

# George Mason: Agrarian-Minded Constitutionalist, 1787-1788

By STANLEY WILLIS\*

George Mason's role in the move toward union is not easily characterized. Born to wealth and position, the squire of Gunston Hall in Virginia's Northern Neck became one of the state's leading men. Possessed of a strong intellect and a reflective nature buttressed by wide reading in history, law, and philosophy, Mason was the dean of Virginia's intellectual rebels.<sup>1</sup> His intimate acquaintance with the classic principles of republicanism is reflected in "The Virginia Declaration of Rights" which he drew up in 1776. He recognized the need for a stronger central government in 1787, yet refused to sign the completed Constitution which he felt lacked sufficient safeguards against the creation of an aristocracy or a monarchy. As one of the leading Antifederalists during the 1787-1788 ratification struggle, he provided many of the key arguments used by the opponents of the Constitution.

Was Mason a Virginian or an American? Was he more interested in the liberties of the individual or in protecting the interests of the propertied classes? As a constitution maker and opponent of the completed document, does he fit the broad interpretations advanced by historians of the Constitutional Convention and the ratification struggles? Only by seeking answers to these and related questions, can the historian hope to understand the important part played by this enigmatic Founding Father.

Charles A. Beard, in his pioneering work, *An Economic Interpretation of the Constitution of the United States*, (1913), suggested that the framers used the system of checks and balances as an institutional means to protect their property rights against invasion by a democratic majority.<sup>2</sup> This quickly became the pervasive inter-

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1. Robert Rutland, *George Mason: Reluctant Statesman*. (Charlottesville, 1963), xiv.

2. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*. (New York, 1913, 1935), 154-164; Cecilia M. Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly*, XII (January, 1955), 4.

pretation of the Constitution. Beard found Mason's political philosophy adequately expressed in his proposal to establish a property qualification for Senators. His subsequent refusal to sign the completed instrument, Beard ascribed to "personal economic interests."<sup>3</sup>

Recently two historians have challenged this interpretation on its own terms. Robert E. Brown in *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution,"* published in 1956, used Beard's own evidence to draw different conclusions. Brown found that while much of Mason's property was personalty, particularly in slaves and private debts, he owned few public securities—the kind of personalty that had excited Beard's interest.<sup>4</sup> Further, Brown contends that Mason's marriage to the daughter of a well-to-do merchant should have made him pro-personalty and a supporter of the Constitution rather than one of its most vociferous opponents.<sup>5</sup>

Forrest McDonald's *We the People: The Economic Origins of the Constitution*, published in 1958, was written to examine Beard's thesis as history by filling in the details of Beard's "frankly fragmentary" work and to show that the "facts" can be used to support a number of economic arguments.<sup>6</sup> Like Brown, he rejects Beard's central thesis. Characterizing Mason as the largest private creditor in the convention, he suggests that Gerry, Lansing, Yates, Mercer, Luther Martin, Randolph, and Mason, all of whom would probably have voted against ratification had the Convention been a ratifying convention, constituted almost an all-star team of personalty interests. Thus, one could argue that the internal conflict in the Convention lay between the men of considerable personalty interests who opposed the Constitution, and men of realty-agrarian interests, debtors, and modest personalty interests who favored it.<sup>7</sup>

McDonald does not reject an economic interpretation of the Constitution as such. As a possible working hypothesis, he suggests that an analysis of state legislation from 1776-1789 shows a consistent theme of mercantilism; yet, many Antifederalists opposed the Con-

3. Beard, *Economic Interpretation*, 206-207. The interests he refers to were Mason's speculations in western lands and his fears that if the Constitution went into effect, Lord Fairfax's heirs would be able to collect quit rents in federal courts, *Ibid.*, 128-129.

4. Robert E. Brown, *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution."* (Princeton, 1956), 90.

5. *Ibid.*, 81.

6. Forrest McDonald, *We the People: The Economic Origins of the Constitution.* (Chicago, 1958), ix.

7. *Ibid.*, 110.

stitution on the grounds of commerce control. From this apparent paradox, he concludes that while Americans were accustomed to a fairly extensive governmental regulation of their economic lives, it was control at the local level. They did not fear governmental power as such, but the centralization of power, particularly in a government well removed from local supervision. This kind of interpretation emphasizes the question of what is the socially desirable relationship between the government and the economy.<sup>8</sup> As will be seen below, this question is central to much of Mason's argument.

More recently, Jackson Turner Main in his massively researched work, *The Antifederalists: Critics of the Constitution 1781-1788*, has approached the problem from the point-of-view of the opponents of the Constitution. In attempting to discern who the Antifederalists were, what their philosophy was, and why they opposed the Constitution, Main finds a socio-economic division between the two groups based on a geographical location, giving a class as well as a sectional interpretation to the struggle.<sup>9</sup>

Basically, the sectional conflict was on east-west lines, a division which does not adequately explain the situation in Virginia. Here the division was between those who lived near the tidal streams and those who did not. He finds the ruling element to be the landed interests clustered around the navigable streams which, in many cases, extended well into the Piedmont. The opposing element in Virginia politics consisted of the small farmer, particularly in the Southside. Between these extremes were the transition counties which often represented the "swing" vote.

Beyond the Blue Ridge, conditions were not so clear cut. While the Valley and the Allegheny counties resembled the Southside in economic interests and social structure, its politics often differed. The Valley sent its agriculture surplus through Alexandria and was therefore inclined to vote with the Northern Neck plantation owners on commercial questions. The Valley and Allegheny counties were also extremely interested in western expansion, and as it became obvious that a strong government was necessary to drive the British from the western posts, this became a dominant factor in transmontane voting patterns. Here, too, these sections found themselves in agreement with the landed interests, most of whom, like

8. *Ibid.*, 408-411.

9. Jackson Turner Main, *The Antifederalists: Critics of the Constitution 1781-1788*. (Chapel Hill, 1961) The Antifederalists were not anti-federal at all. Originally the word Federalist referred to anyone who supported the Confederation, but, over the years, the men who wanted a strong national government appropriated the name for themselves. *Ibid.*, ix.

Mason, were speculators in western lands. Kentucky was primarily interested in the free use of the Mississippi, and, in the ratifying convention, both sides would appeal to that interest.<sup>10</sup>

By this interpretation, Mason, the largest slave and land owner on the Northern Neck and an extensive speculator in western lands, should have been a strong proponent of the Constitution. Yet, Mason, as an individual, does not fit the thesis.

Since Mason, as an historical figure, does not conform with the broad interpretations discussed above, the problem of explaining his position remains. Cecilia M. Kenyon in her article, "Men of Little Faith: The Anti Federalists on the Nature of Representative Government," postulated a possible answer. Rejecting the Beardian interpretation she analyzed the Antifederal arguments and found few positive proposals for remedying the alleged defects. Neither democrats nor legislative majoritarians, the Antifederalists might have provided some impetus on the state level for an extension of power and privilege to the mass of the people, but they lacked the faith and vision to extend these principles nation wide.<sup>11</sup> Certainly Mason can be thus characterized. He shared the large body of political ideas and attitudes held by the Antifederalists and supplied many of their arguments. Yet, the answer is something more than this, and to get at that answer, it is necessary to turn to the records of the Philadelphia Convention and the Virginia Ratifying Convention.

By 1786, it had become clear that Congress as then constituted could not discharge the functions for which it had been created, and it was almost universally agreed that changes in the central government were necessary. The committee which drew up the Articles of Confederation, reacting to the bitterness engendered by an arbitrary government, had been more concerned with controlling the central organ than with giving it the means to do a job. Therefore, while Congress was kept well in hand, the state governments had proved largely ineffective in many areas. Many felt that the state governments were irresponsible. By failing to protect the investments of creditors, they were violating the principle of the sacredness of private property. In Rhode Island debtors happily paid off their obligations in worthless paper money, and responsible people felt that only a strong central government could offer the necessary protection. If property were the only security for life and liberty, inci-

10. *Ibid.*, 28-33.

11. Kenyon, "Men of Little Faith," 40-43.

dents like the Shays' revolt in Massachusetts promised anarchy.<sup>12</sup>

One of the powers not given to Congress was the power of regulating trade, and in the face of a postwar depression, Virginia, in 1786, took the initiative to do something for the merchant. An interstate convention to discuss uniform regulation of commerce was proposed, ostensibly to recommend a course of action for Congress. The convention, held at Annapolis in September, 1786, attracted only five states but some of the delegates had been given powers to consider "other important matters." Out of the discussions came a report calling for a general convention to be held at Philadelphia in May, 1786, to amend the Articles in such a way that it would be adequate to handle the problems that it faced.<sup>13</sup>

George Mason, a non-attending delegate to the Annapolis Convention, was chosen by the Assembly to be one of Virginia's delegates to Philadelphia. This was Mason's first venture in public service outside the state. He preferred the role of behind-the-scenes advisor, and by pleading gout or the press of private business, usually managed to shy away from an active role in public life.<sup>14</sup>

Yet, the obvious seriousness of the crisis had changed Mason's attitude somewhat. Madison, a strong advocate of a more powerful federal government, wrote to Jefferson on April 23, that Mason ". . . will pretty certainly attend. [He] . . . is renouncing his errors on the subject of the confederation, and means to take an active part in the amendment of it."<sup>15</sup> The error to which Madison alludes was Mason's preference for the kind of Confederation then in existence.

Mason arrived in Philadelphia on May 17. After getting the feel of things, he reported his observations to George, Jr. on May 20. Mason was not too surprised to find that the concensus favored a complete alteration of the Confederation with the establishment of a national bicameral legislature based on equal representation and with full power to act directly on the individual. This body would be supreme over the various state legislatures by having a negative on all state legislation. There would also be an executive. Mason recognized the difficulties in organizing such large scale government, but felt that it could be effected with "a proper degree of coolness, liberality and candor."<sup>16</sup>

12. Edmund S. Morgan, *The Birth of the Republic 1763-1789*. (Chicago, 1956), 126-128.

13. *Ibid.*, 129-130.

14. Rutland, *George Mason*, 77-78.

15. Kate Mason Rowland, *The Life of George Mason 1725-1792*. (2 volumes, New York, 1892), II, 99.

16. *Ibid.*, II, 100-102.

Governor Randolph opened the main business of the convention on May 29, when, as spokesman for his Virginia colleagues, he set forth the resolutions which became known as the Virginia Plan. The sixth resolution contained the heart of the plan. This stipulated that each house could originate acts, that the Congress could legislate where the states were not competent, that Congress could veto all state laws contravening the federal document, and that Congress could use force to coerce the states into compliance.<sup>17</sup> In the ensuing debate, Mason, showing his desire for stronger government, argued that punishment could not be executed on a state collectively, but that a government drawing its power from the people must exercise its power directly over the individual.<sup>18</sup>

The following day it was agreed that the legislature should consist of two branches, but the question of how to elect the first branch brought forth vigorous debate.<sup>19</sup> While Mason argued for a more energetic government, he already began to posit the kinds of limiting ideas that would eventually lead him into open opposition to the completed instrument. He proposed election to the larger branch by the people. As it was to be the "grand depository" of the democratic principle, he felt it should know intimately and sympathize with the interests of people in every part of the state. While admitting that the state governments had perhaps been too democratic, he was afraid that the convention might go too far the other way. The rights of all classes must be served.<sup>20</sup>

As the extended debates over the legislative branch continued into mid-August, the nature of Mason's stand began to emerge. Basically his position was one of trying to keep the legislature responsible to the people by having it mirror as nearly as possible the interests of the people through frequent rotation in office and by keeping the representative districts small. Like most of the delegates to the convention, he believed that men tended to abuse power. This dark view of human nature was particularly apparent in his attitude toward the Senate which he feared as the potential basis of an aristocracy. To obviate this possibility he was particularly adamant about not having money bills originate in the Senate.

In reply to Charles Pinckney's motion that the first branch be

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17. Winton U. Solberg, *The Federal Convention and the Formation of the Union of the American States*. (New York, 1958), 78.

18. "Madison's Notes" in Max Farrand, *The Records of the Federal Convention of 1787*. (New Haven, 1911, 3 volumes), I, 34. Hereinafter (F-M).

19. Rowland, *Mason*, II, 109.

20. F-M, I, 48-49.

elected by the state legislatures, Mason argued that the people should choose their own representatives since the new government was to act directly on the populace. The representatives should mirror their constituents and therefore should be resident among them. While this sort of democratic procedure had its drawbacks, it had the advantage of favoring the rights of the people, and he felt that even the "diseases" of the people should be represented as the surest way to cure them.<sup>21</sup> Similarly he opposed the smallness of a quorum in the first branch. With only sixty-five members, thirty-eight would be a quorum and therefore twenty would be a majority. This would be too few to make America's laws, since they could not have the necessary local information or the confidence of the people.<sup>22</sup>

Mason continued to demand that some power be left to the states. One power could not pervade all parts with equal justice. Since the national legislature would have a negative on state legislation, he felt that the states should have some way to protect their interests against federal encroachment. One way to do this would be to elect the second branch by the state legislatures, a suggestion which received unanimous approval.<sup>23</sup>

In July Mason demanded a precise standard for periodically reapportioning representation. Without written checks on power those who had it were reluctant to give it up. He advocated western states coming into the union on an equal footing with the old. To those who argued that these states would be poor, and thereby democratic, Mason answered that in the future they might become populous and wealthy, and, until then, population was a sufficient indicator of wealth. But unless some written provision were made, within a few years the minority might rule the majority.<sup>24</sup>

Gouverneur Morris in particular favored Senate origin for money bills. While it had been previously decided that such bills would originate in the first branch, he brought it up again on August 8. Mason objected, and said that he had agreed to their long term in office to get this concession. If this power were placed in the hands of such a small body, it would be but a short step to an aristocracy. And unless money bills originated exclusively in the House, he would oppose equality of representation in the Senate, "not from obstinancy but duty and conscience."<sup>25</sup>

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21. *Ibid.*, I, 133-134.

22. *Ibid.*, I, 569.

23. *Ibid.*, I, 155-156.

24. *Ibid.*, I, 579, 586.

25. *Ibid.*, II, 224, 234.

The Senate did not represent the people; they were not chosen frequently and would stay at the seat of government and hatch out schemes for their own aggrandizement. Therefore, they should have no power to tax the people. Already, Mason contended, the "Senate could sell the whole country by means of treaties."<sup>26</sup>

Another indication of Mason's desire to extend the rights of the people came in response to Morris's move to limit the right to vote for legislators to freeholders. Citing that eight or nine states already had more advanced laws, he was of the opinion that every man who gave evidence of attachment and permanent interest to the common aims of society should share in all its rights and privileges. Property was more than land. Was the merchant, the married man, the parent with children to be viewed with suspicion? This broadens the state-in-society principle somewhat and comes close to Plato's idea that wealth is knowledge, justice, virtue and happiness.<sup>27</sup>

In the debates on the executive branch, which took place throughout the course of the Convention, Mason spoke often. While his views changed a number of times, he probably would have preferred a three-headed executive as being better able to represent the people and also to better resist encroachment by the legislature. But accepting a single executive, he attempted to check the office in such a way as to prevent the creation of a monarchy, and to protect it against possible legislative domination.

In his early opposition to a single executive, he flirted with the idea of popular election but was easily persuaded as to its impracticability. By making the executive ineligible for reelection, the republican maxim of frequent rotation would be served. In practice, this would obviate the reelection of weak men and the possibility of legislative collusion.<sup>28</sup>

During these early broad discussions, Mason asked how the executive was to be regulated. His preference, and one he frequently referred to, was for a council of revision with a negative over all laws. Curiously, in light of his republican insistence on balanced government, he wished this revisory council to consist of members of the federal supreme court acting in concert with a plural executive because this combination would be better able to protect itself from

26. *Ibid.*, II, 273-274; 297.

27. *Ibid.*, II, 201-205; Solberg, *The Federal Convention*, xxi; See also the "Declaration of Rights," where every man who could give evidence to an interest in and attachment to the community was entitled to a vote. Robert Allen Rutland, *The Birth of the Bill of Rights*. (Chapel Hill, 1955), 38.

28. *F-M*, I, 68-69, 97.



the legislature.<sup>29</sup> He expanded his argument further by saying that the council of revision would hinder the passage of unjust laws and put a brake on demagogues. He rejected Luther Martin's suggestion that this would constitute a double negative for the supreme court justices by contending that, as judges, they could impede the operation of laws only through the power of judicial review, in which case, even if the law were bad, it operated until judicial action was taken. However, his plan would make further use of their training by preventing the passage of improper laws in the first place.<sup>30</sup>

Although Mason recognized the possible advantages of a strong executive, he was afraid that the secrecy of the office combined with the natural lust for power, in case of a single executive would degenerate into a monarchy; "A government so contrary to the genius of the people that they will reject even the appearance of it."<sup>31</sup> He likewise rejected James McClurg's proposal of executive continuance during good behavior as the surest way to an hereditary monarchy.<sup>32</sup>

Roger Sherman's proposal to allow the legislature to remove the executive at its pleasure met Mason's disapproval since it would make the executive the creature of the legislature.<sup>33</sup> Yet, he favored impeachment. "Shall any man be above justice?" He would have added "maladministration" to "treason and bribery" but settled for "other high crimes and misdemeanors."<sup>34</sup>

As to methods of choosing the executive, Mason favored election by the national legislature. On July 26, he made a comprehensive speech reviewing the various plans that had been proposed. He was in agreement with Elbridge Gerry that popular election might throw the election into the hands of the Cincinnati, as perhaps the only organized national group who could control "the ignorance of the people." As the "polestar of his political conduct was the preservation of the rights of the people," he felt that the executive should not be eligible for reelection. But if this right were to be accorded, he should first be returned to the status of private citizen to once again get the sense of the people.<sup>35</sup>

Mason was particularly anxious to guard against a marriage of the Senate and the executive. His was in constant fear that the

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29. *Ibid.*, I, 110-114.

30. *Ibid.*, II, 74, 78.

31. *Ibid.*, I, 110-114.

32. *Ibid.*, II, 35.

33. *Ibid.*, I, 86.

34. *Ibid.*, II, 550.

35. *Ibid.*, II, 112, 118-120.

Senate, if not closely hemmed in, would subvert the Constitution and revert to an aristocracy. He opposed the Senate as the proper body to choose between presidential candidates when no candidate had a majority. Believing that in nineteen elections out of twenty a clear majority would not be effected, Mason pictured the Senate as the real electoral body in most cases. Since the existing president would normally be among the first five, collusion between the Senate and the incumbent executive would be likely.<sup>36</sup>

In the interest of balanced government, Mason felt the office of Vice-President was an encroachment on the Senate. He also opposed referring appointments to either branch of the legislature. Yet, since the appointive power was too vast for the president alone, he recommended a privy council of six, chosen from the three sections of the country, with Senate concurrence necessary only for treaties and ambassadorial appointments. This would prevent constant Senate sessions as well as keep the departments distinct and separate.<sup>37</sup>

Earlier Mason had used the power of appointment to illustrate the possibility of a monarchy. By refusing to assent to laws, the executive could coerce the legislature into approving his appointments. The people, Mason warned, would not ratify a frame of government giving this much power to the executive. "Notwithstanding the oppression & injustice experienced among us from democracy; the genius of the people is in favor of it, and the genius of the people must be consulted."<sup>38</sup>

This refrain, "genius of the people," runs throughout the Convention and is perhaps Montesquieu's chief contribution to the thought of the delegates. Each people had a constitutive principle unique to themselves, "the spirit of the laws" or "genius of the people," which determined their form of government and, at the same time, operated as a limit on power. This ultimate check on government in a democratic republic was public virtue or the public spirit.<sup>39</sup> Yet, in opposing the Constitution, Mason did not put as much faith in the "genius of the people" as his speeches would indicate.

Next to the debate over representation in the legislature, perhaps the keenest fight during the Convention was over the sectional issues, commerce and slavery. When the two were ultimately joined,

36. *Ibid.*, II, 500, 514, 527.

37. *Ibid.*, II, 537.

38. *Ibid.*, I, 104.

39. Solberg, *The Federal Convention*, xxviii-xxix.

Mason found his conscience pitted against his sectional loyalty. His opposition to slavery was well known, but so was the fact of his extensive slave holdings. Being in a quandary, Mason moved to the sidelines during the debates over the three-fifths clause,<sup>40</sup> but during the August-September debates over commerce stated his views fully.

Mason, the sectionalist and the planter, fought an export tax. Obviously this would imperil Southern security and be desirable to an increasingly populous North. He professed his jealousy for the production of the Southern states, or as he called them, the "staple states." An interested majority would always oppress the minority, and the "staple states" were in an eight to five minority.<sup>41</sup>

The slave trade being discussed concurrently, Mason struck out in a bitter attack. He branded the slave trade an evil originating with the British merchants against Virginia's wishes. While already illegal in Virginia, Maryland, and North Carolina, its continuance in South Carolina and Georgia would spread slavery throughout the new states. It would discourage art and manufacturing, make the poor despise labor, prevent white immigration, and affect manners. He left himself open for personal rebuttal by saying that "every master was born a petty tyrant." The general government should have authority to control slave importation, an evil right that should be given up.<sup>42</sup>

But to South Carolina and Georgia the continued slave importation was a *sine qua non* to adoption of the new government. On August 29, General Charles Cotesworth Pinckney of South Carolina stated that while it was to the interest of the Southern states to have no regulation of commerce, the liberal views of the Northern states on the slavery issue made it proper that no fetters be placed on the central government's power to regulate commerce.<sup>43</sup> The deal had been effected.

Mason tried to keep the debate alive. He averred that if the government were to be lasting, it had to be founded in the "confidence & affection of the people." The majority would be governed by their interests, and the North was in the majority in both houses. Therefore, said Mason, the South was in effect binding itself over hand and foot to the Eastern states.<sup>44</sup>

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40. Rutland, *George Mason*, 86.

41. *F-M*, II, 305, 362.

42. *Ibid.*, II, 570.

43. *Ibid.*, II, 449-450.

44. *Ibid.*, II, 451.

Mason would date his own change in attitude toward the Constitution from the consummation of the North-South deal. He continued to vie for a change in the commerce clause, and toward the close of the session, was able to extract a small concession in his desire that the states be allowed to lay incidental duties to defray the cost of inspection, packing, and storing products. This was in view of the inconvenience to the tobacco planter of having to pay a tax prior to export. Then on September 15, he made one last effort, asking that no navigation acts be passed before 1808. But his was a lonely voice.<sup>45</sup>

Mason had come to Philadelphia in May, feeling, as apparently the general public felt, that guarantees of personal rights had been well established—in Virginia by his own Declaration of Rights. But as the proceedings began to unfold, and as the broader issues fundamental to the establishment of the new government were debated, Mason began to feel that the rights and freedoms of the people were being put in jeopardy. Much of his concern throughout the debates, therefore, was to guard against the subversion of civil liberties.<sup>46</sup>

On August 20, two weeks after the Committee of Detail reported out a draft constitution, Charles Pinckney submitted a list of propositions that amounted to a bill of rights. These included freedom of the press, no military quartering without consent, and no religious test or qualification for office. While not adopted as a whole, over the next several days certain of Pinckney's suggestions were incorporated into the body of the Constitution, indicating a revival of interest in guarantees of personal liberty.<sup>47</sup>

By this point in the Convention, the summer heat, chronic gout, frayed nerves brought about by long sessions, and the commerce-slavery compromise had combined to put Mason into opposition.<sup>48</sup> For the rest of the Convention, speaking often, Mason moved to an open break with the main body. Yet, it was not until September 12, in the debate over jury trials, that Mason advocated a bill of rights. Such a bill would give "great quiet to the people," and he indicated that with the aid of the state declarations, most of which were modeled after his Virginia Declaration, such a bill could be prepared in a few hours. Gerry so moved, seconded by Mason. Sherman argued that the state declarations would not be repealed by the Constitution and were sufficient for the purpose. Mason disputed this, contend-

45. *Ibid.*, II, 605, 625, 631.

46. *Ibid.*, II, 119-120.

47. Rutland, *Bill of Rights*, 113-114; *F-M*, II, 341-342.

48. Rutland, *Bill of Rights*, 119.

ing that the laws of the United States would be paramount to the state constitutions, and called the question. Apparently few of the delegates shared Mason's fears; the proposal was unanimously opposed.<sup>49</sup>

With four days remaining, it had become obvious that Mason would not sign the Constitution. However, he continued to debate. He moved to get "all" of the proceedings of the House published. He reiterated his fear of a standing army. He opposed prohibition of *ex post facto* laws on the grounds that it was not clear that the prohibition was limited to criminal cases, and that they were unavoidable in civil cases.<sup>50</sup>

Finally, on Randolph's motion for state amendments to be decided on at another convention, Mason offered an immediate second. He spoke of the dangerous power of the new government, and concluded that it would end in either a monarchy or a tyrannical aristocracy. It was improper to submit the Constitution to the people on an all-or-nothing basis; a second convention would know more the ideas of the people. As the Constitution then stood, he could neither sign it here nor support it in his state.<sup>51</sup>

It is difficult to tell exactly when and exactly why Mason decided definitely to oppose the Constitution. On his personal copy of the September 12, draft, Mason made notes on changes he desired—none of them really fundamental. On the same draft, he wrote out his "Objections to this Constitution of Government," which was in the hands of some of the members before the Convention closed. When widely distributed throughout the states, in 1788, this pamphlet became the basis for much of the Antifederalist argument. It is probably indicative of his real attitude that his opening objection was the lack of a bill of rights. This was followed by a statement of fundamental republican principles which Mason alleged had been violated. These included: too few representatives really to know the temper of the people; the power of the Senate over money bills; the overall strength of the Senate contributing to an unbalanced government; a lack of a constitutional council for the President; a dangerous blending of the branches in the office of the Vice-President; the power of a simple majority to control commerce; and the continued importation of slaves for an additional twenty years.<sup>52</sup>

49. *Ibid.*, 115-116; *F-M*, II, 587-588.

50. *F-M*, II, 617.

51. *Ibid.*, II, 631-632.

52. *Ibid.*, II, 636-640; Rowland, *Mason*, II, 383-385; "The Objections of the Hon. George Mason to the proposed Federal Constitution. Addressed to the Citizens of Virginia." Broadside reprinted in *Pamphlets*

In Madison's letter to Jefferson on October 24, forwarding a copy of the Constitution and making extensive explanatory comments, he discussed Mason's stand. Reporting that Mason "left Philada. in an exceeding ill humor," he suggested that part of his opposition stemmed from a testiness arising from the "impatience that prevailed" near the close of the session.<sup>53</sup> Listing some of Mason's objections, including "the want of a Bill of Rights" as the fatal one, Madison correctly forecast that Mason would muster every possible objection in an effort to justify his actions.<sup>54</sup>

During the nine months between the end of the Convention and the opening of Virginia's ratifying convention, both sides maneuvered for position. Mason and Henry were the most notable Virginia opponents, while the lukewarm Randolph moved steadily to a position of support.

Gradually the focal point of the Antifederalist argument throughout the states became the lack of a bill of rights. This was in no wise a "phoney issue" but simply one on which all opponents could agree. By this time it probably was the chief reason for Mason's opposition. However, in this respect, it is interesting to note that in 1792, a few weeks before his death, Mason indicated to Jefferson that prior to the commerce-slave deal in late August, he would gladly have signed the Constitution. Up to that point a bill of rights had gone unmentioned in debate.<sup>55</sup>

The Virginia Ratifying Convention convened on June 2, 1788, elected Edmund Pendleton president and, on Mason's motion, adjourned until the following day to meet at the New Academy, on Shockoe Hill.<sup>56</sup> The second day was taken up with preliminary skirmishes. Mason inadvertently played into his opponent's hands by proposing that "to secure the happiness and liberty of the people," it was necessary to undertake a clause by clause examination of the document. This obviated the possibility of the conven-

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*on the Constitution of the United States 1787-1788*, edited by Paul L. Ford. (Brooklyn, N.Y., 1888), 329-332.

53. This was perhaps compounded by a carriage accident near Baltimore while on his way back from the convention with James McHenry of Maryland, Rutland, *George Mason*, 91.

54. Madison to Jefferson, October 24, 1787, Farrand, *Notes*, III, 131-136.

55. Rutland, *Bill of Rights*, 124; Farrand, "fragment" reprinted from Jefferson's papers, *Notes*, III, 367.

56. Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787*. (5 volumes, Philadelphia, 1896), III, 1-2.

tion voting down the complete document following one of Henry's emotional speeches.<sup>57</sup> The lines were drawn on the third day. In reply to Henry's questioning the right of the Philadelphia Convention to write a new Constitution, Governor Randolph, who had been wavering, took his stand. Outlining his position changes to date, he said that he never would "assent to any scheme that will operate a dissolution of the Union, or any scheme which may lead to it." He had come full circle.<sup>58</sup>

Following Randolph, Mason delivered a prepared speech outlining his objections. Going considerably beyond anything he had said at Philadelphia, Mason attacked the tax clause, contending that the power to lay direct taxes changed the Confederation into a national government. Mason believed this change to be subversive to all principles of good government. Two concurrent powers could not long co-exist; the one would destroy the other, and since the national was paramount, the states must be destroyed. Hinging most of his argument on Montesquieu's principle that a republic was only successful in small territories, Mason intoned that sixty-five members who could not know the will of the people would tax those articles which were most productive and the easiest to collect from—presumably Southern staples and slaves. Returning to the House of Representatives, he counted himself in that group who trusted not in the probable virtue of the representatives. Thus, "considering the natural lust of power so inherent in man," he feared the people would be oppressed by that non-representative body. Mason would only agree to ratification if the Constitution were properly amended. The indispensable amendment was a prohibition on direct taxes except in cases of non-compliance to the kind of quota system he advocated. This amendment, necessary "to secure the dearest rights of the people" had become a "*sine qua non*" for Mason.<sup>59</sup>

Eight days later, Mason made his second major speech. Answering arguments, reiterating his demand for amendments, Mason paraded a fresh retinue of horrors. Re-emphasis was placed on the principle that a small body could not truly represent a vast territory. Representatives would be chosen only from the highest order of people, from the "*well born . . . that aristocratic idol—that flattering idea—that exotic plant . . . lately imported . . . and planted in the luxurious soil of this country.*" He acknowledged the need for

57. *Ibid.*, III, 3; Rutland, *George Mason*, 97.

58. Elliott, *Debates*, III, 23, 24.

59. *Ibid.*, III, 29-34.

union, but if Virginia needed a Declaration of Rights to secure its liberties from the 160 members of its own legislature who *did* know the will of its constituents, Mason asked, how could it trust sixty-five men scattered over the whole nation who could *not* have such knowledge. While making known his detestation of slavery and the continuance of the slave trade, Mason warned that there was nothing in the Constitution that kept Northern states from meddling with this valuable property.<sup>60</sup>

Drawing on experience, history, and wide reading in political philosophy, Mason turned his guns on the militia clause. Fearing the "natural propensity of rulers to oppress," he argued that sufficient checks must be placed on Congress' power to employ the militia. Otherwise, by harrassing the militia through misuse, i.e., calling it from Georgia to suppress a New Hampshire rebellion, the people would vote for its abolition and for the institution of a standing army—the surest way to despotism. Congress also might use its power gradually to disarm the militia, or make it so odious through harsh disciplinary measures, that the people would adopt a standing army. Unless checked sufficiently by amendment, Congress could employ the clause to deprive the states of the God-given right of self defense.<sup>61</sup>

The brevity of the Constitution has come to be an admired quality. But to Mason and his fellow Antifederalists, it constituted a great fault. In this sense they were the forefathers of the prolix modern constitutions. The general language and its multiple interpretations left it open to the skillful debater hunting for bogies. Mason, facetiously apologizing for his suspicious nature engendered by age and experience, missed few opportunities to find such bogies. A rereading of the militia clause, convinced him, said Mason, that Congress had the power to annex punishments on the most worthy citizen. Hinting that the whole Congress might be bribed by a foreign power, Mason asked if they could then be trusted to impeach themselves.

Then he proceeded to one of the fundamental Antifederal arguments. If one accepted the dark view of the Constitution's opponents, the general wording of the clause pertaining to time and place of elections, Article I, Section 4, constituted a grave danger. Congress could make the place of election so inaccessible that the voting privilege would become a mockery. Mason questioned Congress'

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60. *Ibid.*, III, 262-272.

61. *Ibid.*, III, 378-381.



right to ultimate control over time and place. If Congress did tend to despotism, this was only another means it could use.

Mason looked at the Senate. Its members were to be elected for six years, reeligible, and not subject to recall. Mason thought it probable that Senators would attach themselves to the federal town and cease to be state citizens. From that vantage point, they would probably prolong the session to the point wherein the impatient members of the House would agree to anything the Senate wanted. An aristocracy was a real possibility.<sup>62</sup>

Throughout the nationwide debate on the Constitution, Antifederalists attacked the creation of a ten mile square area under the exclusive control of Congress. Arguing that few clauses were as dangerous, Mason saw it being used to augment Congressional powers. The laws of surrounding states would be set at defiance and the area would become a "sanctuary of the blackest crimes." With judges and juries under federal control, any officer who oppressed the people need only get back into the area to be safe. Such arguments seem flippant, but to those who seriously felt the Constitution was an invitation to despotic government, and Mason must be included, the argument was a serious one. In replying to those who would scoff at his fears, Mason contended that no power should be given where possible abuse outweighed its possible benefit.<sup>63</sup>

Discussion of the general welfare clause provided an opening for a fundamental Antifederalist objection. Citing the old Confederation, Mason demanded the inclusion of an amendment securing to the states the powers not delegated to Congress. Again, he denied that rulers could be trusted to act with wisdom and integrity, and without such a clause, the power of Congress was unlimited.<sup>64</sup>

Returning to the slave issue, Mason was bitter. Calling it one of the great causes of separation from Great Britain, he contended that the exclusion of the slave trade had long been a principle object of Virginia's policy. Going much beyond any statement made in Philadelphia, he said that as much as he desired union, he would exclude the Southern states from it unless the slave trade were discontinued. On the other hand, Mason argued, the Constitution made no provision to secure the slaves already owned, and therefore the slaves might be taxed into manumission. The Convention had "done what they ought not to have done, and have left undone what they ought to have done." It is worthy of note that Mason

62. *Ibid.*, II, I, 402-405.

63. *Ibid.*, III, 431-432; Main; *Antifederalists*, 151.

64. Elliot, *Debates*, III, 441-442.

made a careful distinction between slave owning and a continuance of slave importation, a distinction he did not dwell on at Philadelphia.<sup>65</sup>

His attack on the *ex post facto* clause took a practical turn. Continuing to argue that since the Constitution did not specifically apply *ex post facto* to criminal cases, such a law, often necessary, could not be passed in civil matters. Therefore, the continental debt would have to be funded at par, saddling unborn generations with huge debts.<sup>66</sup>

A fundamental principle of republicanism was violated, Mason declared, by allowing the President to run for reelection. Great men would be continuously reelected. European nations would work for the reelection of a friendly executive. Nothing would make a man regard the problems of the people like knowing he would soon share them.<sup>67</sup> Not once in fifty times would the President be chosen on the first ballot. Choosing from the two with the highest vote count rather than five, Mason felt, would be a more representative method. Then too, the marriage of the President with the Senate would call forth mutual support. This combination would destroy the balance. But these evils, too, Mason sarcastically remarked, would no doubt be cured by the "virtue and integrity of our representatives."<sup>68</sup>

Mason continued to attack the Senate at every point. In regard to the power of the Senate to ratify treaties, he pointed out that the ten Senators from the five smallest states, representing two-thirds of a quorum, could make a treaty. This was in contrast to the Confederation where the concurrence of nine states had secured justice.<sup>69</sup> He did not deny that the treaty power was necessary, but only wished that it be sufficiently checked. For instance, no treaty to dismember the nation should be made without at least three-fourths of each branch of the legislature concurring.<sup>70</sup>

Turning to the judiciary, Mason read: "The judicial power shall extend to all cases in law and equity arising under this Constitution." What then, Mason asked, was left to the state courts? For those who wanted a consolidated national government, this was fine, but it seemed a sure way to destroy all state power.<sup>71</sup> As to specifics, Mason was particularly opposed to the federal courts

65. *Ibid.*, III, 652-653.

66. *Ibid.*, III, 479-481.

67. *Ibid.*, III, 484-485.

68. *Ibid.*, III, 493-494.

69. *Ibid.*, III, 499.

70. *Ibid.*, III, 509.

71. *Ibid.*, III, 521-522.

having jurisdiction in controversies between citizens of different states. He painted dark pictures in which a citizen of one state attempting to collect a just debt from a citizen of another would have to travel a thousand miles with witnesses to present his case. All claims respecting western lands would be tried before federal courts. Mason asked if this meant that the state would be brought to the bar like a common criminal. If a judgment was obtained against a state, how was it to be collected? <sup>72</sup>

Begging that his motives and views be interpreted in the light of his public and private character, Mason pointed out that he and many others in the Northern Neck were personally endangered by the clause giving jurisdiction to federal courts in cases arising between citizens of the United States and citizens of another country. Virginia had passed an *ex post facto* law confiscating Lord Fairfax's lands after the treaty of peace had agreed to no further confiscations. If the federal courts awarded Fairfax's heirs the right to collect quitrents, this would mean double taxation. By the same token, all of the land between the Blue Ridge and the Alleghenies would be repossessed by the companies having prior title to them. Federal courts would drive "our peasants" from the land. To safeguard Virginians, he proposed an amendment that would prohibit the extension of judicial power into areas where the cause of action originated prior to the ratification of the Constitution, except as to debts owed the United States and other specified instances.<sup>73</sup>

Time was running out on the Antifederalists. Henry, who had carried the bulk of the Antifederalist argument, led the fight to ratify with prior amendments but was defeated by an 88-80 vote. The Constitution was then ratified by a 89-79 margin. The Federalists had carried the day.<sup>74</sup>

The question still remains. Why did Mason oppose the Constitution? What kind of federal-state relationship did he want? He went to Philadelphia with intentions of strengthening the central government. He apparently offered no opposition to the motion to formulate a new Constitution and lent an active hand in its creation. During the course of the lengthy debates, he became increasingly concerned over the vast powers being delegated to the general government and bent his efforts toward the preservation of individual liberties. Yet, by his own testimony, he favored the Constitution until the commerce clause slave trade compromise was effected in late

72. Elliot, *Debates*, III, 523.

73. *Ibid.*, III, 528-530.

74. Rutland, *George Mason*, 100-101.

August. After this point, Mason's testiness, probably aggravated by gout, heat, and a distaste for rough-and-tumble politics, became more apparent. Staking his objections on the want of a bill of rights, he refused to sign the document and left for Virginia and open opposition to ratification.

In the ratifying convention, true to Madison's prediction, Mason's attacks went well beyond any criticism voiced at Philadelphia. Still favoring a union, a federal as opposed to a national union, his arguments at Richmond show a two-pronged approach. He would check the power of the various branches of government by writing in specific checks on the functioning of office, and by opposing grants of power at unneeded points—power which might be used by those attempting to establish a despotic government. Secondly, Mason railed against the notion that the lack of a specific grant of individual rights did not mean their loss, and demanded that a bill of rights be amended to the Constitution.

Mason was a partisan of that body of American thought and attitudes which favored an agrarian as opposed to a commercial society. This does not connote a class, or a socio-economic group, but a way of thinking. Broadly, Mason and other agrarian-minded men favored a sparsely settled, localistic, self contained, farming society. This does not mean that they would dispense with commerce and trade. Mason as a planter was as much involved with commerce as with farming, and had married a merchant's daughter. On a scale of agrarian philosophy, Mason would probably fit slightly to the right of Jefferson—due perhaps to a self imposed provincialism that somewhat narrowed his perspective.

Since government plays a role in creating society, the governmental corollary of an agrarian society, the good society, was a system that gave limited powers to the state and located those powers close to the people. With other agrarian-minded men, Mason adhered to the following body of ideas: Montesquieu's notion that a republic can flourish only in a small, homogenous territory; liberty is preserved when governmental power diminishes in proportion to distance from the people, and when officials are accessible to and directly responsible to the people; the lesson of history proves that the possession of power is a potential menace to liberty; and American history had indicated that strong governments become despotic. From these ideas, it followed that the best form of government would be a loose confederation.

The degree of looseness acceptable in a confederation differed among individuals. Mason believed in a relatively strong union. He

certainly believed in a division of sovereignty, but he wanted the written Constitution to spell out carefully the limits of the power of the central government. Concomitantly, he wanted no unnecessary power to be delegated to the federal government. Given man's natural tendency to abuse power and to establish tyranny over the people, any grant of power increased the chance for ultimate despotism.<sup>75</sup>

Therefore George Mason refused to sign the Constitution and fought its ratification. Mix the idea of man's inherent capacity to accrue and abuse power with the ideas of classical republicanism and an agrarian-minded attitude; spice with the lessons of a history that he had helped make, and the result is a constitutionalist who, though neither a democrat nor a legislative majoritarian, felt that liberties bought at the price of blood were too dear to risk on a document, which, broadly interpreted, gave virtually unlimited power to the central government.

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75. For the agrarian-minded—commercial-minded interpretation, I am indebted to Lee Benson, *Turner and Beard: American Historical Writing Reconsidered*. (Glencoe, Illinois, 1960), 215-228.