

**Topic:**

Constitutional Tension:  
Defendant's Rights v. Rights  
of Society

**Time:**

3-4 class  
periods

**Historical**

**Period:**  
Modern

**Core:**

Gov. 6210-0201

**Objectives:** Students will:

1. Understand the background to the rights found in the Bill of Rights.
2. List the rights of a defendant in a court of law.
3. Learn to apply the rights as stated in Amendments 1, 4, 5, 6, and 14.

**Procedure:****Day 1**

1. Introduction Activity: Ask the students to list the rights they believe they have. Make a list of the answers the students wrote down.
2. Using Handouts 1 and 2: Magna Carta and John Locke, have students read in class. Discuss the rights found in these documents.
3. Read aloud the first two paragraphs of the Declaration of Independence. Discuss the rights found there. What do these rights imply?
4. Read aloud Amendments 1, 4, 5, 6, and 14. What rights are given in these Amendments? What do they really mean?

**Day 2**

1. Read and discuss Handout 3: Constitutional Tension. Have the class examine the Constitutional Tension Worksheet questions. These are the questions that the students will be asking themselves in each hypothetical case.
2. Instruct the class that 1/3 of the class will be defending the rights of the individual, 1/3 of the class will be defending the general public's rights, and 1/3 will be judges who will decide which side's argument is stronger. Both sides will argue before the judge why their point of view should be considered.

**Handouts/Worksheets:**

1. Handout 1: Magna Carta
2. Handout 2: John Locke
3. Handout 3: Constitutional Tension
4. Handout 4: Hypothetical Cases 1-11
5. Answer Key Hypothetical Cases 1-11

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### **Procedure continued**

3. Divide the class into groups of three. Have them line up in three straight lines. Have the 1's be the defense attorney or the attorney for the individual's rights. Have the 2's be the prosecution or the public's rights attorney. The 3's will be the judges. Send the first person in each line to a spot and hand them a case. Do the same thing with the rest of the students. Cut up Handout 4: Hypothetical Cases and distribute one to each group. Make sure each group has a case. Tell the judge to give each side five minutes to prepare. Each person in the group will answer the questions found in Handout 3: Constitutional Tension. Each attorney should keep in mind which side he/she is defending. After the five minutes, each side argues the case. The judge may ask questions. Each side may have a rebuttal. This should take about ten minutes. The judge then makes her/his decision.
4. After all groups have concluded, have them remain in their groups and discuss their cases with the class. The attorneys should describe the case, and the judge should state his/her opinion of the case. If the class wishes to comment on the particular case, allow them a few minutes. Then, the teacher will reveal the real case and read the Supreme Court decision on the matter using the ANSWER KEY.
5. If time runs short, have each judge write down the opinion for reference during the next class.

### **Day 3**

1. Continue with step 3 from day 2, if needed.
2. Follow-up activity: Discuss public's v. defendant's rights. How much do they conflict? Can the sides work together? How much give and take is in our system?

### **Alternate Activity**

Using the questions from day 3, #2, write a group or individual essay on the activity; this should also include an evaluation of the activity.

This can also be a springboard for discussion of search and seizure, self incrimination, and the Exclusionary Rule.

## HANDOUT 1

### MAGNA CARTA

Angered by the unjust rule of King John, English nobles presented him with a petition in 1215. The Magna Carta (or great charter), approved by King John at Runnymede, contained 63 articles limiting the monarch's power and granting certain rights to his subjects. It became an important symbol of political freedom and laid the foundation of modern constitutional government.

John, by the grace of God, king of England . . . to his . . . faithful subjects, greeting. Know ye, that we . . . have . . . by this present Charter confirmed, for us and our heirs forever:

1. That the English church shall be free, and shall have here rights entire, and her liberties inviolate; . . . that the freedom of elections, which is reckoned most important and very essential to the English church, we . . . did by our Charter confirm . . .
12. No scutage (tax paid by nobles to avoid military service) or aid (tax) shall be imposed in our kingdom, unless by the general council of our kingdom.
14. And for holding the general council of the kingdom concerning the assessment of aids (taxes), . . . we shall cause to be summoned the (clergy) and greater barons of the realm, singly by our letters. And furthermore, we shall cause to be summoned generally . . . all others who hold of us in chief (their subjects), for a certain day . . . and to a certain place . . . and summons being thus made, the business shall proceed on the day appointed, according to the advice of (those) present . . .
36. Nothing from henceforth shall be given or taken for a writ (order) of inquisition (questioning) of life or limb, but it shall be granted freely, and not denied . . .
39. No freedom shall be taken or imprisoned, or (dispossessed), or outlawed, or banished, or in any way destroyed, nor will we pass upon him, nor will we send upon him, unless the lawful judgement of his peers, or by the law of the land.
40. We will sell to no man, we will not deny to any man, either justice or right.
41. All merchants shall have safe and secure conduct to go out of, and to come into, England, and to stay . . . for buying and selling . . .
60. All the . . . liberties, which we have granted . . . all people of our kingdom, as well clergy as laity, shall observe. . . toward their dependents.
61. . . . willing to render (all of the above) firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five and twenty barons of the kingdom, . . . who shall . . . hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present Charter confirmed.

## HANDOUT 2

### **JOHN LOCKE**

English political philosopher  
from his *OF CIVIL GOVERNMENT*

*Though in a constituted commonwealth, standing upon its own basis, and acting accordingly to its own nature, that is, acting for the preservation of the community, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate; yet the legislative, being only a fiduciary (based on public trust) power to act for certain ends, there remains still “in the people a supreme power to remove or alter the legislative,” when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end; whenever that end is manifestly neglected or opposed, the trust must necessarily be forfeited, and the power to devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body even of their legislators, whenever they shall be so foolish, or so wicked, as to try and carry on designs against the liberties and properties of the subject . . . and thus the community may be said in this respect to be always the supreme power.*

## HANDOUT 3

### CONSTITUTIONAL TENSION

#### An Introduction

For over 200 years, the United States has had a Bill of Rights, a series of fundamental liberties afforded all citizens. These rights have created tensions and conflicts because individual liberties often clash with the *public good* or the *community security*. If the Second Amendment gives me the right to own a gun, I may jeopardize the community's security by robbing a liquor store or committing some other violent act. During wartime, freedom of the press may be seen as a threat to the national security (or to the security of the troops involved, as in the war in Iraq).

This tension can be referred to by many names -- *liberty vs. security*, *guaranteeing due process vs. controlling crime*, etc. Regardless of the name given, the American public, including students, is becoming increasingly more aware of this tension. The Supreme Court is having to examine the rights of the accused person weighed against the rights of the rest of the society, especially the victims of crime.

The purpose of this exercise is to examine this constitutional "*tension*." We will debate a number of different hypothetical cases, and for each case, you should identify the conflict between the constitutional right involved as well as the larger "public good" being served using the Constitutional Tension Worksheet. Argue these points in your group with your impartial "*judge*," who will render a decision and give reasons for it. Be prepared to share your arguments and decision with the class.

## CONSTITUTIONAL TENSION WORKSHEET

1. What are the important facts of this case?
2. What is/are the constitutional issue(s) involved? What Amendment is at issue?
3. What is the larger *public good* that may be threatened by the individual's liberty?
4. What is the judge's decision? What is the reasoning behind this decision?

## HANDOUT 4

### HYPOTHETICAL CASES 1-11

Cut up and give one to each group.

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#### CASE #1

In 1982, Cindy Warmeier became the editor of the school newspaper. Rather than doing standard features, she initiated a comprehensive journalistic study on two issues deemed to be important by her and the faculty journalism advisor. These issues were Teen Pregnancy and the Effects of Divorce on Students. Many sensitive issues were brought up in the articles including birth control, parental irresponsibility, and psychological problems.

The school newspaper, the *Rainbow*, was designed to give students an opportunity to practice journalistic skills. It pledged to follow the First Amendment except “. . . *language that... substantially interferes with the requirements of appropriate discipline can be . . . prohibited.*”

The principal of Woodhazel High School, Reynold Roberts, ordered both features cut. He objected to the interview with the pregnant girls feeling that their discussion of teen-age sexuality was inappropriate for a high school audience. In addition, he felt the article on divorce was not journalistically sound and might invade the privacy of certain students. Roberts did not tell the newspaper staff of his decision until after the paper had come back from the printer. At this point Warmeier decided to sue, claiming that the *Rainbow* was a “public forum” for students where legitimate expressions of journalistic effort can be read and discussed.

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#### CASE #2

The Ku Klux Klan planned a march through the streets of South Atlanta, a predominately African American community. Leaders of South Atlanta quickly passed laws prohibiting such a march, even though the First Amendment guarantees such marches if they are “*peaceful.*” Civil liberty groups, such as the American Civil Liberties Union, found themselves supporting the rights of a group, the KKK, that pledges itself to depriving others of their civil rights.

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#### CASE #3

A radio station in New York broadcast a comedy routine by one of its DJs entitled, “*Words I Can’t Say On The Radio.*” He repeatedly used seven words referring to the human body. A warning was given prior to the broadcast. The broadcast was aired in the middle of the day. The FCC found the broadcast to be offensive and fined the station’s owner, the Pacifica Foundation. The Pacifica Foundation claimed that the 1934 Communications Act allowed such expression.

#### **CASE #4**

The Amish community is a religious community that lives a very simple lifestyle. Many older Amish felt that the public schools, especially after the eighth grade, influenced their young people in a negative way. More schooling exposed their young people to “worldly” ideas that conflict with the traditional Amish values. Jonas Lader refused to allow his son, Charles, to attend ninth grade in the Indiana Public Schools. He preferred to teach Charles in the home. The state of Indiana tried various remedies to persuade the Laders but finally decided prosecution was the only way to deal with this problem.

The state of Indiana ordered Jonas Lader jailed and found him in contempt of court.

**Q.** Besides the First Amendment, what reasons can you think of for the Amish to wish their young people to have home schooling?

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#### **CASE #5**

Debbie Chartman’s apartment was requested to be searched by the police in Cleveland, Ohio, when they felt Chartman was sheltering a suspect involved in a bombing. Chartman called her attorney, who told her to keep the police out if they didn’t have a warrant. The police showed Chartman a piece of paper, claiming it was a search warrant. Chartman seized the piece of paper because she knew that it was a worthless piece of paper. The police continued their “*warrantless*” search and found a box containing some sketches Chartman had done of a nude human body. In addition, the police also found a sexually descriptive book. Chartman was arrested and sentenced to a seven year term for possessing obscene materials.

The Fourth Amendment to the U. S. Constitution protects people from violations against unreasonable searches and seizures in FEDERAL cases only. Since this was a purely state matter, the Ohio Supreme Court upheld the conviction.

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#### **CASE #6**

Eddy Woodson was reported to be a drug dealer. A federal agent had heard from an informant that a large shipment of narcotics was on its way to Woodson’s house. The agent was also aware of the neighbors’ complaints to the police about the numerous cars that cruised through the neighborhood at all hours of the night and stopped at the Woodson place. The police staked out the place and found this was true. Yet, the police knew that would not be enough evidence to actually obtain a search warrant for Woodson’s place. In addition, their informant also was considered unreliable. The police had to find another way to get evidence for a search warrant.

A police investigator asked the trash collector to give her the garbage bags in front of Woodson’s house. The trash collector picked up the garbage and before he put it with the rest of the neighborhood’s garbage, he gave it to the police investigator. The investigator then searched the garbage and found items related to the narcotics trade. This gave the police enough evidence for a search warrant. When the police entered Woodson’s home, they discovered hashish and cocaine. Woodson was arrested. However, the Superior Court of California dismissed the charges saying that the search of the garbage was illegal. The evidence gathered there must be thrown out.

**CASE #7**

The Amish community is a religious community that lives a very simple lifestyle. They believe that bright colors are worldly. Bright colors on a slow moving vehicle sign and the symbol itself would seem to put their faith in “*worldly symbols*” rather than in God. Many of the Amish in a rural Midwestern state believed this. Instead of using the sign, they put reflective tape on their buggies. The police then stopped the buggies and tagged them. The Amish pleaded not guilty to the charges. The courts then found them guilty and fined them. The Amish would pay the fine and continue their practice of putting the tape on the buggies. This group was arrested again, and, as repeat offenders, the judges had no recourse but to sentence them to community service and jail. The Amish claimed this state was the only state in the area that seemed to be actively prosecuting them for non-compliance. The state claimed the law held no religious bias.

**Q.** What was the danger to the state?

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**CASE #8**

Tom Smith, an indigent, was charged in Alabama with breaking into and entering a poolroom with the intent to commit a misdemeanor. This was a felony under the Alabama State law. Smith asked to have a lawyer present to assist in his defense. The state told Smith that a lawyer was only guaranteed by the court if the case involved a capital offense. Smith proceeded with the trial. He gave an opening statement, questioned the witnesses, and called witnesses on his own behalf. In the end, Smith was found guilty of the charge. He appealed the case.

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**CASE #9**

Shortly after the defendant’s (Gondolez) arrest for murder, the defendant’s lawyer arrived at the police station and asked to see the defendant Gondolez. In fact, his attorney was actually turned away at the police station because his client had not been charged formally. Gondolez requested repeatedly to see his lawyer during the preindictment hearing. The police denied his request. During the questioning, the defendant denied committing the crime. When the co-defendant was brought in, the defendant said, “I didn’t shoot Manuel; you did it.” This showed that the defendant at least knew something about the crime. Later, the defendant confessed to being involved in the murder. At no time during the questioning did the police warn Gondolez of his right to refuse to answer questions. He was convicted of murder in the criminal court of Cook County because of the incriminating statements that the defendant made. The case was appealed.

**CASE #10**

Tammy, a freshman in high school, was caught smoking in the bathroom by a teacher. This teacher took the student directly to the principal's office. Tammy denied smoking in the bathroom. The Assistant Vice Principal demanded that she open her purse. Mr. Hunter then took the purse and found the following: stack of one dollar bills, cigarette rolling papers, a small amount of marijuana, a number of empty plastic bags, and two letters that indicated Tammy was dealing drugs. Based on the evidence the Assistant Vice Principal found in the purse, the juvenile court sentenced Tammy to one year probation. Tammy appealed the court's decision.

**Q.** Why would the state want the charge to stick?

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**CASE #11**

For the second time this semester, Tom's teacher sent him to the principal's office for starting a fight. The principal explained that because of Tom's disruptive conduct he was being suspended for three days. Tom replied that he didn't start the fight. He demanded a hearing in order to question his accusers and to have his friends testify on his behalf. After listening to Tom for ten minutes, the principal concluded that Tom was lying. He told Tom that he believed the teacher's report about the fight, that this was a school and not a courtroom, and that Tom had just had his hearing. Tom replied that he was no fool, that he knew he was being suspended without due process, and that he could sue the principal for violating his clearly established constitutional rights.

**Q.** Can he?

## ANSWER KEY: HYPOTHETICAL CASES 1-11

### CASE #1: *Hazelwood v. Kuhlmeier* (1988)

The Supreme Court voted 5-3 in favor of the school and its principal, Robert Reynolds. The reasons the court gave were (a) the *SPECTRUM* was not a public forum suitable for any student expression; (b) the school's actions were reasonably related to legitimate educational concerns, and (c) the principal did not feel the articles were within good journalistic standards and thus within good educational standards.

In the dissent, the justices said that (a) the First Amendment protects school newspapers; (b) it puts schools in the position of imposing censorship which is not a lesson young people should learn.

### CASE #2: *National Socialist Party v. Skokie, Illinois* (1977)

The American Civil Liberties Union (ACLU) joined with the Nazis to argue in favor of allowing the Nazis to march in Skokie, a predominantly Jewish community. The ACLU, calling it a classic First Amendment case, successfully defended the Nazis right to march. However, the Nazis never did march in Skokie. Instead, they moved their march to downtown Chicago.

### CASE #3: *FCC v. Pacifica Foundation* (1978)

The issue in this case was the radio station's airing of a monologue by George Carlin entitled, "The Seven dirtiest Words in the English Language." This monologue used the words repeatedly.

The Supreme Court ruled 5-3 against the radio station. Their reasoning was that radio was a "uniquely persuasive presence" in the lives of Americans, especially younger ones. They said that the action was NOT a form of censorship.

In the dissent, the justices said that the government ought not to be able to determine what is offensive and what isn't. The public must have that responsibility. Much of the contemporary literature, including the *Bible*, contains words or ideas restricted by the Court.

### CASE #4: *Wisconsin v. Yoder* (1972)

The Supreme Court ruled by a 6-1 margin in favor of Yoder, citing the long history of the Amish religion and the sincere belief that high school would endanger traditional Amish values. The majority rejected the claim that home schooling could be damaging to Amish children who leave the Amish community. The majority also felt that freedom of religion was more compelling than the state's need to provide education for its young people.

### CASE #5: *Mapp v. Ohio* (1961)

This is the famous case of *Mapp v. Ohio*. This case was historic because it applied to the states the principle known as the "Exclusionary Rule." This rule states that evidence seized illegally may not be entered in a criminal trial. This protection of the rights of the accused has been extremely controversial and has been somewhat restricted since *Mapp*.

The Supreme Court ruled 6-3 that the Cleveland police had violated Ms. Mapp's Sixth Amendment rights due to their illegal search. Ms. Mapp was exonerated.

- Q.** Would your opinion in *Mapp* be different if the police had made an error in their search, but the error was made in good faith? (In other words, an honest mistake?)

ANSWER KEY continued

**CASE #6: *California v. Greenwood* (1988)**

Billy Greenwood was the suspected drug dealer in this case. When the State of California asked the Supreme Court to review the case, the Supreme Court reversed the Superior Court of California's decision. In a 6-2 vote (Kennedy did not participate), the Court held that the Fourth Amendment does not prohibit the warrantless search and seizure of garbage that is left for collection on the curb in front of a house. The case was sent back to California and with the evidence being legal, Billy Greenwood was found guilty.

**CASE #7: *Minnesota v. Hershberger* (1990)**

This case was returned by the U. S. Supreme Court to the Minnesota Supreme Court after the U. S. Supreme Court decided a similar case (*Smith*) that would have limited the rights of the Amish to use reflective tape. The U. S. Supreme Court instructed the Minnesota Supreme Court to decide the case, basing their decision on the reasoning of the *Smith* case. However, the Minnesota Supreme Court also used the Minnesota Constitution in its consideration of the *Hershberger* case. The Minnesota Constitution protects religious practices if the government has a lesser restrictive alternative that can be used to satisfy the same public need. In this case, the use of reflective tape was less restrictive than the slow-moving vehicle sign, and it was deemed effective. The Minnesota Supreme Court ruled for the Amish. The result of this case is that Minnesotans have stronger protection of their rights to practice their religions under the Minnesota Constitution than they do under the U. S. Constitution.

**CASE #8: *Gideon v. Wainwright* (1963)**

Gideon wrote the Supreme Court of the United States believing that justice had not been served. He believed that he truly had the right to a lawyer. The Supreme Court took the case. The Supreme Court, applying the Sixth and Fourteenth Amendments, felt that in all criminal prosecutions, the accused should have the right of counsel. They also felt that an indigent defendant in a state court has the right to have counsel and the right to have counsel appointed for him. Of course, the court left it up to the state to define what an indigent person is.

Gideon went back to Court. In his new trial with his court appointed lawyer, he was found not guilty.

**CASE #9: *Escobedo v. Illinois* (1964)**

The United States Supreme Court in a 5-4 decision reversed the decision. The majority opinion said that because the police focused on the accused as a suspect rather than general investigation, not honoring the defendant's request to consult with his lawyer was denying his right to the assistance of counsel under the Sixth and Fourteenth Amendments. The Court further said that the statements given to the police without the attorney should NOT have been admitted as evidence.

## **ANSWER KEY continued**

### **CASE #10: *New Jersey v. T.L.O.* (1985)**

The Supreme Court said in this case that a student does not leave his/her Constitutional rights at the door when he/she enters school. The decision in which the justices concurred with in part and dissented in part said that the Fourth Amendment's prohibition of unreasonable searches and seizures does apply to the school. But, the school officials do not need to obtain a warrant to search a student under their authority nor do the school officials need to adhere to the requirement of "probable cause." In school, the "reasonableness standard" is the proper standard for determining the legality of searches by school officials. In other words, the search of the defendant in this case was not unreasonable. The evidence found in the purse could be admissible in court.