

Chapter 13 – A “Bill Of Rights” Is Added To The Constitution

Time: 1787

Anti-Federalists Are Still Not Satisfied With The 1787 Constitution

Even as Washington takes office, it remains clear that Anti-Federalist factions in many states will not be fully behind the Union unless and until a Bill of Rights is added to the 1787 Constitution.

To do so will require the development and passage of formal amendments, first in the Congress and then through ratification by at least three-quarters of the states. This promises to be a long and contentious process, and one which neither Washington and Madison, nor their more hard-core Federalist allies, wish to entertain. They point out that the vote was 10-0 against adding a Bill of Rights just before the Philadelphia Convention adjourned, so why re-open the debates again?

The answer lies in the fact that nine states have submitted proposed amendments to Congress coming out of their local ratification meetings – far too many to simply ignore.

Constitutional Amendments Proposed

State	#
North Carolina	46
Virginia	40
New York	32
Rhode Island	21
Pennsylvania	15
Maryland	13
New Hampshire	12
Massachusetts	9
South Carolina	4
Total	192

Seven of the states have begun their own constitutions by asserting the “rights of individual citizens” within their borders, mostly modeled after the liberties guaranteed to their English forbears.

Ominously, however, one amendment appearing on all the state submissions relates to federal taxation. If passed, it would prohibit the national government from collecting any “direct taxes” on citizens (e.g. based on their income or total wealth) without first asking state legislatures to donate the funds sought.

Since “direct taxes” are already ruled out by the Constitution, this prohibition is hypothetical in nature. But it still rankles the Federalists, who have fought so hard to guarantee that the new

government is properly funded. Washington in particular says he will oppose any amendment that “goes to the prevention of direct taxation.”

The task of dealing with the proposed amendments falls to James Madison, whose election to the House of Representatives from Virginia is threatened by his vocal opposition to a Bill of Rights. After switching his position, he wins his seat and is left with the duty of fulfilling on his new promise. His wish, as he says on the floor, is that...

Something should be done, that those who have been friendly to the adoption of this constitution, may have the opportunity of proving to those who were opposed to it, that they were as sincerely devoted to liberty and a republican government, as those who charged them with wishing the adoption of this constitution in order to lay the foundation of an aristocracy or despotism.

Time: June-October 1789

Madison Takes The Lead In Crafting A “Bill Of Rights”



Madison begins by reading through the nearly 200 amendments developed by the states. They tend to fall into two categories: those focused on personal rights of citizens versus others wishing to alter the set-up or functioning of the government.

It is the latter group that Madison intends to avoid, since they re-open many old and divisive issues – calls for a larger number of House seats, restrictions on a standing army, term limits for the President and Senators, a prohibition on government-sponsored monopolies, rejecting federal accountability for state debts, annual pay for congressmen, and so on.

Instead he concentrates on the amendments that spell out the “rights” of American citizens.

James Madison (1751-1836)
Authors the Bill of Rights

This leads to drafting an initial list of 19 amendments, which Washington approves, albeit with little enthusiasm.

Madison brings this list to the House on June 8, 1789, where it is soundly rejected by the Federalist majority. Six weeks pass before he tries again on July 21, this time securing an eleven member committee to study the proposals and report back. This group arrives at 17 amendments, including one that is crucial to the Anti-Federalists.

In the end it will become the Tenth Amendment – reassuring the states of their authority over all local matters not overtly delegated to the federal government in the Constitution. Included here will be matters related to slavery.

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.

The House also agrees to bundle the amendments together as an appendix to the original Constitution, rather than intersperse them throughout the Articles, as Madison had proposed. After an eleven day debate these are passed on August 24, 1789.

The Senate adds its own changes, consolidating from seventeen to twelve Amendments, and passing these on September 9.

The final version is approved by Washington on September 25, 1789, and sent on to the states for ratification on October 2.

Time: November 1789 - December 1791

The Bill Of Rights Become Law

Another 811 days will elapse before the nation has its Bill of Rights – with Virginia becoming the tenth of the original thirteen states to ratify, on December 15, 1791.

Vermont, finally admitted on March 4, 1791, approves on November 3, 1791. The remaining three states reject the amendments. Georgia says they aren't needed; Connecticut feels they undercut the original agreement; while Massachusetts simply fails to reach consensus.

First Ten Original States To Ratify The Bill Of Rights

1789	Approved by	1790	Approved by
November 20	New Jersey	January 28	Delaware
December 19	Maryland	February 24	New York
December 22	North Carolina	March 10	Pennsylvania
1790		June 7	Rhode Island
January 19	South Carolina	1791	
January 25	New Hampshire	December 15	Virginia

The first two amendments deal with functional matters – House membership and congressional pay – and fail to gain enough state support for ratification.

The other proposed amendments spell out individual rights possessed by all Americans and not to be infringed upon by the government. The great freedoms – of speech, assembly, religion, the

press. Trial by a jury of one's peers. The right to bear arms. Protection from unlawful search or seizure.

Many of these rights respond to violations suffered by the colonists at the hands of the King. In spirit they reflect the motto of the first corps of Marines, assembled during the Revolutionary War – "Don't Tread On Me!"

Constitutional Amendments Proposed

#	Description
x	Proposes a formula for boosting the # of seats in the House of Representatives.
x	No law increasing congressional pay can take effect until after a new election.
1	Freedom of religion, speech, the press, right to assemble and petition the government.
2	Right to keep and bear arms and maintain a militia.
3	Protection from being forced to quarter troops on one's property.
4	Protection from unreasonable search and seizure.
5	Right to due process, to avoid self-incrimination, double jeopardy, unlawful seizure of property.
6	In criminal cases, right to speedy, public trial by impartial jury where crime committed, confront accusers, have legal adviser.
7	The right to trial by jury also extends to civil (i.e. non-criminal) cases, involving \$20 or more.
8	Prohibits excessive bail charges for accused, and cruel and unusual punishment for the guilty.
9	The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
10	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.

Passage of the Bill of Rights ends the Anti-Federalists call to hold a second Constitutional Convention and enables the country to move forward on actual matters of foreign and domestic policy.