

Constitution Day: Celebrate the Bill of Rights

Written by John W. Whitehead

Wednesday, 15 September 2010 07:25

- [Discount - The Adobe Photoshop CS6 Book for Digital Photographers](#)
- [Buy Cheap Sony ACID Pro 6](#)
- [Buy OEM Adobe InDesign CS5.5 MAC](#)
- [Buy OEM Sony Sound Forge 10](#)
- [Buy Cheap Autodesk Mudbox 2011 \(32-bit\)](#)
- [Buy Paragon Partition Manager 8.5 Enterprise Server \(en\)](#)
- [199.95\\$ Microsoft Windows 8 Enterprise \(32-bit\) cheap oem](#)
- [Discount - ACDSee Pro MAC](#)
- [99.95\\$ Kolor Autopano Giga 3 MAC cheap oem](#)
- [199.95\\$ Autodesk Ecotect Analysis 2011 cheap oem](#)
- [99.95\\$ Adobe FreeHand MX cheap oem](#)
- [Download Artlantis Studio 5 MAC](#)

“At the time of their adoption, the Bill of Rights represented the high point of a courageous struggle to pass on the relatively new idea that rule of law must forever stand as a check upon governmental power.” – Bernard Swartz



On September 17, 1787, the final draft of the Constitution was adopted by members of the Constitutional Convention. It was a momentous occasion in our nation’s history – one that we continue to pay tribute to today – and yet it pales in significance to the adoption of the “Bill of Rights.” Without those 462 words of the Bill of Rights, there would be little standing between average citizens like you and me and governmental tyranny.

Some states initially opposed the Constitution because it didn’t include a bill of rights. And while the Constitutional Convention had considered including a bill of rights, the motion to have a committee prepare such a document was quickly and easily defeated. Roger Sherman of Connecticut suggested that because the Constitution did not give the federal government the power to infringe upon fundamental rights, a bill of rights was unnecessary. The majority of the delegates shared this view.

Supporters of the Constitution became known as Federalists, and opponents of the Constitution were labeled Anti-Federalists. Anti-Federalists criticized the Constitution for several reasons, one being its failure to include a bill of rights. Richard Henry Lee despaired at the absence of

Constitution Day: Celebrate the Bill of Rights

Written by John W. Whitehead

Wednesday, 15 September 2010 07:25

protection of “those essential rights of mankind without which liberty cannot exist.” Although the Anti-Federalists disliked the Constitution for a number of reasons, they focused on its omission of a bill of rights because that was their best argument for enlisting public support to defeat it: “From the start of the ratification controversy, the omission of a bill of rights became an Anti-Federalist mace with which to smash the Constitution,” writes historian Leonard W. Levy.

Samuel Adams at first opposed the ratification of the Constitution but later changed his mind when it was agreed that a series of amendments would be introduced to protect fundamental rights. These rights included, among others, the freedom of speech, religion, and press, the right to petition government for a redress of grievances, the right to bear arms, and the right to be secure against unreasonable searches and seizures by government agents. Adams had feared that without a bill of rights, the federal government would take over the powers of the state governments “and sink both in despotism.” As Adams proclaimed: “I mean, my friend, to let you know how deeply I am impressed with the sense of the importance of amendments; that the good people may clearly see the distinction – for there is a distinction – between the federal powers vested in Congress and the sovereign authority belonging to the several states, which is the palladium of the private and personal rights of the citizens.”

Several of the states agreed to ratify the Constitution on the condition that amendments would be proposed to ensure fundamental rights. But the existence of the Bill of Rights is due in great part to James Madison, who actually drafted the amendments and pushed them through Congress.

Madison initially thought that a bill of rights would be “unnecessary and dangerous.” The danger of a bill of rights, Madison and other Federalists believed, was that by listing rights, the drafters might accidentally omit some from the list and thus fail to protect those rights not referenced.

In this way, a bill of rights was unnecessary, Federalists argued, because the Constitution did not grant the federal government the power to deprive the people of their fundamental rights. A bill of rights, then, would lead people to believe that the Constitution empowered the federal government to deprive the people of those rights in the first place. As Alexander Hamilton phrased it in *The Federalist*, “Why declare things should not be done which there is no power to do?”

In the end, Madison recognized the political necessity of allaying the fears of Anti-Federalists. Madison also believed there was a moral obligation imposed by those ratifying conventions that

Constitution Day: Celebrate the Bill of Rights

Written by John W. Whitehead
Wednesday, 15 September 2010 07:25

had approved the Constitution with the understanding that a bill of rights would be offered to the states.

While several of the arguments that Madison would later use to support his change of position (on a bill of rights) were strong, they can be traced directly to arguments made earlier by Thomas Jefferson. In his first letter to Madison on the subject of the Constitution, Jefferson began with praise but ended with what he did not like: "First the omission of a bill of rights." After listing rights he thought deserved special protection, starting with the freedoms of religion and the press, Jefferson dismissed as campaign rhetoric justifications for the omission of a bill of rights and concluded: "Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."

Jefferson's personal opinion refuted Federalist concerns about the bill of rights with clear logic. Concerning the Federalist argument that a bill of rights was unnecessary because the Constitution did not grant the federal government the power to deprive the people of fundamental rights, Jefferson responded that "because the Constitution protected some rights but ignored others, it raised implications against them, making a bill of rights 'necessary by way of supplement.'"

Many of the founders were concerned that majorities could become oppressive and override the decisions of so-called well-reasoning men. As John Winthrop of Massachusetts wrote, a bill of rights "serves to secure the minority against the usurpations and tyranny of the majority." With regard to such concerns about overbearing majorities, Jefferson believed that an independent court could withstand oppressive majority impulses by holding unconstitutional any acts violating a bill of rights. Jefferson was anticipating the role of the courts in curbing the power of the government, even if it feigned to speak for the people. Jefferson added "that a bill of rights 'will be the text whereby to try all the acts of the federal government.'"

With regard to the position that compiling a list of rights runs the danger of omitting some rights, Jefferson replied with the adage that half a loaf is better than none. Even if all rights could not be secured, "let us secure what we can." Others believed that a bill of rights was a good education tool in that it taught "truths" upon which freedom depends.

Incredibly, when Madison introduced his proposals for the Bill of Rights in the First Congress, the Federalists thought the House had more important matters with which to deal. And the

Constitution Day: Celebrate the Bill of Rights

Written by John W. Whitehead

Wednesday, 15 September 2010 07:25

Anti-Federalists feared that the adoption of such amendments would effectively ruin their quest to oppose the Constitution. But Madison persevered and on June 8, 1789, made a long, memorable speech before an apathetic House of Representatives, introducing amendments culled mainly from state constitutions and state ratifying-convention proposals, especially Virginia's. All power, he argued, was subject to abuse and should be guarded against by constitutionally securing "the great rights of mankind."

Madison argued that the government had only limited powers but that it might, unless prohibited, abuse its discretion. The great objective he had in mind, Madison declared, was to limit the powers of government, thus preventing legislative as well as executive abuse and, above all, preventing abuses of power by "the body of the people, operating by the majority against the minority." Madison also used Jefferson's argument that the Bill of Rights would encourage courts to "check" the other branches of the federal government.

Madison's political courage and determination cannot be overstated. He was insistent, compelling, unyielding, and ultimately triumphant. By the end of the summer, Congress proposed to the states the amendments that eventually became the Bill of Rights.

*Constitutional attorney and author John W. Whitehead is founder and president of The Rutherford Institute (Rutherford.org). His book *The Change Manifesto* is available in bookstores and online.*