

Lesson Twenty-Nine

The Bill of Rights

LESSON IDEA

To understand the rights and privileges we enjoy as Americans and how the Bill of Rights was designed to protect them from government interference. PREPARATION

Be sure that copies of the Bill of Rights used for last week's lesson are still available. Have one for each family member.

LET US BEGIN our lesson with a simple one-sentence prayer:

Almighty God, we make our earnest prayer that Thou wilt keep the United States in Thy holy protection . . .

Those were the sentiments of George Washington in 1789 just after becoming President of the United States. Many Presidents and other federal officials have given similar supplications since, but in 1962 the Supreme Court ruled that such prayers could no longer be uttered in government schools because they violate the First Amendment of the Constitution. Does that make sense? Before answering, let us read the first provision of that amendment. [Be sure that everyone has a copy of the Bill of Rights from last week's lesson.]

Bill of Rights.

Article I — Religion and Free Speech. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .

Does Washington's prayer establish a religion? Does it prohibit anyone from worshiping as he chooses? [Encourage discussion. Explain the differences between believing in God, publicly expressing that belief, and establishing a religion.]

To further clarify the issue, let us look at additional history. In the 1700s, most colonial governments followed the Old World or European tradition of establishing an official church that the people were expected to support and attend. In

Virginia, for instance, it was the Anglican Church or Church of England. The legislature of the colony passed laws to punish parents who did not have their children baptized into that church. A law passed in 1705 sought to punish those who did not attend church services. It read:

Be it enacted . . . that if any person, being of the age of twenty-one years, or upwards, shall wilfully absent him or her self from divine service at his or her parish church, the space of one month . . . shall forfeit and pay fifty pounds of tobacco. . . If any person offending shall refuse to make payment. . . by order of Justice, shall receive on his or her bare back, ten lashes, well laid on.

In 1748, Virginia's General Assembly even passed a law setting the salary of ministers! Then, in 1786, "an act for establishing religious freedom" repealed the dogmatic decrees. And five years later the First Amendment to the U.S. Constitution was ratified to prohibit Congress from establishing a national religion.

With that background in mind, does the Supreme Court's 1962 decision forbidding prayer in government schools seem Constitutional or far-fetched? Had Congress made any law establishing a religion? Did prayer in a classroom or during a school assembly establish a religion? [Discuss the issue. For those interested in further information about recent Supreme Court decisions, see "For Serious Students."]

The First Amendment also prohibits Congress from passing laws abridging, "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." What does "abridging" mean? "Redress of grievances"?

HOW DOES FREE SPEECH, holding meetings, and circulating and signing petitions help us correct flaws in government? [Encourage everyone express an opinion.]

Are people in Communist China, Cuba, and North Korea free to speak their minds about their governments? What would likely happen if they attempted to organize meetings where speakers criticized the ruling authorities, or if they circulated petitions asking the government to grant the people more freedom? [Encourage discussion.]

To be truly free, persons must have the right to criticize their government and attempt to influence its actions without fear of being executed, fined, or placed in prisons or concentration camps. But should free speech be totally unlimited? [Point out that free speech does not include such abuses as slander and treason. See Article 3, Section 3, Clause 1 of the Constitution for a definition of treason. It might also be noted that the freedom also entails personal responsibility, and that a lack of self restraint can give governments an excuse to increase their power under the guise of coping with the problems (such as crime) that results from a lack of personal responsibility.]

The Second Amendment states that “the right of the people to keep and bear Arms, shall not be infringed.” Yet, Congress has approved laws that bar Americans from owning certain types of firearms, require waiting periods to purchase guns, and otherwise circumvent the clear wording and intent of the Second Amendment. Criminals, by definition, do not obey laws, and gun control laws cannot keep firearms out of the hands of those determined to obtain them. [Discuss some of the ways that persons bent on committing crimes can obtain guns despite gun control laws. They can buy them on the black market, steal them, and even make them (so-called “zip” guns) out of ordinary household implements such as radio antennas, rubber bands, nails, and bathroom plumbing. In the late 1980s, a 15-year-old student in Idaho made a workable shotgun out of a music stand and a ball bearing.] If law-abiding citizens are totally or partially disarmed by gun control laws, while criminals ignore those laws, is crime likely to go up or down? Are law-abiding citizens going to be more or less safe? [Cite instances in which armed citizens have defended their lives, loved ones, and property with firearms. Examples may found in the “Exercising The Right” column of The New American magazine.]

The Second Amendment states that a “well-regulated Militia” is “necessary to the security of a

free State,” which is one reason with the “right of the people to keep and bear Arms” was not to be infringed. What did the Founders mean by the term militia? [A citizen army of volunteers armed with their own weapons.]

In contrast, a national army is lead by professional soldiers under the command of a country’s ruler or chief executive. It entails government power that can be used by a ruthless executive to coerce his subjects to either obey his edicts or die. It had frequently happened in Europe, and Patrick Henry and other anti-Federalists feared it could happen in the United States.

Nevertheless, professional national armies are necessary, since foreign enemies can easily conquer nations without them. The dilemma facing the Founders was how to check-and-balance government in a way that would allow an adequate national defense, but precluding the possibility that a standing Army could be turned against the American people themselves. They concluded that the best solution was to allow ordinary citizens to keep and bear arms. If threatened by domestic criminals (even within their own government) or foreign aggressors, an armed citizenry could quickly and effectively rise in defense of the nation. Isn’t this as logical today as then?

The Third Amendment deals with another aspect of the same subject: forcing citizens to house and feed federal soldiers. It was not to be allowed “in time of peace,” and not even in wartime unless authorized by our elected representatives. This, too, was a protection against dictatorial, strong-arm actions by government. It was also recognition of private property rights. “A

FOR SERIOUS STUDENTS

The 1962 Supreme Court decision forbidding prayer in the government schools is merely one of many High Court rulings that have violated provisions of the Constitution. For other examples, see *Nine Men Against America: The Supreme Court And Its Attack On American Liberties*, by Rosalie M. Gordon, and *The Great Prison Break: The Supreme Court Leads The Way*, by G. Edward Griffin. Both books are out-of-print, but may be available at a local library or from a used bookstore. Mr. Griffin's *A Memorandum On Supreme Court Decisions* is a concise summary of key Supreme Court decisions. It may be found at [URL] on the Internet. [Could we scan/post it on our website. — rwl]

man's home is his castle" is one way the principle has been stated. The federal government was not to decree whom a homeowner must feed and lodge, except under terms specified in the Constitution.

The Fourth Amendment, forbidding unreasonable searches and seizures, is a further extension of the same right. It protects law-abiding citizens, but what about criminals (such as drug dealers)? Are they entitled also entitled to the protection? Can they simply retreat into their homes and preclude the police from gathering evidence of a crime? How can we keep property rights from being abused by lawbreakers? [Encourage discussion. Point out that the Fourth Amendment provides a balanced solution. Have someone read it. Explain the term "warrant" — a legal document giving authority.]

So the right to control property can be denied to suspected criminals, but only if the denial is based on well-established written and legal (including constitutional) rules. The police must have a warrant from a magistrate or judge based on specific reasons for a search.

THE FIFTH, SIXTH, SEVENTH, and Eighth Amendments also deal with lawbreakers and those suspected of criminal acts. There is a further balance between protection of the innocent, apprehension of suspects, and punishment of persons convicted of crimes. [Compare the U.S. system under the Constitution with those of communist and other totalitarian regimes, where innocent individuals are often imprisoned indefinitely or executed at the whim of despotic leaders.]

Suppose you were living today in Fidel Castro's Cuba, and were suddenly arrested by government police and jailed. What rights would you have? [Encourage discussion.]

Would you want to know the crime that you are accused of committing? Would you want a chance to prove your innocence? Would you want to be tried by an impartial jury of your peers? Would you want to be represented by legal counsel? Would you want your trial to be held in public, rather than behind closed doors?

In the United States, the Sixth Amendment would provide all of those protections. Indeed, you would have the right to a trial by jury for even a

common law suit, if the amount in controversy exceeded twenty dollars. That is guaranteed in the Seventh Amendment. But in a communist country you could be kept in jail indefinitely, or even executed, without knowing the nature of the accusations against you, having a public trial, or having your guilt or innocence determined by a jury of your peers in open court.

The U.S. Constitution even provides a way for those suspected of even serious crimes to be released from jail pending trial. They must deposit a sum of money called "bail," but the Eighth Amendment states that it must not be excessive. Only for the most heinous crimes (such as murder) is bail sometimes denied entirely. What is bail? Why is it even required before a suspect is released? [Read the first clause of the Eighth Amendment and explain that bail is the security required by the court to help assure that a suspect will appear for trial, rather than attempt to hide or flee. If the suspect does not appear, the bail is forfeited.]

The Eighth Amendment also precludes the infliction of "cruel and unusual punishments." What are some examples? [Let everyone answer.] Public whippings were considered cruel punishments in colonial times. Torture devices and four-foot square prison cells or cages (such as those in which many U.S. prisoners of war were kept in Vietnam) would be considered so today.

The Framers did not consider capital punishment (the death penalty) to be either "cruel" or "unusual." Judges and juries have sentenced some criminals to death, for such crimes as murder and treason, through out our history. In 1972, the Supreme Court temporarily declared capital punishment to be unconstitutional, but reinstated it in 1976.

There are several other aspects of criminal law that we have not mentioned. See if you can find some in the Fifth Amendment. [Explain that a capital crime is one that carries the death penalty, and that the Fifth Amendment implicitly condones it. Also, a grand jury is a select group of citizens that hears witnesses and decides whether or not a persons of accused for a crime should be indicted (brought to trial). A grand jury does not determine guilt or innocence.]

What happens if a person is acquitted of a crime? Can he or she be retried on the same

charge? Can accused persons be forced to testify against themselves? [Find the answers in the Fifth Amendment.]

There is a phrase at the conclusion of the Fifth Amendment that is unrelated to criminal trials, but is a crucial protection of property rights. It reads: "... nor shall private property be taken for public use, without just compensation."

When is private property needed for public use? [Three of the most common examples are road and highway construction, historic site preservation, and the construction of government buildings.] Even in these instances, however, the federal government is not allowed to seize private land unless the owners are paid a fair price ("just compensation").

The last two Amendments are among the most important. In a previous lesson, we discussed the anti-Federalist objections to the Constitution. They feared that federal power would expand to a dictatorship. What would happen, they wanted to know, should situations arise that are not covered by specific provisions of the Constitution? Would federal officials argue that since there was nothing in the Constitution to prohibit their actions, they had a right to carry them out?

No, Framers answered; exactly the opposite is true. They wrote the Tenth Amendment to make crystal clear that the federal government has only those powers specifically granted to it by the Constitution. The states and/or the people retain those not so granted:

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.

While this Constitutional "stop sign" was intended to limit federal power, a needed to limit the power of the federal government, a "go sign" was also needed for the rights of the people. Those specifically protected by the Bill of Rights are among the most important that a free people can have, but not the only ones. To list them all would be equivalent to cataloguing every grain of sand in a bucket. The Ninth Amendment was drafted to make it clear that the rights of the people were not limited merely to those mentioned in the Bill of Rights. It reads:

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage

others retained by the people.

Concluding Thought

The first ten amendments to the Constitution protect our God-given rights to worship as we choose, speak as we wish, peaceably assemble, petition government for a redress of grievances, keep and bear arms for self- and national-defense, be secure in our homes, and be treated fairly in courts of law. They place limits on federal power without eroding individual rights. As a framework of Government for a free people, the Constitution and its Bill of Rights have no equal in world history. Any imperfections are minor. The principles are solid and enduring.

Looking Ahead

Next week we will learn why the Constitution and its amendments are more than words on paper; what makes this unique system of government so vital and effective; and what could cause it to fail.

DURING THE WEEK

Post a legal-sized sheet or a poster board in a well-trafficked area of your home. Title it, "Privileges and Rights of Americans." Number down the left side from one to 24. Ask members of the family to jot down as many of the specific rights protected by the Bill of Rights as they can remember. Continue the project throughout the week until all 24 rights are listed. Encourage short, concise phrasing of each right.