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1791: The Bill of Rights

By Adam Liptak

- *The Constitution might never have been ratified without a promise to add safeguards of fundamental rights*

The Constitution, John Adams once said, was the result of "the greatest single effort of national deliberation that the world has ever seen." Indeed, it created a wonderfully calibrated structure for the new American nation, balancing the relationship between the three branches of government, as well as the relationship between the federal government and the states.

[\(See picture, "Constitutional Convention."\)](#)

But at the time, a lot of people thought the Constitution was woefully incomplete.

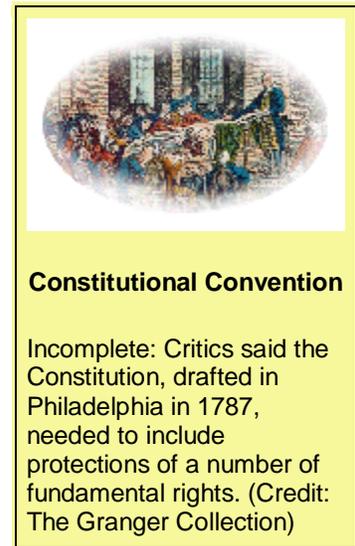
It lacked, detractors claimed during the ratification debates in 1787 and 1788, protections for fundamental **rights** like free speech, religious liberty, jury trials, and due process. It lacked, in other words, what we now know of as the **Bill of Rights**, the first 10 **Amendments** to the Constitution.

That shortcoming was so grave, critics known as anti-Federalists said, that the states should refuse to vote for ratification of the Constitution. Had ratification failed, it would have left the 13 states bound together only by the weak national government created by the Articles of Confederation, possibly jeopardizing the very existence of the country.

In response, James Madison and other supporters of the Constitution--the Federalists--promised that they would propose a set of constitutional **amendments** in the first session of Congress to address these concerns.

With Madison's promise in mind, key states like Massachusetts, Maryland, Virginia, and New York voted for the Constitution, which took effect in March 1789.

Later that year, Madison was elected to the first House of Representatives, and he promptly introduced a series of **amendments** based on declarations of **rights** in state constitutions and in other foundational legal documents from around the world.



Recalling the recently concluded Revolutionary War, Madison said the **amendments** were meant "to extinguish from the bosom **of** every member **of** the community any apprehension that there are those among his countrymen who wish to deprive them **of** the liberty for which they valiantly fought and honorably bled."

Though he kept his word to the anti-Federalists, Madison actually thought that the **amendments** were "unnecessary and dangerous." They were unnecessary, he said, because the Constitution had not granted the government the powers that the **Bill of Rights** would guard against. And they were dangerous because any **rights** *not* on the list might be thought to be unprotected.

Despite those misgivings, Congress agreed, by the required two-thirds majorities **of** the House and Senate, to approve Madison's handiwork. In September 1789, it sent 12 **amendments** to the states for ratification. That's right: 12, **of** which only 10 were initially adopted (see *Why You Don't Talk About Your Third Amendment Rights*).

On Dec. 15, 1791, Virginia became the 11th **of** what were by then 14 states to ratify 10 **of** the **amendments**. That satisfied the constitutional requirement **of** ratification by three-quarters **of** the states, and the **Bill of Rights** became part **of** the Constitution.

Many people say that the **Bill of Rights**, which is celebrating its 215th anniversary this year, is the most important part **of** America's most important document. Packed into 413 words are not only the majesty **of** the First Amendment, but also a series **of** protections from many kinds **of** potential government abuse:

The Fourth Amendment protects against "unreasonable searches and seizures." That's why, for example, the police must usually get a warrant, based on "probable cause," before searching a criminal suspect's home.



Police Searching a Home

The Fourth Amendment requires police to obtain a warrant before searching a home. (Credit: Mikael Karlsson/Alamy)

[\(See picture, "Police Searching a Home."\)](#)

The Fifth Amendment prohibits double jeopardy (being tried twice for the same crime), the taking **of** private property for public use without compensation, and forced self-incrimination in criminal cases. That last prohibition is the basis for the "you have the right to remain silent" part **of** the "Miranda warning" that police recite to suspects after their arrest. (The warning was named for *Miranda v. Arizona*, a 1966 Supreme Court case.) The Amendment also gives defendants the right to "take the Fifth" in court, or even when testifying before Congress, and not answer questions about their alleged involvement in a crime.

The Sixth Amendment, which concerns criminal prosecutions, guarantees public trials, impartial juries, and the "right to an attorney" part **of** the Miranda warning.



Courtroom Scene

[\(See picture, "Courtroom Scene."\)](#)

The Seventh Amendment requires **Jury trials** in most civil cases, while **the Eighth Amendment prohibits "cruel and unusual punishments,"** a term that continues to be the subject of intense debate. Just last year, the Supreme Court ruled that the Eighth Amendment forbids the execution of offenders younger than 18.

The Sixth Amendment ensures public trials, impartial juries, and the right to an attorney. (Credit: Getty Images)

The Second Amendment, which guarantees the right to "keep and bear arms," is easily the most controversial one. Constitutional scholars continue to debate whether that right is limited to the "well-regulated militia" mentioned in the Amendment or whether it is a personal right of every American.



Gun Display

The Second Amendment guarantees the "right to keep and bear arms," though its meaning is still disputed. (Credit: Robert Wallis/Corbis)

[\(See picture, "Gun Display."\)](#)

The other **Amendments** do not pack quite the same power, at least not today.

The Third Amendment, which bars the government from housing soldiers in private homes, was of great significance at the time: Before and during the Revolutionary War, the British had forced Americans to house their soldiers. **And the Ninth and Tenth Amendments speak about the distribution of power between the people,** the states, and the federal government.

These days, the **Bill of Rights** is being tested in new areas. The Bush administration has said that it is considering prosecuting news organizations for publishing classified information about some of its efforts to fight terrorism, but such prosecutions might violate the First Amendment. Some of the surveillance undertaken in the war on terror, including the monitoring of phone calls without warrants, may give rise to Fourth Amendment issues.

And various aspects of the death penalty have been challenged as a violation of the Eighth Amendment's ban on cruel and unusual punishment. There have been scores of lawsuits around the country, for instance, taking issue with the chemicals used in lethal injections.



Execution Table

The Eighth Amendment prohibits "cruel and unusual punishments," which now includes the

[\(See picture, "Execution Table."\)](#)

Not everyone will agree about precisely how far the protections in the **Bill of Rights** ought to reach. But 215 years after its ratification, even James Madison would probably agree that the Constitution would not be complete without it.

execution of juvenile offenders. (Credit: Mike Fiala/Photographers Showcase/Newscom)

Why You Don't Talk About Your Third Amendment Rights

When people invoke their First Amendment **rights** to free speech and religion, they frequently say there is a reason those **rights** were listed first. What those people fail to realize is that, but for politics and happenstance, they might be invoking their Third Amendment **rights** instead. That might not have the same force. As it happened, the states failed to ratify the original first amendment, which concerned the apportionment **of** seats in the House. They did eventually ratify the original second amendment, which says that Congressional pay raises cannot take effect until after a subsequent election. But that didn't happen until 1992--more than 200 years later--when it became the 27th Amendment.--*Adam Liptak*

Background

Critics **of** the Constitution said it spelled out what the federal government could do, but not what it could *not* do. Having just escaped from British rule, Americans were reluctant to create too strong a central government. The **Bill of Rights** protected citizens from potential abuses **of** power by the federal government.

Critical Thinking

- **Ask students** which **of** the **Amendments** seems most important to them or most vital to society in 2006.
- **Have students** ever relied on the protection **of** one **of** the **Amendments**? If the response is a blank stare, remind them **of** the First Amendment, **of** freedom **of** religion and **of** speech.

Debate

- **Focus on one of** the issues in the news today: surveillance for the purpose **of** finding terrorists.
- **Have students** read the Fourth Amendment. Then tell them that the federal government has eavesdropped on Americans' phone calls and e-mails without warrants in the search for terrorist links. Have them take sides: Does this eavesdropping program violate the Fourth Amendment protection against "unreasonable searches and seizures"? Should the President have this power during a war?

Discussion Question

- **Why do** you think the Second Amendment, which allows the bearing **of** arms, is so contentious?

Fast Fact

The **Bill of Rights** is based in part on the Virginia Declaration **of Rights**, written by George Mason in 1776, the English **Bill of Rights** and England's Magna Carta, and France's Declaration **of the Rights of Man**.

Web Watch

www.billofrightsinstitute.org The **Bill of Rights** Institute site provides background and the **Bill of Rights** in the news today.

Go to the right and click on "**Bill of Rights** in the News" to see how the **Bill of Rights** figures in current news and issues.

Quiz

1. The **Bill of Rights** protects Americans' **rights** in each **of** the following areas except
 - a. due process.
 - b. religious liberty.
 - c. access to education.
 - d. self-incrimination.
2. Those Founding Fathers who thought the Constitution was fine as first written--without the addition **of** a **Bill of Rights**--were known as
 - a. Federalists.
 - b. Anti-Federalists.
 - c. Strict constructionists.
 - d. Abolitionists.
3. Why did James Madison think the **Bill of Rights** was unnecessary? Why did he think it was dangerous?
4. The Supreme Court ruled against the administration **of** President Richard Nixon in a freedom **of** press case involving the publication **of** a history **of**
 - a. racial integration.
 - b. American education.
 - c. the Vietnam War.
 - d. corruption in Congress.
5. Before the **Bill of Rights** could be sent to the states for ratification it had to
 - a. be approved by the President.
 - b. receive the support **of** a majority vote in the Supreme Court.
 - c. receive a two-thirds majority in both houses **of** Congress.
 - d. be approved by the U.S. Attorney General.
6. The Fourth Amendment to the Constitution, hotly debated in the age **of** terrorist investigations, prohibits "unreasonable _____ and seizures."

In-Depth Questions

1. The Fifth Amendment prohibits authorities from trying a person twice for the same crime, even if new evidence is found. Explain why you agree or disagree with this **Bill of Rights** protection.
2. How would you explain the **Bill of Rights** to a visitor from a country that has no such protections?

Answer Key

1. [c] access to education.
2. [a] Federalists.
3. Madison thought the **Bill of Rights** unnecessary because the Constitution had not granted government the powers the **Bill of Rights** would protect against. He thought it dangerous because **rights** not listed might be thought to be unprotected. (*Similar wording is acceptable.*)
4. [c] the Vietnam War.
5. [c] receive a two-thirds majority in both Houses **of** Congress.
6. searches.