Luther Martin: A Citizen of the State of Maryland Remarks Relative to a Bill of Rights, 12 April 1788

REMARKS *relative to a* BILL *of* RIGHTS.

It has been asserted by many, that a bill of rights was altogether useless, and in some respects a dangerous experiment; such an opinion is evidently calculated to mislead the people, and to take off the necessary checks from those who will be entrusted with the administration of government.

We are told by that able advocate for constitutional liberty, Lord *Abingdon*, that in every free government "there are found *three principal powers*, the first of these is the *power of the people*; the second, the *power of the constitution*; the third, the *power of the law*.—That the constitution ascertains the reciprocal duties, or several relations subsisting betwixt the *governors* and *governed*; that the law, or third power of the State, maintains the rights, and adjusts the differences arising between individuals, as parts of the same whole."

Thus his Lordship makes a very evident distinction between the constitution and the law; he also calls *the rights of the people* the *substantial parts* of the constitution.

From a perusal of his letter to Mr. *Edward Burke*, it is evident, he considers the constitution, as that power which gives law, or restrains the conduct of the legislature; that as the laws of the land are the rule of action to the people; so the principles of the constitution direct the legislature in their several duties, for the rules of the one are to the other, what the law is to the Judges. In examining the constitution for the United States, as proposed by the late convention, I do not find any explicit declaration respecting the rights of the people, that can be considered as a sufficient guide on these points to the legislature, though they ought to to have been its SUBSTANTIAL parts.

It is true, the legislature may act according to their own principles of equity and reason; but these may differ from real constitutional principles, which should be so particularly expressed, that the constitution might have a controul over the legislature and the law. "My idea of government," says Lord Abingdon, "to speak as a lawyer would do, is, that the legislatures are the *trustees* of the people, the constitution the *deed of gift*, wherein they stood seized to *uses* only, and *those uses being named*, they cannot depart from them; but for their due performance are accountable to those by whose conveyance the trust was made. The *right* is therefore *fiduciary*, the power *limited*; or, as a mathematician would say, more in the road of demonstration; the *constitution* is a *circle*, the *laws* the *radii* of that circle, drawn on its surface with the pen of the legislature, and it is the known quality of a circle that its *radii* cannot exceed its *circumference*, whilst the people, like the *compasses*, are fixed in the center, and describe the circle."

I do not perceive in the new constitution, *those uses named*, for which the administration of government is entrusted; no directing principles, sufficient for security of life, liberty, property, and freedom in trade; and therefore, as a supplement, a declaration or bill of rights is evidently wanting; otherwise, we shall have a legislature without check or controul; which if it should take place, it would open a door to every species of fraud and oppression.—Should the present system now proposed, pass without amendments, it would immediately constitute an aristocratic tyranny, a many-headed leviathan, an ungovernable monster, without constitutional checks, deplorable and to be deplored, dangerous and destructive, in proportion to the number of which it consists.

An eminent lawyer expressed an idea, which has been re-echoed, and become pretty general, "that what power was not expressly given, was retained by the people."—Another civilian, of equal standing and professional abilities, has asserted the reverse of this proposition, and insisted that what power was not expressly declared, was relinquished and given up:—Since then, the sentiments of men, respectable for their talents, are so discordant on essential points surely, the common people may well be at a loss in a choice of their political guides,—and the safest way for them must be, to insist upon a *solemn declaration* of their rights and privileges, as the *substantial* and unalterable parts of the constitution: for such a *declaration* cannot be prejudicial; but may restrain the growth of despotism, the wantonness of power, and the base, licentious attempts of juvenile, daring ambition.

In fine, let me caution the supreme power, *the people*, to take care how they part with their birth-right; that they do not, like *Esau*, sell it for a *mess of pottage*; and let them reflect, *seriously* reflect, on the inestimable value of the least atom of their liberty; she is more precious than rubies, and all the things that can be desired, are not to be compared unto her.

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