



James Madison Debates a Bill of Rights

Framing Question

What doubts, concerns, and misgivings arose during the development of the Bill of Rights?

Understanding

The Bill of Rights, considered today a foundation of our liberties, was highly contested at the time of its creation. Some legislators saw a bill of rights as unneeded or unworkable while others saw it as an absolute necessity. Questions of states' rights, federal rights, and the rights of individuals were all part of the debate.

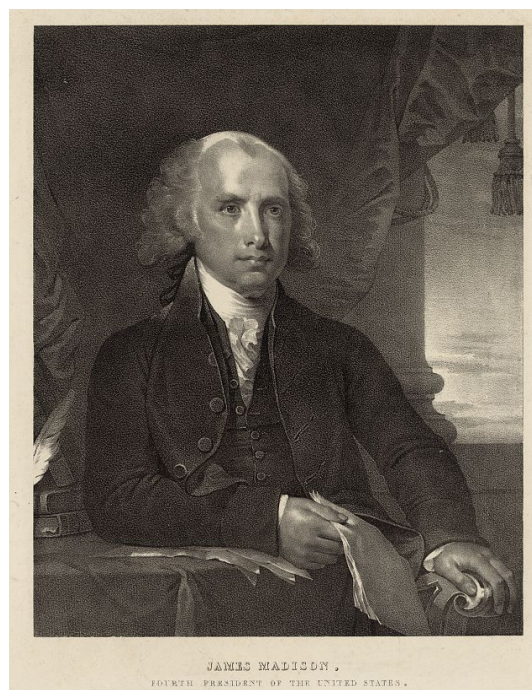
Text

[Letter from James Madison to Thomas Jefferson, 1788.](#)

Background

Once the American Colonies declared their independence from Great Britain in 1776, the most immediate concern was to develop a plan of government. While it managed the day-to-day conduct of the Revolution, the Second Continental Congress, in session since 1775, worked to create such a plan. It produced the Articles of Confederation, which were ratified in 1781, but by 1787 it became apparent to America's political leaders that the country could no longer continue to be governed under the Articles. They then set out to reform the Articles in a convention held in Philadelphia, but soon they would scrap them altogether and develop something entirely new, the U.S. Constitution.

Writing that document was not easy. The delegates had to work through many issues, one of the most difficult being the division of power between the national government and the state governments. While Federalists pushed for a strong national government, Antifederalists wanted to protect the rights



James Madison, lithograph, 1828

of the states. When the Constitution went to the states for ratification in the fall of 1787, the Federalists assured their colleagues that there would be opportunities for revisions and additions to the document after ratification. Even this, however, did not satisfy some Antifederalists, who insisted on holding another convention to draw up an entirely new document which guaranteed strong protections for states' rights. James Madison (1751–1836), one of the most influential delegates at the convention and later the fourth president of the United States (1809–1817), strongly opposed the creation of a new document and worked to forge a compromise. While he wanted to maintain strong national control over what he saw were potentially corrupt, inefficient or ineffective state governments, he agreed to the possibility of changes to the Constitution as long as they did not alter the basic structure of the original.

During the ratification process, many states submitted suggestions for additions and amendments. As a member of the House of Representatives, Madison reviewed these propositions and recommended thirty-nine of them to the full Congress. They were combined into twelve amendments to be added to but separate from the body of the Constitution. On September 25, 1789, President Washington sent the twelve congressionally-approved amendments to the states. Although in the state ratification process two of the original twelve suggestions were not approved, amendments three through twelve were adopted by the states over the next thirty months. These ten successful amendments became our Bill of Rights.

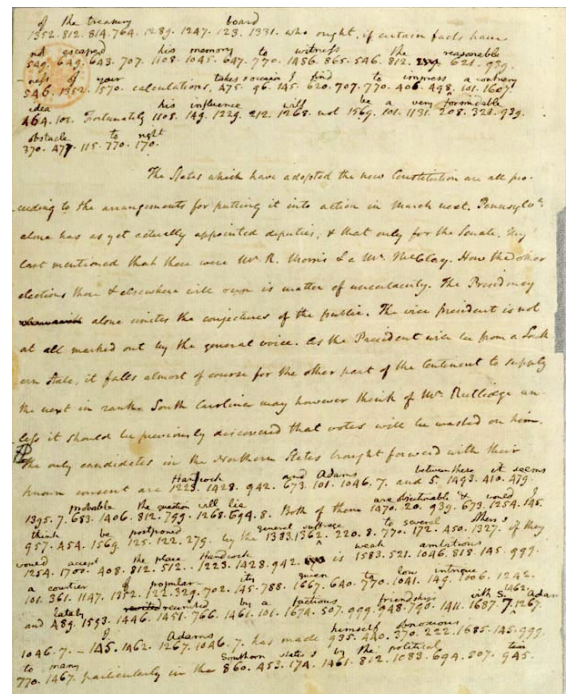
In this lesson we examine excerpts from a letter Madison wrote to his friend and mentor Thomas Jefferson on October 17, 1788, in which he weighs arguments for and against adding a bill of rights to the Constitution. Today we see the Bill of Rights as an essential part of our founding document, and we often credit Madison as one of its creators. Thus it may come as a surprise to discover in this letter that his support for a bill of rights was at one time rather lukewarm. Madison was not sure that a bill of rights was necessary. States' rights were, he believed, adequately protected within the Constitution itself, and besides he was sure that the states were quite capable of guarding their rights on their own against the power of a weak federal government. Along with his doubts about the necessity of a bill of rights,

Contextualizing Questions

1. What kind of text are we dealing with?
2. When was it written?
3. Who wrote it?
4. For what audience was it intended?
5. For what purpose was it written?



Virginia's Ratification of the Bill of Rights, December 15, 1791



Letter from James Madison to Thomas Jefferson, October 17, 1788 (excerpt)

he also harbored misgivings about its workability. He was convinced that state legislatures would disregard the liberties guaranteed in such a bill whenever they decided to do so. Keep in mind that Madison was writing in 1788, one year before the Supreme Court was organized and fifteen years before it claimed the power to decide what was Constitutional and what was not. Thus when he wrote there was no enforcement mechanism to see that rights listed in a bill of rights would actually carry the force of law.

In this letter Madison subtly begins to change the purpose of the rights under debate. Originally, they were intended to protect the states from the power of the federal government, and we see that purpose reflected in Madison’s claim that the states are powerful enough to protect their own rights. But here, too, we see the debate expanded to include rights proposed to protect individuals. For example, Madison wanted to insure that any bill of rights was broad enough, possessing the “requisite latitude,” to protect the rights of such people as “Jews, Turks, and infidels.”

It is important to remember that, as Madison uses the term, “majority” refers to large groups of powerful politicians and legislators, not to a mass of voters. Moreover, Madison did not conceive of “minorities” as we do today — groups like women, African-Americans, Latinos, or other social or ethnic groups. Rather, when he uses the word, it simply refers to political groups whose numbers are less than the majority.

Text Analysis

Excerpt 1

In this excerpt Madison states his reasons for favoring a bill of rights, but he also raises questions about the necessity and practicality of such a bill.

[1] It is true...that among the advocates for the Constitution there are some who wish for further guards to public liberty and individual rights.

[2] As far as these [guards to public liberty and individual rights] may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. [3] There is scarce any point on which the party in opposition is so much divided as to its importance and its propriety.

[4] My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. [5] At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* [emphasis in original] amendment, for any other reason than that it is anxiously desired by others. [6] I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light.

[7] Because I conceive that in a certain degree...the rights in question are reserved by the manner in which the federal powers are granted.

[8] Because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. [9] I am sure that the rights of conscience [freedom of religion] in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by

Activity: Vocabulary

Learn definitions by exploring how words are used in context.



an assumed power [government]. [10] One of the objections in New England was that the Constitution by prohibiting religious tests opened a door for Jews Turks & infidels.

[11] Because the limited powers of the federal Government and the jealousy of the subordinate [state] Governments, afford [provide] a security [protection] which has not existed in the case of the State Governments, and exists in no other.

[12] Because experience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. [13] Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. [14] In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current...

Madison tells us that some delegates to the Continental Congress want “further guards to public liberty and individual rights,” but many are opposed. What is the basis of their opposition?

How would you describe Madison’s attitude toward a bill of rights? Cite evidence from the text to support your answer.

In sentence 8, on what grounds does Madison object to a bill of rights?

How does he support the claim he makes in sentence 8?

In sentence 11, on what grounds does Madison question the necessity of a bill of rights?

In sentences 12, 13, and 14, on what grounds does he question the practicality of a bill of rights?

How does he support the claim he makes in sentences 12, 13, and 14?

What sentence structure does Madison use to set forth his reasons for not viewing a bill of rights “in an important light”?

Excerpt 2

In this excerpt, Madison offers reasons for supporting a bill of rights.

[1] What use then it may be asked can a bill of rights serve in popular Governments? [2] I answer the two following which though less essential than in other Governments, sufficiently recommend the precaution. [3] The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. [4] Altho’ it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped [wrongful or illegal] acts of the Government, yet there may be occasions on which the evil may spring from the latter sources [acts of government]; and on such, a bill of rights will be a good ground for an appeal to the sense of the community.

Madison explains in his letter two very specific purposes that he believes a bill of rights can serve in a popular government. Summarize the purpose he states in sentence 3.

In sentence 4 what group does Madison see as the most likely source of oppression?

Judging from its context, what do you think Madison means by “interested”?

Summarize the purpose for a bill of rights Madison states in sentence 4.

Excerpt 3

In this excerpt Madison cautions against making rights inflexible.

[1]...Supposing a bill of rights to be proper[,] the articles which ought to compose it, admit of much discussion. [2] I am inclined to think that absolute restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided. [3] The restrictions however strongly marked on paper will never be regarded when opposed to the decided sense of the public; and after repeated violations in extraordinary cases, they will lose even their ordinary efficacy. [4] Should a Rebellion or insurrection alarm the people as well as the Government, and a suspension of the Hab. Corp.* be dictated by the alarm, no written prohibitions on earth would prevent the measure. [5] Should an army in time of peace be gradually established in our neighbourhood by Britn: or Spain, declarations on paper would have as little effect in preventing a standing force for the public safety.

** Habeas corpus: a writ of habeas corpus is a court order that requires a government to bring a prisoner before a court and to prove that it has the authority to hold the prisoner. It is a fundamental protection against being held in jail unlawfully and indefinitely.*

Activity: James Madison Argues For and Against a Bill of Rights

Review the central points of the textual analysis.



What does Madison mean by “absolute restrictions”?

Why does he believe that “absolute restrictions” should be avoided?

What purpose do sentences 4 and 5 serve in this paragraph?

Glossary

advocates: supporters

propriety: appropriateness

enumeration: a list

material: important

reserved: set apart

requisite: needed, required

latitude: breadth, scope

inefficacy: ineffectiveness

maxims: principles

sentiment: opinions

artful: cunning

prudent: wise

melancholy: sad

absolute: inflexible

efficacy: effective

Text:

- “From James Madison to Thomas Jefferson, 17 October 1788,” Founders Online, National Archives (<http://founders.archives.gov/documents/Madison/01-11-02-0218> [last update: 2014-12-01]). Source: *The Papers of James Madison*, vol. 11, 7 March 1788–1 March 1789, ed. Robert A. Rutland and Charles F. Hobson. Charlottesville: University Press of Virginia, 1977, pp. 295–300.

Images:

- Pendleton’s Lithography. James Madison, fourth President of the United States. Lithograph. 1828(?). Library of Congress Prints and Photographs Division Washington, D.C. 20540 USA. *Popular Graphic Arts Collection*. <http://www.loc.gov/pictures/item/96522271/> (Accessed August 19, 2014)
- “Virginia’s Ratification of the Bill of Rights, 12/15/1791”. ARC ID: 5721244. File Unit New Hampshire, New York and Virginia Ratifications of the U.S. Constitution. Series: State Ratifications of the Constitution of the United States and the Bill of Rights, compiled 1787–1939 ARC ID: 4243802 / MLR No: A1 2 Record Group 11: General Records of the United States Government, 1778–2006. National Archives at Washington, DC — Textual Reference (RD-DC-1), National Archives Building, 7th and Pennsylvania Avenue NW, Washington, DC, 20408.
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