

James Madison and the Bill of Rights

On September 12, 1787, during the last days of the Constitutional Convention, Virginia delegate George Mason rose and proposed a bill of rights, a list of rights belonging to the people that the government could not violate. Mason said he “wished the plan had been prefaced with a Bill of Rights & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.”

The delegates were wrapping up their business and worried that a prolonged debate on a bill of rights could endanger the success of their project. In addition, Roger Sherman of Connecticut made the argument that, because the states had their own bills of rights, they had no need for a national bill of rights. The convention unanimously rejected Mason’s idea. As a result, Mason refused to sign the document. The question about a bill of rights would endure throughout the ratification debate.

When the Constitution was sent to state conventions for ratification, many Americans, known as Anti-Federalists, opposed it because they thought it needed a bill of rights to protect the liberties of the people. The absence of a bill of rights became one of their main criticisms during the ratification debate. Several Federalists (those Americans who supported the proposed Constitution) disagreed. On October 6, 1787, Pennsylvanian James Wilson delivered a speech in support of ratifying the new Constitution in which he argued that a bill of rights was unnecessary because the proposed national government had limited powers and no power to violate liberties. In *Federalist* #84, Alexander Hamilton warned that a bill of rights could be dangerous because defining certain rights vaguely would leave them subject to misinterpretation or violation. Moreover, Hamilton argued, in any bill of rights some important rights would be left out and therefore could become endangered. Most importantly, Hamilton argued that “the constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS” because of the principle of limited government.

During debates in the various ratifying conventions, the inclusion of a bill of rights was a major sticking point. To secure ratification, Federalists in many states compromised on the issue to persuade Anti-Federalists to vote for the Constitution. Although the Federalists were able to prevent the addition of “conditional amendments” prior to ratification, they had to promise the Anti-Federalists they would propose a bill of rights after the Constitution had been ratified. Virginian James Madison thought the promise of “the amendments are a blemish” because he thought that the real protection of rights came through structures of governance. He feared that in a republic the majority could act tyrannically by violating the rights of the minority. A bill of rights would just be a “parchment barrier” that would not stop a majority from imposing its will.

While Madison opposed a bill of rights, he took the promise seriously. He conducted an extensive correspondence over several months with his friend Thomas Jefferson, who was in Paris at the time, working as an ambassador. Jefferson was deeply concerned that the Constitution lacked a bill of rights. He thought that “a bill of rights is what the people are entitled to against every government on earth.” Madison waffled on the issue but still did not think a bill of rights was that important. Nevertheless, he began to change his mind.

This was partly because, even after the Constitution’s ratification, Madison was deeply concerned about the continuing strength of the Anti-Federalists. Anti-Federalists were still calling for structural changes and a second constitutional convention to limit the powers of the proposed national government. For example, they wanted to limit the proposed power to tax or declare war. Madison feared this would lead to chaos and fought against it. He sought greater consensus and harmony around constitutional principles by reaching out to the opponents of the new government. Ultimately, he ran for the House of Representatives, determined to support a bill of rights. During his campaign, he promised Baptists in his district that he would support a bill of rights, especially religious liberty, in the First Congress. He wanted to provide “additional guards in favor of liberty” and to satisfy “the minds of well meaning opponents.” His dual purpose was defending essential liberties and public harmony within constitutional self-government.

Representative Madison became the champion for a bill of rights in the First Congress, but the idea met a hostile reception. Most representatives and senators thought Congress had more important work to do setting up the new government or passing tax bills for revenue. Many thought that creating a bill of rights was a useless distraction, but Madison persevered.

On June 8, 1789, Madison rose on the floor of the House to deliver a speech proposing a bill of rights. He argued that it would promote a harmonious political order and the ideal of justice. A bill of rights would calm the fears of Anti-Federalists and convince them of the “principles of amity and moderation” held by the other side. He believed that the Congress was bound by honor to respect the sacred promise made during the ratification debate to create a bill of rights. Rhode Island and North Carolina, which had withheld their ratification of the Constitution until a bill of rights was added, would join the union. Most importantly, the proposed Bill of Rights would “expressly declare the great rights of mankind secured under this constitution.”

Madison then skillfully guided the amendments through Congress. Madison led a committee that developed a list of 19 amendments and a preamble. He wanted them to be woven into the text of the Constitution, not simply placed at the end of the document as amendments. In addition, he sought a key amendment that would protect the people’s right to religious freedom, a free press, and trial by jury from being infringed by state governments. He lost both these provisions but, in a spirit of prudence and moderation, continued to support the bill of rights he had proposed.

On August 24, the House approved seventeen amendments by more than the required two-thirds majority and sent them to the Senate. By September 14, two-thirds of the Senate had approved twelve amendments and removed the one protecting liberties from state governments. President Washington sent these amendments to the states for ratification, endorsing them even though the president did not have a formal, constitutional role in their adoption.

Over the next two years, 11 states ratified the Bill of Rights to meet the three-fourths constitutional threshold. Virginia became the last state to ratify on December 15, 1791. The Bill of Rights fulfilled Madison’s goals of reconciling the Anti-Federalists to the Constitution and protecting individual liberties without changing the structure of government.

With their ratification, the Bill of Rights further limited the actions of the national government. But they did not apply to the state governments. This principle was affirmed in *Barron v. Baltimore* (1833). The Fourteenth Amendment and later Supreme Court cases in the twentieth century changed this approach by applying the Bill of Rights to the states through the principle known as “incorporation.”