

## ***New York Journal, 23 January 1788***

The editor has dared to publish to the freemen of New-York, and to assert, that the objection to the new constitution, because it contains no bill of rights, is founded on ideas of government that are totally false. That our ancestors reasoned right, and because we reason in the same way, we adhere to old prejudices, and reason wrong. These are vain assertions without proof— But the editor goes on, “a bill of rights against the encroachments of kings, is perfectly intelligible,” and pray, are not the rights of worshipping as I please, and of being tried by a jury, as perfectly intelligible under a republican form of government, as under a monarchical? “A bill of rights against the encroachments of an elective legislature, is a curiosity in government.[”] The editor would do well to shew, that it is so, because, his ipse dixit would not go very far, if stubborn facts were not directly against him. The next sentence, I think I may say, is a curiosity—and perhaps it is in point, to prove a bill of rights is not worth contending for, nay, that it is wrong to make it a constituent part, when forming a constitution. “One half of the people who read books, have so little ability to apply what they read to their own practice, that they had better not read at all.” How the editor arrived at the exact number I know not; it is a bad compliment to *his readers*. About one eighth of the people read; half of this eighth had better not read at all; therefore, fifteen sixteenths of the people, what are they better than cattle; and is this the reason why N. York is the most eligible situation for this publication.

The privileges of a Britain are held as a birthright, or matters never alienated. They are not grants of the king; the barons, the only freemen in England in 1215, demanded, sword in hand, of the king, that he should renounce all claim to certain privileges of right belonging to them. Whatever might have been the knowledge of the barons of England at that time, I venture not to assert; but to think, that it was infinitely short of the knowledge of the good people of New-York in the science of government—Mr. Editor goes on, “These statutes are, however, not esteemed, because they are unalterable; for the same power that enacted them can at any moment repeal them; but they are esteemed, because they are barriers erected by the representatives of the nation against a power that exists independent of their own choice.” For the Editor’s consideration I shall extract several passages from Blackstone, observing by the way, that he says, the people of England were not represented in parliament till the year 1265. “Hence it indisputably appears, that parliaments, or general councils, are coeval with the kingdom itself; how those parliaments were constituted and composed, is another question, which has been a matter of great dispute, &c.”

“Thus much for the declaration of our rights and liberties; which will appear from what has been premised to be indeed no other than either that residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience;” they may be said to remain, in a peculiar and emphatical manner, the rights of the people of England; “and these may be reduced to three primary articles: The right of personal security; the right of personal liberty, and the right of private property.” “To vindicate these rights, when actually violated, or attacked, the subjects of England are entitled, in the first place, to the regular administration, and free course of justice, in the courts of law; next to the right of petitioning the king and

parliament for redress of grievances, and lastly to the right of having and using arms for self-preservation and defence—And all these rights and liberties it is our birth right to enjoy entire.”

Perhaps, upon the principles before established, the convention might (if they pleased) have vested the regal dignity in a family entirely new. “These three princes, king William, queen Mary, and queen Anne, did not take the crown by hereditary right” — “formerly the descent was absolute, but now, upon the new settlement, the inheritance is conditional.”

“The doctrine of hereditary right does by no means imply an indefeasible right to the throne.”

It is evident, according to the learned judge, that the kings of England are not independent of the people, and yet that people have reserved that residuum of liberty, which is not necessary to be sacrificed to public convenience. That these rights have their existence otherwise than merely by acts of parliament. When King William came to the throne of England, there was a solemn compact, previous to his being declared king, called a bill of rights: The statute that soon after took place, contains nearly verbatim the same articles; if, however, the statute had been repealed, the bill of rights would have remained in force. The editor says, “In our government there is no power of legislation independent of the people.” Is there any power of legislation in England independent of the people? Surely there is not; and did these people, in their wisest days, draw such an absurd consequence? “There is no power existing against which it is necessary to guard.”

“I undertake to prove, that a standing bill of rights is absurd (attend to the proof) because no constitutions (how many are there in a free government) can be unalterable. Cannot a constitution be altered without altering the bill of rights?—Cannot the constitution of Pennsylvania be essentially altered?—And is not all the alteration, contended for by its opposers, merely that of the deposit of the powers? Is it not the voice of the states in the Union, that the people have a right to alter their constitutions? We can have no greater power to enslave posterity, than they have to repeal the act, if found inconvenient. What idle attempt at reasoning—we can only make ourselves happy in a particular way, by retaining some privileges, which, if the legislature possessed, would not be exercised, but for the purposes of slavery; yet we must not make this reservation for fear of enslaving our posterity. “The right of jury trial may in future cease to be a privilege—(It may so, Mr. Editor, if the person to be tried and his jury, are to travel five hundred miles) or other modes more satisfactory to the people may be devised; such an event is neither impossible nor improbable.”—There is but one other way, that is, for the judges to decide as to law and fact. And when this takes place, farewell to all liberty in America. I am happy in thinking, that the genius of America will spurn at the idea with as much contempt and energy as she did against the assumed power of the Parliament of Great-Britain. There need not be much said here. Where, Mr. Editor, did you learn, that there is an attempt to make a *perpetual* constitution? I never heard of such a thing, until I saw it in your new publication. Did you start this idea for the sake of building upon it near half a column of nonsense?

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 XX: New York, No. 2