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Educational materials for Bill of Rights

In this article, Thomas Pangle explores the distinctly modern principles that predominate in the Bill of Rights, and contrasts these with principles of classical and Christian republicanism. The theory of natural rights, represented here by Montesquieu, John Locke, and William Blackstone, forms the foundation for these modern principles. Egalitarian, autonomous, individual "natural rights" are primary, and, from these, reason deduces practical "natural laws." Societies are created when men form a contract and agree to follow these rules in order to maximize collective and individual self-interest. Pangle contrasts this theory of rights with the tradition of classical and Christian republicanism, which upholds the idea of a political life dedicated to communal spiritual fulfillment according to the dictates of natural law, or natural righteousness. Rather than emphasizing individual natural rights, Thomas Aquinas and others in the classical tradition understand natural law as an innate and elevated standard of right and wrong that exists prior to all practical considerations. In this view, the chief aim of human law is to implement the natural law and cultivate virtue. According to Pangle, the bills of rights proposed as amendments, State Declarations of Rights, and the writings of the Anti-Federalists contain only echoes of the classical and Christian tradition, and our Bill of Rights is solidly rooted in the American founders' modernist understanding of individual rights and limited government.

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ALEXANDER HAMILTON

Alexander Hamilton was born on the West Indian island of Nevis in 1755. The son of an illegitimate marriage, he grew up in poverty but excelled in the reading and writing required by his job as a mercantile clerk. His captivating response to a speech by the Reverend Hugh Knox published in the *Royal-Danish American Gazette* attracted attention from several readers, and at the age of 15 he was sent to America to be formally educated at King's College (today Columbia University), where he became embroiled in literary debates between the British Loyalists and the Whigs.

During the Revolutionary War, Hamilton's great courage and leadership earned him the position of George Washington's aide. After the war, Hamilton married Elizabeth Schuyler in 1780, studied law, opening a practice in 1783, and began his political career. He served in Congress from 1782-1783 and was elected to the Continental Congress. In 1784 he established the Bank of New York.

Hamilton was instrumental in prompting the Annapolis Convention of 1786, where he helped to draft the proposal for the Constitutional Convention of 1787. From 1787-1788, Hamilton co-authored the Federalist Papers with James Madison and John Jay, and in doing so he helped establish the foundational tenets of American political philosophy.

In Washington's presidential cabinet, Hamilton served as the first Secretary of the Treasury. During this time he wrote his *Report on the Public Credit* (1790), *Report on a National Bank* (1790), and *Report on Manufacturers* (1791). Hamilton also became the leader of the Federalists, though he did not favor political parties. Hamilton remained an advocate of neutrality in American foreign affairs.

In 1795, Hamilton resigned from his position as secretary. He served briefly in the military from 1798-1800. A longtime rivalry with Aaron Burr, whose ambitions Hamilton perceived as dangerous to the Union, provoked a duel between them in 1804. Hamilton was mortally wounded and today lies buried in Trinity Churchyard.

To read more about Hamilton's life and works, please click here.

PATRICK HENRY

Patrick Henry was born in Hanover County, Virginia in 1736. His laziness as a child continued into early adulthood; he failed to become a farmer like his father and could apply himself neither to studies nor to business. Yet obligations to his young family after his early marriage at eighteen forced him to study for the bar exam and begin working as a lawyer. Henry's legal career ended his early lethargy. Reputed for his skills as an orator, he quickly became a successful statesman. In 1765 he was elected to the Virginia House of Burgesses, where he proposed the Virginia Stamp Act Resolutions. Though these acts effectively counted as treason against Britain, Henry brilliantly and forcefully defended them to his fellow representatives. In 1774, Henry represented Virginia in the First Continental Congress, and in 1776, he was elected the governor of Virginia. After being re-elected for three terms, he was succeeded by Thomas Jefferson, then elected again in 1784.

Henry opposed the Constitution as it was drafted in the Constitutional Convention of 1787 because he believed the new government did not give the states enough power. He declined the Secretary of State appointment offered him by George Washington in 1795, and in 1799, his poor health forced him to decline his appointment as envoy to France by President John Adams. Henry died later that year in June.

For more information about Patrick Henry, please click here.

JAMES MADISON

James Madison was born in Port Conway, Virginia in 1751. His education continued from early childhood through his graduation from the College of New Jersey (now Princeton University) in 1771. His appointment to the Orange County Committee of Safety in 1774 began his long career of political statesmanship. In the initial stages of America's founding, Madison helped to draft the first Constitution of Virginia and the Virginia Declaration of Rights. He was also elected a representative to the Virginia House of Delegates and the Continental Congress. Madison's youthful vigor and brilliance gained him attention, and soon earned him the opportunity to assist the drafting of the Constitution.

A member of the Constitutional Convention in 1787, Madison threw himself wholeheartedly into researching the history of political structures across the world. In his endeavor to discover why certain republics had failed, he concluded that the current Articles of Confederation could not protect the Union against states' interests. At the Convention, Madison argued for key propositions that eventually became part of the Constitution, including legislative representation by population, the necessity of checks and balances between the branches of government, and the importance of a strong national executive. To bring about ratification for the Constitution from the states that offered the most resistance, Madison co-authored the famous Federalist Papers with Alexander Hamilton and John Jay (1787-1788).

Madison succeeded Jefferson as the fourth president in 1808. He led the country through the War of 1812, and though the British managed to burn the U.S. Capitol building and the White House, the period of rebuilding that followed the war became one of economic growth and continued westward expansion. After retiring from government in 1817, Madison continued to play an active role in American politics. In 1819 he started the American Colonization Society, which he dedicated to freeing slaves and bringing them to West Africa. He attended the Virginia Constitutional Convention in 1829. In 1836, he died at Montpelier and is now buried at the Madison Family Cemetery.

To read more about Madison's life and works, please click here.

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amendment:

a formal change or addition to a legal document

Anti-Federalists:

In the debate of 1787-1788 surrounding the ratification of the U.S. Constitution, they opposed ratification because they worried that the constitution gave too much power to the national government. They advocated for the Bill of Rights. Leaders included Patrick Henry and George Mason.

executive powers:

the powers of the executive branch to enforce the laws as written by the legislature and interpreted by the judicial system

Federalists:

The proponents of the Constitution and a stronger national government. Leaders included Alexander Hamilton, James Madison, and James Wilson.

hedonism:

the philosophy that holds some notion of pleasure to be the only or the highest good

legislative powers:

the powers of the legislative branch of government to make and change laws

natural laws:

rules, knowable by reason without the aid of supernatural revelation, determining what is fundamentally right and wrong in accordance with human nature, hence everywhere and always

natural rights:

absolute entitlements that all men have by virtue of their human nature. The new natural rights theory was first developed by Hobbes, Locke, Spinoza, and Montesquieu, and was later popularized by William Blackstone.

objective norms:

universal, unchanging standards for moral action

Pentateuch:

the first five books of the Hebrew Bible or Christian Old Testament

social compact:

agreement formed among men who come together and surrender to the government some of their natural rights to secure their own “comfortable preservation”. The government will in turn ensure collective peace and security.

state of nature:

spontaneous expression of man’s individual, autonomous natural rights when he is competing with other men to ensure his own security

virtue:

a habit of character conducive toward achieving one's natural end; a habitual and firm disposition to do good.

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I. The Bill of Rights

A. Product of debate between Anti-Federalists and Federalists about the ratification of the Constitution

B. Rooted in modern republican principles that are in profound contrast to principles of classical and Christian republicanism

II. Modern natural rights

A. Egalitarian, autonomous, and individual; focused on self-interest

B. Tamed by "natural laws" made to foster peace and maximize collective and individual self-interest in a society

III. Classical/Christian natural law

A. Innate, high standard of "right" or righteousness that dictates obedience to self-transcending civic duties and virtues

B. Regulates a political life that is dedicated to communal spiritual fulfillment

IV. Texts illustrating relation of Natural Law theory to American Bill of Rights

A. Classical, Greco-Roman, natural right republicanism

1. Aristotle, Cicero, Plutarch
2. Illuminate American founders' commitment to modern, individualistic republicanism by way of contrast

B. Christian political theology

1. Aquinas
2. Natural law is known to unassisted reason, articulated in the Ten Commandments, and applies to everyone. It is implemented by human law to cultivate virtue, and supplemented and clarified by revealed divine law.
3. Applied to colonial America in the communal, religious, virtue-oriented character of original American republicanism (William Penn)

C. New natural rights

1. Montesquieu, Locke, Blackstone
2. Man in the original "State of Nature" is isolated, lacking fixed or shared fulfilling goals,

but seeking to flee the pains of hunger and death. He is thus in conflict with others who have the same needs.
3. Foundation of morals is now hedonism. Humans share fundamental needs for "comfortable preservation"
4. Individual gives over his right to provide for his own security to the government that will in turn ensure the peace and security of all. Natural law binds individuals to this social compact and prevents the government's abuse of its powers

D. Founders' re-articulation of philosophic basis for bill of rights

1. State Declarations of Rights, Anti-Federalist and Federalists writings
2. Contain echoes of classical tradition, but in these documents and the Bill of Rights, these are reworked into a modernist meaning

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Part I. Basic Interpretation of the Bill of Rights and Related Documents

If you are interested in learning more about the Bill of Rights after reading Professor Pangle's essay, please go to the Primary Source Documents to read the full text of the Bill of Rights, and other related documents mentioned in the essay. Biographies of the Anti-Federalist proponents of the Bill of Rights – Patrick Henry—as well as the Federalist opponents – James Madison and Alexander Hamilton – are also available. As you go back to the primary sources, keep in mind the following questions:

1. According to Locke and Blackstone, what are natural rights? Who possesses them? To what exactly do men have a natural right?
2. Examine the relationship between natural rights and natural laws, according to Locke and Blackstone. Does one come before the other? Why does Pangle claim that these natural laws are misleadingly named? Where do these laws come from? What is their function in society?
3. Pangle contrasts the theory of natural rights with the idea of natural righteousness or natural law upheld by classical and Christian republicanism. According to Cicero, what is law? Where does it come from? How does Cicero distinguish between the "supreme law" and written laws? What happens if someone disobeys the supreme law?
4. In the new natural rights tradition of Locke and Blackstone, what is the relationship between natural rights and government? Do men have natural rights before they live in a political society? How is government formed, and what is its purpose? Why is a written Bill of Rights so important for a government thus conceived, in contrast to a state such as Lycurgus's?
5. Examine Penn's understanding of law in his Preface to the Frame of Government. For whom is law primarily made? What is most important for a good government? What is government's relationship to religion?
6. List the rights that are explicitly enumerated in the state constitutions and ratifying conventions. Does the Bill of Rights significantly add to these rights, or simply make them more specific?

Part II. Connections to Other Thinkers

In order to understand the Bill of Rights, and the debate surrounding it, it is important to place it in its

proper context. The Bill of Rights is an expression of distinctly modern principles, but participates in the tradition of debate between classical natural law and modern natural rights philosophies. As you learn more about the Bill of Rights, consider how it expresses continuity with or departure from the ideas of earlier thinkers.

1. Aristotle quotes the proverb that “in justice is all of virtue taken together.” Why does he argue that justice is supreme among the virtues? What is Aristotle’s view of man’s fundamental relationship to society? Is Locke’s understanding of man more individualistic, or not? Is the virtue of justice implicitly upheld by a theory of natural rights, since justice includes giving every man his due, or do you think that the Bill of Rights is too individualistic to actually cultivate this virtue?
2. Classical, Christian, and modern political thinkers each have an explicit understanding of the purpose of law and government. a) Using quotes from Aristotle and Aquinas, Locke and Blackstone, clearly explain these distinctions. Do these thinkers disagree primarily about the proper extent of the government’s jurisdiction, or about the nature of what Aquinas calls “the common good?” b) Aquinas makes the strong claim that “the common good cannot flourish, unless the citizens be virtuous.” What would Locke and Blackstone say to this? What does Aquinas mean by virtue here?
3. According to Pangle, the excerpt from William Penn applies the Christian version of classical republicanism to colonial America. a) Where do you see a Thomistic framework in the background of Penn’s own Frame of Government? Compare Penn’s understanding of the purpose of law and his view of government’s relationship to religion with that of Thomas Aquinas. Does Penn break away at all from the Thomistic tradition?
4. Montesquieu calls Mr. Penn “a true Lycurgus.” Compare Penn’s Preface to both Plutarch’s and Montesquieu’s picture of Lycurgus’s state. Is Penn a true Lycurgus? Penn does not think that freedom and obedience are opposed to one another. Explain his view. Would Lycurgus agree? Would Locke?
5. According to Aristotle, what does “natural” mean? What does Aristotle mean when he says that even what is by nature is changeable? How does he distinguish between natural and conventional? How does Aquinas take into account this distinction in his discussion of precepts that admit of dispensation, and precepts that do not? Are the new natural rights as articulated by Locke, Blackstone, and the states’ declarations of rights properly called “natural,” according to Aristotle’s definition?
6. How does Montesquieu critique classical and Christian republicanism even while using its language? What does he think of virtue and its relationship to government?
7. Demonstrate how the writings of the federalists and the state constitutions and amendments apply modern principles articulated by Locke and Blackstone. Although they are not included in the documents accompanying the Bill of Rights, Pangle also attributes the new natural rights theorizing to Hobbes and Spinoza. How do the state constitutions and amendments, as well as the writings of the federalists, incorporate the ideas of these two thinkers? Give specific evidence.
8. Pangle argues that although the state constitutions and amendments contain “glimmers and echoes of the classic tradition, these limn only more starkly the basically modernist meaning of our Bill of Rights.” Where do you see glimmers of classical and Christian republicanism in these documents? Do they include any notion of natural law as it was classically understood?

Part III. Critical Analysis

With a basic understanding of the Bill of Rights, let us examine the document, and the debate surrounding it, more critically. How does the introduction of a Bill of Rights strengthen and weaken the central government? How does it affect our understanding of the rights enumerated in the Constitution? Are there implications of the Bill of Rights that its proponents or detractors could not foresee? Use the

questions below as a guide:

1. Although the Federalists and the Anti-Federalists fiercely debated the ratification of the Constitution, the Bill of Rights represents their compromise. How does the Bill of Rights both strengthen and weaken the central government?
2. Locke distinguishes the absoluteness of rights from the uncertainty of their enjoyment. a) What is important about this distinction? What do Locke and Blackstone mean when they say that rights are “absolute”? b) The Anti-Federalist Papers describe how, in the social compact, “a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved…But it is not necessary, for this purpose, that individuals should relinquish all their natural rights.” In the American Constitution, which rights are surrendered, and which are preserved? Can absolute rights really be absolute if they can be surrendered?
3. Blackstone speaks about rights as opposed to duties. Human laws define and enforce man’s rights, but it is not expected that they should explain or enforce man’s duties. a) Would Aquinas say that someone can have rights without also having duties? Would Penn? Refer to Penn’s understanding of the relationship between freedom and obedience to the law to defend your argument. b) Consider again the tension inherent in the social contract: humans must relinquish some of their “natural liberty” in order that certain natural rights of all may be preserved. Do you think it is possible for laws to enforce rights without making any reference to man’s duties? If Locke is right, and man’s enjoyment of his natural rights is not certain, the duty to preserve these rights must lie somewhere. If individual rights do not include duties, as in Blackstone’s model, whose responsibility is it to preserve man’s rights? Individuals themselves? The government? c) In a similar vein as Blackstone, Webster argues that virtue will never be a permanent support of government. How would Aquinas and Penn respond? How do Webster and the Founders propose to ensure the government’s stability, if not by virtue? Do you think that classical/Christian republicanism or modern republicanism offers a more stable and effective model for government? Explain your choice.
4. Aristotle and Locke offer very different views of man, especially regarding his fundamental relationship to political society. If Locke is right about man’s natural tendency to individualism and competition, do you think this should discourage the public support of virtue, or encourage it?
5. The Bill of Rights clearly fits within the modern framework of Locke and Blackstone, but perhaps it need not imply their philosophic principles. a) Would Aquinas agree that man has natural rights that should be defended? Would Cicero? Give evidence to support your claim. b) Aquinas identifies natural right with natural law, while Locke proposes that laws be practically derived from a multitude of natural rights. Is the order of derivation important? c) Even if classical and Christian republicanism does leave room for a theory of natural rights, is it significant that the American constitution requires a written Bill of Rights to safeguard these? Does the promulgation of the Bill of Rights imply a modern social compact understanding of government? Would a written Bill of Rights be useful in Penn’s government? Do you think that it would be necessary?
6. Pangle claims that the only morality that modern “natural laws” are built upon is hedonism. Explain his argument. Do you agree?

Part IV. Contemporary Connections

The Bill of Rights may have resulted from a compromise between the Federalists and Anti-Federalists in their fierce debate about the Constitution, but the document remains contentious to this day. Let us not turn to some contemporary issues that may shed light on the legacy of the Bill of Rights in our society:

1. In the case of *District of Columbia* v. *Heller* (2008), Scalia traces the 2nd Amendment to William and Mary's assurance in the English Bill of Rights (1689) that Protestants would never be disarmed. The right of Americans to keep and bear arms has as its predecessor a right granted during the peculiar circumstances of England's Glorious Revolution. a) Does the particular historical context of the right enumerated by the 2nd Amendment say anything about its universality? The right to keep and bear arms is not mentioned in the state constitutions or amendments. Are there some rights that are universal, and others that are not? In today's context, do you think that the Bill of Rights should include rights that may not be universal, but are still important to safeguard? If so, why should some rights be included, and others not? Does the 9th Amendment solve this difficulty? b) Do you ever see different rights, whether or not explicitly enumerated in the Bill of Rights, come into conflict today? Would conflict between rights necessarily be problematic? Are there distinctions (such as whether they are natural rights or positive rights) might settle this difficulty?
2. Although the Federalists and the anti-Federalists debated about the strength of the central government, they were able to compromise with the Bill of Rights. It is supposed to prevent government's abuse of power, while also giving to the state a huge amount of responsibility to protect the rights of individuals. In your opinion, does the centrality of the Bill of Rights in today's legal debates limit or increase the power of the national government?
3. Pangle claims that natural rights are ensured especially through "limitless, competitive acquisitiveness." Could the Bill of Rights be promulgated in a non-capitalist society? Is capitalism rooted in Locke and Blackstone's understanding of man and government, or do you think that it is simply an economic system that could flourish in the government of Penn's Preface, for example?
4. Pangle claims that modern "peacefully competitive commercial societies…de-legitimize the political cultivation of spiritual fulfillment." The Virginia Declaration of Rights states

   that Religion "can be directed only by reason and conviction," and "all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other." Do you think that the separation of church and state necessarily de-legitimizes the political cultivation of spiritual fulfillment? a) As Americans who respect the separation of church and state, do we automatically limit the common good to collective material well-being? Do you still see the political cultivation of virtue and spiritual fulfillment, even in contemporary America? If not, is it the fault of separation between church and state, or are there other factors at work?

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