

Activity 3. The Jefferson-Madison Correspondence

Student Name _____ Date _____

Directions: Read the following documents and complete the questions on the assigned worksheet.

Thomas Jefferson to James Madison, 20 December 1787

<http://www.teachingamericanhistory.com/library/index.asp?document=306>

I will now add what I do not like [*about the proposed Constitution*]. 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...and trials by jury in all matters of fact triable by the laws of the land...To say, as Mr. Wilson does that a bill of rights was 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...Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse...

Thomas Jefferson to James Madison, 31 July 1788

<http://www.teachingamericanhistory.com/library/index.asp?document=998>

I sincerely rejoice at the acceptance of our new constitution by nine States. It is a good canvas, on which some strokes only want retouching. What these are, I think are sufficiently manifested by the general voice from north to south, which calls for a bill of rights...I hope, therefore, a bill of rights will be formed to guard the people against the federal government, as they are already guarded against their State governments, in most instances..

James Madison to Thomas Jefferson, 17 October 1788

<http://www.teachingamericanhistory.com/library/index.asp?document=999>

The little pamphlet herewith inclosed will give you a collective view of the alterations which have been proposed by the State Conventions for the new Constitution...

My own opinion has always been in favor of a bill of rights, provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time, I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed, could not be of disservice.

I have not viewed it in an important light—1. Because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. 2. Because there is great reason to fear that the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be by an assumed power...3. Because the limited powers of the federal Government, and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. 4. Because experience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State.

The Creation of The Bill of Rights: "Retouching the Canvas"

In Virginia, I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that State, if the Legislative majority had found, as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place, and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created.

Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents... Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party than by a powerful and interested prince...

What use, then, it may be asked, can a bill of rights serve in popular Governments? I answer, the two following, which, though less essential than in other Governments, sufficiently recommend the precaution: 1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the National sentiment, counteract the impulses of interest and passion. 2. Although it be generally true, as above stated, that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter source; and on such, a bill of rights will be a good ground for an appeal to the sense of the community.

Thomas Jefferson to James Madison, 15 March 1789

<http://www.teachingamericanhistory.com/library/index.asp?document=993>

Your thoughts on the subject of the declaration of rights in the letter of October the 17th, I have weighed with great satisfaction. Some of them had not occurred to me before, but were acknowledged just in the moment they were presented to my mind... I am happy to find that, on the whole, you are a friend to this amendment. The declaration of rights is, like all other human blessings, alloyed with some inconveniences, and not accomplishing fully its object. But the good of this instance vastly outweighs the evil. I cannot refrain from making short answers to the objections which your letter states to have raised.

1. That the rights in question are reserved by the manner in which the federal powers are granted. Answer. A constitutive act may, certainly, be so formed, as to need no declaration of rights... But in a constitutive act which leaves some precious articles unnoticed, and raises implications against others, a declaration of rights becomes necessary, by way of supplement. This is the case of our new federal Constitution. This instrument forms us into one State, as to certain objects, and gives us a legislative and executive body for these objects. It should, therefore, guard us against their abuses of power, within the field submitted to them.

2. A positive declaration of some essential rights could not be obtained in the requisite latitude. Answer. Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can.

3. The limited powers of the federal government, and jealousy of the subordinate governments, afford a security which exists in no other instance. Answer... The jealousy of the subordinate governments is a precious reliance... They must have principles furnished them, whereon to found their opposition. The declaration of rights will be the text, whereby they will try all the acts of the federal government. In this view, it is necessary to the federal government also; as by the same text they may try the opposition of the subordinate governments.

4. Experience proves the inefficacy of a bill of rights. True. But though it is not absolutely efficacious under all circumstances, it is of great potency always, and rarely inefficacious. A brace the

The Creation of The Bill of Rights: "Retouching the Canvas"

more will often keep up the building which would have fallen, with that brace the less. There is a remarkable difference between the character of the inconveniencies which attend a declaration of rights, and those which attend the want of it. The inconveniences of the declaration are, that it may cramp government in its useful exertions. But the evil of this is short-lived, moderate and reparable. The inconveniencies of the want of a declaration are permanent, afflicting and irreparable. They are in constant progression from bad to worse...

I am much pleased with the prospect that a declaration of rights will be added; and hope it will be done in that way which will not endanger the whole frame of the government, or any essential part of it.

The Creation of The Bill of Rights: "Retouching the Canvas"

Directions: Read the documents assigned for Supplemental Activity Two and answer the questions on the worksheet.

Madison's Reasons for believing a bill of rights is unimportant	Jefferson's Response
1.	
2.	
3.	
4.	

The Creation of The Bill of Rights: "Retouching the Canvas"

Question	Answer
5. What example does Madison give of the ineffectiveness of "parchment barriers"?	
6. According to Madison, what is the first practical use that a bill of rights might serve?	
7. According to Madison, what is the second practical use that a bill of rights might serve?	