Bill of Rights in Action

Constitutional Rights Foundation

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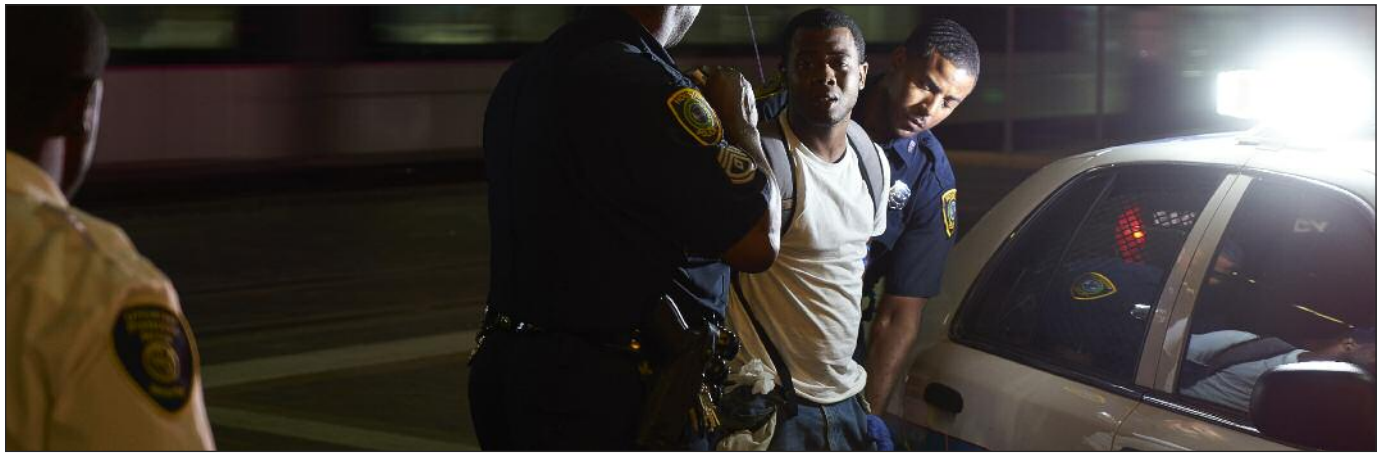
POLICE BODY CAMERAS AND THE USE OF FORCE



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Police arresting a young man in Houston, Texas.

Recent police actions resulting in the deaths of African-American men have put the spotlight on the police use of force, beginning with the fatal shooting of Michael Brown and the protests that followed in Ferguson, Missouri, in 2014. These incidents, some recorded on cellphone cameras, have raised questions about police use of force and whether police should wear body cameras to record their interactions with citizens in the community.

Policing is a dangerous job. Officers make arrests, respond to calls, deal with criminal suspects, and even intervene in crimes in progress. A seemingly harmless situation — walking around the corner on a street, pulling over a motorist — can turn perilous, even deadly, in an instant. According to FBI data, over the last 10 years, 511 police officers have been killed in criminal assaults, more than 50 a year on average.

Since their job entails dealing with dangerous situations, police are authorized to use force when enforcing the law. But limits are placed on how much force they may use. Department regulations, state and federal law, and even the U.S. Constitution limit the police's use of force.

As a general rule, police may use whatever level of force is "reasonable and necessary" to make an arrest. For instance, clubbing a passive, unarmed person who has shoplifted a sweater from a store would most likely not be reasonable. Pepper spraying an unresisting suspect is not necessary.

Special rules apply to the use of deadly force. Deadly force is commonly defined as "force that poses a high risk of death or serious injury to its human target." In general, police may only use deadly force when a suspect is threatening immediate death or serious bodily injury to the officer or others *and* deadly force is necessary to stop the threat.

Courts have ruled that an officer who uses deadly force *does not have to be certain* that a suspect will cause death or serious bodily injury. The justifiable use of deadly force depends on the facts that existed from the "perspective of a reasonable officer on the scene."

CRITICAL CONCERNS

This edition of Bill of Rights in Action looks at issues of critical concern. The first article looks at the issue of whether police should wear body cameras. The second article explores the argument among abolitionists over whether the Constitution was a pro-slavery document. The last article profiles Voltaire, the great Enlightenment thinker, and focuses on his campaigns for religious toleration.

Current Issue: Police Body Cameras and the Use of Force
U.S. History: Abolitionists and the Constitution
World History: Tolerance: Voltaire and the Spirit of the Enlightenment

Carlton Martz wrote the article on police use of force along with outgoing *Bill of Rights in Action* editor Bill Hayes and incoming editor Damon Huss. Damon Huss wrote on the abolitionists. Bill Hayes wrote the article on Voltaire along with CRF staffer Keith Mataya.

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Chief Ken Burton of the City of Columbia Police Department in Missouri, addresses the Citizens Police Review Board. The board provides an external and independent process to review allegations of police misconduct.

For many years, most American police followed the old English common law rule that a "fleeing felon," escaping from a crime, may be stopped with deadly force. But this changed in 1985 in *Tennessee v. Garner*. The U.S. Supreme Court ruled that police may only use deadly force when necessary to prevent the escape of a *dangerous* fleeing suspect, that is, a suspect who the pursuing police officer "has probable cause to believe . . . poses a threat of serious physical harm, either to the officer or to others."

If police officers are alleged to have used excessive force, they face investigation and potential punishment by their department, civil lawsuits and citizen complaints, and in cases of extreme misbehavior, criminal charges. Depending on the circumstances, criminal charges can range from assault under color of authority or assault with a deadly weapon, to manslaughter or murder. State or local police officers can, in rare instances, face federal charges if they have been accused of willfully violating the victim's civil rights.

Except in the most blatant cases, it can be difficult to successfully prosecute a police officer for using excessive force. Since police are authorized to use force, the prosecutor does not merely have to prove that the officer assaulted the victim. The prosecutor must show that the officer used *excessive* force. Many of these incidents happen at night with few witnesses other than the victim and the police, and juries tend to side with the police.

Some critics point out that prosecutors work with police on a daily basis and depend on officers to investigate crimes and testify at trials. Since police are part of the "prosecution team," critics charge that prosecutors have a conflict of interest in pursuing cases against police. These critics call for states to use special, independent prosecutors who do not work with local police to handle allegations of excessive force.

Most prosecutors and others disagree about the need for a special prosecutor. Frank Sedita of New York, the Erie County District Attorney, has stated, "We view ourselves as an independent agency that is called upon, on a daily basis, to review the work of the police . . . . In my office, there's not a week that goes by that there's not some disagreement between prosecutors and police."

Police and the Public

Instituting a special prosecutor is one proposal to address community concerns about police use of force. Other proposed policies, reforms, and practices are designed to address these concerns, but also to help improve relations and resolve conflicts that arise between police and local communities.

Many police departments have instituted programs to help prevent conflicts and raise community awareness of the difficulties faced by police officers. These programs usually do not produce controversy. Police "ride along" programs allow citizens to accompany police during their daily routines. Citizen police academies provide classes conducted by police officers to educate community members about their local police department's history, structure, and investigative procedures.

Many police departments have adopted community policing. In this preventive approach to law enforcement, officers work within the community, building relationships and trust with members of the community by helping them solve problems that otherwise might lead to crime. An act of Congress in 1994 provided funding for Community Oriented Policing Services (COPS). The objective of COPS is to assist local law-enforcement agencies in hiring more officers to effectively engage in community policing nationwide.

Citizens have also turned to civil lawsuits in alleged cases of excessive force. Families of those who have been killed have sued police departments and

city governments. For example, Eric Garner, a 43-year-old African-American man was killed while in police custody in New York City in 2014. Garner's family sued the city after a medical examiner determined that a police chokehold contributed to Garner's death. The family settled with the city for $5.9 million in 2015.

Many have advocated a more vigorous oversight of police practices by civilian (or citizen) review boards, though these can be highly controversial. A civilian review board is composed of community members who investigate complaints of police misconduct or excessive use of force. Supporters of civilian review boards argue that unlike the special prosecutor or a police department's own internal investigations office, a civilian review board is independent and, therefore, fairer in its treatment of citizen complaints.

Critics of civilian review boards argue that they are not, however, fair to the police officers involved. Even with programs like COPS and other trust-building measures, police often feel that the public does not have a clear understanding of the day-to-day dangers and difficulties of police work. For this reason, they argue that police officers themselves are better informed and more able than civilians to investigate alleged police misconduct.

Police Body Cameras

As more incidents of police use of force have been caught on video by onlookers, many police departments have started to equip their officers with body cameras to record what happens in an incident. Such cameras are worn somewhere on the officer's uniform and cost several hundred dollars each.

Supporters of putting body cameras on police officers argue that video eliminates much of the uncertainty of what happened, as in the shooting of Michael Brown in Ferguson, which was not caught on video. Video can be used as evidence at trials where eyewitness accounts often differ. Video can also be used for training recruits and disciplining officers who violate department policy. In addition, body-camera video can defuse false rumors of police misconduct and build community trust by recording the difficult decisions police have to make throughout the day.

Critics of body cameras counter that they are totally under the control of the officer who decides when to turn it on and off. Others voice privacy concerns such as recording statements of a child, a rape victim, or a witness who fears retaliation from a gang. Some argue that body cameras might even erode community trust if footage is made public of people in private moments of grief or anguish at a crime scene. Body

ASU Now

Body cameras can be attached to the officer's shoulder or, as pictured above, the officer's chest area.

cameras show only one narrow view, say the critics, and do not show entirely what the officer is doing. Some are troubled that this is another step in the widespread government surveillance of Americans.

Little research has been conducted on the use of body cameras. The most noted study was done in 2012–13 in Rialto, Calif., with a police force of about 50 officers. It showed a 60-percent drop in use of force by the half of the police department that wore body cameras. Citizen complaints also fell by almost 90 percent.

The results of a study done in San Diego, Calif., in 2014–15 were more mixed. Citizen complaints fell by 23 percent, but use of force *increased* 10 percent. The study also revealed an 8-percent drop in the use of alternative control methods like pepper spray and stun guns, which some view as less dangerous than the use of firearms. The researchers called for caution in adopting body cameras until more studies have been done.

In 2015, Los Angeles became the largest city in the U.S. to adopt body cameras for its entire police force of 7,000 officers. But disagreement has erupted over the body-camera usage rules.

The most controversial issue was over the rule that required officers to view the video of their use-of-force incidents *before* writing their reports. Police officials said that viewing the video first will make sure officers write complete and accurate reports while deterring dishonesty. But those who opposed this rule argued that it gives officers a chance to shape their written reports to their advantage, leaving out important details not shown in the video.

Another controversy arose over who should have access to police body-camera video. The Los Angeles Police Department policy prohibits releasing video to the public unless authorized by the chief. The purpose of this rule is to observe privacy laws and control evidence. Critics of this rule, however, called for public release of video involving alleged police misconduct.

DISCUSSION AND WRITING

1. What are the basic rules for police using force in arresting suspects?
2. Do you think the law gives police too much, too little, or about the right amount of authority to use force? Why?
3. Do you think the local prosecutor should handle cases of local police accused of using excessive force? Explain.
4. What programs and policies are described in the article to build trust between communities and police? Do you think they are adequate? Why?
5. Do you think police body cameras are a good idea or not? Why?
6. What other recommendations, if any, would you make to reduce the killing of suspects? Explain.

ACTIVITY: A Body Camera Policy for Your Police Department

1. Form small groups to discuss and complete the template below for a body camera policy designed for the local police department. Students may want to interview local officers to get their views on the policy.
2. The groups will present and discuss their recommendations for each part of the policy and try to reach a consensus on the policy.

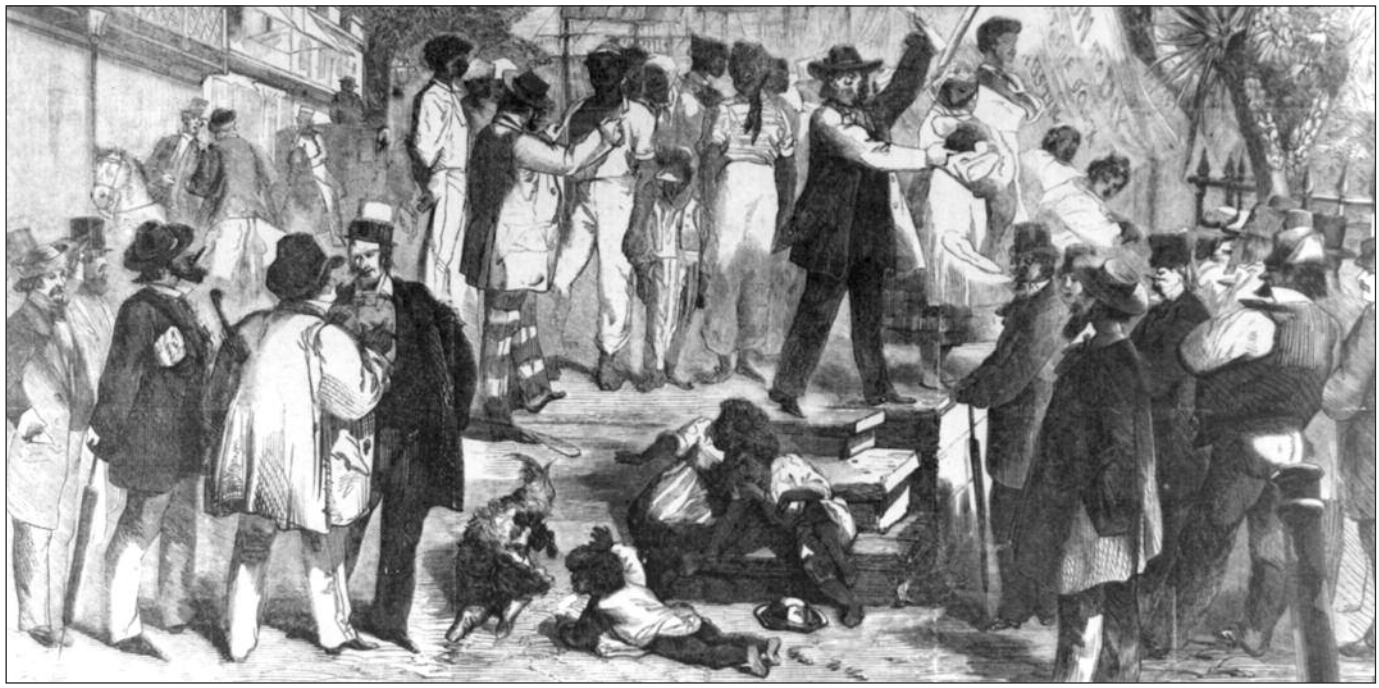
Body Camera Policy

A. What is the purpose of the police body-camera?
B. When should the body camera be switched on and off?
C. In what situations should a body-camera activation be required?
D. Which of the following a body camera activations should be prohibited or left to the officer's discretion? Why?
   — interviewing rape victims
   — searches of a home
   — searches of a person
   — interviewing minors
E. Should suspects and other persons be notified they are being recorded? Why?
F. Should officers view video before they write their reports? Why?
G. Which of the following should have access to police body camera video? Why?
   — police and criminal justice system personnel only
   — person(s) recorded
   — media
   — any interested citizen

About Constitutional Rights Foundation

Constitutional Rights Foundation is a non-profit, non-partisan educational organization committed to helping our nation's young people to become active citizens and to understand the rule of law, the legal process, and their constitutional heritage. Established in 1962, CRF is guided by a dedicated board of directors drawn from the worlds of law, business, government, education, and the media. CRF's program areas include the California State Mock Trial, youth internship programs, youth leadership and civic participation programs, youth conferences, teacher professional development, and publications and curriculum materials.

ABOLITIONISTS AND THE CONSTITUTION



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The Constitution allowed Congress to ban the importation of slaves in 1808, but slave auctions, like the one pictured here, continued in southern states in the 19th century.

Two great abolitionists, William Lloyd Garrison and Frederick Douglass, once allies, split over the Constitution. Garrison believed it was a pro-slavery document from its inception. Douglass strongly disagreed.

Today, many Americans disagree about how to interpret the Constitution. This is especially true with our most controversial social issues. For example, Americans disagree over what a "well-regulated militia" means in the Second Amendment, or whether the government must always have "probable cause" under the Fourth Amendment to investigate terrorism suspects. These kinds of disagreements about interpretation are not new. In fact, they have flared up since the Constitutional Convention in 1787. One major debate over the Constitution's meaning caused a rift in the abolitionist movement to end slavery in the 19th century.

Before the 13th Amendment was added to the Constitution in 1865, formally ending slavery in the United States, many abolitionists had argued that slavery was already inherently unconstitutional. The escaped slave and renowned author Frederick Douglass was one of them. Others, like the newspaper publisher and activist William Lloyd Garrison, disagreed and argued that the Constitution had always been a pro-slavery document.

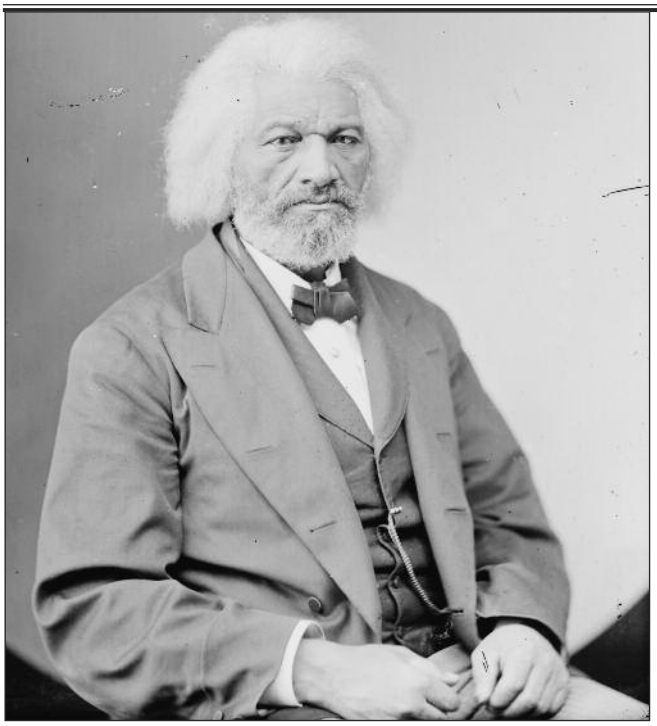
This split between abolitionists' views of the Constitution was more than a legalistic debate. Neither Douglass nor Garrison were lawyers, though each had key allies who were. The debate had primarily political origins, grounded in Garrison's deep-seated moral sentiments that attracted many followers ("Garrisonians"), but also alienated many others, including Douglass.

Garrison and Northern Secession

Motivated by strong, personal Christian convictions, Garrison was an uncompromising speaker and writer on the abolition of slavery. In 1831, Garrison launched his own newspaper, *The Liberator*, in Boston, to preach the immediate end of slavery to a national audience. In his opening editorial, he informed his readers of his then radical intent: "I will not retreat a single inch, and I will be heard!"

Garrison also co-founded the American Anti-Slavery Society (AAS) in Boston, which soon had over 200,000 members in several Northern cities. Garrison was a popular speaker at meetings of the AAS and was known for giving fiery speeches about the evils of slavery.

Garrison's editorials and speeches angered Southern slaveowners, especially those who used slaves on large plantations, or cash-crop farms for cotton, rice, and indigo. They feared that if the Northern states united to abolish slavery, then the ▶



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Frederick Douglass as photographed late in his life. New scholarship shows Douglass was the most photographed man of his time.

balance of power between the South and North in Congress would shift decidedly to the North, and slavery would be undone. For his views, Garrison was repeatedly threatened and once narrowly escaped being hanged in Boston by an angry pro-slavery mob.

Garrison's activism also polarized his fellow abolitionists. Garrison urged his readers not to vote, not to hold public office, and not to accept the authority of the U.S. Constitution as long as slavery still existed. Garrison once wrote that he wished that the Union would "crumble into dust" rather than let slavery continue.

Douglass argued that 'the intentions of the framers of the Constitution were good, not bad.'

Garrison even supported Northern secession from the United States. He believed that *disunion* between North and South would result in massive slave revolts in Southern states, like Nat Turner's revolt in Virginia in 1831. Without protection from the Union Army, Southerners would have no choice but to give up owning slaves. "No Union with Slaveholders!" became *The Liberator*'s motto.

Garrison's brand of abolitionism attracted many radicals. More moderate abolitionists, however, feared that Garrison's published criticisms of the government and even of organized religion would push abolitionism to the margins of American politics.

In 1840, two wealthy co-founders of the AAS founded a new rival organization, the American and Foreign Anti-Slavery Society, as well as a political party, the Liberty Party. Both of these new organizations supported political reform and the U.S. Constitution as the means to end slavery. Eventually, in 1854, the newly formed Republican Party would absorb the Liberty Party's abolitionists.

Douglass and Spooner: Free Citizens Under the Constitution

In 1838, Frederick Douglass escaped from slavery in Maryland. He made his way to New York, got married, and settled with his wife in New Bedford, Massachusetts. He began to attend meetings of the local abolitionist society and started to speak publicly about the cruelties of slavery and his daring escape. Garrison saw him speak and recognized Douglass' skills as a speaker.

Soon, Garrison had Douglass speaking regularly at meetings of the AAS. Over the years, both of them ventured on speaking tours throughout the North, and Garrison became a mentor to Douglass.

Douglass' fame grew. In 1845, *The Liberator* published Douglass' first autobiography, which went on to be a best-selling book. Despite his growing notoriety, Douglass had to flee to Ireland and England to be safe from his former slave master, who could legally send agents into the North to abduct him. Fortunately, with Garrison's help, British abolitionists bought Douglass' freedom.

Douglass returned to the United States in 1847 and started publishing his own abolitionist newspaper *The North Star*. He thought it was important to have a black-owned and operated abolitionist newspaper "under the complete control and direction of the immediate victims of slavery and oppression."

The North Star's editorials generally supported the Garrisonian idea of disunionism and Northern secession. But Douglass had begun feeling sympathy with the Liberty Party and the pro-Constitution ideas of others, including a prominent white Massachusetts attorney and abolitionist named Lysander Spooner.

In 1845, Spooner had published a book, *The Unconstitutionality of Slavery*, in which he argued that the Constitution's words supported liberty for all slaves. Spooner saw the absence of the words "slave" or "slavery" in the Constitution as proof of the document's anti-slavery nature.

The Preamble, Spooner argued, "does not declare that 'we, the white people,' or 'we, the free people,' or 'we, a part of the people' — but that 'we, the people' — that is, we the whole people — of the United States, 'do ordain and establish this Constitution.' "

Spooner argued that all black slaves should be as free as white women and children. "Because the whole people of the country were not allowed to vote on the ratification of the Constitution," Spooner wrote, "it does not follow that they were not made citizens under it; for women and children did not vote on its adoption; yet they are made citizens by it . . . and the state governments cannot enslave them." These were novel arguments and persuasive to Douglass. To Garrison's dismay, Douglass finally announced at an AAS meeting in 1851 that *The North Star* would no longer promote the idea of Northern secession. Douglass believed that disunion would mean the abandonment of millions of suffering black slaves in the Southern states.

He also announced that he supported the U.S. Constitution, believing that it would be the means to end slavery once and for all. His unexpected announcement caused uproar at the meeting, and *The Liberator* and *The North Star* then published feuding editorials over the direction of abolitionism.

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From L to R: Wendell Phillips, William Lloyd Garrison, and George Thompson (1851). Thompson was a British member of Parliament and abolitionist.

Garrison and Phillips: Was the Consitution Pro-Slavery?

One prominent Garrisonian was the Harvard-educated lawyer Wendell Phillips. Both Garrison and Phillips knew that the Constitution did not include the words "slave" or "slavery." But they argued that the free states made compromises with the slave states in order to get the Constitution passed in 1787, and these compromises corrupted the Constitution.

Phillips wrote a treatise, "The Constitution: A Pro-Slavery Document," in 1845, to refute the arguments of Spooner. He argued that the three-fifths clause, Congress' power to put down "insurrections" (rebellions), and the extension of the slave trade until 1808 in Article I of the Constitution were evidence of the Founding Fathers' intent to maintain the institution of slavery. (See page 8 for excerpts from the Constitution.)

Furthermore, Phillips argued that the so-called fugitive slave clause in Article IV proved the pro-slavery nature of the document. By 1846, 13 states had banned slavery but were obligated to return fugitive slaves to their slave masters under the Fugitive Slave Act of 1793. Congress passed another Fugitive Slave Act in 1850. These acts were authorized by the Constitution's fugitive slave clause.

The 1793 Fugitive Slave Act and other laws convinced Phillips that the three branches of the U.S. government had been "unanimous, concurrent, [and] unbroken" in preserving slavery ever since 1789. "Anyone who swears to support [the Constitution]," he wrote, "swears to do pro-slavery acts. . . ."

In 1854, Garrison publicly demonstrated his anger against the U.S. government and the Constitution by burning a copy of the 1850 Fugitive Slave Act at an anti-slavery picnic in Massachusetts. Calling the Constitution "a covenant with death, an agreement with hell," he burned a copy of that, too.

Douglass: 'The Constitution Encourages Freedom'

The U.S. Supreme Court's 1857 decision in *Dred Scott v. Sandford* held that black slaves were not citizens in any sense and could not sue for their freedom under the Constitution. For Garrison, this merely confirmed the corruption of the constitutional system. But Douglass believed the decision misinterpreted the Constitution, and he held firm in his constitutional support.

In 1860, Douglass outlined his pro-constitutional message in a speech to abolitionists in Scotland. In "The Constitution: Is It Pro-Slavery or Anti-Slavery?," Douglass argued, like Lysander

Spooner, that the language of the Constitution itself was anti-slavery. "The Garrisonians . . . hold the Constitution to be a slaveholding instrument," he said. "I, on the other hand, deny that the Constitution guarantees the right to hold property in man, and believe that the way to abolish slavery in America is to vote such men into power as will use their powers for the abolition of slavery."

He argued that "other persons" in the three-fifths clause could equally refer to non-citizen aliens, or immigrants, as much as to black slaves. Moreover, he argued that "instead of encouraging slavery, the Constitution encourages freedom by giving an increase of 'two-fifths' of political power to free over slave States."

Douglass also argued that the clause in Article I ending the slave trade in 1808 "showed that the intentions of the framers of the Constitution were good, not bad." The clause itself "looked to the abolition of slavery rather than to its perpetuity."

Douglass argued that the so-called fugitive slave clause did not pertain to slaves. Pierce Butler and Charles Pinckney, both delegates from South Carolina, originally had introduced the clause to refer to slaves. James Madison, a delegate from Virginia, however, "declared that the word ['slave'] was struck out because the convention would not consent that the idea of property in men should be admitted into the Constitution."

Instead, Douglass argued, the Constitutional Convention intended the clause to refer to redemptioners, or foreign-born workers, and others who had contracts for "service and labor." White indentured servants, for example, could be redemptioners, who were forced to work but only for a limited period by contract. Slaves, by definition, did not work under contracts.

Douglass offered other arguments based on the text of the Constitution. For example, the Constitution prohibits bills of attainder, which are laws that declare a person or group of people guilty of a crime without any trial. Arguing that a "slave is made a slave because his mother is a slave," Frederick Douglass argued that the prohibition on bills of attainder alone should have ended slavery immediately.

As for slave revolts, Douglass argued that the plain language of the Constitution did not include anything about slave insurrections. He also noted that the president has the authority to put down insurrections of any kind. If the U.S. had an anti-slavery president, that president could put down a "slave insurrection" by simply issuing an order ending slavery.

Later in 1860, an anti-slavery president was indeed elected. Abraham Lincoln believed that slavery should not extend beyond the states where it already existed. This view was anti-slavery but not necessarily abolitionist. Still, it proved too much for Southern states. A month after the election, South Carolina seceded from the Union. The Civil War soon followed.

Reconstruction and Reconciliation

After the Civil War ended in 1865, slavery was finally abolished. The 13th Amendment was added to the Constitution, making clear that "involuntary servitude"

Excerpts From the Constitution of the United States of America (1789)

The Garrisonians argued that the following clauses in the Constitution were pro-slavery. The key debated terms and phrases are shown in italics:

Article I

Section 1 – Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, *three-fifths of all other persons*.

Section 8 – The Congress shall have the power to...provide for calling forth the militia to execute the laws of the Union, *suppress insurrections* and repel invasions. . . .

Section 9 – The migration or *importation of such persons* as any of the States now existing shall think proper to admit, *shall not be prohibited by the Congress prior to the year one-thousand eight-hundred and eight* [1808], but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Article IV

Section 2 [often referred to as the "fugitive slave clause"] – No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but *shall be delivered up on claim of the party to whom such service or labor may be due*.

Section 4 – The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against *domestic violence* [mass violence, such as a rebellion or revolt].

Why do you think Wendell Phillips argued that Article IV, Section 4, was pro-slavery?

would no longer be legal in any state, except for prison inmates. Reconstruction of the nation began.

Garrison resigned as president of the AAS and called for the organization to dissolve. Wendell Phillips rejected this idea, arguing that ending slavery was only the beginning of what freed blacks needed. He and Garrison fell out of friendship over the issue. The 14th Amendment in 1868, protecting due process and equal protection under the law, and the 15th Amendment in 1870, establishing voting rights, later fulfilled Phillips' hopes.

In 1873, Garrison and Douglass ended their estrangement. Throughout their careers, they actively supported women's suffrage, or voting rights. At a rally organized by a women's rights group in Boston, Garrison, Douglass, and Phillips, too, publicly reunited in the women's suffrage cause.

The debate over how the Constitution's language can be interpreted to address present social needs is ongoing. To this day, the U.S. Supreme Court continues to hear cases in which it must interpret the scope and meaning of the U.S. Constitution, as well as the history of the Constitution's drafting. Those in this country who argue over gun rights, LGBT rights, women's rights, or issues of national security continually seek to clarify whether the language and principles of the Constitution and its existing amendments remain broad enough to guide our present day experiences, challenges, and ideals.

DISCUSSION AND WRITING

1. What was disunionism? Why did Garrison support it? Why did Douglass oppose it? What made it such a polarizing idea?
2. Explain Lysander Spooner's argument about the Preamble. Do you find it convincing? Why or why not?
3. When Frederick Douglass was a child, he was sent to be a house slave in urban Maryland. There, he secretly learned to read, a forbidden act for a slave. Why do you think slave masters wanted to prevent slaves from reading? What examples in the article support your answer?

ACTIVITY: Which Side Had the Stronger Argument?

Abolitionists were split about how to interpret the Constitution. Now you will have a chance to decide for yourselves which side had the stronger arguments.

1. Form groups of four. Each group is a panel, with each member of your group assigned to review the arguments of *one* of the four abolitionists discussed in the article: Frederick Douglass, William Lloyd Garrison, Wendell Phillips, or Lysander Spooner.
2. Recall how your assigned abolitionist would respond to this statement: *The Constitution was a pro-slavery document.*
3. Re-read the sections in the article that pertain to your assigned abolitionist. Underline the main arguments he would make in response to the statement above. Write notes, questions, or comments about the text in the margins.
4. Take turns in your panel group sharing the main arguments of each abolitionist. Take notes and ask clarifying questions when needed. Once each person has spoken, discuss in your group:
   (a) The strengths and weaknesses you see in each abolitionist's arguments.
   (b) The side your group thinks had the stronger arguments in interpreting the Constitution: Garrison/Phillips or Douglass/Spooner. Try to reach consensus within your group.
5. Each group should appoint a spokesperson to share back with the class which abolitionists they thought had the stronger arguments and why.

TOLERANCE: VOLTAIRE AND THE SPIRIT OF THE ENLIGHTENMENT

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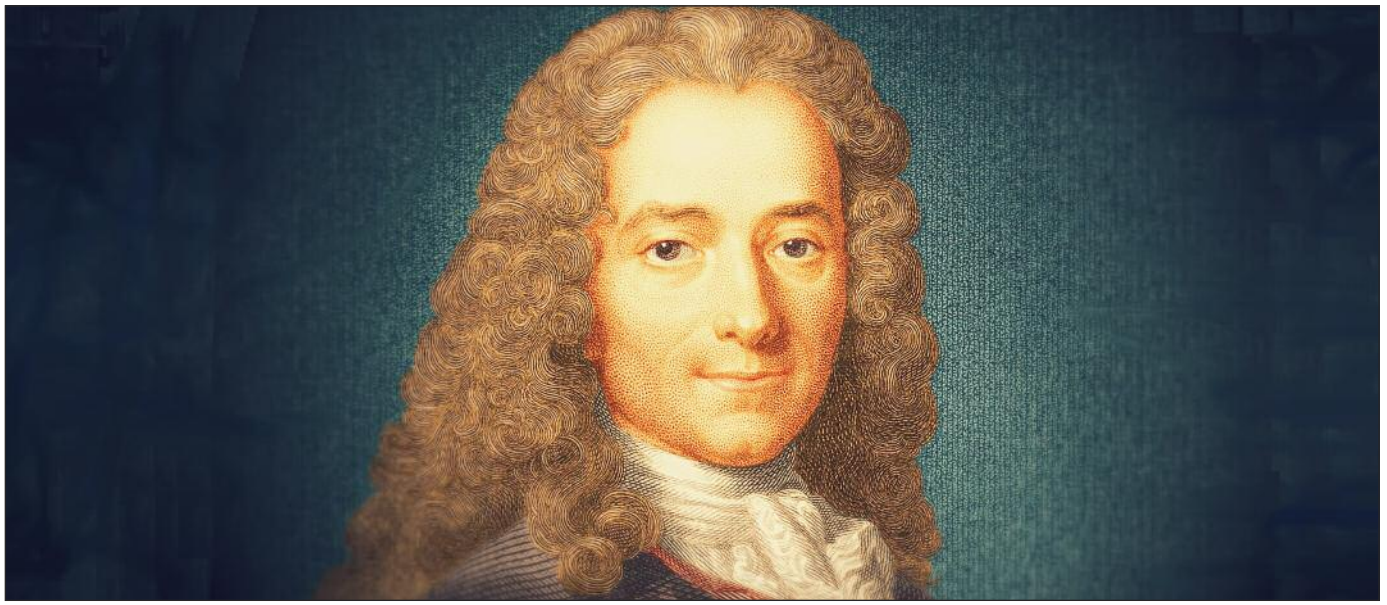

Voltaire (1694–1778) around age 24. A sharp-witted critic of authority, Voltaire saw many of his own writings banned in his lifetime.

One of the leaders of the French Enlightenment, Voltaire advocated for greater freedom of speech and the press and railed against superstition, fanaticism, and religious intolerance.

Voltaire was born in Paris in 1694. He grew up at the end of the long reign of King Louis XIV, the absolute monarch who ruled France from 1643 until his death in 1715.

Voltaire's name at birth was François-Marie Arouet. His father was a well-to-do lawyer and wanted his son also to pursue a career in law. When Voltaire finished school, however, he announced he wanted to be a writer. His father repeatedly tried to push him into law, shuffling him off to legal jobs within and even outside France. Each job led to the same result: Voltaire charmed his hosts with his great wit, concentrated on his writing, and failed at his job.

Finally, his father had to pull Voltaire back to Paris before he eloped with a girl he had met. When Voltaire returned, Louis XIV had died, his 5-year-old son, Louis XV, could not rule until he reached the age of 13, and the Duke of Orleans ruled in his place as regent. The Paris social scene was particularly lively during the regency, and Voltaire eagerly jumped in. He quickly gained a reputation in social circles for his ironic poetry and lively, barbed wit, but he overstepped the line when he wrote verses that mocked the regent's family. The regent sent him to the Bastille, the Paris prison, for 11 months.

Behind bars, he wrote *Oedipe*, based on the ancient Greek tragedy *Oedipus Rex*. He placed the name "Monsieur de Voltaire" on the play's title page, his first use of this name.

He wrote constantly throughout his long career. His sheer output was amazing. With boundless energy, fueled by cup after cup of coffee, he wrote from the time he arose to when he went out at night. He wrote more than 20,000 letters, signed "Voltaire," to philosophers, scientists, writers, clergymen, and even kings and queens. He also wrote innumerable essays, plays, novels, books and booklets, poems, histories, scientific works, and pieces of journalism and criticism. Many of his works carried other pen names (he used almost 200 pen names in his career) or had no name attached at all, because, as he knew too well, writing the wrong words in France could land an author in prison.

When *Oedipe* was staged in Paris, the public hailed it as a masterpiece. The play made Voltaire famous, and he returned to the social scene as the most sought-after guest in Paris.

But on two separate social occasions, a young nobleman mocked Voltaire for changing his name. Each time Voltaire responded with a retort of his own. Enraged at Voltaire's nerve, the nobleman sent his servants to beat up Voltaire while he watched at a distance. Voltaire tried to get the authorities to arrest him, but he was a nobleman, and Voltaire, a mere playwright. They refused to help. Voltaire decided to challenge him to a duel. Learning of Voltaire's plan, the nobleman arranged for an order,

signed by the regent, to send Voltaire to the Bastille. Voltaire was not entitled to a trial, appeal, or any other way to defend himself.

The English Years (1726–1728)

After a short time in the Bastille, however, Voltaire persuaded the authorities to let him go into exile in England. He spent the next two years in London. Voltaire quickly mastered the English language, and using his contacts from Parisian society, he mingled with the leading scientists and writers of London.

Voltaire found a lot to admire in England. The country allowed much greater freedom than France. Its writers did not fear being sent to prison for what they wrote. In fact, no one went to prison without a trial. Even the king had to obey the law.

He saw greater religious diversity. Hundreds of Protestant sects existed side by side. He particularly respected one sect, the Quakers, who practiced pacifism, lived simply, and had no clergy.

He observed that England held different values than France. He attended the funeral of Isaac Newton and marveled that England honored the life of the great scientist and mathematician. He also noted that England respected its businessmen. In short, he found England to be a much more vigorous and prosperous society than France, where the royalty, nobles, and clergy held all the power.

The censors banned the book and burned it in public, and Voltaire had to flee Paris . . . .

Voltaire immersed himself in studying the works of Newton and the philosopher John Locke (1632–1704). Locke was a proponent of human rights and natural philosophy. Thomas Jefferson borrowed many of Locke's ideas (and even words) when writing the Declaration of Independence: "all men . . . are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Chateau de Cirey (1734–1749)

Voltaire was allowed to return to France in 1729. At a dinner party in Paris, a mathematician told him of a plan to win a government lottery. He joined in the plan and won a fortune. In addition, his father had died and left him an inheritance. Voltaire invested his money wisely and remained rich for the rest of his life. Unlike most writers and artists of his day, Voltaire never had to look for a patron to support him financially. But his wealth did not protect him from the authorities.

Voltaire had written his thoughts about England in a series of collected essays that praised England and by implication criticized France. The work was published in England, but Voltaire had not gotten permission from the French censors to publish it in France. When the work was printed in France (probably without Voltaire's permission), it caused a scandal. The censors banned the book and burned it in public, and Voltaire had to flee Paris because he was about to be arrested once again.

He fled to the Chateau de Cirey, an estate in eastern France, but close to the border just in case he had to flee France completely. He felt safe because it was owned by a nobleman, and therefore the French authorities probably would not go after him there. The resident of the estate was a woman he knew, Emilie de Breteuil. Brilliant, highly educated, and 12 years younger than Voltaire, she knew much more about Newtonian science than Voltaire. He lived with her for the next 15 years.

Voltaire renovated the estate. He and Emilie spent their days studying science, conducting experiments, debating subjects, and writing. One debate centered on Gottfried Leibniz, the German scientist, mathematician, and philosopher. Leibniz had developed calculus at the same time as Newton and is considered its co-founder. Although Emilie believed Newton was the greater scientist, she enjoyed Leibniz's metaphysics. Metaphysics, to oversimplify, is the study of what exists behind or beyond physical reality. Voltaire considered metaphysics too abstract and impractical. He preferred the practical, the scientific, and the experimental. Hence they argued. At night, they entertained the many guests who visited them.

In and Out of France (1750–1778)

In 1749, Emilie died in childbirth, and Voltaire had to find a new home. He returned to Paris and then in 1751, he accepted an offer from Frederick the Great, the king of Prussia, to be an adviser at his court. All went well at first, but then Voltaire got into a dispute with Frederick's main science adviser and accused him of plagiarizing Leibniz. Frederick flew into a rage, and Voltaire fled.

Learning that King Louis XV did not want him to return to Paris, Voltaire went to Geneva, then an independent city-state (today it is a city in Switzerland). He bought an estate, continued his writing, entertained guests, and performed his plays. But Geneva was a strict Protestant state and outlawed performing plays.

After several years, Voltaire moved on. His solution was to relocate to nearby Ferney and buy a large ▶

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Illustration from Voltaire's popularization of the science of Isaac Newton (1738). Voltaire is shown at a writing desk receiving light from Newton himself.

piece of land that overlapped the borders of three countries: France, Switzerland, and Geneva. He figured he could cross the border if one country's police came for him. He lived there with his niece for the last 20 years of his life.

He built a large country house, tore down a church that blocked his view, and built a new one. On the church's entrance, he engraved in Latin, "Voltaire erected this to God." Like other Enlightenment thinkers, Voltaire was a deist, someone who believes in God as a supreme intelligence but does not think God performs supernatural acts in the world.

Candide

At Ferney in 1759, Voltaire wrote his most famous work, the novella *Candide*. The work dealt with an aspect of Leibniz's philosophy. Leibniz was religious and had to reconcile his belief in an all-good and all-powerful God with the evil that exists in the world. His answer was that God created the "best of all possible worlds." God did not create a perfect world; that would be Heaven. Instead, God created the best possible world that had evil in it. Voltaire satirized this belief, because Voltaire thought it could be used to support superstition, create religious intolerance, and justify evil in the world.

Candide tells the tale of a young, naive German driven from his home who ends up traveling the world, accompanied by his former tutor, Dr. Pangloss. Pangloss is a follower of Leibniz who keeps pointing out, after each evil act and natural disaster, that "all is for the best in the best of all possible worlds."

Candide and his companions suffer terrible mishaps and meet selfish or foolish people. Many encounters are based on real events. For example, in 1755, a terrible earthquake and tsunami destroyed the large city of Lisbon, Portugal, killing thousands. Many Portuguese thought God was punishing them. In hopes of averting future disasters, officials gathered up locals not considered sufficiently Catholic and publicly burned them alive. In the book, Candide visits Lisbon after the earthquake. Voltaire writes:

> After the earthquake had destroyed three-fourths of Lisbon, the sages of that country could think of no means more effectual to prevent utter ruin than to give the people a beautiful auto-da-fé; for it had been decided by the University of Coimbra, that the burning of a few people alive by a slow fire, and with great ceremony, is an infallible secret to hinder the earth from quaking.

Voltaire highlights that Europeans, who increasingly saw themselves as more "enlightened" than the rest of the world, still often succumbed to dangerous, superstitious beliefs. *Candide* also was meant to criticize those who thought the advances of the Enlightenment alone would naturally lead to a better world. Pangloss and Candide witness many terrible things and are themselves enslaved, beaten, and mutilated over the course of their travels. They end up on a farm in Turkey.

Through it all, Pangloss somehow keeps his same point of view. By the end, however, Candide has changed his mind. After yet another speech by Pangloss, the book concludes with Candide responding: "All that is very well . . . but let us cultivate our garden."

'Crush the Infamy'

Voltaire spent much time in his later years campaigning against injustices, torture, fanaticism, and religious intolerance. His often-repeated motto was "écrasez l'infâme," which translates as "crush the infamy." Voltaire believed that ignorance and superstition led to many injustices.

Voltaire focused his criticism on Catholicism, but he also criticized Protestantism, Judaism, and Islam. He even wrote a play titled *Fanaticism, or Muhammad the Prophet*. But church officials saw it as a thinly veiled assault on Catholic practices and had the play shut down.

Voltaire had limited knowledge of religion in India and China. But he respected Hinduism and Confucianism for what he believed was their willingness to accept other religious faiths.

Voltaire took up many cases of injustice. One was that of Jean Calas, a Protestant. His son hanged himself, but rumors circulated that Calas had killed his son because he wanted to convert to Catholicism. Without any evidence, French authorities prosecuted Calas for murder. They tortured and killed Calas while trying to get him to confess. The authorities took all the family's property and removed the remaining children from their mother and put them in a monastery.

Voltaire spent much time in his later years campaigning against injustices, torture, fanaticism, and religious intolerance.

Outraged, Voltaire provided financial support for the Calas family. He also mounted a massive campaign, lobbying every contact he had in the French government. Voltaire's effort in publicizing the injustices done to Calas and his family eventually led to Calas' conviction being overturned, and his family was reunited and paid compensation. As part of the campaign, Voltaire wrote *A Treatise on Tolerance*. The work defended not only Calas, but promoted the idea of universal toleration of religious differences to prevent a similar injustice from ever happening again.

The work employs various arguments in support of toleration. In one, Voltaire appeals directly to European monarchs arguing that intolerance can threaten their rule:

> And here let us consider a while the dreadful consequences of the right of non-toleration; if it were permitted us to strip of his possessions, to throw into prison, or to take away the life of a fellow-creature, who . . . did not profess the generally received religion . . . what is there which would exempt the principal persons of the state from falling under like punishments? Religion equally binds the monarch and the beggar.

Voltaire also appeals to a wider audience in condemning intolerance as a threat to reason and civilization:

> The law of persecution then is equally absurd and barbarous; it is the law of tigers; nay, it is even still more savage, for tigers destroy only for the sake of food, whereas we have butchered one another on account of a sentence or a paragraph.

The book was distributed briefly in France, but then the censors banned it.

Voltaire's Final Days

In 1778, Voltaire returned to Paris to see the opening of his final play. Greeted as a hero, he was overwhelmed. He died in Paris a couple of months later. Because of his conflicts with the church, he was denied a burial in Paris. But in 1791, two years after the French Revolution broke out, the revolutionary government established the Pantheon, a temple in Paris to honor and bury national heroes. Voltaire's body was the first entombed there.

The great 19th century French writer Victor Hugo said, "To name Voltaire is to characterize the entire 18th century." American popular historian Will Durant stated:

> Italy had a Renaissance, and Germany had a Reformation, but France had Voltaire. . . . His spirit moved like a flame over the continent and the century, and stirs a million souls in every generation.

DISCUSSION AND WRITING

1. Why did Voltaire believe England was superior to France?
2. What do you think were Voltaire's strongest beliefs? Why do you think he held them? Are Voltaire's beliefs relevant to today's world? Explain your answers.
3. The following two quotations are often attributed to Voltaire, yet no evidence exists that he ever said them:
   - "I disapprove of what you say, but I will defend to the death your right to say it."
   - On his death bed when a priest asked him to renounce Satan, Voltaire replied, "Now is not the time for making new enemies."

   Why do you think people believe he said each of them? Explain.
4. During the French Revolution, many violent attacks on French clergy occurred. Do you think Voltaire would have approved of them? Was his criticism of the church in some way responsible for them? Use the article to explain your answers.
5. What did Leibniz mean by the "best of all possible worlds"? Why did Voltaire disagree with Leibniz, and how did Voltaire express his disagreement?

ACTIVITY: 'Let Us Cultivate Our Garden'

The last phrase of the novella *Candide* is often quoted and its meaning disputed. Below are seven possible meanings of "let us cultivate our garden" that people have proposed.

We should . . .

a. Avoid all philosophical speculation.
b. Work with others using human reason to actively improve society, not just talk about what we should do.
c. Take care of our own, and let the world take care of itself.
d. Be moderate, use common sense, be restrained, and work hard.
f. Work in a garden and get food from the garden.
g. Get experience, make up our own minds, and act to improve ourselves.
h. There is no advice on what to do; it's a satire.

Divide the class into small groups. Each group should:

1. Discuss the proposed meanings of "let us cultivate our garden" and think of other possible meanings.
2. Decide which meaning best fits the story of Candide and that fits with what they have learned about Voltaire from the entire reading.
3. Prepare to report to the class and defend the group's decision, citing evidence from the reading.

Standards Addressed

Police Body Cameras and the Use of Force

National Civics Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good.

National Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights.

California History-Social Science Standard 12.10: Students formulate questions about and defend their analyses of tensions within our constitutional democracy . . .

Common Core Standard RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

Common Core Standard RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

Common Core Standard RH.11-12.10: By the end of grade 12, read and comprehend history/social studies texts in the grades 11-CCR text complexity band independently and proficiently.

Common Core Standard SL.11-12.1: Initiate and participate effectively in a range of collaborative discussions . . . with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

Common Core Standard SL.11-12.3: Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis, and tone used.

Common Core Standard SL.11-12.4: Present information, findings, and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed, and the organization, development, substance, and style are appropriate to purpose, audience, and a range of formal and informal tasks.

Abolitionists

National High School Civics Standard 15: Understands how the U.S. Constitution grants and distributes power and responsibilities to national and state government and how it seeks to prevent the abuse of power. (3)Understands ways in which federalism is designed to protect individual rights to life, liberty, and property and how it has at times made it possible for states to deny the rights of certain groups, (e.g. states' rights and slavery, denial of suffrage to women and minority groups)

National High School U.S. History Standard 12: Understands the sources and character of cultural, religious, and social reform movements in the antebellum period. (1) Understands elements of slavery in both the North and South during the antebellum period (e.g., similarities and differences between African American and white abolitionists . . .).

California History-Social Science Standard 8.9: Students analyze the early and steady attempts to abolish slavery and to realize the ideals of the Declaration of Independence. (1) Describe the leaders of the movement (e.g., . . . William Lloyd Garrison, Frederick Douglass).

Common Core Standard RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

Common Core Standard RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

Common Core Standard SL.11-12.1: Initiate and participate effectively in a range of collaborative discussions . . . with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

Common Core Standard SL.11-12.3: Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis, and tone used.

Common Core Standard SL.11-12.4: Present information, findings, and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed, and the organization, development, substance, and style are appropriate to purpose, audience, and a range of formal and informal tasks.

Tolerance

National High School World History Standard 27: Understands how European society experienced political, economic, and cultural transformations in an age of global intercommunication between 1450 and 1750. (4) Understands influences on the spread of scientific ideas and Enlightenment thought . . . . (6)Understands the role of the Enlightenment in shaping European society (e.g., . . . the development of concepts of universalism, tolerance . . .; the connection between the Enlightenment and the Scientific Revolution . . . .

California History-Social Science Standard 7.11: Students analyze political and economic change in the sixteenth, seventeenth, and eighteenth centuries (the Age of Exploration, the Enlightenment, and the Age of Reason). (4) Explain how the main ideas of the Enlightenment can be traced back to such movements as the Renaissance, the Reformation, and the Scientific Revolution and to the Greeks, Romans, and Christianity. (5) Describe how democratic thought and institutions were influenced by Enlightenment thinkers . . . .

Common Core Standard ELA-Literacy.RL.11-12.1: Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.

Common Core Standard ELA-Literacy.RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

Common Core Standard ELA-Literacy.RH.11-12.4: Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and defines the meaning of a key term over the course of a text . . . .

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