

DOCUMENT A

John Locke, *Second Treatise of Civil Government* (1690)

[Ch. IX, 123] 'Tis not without reason, that [man] seeks out, and is willing to join in Society with others who are already united, or have a mind to unite for the mutual *Preservation* of their Lives, Liberties and Estates, which I call by the general Name, *Property*. ...The great and *chief end* therefore, of Men's uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*. To which in the state of Nature there are many things wanting.

[Ch. V, 27] [E]very man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.

(Italics are Locke's.)

- 1. How did Locke define property?**
- 2. According to Locke, why do people unite into “commonwealths” i.e. communities, nations, etc.?**
- 3. According to Locke, how do external things become our “property”?**

DOCUMENT B

Declaration of Independence (1776)

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

- 1. According to the Declaration of Independence, what are some of the inalienable rights that all people have equally?**
- 2. Why would Jefferson write that government's purpose is to "secure" right rather than to "grant" them?**
- 3. What are some definitions that people apply to the term "happiness" today? How was the term understood in 1776?**

DOCUMENT C

The United States Constitution and Amendments (1789-1791)

Article I, Section 10, 1789

No state shall ... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Amendment I, 1791

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.

Amendment V, 1791

No person shall ... 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 IX, 1791

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

Amendment X, 1791

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.

- 1. How does each of these constitutional provisions protect property?**
- 2. Taken together, what do they reveal about the power of government in relationship to the rights of citizens?**

DOCUMENT D

James Madison, *On Property* (1792)

This term in its particular application means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*

In the former sense, a man’s land, or merchandize, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No

man is safe in his opinions, his person, his faculties, or his possessions.

Where there is an excess of liberty, the effect is the same, tho’ from an opposite cause.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.

Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right. To guard a man’s house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man’s conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights.

(Italics are Madison’s.)

1. **How did Madison define property? Is it an inalienable right?**
2. **Madison notes that when there is “an excess of power,” no property of any sort is safe. He also notes that the same problem occurs when there is an “excess of liberty.” How might John Locke (Document A) have responded to this idea?**
3. **What did Madison call “the most sacred of all property”?**
4. **In Madison’s view, how will the United States earn respect as a just government?**

DOCUMENT E

The Fourteenth Amendment (1868)

Section 1. ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- 1. Explain three ways this amendment protects the liberty of citizens.**
- 2. Did this amendment in any way change the protections for individual rights, as well as the division between state and federal power enshrined in the Bill of Rights? Explain.**

DOCUMENT F

Slaughterhouse Cases (1873)

...We venture to suggest some [privileges and immunities] which owe their existence to the Federal government, its National character, its Constitution, or its laws.

...It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, “to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States.”

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. ...The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State....

- 1. Did this decision define the “privileges or immunities” of U.S. citizens narrowly or broadly? Explain.**

DOCUMENT G

This is One of a Hundred Murdered (1911)



"This Is One of a Hundred Murdered. Is any one to be punished for this?" Photographer: Artist TAD [Thomas Aloysius Dorgan], 1911, Kheel Center, Cornell University

On March 25, 1911, a fire that started on the eighth floor engulfed the Triangle Waist Company, a garment manufacturer in New York City. As was a common practice at the time, exits and stairwells were kept locked to prevent employees from theft and from taking unauthorized breaks during the workday. Although the fire department responded promptly to the blaze, the fire spread rapidly because of the many combustible materials in the factory. An estimated 500 people were at work that day. Because there was no safe way to exit the upper floors of the building, dozens of employees jumped out of windows to their deaths as the flames advanced. The death toll was 146 workers, most of them young immigrant women. The Triangle Waist Company tragedy was one of the most shocking of the events that focused national attention on unsafe working conditions.

1. What is depicted in the artist's drawing?
2. Why does the title refer to "murder"? Whom do you think was responsible for the tragedy at the Triangle Waist Company?

DOCUMENT H

Meyer v. State of Nebraska (1922), Majority Opinion

While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected ... a desirable end cannot be promoted by prohibited means.

- 1. How did this decision define liberty?**
- 2. How did the Court define the limits of government's power to improve the quality of citizens' mental, physical and moral states?**

DOCUMENT I

***Pierce v. Society of Sisters* (1924), Unanimous Opinion**

[A lower court] declared the right to conduct schools was property, and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places.

We think it entirely plain that the Act of 1922 [requiring all children to attend public school] unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State....

Appellees are corporations [schools], and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action.

1. How did this decision define liberty?

DOCUMENT J

***Schechter Poultry Corp. v. U.S.* (1935), Unanimous Opinion**

Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extra constitutional authority were anticipated and precluded by the explicit terms of the Tenth 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.'

- 1. How did this decision interpret the power of the national government in extraordinary circumstances?**
- 2. Why did this ruling refer to the Tenth Amendment (Document C)?**

DOCUMENT K

***Palko v. Connecticut* (1937), Majority Opinion**

[T]he due process clause of the Fourteenth Amendment may make it unlawful for a state to abridge by its statutes the freedom of speech which the First Amendment safeguards against encroachment by the Congress; or the like freedom of the press, or the free exercise of religion, or the right of peaceable assembly, without which speech would be unduly trammelled; or the right of one accused of crime to the benefit of counsel. In these and other situations, immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states.

The line of division may seem to be wavering and broken if there is a hasty catalogue of the cases on the one side and the other. Reflection and analysis will induce a different view. There emerges the perception of a rationalizing principle which gives to discrete instances a proper order and coherence.

The right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a “principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.”

- 1. How did this decision define liberty?**
- 2. According to this decision, what are two rights guaranteed by the Bill of Rights that are “not of the very essence of a scheme of ordered liberty”?**
- 3. Should the Court decide which rights are “implicit in the concept of ordered liberty”? If so, how should it decide? If not, who should decide?**

DOCUMENT L

***West Coast Hotel Co. v. Parrish* (1937), Majority Opinion**

Deprivation of liberty to contract is forbidden by the Constitution if without due process of law, but restraint or regulation of this liberty, if reasonable in relation to its subject and if adopted for the protection of the community against evils menacing the health, safety, morals and welfare of the people, is due process....

The State has a special interest in protecting women against employment contracts which through poor working conditions, long hours or scant wages may leave them inadequately supported and undermine their health; because:

- (1) The health of women is peculiarly related to the vigor of the race;
- (2) Women are especially liable to be overreached and exploited by unscrupulous employers....

- 1. How did this decision define liberty?**
- 2. How did this decision define the due process necessary to deprive someone of their freedom to choose to enter into a contract?**
- 3. In this context, how should “reasonable” be understood?**

DOCUMENT M

***U.S. v. Carolene Products*, Footnote 4 (1938)**

Even in the absence of [reports of legislative committees revealing the rationale of the legislation], the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless, in the light of the facts made known or generally assumed, it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators.⁴

Footnote 4

There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth....

[We do not need to] enquire whether similar considerations enter into the review of statutes directed at particular religious, or national, or racial minorities: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.

- 1. According to this ruling, what should the Supreme Court generally presume about laws passed by Congress that affect commercial transactions?**
- 2. How, if at all, did Footnote 4 clarify the body of the ruling?**
- 3. Was the Court right to distinguish between types of rights? Explain.**
- 4. Does Footnote 4 of *Carolene Products* prove the Federalists right about the dangers of listing certain rights at the end of the Constitution, or was the footnote consistent with the Constitution and the goal of protecting liberty?**

DOCUMENT N

Griswold v. Connecticut (1964), Majority Opinion

We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law [banning the sale of birth control to married couples], however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

By *Pierce v. Society of Sisters* (Document H), the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. Nebraska* (Document G), the same dignity is given the right to study the German language in a private school. ...The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read, and freedom of inquiry, freedom of thought, and freedom to teach. Without those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases....

[Many] cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.

- 1. How did this decision define liberty?**
- 2. Why do you think the Court notes that it does not judge the wisdom of laws touching on economic problems, business affairs, or social conditions?**
- 3. What do you think the Court means by “Without those peripheral rights, the specific rights would be less secure”?**
- 4. What do you think the Court meant by “penumbras, formed by emanations”? Are these equal to enumerations? Explain.**

DOCUMENT 0

***Lawrence v. Texas* (2002), Majority Opinion**

Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.

- 1. How did this decision define liberty?**
- 2. What types of rights were not listed in the definition?**

DIRECTIONS

Read the Case Background and Key Question. Then analyze the Documents provided. Finally, answer the Key Question in a well-organized essay that incorporates your interpretations of the Documents as well as your own knowledge of history.

CONSTITUTIONAL PRINCIPLES

*Inalienable rights
Liberty
Limited government*