Samuel Spencer, Speech in the Ratifying Convention, 29 July 1788

Mr. SPENCER. Mr. Chairman, I hope to be excused for making some observations on what was said yesterday, by gentlemen, in favor of these two clauses. The motion which was made that the committee should rise, precluded me from speaking then. The gentlemen have showed much moderation and candor in conducting this business; but I still think that my observations are well founded, and that some amendments are necessary. The gentleman said, all matters not given up by this form of government were retained by the respective states. I know that it ought to be so; it is the general doctrine, but it is necessary that it should be expressly declared in the Constitution, and not left to mere construction and opinion. I am authorized to say it was heretofore thought necessary. The Confederation says, expressly, that all that was not given up by the United States was retained by the respective states. If such a clause had been inserted in this Constitution, it would have superseded the necessity of a bill of rights. But that not being the case, it was necessary that a bill of rights, or something of that kind, should be a part of the Constitution. It was observed that, as the Constitution is to be a delegation of power from the several states to the United States. a bill of rights was unnecessary. But it will be noticed that this is a different case.

The states do not act in their political capacities, but the government is proposed for individuals. The very caption of the Constitution shows that this is the case. The expression, "We, the people of the United States," shows that this government is intended for individuals; there ought, therefore, to be a bill of rights. I am ready to acknowledge that the Congress ought to have the power of executing its laws. Heretofore, because all the laws of the Confederation were binding on the states in their political capacities, courts had nothing to do with them; but now the thing is entirely different. The laws of Congress will be binding on individuals, and those things which concern individuals will be brought properly before the courts. In the next place, all the officers are to take an oath to carry into execution this general government, and are bound to support every act of the government, of whatever nature it may be. This is a fourth reason for securing the rights of individuals. It was also observed that the federal judiciary and the courts of the states, under the federal authority, would have concurrent jurisdiction with respect to any subject that might arise under the Constitution. I am ready to say that I most heartily wish that, whenever this government takes place, the two jurisdictions and the two governments — that is, the general and the several state governments — may go hand in hand, and that there may be no interference, but that every thing may be rightly conducted. But I will never concede that it is proper to divide the business between the two different courts. I have no doubt that there is wisdom enough in this state to decide the business, without the necessity of federal assistance to do our business. The worthy gentleman from Edenton dwelt a considerable time on the observations on a bill of rights, contending that they were proper only in monarchies, which were founded on different principles from those of our government; and, therefore, though they might be necessary for others, yet they were not necessary for us. I still think that a bill of rights is necessary. This necessity arises from the nature of human societies. When individuals enter into society, they give up some rights to secure the rest. There are certain human rights that ought not to be given up, and which ought in some manner to be secured. With respect to these great essential rights, no latitude ought to

be left. They are the most inestimable gifts of the great Creator, and therefore ought not to be destroyed, but ought to be secured. They ought to be secured to individuals in consideration of the other rights which they give up to support society.

The trial by jury has been also spoken of Every person who is acquainted with the nature of liberty need not be informed of the importance of this trial. Juries are called the bulwarks of our rights and liberty; and no country can ever be enslaved as long as those cases which affect their lives and property are to be decided, in a great measure, by the consent of twelve honest, disinterested men, taken from the respectable body of yeomanry. It is highly improper that any clause which regards the security of the trial by jury should be any way doubtful. In the clause that has been read, it is ascertained that criminal cases are to be tried by jury in the states where they are committed. It has been objected to that clause, that it is not sufficiently explicit. I think that it is not. It was observed that one may be taken to a great distance. One reason of the resistance to the British government was, because they required that we should be carried to the country of Great Britain, to be tried by juries of that country. But we insisted on being tried by juries of the vicinage, in our own country. I think it therefore proper that something explicit should be said with respect to the vicinage.

With regard to that part, that the Supreme Court shall have appellate jurisdiction both as to law and fact, it has been observed that, though the federal court might decide without a jury, yet the court below, which tried it, might have a jury. I ask the gentleman what benefit would be received in the suit by having a jury trial in the court below, when the verdict is set aside in the Supreme Court. It was intended by this clause that the trial by jury should be suppressed in the superior and inferior courts. It has been said, in defence of the omission concerning the trial by jury in civil cases, that one general regulation could not be made; that in several cases the constitution of several states did not require a trial by jury, — for instance, in cases of equity and admiralty, — whereas in others it did, and that, therefore, it was proper to leave this subject at large. I am sure that, for the security of liberty, they ought to have been at the pains of drawing some line. I think that the respectable body who formed the Constitution should have gone so far as to put matters on such a footing as that there should no danger. They might have provided that all those cases which are now triable by a jury should be tried in each state by a jury, according to the mode usually practised in such state. This would have been easily done, if they had been at the trouble of writing five or six lines. Had it been done, we should have been entitled to say that our rights and liberties were not endangered. If we adopt this clause as it is, I think, notwithstanding what gentlemen have said, that there will be danger. There ought to be some amendments to it, to put this matter on a sure footing. There does not appear to me to be any kind of necessity that the federal court should have jurisdiction in the body of the country. I am ready to give up that, in the cases expressly enumerated, an appellate jurisdiction (except in one or two instances) might be given. I wish them also to have jurisdiction in maritime affairs, and to try offences committed on the high seas. But in the body of a state, the jurisdiction of the courts in that state might extend to carrying into execution the laws of Congress. It must be unnecessary for the federal courts to do it, and would create trouble and expense which might be avoided. In all cases where appeals are proper, I will agree

that it is necessary there should be one Supreme Court. Were those things properly regulated, so that the Supreme Court might not be oppressive, I should have no objection to it.

Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution,* Vol. 4, Philadelphia: J.B. Lippincott and Company, pp.152-155.