***Unit V, Question 2***

*How are individual rights protected in the body of the Constitution?*

* *Given the protection of rights in the body of the Constitution, would you have agreed or disagreed with the Anti-Federalists’ argument for the addition of a bill of rights? Why?*
* *What additional rights, if any, do you think should be added to the Constitution? Why?*

**P1.** All governments must hold and exercise a degree of power; however, the exercise of power can be dangerous to the liberties of the people. The Framers of our Constitution attempted to create a national government that was powerful, but one that did not infringe on individual rights. George Mason, the Anti-Federalist author of the Virginia Declaration of Rights, among other framers, felt that the protection of individual rights mandated the addition of a Bill of Rights to the original document. He lost this battle. But in what some have termed a “mini-Bill of Rights, “ some rights were guaranteed by the original Constitution.

**P2.**  In Article I, Section 9, three key individual rights are guaranteed. Although most of the Framers were skeptical of “paper barriers” to excess in governmental powers, some prohibitions were seen to be important enough to be included from the beginning.

**P3.** “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.” Habeas corpus requires an authority to prove to a court why it has cause to hold someone and is a key individual right.

**P4.**  “No Bill of Attainder or ex post facto law shall be passed.” A bill of attainder is a bill written to punish one person or a group of people. An ex post facto law is one that retroactively makes an act a crime.

**P5.**  Article III, Section 3, contains a very specific definition of treason and insists that only the person convicted of treason can be punished for the crime.

**P6.** The right of trial by jury is ensured in Article III, Section 2, and a ban on religious tests for officials of the national government is found in Article VI.

**P7.**  Most of the Framers felt that interfering with individual rights would not be possible, since the ability to do so was not expressly granted to the United States by the Constitution. We, however, still would have agreed with Mason and the other Anti-Federalists that a Bill of Rights should be added. Why?

**P8.** These men were concerned about loosely phrases clauses in the Constitution. What did “necessary and proper” mean? What was implied by the terms, “general welfare” and “commerce”? From a historical perspective, we know actions by presidents, laws passed by Congresses, and decisions made by courts have all expanded the power of the federal government. For example, the Anti-Federalist fear of the Necessary and Proper Clause was born out as early as 1819 out of the decision in *McCulloch v. Maryland*.

**P9**. While the Constitution describes what government can do and how it may do it, the Bill of Rights helps describes what government must not do. We believe that the bill of rights is a fundamental statement of principles governing the relations between citizens and the state. In the period from 1787 to 1791 when the Bill of Rights was ratified, its supporters not only argued this point, they also emphasized the fact that the addition of the Bill of Rights would strengthen the system of federalism. How?

**P10.** Its adoption would assure the States that they would retain jurisdiction and control over most civil liberties disputes between states and their citizens. Of course, from today’s perspective, the incorporation of provisions of the Bill of Rights through the due process clause of the 14th Amendment has dramatically altered that arrangement.

**P11.** In conclusion, one additional right that could be added to the Constitution today is the right of privacy. From the time of the decision in Griswold v. Connecticut in 1965, when a minority of three justices found that right in the 9th Amendment, debate has raged over this issue. Does the 9th Amendment protect implied rights for individuals in the same way as the Necessary and Proper Clause protects implied powers for the national government? Adding a specific right of privacy would reinforce the constitutional principle of higher law in which citizens enjoy the privilege of a private domain.

**P12.** Thank you for your time. We are now eager to answer your questions