

The University of California, Santa Barbara

**George Mason and Ordered Liberty in the
Formation of the Early American Republic: 1774-1790**

By

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Introduction

Amidst the political turmoil of the late fall of 2019 as impeachment proceedings consumed the already tense Washington D.C. atmosphere, one particular historical figure was witnessing a bit of a resurgence. As special inquiries were being held and grand questions of presidential authority as originally understood by the Framers were being debated, renewed interest in the former lord of Gunston Hall grew. George Mason of Fairfax County, Virginia was a rather obscured figure to be on the receiving end of mentions in contemporary Washington Post and Wall Street Journal opinion-editorials.¹ The reason for all this newfound notice? The distinct involvement of George Mason in defining the standards for executive office impeachment during his service in the Constitutional Convention of summer 1787. During a September 8th, 1787 debate, Mason brought up his objection to impeachment being limited to “treason and bribery.”² Fearing that this definition would prove too narrow, he proposed the addition of “maladministration” to expand the scope.³ Facing opposition to this term from James Madison and Gouverneur Morris, Mason supplied “high crimes and misdemeanors” instead of maladministration and proved successful at inserting this arcane English judicial term into the impeachment clause of the Constitution.⁴ It is thanks to that

¹ See Brockell, Gillian. "How the Founding Fathers Saw Impeachment and 'high Crimes and Misdemeanors'." WP Company LLC d/b/a The Washington Post, last modified Sep 28. and Turley, Jonathan. "Opinion | Adam Schiff's Capacious Definition of Bribery Was Tried in 1787." The Wall Street Journal. Dow Jones & Company, November 28, 2019. Wise, Lindsay, and Andrew Duehren. 2019. "Impeachment Vote Divides and Dismays, Inside and Outside the Capitol." The Wall Street Journal. Dow Jones & Company. December 19, 2019. Freeman, James. 2020. "Opinion | More Fun with Impeachment History." The Wall Street Journal. Dow Jones & Company. January 24, 2020. Lipsky, Seth. 2019. "Opinion | Democrats Rediscover the Constitution." The Wall Street Journal. Dow Jones & Company. December 8, 2019. Savage, Charlie. "'Constitutional Nonsense': Trump's Impeachment Defense Defies Legal Consensus: News Analysis." New York Times Company, last modified Jan 20. "Impeachment, Elections and Bad History." 2019. Lawfare. October 31, 2019.

² . James Madison's Notes of the Constitutional Convention (September 8, 1787). Accessed March 1, 2020. <https://consourse.org/document/james-madisons-notes-of-the-constitutional-convention-1787-9-8/20180514160636/>.

³ Madison, James. "James Madison's Notes of the Constitutional Convention." *The Records of the Federal Convention of 1787*. Vol. 2. Ed. Max Farrand. New Haven: Yale University Press, 1911. 547-54.

⁴ Ibid

planter-statesman from Fairfax County, Virginia, George Mason, that ‘high crimes and misdemeanors’ has been the subject of internecine legal and political disputation since.

Critical to the impeachment debates riveting the nation in the fall of 2019 and early winter of 2020 was discussion of the fundamental principles of constitutional governance. In a letter signed by over 2000 prominent historians calling for the impeachment of President Donald Trump, George Mason was cited in the first paragraph in order to buttress their argument for Trump’s impeachment. These historians quoted Mason’s description of impeachable offenses as “attempts to subvert the Constitution” and ascribed that designation to the 45th President.⁵ Mason’s newfound relevance during only the third presidential impeachment in history signifies the paradoxical nature of his role as one of America’s leading founding fathers. Evidently George Mason was a major player and had enough clout to shape how a president may be impeached, yet his original intention of categorizing ‘maladministration’ as impeachable did not succeed. Likewise, in several respects, from the influence of his writings on the Declaration of Independence to his actions during the Convention, Mason proved to be enormously instrumental in shaping the contours of American liberty yet often as a byproduct of not succeeding at his initial ambition.

Distinct from the other leading framers in several regards, most especially his reticence to hold public office and dedication to his local responsibilities, George Mason led a consistent life in pursuit of the protection of liberty. Older than other men such as Thomas Jefferson and James Madison who produced brilliant political documents, Mason was never educated in the law and largely received education from self-study in his uncle John Mercer’s library.⁶ Despite his lack of advanced education, Mason gave voice to a strain in colonial and thereafter American political thought which

⁵ “Over 2000 Historians and Scholars Sign Letter Urging Impeachment.” n.d. History News Network. Accessed March 1, 2020. <https://historynewsnetwork.org/article/173856>.

⁶ “George Mason of Gunston Hall, An Introduction” in PGM I: cxii

demonstrated concern over any arbitrary executive overreach, whether British or American in origin. For Mason, the fundamental work of the revolution was not necessarily independence but rather “first principles of the constitution” which he defined as “The People’s being governed by no Laws, to which they have not given their consent.”⁷ This reflected Mason’s concern to preserve the natural English liberties, self-governance ranking first. Historiographically, antipathy toward Mason occurred because he would be one of three delegates to not sign the completed document at the Constitutional Convention. George Mason would be remembered for the most part as the stubborn Anti-Federalist who refused to sign the Constitution and led efforts to oppose it. This in one sense demonstrates the poor manner in which Mason was considered until the 1892 biography of him by Kate Mason Rowland.⁸ Yet at the same time Mason had a profound effect on shaping the document but refused to sign because it lacked the declaration of rights he believed to be of paramount importance. As the author of the Virginia Declaration of Rights which inspired Jefferson’s declaration, Mason understood the need for enumerated civil liberties. Just as Mason did not succeed at his intention of labeling ‘maladministration’ as impeachable but inserted the finalized phrase of ‘high crimes and misdemeanors’, so Mason failed at preventing the ratification of the Constitution nevertheless caused such consternation in his opposition as to force a bill of rights to be drafted and added to the Constitution during the First Congress.

In the twenty first century, Mason has been the subject of two new biographies and received multiple mentions in current events articles yet the understanding of his

⁷ PGM I: 209. Editor of the PGM and Mason biographer Robert Rutland labeled this phrase “first principles” and its ensuing descriptor as the “shibboleth” of Mason’s public expressions on liberty.

⁸ “George Mason of Gunston Hall, An Introduction” in PGM I: cxi

impact on American constitutional liberty is still of need for revision.⁹ No other figure can claim involvement or direct influence on the creation of the three most important founding political documents-the Declaration of Independence, the Constitution, and the Bill of Rights. Mason crafted the Virginia Declaration of Rights which arrived in Philadelphia in June of 1776 just in time for Jefferson to imitate it in his own declaration. Mason served as a delegate to the Constitutional Convention and had a tangible effect on the words of the governing structure of the nation. His tireless and lifetime pursuit of the preservation of liberty made him a particularly credible voice in arguing for a declaration of rights in his ‘Thoughts on the Constitution’-a widely circulated Anti-Federalist tract at the time. If not for Mason’s determination and stature, the Bill of Rights most probably would not have taken form. His express concern for the protection of civil liberties forms the core of American constitutional governance, as the Anti-Federalist insistence on a bill of rights have made them “the senior partners in the venture of American constitutionalism.”¹⁰ Examining Mason’s writings will allow an illumination of his influence on American liberty to unfold.

Sources and Methodology

⁹ For example, Broadwater, Jeff. *George Mason, Forgotten Founder*. Chapel Hill: University of North Carolina Press, 2006.; Hyland, William G. *George Mason : The Founding Father Who Gave Us the Bill of Rights*. Washington, DC: Regnery History, 2019.

¹⁰ Dry, Murray “The Antifederalists and the Constitution” in Pacheco, Josephine F. *Antifederalism : The Legacy of George Mason*. The George Mason Lecture Series. Fairfax, Va.: George Mason University Press, 1992. Pg. 25

Utilizing the extant three volume collection of the Papers of George Mason(PGM)¹¹ edited by Robert Rutland, an analysis shall be conducted of critical thought points in Mason's intellectual history. This collection includes correspondence with such luminaries as George Washington, Thomas Jefferson, Richard Henry Lee, and Patrick Henry. Additionally, PGM contains elucidating letters from George Mason to his children that convey his inner thoughts and underlying political theory. Mason's principal political writings are included, from his lead role in drafting the 1774 Fairfax Resolves to his provocative 'Objections to the Constitution' published in 1787. Some usage will be made of the extant records from the Constitutional Convention, although as these are largely the edited notes of James Madison some caution must be exercised for analysis purposes. Furthermore, the responses to Mason's objections to the constitution published in *The Debate on the Constitution* edited by Bernard Bailyn will demonstrate the strength of George Mason's influence on events. Throughout all of these primary sources, I will seek to explicate George Mason's views on and promotion of liberty during both the Revolution and the creation of the Constitution. His writings are not as prolific as thinkers such as James Madison and Alexander Hamilton, but the succinct nature of his compositions provide a clear path for establishing a narrative of his vision of liberty. This also will allow for some comparison to be made to relevant historical documents on the roots of American liberty, including Cato's Letters, John Locke's Second Treatise on Government, and the writings of radical English Whigs. Mason, despite the lack of a college education, would have been familiar with these writings as they formed a reservoir of thought from which many Founders drew from.¹²

¹¹ Mason, George. *The Papers of George Mason, 1725-1792*. Chapel Hill: University of North Carolina Press, 1970. Hereafter abbreviated by PGM and Volume number (I-III).

¹² Chester, Edward W. "George Mason: Influence Beyond the United States" in Senese, Donald J. (ed.). *George Mason and the Legacy of Constitutional Liberty*. Fairfax County History Commission. Pg. 133

This project fits primarily within the field of intellectual history, specifically as a history of key concepts as they were understood and shared within a single man's network of correspondence and writings.

A number of key secondary sources will trace the underlying political context such as *The Radicalism of the American Revolution* by Gordon Wood and *The Ideological Origins of the American Revolution* by Bernard Bailyn represent key general texts. Additionally, biographical texts, beginning with Jeff Broadwater's biography of George Mason will serve to provide the necessary character sketch for interpreting Mason's understanding of political liberty. Other sources that will prove helpful include compilations of essays on Mason and Anti-federalism such as George Senese's *George Mason and the Legacy of Constitutional Liberty*. The dearth of references to Mason in seminal chronicles of the Revolution such as *The Glorious Cause* by Robert Middlekauff will reflect on the need for a revision of his place amongst the Founders. By compiling a composite understanding of the place of George Mason in narrative texts and discussion of the intellectual history of the founding, I will then be better equipped to draw conclusions on his impact on the form of liberty pronounced in the Constitution and Bill of Rights.

Whig Understandings of Liberty

Historians have argued for generations that English Whig thought both inspired and justified the actions of American revolutionaries like Mason. The leading men of this generation located the precedents of their politics in the republics of ancient times. Mason and others drew upon Cicero's warnings against tyranny more than they relied on the logical reasoning of esteemed English thinkers such as John Locke, perhaps because Cicero's rhetoric was a good deal more stirring than Locke's argumentation. But although these writings typically contained numerous classical

allusions, they were keenly contemporary, making frequent reference to recent events in British politics. Classical warnings against tyranny and the need for the preservation of liberty would be reclaimed through the ferocious polemics of the Whig opposition.

Historian Gordon Wood has labeled this style an adherence to the “Whig Science of Politics” that permeated the tracts of the Patriot pamphleteers.¹³ The mediating influence of the radical Whig politicians of the English opposition during the 1750s and 1760s cannot be understated. These thinkers formed a base of knowledge and foundation for the novel notions of civil liberty that would be expressed in the Revolution.

It was Wood who, in his book, *The Creation of the American Republic*, uncovered the profound effect of radical Whig thinkers on the political theory that undergirded and justified the American rebellion. Traditionally, the influence of John Locke on the underpinnings of how government ought to be organized for and what liberty meant has been understood. However, the impact of eighteenth-century Whig thinkers such as John Trenchard and Thomas Gordon went mostly unnoticed by historians until Wood’s work appeared. In Wood’s view, the most radical Whig writings became to the Americans “most attractive, most relevant to their situations and needs.”¹⁴ These thinkers were on the “left of the official Whig line” and were considered especially disruptive to the political status quo of Britain.¹⁵ As evident in Wood’s work, radical English Whig thought played a dynamic role in the development of American political resistance.

Broadwater, Mason’s biographer also examines the central political theories that inspired the founding generation. He argues, “The notion of political first principles reflected an eighteenth-century preoccupation with the idea of balance.”¹⁶ Broadwater

¹³ Wood, Gordon. *The Creation of the American Republic, 1776-1787*. Pg. 3

¹⁴ Wood. *Republic*. Pg. 15

¹⁵ *Ibid*

¹⁶ Broadwater, *Forgotten Founder*. Pg. 40

acknowledges the significant influence of John Locke on the founders by labeling him “the philosophical godfather of the American Revolution.”¹⁷ However, Broadwater aligns with Wood, agreeing that the impetus for strong resistance to British machinations was derived from the “writings of the English Whig opposition.”¹⁸ For Mason in particular, the Whig focus on the dangers of corruption and the need for virtuous political citizens served as a lodestone as will be discussed later. In his speech concerning the establishment of the Fairfax Independent Company, Mason would decry even officers for life as “contrary to that principles of which liberty which we profess to contend.”¹⁹ This is a sentiment GM would echo consistently in his major political tracts, with an acute foreboding for any long-term investiture of power. Broadwater notes that radical Whigs often adopted an aggressive rhetorical style imbued with sarcasm and verbal attacks.²⁰

The Whig obsession with fallen human nature and the need for constant vigilance fit well with the concerns of many leading colonial rebels. The great bulk of American political theory rooted itself in the “the tradition of the eighteenth century commonwealthmen,” concerned with corruption of power above all.²¹ As described by historian Robert Middlekauff, the perceived two main threats to liberty which motivated the commonwealthmen and in turn the American resistance were:

“A general moral decay of the people which would invite the intrusion of evil and despotic rulers, and the encroachment of executive authority upon the legislature, the attempt that power always made to subdue the liberty protected by mixed government.”²²

¹⁷ Broadwater, *Forgotten Founder*. Pg. 41

¹⁸ *Ibid*

¹⁹ Mason, *Remarks on Fairfax Independent Company*

²⁰ Broadwater, *Forgotten Founder* Pg. 42

²¹ Middlekauff, Robert. *The Glorious Cause : The American Revolution, 1763-1789*. Revised and expanded. The Oxford History of the United States. New York, NY: Oxford University Press, 2005. Pg. 51

²² Middlekauff, *Glorious Cause*. Pg. 51

As Mason would later emphasize in his writings, the need for virtue in citizenry answered the concerns over moral decay and authentic federalism between the states and the central government would prevent arbitrary threats to liberty.

Liberty and the Colonial Revolt

Liberty, more so than other classical political concepts such as justice and goodness, existed as the object of paramount civic debate in the colonial and founding era. As Gordon Wood has stated, colonial era “politics [were] seen as a diametric struggle for absolute powers.”²³ Thus, liberty and its close but distinct relative freedom, were both seen as political attainments of the highest order. Furthermore, colonists expected protection of rights worthy of their status as British citizens. English history in particular had been one of ever-increasing limitations on the arbitrary power of the Crown with corresponding expansions in the reach of the elected House of Commons.²⁴ While a variety of economic and social factors propelled colonists to revolt, an abuse of liberty by the British served as a catalyst for dissent. Considered a cliché now, Patrick Henry’s call to “give me liberty or give me death” encapsulated the genuine fears of colonists about even the slightest abridgement of these rights. For Henry, it was “the principle of freedom that excited him” and made him an opponent of all degrees of tyranny.²⁵ This description, of course, might also be applied to each of the leaders in the colonial assemblies and conventions. These men sought above all to regain a liberty they saw as their birthright.

Because differing visions of freedom inherently shape the form of governance, it mattered which form of liberty would triumph in constitutional thought. The *ordered liberty* pursued by figures such as Mason (who were usually Anti-Federalist), would

²³ Wood, Republic. Pg. 18

²⁴ Wood, Radicalism. Pg. 13

²⁵ Gaines, Francis Pendleton. "Patrick Henry: The Embodiment of a Great Idea." American Bar Association Journal 36, no. 6 (1950): 448-50.

have a far more significant effect on the language of the Constitution and its interpretation than it may have appeared at first. Protecting the freedom of individuals against government encroachment, and, critically for Mason, against the tyranny of the majority, became a leading focus of the liberty he hoped would be enshrined in the constitutional documents. The high political theoretical view of liberty would mold the type of government created. That vision remains largely unchanged since it was first expressed in the Constitution and Bill of Rights.

George Mason-the Figure



“Painted by Dominic W. Boudet, after the lost portrait by John Hesselius.

Courtesy of the Virginia Museum of Fine Arts, Richmond; photography courtesy of Colonial Williamsburg, Inc.”²⁶

Bred the upper crust of the landed elite of Virginia’s Tidewater Region, George Mason easily could have solely pursued a life of leisure far detached from the political

²⁶ Rutland, *Papers of George Mason*, vii.

passions of his era. Instead, Mason sought to craft a vision of ordered liberty for the nation rooted in political philosophy and served his colony and then state with diligence. While all landholders of his sort maintained some interest in political machinations, it was generation of distinct political concepts that affected the nation that made his profile unique. Fortunately for the American cause, Mason chose to embody the citizen-farmer ideal of the later Jeffersonian era and to engage in the political process while maintaining his life as a local gentleman.

Born on December 11th, 1725 as the fourth of his name, Mason would live his entire life in Fairfax County located in northern Virginia near the Maryland border. He helped design and build his lifelong abode of Gunston Hall, an elegant yet not ostentatious manor. In 1753 his father, George Mason III, would die before young Mason's tenth birthday. As was the custom for the male children of the affluent planters, Mason received an education at home consisting of a "series of Scottish tutors" who taught him in a variety of subjects.²⁷ Most elite men at the time shared a background of training in the classics: ancient writings in the Greek and Latin language, along with a heavy dose of Enlightenment philosophy and history. Texts ranged from Cicero to Locke to Blackstone, and these shaped their outlook on politics and the rightly ordered structure of society.²⁸ The presence of his uncle John Mercer in his life added a further emphasis on education, as the "scholarly but combative lawyer" possessed an extensive library that formed part of the intellectual pedigree of George Mason.²⁹ There were no public libraries in rural Virginia. But those who could afford it assembled private collections of books and Mason proved no exception. Mason biographer Robert Hyland

²⁷ Broadwater, *Forgotten Founder*. Pg. 7

²⁸ Nash, *Books and the Founding Fathers*, Pg. 11

²⁹ Broadwater, *Forgotten Founder*, Pg. 3

Jr. described the young George as “bookish, infused with a lifelong need for knowledge, and exhibited the reserved personality that would later define him.”³⁰

As an adult, Mason “kept his own [account] books,” overseeing 75,000 acres centered on the house he built, Gunston Hall.³¹ Upon his coming of age, Mason inherited one of the largest estates in northern Virginia. Mason was a leading planter of the region. His intellectual pursuits and role in public affairs would eventually conflict with life as a planter, just as they would for his better-known contemporaries: Jefferson and Washington. One gets the feeling, reading his letters to his children and close friends, that for Mason, life at Gunston Hall was the equivalent of heaven on earth. Yet because of his dedication to matters of state he would be separated from it for long periods throughout his adult life.



Gunston Hall, the manor of George Mason IV. Courtesy of Gunston Hall.

³⁰ Hyland, George Mason. Pgs. 12-13

³¹ Broadwater, Forgotten Founder, Pg. 8

Mason's introduction to politics came when he was appointment to justice of the peace on the Fairfax County Court in April 1747.³² Service on the court involved real work but also signaled some real influence in the decision-making of colonial Virginia. Mason found a lot of the work very mundane, and yet it suited him. He never trained as a lawyer, but many described him as having "a legalistic caste of mind." Clearly he was good at it, because friends sought his legal advice throughout his life especially in cases relating to the Ohio Company.³³ Nevertheless, Mason's erratic attendance record as a commissioner of the peace implied less than full commitment.³⁴ During his tenure on the court between 1747 and 1752 he only attended three full days and a partial fourth.³⁵ In June 1748 Mason stood for election to the lower house of the colonial legislature, the Virginia House of Burgesses. He would be unsuccessful, with biographer Jeff Broadwater speculating he lost due to his youth.³⁶ Mason did come close to defeating the incumbent John Colville. Other founding fathers achieved election at a young age including James Madison and Thomas Jefferson. But a lackluster judicial reputation certainly did not help his cause.³⁷ One decade after his failed venture, Mason would be elected to the House of Burgesses for Fairfax County. Mason's lack of industry as justice of the peace revealed a characteristic that would set him apart from other founders again and again: he had little desire for power for its own sake, and little patience for the tedious parts of public service.

After serving one term in the House of Burgesses, Mason did not stand for re-election, seeking instead to return to private life. In this period, he began investing in the Ohio Company, something many of his peers were doing, as a way of diversifying

³² Broadwater, *Forgotten Founder*. Pg. 15

³³ Broadwater, *Forgotten Founder*. Pg. 4

³⁴ Broadwater, *Forgotten Founder*. Pg. 15

³⁵ Horrell, Joseph "George Mason and the Fairfax Court" in Senese, Donald J. (ed.). *George Mason and the Legacy of Constitutional Liberty*. Fairfax County History Commission. Pg. 35

³⁶ Broadwater, *Forgotten Founder*. Pg. 16

³⁷ Broadwater, *Forgotten Founder*. Pg. 16.

their holdings and shoring up Virginia's somewhat shaky claims on backcountry territory.³⁸ Mason's experience with the Ohio Company would introduce him to the dangers of arbitrary authority interfering with citizens' rights. Although it was private, the Ohio Company furthered imperial goals by seeking to map native lands west of the Appalachian Mountains in preparation for colonization. In 1749, the Lieutenant Governor of Virginia had granted generous terms to the Ohio Company for their surveying enterprise. Despite this, GM and his fellow investors endured years of regulatory limbo and this surely contributed to his eventual opposition to the overreach of imperial authority.

The French & Indian War proved to be a crucial turning point both for the colonies and their relationship with Britain and Mason's own view towards the Crown. During the war, Mason served as a quartermaster for the local militia from Gunston Hall. During the war colonists had participated in part because they were defending British colonial rights of expansion which they believed would benefit the colonies. The Ohio Company remained hopeful for their surveying aims during the French & Indian War but the Proclamation of 1763 would squash that by banning colonial settlement west of the Appalachians.³⁹ This proclamation came at the conclusion of the war that Mason and other colonists had devoted significant effort and commitment to. Years of effort and investment from the Ohio Company came to waste with this royal decree. The proclamation may have shaken Mason's allegiance to the Crown, as it did for other investors, who saw this interference as an abrogation of their rights to private property. As noted by biographer William Hyland, Jr. this crisis "over property rights between the Ohio Company and the Crown ignited a fire in Mason and sparked his revolutionary ideas."⁴⁰ Following the revocation of the Ohio Company's land rights, Mason penned

³⁸ Broadwater, *Forgotten Founder*. Pgs.18-19

³⁹ Broadwater, *Forgotten Founder*. Pg. 26

⁴⁰ Hyland, *George Mason*. Pg. 94

his first “political protest paper, *Extracts from the Virginia Charters, with Some Remarks Upon Them*.”⁴¹

Two years later, the Stamp Act Crisis further galvanized opposition to the Crown. The fury over the imposition of the taxation on all official colonial documents proved another critical step in the radicalization of Mason’s political views. Created in order to collect needed revenue, the Stamp Act imposed duties on all printed material in the colonies.⁴² Mason spoke out forcefully against the taxes which he saw as violating English land laws. His “Scheme for Replevying Goods and Distresses for Rent” vigorously denounced the act while also offering an intriguingly scathing critique of chattel slavery for a slaveholder in the colonies.⁴³ With the pamphlet debates that followed, Mason had found a calling. His vigorous participation established him as a leader of the colonial opposition in Virginia. He conferred with prominent political leaders such as Patrick Henry, sharing ideas and plotting strategy.⁴⁴ A true son of the Northern Neck region, he benefitted from acquaintance with opposition figures such as George Washington and the Lee cousins (Richard Henry Lee and Francis Lightfoot Lee)

⁴¹ Hyland, George Mason. Pg. 96

⁴² Broadwater, Forgotten Founder. Pg. 31

⁴³ Broadwater, Forgotten Founder. Pg. 33

⁴⁴ Broadwater, Forgotten Founder. Pg. 56



Painted by Dominic W. Boudet, after the lost portrait by John Hesselius. Courtesy of Gunston Hall

Mason's personal life may best be characterized by devotion to managing the substantial affairs of Gunston Hall and caring for his growing family. In 1750 George Mason had wed the beautiful Ann Eilbeck, a wealthy heiress from Charles County, Maryland.⁴⁵ Their 23-year marriage was both loving and fruitful, producing a brood of 12 children of whom nine survived to adulthood.⁴⁶ George and Ann proved a fitting match, with a shared interest in intellectual pursuits and genuine affection for each

⁴⁵ Hyland, George Mason. Pg. 23

⁴⁶ Hyland, George Mason. Pg. 33

other.⁴⁷ Most accounts seem to indicate a stern but blithe mannered household at Gunston Hall, with mistress Ann Eilbeck Mason presiding over it well. The premature death of 39-year-old Ann in 1773 proved a devastating blow to Mason and the entire family. The authentic love and bond between George and his wife meant that her death shattered his comfortable world and left him bereft of purpose. John Mason, their son, “years later would remember his father’s visceral emotional reaction...for the next week Mason was sequestered in his bedroom and study.”⁴⁸ The loss of his beloved wife indubitably produced a profound effect on Mason, yet in keeping with the lack of private disclosures present in his papers, he writes very little.⁴⁹

Mason’s first significant contribution to defining American political liberty came in the form of the 1774 Fairfax County Resolves. Mason was an obvious choice to serve on the committee, and indeed, it would have been unthinkable for him not to be invited, given his prominence among the elite of the county. This committee such as all other county committees sending delegates to the Virginia Convention, was charged with drafting a set of resolves that articulated their view of needed liberties.⁵⁰ As he would in later settings as well, Mason took the lead in an endeavor that finally captured his interest, combining his intellectual gifts with a keen political vision. The 1774 Fairfax Resolves inaugurated colonial support for a set of clearly articulated civil liberties in line with those enshrined in traditional, but unwritten, English constitution. Most of the measures called for in the resolves, including the boycott of British goods, would eventually be incorporated into the nonimportation agreement adopted by the Virginia

⁴⁷ Hyland, George Mason. Pg. 21

⁴⁸ Hyland, George Mason. Pg. 33

⁴⁹ One exception is the inscription he inserted into the Mason family bible recording her death.

Found in Hyland, George Mason. Pg. 33

⁵⁰ Broadwater, Forgotten Founder. Pg. 65

Convention.⁵¹ Due to the efforts of one of the Fairfax County delegates, George Washington, the resolves carried forth by Mason would be accepted with few alterations.⁵²

As a necessary complement to his articulation of political rights and liberties, Mason prepared to do his duty by defending these rights. Therefore, he joined in efforts to form an autonomous militia company for the county. Entitled “The Fairfax Independent Company of Volunteers”, Mason played an integral role in its formation during 1774-1775.⁵³ Mason offered watershed remarks at the ceremony in which officers were appointed. His remarks drew upon Whig thought to articulate a dynamic vision of a republican government “calculated for the general good and safety of the community.”⁵⁴ By July 1775 Mason was selected as a delegate to the third Virginia Convention to replace George Washington who had headed north for the Continental Congress and was now newly in command of its armed forces in Boston.⁵⁵ From then until the conclusion of the Revolutionary War, Mason would serve continuously in the legislative bodies governing Virginia. Despite his proclivity for staying at Gunston Hall with his family, his desire to see his vision of civil liberty enacted motivated his decision to carry on duties. Nevertheless, Mason repeatedly refused appointments as delegate to the Continental Congress, despite the pleas of his colleagues.⁵⁶ In a letter to George Washington, Mason writes that he simply wants to “sit under the shade of his own Vine, and his own fig tree, and enjoy the sweets of domestic Life.”⁵⁷ Mason’s

⁵¹ Broadwater, *Forgotten Founder*. Pg. 67. George Washington himself took the Resolves to the Convention from where they were slightly edited before being established as the nonimportation agreement.

⁵² PGM I: 200

⁵³ Broadwater, *Forgotten Founder*. Pg. 68

⁵⁴ George Mason, *Remarks on Annual Elections for the Fairfax Independent Company as found in the Founders’ Constitution*, Volume I Pg. 667

⁵⁵ Broadwater, *Forgotten Founder*. Pg. 69

⁵⁶ Broadwater, *Forgotten Founder*. Pg. 74

⁵⁷ PGM I: 267

refusal to simply seek higher political office for personal gain reflects upon his character and helps explain how far more ambitious men received a greater place in the pantheon of founders.

From his service in the Virginia Convention Mason played a leading role in the creation of both the Virginia Declaration of Rights and the Virginia Constitution. As noted previously, the Virginia Declaration of Rights was a seminal document in the history of American political liberty. Mason was responsible for all the articles except two and undoubtedly can claim credit for writing the first such declaration in the American colonies.⁵⁸ For those who may question Mason's stature in Virginia, it is noteworthy to mention he was labeled "of the first order of greatness" by Thomas Jefferson and that James Madison stated he "possessed the greatest talents for debate of any man I have ever seen or heard speak."⁵⁹ Noted orator of liberty Patrick Henry described Mason as "the greatest statesmen I ever knew."⁶⁰ It was both Mason's unimpeachable character and his intellectual prowess that enabled him to succeed at manifesting his ideas into the most important political documents of the day.

Following the ratification of the Virginia Constitution, Mason would serve in the House of Delegates from its inception in 1777 until he left in 1781.⁶¹ During this time he continued to engage in public service while remaining committed to looking after his holdings and family. His marriage to Sarah Brent in April 1780 relieved him of being a widower and brought comfort to the young children at Gunston Hall in need of a mother.⁶² The fifty year-old Sarah Brent proved to bear "the mantle of mistress of Gunston with grace and dignity."⁶³ Following his withdrawal from the House of

⁵⁸ Broadwater, *Forgotten Founder*. Pg. 87

⁵⁹ PGM I: cxi; Hyland, *George Mason*. Pg. xvi

⁶⁰ Hyland, *George Mason*. Pg. xvi

⁶¹ Broadwater, *Forgotten Founder*. Pg. 135

⁶² Hyland, *George Mason*. Pg. 168

⁶³ Hyland, *George Mason*. Pg. 170

Delegates GM maintained oversight of his lands and continued to be the family centered man that he sought to be. He refused efforts to recruit him in a return to public service and spurned the efforts of some in the post-war period to prevent debt recovery for British merchants.⁶⁴ Mason did play a part in assisting James Madison in defeating Patrick Henry's proposal for the State of Virginia to provide subsidies for Christian education. Madison's compendium on the subject *Memorial and Remonstrances against Religious Assessments* quoted heavily from Mason's Declaration of Rights and followed correspondence between Mason and Madison on the matter.⁶⁵ Mason participated in the Mount Vernon Conference, now considered the first step on the route to the Constitutional Convention.⁶⁶ While most certainly not relinquishing his duties or influence on political matters, the only time Mason would take a national role was still to come.

In late 1786, Mason is informed by Governor Randolph that he has been assigned to be a part of the seven-man delegation traveling to the Federal Convention in Philadelphia in the summer of 1787.⁶⁷ Despite the 140-mile trek that would be required from Gunston Hall to Philadelphia, GM accepted the role. Mason put aside his habitual reluctance to claim the public office assigned to him because he realized the significance of the upcoming convention. George Mason arrived early for the convention on May 17th, 1787 and quartered at the Indian Queen Tavern on 4th Street.⁶⁸ In a letter to George Mason Jr. following his arrival in Philadelphia, he writes "The expectations and hope of all the Union center in this convention."⁶⁹

⁶⁴ PGM I: cxix

⁶⁵ Broadwater, *Forgotten Founder*. Pg. 148. Madison's *Memorial* is often considered to be the major reason for the defeat of the bill in the Virginia House of Delegates.

⁶⁶ Broadwater, *Forgotten Founder*. Pgs. 154-55

⁶⁷ Hyland, *George Mason*. Pg. 175

⁶⁸ Pacheco, Josephine. "George Mason and the Constitution" in Senese, Donald J. (ed.). *George Mason and the Legacy of Constitutional Liberty*. Fairfax County History Commission. Pg. 62

⁶⁹ PGM III: 880

Throughout the summer of 1787, Mason played a critical role in shaping the document of the convention. Josephine Pacheco argued that “except for Madison, probably no one contributed more to the actual document than did Mason.”⁷⁰ There are likely only four to five delegates who spoke more than Mason during the Convention and he easily distinguished himself as one of the leading statesmen of the group.⁷¹ Mason, ever the believer in the necessity of communal self-governance, sought ways to ensure that the new governing structure would be accountable to the people it was intended to represent. Mason opposed measures that would have inoculated the executive branch from some form of answerability to the populace and successfully pursued the popular election of members of the House of Representatives.⁷² In turn he ensured that powers of appropriation originated in the House so that the peoples’ representatives would be held responsible for taxation.⁷³ On nearly every issue brought for discussion amongst convention members, Mason had claims to assert. Unlike other convention delegates who drifted in and out of proceedings, GM attended every available meeting and established his good delegate reputation.⁷⁴

Mason did face defeats on decisive issues that effectuated his decision not to sign the completed constitution. Foremost in opposition to his southern roots was the inability of the delegates to establish a two-thirds requirement for all navigation and trade acts. Southern states feared that northern commercial interests would impose deleterious trading policies through simple majority and southern delegates failed in achieving this stipulation. That this issue consumed the majority of Mason’s vociferous opposition to the document in the waning days of the convention reveals he always

⁷⁰ Pacheco, Josephine. *George Mason and the Constitution*. Pg. 63

⁷¹ Broadwater, *Forgotten Founder*. Pg. 165

⁷² Broadwater, *Forgotten Founder*. Pg. 165

⁷³ Broadwater, *Forgotten Founder*. Pg. 173

⁷⁴ Broadwater, *Forgotten Founder*. Pg. 156

maintained “commitment to republican virtue and the interests of Virginia.”⁷⁵ GM voiced robust resistance to the failure of the convention to ban the slave trade, and gave “a vitriolic speech denouncing slavery, one of the most cited speeches of the convention.”⁷⁶ While the paradox laden with a slaveholder denouncing the institution of slavery may be recognized today, in the Founding era this denunciation was noteworthy and emblematic of future divisions to come. Ultimately, the final vote not to include a declaration of rights developed into the catalyst for Mason’s decision not to sign. “Motivated most by republicanism and concern for minority rights”, GM refused to affix his name to the document he shaped in profound ways.⁷⁷

George Mason’s role in leading the opposition to ratification and his influence on the creation of the Bill of Rights cemented his legacy as one of the leading progenitors of American constitutional liberty. Frustrated over his defeats at the Federal Convention, Mason penned his *Objections to the Constitution* generating intense discussion and passionate responses from James Iredell and “Civis Rusticus.”⁷⁸ The central argument of Mason’s ‘Objections’ that the Constitution contained no guarantee for civil liberties garnered increased support “as the rallying theme of the ‘anti-federalists’” gathered in Richmond for the Virginia Ratifying Convention.⁷⁹ GM did attend the Virginia ratifying convention, but acquiesced to the leadership of Patrick Henry who guided the Antifederalists to near victory.⁸⁰ Yet the pressure for a written declaration of rights mounted and James Madison in seeking election to Congress had to “ensure constituents he would seek changes to the Constitution including a bill of

⁷⁵ Broadwater, *Forgotten Founder*. Pg. 184

⁷⁶ Broadwater, *Forgotten Founder*. Pg. 191

⁷⁷ Broadwater, *Forgotten Founder*. Pgs. 207-08

⁷⁸ *The Debate on the Constitution, Part One*. Library of America, 1993. Pgs. 353, 363

⁷⁹ Hyland, *George Mason*. Pg. 269

⁸⁰ Broadwater, *Forgotten Founder*. Pg. 228

rights.”⁸¹ Without Mason’s standing as protector of civil liberties and effective use of that to cudgel the Federalists the impetus for the Bill of Rights in all likelihood would not have existed.

Following the ratification of the United States Constitution, Mason receded from public life but maintained an active existence in business affairs and the Northern Neck community. He chose to resign from the Fairfax County Court rather take the oath of office pledging fealty to the Constitution.⁸² He cultivated a renewed relationship with James Madison and characteristically refused the opportunity to serve in the United States Senate after being appointed to it in 1790.⁸³ The waning years of Mason’s life were spent in skepticism toward the viability of the new nation to preserve liberty, yet some of those concerns must have been allayed by Madison’s guidance of the Bill of Rights to passage. George Mason died at Gunston Hall on October 8th, 1792 at the age of 66 years old, having shaped the course of liberty in the new nation in manners he may not have appreciated then.

Thesis

⁸¹ Rutland, Robert. “George Mason’s ‘Objections’ and the Bill of Rights” in Senese, Donald J. (ed.). *George Mason and the Legacy of Constitutional Liberty*. Fairfax County History Commission. Pg.80

⁸² Broadwater, Forgotten Founder. Pg. 242

⁸³ PGM I: ccxv

This research project concentrated on the contested meanings of “liberty” in the American Revolutionary and Early Republic periods as visible through a close study of George Mason’s views. The rallying cry of “liberty” served a central role in the formation of the American nation. Yet, as shown above, it meant several different things. Primary sources such as polemical tracts and key documents like the Virginia Declaration of Rights reveal nuances in what was meant by liberty, this term that galvanized a revolution and served as the fulcrum for generations of American identity. Focusing on a multi-varied political actor such as George Mason illuminates the contested meaning of liberty during the constitutional ratification process. Delegates’ views of ‘proper liberty’ shaped the construction of basic civil liberties. At the heart of the dispute over the meaning of liberty existed a debate over how the government should be constituted in relation to society. A distinctively American definition of ‘liberty’ unencumbered by monarchical attachments did not emerge until the ratification of the Constitution and the Bill of Rights. Analysis of political pamphlets, personal diaries, constitutional convention and state convention records will have enabled me to sketch out the meaning of liberty changed in the period from the onset of conflict through the adoption of the Constitution. While rooted in English hierarchical liberty, the American liberty drawn from the turmoil of the Founding era propounded rights to communal self-governance as paramount.

The Vision of George Mason

George Mason authored the 1776 Virginia Declaration of Rights. In it, he positions his understanding of liberty as a political concept firmly within an *ordered liberty* framework. This framework derived largely from Whiggish republican thought and emphasized the importance of virtue for the fulfillment of liberty. Adopted by the Virginia Constitutional Convention on June 12th, 1776, and thereafter heavily replicated in Jefferson's Declaration of Independence, this document serves as a distilled reflection of an early Revolutionary view of liberty in general. Fundamentally drawing upon the central tenets of Lockean political philosophy, particularly from his Second Treatise on Government, Mason sought to pronounce a colonial exegesis of their rights as Englishmen. While this declaration precedes the actual declaration of rebellion from the mother country, it fulfills the role of providing an intellectual basis for the cause of such a rebellion. Inherently radical for its proposition that every man was equal and entered into civil society via compact, the text demonstrates a vision of liberty that was self-determinant in nature yet governed by hierarchical limits. He writes in Article XV of the Declaration,

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.⁸⁴

The critical definition of authentic liberty that Mason settles upon explains that for true liberty to exist the disposition of the people must be ordered correctly. This conditioning of liberty is intentional, as it therefore contrasts a 'proper' understanding of it with the anarchic licentiousness promoted by certain revolutionary elements. Mason, concerned with the need for both liberty and law, presents *ordered liberty* as the only legitimate classification. Jefferson, in his drafting, did not include these conditions for authentic liberty in his explication. Thus, the slight divergence in the notions of

⁸⁴ Virginia Declaration of Rights as found in *Founding America: Documents from the Revolution to the Bill of Rights*. Pg. 88

liberty provides insight into the differing visions of the men active in challenging the colonial status quo. Of course, Mason's declaration would go on to be the model for seven other state declarations and demonstrated a long-lasting influence on the principles of liberty expressed by future states.⁸⁵

Beginning with the preface, Mason lays out the understanding that "rights" are "the basis and foundation of government".⁸⁶ A declarative statement, this preface is articulating the position that 'rights', or civil liberties as we may understand them, function as the only legitimate root of any structured authority or government. Thus, in the eyes of the colonists, liberty is already presupposed as a necessary component for just governance. While not an entirely alien concept to the British people and her colonies, such an assertion evinces the inherently natural law-based worldview of certain leading Patriots who considered fealty to the Crown as subordinate to the protection of their liberties. The existing English constitution implied a set of reciprocal duties among the many parts, with the understanding that the allegiance to the Crown was required but the preservation of English liberties lay at the core of the paradigm.

Many of these Patriots at the time, including Mason, would not have considered themselves anti-monarchists or necessarily disloyal to the Crown. However, the radical element of this opening preface to the declaration is precisely the matter of liberty, and not divine authority, functioning as the basis of legitimate authority. For as Gordon Wood explained, liberty in the republican tradition meant the means by which one "achieved his greatest moral fulfillment by participating in a self-governing republic."⁸⁷ The references to liberty compactly presented by Mason would have been understood in

⁸⁵ George Mason: the Preparation for Leadership George Mason and the legacy of constitutional liberty: an examination of the influence of George Mason on the American Bill of Rights Pg. 29

⁸⁶ Virginia Declaration of Rights as found in *Founding America: Documents from the Revolution to the Bill of Rights*. Pg. 88

⁸⁷ Wood, *Radicalism*, Pg. 104

the context of “when citizens are virtuous.”⁸⁸ The need for virtue in the citizenry substantiates that the political liberty consistently addressed by Mason in his public career was about more than independence but instead a grander alignment of the governing structure toward self-governance.

The questions of who government serves and where sovereignty lies is answered in a rather Lockean manner by Mason. The purpose of government is illuminated as for “the common benefit, protection, and security of the people” and the best government being that which “produces the greatest degree of happiness and safety.”⁸⁹ If the end of government is to serve the people and to protect them, then that raises the question of what is being protected. In agreement with Locke, Mason is setting forth an understanding that attached to the purpose of government is the preservation of one’s property rights. This is enforced by the subjective claim that the best governments are those which produce the most happiness, since a prevailing perception of happiness was property being essential to procuring it. Mason completes this clause by avowing that any authority which is deficient in its purpose is then liable to be changed by the people. With the ‘people’, therefore, exists the ultimate authority for liberty triumphs over arbitrary power. This consistent concern with arbitrary power motivated both proponents of ordered liberty and more radical minds such as Thomas Paine.

Mason continues to explicate qualities of liberty which eventually form several crucial constitutional amendments, yet his essential understanding of the nature of liberty comes later in the document. He states that every man has a right to hear the crime he is accused of, to a trial “by the judgment of his peers”, and that warrants must be limited and based on evidence. These basic rights, not included in Jefferson’s discourse in the Declaration of Independence, foreshadow Mason’s great concern for

⁸⁸ Wood, *Radicalism*, Pg. 104

⁸⁹ Virginia Declaration of Rights, Pg. 88

explicit civil liberties that motivated his actions at the Constitutional Convention.

Another fascinating omission of the later Declaration of Independence when compared to its Virginian predecessor is the lack of dialogue on religious division and the need for freedom to worship. Mason, a generally orthodox Christian, nonetheless valued the need for tolerance on religious matters and included a forceful defense of freedom of conscience in his writings. Particularly on the issue of religious liberty, Mason expands upon the common English understanding and states that “all men are equally entitled to the free exercise of religion.”⁹⁰ This insistence upon religious liberty as integral to the practice of authentic freedom reveals the nuanced nature of the ordered liberty he sought to promote. While Mason believed in the need for a people to be virtuous for liberty to exist, he did not view the imposition of one religious dogma as the precursor for virtue to exist. That viewpoint would be echoed in future debates over the proper role of liberty and virtue, and closely aligns Mason with other proponents of republican virtue such as John Adams. From the chassis of republican thought, a distinction was made between types of virtue. Essential to the definition of republican virtue was independence and thus protection from the corruption of economic dependence. Thus, while Mason was obsessed with the need for virtue in the active citizenry, he did not desire to have religious virtue promulgated by a central authority. The inclusion of religious freedom of conscience in the Virginia Declaration demonstrates the process by which colonial understandings of liberty began to evolve with the flow of the Revolution.

Central to the debates that occurred during the construction of the American Experiment were the differing understandings of political liberty. The American Revolution involved a nuanced series of cultural, economic, social, and political factors. Liberty as a theoretical concept may seem to be less important in recent historiography,

⁹⁰ Virginia Declaration of Rights, Pg. 88

as it may be easier to ascribe broader sociological trends as impetus for revolt rather than political theory. However, it would be a mistake to assume so, for liberty gave expression to the frustrations and anxieties that motivated the aggrieved rebels. The founding generation that drafted the United States Constitution and similar documents were engaged in discussion over what the American understanding of political liberty should be. George Mason, a leading Anti-Federalist, influenced this discourse in the assemblies which he served. More important, his thinking shaped the structure of American constitutional liberty. As biographer Jeff Broadwater noted, part of Mason's contribution resulted from his "ability to combine Enlightenment political philosophy with the English legal tradition to express in scarcely two pages the ideology of the American Revolution."⁹¹

But George Mason remains sorely unappreciated. A planter from Fairfax County who, before 1787, had never travelled more than thirty miles beyond his plantation, Mason ultimately belongs among the upper stratum of the founding generation. Virtually unknown to any but scholars, he played a critical role in the formation of government in the early Republic, both in his home state of Virginia and in the new nation as a whole. Virginia played an outsized role in the Revolution, due to both its population and the national influence of many of its leading sons, George Washington and Thomas Jefferson among them. By 1776, Mason was described by one biographer as one of the "two or three dominant figures in Virginia politics," a characterization he earned due to his impact on a range of legislative and constitutional proposals.⁹² Although not as prolific as Thomas Jefferson, Mason displayed a similarly rational approach to religious toleration. Scholars have argued that this was motivated by a "republican obsession with political virtue" that proved groundbreaking for

⁹¹ Broadwater, *Forgotten Founder*. Pg. 88

⁹² Broadwater, *Forgotten Founder* Pg. 55

religious liberty in America.⁹³ Due to Mason's influence, Virginia established a model for promoting the notion that freedom of conscience must be preserved in order for authentic liberty to exist.

The concept of a hierarchical liberty did not begin with Mason, and the debate over the degrees of liberty that should be allowed in a civil society expanded beyond the American Revolution. Inherent to *ordered liberty* is a belief in the danger posed by a strong central authority that masquerades tyranny as liberty. For figures such as Mason, descended from the neat arrangement of Virginia society, political liberty in the form of a republic was not licentiousness but instead rooted in a virtuous citizenry exercising the consent of the governed. Mason, while a slaveholder, demonstrated a progressive understanding of liberty unattached to arbitrary authority and placed firmly within a rather ancient Roman framework. As historian David Hackett Fischer has detailed, the caste of Virginians including George Mason "had a highly developed sense of their own liberty and freedom" that while allowing for slavery provided an edifice for greater liberty.⁹⁴ The "hierarchical liberty" that characterized the Virginian ideal had much similarity with "the Roman *libertas*."⁹⁵ Drawing inspiration from ancient Roman notions of liberty, Mason articulated a vision of ordered and virtuous liberty that transcended beyond the American Revolution.

Mason proposed a nuanced understanding of liberty as revealed in correspondence during the growing imperial crisis. Writing to Richard Henry Lee in the midst of another nonimportation association to protest British policies, Mason supported harsh penalties for those colonists who violated association rules. Distilling his view of ordered liberty further he writes:

⁹³ Broadwater, *Forgotten Founder* Pg. 82

⁹⁴ Fischer, David Hackett. *Liberty and Freedom*. America, a Cultural History, 3. Oxford: Oxford University Press, 2005. Pg. 61

⁹⁵ Fischer, David Hackett. *Liberty and Freedom*. Pg. 64

“The Objection that this would be infringing the Rights of others, while we are contending for liberty ourselves, is ill founded. Every Member of Society is in Duty bound to contribute to the Safety and Good of the Whole; and when the subject is of such importance as the Liberty & Happiness of a Country, every inferior consideration, as well as the inconvenience to a few Individuals, must give place to it”⁹⁶

This perception of liberty necessarily involving “duty” to each other demonstrates that Mason understood liberty naturally containing constrictions. As Mason stated above, that liberty included such boundaries did not diminish it but rather “contribute[d] to the Safety and Good of the Whole.”⁹⁷

A more advanced form of Christian liberty, Mason’s republican virtue stood in stark contrast to that espoused by some of his patriot consociates including Thomas Paine. Although the American debate over political liberty largely preceded the events of the French Revolution, it is significant to contrast the forms of liberty which appeared to have been most successful in those respective rebellions. The writings of radical English Whigs inspired Mason, such as the Junius Letters, which he labeled “certainly superior to anything of the kind that ever appeared in our language.”⁹⁸ Compositions such as these were ultimately an enhancement of traditional English understandings of liberty that Mason applied to the American colonies.⁹⁹

Mason and Liberty in Action

The Fairfax Resolves

As his first foray into the grand stage of the Revolution in 1774, Mason drafted the Fairfax Resolves. This would prove to be a pivotal moment, one in which Mason’s understanding of ordered liberty was first publicly articulated. Because the document

⁹⁶ Letter; GM to Richard Henry Lee. PGM I: 118

⁹⁷ Letter; GM to Richard Henry Lee. PGM I: 118

⁹⁸ Letter; GM to George Brent. PGM I: 127

⁹⁹ Broadwater, *Forgotten Founder*. Pg. 42

and the debate survive, analysis of the resolves provides a crucial lens through which to explore the earliest expression of his thoughts.

Deputized by the Virginia General Assembly in July 1774, Mason began drafting the resolves of Fairfax County stakeholders regarding the natural liberties of Virginians as British subjects. While these were the resolves to be transmitted to the gathering Virginia Convention, Mason's contributions would go beyond the Fairfax County level.

Critical aspects of the resolves were incorporated into the nonimportation agreement of the Virginia Convention at the behest of George Washington.¹⁰⁰ Mason's draft explicitly called for a boycott of British goods until the colonial demands for restoration of some self-determination and local autonomy were met. Mason inserts into the resolves a passage clearly in alignment with the social contract theory as it has been articulated by John Locke. In Locke's *Second Treatise on Government*, the great thinker delineated the "great and chief purpose of men's uniting into commonwealths and putting themselves under government is the preservation of their property."¹⁰¹ Mason articulates his objections to British taxation as follows:

"The claim lately assumed and exercised by the British Parliament, of making all such Laws as they think fit, to govern the people of these Colonies, and to extort from us our Money without our Consent, is not only diametrically contrary to the first Principles of the Constitution, and the original Compacts by which we are dependant upon the British Crown and Government; but is totally incompatible with the Privileges of a free People, and the natural Rights of Mankind; will render our own Legislatures merely nominal and nugatory, and is calculated to reduce us from a State of Freedom and Happiness to Slavery and Misery."¹⁰²

This little-known text reveals that leading rebels, in this case, Fairfax County freeholders, were focused on the perceived abrogation of natural English liberties rooted in social "compacts". In this vision of liberty, the central injustice lay in the violation of

¹⁰⁰ Broadwater, *Forgotten Founder*. Pg. 66. Washington took the finalized resolves to the Virginia Convention where it was incorporated into the convention's agreement.

¹⁰¹ Locke, John. "Second Treatise of Government". Chapter IX. Section 124

¹⁰² Fairfax County Resolves. PGM I: 203

communitarian standards by British attempts to deprive local communities of the self-governance they had enjoyed.

The Resolves made consistent references to the “British Constitution,” an unwritten understanding of common law tradition mixed with court opinions and societally accepted rights. Similar to other Patriot writers in the Revolutionary era, Mason made references to this unwritten constitution to appeal to a broader cultural milieu. English identity derived in part from the pride of and reverence for the liberty afforded by the British constitution. As described by historian Gordon Wood, “Like all Englishmen, the colonists continued to embrace deeply rooted assumptions about the order and stability needed in a monarchical society.”¹⁰³ Undoubtedly, British subjects and their brethren in the colonies valued the order enshrined in this version of liberty. At the same time, what made the British distinct from their European cousins was a “stubborn unwillingness to be governed.”¹⁰⁴ The value attached to the unwritten British Constitution underlaid many colonial objections to imperial policies.

Liberty as presented in the Resolves belongs in this larger colonial framework with its balanced approach to greater expansion of self-governance while maintaining long-established tradition. The colonists understood well their own need for state collection of revenue to ensure protection, as they had only recently experienced with the French and Indian War. So, their objections were never to taxation per se. Instead, colonial objection to British taxation as explicated in Mason’s Fairfax Resolves concerns the fundamental question of who is exercising this right of control over taxation that “is the only effectual Security to a free People.”¹⁰⁵ While radical in its application, the Fairfax Resolves drafted by Mason demonstrated that the concern for

¹⁰³ Radicalism, Wood. Pg. 11

¹⁰⁴ Radicalism, Wood Pg. 12

¹⁰⁵ Fairfax County Resolves, PGM I: 203

liberty centered not on individual violations but rather on a perceived transgression against the community.

Fairfax Company

The assertion of principle also demanding its defense, at least if you were true to Lockean reasoning. After drafting the Resolves, Mason would become intimately involved in the creation of a local militia company, the Fairfax Independent Company, in the spring of 1775. In a speech espousing many classical liberal principles such as protection of natural liberties and concern over arbitrary assumption of power, Mason discussed the decision to institute an annual rotation of the elected officers of the company, an example of radical democracy in a world of oligarchical control. Before an assemblage of the founders and prospective officers of this militia company he gave a speech that contemplated deeper principles beyond simply the mode of selecting officers for the local county militia. This speech “was a classic statement of his republican philosophy.”¹⁰⁶ Mason describes the focus of the company on “the liberal sentiments of the public good” and its mission to safeguard “the inestimable rights” derived from the English tradition.¹⁰⁷ Similar to his claims in the Fairfax Resolves, Mason appeals to a shared fear of communal loss of liberty when he states that the colonies are “threatened with the ruin of that constitution under which we were born.”¹⁰⁸ This unwritten English constitution represented their best protection against contemporary tyranny.

The unique obsession with liberty was a distinctly English and colonial trait in the Revolutionary era. As historian Gordon Wood has noted, “Every cause...was wrapped in the language of English liberty.”¹⁰⁹ Foreshadowing the words he would craft

¹⁰⁶ Broadwater, *Forgotten Founder*. Pg. 68

¹⁰⁷ George Mason, *Remarks on the Annual Elections for the Fairfax Independent Company* as found in the PGM I: 229-232

¹⁰⁸ PGM I: 229

¹⁰⁹ Wood, *Radicalism*. Pg. 13

in the later Virginia Declaration of Rights, Mason spoke of how “all men are by nature born equally free and independent.”¹¹⁰ Drawing upon Lockean ideals, Mason describes the transition from the state of nature to modern societies as one in which “men entered into compacts” so that government would “be calculated for the general good.”¹¹¹ While not entirely original in its premise due to his likely reliance on John Locke’s Second Treatise on Government, Mason’s highlighting of the purpose of government is striking because it demonstrates a vision of liberty that does involve some giving up of rights to ensure the greater good for the whole community. Thus, a hierarchy of liberty can persist despite all persons being equal, with each person or group having a properly ordered position within the broader “general good” framework.

In anticipation of later Anti-Federalist concerns, Mason champions liberty by warning against the encroachments that could easily form against it. He describes “the incautious nature of many” and the “lust [for] power in the few” as dangers that must be guarded against. From Mason’s perspective, without the proper structure and order, liberty will quickly descend into tyranny and oppression.

Later in the speech, Mason expresses concern over a standing army. He notes the threat if “any military establishment is not...blended [back] into the mass from which it was taken [at the end of the conflict].”¹¹² In describing how best to guard against future abuse of authority, Mason makes a forceful case for rotation of officers. He saw this as the best guarantee against domination by a Julius Caesar-like military officer. The distress expressed by Mason over the officers for a company as relatively small as the Fairfax Company validates the notion that he was consistently motivated over any potential arbitrary domination, whether at the local level or larger.

¹¹⁰ PGM I: 229

¹¹¹ PGM I: 229

¹¹² PGM I: 230

This oft overlooked speech by Mason contains, in fact, a précis of his later political theory. A consistent thinker, Mason was already pondering these dangers as a foundation of his political philosophy. The speech anticipates many of the concerns with abuse of power that would later earn intense ridicule as a delegate to the Constitutional Convention. But even in this early era and even for an organization as small as the Fairfax County militia, Mason argued the “fundamental maxim” that “all power was originally lodged in, and consequently is derived from, the people.”¹¹³ This principle would appear again and again throughout his career. Mason was motivated by an authentic concern for civil liberties and a grand vision of “the constitution” of liberty which he viewed as rooted in the English tradition and now owned by the colonists. His references to the Roman Republic and its fall were not simply convenient reliance on the reading choices afforded him during his education but are a prescient substantiation of his belief in republican liberty preceding the development of English liberty. With a deep conviction, Mason viewed English corruption as threatening the American system of liberty and saw it “as our duty by every means in our power to prevent the like here.”¹¹⁴

The Constitutional Convention

For the first time in his 61 years of life, the Fairfax County planter-statesman set out beyond the radius of his home to serve Virginia in the Constitutional Convention in Philadelphia. Mason’s service during the convention marked the culmination of his lifetime commitment articulating a universal vision of liberty. GM expounded upon all his previous writings on political matters through 136 recorded speeches to the assembled delegates.¹¹⁵ Mason maintained potent effects on a variety of the issues

¹¹³ PGM I: 231

¹¹⁴ PGM I: 230

¹¹⁵ PGM III: xxvii

debated, from the apportionment of Senate seats to the origination of appropriation bills and impeachment parameters. While not entirely comfortable in the scheming sphere of the Philadelphia gathering, his principled nature led him to become outspoken during the entirety of the proceedings.

His first notable act at the convention concerned defending the need for popular election of House members. Convention records state that Mason argued the House “was to be the grand depository of the democratic principle of government.”¹¹⁶ Mason feared that the failure of the previous Articles of Confederation may motivate delegates to “run into the opposite extreme.”¹¹⁷ Popular election for the House of Representatives ensured that the most basic principle of constitutional liberty, that of the right to self-governance, existed in the new republic. Mason’s vigorous defense of that principle harkened to the objections he raised in the Fairfax Resolves to the British deprivation of the consent of the governed. Preserving the principle of self-governance through direct accountability of the ‘peoples’ representatives’ forms a central tenet of democratic governance to the contemporary age.

Consistent with his previous stances on slavery Mason opposed the infamous Three-Fifths Compromise that allocated three fifths of slaves as persons to qualify for representation. Despite the benefits afforded to Virginia through the scheme, Mason opposed the measure out of principle. Madison records that GM simply viewed it “as unjust.”¹¹⁸ Mason’s predilection for denouncing slavery while remaining a slaveholder has been documented, but his forceful condemnation of the institution reflected a prescient warning for the effect the issue would have on the young nation.

Mason most probably drafted the clause mandating the origination of all appropriations bills from the House of Representatives. Intensely aware that the House

¹¹⁶ PGM III: 888

¹¹⁷ PGM III: 888

¹¹⁸ PGM III: 923

symbolized the power of the people, Mason threatened to withdraw support for the equal representation of the Senate if the clause on origination of money bills did not receive adoption.¹¹⁹ Appropriations represent the clearest exercise of raw power by the legislature, for they enable the legal deprivation of economic livelihoods. GM already viewed the Senate as an aristocratic body, and therefore argued “the purse strings should never be put into its hands.”¹²⁰ This position reflected clear alignment with his earlier articulation in the Fairfax Resolves that “privileges of a free people” require consent of the governed for money to be taxed.¹²¹

For the duration of the proceedings, Mason’s active involvement and participation ensured some of the balanced liberty that he sought, with properly ordered powers allotted to the differing branches. He supported the right of Congress to declare war, fearful that trusting the executive with such power would be detrimental to liberty.¹²² Mason opposed election of the President by the Senate, fearing that such an arrangement created “an Alarming Dependence” as he later stated.¹²³ Demonstrating an authentic devotion to federalism, Mason opposed the suggestion of Charles Pickney that Congress should be allowed to nullify state laws.¹²⁴ GM understood that such a power would make the states simply provinces under the direction of the central government. He often found himself sitting on “committees of eleven” convened to discuss multi-faceted issues including trade regulations.¹²⁵ Yet despite his success at shaping the document, on August 31, 1787 Mason famously declared “he would sooner chop off his right hand than put it to the Constitution as it now stands.”¹²⁶ This derived from GM’s

¹¹⁹ PGM III: 952

¹²⁰ PGM III: 951

¹²¹ PGM I: 203

¹²² PGM III: 960

¹²³ PGM III: 976

¹²⁴ PGM III: 967

¹²⁵ PGM III: 971

¹²⁶ PGM III: 973

concern that the working document reflected aristocratic priorities and did not institute the needed reforms for the preservation of self-governance for both the people and the states.

The juncture point from which Mason's opposition to the Constitution was finalized came in the reaction to his September 12th speech. GM spoke of the need for the constitution "to be prefaced with a bill of rights."¹²⁷ Roger Sherman attacked this notion and claimed the state declaration of rights, such as that of Virginia crafted by Mason, were sufficient. Mason, utilizing his legalistic mindset, replied that "the Laws of the U.S. are to be paramount to State Bills of Rights."¹²⁸ The supremacy granted to federal laws therefore could lead to the deprivation of civil liberties if so stipulated. The rejection of Mason's motion for a bill of rights to be drafted provided the final cause for his decision not to sign the Constitution. Motivated by the consistent principle throughout his life of preserving the right to self-governance, George Mason refused to affix his name to a document he felt did not rise to that standard.

Anti-Federalist and the Bill of Rights

Joined by other leading Virginia figures such as Patrick Henry and Richard Henry Lee, Mason set out to vigorously oppose the ratification of the Constitution and ultimately proved successful at acquiring a written bill of rights for the nation. Mason's "Objections to the Constitution of Government formed by the Constitution" became "the most influential statement of Anti-Federalist principles" after Elbridge Gerry's essay.¹²⁹ Written on September 16th, 1787 only days after the vote to accept the Constitution, Mason eloquently remonstrated against the major failures of the

¹²⁷ PGM III: 981

¹²⁸ PGM III: 981

¹²⁹ Cornell, Saul, and Omohundro Institute of Early American History & Culture. *The Other Founders : Anti-Federalism and the Dissenting Tradition in America, 1788-1828*. Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1999. Pg. 29

document. He began with “there is no Declaration of Rights...the Declarations of Rights in the separate States are no security.”¹³⁰ This proved to be the clarion call for the resistance to the constitution and shaped “the response of leading Anti-Federalist politicians in several states.”¹³¹ His consistent concern for civil liberties and communitarian autonomy displayed throughout his writings manifested in the ‘Objections’. While Mason exhibited the typical Antifederalist suspicion of any accumulation of power his concern was always in the context of the threat of institutionalized power. Mason seemed to trust communities and local governance more because it created deeper accountability and thus ensured more authentic self-governance.

Mason’s role in the Virginia Ratifying Convention would be more subdued, but the influence of his Objections in creating demand for a written Bill of Rights demonstrates the lasting impact he had on American constitutional liberty. In a “conflict between champions of state rights versus individual rights. Mason was a champion of both” helping to craft “a central government of limited powers but one which provided protection of the rights of individual citizens.”¹³² The Constitution achieved ratification without a bill of rights, but the demand for such a declaration became so intense as to make Madison vow it would be his first project upon his arrival in Congress.¹³³ Madison’s proposed amendments which eventually constituted the Bill of Rights largely drew inspiration from Mason’s Virginia Declaration. “Madison’s provisions were a condensed, rearranged version of Mason’s first three provisions of the Virginia Declaration of Rights.”¹³⁴ Thus, a direct linkage between the rights first expounded in

¹³⁰ PGM III: 991

¹³¹ Cornell, *The Other Founders*. Pg. 29

¹³² Senese, Donald J. “George Mason: Why the Forgotten Founding Father?” in Senese, Donald J. (ed.). *George Mason and the Legacy of Constitutional Liberty*. Fairfax County History Commission. Pg. 149

¹³³ Hyland, *George Mason*. Pg. 299

¹³⁴ Hyland, *George Mason*. Pg. 301

the Virginia Declaration to creation of the Bill of Rights may be traced to the efforts of Mason for the preservation of liberty he sought throughout his public service.

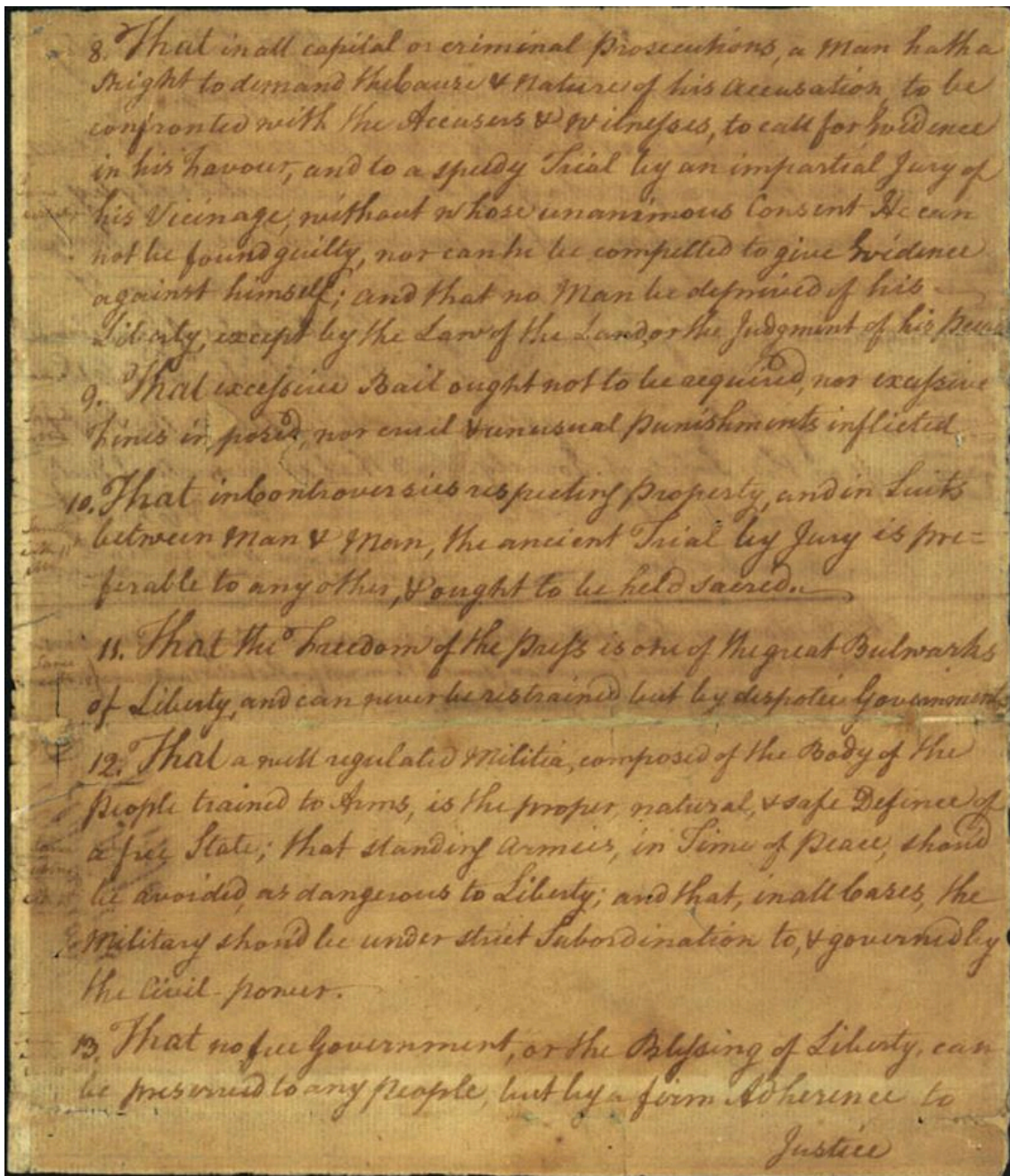
Mason's Legacy Reconsidered

Perhaps wrongfully discarded as one of three contrarian delegates to the Constitutional Convention, Mason's esteemed status during his lifetime and more importantly his tangible achievements for liberty deserve recognition as that of a leading founding father. Historian Forrest McDonald characterized Mason with "prestige just below Washington and talent that far outweighed Madison's."¹³⁵ Mason's contributions to the framework of American constitutional governance alone should place high amongst the Framers. When Mason's descendant inquired to James Madison about the legacy of his esteemed ancestor in shaping the Constitution, he replied that "throughout the proceedings of the body" Mason maintained "the high character of a

¹³⁵ Pacheco, Josephine. George Mason and the Constitution. Pg. 62

powerful reasoner, a profound statesman, and a devoted Republican.”¹³⁶ Yet his lasting achievement is the consistency in his life toward the preservation of the right to self-governance and the promotion of an ordered liberty. The manifestation of American liberty in the wake of the Revolution and French Revolution would take such a form, with proper boundaries established to ensure that citizens were able to do what they ought but not bridled in anarchy. It is difficult to find any other founder who exercised a role in shaping the Declaration of Independence, the Constitution, and the Bill of Rights. Those three documents persist to the contemporary era as exemplifications of American liberty from the founding to the present. While Mason lost the battle over ratification of the Constitution, the impetus to craft a bill of rights derived from his emphatic efforts. The Bill of Rights, authentically federalist in nature and communicative of the inherent civil liberties as expressed in Mason’s Virginia Declaration, forms the crux of liberty in American constitutional governance. Every citizen who cherishes and receives protection of their right to self-governance owes a certain debt of gratitude to the sage of Gunston Hall. The time of minimalizing George Mason’s contribution in forming the distinctly American ordered liberty should give way for proper encomiums to his legacy.

¹³⁶ PGM III: 1007



Copy of the Virginia Declaration of Rights, largely written by George Mason. Courtesy of University of Virginia.

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