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Alfredus

Exeter *Freeman's Oracle*, 18 January 1788

Messieurs PRINTERS, In your Oracle of the 11th current I observed an address to the Farmers of the State, by one who pretends to belong to that respectable class of citizens. Whether he does or not is of no consequence. In this address he labors hard to tincture the public mind with jealousies and prejudices against the new Constitution. Having possessed himself of that wretched hobby horse, a Bill of Rights, which has been bestridden by every antifederal scribbler thro' the United States, till he is jaded into a perfect hack equally unfit for service and shew, he has mounted him, armed *cap-a-pee* [French: from head to foot] with Federal courts, trial by Jury, liberty of the Press, Standing armies, &c. &c. &c. Thus accoutred and mounted and perfectly resembling Don Quixote and Rosinante [Don Quixote's horse] in their memorable attack on the Wind-Mill, he sallies out against the new Constitution, calling on his brethren to witness his amazing prowess and address in the dangerous conflict. But the patrons of this admirable system of federal government need be under no apprehensions for its fate in this expedition. Whatever may be the valor of the Rider, the steed has no mettle and will certainly fail him in the terrible onset. For a proof of this I shall insert in this address the Speech of Mr. WILSON in the Pennsylvania Convention on the subject of a Bill of Rights, by which it will appear that it is not only *unnecessary* in the new Constitution, but would be *impractable* and *dangerous*. The substance of this speech is as follows.

“Mr. President,

“We are repeatedly called upon to give some reason why a bill of rights has not been annexed to the proposed plan. I not only think that enquiry is at this time unnecessary and out of order, but I expect, at least, that those who desire us to shew why it was omitted, will furnish some arguments to shew that it ought to have been inserted; for the proof of the affirmative naturally falls upon them. But the truth is, Sir, that this circumstance, which has since occasioned so much clamour and debate, never struck the mind of any member in the late convention until, I believe, within three days of the dissolution of that body, and even then, of so little account was the idea, that it passed off in a short conversation, without introducing a formal debate, or assuming the shape of a motion. For, Sir, the attempt to have thrown into the national scale an instrument in order to evince that any power not mentioned in the constitution was reserved, would have been spurned at as an insult to the common understanding of mankind. In civil governments it is certain, that bills of rights are unnecessary and useless, nor can I conceive whence the contrary notion has arisen. Virginia has no bill of rights, and will it be said that her constitution was the less free? Has South-Carolina no security for her liberties?—That state has

no bill of rights. Are the citizens of Delaware more secured in their freedom, or more enlightened on the subject of government than the citizens of Maryland? New-Jersey has no bill of rights; New-York has none; Connecticut has none, and Rhode-Island has none. Thus, Sir, it appears from the example of other states, as well as from principle, that a bill of rights is neither an essential nor a necessary instrument in framing a system of government, since liberty may exist and be as well secured without it. But it was not only unnecessary, but on this occasion, it was found impracticable; for who will be bold enough to undertake to enumerate all the rights of the people? And when the attempt to enumerate them is made, it must be remembered that if the enumeration is not complete, every thing not expressly mentioned will be presumed to be purposely omitted. So it must be with a bill of rights, and an omission in stating the powers granted to the government, is not so dangerous as an omission in recapitulating the rights reserved by the people. We have already seen the origin of magna charta, and tracing the subject still further, we find the petition of rights claiming the liberties of the people, according to the laws and statutes of the realm, of which the great charter was the most material; so that here again recourse is had to the old source from which their liberties are derived, the grant of the king. It was not until the revolution [of 1688] that the subject was placed upon a different footing, and even then the people did not claim their liberties as an inherent right, but as the result of an original contract between them and the sovereign. Thus, Mr. President, an attention to the situation of England will shew that the conduct of that country in respect to bills of rights, cannot furnish an example to the inhabitants of the United States, who by the revolution have regained all their natural rights, and possess their liberty neither by grant nor contract. In short, Sir, I have said that a bill of rights would have been improperly annexed to the federal plan, and for this plain reason, that it would imply that whatever is not expressed was given, which is not the principle of the proposed constitution.”

To these reasonings of Mr. Wilson it may be added that the Constitution for the United-States and a constitution for an individual State are essentially different. When we framed our State Constitution we were in a state of Nature, possessing individually all the rights privileges and immunities that belong to men before they enter into political society. The question was which of those we should retain. The Bill of Rights prefixed to our constitution innumrated and defined them. The rest were given up. But to whom were they resigned? Not to a sovereign power independent of our controul, but to each other. It was a social compact between individuals possessed of equal power and authority, in which every thing that was not expressly reserved and guaranteed to individuals was resigned to the direction of the majority. The Constitution now before the public is not a compact between individuals, but between several sovereign and independent political societies already formed and organized. These societies have *general* and *particular* interests and concerns. Those which respect the whole are submitted to the direction of the federal government; while those which respect individual states only are left, as they ought to be, in the hands of the state assemblies. To prevent any interference between the federal and state governments, the objects of the former are pointed out in the preamble to the Constitution, viz. “*To form a more perfect union—establish justice—insure domestic tranquility—provide for the common defence—promote the general welfare—and secure the blessings of liberty to ourselves and posterity.*” These objects are all national and important. The powers vested in the supreme authority for the accomplishment of these purposes are accurately defined in the 8th section of the

first article, and limited in the section following. It must therefore be taken for granted that every thing not expressly given up is retained by the states. If this is not enough to secure the liberties of the subject. *The United States guarantee to each separate state a republican form of government* [Article IV, section 4]. Of these, the Bill of Rights, where they have any prefixed, is an essential part; of consequence the Bill of Rights is as effectually secured by the Constitution proposed as if it had been expressly mentioned.—What can the most suspicious patriot want further? The Farmer himself acknowledges that he is silenced by Mr. Wilson's arguments in favour of the omission—tho' he pretends not to be convinced. Perhaps a man of more candor than he appears to be would have been perfectly satisfied. The clause in the constitution which he recites to prove the necessity of a Bill of Rights is very little to his purpose, even in appearance, and in reality still less [the supremacy clause, Article VI, paragraph 2].—By this Constitution the Congress of the United States will be invested with several powers, which now belong only to individual states. For the exercise of these powers laws must necessarily be enacted. They must also be the supreme law of the land, otherwise they would be useless and insignificant. Now it is evident that, although these laws may apparently clash with the Constitutions of the several states as they at present stand, yet they will be perfectly consistent with the exercise of all the powers the states still retain; because they will be founded on those rights which they have voluntarily divested themselves of and placed in the hands of the United States.

The Bill of Rights being the Burden of the Farmer's song; and it having been clearly shewn that those of the several states are confirmed and guaranteed to them by the new Constitution, I might here terminate my structures [i.e., strictures] on the publication. But there are several other things calculated to mislead the class of men to whom they are addressed and therefore deserve a few remarks by way of reply. Among these his hints concerning the *Federal Courts* first present themselves. Of these courts, especially after Congress have mounted their hobby horse of a federal jurisdiction over a certain district of country [federal capital], he has the most fearful apprehensions, except this horse is well *guarded and fettered*. But whence can these apprehensions arise in this gentleman's mind? Certainly no good member of society can have any grounds to fear passing through, or residing within the jurisdiction of those rulers whom he has had a hand in appointing, and who are accountable to him for the use they make of their delegated authority. Good laws and magistrates are a terror to evil doers; but those who do well may ever expect from them both protection and praise [Romans 13:13]. An honest man therefore can never be in danger from legal authority, whether established by a single state or thirteen combined.

The Farmer thinks a Trial by Jury is indispensably necessary to the security of the liberties of the people. A person who had never read the new constitution would suppose that this institution was to be entirely abolished in the federal courts. But how would he be surprized to find that the "Trial of all crimes except in cases of impeachment, shall be by jury?" [Article III, section 2.] Life and Liberty are therefore as well secured by the federal Constitution as by those of the several states: for in cases of impeachment juries have never been employed. But who has informed this writer that any causes shall be tried in the federal courts without jury? The constitution does not prescribe it, but leaves it to the direction of Congress.

But after all, what are the advantages of this boasted *trial by Jury*, and on which side do they lie? Not certainly on the side of *justice*: for one unprincipled juror secured in the interest of the opposite party will frequently divert her from her course. And I believe every gentleman much

acquainted in our judicial courts will agree in sentiment with me that in four cases out of five, where injustice is done, it is by the ignorance or knavery of the jury, in opposition to the opinion of the Judges. The fact is that under the present regulation, which most unreasonably (at least in civil cases) requires an unanimity in the verdict, juries favor the guilty much more than the innocent party. It is therefore no wonder that certain characters, in this as well as in other States shudder at the idea of courts in which justice will more generally take place. Let those who for sake of the wages, love and practice the *works of unrighteousness*, clamour at such an establishment: Honest men will justify & applaud it. Laws were made and judicatories established for the punishment of the former, and the security of the latter. Upon their faithful execution greatly depends the happiness of society: and however the vicious and disorderly may fare, the virtuous and honest can never suffer by them except when they permit *violence, injustice* and *fraud* to escape with impunity.

The next engine the Farmer brings into play to alarm the fears of the people is that hedious Bug-bear, a *standing army in time of peace*. This he and some others would represent as a monster ever possessed both of the will and power to swallow up the liberties of the country at a meal. But let us for a moment enquire into the idea of a standing army, and ask what it is? Certainly not an army voted, raised and supported by the people. Such an army *stands* no longer than the people direct. The same voice that gave it being last year may now annihilate it. —How then can it be called a *standing army*? In fact, a free government knows no such thing, nor can it: and the writer who endeavors to excite jealousies against the new Constitution in the minds of the good citizens of the United States, by representing that it licences standing armies in times of peace, is either grossly ignorant or scandalously dishonest. A standing army is that which the supreme executive magistrate can raise by his own authority and support by permanent revenues placed beyond the controul of his subjects. It is against standing armies thus circumstanced that so much reasoning and declamation have been levelled, and not against such bodies of men as may be necessary for the protection of a state, and under the direction of its legislature. Such an army, it must be confessed is a most dangerous instrument in the hands of arbitrary power, and too much cannot be said against it: But when I hear a man of the least knowledge in such matters expressing his apprehensions of danger to the liberties of America from that quarter, under the new constitution without a Bill of Rights, I cannot help considering him as an unhappy HYPOCHONDRIAC, whose fears must be calmed by medicine rather than by argumentation.

To trace this writer, Messieurs Printers, thro' all his ramblings from the point, and to make a reply to every scandalous innuendo, foolish proposition, impertinent observation, and groundless assertion, would equally fatigue the patience and insult the understandings of your readers. I shall therefore conclude with this remark on his observation in the last sentence of his address elegantly introduced by the *fox* and the *hen-roost*, that however cautious we ought to be in our choice of public officers, when we have got the most patriotic virtuous and enlightened characters we can find, they ought never to be degraded by mean jealousies and groundless distrusts, but to be honored with our full confidence; because by such jealousies and distrusts we should in some measure authorize them to betray their trust: as many a husband has procured a growth of horns on his front by unjustly calling in question the fidelity of his Wife.

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. XXVIII: New Hampshire (Madison, Wis.: Wisconsin Historical Society Press, 2017), 86–92.