

## The Birth of the Bill of Rights

The idea of including a bill of rights in the Constitution was brought up a scant five days before the Constitution was signed in Philadelphia by 29 delegates. On September 12, 1787, George Mason of Virginia said a bill of rights would "give great quiet to the people." However, there was little discussion, and the Convention did not pursue the rights issue.

Nathan Sherman of Connecticut and other delegates maintained that not only were individual rights protected in state constitutions—the majority of the 13 state constitutions in effect at the time included bills of rights—but also in the new Constitution itself. Sherman and other Federalists would later cite as examples the inclusion in the Constitution of the right of the writ of *habeas corpus*, freedom from bills of attainder and *ex post facto* laws, equality for all by the prohibition of direct elections in the House of Representatives, and the right to a jury trial in criminal cases. Although Mason, Edmund Randolph of Massachusetts, and Elbridge Gerry of Massachusetts, refused to sign the new Constitution, the document was approved September 17, 1787, and sent to the states for ratification.

By January 9, 1788, five of the nine states required for ratification had approved the Constitution. However, in several powerful states—

PHOTOGRAPH BY GUY LAWRENCE FOR THE NEW YORK TIMES

George Mason  
Drafted the original Bill of Rights

## The "Revolutionary" First Amendment

Freedom of religion, speech, the press, assembly, and petition

The First Amendment was revolutionary. It abolished the Old World concept of an "official" church supported by the state. It prohibited Congress from interfering with freedom of speech and of the press. And it protected the right to protest and petition the government for a redress of grievances. In 1663 Rhode Island became the first colony to provide for religious liberty. More than a century later, George Mason drafted the Virginia Declaration of Rights, in 1776, calling for the "fullest toleration" of nonmembers of the established Anglican Church in Virginia. James Madison, also a Virginian and a colleague of Mason's, later the major force in the passage of the Bill of Rights through Congress, said that the Declaration should read: "All men are equally entitled to enjoy the free exercise of religion. Madison soon believed in the freedom of religion, simply in toleration.

The "establishment clause" of the amendment ensured that the federal government would neither favor nor discriminate against any religious entity. In 1802, Thomas Jefferson wrote that the intention of the First Amendment was to build a "wall of separation between church and state." The First Amendment guarantees freedom of speech and of the press resulted from a long struggle in British and American history. It had been a crime to criticize the king or his government, and censors could seize unapproved books, and

Yankee Anti-Federalists stood a very real chance of defeating ratification. Their most persuasive argument was based on the lack of a Bill of Rights. Others wanted a second convention, where they could argue to reduce the power of the federal government.

The Federalists outlined their fears in pamphlets and newspaper essays. The best known of these, written by Alexander Hamilton, James Madison, and John Jay, are called *The Federalist Papers*. In *Federalist 84*, Hamilton argued against a list of specific, enumerated rights. "Why declare that things shall not be done which there is no power to do?" he wrote.

To secure ratification in Massachusetts, Virginia, and New York, the Federalists promised to add a bill of rights after ratification, and enough Anti-Federalists agreed so that ratification was possible. The states ratifying conventions recommended 210 additions to the new Constitution.

Although Madison opposed a bill of rights in both the Philadelphia Convention and the Virginia ratification convention, the near defeat of the Constitution in his home state and the growing anxieties in the states caused him to rethink his position. In the First Federal Congress, meeting in New York City in 1789, Madison led the move for passage of a bill of rights. He distilled the 210 suggestions into eight amendments, encompassing 17 changes in the Constitution. In September, the House and Senate agreed on 12 proposed amendments and submitted them to the states for ratification.

The ratification process lasted a little more than two years. On December 15, 1791, Virginia became the eleventh state to ratify proposed amendments three through twelve now known as the Bill of Rights.

One of the chief grievances that the American colonists had against Great Britain was the lack of an avenue to protest to royal governors heaped on the colonies. When the colonies declared their independence on July 4, 1776, they noted that their petitions had fallen on deaf ears and were "answered only by a contemptuous refusal."

"We mark in the name of the Constitution, knowing that the Constitution is on our side."

Originally, the right of assembly peacefully was considered less important than the right of petition. But the right of assembly was now afforded a fundamental importance. These two rights have secured protection for many more citizens.



James Madison  
Drafted the original Bill of Rights

Eleven states were necessary for ratification after Vermont entered the Union. The first two proposals—dealing with appointment in the House and Congressional pay—were not ratified by the states.

But even with the Bill of Rights, the Constitution was not perfect, for it did not provide guarantees of individual rights for all Americans. It would take almost 70 years and a Civil War before the question of equality for blacks was addressed. It would be 150 years before women were guaranteed suffrage under the Constitution.

The Civil War Amendments (Thirteen, Fourteen, and Fifteen), as well as the Nineteenth, Twenty-fourth and Twenty-sixth, secured the rights of citizenship for all Americans—including the rights of women. Moreover, the Fourteenth Amendment gave new meaning to the rights of citizens in the states as well as to the national government.

In its 200 years, the Bill of Rights, together with the subsequent amendments and the efforts of government officials and private citizens, has helped to move the nation closer to the aspiration of equality, liberty, justice, and security for all Americans.

movements, from American labor unions to the abolitionist movement, and the civil rights struggle of recent years. The Reverend Dr. Martin Luther King, Jr., believed that a cornerstone of the civil rights movement was the right of all Americans peaceably to assemble in all public places.

During a trying period in Selma, Alabama, when marchers were physically abused, Dr. King said, "We march in the name of the Constitution, knowing that the Constitution is on our side."

From the beginning, the guarantee of the First Amendment have been an informal and engaged citizenry on which the success of the Founders' experiment in republican government would depend.

## The Fear of Being Disarmed and Helpless

The Second and Third Amendments: State militia; Citizens' right to keep and bear arms; No placing of soldiers in private homes

When British soldiers landed in Boston in 1775, they were billeted in private buildings and homes before marching to Lexington and Concord to seize patriot arms.

By violating the sanctity of private property and attempting to disarm civilians, the British aroused fears that people had experienced since ancient times—the fear of being disarmed and helpless before a standing professional army.

In 370 B.C. Aristotle had said that government "backed by a standing army" would make bold decisions compared with those decisions made by a leader "awed by the fear of an armed people." Niccolò Machiavelli wrote that the citizen-warrior was the strength of a republic and that armed citizens kept tyrants honest.

As relations between Britain and the American colonies worsened, Great Britain imposed a series of laws called the Coercive Acts which included the detested Quartering Act, authorizing colonial governors put soldiers in private buildings. The reaction to these repressive acts was recorded in a series of tracts and pamphlets. Reminding Britain of the Bill of Rights, the Boston Pamphlet of 1772 said "introducing and quartering

standing armies in a free country in times of peace without the consent of the people...is and always has been deemed a violation of their rights as freemen." The Declaration of Independence said, "The King George III has kept among us, in times of peace, standing armies without the consent of our Legislatures..."

Following independence, several states rewrote their colonial charters or drafted state constitutions, and several of the states included prohibitions against a standing army and reaffirmed the right to raise a state militia and the right of citizens to bear arms.

The Framers shared the people's apprehension of a standing army and provided that Congressional appropriations for a national army could last no more than two years at a time. Neither this limitation nor the eloquent arguments of James Madison eased apprehension. Madison maintained that state militia would act as a quartering force to a national army. He wrote in *Federalist 43* that a "regular army" in the service of the federal government would be no match for the combined militia of the states, "afforded by mere chosen from among themselves, fighting for their common liberties, and united..."

The fear of being disarmed and helpless before a standing professional army lies behind the Second and Third Amendments.

Madison added that the Constitution would not prohibit citizens from owning guns. Americans among all peoples had the unique advantage of the right to bear arms, he said, and this right "forms a barrier against every enterprise of ambition." Five of the eight states that proposed amendments to the Constitution wanted an amendment authorizing the individual states to maintain a militia, prohibiting the quartering of troops, and reaffirming the right of citizens to bear arms.

The Second and Third Amendments have provided practical checks on the dangers of military tyranny. The provisions in the Constitution for civilian control of the military have alleviated the worst fears of a standing army, and the provisions of the Third Amendment prohibiting the quartering of soldiers have never been tested. The right of the states to raise a militia under the Second Amendment has been vindicated. State militia and National Guard units play a vital role in times of internal unrest and in defense of the nation. The right "to bear arms" has remained intact although the federal and several state governments have regulated certain firearms and prohibited the use of others.

## No Unreasonable Searches and Seizures

The Fourth Amendment

The struggle against illegal searches and seizures had a long history. A 1591 English law authorized magistrates to question anyone they desired and to search all suspected places for papers of a threatening political character. An anti-Catholic law of 1606 authorized searches in the "houses and lodgings" of every Papist recusant and the destruction of anything judged "conducive to such recusants to have recourse."

The efforts of one of England's most famous jurists, Sir Edward Coke, to win security for home and property were well known in America. In his famous *Judicium*, Coke cited the Magna Carta of 1215 as prohibiting illegal searches. Ironically, when Coke died, his house and chambers were ransacked on the orders of King Charles I.

John Wilkes, a member of Parliament, dealt a significant blow against illegal searches. Wilkes was arrested in 1763 on a general warrant. His home was raided, and he was jailed in the Tower of London until 1774. Wilkes charged the raiders with illegal trespass. A courageous Chief Justice found in favor of Wilkes and said that "to enter a man's house by virtue of a needless warrant...is worse than the Spanish inquisition." Wilkes was vindicated and returned to Parliament.

Wilkes was a hero to the American colonists who suffered from illegal searches and seizures in communities in the years before the Revolution. Crown authorities raided private homes and businesses looking for seditious documents, newspapers, and smuggled goods. Under "writs of assistance," which were, in effect, general warrants, any suspicious item found during

the searches could be used as evidence, even if the individual involved had not been charged with a crime.

At a 1772 meeting in Boston, colonists drafted a document called *The Rights of the Colonists and a List of Infractions and Violations of Rights*. This Boston Pamphlet listed rights considered fundamental, including protection against unreasonable searches and seizures. Without this right, "Officers break thro' the sacred rights of the Colonists, ransack mens' houses, destroy their securities, carry off their property, and...commit the most horrid murders."

The Fourth Amendment has two parts: the first protects citizens against unreasonable searches and seizures; the second part sets the procedure for issuing a warrant. The Amendment specifies "unreasonable" searches to allow for occasions when reasonable search without a warrant is justified. For example, an officer may enter a home without a warrant if there is "probable cause" to believe that a crime has been committed.

To protect individuals from illegal searches, the Supreme Court has ruled that evidence seized in violation of the Fourth Amendment may not be introduced as evidence in court. This is called the exclusionary rule and dates back to 1914 in federal jurisdictions and to 1961 for the states.

**"You have the right to remain silent."**

**"HAS THE PAPER THAT'S DISCRIMINATION COME YET?"**

**"I've got my rights!"**

**"I'll sue!"**

**"NO 'I' @ '#! TRESPASSING' IN A FREE COUNTRY!"**

**"THROW THE RASCALS OUT!"**

**"THAT'S ART!"**

**"NO COMMENT!"**

**"THE CONSTITUTION — THE WORDS WE LIVE BY."**