

Marcus I, *Norfolk and Portsmouth Journal*, 20 February 1788

MR. M'LEAN, *I beg the favour of you to publish in your paper, the following Answers to Mr. Mason's Objections to the New Constitution. Each objection is inserted in his own words (as taken from a printed newspaper) before the answer given to it, so that the merits of both will be fairly before the Public.—Nothing can be more easy than the business of objecting, and as mankind are generally much more apt to find fault than to approve its success is commonly proportionable; but I trust the good sense of America, at this awful period, will exert itself to judge coolly and impartially, especially as the dissenting gentlemen appear to differ as much from each other as from the respectable majority who have recommended the New Constitution to the public.—I am Sir, your very humble servant,*

The AUTHOR.

Answers to Mr. Mason's Objections to the New Constitution, Recommended by the late Convention at Philadelphia.

1st. Objection.

“There is no declaration of rights, and the laws of the general government being paramount to the laws and constitutions of the several States, the declarations of rights in the separate States are no security; nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several States.”

Answer.

1. As to the want of a Declaration of Rights.

The introduction of these in England, from which the idea was originally taken, was in consequence of usurpations of the Crown, contrary, as was conceived, to the principles of their government. But there, no original constitution is to be found, and the only meaning of a declaration of rights in that country is, that in certain particulars specified, the Crown had no authority to act. Could this have been necessary, had there been a Constitution in being, by which it could have been clearly discerned whether the Crown had such authority or not? Had the people by a solemn instrument delegated particular powers to the Crown at the formation of their government, surely the Crown which in that case could claim under that instrument only, could not have contended for more power than was conveyed by it. So it is in regard to the new Constitution here: The future government which may be formed under that authority, certainly cannot act beyond the warrant of that authority. As well might they attempt to impose a King upon America, as go one step in any other respect beyond the terms of their institution. The question then only is, whether more power will be vested in the future government than is necessary for the general purposes of the Union. This may occasion a ground of dispute—but after expressly defining the powers that are to be exercised, to say that

they shall exercise no other powers (either by a general or particular enumeration) would seem to me both nugatory and ridiculous. As well might a Judge when he condemns a man to be hanged, give strong injunctions to the Sheriff that he should not be beheaded.

2. As to the common law, it is difficult to know what is meant by that part of the objection. So far as the people are now entitled to the benefit of the common law, they certainly will have a right to enjoy it under the new constitution, till altered by the general Legislature, which even in this point has some cardinal limits assigned to it. What are most acts of Assembly but a deviation in some degree from the principles of the common law? The people are expressly secured (contrary to Mr. Mason's wishes) against *ex post facto* laws, so that the tenure of any property at any time held under the principles of the common law, cannot be altered by any act of the future general legislature. The principles of the common law, as they now apply, must surely always hereafter apply, except in those particulars in which express authority is given by this Constitution; in no other particular can the Congress have authority to change it, and I believe it cannot be shewn that any one power of this kind given is unnecessarily given, or that the power would answer its proper purpose if the Legislature was restricted from any innovations on the principles of the common law, which would not in all cases suit the vast variety of incidents that might arise out of it...

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