The Evolution of the Bill of Rights

Teaching American History Institute:
Leadership in America

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Anti-Federalists and Federalists

• Simmering recognition that Constitution strayed from Revolutionary ideals

• Opponents feared central government, with open-ended power to legislate, general power to tax, and Senate as “nursery for aristocracy”

• Hamilton and others argued statement of rights would suggest other unstated rights not protected (Federalist No. 84)
“We find they have, in the ninth section of the first article declared, that the writ of habeas corpus shall not be suspended, unless in cases of rebellion — that no bill of attainder, or ex post facto law, shall be passed — that no title of nobility shall be granted by the United States, etc. If every thing which is not given is reserved, what propriety is there in these exceptions? Does this Constitution any where grant the power of suspending the habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers which the bills of rights guard against the abuse of, are contained or implied in the general ones granted by this Constitution.”
Thomas Jefferson to James Madison, 1787

“I will now add what I do not like. First the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal & unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land & not by the law of Nations. To say, as Mr. Wilson does, that a bill of rights is not necessary because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved, might do for the Audience to whom it was addressed, but is surely a gratis dictum, opposed by strong inferences from the body of the instrument.”
Massachusetts Convention, 1788

• Substantial opposition to ratification of Constitution in Massachusetts by Anti-Federalists

• Adams and Hancock negotiated compromise, getting ratification for recommending amendments to Congress

• New Hampshire, Virginia, and New York adopted similar language, while North Carolina refused to ratify until Bill of Rights considered
Bill of Rights Ratification

• June 1789, James Madison introduced twelve amendments to the House of Representatives

• August and September 1789, Congress completed deliberation and revision, sent amendments to the states

• December 1791, ratification by Virginia permitted III-XII to become Amendments I-X to the Constitution