

Origins of the Bill of Rights

Many colonists felt betrayed by the British government as their rights were taken away. The colonists were forced to allow British soldiers to stay in their homes. They had their own weapons taken away and saw restrictions put on speech and the press. They were not even allowed to gather together freely. Ironically, the British government had given the colonists the idea of “essential rights.” Now it was the British government that challenged those principles.

What Is the Magna Carta?

These rights were part of a centuries old heritage. In fact, much of American colonial law was based on the rights of Englishmen. The oldest document in the British and American heritage of rights, the Magna Carta, was written in 1215. This heritage is alive in America today. More than half the Amendments in the Bill of Rights have roots in the Magna Carta. England’s King John agreed to preserve the freedom of the Church and to hear petitions from the barons (First Amendment). He also agreed to remove foreign armies from England (Third Amendment); not to seize land to pay for debts (Fourth Amendment); not to take life or liberty without due process or repayment (Fifth Amendment). He swore not to delay court proceedings or punish without hearing from witnesses (Sixth Amendment), as well as to repay unjust fines and not to issue extreme punishments (Eighth Amendment).

How Were Rights Protected and Expanded?

Through the centuries, Magna Carta freedoms found their way into English common law. Englishmen were fiercely protective of these rights when the King tried to withdraw them. In the 17th century, King Charles I disbanded Parliament and said he was ruling England on his own. House of Commons member Sir Edward Coke presented a list of complaints. This list came to be called the Petition of Right. This established the principle that the King was not above the law. Charles’s abuses of the law included denying Englishmen due process (Fifth Amendment); protection from unjust taking of property or imprisonment (Fourth and Fifth Amendments); the right to trial by fellow Englishmen (Sixth Amendment); and protection from unjust punishments or fines (Eighth Amendment). Although Charles first agreed to stop breaking the law, he soon went back on his word. He was beheaded in 1649. Prince William of Orange and his wife Mary came to the throne in the 1688 Glorious Revolution. As a condition of their rule, William and Mary accepted the Declaration of Rights and the Toleration Act in 1689. The Toleration Act expanded freedom of religion. It granted Protestants who did not attend the Church of England the right to freely exercise their faith freely (First Amendment). The Declaration of Rights gave Parliament total freedom of speech during debate (First Amendment). The Declaration also included: the right to assemble peacefully and to petition (First Amendment); the right to keep arms (Second Amendment); protections of property and liberty (Fourth and Fifth Amendments); rights of the accused (Sixth Amendment); and rights of criminals (Eighth Amendment).

What Was the Purpose of Government?

Forty years after Charles’s execution and just after the Declaration of Rights, John Locke wrote *Two Treatises of Government* (1690). Locke argued that men are by nature free and equal and that they own their “persons [bodies] and possessions.” He said people must “unite into a community for their comfortable, safe, peaceable living” in order to defend their rights. Locke believed that a government’s purpose is to protect individual natural rights such as life, liberty, and property. Therefore, people must

have the right to dissolve a government that is not protecting them. And so it was in the thirteen colonies. When the British ignored English laws in the American colonies, the colonists were armed with a tradition of demanding those laws be followed.

What Did the Colonial Experience Teach the Founders?

The colonists brought their rights as Englishmen to the earliest American colonies. Massachusetts adopted the “Body of Liberties” in 1641. The document included protection for free speech and petition (First Amendment), just compensation for property taken for public use (Fifth Amendment), protection from double jeopardy (Fifth Amendment), right to trial by jury and counsel (Sixth Amendment), and protection from cruel punishments and excessive bail (Eighth Amendment). As the British government began to limit freedoms between 1763 and 1776, the colonists’ resolve was tested. For example, the 1765 Quartering Act demanded colonists give British troops shelter (Third Amendment). The 1774 Coercive Acts included: restricting the right of the press, free speech, and the right of assembly (First Amendment); confiscating of colonists’ weapons (Second Amendment); lifting protections of property (Fourth and Fifth Amendments); prosecuting colonial activists in English courts, or holding them without trial (Sixth Amendment). The colonists responded to these acts with protest and eventually revolution. The colonists later addressed these issues in the United States Bill of Rights.

How Did History Repeat Itself?

The conflict reached a breaking point in 1776. As Locke had written, the people had the right to dissolve a government that was not protecting their rights. Americans realized they needed self-government and issued a Declaration of Independence. Locke had listed life, liberty, and property as natural rights, while Thomas Jefferson substituted “life, liberty, and the pursuit of happiness.” The Declaration of Independence went on to list ways the British had violated the rights of Englishmen. The colonists then had to begin creating their own government. They threw out the colonial charters and wrote new constitutions. Seven colonies included a Declaration of Rights. The most important of these, historians agree, was Virginia’s. The Virginia Declaration of Rights, written by George Mason, protected the press, exercise of religion, arms, property, the accused, and criminals. James Madison later used it as a model when he wrote the United States Bill of Rights. After the Revolution, the states united under the Articles of Confederation from March 1781 to June 1788. The Articles proved to be an inadequate system of government. To replace it, the Founders drafted a new document: the Constitution of the United States of America. This document created a stronger central government.

Why Add a Bill of Rights?

There were some Americans who feared the central government was too strong under the Constitution alone. They believed that a separate listing of rights was needed to protect individual and states’ rights. A compromise eased the debate. The new Constitution was ratified in 1789 and two years later amended to include a bill of rights. The Founders inherited a tradition of rights that they cherished. They created the American system of government with great care to ensure future generations would enjoy all the “blessings of liberty.” In the end, it is not the governments who are sovereign, but the people.

1. What does the Declaration of Independence have in common with Locke’s *Two Treatises of Government*?

2. How are these two documents different?

3. How does the Constitution differ from the Articles of Confederation?

4. Why do you think some specific rights appear more often than others in the documents?

5. Which right, and why, do you think is most important to you? To your parents? If they are different why? Explain.