

The Breakfast Club
Constitutional Minute for 20 December 2022
Life Without the Bill of Rights – Part 1

I'll wager few Americans realize that we owe our Bill of Rights to a mere 336 votes. That was the margin that sent James Madison to the first Congress instead of his friend, and rival James Monroe. Without Madison's dogged persistence in that first Congress, it is likely the idea of rights-based amendments to the Constitution would have "died on the vine."

What would life in America be like without the Bill of Rights? Downright terrifying!

First, remember that in 1787, one of the primary arguments against a Bill of Rights was that it was unnecessary; government was not being given any power that would infringe upon the liberties of the people. In Federalist 84, Alexander Hamilton wrote: "*I ... affirm that bills of rights ... are not only unnecessary in the proposed Constitution, but would even be dangerous. ... For why declare that things shall not be done which there is no power to do?*" Under this logic, if the entire Bill of Rights was repealed tomorrow nothing would change regarding our rights. They would be equally present and secure with or without the first ten amendments. How wrong the Founders were on this point. Given that over the years the courts have granted Congress nearly unrestrained power to legislate in whatever way it wishes; the argument that a Bill of Rights was unnecessary now looks ridiculous. Today, the Bill of Rights may be the only thing holding back "Leviathan's" desire to control our liberty. That doesn't make it right, just a reflection of reality. Former Representative Peter Stark's (D-CA) view that "The federal government, yes, can do most anything in this country" is much closer to the truth today than Madison's view of limited and enumerated powers.

In addition to the threat from a government unrestrained by enumerated powers, loss of the Bill of Rights would be worsened by the fact that we have also abandoned the concept of natural rights. Jefferson's idea that "certain unalienable rights" had been "endowed by their Creator" is today viewed by many as a quaint relic of a by-gone era. Our "enlightened" intelligentsia has risen above this "infantile" attachment to an omniscient Creator. Unfortunately for the intelligentsia, unalienable rights and the God who created them don't disappear just because you click your heels three times and wish real hard. We obtain our unalienable rights (Virginia's Declaration called them "inherent" rights) at conception. They are irrevocable and non-transferable (some can of course be forfeited by breaking certain laws).

At law schools, natural rights theory was replaced by "legal positivism," the theory that all laws (and thus the rights that laws protect) are the creation of man. The effect of this stark: take away the law and you've taken away the right. This view is why you can find on today's White House website a sentence claiming "The 2nd Amendment grants us the right to bear arms." The Amendment, of course, does no such thing, but such is the thinking of today's progressives. In their view, to provide government an unrestrained power to control guns we need only get rid of the 2nd Amendment.

Although natural rights have fallen out of favor, they have not disappeared, just as the God who created those rights has not “left the building,” as Elvis famously did. The rights are still there, waiting to be invoked. So what would America be like without the Bill of Rights?

Government would have full sway in determining what verbal and symbolic speech would be prohibited. Our government has attempted to limit speech many times, of course, and has usually been rebuked by the Court, based on the First Amendment. Without the Amendment, expressions allowed today could easily be prohibited tomorrow.

Without the First Amendment a national religion might have been declared; New England’s Congregationalists were all for it and their Federalist party dominated the first Congress. Such a national religion might have even persisted for a time before the waves of Virginia’s Statute for Religious Freedom washed over the rest of the country.

Attempts by the citizens to assemble and petition their government would be greatly restricted if not outright prohibited. Governments hate criticism. The press would likely have to obtain permission to publish on certain topics, particularly anything critical of the current administration.

Guns, since they are clearly “dangerous,” would be limited to the military, the police, and the bodyguards of the rich and powerful. Of course, the lawless element in society would still obtain them, and use them, as folks in Britain and Australia from time to time discover. Personal self-defense would probably be limited to pepper spray and baseball bats (sharp knives would even be controlled, as is now being attempted in Britain).

Government could lodge troops in your home at any time, for any reason.

Governments at all levels would search your person, vehicle and home at any time, for any reason, without the need to obtain consent of a judge. Store security would be able to pat you down leaving their store if you even looked suspicious. Any police traffic stop could result in a search of your car, with or without “probable cause.” Based on phone calls from jealous neighbors, homes would be raided and searched at all hours of the day and night. People would live in fear of a knock on their door. “We’re here to search your home, Sir; we observed you were staying up past the mandatory curfew hour and just want to see what you were up to. Won’t take long; could you and the misses please step outside while we take a look around?” (Notice they said “please.”)

Your testimony in court (or even before you are charged with a crime) could be compelled, including through torture if necessary. “We can’t have the guilty remaining free now, can we?”

Whew! This only covers the first five articles of the Bill of Rights, and then only superficially, but you can see where this is going. Read Amendments 6-10 yourself and imagine life without them. Life in America would be a very bad experience, for everyone. Think about it. (To be continued)

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