

## **Cincinnatus I: To James Wilson, Esquire, *New York Journal*, 1 November 1787**

MR. GREENLEAF, A speech made to the citizens of Philadelphia, and said to be by MR. WILSON, appears to me to abound with sophistry, so dangerous, as to require refutation. If we adopt the new Constitution, let us at least understand it. Whether it deserves adoption or not, we can only determine by a full examination of it, so as clearly to discern what it is that we are so loudly, I had almost said, indecently called upon to receive. Such an examination is the object of the papers which I am to entreat you to lay before the public, in answer to Mr. Wilson, and under the signature of—Cincinnatus.

SIR, You have had the graciousness. Sir, to come forward as the defender and panegyrist of the plan of a new Constitution, of which you was one of the framers. If the defence you have thought proper to set up, and the explanations you have been pleased to give, should be found, upon a full and fair examination, to be fallacious or inadequate; I am not without hope, that candor, of which no gentleman talks more, will render you a convert to the opinion, that some material parts of the proposed Constitution are so constructed—that a *monstrous aristocracy springing from it, must necessarily swallow up the democratic rights of the union, and sacrifice the liberties of the people to the power and domination of a few.*

If your defence of this new plan of power, has, as you say, been matured by four months constant meditation upon it, and is yet so very weak, as I trust will appear, men will begin to think, that—the thing itself is indefensible. Upon a subject so momentous, the public has a right to the sentiments of every individual that will reason: I therefore do not think any apology necessary for appearing in print; and I hope to avoid, at least, the indiscriminate censure which you have, with so much candor and liberality, thrown on those who will not worship *your idol*—“that they are industriously endeavouring to prevent and destroy it, by insidious and clandestine attempts.” Give me leave just to suggest, that perhaps these clandestine attempts might have been owing to the terror of *your mob*, which so nobly endeavoured to prevent all freedom of action and of speech. The *reptile Doctor*, who was employed to blow the trumpet of persecution, would have answered the public reasoning of an opponent, by hounding on him the rage of a deluded populace.

It was to such men, and under such impressions, that you made the speech which I am now to examine; no wonder then that it was received with loud and unanimous testimonies of their approbation. They were vociferating through you the panegyric of their own intemperate opinions.

Your first attempt is to apologize for so very obvious a defect as—the omission of a declaration of rights. This apology consists in a very ingenious discovery; that in the state constitutions, whatever is not reserved is given; but in the congressional constitution, whatever is not given, is reserved. This has more the quaintness of a conundrum, than the dignity of an argument. The conventions that made the state and the general constitutions, sprang from the same source, were delegated for the same purpose—that is, for framing rules by which we should be governed, and ascertaining those powers which it was necessary to vest in our rulers. Where

then is this distinction to be found, but in your assumption? Is it in the powers given to the members of convention? no—Is it in the constitution? not a word of it:—And yet on this play of words, this dictum of yours, this distinction without a difference, you would persuade us to rest our most essential rights. I trust, however, that the good sense of this free people cannot be so easily imposed on by professional figments. The confederation, in its very outset, declares—that what is not expressly given, is reserved. This constitution makes no such reservation. The presumption therefore is, that the framers of the proposed constitution, did not mean to subject it to the same exception.

You instance, Sir, the liberty of the press; which you would persuade us, is in *no* danger, though not secured, because there is no express power granted to regulate literary publications. But you surely know, Sir, that where general powers are expressly granted, the particular ones comprehended within them, must also be granted. For instance, the proposed Congress are empowered—to define and punish offences against the law of nations—mark well, Sir, if you please—to *define* and punish. Will you, will any one say, can any one even think that does not comprehend a power to define and declare all publications from the press against the conduct of government, in making treaties, or in any other foreign transactions, an offence against the law of nations? If there should ever be an influential president, or arbitrary senate, who do not choose that their transactions with foreign powers should be discussed or examined in the public prints, they will easily find pretexts to prevail upon the other branch to concur with them, in restraining what it may please them to call—the licentiousness of the press. And this may be, even without the concurrence of the representatives of the people; because the president and senate are empowered to make treaties, and these treaties are declared the supreme law of the land.

What use they will make of this power, is not now the question. Certain it is, that such power is given, and that power is not restrained by any declaration—that the liberty of the press, which even you term, the sacred palladium of national freedom, shall be forever free and inviolable. I have proved that the power of restraining the press, is necessarily involved in the unlimited power of defining offences, or of making treaties, which are to be the supreme law of the land. You acknowledge, that it is not expressly excepted, and consequently it is at the mercy of the powers to be created by this constitution.

Let us suppose then, that what has happened, may happen again: That a patriotic printer, like Peter Zenger, should incur the resentment of our new rulers, by publishing to the world, transactions which they wish to conceal. If he should be prosecuted, if his judges should be as desirous of punishing him, *at all events*, as the judges were to punish Peter Zenger, what would his innocence or his virtue avail him? This constitution is so admirably framed for tyranny, that, by clear construction, the judges might put the verdict of a jury out of the question. Among the cases in which the court is to have appellate jurisdiction, are—controversies, to which the United States are a party:—In this appellate jurisdiction, the judges are to determine, *both law and fact*. That is, the court is both judge and jury. The attorney general then would have only to move a question of law in the court below, to ground an appeal to the supreme judicature, and the printer would be delivered up to the mercy of his judges. Peter Zenger's case will teach us,

what mercy he might expect. Thus, if the president, vice-president, or any officer, or favorite of state, should be censured in print, he might effectually deprive the printer, or author, of his trial by jury, and subject him to something, that will probably very much resemble the—Star Chamber of former times. The freedom of the press, the sacred palladium of public liberty, would be pulled down;—all useful knowledge on the conduct of government would be withheld from the people—the press would become subservient to the purposes of bad and arbitrary rulers, and imposition, not information, would be its object.

The printers would do well, to publish the proceedings of the judges, in Peter Zenger's case—they would do well to publish lord Mansfield's conduct in, the King against Woodfall;—that the public mind may be property warned of the consequences of agreeing to a constitution, which provides no security for the freedom of the press, and leaves it controversial at least—whether in matter of libels against any of our intended rulers; the printer would even have the security of trial by jury. Yet it was the jury only, that saved Zenger, it was a jury only, that saved Woodfall, it can only be a jury that will save any future printer from the fangs of power.

Had you, Mr. Wilson, who are so unmerciful against what you are pleased to call, the disingenuous conduct of those who dislike the constitution; had you been ingenuous enough to have stated this fairly to our fellow citizens; had you said to them—gentlemen, it is true, that the freedom of the press is not provided for; it is true, that it may be restrained at pleasure, by our proposed rulers; it is true, that a printer sued for a libel, would not be tried by a jury; all this is true, nay, worse than this is also true; but then it is all necessary to what I think, *the best form of government that has ever been offered the world.*

To have stated these truths, would at least have been acting like an honest man; and if it did not procure you such unanimous testimonies of approbation, what you would have received, would have been *merited.*

But you choose to shew our fellow citizens, nothing but what would flatter and mislead them. You exhibited, that by a rush-light only, which, to dissipate its darkness, required the full force of the meridian sun. When the people are fully apprized of the chains you have prepared for them, if they choose to put them on, you have nothing to answer for. If they choose to be tenants at will of their liberties, by the new constitution; instead of having their freehold in them, secured by a declaration of rights; I can only lament it. There was a time, when our fellow citizens were told, in the words of Sir Edward Coke—For a man to be tenant at will of his liberty, I can never agree to it—*Etiam si Dominus non sit molestus, tamen miserremum est, posse, se vebit*—Though a despot may not act tyrannically; yet it is dreadful to think, that if he *will*, he *may*. Perhaps you may also remember, Sir, that our fellow citizens were then warned against those—“smooth words, with which the most dreadful designs may be glossed over.” You have given us a lively comment on your own text. You have varnished over the iron trap that is prepared, and *bated with some illustrious names, to catch the liberties of the people.*

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