

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.

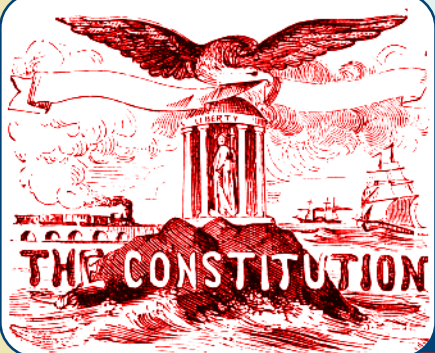
THE EVOLUTION

OF

THE BILL OF RIGHTS

A Unit of Study for Grades 8-12

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Series: Constitutional Issues

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TEACHER BACKGROUND MATERIALS

I. UNIT OVERVIEW

The Bill of Rights is often enshrined as a sacred document which guarantees our basic human and civil rights. Survey texts discuss the clash of ideals at the Constitutional Convention but seldom refer to conflicts over the incorporation of a Bill of Rights outside the context of the state ratification debates. The stormy history of the Bill of Rights should be included in the study of United States history and American Government. Its evolution from state declarations to final incorporation as the first ten amendments to the Constitution illustrates the clash of political ideology in a turbulent era of history.

Although today we regard the Bill of Rights with reverence, adoption was a long and arduous process which began with Virginia's Declaration of Rights in 1776 and culminated with the states' ratification of the Bill of Rights on December 15, 1791. A study of the process helps students understand the importance of vigilance in maintaining individual rights, lending credence to the Federalist arguments that "parchment barriers" in themselves are worthless.

II. UNIT CONTEXT

This unit is applicable in United States history or American Government classes where students study political ideologies during the Revolutionary and early Federal periods. The unit presents five lessons on the Bill of Rights: the Virginia and Pennsylvania Declarations of Rights; discussion regarding incorporation at the Constitutional Convention; Federalist and Antifederalist debates over ratification of the Constitution; House debates regarding inclusion of a bill of rights; and cases involving the application of principles included in the Bill of Rights. The unit also includes an extension lesson which may be used to further explore the development of state declarations of rights. The unit should be used to supplement the study of the Constitution in United States history. In American Government classes lessons are appropriate in the study of political philosophy and as an introduction to a study of contemporary issues related to the Bill of Rights.

III. CORRELATION TO NATIONAL STANDARDS FOR UNITED STATES HISTORY

The Evolution of the Bill of Rights provides teaching materials that address *National Standards for History, Basic Edition* (National Center for History in the Schools, 1996), **Era 3**, *Revolution and the New Nation (1754–1820s)*. Lessons

specifically address **Standards 3A** and **3B** on the Federalist and Anti-Federalist debates over the inclusion of a bill of rights in the federal Constitution, Madison's role in securing adoption by the First Congress, and the significance of the Bill of Rights in American history.

Lessons within this unit likewise address a number of specific Historical Thinking Standards including: Explain historical continuity and change; analyze cause-and effect relationships; support interpretations with historical evidence to construct reasoned arguments; and, analyze the interests, values, and perspectives of those involved in the debate over the Bill of Rights.

IV. UNIT OBJECTIVES

1. To understand the evolution of the Bill of Rights.
2. To clarify ideological differences over the inclusion of a Bill of Rights in the federal Constitution.
3. To appraise the impact of a Bill of Rights on the development of American democracy.

V. LESSON PLANS

1. The Virginia and Pennsylvania Declarations of Rights (an extension lesson focuses on other state declarations)
2. The Debate at the Constitutional Convention
3. Federalist and Antifederalist Perspectives on Inclusion of a Bill of Rights
4. The House Debate
5. Voices from the Past—Testing the Bill of Rights

VI. INTRODUCTION TO THE EVOLUTION OF THE BILL OF RIGHTS

By the spring of 1776 reconciliation with Britain appeared to be impossible, and on May 10 the Continental Congress called on each colony to assume sovereignty. By May 15, the Virginia Convention passed a resolution to sever all ties with the mother country and called on the Continental Congress to declare complete independence. At the same time the Virginia Convention authorized a committee to draft a Declaration of Rights and a plan of government for the colony.

George Mason was appointed as one of the twenty-seven members of the drafting committee. Mason had a reputation as a patriot and had the admiration and respect of colleagues including his Fairfax County neighbor, George Washington. Mason quickly grew impatient with parliamentary maneuvering and wrote to Richard Henry Lee that nothing would come from a committee “overcharged with useless members.” Mason, determined to meet the Convention’s charge, took it upon himself to draft a Declaration of Rights. The declaration began:

. . . All Men are born equally free and independant [sic], and have certain inherent natural Rights, of which they cannot by any Compact, deprive or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursueing [sic] and obtaining Happiness and Safety.

—Robert A. Rutland, *The Papers of George Mason*, Vol. 1, 1749–1778 (Chapel Hill: University of North Carolina Press, 1970), 276–277.

This language posed problems in a state with some 200,000 slaves. Robert Carter Nicholas led the opposition, attacking the phrase “born free and equal.” He argued that adopting this language would lead to “civil convulsion” because the ideas expressed in this statement were dangerous to a slave-holding society. Thomas Ludwell Lee complained that opponents to Mason’s proposal were obstructionists, remarking:

. . . we find such difficulty in laying the foundation stone, that I very much fear for the Temple of Liberty which was proposed to be erected. . . . A certain set of aristocrats, —for we have such monsters here, — finding that their execrable system cannot be reared on such foundations have to this time kept us at Bay on the first line, which declares all men to be born equally free and independent. . . .

—Robert A. Rutland, *The Birth of The Bill of Rights, 1776-1791* (New York: Collier Books, 1962), 37.

Mason was appalled by the debate and to avoid further haggling agreed to substitute the words “by nature” for “born” and the word “inherent” was dropped in the first sentence. Another compromise added the phrase “when they enter into a state of society.” The opening statement of the Declaration of Rights now read:

That all men are by nature equally free and independent, and have inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

The addition of the phrase “when they enter into a state of society” was implicitly understood to remove any pretension that slaves shared in the natural rights guaranteed by this first article of the Declaration of Rights. Slaves held no property and were not considered “constituent members” of Virginia society. Other less substantive changes were approved and in June 1776, Virginia adopted the Declaration. George Mason, seldom boastful of his role in writing the Declaration, acknowledged his authorship in a letter to a friend dated October 2, 1778:

. . . I inclose you a Copy of the first Draught of the Declaration of Rights, just as it was drawn by me, & presented to the Virginia Convention, where it received few Alterations; some of them I think not for the better; this was the first thing of the kind upon the Continent, and has been closely imitated by the other States.

—Rutland, ed., *The Papers of George Mason*, 1 :434.

The Virginia declaration provided a model for other states. Pennsylvania likewise adopted a Declaration of Rights on September 28, 1776, which prefaced the new state Constitution. Employing much of the language of the Virginia document, the Pennsylvania Declaration also reflected a marked Quaker influence. It expressly guaranteed liberty of conscience and prohibited coercion to bear arms against one’s religious beliefs. Although slavery existed in both states in 1776, Pennsylvania’s first article was not amended so as to reconcile it with the Virginia slave holders’ objections. It reads:

. . . all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Of the thirteen original states, eight adopted separate declarations of rights; the remaining five incorporated some of the guarantees of the Virginia and Pennsylvania declarations into the body of their constitutions.

In 1787, delegates meeting in Philadelphia drafted a Constitution after bitter debate on a variety of issues. The discussion of a bill of rights was addressed on several occasions, but when George Mason called for a vote to have a committee draft a declaration of rights, it failed to carry a single state. This failure to include a bill of rights almost proved fatal during the ratification debates. Opponents of the Constitution used the omission of a guarantee of basic rights as proof of a conspiracy to subvert the principles on which the nation was founded.

Antifederalists objected to many specific features of the new political system but best articulated their objections regarding the failure of the Constitution to incorporate a bill of rights. Federalists, however, had won an important battle at the Philadelphia Convention in requiring that the Constitution be submitted to state conventions in its entirety and that ratification could not be placed on conditions or amendments.

Federalists justified the absence of a declaration of rights by arguing that the Constitution established a federal system with specific powers delegated to the national government and other powers reserved to the states. The powers held by the central government could not limit or threaten liberty. Federalists furthermore asserted that in the English tradition, bills of rights were necessary in order to limit royal prerogatives and the usurpation of power. They added that “parchment barriers” would provide no protection; only an ever-vigilant populace could safeguard basic rights. In addition, a grave risk existed in enumerating rights—those which may not be stated would be assumed denied.

The Antifederalists, on the other hand, argued that power corrupts, thus compelling written protections of basic rights which would set governmental bounds. They feared that the general welfare and the necessary and proper clauses of Article I, Section 8 along with the supremacy clause in Article VI created a powerful central government with dangerous powers. The Antifederalists believed that the Constitution placed in jeopardy guarantees which had been incorporated in state declarations of rights by giving the national government vague and unlimited powers and creating a federal judiciary to serve as a final arbiter in disputes. They countered the Federalist argument regarding specific enumeration of powers by citing prohibitions of powers in Article I, Section 9 and inquired why these and no other rights were protected in the Constitution.

Massachusetts approved the Constitution in February, 1788, with a call for “certain amendments and alterations” to lessen “the fears and quiet the apprehension of many of the good people of the commonwealth.” Ratification debates in New York and Virginia showed the degree of opposition and ultimately lead to a promise of the inclusion of a Bill of Rights.

James Madison introduced a series of amendments to the Constitution in the House of Representatives on June 8, 1789. Federalists opposed on the same grounds as they argued in the ratification debates and further argued that it was inappropriate to amend the Constitution at this time. Antifederalists likewise opposed Madison’s proposals claiming that they were “milk and water propositions.” Despite haggling, mostly over form, amendments were approved and sent to the Senate. After some alterations, the Bill of Rights was finally submitted to the states for ratification.

DRAMATIC MOMENT

Do We Need a Bill of Rights?

There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declarations of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law.

George Mason
Objections to the Constitution,
September 16, 1787

—Rutland, ed., *The Papers of George Mason*, 3:991.

I . . . affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous.

Alexander Hamilton
Federalist 84

—Clinton Rossiter, ed., *The Federalist Papers*, (Mentor, 1961), 513.

What I disapproved from the first moment . . . was the want of a bill of rights to guard liberty against the legislative as well as executive branches of the government, that is to say to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land....

Thomas Jefferson

—Daniel Aaron, *American Issues Forum*, Vol. 1, (Los Angeles: Regents of the University of California, 1975), 222.