

The Breakfast Club

Constitutional Minute for 8 Aug 2023

Reflections on the Bill of Rights

*“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: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution...”*

Recognize these words? Most Americans recognize the words of the Constitution’s Preamble, but these words preceded what we now call the Bill of Rights (BOR) as Congress sent the proposed amendments to the states for their consideration and ratification. Notice this preamble does not even mention rights. What does it declare to be the purpose of the Bill of Rights? “[T]o prevent misconstruction or abuse of [the Constitution’s] powers.” Not to give Americans rights they lacked, not to create new rights from thin air, it is simply to prevent a future government from mis-interpreting the Constitution or intentionally abusing its powers and thereby infringe on the citizens natural inalienable rights.

The BOR forms a barrier against an overreaching federal government (and through the Incorporation Doctrine, the state governments). Without the protection provided by the 2nd Amendment, it seems likely that by now our right to keep and bear arms might have been completely obliterated, leading to the deaths of thousands of citizens at the hands of armed criminals. The amendment did not create the right, it helps keep the government from infringing upon the right (or that is at least the intent, the “win/loss” record of the 2nd Amendment is not perfect). The Biden administration’s attempt to censor from public media opinions they don’t agree with would certainly have been more successful without the First Amendment’s protection. Property would not be safe, self-incrimination protection would be unknown, and on and on. Thank you, James Madison, for having the tenacity to see your “homework” project through to completion.

Protection of rights was central to the founding generation’s politics, they had been asserting their natural and civil rights for 150 years by the time Virginia approved the first state-level declaration of rights in 1776.¹ Four years earlier, Samuel Adams had proclaimed the colonist’s rights as Men, as Christians, and as Subjects of the King.² His essay is still worth reading today -- a great primer on natural rights.

The concept of a bill of rights certainly struck a chord with modern Americans; today we hear calls for:

[A Parents Bill of Rights](#)

[An Airline Passenger’s Bill of Rights](#)

[A Library Bill of Rights](#)

[Fat Rights](#)

[Blueprint for an AI Bill of Rights](#)

[An Economic Bill of Rights](#)

In 1944, Progressives found the idea of a Bill of Rights so attractive they tried to enact another one.³ If Congress had taken the bait, FDR's "Second Bill of Rights" would have guaranteed each American a right to a job, an adequate income, a right to "decent" housing, a right to an education, medical care and "freedom from unfair competition and monopolies." Any American unable to provide these accoutrements of life for themselves would have them provided freely by a benevolent federal government. The cost? Don't worry about it.

To show you how ill-informed Americas today are about their Bill of Rights:⁴

- 1 in 10 Americans believe the Bill of Rights guarantees the right to own a pet.
- 1 in 4 Americans believe the Bill of Rights guarantees "equal pay for equal work."
- 1 in 3 Americans believe the Bill of Rights guarantees the right to home ownership.
- 26 percent favor requiring a person to testify against himself in court.

I think you'll agree with me that we face a monumental civics education problem in this country. If we were only able to wrestle control of the public schools from the clutches of progressives.... Instead, we sit (mostly) silent on the sidelines as progressive teachers indoctrinate our kids and grandkids in socialist malarky,⁵ proclaim the U.S. as "systemically racist,"⁶ and suggest that parents should play no role in their child's public education.⁷

I've enjoyed this trip through the Bill of Rights and I hope you have as well; I've even learned a few new things along the way. I'll leave you with a few parting quotes:

*"You can't fight for your rights **if you don't know what they are.**"*⁸ Chief Justice John Roberts

*"The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are **written, as with a sun beam, in the whole volume of human nature**, by the hand of the divinity itself; and can never be erased or obscured by mortal power."*⁹ Alexander Hamilton

*"Every member of the State ought diligently to read and to study the constitution of their country and teach the rising generation to be free. **By knowing their rights**, they will sooner perceive when they are violated, and be the better prepared to defend and assert them."*¹⁰ First Chief Justice John Jay

Next week: *Constitutional Minute* will be taking a sabbatical while I work on some other projects I've been neglecting and reflect on what should be CM's next focus. Suggestions?

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¹ I listed some of these documents in the very first essay in this series, on 17 Jan 23.

² <https://press-pubs.uchicago.edu/founders/documents/amendIXs3.html>.

³ https://en.wikipedia.org/wiki/Second_Bill_of_Rights.

⁴ <https://www.dailysignal.com/2015/09/17/1-out-of-every-ten-americans-thinks-owning-a-pet-is-a-right-guaranteed-by-the-constitution/>.

⁵ <https://thefederalist.com/2018/10/26/public-schools-indoctrinate-kids-without-almost-anyone-noticing/>.

⁶ <https://www.heritage.org/education/commentary/keep-racist-critical-race-theory-ideology-out-k-12-classrooms>.

⁷ <https://www.nationalreview.com/2021/10/terry-mcauliffes-war-on-parents/>

⁸ Attributed to Supreme Court Chief Justice John Roberts.

⁹ Alexander Hamilton, *The Farmer Refuted*, 1775.

¹⁰ John Jay, *Charge to the Grand Jury of Ulster County*, Sept 9, 1777.