

United States Bill of Rights

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Created	September 25, 1789
Ratified	December 15, 1791
Location	National Archives
Author(s)	James Madison
Purpose	To set limits on government actions in regard to personal liberties.

The **Bill of Rights** is the collective name for the first ten amendments to the United States Constitution. These limitations serve to protect the natural rights of liberty and property. They guarantee a number of personal freedoms, limit the government's power in judicial and other proceedings, and reserve some powers to the states and the public. While originally the amendments applied only to the federal government, most of their provisions have since been held to apply to the states by way of the Fourteenth Amendment.

The amendments were introduced by James Madison to the 1st United States Congress as a series of legislative articles. They were adopted by the House of Representatives on August 21, 1789,^{[1][2]} formally proposed by joint resolution of Congress on September 25, 1789, and came into effect as Constitutional Amendments on December 15, 1791, through the process of ratification by three-fourths of the States. While twelve amendments were passed by Congress, only ten were originally passed by the states. Of the remaining two, one was adopted as the Twenty-seventh Amendment and the other technically remains pending before the states.

Originally, the Bill of Rights implicitly legally protected only white men,^[3] excluding American Indians, people considered to be "black"^[3] (now described as African Americans), and women.^{[4][5][6]} These exclusions were not explicit in the Bill of Right's text, but were well understood and applied.^[3]

The Bill of Rights plays a key role in American law and government, and remains a vital symbol of the freedoms and culture of the nation. One of the first fourteen copies of the Bill of Rights is on public display at the National Archives in Washington, D.C.

Background and historical context

English Bill of Rights

One of the earliest documents used in drafting the American Bill of Rights was the English Bill of Rights of 1689, one of the fundamental documents of English constitutional law. The English Bill of Rights differed substantially in form and intent from the American Bill of Rights, because it was intended to address the rights of citizens as represented by Parliament against the Crown. However, some of its basic tenets were adopted and extended by the U.S. Bill of Rights, including:

- the right of petition,
- an independent judiciary (the Sovereign was forbidden to establish his own courts or to act as a judge himself),
- freedom from taxation by royal (executive) prerogative, without agreement by Parliament (legislators),
- freedom from a peace-time standing army,
- freedom [for Protestants] to bear arms for their defence, as allowed by law,
- freedom to elect members of Parliament without interference from the Sovereign,
- freedom of speech in Parliament,
- freedom from cruel and unusual punishments and excessive bail, and
- freedom from fines and forfeitures without trial.

Virginia Declaration of Rights

The Virginia Declaration of Rights, well-known to Madison, had already been a strong influence on the American Revolution ("all power is vested in, and consequently derived from, the people ...";^[7] also "a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish [the government]"). It had shaped the drafting of the United States Declaration of Independence a decade before the drafting of the Constitution, proclaiming that "all men are by nature equally free and independent, and have certain inherent rights of which ... [they cannot divest;] namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."^[8] On a practical level, its recommendations of a government with a separation of powers (Articles 5–6) and "frequent, certain, and regular"^[9] elections of executives and legislators were incorporated into the United States Constitution — but the bulk of this work addresses the rights of the people and restrictions on the powers of government, and is recognizable in the modern Bill of Rights:

The government should not have the power of suspending or executing laws, "without consent of the representatives of the people".^[10] A legal defendant has the right to be "confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage," and may not be "compelled to give evidence against himself."^[11] Individuals should be protected against "cruel and unusual punishments",^[12] baseless search and seizure,^[13] and be guaranteed a trial by jury.^[14] The government should not abridge freedom of the press,^[15] or freedom of religion ("all men are equally entitled to the free exercise of religion").^[16] The government should be enjoined against maintaining a standing army rather than a "well regulated militia".^[17]

Articles of Confederation

Prior to the acceptance and implementation of the United States Constitution, the original 13 colonies followed the stipulations and agreements set forth in the Articles of Confederation, created by the Second Continental Congress and ratified in 1781. The national government that operated under the Articles of Confederation was too weak however to adequately regulate the various conflicts that arose between the states.^[18] The Philadelphia Convention set out to correct weaknesses inherent in the Articles of Confederation that had been apparent even before the American Revolutionary War had been successfully concluded.^[18] The newly constituted Federal government included a strong executive branch, a stronger legislative branch and an independent judiciary.

The Bill of Rights is a series of limitations on the power of the U.S. federal government, protecting the natural rights of liberty and property including freedom of religion, freedom of speech, a free press, free assembly, and free association, as well as the right to keep and bear arms. In federal criminal cases, it requires indictment by a grand jury for any capital or "infamous crime", guarantees a speedy, public trial with an impartial jury composed of members of the state or judicial district in which the crime occurred, and prohibits double jeopardy. In addition, the Bill of Rights reserves for the people any rights not specifically mentioned in the Constitution^[19] and reserves all powers not specifically granted to the federal government to the people or the States. Most of these restrictions on the federal government were later applied to the states by a series of legal decisions applying the due process clause of the Fourteenth Amendment, which was ratified in 1868. The Bill was influenced by George Mason's 1776

Virginia Declaration of Rights, the English Bill of Rights 1689, works of the Age of Enlightenment pertaining to natural rights, and earlier English political documents such as Magna Carta (1215).

The Anti-Federalists

Following the Philadelphia Convention, some famous revolutionary figures and statesmen, such as Patrick Henry, publicly argued against the Constitution.^[20] Many were concerned that the strong national government proposed by the Federalists was a threat to individual rights and that the President would become a king, and objected to the federal court system in the proposed Constitution.

Thomas Jefferson, at the time serving as Ambassador to France, wrote to Madison advocating a Bill of Rights: "Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can."^[21] George Mason refused to sign the proposed Constitution, in part to protest its lack of a Bill of Rights.^[22]

In a paper later collected into the *Anti-Federalist Papers*, the pseudonymous "Brutus" (probably Robert Yates) wrote,

We find they have, in the ninth section of the first article declared, that the writ of habeas corpus shall not be suspended, unless in cases of rebellion — that no bill of attainder, or ex post facto law, shall be passed — that no title of nobility shall be granted by the United States, etc. If every thing which is not given is reserved, what propriety is there in these exceptions? Does this Constitution any where grant the power of suspending the habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers which the bills of rights guard against the abuse of, are contained or implied in the general ones granted by this Constitution.^[23]

Brutus continued with an implication directed against the Founding Fathers:

Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought. So clear a point is this, that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the States, are wilfully endeavoring to deceive, and to lead you into an absolute state of vassalage.^[23]



On June 5, 1788, Patrick Henry spoke before Virginia's ratification convention in opposition to the Constitution.

Philadelphia Convention

The United States Constitutional Convention^[24] (also known as the Philadelphia Convention,^[24] and various other names) took place from May 14 to September 17, 1787, in Philadelphia, Pennsylvania and although the Convention was purportedly intended only to revise the Articles of Confederation, the intention from the outset of many of its proponents, chief among them James Madison and Alexander Hamilton, was to create a new government rather than fix the existing one. Due to the difficulty of travel in the late 18th century, very few of the selected delegates were present on the designated day of May 14, 1787, and it was not until May 25 that a quorum of seven states was secured. The convention convened in the Pennsylvania State House, and George Washington was unanimously elected as president of the convention^[25] and William Jackson was elected as secretary. Madison's *Notes of Debates in the Federal Convention of 1787* remain the most complete record of the convention.^[18]

In late July 1787, the convention appointed a Committee of Detail to draft a document based on the agreements that had been reached. After another month of discussion and refinement, a second committee, the Committee of Style and Arrangement, headed by Gouverneur Morris, and including Hamilton, William Samuel Johnson, Rufus King, and Madison, produced the final version, which was submitted for signing on September 17. Morris is credited, both now and then, as the chief draftsman of the final document, including the preamble.

Not all delegates were pleased with the results and thirteen of them left before the ceremony, three of those remaining refused to sign: Edmund Randolph of Virginia, George Mason of Virginia, and Elbridge Gerry of Massachusetts. George Mason demanded a Bill of Rights if he was to support the Constitution. The Bill of Rights was not included in the Constitution submitted to the states for ratification, but many states ratified it anyway with the understanding that a bill of rights would soon follow.^[26] 39 of the 55 delegates ended up signing, but it is likely that none were completely satisfied. Their views were summed up by Benjamin Franklin, who said,

"There are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. ... I doubt too whether any other Convention we can obtain, may be able to make a better Constitution. ... It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies..."

Delegates to the Philadelphia Convention on September 12, 1787, debated whether to include a Bill of Rights in the body of the U.S. Constitution, and an agreement to create the Bill of Rights helped to secure ratification of the Constitution itself.^[27] Ideological conflict between Federalists and anti-Federalists threatened the final ratification of the new national Constitution. Thus, the Bill addressed the concerns of some of the Constitution's influential opponents, including prominent Founding Fathers, who argued that the Constitution should not be ratified because it failed to protect the fundamental principles of human liberty.

The Constitution was then submitted to the states for ratification, pursuant to its own Article VII. Twelve articles were proposed to the States, but only ten, corresponding to the First through Tenth Amendments, were ratified in the 18th century. The first Article, dealing with the number and apportionment of U.S. Representatives, has never been ratified, and the second, limiting the power of Congress to increase the salaries of its members, was ratified in 1992 as the 27th Amendment.

Delegates to the Constitutional convention

The 55 delegates who drafted the Constitution included many of the Founding Fathers of the new nation. Thomas Jefferson, who was Minister to France during the convention, characterized the delegates as an assembly of "demi-gods."^[18] John Adams also did not attend, being abroad in Europe as Minister to Great Britain, but he wrote home to encourage the delegates. Patrick Henry was also absent; he refused to go because he "smelt a rat in Philadelphia, tending toward the monarchy." Also absent were John Hancock and Samuel Adams. Rhode Island refused to send delegates to the convention.

Connecticut	Maryland	New Jersey	Pennsylvania	Virginia
• Oliver Ellsworth*	• Daniel Carroll	• David Brearley	• George Clymer	• John Blair
• William Samuel Johnson	• Luther Martin*	• Jonathan Dayton	• Thomas Fitzsimons	• James Madison
• Roger Sherman	• James McHenry	• William Houston*	• Benjamin Franklin	• George Mason*
Delaware	• John Francis Mercer*	• William Livingston	• Jared Ingersoll	• James McClurg*
• Richard Bassett	• Daniel of St. Thomas Jenifer	• William Paterson	• Thomas Mifflin	• Edmund Randolph*
• Gunning Bedford, Jr.	Massachusetts	New York	• Gouverneur Morris	• George Washington
• Jacob Broom	• Elbridge Gerry*	• Alexander Hamilton	• Robert Morris	• George Wythe*
• John Dickinson	• Nathaniel Gorham	• John Lansing, Jr.*	• James Wilson	Rhode Island
• George Read	• Rufus King	• Robert Yates*	South Carolina	• <i>Rhode Island did not send delegates to the convention.</i>
Georgia	• Caleb Strong*	North Carolina	• Pierce Butler	
• Abraham Baldwin	• Nicholas Gilman	• William Blount	• Charles Cotesworth Pinckney	
• William Few	• John Langdon	• William Richardson Davie*	• Charles Pinckney	
• William Houstoun*		• Alexander Martin*	• John Rutledge	
• William Pierce*		• Richard Dobbs Spaight		
		• Hugh Williamson		

(*) Did not sign the final draft of the U.S. Constitution. Randolph, Mason, and Gerry were the only three present in Philadelphia at the time who refused to sign.

The Bill of Rights

The Ideas of John Locke

To some degree, the Bill of Rights (and the American Revolution) incorporated the ideas of John Locke, who argued in his 1689 work *Two Treatises of Government* that civil society was created for the protection of property (Latin *proprius*, or that which is one's own, meaning "life, liberty, and estate"). Locke also advanced the notion that each individual is free and equal in the state of nature. Locke expounded on the idea of natural rights that are inherent to all individuals, a concept Madison mentioned in his speech presenting the Bill of Rights to the 1st Congress. Locke's argument for protecting economic rights against government may have been most salient to the framers of the Amendments; quartering and cruel punishments were not the current abuses of 1791.^[28]

Madison's preemptive proposal

On June 8, 1789, Madison submitted his proposal to Congress. In his speech to Congress on that day, Madison said:

For while we feel all these inducements to go into a revisal of the constitution, we must feel for the constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a re-consideration of the whole structure of the government, for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door was opened, if we should be very likely to stop at that point which would be safe to the government itself: But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any



Madison's "Notes for speech on Constitutional amendments, June 8, 1789, in which he underlined the concept of "natural rights retained""

class of our constituents.^[29]

Prior to listing his proposals for a number of constitutional amendments, Madison acknowledged a major reason for some of the discontent with the Constitution as written:

I believe that the great mass of the people who opposed [the Constitution], disliked it because it did not contain effectual provision against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercised the sovereign power: nor ought we to consider them safe, while a great number of our fellow citizens think these securities necessary.^[29]

Madison's proposed amendments were presented as Nine Articles comprising up to 20 Amendments.

The amendments which have occurred to me, proper to be recommended by congress to the state legislatures are these:

First. That there be prefixed to the constitution a declaration That all power is originally vested in, and consequently derived from the people.

That government is instituted, and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 2nd. section 2, clause 3, these words be struck out, to wit, "The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative, and until such enumeration shall be made." And that in place thereof be inserted these words, to wit, "After the first actual enumeration, there shall be one representative for every thirty thousand, until the number amount to after which the proportion shall be so regulated by congress, that the number shall never be less than nor more than but each state shall after the first enumeration, have at least two representatives; and prior thereto."

Thirdly. That in article 2nd, section 6, clause 1, there be added to the end of the first sentence, these words, to wit, "But no law varying the compensation last ascertained shall operate before the next ensuing election of representatives."

Fourthly. That in article 2nd, section 9, between clauses 3 and 4, be inserted these clauses, to wit, The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience by in any manner, or on any pretext infringed

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the legislature by petitions, or remonstrances for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment, or one trial for the same office; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

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

The rights of the people to be secured in their persons, their houses, their papers, and their other property from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 2nd, section 10, between clauses 1 and 2, be inserted this clause, to wit: No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That article 3rd, section 2, be annexed to the end of clause 2nd, these words to wit: but no appeal to such court shall be allowed where the value in controversy shall not amount to——dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3rd, section 2, the third clause be struck out, and in its place be inserted the classes following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same state, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this constitution, are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial; nor the executive exercise the powers vested in the legislative or judicial; nor the judicial exercise the powers vested in the legislative or executive departments.

The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the States respectively.

Ninthly. That article 7th, be numbered as article 8th.

Madison's proposal was reworked and adopted as 17 Amendments by the House of Representatives on August 21, 1789, and forwarded to the Senate on August 24. The House version rejected Madison's idea to incorporate the amendments into the body of the Constitution and instead submitted its 17 Articles to be attached separately "in addition to, and amendment of, the Constitution."^[30]

The Senate edited the House's proposed 17 Amendments and adopted a version with 12 Amendments. The two versions went to the Joint Committee and the Senate's version became the one adopted by joint resolution of

Congress on September 25, 1789, to be forwarded to the states on September 28.^{[1][2][31]}

Early sentiments favoring expanding the Bill of Rights

The idea of adding a bill of rights to the Constitution was originally controversial. Alexander Hamilton, in *Federalist* No. 84, argued against a "Bill of Rights," asserting that ratification of the Constitution did not mean the American people were surrendering their rights, and, therefore, that protections were unnecessary: "Here, in strictness, the people surrender nothing, and as they retain everything, they have no need of particular reservations." Critics pointed out that earlier political documents had protected specific rights, but Hamilton argued that the Constitution was inherently different:

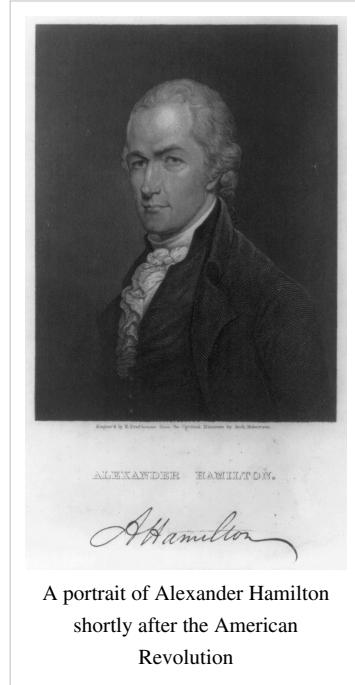
Bills of rights are in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was "Magna Charta", obtained by the Barons, swords in hand, from King John.^[32]

Finally, Hamilton expressed the fear that protecting specific rights might imply that any unmentioned rights would not be protected:

I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?^[32]

Essentially, Hamilton and other Federalists believed in the British system of common law which did not define or quantify natural rights. They believed that adding a Bill of Rights to the Constitution would limit their rights to those listed in the Constitution. This is the primary reason the Ninth Amendment was included.

Thomas Jefferson was a supporter of the Bill of Rights.^[33] George Mason "wished the plan [the Constitution] had been prefaced with a Bill of Rights." Elbridge Gerry of Massachusetts "concurred in the idea & moved for a Committee to prepare a Bill of Rights." Roger Sherman argued against a Bill of Rights stating that the "State Declarations of Rights are not repealed by this Constitution." Mason then stated "The Laws of the U.S. are to be paramount to State Bills of Rights." Gerry's motion was defeated with 10-Nays, 1-Absent, and No-Yeas.^[34]



A portrait of Alexander Hamilton shortly after the American Revolution

Ratification and the Massachusetts Compromise

Ratification of the Constitution					
	Date	State	Votes		
			Yes	No	
1	December 7, 1787	Delaware	30	0	
2	December 12, 1787	Pennsylvania	46	23	
3	December 18, 1787	New Jersey	38	0	
4	January 2, 1788	Georgia	26	0	
5	January 9, 1788	Connecticut	128	40	
6	February 6, 1788	Massachusetts	187	168	
7	April 28, 1788	Maryland	63	11	

8	May 23, 1788	South Carolina	149	73
9	June 21, 1788	New Hampshire	57	47
10	June 25, 1788	Virginia	89	79
11	July 26, 1788	New York	30	27
12	November 21, 1789	North Carolina	194	77
13	May 29, 1790	Rhode Island	34	32

Individualism was the strongest element of opposition; the necessity, or at least the desirability, of a bill of rights was almost universally felt, and the Anti-Federalists were able to play on these feelings in the ratification convention in Massachusetts. By this stage, five of the states had ratified the Constitution with relative ease; however, the Massachusetts convention was bitter and contentious:

In Massachusetts, the Constitution ran into serious, organized opposition. Only after two leading Anti-federalists, Adams and Hancock, negotiated a far-reaching compromise did the convention vote for ratification on February 6, 1788 (187–168). Anti-federalists had demanded that the Constitution be amended before they would consider it or that amendments be a condition of ratification; Federalists had retorted that it had to be accepted or rejected as it was. Under the Massachusetts compromise, the delegates recommended amendments to be considered by the new Congress, should the Constitution go into force. The Massachusetts compromise determined the fate of the Constitution, as it permitted delegates with doubts to vote for it in the hope that it would be amended.^[35]

On September 17, 1787, the Constitution was completed, followed by a speech given by Benjamin Franklin, who urged unanimity, although the Convention decided that only nine states were needed to ratify. The Convention submitted the Constitution to the Congress of the Confederation^[36]

Massachusetts' Rufus King assessed the Convention as a creature of the states, independent of the Articles Congress, submitting its proposal to Congress only to satisfy forms. Though amendments were debated, they were all defeated, and on September 28, 1787, the Articles Congress resolved "unanimously" to transmit the Constitution to state legislatures for submitting to a ratification convention according to the Constitutional procedure.^[37] Several states enlarged the numbers qualified just for electing ratification delegates. In this they went beyond the Constitution's provision for the most voters for the state legislature to make a new social contract among, more nearly than ever before, "We, the people".^[38]

Following Massachusetts' lead, the Federalist minorities in both Virginia and New York were able to obtain ratification in convention by linking ratification to recommended amendments.^[39] A minority of the Constitution's critics continued to oppose the Constitution. Maryland's Luther Martin argued that the federal convention had exceeded its authority; he still called for amending the Articles.^[40] Article 13 of the Articles of Confederation stated that the union created under the Articles was "perpetual" and that any alteration must be "agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State".^[41]

However, the unanimous requirement under the Articles made all attempts at reform impossible. Martin's allies such as New York's John Lansing, Jr., dropped moves to obstruct the Convention's process. They began to take exception to the Constitution "as it was", seeking amendments. Several conventions saw supporters for "amendments before" shift to a position of "amendments after" for the sake of staying in the Union. New York Anti's "circular letter" was sent to each state legislature proposing a second constitutional convention for "amendments before". It failed in the state legislatures. Ultimately, only North Carolina and Rhode Island would wait for amendments from Congress before ratifying.^[39]

Article VII of the proposed constitution stipulated that only nine of the thirteen states would have to ratify for the new government to go into effect (for the participating states). After a year had passed in state-by-state ratification battles, on September 13, 1788, the Articles Congress certified that the new Constitution had been ratified. The new

government would be inaugurated with eleven of the thirteen. The Articles Congress directed the new government to begin in New York City on the first Wednesday in March,^[42] and on March 4, 1789, the government duly began operations.

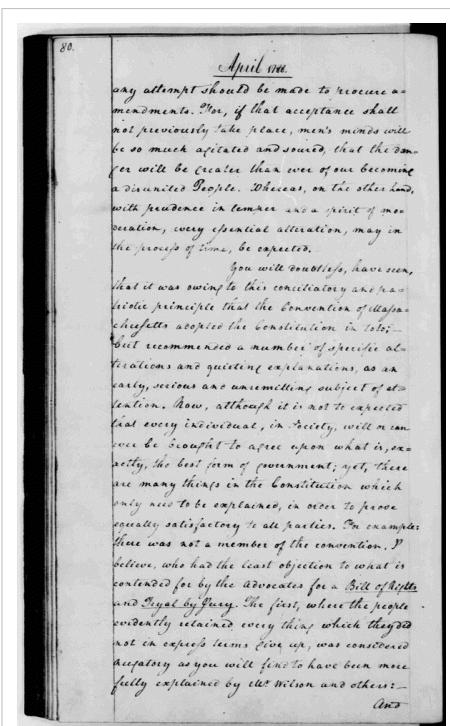
George Washington had earlier been reluctant to go the Convention for fear the states "with their darling sovereignties" could not be overcome.^[43] But he was elected the Constitution's President unanimously, including the vote of Virginia's presidential elector, the Anti-federalist Patrick Henry.^[44] The new Congress would be a triumph for the Federalists. The Senate of eleven states would be 20 Federalists to two Virginia (Henry) Anti-federalists. The House would seat 48 Federalists to 11 Antis from only four states: Massachusetts, New York, Virginia and South Carolina.^[45]

Antis' fears of personal oppression by Congress would be allayed by Amendments passed under the floor leadership of James Madison in the first session of the first Congress. These first ten Amendments ratified by the states were to become known as the Bill of Rights.^[46] Objections to a potentially remote federal judiciary would be reconciled with 13 federal courts (11 states, Maine and Kentucky), and three Federal riding circuits out of the Supreme Court: Eastern, Middle and South.^[47] Suspicion of a powerful federal executive was answered by Washington's cabinet appointments of once-Anti-Federalists Edmund Jennings Randolph as Attorney General and Thomas Jefferson as Secretary of State.^{[48][49]}

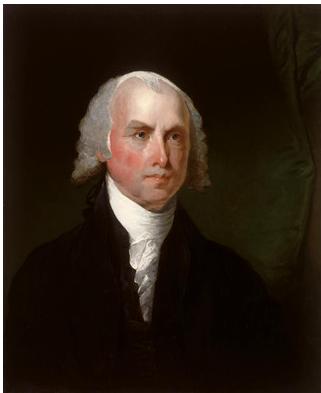
What Constitutional historian Pauline Maier calls a national "dialogue between power and liberty" had begun anew.^[50]

Four of the next five states to ratify, including New Hampshire, Virginia, and New York, included similar language in their ratification instruments. They all sent recommendations for amendments with their ratification documents to the new Congress. Since many of these recommendations pertained to safeguarding personal rights, this pressured Congress to add a Bill of Rights after Constitutional ratification. Additionally, North Carolina refused to ratify the Constitution until progress was made on the issue of the Bill of Rights. Thus, while the Anti-Federalists were unsuccessful in their quest to prevent the adoption of the Constitution, their efforts were not totally in vain.

After the Constitution was ratified in 1789, the 1st United States Congress met in Federal Hall in New York City. Most of the delegates agreed that a "bill of rights" was needed and most of them agreed on the rights they believed should be enumerated.



George Washington's 1788 letter to the Marquis de Lafayette observed, "the Convention of Massachusetts adopted the Constitution in toto; but recommended a number of specific alterations and quieting explanations." Source: Library of Congress



James Madison, "Father of the Constitution" and first author of the Bill of Rights

Madison, at the head of the Virginia delegation of the 1st Congress, had originally opposed a Bill of Rights but hoped to pre-empt a second Constitutional Convention that might have undone the difficult compromises of 1787: a second convention would open the entire Constitution to reconsideration and could undermine the work he and so many others had done in establishing the structure of the U.S. Government. Writing to Jefferson, he stated, "The friends of the Constitution...wish the revisal to be carried no farther than to supply additional guards for liberty...and are fixed in opposition to the risk of another Convention....It is equally certain that there are others who urge a second Convention with the insidious hope of throwing all things into Confusion, and of subverting the fabric just established, if not the Union itself."^[51]

Madison based much of the Bill of Rights on George Mason's Virginia Declaration of Rights (1776),^[52] which itself had been written with Madison's input. He carefully considered the state amendment recommendations as well. He looked for recommendations shared by many states to avoid controversy and reduce opposition to the ratification of the future amendments.^[53] Additionally, Madison's work on the Bill of Rights reflected centuries of English law and philosophy, further modified by the principles of the American Revolution.

Ratification process

On November 20, 1789, New Jersey became the first state to ratify these amendments. On December 15, 1791, ten of these proposals became the First through Tenth Amendments — and U.S. law — when they were ratified by the Virginia legislature.

Ratification timeline

- September 17, 1787 – Final draft of the Constitution is signed and convention adjourns.
- September 28, 1787 – Continental Congress approves sending proposed Constitution to states for their consideration.
- December 7, 1787 – Delaware is 1st state to ratify the Constitution.
- December 12, 1787 – Pennsylvania is 2nd state to ratify the Constitution.
- December 18, 1787 – New Jersey is 3rd state to ratify the Constitution.
- January 2, 1788 – Georgia is 4th state to ratify the Constitution.
- January 9, 1788 – Connecticut is 5th state to ratify the Constitution.
- February 6, 1788 – Massachusetts is 6th state to ratify the Constitution.
- March 24, 1788 – Rhode Island REFUSES to call ratifying convention.
- April 28, 1788 – Maryland is 7th state to ratify the Constitution.
- May 23, 1788 – South Carolina is 8th state to ratify the Constitution.
- June 21, 1788 – New Hampshire is 9th state to ratify the Constitution.
- June 25, 1788 – Virginia is 10th state to ratify the Constitution.
- July 26, 1788 – New York is 11th state to ratify the Constitution.
- March 4, 1789 – The Constitution **goes into effect**.
- September 25, 1789 – Congress **proposes Bill of Rights**.
- November 20, 1789 – New Jersey is 1st state to ratify the Bill of Rights; rejected article II^[54]
- November 21, 1789 – North Carolina is 12th state to ratify the Constitution.
- December 19, 1789 – Maryland is 2nd state to ratify the Bill of Rights, approved all
- December 22, 1789 – North Carolina is 3rd state to ratify the Bill of Rights, approved all
- January 19, 1790 – South Carolina is 4th state to ratify the Bill of Rights, approved all
- January 25, 1790 – New Hampshire is 5th state to ratify the Bill of Rights, rejected article II.

- January 28, 1790 – Delaware is 6th state to ratify the Bill of Rights, rejected article I
- February 24, 1790 – New York is 7th state to ratify the Bill of Rights, rejected article II
- March 10, 1790 – Pennsylvania is 8th state to ratify the Bill of Rights, rejected article II
- May 29, 1790 – Rhode Island is 13th state to ratify the Constitution, rejected article II
- June 7, 1790 – Rhode Island is 9th state to ratify the Bill of Rights.
- October 17, 1790 – Treaty between New York and Vermont paves way for Vermont's admission to the union.
- January 10, 1791 – Vermont becomes 14th state to ratify the Constitution — except that it's not a state until March 4, 1791.
- November 3, 1791 – Vermont is 10th state to ratify the Bill of Rights, approved all
- December 15, 1791 – Virginia is 11th state to ratify the Bill of Rights, approved all and the *Bill of Rights goes into effect*.
- March 2, 1939 – Massachusetts ratified the Bill of Rights as part of the Bill of Rights sesquicentennial celebrations.^[55]
- March 24, 1939 – Georgia ratified the Bill of Rights as part of the Bill of Rights sesquicentennial celebrations.^[56]
- April 19, 1939 – Connecticut ratified the Bill of Rights as part of the Bill of Rights sesquicentennial celebrations.^[57]

Articles III to XII were ratified by 11/14 states (> 75%). Article I, rejected by Delaware, was ratified only by 10/14 States (< 75%), and despite later ratification by Kentucky (11/15 states < 75%), the article has never since received the approval of enough states for it to become part of the Constitution. Article II was ratified by 6/14, later 7/15 states, but did not receive the 3/4 majority of States needed for ratification until 1992 when it became the 27th Amendment.

Later consideration

Lawmakers in Kentucky, which became the 15th state to join the Union in June 1792, ratified the entire set of twelve proposals during that commonwealth's initial month of statehood, perhaps unaware that Virginia's approval six months earlier had already made ten of the package of twelve part of the Constitution.

Although ratification made the Bill of Rights effective in 1791, three of the original thirteen states — Connecticut, Georgia, and Massachusetts — did not ratify the first ten amendments until 1939, when they were urged to do so in a celebration of the 150th anniversary of their passage by Congress.^[58]

Text of the Bill of Rights

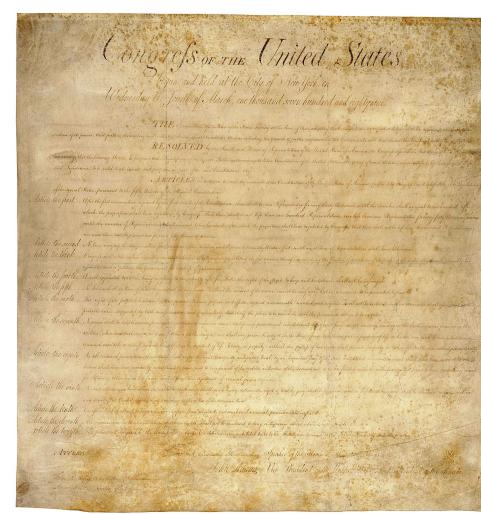
Preamble

Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.^[59]



United States Bill of Rights currently housed in the National Archives.

Amendments

Further information: List of amendments to the United States Constitution

- First Amendment – Establishment Clause, Free Exercise Clause; freedom of speech, of the press, and of assembly; right to petition

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.

- Second Amendment – Militia (United States), Sovereign state, Right to keep and bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.^[60]

- Third Amendment – Protection from quartering of troops.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

- Fourth Amendment – Protection from unreasonable search and seizure.

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.

- Fifth Amendment – due process, double jeopardy, self-incrimination, eminent domain.

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 offence 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.

- Sixth Amendment – Trial by jury and rights of the accused; Confrontation Clause, speedy trial, public trial, right to counsel

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 defence.

- Seventh Amendment – Civil trial by jury.

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.

- Eighth Amendment – Prohibition of excessive bail and cruel and unusual punishment.

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

- Ninth Amendment – Protection of rights not specifically enumerated in the Constitution.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Tenth Amendment – Powers of States and people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Proposed amendments not passed with Bill of Rights

- Article I – Apportionment.

After the enumeration required by the first article of the Constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall be not less than two hundred representatives, nor more than one representative for every fifty thousand persons.

- Article II (ratified in 1992 as Twenty-seventh Amendment) – Congressional pay raises.

No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Status of the original 14 copies

George Washington had fourteen handwritten copies of the Bill of Rights made, one for Congress and one for each of the original thirteen states:^[61] Connecticut,^[62] Delaware,^[63] Georgia,^[62] Maryland,^[64] Massachusetts,^[62] New Hampshire,^[62] New Jersey,^[65] New York,^{[66][67]} North Carolina,^{[61][68]} Pennsylvania,^[62] Rhode Island,^[62] South Carolina,^[62] Virginia.^[69]

The copies for Georgia, Maryland, New York, and Pennsylvania are missing. The New York copy is thought to have been destroyed in a fire,^[67] whereas the Pennsylvania copy reportedly disappeared in the later 18th century. Two unidentified copies of the missing four (thought to be the Georgia and Maryland copies) survive; one is in the National Archives^{[70][71]} and the other is in the New York Public Library.^[68]

North Carolina's copy was stolen by a Union soldier in April 1865 and returned to North Carolina in 2005, 140 years later by FBI Special Agent Robert King Wittman.^{[61][68]}

Virginia's copy was used for the Bill of Rights Tour, to mark the bicentennial of the Bill of Rights, in 1991.

Excluded from The Bill of Rights

Originally, the Bill of Rights restrictions applied only to the federal government and not to the state governments. Parts of the amendments originally proposed by Madison that would have limited state governments ("No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.") were not approved by Congress, and therefore the Bill of Rights did not apply to the powers of state governments.^[72]

States had established state churches up until the 1820s, and Southern states, beginning in the 1830s, could ban abolitionist literature. In the 1833 case *Barron v. Baltimore*, the Supreme Court specifically ruled that the Bill of Rights provided "security against the apprehended encroachments of the general government—not against those of local governments." In the *Gitlow v. New York*, 268 U.S. 652, (1925) case, the Supreme Court ruled that the Fourteenth Amendment, which had been adopted in 1868, could make certain applications of the Bill of Rights applicable to the states. However, the Gitlow case stated (p. 666): "For present purposes we may and do presume that freedom of speech and of the press — which are protected by the First Amendment from abridgment by Congress — are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." However at p. 668, the Court held: "It does not protect publications prompting the overthrow of government by force", which Gitlow and associates advocated in their publications. The Supreme Court has cited *Gitlow v. New York* as precedent for a series of decisions that made most, but not all, of the provisions of the Bill of Rights restrictions applicable to the states under the doctrine of *selective incorporation*.

When first adopted, the Bill of Rights applied to white men and excluded most Americans. Free blacks were excluded from The Bill of Rights because they were not citizens.^[73] Also excluded were all women, American Indians, immigrants, and white men who did not own land.

Display and honoring of the Bill of Rights

In 1941, President Franklin D. Roosevelt declared December 15 to be Bill of Rights Day, commemorating the 150th anniversary of the ratification of the Bill of Rights.

The Bill of Rights is on display at the National Archives and Records Administration,^[74] in the Rotunda for the Charters of Freedom.

The Rotunda itself was constructed in the 1950s and dedicated in 1952 by President Harry S. Truman, who said, "Only as these documents are reflected in the thoughts and acts of Americans, can they remain symbols of power that can move the world. That power is our faith in human liberty"^[75]

After fifty years, signs of deterioration in the casing were noted, while the documents themselves appeared to be well preserved: "But if the ink of 1787 was holding its own, the encasements of 1951 were not ... minute crystals and

microdroplets of liquid were found on surfaces of the two glass sheets over each document.... The CMS scans confirmed evidence of progressive glass deterioration, which was a major impetus in deciding to re-encase the Charters of Freedom."^[76]

Accordingly, the casing was updated and the Rotunda rededicated on September 17, 2003. In his dedicatory remarks, two hundred and sixteen years after the close of the Constitutional Convention, President George W. Bush stated, "The true [American] revolution was not to defy one earthly power, but to declare principles that stand above every earthly power—the equality of each person before God, and the responsibility of government to secure the rights of all."^[77]

In 1991, the Bill of Rights toured the country in honor of its bicentennial, visiting the capitals of all fifty states.

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- [10] Article 7
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