

A TIMELINE OF THE BILL OF RIGHTS

Ideas about justice, fairness and equity have long been central to human thought.. The American people in 1787 were worried about ratifying a Constitution that was missing the enumeration of fundamental rights. The Constitution was ratified with a promise that a bill of rights would be added. It began as a guarantee only against the federal government, the Bill of Rights eventually applied to the states. Debates about its meaning and full application continue up to the present day.

By the Way, The Bill of Rights Was Ratified

I have the honor to send you herein enclosed two copies, duly authenticated, of an Act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein; also of an Act to establish the Post office and Post roads within the United States; also the ratifications, by three fourths of the Legislatures of the several States, of certain articles in addition to and amendment of the Constitution of the United States, proposed by Congress to the said Legislatures.

- [Thomas Jefferson](#) (March 1, 1792)

Secretary of State Thomas Jefferson informed state governors of the ratification of the Bill of Rights as a sort of aside. The passage (now celebrated on [Bill of Rights Day](#) on December 15th) of a statement of fundamental rights that at one time seemed essential for the [Constitution](#) itself to be ratified was apparently secondary to fisheries and post offices.

A Nation Concerned About Rights

It was not as unimportant as all that. The people in this country from the first time they permanently settled here in the 17th Century ([Jamestown](#)) were concerned about rights.

Rights, including freedoms protected by the government, were something basic to being English. Many argued it was more than that. It was something basic to being human with many believing their rights were guaranteed by God.

When the British government failed to protect our rights, the people fought [for their independence](#). And, many people were not satisfied with the U.S. Constitution until it included a basic list ("bill") of rights. Our concern today is to provide a timeline of sorts on its history.

5th Century Athens

Our understanding of rights goes back to ancient times.

[Ancient Greek philosophers](#) considered the nature of things. They considered "natural law," including those things that are necessary for our happiness. Any government that did not protect these things would be unjust, even if it had the raw power to control the people.

The concept of "[natural rights](#)" developed. These were protections (such as freedom of speech) that arose from our very nature as human beings. Likewise, people began to argue that the best way to protect these rights was a government by the people

For instance, when the great philosopher Socrates was put on trial, a jury made up of his fellow citizens decided his fate. The Ancient Greeks were a major influence on later rights talk, including the "age of reason" ([Enlightenment](#)) in the 18th Century.

Two Key Moments in British History: 1215 and 1689

King John might best be known as the weak-minded and corrupt king that battled Robin Hood. But, outside of the movies, King John is best remembered for his signing of the Magna Carta.

The [Magna Carta](#) was an agreement between King John and English barons. It set forth the basic principle that the king was not above the law. Royal authority must not be used to violate certain basic rights and privileges, including what became to be known as "due process of law."

King James II also was not popular. After a few years, he was disposed of in favor of William and Mary. But, the welcome to the new royal couple came with strings. The Parliament [asserted](#) their "ancient rights and liberties," including many that are found in our own Bill of Rights.

The "English Bill of Rights" is an important precedent to our own Bill of Rights.

Declaration of Independence (1776)

The push for American independence was motivated by a range of things.

The document formally explaining why uses the language of rights. [The Declaration of Independence](#) states that we have certain basic natural rights. A just government, not one led by a "tyrant" like King George III, protects them. Laws are passed just for that purpose.

One other thing to keep in mind here is that the *specific conflicts* that led to the Revolutionary War helped influence what rights were particularly respected.

John Adams once said the first spark of the Revolutionary War was a battle over "general warrants," open-ended authority to search the homes of colonialists. Another example would be the "quartering of troops," the hated requirement that civilians take in British soldiers when there was no other place to put them. A practice that continued [into wartime](#).

These struggles led to the Third and Fourth Amendments. Likewise, the importance of a civilian jury as a voice of the everyday person against the British government led to multiple constitutional provisions protecting jury rights.

Battle Over The Constitution (1787-91)

The first governing document of the United States, the [Articles of Confederation](#), didn't work that well. There was a debate, however, on the proper path. Were limited reforms the proper way to go? Or, a more fundamental change, the ratification of a whole new Constitution?

Our Founding Fathers chose "door #2" in 1787, but there was a lot of dissent, including in two of the largest states at the time (New York and Virginia). A major concern was the lack of a bill of rights, even though there were some rights mixed in there.

A compromise, these guys were big on that, was agreed upon. The Constitution would be ratified, fine, but Congress would right away amend it, add to it, to include a list of fundamental rights. James Madison, "the father of the Constitution," himself made a campaign promise when he ran for Congress to support a bill of rights. And, he did help lead the effort once there.

The Bill of Rights was ratified on December 15, 1791, though two were not. One of these amendments eventually became the 27th in 1992! The other, involving the number of members of the House of Representatives, never was ratified.

First Battles: Alien and Sedition Acts (1798)

Some people, including some anti-federalists who opposed the ratification of the Constitution, were not impressed. They wanted stronger limits on federal power such as limits on navigation and taxation. Some compared the Bill of Rights to a "tub before a whale," a tub used to lure a whale away from a ship. They argued that it was a trivial list of rights to quiet opposition to the Constitution.

The [Bill of Rights](#) was originally only a restraint on the *federal* government. James Madison hoped certain rights would also apply to the states. This was not to be. The Supreme Court formally recognized that the Bill of Rights applied to the feds in *Barron v. Baltimore* (1833).

Meanwhile, there were various early battles involving the Bill of Rights. The first major conflict arose after the passage of the [Alien and Sedition Acts](#), which regulated immigrants and criticism of the government. Federal judges uphold their constitutionality.

James Madison himself spoke out against the laws, arguing they were both a violation of the First Amendment (free speech) and the Tenth Amendment ([state powers](#)). Lesson learned: the "original understanding" of these amendments was disputed.

Fourteenth Amendment: National Rights (1868)

The Bill of Rights originally applied only to the federal government. And, the limited nature of constitutional liberty was clear as long as slavery still was allowed in the land.

More and more people argued that there were certain rights that should be protected nationwide. Slavery was not only wrong; we should as a nation declare it illegal. The Supreme Court [said](#) otherwise; in fact, it suggested blacks had no rights that whites need to respect.

A bloody civil war was fought over these principles. The end result was the abolishment of slavery (Thirteenth Amendment in 1865) and the declaration of basic rights of all citizens (Fourteenth Amendment, 1868) that both the federal and state governments must respect.

What Rights? Applying Rights To The States (1873-??)

Rep. John Bingham is often seen as the "Father of the Fourteenth Amendment." Bingham argued that the "privileges or immunities" protected by the amendment against state action include the provisions of the Bill of Rights. The Supreme Court disagreed.

The Supreme Court in *The Slaughterhouse Cases* (1873) held that the Fourteenth Amendment only protects a limited number of rights against state action. A state could pass a law abridging the freedom of speech as long as it was not so bad that it violated "due process of law."

This started a long battle where many argued that at least *some* of the Bill of Rights were so fundamental that they should apply to the states. The Supreme Court in a series of cases in the 20th Century agreed. They applied most of the provisions, leaving out the Third Amendment (poor baby is mostly forgotten), and those involving grand and civil juries.

Nonetheless, it is far from clear that this process is complete. The most recent case involving "incorporating" (to use a fancy word meaning applying them to the states) the Bill of Rights via the Fourteenth Amendment [was in 2019](#) (Eighth Amendment provision involving excessive fines).

The Second Amendment (guns) was only incorporated a decade earlier. So, maybe the process will eventually be complete in the future. Meanwhile, [the debate over its meaning continues](#).

Final Thoughts

The opening quotation reflects early practice. For a number of years, people did not normally speak of "the Bill of Rights." There were many bills of rights, state and federal, but the first ten amendments of the Constitution were not generally known by a sort of official title.

The battle over the Fourteenth Amendment gave special attention to the first ten amendments. The "Bill of Rights" slowly became a well-recognized term.

The biggest booster is probably President Franklin D. Roosevelt. He honored the Bill of Rights in an age of fascism and pushed for a "[Second Bill of Rights](#)" that were not just "negative" rights against the government. They would provide "positive" benefits.

The battle for a "right to health care" and other things today honors his vision.