The Bill of Rights and America's Declaration of the People's Unalienable Civil Liberties

By W. West Allen

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The U.S. Constitution is built upon the chief foundational cornerstone of popular sovereignty—the fundamental principle that the source of all government power is the people. Sovereign power does not arise from the divine right of kings, political parties of a state, or might of the military. The authority of any commonwealth, rather, is originally vested in and derived from its citizens. This verity exists among every nation of the world—precisely as America's Founders declared it from the Pennsylvania State House in 1776—because all human beings are by nature equal, free, and endowed by their Creator with certain unalienable rights, including life, liberty, and the pursuit of happiness. A just government exists only as charted *by* the people in order to protect the fundamental rights *of* the people. These rights can never be surrendered to government under any circumstances.

To ensure a correct understanding of this proper relationship between people and their charted government, America fixed within its U.S. Constitution, as *ordained* and *established* by the people, an unambiguous enumeration of certain inherent rights that are to be held inviolate by government. These rights are guaranteed and rendered sacrosanct by their explicit incorporation directly into America's written governmental charter. The people's first 10 amendments to their Constitution comprise the fourth fundamental principle of the U.S. Constitution—*the Bill of Rights*.[1]

The ideas of liberty and equality expressed by Thomas Jefferson in the Declaration of Independence and thereafter by James Madison and others in the U.S. Constitution were not new. The American colonies had been granted charters that included represented assemblies and even basic rights recognized since the Magna Carta that no "freeman could be imprisoned or destroyed except by lawful judgment of his peers or by the law of the land."[2] George Mason's Virginia Declaration of Rights of 1776 had declared that all are by nature equally free and independent and have certain inherent rights. The bill or declaration of rights of Pennsylvania, from the committee led by Benjamin Franklin, did likewise. But never before had such a promissory note of freedom been written so expressly and directly into a nation's founding documents, and never had the natural rights of individual citizens been enumerated and guaranteed so unequivocally in a written constitution. The American experiment of government was unique: a free people chartered a government and conditioned their government's power on its ability to guarantee and safeguard the natural rights of every citizen. Government would no longer dictate the rights of the people. The people, rather, would dictate to their chartered government its limited authority and declare certain inherent, or natural, rights inviolate. This was the new American standard. And to improve and repair it, the wise would include a statement of particular individual liberties and limits on government—a bill of rights.

Madison, the principal author of the U.S. Constitution and its Bill of Rights, originally opposed making inclusion of a bill of rights a precondition for ratification of the Constitution. He, along with Alexander Hamilton and others, did not think a separate bill of rights was necessary. They believed that since the Constitution "is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS," no further amendments were required.[3] "For why declare that things shall not be done which there is no power to do?"[4] In other words, since the Constitution expressly separated the powers of government and only gave government express limited powers, what need was there to restrict what was never given? Some believed, further, that attempting to enumerate certain rights was not just unnecessary, but dangerous. If the Constitution contained various exceptions to powers not granted by the people, such language could afford a colorable pretext to the unscrupulous, who might seek more power than the people granted in the first place. Following four months of debate in the summer of 1787, the Philadelphia delegates produced a constitution that did not contain an explicit bill of rights.[5]

It may have been Jefferson, far from the cacophony of heated constitutional debates in Philadelphia in

1787, who ultimately helped his brethren hear reason and see the light. While serving as U.S. minister to France at the time, Jefferson received a copy of the proposed U.S. Constitution. He approved, generally, but wrote to Madison voicing concern that the Constitution did not contain an express bill of rights. Jefferson understood the *principle* of a bill of rights and why an unequivocal guarantee of unalienable individual liberties and limits on government was imperative to the success of the new nation. Without such a guarantee, a new government, and certainly those eager to wield its national power, could readily abuse that power, usurp the people's authority, and, in time, destroy individual liberties. Jefferson admonished Madison of this critical omission when he famously wrote his friend in December 1787: "A bill of rights is what the people are entitled to against every government on earth ... and what no just government should refuse, or rest on inference."[6]

Thanks to Jefferson and a popular groundswell of the people in many state ratifying conventions who understood the significance of a bill of rights, Madison and his congressional colleagues listened. Madison eventually proposed a series of 19 constitutional amendments to the First Congress on June 8, 1789, just over one month after George Washington was inaugurated as the first president of the United States. Madison's proposals, many incorporated directly from proposals by state ratifying conventions and state constitutions, were duly considered and debated by the new legislature. In the end, 12 of Madison's amendments survived the congressional approval process and went to the states for ratification on Sept. 25, 1789.[7] Of those congressionally approved 12 amendments, just 10 were ratified and incorporated into the Constitution, when, more than two years later, on Dec. 15, 1791, Jefferson's home state of Virginia ratified 10 of the proposed 12 amendments.[8] In time, these original amendments to the U.S. Constitution became known as the Bill of Rights.

According to its preamble, the Bill of Rights is the result of the "Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added ... [to extend] the ground of public confidence in the Government[.]"[9] The original Bill of Rights was mostly forged from ideas already expressed within revolutionary-era state constitutions, which included vital guarantees of individual rights and specific limits on government authority. These principles were understood as maxims by which "every wise and enlightened people will regulate their conduct" and, as Patrick Henry explained, "which no free people ought ever to abandon ... [and] of which the observance is essential to the security of happiness."[10]

Sadly, the protections of these first 10 amendments were largely ignored by the courts and the states for the first 100 years after the Bill of Rights was ratified in 1791, just as Madison had predicted. But in time, the wise and honest within America began to repair the standard raised by our founding generation. By the 20th century, with the leadership of citizens like Abraham Lincoln, Frederick Douglass, and Martin Luther King Jr., our nation began to vigorously enforce the Bill of Rights against the states. Americans began to understand and see what our Founders had hoped they would—that these vital guarantees of individual rights and limits on government could be more than bulwarks of mere parchment, but "a promissory note to which every American was to fall heir" and see fulfilled.[11]

The Bill of Rights, as declared by the American people in the U.S. Constitution, has providential and inspired purpose. It constitutes the preeminent declaration of freedoms of human dignity based on principles of moral agency and liberty. It transcends politics, party, and government. As with all truth, it prevails. Consequently, as nations and citizens honor the constitutional principles of the Bill of Rights, they prosper; as nations and citizens ignore them, they falter.

What are the unalienable rights that are recognized and guaranteed by the world's most successful nations? They bear repeating and demand careful individual study: the freedom of religion, the freedom to exercise one's faith and conscience,[12] the freedom of speech, the freedom of the press,[13] the right to peaceably assemble, and the right to petition government for a redress of grievances. They include the people's inherent civil liberties that prohibit the housing of soldiers in residential homes, unreasonable government searches and seizures, self-incrimination, and double jeopardy. They encompass and protect the right to due process of law, the right to a fair and speedy jury trial, the right to bear arms to maintain the people's defense of their liberties, and the right to be free from excessive bails, fines, and unusual punishments.

To further protect against the concern that a new federal government might claim rights not listed in the Bill of Rights, Madison drafted what became the Ninth Amendment, which says that that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." To ensure that Congress would be viewed as a government of limited rather than unlimited powers, Madison included the Tenth Amendment, which says 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." We would do well to understand these amendments with the earnestness that Madison and his generation intended.

Together, the Constitution's first 10 amendments defend not only majorities of the people against an overreaching federal government but also minorities against overreaching state government. The Bill of Rights proscribes as law the proper limits of government and prohibits the state from abridging the fundamental freedoms and civil liberties that all individuals possess on the basis of their humanity. It is unique among the political writings of the world in that it unambiguously sets forth the most critical and vital civil liberties that simultaneously engender strong and successful nations. Honoring the Bill of Rights ennobles and advances governments that justly derive their power from the consent of the governed. It increases civil accord, security, and happiness among a nation's citizens. No action by any government or person acting under color of law should therefore ever subvert these unalienable rights.[14] And never are these rights more important, subject to greater danger, and in more need of defense than in times of national crisis.

It is now the work of this generation to uphold and repair this standard that was wrought and raised by the architects of the American Republic. The Bill of Rights, along with the Declaration of Independence and the Constitution, remains a promissory note of liberty to its heirs. The enduring principles of these documents should be studied and advocated by all. It is the responsibility of every citizen of our nation—but especially its judges and lawyers as guardians of the Constitution—to honor, uphold, and defend the liberties guaranteed in the Bill of Rights. We are they who will honor and fulfill the promises of liberty made over two centuries ago.☉

continued on page 84

President's Message *continued from page 4*

Endnotes

[1]The 2020-2021 FBA presidential messages focus on five foundational principles of the U.S. Constitution: popular sovereignty, federalism, separation of powers, the Bill of Rights, and the rule of law.

[2]Magna Carta (1297), https://www.archives.gov/exhibits/featured-documents/magna-carta#:~:text.

[3]The Federalist No. 84 (Alexander Hamilton).

[4]*Id.* As Madison argued, a bill of rights was unnecessary because the federal government was granted no power to abridge individual liberty.

[5]In the final days of the Constitutional Convention in Philadelphia, delegates George Mason and Elbridge Gerry, in particular, objected to the proposed Constitution because it did not include a bill of rights to protect the fundamental liberties of the people against the newly empowered federal government. The motion was denied swiftly, as a debate over what rights to include would go on for weeks and the delegates were tired.

[6]Thomas Jefferson, Letter to James Madison (Dec. 20, 1787), https://founders.archives.gov/documents/Madison/01-10-02-0210 (emphasis added).

[7]Interestingly, the amendment Madison considered the "most valuable" to protect minorities—which would have prohibited state governments from abridging freedom of conscience, speech, and the press, as well as trial by jury in criminal cases—was not adopted. The nation would have to wait until the passing of the Fourteenth Amendment for these rights to be recognized by the states.

[8]Many state ratifying conventions proposed amendments specifying the rights as recognized by Jefferson in the Declaration of Independence and as done by other states in their respective state constitutions. Of the two bypassed Madison proposals, one was ratified on May 7, 1992, as the Twenty-seventh Amendment, which prohibits laws to vary the compensation paid to senators and representatives while Congress is in session (i.e., no sitting Congress can give itself a pay raise). The second rejected amendment dealt with the number of representatives in Congress to ensure House members would be apportioned to the states so as to always represent small constituencies, even as the general population grew, and ensure that representatives were not too far removed from the concerns of their citizens.

[9]U.S. Const., pmbl. to amends. I–X.

[10]Patrick Henry, Speech Delivered at the Virginia Convention Debate of the Ratification of the Constitution (June 7, 1788), https://teachingamericanhistory.org/library/document/speech-delivered-at-the-virginia-convention-debate-of-the-ratification-of-the-constitution-june-7-1788.

[11]Dr. Martin Luther King Jr., "I Have a Dream" Speech, Given at the Lincoln Memorial (Aug. 28, 1963), https://avalon.law.yale.edu/20th_century/mlk01.asp.

[12]Each of these fundamental freedoms should be studied carefully by both nations and individuals. Consider just the first right of religious freedom. George Washington exhorted those who would inherit the nation his generation founded to contemplate the salutary and positive effects of religious freedom upon the new American Republic. Washington stated: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness[.]" George Washington, *Farewell Address (1796),* https://www.ourdocuments.gov/doc.php?flash=false&doc=15&page=transcript.

[13]A study of the importance of free speech and a free press among nations also teaches us continually. A free people must express their ideas and have access to truth and information that is not guided by prejudices, agendas, or propaganda from political parties. Statements by politicians, corporations, news organizations, and individuals unmoored from truth is deleterious to people's bill of rights and their republican form of government. The right and wise response to false speech is more truthful speech in the arena of ideas, not less speech. As Jefferson taught: "[W]e need not doubt that truth, reason, and their own interests, will at length prevail[.]" Thomas Jefferson, Second Inaugural Address (March 4, 1805), https://avalon.law.yale.edu/19th_century/jefinau2.asp.

[14]Individuals and organizations, like governments themselves, should honor the principles set forth in the Bill of Rights. When we as individual citizens, students, educators, civic leaders, politicians, or corporate executives personally engage in actions that compromise or are antithetical to the inviolate individual human rights of others, then we, too, are acting contrary to principles of freedom and our own ultimate best interests. In the end, we endanger the very political system that sustains us.