

Edmund Pendleton to Richard Henry Lee, Richmond, 14 June 1788

As to the Amendments themselves, I feel the Fullest Conviction of the Importance of those great rights, so favourable to Liberty, the trial by *Jury*, the Liberty of the *Press*—the *Fre[e]dom & Frequency of Elections*, & that *responsibility* of the Representative to his Constituents, by *residing* amongst, & *sharing* with them in all *benefits & Injuries*. I am unfortunate enough to differ From you in Opinion as to the best means of Securing them, being that of a *Bill of Rights*, my Objection to that is founded not on it's *strength*, but my Fear of it's *weakness & Danger*, and the *impropriety* of it's *Principle*. The *Magna Charta* of England wch. our Ancestors so much valued themselves upon, had it's merits; it unfettered them From some of those shackles which the dictated Will of a Conq[ue]r had in the Formation of their Government imposed upon them: It was all they could do, the struggle was *noble* & the *Acquisition* valuable; but supposing it Recur'd to as a model For a *free* people in *Forming* a Governmt. For themselves, it appears in Principle, *humiliating & unsafe*, the former in accepting From any *Agent* of their *Power* a Charter of their rights, which they *Possess*, & derive From a *higher* Source. *Unsafe* because it *admits* a Power in the *Donor* to *take* away; a mischief which produced the Subsequent Struggles about the Great Charter, to be found in it's numerous Ratifications. The *Petition* of Rights there, was a further Progress in wch. the humiliating Part of the principle was kept up; the *Bill* of Rights indeed, was a further step in wch. that principle was dropt, and a *Protest* made agt. Violations of Right, still *opposed* to a Ruler in Possessn. of *Dangerous* Powers. Whether that has produced the Apparent Repose of that nation, and the Safety, as some Gentn. Suppose, of their liberty; or whether the first of those effects, if it exists at all, has not been produced by a cause by Far more dangerous to, and annihilating the other, the change of the Instrument For Power From *vain Coertion*, to *effectual Bribery & corruption*, is at least *Problematical*: I fear that a review there would Find the Power of the Crown in it's greatest *Altitude*. However if they are happy 'tis well, & I wish not to disturb their *repose*.

But after this view is it not Safer to trust the two first rights to the Broad & Sure ground of this Principle—that the people being Established in the Grant itself as the *Fountain* of Power, *retain* every thing which is not granted? Is not the Principle true & Sound? does the Landlord in a grant For a term, reserve his own right? does the donor in grants For life or intail, reserve his Inheritance? no—when what is granted is at an end, his Original right Occurs—the Case of Escheat is still stronger—when ever an Absolute Fee Simple Estate ceases to Operate, by there being no legal, or Appointed Successor, the Original Source of the Grant comes Forth with it's Indisputable claim. In all these the Principle [retains?] it's Force, & will, I believe be Found to have in every investigation of Grants, or Delegations of Power. Again is there not danger in the Enumeration of Rights? may we not in the progress of things, discover *some* great & important, which we don't now think of? there the principle may be turned upon Us, & what is not reserved, said to be granted: If therefore Gentn. think something should be done, it would seem to me more proper to do as Massachussets proposes—Declare the *Principle*—as more Safe than the *Enumeration*. or after all if Gentn. think a Bill of Rights best, I am satisfied; approving the *End*, I will not divide with them about the *means*, unless I saw more danger than in this.

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: Commentaries on the Constitution, Volume XVIII: Commentaries on the Constitution, No. 6