

Balancing Liberty and Security: From the Early Republic to the War on Terror

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Abstract

*The eternal question posed by students, “Why do I have to learn this?” is being answered for them every day in the newspapers and on television with respect to the balance of liberty and security in time of war. Teachers often express the need for focused materials that approach this question from both historical and modern perspectives, and this high-school lesson provides that. The Latin maxim, **Inter arma enim silent leges**, translated, “In time of war the laws are silent” expresses the doctrine that security trumps liberty in wartime, but in this lesson, student will ask, “Is liberty necessarily the price of security? How have United States governments justified the curtailment of liberty in wartime?” This lesson presents students and teachers with hands-on focus activities, student manipulatives and role-plays, and primary source document analyses that will lead students to appraise the cost of security and whether the Constitution can be preserved by being abridged.*

Overview

In this lesson, students will assume the identity of lawmakers, judges, writers, and protestors during times in American history when freedoms of speech and press were limited because the country was on the brink of war (1798) or fighting one (World War I). They will also analyze *habeas corpus* and Fourth Amendment issues that arose during the Civil War and World War II. Finally, they will evaluate the current curtailment of civil liberties during the War on Terror. They will then draft a new constitutional amendment that clearly defines the government’s powers in times of national crisis.

[The Sedition Act of 1798 abridges the] right of freely examining public characters and measures, and of free communication among the people. – James Madison

We are going to do everything we can to harmonize the constitutional rights of individuals with every legal capacity we can muster to also protect the safety and security of individuals. – John Ashcroft

Critical Engagement Question

What constitutional limitations can the government place on liberty in times of national crisis?

Objectives

Students will:

- understand what powers have been assumed by the government in times of crisis from 1798 to the present day;
- analyze primary source documents including the Sedition Act of 1798, the Sedition Act of 1918, the Constitution, and the Bill of Rights;
- write an amendment to the Constitution that explains if, when, how, and by whom individual rights can be suspended; and
- apply their analysis to modern constitutional issues raised by the War on Terror.

Standards

NCSS: Strands 2, 6, and 10

CCE: (9-12): IA1, VB1, VB2, VB5, and VD2,

NCHS: Era 3, Standard 3; Era 5, Standard 2; Era 8, Standard 3; Era 10, Standard 1

Suggested Grade Level and Time

Two 50-minute high school classes

Materials

Handout A: Sedition Free Association

Handout B: Voices on Sedition Cards

Handout C: The Sedition Act of 1798

Handout D: The Sedition Act of 1918

Handout E: Government Powers

Handout F: Lincoln and *Habeas Corpus*

Handout G: Executive Orders 9066 and 9102

Handout H: The Patriot Act

Day One**Lesson Plan****I. Background/Homework [10 minutes the day before]**

- A. Begin with a brief discussion of sedition: speech that incites resistance, disloyalty, or hatred of the government
- B. Have students complete **Handout A: Sedition Free Association**.

II. Warm-Up/Anticipatory Activity [10 minutes]

- A. Cut out the quote cards on **Handout B: Voices on Sedition Cards** and give one to each student. Have students read their quotes and decide if these represent a view for or against government restriction of speech.
- B. Have students stand up and walk around the room, sharing their statements aloud with

others. Their goal is to find other students whose quotes' ideas and historical context match with theirs. Have them form new groups as they find classmates with matching quotes. Students should end up in four groups: one for and one against the Sedition Act of 1798 and one for and one against the Sedition Act of 1918.

- C. Once students are in groups, evaluate whether they are organized correctly according to their quotes. If not, discuss how that may reveal that the issues of 1798 were still being discussed in 1918 and how they may continue today. Give students a moment to assemble into correct groupings.

For/1798: Quotations 1-6; Against/1798: Quotations 7-12; For/1918: Quotations 13-18;

Against/1918: Quotations 19-26

III. Mini-Lecture: Historical Context [5 minutes]

As you discuss the historical context, invite students to read their quotes aloud if you call their quote number. Quote numbers appear in [brackets] below.

Write the First Amendment on the board and discuss its wording of the First Amendment. You may wish to point out that unlike other prohibitions in the Constitution, such as the suspension of *habeas corpus*, the First Amendment contains no qualifiers. It is, apparently, an absolute. Explain to students that the Founders wished, in particular, to protect the expression of political speech. In a society where the government derives its power from the people, an informed and engaged citizenry is essential. [11]

There have been times in U.S. History when the federal government has limited freedom of speech. In wartime, particularly, the government has placed limits on what it has called “sedition” or speech that incites disloyalty or hatred of the government. [5]

The Sedition Act of 1798 was passed by the Federalist-controlled Congress in 1798 and signed into law by President John Adams. The law was designed to silence Republican critics of Adams' administration and to quiet support for the French in their war with England. Twenty-four editors, writers, and others were arrested, and ten were convicted under the Sedition Act. The United States remained out of the war between France and England, which was one of Adams's goals. [1] The law was allowed to expire by the Republican-controlled Congress in 1801. [10]

The Sedition Act of 1918 (which amended the Espionage Act of 1917) targeted those who interfered with the draft as well as those individuals who publicly criticized the government including negative comments about the flag, military, or Constitution. [15]

More than 2000 people were prosecuted under the Sedition Act of 1918; though many were later pardoned or had their sentences commuted. The Espionage and Sedition Acts were repealed in 1921. [22]

III. Activity [35 minutes]

- A. Distribute **Handout C: The Sedition Act of 1798** to the for/against the Sedition Act

of 1798 groups. Give **Handout D: The Sedition Act of 1918** to the groups for/against the Sedition Act of 1918. Additionally, give copies of the Bill of Rights and **Handout E: Government Powers** to all students.

- B. Tell students that for the activity, they will be assuming the identity and opinion of the individual on their quote card. Have students read the powers of the federal government in the Constitution and Bill of Rights, and then read the Sedition Acts on **Handouts C or D**. Have students use the documents to gather evidence to support their identity's position on the constitutionality of the government action. Have them highlight passages that support their position.
- C. When students have finished, have them jigsaw into pairs with individuals for/against each Act. Students should explain who they are and perform a role-play of a discussion that might have taken place between the two people. Encourage students to base their arguments on the documents.

Suggested pairings

1798

Matthew Lyon/Sentencing Judge

Timothy Pickering/Thomas Jefferson

John Adams/David McCollough

Ben Franklin/Abigail Adams

Thomas Jefferson/John Adams

James Madison/Massachusetts legislature

1918

Emma Goldman/Woodrow Wilson

Kate Richards O'Hare/Sentencing Judge

Jane Adams/J. Edgar Hoover

Eugene V. Debs/ Woodrow Wilson

John H. Clarke/Oliver Wendell Holmes

Rose Pastor Stokes/ A. Mitchell Palmer

- D. For homework, have students familiarize themselves with the documents on **Handout F: Lincoln and Habeas Corpus** and **Handout G: Executive Orders 9066 and 9102**. They should read the documents and answer the questions.

Day Two

Lesson Plan

I. Warm-Up [10 minutes]

- A. As a large group, use the last night's homework handouts to define and discuss the actions taken by Presidents Lincoln and Roosevelt during the Civil War and World War II, respectively.

- B. Using an overhead of **Handout E: Government Powers**, which was used in the last class, ask students whether the actions taken by each president were constitutional. You may wish to ask the following questions

:

- When does the Constitution say that writs of *habeas corpus* can be suspended?
- The restriction on suspension of *habeas corpus* is listed with limits on the powers of Congress, not the Executive Branch. How, if at all, does that impact your assessment of Lincoln's action?

- What constitutionally-protected liberties did interned Japanese Americans lose?
- How did Presidents Lincoln and Roosevelt attempt to balance liberty and security?

II Activity [25 minutes]

A. Distribute **Handout H: The Patriot Act**. Give students a few moments to read over the information, and as a large group, discuss the following:

- Do any portions of the Patriot Act appear to abridge rights protected by the Bill of Rights? Which ones?
- Are these limits on rights acceptable in times of crisis?
- How do the additional powers given to/assumed by the government under the Patriot Act compare/contrast with those of previous wartime eras?
- Should history and precedent matter when determining the constitutionality of wartime measures? If so, how much should matter?

III. Culminating Activity [15 minutes]

A. Have students work together in their pairs to write a new amendment to the Constitution, specifying what powers the government has (if any) to suspend freedom of expression and the press in wartime. Students should consider the War on Terror when drafting their amendments. Amendments should address the following:

- Explain what defines a national crisis: a declared war, any war, an invasion, a rebellion, a riot, a natural disaster, an environmental threat, economic threat, etc.
- Explain the procedure of how the federal government will take emergency power.
- Specify who will make the decisions: the President, Congress, the Supreme Court, a combination of the three, etc.

B. Have students share their proposed amendment with the class and have students vote on the best amendment.

IV. Homework

A. Have students write two or three paragraphs in response to these questions:

- If the federal government should have extraordinary powers during a crisis, what type of governmental system should be put into place to protect against tyranny and despotism? Explain.
- Or, if the federal government does not have any extra powers, how can the government adequately provide security? Explain.
- Should the government ever violate the Constitution to preserve the Constitution?

V. Extensions

A. Ask students to research instances in American history when the government has restricted freedom of speech in times of national crisis. Have them present their findings in an essay or PowerPoint presentation sharing what they have learned about the Sedition Act of 1798, *Ex Parte* Milligan (1866) Executive Order 9066,

Hirabayashi v. U.S. (1943) and Korematsu v. United States (1944). Students can begin their research at <http://www.citizenbee.org/>

- B. Have students research the following cases and summarize the way each decision defined the balance between free speech and national security. Students can begin their research at <http://www.citizenbee.org/>
1. *Schenk v. United States* (1919)
 2. *Debs v. United States* (1919)
 3. *Abrams v. United States* (1919)
 4. *Gitlow v. People of New York* (1925)

Handout A

Sedition Free Association

Directions: The following are phrases the government has used to describe speech that can be constitutionally limited during times of national crisis. Read each term or phrase and brainstorm four or five other words or situations that might be associated with it.

term/phrase	words or situations you might associate with it
clear and present danger	
substantive evils	
proper authority	
by word or act oppose the cause of the United States	
insurrection, riot, unlawful assembly	
unlicensed abuse of government	
base and unfounded calumny (lie)	
passion, disloyalty, anarchy	
conspiracy	

Handout B (1 of 3 pages)

Voices on Sedition Cards

1. “A pen is certainly an excellent instrument, to fix a man’s attention and to inflame his ambition...I knew there a need of [the Sedition Act] and I consented.”
—President John Adams, who signed the 1798 Sedition Act into law
2. “You must be well acquainted with the mischiefs which flow from an unlicensed abuse of government.”
—Judge sentencing Congressman Matthew Lyon, one of the first people charged under the 1798 Sedition Act
3. “Because we have the right to speak and publish our opinions, it does not necessarily follow that we may exercise it in uttering false and malicious slanders against our neighbor or our government, any more than we may under cover of freedom of action knock down the first man we meet, and exempt ourselves from punishment by pleading that we are free agents.”
—Timothy Pickering, Secretary of State under President John Adams
4. “The infamous Sedition Act must be seen in the context of the time, and the context was tumult and fear.”
—Historian David McCollough on President John Adams
5. “A sedition law is ‘wise and necessary’ to defend against secret attacks by foreign or domestic enemies.”
—Massachusetts state legislature, about the 1798 Sedition Act
6. “I wish the laws of our country were competent to punish the stirrer up of sedition, the writer of base and unfounded calumny (false charges). This would contribute as much to the peace and harmony of our country as any measure.”
—Abigail Adams, in a letter to her husband President John Adams
7. “Adams did not ask for or encourage [the Sedition Act] but neither did he oppose it. Its passage and its signature were to be rightly judged by history as the most reprehensible acts of his presidency.”
—Historian David McCollough on President John Adams
8. “They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”
—Benjamin Franklin, 1759
9. The Sedition Act attacks the “right of freely examining public characters and measures, and of free communication among the people.”
—James Madison

Handout B (2 of 3 pages) **Voices on Sedition Cards**

10. “A little patience, and we shall see the reign of witches pass over, their spells dissolve, and the people, recovering their true sight, restore their government to its true principles.”
—Thomas Jefferson
11. The definition of free speech and press is the right of Americans “to think freely and to speak and write what they think.”
—President Thomas Jefferson, in his inaugural address
12. “It is quite a new kind of jargon to call a Representative of the people and an opposer of government because he does not, as a legislator, advocate and acquiesce in [agree to every proposition that comes from the executive.”
—Congressman Matthew Lyon, one of the first people charged under the Sedition Act
13. “This is a nation of free speech; but this is a time for sacrifice, when mothers are sacrificing their sons. Is it too much to ask that for the time being men shall suppress any desire which they may have to utter words which may tend to weaken the spirit, or destroy the faith or confidence of the people?”
—Judge sentencing World War I protestor Kate Richards O’Hare to prison in July, 1917
14. “There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life...”
—President Woodrow Wilson in a 1915 speech to Congress
15. “I urge you to enact such laws [that] do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.... For what we are seeking now, what in my mind is the single thought of this message, is national efficiency and security.”
—President Woodrow Wilson in a 1915 speech to Congress
16. “The plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the Government in Europe. The language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war....”
—Justice John H. Clarke, upholding the conviction of five people for violating the Espionage Act of 1918
17. “...Underneath my own determination to drive from our midst the agents of Bolshevism (communism), I...ask: what will become of the United States Government if these alien radicals carry out the principles of the Communist Party?”
—A. Mitchell Palmer, President Woodrow Wilson’s attorney general

Handout B (3 of 3 pages) **Voices on Sedition Cards**

18. The Communist propaganda technique is designed to promote emotional response with the hope that the victim will be attracted by what he is told the Communist way of life holds in store for him. The objective, of course, is to develop discontent and hasten the day when the Communists can gather sufficient support and following to overthrow the American way of life.
—J. Edgar Hoover, assistant to Wilson’s attorney general
19. “I look upon the Espionage Law as a despotic enactment in flagrant conflict with democratic principles and with the spirit of free institutions....”
—Eugene V. Debs, in a September 1918 statement to the court as he was being sentenced to 10 years in prison for an anti-war speech
20. “The free expression of the hopes and aspirations of a people is the greatest and only safety in a sane society.”
—Emma Goldman, magazine publisher and founder of the No Conscription League. She was sentenced to two years in prison under the Sedition Act and was later deported.
21. “Hundreds of poor laboring men and women are being thrown into jails and police stations because of their political beliefs. In fact, an attempt is being made to deport an entire political party....And what is it these radicals seek? It is the right of free speech and free thought; nothing more than is guaranteed to them under the Constitution of the United States, but repudiated because of the war.”
—Jane Adams in a 1919 speech
22. “No government which is for the profiteers can also be for the people, and I am for the people while the government is for the profiteers.”
—Rose Pastor Stokes, in a letter to the *Kansas City Star*, for which she was sentenced to ten years in prison in 1917
23. “But, Your Honor, all through this trial...as the ever-recurring motive in this little drama of life, there ran the charge of a crime, a crime of which I was accused. And this crime ...was the same charge that was brought against the first slave rebellion...It was the charge that was brought against Moses and Spartacus...George Washington and Patrick Henry, William Lloyd Garrison and Wendell Phillips, and it was the same crime that was charged against Jesus of Nazareth when he stood at the judgment bar on Pontius Pilate. The crime is this: ‘She stirred up the people.’”
—Kate Richards O’Hare, in her statement before being sentenced to five years in prison for violating the Sedition Act of 1918
24. “I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.”
—Supreme Court Justice Oliver Wendell Holmes, on the Espionage Act of 1918

Handout C

Sections of the Sedition Act of 1798

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing, or executing his trust or duty, and if any person or persons, with intent as aforesaid, shall counsel, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years...

SECTION. 2. *And be it farther enacted,* That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false, scandalous, and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage, or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years....

Handout D

Sections of the Sedition Act of 1918

SECTION 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports, or false statements, ...or incite insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct ...the recruiting or enlistment service of the United States, or ...shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States ...or shall willfully display the flag of any foreign enemy, or shall willfully ...urge, incite, or advocate any curtailment of production ...or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than 20 years, or both....

Handout E

Government Powers

Excerpts from Articles I and II of the United States Constitution

Article I, Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, Section 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;...

To establish post offices and post roads;...

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;...

--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article I, Section 9: The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Article II, Section 2. The President shall be commander in chief of the Army and Navy of the United States...

Handout F

Lincoln and *Habeas Corpus*

A proclamation by the President of the United States, September 24, 1862

Whereas, it has become necessary to call into service not only volunteers but also portions of the militia of the States by draft in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure and from giving aid and comfort in various ways to the insurrection...

The Writ of *Habeas Corpus* is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any Court Martial or Military Commission.

1. What was the purpose of this proclamation?
 2. Why did President Lincoln claim this action was necessary?
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Handout G

Executive Orders 9066 and 9102

Executive Order No. 9066 - February 19, 1942

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities...

...I hereby authorize and direct the Secretary of War...to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary...for the conduct and control of alien enemies...

Executive Order No. 9102 - March 18, 1942

...[I]n order to provide for the removal from designated areas of persons whose removal is necessary in the interests of national security, it is ordered as follows...The Director of the War Relocation Authority is authorized and directed to formulate and effectuate a program for the removal, from areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision....

1. What was the purpose of these two executive orders?
 2. Why did President Roosevelt claim these actions were necessary?
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Handout H

The Patriot Act

Directions: Read the summary of key Patriot Act provisions, and then read the portions of the Bill of Rights that follow. Underline sections of the Bill of Rights that you believe may be limited by the PATRIOT Act.

In 2001, the people granted additional powers to Congress in response to the September 11 terrorist attacks. Summary of some key portions:

- Defined “Domestic Terrorism” as any “acts dangerous to human life that are a violation of the criminal laws . . . [if such acts] . . . appear to be intended . . . to influence the policy of a government by intimidation or coercion” and are conducted “primarily within the territorial jurisdiction of the United States.”
 - Permitted federal investigators to access library, business and medical records without a court order.
 - Allowed indefinite detention, with no access to judicial review, of more than a thousand non-citizens who were lawfully in the United States and had not been charged with any crime.
 - Authorized blanket secrecy concerning the identity of detainees.
 - Denied many of these detainees the opportunity to communicate with an attorney
 - Permitted the government to get a wiretap on every phone a suspect uses (“roving wiretaps”)
-

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.