

# Lesson 5: The Ratification Debates and the Bill of Rights

## Lesson Overview and Student Learning Objectives

The purpose of this lesson is to look at the key debates during the battles over ratification of the Constitution, 1787-1788. The focus is on the views of the Anti-Federalists and their arguments with Federalists over the need for a bill of rights. The Background Essay provides what students need to understand what a bill of rights is and why it became a central issue in the arguments between Federalists and Anti-Federalists. The student activity for the lesson asks students to analyze the lesson's primary sources and use them to construct a brief essay addressing a Document Based Question about the debate over the bill of rights.

When the lesson is completed:

- Students will be able to explain what a bill of rights is, what the provisions are of the one now part of the U.S. Constitution, and the process by which that Bill of Rights was added to the Constitution.
- Students will be able to explain several of the reasons key Federalists and Anti-Federalists did or did not support the need for a bill of rights.
- Students will evaluate and write a brief essay explaining the alternative opinions expressed in the sources as to whether the Constitution needed to have a bill of rights.

## Teacher Directions

**Before this class meets:** Distribute the Background Essay “The Constitution, the Ratification Debates, and the Bill of Rights.” Also distribute the five sources for this lesson. As homework or during an earlier class period, have all students read the Background Essay and the sources. The Background Essay deals with the ratification of the U.S. Constitution and the arguments for and against it by Federalists and Anti-Federalists.

**In class:** Briefly discuss the Background Essay and address any questions the students have about it along with the five brief sources for the lesson. Then give students the two-page Student Activity assignment. It asks each student to take some notes on Sources 2-5 and use those notes to write a brief (2-3 pages) DBQ essay answering two questions. Teachers may want to give students extra time in addition to this class period to complete their essays. Perhaps display some or all of the students’ essays for others to read.

**Extension Activity:** For a long time, the Bill of Rights’ protections applied only to actions by the federal government. They did not bind the states until well after the 14th Amendment was ratified in 1868. Have a small group of students read about the 14th Amendment and the process by which key Bill of Rights provisions were later applied to the states (a process known as “incorporation”). Ask them to present their findings to the class and lead a discussion about how the significance of the Bill of Rights has changed in American history over time.

### Suggested Grade Level:

12th grade

### Time to Complete:

One class period plus prior reading as homework

## Terms and Phrases to Understand (In order of their appearance in the lesson material.)

- **ratify**—to approve an act so as to make it legally binding.
- **Magna Carta**—“The Great Charter,” an agreement in 1215 between England’s King John and his barons limiting the king’s powers.
- **enumerated**—Specifically named or listed; individually numbered.
- **establishment of religion**—A religion recognized by law as the official religion; also, government actions that favor one religion over another.
- **warrant**—In this case, a legal document authorizing officials to make an arrest, search premises, or carry out some other action.
- **probable cause**—In this case, having reasonably trustworthy information that a crime is being committed.
- **indictment of a grand jury**—In this case, an indictment is the legal charge against someone for a crime. A grand jury decides if there are good reasons to charge someone with a crime.
- **due process of law**—Applying all legal rules to a case so that the rights of the persons involved are respected.
- **common law**—the part of English law based on custom and past judicial decisions rather than statutes.

## Sources to Read

**This lesson’s Background Essay: “The Constitution, the Ratification Debates, and the Bill of Rights.”**

*The following are located in the “Sources for this Lesson” section and fully at the indicated link.*

- Source 1: The Bill of Rights, which comprises the first ten amendments to the U.S. Constitution. Available online from the Bill of Rights Institute at: <https://billof-rightsinstitute.org/primary-sources/bill-of-rights>.

- Source 2: A passage from “An Old Whig IV,” which is an article from the *Independent Gazetteer* in Philadelphia, October 27, 1787, available from the Center for the Study of the American Constitution at: <https://csac.history.wisc.edu/document-collections/constitutional-debates/bill-of-rights/>.
- Source 3: A passage from “Federal Farmer II,” an essay in *The Essential Debate on the Constitution: Federalist and Antifederalist Speeches and Writings*, eds., Bernard Bailyn Robert Allison. Library of America, 2018, pp. 74-79. Available online from Teaching American History at: <https://teachingamericanhistory.org/document/federal-farmer-ii/>.
- Source 4: A passage from *Federalist 84*, by Alexander Hamilton. *Federalist 84* is available online from “The Avalon Project” website of Yale University’s Lillian Goldman Law Library at: [https://avalon.law.yale.edu/18th\\_century/fed84.asp](https://avalon.law.yale.edu/18th_century/fed84.asp).
- Source 5: Noah Webster, “The Absurdity of a Bill of Rights,” an essay in *The Essential Debate on the Constitution: Federalist and Antifederalist Speeches and Writings*, eds., Bernard Bailyn Robert Allison. Library of America, 2018, pp. 177-180. Available online from Library of America at: <https://storyoftheweek.loa.org/2017/03/on-absurdity-of-bill-of-rights.html>.

### Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

### Sources for Teacher Enrichment

- Robert J. Allison and Bernard Bailyn, editors, *The Essential Debates on the Constitution: Federalist and Antifederalist Speeches and Writings* (Library of America, 2018).
- Merrill Jensen, John P. Kaminski, and Gaspare J. Saladino, *The Documentary History of the Ratification of the Constitution* (Wisconsin Historical Society Press, 1976-2009).
- John P. Kaminski and Richard Leffle, *Federalists and Antifederalists: The Debate Over the Ratification of the Constitution* (Rowman & Littlefield Publishers, 1998).

- Pauline Maier, *The People Debate the Constitution, 1787-1788* (Simon & Schuster, 2010)
- Richard Labunski, *James Madison and the Struggle for the Bill of Rights* (Oxford University Press, 2006).

## Background Essay

### The Constitution, the Ratification Debates, and the Bill of Rights

The Constitutional Convention met from May 25 to September 17, 1787. During that time, its sessions in Philadelphia’s Independence Hall were closed to the public. Few Americans had any idea what the delegates were doing. When those delegates finished, they presented the Constitution to the country in its completed form. However, they did not force Americans to accept it, no questions asked. They urged them to read, discuss, and decide whether to accept it. The Constitution itself provided the way to do this. Each state would establish a special convention to debate the Constitution and either ratify it (that is, approve it) or reject it. The Constitution would take effect once nine of the thirteen states ratified it.

It might seem that these state ratifying conventions faced a simple choice regarding the Constitution—“take it or leave it.” Basically, that’s true. The conventions did have to make that choice. Yet, the ratification debates did much more than that. They involved the entire nation in a vigorous debate. For more than a year, in newspaper articles, pamphlets, and essays, those for and against the Constitution argued about it vigorously. Every detail of the new system was examined, discussed, and challenged. Those who supported the Constitution called themselves “Federalists.” Three of them—Alexander Hamilton, John Jay and James Madison—wrote 85 essays supporting the Constitution. The essays, known as *The Federalist Papers*, appeared first in New York newspapers. The opponents of the Federalists came to be labeled “Anti-Federalists,” a group that included men like Patrick Henry, Sam Adams, Elbridge Gerry, and George Mason. Despite the label, the Anti-Federalists were not actually a single organized political party nor all of one mind in what they did not like about the Constitution.

Two chief dangers worried the Anti-Federalists. One was a fear that the government would deprive individuals of basic personal liberties such as freedom of speech and religion, or the right to a fair trial. The other concern was that the federal government’s powers under the Constitution were too broad and would slowly weaken and destroy the independence of the states. The result would be a single “consolidated” all-powerful national government.

The ratification battles over such issues helped shape the Constitution in a way that few Constitutional Convention delegates thought necessary. The critics did this above all by demanding a bill of rights. They agreed to accept the Constitution only on the promise that its Article V would be used to add a bill of rights as a set of Constitutional amendments. According to Article V, such amendments can be proposed by two-thirds of both houses of Congress or by a convention called by two-thirds of the state legislatures. To be adopted, the amendments then must be approved by three-fourths of either state conventions or state legislatures.

Americans were very familiar with the idea of a bill of rights. They looked back to England’s Magna Carta as one early example. The English Bill of Rights of 1688 is another. It limited the

power of the monarch, protected freedom of speech within parliament, established the right to petition the government, and prohibited courts from imposing cruel and unusual punishments. In America, a bill of rights was already a part of many state constitutions. Thomas Jefferson, writing to James Madison said, “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.”

However, most Federalists said a bill of rights was simply not needed for the proposed Constitution. Their main objection was that the Constitution already clearly limited the federal government to a set of enumerated powers and left everything else to the states. The new government would have no authority to take away any other rights. So why bother specifically listing and protecting some of those rights? Alexander Hamilton, in *Federalist 84*, asked “why declare things shall not be done, which [in the Constitution] there is no power to do? Why, for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?”

At first, James Madison agreed with Hamilton. However, he soon came to see that unless some kind of bill of rights was agreed to, many state ratifying conventions would vote against the Constitution. He and other Federalists began to promise that once the new government was formed, a set of amendments would be proposed to satisfy those demanding a bill of rights. By July of 1788, the required number of states had ratified the Constitution. Many state ratifying conventions did call for various amendments. The first Congress would have to sift through these and decide which ones to send to the states to be voted on. When the new government met in 1789, it began to do just that.

Madison was a member of the first House of Representatives. He took charge of dealing with proposed amendments. He wanted to make sure that none of them would alter the basic structure of the new system—that is, its division into three separate branches (the legislative, the executive, and judicial branch), its system of checks and balances, its careful listing of powers of the federal government in relation to the states, etc. With this goal in mind, Madison worked tirelessly to reduce all the proposed amendments to just twelve. By the end of 1791, three-fourths of the states had approved ten of them. Those ten amendments are what we today call the Bill of Rights.

Amendments 1 and 2 protect personal liberties such as freedom of the press, speech and religion, or the right to bear arms. Amendments 4 through 8 provide for fair treatment in all judicial proceedings. Amendment 9 states that listing some rights specifically does not mean others can be denied to the people. Amendment 10 declares that all powers not specifically granted to the federal government are reserved to the states or the people.

The sources for this lesson ask you to discuss the Bill of Rights and consider some of the views of those at the time who favored it and those who opposed adding it to the Constitution.

## Sources for this Lesson

### Source 1: The Bill of Rights

The U.S. Bill of Rights refers to the first ten amendments to the U.S. Constitution. They can be accessed online from The Bill of Rights Institute at: <https://billofrightsinstitute.org/primary-sources/bill-of-rights>.

First Amendment: 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.

Second Amendment: A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Third Amendment: No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Seventh Amendment: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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

Tenth Amendment: 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.

**Source 2. An Old Whig IV, in the *Independent Gazetteer*, October 27, 1787.**

“An Old Whig” was a Pennsylvania Anti-Federalist whose identity is unknown. He feared the Constitution would create a far too powerful national government. To keep that from happening, he said, a bill of rights was needed. In this passage, he first summarizes a central idea from English philosopher John Locke, which the Founders shared, that every individual is born with certain natural rights. In this system of thought, people give up only a part of those rights to the government they create in order to protect themselves and preserve their remaining rights. This text is available from the Center for the Study of the American Constitution at: <https://csac.history.wisc.edu/document-collections/constitutional-debates/bill-of-rights/>.

Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights, they are absolute slaves to their governors. If they yield up less than is necessary, the government is so feeble, that it cannot protect them. To yield up so much, as is necessary for the purposes of government; and to retain all beyond what is necessary, is the great point, which ought, if possible, to be attained in the formation of a constitution. At the same time that by these means, the liberty of the subject is secured, the government is really strengthened; because wherever the subject is convinced that nothing more is required from him, than what is necessary for the good of the community, he yields a cheerful obedience, which is more useful than the constrained service of slaves. To define what portion of his natural liberty the subject shall at all times be entitled to retain, is one great end of a bill of rights. . . . [W]ithout such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny;

for it is certainly true, that “in establishing the powers of government, the rulers are invested with every right and authority, which is not in explicit terms reserved.” Hence it is, that we find the rulers so often lording over the people at their will and pleasure.

Before we establish a government, whose acts will be THE SUPREME LAW OF THE LAND, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a BILL OF RIGHTS, against the invasion of those liberties which it is essential for us to retain, which it is of no real use to government to strip us of; but which in the course of human events have been too often insulted with all the wantonness of an idle barbarity.

### Source 3. “Federal Farmer II” on the Need for a Bill of Rights.

The “Federal Farmer” was a pen name of an Anti-Federalist who wrote a series of letters on the Constitution. The author may have been Richard Henry Lee or Melancton Smith. The letters were addressed to “The Republican,” who was most likely New York governor George Clinton. This passage is from *Federal Farmer II*. It supports the need for a bill of rights and rejects the claim that the American states differ too much to ever agree to a single list of those rights. The essay is available online from Teaching American History at: <https://teachingamericanhistory.org/document/federal-farmer-ii/>.

There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm. These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only. I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

#### Source 4. Alexander Hamilton Writing as “Publius” in *Federalist 84*.

Alexander Hamilton was a delegate to the Constitutional Convention and a leading Federalist in New York. Hamilton, James Madison, and John Jay together wrote the 85 essays of *The Federalist Papers*, all using the pen name “Publius.” This passage is from *Federalist 84*, by Hamilton. In it, he explains why bills of rights in England made sense given that the English kings otherwise held unlimited powers. However, Hamilton says, a U.S. bill of rights is not needed given that the U.S. Constitution already strictly limits the government’s powers. Moreover, those powers come from the people themselves, not a king. *Federalist 84* is available online from The Avalon Project at: [https://avalon.law.yale.edu/18th\\_century/fed84.asp](https://avalon.law.yale.edu/18th_century/fed84.asp).

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. “WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America.” Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

#### Source 5. Noah Webster, “The Absurdity of a Bill of Rights.”

Noah Webster is best known as an American lexicographer whose spelling book and dictionary made him famous throughout the nation. In the 1780s, he was also an advocate for a stronger national government. Using the name “Giles Hickory,” he published several essays in support of the Constitution. This passage is from one titled “The Absurdity of a Bill of Rights,” published in December 1787. His argument is similar to that of Alexander Hamilton. The entire essay can be accessed online from Library of America at: <https://storyoftheweek.loa.org/2017/03/on-absurdity-of-bill-of-rights.html>.

One of the principal objections to the new Federal Constitution is, that it contains no Bill of Rights. This objection, I presume to assert, is founded on ideas of government that are totally false. Men seem determined to adhere to old prejudices, and reason wrong, because our ancestors reasoned right. A Bill of Rights against the encroachments of Kings and Barons, or against any power independent of the people, is perfectly intelligible; but a Bill of Rights against the encroachments of an elective Legislature, that is, against our own encroachments on ourselves, is a curiosity in government. . . .

In our governments, there is no power of legislation, independent of the people; no power that has an interest detached from that of the public; consequently there is no power existing against which it is necessary to guard. While our Legislatures therefore remain elective, and the rulers have the same interest in the laws, as the subjects have, the rights of the people will be perfectly secure without any declaration in their favor.

But this is not the principal point. I undertake to prove that a standing Bill of Rights is absurd, because no constitutions, in a free government, can be unalterable. The present generation have indeed a right to declare what they deem a privilege; but they have no right to say what the next generation shall deem a privilege. A State is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times, equally extensive; and it has the same right to repeal a law this year, as it had to make it the last. If therefore our posterity are bound by our constitutions, and can neither amend nor annul them, they are to all intents and purposes our slaves.



**DBQ Essay assignment: Write an essay addressing the following:**

**With which of the sources for this lesson do you agree most? Do you think these sources are as correct today as they were in 1787? Explain your answers in detail.**

*Before writing your essay, review the guidelines here for writing DBQ essays.*

1. Consider the question carefully. Pay attention to the question's form (cause-and-effect, compare-and-contrast, assess the validity, etc.), which will suggest how best to organize your essay.
2. Thesis statement and introductory paragraph. A clear statement addressing all parts of the DBQ, it must make a claim you can back up with the sources, and it should be specific enough to help you organize the rest of your essay.
3. Using evidence. Use the notes on the sources for this lesson. Refer to specific points or details in each source. If a source does not support your thesis, still try to use it as a way to support or qualify your thesis.
4. Make your argument. Your internal paragraphs should make your argument in a logical or clear way. Use transition phrases such as "on the one hand. . . but on the other hand," to help readers follow the thread of your argument.
5. Wrapping it up. Don't add new details about sources in your final paragraph. State a conclusion that refers back to your thesis statement by showing how the evidence has backed it up.

**Use additional sheets of paper as needed.**