

purely national. The honorable member was pleased to say that the sword and purse included everything of consequence. And shall we trust them out of our hands without checks and barriers? The sword and purse are essentially necessary for the government. Every essential requisite must be in Congress. Where are the purse and sword of Virginia? They must go to Congress. What is become of your country? The Virginian government is but a name. It clearly results, from his last argument, that we are to be consolidated. We should be thought unwise, indeed, to keep two hundred legislators in Virginia, when the government is, in fact, gone to Philadelphia or New York. We are, as a State, to form no part of the government. Where are your checks? The most essential objects of government are to be administered by Congress. How, then, can the State governments be any check upon them? If we are to be a republican government, it will be consolidated, not confederated.

The means, says the gentleman, must be commensurate to the end. How does this apply? All things in common are left with this government. There being an infinitude in the government, there must be an infinitude of means to carry it on. This is a sort of mathematical government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of representatives, and an unimpeded reversion of it back to the people, at short periods, form the principal traits of a republican government. The idea of a republican government, in that paper, is something superior to the poor people. The governing persons are the servants of the people. There, the servants are greater than their masters; because it includes infinitude, and infinitude

excludes every idea of subordination. In this the creature has destroyed and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument, despotism has made way in all countries where the people unfortunately have been enslaved by it. We are told, the sword and purse are necessary for the national defence. The junction of these, without limitation, in the same hands, is, by logical and mathematical conclusions, the description of despotism.

The reasons adduced here to-day have long ago been advanced in favor of passive obedience and non-resistance. In 1688, the British nation expelled their monarch for attempting to trample on their liberties. The doctrine of Divine Right and Passive Obedience was said to be commanded by Heaven—it was inculcated by his minions and adherents. He wanted to possess, without control, the sword and purse. The attempt cost him his crown. This government demands the same powers. I see reason to be more and more alarmed. I fear it will terminate in despotism. As to his objection of the abuse of liberty, it is denied. The political inquiries and promotions of the peasants are a happy circumstance. A foundation of knowledge is a great mark of happiness. When the spirit of inquiry after political discernment goes forth among the lowest of the people, it rejoices my heart. Why such fearful apprehensions? I defy him to show that liberty has been abused. There has been no rebellion here, though there was in Massachusetts. Tell me of any country which has been so long without a rebellion. Distresses have been patiently borne in this country, which would have produced revolutions in other countries. We strained every nerve to make provisions to pay off our soldiers and offi-

cers. They, though not paid, and greatly distressed at the conclusion of the war, magnanimously acquiesced. The depreciation of the circulating currency very much involved many of them, and thousands of other citizens, in absolute ruin; but the same patient fortitude and forbearance marked their conduct. What would the people of England have done in such a situation? They would have resisted the government, and murdered the tyrant. But in this country no abuse of power has taken place. It is only a general assertion, unsupported, which suggests the contrary. Individual licentiousness will show its baneful consequences in every country, let its government be what it may.

But the honorable gentleman says responsibility will exist more in this than in the British Government. It exists here more in name than anything else. I need not speak of the executive authority. But consider the two houses—the American Parliament. Are the members of the Senate responsible? They may try themselves, and, if found guilty on impeachment, are to be only removed from office. In England the greatest characters are brought to the block for their sinister administration. They have a power there, not to dismiss them from office, but from life, for malpractices. The king himself cannot pardon in this case. How does it stand with respect to your lower house? You have but ten. Whatever number may be there, six is a majority. Will your country afford no temptation, no money to corrupt them? Cannot six fat places be found to accommodate them? They may, after the first Congress, take any place. There will be a multiplicity of places. Suppose they corruptly obtain places. Where will you find them to punish them? At the furthest parts of the Union; in the ten miles square, or within a

State where there is a stronghold. What are you to do when these men return from Philadelphia? Two things are to be done. To detect the offender and bring him to punishment. You will find it difficult to do either.

In England, the proceedings are openly transacted. They deliver their opinions freely and openly. They do not fear all Europe. Compare it to this. You cannot detect the guilty. The publication from time to time is merely optional in them. They may prolong the period, or suppress it altogether, under pretence of its being necessary to be kept secret. The yeas and nays will avail nothing. Is the publication daily? It may be a year, or once in a century. I know this would be an unfair construction in the common concerns of life. But it would satisfy the words of the Constitution. It would be some security were it once a year, or even once in two years. When the new election comes on, unless you detect them, what becomes of your responsibility? Will they discover their guilt when they wish to be re-elected? This would suppose them to be, not only bad men, but foolish men, in pursuit of responsibility. Have you a right to scrutinize into the conduct of your representatives? Can any man, who conceives himself injured, go and demand a sight of their journals? But it will be told that I am suspicious. I am answered, to every question, that they will be good men. In England, they see daily what is doing in Parliament. They will hear from their Parliament* in one thirty-ninth part of the time that we shall hear from Congress in this scattered country. Let it be proposed, in England, to lay a poll tax, or enter into any measure, that will injure one part and produce emoluments to another, intelligence will fly quickly as the rays

of light to the people. They will instruct their representatives to oppose it, and will petition against it, and get it prevented or redressed instantly. Impeachment follows quickly a violation of duty. Will it be so here? You must detect the offence, and punish the defaulter. How will this be done when you know not the offender, even though he had a previous design to commit the misdemeanor? Your Parliament will consist of sixty-five. Your share will be ten out of the sixty-five. Will they not take shelter, by saying they were in the minority—that the men from New Hampshire and Kentucky outvoted them? Thus will responsibility, that great pillar of a free government, be taken away.

The honorable gentlemen wished to try the experiment. Loving his country as he does, he would not surely wish to trust his happiness to an experiment, from which much harm, but no good, may result.

I will speak another time, and will not fatigue the committee now. I think the friends of the opposition ought to make a pause here; for I can see no safety to my country if you give up this power.

THE BILL OF RIGHTS

DELIVERED IN THE VIRGINIA CONVENTION, ON THE ADOPTION OF THE
FEDERAL CONSTITUTION, JUNE 14, 1788

Mr. Chairman:

THE necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before. I have observed already that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained

which are not expressly relinquished. I repeat that all nations have adopted this construction—that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, is within the king's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the Revolution, it must be admitted that it was their sense to set down those great rights which ought, in all countries, to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No. She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges which no people inspired with the least glow of patriotic liberty ever did, or ever can, abandon. She is called upon now to abandon them and dissolve that compact which secured them to her. She is called upon to accede to another compact which most infallibly supersedes and annihilates her present one. Will she do it? This is the question. If you intend to reserve your inalienable rights, you must have the most express stipulation; for if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the congressional rights

defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The States were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the States, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw—a government that has abandoned all its powers—the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights—without check, limitation, or control. And still you have checks and guards; still you keep barriers—pointed where? Pointed against your weakened, prostrated, enervated State government! You have a Bill of Rights to defend you against the State government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this conduct of unexampled absurdity? What barriers have you to oppose to this most strong, energetic government? To that government you have nothing to oppose. All your defence is given up. This is a real, actual defect. It must strike the mind of every gentleman. When our government was first instituted in Virginia, we declared the common law of England to be in force.

That system of law which has been admired and has protected us and our ancestors is excluded by that system. Added to this, we adopted a Bill of Rights. By this Constitution some of the best barriers of human rights are thrown away. Is there not an additional reason to have a Bill of Rights? By the ancient common law the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law in criminal cases; and in civil controversies excludes trial by jury altogether. There is, therefore, more occasion for the supplementary check of a Bill of Rights now than then. Congress, from their general powers, may fully go into the business of human legislation. They may be legislative in criminal cases, from treason to the lowest offence—petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our Bill of Rights?—"that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress to prescribe trials and define punishments without this control? Will they find sentiments there similar to this Bill of Rights? You let them loose; you do more—you depart from the genius of your country. That paper tells you that the trial of crimes shall be by jury, and held in the State where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty; a person accused

may be carried from one extremity of the State to another, and be tried not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the fact, but by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors and your own! I need not tell you that, by the common law, a number of hundreders were required on a jury, and that afterward it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your members of Congress will lose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments. These are prohibited by your Declaration of Rights. What has distinguished our ancestors? That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the common law. They may introduce the practice of France, Spain and Germany—of torturing, to extort a confession of crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone. And can any man think it troublesome, when we can, by a small interference, prevent our rights from being lost? If you will, like the Virginian government, give them knowledge of the extent of the rights retained by the people, and the powers of them-

selves, they will, if they be honest men, thank you for it. Will they not wish to go on sure grounds? But if you leave them otherwise, they will not know how to proceed; and, being in a state of uncertainty, they will assume rather than give up powers of implication.

A Bill of Rights may be summed up in a few words. What do they tell us? That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a Bill of Rights does not satisfy me. Without saying which has the right side, it remains doubtful. A Bill of Rights is a favorite thing with the Virginians and the people of the other States likewise. It may be their prejudice, but the government ought to suit their geniuses; otherwise, its operation will be unhappy. A Bill of Rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, etc. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, guarded those indefeasible rights which ought ever to be held sacred! The officers of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitation of their numbers no man knows. They may, unless the general government be restrained by a Bill of Rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and measure, everything you eat, drink, and wear. They ought to be restrained