

Patrick Henry Speech in the Virginia Convention, 17 June 1788

Mr. Henry,—Mr. Chairman.—We have now come to the ninth section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark, that there is a Bill of Rights in that Government. There are express restrictions which are in the shape of a Bill of Rights: But they bear the name of the ninth section. The design of the negative expressions in this section is to prescribe limits, beyond which the powers of Congress shall not go. These are the sole bounds intended by the American Government. Whereabouts do we stand with respect to a Bill of Rights? Examine it, and compare it to the idea manifested by the Virginian Bill of Rights, or that of the other States. The restraints in this Congressional Bill of Rights, are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this ninth section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended, but when in cases of rebellion, or invasion, the public safety may require it. It results clearly, that if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up. For instead of this, every thing is given up, which is not expressly reserved.—It does not speak affirmatively, and say that it shall be suspended in those cases. But that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negated, shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia Bill of Rights interdicts the relinquishment of the sword and purse without controul. That Bill of Rights secures the great and principal rights of mankind. But this Bill of Rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what is to become of the old continental paper dollars? Will not this country be forced to pay it in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve an answer: But it is an all important question. Because the property of this country is not commensurate to the enormous demand. Our own Government triumphs with infinite superiority when put in contrast with that paper.—The want of a Bill of Rights will render all their laws, however oppressive, constitutional.

If the Government of Virginia passes a law in contradiction to our Bill of Rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy: For the publication from time to time, will amount to nothing; and they may conceal what they may think requires secrecy. How different is it in your own Government?—Have not the people seen the journals of our Legislature every day during every session? Is not the lobby full of people every day? Yet, Gentlemen say, that the publication from time to time is a security unknown in our State Government! Such a regulation would be nugatory and vain, or at least needless, as the people

see the journals of our Legislature, and hear their debates every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the Government. You are told, that your rights are secured in this new Government. They are guarded in no other part but this ninth section. The few restrictions in that section are your only safeguards. They may controul your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress: For these are not within the restrictions of the ninth section.

If Gentlemen think that securing the slave trade is a capital object; that the privilege of the *habeas corpus* is sufficiently secured; that the exclusion of *ex post facto* laws will produce no inconvenience; that the publication from time to time will secure their property; in one word, that this section alone will sufficiently secure their liberties, I have spoken in vain.—Every word of mine, and of my worthy coadjutor [George Mason], is lost. I trust that Gentlemen, on this occasion, will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right secured, before they agree to that paper. These most important human rights are not protected by that section, which is the only safeguard in the Constitution.—My mind will not be quieted till I see something substantial come forth in the shape of a Bill of Rights.

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