

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 3: The Founding Era — Foundations/Sources/Constitutions and Amendments

Amendments to the Constitution Proposed by State Conventions

Many state ratification conventions approved the Constitution with the understanding that amendments protecting fundamental rights would swiftly be added. Virginia, New York, Massachusetts, South Carolina, New Hampshire, and North Carolina proposed amendments when voting to ratify the Constitution. These amendments including enumerated protections for certain rights, adjustments to the structure and powers of the national government, and declarations of fundamental principles.

Compare the Amendments proposed by the Virginia Convention and the New York Convention to the actual Bill of Rights. What are the fundamental similarities and differences between them and are there important differences between the proposals made by the two states? Were Virginians and New Yorkers merely proposing additional text or did the Convention have a fundamentally different notion of how the Constitution would protect rights? How did Virginians and New Yorkers believe the Constitution would protect rights, and what are the merits/demerits of that understanding of how the Constitution would function in practice?

Amendments Proposed by the Virginia Convention, June 27, 1788¹

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following;

1st, That there are certain natural rights of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

2nd, That all power is naturally vested in and consequently derived from the people; that Magistrates, therefore, are their trustees and agents and at all times amenable to them.

3rd, That Government ought to be instituted for the common benefit, protection and security of the People; and that the doctrine of non-resistance against arbitrary power and oppression is absurd slavish, and destructive of the good and happiness of mankind.

4th, That no man or set of Men are entitled to exclusive or separate public emoluments or privileges from the community, but in Consideration of public services; which not being descendible, neither ought the offices of Magistrate, Legislator or Judge, or any other public office to be hereditary.

5th, That the legislative, executive, and judiciary powers of Government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burdens, they should, at fixed periods be reduced to a private station, return into the mass of the people; and the vacancies be supplied by certain and regular elections; in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of Government, and the laws shall direct.

6th, That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with and attachment to the Community ought

¹ Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, volume III, 2nd ed. (Philadelphia, PA: J.B. Lippincott Company, 1901), 592–96.

to have the right of suffrage: and no aid, charge, tax or fee can be set, rated, or levied upon the people without their own consent, or that of their representatives so elected, nor can they be bound by any law to which they have not in like manner assented for the public good.

7th, That all power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people in the legislature is injurious to their rights, and ought not to be exercised.

8th, That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial Jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th, That no freeman ought to be taken, imprisoned, or disseised of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the law of the land.

10th, That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th, That in controversies respecting property, and in suits between man and man, the ancient trial by Jury is one of the greatest Securities to the rights of the people, and ought to remain sacred and inviolable.

12th, That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property or character. He ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust.

13th, That excessive Bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th, That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers and his property; all warrants, therefore, to search suspected places, or seize any freeman, his papers or property, without information upon Oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general Warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous and ought not to be granted.

15th, That the people have a right peaceably to assemble together to consult for the common good, or to instruct their Representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

16th, That the people have a right to freedom of speech, and of writing and publishing their Sentiments; but the freedom of the press is one of the greatest bulwarks of liberty and ought not to be violated.

17th, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power.

18th, That no Soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct.

19th, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

20th, That religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

Amendments to the [Body of the] Constitution

1st, That each State in the Union shall respectively retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States or to the departments of the Federal Government.

2nd, That there shall be one representative for every thirty thousand, according to the enumeration or Census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or increased as the Congress shall direct, upon the principles fixed by the Constitution, by apportioning the representatives of each state to some greater number of people from time to time as population increases.

3rd, When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state of the quota of such state according to the Census herein directed, which is proposed to be thereby raised; And if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected, in such state.

4th, That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.

5th, That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy.

6th, That a regular statement and account of the receipts and expenditures of all public money shall be published at least once in every year.

7th, That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining or suspending the territorial rights or claims of the United States or any of them, or any of their rights or claims to fishing in the American Seas or navigating the American rivers shall be but in cases of the most urgent and extreme necessity, nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

8th, That no navigation law or law regulating commerce shall be passed without the consent of two thirds of the members present in both houses.

9th, That no standing army or regular troops shall be raised or kept up in time of peace without the consent of two thirds of the members present in both houses.

10th That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

11th, That each state respectively shall have the power to provide for organizing, arming and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own state.

12th, That the exclusive power of legislation given to Congress over the Federal Town and its adjacent District and other places purchased or to be purchased by Congress of any of the states shall extend only to such regulations as respect the police and good government thereof.

13th, That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

14th, That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of Admiralty as Congress may from time to time ordain and establish in any of the different states: The judicial power shall extend to all cases in Law and Equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to

which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned the Supreme Court shall have appellate jurisdiction as to matters of law only; except in cases of equity, and of admiralty and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make. But the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this Constitution; except in disputes between states about their territory, disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

15th, That in criminal prosecutions no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the Jury.

16th, That Congress shall not alter, modify or interfere in the times, places, or manner of holding elections for Senators and Representatives or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion or rebellion to prescribe the same.

17th, That those clauses which declare that Congress shall not exercise certain powers be not interpreted in any manner whatsoever to extend the powers of Congress. But that they may be construed either as making exceptions to the specified powers where this shall be the case, or otherwise as inserted merely for greater caution.

18th, That the laws ascertaining the compensation to Senators and Representatives for their services be postponed in their operation until after the election of Representatives immediately succeeding the passing thereof; that excepted, which shall first be passed on the subject.

19th, That some tribunal other than the Senate be provided for trying impeachments of Senators.

20th, That the salary of a judge shall not be increased or diminished during his continuance in office otherwise than by general regulations of salary which may take place on a revision of the subject at stated periods of not less than seven years to commence from the time such salaries shall be first ascertained by Congress.

Amendments Proposed by the New York Convention, July 26, 1788²

...

That all power is originally vested in, and consequently derived from, the people, and that government is instituted by them for their common interest, protection, and security.

That the enjoyment of life, liberty, and the pursuit of happiness are essential rights, which every government ought to respect and preserve.

That the powers of government may be reassumed by the people whensoever it shall become necessary to their happiness; that every power, jurisdiction, and right which is not by the said Constitution clearly delegated to the Congress of the United States, to the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same; and that those clauses in the said Constitution which declare that Congress shall not have or exercise certain powers do not imply that Congress is entitled to any powers not given by the said Constitution; but such clauses are to be construed either as exceptions to certain specified powers, or as inserted merely for greater caution.

That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion, according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference to others.

² Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, volume I, 2nd ed. (Philadelphia, PA: J.B. Lippincott Company, 1901), 328–31.

That the people have a right to keep and bear arms; that a well-regulated militia, including the body of the people *capable of bearing arms*, is the proper, natural, and safe defense of a free state.

That the militia should not be subject to martial law, except in time of war, rebellion, or insurrection.

That standing armies, in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that at all times the military should be under strict subordination to the civil power.

That, in time of peace, no soldier ought to be quartered in any house without the consent of the owner, and in time of war only by the civil magistrate, in such manner as the laws may direct.

That no person ought to be taken, imprisoned, or dispossessed of his freehold, or be exiled, or deprived of his privileges, franchises, life, liberty, or property, but by due process of law.

That no person ought to be put twice in jeopardy of life or limb for one and the same offense; nor, unless in case of impeachment, be punished more than once for the same offense.

That every person restrained of his liberty is entitled to an inquiry into the lawfulness of such restraint, and to a removal thereof if unlawful; and that such inquiry or removal ought not to be denied or delayed, except when, on account of public danger, the Congress shall suspend the privilege of the writ of *habeas corpus*.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

That (except in the government of the land and naval forces, and of the militia when in actual service, and in cases of impeachment) a presentment or indictment by a grand jury ought to be observed as a necessary preliminary to the trial of all crimes cognizable by the judiciary of the United States; and such trial should be speedy, public, and by an impartial jury of the county where the crime was committed; and that no person can be found guilty without the unanimous consent of such jury. . . . [T]hat, in all criminal prosecutions, the accused ought to be informed of the cause and nature of his accusation, to be confronted with his accusers and the witnesses against him, to have the means of producing his witnesses, and the assistance of counsel for his defense; and should not be compelled to give evidence against himself.

That the trial by jury, in the extent that it obtains by the common law of England, is one of the greatest securities to the rights of a free people, and ought to remain inviolate.

That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property; and therefore, that all warrants to search suspected places, or seize any freeman, his papers, or property, without information, upon oath or affirmation, or sufficient cause, are grievous and oppressive; and that all general warrants (or such in which the place or person suspected are not particularly designated) are dangerous, and ought not to be granted.

That the people have a right peaceably to assemble together to consult for their common good, or to instruct their representatives, and that every person has a right to petition or apply to the legislature for redress of grievances.

That the freedom of the press ought not to be violated or restrained.

. . .

That nothing contained in the said Constitution is to be construed to prevent the legislature of any state from passing laws at its discretion, from time to time, to divide such state into convenient districts, and to apportion its representatives to and amongst such districts.

That the prohibition contained in the said Constitution against *ex post facto* laws extends only to laws concerning crimes.

That all appeals in causes determinable according to the course of the common law ought to be by writ of error, and not otherwise.

That the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a state.

That the judicial power of the United States, as to controversies between citizens of the same state, claiming lands under grants from different states, is not to be construed to extend to any other

controversies between them, except those which relate to such lands, so claimed, under grants of different states.

That the jurisdiction of the Supreme Court of the United States, or of any other court to be instituted by the Congress, is not in any case to be increased, enlarged, or extended by any faction, collusion, or mere suggestion; and that no treaty is to be construed so to operate as to alter the Constitution of any state.

...

That there shall be one representative for every thirty thousand inhabitants, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred, after which that number shall be continued or increased, but not diminished, as the Congress shall direct, and according to such ratio as the Congress shall fix, in conformity to the rule prescribed for the apportionment of representatives and direct taxes.

That the Congress do not impose any excise on any article (ardent spirits excepted) of the growth, production, or manufacture of the United States, or any of them.

That Congress do not lay direct taxes but when the moneys arising from the impost and excise shall be insufficient for the public exigencies, nor then, until Congress shall first have made a requisition upon the states to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said Constitution, in such way and manner as the legislatures of the respective states shall judge best; and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest at the rate of six per centum per annum, from the time of payment prescribed in such requisition.

That the Congress shall not make or alter any regulation, in any state, respecting the times, places, and manner of holding elections for senators and representatives, unless the legislature of such state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only until the legislature of such state shall make provision in the premises; provided that Congress may prescribe the time for the election of representatives.

That no persons, except natural-born citizens, or such as were citizens on or before the 4th day of July 1776, or such as held commissions under the United States during the war, and have at any time since the 4th day of July 1776, become citizens of one or other of the United States, and who shall be freeholders, shall be eligible to the places of President, Vice-President, or members of either House of the Congress of the United States.

That the Congress do not grant monopolies, or erect any company with exclusive advantages of commerce.

That no standing army or regular troops shall be raised, or kept up, in time of peace, without the consent of two thirds of the senators and representatives present in each house.

That no money be borrowed on the credit of the United States without the assent of two thirds of the senators and representatives present in each house.

That the Congress shall not declare war without the concurrence of two thirds of the senators and representatives present in each house.

That the privilege of the *habeas corpus* shall not, by any law, be suspended for a longer term than six months, or until twenty days after the meeting of the Congress next following the passing of the act for such suspension.

...

That the compensation for the senators and representatives be ascertained by standing laws; and that no alteration of the existing rate of compensation shall operate for the benefit of the representatives until after a subsequent election shall have been had.

That the Journals of the Congress shall be published at least once a year, with the exception of such parts, relating to treaties or military operations, as, in the judgment of either house, shall require secrecy; and that both houses of Congress shall always keep their doors open during their sessions, unless the business may, in their opinion, require secrecy. That the yeas and nays shall be entered on the Journals whenever two members in either house may require it.

That no capitation tax shall ever be laid by Congress.

That no person be eligible as a senator for more than six years in any term of twelve years; and that the legislatures of the respective states may recall their senators, or either of them, and elect others in their stead, to serve the remainder of the time for which the senators so recalled were appointed.

That no senator or representative shall, during the time for which he was elected, be appointed to any office under the authority of the United States.

That the authority given to the executives of the states to fill up the vacancies of senators be abolished, and that such vacancies be filled by the respective legislatures.

That the power of Congress to pass uniform laws concerning bankruptcy shall only extend to merchants and other traders; and the states respectively may pass laws for the relief of other insolvent debtors.

That no person shall be eligible to the office of President of the United States a third time.

That the executive shall not grant pardons for treason, unless with the consent of the Congress; but may, at his discretion, grant reprieves to persons convicted of treason, until their cases can be laid before the Congress.

That the President, or person exercising his powers for the time being, shall not command an army in the field in person without the previous desire of the Congress.

...

That the Congress shall not constitute, ordain, or establish, any tribunals or inferior courts with any other than appellate jurisdiction, except such as may be necessary for the trial of cases of admiralty and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas; and in all other cases to which the judicial power of the United States extends, and in which the Supreme Court of the United States has not original jurisdiction, the causes shall be heard, tried, and determined in some one of the state courts, with the right of appeal to the Supreme Court of the United States, or other proper tribunal, to be established for that purpose by the Congress, with such exceptions, and under such regulations, as the Congress shall make.

...

That the Congress be authorized to pass laws for compensating the judges for such services, and for compelling their attendance; and that a majority, at least, of the said judges shall be requisite to constitute the said court. That no person impeached shall sit as a member thereof; that each member shall, previous to the entering upon any trial, take an oath or affirmation honestly and impartially to hear and determine the cause; and that a majority of the members present shall be necessary to a conviction.

That persons aggrieved by any judgment, sentence, or decree of the Supreme Court of the United States, in any cause in which that court has original jurisdiction, with such exceptions, and under such regulations, as the Congress shall make concerning the same, shall, upon application, have a commission, to be issued by the President of the United States to such men learned in the law as he shall nominate, and by and with the advice and consent of the Senate appoint, not less than seven, authorizing such commissioners, or any seven or more of them, to correct the errors in such judgment, or to review such sentence and decree, as the case may be, and to do justice to the parties in the premises.

That no judge of the Supreme Court of the United States shall hold any other office under the United States, or any of them.

That the judicial power of the United States shall extend to no controversies respecting land, unless it relate to claims of territory or jurisdiction between states, and individuals under the grants of different states.

That the militia of any state shall not be compelled to serve without the limits of the state, for a longer term than six weeks without the consent of the legislature thereof.

That the words *without the consent of the Congress* in the seventh clause of the ninth section of the first article of the Constitution be expunged.

That the senators and representatives, and all executive and judicial officers of the United States, shall be bound by oath or affirmation not to infringe or violate the constitutions or rights of the respective states.

That the legislatures of the respective states may make provision, by law, that the electors of the election districts, to be by them appointed, shall choose a citizen of the United States, who shall have been

