

Lesson Title: What Rights does New York Value the Most and do our policies align with these values?

Author: Kathleen Argus, Syracuse City School District

Lesson Outcomes:

- Generate a list of rights New Yorkers value
- Analyze a sampling of New York State individual liberties which are included in Federal law and determine if New York State expansion of Federal liberties align with our valued rights
- Use sources to research, develop an argument, and participate in discussion regarding voter rights of citizens convicted of a felony.

Alignment to New York State Framework:

12.G2 CIVIL RIGHTS & CIVIL LIBERTIES: The United States Constitution aims to protect individual freedoms and rights which have been extended to more groups of people over time. These rights and freedoms continue to be debated, extended to additional people, and defined through judicial interpretation. In engaging in issues of civic debate, citizens act with an appreciation of differences and are able to participate in constructive dialogue with those who hold different perspectives.

12.G2a Equality before the law and due process are two fundamental values that apply to all under the jurisdiction of the United States. While the United States legal system aims to uphold the values of equality before the law, due process, human dignity, freedom of conscience, inalienable rights, and civility, the extent to which the legal system upholds these values in practice is an issue of ongoing civic debate.

12.G2c The Constitution aims to protect, among other freedoms, individual and group rights to freedom of speech, freedom of the press, freedom of assembly, freedom of petition, and freedom of religion. The extent to which these ideals exist in practice and how these protections should be applied in a changing world continues to be an issue of ongoing civic debate.

12.G2e The definition of civil rights has broadened over the course of United States history, and the number of people and groups legally insured of these rights has also expanded. However, the degree to which rights extend equally and fairly to all (e.g., race, class, gender, sexual orientation) is a continued source of civic contention.

12.G2f Rights are not absolute; they vary with legal status, with location (as in schools and workplaces), and with circumstance. The different statuses of United States residency bring with them specific protections, rights, and responsibilities. Minors have specific rights in school, in the workplace, in the community, and in the family. The extension of rights across location, circumstance, age, and legal status is a subject of civic discourse.

12G2g Freedom of the press is an essential element of a democratic system, and allows for a citizen to receive and interpret information representing different points of view. Freedom of the press has limits, which are intended to protect the rights of individuals and other entities. The degree to which the press is free and impartial in practice is a source on ongoing debate.

Alignment to New York State Practices:

A. Gathering, Using, and Interpreting Evidence

- Define and frame questions about events and the world in which we live, form hypotheses as potential answers to these questions, use evidence to answer these questions, and consider and analyze counter-hypotheses.
- Identify, describe, and evaluate evidence about events from diverse sources (including written documents, works of art, photographs, charts and graphs, artifacts, oral traditions, and other primary and secondary sources).
- Deconstruct and construct plausible and persuasive arguments using evidence.

B. Chronological Reasoning and Causation

- Recognize, analyze, and evaluate dynamics of historical continuity and change over periods of time and investigate factors that caused those changes over time.

C. Civic Participation

- Demonstrate respect for the rights of others in discussions and classroom; respectfully disagree with other viewpoints and provide evidence for a counter-argument.
- Participate in persuading, debating, negotiating, and compromising in the resolution of conflicts and differences.

Lesson Procedures:

Rationale:

When we look at the layout of the New York State Constitution we can see many differences from the Federal Constitution beginning with its structure. New York outlines two Articles before the structure of the government. This lesson will focus on three compelling questions:

1. What are these articles, why does New York value them?
2. How has NY expanded Federal rights
3. How does New York state government respond when Federal and states' rights get tangled up with individual liberties?

In this lesson, students will analyze text of the New York Constitution to determine values of the state, discuss if expansions of Federal liberties align with New York values, and engage in academic discourse regarding New York convicted felon voting rights which pits elected officials and the Governor against each other.

Materials:

- Powerpoint Presentation – “Ind Rights”
- Access to Articles I and II of NYS Constitution
- Appendix A: Articles I and II Worksheet and NY values (guided by PPT)
- Appendix B: Sampling of New York Expansion of Federal Individual Liberties readings
- Appendix C: Note guide for NY Expansion of Federal Individual Liberties
- Appendix D: Felony Research worksheet
- Appendix E: Developing an Argument worksheet
- Appendix F: Handout/ teacher guide: Tips for discourse.

Procedures:

1. Opening discussion ([PowerPoint](#)): Rights and suffrage as the forefront of NYS Constitution Structure
 - Group students in pairs or small discussion groups
 - Lead brief discussion using PPT slides with text of historical description of the New York State Constitution.
 - Ask students to discuss: What do you think is the main goal of the New York Constitution after reading the 3 descriptions? (Likely response: outline/ structure of Government)
 - Instructor randomly calls for three group responses
 - Project slide showing Articles listed and ask what they think the main goal of the NYS Constitution was now that they see the structure?
2. New York Rights and Values
 - Procedure continues in [PPT slides](#) with students in groups
 - Print copies, or provide access to digital link, of New York State Constitution’s [Article I and Article II](#).
 - Students should skim documents and summarize a list of 5 values that appear in these sections in the first ½ of Article I and II *group worksheet*
 - Each group should discuss findings and complete sentence stem prompt at bottom of *Articles worksheet* (Amendment ___ of the NYS Constitution shows that New Yorkers value _____ and/ or fear _____)
 - Instructor, or student volunteer collects cards from groups and tapes on board to lead a group sort. After reading each card out loud ask volunteers to come to board and sort cards in to categories, with hope that a dominant theme will emerge.
 - Write the following prompt on board and complete with class. “Framers of the NYS Constitution Valued _____ and Feared _____.”
 - Ticket out the door: Ask students to write on a post it note if they believe New Yorkers still hold these values and beliefs, and to support their claim.
3. Deeper Dive – Sampling of New York Expansion of Federal Individual Liberties Activity
 - Group students in 5 groups and assign topics and *corresponding reading*.
 - Jury Trial, Grand Jury and Right to Counsel

- Searches and Seizures
 - Self-Incrimination and Due Process
 - Freedom of Speech and the Press
- Ask students to review information, create a brief synopsis and answer the question: How does this example of New York expansion of Federal rights align with New York state values?
- Hand out *note chart* and ask each group to present their findings to class.
- All students should complete chart as their peers present.

4. Academic Discussion Preparation

Compelling Question: *Should Convicted Felons have their right to vote reinstated upon their release from Prison? Or Should New York State limit voting rights of citizens convicted of a felony?*

Optional Compelling question: Is the right to vote a right or a privilege?

- Instructor leads [4 Corners activity](#) using questions below
 - Should voting be a right or a privilege?
 - When felons are convicted should they lose their right to vote?
 - Should citizens in jail be allowed to vote?
 - Should Convicted Felons have their right to vote reinstated upon their release from Prison?
- Show [Barred from the Vote](#) (Vice News April 2016) Video and instruct students through one more round of 4 corners using only the Discourse question (question iv.)
- Students will develop their opinion about Felon Voter laws through completion of research on general felonies and research perspectives on voter rights regarding citizens convicted of felonies
- Students will develop an argument, and complete argument worksheet, by researching and accessing at least two articles, and may also use evidence from Barred from the Vote video. A brief curated list of resources can be found in appendix below.
- Conduct a discussion.
 - Choose a discussion strategy ([The Big List of Classroom Discussion Strategies](#))

***Extensions (other possible resources/topics for section 4 – Academic Discourse)**

- [Voting Rights Restoration in New York](#) : disenfranchisement in New York and compiles various materials.
- [Jim Crow in New York](#) : the history of disenfranchisement in New York state.
- [Voting laws roundup](#): discusses efforts across the country to expand voting rights.
- [Purge Report](#): an overview on illegal purges and discusses the NYC purge, as well as problems in other states.
- [“What Caused the Crime Decline”](#) includes fact sheets on crime in different states, including information on incarceration rates.

Additional Resources:

Discussion rights or liberties <https://civilrights.findlaw.com/civil-rights-overview/civil-rights-vs-civil-liberties.html>

<https://www.nytimes.com/2012/07/20/opinion/why-felons-shouldnt-vote.html>

<https://www.nytimes.com/roomfordebate/2016/04/22/should-felons-ever-be-allowed-to-vote/if-you-cant-follow-laws-you-shouldnt-help-make-them>

<https://felonvoting.procon.org/view.resource.php?resourceID=000283>

<https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-new-york>

<https://www.nyclu.org/en/issues/voting-rights/felon-voting-rights>

<https://www.politifact.com/truth-o-meter/article/2018/apr/25/understanding-felon-voting-rights-restoration/>

Florida man who lost rights recently after being involved with Campaigning and being politically active <http://time.com/4552390/unforgiven-a-short-film-about-a-disenfranchised-voter-in-florida/>

Bopst, Christopher, and Peter Galie. "Protections in the New York State Constitution." Edited by Scott N. Fein and Andrew B Ayers, *Rockefeller Institute of Government*, rockinst.org/issue-area/protections-new-york-state-constitution/.

What does the Structure of the NYS Constitution say about NYS Values?

5 values which appear in Article I and II

1. _____
2. _____
3. _____
4. _____
5. _____

-----Fold Here -----

Amendments I and II of the NYS
Constitution proves that New Yorkers value

and/ or fear _____

Authors _____

Jury Trial

Both the New York and U.S. Constitutions provide for trial by jury. The New York jury-trial provision is more protective than the U.S. Constitution in several aspects:

- The New York Constitution specifies that a jury in a felony case must be composed of 12 members, while the U.S. Constitution has been interpreted to allow felony juries of as few as six members.
- The New York Constitution has been understood to require unanimous juries in criminal cases, while the U.S. Constitution does not impose a unanimity requirement on the states (although unanimity is required in federal cases).
- The New York Constitution specifies stringent requirements for the waiver of a jury trial in criminal cases that are not required under the U.S. Constitution, including that the defendant must personally sign a written waiver in open court before the judge.

Grand Jury and Right to Counsel

Grand Jury

Like the Fifth Amendment, New York requires a grand jury indictment for all felony prosecutions. The New York Constitution allows a defendant to waive indictment on charges other than ones punishable by death or life imprisonment by filing a written instrument signed by the defendant in open court in the presence of his or her counsel. The U.S. Constitution does not require the presence of counsel to waive the right to a grand jury.

Right to Counsel

Considered indispensable to a fair trial, the right to counsel has appeared in every one of New York's four constitutions. Under the state constitution, the right to counsel is more extensive than the protection afforded by the U.S. Constitution. For example, New York courts treat the right to counsel as "indelible," meaning that once the right attaches, it cannot be waived except in the presence of counsel. Subject to certain limitations, the U.S. Constitution allows a represented individual to waive his or her right to counsel outside the presence of counsel.

The right to counsel in New York indelibly attaches in two separate situations: (1) upon the commencement of formal criminal proceedings; and (2) when an individual in custody requests the assistance of an attorney or an attorney enters the case. Concerning the first situation, federal and New York law both provide that the right to counsel attaches upon the commencement of criminal proceedings but differ as to when commencement occurs.

In New York, the filing of a felony complaint, a necessary step to obtain an arrest warrant, signals the commencement of criminal proceedings; at that point, the indelible right attaches regardless of whether the suspect has requested counsel, and police may not question him or her absent an attorney. Under the federal rule, criminal proceedings do not necessarily start when a complaint is filed or an arrest warrant is issued, so police may interrogate a suspect without a lawyer after an arrest made pursuant to a warrant without violating his or her right to counsel.

Regarding the second situation, the Court of Appeals has extended the right beyond what is required by the U.S. Supreme Court, by prohibiting questioning of a suspect:

- in custody not yet represented by counsel but who has requested counsel;
- not in custody and who is questioned about a matter under investigation, where officials know counsel has been obtained; and
- whose attorney in other matters appeared at the police station and identified himself, even though he had not been retained by the defendant before his arrival and took no positive action to protect the defendant's rights once he arrived on the scene.

The right to counsel in New York extends beyond the crime for which the defendant is charged. Once a defendant in custody on a particular matter is represented by or requests counsel, custodial interrogation about any subject, whether related or unrelated to the charge upon which representation is sought or obtained, must cease. In addition, a police officer wishing to question a person in custody about an unrelated matter must make a reasonable inquiry concerning the defendant's representational status when the circumstances indicate that there is a probable likelihood that an attorney has entered the custodial matter, and the accused is actually represented on the custodial charge.

The right to counsel extends to post-conviction proceedings. The state constitution mandates counsel at final parole-revocation hearings, while under federal law, these determinations are made on a case-by-case basis.

Effective Assistance of Counsel

The Court of Appeals has been more protective of a defendant's right to effective assistance of counsel than the U.S. Supreme Court. The Supreme Court requires an individual challenging a conviction on grounds of ineffective assistance of counsel to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." New York courts do not require such a showing.

Excerpts edited for student use from Bopst, Christopher, and Peter Galie. "Protections in the New York State Constitution." Edited by Scott N. Fein and Andrew B Ayers, *Rockefeller Institute of Government*, rockinst.org/issue-area/protections-new-york-state-constitution/.

Searches and Seizures

New York did not have a provision comparable to the Fourth Amendment's prohibition against unreasonable searches and seizures until 1938. Before 1938, New Yorkers had to rely on a statutory protection. Search-and-seizure law has been the most extensively developed area of independent, state-based constitutional law:

- The New York Court of Appeals has refused to adopt the U.S. Supreme Court's exceptions to the exclusionary rule for evidence obtained in "good faith" reliance upon a deficient search warrant, or for primary evidence that would have inevitably been discovered through normal police investigation.
- New York generally bans full searches of persons incident to arrests for traffic violations. Such searches are permitted under federal law.
- New York requires the state demonstrate the presence of "exigent circumstances" (e.g., danger to the officers or the possibility of destruction of evidence) to sustain a warrantless search of a closed container on a person conducted incident to an arrest, which are *per se* constitutional under federal law.
- In *People v Scott*, the New York Court of Appeals rejected the Supreme Court's "open fields" doctrine, which permitted warrantless searches of open fields.
- In evaluating whether information supplied by an informant to police is sufficient to provide probable cause for a search and seizure, New York courts evaluate both the basis of the informant's knowledge and the reliability or veracity of the informant himself. Federal law uses a less stringent "totality-of-circumstances" test for judging the worth of an informant's tip.
- The New York Court of Appeals has held that random, warrantless administrative searches of businesses to uncover evidence of criminality violated the state constitution, although the Fourth Amendment does not prohibit such searches.
- The New York Court of Appeals has rejected the "plain touch doctrine," a doctrine accepted by the U.S. Supreme Court allowing officers to make warrantless seizures of evidence recognized by touch during a lawful pat down.
- New York law provides that warrantless canine sniffs are "searches," under the state constitution. Such activity is not considered a search such under the U.S. Constitution.
- In New York, police are not permitted to conduct a more intrusive search of an automobile's interior following a limited protective frisk of the occupants absent probable cause. Such a search is permitted under federal law. New York requires that inventory searches be conducted pursuant to an established procedure that clearly limits the conduct of individual officers—assuring the searches are consistent and reasonable.³⁵
- Under New York law, a police officer who approaches a citizen to request identifying information must have an objective, credible reason for doing so. An officer who exercises the common law right of inquiry regarding matters that would lead a reasonable person to believe he or she is suspected of criminal behavior must have a founded suspicion of criminal activity. Such encounters are not considered Fourth Amendment seizures under the Federal Constitution and can be undertaken without any evidentiary justification. A suspect's refusal to answer police questions and flight from the officer, absent any other evidence of criminal activity, are not sufficient grounds for search, seizure, or pursuit of the suspect.

- The New York Court of Appeals does not allow the use at trial of any statements obtained from an accused after an arrest in his or her home without a warrant or consent to enter. The U.S. Supreme Court has allowed the admission into evidence of such statements

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Self-Incrimination

The privilege against self-incrimination in the New York Constitution is worded similarly to the privilege found in the Fifth Amendment. Nonetheless, there are some areas in which New York courts have found the state constitution's version more rights-protective:

- When a defendant, in a closely timed sequence, makes statements under interrogation without *Miranda* warnings and repeats those statements after being Mirandized, the later statements will be inadmissible. The U.S. Constitution allows admission of such statements.
- The attempt to use a defendant's post-arrest silence for impeachment purposes at trial is a violation of due process. Such evidence is allowed under federal constitutional law.

Due Process

New York was the first state to add a due-process clause to its state constitution. The clause has been used to invalidate many practices otherwise permissible under federal law:

- A lengthy and unjustifiable delay between the commission of the crime and the time of trial is a violation of the defendant's due process rights, even in the absence of prejudice to the defendant. The federal Due Process Clause requires a showing of actual prejudice.
- The state clause provides a higher burden of proof upon the state in proving that a defendant's confession was voluntary. Under state law, voluntariness must be proved beyond a reasonable doubt; federal law only mandates a preponderance of the evidence.
- New York's death-penalty statute requiring the jury to be instructed that if there was a deadlock on the penalty to be imposed (death or life imprisonment without the possibility of parole), the trial judge could sentence the defendant to as little as twenty years to life or as much as life without parole. The New York Court of Appeals held this instruction violated the due process clause of the state constitution because it had the potential to coerce jurors who believed life imprisonment was the appropriate sentence but feared that if they stuck to their vote and a deadlock resulted the defendant could be eligible for parole in as little as twenty years. The court also held that it would be a violation of the state due process clause to provide no deadlock instruction at all. No such deadlock instruction is required by the federal Constitution.
- A regulation restricting prisoners' contact visits (where inmates are allowed to touch or hug their visitors) was struck down on state due-process grounds. The U.S. Constitution requires no such visitation.
- The New York Court of Appeals has extended the speedy-trial protection afforded to criminal defendants under the due-process clause of the state constitution to juvenile delinquency proceedings.

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Freedom of Speech and the Press

Freedom of speech and the press are essential conditions for self-government. New York has more zealously safeguarded these rights than the U.S. Constitution:

- New York courts require that a private citizen suing for defamation over a comment on an issue of legitimate public concern must prove gross irresponsibility on the part of the defendant, as opposed to the mere negligence standard required by federal law in such circumstances.
- The New York Court of Appeals has required more constitutional protection for opinions than the U.S. Supreme Court. The state constitution provides for absolute constitutional protection of pure opinion; the Supreme Court has not adopted that standard.
- New York law provides that journalists possess a qualified right to withhold sources, even though those sources are not gained in confidence.
- The standard for determining obscenity under the New York Constitution is a statewide standard, rather than the local community standard permitted by federal law.
- The New York Court of Appeals has protected topless dancing as a form of expression, even though the U.S. Supreme Court has not given this activity constitutional protection.
- The Court of Appeals has given greater protections under the state constitution to materials deemed obscene than that afforded by the U.S. Constitution. The court did not allow a municipality to use a public-health law to close an adult bookstore without resorting to less restrictive remedies, even though such a closure would have been consistent with the Supreme Court's interpretation of the First Amendment. The court has also required a higher probable cause standard under the state constitution for warrants issued to search and seize allegedly obscene materials because of the presumptive First Amendment protection enjoyed by such materials.

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Name _____	
New York State Expansion of Federal Individual Liberties	
Brief Synopsis of NY Expansion on this Right	How does this example of NY expansion of Federal rights align with NY state values? Explain.
Jury Trial	
Grand Jury	
Right to Counsel	

Searches and Seizures

Self- Incrimination

Due Process

Freedom of Speech and Press

Appendix D

Name _____

New York State Felony Laws Research

Define Key vocabulary: <https://www.omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm>

Felony: _____

Conviction: _____

Persistent felony offenders: _____

Persistent violent felony offenders: _____

Probation: _____

Parole: _____

Types of felonies and sentences: http://ypdcrime.com/penal.law/felony_sentences.htm

List types of crimes in this category	Sentence for this felony, and do you feel it is appropriate?
"A" Violent	
"B" Violent	
"B" Non-violent	
"C" Violent	

"C" Non-violent	
"D" Violent	
"D" Non-violent	
"E" Violent	
"E" Non-violent	

Voter laws regarding felony convictions: <https://ag.ny.gov/civil-rights/voting-rights>
(end of document)

A person convicted of a felony in NYS may register to vote under if:

Citing evidence from the research above, do you agree with the current New York State laws regarding voting rights of people convicted of felonies? Explain.

Name: _____

Period: _____

Main Idea

Here's what I think



PE:

building an argument

Evidence to back up my reasons



1.



2.



3.

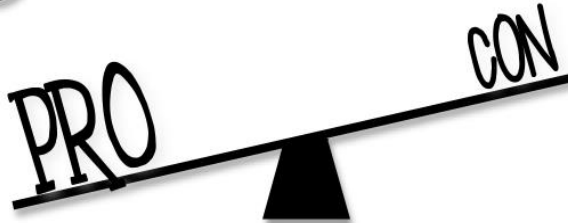


Here are my reasons

Counter Argument

You could argue that...

But here's the WEAKNESS...



When you weigh all the evidence, you can conclude that...

STRONG

FINISH

Don't be Scared, Be Prepared

Controversial Discourse in the Social Studies Classroom: A Guide for Teachers

We have a responsibility, as Social Studies Educators, to prepare a climate and culture for students to express their views through academic discourse. How can we do this without the lesson going off the rails? Be prepared and keep your learning goals/content standards in view at all times. No matter if you want to discuss news that broke on your way to school, or you have a discourse lesson your students tackle each year, keeping the five steps below in your planning will allow your students to practice discourse and keep the peace.

1. **Compelling Question:** Take time and develop a question for students to analyze and think about. Compelling questions also allow the instructor to gain control of any discourse that may be going in the wrong direction by refocusing discussion. Pose the question in neutral and achievable language for all learners. The first step of any discourse lesson should provide students with the opportunity to break down the question and check for understanding in the entire class. For more information on writing compelling questions see <http://www.c3teachers.org/what-are-compelling-questions/>.
2. **Prepare supporting questions:** Although compelling questions perk student interest, classes typically need supporting questions to help scaffold logical reasoning. Questions also assist with overcoming uncomfortable lows in discourse, and serve as a check for the instructor to see if the compelling question is good. Prepare a set of questions that will lead students to be able to answer the compelling question and scaffold their thoughts. Supporting questions can be closed-ended, with supporting comments. They build confidence in students and will add voices to the discourse.
3. **Insure that multiple perspectives are heard:** Multiple perspectives enhance discussion. Ideally, students should research multiple perspectives, but in order to jump start the discussion, you may need to present them with different perspectives. Perspectives should show the different views in a respectful manor and not allow students to pass judgement or disregard perspectives. Video clips from multiple news sources are very helpful.
4. **Choose a specific instructional method for the lesson:** Without process, discussion of sensitive issues will ultimately end up happening between a few strong minded students and the instructor. Choose a strategy that allows every student the opportunity to voice and hear opinions. Anchor charts of your most successful method are great for creating discourse around breaking news, have them ready and talk about today's news today. Jennifer Gonzalez, Cult of Pedagogy, has provided a Big List of discussion strategies to choose from here <https://www.cultofpedagogy.com/speaking-listening-techniques/>.
5. **Set guidelines and classroom discourse rules:** Ideally each class would create these discourse rules. There are a number of lesson plans available to lead instructors through this process of creating classroom culture. Classrooms are different, but the goal remains the same; if a

student's comment crosses the line, instructors must be able to refer to policies and procedures.