an individual state constitution as well as the United States Constitution in deciding the protections afforded its citizens.

In an article in the summer 1978 issue of The Judge’s Journal, Charles G. Douglas outlines from a New Jersey case seven factors which might require a state constitutional control instead of the United States Constitution. These factors are: “a) the text differs, b) the legislative history of the clause differs, c) state law holdings predate the federal change, d) there is a difference in state structure, e) the subject matter is of unique local interest, f) there is a countervailing state or local tradition, and/or g) public attitudes on the issue differ.”

Former Oregon State Supreme Court Justice Hans A. Linde is nationally recognized as a leader in his use of the state constitution to decide cases. In the spring 1980 issue of the University of Baltimore Law Review, Linde wrote: “In my view, a state court should always consider its state constitution before the Federal Constitution. It owes its state the respect to consider the state constitutional question even when counsel does not raise it, which is most of the time.”

Neither Linde nor others in the “states’ first” group downplay the importance of the federal Constitution. They simply stress that ours is a federal system, one in which citizens have different levels of government with rights and protections that differ at each level. Written constitutions that listed the rights of citizens existed in the states before the federal Constitution. The Bill of Rights was added after the federal Constitution was adopted by the states in part to codify the rights of the citizens. Many of the Anti-Federalist arguments opposing ratification of the federal Constitution were based on its lack of these rights. A comprehensive examination of state constitutional protections as suggested by this lesson may well result in the discovery of a separate and distinct source of protections which, in some cases, may far exceed those provided by the federal Constitution.

Introduction
The Fourteenth Amendment creates a “floor” or minimum level of rights citizens of this country enjoy but what might the result be if you analyze your state’s bill of rights along side the federal Bill of Rights? How are they the same? How do they differ? The focus of this activity is to have students compare the language, meaning, coverage, similarities, and differences in their state constitution’s bill of rights and the federal Bill of Rights.

Objectives
1. Students will examine both their state’s bill of rights and the federal Bill of Rights.
2. Students will examine the content of both and judge areas of strengths and weakness in each.
3. Students will understand the importance of proper word usage in written rights.
4. Students will analyze differences in the two documents.

Procedure
1. Distribute copies of your state constitution and the U.S. Constitution to each student.
2. Divide the class into small groups. Using the sample worksheet on page 19, have the groups fill in the top part by listing the sections/articles of the state bill of rights. (Note that most state constitutions are much longer than the federal Bill of Rights, so you may need more than one page of each in order to list all the items.)
3. Reassemble the entire class. Review the state bill of rights with the whole group and agree upon the issue/s of each section/article.
4. Return to the groups. As a group, have the students go through the chart and locate the point where the rights correspond. Have them mark an “S” where the language used to describe the rights is similar or a “D” where it differs. Designate one student in each group to record, on a separate piece of paper, the areas where differences are noted.
5. Reassemble the class and review the chart and the lists.
6. If possible, work with a local attorney or LRE resource person to determine the strengths and weaknesses of your state constitution. Using this knowledge, ask students questions to determine why they think these strengths and weaknesses exist. The Oregon Constitution, for example, has a much broader free speech clause than does the federal Constitution. This is also true in the area of search and seizure. For this reason, people in Oregon file these types of cases in state court if possible.
7. If possible, invite an attorney to class after the chart exercise to further explain the range of rights citizens enjoy in our nation at both the state and federal level.

Joseph L. Calpin teaches government and United States history at Tigard High School in Tigard, OR.
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