

WHY A BILL OF RIGHTS?

The Constitution of the United States was written during the summer of 1787. That September it was sent to the states for ratification. Nine of the thirteen states would have to ratify it for the Constitution to become effective for those ratifying states. The future was not certain at all—a debate began among the states over ratification. Those who argued that the Constitution should be approved were called Federalists; those who argued against it were called Anti-Federalists.

One of the many points of contention between these two groups was the Constitution's lack of a bill of rights. A bill of rights would place specific limits on government power. Federalists argued that the Constitution did not need a bill of rights, because the people and the states kept any powers not given to the federal government.

Anti-Federalists held that a bill of rights was necessary to safeguard individual liberty.

Many of the state conventions ratified the Constitution, but called for amendments specifically protecting individual rights from abridgement by the federal government. The debate raged for months. By June of 1788, nine states had ratified the Constitution, ensuring it would go into effect for those nine states. However, key states including Virginia and New York had not ratified. James Madison, the principal author of the Constitution, knew that grave doubts would be cast on the Constitution if those states (the home states of several of its chief architects, including Madison himself) did not adopt it.

During the ratification debate in Virginia, James Madison promised that a bill of rights would be added after ratification. His promise reassured the convention and the Constitution was approved in that state by the narrowest margin. New York soon followed, but submitted proposed amendments. Two states, Rhode Island and North Carolina, refused to ratify without a bill of rights.


Though the Federalists enjoyed a majority in Congress, it was clear that the people wanted a bill of rights. A year later in June of 1789, James Madison proposed a series of amendments to be debated in the first Congress.

Madison, then a member of the US House of Representatives, went through the Constitution itself, making changes where he thought most appropriate. But several Representatives, led by Roger

Sherman, objected that Congress had no authority to change the wording of the Constitution itself. Therefore, Madison's changes were presented as a list of amendments that would follow Article VII.

The House approved seventeen amendments. Of these seventeen, the Senate approved twelve. Those twelve were sent to the states for approval in August of 1789. Of those twelve, ten were quickly approved (or, ratified). Virginia's legislature became the last to ratify the amendments on December 15, 1791.

The Bill of Rights is a list of limits on government power. For example, what the Founders saw as the natural right of individuals to speak and worship freely was protected by the First Amendment's prohibitions on Congress from making laws



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establishing a religion or abridging freedom of speech. For another example, the natural right to be free from unreasonable government intrusion in one's home was safeguarded by the Fourth Amendment's warrant requirements.

The Ninth Amendment protects all natural rights that are not listed in the Bill of Rights. Since it was impossible to list every right, the Ninth Amendment makes it clear that individual's rights are not confined to those in the first eight amendments. The Tenth Amendment reinforces the limited nature of the federal government, spelling out the fact that the powers not given to the federal government are kept by the states and the people (except for those powers the Constitution explicitly says states do not have).

The amendments in the Bill of Rights do not "give" anyone anything. On the other hand, Bill of Rights protections do stop the government from doing

certain things. This kind of limited government is the essence of liberty: the freedom to act without unauthorized restraint. Citizens have the right to pursue happiness, but as Benjamin Franklin is believed to have said, they have to "catch" it themselves.

The amendments appear in a certain order because of Madison's original changes to the Constitution. The rights in the First Amendment—Congress has no power to infringe on free religion, speech, press, assembly, and petition—were originally written by Madison as changes to Article I of the Constitution. The First Amendment was originally the third amendment, but the first two amendments were not ratified by the states in the 18th century, and so it became the First. (One of Madison's original amendments regulating the pay of Congressmen was eventually ratified in 1992 and became the Twenty-Seventh Amendment.)



CRITICAL THINKING QUESTIONS

1. What was the Federalist position on the Constitution in 1787? What was the Anti-Federalist position?
2. Why was Madison concerned when Virginia and New York had not ratified the Constitution?
3. How did Madison first introduce amendments in Congress?
4. The Bill of Rights is a list of limits on government power. What does this reveal about the concept of liberty?