

## Handout B: Excerpts, Madison's Speech in Congress on Amendments to the Constitution June 8, 1789

**Background:** *Madison went through several phases in his attitude about a bill of rights. At the Constitutional Convention and in the Federalist Papers, he maintained the position that individual rights were fully protected by the Constitution as it stood, and a bill of rights was unnecessary—or maybe even dangerous. However, by the summer of 1789, it was clear that, even though the Constitution had been ratified by all but two states (North Carolina and Rhode Island) a bill of rights was necessary to gain the people's trust in the new system of government. Several states had ratified the Constitution based on the Federalists' promise that one of the first acts of business in the First Congress would be to draw up a series of constitutional amendments to further safeguard individual liberties. Madison, having played such a pivotal role in every stage of the development of the Constitution, now led the effort to draft a bill of rights. He had promised his constituents in Virginia that, if he were elected to the House of Representatives, he would use his influence to produce a bill of rights, so he had a commitment to keep to those who elected him. He led the effort for an additional reason, however. In the Constitution's state-by-state ratification process, two main kinds of proposed amendments had emerged. One category of amendments would have significantly altered the structure and operation of the new national government. The second category consisted of guarantees of individual rights and liberties. Madison wanted to focus Congress's efforts on the latter so that the former category of proposed amendments would die of neglect. In his speech on June 8, 1789, he presented for Congress's consideration his list of thirty-nine points that he recommended to be inserted at various points in the Constitution. For more information about these 39 specific rights and their backgrounds, please see Gordon Lloyd's detailed tables here: <http://teachingamericanhistory.org/bor/conventions-chart>*

**Directions:** Madison's speech (with introductory and concluding sections edited for length) is provided below. You will use the Amendments section (which is provided in full) to trace the development of the content of the Bill of Rights, using the succeeding handouts. Use highlighting and annotations as appropriate to analyze Madison's proposals in the First Congress. (Paragraphs are numbered in this excerpt to simplify annotation and discussion.)

### Madison's introduction (excerpts)

1. "...The applications for amendments come from a very respectable number of constituents, and it is certainly proper for congress to consider the subject, in order to quiet that anxiety which prevails in the public mind..."
2. "It will be a desirable thing to extinguish from the bosom of every member of the community any apprehensions, that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired, of such a

## Handout B: Page 2

nature as will not injure the constitution, and they can be engrafted so as to give satisfaction to the doubting part of our fellow citizens; the friends of the federal government will evince that spirit of deference and concession for which they have hitherto been distinguished.”

3. “...I should be unwilling to see a door opened for a re-consideration of the whole structure of the government, for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door was opened, if we should be very likely to stop at that point which would be safe to the government itself: But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents, such as would be likely to meet with the concurrence of two-thirds of both houses, and the approbation of three-fourths of the state legislatures...”
4. “The amendments which have occurred to me, proper to be recommended by congress to the state legislatures, are these:”

## Handout B: Page 3

<p>A. References to ideas found in prior historical documents, such as Magna Carta, English Bill of Rights, Declaration of Independence, etc.</p>	<p>B. Madison's proposed amendments</p>	<p>C. Included in Amendments approved by the House of Representatives (show Article number)</p>	<p>D. Included in Amendments approved by the Senate (show Article number)</p>	<p>E. Included in final Bill of Rights ratified by the states (show Amendment number)</p>
	<p>5. "First. That there be prefixed to the constitution a declaration That all power is originally vested in, and consequently derived from the people."</p>			
	<p>6. "That government is instituted, and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety."</p>			
	<p>7. "That the people have an indubitable, unalienable, and inalienable right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution."</p>			
	<p>8. "Secondly. That in article 1st. section 2, clause 3, these words be struck out, to wit, 'The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative, and until such enumeration shall be made.' And that in place thereof be inserted these words, to wit, 'After the first actual enumeration, there shall be one representative for every thirty thousand, until the number amount to _____ after which the proportion shall be so regulated by congress, that the number shall never be less than _____ nor more than _____ but each state shall after the first enumeration, have at least two representatives; and prior thereto.'"</p>			
	<p>9. "Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit, 'But no law varying the compensation last ascertained shall operate before the next ensuing election of representatives.'"</p>			

## Handout B: Page 4

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	C. Included in Amendments approved by the House of Representatives (show Article number)	D. Included in Amendments approved by the Senate (show Article number)	E. Included in final Bill of Rights ratified by the states (show Amendment number)	
	10. "Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit, The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed."			
	11. "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."			
	12. "The people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the legislature by petitions, or remonstrances for redress of their grievances."			
	13. "The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person."			
	14. "No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law."			

## Handout B: Page 5

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	15. "No person shall be subject, except in cases of impeachment, to more than one punishment, or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation."					
	16. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."					
	17. "The rights of the people to be secured in their persons, their houses, their papers, and their other property from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized."					
	18. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."					
	19. "The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution."					

## Handout B: Page 6

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	20. "Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:"	
	21. "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases."	
	22. "Sixthly. That article 3d, section 2, be annexed to the end of clause 2nd, these words to wit: but no appeal to such court shall be allowed where the value in controversy shall not amount to _____ dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law."	
	23. "Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:"	
	24. "The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury, shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same state, as near as may be to the seat of the offence."	

## Handout B: Page 7

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	25. "In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate."				
	26. "Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:"				
	27. "The powers delegated by this constitution, are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial; nor the executive exercise the powers vested in the legislative or judicial; nor the judicial exercise the powers vested in the legislative or executive departments."				
	28. "The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the States respectively."				
	29. "Ninthly. That article 7th, be numbered as article 8th..."				



## Handout B: Page 8

Madison's conclusion and further commentary (Excerpts)

29. "...[W]hatever may be the form which the several states have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the executive power, sometimes against the legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority."
30. "In our government it is, perhaps, less necessary to guard against the abuse in the executive department than any other; because it is not the stronger branch of the system, but the weaker: It therefore must be leveled against the legislative, for it is the most powerful, and most likely to be abused, because it is under the least control; hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a government modified like this of the United States, the great danger lies rather in the abuse of the community than in the legislative body. The prescriptions in favor of liberty, ought to be leveled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power: But this is not found in either the executive or legislative departments of government, but in the body of the people, operating by the majority against the minority."
31. "It may be thought all paper barriers against the power of the community, are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defense; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one mean to control the majority from those acts to which they might be otherwise inclined..."
32. "It is true, there are a few particular states in which some of the most valuable articles have not, at one time or other, been violated; but does it not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights. Beside this security, there is a great probability that such a declaration in the federal system would be enforced; because the state legislatures will jealously and closely watch the operation of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty. I conclude from this view of the subject, that it will be proper in itself, and highly politic, for the tranquility of the public mind, and the stability of the government, that we should offer something, in the form I have proposed, to be incorporated in the system of government, as a declaration of the rights of the people..."



33. “These are the points on which I wish to see a revision of the constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentlemen will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronized by a respectable number of our fellow citizens; and if we can make the constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness, in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect...”

### Critical Thinking Questions

1. Restate paragraph 3 in your own words.
2. According to paragraph 29, what was the “great object” of this effort and why was it important?
3. Bills of rights historically limited the power of kings, or the executive branch. According to Madison in paragraph 30, which of the following posed the greatest danger to rights in the American system? List them in order from most dangerous to least dangerous.  
  
**executive department, legislative department, the majority acting against the rights of the minority**
4. According to paragraphs 31 and 32, why are “paper barriers” useful?
5. In paragraph 33, Madison wrote, “nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the government in any one important feature, even in the eyes of its most sanguine admirers.” What do you think he meant by the “beauty of the government”?