

REFLECTIONS ON THE BILL OF RIGHTS

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I would like to thank the former Dean of the Graduate Institute, David MacDonald, and the current Dean, Edward Walpin, and St. John's College for giving me the opportunity to speak this evening. These reflections are preceded by two prior lectures. Two years ago, I gave the first on the 4th of July entitled "Does the Declaration of Independence Still Speak to Us Today?" and last summer a second entitled "What Kind of Political Community Does the United States Constitution Form?" "Reflections on the Bill of Rights" follows in sequence.

Introduction

Debate about including a bill of rights in the United States Constitution began in earnest during the ratification debates of the Constitution. The first ten amendments to the Constitution, called the Bill of Rights, were ratified on December 15, 1791. In contrast to the tradition of celebrating two famous dates in the history of the United States—the 4th of July, the day that the Declaration of Independence was adopted in 1776, and September 17, the day that the members of the Constitutional Convention signed the Constitution in Philadelphia in 1787—there is little public commemoration of December 15. Yet, of the three documents, it is perhaps the most invoked by citizens and advocates in day-to-day life. Three questions come to mind. What is the relation of the Bill of Rights to the other seminal documents of the founding era? Has its role changed since ratification? How does it contribute to forming a political community?

The Origin of the Bill of Rights

A review of the origin of the Bill of Rights will lead into discussion of the questions posed. The final draft of the Constitution did not include a bill of rights when it was sent to the states for ratification. George Mason, a convention delegate, argued for the inclusion of such, but his effort failed. The primary argument against including a bill of rights in the newly drafted Constitution was that the proposed government was one of limited powers.¹ Not all agreed. Thomas Jefferson, commenting on the proposed Constitution, wrote to James Madison in 1787 that he did not like the omission and added "a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse or rest on inference."² The more vocal opponents of ratification came to be known as the Anti-Federalists. One of their concerns was that reducing the thirteen states (as constituted under the Articles of Confederation) into one government (as proposed under the newly drafted Constitution) would prove destructive to the liberties of the people.³ They saw a bill of rights as one of the means to remedy this defect in the Constitution.

Madison took a prominent role in responding to the critics when it became apparent that ratification of the Constitution was in doubt, in part due to his unique involvement in the nation's history. He had served his home state of Virginia and the nation in several capacities, including election as a delegate to the Continental Congress, to the Constitutional Convention, and to the Virginia Ratifying Convention. He was among the more vocal critics of the Articles of Confederation that formed a confederation of sovereign states, the government that was instituted immediately following independence from Britain. He was instrumental in organizing the Constitutional Convention and played a prominent role at every stage of debate about instituting a new government, drafting a constitution, and arguing in favor of ratification. The latter took the form of essays published under the pseudonym of Publius.⁴ The eighty-five essays

came to be known as the *Federalist Papers*. Among the arguments that Publius makes in Federalist #84 defending the omission of a bill of rights is that first, the Constitution recognizes particular privileges and rights of the people; second, that bills of rights were in their origin between king and subjects; and third, declaring things shall not be done when there is no power or authority in the Constitution to do them would raise the implication that broader powers had in fact been given.

Several states had ratified the Constitution with the understanding that a bill of rights would be considered.⁵ Madison recognized arguments for and against a bill of rights and he chose to take the lead and composed a list of amendments from the more than two hundred recommended by several states during their ratifying conventions.⁶ He was elected to serve in the First Congress under the new Constitution and on June 8 Madison made a speech to the First Congress proposing twenty amendments to the Constitution.

Not all in Congress supported Madison's efforts. Some argued that the new government was not yet fully operational and compared it to "a ship that has never yet put to sea."⁷ Others asked why amend something that had just been ratified and if doing so would undermine its legitimacy. Madison knew that the success of the new nation could have been imperiled had the promise to consider amendments been ignored. He closed his June 8th speech asking for a motion: "that a committee be appointed to consider of and report such amendments as ought to be proposed by congress to the legislatures of the states, to become, if ratified by three-fourths thereof, part of the constitution of the United States." He added, "I should advocate greater dispatch in the business of amendments, if I was not convinced of the absolute necessity there is of pursuing the organization of the government; because I think we should obtain the confidence of our fellow citizens, in proportion as we fortify the rights of the people against the encroachments of the government."⁸

The committee, made up of one member from each state, reported back to the full House of Representatives where the revised amendments were debated for eleven days.⁹ The debate was wide-ranging. Some criticized Madison's work. One of the more colorful remarks was made by South Carolina representative Aedanus Burke, who characterized the amendments as "not those solid and substantial amendments which the people expect," describing them as "little better than whip-syllabub, frothy and full of wind, formed only to please the palate."¹⁰ The House approved seventeen amendments and the Senate twelve. A conference committee resolved the differences and after the House and Senate each met the two-thirds vote requirement, President Washington submitted the twelve amendments to the states for ratification.¹¹ On December 15, 1791 Virginia became the tenth of fourteen states to ratify, thus meeting the constitutional requirement of three-fourths of the states. The amendments that related to the size of the House of Representatives and congressional pay fell short of the votes required for ratification.¹² Consistent with the requirements set out in Article V of the Constitution, ten of the twelve amendments were ratified by the states and they became known as the Bill of Rights.

This detailed account of how the Bill of Rights was achieved demonstrates how the citizens and representatives in the states and the new government under the Constitution contributed to the significant task of addressing concerns about securing the rights of citizens.

Our inquiry continues by examining how the Bill of Rights relates to the other seminal documents of the founding era, the Declaration of Independence and the Constitution.

What is the relation of the Bill of Rights to the other seminal documents of the founding era?

The two seminal documents from the founding era are the Declaration of Independence and the Constitution. The document that declared independence from the British in July 1776 is composed of distinct parts. It begins with the notion of dissolving the political bands of one people from another, followed by a statement on the universal truths and rights of the people. The facts that support a separation of the United States of America from Great Britain and the failed efforts to remedy their differences led to a declaration that the states were free and independent. The Constitution begins with a Preamble invoking we the people. The first three of the seven articles define the legislative, executive, and judicial branches. The subsequent articles address relations with the states and territories, amending the Constitution, the transition from the Confederation, and finally the requirements for ratification. The Bill of Rights relates to the Declaration of Independence and to the Constitution in different ways. The theme of rights is the starting point.

The rights of the people are referred to three times in the Declaration. The first reference is to the unalienable rights to life, liberty, and the pursuit of happiness. Second, there is a recognition to the right of representation in the legislature. The third reference is to King George dissolving representative houses that opposed his invasions on the rights of the people. These references, while seemingly distinct, all point to the proper relationship between the government and the people. As stated in the Declaration that to secure the rights of the people, “governments are instituted among Men, deriving their just powers from the consent of the governed.”¹³ King George dissolved the colonial governments that attempted to secure the rights of the people. Thus, one of the roles of government is made clear: it must secure, not infringe on the rights of the people.

The recognition of rights is further emphasized in the Declaration with references to the right of the people to act. First, the people have a right to alter or to abolish governments that do not secure the rights of the people and “to institute new Government . . . most likely to effect their Safety and Happiness.” Second, this sentiment is restated as a right and a duty to “throw off” government that “evinces a design to reduce them under absolute Despotism” as the “repeated injuries and usurpations” of the King of Great Britain had done. The third and fourth mentions are in the closing paragraph of the Declaration: the “United Colonies are, and of Right ought to be Free and Independent States” and may thus carry out those activities “which Independent States may of right do.”

This right to act is specific in its direction toward particular activities: instituting government to secure rights, throwing off tyrannical government, embracing freedom and independence, and acting as a free and independent nation. Many throughout the colonies had experienced the abuses and usurpations listed in the Declaration. Some dozen years before in 1776, many had participated in dissolving the political bands with the British government that had increasingly disregarded their liberties and repeatedly harmed those living under that government. Clearly stated in the Declaration are the right and duty to alter and abolish any form

of government destructive of the unalienable rights of men. To abolish is extreme and governments should not be challenged for “light and transient causes,” as explained in the document. To alter is the preferable alternative. The new Constitution, which introduced a strong central government, albeit with limited and enumerated powers, was feared to afford too much power to the central government. A bill of rights was one of the means to forestall and check oppressive tendencies and challenge an all-powerful government should it become necessary.

The opening words of the First Amendment could be no clearer: “Congress shall make no law . . .”.¹⁴ Among the rights in the First Amendment are the freedoms of speech and the press, and the right of the people to assemble peaceably and petition the government for a redress of grievances. These rights are instrumental to the people to preserve their liberties. The First Amendment restricts the government from abridging these freedoms.

The rights to life, liberty, and the pursuit of happiness as stated in the Declaration are more general and universal in nature. The content of the Bill of Rights is more explicit with respect to the rights and protections of not only individuals but their property as well. The Second, Third, and Fourth Amendments—the right to bear arms, regulating the quartering of soldiers in a house, and forbidding unreasonable searches and seizures of persons and their property—are consistent with the Declaration because they support defending and securing one’s life, liberty, and property.¹⁵ The Constitution provides for a judicial power that extends to “all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . .”, thus providing further protections to the people within the federal courts.¹⁶

The theme of justice is prominent in the three documents but supported by each in distinct ways. A successful prosecution of someone charged with a crime may result in the loss of life, liberty, or property as a punishment. In order to honor the unalienable rights to life, liberty, and the pursuit of happiness that are affirmed in the Declaration, the government must proceed in a manner that is consistent with the greatest care and caution that all citizens deserve, something addressed with great specificity in the Bill of Rights. The Preamble of the Constitution likewise recognizes establishing justice as necessary to form a more perfect union. The Constitution accords protection to individuals by forbidding the legislature from passing bills of attainder or ex post facto laws and allowing for the suspension of the writ of habeas corpus only in cases of rebellion or invasion. There was also authority to establish a federal judiciary in the Constitution. It must be noted that there was nothing in the Constitution that precluded the states from maintaining their own legislative bodies and courts, many of which were already in existence or that would be organized in new states as they joined the union. It is in the states where much of the legislative and judicial activity occurs.

The Fifth, Sixth, Seventh, and Eighth Amendments are generally related to upholding justice. The protections in these amendments have some direct correlations to the injuries and abuses that the colonists suffered at the hands of the British that are listed in the Declaration. These included the King obstructing the administration of justice, depriving colonists of the benefits of trial by jury, and transporting them beyond seas to be tried for pretended offences. The content of these four amendments (five through eight) include the means by which one can be held answerable for a crime such as an indictment by a Grand Jury; a prohibition on double jeopardy and self-incrimination; due process of law to protect life, liberty and property; and the

requirements surrounding prosecutions, trials, and bail. Those accused of crimes are afforded protections in these amendments.

The first eight amendments protect individual freedoms as explained above; we turn now to the Ninth and Tenth Amendments, which address rights and powers.

One of the questions that arose in the calls for a bill of rights was whether any list of rights is comprehensive. George Lee Turberville expressed this concern to Madison in a 1787 letter.

The principal objection that the opponents bring forward against this Constitution, is the total want of a Bill of Rights. This they build upon as an essential—and altho' I am satisfied that an enumeration of those priviledges which are retained—wou'd have left floating in uncertainty a number of non enumerated contingent powers and priviledges—either in the powers granted or in those retained—thereby indisputably trenching upon the powers of the states—& of the Citizens—insomuch as those not specially retained might by just implication have been consider'd as surrender'd. Still it wou'd very much assist me in my determination upon this subject if the sense of the Convention and their opinion upon it cou'd be open'd to me.¹⁷

The words of the Declaration anticipated Turberville's concern and addressed it in this manner. It reads "they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The words "certain" and "among these" acknowledge the existence of other rights. The Ninth Amendment is likewise explicit in stating that the rights listed in the Bill of Rights are not comprehensive. It, too, addresses Turberville's concern. It reads "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Tenth Amendment addresses the scope of powers through the principle of federalism (i. e. divided sovereignty between the federal and state governments) and acknowledges the people. Brutus, the Anti-Federalist, questioned whether state constitutions would be repealed in light of the assertion of the supremacy of the Constitution and the requirement of elected and appointed officials at the national and state levels to take an oath to support the Constitution.¹⁸ The Tenth Amendment responds to Brutus. It reads "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." The Tenth Amendment affirms that the Constitution designs a national government of enumerated and limited powers and that the states retain powers to make laws and govern the people, as the people in each of the respective states see fit. The framers were careful to enumerate the limited powers conferred on the federal government, but it also made clear that the Constitution and the laws made in accordance with those enumerated powers are supreme. The language of the Constitution is clear: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."¹⁹ The supremacy of the Constitution is required to avoid conflict with the states and to put the nation on a firm foundation.

The Tenth Amendment also affirms that the powers not delegated to the United States are also reserved to the people. Recognition of the people calls forth the prominent role that they play in governance. Beginning with declaring independence, the people living in the thirteen United States of America chose to dissolve the political bands with another and assume among the powers of the earth a separate and equal station. It is from the consent of the governed that governments derive their just powers, as stated in the Declaration. The Preamble of the Constitution begins with the words “we the people.” The people instituted the government. With respect to participation, the Constitution provides for direct election of the members of the House of Representatives by the people and election of the members of their state legislatures who in the original design of the Constitution appointed two Senators. These are but a few examples of how the people participate in governing. The people are the sovereign authority in this free government.

Before concluding this section on the relation of the Bill of Rights to the other seminal documents of the founding era, I must add two additional thoughts on the language in these documents, specifically the language of the times during which they were written. I have specifically retained the use of the word “men” as used in the Declaration when quoting from it. That is what is in the text. A scholar writing on the founding explains it this way: “The word ‘men’ in the Declaration means mankind, human beings, male and female of whatever color or race.”²⁰ I add to this that the reference to men and the male pronouns were used in the generic sense, which means not referring to either sex but only to people in general. People are referred to in other places in the Declaration, which is consistent with usage of generic language. The use of male pronouns in the past in their generic sense was a common grammatical practice, though currently it is not used widely.

The second point is how we are to understand the phrase “all men are created equal” in a country where slavery was practiced in some states when these founding documents were drafted. Abraham Lincoln in his 1857 speech at Springfield explains this:

I think the authors of that notable instrument (the Declaration of Independence) intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal – equal in ‘certain inalienable rights, among which are life, liberty, and the pursuit of happiness.’ This they said, and this meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that ‘all men are created equal’ was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might seek to turn a free

people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should re-appear in this fair land and commence their vocation they should find left for them at least one hard nut to crack.²¹

These two points about language and equality are worthy of greater discussion, but the immediate pursuit allows only an acknowledgement. The language of the Bill of Rights is to persons and people, again generic language, consistent with the Declaration. It is also consistent with the Constitution, which refers to person, persons, and people. Social conventions at the time were such that women tended toward a more private role within the household in contrast to the more public role of men, but both men and women were accorded rights. Conventions change over time and there is a procedure to amend the Constitution to reflect these changes.

We began with the question, What is the relation of the Bill of Rights to the other seminal documents of the founding era? The recognition and preservation of rights to effect the safety and happiness of the people and secure the blessings of liberty are the foremost concerns in the three documents. Each contributes to these goals and aspirations in a distinct manner. The Declaration proclaimed self-evident truths and severed ties with the British government that contravened their rights. Such an act allowed a new government to be instituted to secure the rights of the people. The Constitution, which undertook the effort to form a more perfect union, replaced the confederation of states. The Bill of Rights was a response to those in the states who at the time of their debates about adopting the Constitution, desired to prevent misconstruction or abuse of its powers. They desired that “declaratory and restrictive clauses” should be added.²² The Bill of Rights thus provided additional measures to achieve the goals announced in the Preamble to the Constitution. We now ask the question, Has the role of the Bill of Rights changed since ratification?

Has the role of the Bill of Rights changed since ratification?

My argument suggests a unity of the three documents in achieving the lofty goals of the revolution, albeit in different ways. The second question posed—has the role of the Bill of Rights changed since ratification—allows us to move beyond the period between the declaration of independence from Britain (1776) to the ratification of the Bill of Rights (1791). My response is limited due to the constraints of time. It focuses on one example.

There are now twenty-seven amendments to the Constitution. Some recognized new rights such as the right of eighteen-year-old citizens to vote; others amended the Constitution such as the direct election of Senators. These examples indicate that the amendment process as laid out in Article V has been followed successfully, though not all proposed amendments have been ratified. The additional amendments (11-27) were added to the separate list with each receiving a numerical designation as had the first ten amendments.

Madison originally proposed that the amendments be incorporated into the body of the Constitution, but he reluctantly agreed to place them at the end of the Constitution as it is today.²³ Among the reasons why Madison did not want a separate bill is because he thought it would not be clear which sections of the Constitution were being amended. He was also concerned that an attached bill of rights would be more of an appendix instead of part of the

Constitution.²⁴ While these are legitimate concerns, only the former has proven true (losing the direct connection to the Constitution), not the latter (that it is a mere appendix). The simplest response to the question, has the role of the Bill of Rights changed since ratification, is yes in the sense that Bill of Rights has become a focal point in national discourse. As a separate list, it has been elevated in importance and has become a central focus, almost to the exclusion of the main part of the Constitution.

The scope of this talk is limited to the first ten amendments, but they and the subsequent amendments dominate debate. It is arguably a good thing that the cherished unalienable rights announced in the Declaration of Independence are of such prominence in a nation designed to secure the blessings of liberty. But can there be too great an emphasis on individual rights? The role of the courts takes on greater prominence as a means to seek redress when rights are denied or abridged. Yet, the danger of the courts becoming a second legislative body is real. Unelected judges making law is antithetical to the idea of self-government, in which laws are made by a legislative body elected by the people. The behavior of citizens also changes in the sense that too much emphasis on individual rights may be at the expense of the common good. It is this last point that I shall discuss briefly.

In his two-volume work *Democracy in America*, Alexis de Tocqueville addresses individualism. In an aristocratic society there are strong bonds between generations, Tocqueville explains, in part due to families remaining in the same state for centuries, and often in the same place. In a democratic society, he observes, the bond of human affections is extended and loosened. The effect is that members of democratic society become indifferent and almost like strangers among themselves. Individualism is of democratic origin and while we often celebrate the individual, Tocqueville sees a darker side to it: “individualism at first dries up only the source of public virtues; but in the long term it attacks and destroys all the others and will finally be absorbed in selfishness.” He defines selfishness as “a passionate and exaggerated love of self that brings man to relate everything to himself alone and to prefer himself to everything.”²⁵

The beauty of the Bill of Rights is its simplicity in articulating behavior that should be accorded to a free people. Who can quibble with freedom of the press or freedom of speech? The danger arises when individualism and selfishness take hold and as Tocqueville says, the individual relates everything to himself alone and prefers himself to everything. Tocqueville’s remedy to individualism is found in uniting particular interest to the general interest.²⁶ In other words, avoid the individual having reference only to himself by interesting him in the public good. Tocqueville argues that this is accomplished in America through free institutions in which all can participate, primarily through the vehicle of political and civic associations. The individual may consider how events relate to himself, but participation in associations hinders him from devolving into selfishness. These associations are part of the civil and political communities.

Another way to understand the danger of an overemphasis on rights to the exclusion of everything else is to ask the question, Are rights an end in themselves or are they a foundation or a means to happiness and a good life? The selfish individual wrongly assumes that rights are an end in themselves and disregards how he fits into the community as a whole. We can speculate that if the Bill of Rights had been incorporated into the text of the Constitution as Madison had

envisioned, this over emphasis on individual rights may not have occurred. These rights would have been cast more clearly within the whole context of the Constitution.

Finding a remedy to an over-emphasis on individualism may be found in the political community, the topic of the third section of this lecture. Ironically, the same Bill of Rights that can lead to individualism at the expense of the whole society or the common good may provide an answer. The third question I pose is, How does the Bill of Rights contribute to forming a political community?

How does the Bill of Rights contribute to forming a political community?

Among the advantages of having a bill of rights is that it can serve to unify the citizenry and thus contribute to a good political community. First, a bill of rights promotes the concepts that we are one people who can appeal to rights that are acknowledged and that there is a starting point to remedy differences. Second, what is protected and safeguarded--freedom of speech and the press; peaceable assembly and the right to petition the government; the rights of citizens to protect their life, liberty, and property; and the procedures that support justice--are activities that support establishing and maintaining good political communities. Third, a bill of rights serves to encourage citizens to respect the rights of others. This is related to Tocqueville's point about preventing the individual from tending toward selfishness and instead toward the community of which he is part. Fourth, a bill of rights is a reminder that governments are instituted to secure rights and not diminish them. It serves to clarify the role between government and its citizenry.

There remains one right not yet discussed. It is in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."²⁷ Related to the content of the First Amendment is the Virginia Declaration of Rights that was influential in the drafting of the Declaration of Independence and the Bill of Rights. Section 15 reads as follows: "That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles."²⁸ In his Farewell Address, George Washington unifies the sentiments of the First Amendment regarding religion and the Virginia Declaration of Rights when he links political prosperity to religion and morality: "of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."²⁹

I began this last section listing the advantages of a bill of rights. Whether those advantages can be realized depends upon the people, specifically on the character of the people. For a political community to be prosperous, secure safety and happiness, and enjoy the blessings of liberty, the people must conduct themselves in a manner befitting these ideals, though they may not always be attained. The protections afforded religion in the First Amendment, the statement on the necessity of virtuous conduct from the Virginia Declaration of Rights, and Washington's counsel speak to the formation of the character of the people and the citizen. Conscience protections were important to the founders because they knew that free government and self-governance rely on a virtuous people. Whether virtuous behavior be cultivated through religion or other means, it is a necessary foundation to a free people and the building of good political communities.

Conclusion

My effort has been to think of the Bill of Rights as a whole. There has been some discussion of the individual rights, but only in light of how they corresponded to the other founding documents. My intent was not to have a discussion of particular rights. That happens daily in many other fora. Thinking about the whole is far less frequent and that serves as a point of beginning to reflect on the Bill of Rights.

1. Richard Labunski, *James Madison and the Struggle for the Bill of Rights*, (New York: Oxford University Press, 2006), 9. See also Federalist Papers, #84.

2. Thomas Jefferson to James Madison, December 20, 1787,
<https://founders.archives.gov/documents/Madison/01-10-02-0210>.

3. Brutus, Brutus II, November 1, 1787,
<https://teachingamericanhistory.org/library/document/brutus-ii/>.

4. Alexander Hamilton and John Jay were also contributors to the *Federalist Papers* under the same pseudonym.

5. Labunski, *James Madison and the Struggle for the Bill of Rights*, 234. See also James Madison to Richard Peters August 19, 1789,
<https://founders.archives.gov/documents/Madison/01-12-02-0230>.

6. Labunski, *James Madison and the Struggle for the Bill of Rights*, 199.

7. Labunski, *James Madison and the Struggle for the Bill of Rights*, 195.

8. James Madison Speech to Congress, June 8, 1789, <https://www.revolutionary-war-and-beyond.com/james-madison-speech-june-8-1789.html>.

9. Labunski, *James Madison and the Struggle for the Bill of Rights*, 216, 217.

10. Labunski, *James Madison and the Struggle for the Bill of Rights*, 226.

11. Labunski, *James Madison and the Struggle for the Bill of Rights*, 235-240.

12. Labunski, *James Madison and the Struggle for the Bill of Rights*, 256.

13. “Declaration of Independence,” National Archives: America’s Founding Documents, <https://www.archives.gov/founding-docs/declaration-transcript>.

14. “Bill of Rights,” National Archives: America’s Founding Documents, <https://www.archives.gov/founding-docs/bill-of-rights-transcript>.

15. The formulation of life, liberty, and the pursuit of happiness in the Declaration is modified from John Locke’s phrase in *Of Civil Government*, Book II: “The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.” John Locke, *Two Treatises of Civil Government*, chap. 2, sec. 6. https://oll.libertyfund.org/titles/locke-the-two-treatises-of-civil-government-hollis-ed#lf0057_label_207.

16. “U. S. Constitution,” National Archives: America’s Founding Documents, <https://www.archives.gov/founding-docs/constitution>. Article III section 2.

17. George Lee Turberville to James Madison, December 11, 1787, <https://founders.archives.gov/?q=bill%20of%20rights%201789&s=1111311111&sa=&r=80&sr=>.

18. Brutus, Brutus II, November 1, 1787, <https://teachingamericanhistory.org/library/document/brutus-ii/>. There are two oaths referenced in the Constitution. The oath that the President takes before assuming office is in Article II, section 1. Article VI states the requirement that the Senators and Representatives, members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several states shall be bound by oath or affirmation to support the U. S. Constitution.

19. “U. S. Constitution,” National Archives: America’s Founding Documents, <https://www.archives.gov/founding-docs/constitution>. The powers of Congress are in Article I, section 8; the powers of the President in Article II, section 2; and the powers and jurisdiction of the Judiciary in Article III, sections 1 and 2. The supremacy clause is in Article VI.

20. Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America*, (Lanham, MD: Rowman and Littlefield Publishers, 1997), PAGE #

21. Abraham Lincoln speech, Speech at Springfield, June 26, 1857, <http://www.mrlincolnandfreedom.org/pre-civil-war/dred-scott/speech-at-springfield-june-26-1857/>.

22. There was a Preamble to the Bill of Rights when it was transmitted from Congress to the Legislatures of the several states. “Bill of Rights,” National Archives: America’s Founding Documents, <https://www.archives.gov/founding-docs/bill-of-rights-transcript>.

23. Labunski, *James Madison and the Struggle for the Bill of Rights*, 200, 232. See also James Madison to Richard Peters August 19, 1789, <https://founders.archives.gov/documents/Madison/01-12-02-0230>.

24. Labunski, *James Madison and the Struggle for the Bill of Rights*, 200.

25. Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 482-83.

26. Tocqueville, *Democracy in America*, 487.

27. There is a debate about whether these are two rights and in tension with one another.

28. “Virginia Declaration of Rights,” National Archives, America’s Founding Documents, <https://www.archives.gov/founding-docs/virginia-declaration-of-rights>.

29. William B Allen, ed., *George Washington: A Collection* (Indianapolis: Liberty Classics, 1988), 521.