

History of the Development of the First Amendment

Contributed by Kim Freitag

to the Illinois First Amendment Center

Thomas Jefferson stated, “A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.” Jefferson’s view was a product of the new philosophical thought of the 18th century, the Enlightenment.

Enlightenment thinkers such as the Founding Fathers believed that basic political rights were inherent in man’s nature as a rational being. This was a shift in belief from Medieval times when all political rights and powers were vested in a “divinely ordained” monarch to whom ordinary people owed unquestioning allegiance.

Enlightenment thinkers asserted that the people through their consent were the source of political legitimacy. Thus, the authority governmental officials exercised was a result of the people freely giving them that authority, not the result of divine appointment. Further, the job of government was not to grant rights but to secure and protect these God-given, natural rights for the people.

British intellectual John Locke was an eloquent writer advocating Enlightenment ideas. He articulated life, liberty, and property as natural rights. His work served as inspiration for the American Founders, particularly Thomas Jefferson.

Locke’s countrymen, John Trenchard and Thomas Gordon, writing a series of essays under the title, *Cato’s Letters*, argued for freedom of speech as a natural right. Thus, Enlightenment thought, augmented by the Founders’ colonial experience of tyranny under British rule as well as the erosion of authority of absolute monarchs and protection of rights and freedoms enshrined in documents from the Magna Carta in 1215 to state constitutions in the post-Revolution era, shaped the fundamental freedoms outlined in the First Amendment.

The explicit articulation of these freedoms, however, was not included in the Constitution written in 1787. This absence of a bill of rights was a stumbling block to the document’s ratification. Debate about ratification of the new constitution was fierce, and the American press played a central role in advancing the arguments of both sides. Those who advocated ratification of the constitution styled themselves as Federalists while the opponents were left with the negative moniker, Anti-Federalists.

Federalists Alexander Hamilton, James Madison and John Jay wrote a series of articles under the pseudonym, Publius, which were published in state newspapers such as the *New York Independent Journal* and the *Gazette of the United States*. These 85 essays were later gathered and re-published as the *Federalist Papers*.

The Anti-Federalists were less organized in their approach; however, opponents of the new constitution such as George Mason, George Clinton, Robert Yates, John Mercer, Samuel Bryan and Patrick Henry wrote articles or made speeches outlining their arguments against ratification. Anti-Federalist essays were published under various pennames including Brutus, Federal Farmer, and Centinel.

A key newspaper which provided a forum for the Anti-Federalist message was the Phila-

delphia General Advertiser (also known as the Aurora), published by Benjamin Franklin Bache, grandson of Benjamin Franklin. These essays were also later collected and published as the Anti-Federalist Papers.

While Anti-Federalist arguments against the constitution were mostly variations on a single theme – fear of concentration of power in a central government which could ultimately exercise that power in a tyrannical fashion similar to that of the British crown – the specific criticism of the constitution which most powerfully resonated with the American public was the absence of a bill of rights.

The American public supported the Anti-Federalist position that explicit guarantees of individual liberties not expressly stated in the constitution were essential. The Anti-Federalist position regarding the bill of rights was bolstered by the opinion of Thomas Jefferson who was absent from the Constitutional Convention as he was serving as the U.S. minister to France.

Jefferson wrote to his friend, Madison, and argued that the absence of a bill of rights in the constitution exposed Americans to the risk of tyranny. Jefferson asserted that a bill of rights designed to restrict the powers of the central government was needed. Thus, the Federalists, recognizing popular support for a bill of rights and anxious to see the new constitution ratified, promised that upon ratification of the Constitution, the first business of the new Congress would be to draft and approve a bill of rights.

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