

4.1 Democracy in America The Bill of Rights.

Aspect: The importance of the Bill of Rights.

Introduction:

This resource should be undertaken as a conclusion to section 4.1 of Unit 4. It is designed to provide an overview of the main features of the Bill of Rights but is not inclusive of all potential material required for examination purposes.

This resource provides a study of the main rights protected in the first Ten Amendments to the Constitution, and their importance. Both teacher and students will also need to undertake their own research/reading in order to provide a fully comprehensive coverage of the importance of the Bill of Rights which would need to be supported with further study of the Supreme Court and its role in upholding rights which is found in the specification at 4.2.3, along with up-to-date examples.

For this unit it is essential that students have their own copy of the Bill of Rights, which can be found as the first Ten Amendments to the US Constitution. It would be also useful for students to have access to the further 17 Amendments, especially Amendment 14.

Aims and Objectives:

Aim:

To begin to analyse the importance of the Bill of Rights.

Objectives:

1. To identify the main rights protected in Amendment 1.
2. To identify the main rights protected in Amendments 2 to 8.
3. To explain the significance of Amendments 9 and 10.
4. To analyse the importance of Amendment 5.
5. To start to analyse the importance of the Bill of Rights.

WJEC Government and Politics Assessment Objectives:

AO1: Knowledge and understanding of the main rights and liberties protected by the Bill of Rights.

AO2: Connections between the intentions of the framers of the Bill of Rights in 1791 and the protection of rights today; similarities and differences between civil liberties and civil rights.

AO3: Analysis and synthesis of arguments about the importance of the first Ten Amendments.

Links to other parts of the WJEC specification:

AS Unit 2 - 2.1.1, 2.1.2, 2.1.3 Citizenship and rights (illustration and comparison only)

A2 Unit 4 - 4.2.3 The Supreme Court.

Introducing the resource:

A teacher may want to introduce this resource by explaining the circumstances of the addition of the first Ten Amendments in 1791, and by facilitating discussion about what rights students would expect to have been protected in 1791 compared to what rights they think Americans would claim to have today. Students will need their own copy of the Bill of Rights, which can be found as the first Ten Amendments to the US Constitution. It would be useful for students to have access to the further 17 Amendments too, especially Amendment 14.

Conclusion:

The teacher could remind students of the changing nature of what society values as rights over time, the difference between civil liberties and civil rights, and the effects on the powers of the judicial branch of some of the Amendments.

Exercise 1: To identify the main rights protected in Amendment 1.



Guidance

The teacher could introduce the session by explaining that the original Constitution, whilst it laid down the main structures of US government and dealt with the powers and inter-relationships of the branches, did not define the relationship between the government and the governed. Much had been made of citizenship in the Declaration of Independence, but the Constitution neglected this aspect. The first Ten Amendments were largely the work of James Madison and other Anti-Federalists of the time, who argued that the Bill of Rights was necessary to limit government power.



Activity – First Amendment – Protected or Not Protected

[Click to open activity](#)

See Worksheet 1

Students should decide whether the actions or laws in the table would be upheld or allowed and therefore protected under the First Amendment.

Action	Protected or not protected
A law banning the hijab	Not protected
The burning of a US flag in the street as a protest.	Protected
A law to make Protestantism the official religion of the USA.	Not protected
A mass street protest against cuts to welfare payments.	Protected
A newspaper cartoon which offends Republicans by poking fun at them.	Protected
A ban on anyone criticising the government using the internet.	Not protected
Individuals and organisations giving money to support political campaigns of candidates that they support.	Protected



Notes

The First Amendment is: '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.'

Exercise 2: To identify the main rights protected in Amendments 2 to 8.

The original 1791 version of Amendments 2 to 8 is:

Amendment II

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.

Amendment III

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.

Amendment IV

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.

Amendment V

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 offense 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.

Amendment VI

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 favour, and to have the assistance of counsel for his defence.

Amendment VII

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.

Amendment VIII

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



Activity - The Main Rights Protected in Amendments 2 to 8

[Click to open activity](#)

See **Worksheet 2**

Students should read the original 1791 version of Amendments and match the modern descriptions below with the original wording by noting its number.

Modern phrasing of the right or liberty	Amendment No.
Except during times of war or if you are in the military: <ul style="list-style-type: none">You can't be tried for any serious crime without a Grand Jury meeting first to decide whether there's enough evidence;If the jury decides you are innocent, the government can't try you again for the same crime with another jury (double jeopardy);You cannot be forced to admit guilt and, if you choose not to, you don't have to say anything at your trial at all;You can't be killed, put in jail, or fined, unless you were convicted of a crime by a jury and all of the proper legal steps during your arrest and trial were followed; andThe government can't take your house or your farm or anything that is yours, unless the government pays for it at a fair price.	5
Nobody can search your body, or your house, or your papers and things, unless they can prove to a judge that they have a good reason for the search.	4

<p>If you are arrested and charged with a crime:</p> <ul style="list-style-type: none"> You have a right to have your trial soon and in public, so everyone knows what is happening; The case has to be decided by a jury of ordinary people from where you are, if you wish; You have the right to know what you are accused of doing wrong and to see, hear and cross-examine the people who are witnesses against you; You have the right to a lawyer to help you. If you cannot afford to pay the lawyer, the government will. 	6
The government can't make you pay more than is reasonable in bail or in fines, and the government can't inflict cruel or unusual punishments (like torture) even if you are convicted of a crime.	8
Congress can't stop people from having and carrying weapons.	2
You also have the right to a jury when it is a civil case (a law case between two people rather than between you and the government).	7
You don't have to let soldiers live in your house, except if there is a war, and even then Congress needs to pass a law and set the rules.	3



Guidance

Students should then be asked their opinion of the relevance and importance of these rights and liberties today. Which do they think sound as if they were important in the 1780s but are not now? Which ones seem to have modern-day relevance? Can they think of similar guarantees of rights in the UK?

Students might consider whether the first phrase of Amendment 2 really means that every person in the modern-day USA has the right to gun ownership; whether Amendment 3 is still relevant; how Amendment 4 can be applied to the digital age; how Amendments 5, 6 and 7 compare to similar rights in the UK; the issues with Amendment 8 in times of war, dealing with terrorist threats, definitions of 'cruel and unusual'.

Exercise 3: To explain the significance of Amendments 9 and 10.



Activity - The Significance of Amendments 9 and 10

[Click to open activity](#)

See Worksheet 3

Students should read the Amendments carefully and answer the four questions and then compare their answers with the suggested responses.

Original wording of Amendment IX

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

Modern-day wording of Amendment 9

Just because these rights are listed in the Constitution doesn't mean that you don't have other rights too.

Question: How was Amendment 9 meant to 'future-proof' the Bill of Rights?

Suggested answer: By allowing the insertion of new rights and liberties as these became important to American society. This has been important in allowing the rights of certain groups to be protected who were unrecognised in the 1790s, or allowing for rights and liberties to keep pace with technological changes, for example.

Question: How does Amendment 9 increase the power of the Supreme Court?

Suggested answer: Because it is the Supreme Court that decides ultimately whether a right is protected by interpreting the meaning of the Constitution and the Bill of Rights, including Amendment 9. The Supreme Court can decide to add new rights – in line with changes in society - by invoking Amendment 9. This has been the case with the right to privacy, for example.

Original wording of Amendment X

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.

Modern-day wording of Amendment 10

Anything that the Constitution doesn't say that Congress can do, is left up to the states and to the people.

Question: Whose powers are restricted by Amendment 10?

Suggested answer: Those of the federal government, i.e. the government of 'the United States', not the states individually.

Question: How does Amendment 10 support some of the fundamental concepts and principles that the Founding Fathers built the Constitution on?

Suggested answer: It supports the idea of limited government by reminding everyone that the federal government's powers are only those delegated to it by the Constitution (enumerated); it upholds federalism and the sovereignty of the individual states by stating that the powers of the states are unenumerated and uncontrolled by the Constitution; it upholds the concept of the sovereignty of the people and the rights of citizens in the last few words.

Exercise 4: To analyse the importance of Amendment 5

Original wording of Amendment V

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.



Activity - Analysing the Importance of Amendment 5

[Click to open activity](#)

[See Worksheet 4](#)

The aspects of Amendment 5 are listed below in modern-day language. Students should rank them according to their perceived relative importance.

Except during times of war or if you are in the military:
1. You can't be tried for any serious crime without a Grand Jury meeting first to decide whether there's enough evidence
2. If the jury decides you are innocent, the government can't try you again for the same crime with another jury (double jeopardy)
3. You cannot be forced to admit guilt and, if you choose not to, you don't have to say anything at your trial at all
4. You can't be killed, put in jail, or fined, unless you were convicted of a crime by a jury and all of the proper legal steps during your arrest and trial were followed
5. The government can't take your house or your farm or anything that is yours, unless the government pays for it at a fair price



Guidance

Any ranking is possible, and should provoke quite a discussion. Students will probably rank number 5 as the lowest. However, this clause embodies the idea of the sanctity of property

and is another example of the ideas of liberalism in the Constitution, so is important.



Notes

Probably the most important is number 4 which contains the concept of '**due process**' (see the original wording) – in this case applying to actions of the federal government. In 1868 the 14th Amendment also used the same 'due process' wording and applied it to actions of the states.

The significance of the 'Due Process clauses' is that they protect citizens' rights by ensuring 'substantive due process' and 'procedural due process' in the actions of both the federal government and the states.

'Substantive due process' means that any law or action by state or federal governments must not infringe any enumerated or unenumerated right or freedom (Amendments 5, 9 and 14 acting together).

'Procedural due process' means that any law or action by state or federal governments must be capable of being easily understood and equally applied (fair). In *Miranda vs. Arizona* (1966) Ernesto Miranda had been questioned, had confessed, and had signed a written statement without being told that he had a right to a lawyer. His confession was used at trial. In overturning Miranda's conviction, Chief Justice Earl Warren held that the prosecution may not use statements made by a person in police custody unless certain minimum procedural safeguards were in place. Before questioning, a person must be given what is now known as a Miranda warning: that you have the right to remain silent that anything you say may be used as evidence against you that you may request the presence of an attorney, either retained by you or appointed by the court and that you have the right, even after beginning to answer questions, to stop answering or request an attorney. The Miranda decision was one of the most controversial of the Warren Court.

Overall, the Due Process clauses of the 5th and 14th Amendments substantially increase the power of the Supreme Court whose ultimate decision it is as to whether the clauses have been infringed, either by the federal or state governments.

Exercise 5: To analyse the importance of the Bill of Rights



Activity - For and Against the Bill of Rights

[Click to open activity](#)

See Worksheet 5

Students should separate the statements into two categories – those for and those against the statement, ‘The Bill of Rights is fundamental in protecting the rights of American citizens.’

FOR	AGAINST
Amendment 9 allows the Bill of Rights to protect freedoms the Founding Fathers could never have envisaged 230+ years ago.	Some groups have been and still are denied rights, e.g. black Americans, LGBT groups.
Amendment 10 re-states the basic concept that the power of the federal government is limited whereas the rights of the people are not.	The Bill of Rights gives too much power to the unelected Supreme Court to interpret and invent rights, and rule on the actions of federal and state governments. The view of the Supreme Court is not constant on this, as the make-up of the Court changes.
Most Americans can name their First Amendment rights and are fiercely loyal to the protection of them.	Some of the first Ten Amendments are no longer relevant to the modern world.
The Bill of Rights is a forceful statement of liberal ideas about citizenship and limited power.	Upholding the rights in the Second Amendment has made America more unsafe.
The Bill of Rights guarantees protections for minorities from ‘the tyranny of the majority’.	Civil rights have not been as well protected by the Supreme Court as civil liberties because they are more controversial (e.g. apply to certain groups rather than everyone).

After completing the task above students should now be asked to combine what they have learned about the Bill of Rights in this resource with their understanding of the Constitution from previous resources in order to attempt some examination type questions on section 4.1 of the specification, Democracy in America.