No Bill of Rights, No Deal

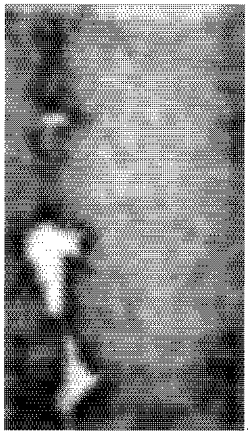
Name:

An All-New Government

When something has never been tried before, how much are you willing to trust it? If it's a new lasagna recipe, no big deal—but what if it's a new technology, like a self-driving car? When the U.S. Constitution was proposed, it created a new type of government that had never been tried before. Today, this may seem ho-hum or might even sound like fun, but that's because modern Americans take for granted something that early Americans did not: the idea that a government has limited power that is given to it by the people. Early Americans' experience with government was the opposite. The British government they'd broken free from had unlimited power that was only restrained by a few laws. Often, those laws were ignored. So when the Constitution was introduced, many Americans looked at it the way many people today look at a self-driving car. They didn't trust it.

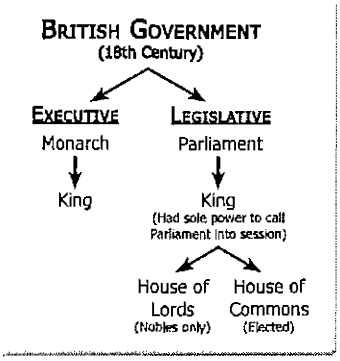
Whoa! Something's Missing

A lot of people freaked out when they learned about the Constitution. There were several reasons why, but it boiled down to one main issue: It seemed to give the government too much power, and it didn't seem to give the people any protection from government power. Specifically, the Constitution did not list citizens' individual rights. To understand how panic-inducing this really was, you need to know two things about the British government Americans were used to. First, British law *did* list individual rights. Some of these were in a document called the Magna Carta, which had existed for almost 600 years, and others were in the English Bill of Rights, written less than 100 years before America's revolution.



A version of the Magna Carta made in 1225 and held at the National Archives.

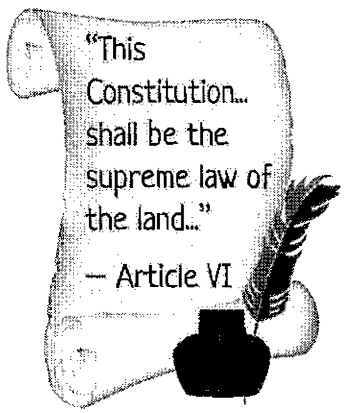
The Magna Carta represented the first demand for limits on the English king's power.



Second, the rights in these documents were citizens' only protection from a government that could be both abusive and unpredictable, and over which citizens had almost no control. In Britain, the monarch (king or queen) was the source of all government power. Although the British government had a legislative and an executive branch, the monarch controlled both. The right to become king or queen passed down through families, so there was no telling what each new king or queen would be like or what they would do with their power. Both the Magna Carta and the English Bill of Rights were written after a king had abused his power. Even then, the new rights were really just demands that the monarch agreed to.

What Were They Thinking?

Those who wanted a bill of bights couldn't understand how the men at the Constitutional Convention could have left a bill of rights out of the Constitution when not only Britain but *every individual state constitution* had one. States that didn't have a formal bill of rights at least listed individual rights directly in their constitution. The U.S. Constitution didn't even do that. What it did do was say that the Constitution was the "supreme law of the land" and was superior to state laws and constitutions. So not only did the Constitution fail to protect individual rights, but it also overruled the protections in state constitutions? This seemed like madness, and people opposed to the Constitution saw their freedom headed down the drain.



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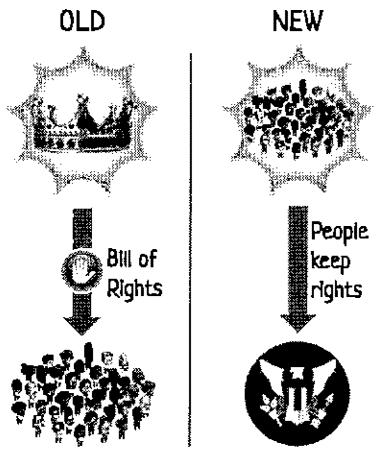
A Different Kind of Government

When these Americans started bashing the Constitution for not listing individual rights, the men who wrote it gave a collective eye-roll. In their view, the Constitution didn't *need* to list individual rights because the government it created wasn't capable of abusing power. This new government was *different*. It got its power from the people, and the people only gave it a *little* power. Right from the start, this government could only do what the Constitution said it could do. So if the Constitution didn't say the government could limit freedom of speech, then guess what? It couldn't. From this perspective, protection of individual rights was baked right into the Constitution itself.



Not Buying It

FEDERALISTS
The name for people who supported the Constitution (and generally saw a bill of rights as unnecessary).

ANTI-FEDERALISTS
The name for people who opposed the Constitution, partly because it had no bill of rights.

For those who wanted a bill of rights, the baked-right-in argument was a load of malarkey. They read the Constitution and saw many ways that power-hungry leaders could get around the so-called limits on power. Between these loopholes and the history of government in Great Britain, they had absolutely no faith that the Constitution would work the way its authors said it would. They pointed to human nature, arguing that once people get a taste of power, they tend to want more. This would cause America's leaders to take advantage of the Constitution, and anyone who believed that could never happen had their head in the clouds. Without a bill of rights, Americans would be completely unprotected when the constitutional government one day became as powerful and tyrannical as the rest of the world's governments.

It's All There, Anyway

People opposed to a bill of rights pointed out that several rights actually were listed in the Constitution. They argued that three of these in particular were the most important "securities to liberty":

- "The Privilege of the Writ of Habeas Corpus shall not be suspended." A **writ of habeas corpus** is a court order requiring the government to show that it is detaining someone lawfully.

- "No Bill of Attainder or ex post facto Law shall be passed." A **bill of attainder** is a law that punishes someone for a crime, usually without that person being given a trial. An **ex post facto law** is a law that makes something a crime or increases the punishment for a crime, and then applies it retroactively to people who committed the crime before the law was passed.

- "No Title of Nobility shall be granted by the United States." A **title of nobility** is a rank granted to someone by a king or government giving that person greater status than common people.

Those who believed a bill of rights was unnecessary argued that the first two things on this list protected Americans against the some of the worst threats to liberty—random, unjustified imprisonment and creation of crimes after the fact. Both of these had been huge problems in the course of Great Britain's history. But the third thing, nobility, was in a league of its own.

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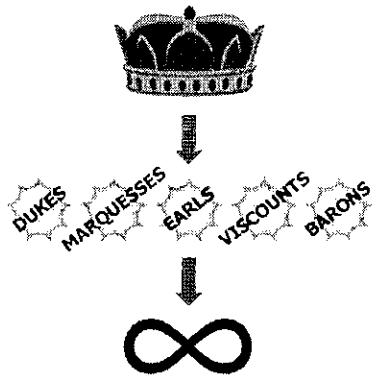
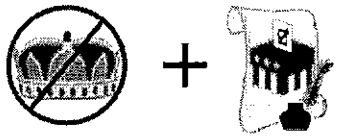


Let's Talk About Nobility

Americans on both sides of the bill of rights debate agreed that Britain's system of nobility had no place in a free society. What they didn't agree on was whether refusing to grant titles of nobility was enough to protect anyone's liberty. Throughout Britain's history, the system worked like this: The king or queen had the power to grant special status to people. Those people became "nobles" with titles like Duke, Earl, or Baron, and they automatically joined Britain's government as both members of the legislature and advisors to the king. The status of nobility passed down through a person's family. This meant that a huge amount of government power was concentrated among a few families that could never be voted out of office.

No Nobility, No Problem

The issue of nobility was a big deal to early Americans. In many ways, they saw the system of nobility as the root of all threats to liberty. So when they said no title of nobility would be granted, they were really saying America's government power would never be in the hands of anyone with a special, natural-born right to power. To the Constitution's supporters, this did not need further explanation. The American constitutional government would always be "of the people," and freedom would never be in any real danger. Those opposed to the Constitution saw plenty of opportunities for danger without a bill of rights.



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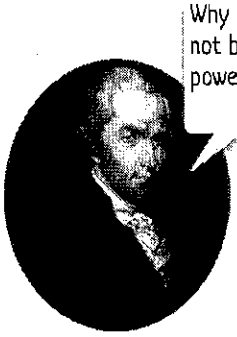
What are you worried about?



Why declare that things shall not be done which there is no power to do?

– Alexander Hamilton

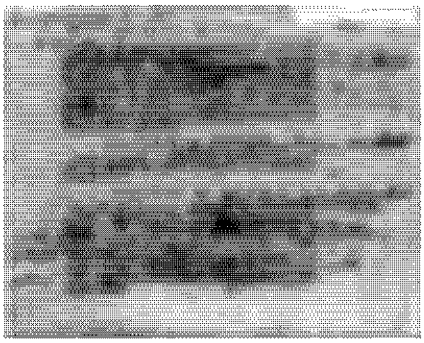
Danger, Danger Everywhere

Meanwhile, Constitution supporters argued that including a bill of rights could be even more dangerous than leaving it out. Their reasoning went like this: If the Constitution doesn't give the government power to limit freedom of speech in the first place, but then you say that the government cannot limit freedom of speech, doesn't that imply maybe the government *does* somehow have the power to limit speech? The people opposed to a bill of rights didn't like the idea of putting limits on powers the government didn't even have. They feared future leaders could twist that around and use it against the people.

Compromise

The terms of the Constitution said that it would become effective after just nine states ratified it. But as state approvals started rolling in, some came with conditions. Several states requested changes or additions to the Constitution—and (surprise!) most of these requests involved listing individual rights. In order to get key states on board, those who supported the Constitution finally agreed to add a bill of rights as soon as the Constitution was ratified.

Ultimately, the pro-Constitution people weren't nearly as afraid of having a bill of rights as the anti-Constitution people were afraid of not having one. They understood the fear, and the agreement was a gesture of goodwill meant to bring everyone together around the new Constitution. Above all, those who supported the Constitution wanted to see the United States become a nation of unified people.



Edits made by the Senate after receiving proposed amendments from the House. The Constitution was ratified 1788, and the ten amendments that became the Bill of Rights were ratified three years later.

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Name: _____

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2nd Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

3rd Amendment

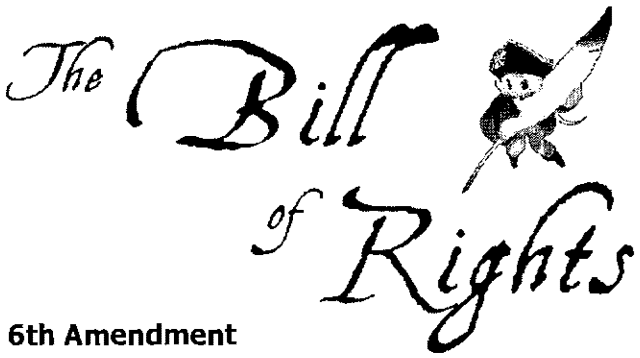
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

7th Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

10th Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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C. The Fear is Real. Early Americans knew about the abuse citizens could endure from a government. For each example, find the amendment(s) in the Bill of Rights related to the issues presented.

What Happened	Related BoR Amendments
In the American colonies, government officials got court orders authorizing them to enter any location to search for and take goods that had been smuggled into the country. These court orders were valid for the lifetime of the current king, plus six months.	
During the 16th and 17th centuries in England, the Star Chamber was a royal court that heard cases that couldn't be heard in regular courts. Before it was finally abolished, the court met in secret, tortured people to gain information, and sentenced people to huge fines, life in prison, and even mutilation.	
John Wilkes was both a journalist and a member of the British Parliament. In 1762, he published a severe criticism of a speech the king had given. Wilkes was arrested for publishing a "treasonous" newspaper intended to cause rebellion against the king.	

D. But in England We Had... Check out the exerpts from the Magna Carta and the Bill of Rights. Anything sound familiar? Locate the amendments in the Bill of Rights that correspond to these British rights, then match each one with the general protection involved.

Magna Carta
(1215; revised 1297)

A group of rebel barons presented a list of demands to the king, declaring that...

Amdmt # _____ For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.

Amdmt # _____ In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

Amdmt # _____ No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

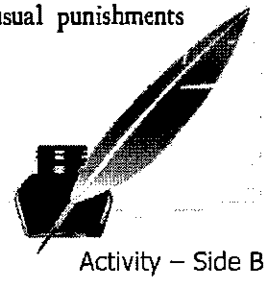
English Bill of Rights
(1689)

The English Parliament listed many grievances against the king, and "for the vindicating and asserting of their ancient rights and liberties" declared...

Amdmt # _____ That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;

Amdmt # _____ That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;

Amdmt # _____ That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;



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Quote & Paste. Each of the quotes below is an excerpt from something that was written or said at the time the Constitution and the Bill of Rights were being debated. These quotes address the main arguments discussed in the reading for this lesson.

1. Cut out the quotes.
2. Paste or place each quote on the grid page beneath the argument it best addresses.

Of what avail will the Constitutions of the respective States be to preserve the rights of its citizens? [T]he Constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the General or State governments, are bound by oath to support it.	The most blind admirer of this Constitution must in his heart confess that it is ... far inferior to the British Constitution.... In the British Constitution the rights of men ... are fixed on an immoveable foundation and clearly defined and ascertained by their Magna Charta, their Petition of Rights, [and] their Bill of Rights...
[Bills of rights] have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations.	The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of TITLES OF NOBILITY, to which we have no corresponding provision in our Constitution, are perhaps greater securities to liberty and republicanism than any it contains.
The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. ... The powers reserved to the several States will extend to all the objects which ... concern the lives, liberties, and properties of the people...	Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.
[W]e conceive that there is no power which Congress may think necessary to exercise for the general welfare, which they may not assume under this Constitution. ... [T]hose very powers, which are to be expressly vested in the new Congress, are of a nature most liable to abuse.	[T]he [constitutional] convention was composed of ... ambitious men ... whose similitude to each other, consisted only in their determination to lord it over their fellow citizens; ... they were unanimous in forming a government that should raise the fortunes and respectability of the well born few, and oppress the plebeians.
[T]his principle is a fundamental one, in all the Constitutions of our own States; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them.	Bills of rights are, in their origin, stipulations between kings and their subjects, ... reservations of rights not surrendered to the prince. They are ... not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted.

It would be dangerous to protect rights the government doesn't have any power over.	The Constitution grants unlimited government power, which will be easy to abuse.
The Constitution protects against the most dangerous threats to liberty.	State constitutions list individual rights, so the U.S. Constitution should, too.
States and their constitutions will not lose the power to protect individual rights.	State constitutions will be invalid under the new Constitution, so rights listed there won't help.
Without a system of nobility, the government is "of the people" and liberty is secure.	Refusing to grant titles of nobility won't protect citizens from government abuse.
A bill of rights is unnecessary when government power is limited and comes from the people.	Even the British have a clear list of rights, so the U.S. Constitution should, too.