

Lesson Twenty-Eight

Amending the Constitution

LESSON IDEA

To show how the fear of federal power was squelched by the election of George Washington as President and the adoption of the Bill of Rights' restrictive amendments.

PREPARATION

Make copies of the Bill of Rights for each family member. Have a dictionary handy, and a copy of Your Rugged Constitution.

LIKE A NEWBORN CALF struggling to stand for the first time on four wobbly legs, in 1788 the new U.S. federal government began the transformation from mere words and concepts to a working body of lawmakers, executives, and judges. North Carolina and Rhode Island remained reticent about ratifying the Constitution, but each of the 11 states that had ratified by then began formulating procedures for electing Senators and Representatives, as well as the presidential electors who would choose the first President.

Does anyone know how the presidential electoral system worked in that initial election? [If not, ask a family member to look it up in Your Rugged Constitution, pages 114–116, and explain it to the entire family during the next evening's dinner hour.]

The choice for President was unanimous. George Washington captured every electoral vote. Even Patrick Henry, the politically powerful Virginian who viewed the Constitution as a danger to freedom, voted for him. Only one man was not wholeheartedly in favor of the result: Washington himself. He had repeatedly told friends that he had "no wish which aspires beyond the humble and happy lot of living and dying a private citizen on my own farm."

Anxious as he was to see the new government rise on the foundation of the Constitution, he had no apparent desire to become the first American President. He had served his country and its citi-

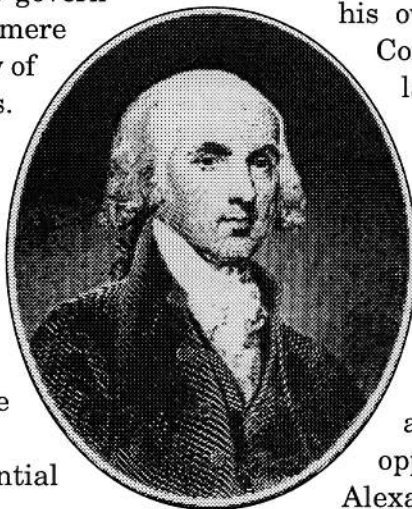
zens almost continuously since age 16. During the Revolutionary War, he had accepted the prodigious task of building an army, and for eight long years had kept it on its feet until victory was achieved.

The constant exposure to bad weather and inferior food, as well as endless days and months of fatigue, had aged him considerably. Financially, his resources were exhausted. As Commander-in-Chief of the American forces he had received no salary, but had drawn money for expenses from his own accounts in the hope that the Continental Congress would repay him later. With the war won and the Constitution ratified, he yearned for retirement to his Virginia home, where he could straighten out his business affairs and lead a quiet life.

But his friends and admirers gave him no peace. Letters flowed to Mount Vernon urging him to accept the presidency should the opportunity arise. The appeal from Alexander Hamilton, his former aide, was typical: "In a matter so essential . . . a citizen of so much consequence as yourself . . . has no option but to lend his services if called for."

Newspapers continually mentioned his name, and none other, as President-to-be. The July 4th celebration in 1788 became, in large part, a general call for his election. As the public demand grew, Washington reluctantly postponed his retirement plans and prepared to accept the inevitable.

ONE FACTOR that may have drawn him into public service once again was fear of what the anti-Federalists who opposed the Constitution might do to the new government were they elected to Congress in large numbers. James Madison, a fellow Virginian and ardent Federalist, had warned that the anti-Federalists



James Madison
"Father of the Constitution"

might work to “get a Congress appointed in the first instance that [would] commit suicide on their own authority.”

There were still strong feelings that the new Constitution could endanger the citizenry unless it was amended to restrict government power and authority. Virginia, New York, Massachusetts, and New Hampshire had ratified the Constitution, but had also urgently recommended such amendments, and the anti-Federalists were determined to have it accomplished.

In Virginia, many congressional races between Federalists and anti-Federalists in Virginia were hotly contested close, especially for Madison, who was forced to run for a House seat in a district that was strongly laced with anti-Constitutional opinions. The prospects of winning in such a situation seemed slim, but as the contest drew to a close he punctured his opponent’s balloon by endorsing the proposed amendments. And it was no idle campaign promise merely intended to attract votes, as Madison would subsequently confirm. Two months after the first Congress convened, he rose to his feet on the House floor and declared:

This day, Mr. Speaker, is the day assigned for taking into consideration the subject of amendments to the Constitution. As I considered myself bound in honor and in duty to do what I have done on the subject, I shall proceed to bring the amendments before you as soon as possible, and advocate them until they shall be finally adopted or rejected by a constitutional majority of this House.

That same day, Madison presented his first draft of the amendments, which were based on the Virginia Bill of Rights. He explained why, in his opinion, each was necessary. The confidence of our fellow citizens will be gained, he asserted, “in proportion as we fortify the rights of the people against the encroachments of the Government.”

Americans in 1789 knew, from personal experience with the English monarchy, that the greatest danger to rights is government itself, even including the one that Madison and the other Framers had designed.

EACH AMENDMENT was scrutinized and debated, word by word and clause by clause. Madison personally and patiently wrote and rewrote each until majority support for all but two was achieved.

The ten amendments that were approved amounted to a list of restrictions on the federal government. Some are specific, others more general. We call them a “Bill of Rights,” but they were, and are, more than that. Any country can have a formal bill of rights. The Soviet Union had one. So does the United Nations. They meant and mean nothing. Stating a basic human right in flowery phrases amounts to empty rhetoric unless the right is protected by specific, meaningful restrictions on what government may or may not do. And this is especially true if it is assumed (as does the UN) that rights are granted by government, rather than that they should merely be protected by government because they are God-given, inherent, and pre-existing. The latter assumption underpins the U.S. Bill of Rights.

It may, for example, sound wonderful to say: “The people have the right to free speech.” But suppose a government decides to make it illegal to criticize federal actions? What good is a proclaimed right to free speech if it can be made illegal by government edict? [Encourage discussion. Give examples of the “rights” of people in Cuba, Red China, erstwhile Nazi Germany, or the former Soviet Union.]

Can you see how the “right” becomes more secure when it reads: “Congress shall make no law ... abridging the freedom of speech or of the

FOR THE SERIOUS STUDENT

Patrick Henry: Patriot and Statesman by Norine Campbell is an informative book that provides additional background about the fiery Virginia orator. It is said that Henry was one of the few speakers who could hold an audience spellbound, hungering for his next words.

Henry used his rhetorical skills in the Virginia Convention to point out what he perceived to be weaknesses in the Constitution. Some were subsequently corrected by amendments. Others have only become evident in recent decades as our central government has increasingly usurped power from the states and otherwise far exceeded its Constitutional boundaries.]

press”?

[Discuss the differences between the two ways of stating rights. Point out that the U.S. Congress is specifically prohibited from making laws 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.” (First Amendment). Compare those provisions to the UN’s Universal Declaration of Human Rights which, after listing all sorts of supposed “rights,” states: “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.” (Article 29, paragraph 3).]

We could call our Bill of Rights a Bill of Government Restrictions, since much of the phraseology is (like that of the biblical Ten Commandments) negative. It forbids government action: “Congress shall make no law,” “the right of the people to keep and bear arms shall not be infringed,” “no person shall be held,” “no fact tried by a jury shall be otherwise re-examined.” “excessive bail shall not be required,” “powers not delegated,” etc., etc.

Before discussing more specifics, let us take a moment to think about the amendments and some of the questions they raise. [Hand each member of the family a copy of the Bill of Rights. Go through the amendments together, reading each while the family follows the printed text of his or her own copy.]

We’ll go through them together now. If you think of ways in which they are being violated today, share your thoughts with us all:

BILL OF RIGHTS

I — RELIGION, SPEECH, THE PRESS, AND PEACEFUL ASSEMBLY. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise hereof; 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.

Does this mean that our federal courts are right when they ban prayer from government schools, refuse to allow the Ten Commandments to be posted in classrooms, or bar Nativity scenes from schools at Christmas time? What does establishing a religion mean? Is religion the same thing as a church? Should freedom of speech include

yelling “Fire!” in a crowded theater when there is no fire? Should freedom of the press include printing pornography? Should the right to peacefully assemble include assembling on someone’s private property when they do not condone it? Should Congress, or state and local legislative bodies, be responsible for dealing with any problems arising from such matters? [Explain that Senators and Representatives, the President, and federal judges pledge by oath or affirmation to uphold and defend the Constitution, and should not violate that obligation for reasons of expediency or in response to pressure from special-interest groups. The first test of any proposed federal legislation or other action should be, “If implemented, would it be Constitutional?” If not, it should be dropped from further consideration.]

II — RIGHT TO KEEP AND BEAR ARMS. 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.

Is this right outdated now that we have a national army, navy, air force, national guard, and local police to protect us? What are the dangers of a standing army?

III — QUARTERING SOLDIERS. 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.

How important is personal privacy in our own homes?

IV — RESTRICTING SEARCHES. 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.

What happens when the police are looking for dangerous drugs? Should they be allowed to enter a home without a search warrant? Should the guilty as well as the innocent be protected from “unreasonable searches and seizures”? Why?

V — CAPITAL AND INFAMOUS CRIMES, AND DOUBLE JEOPARDY. No person shall be held to answer for a capital or other 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 witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

What is capital punishment? What is an infamous crime? What is a Grand Jury, and why is it important? What would happen if the government wanted our land for a new highway? For a new shopping center?

VI — SPEEDY AND PUBLIC TRIAL, CONFRONTING WITNESSES. 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 defence.

Why is a jury trial important? Why should trials be public? Does this amendment favor the innocent or the guilty? How?

VII — TRIAL BY JURY. 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 re-examined in any Court of the United States, than according to the rules of the common law.

How does this right protect us from incompetent or corrupt judges?

VIII — EXCESSIVE BAIL, FINES, AND PUNISHMENTS. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

What is bail? What cruel and unusual punishments have governments imposed in times past? Is capital punishment “cruel and unusual”? Does the Constitution authorize it? (See Amendment 5.)

IX — UNSPECIFIED RIGHTS OF THE PEOPLE. The enumeration in the Constitution of certain rights, shall not be construed to deny or dis-

parage others retained by the people.

Where do rights come from? God? Government? If government grants rights, what is to keep government from taking them away whenever it wishes? If God grants rights, what is government’s proper role? [Explain that since rights come from a source outside of government, government’s role is to protect them — not infringe, abolish, or otherwise tamper with them.]

X — LIMITING FEDERAL POWER. 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.

Does this amendment limit or expand the powers of the federal government? How? Why did the Framers deem it important to put the principle in writing?

Concluding Thought

Patrick Henry and other American leaders who opposed the Constitution did so primarily because they feared that an unrestricted (or insufficiently restricted) federal government would abuse its power at the expense of freedom, as the English monarch had done. Two developments quieted their fears: The election of George Washington as President (a man whom virtually everyone believed to be a true public servant without personal ambition) and prompt adoption of the first ten amendments to protect basic rights from government interference. Next week we will examine each of the amendments in more detail and answer some of the questions they raise.

DURING THE WEEK

When the family is together for meals or other leisurely events, discuss the amendments and relate them to today’s news headlines.

You may also wish to purchase a copy of the Bill of Rights and having it framed. Surrounding your family with visual reminders of our American heritage reinforces the learning experience. Parchment reproductions may be available at your local library or from sundry sources on the Internet. [Could AOBs stock reproductions of key documents, including the Bill of Rights?

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