A Federal Republican, A Review of the Constitution, 28 November 1787

Hitherto we have been considering the blemishes of the Constitution as they statedly exist—other objects are derived from omission. Among these the grand one, upon which is indeed suspended every other, is the omission of a bill of rights.

The remarcker upon the address of the sixteen members has answered their objection with much force. “I answer (says he) this is not true, it contains a declaration of many rights, and very important ones, i.e., that people shall be obliged to fulfill their contracts, and not avoid them by tenders of anything less than the value stipulated—that no ex post facto laws shall be made, etc.”

The gentleman has here very wittily mistaken the sense of the two terms right and obligation.

They are correlative terms and between two parties. Whenever the former applies to the one, the latter of necessity applies to the other. Whatever anyone has a right to expect from me, I am obliged to render him. He might as well have said that the Constitution gave the people a right to submit to Congress in everything, and that we have a right to pay the last farthing of compliance to their despotic whims.

What he mentions is the enforcing of obligation and not the declaring of right.

One of the learned members of the late Convention, the Honorable Mr. [James] Wilson, observes in his speech that all powers which are not by the Constitution given up to Congress are reserved for the disposition of the several states. This observation is wise and true, because properly speaking it should be so. In entering into the social compact, all rights which are not expressly given up to the governors are reserved to the people. That it is so from a just construction it is easy to discover.

But notwithstanding, if the people are jealous of their rights, where will be the harm in declaring them? If they be meant, as they certainly are, to be reserved to the people, what injury can arise from a positive declaration of it? Although in reasoning it would appear to be unnecessary, yet if the people prefer having their rights stately defined, it is certainly reasonable that it should be done. I am well acquainted with the logical reason that is generally given for it.

It is said that the insertion of a bill of rights would be an argument against the present liberty of the people.

To have the rights of the people declared to them would imply that they had previously given them up or were not in possession of them.
This indeed is a distinction of which the votaries of scholastic philosophy might be proud—but in the political world, where reason is not cultivated independently of action and experience, such futile distinctions ought not to be agitated.

In fact, it does not exist, for I should think it is as rational to declare the right of the people to what they already possess, as to decree to them any new rights. If the people do really possess them, there can be no harm in expressing what is meant to be understood.

A bill of rights should either be inserted, or a declaration made that whatever is not decreed to Congress is reserved to the several states for their own disposal.

In this particular, the Articles of the present Confederation have an evident advantage. The second Article says, that “each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this confederation expressly declared to United States in Congress assembled.”

This will appear the more proper, if we consider that these are rights in which all the states are concerned. It is thought proper to delegate to Congress supreme power on all occasions where the natural interests of the states are concerned, and why not for the same reason grant and declare to the states a bill of those rights which are also mutual?

At any rate it is certain that no injury can arise from it, and to do it would be satisfactory and wise.

On the whole, my fellow citizens, this Constitution was conceived in wisdom; the thanks of the United States are justly due to the members of the late Convention.

But let their productions pass again through the furnace.

Do not give them even the opportunity of depriving you of your rights and privileges, and that, without breaking over any restraint imposed by the Constitution.

Because this once granted they will be fully enabled in the present age to lay the gentle foundation of despotic power, and after a temporary interval of seeming humanity between you and succeeding generations, to rivet upon them the chains of slavery beyond the possibility of a rupture.

To guard against this, I could wish to see the proposed Constitution revised and corrected.

If the states are not to be confederated, let them be reduced to one compact body.

And if a perfect consolidation of the states is to take place, if the people are to become the source of power, and if Congress is to represent them as the head of this grand body politic, in the name of all that is dear to freemen, permit not the veins through which the life of
government itself is to flow from the heart to the head be any way obstructed—let the
passages be free and open that vital heat may animate every limb.

That if all the states were to offer their objections, the Constitution would be reduced to
nothing, is an ill-founded idea.

The good-natured simularity which the citizen of America discovered between this Constitution
and a piece of painting is perfectly erroneous.

All painting is addressed to the sense and relished by taste which is various and fluctuating—but this Constitution is addressed to the understanding and judged of by reason which is fixed
and true.

The Constitution is for the most part good, and perhaps many of the objections which have
been made to it arise from our not being able to discern clearly the collective interest of the
states.

Some of them, however, in all probability, exist beyond contradiction.

Let the convention of each state make its exceptions, then let a future and general one receive
them all and reconcile them with as much wisdom as possible.

This would certainly be some refinement.

It could do no harm, but might do much good.

To conclude, my friends and fellow citizens, have [the] proposed Constitution revised, corrected
and amended—have every dubious expression be made plain and clear—have every power
accurately defined and well understood, and your own rights and privileges clearly stated or a
declaration made that all powers that are not by this Constitution delegated to Congress are
reserved for your own disposal.

Then, and not till then, will impartial justice rule over our land, and America become the
theater of equity and wisdom, as she has already been the field of patriotism and bravery.

This once obtained, we shall be happy and free, and having enjoyed the blessings of peace and
plenty under the ample shade of the tree of liberty, we shall deliver them down unimpaired by
the corrosive influence of time to the latest posterity.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John
P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A.
Hogan. Charlottesville: University of Virginia Press, 2009. Original source: Ratification by the
States, Volume II: Pennsylvania