

William Cushing: Undelivered Speech, c. 4 February 1788

And first as to a bill of rights, wch. the worthy Gent. from Sutton, thinks wanting.

Bills of rights originated in antient despotic times; in the times of despotic Kings, whose prerogatives were boundless & whole will alone was law. I will mention one Instance—in the Reign of Chs. ye. I., the spirits of ye. Commons rose high agst. his usurpations, & Ld. Coke & others drew up a *bill* of rights, which the King was obliged to assent to, before he could obtain a grant of monies he demanded.

But it was of no consequences, for no sooner had he assented to the bill of rights *than* he trampled the whole under foot. The short of ye. matter is,—when the people could extort an Acknowledgment of some of their essential rights as freemen from the King, who before had possõn of the whole, they thought they gained a great point.

Twas then deemed treason to hold, that all civil power originated from the people & that its sole End was their good.

But now this being the only doctrine of the country, & well understood by every man, we should lay ourselves under a disadvantage to go about to enumerate all ye. particular rights we meant to retain, because we might inadvertently omit some important ones which would thereby be lost

The fact is (& it is a selfevident proposition)—we retain all that we do not part with.

And this is the only safe Idea that the freemen of America can rest upon when they assemble to draw up forms & delegate powers of govmt.

And therefore it is that *in ye.* Constitution of New York, & a number of others—there is no bill of rights at all;—*going Upon this Sure ground, that* no authority could be exercised over the *people*, but such as should be expressly granted by them; which in my opinion is better & safer than any bill of rights that the wisest mortal can draw by attempting a particular enumeration of rights.

It is said still that without the guard of a bill of rights, Congress might even prescribe a religion to us;—That could not be without a downright usurpation which we should have as good a right to refuse without a bill of rights as with one—I will put a plain case precisely in point.

A man makes a power of atty to his friend to receive monies due upon certain notes of hand, which he specifies, with dates Sums & names. Does such a power authorise the Atty to receive monies upon any other notes (not named) or to touch real Estate? No more can Congress impose a Religion upon us without color of warrant or authority. . . .

The doctrine that rulers may have the Controll of the peoples rights, without their grant, is better adapted to the despotic monarchies of the East than to this Enlightned Country—and our Constituents will have no reason to thank us for placing their Liberties upon so dangerous a foundation, as necessarily implies that *they* are all born slaves, instead of being born free & equal.

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