

TIMES PAST

INCOMPLETE: Critics said the Constitution, drafted in Philadelphia in 1787, needed to include protections of a number of fundamental rights.



The Bill of Rights

The Constitution might never have been ratified without a promise to add safeguards of fundamental rights

BY ADAM LIPTAK

The Constitution, John Adams once said, was the result of “the greatest single effort of national deliberation that the world has ever seen.” Indeed, it created a wonderfully calibrated structure for the new American nation, balancing the relationship between the three branches of government, as well as the relationship between the federal government and the states.

But at the time, a lot of people thought the Constitution was woefully incomplete.

It lacked, detractors claimed during the ratification debates in 1787 and 1788, protections for fundamental rights like free speech, religious liberty, jury trials, and due process. It lacked, in other words, what we now know of as the Bill of Rights, the first 10 Amendments to the Constitution.

That shortcoming was so grave, critics known as anti-Federalists said,

that the states should refuse to vote for ratification of the Constitution. Had ratification failed, it would have left the 13 states bound together only by the weak national government created by the Articles of Confederation, possibly jeopardizing the very existence of the country.

In response, James Madison and other supporters of the Constitution—the Federalists—promised that they would propose a set of constitutional amendments in the first

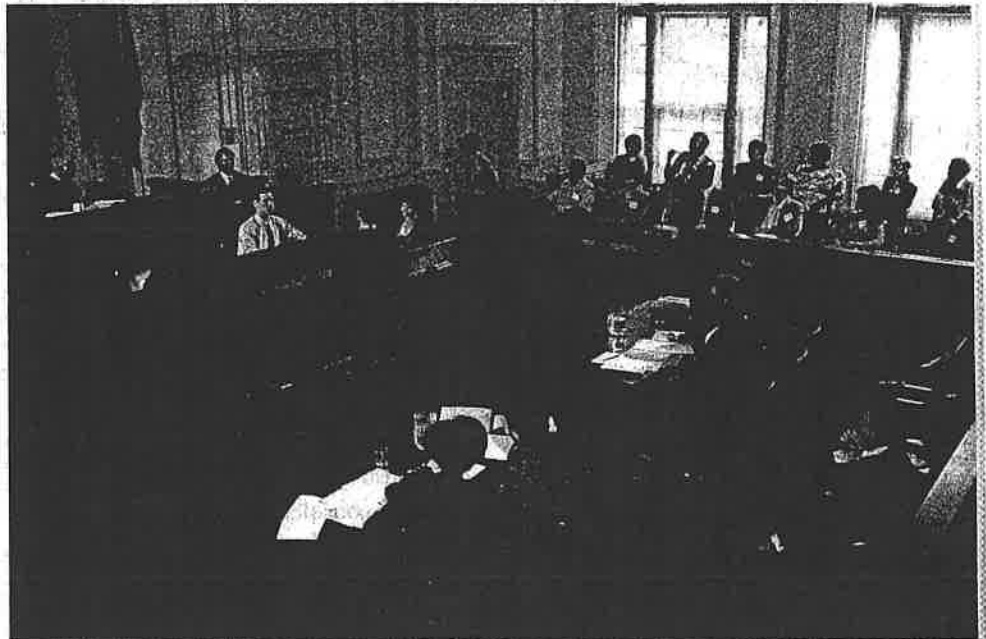
session of Congress to address these concerns.

With Madison's promise in mind, key states like Massachusetts, Maryland, Virginia, and New York voted for the Constitution, which took effect in March 1789.

Later that year, Madison was elected to the first House of Representatives, and he promptly introduced a series of amendments based on declarations of rights in state constitutions and in other foundational legal documents from around the world.

Recalling the recently concluded Revolutionary War, Madison said the amendments were meant "to extinguish from the bosom of every member of the community any apprehension that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled."

Though he kept his word to the anti-Federalists, Madison actually thought that the amendments were "unnecessary and dangerous." They were unnecessary, he said, because the Constitution had not granted



THE SIXTH AMENDMENT ensures public trials, impartial juries, and the right to an attorney.

the government the powers that the Bill of Rights would guard against. And they were dangerous because any rights *not* on the list might be thought to be unprotected.

Despite those misgivings, Congress agreed, by the required two-thirds majorities of the House and Senate, to approve Madison's handiwork. In September 1789, it sent 12 amendments to the states for ratification. That's right: 12, of which only 10 were initially adopted (*see box, p. 26*).

On Dec. 15, 1791, Virginia became the 11th of what were by then 14 states to ratify 10 of the amendments. That satisfied the constitutional requirement of ratification by three-quarters of the states, and the Bill of Rights became part of the Constitution.

Many people say that the Bill of Rights, which is celebrating its 215th anniversary this year, is the most important part of America's most important document. Packed into 413 words

are not only the majesty of the First Amendment (*see p. 20*), but also a series of protections from many kinds of potential government abuse:

The Fourth Amendment

protects against unreasonable searches and seizures. That's why, for example, the police must usually get a warrant, based on "probable cause," before searching a criminal suspect's home.

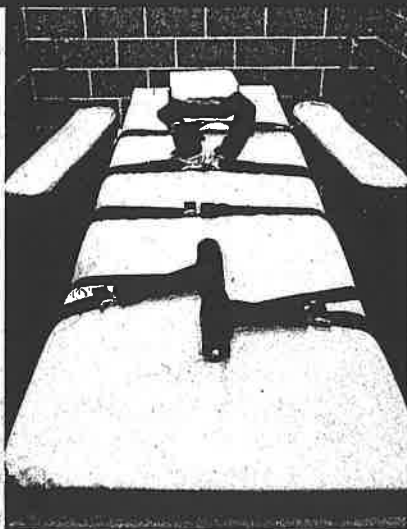
The Fifth Amendment

prohibits double jeopardy (being tried twice for the same crime), the taking of private property for public use without compensation, and forced self-incrimination in criminal cases. That last prohibition is the basis for the "you have the right to remain silent" part of the "Miranda warning" that police recite to suspects after their arrest. (The warning was named for *Miranda v. Arizona*, a 1966 Supreme Court case.) The Amendment also gives defendants the right to "take the



THE FOURTH AMENDMENT requires police to obtain a warrant before searching a home.

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THE EIGHTH AMENDMENT prohibits "cruel and unusual punishments," which now includes the execution of juvenile offenders.

Fifth" in court, or even when testifying before Congress, and not answer questions about their alleged involvement in a crime.

The Sixth Amendment, which concerns criminal prosecutions, guarantees public trials, impartial juries, and the "right to an attorney" part of the Miranda warning.

The Seventh Amendment requires jury trials in most civil cases, while **the Eighth Amendment** prohibits cruel and unusual punishments, a term that continues to be the subject of intense debate. Just last year, the Supreme Court ruled that the Eighth Amendment forbids the execution of offenders younger than 18.

The Second Amendment, which guarantees the right to keep and bear arms, is easily the most controversial one. Constitutional scholars continue to debate whether that right is limited to the "well-regulated militia" mentioned in the Amendment or whether it is a personal right of every American.

The other Amendments do not pack quite the same power, at least not today.

The Third Amendment, which bars the government from housing soldiers in private homes, was of great significance at the time: Before and during the Revolutionary War, the British had forced Americans to house their soldiers. **And the Ninth and Tenth Amendments** speak about the distribution of power between the people, the states, and the federal government.

These days, the Bill of Rights is being tested in new areas. The Bush administration has said that it is considering prosecuting news organizations for publishing classified information about some of its efforts to fight terrorism, but such prosecutions might violate the First Amendment. Some of the surveillance undertaken in the war on terror, including the monitoring of phone calls without warrants, may give rise to Fourth Amendment issues.

And various aspects of the death penalty have been challenged as a violation of the Eighth Amendment's ban on cruel and unusual punishment.

There have been scores of lawsuits around the country, for instance, taking issue with the chemicals used in lethal injections.

Not everyone will agree about precisely how far the protections in the Bill of Rights ought to reach. But 215 years after its ratification, even James Madison would probably agree that the Constitution would not be complete without it. **Q**



THE SECOND AMENDMENT guarantees the "right to keep and bear arms," though its meaning is still disputed.

Why You Don't Talk About Your Third Amendment Rights

When people invoke their First Amendment rights to free speech and religion, they frequently say there is a reason those rights were listed first. What those people fail to realize is that, but for politics and happenstance, they might be invoking their Third Amendment rights instead. That might not have the same force. As it happened, the states failed to ratify the original first amendment, which concerned the apportionment of seats in the House. They did eventually ratify the original second amendment, which says that Congressional pay raises cannot take effect until after a subsequent election. But that didn't happen until 1792—more than 200 years later—when it became the 27th Amendment. —Adam Liptak