

DEFINING

PRINCIPLES ➤

George Mason and his **Virginia Declaration of Rights** offered a blueprint for a fledgling government

BY WILLIAM E. (BILL) WHITE

Cold, gray skies settled over Virginia in the winter of 1775-1776. Lord Dunmore, the royal governor, had left the capital of Williamsburg during the previous summer, retreating to a small flotilla of British naval and Loyalist merchant ships. Royal governance had collapsed.

Independence stirred that dreary winter and Virginians began to take upon themselves responsibility for the future.

It began with preparations by Virginia freeholders to elect representatives to the Fifth Virginia Convention, planned for the spring. The first convention had been called in 1774 after Dunmore dissolved the House of Burgesses for protesting the closure of Boston Harbor, and the conventions

had served as a shadow — an extralegal — government for Virginians ever since.

The debate over convention representation became a local referendum on independence. “The old delegates were left out ... and these new ones chose for this very Purpose of an entire independence,” said Landon Carter, a member of the House of Burgesses — and an enthusiastic supporter of independence.

The Fifth Virginia Convention resolved “unanimously, That the Delegates appointed to represent this Colony in General Congress be instructed to propose to that respectable body to declare the United Colonies free and independent States absolved from all ▶



allegiance to, or dependence upon, the Crown or Parliament of Great Britain.”

Having set a course for independence, the convention needed to decide — quickly — what kind of nation it would create.

lous and impracticable proposals.”

He decided the only solution was to get ahead of the problem and put his pen to paper.

There was precedence for a bill of rights. Colonial Patriots often refer-

COLONIAL PATRIOTS *often* **REFERENCED** *the* **BRITISH CONSTITUTION, MAGNA CARTA** *and the* **1689 BILL of RIGHTS** *in their* **PROTEST RHETORIC.**

Then the convention formed a committee to “prepare a Declaration of Rights and such a plan of Government as will be most likely to maintain peace and order in this Colony and secure substantial and equal liberty to the people.” There were more than 30 members, a who’s who of Virginia revolutionaries: Archibald Cary, Henry Lee, Treasurer Robert Carter Nicholas, Patrick Henry, Edmund Randolph, Thomas Ludwell Lee and Mann Page, just to name a few. On May 16, a young James Madison was added to the committee. Two days later, George Mason took his seat representing Fairfax County and was appointed to the committee.

Virginians recognized Mason as one of the foremost political theorists of his time. No fan of the Williamsburg scene, his life at Gunston Hall plantation near the Potomac River was preferable to politics. But his convention presence was fortunate for Virginia — indeed for America.

Mason arrived in Williamsburg late, after the vote for independence, and what he found distressed him. The behemoth committee at work drafting a declaration of rights was “over charged with useless Members” who would “in all probability have a thousand ridicu-

enced the British constitution, Magna Carta and the 1689 Bill of Rights in their protest rhetoric. But these traditions and documents grew out of a British history of limiting the authority of monarchs. In this conception of the world, God created monarchical rule and monarchs granted rights and privileges to their subjects.

Americans were moving past these bulwarks. American political thinkers — led by the likes of Mason — built a new construct on the foundation of Enlightenment philosophy. They believed God vested rights and privileges in the individual. Individuals created governments, and therefore governments were subject to the citizenry.

That May of 1776 in Williamsburg, Mason gave expression to nascent American doctrine.

Mason did not simply list individual rights or liberties in the Virginia Declaration of Rights. The document outlined the principles on which Virginians would found a new government. After that, Mason enumerated individual rights and then — probably most important — he defined civic responsibility.

Mason originally penned 10 articles, the bulk of which were written in his

own hand. More articles were added as the document made its way through the committee. Many now sound familiar.

There were key principles of self-government. Mason began with the assertion “That all Men are born equally free and independent, and have certain inherent Rights.” Government is the people’s servant, instituted for the “common Benefit.” There should be frequent and regular elections. If the community finds the government to be inadequate, it has a “Right to reform, alter or abolish it.” Thomas Jefferson drew on this language a few weeks later as he drafted the Declaration of Independence. Mason went further: No group of individuals deserved special privileges from the community. And there would be no hereditary offices. Americans would suffer no aristocratic class.

Other articles focused on individual rights. A person’s property could not be taken without the consent of the owner. In criminal prosecutions, individuals had the right to know the nature of the charges, meet “Accusers or Witnesses” in court and present evidence to a jury. No one could be compelled to give self-incriminating evidence. Mason also included language to ensure toleration in the exercise of religion.

Two articles in the original draft appear in a hand other than Mason’s. The freedom of the press provision is in Thomas Ludwell Lee’s handwriting, as is a provision to prohibit *ex post facto* laws — or laws that make illegal an action that was legal when committed. The convention would later strike this article completely.

Committee members suggested additions and elaborations to Mason’s draft, though it seems that Mason served as the editor and drafted most of the revised language. At one point, the

number of articles swelled to 18, including provisions for free elections and the right to suffrage. The committee also added an article requiring legal warrants — supported by evidence — for searching or seizing property or person.

The Declaration of Rights was presented to the convention on May 27 by committee chair Archibald Cary. When debate opened two days later, Robert Carter Nicholas objected to the very first line of the first article: “That all men are born equally free and independent.” If all men are equal, what about enslaved Africans? Did the convention mean, Nicholas asked, to abolish slavery? Would the language encourage and condone slave insurrection? The question so stymied the convention that the Declaration was tabled until June 3. When it reconvened, Edmund Pendleton, president of the convention and one of Virginia’s most able lawyers, offered a modifying phrase. The new article read:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

It was a lawyer’s sleight of hand. Enlightenment philosophy held that individuals voluntarily entered into a state of society. Slaves were chattel and therefore excluded. The compromise did not explain how a free republic could tolerate the institution of slavery. Instead, it skirted the issue completely and, as a result, allowed the convention to move on. ▶



African Americans and critics of slavery did not move on, however. The statement that all were “equally free and independent” echoed in the Declaration of Independence. It echoed on the Revolutionary War battlefield. It challenged courts and slaveowners to justify themselves. It buoyed the abolitionist movement, and four score and seven years later, it echoed from Abraham Lincoln’s lips as he dedicated the Gettysburg battlefield cemetery and called on America to embrace the long-withheld promise of freedom and equality.

Some delegates in the convention also challenged Mason’s provision for religious tolerance. Mason based the article on Great Britain’s 1689 Toleration Act. But toleration of religion was not freedom of religion. Government and religion were intertwined in the British Empire. The Toleration Act confirmed the Church of England as the state church but tolerated non-Anglican Christians. Virginia required non-Anglicans to license and register meetinghouses and ministers. Dissenters were also required to support the Anglican vestry. Non-Anglicans were, in other words, second-class citizens. Baptists in Virginia had long refused the authority of government to dictate or regulate their relationship with God. Mere toleration was not enough to secure the support of religious dissenters for a new government.

The young James Madison drafted an amendment granting freedom of conscience that effectively disestablished the Anglican Church. It was a step too far. Conservative delegates could not sanction a complete separation between church and state. Madison redrafted the language and accepted amendments in the final document to create the 16th article.

That religion, or the duty which we owe to our Creator and the manner of

discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Ten years later, in 1786, the Virginia General Assembly would enact Thomas Jefferson’s Statute for Religious Freedom declaring that “Almighty God hath created the mind free.”

For George Mason, the principles of government and individual freedoms enumerated in a document were insufficient guarantees. The guarantee of freedom rested with the people and Mason included civic responsibility in his earliest draft. It became the 15th article.

That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

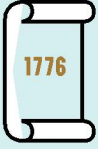
Mason defined citizenship by responsibility. The people do not simply receive blessings — they work to guarantee them for themselves and the whole community. Justice denied to one damages the freedoms of all. Personal moderation and self-restraint benefit the community. And public virtue — which the Founders understood to be service — is the soul of the republic.

These are the principles and freedoms on which Virginians — indeed all Americans since 1776 — built community and commonwealth. In this remarkable moment, Mason and his colleagues took everything Europeans understood about the administration of government and

IN SO MANY WORDS

George Mason's ideals and phrasing are found in a variety of documents


THE DOCUMENT



1776

VIRGINIA DECLARATION OF RIGHTS


"That all power is vested in, and consequently derived from, the people ..."



1776

DECLARATION OF INDEPENDENCE


"Governments are instituted among Men, deriving their just powers from the consent of the governed."



1789

FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN

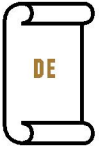
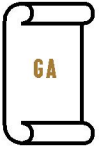


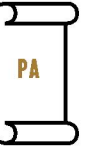

"The safeguard of the rights of man and the citizen requires public powers. These powers are therefore instituted for the advantage of all."



1791

BILL OF RIGHTS

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

STATE CONSTITUTIONS THAT INCLUDED A BILL OF RIGHTS
 Delaware, Georgia, Massachusetts, New York, Pennsylvania, Virginia

► Read the full text of the Virginia Declaration of Rights: history.org/varights

turned it on its head. Enlightenment philosophers had theorized about these principles for decades, but it was only theory. Mason and the Fifth Virginia Convention put principles into action.

It is hard to overstate the impact of Mason's Declaration of Rights. Jefferson drew from Mason's language and concepts to write the Declaration of Independence. New states adopted bills of rights modeled on Mason's language as they wrote constitutions. When the Constitutional Convention met in 1787, George Mason was in the hall. He refused to sign the new document because it did not have a bill of rights and he joined the Anti-federalists in opposition to ratification. Insistence led to a compromise — a bill of rights would follow ratification. And

no one reading the federal Bill of Rights can doubt that the spirit of George Mason and the Fifth Virginia Convention was alive in James Madison as he penned those first amendments to the Constitution.

Still, the federal Constitution and Bill of Rights do not quite capture the full essence of George Mason. We are

not subjects and no human grants or confers anything to us, but Mason also implores us to be citizens with responsibility for our community, our government and our destiny. ▼



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