

John Smilie Speech: Pennsylvania Ratifying Convention, 28 November 1787

...The arguments which have been urged, Mr. President, have not, in my opinion, satisfactorily shown that a bill of rights would have been an improper, nay, that it is not a necessary appendage to the proposed system. As it has been denied that Virginia possesses a bill of rights, I shall on that subject only observe, that Mr. Mason, a gentleman certainly of great information and integrity, has assured me that such a thing does exist, and I am persuaded, I shall be able at a future period to lay it before the Convention. But, sir, the State of Delaware has a bill of rights, and I believe one of the honorable members (Thomas M'Kean) who now contests the necessity and propriety of that instrument, took a very conspicuous part in the formation of the Delaware government. It seems however that the members of the Federal Convention were themselves convinced, in some degree, of the expediency and propriety of a bill of rights, for we find them expressly declaring that the writ of *habeas corpus* and the trial by jury in criminal cases shall not be suspended or infringed. How does this indeed agree with the maxim that whatever is not given is reserved? Does it not rather appear from the reservation of these two articles that everything else, which is not specified, is included in the powers delegated to the government? This, sir, must prove the necessity of a full and explicit declaration of rights; and when we further consider the extensive, the undefined powers vested in the administrators of this system, when we consider the system itself as a great political compact between the governors and the governed, a plain, strong, and accurate criterion by which the people might at once determine when, and in what instance, their rights were violated is a preliminary without which this plan ought not to be adopted. So loosely, so inaccurately are the powers which are enumerated in this Constitution defined, that it will be impossible, without a test of that kind, to ascertain the limits of authority and to declare when government has degenerated into oppression. In that event the contest will arise between the people and the rulers. "You have exceeded the powers of your office, you have oppressed us" will be the language of the suffering citizens. The answer of the government will be short: "We have not exceeded our power; you have no test by which you can prove it." Hence, sir, it will be impracticable to stop the progress of tyranny, for there will be no check but the people, and their exertions must be futile and uncertain; since it will be difficult indeed, to communicate to them the violation that has been committed, and their proceedings will be neither systematical nor unanimous. It is said, however, that the difficulty of framing a bill of rights was insurmountable; but, Mr. President, I cannot agree in this opinion. Our experience, and the numerous precedents before us, would have furnished a very sufficient guide. At present there is no security, even for the rights of conscience, and under the sweeping force of the sixth Article every principle of a bill of rights, every stipulation for the most sacred and invaluable privileges of man, are left at the mercy of government.

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