

George Nicholas Speech in the Virginia Convention, 16 June 1788

Mr. *George Nicholas*, in answer to the two Gentlemen last up, observed, that though there was a Declaration of Rights in the Government of Virginia, it was no conclusive reason that there should be one in this Constitution. For, if it was unnecessary in the former, its omission in the latter could be no defect. They ought therefore to prove, that it was essentially necessary to be inserted in the Constitution of Virginia: That there were five or six States in the Union, which had no Bill of Rights, separately and distinctly as such. But they annexed the substance of a Bill of Rights to their respective Constitutions. These States, he further observed, were as free as this State, and their liberties as secure as ours. If so, Gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the Government without any exception. It was different in the General Government, to which certain special powers were delegated for certain purposes. He asked, which was the more safe?—Was it safer to grant general powers, than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable Government? Have your citizens been bound by it? They have not, Sir. You have violated that maxim, "That no man shall be condemned without a fair trial."—That man who was killed, not *secundum artem*, was deprived of his life, without the benefit of law, and in express violation of this Declaration of Rights, which they confide in so much. But, Sir, this Bill of Rights was no security.—It is but a paper check.—It has been violated in many other instances. Therefore from theory and practice it may be concluded, that this Government with special powers, without any express exceptions, is better than a Government with general powers, and special exceptions. But the practice of England is against us.—The rights there reserved to the people, are to limit and check the King's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends.—Besides, these reservations being only formed in acts of the Legislature, may be altered by the Representatives of the people, when they think proper. No comparison can be made of this, with the other Governments he mentioned.—There is no stipulation between the King and people. The former is possessed of absolute unlimited authority.

But, Sir, this Constitution is defective, because the common law is not declared to be in force—What would have been the consequences if it had? It would be immutable. But now it can be changed or modified as the Legislative body may find necessary for the community. But the common law is not excluded. There is nothing in that paper to warrant the assertion. As to the exclusion of a jury from the vicinage, he has mistaken the fact:—The Legislature may direct a jury to come from the vicinage. But the Gentleman says, that by this Constitution, they have power to make laws to define crimes, and prescribe punishments; and that consequently we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted.—Congress have power to define and punish piracies and felonies committed on the high seas; and offences against the law of nations: But they cannot define or prescribe the punishment of any other crime whatever, without violating the Constitution. If we had no security against torture, but our Declaration of Rights, we might be tortured to morrow: For it has been repeatedly infringed and disregarded. A Bill of Rights is only an acknowledgement of the pre-existing claim to rights in the people. They belong to us as much as if they had been inserted in the Constitution.—But it is said, that

if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a Bill of Rights, it is not proper here to propose it, as the condition of our accession to the Union. Would you reject this Government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the Gentleman [Patrick Henry] does not oppose it on this ground solely. Is there another reason? He said, that it is not only the general wish of this State, but of all the States to have a Bill of Rights. If it be so, where is the difficulty of having this done by way of subsequent amendments? We shall find the other States willing to accord with their own favourite wish. The Gentleman last up [William Grayson], says, that the power of legislation includes every thing. A *general* power of legislation does. But this is a special power of legislation: Therefore it does not contain that plenitude of power which he imagines. They cannot legislate in any case, but those particularly enumerated. No Gentleman who is a friend to the Government ought to withhold his assent from it for this reason.

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