



1ST Amendment

The government can't establish a national religion or prevent people from worshipping as they choose. Also guaranteed: freedom of speech and of the press (*above*), as well as the right to protest against the government.

2ND Amendment

Just last year, the Supreme Court ruled that the right of "the people" to bear arms applies not only to militias but also to ordinary citizens, settling a 219-year debate.

3RD Amendment

In peacetime, the government can't force people to house soldiers. That may sound bizarre now, but being forced to quarter British soldiers was one of the things that angered American colonists before the Revolution.

4TH Amendment

Protects against "unreasonable searches and seizures." That means police can't search your house or car without a warrant. Amendments 4 through 8 protect the rights of the accused in the justice system.

5TH Amendment

Protects against "double jeopardy" (being tried twice for the same crime) and says suspects may remain silent during an arrest, in court, or when testifying before Congress. (*Above, Oliver North "taking the Fifth" before Congress in 1986.*)

1791

The Bill of Rights, Then & Now

The first 10 amendments to the Constitution are still sparking debate 220 years after they were ratified

BY VERONICA MAJEROL

BROCKE KRAL/GETTY IMAGES; DANIEL BROWN/SHUTTERSTOCK; JEFFREY MERRILL/SHUTTERSTOCK; THE FBI/AMERICAN VIA GETTY IMAGES; KANSAS DRUG TASK FORCE/AP IMAGES (FOURTH AMENDMENT); JSCOTT APPLEWHITE/AP IMAGES (FIFTH AMENDMENT); DAVID J. SANS/ISTOCK/GETTY IMAGES (EIGHTH AMENDMENT)



6TH Amendment

Criminal defendants are entitled to public and speedy trials and impartial juries, and they have a right to an attorney. Most debates about the treatment of terrorism suspects since 9/11 have focused on the Sixth Amendment.

7TH Amendment

Calls for jury trials in civil cases where a minimum amount of money is at stake. The original amount was \$20, but today the threshold is generally \$75,000.

8TH Amendment

Protects against “cruel and unusual punishments” and prohibits excessive fines and bail. The decades-long debate over the constitutionality of the death penalty hinges on the Eighth Amendment.

9TH Amendment

Says that just because a right isn’t specified doesn’t mean you don’t have it. The right to privacy, for example, isn’t mentioned in the Constitution, but some say it’s implied in the First (privacy of beliefs) and Fourth (privacy at home) amendments.

10TH Amendment

A Tea Party favorite, it says that powers not explicitly given to the federal government belong to the states. State responsibilities include marriage and divorce, taxing and spending, and licensing drivers and businesses.

JASON MERRITT/AP IMAGES (SIXTH AMENDMENT); ISTOCKPHOTO (SEVENTH AMENDMENT); DAVID J. SANS/STONE/GETTY IMAGES (EIGHTH AMENDMENT)

Across the Middle East this year throngs of people took to the streets in the hope of replacing their autocratic governments with more-democratic ones.

Tunisia and Egypt are now in the throes of transition after ousting their leaders early this year. And much like a nation that threw off the shackles of tyranny more than two centuries ago, they’ve begun drafting new constitutions and at least discussing provisions to protect fundamental liberties, like freedom of speech, worship, political expression, and a right to due process of law.

Those freedoms should sound familiar to anyone who’s read the first 10 amendments to the United States Constitution, known as the Bill of Rights. Ratified 220 years ago, it continues to serve

as one of the foundations of American democracy, and an inspiration to many around the world.

A Newborn Nation

“There is no document in the history of the United States more critical to the protection of the rights of American citizens than the Bill of Rights,” says Andrew Cayton, a professor of history at Miami University in Oxford, Ohio.

But despite the example it still provides to budding democracies around the world, the Bill of Rights has long stirred debate. Indeed, the question of whether a Bill of Rights was even necessary sharply divided the Founding Fathers. Today, it still has Americans debating—not only about what the Framers really meant but also about how the Supreme Court should inter-

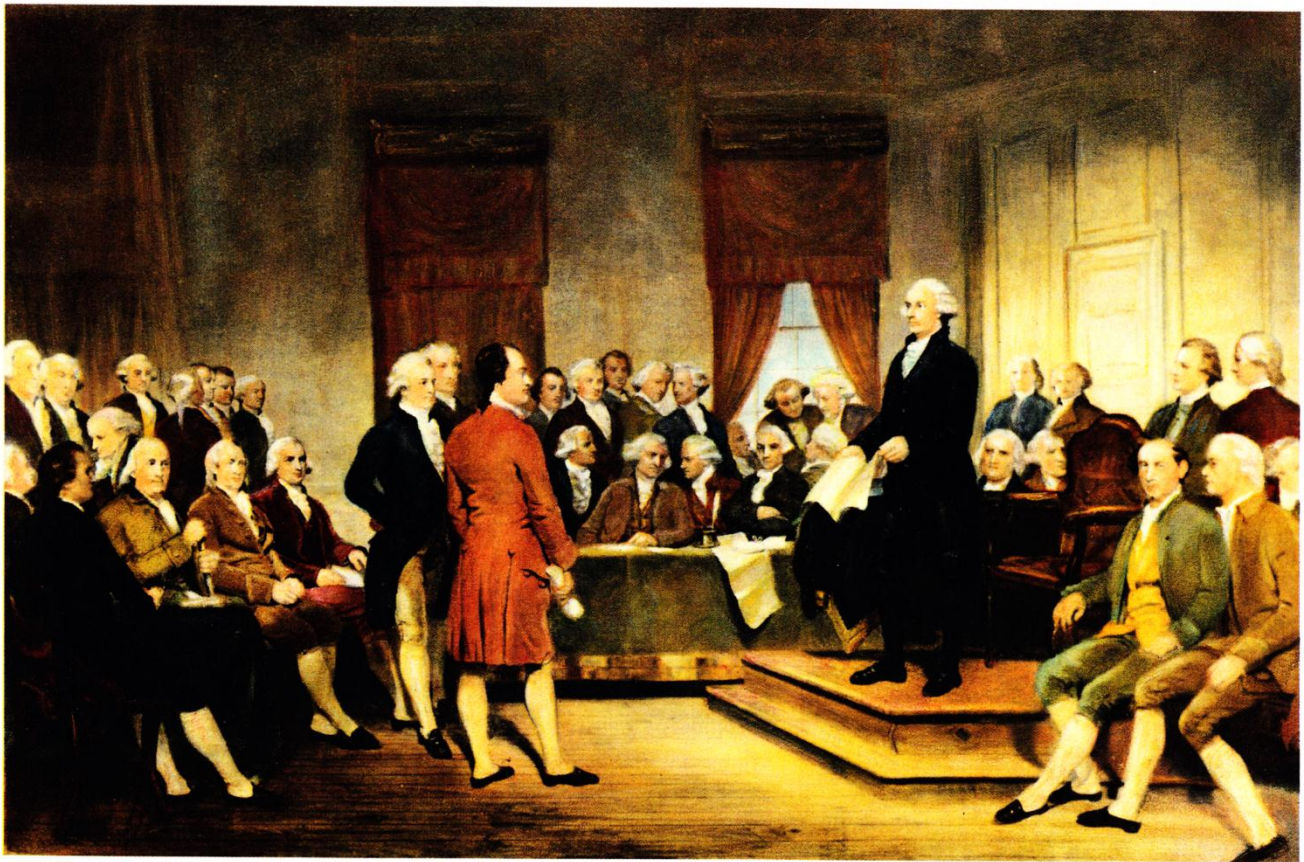
pret the document in the modern world.

After America won its independence from Great Britain in the Revolutionary War (1775-83), delegates from 12 of the 13 states* at the 1787 Constitutional Convention fiercely debated what kind of government should be established. On the one hand, they understood that the Articles of Confederation, which had created a weak government, needed to be strengthened. At the same time, they wanted to make sure that the states and individuals didn’t give up basic freedoms.

“They had just come out of fighting for eight long years against Great Britain, who they thought had violated various rights that British subjects were entitled to,” says Cayton. “So they

With reporting by Adam Liptak of The Times.

*Rhode Island didn’t send delegates.



Incomplete: Critics said the Constitution, drafted in Philadelphia in 1787, needed protections for basic rights.

were very sensitive to the idea of a government having big powers.”

The Constitution—which John Adams once called the result of “the greatest single effort of national deliberation that the world has ever seen”—laid out a carefully calibrated structure for the new American nation, balancing the powers of the three branches of government, as well as the relationship between the federal government and the states.

But many people at the time thought the Constitution was incomplete. During the ratification debates of 1787 and 1788, detractors said the Constitution lacked protections for fundamental rights, like freedom of speech and the right to worship as one chooses. It lacked, in other words, a bill of rights.

Anti-Federalists, those who opposed the Constitution for a variety of reasons, said the shortcoming was so grave that states should refuse to ratify the Constitution. George Mason, a Virginia planter, was among them. He said he’d “sooner chop off my right hand than put

it to the Constitution as it now stands.”

James Madison and other supporters of the Constitution—the Federalists—offered a compromise: They agreed to propose a set of constitutional amendments in the first session of Congress.

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.

‘Unnecessary & Dangerous’

Later that year, Madison was elected to the first House of Representatives, and he promptly introduced a series of amendments based on rights in state constitutions and other foundational legal documents from around the world, including Britain’s 1689 Bill of Rights.

Though he kept his word to the anti-Federalists, Madison actually thought that the amendments were “unnecessary and dangerous.” Unnecessary, he said, because the Constitution had not granted the government the powers that the Bill of Rights would guard against.

And dangerous because any rights *not* on the list might be thought to be unprotected. (*Amendment 9 was included to allay that fear; see page 19.*)

Despite those misgivings, Congress agreed, by the required two-thirds majorities of the House and Senate, to approve Madison’s handiwork. In September 1791, it sent 12 amendments to the states for ratification: That’s right, 12, of which only 10 were initially adopted (*see box, facing page*).

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

Debates over what they mean, however, are still going strong. For example, it took 219 years for the Supreme Court to finally answer the question of whether the Second Amendment grants individuals or just militias the right to have guns. The

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Court ruled in *McDonald v. Chicago* last year that the amendment applies to individuals.

Still Stirring Controversy

And the resolution of three big debates in the news right now—the government’s use of technology for surveillance, the legal rights of terrorism suspects, and the Tea Party’s call for a less-powerful federal government—may hinge on how the Supreme Court interprets the 220-year-old Bill of Rights:

• **Government Surveillance & Technology:** A case now before the high court asks the Justices whether police need a warrant to track a suspect’s car using GPS. The issue involves the Fourth Amendment, which protects against “unreasonable searches and seizures.”

Prosecutors say the technology is a harmless tool that helps police do their job. But during arguments for the case last month, Justice Stephen Breyer said the idea of the government tracking citizens through technologies “sounds like 1984,” George Orwell’s futuristic novel in which “Big Brother” is always watching.

• **Civil Liberties & Terrorism Suspects:** Ever since 9/11, Americans have debated whether terrorism suspects deserve the protections accorded by the Bill of Rights. In 2008, the Supreme Court ruled they have the right to chal-

Why You Don’t Talk About Your Third Amendment Rights

When people invoke their First Amendment right to freedom of speech and religion, they often argue that those rights were listed first because they’re the most important.

That may sound good, but the reality is that those rights were originally slated to be the Third Amendment.

Back in 1789, the states failed to ratify the original First Amendment—which had to do with the apportionment of seats in the House of Representatives—and the original Second Amendment—which said that Congressional pay raises can’t take effect until after an election.

With those two amendments off the table, freedom of speech, religion, and the right to protest were able to sneak into first place. The original Second was eventually ratified—more than 200 years later, in 1992, when it became the 27th Amendment.

—Adam Liptak

lenge their detention at Guantánamo Bay, the U.S. naval base in Cuba where hundreds have been imprisoned since 2002. But other questions remain, including whether they should be read Miranda rights (advising them of the right to an attorney and to remain silent); and whether it’s constitutional to assassinate a terror suspect without trial, as the Obama administration did recently with Anwar al-Awlaki, an American-born radical cleric who had preached violence against Americans from a base in Yemen.

• **States’ Rights:** Long one of the more obscure amendments, the 10th has made a comeback in recent years. Members of the Tea Party (*see p. 12*) say that the federal government has grown too large and is encroaching on states’ rights, which are protected by the 10th Amendment. One of their biggest gripes has been with President Obama’s 2010 health care bill, which imposes a penalty on individuals who don’t buy health insurance. The Supreme Court will hear challenges to the bill’s constitutionality this spring.

Americans may not all agree on how the courts should rule on such difficult questions, but openly debating these issues and taking the government to task when it fails to live up to its ideals are only possible because of the very protections enshrined in the Bill of Rights. It helps to ensure, in other words, that the people have a voice—an essential ingredient for the health of any democracy.

“This document guarantees that our government cannot tell us to shut up, it allows people like the Tea Party and Occupy movement to protest, to gather, to do all these kinds of things,” says Cayton, the history professor. “Without a Bill of Rights, who knows what people in government might decide to do.” ●



Tunisians celebrating in October after the first free election of the Arab Spring. They’re hoping to add a bill of rights to their new constitution.