

The Holiday That Isn't

BY LAWRENCE W. REED



I know it's only October, but that's late enough in the year for most people to have already begun thinking of the holidays just around the corner. We will each observe the traditional ones according to our personal wishes—a precious right won for us by past and present patriots.

Allow me to advise you, however, not to let 2008 end without taking note of “the holiday that isn't.” It's not recognized officially, and few Americans really know of it. I had to be reminded of it by a friend from Arizona, Roy Miller, one of the founders of the Goldwater Institute.

The day is December 15. It was on that date in 1791 that the fledgling United States of America formally adopted what we know as the Bill of Rights, the first ten amendments to the Constitution. Miller says, “Few days in American history were more critical to securing or proclaiming the principles behind the nation's founding.”

A “Bill of Rights Day” is not on the calendar, but a free people don't have to wait for Congress to declare a holiday to celebrate one. On December 15, take a moment to reread the Bill of Rights and reflect on its importance. Call it to the attention of friends and family. Without an agreement that a Bill of Rights would be added or without a consensus of what they would do, the Constitution itself would probably not have been accepted. The ten amendments ultimately adopted guarantee *freedoms of religion, speech, the press, peaceful assembly and petition; the rights of the people to keep and bear arms, and to hold private*

property; rights to fair treatment for people accused of crimes, protection from unreasonable search and seizure and self-incrimination; and rights to a speedy and impartial jury trial and representation by counsel.

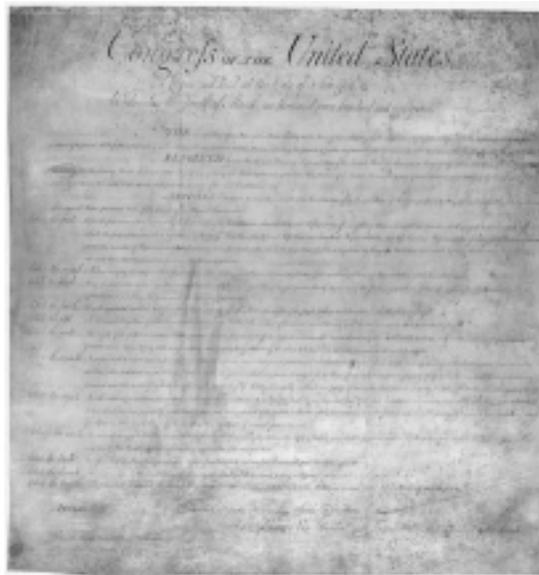
In this modern and supposedly enlightened age, not many people among the world's 6.6 billion can honestly say they enjoy many of these rights to their fullest—or at all. Even in America we have to work hard to educate fellow citizens about the liberties the

Bill of Rights is meant to protect. There are plenty in our midst who would sacrifice one or more liberties for the temporary and dubious security of a government program. This past June the Supreme Court affirmed the right to keep and bear arms but only by a 5–4 vote. No wonder Benjamin Franklin said the Constitution gave us “a republic, madam, if you can keep it.”

In the grand scheme of American liberty, how important is the Bill of Rights? It's fundamental and foundational, and about as bedrock as it gets.

In fewer than 500 words, many of our most cherished liberties are expressed as rights and unequivocally protected. It's a roster of instructions to government to keep out of where it doesn't belong. It bears the heavy imprint of a giant of republican government, James Madison.

Why did such critical protections end up as amendments instead of as core elements of the primary document? Here's the background:



U.S. Bill of Rights
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The Second Continental Congress, originally convened in 1775 at the outbreak of hostilities with the mother country, adopted the Articles of Confederation as the new nation's first formal, national government. Some Americans came to believe by the late 1780s, however, that the Articles were weak and inadequate. The Constitutional Convention of 1787 produced a draft Constitution to replace them, subject to ratification by the states.

A great debate ensued and people lined up in one camp or the other—the Federalists or the Antifederalists. The former favored the Constitution and in most cases, at least at first, without any amendments. The latter either opposed it altogether or conditioned their approval on adoption of stronger protections for individual liberties.

Keep in mind that virtually all the leading figures in this great debate were libertarians by today's standards. They believed in liberty and limited government. Even the least libertarian among them would be horrified if he could see how later generations have ballooned the size and intrusiveness of the federal establishment. It never occurred to the most ardent Federalist that government should rob Peter to pay Paul for his health care, art work, alternative energy, prescription drugs, hurricane relief, or his notions of regime change in Somalia.

The Constitution and Centralization

So even without the Bill of Rights, the Constitution represented a huge advance for civilization. But during the ratification debate, enough citizens were wary of any centralization of power that they wanted to go further. I think they instinctively understood something that Thomas Jefferson once so aptly expressed, "The natural progress of things is for liberty to yield and government to gain ground." When the Massachusetts legislature made it clear it would not ratify the Constitution unless language was added to strengthen individual rights, it triggered a movement among the states to do just that.

Madison is regarded as the "Father of the Constitution" because he was its primary author and, along with Alexander Hamilton and John Jay, part of the trio that wrote the Federalist Papers in its defense. On the matter of amending it with a Bill of Rights, he was at first opposed, being of the view that enumerating some rights in the form of amendments would open the door to government violations of any that were *not* listed. He eventually met that very objection by devising what became the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Madison became one of the most eloquent defenders of the Bill of Rights, and it is unlikely the Constitution would have been ratified without him or them.

In 1789 New Jersey was the first state to adopt the ten amendments that would become the Bill of Rights and when Virginia did so on December 15, 1791, they became part of the supreme law of the land. (Actually, 12 amendments were sent to the states, but two failed to win enough states to be ratified. The unratified amendments, originally numbers 1 and 2, set the ratio of House representative to population and forbade congressional pay raises to take

effect "until an election of Representatives shall have intervened." The latter was ratified as the 27th amendment in 1992.)

If you want to bone up on the Bill of Rights before December 15, check out the website of the Bill of Rights Institute (www.billofrightsinstitute.org), which produces instructional materials and sponsors seminars about America's foundational documents. Some excellent books to consult on the subject include *We the People* by Forrest McDonald, *Fighting for Liberty and Virtue* by Marvin Olasky, *Simple Rules for a Complex World* by Richard Epstein, *Restoring the Lost Constitution: The Pre-emption of Liberty* by Randy Barnett, and *Origins of the Bill of Rights* by Leonard Levy.

Happy Bill of Rights Day!



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