

## Chapter 10

### A Bill of Rights?

The rights of the people were never defined under the Articles of Confederation. The national government, with no independent executive or judicial branch, did not have the power to take away the people's rights, but many states protected their citizens with their own bills of rights.

Because the delegates were considering a more powerful and effective government, the protection of individual liberties from the national government became an important issue. The matter did not receive serious attention, however, until the closing days of the Convention and then it was quickly dismissed. Nevertheless, the issue of a bill of rights became much more important after the Convention closed. A bill defining the rights of the people was eventually passed by the first Congress and quickly ratified by the states.. What follows is a reconstruction of speeches on this topic given at the Constitutional Convention:

#### The Debate

*Mr. Williamson of North Carolina: No provision has yet been made for a jury in civil cases. I think it is necessary that we protect the right of trial by jury.*

*Mr. Gorham of Massachusetts: I think you can trust the representatives of the people to protect their rights to jury trials.*

*Mr. Gerry of Massachusetts: Because judges can be corrupted, it is necessary to guard the right of jury trials. Let us appoint a committee to provide a clause that would secure trial by juries.*

*Mr. Mason of Virginia: Let us lay down the general principle that right of trial needs to be prefaced by a bill of rights. This would reassure the people of the states that we do not intend to destroy their liberties. Such a bill could be drawn up in a few hours, for various states already have similar declarations that could be used as models.*

*Mr. Sherman of Connecticut: I am as much in favor of protecting the people rights as any man, when necessary. But the state declarations of rights are not repealed by this Constitution, and they are sufficient to protect the people.*

*Mr. Mason of Virginia: In our new Constitution, the laws of the United States will override a state's bill of rights. So, let us establish a committee to prepare a bill of rights.*

*I would second a motion if made for that purpose. It would give great quiet to the people by reassuring them that we are concerned with their rights. By consulting the state constitutions, a bill of rights might be prepared in a few hours.*

*Mr. Wilson of Pennsylvania: It appears from the example of other states, as well as from principle, that a bill of rights is neither an essential nor a necessary tool in forming a system of government since liberty may exist and be as well-protected without it. It is not only unnecessary, but also found to be impractical – for who would be bold enough to undertake to list all the rights of the people? And when the attempt to list them is made, it must be remembered that if the list is not complete, everything not expressly mentioned will be assumed to be purposely omitted.*

*Mr. Mason of Virginia: There is no declaration of rights in the Constitution, and the laws of the national government, being superior to the laws and constitutions of the various states, the declaration of rights in the separate states are no security to the people.*

*Under the interpretation in this convention of the general clause at the end of the listing of powers granted Congress, Congress may grant monopolies in trade and commerce to particular individuals, define new crimes, inflict unusual and severe punishments, and extend their power as far as they think proper. Thus, the state legislatures have no security for the powers now assumed to remain with them; nor are the rights of the people protected.*

*Colonel Hamilton of New York: A bill of rights is not only unnecessary in the proposed Constitution, but also dangerous. It would contain various exceptions to powers not granted; and, on this very account, would afford a usable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?*

*On the subject of the liberty of the press – as much has been said, I cannot refrain from adding a remark or two. First, I notice that there is not a syllable concerning it in the constitution of this state; next, that whatever has been said about it in the constitution of any other state amounts to nothing. What is the meaning of a declaration that “the liberty of the press shall be preserved”? What is “the liberty of the press”? Who can give it any definition that would not leave much room for evasion? I believe it to be impractical to define liberty of the press or to protect it in any constitution. Liberty of the press must depend altogether on public opinion and the general spirit of the people and of the government. And here, after all, must we seek for the only solid basis of all our rights.*

*General Pinckney of South Carolina: At one point I thought we should have some declarations in the Constitution on trial by jury, and the freedom of the press, and I still think it would have been well to have them inserted. But I understand the arguments that have been presented here and think that it is not essential to include them.*

*Mr. Martin of Maryland: The more this convention advances the more impressed I am of the need of not merely attempting to protect a few rights, but of forming a complete bill of rights, which would be placed at the beginning of the Constitution to serve as a barrier between the national government and the respective states and their citizens. The more the Constitution advances toward completion, the more clearly it appears to me that the writers of it do not consider that either states or men have rights at all; or that they mean to protect the enjoyment of any to either the one or the other. I have said it before, and it is true today, as a group you are completely insensitive to the freedom and happiness of the states and their citizens. You are only interested in building an empire enslaving the common man, and putting yourselves on top of the heap.<sup>7</sup>*

Two important positions considered at the Convention include:

A bill of rights is absolutely necessary, and the following rights should be included as part of the Constitution (a) freedom of speech in all cases; (b) trial by jury in civil cases; (c) the right to bear arms; and...[delegates should list all other rights they think are necessary]

<sup>7</sup> Max Farrand, ed., *The Records of the Federal Convention* (New Haven, Connecticut, 1937) Speeches have been freely adopted from this source.

Franklin, Gerry, Lansing, Martin, Mason, and Williamson would support this position.)

That a bill of rights should not be included in the Constitution.  
(Gorham, Hamilton, King, Morris, Rutledge, and Wilson would probably support this proposal; Brearly, Dickinson, Ellsworth, Paterson, Pierce, Pinckney, Randolph, Read, Sherman, Washington, and Madison were probably undecided on this issue.)

## Suggested Student Exercises:

1. Restate the issue before the convention, using your own words.
2. Take notes on the reading covering the convention debate. Make sure that you have understood each of the speeches. You should be able to figure out: (a.) what the person is saying, (b) how he is supporting his point, (c) whether or not you agree with him and why.
3. If your delegate has a position on the issues in this debate, summarize this position in not fewer than 20 words. Then write a 100-150-word statement giving several strong arguments supporting his case. You should use arguments that delegates with similar views made in their speeches, you should make references to things that have been discussed in class before; **or**
4. If it is your turn to make a speech, write a really strong speech (of 200-250 words), showing why you think the issue is important and why people should agree with you. Use dramatic flourishes, humor, and analogies. You should borrow arguments from other delegates and make reference to things discussed in class. Give the kind of speech you'd enjoy hearing. Practice the speech at home; **or**
5. If your delegate does not have a position on this issue, come to class ready to be convinced or to make a deal. Restate the issue before the convention, using your own words.