

The Individual and the Constitution**I INDIVIDUAL RIGHTS:
AN HISTORIC LEGACY****READING • 1****Sources of
Constitutional Rights**

The United States Constitution guarantees Americans numerous rights, including rights to free expression, assembly, freedom of religion, and the right to a fair trial. The historical sources of the freedoms set forth in the Constitution are described in this reading.

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Almost two hundred years ago, in words which still live today as they did for the hardy souls who dared to invade this continent and to create this nation, the Declaration of Independence expressed confidence in a political system which would give recognition and protection to the rights of ordinary men and women against encroachment by arbitrary government.

It is a cliché to say that we take our freedoms for granted; yet, like many clichés, this one expresses a good deal of truth. Although we know that our forebears suffered and died for their freedom, few people are quite sure of exactly how our liberties were gained. We blithely and uncritically assume that these freedoms cannot be taken from us because they were secured by dedicated spirits who overcame a tyrannical government nearly two centuries ago. However, the history of the twentieth century belies this belief that individual rights, individual liberties, are sacred and cannot be wrested from our grasps. If we are to preserve our civil rights and liberties, we must develop an understanding of their origins.

Recognition of the sacredness of each individual man, woman, and child did not come quickly. Primitive peoples generally regarded a person as part of the tribal community, not as an individual—a person separate from the group. The great prophets and philosophers of the Orient conceived of man as being part of a broad river of humanity, which flowed into an enormous ocean of life extending into eternity. The individual counted as little in such a scheme of things. It was only with the Greek and Jewish traditions and, later, with the Christian ideals that the human being began to be regarded as a single person, significant in his own right. Each person was believed to have been endowed with a gift of freedom by a Divinity, a God who concerned Himself with promoting the fullest development of each of His creatures. As the beliefs of the Jews, the Greeks, and the Christians were spread throughout the world, the ideal of the sanctity of individual rights began to take root. These concepts were not accepted with equanimity. They were secured at the cost of suffering, of struggling, of the lives of people

who sacrificed themselves to establish the rights and freedoms which they believed were their due. However, in countries influenced by the Jewish and Christian philosophies, certain ideas gradually came to be respected. These ideas involved the following basic concepts:

- the right to free expression and as a corollary, the right to stand mute and not be compelled to testify or to speak against oneself
- the right to freedom of religion, which ultimately came to mean that government would not support any single church
- the right to seek changes in the established society or government and, for that purpose, to assemble to assert one's grievances
- the right to the protection of life and property against arbitrary seizure by government officials
- the right to a trial by a jury consisting of people of the same sort as the person to be tried
- the right to be secure against physical torture such as blinding, mutilation, burning—in short, against all cruel and unusual punishment
- the right to have a lawyer when facing indictments brought by government officials

These revolutionary ideas brought on a revolt against the rulers of England, France, and Germany. The cries for individual freedom resulted in bloody wars, the dethroning and killing of kings, and the painful deaths of thousands.

In England the Puritans left the Church of England because they were convinced that it had become corrupt. Some of these Puritans, as well as other persons who could not accept the political and religious practices of the day, fled to Holland and, later, from there to North America where they established colonies on the shores of the Massachusetts Bay.

These settlers felt that their essential rights as Englishmen, painfully won in earlier generations, were being stolen from them in England by kings who disregarded Parliament and refused to call it into session. Between 1620 and 1640, under aegis of the Puritan movement, more than twenty-five thousand men and women migrated to what eventually came to be called New England. Later, after Parliament had been reconvened in England in 1640, some of these Puritans returned to their homeland. But the many who remained in Massachusetts and elsewhere could never forget their vision of independence, and it was this that laid the ideological foundation for the American Revolution.

During this time of immigrant settlement in America a group of Catholics seeking an atmosphere of liberty organized a community in Maryland. There, under a charter given to Lord Calvert, the colony's founder, a representative assembly was set up. This legislative body, similar to the house of Burgesses in the nearby colony of Virginia, claimed the right to enact laws for all free men within its territory.

In neighboring Virginia the colonists asserted the rights and privileges of freeborn Englishmen, in-

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cluding free expression and the right to a trial by jury. The legislative body, the House of Burgesses, asserted, in 1624, that it had the authority to determine the taxation to be imposed in Virginia.

While the Puritans in New England were themselves rigid and intolerant, their struggles planted the seed for the germination in America of the concept of freedom for the individual. The settlers in Maryland, Virginia, Rhode Island; and the other colonies [told] their royal governors their belief that they were entitled to the same rights afforded to each freeholder under the common law in England. In England the sovereign was believed to have an obligation to protect the free man's life, his liberty, and his property from encroachment. This claim of right went back to the twelfth century when the right to jury trial, to the assistance of a lawyer, to be released on bail, and to be protected from excessive fines found legal validation. . . .

When King George II came to the throne of England, he did not realize that the colonists in America took their rights and privileges as Englishmen very seriously. In 1760 he tried to compel the American colonists to pay higher taxes in spite of the fact that they were not represented in Parliament. The slogan "No taxation without representation" became a rallying cry; and, as we know now, by 1775 the American colonists were up in arms and in rebellion against Mother England.

The Thirteen Colonies joined together in a loose organization under the Articles of Confederation. It had been approved by them between 1778 and 1781 while the army of George Washington was in the field, carrying on its war against the British. Washington earned a great victory for the Americans and for posterity. [The colonists had secured their independence.] *for future generations*

In 1787, on the recommendation of Congress, a convention met to determine [how the weaknesses of the Articles of Confederation might be corrected in order to strengthen the newly-independent nation.] The delegates were not empowered to draft a new constitution. However, under the encouragement of such leaders as Washington, Franklin, Madison, and other persons of property and standing in the colonies they decided to go ahead. . . . Some of America's outstanding men of affairs gathered at Annapolis. This group was perhaps the most capable aggregation of philosopher-activists ever joined together for a single undertaking in the Western world. The Constitution of 1789 was their brainchild, and it is essentially this same Constitution that still acts as a guide for the American federal system today. This master document commences with a preamble which breathes the very spirit of popular rights:

We, the People of the United States, in order to . . . secure the blessings of liberty to ourselves and our posterity, do ordain and estab-

lish this Constitution for the United States of America.

In addition there were many specific articles in the original Constitution which protected civil rights and liberties. For example, the body of the Constitution provided:

The privilege of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No title of nobility shall be granted by the United States.

In spite of these safeguards the advocates of ratification of the Constitution were deluged by criticism when the draft was finally sent to the thirteen original states for approval. In certain key states it was passed by only the slimmest majority. . . .

The first ten amendments were added to the Constitution as a sop to popular concerns; yet, they were also a reflection of the deep-seated convictions of many of the leaders of the infant nation. The provisions of the Bill of Rights protected the individual from government interference with freedom of thought, religion, press, speech, petition, assembly. They also guarded the property and physical security of the individual from abuse by agents of the federal government; and these amendments were very specific, dealing with such things as the right to jury trial, the privilege against self-incrimination, excessive bail and fines, cruel and inhuman punishment, general warrants, unreasonable search and seizure, right to counsel, and compensation for property taken for public use. These are set out in the first eight amendments.

As a result of the War Between the States, which came to an end in 1865, three amendments were added to the Constitution, and these increased the rights of Americans immeasurably. These three Civil War amendments were the Thirteenth Amendment, which abolished slavery; the Fourteenth Amendment, which made all persons born in the United States citizens of the United States and of the state in which they lived; and the Fifteenth Amendment, which provided that the vote should not be taken from any citizen because of "race, color, or previous condition of servitude."

In 1919 the right to vote was extended to women by means of the Nineteenth Amendment. In 1964 the right of suffrage was further guaranteed by the Twenty-Fourth Amendment, which abolished the poll tax and similar restrictive measures.

Even superficial examination of the body of the Constitution, the Bill of Rights, and the amendments gives assurance that a major premise of the American constitutional system is an overwhelming concern for freedom.

* *Editor's note:* The right to privacy is implied by the right to the protection of property against arbitrary seizure by government officials. The right to be treated equally before the laws is a concept which also dates to Judeo-Christian traditions.