

## The Bill of Rights

### Why wasn't the Bill of Rights originally included in the Constitution?

During the Constitutional Convention of 1787, which lasted nearly four months, the idea of including some sort of declaration of rights in the Constitution only appears to have come up a few times. The only time that it was even brought to a vote was shortly before the end of the convention, on September 12, 1787. After some discussion on the rights of trial by jury, George Mason stood before the delegates and stated that he wished "the plan had been prefaced with a bill of rights. It would give great quiet to the people" (Philadelphia). When the assembly voted on Mason's motion, they decided against a bill of rights ten votes to none. This unanimous decision might seem surprising in modern times, but it can be explained. To most delegates it seemed unnecessary to outline the natural rights of man, especially since many of the states already had declarations of rights in their own state constitutions. Alexander Hamilton even went beyond calling it unnecessary and suggested it was dangerous. The states and people were already entitled to any and all rights not expressly given to the federal government in the Constitution. Trying to declare all of the rights of man seemed impossible, and failing at the attempt might, in a way, make the federal government even more powerful.

### How did the Bill of Rights come to be added to the Constitution?

Edmund Randolph, Elbridge Gerry, and George Mason all refused to sign the Constitution, in part because it did not include a bill of rights. Once the Constitution was submitted to the states for ratification, the absence of a bill of rights became the chief argument of Anti-federalists, like Patrick Henry and Richard Henry Lee. Both men warned of tyranny and a national government that was being granted too much power at the expense of the states and the people. In the end, all thirteen states would ratify the constitution, but it was not an easy fight. Massachusetts, Virginia, and New York ratified only with the expectation that their long lists of amendments, including a bill of rights, would be considered by the new national congress.

Thomas Jefferson is one founder who strongly supported the Bill of Rights, and by the fall of 1788, James Madison supported it as well. Once elected, Madison worked hard to give the states what they had asked for. He wrote and proposed 17 amendments that passed in the House of Representatives. The senate passed 12 of those amendments, and the states ratified 10. Virginia was the last state to ratify on December 15, 1791. Those 10 amendments make up what we know as the Bill of Rights. The Preamble to the Bill of Rights references the state conventions and the desire for a bill of rights to "prevent misconstruction or abuse of [the Constitution's] powers."

### What does the Bill of Rights mean for us today?

**Amendment I** *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.*

This 1<sup>st</sup> amendment gives us the right to express ourselves. In recent years people have been arrested for using their voices and/or their t-shirts to protest certain ideas. Government officials have passed laws regarding how people could dress and threatened jail time for reporters who wouldn't reveal their sources. In the end, the 1<sup>st</sup> amendment still protects us against all these things.

**Amendment II** *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.*

Though gun control laws exist around the country in different forms, and the fight to ban private ownership of firearms continues based on the 2<sup>nd</sup> amendment's use of the word "militia", individual citizens still have the right to own and use weapons.

**Amendment III** *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.*

This one might seem not to apply anymore, but it's still important because it safeguards the privacy of American citizens and protects us from possible government abuse.

**Amendment IV** *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.*

Prompted by the use of "Writs of Assistance" by British officials to oppress the colonists and violate the privacy of their homes, the 4<sup>th</sup> amendment today is mainly applicable in the collection of evidence during criminal cases. However, the Supreme Court has created numerous exceptions to the law, and these rights are significantly diminished by the USA Patriot Act and the Protect America Act of 2007.

**Amendment V** *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 offense 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.*

This amendment includes all of the rights of due process, particularly as they exist in criminal cases, and is still highly relevant today.

**Amendment VI** *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 defense.*

Because of this amendment, an accused person cannot be held unless publicly charged and is guaranteed a fair trial. The government has gotten around this amendment in the past, and might again in the future, by classifying people as "enemy combatants".

**Amendment VII** *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 reexamined in any court of the United States, than according to the rules of the common law.*

The right to trial by jury in civil disputes is still ours. One possible issue with this today is that the people who make up a jury are not always highly qualified to make decisions in the cases they see.

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

The biggest issue with the 8<sup>th</sup> amendment is determining what should be considered "cruel and unusual". This particularly comes into play when discussing states' use of the death penalty.

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

Many founders didn't believe a Bill of Rights was necessary at all. The way the 9<sup>th</sup> amendment has basically been ignored as the federal government passes more and more laws that restrict the rights of the states and the people proves that it was probably a good idea.

**Amendment X** *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.*

This amendment was meant to limit the federal government, to ensure that state legislatures retained some control, but the power of state legislatures is growing smaller all the time. The federal courts have recently taken away a state's right to define marriage. The federal government is also seeking to pass legislation associated with hate crime law and how driver's licenses are issued, both of which would take away the rights of states.

Sources:

- *Miracle at Philadelphia*, by Catherine Drinker Bowen
- "A More Perfect Union: The Creation of the US Constitution" by Roger A. Bruns, published for the National Archives and Records Administration, [www.archives.gov/exhibits/charters/constitution\\_history.html](http://www.archives.gov/exhibits/charters/constitution_history.html)
- [billofrightsinstitute.org](http://billofrightsinstitute.org)
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