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GEORGE MASON AND THE VIRGINIA BILL OF RIGHTS 1776

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ABSTRACT

After the persistence of the British policy of oppression and control over the American colonies and the attempts to obliterate the identity of their inhabitants, the colonies worked on moving forward towards achieving independence, and Virginia was the first to initiate the development of the new government frameworks, through George Mason in drafting the Virginia Bill of Rights in 1776, which expressed the philosophy of the era Enlightenment and independent revolutionary thought, which called for equality and natural rights for individuals and the need for a free popular government that works for the common good.

INTRODUCTION

Britain's persistence in its mismanagement of the American colonies, the exploitation of its inhabitants, its intransigence, and its rejection of the colonialists' desire to obtain their rights further widened the gap between the two parties [1]. The issuance of strongly worded decisions and warnings, especially after King George III (1738-1820) declared in August 1775 that the colonies were in a state of rebellion and disobedience, it became clear to the colonies that it was not possible for them to remain subservient to Britain and that reconciliation was a distant matter between them [2].

In this regard, Thomas Benn (1737-1809) published on January 10, 1776 his pamphlet called "Common Sense", which ignited the enthusiasm of the Americans with his influential manner that fueled the revolutionary spirit of the Americans [3].

As the Americans began to prepare for independence during this period, Mason joined with many prominent figures such as Thomas Jefferson (1743-1826), Richard Henry Lee (1732-1794), Patrick

Henry (1736-1799), James Madison (1751-1836) and others. To the Fifth Virginia Conference, held in Williamsburg on May 6, 1776, headed by Edmund Pendleton (1721-1803), to discuss the possibility of reaching the American independence decision [4].

Meanwhile, while the continental conference was taking place, the conference sent a request to the colonies on May 10, 1776, to organize new governments [5], so the enthusiastic Virginia National Congress members took decisions regarding the colony's future. And they unanimously decided to work on the declaration of independence [6]. A special committee was appointed to prepare a declaration of rights and draw up a plan for the new government (constitution) to maintain security, peace and order within the colony [7]. And Archibald Kerr (1721-1787) was chosen as its president, and thus Virginia took the first step towards independence [8].

While the arrival of George Mason to attend the conference was delayed until the eighteenth of May 1776, representing the county of Fairfax, and upon his arrival he was appointed to the committee in charge of preparing the Declaration of Rights [9]. George Mason took the initiative and very quickly to start writing a declaration of rights and then a constitution for the government in a short period of time, up to a few days, before any other group in the committee took the initiative to put forward failed government constitutions [10].

President Pendleton praised in a letter to Jefferson on the 24th of May that "political chefs are busy preparing the dish, while George Mason has the lead in a great work" [11]. On May 26, Mason completed a list of ten proposals [12]. With the addition of two proposals by Thomas Ludwell Lee (1730-1778) at the end of the draft, which prepared the first draft of the Virginia Declaration of Rights [13].

Mason relied in writing the Declaration of Rights for a variety of historical sources, as he drew its general principles from the Great Covenant of English Magna Carta document issued in 1215, and from the English Bill of Rights of 1689, which emphasized freedom of religion and the expression of opinions and ideas, guaranteeing the authority of Parliament and the right of the people to a fair trial. In addition, Mason was influenced by the liberal political philosophy of Cato's Letters in the eighteenth century. And from the Declaration of Rights approved by the First Continental Congress in 1774 [14]. George Mason was also influenced by John Locke's articles and theories about the natural rights of the human being, especially with regard to human equality in their natural rights such as the right to life, liberty and the preservation of private property. Mason demonstrated the ability to combine the philosophy of the Age of Enlightenment with English laws to express the thought of the American Revolution [15].

The first paragraph of the Declaration of Rights came, affirming freedom and equality in human rights. "All human beings are born equal, free and independent, and enjoy inherited natural rights ...". As this paragraph emphasized the loss of a human condition in Virginia, not all people were free, nor were the free people equal between them [16].

As for the second paragraph of the Bill of Rights, "The authority is granted by the Lord, and by extension from the people and thus derives from him ..." [17] In it, Mason acknowledged that the government existed to secure the natural rights of people and for their benefit and security, and that it derives its authority and authority from the people, so rulers serve them (for the people The trustees and those responsible for them at all times. Mason approached here in proposing the idea of the social contract that prevailed in the Renaissance and the Enlightenment, and John Locke emphasized it in his writings [18]. Mason even referred to this in advance in the decisions to boycott Prince William that he wrote about the economic boycott against Britain in 1774 [19].

The third paragraph dealt with the establishment of the government, which must be in the interest of the people, and when it appears that the authority does not guarantee the security and happiness of society and does not secure its rights against mismanagement, the people have the right to reform,

change or remove them according to what the majority sees. Here, Mason showed that he was affected by what was stated in Cato's letters that "in the normal state of every human being has the right to reject injustice and take revenge on it." John Locke confirmed this principle indicating that a bad

The legislators 'use of power justifies the individuals' rebellion against it to regain their freedoms and rights ().

However, Mason denounced in the fourth paragraph, "No person or group of persons shall be entitled to receive exclusive or separate rewards or privileges from society ..." [20], the corrupt principle of the democrats based on "heredity", and even rejected this principle in his remarks on the annual elections. For the year 1775, when the principle of "merit and merit" was proposed, which must be available to some of the persons nominated to hold government positions according to their merit and in a manner that serves the public interest and not inheritance [21].

Mason also called in the fifth paragraph of the Virginia Declaration of Rights to Separate Powers and the annual elections to the Legislative and Executive Powers, influenced by historical writings on ancient Greece and Rome about that, as well as the warnings of Cato's letters at the beginning of the eighteenth century. Mason also called for a separation of powers as defined by Montesquieu (1689-1755) [22].

The biggest concern of Mason was to restrict the executive authority and make the legislature sovereign as a result of the accumulations of mismanagement and the arbitrary practices of the English rulers in the colonies against them. So, in his fifth paragraph, Mason acknowledged the separation of powers and the necessity of restricting them by rotating the position through the holding of regular and specific periodic elections [23].

Mason stated in the sixth paragraph that it is not permissible to acquire anyone's property without his or her legitimate representatives's consent, and citizens should not be bound by any laws other than those they have agreed to [24]. John Locke's views are evident here, which calls for not to seize any part of the property of any citizen without his consent when he stated, "The great and main purpose of uniting the people in the Commonwealth ... is to preserve their property" [25].

Mason also acknowledged the guarantees of the rights of the defendants within the seventh paragraph on criminal cases, stressing the right of the accused to demand knowledge of the nature of the accusation directed against him, so that he can defend himself with evidence and evidence before witnesses or whoever accused him, and he has the right to a speedy trial by a jury stressing that The prohibition of self-incrimination, i.e. the practice of means of coercion on the accused, which leads him to present evidence against himself, and no person may be imprisoned without legal evidence [26].

It should be noted that Mason restricted the right not to incriminate oneself to criminal cases only, and it could have been extended to include civil cases as well [27]. Therefore, I returned to one of the deficiencies in George Mason's Bill of Rights. Nevertheless, the paragraph reflects his wide knowledge of criminal laws, even though he was not an official lawyer [28].

In the Virginia Declaration of Rights, Mason referred to a group of human virtues in the eighth paragraph, such as justice, contentment, and restraint, stressing the importance of the ruling authority's commitment to it to preserve freedom, indicating the tendency of some within the government towards corruption and dissolution. There was no disagreement on this paragraph at all stages of discussion until the final draft of the declaration [29].

The ninth paragraph was devoted to the issue of religion and received great attention because religion represents a major pillar of political reality. "The religion or duty that we owe to our

Creator, and the manner of its performance, can only be directed through reason and persuasion, not by force and violence. Therefore, all individuals are equal in enjoying full tolerance. In practicing religion, according to the dictates of conscience, without punishment or restriction by the ruler, unless someone under the cover of religion harasses or disrupts the security, happiness and safety of society ... "[30].

Mason's inclinations toward religious freedom would have led to the separation of religion from the state. However, ambiguity surrounded the wording of the paragraph. Mayson did not explicitly clarify his intention for "complete tolerance in the practice of religion" and left many questions, bearing in mind that Mayson was a believer and not an Anglican. It goes as far as completely dismantling the church directly. The word tolerance placed "believers" at the mercy of the state, so freedom of religion came implicitly and did not explicitly clarify that it is one of the natural and inalienable rights of the government. Perhaps tolerance by Mason was more acceptable in Virginia society than declaring the right to religious freedom directly [31], in addition to the inclusion of The paragraph has serious implications for Mason's use of "tolerance" by allowing the state to intervene in religion under the pretext of threatening the safety and security of society. Thus, the government can impose more restrictions under the pretext of insecurity. Later, amendments were made to the paragraph from James Madison recognizing the right to religious freedom [32].

The tenth paragraph came regarding the deductions related to real estate, which included Mason the right to trial before a jury for all property disputes and litigations between one person and another, and the eleventh and twelfth paragraphs were added after the committee's discussion and were written in Thomas Ludwell's handwriting to me and perhaps George Mason had helped in both proposals regarding press freedom and the prohibition of laws retroactively. A great controversy arose around them [32].

George Mason wrote ten proposals in his own handwriting, but he later indicated that he was the one who proposed the clause (Freedom of the Press): "Freedom of the press is a bastion of freedom that cannot be restricted unless the government is tyrannical." Although many historians assume that George Mason was the one who legislated and wrote the paragraph (Freedom of the Press), the most likely opinion appears even though Mason participated with Thomas Ludwell Lee in the drafting of this paragraph. However, ambiguity surrounds the identification of the first person to claim his status [33].

It is worth noting that there is evidence indicating the presence of a phrase in Cato's letters, which Mason was widely influenced by, that includes what is known as (Freedom Fortress) and with which the press freedom paragraph ended. Perhaps the (freedom of the press) paragraph was one of the proposals of Richard Henry Lee, a member of the Continental Congress, who showed widespread interest in the press at the time, but although there was no evidence to prove this, he might have sent his brother Thomas Lee or Mason some proposals. They both interacted with Henry Lee on political issues [34]. The Virginia newspaper "Dixon and Hunter" on May 18, 1776 published an article about freedom of the press as one of the natural rights, and it is possible that this article influenced George Mason and Thomas Lee. This explains the extent of the cultural shift in the colony of Virginia towards freedom and the emergence of the need for such rights, as it is considered one of the necessities of democracy [35]. Whether or not Mason wrote the freedom of the press clause is less important in the face of the established fact that Mason was the author of the Declaration of Rights, and the free press is part of that declaration.

Finally, the twelfth paragraph of the declaration stipulates the avoidance of laws with retroactive effect ("Ex Post Facto Laws"). that. The committee also agreed to prohibit the use of general inspection warrants and warrants, and also to avoid suspending or implementing laws. "This draft was the first original draft of the Virginia Declaration of Rights [36].

Mason submitted the first draft to the committee in charge of preparing the Bill of Rights and the Constitution on May 27, 1776, and the committee increased it to eighteen proposals, after it included six additional paragraphs, namely the sixth, eighth, eleventh, twelfth, fifteenth and sixteenth paragraphs.

The following are the paragraphs that were entered from the committee that reflected the influence of George Mason in most of them:

The sixth paragraph bore Mason's fingerprint and expressed part of his political philosophy, ensuring that the elections for members of the people's representatives be free, which coincided with his position later in the Constitutional Convention of 1787[37].

As for the eighth paragraph, Mason adopted his writing for it, as will be mentioned later. Which appeared in the first draft of Thomas Lee's handwriting within the revised statement from the committee on not using the authority to suspend or implement laws. The committee placed more restrictions on the executive authority by linking it to the legislative authority by not exercising the power to suspend or implement laws without the approval of the legislature.

It was stated in the eleventh paragraph, "Not to demand a large bail, impose heavy fines, or impose cruel and unusual punishments." In all cases and crimes, fines, bail, and penalties must be fair and human according to specific controls [38]. In addition to the committee's role, Mason may have had an effect in drafting this paragraph in this brief form, as he included it in his proposals in 1787, which will be mentioned later. This is the only paragraph that was accepted literally later in the Federal Rights Document (1789-1791).

As for the fifteenth paragraph, it was drafted entirely from George Mason, which included "the importance of the presence of a well-organized militia composed of individuals trained in arms, as it is a safe defense method" indicating the danger "of having permanent armies in peacetime as they constitute a threat to individual and public freedoms" [39]

Mason often advocated this concept, always supporting militias and unwilling to have permanent armies, which often supported tyrannical governments. As for the twelfth and sixteenth paragraphs, they were added by the committee. The first concerns arrest and search warrants. And the second is about keeping the western provinces within the colony of Virginia [40].

Meissen's proposals for the first draft have been widely considered, as no broad amendments to the committee's draft appear. Therefore, the Chairman of the Committee, Archibald Kerry, presented it to the conference on the same day in which it was discussed on the twenty-seventh of May 1776, and it was decided to read for the second time on the twenty-ninth of May [41].

Before the Virginia Conference announced the final version of the Declaration of Rights, the commission's copy was published in Virginia Dickson and Hunter newspapers at the beginning of June. It was also published in Pennsylvania newspapers, and other newspapers published the Commission's copy (). Other colonies followed the example of Virginia, so Benjamin Franklin (1706-1790) copied the draft to declare the rights of Pennsylvania, and it spread so quickly and widely that it crossed the borders of the American continent and reached Europe, especially the intellectual circles in France [42].

Conference deliberations were resumed on May 29, 1776, and with the presence of the aristocracy wishing to preserve and maintain the status quo, a broad debate soon emerged over the first paragraph, so Robert Carter Nicholas (1728-1780) objected to the phrase "that all human beings are born equal." Free and independent, "Nicholas' concern seemed to stem from that this would be a danger in a society in which slavery prevails, leading to the rebellion of slaves and the demand for their rights or the abolition of slavery [43].

The deliberative sessions continued with the principles of the Declaration until June 3, 1776, at which time Edmund Pendleton - who is considered one of the conservative aristocrats - presented an amendment to the first paragraph so that it would be acceptable to all. They consider them among the properties of individuals. Pendleton wanted a balance between the idea of freedom and the survival of slavery. The word (are born) was replaced by the word (by virtue of their nature) at the beginning of the paragraph, so the settlement was accepted and approved. George Mason did not object to the amendment of his paragraph, and perhaps he was certain that the time was not yet appropriate to announce the abolition of slavery [44].

It is worth noting that Mason acknowledged at the outset of the Declaration of Rights that all human beings are free in Virginia's class society and did not leave a national or public occasion in which he calls on society to turn against the issue of slavery because of the great importance it represents, and he is fully aware that his calls will be met with strong opposition from aristocrats. Mason did not object to amending the first paragraph in order to be a preliminary step and a prelude to the rejection of slavery. Mason's position remains tinged with the contradiction between his rejection of slavery and his call for their liberation and his being the owner of slaves. Perhaps, despite his liberation calls, Mason did not have the courage to confront established traditions in society. Rather, he also needed more time to confront that class society and what he composed of Habits and systems are slowly disappearing.

And another amendment was made to the contents of the Virginia declaration by deleting the phrase Mason "a man is born a ruler ..." which was included in the fourth paragraph and replaced with words that fit the content of the paragraph with "positions should not be hereditary." The sixth paragraph of the committee's copy was merged with the seventh paragraph, with the conference's agreement to delete the paragraph relating to the prohibition of retroactivity laws. Minor changes were made to some paragraphs and the final draft was placed in brackets [45].

As for the eighteenth paragraph on religion, it included a lengthy discussion about it. As a result of the lack of clarity of Mason's paragraph about the word (tolerance in religion), Madison feared its ambiguity, as it might come to mind that it means that the existing church will tolerate opponents later, but they will not be on a footing. Equality with members of the official church, and they remain second-class citizens whose religious rights are controlled by the state. Tolerance means that the state possesses legitimate authority over religion and that its exercise is a civil privilege that it can grant or cancel whenever it wants. Madison sought to amend the paragraph by endorsing "freedom of religion" instead of tolerance. So that practicing religion freely is more compatible with the idea of inherited natural rights advocated by Mason in the Declaration, and so that religious freedom is guaranteed to all sects opposed to the Anglican Church in Virginia [46].

Madison first presented an amendment rejected by the church's supporters at the conference, as it would have worked to completely dismantle the church, then another amendment was submitted by Edmund Pendleton which stipulated "the free practice of religion for all individuals" and because Pendleton is one of those committed to the official Church, it will be He submitted the proposal more convincingly, but his agreement to submit this amendment was not based on his conviction, but rather wanted to get rid of the first amendment that would dismantle the Church [47]. The final wording of the religion in the sixteenth paragraph of the final version of the Bill of Rights was also excluded. The state's ability to regulate religion according to its interests and as it sees fit; When the phrase "without punishment or restraint from the ruler, as long as no one disrupts security and peace" was deleted.

Despite this, the phrase "the free exercise of religion" posed a challenge to the Anglican Church in Virginia, and thus Madison laid the foundation for the establishment of the Religious Freedom Act, which was passed a decade later, but the tolerance advocated by Mason has spread more widely instead of the principle of religious freedom [48].

After the conference approved the amendment of the more difficult paragraph, the document was ready and was officially approved on June 12, 1776 as the "Bill of Rights". The final version was printed and published within weeks after its official approval, but it did not reach the spread limit of the commission copy that was taken widespread fame and used as an official version although it did not contain the quintessential Madison amendment [49].

The Declaration of Rights faced a number of criticisms, as most of the rights it contained were restrictions on the ruling authority as a result of poor colonial administrative policies. While there are some weaknesses in the Declaration of Rights; The right not to incriminate oneself was restricted to criminal defendants only and were not allowed to testify. The announcement also did not guarantee the right to a jury habeas corpus or the right to file a lawsuit before the jury, the right to a lawyer, and other criminal rights procedures. Mason also did not pay much attention and specific controls to restrict the government's authority in arresting and searching orders for anyone in connection with a specific crime or felony, and the thirteenth paragraph of the declaration concerning the organization and arming of the state militia did not recognize the right of the individual to bear arms, although it permitted the collective right to resist the oppressive ruler. And even the religious freedom advocated by Mason allowed some restrictions to be imposed on it when necessary to maintain the safety and security of society [50]. Although there are some deficiencies in the bill of rights, it remains a major issue. And it is the first bill of rights attached to a written constitution by an elected popular body, which is the Virginia Congress. The other states followed Virginia in developing a bill of rights from 1776 to 1790 one by one [51].

Because of the importance of the list, George Mason was not known for his research on the spotlight and fame, and he always wrote and presented proposals and solutions to some political crises and public events and did not care whether it was attributed to him or not except the Virginia Bill of Rights. He talked about writing to her and his great role in the conference two years later, and he acknowledged in a letter to one of his relatives on October 2, 1778 that he had drafted the Bill of Rights and attached with it a copy of the declaration of rights he wrote, which contained additions from the committee's copy that was adopted on the 27th From May 1776, the letter also reviewed his role during the Fifth Virginia Conference, noting the importance of his work by saying, "It was the first of its kind in the American continent." [52]. He also said, "We have put our new government on a broad basis, and endeavored to provide the most effective guarantees for the fundamental rights of nature." Mankind, in both civil and religious freedom ... "[53].

Despite all the foregoing, the Virginia Bill of Rights remains an important document over the years, primarily for American political documents and admired by many historians. It was said about it, "There is no more wonderful work in America's political records than this document, which has withstood the harsh test of every volatility.").

The Virginia Bill of Rights remains a unique example of its kind in the eighteenth century, yet it is nonetheless a form derived from ideas advocated in advance by John Locke and some symbols and pioneers of liberal philosophy for that era and who contributed to drawing up charters for other colonies, but the bill of rights undoubtedly illustrated the development of philosophical thought The cultural and cultural community of society for the better, so Mayson combined the Enlightenment with the revolutionary independence thinking to come up with a basic document for a nascent nation that seeks to secure individual rights more broadly within the framework of the state. The Bill of Rights for the year 1776 constituted the greatest legacy of George Mason in the history of the American Republic, as with his political philosophy and his influence with the era of enlightenment, he rejected the restrictions of his time and defended and guaranteed the natural rights of individuals, thus he was a voice for freedom and the demand for basic rights.

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