

Inside the First Congress: Debating the Bill of Rights

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Station 1 Worksheet: The Source of Rights

Part 1: Proposals from State Ratifying Conventions:

Virginia Convention, June 27, 1789

There are certain natural rights of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

New York Convention, July 26, 1788

That the Powers of Government may be reassumed by the People, whensoever it shall become necessary to their Happiness; that every Power, Jurisdiction and Right, which is not by the said Constitution clearly delegated to the Congress of the United States, or to the departments of the Government thereof, remains to the People of the several States or to their respective State Governments to whom they may have granted the same....

Questions:

1. What did the Virginia Convention proclaim about the source of rights?
2. What rights did the Virginia Convention identify?
3. What did the New York Convention declare about the source of a government's powers?
4. According to the New York Convention, on what conditions did a government have power?

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Station 1 Worksheet Continued: The Source of Rights

Part 2: Rights Reflected in Proposed Amendments to the Constitution

An amendment based on the proposals from state ratifying conventions as introduced in the House of Representatives by James Madison on June 8, 1789.

That the following language be inserted into Article I, Section 9, of the Constitution between Clauses 3 and 4:

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.

Questions:

1. What ideas from the Virginia convention's proposal did Madison's proposed amendment echo?
2. What ideas from the New York convention's proposal did Madison's proposed amendment echo?
3. What principle expressed by the New York convention was absent from Madison's proposal?

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Station 1 Worksheet Continued: The Source of Rights

Part 3: Rights Reflected in the Ratified Bill of Rights

Proposed Amendment XI as sent by Congress to the States for Ratification, December 15, 1791 (Ratified as Amendment IX)

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Questions:

1. How does Amendment IX, as ratified, embody the constitutional principle of limited government?
2. What elements of the Virginia and New York proposals were absent from Amendment IX?
3. Draft a proposed amendment that would add the omitted elements of the Virginia and New York proposals to the Constitution.



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Station 2 Worksheet: Representative Government

Part 1: Proposals from State Ratifying Conventions

Massachusetts Convention, February 6, 1788

That there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of the Representatives be 200.

Virginia Convention, June 27, 1788

That there be one representative for every 30,000... until the number of representatives reach 200; after which the number shall be increased as Congress shall direct.

Questions:

1. What principle of government is behind the idea, found in both proposals, of limiting each representative to 30,000 constituents?
2. How do the two proposals differ about the capacity of the House of Representatives to grow in members?
3. In Colonial America every member of the Parliament in London was considered to represent all British people, including colonists in America, but no member represented people outside of his parliamentary district directly. How do the two proposals from state conventions reflect frustrations with the British system and the desire for accountability?



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Station 2 Worksheet Continued: Representative Government

Part 2: Representation Reflected in Proposed Amendments to the Constitution

An amendment based on the proposals from state ratifying conventions as introduced in the House of Representatives by James Madison on June 8, 1789.

That the following language be incorporated into Article I, Section 2, Clause 3 of the Constitution on June 8, 1789

After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to (left blank), after which the proportion shall be so regulated by Congress, that the number shall never be less than (left blank), nor more than (left blank),, but each State shall, after the first enumeration, have at least two Representatives.

Questions:

1. How did Madison's proposed amendment recognize the likelihood of future population growth and provide Congress with a way of addressing it?
2. According to Madison's proposal, for how long was Congress obligated to honor the principle of one member of Congress for every 30,000 people?
3. According to Madison's proposal, could Congress cap the size of the House of Representatives or were they obligated to continually enlarge it as the population grew?

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Station 2 Worksheet Continued: Representative Government

Part 3: Representation as It was Submitted by Congress to the States

Proposed Amendment I as sent by Congress to the states for ratification on October 2, 1789 (The states did not ratify this proposed amendment.)

After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Questions:

1. How does this proposed amendment show Congress balancing the desire for each member of Congress to represent a small number of people directly against the desire to have a House of Representatives small enough to work efficiently?
2. If this proposed amendment had been ratified, and if the U.S. population were 300 million, how many members could the House of Representatives have?
3. The answer to the preceding question indicates a large House but smaller districts than exist today (currently there are 435 members of the House, each of whom represents approximately 700,000 constituents). Do you think people would be better represented in a system with a large House but small districts or a small House and large districts? Why?

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Station 3 Worksheet: Traditional Rights—Religion, Speech, Press, Assembly, & Petition

Part 1: Proposals from State Ratifying Conventions

Religion:

Virginia Convention, June 27, 1788

All men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

New Hampshire Convention, June 21, 1788

Congress shall make no Laws touching Religion, or to infringe the rights of Conscience.

Speech, Press, Assembly, & Petition

Virginia Convention, June 27, 1788

That the people have a right peaceably to assemble together to consult for their common good or to instruct their Representatives; and that every person has a right to petition or apply to the legislature for redress of grievances.

New York Convention, July 26, 1788

That the people have a right peaceably to assemble together to consult for their common good, or to instruct their Representatives; and that every Person has a right to Petition or apply to the Legislature for redress of Grievances. That Freedom of the Press ought not to be violated or restrained.

Questions:

1. According to the Virginia Convention, what is the source of religious liberty and what authority does the government have to regulate it?
2. Both proposals call for respecting the dictates or rights of conscience. Do you think this means the same as religion? Or, does the concept included in the proposals mean something distinct from religion?
3. How do these proposals reflect the principle of popular government?

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Station 3 Worksheet Continued: Traditional Rights—Religion, Speech, Press, Assembly, & Petition

Part 2: Traditional Rights — Religion, Speech, Press, Assembly, & Petition

Two amendments based on the proposals from state ratifying conventions as introduced in the House of Representatives by James Madison on June 8, 1789.

That the following language be inserted into Article I, Section 9, of the Constitution between Clauses 3 and 4:

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.

The people shall not be deprived or abridged of their right to speak, or to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, and remonstrances, for redress of their grievances.

Questions:

1. How did Madison’s proposed amendment expand the protection for religion from the proposals submitted by the Virginia and New Hampshire conventions?
2. How does the language of Madison’s amendment contrast with language of the proposals from the Virginia and New York ratifying conventions?
3. Explain what you think Madison meant by the phrase, “nor shall the full and equal rights of conscience be in any manner or on any pretext infringed.” How would this phrase — if retained in the proposed amendment — add to the meaning of the First Amendment?



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Station 3 Worksheet Continued: Traditional Rights—Religion, Speech, Press, Assembly, & Petition

Part 3 Traditional Rights — Religion, Speech, Press, Assembly, & Petition

Proposed Amendment III as sent by Congress to the states for ratification on October 2, 1789 (Ratified as Amendment I)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Questions:

1. How was this amendment changed by the addition of the phrase, “Congress shall make no law” in regard to the rights of speech, press, assembly and petition?
2. The First Amendment is usually read with a caution in mind that suggests that rights are not absolute; “You can’t falsely yell fire in a crowded theater.” Does the language of the Amendment as ratified leave room for debate about the limits of freedom? (Tell why and how?)
3. Congress dropped the “right of conscience” as it formulated this amendment. Would the amendment be improved by restoring the concept? Explain why or why not.

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Station 4 Worksheet: The Balance of State and Federal Power

Part 1: Proposals from State Ratifying Conventions

Massachusetts Convention, February 6, 1788

That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

New Hampshire Convention, June 21, 1788

That it be Explicitly declared that all Powers not expressly & particularly Delegated by the aforesaid Constitution are reserved to the several States to be, by them Exercised.

Questions:

1. What does the word “explicitly” as used in these proposals indicate about the states’ opinion of the proper reading of the Constitution as a Charter of Government?
2. How does the phrase “expressly and particularly,” reflect the two states’ anxiety about future changes in federal power?
3. What balance of state and federal power is expressed in these proposals?



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Station 4 Worksheet Continued: The Balance of State and Federal Power

Part 2: The Balance of State and Federal Power

James Madison introduced a constitutional amendment based on the proposals from state ratifying conventions in the House of Representatives on June 8, 1789.

That the following language be inserted into the Constitution as Article VII:

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Questions:

1. How did Madison's omission of the phrase "expressly and particularly" make his proposal different from those submitted by the states?
2. To what extent does the tone of Madison's proposal indicate a different expectation about the future relationship of state and federal powers?
3. Article I, Section 8 of the Constitution says "Congress shall have the power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

How would Madison's proposal affect the interpretation of this clause?

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Station 4 Worksheet Continued: The Balance of State and Federal Power

Part 3: Representation as It was Submitted by Congress to the States

Proposed Amendment XII as sent by Congress to the states for ratification on October 2, 1789 (Ratified as Amendment X)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Questions:

1. This amendment divides powers three ways: those delegated to Congress, those reserved to the states, and those reserved to the people. How does adding the phrase “to the people” change the amendment? Why?
2. Would this amendment create a better balance of state and federal power if the word “expressly” was inserted between “not” and “delegated”? Be sure to explain your answer.



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Review Worksheet

Draw from your work and discussions at the four stations of this lesson to answer each of the following questions. Record your group's response to each question on this sheet. Be prepared to share your findings as directed.

1. Examine the text of Article V of the Constitution. How did the creation of the Bill of Rights follow the steps for amending the Constitution specified in Article V?
2. To what extent did James Madison moderate the terms of the proposed amendments received from the states?
3. How might the process of creating the Bill of Rights have increased public support for the newly established federal government?
4. Which of the amendments studied in this lesson do you think is least understood by the public? What would you say about it to help people understand its significance?
5. Overall, what role did Congress play in shaping the Bill of Rights?

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