

## LESSON

# 2

## How Do Our Nation's Founding Documents Promote Justice?

### PURPOSE OF LESSON

The Founders of our nation were dedicated to the ideal of justice. In this lesson, you have a chance to look at excerpts from the two most important founding documents of the United States—the Declaration of Independence and the Constitution—and evaluate which types of issues of justice the excerpts address.

When you have completed this lesson, you should be able to explain how the Declaration of Independence and the Constitution promote issues of distributive, corrective and procedural justice.

### TERMS TO KNOW

naturalized jurisdiction	indictment
bill of attainder	grand jury
ex post facto law	compulsory process
common law	poll tax
habeas corpus	probable cause
corruption of blood	oath or affirmation

### CRITICAL THINKING EXERCISE

#### Examining Justice—A National Ideal

Each of the following excerpts from the Declaration of Independence and the Constitution of the United States is designed to protect and promote one or more of the kinds of justice you have been studying. Your teacher will divide your class into groups to complete this exercise. Each group should examine the excerpts they have been assigned and do the following:

- Decide whether the excerpts are designed to deal with issues of distributive, corrective, or procedural justice. Some may deal with more than one type of issue.
- Develop answers to the “What do *you* think?” questions that follow the list of excerpts and be prepared to report your group’s answers to the class.

#### Group 1: An Excerpt from the Declaration of Independence

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

#### Excerpts from the Constitution of the United States

##### AMENDMENT I (Bill of Rights, 1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

##### AMENDMENT VIII (Bill of Rights, 1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.



Do the First Amendment rights of assembly and petition promote distributive, corrective, or procedural justice?

## Group 2: Excerpts from the Constitution of the United States

### AMENDMENT XIV, Section 1(1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.



Does the Fourteenth Amendment guarantee of equal protection of the laws promote distributive, corrective, or procedural justice?

### ARTICLE I, Section 9, Clause 3

No bill of attainder or *ex post facto* law shall be passed.

### AMENDMENT VII (Bill of Rights, 1791)

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 re-examined in any Court of the United States, than according to the rules of the common law.

## Group 3: Excerpts from the Constitution of the United States

### ARTICLE I, Section 9, Clause 2

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 have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

### AMENDMENT V (Bill of Rights, 1791)

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; nor shall private property be taken for public use, without just compensation.

### AMENDMENT XXVI, Section 1 (1971)

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

## Group 4: Excerpts from the Constitution of the United States

### ARTICLE III, Section 3, Clause 2

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.



Does the Twenty-Sixth Amendment guarantee of voting rights for eighteen-year-olds promote distributive, corrective, or procedural justice?

#### AMENDMENT VI (Bill of Rights, 1791)

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.



Does the Sixth Amendment protection of the right to counsel promote distributive, corrective, or procedural justice?

#### AMENDMENT XIII, Section 1 (1865)

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

#### AMENDMENT XXIV, Section 1 (1964)

The right of citizens of the United States to vote in any primary or other election for president or vice president, for electors for president or vice president, or for senator or representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

#### Group 5: Excerpts from the Constitution of the United States

##### ARTICLE III, Section 2, Clause 3

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

##### ARTICLE IV, Section 2

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

#### AMENDMENT IV (Bill of Rights, 1791)

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.



Does the Nineteenth Amendment guarantee of voting rights for women promote distributive, corrective, or procedural justice?

#### AMENDMENT XIX, Section 1 (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

## WHAT DO YOU THINK?

1. Which of the excerpts deal with the following:

**Distributive Justice**—For the excerpts focusing on distributive justice, what benefits or burdens do they deal with? What values or interests does each excerpt seem to protect or promote?

**Corrective Justice**—For the excerpts focusing on corrective justice, what responses do they deal with? What values or interests does each excerpt seem to protect or promote?

**Procedural Justice**—For the excerpts focusing on procedural justice, what procedures do they deal with? What values or interests does each excerpt seem to protect or promote?

2. Which excerpts deal with more than one type of issue of justice?

## USING THE LESSON

1. Ask a lawyer or judge to help you find a court opinion or excerpts from an opinion that deals with an issue of justice. Read and analyze the opinion to determine the principles, values, and interests that underlie the position reflected. Some landmark cases of the Supreme Court which might be analyzed include the following:
  - *Brown v. Board of Education* (347 U.S. 483; 1954)
  - *In re Gault* (387 U.S. 1; 1967)
  - *Stanford v. Kentucky* (492 U.S. 361; 1989)
2. Each of the following novels contains situations that raise issues of justice. Read one and then describe to the class the situations in the novel that involve issues or questions of distributive, corrective, or procedural justice.
  - *To Kill a Mockingbird*, by Harper Lee
  - *Animal Farm*, by George Orwell
  - *The Adventures of Huckleberry Finn*, by Mark Twain