

GEORGE MASON AND THE DEBATE ON SLAVERY  
AT THE CONSTITUTIONAL CONVENTION

THESIS

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by

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## **ACKNOWLEDGEMENTS**

I dedicate this thesis to my loving and supportive wife, Erica.

Without her patience and encouragement, none of my accomplishments would be possible.

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## TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS .....	iv
CHAPTER	
I. INTRODUCTION .....	1
History of the Mason Question .....	5
II. BIOGRAPHICAL SKETCH.....	11
Heir to Slave World .....	12
Early Political Career .....	15
Virginian Planter .....	18
Revolutionary Leader.....	20
III. MAY CONVENTION .....	36
Events Leading to the Constitutional Convention .....	36
Slavery in America in 1787 .....	39
The Convention Starts.....	41
The Virginia Plan.....	43
The Start of the Debate on Slavery .....	45
IV. JUNE CONVENTION .....	48
Wilson Wins Support for the Three Fifths Ratio .....	51
Big Versus Small States Fight Almost Derails Convention .....	55
Madison Says Slavery the Real Source of Conflict .....	58

V. JULY CONVENTION.....	62
Mason Selected for Great Compromise Committee .....	63
The Debate on Slavery Flares Up .....	65
The First Sign of the New England / Deep South Alliance .....	66
Mason Supports the Three Fifths Ratio .....	69
The Three Fifths Ratio Rehashed .....	71
The South Threatens to Bolt the Convention.....	73
What about the Western States? .....	75
The Three Fifths Ratio and the Executive Branch.....	77
Conclusion for July .....	78
VI. AUGUST CONVENTION.....	80
The Rutledge Report Attempts to Protect South’s Slave Interests .....	80
Rutledge Report Sparks Zenith of Debate on Slavery .....	84
Debate on Article VII of the Rutledge Report.....	88
Mason’s Great August 22 Anti-slavery Speech.....	92
The Slave Debate Continues.....	96
The Livingston Committee Report Seeks a Compromise.....	101
South Carolina and New England’s Last Backroom Deal.....	105
August Conclusion.....	107
VII. SEPTEMBER CONVENTION.....	108
Slavery Provisions in the Constitution.....	110

Conclusion .....	118
ABBREVIATIONS .....	123
LITERATURE CITED .....	124

## CHAPTER I

### INTRODUCTION

After more than a month of heated debate in the humid Philadelphian summer of 1787, with the tempers of the 55 delegates to the Federal Convention on edge, and many threatening to go home, (and some did), the delegates from the large and small states still could not agree to a compromise. Ironically, the solution to their conflict had already been presented to them. Roger Sherman of Connecticut proposed, in what would later be called the “Connecticut Compromise,” that representation in the lower house ought to be determined by population and representation in the upper ought to be equal. But on June 30, the two camps ignored Sherman and continued to fight. It was on this day that James Madison had an epiphany as to the root cause underlying this contentious debate. He stood up before the Convention and in a firm yet quiet voice asserted that “the States were divided into different interests not by their size, but by other circumstances... principally from their effects of having or not having slaves. These two causes concerned in forming the great division of interests in the United States. It did not lie between large and small States: It lay between the Northern and Southern.”<sup>1</sup>

Although seldom reported in general history books, slavery did cause the great division at the Constitutional Convention. This is because it was closely linked to the

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<sup>1</sup> James Madison. *Notes of Debates in the Federal Convention of 1787*. (New York: W.W. Norton & CO, 1987), 224

question of representation. Whenever the discussion focused on how to calculate representation in the national legislature, the slave question would quickly follow. Should slaves be counted when trying to assess the population or wealth of a state? Many delegates in the North said “no,” and all of the delegates in the South said “yes.” But few delegates at the Convention stood up and said slavery violated their cherished principles of liberty and equality for which they fought the Revolution of 1776.

The figure most associated with the slave debate at the Constitutional Convention was Gouverneur Morris of Philadelphia—actually he lived in New York, but he was representing Pennsylvania at the Convention. Morris, only 35 years of age, was one of the most eloquent and outspoken delegates. Later, as a member of the Committee of Style, he penned the Preamble to the Constitution. But on August 8, after the debate once again returned to the 3/5<sup>th</sup> clause—which determined that in the census five slaves would be counted as three free persons for calculating representation in Congress—Morris said:

The admission of slaves into the representation when fairly explained comes to this: that the inhabitants of Georgia and South Carolina who goes to the coast of Africa and, in deviance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections and damns them to the most cruel bondage, shall have more votes in a government instituted for the protection of the rights of mankind than the citizens of Pennsylvania or New Jersey who view with laudable horror such a nefarious practice.<sup>2</sup>

This is perhaps the most famous anti-slavery speech made at the Federal Convention, but others spoke out as well.

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<sup>2</sup> NDFC, 411



There was another renowned delegate who spoke out against slavery at the Convention who was less voluble than Morris, but in one speech spoke out against slavery in perhaps a more poignant manner. On August 22, this individual said, “Slavery produces the most pernicious effects on manners. Every master of slaves is born a petty tyrant.”<sup>3</sup> And in Madison’s sometimes crimped notes, he is quoted as saying: “They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of cause and effect providence punishes national sin, by national calamities.”<sup>4</sup> Who was this man who made this ominous prediction of God’s retribution on the United States for the sins of slavery? It was George Mason. And what makes this quote more remarkable is the fact that Mason was from the southern state of Virginia and he owned over 200 slaves. Of all the members of the Convention, he was second only to George Washington in slave property.<sup>5</sup>

It becomes obvious that George Mason makes a compelling focus for an examination of the slave debate at the Federal Convention of 1787. Mason is the most interesting figure not only because he was the only southern delegate who made a forceful denunciation of slavery, and thus appeared to be going against his own, and his state’s, economic self interest, but also because he was the author of the Virginia Declaration of Rights. In this document, which had a profound influence on Thomas Jefferson’s Declaration of Independence, Mason wrote, “All men are born equally free and independent, and have certain inherent natural Rights, among which are the

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<sup>3</sup> Ibid., 504

<sup>4</sup> Ibid., 504

<sup>5</sup> Broadwater, Jeff. *George Mason: Forgotten Father*. (Chapel Hill: University of North Carolina Press, 2006), 17

Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursuing and obtaining Happiness and Safety.”<sup>6</sup> Mason really was the embodiment of the ideals and contradictions of the founding generation. He fought the Revolution to secure individual liberty, yet he owned slaves. He was for a democratic Republic based on the idea that people are rational and good enough to govern themselves, and yet he owned humans who were not given the right of autonomy. He was a proud citizen of his state, who before attending the Federal Convention, had never even left Virginia, but now was trying to create a strong national government.

The questions for this paper are these: What were Mason’s true motives in giving his dramatic anti-slave speech on August 22? What was Mason’s role in the debate on slavery at the Constitutional Convention? Was slavery the reason he refused to sign the Constitution? And was he really “America’s first abolitionist,” as some historians describe?

After an examination of Mason’s life and writings, and understanding his speeches in the context of the whole slave debate at the Federal Convention, this paper concludes he was less of an abolitionist than his August 22 speech may at first glance indicate. Like Jefferson, he was acutely aware of the immorality and contradictions to the founding principle which slavery presented, but in the end he was a Virginian who did not want to harm his state. His primary concern was always what effect slavery would have on the white population. He was not an abolitionist because when he talked of the harmful effects of slavery, he only talked of the harm it did white people, the state of Virginia, or the United States. Reared from birth to take over his father’s plantations,

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<sup>6</sup> Robert A. Rutledge et al., eds. *The Papers of George Mason*, 3 vols. (Chapel Hill: University of North Carolina Press, 1970), I:277

Mason was never able to transcend his world to see Blacks as potentially equal, responsible citizens. Mason did support the end of the slave trade and private manumission, but he did not want a large free slave population in Virginia. In his writings and speeches he never extends the individual rights he so eloquently wrote about in the Virginia Declaration of Rights to Black Americans. He did want to reduce slavery but only because it harmed white America.

### **History of the Mason Question**

The works on Mason include such titles as “The Forgotten Founder,” “The Lost Meaning of the Pursuit of Happiness,” and *The Legacy of George Mason* because these authors believed Mason’s great contributions to the founding are little recognized by most Americans today.<sup>7</sup> Mason played a major role during the Revolution. He wrote the Virginia Declaration of Rights, causing some to call him, not James Madison, “the father of the Bill of Rights.” He helped draft the Virginia Constitution, and with Jefferson, rewrote the Virginian law code, and was an advocate of religious freedom. And, of course, he was a leading figure at the Constitutional Convention. However, he was one of three men not to sign the document. After the Convention, Mason stated that his main objection was that it did not contain a bill of rights, but he also stated that he was opposed to the Constitution’s extension of the slave trade. He, along with Patrick Henry, led the Anti-Federalists movement in Virginia. The fact that he refused to sign the Constitution perhaps explains why he has not gone down in history as a leading founder along with the

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<sup>7</sup> Schwartz, Stephen A. “George Mason Forgotten Founder: He Conceived the Bill of Rights.” *Smithsonian* (May 2000): 143. Schesinger, Arthur H. “The Lost Meaning of the Pursuit of Happiness.” *William and Mary Quarterly*, 3<sup>rd</sup> ser., 30 (Jul 1964): 325-27. Shumate, Daniel, ed. *The First Amendment: The Legacy of George Mason*. Fairfax, VA: George Mason University Press, 1985

likes of Washington, Adams, Madison, Jefferson, and the other leading deities of the American pantheon.

Some of the early biographers about Mason were devoted to rectifying this situation. But these advocates often overplayed Mason's contributions to our founding and misinterpreted his views on slavery at the Convention. Perhaps the most dramatic example of this is R. Carter Pittman, a Georgian lawyer and Mason scholar, writing in the 1950s. He said Mason "was the father of the Bill of Rights and the wisest statesmen America has ever known...the contributions of Mason to every bill of rights and constitution that has been adopted since 1776, including the Federal Constitution and the Bill of Rights and those of our various states, are such as to leave his mark and impress indelibly on the world. Not since Christ has any single one man done more for the masses of man." Not the most subtle writer, Pittman also characterized Mason's efforts on behalf of the slaves this way: "had George Mason had his way, the Federal Convention would have emancipated slaves and there would have been no Civil War."<sup>8</sup>

Mason's earliest major biographer, Kate Mason Rowland, one of his descendants and a Virginian writing in the early 1890s, did not paint Mason as an anti-slave idealist as later post World War II writers would. In explaining Mason's apparent anti-slave speech on August 22, Rowland said, "George Mason's attitude must not be misunderstood. He was no *abolitionist* in the modern sense of the term. While he regretted the existence of slavery in the South and opposed the slave trade, at the same time he insisted that the rights of his section in this species of property should be protected, and he wished for a

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<sup>8</sup> Quote from Wallenstein's excellence historiographical essay. Wallenstein, Peter. "Flawed Keepers of the Flame: Interpreters of George Mason." *Virginia Magazine of History and Biography* 102 (April 1994): 229-60. Originally in Pittman, Carter R. "George Mason and the Rights of Man." *Florida Law Journal* 25 (1951): 252

guarantee in the Constitution to insure it.” Rowland was an apologist for the Confederate cause and she did not want Mason’s legacy to be linked to the antebellum abolitionists, but rather the southern aristocratic rebel leaders. She went on to say, “[Mason] himself was an instance that the effect of slavery on manners was not essentially deleterious. No doubt this was the cause in individual instances, but, as a class, there were no nobler men nor more gracious women than the old slave-holding aristocracy of the South...from hence came the patriots and sages of 1776, and the generation that gave equally shining names to history in 1861.”<sup>9</sup>

After World War II, however, scholars began to interpret Mason’s August 22 speech in a more idealistic light than Rowland. Many writers began to call Mason an “abolitionist” and to say his heroic efforts could have prevented the Civil War. Florette Henri, in *George Mason the Virginian*, said, “Mason had lost the constitutional battle and the battle to end slavery. If he had won, the tragic bloodshed and hatred of the Civil War might have been avoided, and both black and white Americans would have started nearly one hundred years earlier to erase the bitterness bred by the slaver system.” Marian Buckley Cox said Mason wanted a bill of rights, protection of states rights, and an end to the slave trade. But “as a result of his defeat, we had the Civil War.”<sup>10</sup>

Robert C. Mason, in *George Mason: Citizen, Statesmen, Philosopher*, said Mason was a major force at the Federal Convention but “he refused to sign for conscientious motives.” He wrote that Mason refused to sign the Constitution for several reason: “As it [the Constitution] stood then, it did not abolish slavery or make preparations for its gradual extinction. It did not clearly define the sovereign states rights or positively

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<sup>9</sup> Rowland, Kate Mason. *The Life of George Mason, 1725-1792*. 2 vols. (New York: G.P.Putnam’s Sons, 1892) I: 161

<sup>10</sup> quote in Wallenstein, 248-252. Henri, Florette. *George Mason of Virginia*. NY: Macmillan, 1971

declare the fundamental constitutional prerogatives of the federal government.”<sup>11</sup>

Heynsfeld and Lewis, in *George Mason*, said “had the delegates listened to his arguments, they might have avoided the national calamity he predicted, the Civil War.”<sup>12</sup>

There has been much confusion about Mason’s role in general books about the Constitutional Convention as well. Perhaps one of the most popular books about the Convention in the last few decades was Catherine Drinker Bowen *Miracle at Philadelphia*. Bowen said Mason was “openly and urgently abolitionist; he wished to see all slaves freed.” At another point in the book she said Mason was a “fervent abolitionist before the word was coined.” And when Bowen commented on his August 22 anti-slavery speech, she said, “It was common knowledge that his magnificent plantation employed two hundred slaves and their master would long ago have freed them had it been possible.”<sup>13</sup> As one of Virginia’s largest slave owners and never either calling for the abolition of slavery or freeing his own slaves, it is curious that Bowen called him an *urgent abolitionist*. Likewise, Clarence B. Carson, in his 5 volume general history of the United States, said “although Mason was a slave holder, he was opposed to the institution of slavery, and looked forward to its abolition.”<sup>14</sup> And William Miller in a recent book about James Madison and the Constitutional Convention described Mason this way: “George Mason, owner of 200 slaves, who was an abolitionist.”<sup>15</sup>

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<sup>11</sup> Ibid., 251

<sup>12</sup> Ibid., 252

<sup>13</sup> Bowen, Cathrine Drinker. *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787*. (Boston: Little Brown, 1966), 95,46, 2002

<sup>14</sup> Carson, Clarence B. *A Basic History of the United States*. (Wadley, Alabama: American Textbook Committee, 1992) II: 84

<sup>15</sup> Miller, William Lee. *The Business of May Next: James Madison and the Founding*. (Charlottesville: University Press of Virginia, 1992), 124

While the above writers misinterpreted Mason's true motives at the Constitution Convention, more recent historians have done a better job. Robert Allen Rutland's *George Mason: the Reluctant Statesman*, (the updated 1981 version, not the original 1961 version), Helen Hill Miller's *George Mason: Constitutionalist*, Pamela Copeland and Richard MacMaster's *The Five George Masons*, and the latest major Mason biography, *George Mason: Forgotten Founder* by Jeff Broadwater, depict a more complex and accurate picture of Mason's slave views.<sup>16</sup> Many of the early historians made the simple mistake of equating Mason's stand against the slave trade to a stand against slavery itself. Some may have taken some of Mason's overblown rhetoric literally. And others superimposed their values and their interpretation of history on to Mason's statements.

After analyzing all the extant statements Mason made in his life on the subject of slavery, and after closely looking at his anti-slavery speeches at the Constitutional Convention, and evaluating them in the context of the general slave debate between the other delegates at the Convention, I conclude that Mason did have a moral objection to the slave trade but he was not an abolitionist. A true abolitionist, like William Lloyd Garrison, who will come in the next generation, sought the end of slavery because the evil institution harmed African-Americans. Mason was typical of other Virginians from the revolutionary generation. Men such as Jefferson, Madison, Lee, and Washington did not personally like aspects of managing slaves on their plantations, abhorred the slave trade, and understood that slavery violated the ideals of the Revolution. And like

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<sup>16</sup> Rutland, Robert Allen. *George Mason: Reluctant Statesman*. Baton Rouge: Louisiana State University Press, 1981. Miller, Helen Hill. *George Mason: Constitutionalist*. Cambridge: Harvard University Press, 1938; reprint, Safety Harbor, FL.: Simon Publications, 2001. Copeland, Pamela and MacMaster, Richard. *The Five George Masons: Patriots and Planters of Virginia and Maryland*. Lorton, VA.: Board of Regents of Gunston Hall, 1975. Broadwater, Jeff. *Forgotten Founder*.

Jefferson, who could speak so eloquently on the evils of slavery, Mason did not free his slaves. But unlike Washington, who did free his slaves in his will, Mason was never able to truly transcend his Virginian gentry class world and do what was best for the nation but always thought in terms of what benefited Virginia and the Chesapeake economy.<sup>17</sup>

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<sup>17</sup> Ellis, Joseph. *American Sphinx: The Character of Thomas Jefferson*. New York: Vintage Books, 1996. Ellis. *His Excellency: George Washington*. New York: Alfred A. Knopf, 2004. Henriques, Peter R. "An Uneven Friendship: The Relationship between George Washington and George Mason." *Virginia Magazine of History and Biography* 97 (April 1989): 185-204



## CHAPTER II

### BIOGRAPHICAL SKETCH

George Mason was one of the leaders of the remarkably talented revolutionary generation. Jefferson said Mason was “of the first order of greatness” and “the wisest man of his generation.”<sup>18</sup> Madison said he was “a powerful speaker, a profound statesman, and a devoted republican.”<sup>19</sup> Born into one of the three dozen aristocratic families that dominated Virginia, Mason had been expected to take a leadership role since youth.<sup>20</sup> He served as a member of the House of Burgesses representing his Fairfax County. And after the Stamp Act, he led the economic boycott of British goods. He wrote the enormously influential Virginia Declaration of Rights and Virginia’s first state constitution. And even though he was one of the more effective members of the Constitutional Convention, he refused to sign the document. Along with Patrick Henry, he then led the Anti-Federalist movement in Virginia. Perhaps because he did become an Anti-federalist, his name has not been as prominent as other Founders. Also his tendency to refuse office and quickly retreat to the comfort of his home, Gunston Hall, also accounts for why he is less known. But Mason’s intellectual leadership and strong ideas about republicanism helped forge American democracy. And as a republican and

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<sup>18</sup> Broadwater, p. 55. Bowen, p. 47

<sup>19</sup> Rutland, p. 85

<sup>20</sup> For background on Virginia’s planter class read Breen, T.H. Tobacco Culture. *The Mentality of the Great Tidewater Planters on the Eve of the Revolution*. Princeton: Princeton University Press, 1964. Morgan, Edmund S. *American Slavery, American Freedom: The Ordeal of Colonial Virginia*. New York: Collier Books, 1975

Virginian slave owner, he was keenly aware of the conflict between slavery and democracy.

### **Heir to Slave World**

On 5 March 1735, George Mason III drowned in the Potomac River after his sloop got caught in an abrupt squall and capsized. George Mason IV, his oldest son, nine years of age at the time, was heir to the estate, which had been built up since the first George Mason planted 900 acres in northern Virginia in 1652. On the sudden death of her husband, Ann Mason was left to take care of three children. Under the laws of the time, she administered the estate in the name of her son until he came of age. And all evidence indicates that she was a prudent and successful manager who taught her son the skills he would need to run a prosperous plantation.<sup>21</sup>

Mason was born into the elite tobacco planter class of Virginia and inherited large tracts of land, slaves, and other businesses. An inventory of the holdings of Mason III at the time of his death shows that he owned twenty-three slaves at his well furnished estate in Maryland. He also employed six indentured servants, one a skilled carpenter and the rest simple laborers. He owned two properties in Virginia: the first, off the Chapawansic Creek, was a large tract of land which included a simple estate; the second, included thousands of acres of land on the Northern Neck, a large promontory on the Potomac River which also included George Washington's estate. This property included a small house on Dogue's Neck, which would later be known as Mason's Neck. This is where Mason would eventually build his home, Gunston Hall. The Virginia inventory included eight slaves and four indentured servants on three plantations. He also owned several

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<sup>21</sup> Rutland, p. xi. Copeland and MacMaster, p. 9, pp. 73-74

tenant farms in Maryland and Virginia, three ferries, and a fishing monopoly on the Potomac at the mouth of Occoquan Creek.<sup>22</sup>

Mason's uncle, John Mercer, a spirited and opinionated lawyer and merchant, was named, along with his mother, as his co-guardian. One of his main responsibilities included supervising the young boy's education. Mercer helped select Master Williams and Dr. Bridges of London as tutors for young George. The typical education at the time included English grammar, Greek, Latin, and mathematics. With over 1500 volumes, Uncle Mercer owned one of the most comprehensive libraries in Virginia. By guiding Mason's reading, he probably asserting more influence over George's education than his tutors. His library was heavy on Greek and Roman classics, history, law, and English satire. Mercer's records are incomplete, but his notes indicate he ordered several books specifically for his nephew: a Greek grammar, a Greek-Latin lexicon, a Greek New Testament, Sallust, Virgil, Terence, Horace, Lucian, a translation of Plutarch's *Parallel Lives*, a few books on Roman history, Pope's the *Iliad*, Charles Rollin's books on ancient history and rhetoric, and sets of the *Spectator*, the *Guardian*, and the *Tatler*. The private tutors and his readings from his uncle's library formed core of his education. Mason did not go to college. As an adult he surrounded himself with books and his library at Gunston Hall included mostly the classics, ancient history, and legal works.<sup>23</sup>

When young, Mason had thick brown hair and a tall, robust, if a little plump, body. A serious person by nature, few traces of humor, if any, can be found in his letters. Like most Virginians of his class he enjoyed hunting, fencing, and horseracing for pleasure. Surprisingly, no original painting of Mason has survived. The single surviving

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<sup>22</sup> Copeland and MacMaster, p. 74. Broadwater, p. 2

<sup>23</sup> Rutland, pp.7-10. Copeland and MacMaster, pp.71-76. Broadwater, pp. 3-4

portrait was painted from another picture and the dull figure depicted possesses none of the intensity and intelligence that people say Mason displayed. As an adult, Mason shaved his head clean and wore a short brown wig above his almost handsome fleshy face. In a note written by a Miss Lewis near the time of the Constitutional Convention, she describes Mason: "He is straight in figure but not tall, and has grand head and clear gray eyes."<sup>24</sup> His health was robust as a youth, but as he got older he constantly complained of physical ailments. The main problem was a painful condition of gout, which is constantly cited in his letters as the reason he refused public office, or when he accepted office, as the reason he quickly retreat back to his beloved home. Perhaps this constant pain added to his strong will, acerbic wit, and inability to suffer fools gladly.

In 1746, George Mason came of age and took title to his inheritance. He was now prepared to manage his plantations and fulfill the responsibilities as one of the leaders of Fairfax County. As part of the tradition of inter-locking families in Virginia,<sup>25</sup> in 1750, Mason married another member of his planter class, Ann Eilbeck, the only daughter of a wealthy planter and merchant who owned a large estate near Mason's Maryland property. She was 16; he was 25. This marriage, by all accounts was a very happy one and it increased Mason's land holdings by several thousand acres. They eventually would have nine children. Mason decided to take up residence in the Doeg's Neck estate in Fairfax County and built a handsome two and half story brick home, which he named Gunston Hall. On the 5,000-acre property, Mason would grow principally tobacco, but also wheat

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<sup>24</sup> Rowland, p. 67

<sup>25</sup> Breen, T.H. *Tobacco Culture. The Mentality of the Great Tidewater Planters on the Eve of the Revolution*. Princeton: Princeton University Press, 1964. Morgan, Edmund S. *American Slavery, American Freedom: The Ordeal of Colonial Virginia*. New York: Collier Books, 1975

and corn, and later in life he kept cattle and hogs. Eventually he built dozens of small utility buildings in which to do everything from tanning and laundry to distilling and weaving. He also cultivated a beautiful garden with hundreds of cherry trees, exotic flowers, manicured shrubs, and the grounds were bountiful in wild deer, which he hunted for meat. The plantation was worked by about 90 slaves, many of them skilled craftsmen.<sup>26</sup>

### **Early Political Career**

Like his father and grandfather before him, and like most future members of the House of Burgesses, George Mason got his political training as a vestryman at his local church and as justice of the peace at the local court. In 1749, he was elected to the vestry of the Truro Parish and would hold this position until 1785. Vestrymen were given such responsibilities as supervising the parish finances, hiring and firing ministers, taking care of the widows and orphans of the county, and punishing adulterers. And as a vestryman he was also put in charge of building a new church in Fairfax County, which was closer to Gunston Hall. That same year he was also elected justice of the peace of the Fairfax County court. This was one of the most important local offices, which included a broad range of duties such as approving road construction, levying taxes, and calling elections. And they also dealt with important civil and criminal cases, including some dealing with slave issues, but the great majority concerned the claims of British agents against local tobacco planters. In Virginia, the local men who held the positions of vestryman-justice formed a sort of oligarchy such that the landed elite controlled the lives of most residents in the region.<sup>27</sup>

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<sup>26</sup> Rutland, pp. 10-22. Copeland and MacMaster, p. 91. Broadwater, pp. 6-7

<sup>27</sup> Rutland, p. 24. Copeland and MacMaster, pp. 167-68. Broadwater, p. 11

As he matured, he took on other public duties as well. In 1754, he was named a trustee to establish the town of Alexandria. Serving in the local militia, he rose to the rank of colonial, a title he kept for the rest of his life. From 1758 to 1760, during the French and Indian War, Mason served his first term in the House of Burgesses with such men as George Washington, George Wyth, Henry Lee, Richard Henry Lee, and Landon Carter (perhaps the richest man in Virginia). In 1775, Mason took the lead to implement a bill to clear the Potomac and make it navigable to the tidewaters. He also was a backer of an ill-fated plan to dig a canal from the Potomac to the Cumberland. This fit in with Mason's tireless efforts to extend Virginia westward and develop the land west of the Alleghenies and Blue Ridge Mountains. But in general, he hated the tedium and deal making of the legislative process.<sup>28</sup>

In 1749, he became a partner in the ill-fated Ohio Company whose plan was to develop and promote western lands. Other partners in the company included George Washington and Richard Henry Lee. He would hold the position of treasurer of this land company for the rest of his life. And for many years, especially between 1749 and 1779, Mason would spend a great deal of his time promoting the Ohio Company and its questionable land claims of up to 500,000 acres beyond the Blue Ridge Mountains. Mason was never a lawyer, but his years in court challenging the British land policy gave him an expertise in many aspects of the law. In Mason's letters and public speeches he used a lawyer's vocabulary and had detailed knowledge of the law, especially in land matters. This mistakenly caused many to assume he was a lawyer and they often sought his advice on legal matters. Mason's various land schemes is an extremely long and complicated story. In 1780, when Virginia ratified the Articles of Confederation, Virginia

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<sup>28</sup> Rutland, pp. 24-25. Broadwater, pp. 17-18

forfeited its western claims, which dealt the final death blow to the Ohio Company. And by the time of the Federal Convention, Mason had given up hope of securing almost all of his questionable land grants. Land speculation did not play a role in Mason's motives and actions at the Constitution Convention beyond his sensitivity to free navigation rights.<sup>29</sup>

There is, however, one interesting episode related to Mason's duties as an officer of the Ohio Company that touches on the slavery issue. In July 1773, Mason wrote the "Extracts from the Virginia Charters." This long, handwritten, document outlines the headrights and territorial limits of Virginia and was probably distributed to the members of the General Council in order to strengthen the Ohio Company's territorial claims.<sup>30</sup> In a sort of off-hand commentary, at the end of an obscure footnote, Mason launched into a passionate diatribe against slavery:\*

*[Slavery] is a slow poison, which is daily contaminating the Minds & Morals of our people. Every gentleman here is born a petty Tyrant. Practiced in Acts of Despotism & Cruelty, we become callous to the Dictates of Humanity, and all the finer feelings of the soul. Taught to regard a part of our own species in the most abject & contemptible Degree below us, we lose the Idea of the Dignity of Man, which the Hand of nature had implanted in us, for great & useful purposes. Habituated from our infancy to trample upon the Rights of Human nature, every generous, every liberal Sentiment, if not extinguished, is enfeebled in our Minds. And in such an infernal School are to be educated our future Legislatures and Rulers. And the Laws of Impartial Providence may even by such Means as these, avenge upon our Prosterity the Injury done a set of Wretches, whom our Injustice hath debased almost to a Level with the Brute Creation.*<sup>31</sup>

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<sup>29</sup> Rutland, p. 24. Copeland and MacMaster, pp. 120-138. Broadwater, pp. 19-27, 128

<sup>30</sup> PGM, p. 182

\* In this paper all of Mason's quotes on slavery will be italicized and in bold.

<sup>31</sup> PGM, p. 173

Perhaps feeling almost startled by this outpouring, Mason then finishes by saying, “these remarks may seem Foreign to the design of the Extracts,” but they were an “Enthusiastic Impulse...and [I] care not whom they please or offend.”<sup>32</sup>

### **Virginian Planter**

Mason wisely avoided the pitfalls that destroyed the fortunes of many prominent tobacco growers. Eighteenth century Virginian planters were often stuck in a precarious cycle of fluctuating tobacco prices, over production, soil depletion, the constant need to buy more land and slaves, and growing debt. After three years, tobacco depleted the soil, and so there was a constant effort to buy more land. But the overproduction of tobacco led to lower prices. Many planters went into debt with their consignment merchants and ordered more costly goods than their tobacco made on the market that year. They bought more land and slaves with any cash they had and they borrowed from their merchant to buy costly goods such as china, clothing, furniture, and art. They lived an opulent life style as they hoped tobacco would fetch a high price in the near future. But a few bad years would really set them back. Many planters, Thomas Jefferson included, were perpetually in debt as each year the merchant extended their credit and charged 5% on the existing debt.<sup>33</sup>

However, Mason oversaw his estates himself and through diversification and careful management not only avoided debt but prospered. He relied more on tenant farmers than slaves because he thought it was easier and more profitable than running a large-scale plantation. Instead of buying slaves, he paid for Irish indentured servants who became tenants after their term was up. Standard rent was 600 pounds of tobacco for 150

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<sup>32</sup> Ibid., p. 173

<sup>33</sup> Copeland, p. 157, For background on Virginian planters read Green and Morgan



acres. The great majority of his revenues came from rents, not the tobacco he grew himself. The down side to this arrangement was that he traded in lesser quality tobacco because the inexperience of the small-scale tenants led them to produce a poor grade leaf. He paid his debts and taxes in this trash tobacco and sold the better leaf through the consignment merchants to England. Besides relying more on tenants than most planters, he also diversified away from a total dependence on the single staple crop of tobacco. Mason owned the fishing rights in Simpson's Bay and salted and packed herring. And he also owned the charters to run ferries across the Potomac at two locations. In the 1760s, as the price of tobacco fell, he devoted more of his crops to wheat. He also raised sheep, cattle, and hogs. Lastly, Mason decided to manufacture tobacco products himself. He built a mill, putting his son in charge, and produced snuff.<sup>34</sup>

There are some questions concerning the economic self interests of the Virginia Revolutionaries. Some historians have argued that Virginia tobacco planters supported the Revolution so that they did not have to pay back their debts (Beard, McDonald, Green). But Mason, like Washington, was not in debt because he diversified. And he supported the provision of the Treaty of Paris that required British merchants to collect their pre-war debts (PGM 771). The same historians have argued that many delegates to the Convention wanted to create a strong national government so that their bonds would not remain worthless or that the western lands would become more valuable. This point is also mute with regards to Mason because he refused to sign the Constitution. He did, however, own bonds and western lands, but an analysis of his voting record at the Convention showed he was one of the most disinterested of the delegates and voted against his economic self interest most of the time.

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<sup>34</sup> Copeland and MacMaster, pp. 58-87, 225

So, Mason was a successful planter who managed his interests with a keen eye, but this was somewhat unorthodox in his circles. It was seen as unseemly for a gentry class planter to show too much concern for money.<sup>35</sup> But when it came to managing and retrieving runaway slaves, the planters were not ashamed to show concern for their economic self interests. Notwithstanding his professed distaste for many aspects of the duties of a master, when Mason's slaves escaped, he made every effort to retrieve them. On 30 September 1786, he wrote an advertisement in the *Virginian Journal & Alexandria Advertiser* offering a reward for a runaway slave:

*Dick, a very lusty and well put together Mulatto fellow about 25 years of age with bushy hair which he combed back. He is a subtle artfull fellow who knows Maryland and Virginia well. And Watt, a stout Negro fellow, remarkably black, about 35 years of age, with some of his for teeth missing...They will probably change their names and pass for freeman. The above reward, of 5 pounds, for either of them will be paid for delivery them to the subscribers or for securing them and giving us notice.*<sup>36</sup>

This same slave had his ear cut off for attempting to run away and steal a hog twelve years earlier. And according to local newspaper reports, two of Mason's slaves were executed in 1767 for attempting to poison their overseer and their heads were placed on the roof of the courthouse.<sup>37</sup>

### **Revolutionary Leader**

George Mason helped lead Virginia, and thus America, to independence from Britain and in the process he helped formulate the new nation's political concepts of individual liberty, limited government, and the separation of church and state. Due to his distaste for managing slaves, Mason was unique as a revolutionary leader because in his

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<sup>35</sup> Ellis, *His Excellency*, p. 47

<sup>36</sup> PGM, p. 856

<sup>37</sup> Broadwater, p. 35

efforts to strengthen an independent Virginia he also sought to end the slave trade and reduce the negative impact of slavery on his beloved country.

The Stamp Act of 1765 touched off a series of responses against the British government that started the movement for American independence. The Stamp Act also initiated Mason's move to the front of Virginian resistance. In December 1765, Mason wrote a letter, known as the "Repleving Scheme," to George Washington and George William Fairfax, the two sitting representatives of Fairfax County in the House of Burgesses. The main purpose of the letter was to propose a bill to undermine the Stamp Act by authorizing an alternative method of collecting overdue rents that would not use stamped paper.<sup>38</sup> But the preamble of the letter is more interesting because it marks Mason's earliest known public denunciation of the institution of slavery. In it he suggested ending the slave trade and encouraging free white settlers to rent land and grow tobacco as sharecroppers. Mason seemed to be saying that now that America may be engaging in a long struggle with Britain, Virginia should consider lessening this evil that weakens the colony. The first paragraph of the letter read as follows:

*The Policy of encouraging the Importation of free People & discouraging that of Slaves has never been duly considered in the Colony, or we shou'd not at this Day see one Half of our best Lands in most Parts of the Country remain unsettled, & the other cultivated with Slaves; not to mention the ill Effect such Practices has upon the Morals & Manners of our People: one Signs of Decay, & perhaps the primary Cause of the Destruction of the Most flourishing Government that ever existed was the Introduction of Great Numbers of Slaves—an Evil very pathetically described by Roman Historians—but 'tis not the present Intention to expose our Weakness by Examining this Subject too freely. That the Custom of leasing Lands is more beneficial to the Community than that of settling them with slaves is a Maxim that will hardly be denied in any free Country; tho' it may not be attended with so much immediate Profit to the Land-holder: in Proportion as it is more useful to the Public, the Invitation from the Legislature to pursue it shou'd be Stronger:--no Means seem so natural as securing the Payment of Rents in an*

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<sup>38</sup> PGM, p. 61

*Easy & effective manner: the little Trouble & Risque attending this Species of Property may be considered as an Equivalent to the greater Profit arising from the Labour of slaves, or any other precarious & troublesome Estate.*<sup>39</sup>

It is noteworthy that in this letter Mason expressed several of the same points he would make in his August 22 anti-slave speech at the Federal Convention. He said a large slave population increased the risk of insurrection, slavery erodes the morals of the slave master, and slavery caused trouble for the ancient Romans. Considering Mason made these same points on several occasions over his lifetime, including in the “Extracts” cited above, we must take them as his true and deep convictions. Indeed, in the letter accompanying the proposal for the Repleving Scheme, Mason told Washington that the first part of the letter had very little to do with the proposal, but it states a “doctrine I was always fond of and which I wish to see more generally adopted.”<sup>40</sup>

In a public letter to the Committee of Merchants in London, Mason predicted that “another experiment as the Stamp Act wou’d produce a general revolt.”<sup>41</sup> Parliament did not heed Mason’s warning and in April 1767, they passed the Townsend Duties. In response to these new tariffs, and following the lead of Boston and Philadelphia, Mason, at the request of Washington, formulated a Non-importation Association for Virginia to boycott certain British goods. After the royal governor of Virginia dissolved the House of Burgesses for passing a resolution that gave them the exclusive right to pass all tax laws, the delegates met in the Raleigh Tavern.<sup>42</sup> In the preamble of the document establishing the Non-importation Association, Mason said the “evils” of the Townsend Duties

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<sup>39</sup> PGM, pp. 61-62

<sup>40</sup> Ibid., p. 61

<sup>41</sup> Ibid., pp. 65-72

<sup>42</sup> Broadwater, p. 51

threaten to reduce the people of Virginia to the “Ruin of themselves and their posterity, by reducing the free and happy people to a Wretched & miserable State of Slavery.”<sup>43</sup>

Here again, Mason included the suggestion to end the slave trade as part of the measures to deal with the British. The eighty-eight Burgesses at the Raleigh Tavern signed and published Mason’s resolves, including Resolution Five, which stated *“that they will not import any slaves, or purchase any hereafter imported until the said Acts of Parliament are repealed.”*<sup>44</sup> However, there was one resolve the Burgesses deleted from Mason’s original draft. This resolve went beyond the agreement to stop buying British imports and took the more drastic step of warning that if Britain refused to rescind the Townsend Duties, then Virginia would stop *exporting* forest products, naval stores, and furs, and *“would find some other employment for their slaves and other hands than cultivating tobacco, which they will entirely leave off making.”*<sup>45</sup> The notion of stopping tobacco production, on which the whole Virginian economy rested, was too radical for the Virginian delegates.<sup>46</sup>

The second non-importation association meeting in 1770 also included a provision forbidding the purchase of slaves from British merchants. Obviously the object of these colonial boycotts was to hurt the merchants directly and cause them to appeal to Parliament to rescind the Townsend Duties as they did the Stamp Act. But Mason was the first to persuade Virginia to seriously consider ending the slave trade. The second non-importation letter was published in the *Virginia Gazette* and the editors of the newspaper

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<sup>43</sup> PGM, p. 103

<sup>44</sup> Ibid, p. 103-106

<sup>45</sup> Ibid, p. 103-106

<sup>46</sup> Rutland, 35

included an appeal to the Virginia planters to end the slave trade forever.<sup>47</sup> Then again in 1774, the Virginia Assembly passed another non-importation agreement, but this time they threatened that if things did not improve they would consider Mason's more radical non-exportation measures in one year.<sup>48</sup>

Tensions continued to escalate between Britain and the colonies when, after the Boston Tea Party, Parliament passed the "Intolerable Acts." Following this, on 18 July 1774, while spending the night at Mount Vernon, George Mason drafted the Fairfax Resolves—Mason's first great step on to the national stage. This document, consisting of twenty-four resolves, represented the Fairfax freeholders' views on how to force Britain to address the colony's grievances and was presented to the First Continental Congress by George Washington. It was a defiant document against British authority. Mason wrote that it is the most "important part of the British constitution that...the People be governed by no Laws to which they had not given their Consent by Representatives freely chosen by them."<sup>49</sup> Further, he said, "The inhabitants of the colonies can not be represented by Parliament, the legislative Power here can only of Right be exercised only by our own Assemblies."<sup>50</sup> And once again Mason included in this protest against British authority a condemnation of the slave trade. Resolve Seventeen stated, "*that it is the Opinion of this Meeting, that during our present Difficulties and Distress, no Slaves ought to be imported into any of the British Colonies on this Continent; and we take this opportunity of declaring our most earnest wishes to see an entire Stop for ever to such*

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<sup>47</sup> Copeland and MacMaster, p. 216

<sup>48</sup> Ibid., p. 187

<sup>49</sup> PGM, p. 201

<sup>50</sup> Ibid., p. 202

*a wicked cruel and unnatural Trade.*”<sup>51</sup> And Resolution Nineteen promised that “*we will not plant or cultivate Tobacco after the Crop now growing if America’s grievances were not addressed.*”<sup>52</sup> Mason’s public condemnations of the slave trade influenced a majority of the delegates at Virginia Convention in 1774 to resolve to put an end to the slave trade. And after independence, the Virginia State Legislature ratified the slave trade embargo in 1778.<sup>53</sup>

Up to this point, except for one term in the House of Burgesses and his position as justice of the peace, Mason avoided public office, but the Revolutionary years will mark Mason’s most active period. In the summer of 1774, Fairfax County created a Committee of Safety and they chose Mason as the chairman. His duties included organizing a militia and seeing that the non-importation agreement was adhered to by local merchants and residents. Always suspicious of the concentration of power in a regular army, Mason was a strong believer in the democratic nature of the militia. He wrote into the Fairfax County Militia Plan that officers would be elected by the troops and after a year, fall back into the regular ranks.<sup>54</sup> Then after some protestations, Mason accepted a seat at the third Richmond Convention, and he actively served on several committees preparing for a possible war. In August 1775, a great majority of members of the Virginia Convention, including Thomas Jefferson and Patrick Henry, voted for Mason to accept a seat representing Virginia at the Continental Congress, but Mason refused. This was fortuitous because Mason was in Virginia when the new state wrote its constitution.<sup>55</sup>

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<sup>51</sup> Ibid., p. 207

<sup>52</sup> Ibid., p. 207

<sup>53</sup> Copeland and MacMaster, p. 216. Broadwater, pp. 65-67

<sup>54</sup> PGM, p. 210

<sup>55</sup> Copeland and MacMaster, pp. 188-90. Rutland, p. 42

Mason's most important contribution to Virginia during the Revolution, and subsequently to the United States, was writing Virginia's Declaration of Rights. On 15 May 1776, the fifth Virginia Convention passed a resolution to send to the Continental Congress a statement "to declare the United Colonies free and independent states" and for Virginia to draft "a Declaration of Rights, and such a plan of Government as will most likely to maintain peace and order."<sup>56</sup> Mason, arriving late due to his gout, was selected to the twenty-seven-member committee to write the document. But Mason told his friend Richard Henry Lee that he found the group "filled with many useless members" and he thought the preamble of the document they produced thus far was "tedious and rather timid."<sup>57</sup> Losing patience with this group which he said could only be saved by a "few men of integrity and ability," and fearing that they would produce a "plan formed of heterogeneous, jarring, and impracticable proposals," he went off by himself and produced his own draft. Once it was submitted to the committee, as Edmund Randolph later said, the draft "proposed by George Mason swallowed up all the rest, by fixing the grounds and plan, which after great discussion and correction, was finally ratified."<sup>58</sup>

Mason's original draft of the Virginia Declaration of Rights is a bold declaration of human rights and limited government. This document reveals Mason's thoughts on the rights and liberties of man, which goes to our discussion of slavery. It also summarizes his thoughts on republican government before he was a delegate to the Constitutional Convention. For these reason, and because it had such a significant influence on the

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<sup>56</sup> PGM, p. 272

<sup>57</sup> Ibid., p. 271

<sup>58</sup> Ibid., p. 271



Declaration of Independence and the Bill of Rights, I think it is important to reprint Mason's original ten propositions in full:

1) That all Men are born equally free and independent, and have certain inherent natural Rights, of which they can not by any Compact, deprive or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursuing and obtaining Happiness and Safety.

2) That Power is, by God and nature, vested in, and consequently derived from the People; that Magistrates are their Trustees and Servants, and at all times amenable to them.

3) That Government is, or ought to be, instituted for the common Benefit and Security of the People, Nation, or Community. Of all various Modes and Forms of Government, that is best, which is capable of producing the greatest Degree of happiness and Safety, and is most effectually secured against Danger of mal-administration. And that whenever any Government shall be found inadequate, or contrary to these Purposes, a Majority of the Community had an indubitable, inalienable and indefeasible Right to reform, alter or abolish it, in such Manner as shall be judged most conducive to the Public Weal.

4) That no Man, or Set of Men are entitled to exclusive or separate Emoluments or Privileges from the Community, but in Consideration of public Service; which not being descendible, or hereditary, the Idea of a Man born a Magistrate, a Legislature, or a Judge is unnatural and absurd.

5) That the legislative and executive Powers of the State should be separate and distinct from the judicative; and that the Members of the two first may be restrained from Oppression, by feeling and participating the Burthens they may lay upon the People; they should, at fixed Periods be reduced to a private Station, and returned, by frequent, certain and regular elections, into that Body from which they were taken.

6) That no part of a Man's Property can be taken from him, or applied to public uses, without the Consent of himself, or his legal Representatives; nor are the People bound by any Laws, but such as they have in like Manner assented to for their common Good.

7) That in all capital and criminal Prosecution, a Man hath a right to demand the Cause and Nature of his Accusation, to be confronted with the Accusers or Witnesses, to call for Evidence in his favour, and to a speedy Tryal by a jury of his Vicinage; without whose unanimous Consent, he can be found guilty; nor can he be compelled to give Evidence against himself. And that no Man, except in times of actual Invasion or Insurrection, can be imprisoned upon Suspicion of Crimes against the State, unsupported by Legal Evidence.

8) That no free Government, or Blessing 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.

9) That a Religion, or the Duty which we owe to our Divine and omnipotent Creator, and the Manner of discharging it, can be governed by Reason and Conviction, not by force or Violence; and therefore that all Men shou'd enjoy

the fullest Toleration in the Exercise of Religion, according to the Dictates of Conscience, unpunished and unrestrained by the Magistrate, unless, under Colour of Religion, any Man disturb the Peace, the Happiness, or the Safety of Society, or of Individuals. And that it is the mutual Duty of all, to practice Christian Forbearance, Love and Charity towards Each other.

10) That in all controversies respecting Property, and in Suits between Man and Man, the ancient Tryal by Jury is preferable to any other, and ought to be held sacred.

And to Mason's original ten, Thomas Ludwell Lee added in his hand two more resolutions: one supporting a free press and another prohibiting ex post facto laws.<sup>59</sup>

From this original draft of twelve propositions, the committee as a whole added eight more and presented them to the Convention on 29 May 1776. After some delays and debates on other matters, on 12 June the Convention unanimously approved the final version of the Declaration of Rights, with sixteen resolutions. By the end of June, various drafts were printed in newspapers such as the *Virginia Gazette*, *Pennsylvania Evening Post*, and *Maryland Gazette*, and soon it spread throughout the colonies and influenced various state constitutions and the Declaration of Independence—even the French Declaration of the Rights of Man.<sup>60</sup> In the final draft, the convention edited some of the language and rearranged the order of Mason's original draft, for example, James Madison added the phrase “free exercise” to Mason's proposition on religious freedom, but they did not add any substantially new ideas to the original twelve propositions.<sup>61</sup>

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<sup>59</sup> PGM, p. 276-78

<sup>60</sup> Rutland, p. 65. Broadwater, p. 90

<sup>61</sup> PGM, p. 275. Rutland, p. 60

Mason's language reflects his familiarity with many documents and authors including the Bill of Rights of 1689, the Declaration of Rights passed by the Continental Congress in 1774, Montesquieu, Plutarch, Machiavelli, Montagu, and Sidney. Mason was also heavily influenced by the radical Whigs, Trenchard and Gordon, who wrote the *Cato Letters*.<sup>62</sup> But, obviously, John Locke's *Second Treatise on Civil Government* was the most influential. In the Virginia Declaration of Rights, Mason paraphrases several of Locke's ideas: that all men are by nature equal; that all men are born free; that all men are born with the natural rights of life, liberty and property; that property cannot be taken from a man without his consent; that the ultimate authority of government is people; that the proper ends of government is for the common and good and safety of the people; that rulers possess a inherited right to rule is invalid; and the right to rebel against a tyrannical government cannot be denied.<sup>63</sup> But Locke's ideas on slavery and natural rights were going to cause many slaveholding delegates to become nervous and revise some of Mason's original language.

A debate on the natural rights of man and its implications for slavery caused the convention to change Mason's first two sentences of the Virginia Declaration of Rights. On the first reading of the document, as reported Thomas Ludwell Lee, a minority of "aristocrats" objected to the first line that "all men are equally born free," fearing that this posed a theoretical threat to the "foundation...of their execrable system" and might encourage slave rebellion.<sup>64</sup> Likewise, Edmund Randolph wrote that the liberals argued that with regards to "asserting the general rights of mán" we should be as expansive as possible, "and that slaves not being a constituent members of our society could never

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<sup>62</sup> PGM, p. 279. Broadwater, pp. 87-91

<sup>63</sup> Locke, John. *The Second Treatise on Civil Government*. New York: Prometheus Book, 1986

<sup>64</sup> PGM, p. 275

pretend to any benefit from such a maxim.”<sup>65</sup> But this argument did not convince everybody. Robert Carter Nicholas, one of the state’s largest slave owners, objected to the “free and equal” clause saying it posed dangers to a slaveholding society and one day might lead to “social convulsion.”<sup>66</sup> As a result, the members agreed to make some changes. They replaced “all men are born equally free and independent” with all men “by nature” are equally free and independent. At this point, Edmund Pendleton suggested they insert the clause “when they enter in to a state of society.” He said this implied that slaves were not members of society and so they could not claim these rights, but at the same time it also retained the universal expression of the natural rights of man.<sup>67</sup> There is no record of Mason’s approving these changes or defending his original language.

The changes in Mason’s draft attempted to find a loophole to reconcile man’s natural rights of equality and liberty with slavery. The final committee draft made the following italicized changes: “That all men are *by nature* equally free and independent, and have certain inherent rights, of which, *when they enter into a state of society*, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty...” The members of the convention wrongly thought this language would keep it consistent with Lockean principles. In *The Second Treatise on Civil Government*, Locke says when one man attempts to enslave another man, he puts himself into a state of war with the enslaved man and the enslaved man has the right to destroy the man who threatens his life and liberty. This threat automatically takes one out of a state of society and into a state of war. Therefore, merely adding the phrase that “when they enter a state of society” men have inherent rights and cannot be deprived of life, liberty, and property,

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<sup>65</sup> Ibid., p. 275

<sup>66</sup> Ibid., p. 289

<sup>67</sup> Ibid., p. 290

makes no sense. Either in a state of nature or in a state of society, if an individual's life or liberty is threatened due to no fault of his own, because he is equal to any man, he has the right to destroy the man who threatens him.<sup>68</sup> For Locke, slavery is a constant state of war. Locke only allows slavery in one circumstance. If a man is captured in a just war, the captor can decide to spare his life and enslave that individual instead. If the enslaved man does not wish to continue as a slave, he may choose to disobey his master and be killed.<sup>69</sup>

After writing the Virginia Declaration of Rights, in June of 1776, Mason was one of the main authors of Virginia's new constitution. The ideas expressed in it reflect Mason's fundamental ideas on republicanism, which he would maintain until eleven years later when he went to Philadelphia to frame a national government. The Virginia constitution separated the legislative and executive branches from the judicial branch. In Mason's original draft there was no property qualification to vote. The legislative branch was bicameral: the lower house would be made of up two delegates owning property worth at least 1,000 pounds and voted to office by the people of the district they would represent, and the upper house was composed of 24 delegates owning property worth at least 2,000 pounds and selected by state electors. All laws would originate in the lower house and all money bills could not be altered by the senate but would be either accepted or denied. The governor would be elected annually by the two houses of the Virginia General Assembly. He could call the Assembly but never dissolve it. And he would also "direct" the state militia. A sort of Privy Council, called a "Council of State," also chosen by the Assembly, would advise the governor. Judges, elected by the Assembly, would

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<sup>68</sup> Locke, pp. 8-17

<sup>69</sup> Ibid., pp. 17-18

serve life terms on good behavior. Thomas Jefferson added a preamble, but for the most part Mason's original draft was left unchanged. The Convention did drop, however, Mason's high property qualifications to hold office and restored a modest property qualification to vote.<sup>70</sup>

Mason also served on a committee with Thomas Jefferson, George Wythe, Thomas Ludwell Lee, and Edmund Pendleton to revise the laws of Virginia. The committee met in Fredericksburg in January of 1777. Mason was given the task of revising the land titles because of his long experience and expertise in this field. According to Jefferson, they prepared a scheme for gradual emancipation, but they did not send it to the legislature.<sup>71</sup> Because Mason was not a lawyer, and greater legal minds were on the committee, he decided to return to the legislature. There he collaborated with Jefferson and sponsored bills in support of the committee's recommendation, such as ending primogeniture, abolishing entail, passing the Statute on Religious Freedom, and creating a system of public education.<sup>72</sup>

For the remainder of the War for Independence, Mason was active in defending Virginia and his Fairfax County. He helped create a 3,000 strong regular army in addition to his Fairfax militia. His legislative efforts mostly involved purchasing food and supplies for the military, encouraging home manufacturing and rationing, raising taxes, and passing laws against hoarding. Because Virginia printed too much paper money,

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<sup>70</sup> PGM, pp. 299-304

<sup>71</sup> Jefferson, Thomas. *Notes on Virginia*. In *The Life and Select Writings of Thomas Jefferson*. Edited by Koch, Adrianna and Peden, William (New York: The Modern Library, 1972), 255

<sup>72</sup> Broadwater, pp. 104-105

inflation skyrocketed. This experience seemed to sear in Mason's mind a life-long hatred of paper money.<sup>73</sup>

Several times during the war British ships sailed up the Potomac and Mason's family had to flee Gunston Hall. During these retreats, many of his slaves escaped or were taken by the British (Five 193). However, on one occasion Mason acted to manumit a slave. On 14 June 1779, Mason introduced a resolution granting a slave by the name of Kit his freedom for discovering and reporting a counterfeiting ring. Mason wrote the bill which stated: "*For meritorious service to the Commonwealth...the said Negro Kitt ought to be emancipated and set free and his master ought to be paid 1000 pounds out of the public treasury.*"<sup>74</sup> Shortly after this, in May of 1779, Mason was worn out and retired to Gunston Hall.

In 1783, when the War for Independence ended, Mason was 57. Now newly married to his second wife—his first wife had tragically died nine years earlier—Mason was looking forward to spending the rest of his life at his beloved estate with his family. During the Revolution, he served his country ably, but he never left Virginia. This is significant. Other Virginian leaders such as George Washington and Thomas Jefferson served in the Continental Congress or led the Continental Army and in the process developed a national point of view. But Mason always saw himself as a Virginian, then a southerner, and then an American. The other significant aspect of his revolutionary experience is that on several occasions when he drafted Virginia's response to British tyranny, he sought to limit the slave trade because he felt slavery weakened Virginia. However, even though in the Virginia Declaration of Rights he so eloquently wrote of

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<sup>73</sup> Copeland and MacMaster, p. 191. Broadwater, pp. 101-116

<sup>74</sup> PGM, p. 517



man's God given rights of liberty and equality, there is little hint in his writings that he was willing to extend these rights to African slaves. If slavery was an "evil," his main concern was that it was an evil because it weakened Virginia economically, militarily, and morally.

## **CHAPTER III**

### **MAY CONVENTION**

Mason was instrumental in the events leading to the Federal Convention of 1787. And as the senior member of the Virginia delegation, which took a leadership role in the early weeks as the 55 delegates streamed into Philadelphia, he was optimistic that a stronger central government could be forged. But Mason was not a nationalist in the same way as were Madison, Hamilton, and Washington. As a recent Mason biographer says, “In reality, Mason’s local attachments, his fidelity to republican ‘first principles,’ and his fundamental suspicion of government will lead him in another direction.”<sup>75</sup> Mason’s unique political views, however, will not become manifest until several weeks later. In May, he will support the general aim of the Virginia Plan, which initially asserted that representation will be based on the “free inhabitants” of the state.

#### **Events Leading to the Constitutional Convention**

In May of 1785, Mason represented Virginia at a small conference at George Washington’s house that became known as the Mount Vernon Compact. The purpose of the meeting was to resolve disputes “left unprovided for by Congress” between the states of Maryland and Virginia concerning naval protection, navigation, currency, fishing rights, tolls and custom duties, lighthouses, and other issues dealing with the Potomac

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<sup>75</sup> Broadwater, p. 143

River, which the two states shared.<sup>76</sup> This was a subject Mason had long been interested in and he must have felt pleased with the task. In Mason's letter accompanying the compact to the two state legislatures, he suggested that Maryland and Virginia meet on an annual basis to discuss such matters as currency and tariffs.<sup>77</sup> When the Virginia Assembly met to ratify the agreement, James Madison pushed for another meeting that resulted in Virginia calling for the "other States of the Union at a time and place to be agreed (later Annapolis, Maryland was chosen) to take into consideration the trade of the United States [and] to consider how far an uniform System in their commercial Regulations may be necessary for their common interests."<sup>78</sup> Therefore, the Mount Vernon Compact was the preliminary to the Annapolis meeting, which was the preliminary to the Constitutional Convention. Mason was named a delegate to the Annapolis meeting, but due to illness he did not attend.<sup>79</sup>

Strictly speaking, the Mount Vernon Compact violated the Articles of Confederation, which forbid contracts between two or more states without the permission of the Confederation Congress, but by this time many had regarded it as a weak and ineffectual government. Washington, who had struggled with the Confederation Congress during the Revolution as he tried to pay and supply his troops, called it a "half starved, limping Government that appears to be always on crutches, and tottering at every step."<sup>80</sup> Madison said "nothing can bear worse than our federal affairs...No money comes into the public treasury, trade is on a wretched footing, and the states are running mad on

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<sup>76</sup> PGM, p. 815

<sup>77</sup> Ibid., p. 816

<sup>78</sup> Ibid., p. 844

<sup>79</sup> Copeland and MacMaster, p. 226. Broadwater, pp. 155-156

<sup>80</sup> Quoted in Ellis, *His Excellency*, p. 127

paper money.”<sup>81</sup> Many Americans shared these feeling as economic chaos and interstate disputes mounted. And Shays’ Rebellion seemed to further demonstrate to the nation the Confederation Congress’s inability to deal with the economy or a minor insurrection.

Later at the Constitutional Convention, Mason will make remarks which showed he agreed with the sentiments of Washington and Madison, but Mason’s letters in the years before the Federal Convention show that on a personal level he was content. He did not express the belief that the Articles of Confederation need to be reformed. During the 1780s, except for a couple of minor setbacks, he prospered financially. And he enjoyed having political influence without actually holding public office by advising friends in government behind the scenes or by writing public letters.<sup>82</sup> On the other hand, he did tend to gripe about the lack of wisdom and integrity of the current batch of public servants, especially their inability to control debt and get rid of paper money—but then again he always complained that politicians were incompetent and avaricious.

In April 1786, Mason publicly declared he would not be running for the Assembly, but he was elected as a representative of Fairfax County anyway. This shows he maintained local popularity, and perhaps he invited this when he recently wrote a public letter warning against the rumored proposal to introduce paper money. Having won a seat against his will, he did manage to get an official excuse from attending the first session on account of illness. But even though Mason was not in Richmond at the time, he was appointed to the delegation to represent Virginia at the Constitutional Convention at Philadelphia.<sup>83</sup>

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<sup>81</sup> Quote in Stewart, David O. *The Summer of 1787*. (New York: Simon & Schuster, 2007), p. 9

<sup>82</sup> Broadwater, p. 134

<sup>83</sup> PGM, p. 855

Wary of Mason's long history of using his illness as an excuse to stay at his beloved Gunston Hall, many of his friends urged him not to stay home this time. Edmund Randolph wrote Mason: "reminding you of your appointment to the Convention at Philadelphia next month [and] to repeat my earnest solicitude and entreaty that you become a member of that body."<sup>84</sup> Afraid the first letter would not have the desired impact, he wrote two more with the same message. In one of these notes also explained to Mason that he would receive 60 pounds from the state for his expenses to the Convention. This was important to Mason because he said earlier that he was currently short of cash because his taxes were due.<sup>85</sup>

### **Slavery in America in 1787**

In May 1787, fifty-five delegates came to Philadelphia with the expressed purpose of "devising such further provisions that appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union," but few would have predicted that slavery would have been a major topic of this gathering. None of Washington's or Madison's correspondence before the Convention even mentioned slavery. And not one of the twelve state resolutions outlining the duties and goals of their delegates mentioned slavery.<sup>86</sup> But considering that about a third of the delegates represented slave states, and it was a significant part of the American economy at the end of the 18<sup>th</sup> century, it is not surprising that it would be an important topic at a convention designed to create a national government with greater power to regulate commerce. Twelve of the fifty-five delegates owned plantations worked by slaves, but others had

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<sup>84</sup> PGM, p. 875

<sup>85</sup> Ibid., p. 875

<sup>86</sup> Stewart, p. 68

house slaves. At the time of his death in 1792, Mason owned about 300 slaves.<sup>87</sup> In 1797, an inventory of Washington's holding revealed he owned 300 slaves.<sup>88</sup> At the time of the Convention, it is estimated that John Rutledge owned 243 slaves, and John Madison had at least a100 slaves. Of course, more southern delegates than northern delegates owned slaves. Four of the Maryland delegates, all seven of the Virginia delegates (although George Wythe was in the process of manumitting his), four of the South Carolinians, and all of the North Carolinians owned slaves.<sup>89</sup>

Economically, at this time in history the thirteen America states were divided into three regions, with only the southern section completely dependent on slave labor. New England (Massachusetts, Connecticut, Rhode Island, and New Hampshire) had a strong fishing and shipping industry. The Middle Colonies (New York, New Jersey, Pennsylvania, and Delaware) grew grain and had nascent factories. New York was becoming the financial center of America. The South was a staple-crop, slave economy, but it could be further divided into two sub-sections: the Upper South (Maryland and Virginia) exported tobacco, and the Lower South (the Carolinas and Georgia) exported rice and indigo. In 1790, the census showed that there were 750,000 slaves in America, about 17% of the U.S. population. Nearly 90% of the slaves lived in the South, with about 50% in Virginia alone. Wealthy families in the middle and northern states used slaves mostly as house servants. In 1790, New York had a slave population of 25,000,

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<sup>87</sup> Broadwater, p. 245

<sup>88</sup> Ellis, *His Excellency*, p. 244

<sup>89</sup> McDonald, *We the People*, pp. 68-86

New Jersey with 14,000, and Pennsylvania with 10,000. But Pennsylvania, one the leading abolitionist state, had a free Black population of 14,000.<sup>90</sup>

But by the time of the Federal Convention, in the aftermath of the revolutionary call for liberty and equality, there was a widespread movement to free the slaves. Several antislavery societies had been established from Virginia to New England. In 1775, Ben Franklin helped create in Philadelphia the Society for the Relief of Free Negroes Unlawfully Held. In 1785, Alexander Hamilton and John Jay of New York helped create the Manumission Society. Vermont's constitution of 1777 specifically prohibited slavery. In 1780, Pennsylvania passed a law gradually emancipating their slaves. And in Massachusetts, after the legislature refused to deal with the issue, a judge put an end to slavery because he said it violated the state's bill of rights that asserts that "all men are...free and equal." Even in the South, many people questioned slavery after the Revolution and some prominent plantation owners, like Richard Randolph, voluntarily manumitted their slaves. In 1790, manumission in Virginia resulted in a free black population of 12,766. So at the time of the Federal Convention of 1787, one state had fully banned slavery—Massachusetts, and four other states had begun the process of gradual emancipation—New Hampshire, Connecticut, Rhode Island, and Pennsylvania.<sup>91</sup>

### **The Convention Starts**

Madison, who arrived in Philadelphia 10 days before any other delegate, started writing some ideas on what would later be called the Virginia Plan. The rest of the Virginian delegation also arrived before most of the other delegates and every morning

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<sup>90</sup> Franklin, John Hope. *From Slavery to Freedom: A History of Negro Americans*. (New York: Alfred A. Knopf, 1974), pp. 102-04

<sup>91</sup> Quarles, Benjamin. *The Negro in the Making of America*. New York: Touch Stone Books, 1987), pp. 69-75. Divine, Robert, et al, 8<sup>th</sup> ed. *America: Past and Present*: (New York: Pearson Longman, 2007), pp. 164-166

they held a meeting to cement their relationships and forge a common strategy. Not all the Virginian delegates were planters, but all owned slaves. The seven Virginians included: James Madison (planter), George Washington (planter), Edmund Randolph (lawyer), George Mason (planter), John Blair (Lawyer), James McClurg (physician), and George Wyth (lawyer and professor). Patrick Henry was elected but he refused to come saying, "I smell a rat." They also met arriving delegates at the State House in the afternoon and appeared to take a leadership role. Considering the Virginian delegation made the greatest effort to forge a common purpose, it is ironic that three of the seven (including Mason) would refuse to sign the Constitution at the end of the Convention.<sup>92</sup>

Mason, in typical fashion, was the last of the Virginians to arrive in Philadelphia, but his letters indicate that he was eager to take part in this consequential mission. The 140-mile ride was the furthest Mason had ever traveled from Gunston Hall. On May 17, he and his son John checked into the Indian Queen Tavern, which he said "is very well accommodated."<sup>93</sup> Normally in ill health, it seems his gout did not flare up that summer. This, along with his sense of purpose, must have contributed to his uncharacteristic good mood. Mason performed during the four months with strength, vigor and confidence. He was one of the only 41 delegates to stay to the end, and only four delegates (Madison, Morris, Wilson, and Sherman) made more speeches than him. Mason was among the half dozen most influential members of the Convention, winning about half of his debates, which was a higher percentage than Madison.<sup>94</sup>

In that first week in Philadelphia, he seemed to be filled with excitement at the prospect of framing a new government. He wrote his son George Jr. that he hopes "God

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<sup>92</sup> Stewart, pp. 27-38. Bowen, pp. 18-19

<sup>93</sup> PGM, p. 881

<sup>94</sup> Bowen, p. 165, pp. 205-07



grants that we may be able to concert effectual means of preserving our Country from the evils which threaten us.”<sup>95</sup> In another letter to his son he said the task now before the Convention is of more importance than those of the revolutionaries because “the influence which the Establishment now proposes may have upon the Happiness or Misery of Millions yet unborn, is an object of such magnitude, as absorbs, in a manner suspends the operation of human understanding.” Normally, Mason tended to look down upon the character of his fellow delegates, but here he says, “America has certainly upon this occasion drawn forth her first Characters, gentlemen of the most respectable abilities, and as far as I can tell, purest of motives.”<sup>96</sup> His views, however, will soon change.

### **The Virginia Plan**

Mason made several very interesting statements and observations in another letter to George Jr. on May 20, five days before the start of the Convention. He explained that the Virginians were meeting every morning to “form a proper correspondence of sentiments” and that in the afternoon they met the arriving delegates at Independence Hall, but that not enough states had arrived yet to form a quorum. And from his comments, it appears that he already had already been reading what will later be called the Virginia Plan and that he had just started the process of “forming an opinion on the great subject of our Mission.” It is interesting to note that even in these very early conversations “a total change in Federal system” had been openly discussed. He says the proposed plan recommends a bicameral legislature based on “proportionate Representation” with a separate executive and judicial branch. “To make the several state legislatures subordinate to the National,” he says, “the later will have the Power of

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<sup>95</sup> PGM, p. 880

<sup>96</sup> Ibid., pp. 892-93

the Negative on all such laws they judge shall be contrary to the interests of the federal Union.” Mason anticipated that the “little states” will be apposed. He foresees “much difficulty” in trying to form a government that balances the power of the national and state legislatures. And he was surprised that in these early conversations the delegates from the “eastern states,” meaning New England, were less “republican” than those of the middle and southern states. He speculated that this was because they were more democratic before the Revolution and thus now more disappointed with the “evils” of the Confederation and so have “run into the opposite extreme.”<sup>97</sup>

On May 29, 1787, on the fourth day of the Convention, the Virginia delegation formally proposed a plan of government. Madison, soft spoken and uncomfortable in the spotlight, was the principle author but he wanted somebody of more stature to introduce it to the floor. Edmund Randolph, a delegate to the Virginia constitution convention, a member of the Continental Congress during the Revolution, and the current governor of Virginia, was the proper choice. Randolph began by delineating the defects of the present government and the dangers these weaknesses posed to the country. Then he presented what became known as the Virginia Plan in the form of fifteen resolutions. It was a radical departure from the Articles of Confederation. As mentioned above, it proposed a two-house legislature, with the lower house voted by the people, and an executive and judicial branch, selected by the legislature. The most remarkable aspect of the plan was how strong it made the national government. It proposed that the national legislature could veto state laws.

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<sup>97</sup> Ibid., pp. 879-82

### **The Start of the Debate on Slavery**

The provision, however, which would receive the most debate at the Federal Convention, and which went to the heart of the slave issue, was the one regarding how to determine the number of members of the national legislature. The Virginia Plan, discarding the one state one vote scheme of the Articles of Confederation, proposed in the second resolution that the number of representatives of the upper and lower house should be determined by the state's wealth or the "number of free inhabitants" of the state.<sup>98</sup> It is important to note that the original provision did not merely state that representation would be based on population, but rather more specifically on the "free inhabitants." The seven delegates from Virginia were all slaveholders. They must have known that this would have eliminated about 40% of the population of Virginia and therefore severely weakened their state in terms of representation (and power) in the central government.

The next day, on May 30, the delegates tried to change the controversial second resolution that contained the "free inhabitants" phrase. They decided to follow the procedure of debating each resolution one by one, which will be the practice for the rest of the Convention. When they got to the second resolution, Madison himself was the first to suggest the words "the number of free inhabitants" be struck out on the grounds that it "might occasion a debate which would divert the committee from the general question of representation."<sup>99</sup> This would leave the other approach of representation: "proportioned to the quota of [state] contributions." In other words, representation would be based on a state's wealth as reflected in the taxes it paid to the general government. The fact that

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<sup>98</sup> NFC, p. 30

<sup>99</sup> Ibid., p. 36

Madison was the first to offer the change raises the question of why he wrote “free inhabitants” in the first place. Perhaps Randolph added it when he presented it to the Convention or maybe that night Madison received some negative feedback from some other delegates. Nevertheless, Alexander Hamilton, in the first sign of conflict between the northern and southern states, stood up and moved that “free inhabitants” remain in the calculation.<sup>100</sup> But the other delegates agreed to postpone the resolution and to temporarily use the conveniently ambiguous language that representation “ought not to be according to the present system.”<sup>101</sup> And so in the second draft of the Virginia Plan, “free inhabitants” was no longer be present. Soon, however, the delegates will realize that basing representation on wealth did not avoid the slave issue either because slaves contribute to the wealth of a state.

As the debate on the second resolution showed, the Virginia Plan was imbedded with a host of thorny issues which would become manifest in the coming weeks and months. Over the hot and contentious summer of 1787, the delegates debated the issues related to slavery and asked a number of fundamental questions: Should only free inhabitants be counted in determining representation? On what principle is representation founded? Who are citizens? If we do not count slaves will this not severely weaken the southern states on trade, commercial, and tax issues? If we maintain slavery how will this effect ratification? Will slavery expose the country to internal dangers? Are slaves property or people? More philosophically, can a representative democracy contain slaves? Or as Abraham Lincoln will later phrase it, can a government of the people, for the people, and by the people maintain slavery? George Mason, as the author of the

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<sup>100</sup> Ibid., p. 37

<sup>101</sup> Ibid., p. 37

Virginia Declaration of Rights, as a major slave owner, and as a Virginian patriot, wrestled with these pointed questions in perhaps a deeper and more personal level than any other delegate.

## **CHAPTER IV**

### **JUNE CONVENTION**

In June, once the delegates established the rules by which the Convention would operate, they quickly argued over the difficult issue of how to determine representation in the House and Senate. The delegates realized that the issue of representation was closely linked to the issue of slavery. If the number of representatives in Congress is based on population, then how are the slaves to be counted? In an effort to kill the one-vote/one-state scheme of the Confederation, James Wilson won support for the three-fifths ratio, which he felt was closer to the proportional representation he advocated. But this did not stop the heated debate between the large and small states that almost brought the convention to an early end. By the end of the month, Madison had a revelation that the real conflict was not between large and small states, but between free and slaves states. Mason, on the other hand, remained silent on the slave issue, but he will be protective of state and sectional powers.

After agreeing to keep the Convention closed to the press and selecting Washington as the presiding officer, the delegates worked out the rules by which the Convention would operate. It was determined that the delegates would vote as states, and a simple majority of states would carry a vote. Seven states would make a quorum. Within each state delegation, a majority would determine the state's vote. But since no more than eleven states were present at any one time, and often the delegates within a

state tied and thus their vote did not count, this meant that five or six states often decided an issue. This tended to give the smaller states an advantage over the three large states. Further, with Rhode Island refusing to attend, and New York and New Hampshire often absent, this resulted in the underrepresentation of northern non-slave states.<sup>102</sup> Another rule specified that any delegate could revisit an issue previously decided. This allowed delegates to vote on something knowing it was not permanently settled, but it also created a frustrating quality to the Convention because old issues were constantly being dredged up. Mason in a letter to his son on June 1 complained that this rule made the proceedings so slow that he could not predict when the Convention would be finished. He said *Festina lente*, “make haste slowly,” ought to be the official motto of the Convention.<sup>103</sup>

For the first couple weeks of June, the delegates debated the Virginia Plan. In a disciplined manner, the delegates debated the 15 resolutions one-by-one. They touched upon many important questions that would not be settled for weeks: Should there be a single executive? Should the upper house be selected by the states or the people? Should the executive have a veto? How should government officials be paid? One issue of particular importance was in what manner should the members of the lower house be selected? On June 6, General Pinckney of South Carolina proposed that representatives should be selected by the state legislatures because “the people were less fit judges.”<sup>104</sup> But most delegates agreed with Mason who said that it is a fundamental republican principle that at least one house ought to represent the people and therefore be selected by the people.<sup>105</sup>

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<sup>102</sup> Stewart, pp. 50-53. Bowen, pp. 36-37

<sup>103</sup> PGM, p. 892

<sup>104</sup> NFC, p. 73

<sup>105</sup> Ibid., p. 75

In an effort to buttress Mason's proposal, Madison rose and made a long speech supporting popular elections for representatives and explaining the general principle of how to control majority factions. It is in this speech that he first articulated the notion he will later express in the famous Federalist # 10—that the best way to prevent a tyranny of the majority is to “extend the sphere” and create a large, pluralist republic.<sup>106</sup> But before Madison offered his solution to majority rule, he explained the problem. “In all cases where a majority are united by a common interest or passion,” Madison explains, “the rights of the minority are in danger.”<sup>107</sup> Then he offered a poignant example of minority powerlessness in a democracy—the slaves. Madison said, “We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number?”<sup>108</sup> This goes to the core of the problem of minority rights of slaves in a democracy. Slaves were a disparaged minority, to say the least, but in a democracy what recourse did they have? And looking back from our advantage, it appears that “extending the sphere” did little to protect the rights of slaves.

General Pinckney lost his resolution on June 6<sup>th</sup>, but the next day he won his goal for the Senate—that the upper chamber should not be selected by a direct vote of the people. John Dickenson of Delaware moved that the Senate be selected by the state legislatures and it passed unanimously. This seemed to encourage a counterattack by the small states, led by William Patterson, the attorney general of New Jersey. On June 9<sup>th</sup> he stood up and said if we do not stay within the limits set by the Confederation Congress

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<sup>106</sup> Ibid., p. 77

<sup>107</sup> Ibid., p. 76

<sup>108</sup> Ibid., p. 77



“we will be charged by our Constituents with usurpation.”<sup>109</sup> Then he said, “If we are to be considered a nation, all state distinction must be abolished, [then] there may be fair and equal representation.”<sup>110</sup> James Wilson of Pennsylvania responded to this threat vigorously. He forcefully supported the principle of proportional representation by saying “all authority derives from the people and an equal number of people ought to have an equal number of representatives.” To make this more clear, he said “are not the people of Pennsylvania equal to the people of New Jersey? Does it require 150 of the former to balance 50 of the latter?” He met Paterson’s threat with an equal threat: “If the small states will not confederate on this plan, Pennsylvania and [I] presume some other states, would not confederate on any other.”<sup>111</sup>

### **Wilson Wins Support for the Three Fifths Ratio**

This exchange not only serves to highlight one of the most contentious issues of the Convention, the matter of representation between large and small states, but it was followed by one of the most important behind the scenes maneuverings which will effect how slavery was dealt with in the Constitution. The above argument flared up on Saturday, the day before the Convention honored the Sabbath by taking a recess. This gave James Wilson, born in Scotland and one of the most successful lawyers in America, some time to solicit supporters. He was determined to kill the one-state/one-vote system that made the Article of Confederation so flawed. The Convention had agreed that the lower house ought to be selected by the people and the upper house by the state legislatures. The remaining issue was how to determine representation in both houses. Wilson believed strongly that it was more democratic and just that representation should

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<sup>109</sup> Ibid., p. 95

<sup>110</sup> Ibid., p. 96

<sup>111</sup> Ibid., p. 97

reflect population; otherwise, a single voter of New Jersey would have more power than a voter of Pennsylvania.

In order to win a floor vote, Wilson needed support from some of the smaller states. The three largest states in the Union at the time were Massachusetts, Pennsylvania, and Virginia, representing about 50% of the country's population. Obviously, these three states were strongly in favor of proportional representation. This meant that Wilson had to find three states from Connecticut, New York, Delaware, Maryland, North Carolina, South Carolina, or Georgia. New Hampshire was not present at the time. And New Jersey was set in its support for per state representation. Wilson is going to end up making an alliance with the lower southern states. This made sense for three reasons. They were not neighbors of Pennsylvania, and had less to fear from the large state. Wilson happened to have good relations with several of the southern delegates, especially John Rutledge of South Carolina. And most importantly, they had something they needed—protection of the institution slavery, their foremost concern. There was another reason why the three smaller southern states might be supportive of proportional representation. It was wrongly assumed, and this assumption was expressed several times during the convention, that because of their large geographical borders, warm climate, and strong economy, the southern states were growing the fastest and would soon be large states.<sup>112</sup>

Historians do not have any documentary evidence to prove it, but several have speculated that, as Paul Finkelman put it in *Slavery and the Founders*, Wilson made a “Covenant with Death” with the slave states.<sup>113</sup> Indeed, it looks like Wilson and Rutledge formed a secret partnership. Wilson wanted to support proportional

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<sup>112</sup> Stewart, pp. 66-67

<sup>113</sup> Finkelman, Paul. *Slavery and the Founders: Race and Liberty in the Age of Jefferson*. (Armonk, N.Y.: M.E. Sharpe, 1996), 3

representation, which he thought was more democratic and equitable. And Rutledge wanted to protect the slave economy of South Carolina. The strong circumstantial evidence of this secret alliance is the fact that the votes and attitudes of the southern delegates changed suddenly when they returned on Monday, June 11.<sup>114</sup>

On June 11, Roger Sherman of Connecticut suggested that the lower house be based on the “number of free inhabitants” and in the Senate each state will get one vote. (Ultimately, the Convention will accept his idea of equal state representation in the Senate, but it will take several more weeks of intense arguing). Then Rutledge rose and said representation should be based on the wealth of the state. His fellow South Carolinian, Pierce Butler, seconded the notion by saying, “money was power.” Then Wilson stood and urged the debate along by suggesting that the Convention abandon the equal representation scheme under the Articles and seek some sort of “equitable ratio of representation.” This set up the introduction of the three-fifths ratio.<sup>115</sup>

At this point Ben Franklin said he prepared some remarks on the subject but because his voice was weak he asked Wilson to read it to the Convention. This arrangement suggests that in addition to Rutledge, Wilson had been working with Franklin over the weekend. Franklin urged the delegates to work together in harmony as they sought to “secure the common good.” His proposal basically echoed Wilson’s by saying “representation should bear some proportion to the number represented” and that arithmetically there was no danger that a few large states would “swallow up” the small states.<sup>116</sup> Following this, Wilson introduced a resolution that representation in the lower house ought not be equal. This passed with only the three small states of New York, New

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<sup>114</sup> Finkelman, pp. 3-6. Stewart, p. 67

<sup>115</sup> NFC, p. 98

<sup>116</sup> Ibid., p. 99-100

Jersey, and Delaware dissenting, but the southern small states of North Carolina, South Carolina, and Georgia affirming.

Now everything was poised for Wilson to established the notorious three-fifths clause. Right after Rutledge again argued that representation should be based on the wealth of the state; Wilson stood up and proposed the resolution that representation should be based “in proportion to the whole number of white and other citizens...and three fifths of all other persons not comprehended in the forgoing description.”<sup>117</sup> Wilson explained that this ratio was supported by eleven states when it was proposed under the Confederation Congress for calculating state taxes in 1783. (Congress did not pass the revenue resolution because it lacked the needed unanimous state vote needed for amendments, but a super majority of the delegates approved the notion. And several of those delegates were now in the room). Pinckney seconded the motion. Elbridge Gerry objected to this. The forty three year old wealthy merchant from Massachusetts stood up and said he thought property should not be the rule for representation. He asked, “Why then should blacks, who are property in the South, be the rule of representation more than cattle and horses of the North?”<sup>118</sup> No one answered Gerry’s question. They then took a vote and the three fifths clause passed with only New Jersey and Delaware voting no.

Once again, Roger Sherman stood up and like a Cassandra proposed equal representation in the Senate, saying now it was even more important and warned that the states would not ratify a constitution based on any other scheme. But yet again his resolution lost five to six. Wilson then stood up and said representation in the lower and upper house should be based on the same principle. This resolution, seconded by

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<sup>117</sup> Ibid., p. 103

<sup>118</sup> Ibid., p. 103

Hamilton, won six to five. Pennsylvania, Massachusetts, and all the southern states, voted in the affirmative. Although by the narrowest of margins, Wilson and his large state/slave state alliance was victorious on this decisive day of June 11.

Virginia had been taking the lead up to this point, but now the Virginia contention was strangely silent. What did Mason think about the 3/5 ratio? He did speak shortly after the vote on Wilson's proposal, but when he spoke the issue had changed to the mode of adopting amendments. Mason said, "The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it is better to provide for them in an easy, regular, constitutional way."<sup>119</sup> If Mason's remark that the current plan is "certainly defected" refers to the three fifths clause, it is unclear, but this is the first time Mason suggested that the work of the Convention will be not be perfect.

After debating each resolution of the original Virginia Plan, on June 13 a Committee of the Whole drew up the revised Virginia Plan now with nineteen resolutions. The three-fifths ration was contained in the Seventh Resolution. Representation in both the upper and lower house would be based on this rule. Now that it looked like the large states were largely victorious, the small states made their most concerted bid for equal state representation. On June 15, William Patterson of New Jersey—the forty-four year old, Irish-born, lawyer—made his official counterproposal to the Virginia Plan by submitting his plan.

### **Big Versus Small States Fight Almost Derails Convention**

The Patterson Plan was a revision of the Articles of Confederation, while Madison's Virginia Plan was a whole cloth change. But the central difference between

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<sup>119</sup> Ibid., p. 103

the plans was that Patterson's government was based on equal representation of the states in a single house national legislature. Interestingly, Patterson's plan (later to be known as the New Jersey Plan) retained the three-fifths ratio but only to be used to calculate state taxes. The next day, when Patterson's plan was debated, Wilson stood up and made a long speech outlining thirteen differences between the two plans and concluded that Patterson's plan did not relieve the government of its present evils and would likely lead to legislative despotism.<sup>120</sup> Randolph agreed by saying the "insufficiency" of the current federal government has been on display for years and it would be "treason" for the Convention not to eradicate the dangers and "imbecility of the existing Confederacy."<sup>121</sup> The last to speak before the vote was Madison. He made a long speech making eight major points about the problems any good plan must rectify. His speech was carefully reasoned, and he made every effort to appear to be evenhanded, but he concluded that the Virginia plan was superior. When Patterson's plan came to a vote it was defeated by a seven to three margin, with only small states of New Jersey, New York, and Delaware supporting it. Maryland was divided.

After the defeat of the Patterson Plan, the Convention returned to the revised Virginia Plan newly printed out by the Committee of the Whole. For the rest of the Convention, the Virginia Plan would serve as the working framework.

For the next several weeks, the delegates will hotly debate each of the nineteen resolutions of the revised Virginia Plan. The period from June 20 to June 29, however, was especially contentious. It seemed that every issue, every word and phrase, no matter how simple or how many times it was discussed before, would be reopened for a long

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<sup>120</sup> Ibid., pp. 124-27

<sup>121</sup> Ibid., p. 127

debate. It was a messy and frustrating process that seemed to go nowhere. Yet on closer examination, a pattern of north versus south was developing. On a variety of issues, the southern slave states attempted to protect state sovereignty against a powerful national government. For example, when they once again debated the issue of popular elections for the lower house, Rutledge of South Carolina suggested that it would be better for the state legislatures to elect representatives. And when they debated the issue of whether representatives should be ineligible to hold other national or state offices while they served in Congress, Pinckney, also of South Carolina, rose and said he was against restricting representatives simultaneously serving in state government. Pinckney felt this would strengthen a Congressman's allegiance to his state, but when he lost the vote he said the Convention was "erecting a kingdom to be divided against itself."<sup>122</sup>

The subtext of the smaller southern states fearing a strong national government explosively came to the open on June 27. On this day, the hitherto quiet Luther Martin of Maryland took the floor and made a three-hour speech. Martin, a 39 year old slovenly dressed lawyer who was known to take a nip from the bottle but was one of the most original and colorful personalities at the Convention, attacked the Virginia Plan on the grounds that it was essentially a "system of slavery for the ten [small] states." He said the states ought not to give up their sovereignty to form a national government and that the Convention should go back to the confederate model based on equality, justice, and freedom of the individual states. Finally, Martin said he was too exhausted to continue and asked that a recess be called and that he would resume tomorrow morning.<sup>123</sup> The next day when he finished his speech the floodgates opened as the delegates from the

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<sup>122</sup> Ibid., p. 176

<sup>123</sup> Ibid., p. 202

smaller states tore apart the Virginia Plan's notion of proportional representation. It appeared the Convention was back to square one.

### **Madison Says Slavery the Real Source of Conflict**

After another day of fighting, Madison made a startling comment. At this point, he had seen a month's worth of progress for his Virginia Plan about to fall apart. He must have asked himself, what was the underlying cause for the impasse? In a long speech on June 30, Madison concluded that slavery, not the conflicting interests between the big states and small states, was the real impediment to forming a national government. He said, "The states were divided into different interests not by their different sizes, but...from the effects of having or not having slaves. These two causes concurred in forming the great division of interests in the United States."<sup>124</sup> Then he tried to offer a solution that would address this division of interests. "Instead of proportioning the votes of the states in both branches to their respective numbers of inhabitants computing slaves in the ration of five to three," he concluded, "representation in one branch should be according to the free number of inhabitants only; and in the other [branch] according to the whole number counting slaves as if free."<sup>125</sup> He said this arrangement would give the South an advantage in one house and the North an advantage in the other. Perhaps needing more time to think through Madison's proposal, the delegates sat in silence and no body responded to his speech.

But later in the day, tempers exploded over Wilson's large state/slave state alliance of June 11 to pass the three-fifths ratio. Gunning Bradford, the attorney general of the small middle state of Delaware, lost his temper and said, "Are not the large states

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<sup>124</sup> Ibid., p. 224

<sup>125</sup> Ibid., p. 225



evidently seeking to aggrandize themselves at the expense of the small?” And then he said, look at the interests and prospects of North Carolina, South Carolina, and Georgia, which are “actuated by the prospect of being great [states]...and puffed up with the possession of her wealth and Negroes.” Bradford feared the power of the large states and wanted to prevent the southern states from allowing them proportional representation. He said, “A combination shall take place,” between the large states and the states of the lower south, “and the smaller states must be ruined.” Then he ended his speech with a pointed warning: “The large states dare not dissolve the Confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice.”<sup>126</sup> This treasonous threat outraged many delegates. King stood up and said he was “grieved that such a thought even entered [Bradford’s] heart. And even more grieved that such an expression had dropped from his lips.”<sup>127</sup> So the last day of June comes with the slave issue finally being brought out in the open and in a rather explosive way.

Before we examine the proceedings of July, we might ask what George Mason was thinking about all this. Before June 11, when the three-fifths ratio was incorporated into the Virginia Plan, Mason had been a leading speaker. Every day he gave several speeches on a variety of topics. Then after June 11, he only made a few speeches and said nothing about slavery. And immediately after the vote to affirm the three fifths ratio on the day of June 11, Mason made a cryptic remark that the Constitution will certainly be defective and therefore an easy amendment process must be established. Going back to his days as a delegate to the House of Burgesses, Mason always expressed hatred for

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<sup>126</sup> Ibid., pp. 229-30

<sup>127</sup> Ibid., p. 231

legislative intrigues and backroom deals. After the Convention, he will cite the northern/southern alliance to extend the slave trade as one of the main reasons he refused to sign the Constitution.

Mason did not speak on the slave issue in June, but he will show sectional concern. On June 4, Mason made a speech against a single executive, which he warned could turn into a monarchy. In the extensive notes he wrote in preparation for the speech, he developed the idea that there should be a three-person executive, each representing one of the sections: New England, the middle colonies, and the South. Perhaps his motive behind this plan was to protect the institution of slavery or, indirectly, the commerce of the staple goods slaves produced. “Will not three men” he wrote, “so chosen bring with them into Office a more perfect and extensive Knowledge of the real Interests” of the people and their “respective concerns.”<sup>128</sup> This shows that sectional interests always entered into Mason’s thinking. In spite of this, when he actually made the speech, perhaps wanting to appear in support of national unity, he did not mention his idea for a tripartite executive. However, later in the Convention, on Sept 7, when he was less concerned about preserving national unity, he called for a privy council with members representing the three sections.

Also in June, Mason made several statements in support of state’s rights. On June 20, rejecting the notion that Congress should have both the power of the purse and the sword, he concluded his speech by saying, “notwithstanding his solicitude to establish a national government, he never would agree to abolish the state government. They were as equally necessary as the General Government and he would be equally careful to

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<sup>128</sup> PGM, p. 898

preserve them.”<sup>129</sup> And then on June 25, Mason said that it was an accepted principle that each branch of government should have the power of self defense, and so he wondered if anyone would be apposed to “the necessity of allowing the state governments the same self defense. If they are to be preserved as he conceived to be essential, they certainly ought to have this power.”<sup>130</sup> Moreover, he made a speech supporting the provision that the Senate should be selected by the states. Eventually this provision will be adopted by the Convention. So, even though Mason did not explicitly mention slavery until July, he was concerned about state and sectional power.

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<sup>129</sup> NFC, p. 159

<sup>130</sup> Ibid., p. 191

## CHAPTER V

### JULY CONVENTION

The first session in July was on a Monday. The previous Saturday Madison made his speech saying that the real conflict deadlocking the delegates was between slave and non-slave states, not between big and small states. The delegates did not discuss Madison's solution (giving the slave states dominance in one branch and free states dominance in the other), perhaps because they were afraid of dealing with the slavery issue in such a straight forward manner. In July, however, they are going to start to discuss slavery openly. And in July, George Mason will make his first open comments about slavery. Mason knew the Convention was at a critical stage. In a letter to Beverly Randolph, the acting governor of Virginia, he wrote "things are now drawing to a Point, on which some fundamental Principles must be decided, and two or three Days will probably enable us to judge (which is at present doubtful) whether some sound and effectual System can be established, or not." He predicted the Convention will either soon break up in failure, or if they do hang together and frame a government, they will be in Philadelphia until September.<sup>131</sup> Here again Mason was right.

The first session of the new month, July 2, opened with another failed vote to allow the states equal representation in the Senate. The same vote was taken on June 11. On that day, the result was five-six, with the small southern states of North Carolina,

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<sup>131</sup> PGM, p. 918

South Carolina, and Georgia voted with the three large states of Massachusetts, Pennsylvania, and Virginia in rejecting the motion. However, on July 2 something different. And this will turn out to be very important. Two delegates from Georgia were ordered by their state legislature to go to New York to attend the session of the Confederation Congress. This left only two delegates, so if one voted against the large state alliance, it would cancel Georgia's vote. This is exactly what happened. Abraham Baldwin, who was born in Connecticut and trained as a minister, but had only moved to Georgia just three years earlier, voted no. He offered no explanation for this shift, which would have a momentous impact on the Convention. The large state/southern alliance was breaking. The vote was now 5-5-1, a tie, and under the rules of the Convention the movement for equal representation in the Senate failed. Now the delegates were at an even greater deadlock.<sup>132</sup>

### **Mason Selected for Great Compromise Committee**

At this point, Mr. Pinckney said he was against an equality of votes in the upper house, but he agreed with Madison that there is a "real distinction [between] the northern and southern interests. North Carolina, South Carolina, and Georgia, in their rice and indigo, had a peculiar interests which might be sacrificed."<sup>133</sup> Perhaps he was trying to remind Baldwin that Georgia's economic interests lie with her neighbors in the Deep South, and not with his home state of Connecticut. Then General Pinckney, his older cousin also representing South Carolina, suggested that a special committee be formed with one member from each state to seek a compromise.<sup>134</sup> Madison and Wilson opposed this, but the proposal was approved. Many outspoken small state advocates, such as

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<sup>132</sup> Stewart, pp. 107-08

<sup>133</sup> NFC, p. 232

<sup>134</sup> Ibid., p. 232

Patterson and Bradford were chosen for the Committee of Eleven (or the Grand Committee, as it is sometimes referred to). But the large state members were moderates, for example Franklin represented Pennsylvania, Gerry represented Massachusetts, and Mason was chosen for Virginia. Then the Convention wisely took a three-day break in honor of the Fourth of July holiday and enjoyed the cities' festive parades, parties, and fireworks.<sup>135</sup>

The Committee of Eleven worked through the holiday, the hottest days of the summer, and prepared their report. History has named their proposal the “Great Compromise.” Ben Franklin persuaded the committee to accept Sherman’s plan to provide equal representation in the upper house and the lower house would be based on the states’ population, with one representative serving a district of 40,000. Judging from later comments, George Mason conditioned his approval of the plan on giving the lower sole authority to introduce tax and spending bills—a tradition the House of Commons has enjoyed since 1407. When they presented their plan on July 5, it met with resistance. Mason stood up to defend the plan and said “some accommodation must be made at this point, or we shall make little progress in this work.” Then, referring to the treasonous remarks made by Bedford, he said, “this is preferable to an appeal to the world, as talked about by some gentlemen.” He ended his speech by making a dramatic statement of his commitment to forming a new government. Mason swore that “he will bury his bones in this city rather than expose his country to the consequences of a dissolution of the Convention without anything being done.”<sup>136</sup>

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<sup>135</sup> Stewart, p. 110. Broadwater, p. 173

<sup>136</sup> NFC, pp. 243-44

History books tend to depict the “Great Compromise” as something the Convention readily accepted, but for the next eleven days they fiercely argued over the committee’s proposal. It was such a sticking point because the compromise dealt with representation, and slavery was connected to representation. On July 6, the Convention focused on the one representative for every 40,000 inhabitants provision of the committee report. Now the delegates could quickly calculate exactly how many representatives each state would actually have in the new national legislature. Some brought up the old argument that representation should reflect the wealth of the state. Mr. Pinckney responded that past attempts to calculate the wealth of the state proved unworkable and he believed the number of inhabitants is the best rule. However, he said, “blacks ought to stand on an equality with whites,” yet he would abide by the three-fifths ratio.<sup>137</sup>

### **The Debate on Slavery Flares Up**

Again, the Convention decided to use a special committee to work out exactly how many representatives each state would get. On July 9 they issued their report on the number of representative in the lower house of the national legislature based on one representative for every 40,000 inhabitants. There would be a total of 56 representatives. Large states like Virginia would get nine; Pennsylvania, eight; and Massachusetts, seven. Small states like the Carolinas would get five; Georgia, two; New Jersey, three; and Delaware and New Hampshire were allocated one.<sup>138</sup> Sherman stood up and demanded to know on what calculation the report was founded. Gorham responded, “the number of blacks and whites with some regard to the supposed wealth was our guide.” But this vague answer did not satisfy anyone. Gouverneur Morris stood up and said, “The report

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<sup>137</sup> Ibid., p. 248

<sup>138</sup> Ibid, p. 257

is little more than a guess.”<sup>139</sup> William Patterson, not happy with New Jersey’s allocation of three representatives compared to Virginia’s nine, agreed with Morris that the report was not fair. He then challenged the three-fifths rule by saying:

He could regard Negroes in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and like other property entirely at the will of the master. Has a man in Virginia a number of votes in proportion to the number of slaves? And if Negroes are not represented in the states to which they belong, why should they be represented in the general government?<sup>140</sup>

Patterson reminded the convention that according to the republican principle, representatives served in an assembly to vote on behalf of the citizens back home, but slaves had no voting rights in the first place and are therefore not represented in such an assembly. Then he added that the three-fifths clause would only encourage the slave trade.<sup>141</sup>

Madison cleverly countered Patterson by saying that if they stuck with pure republican principles in the first place, then a small state like New Jersey should not have an equal vote with the large states. Madison once again returned to his proposal that one branch should represent free inhabitants, thus giving dominance to the free states, and the other house count slaves, and thus giving dominance to the slave states. But as before the Convention completely ignored Madison’s proposal.

### **The First Sign of the New England / Deep South Alliance**

Rufus King of Massachusetts, only 32 years of age, finished the day with the last speech. This speech is very significant because it is the first indication of a new alliance within the Convention. On June 11, Wilson of the large state of Pennsylvania made an

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<sup>139</sup> Ibid, p. 258

<sup>140</sup> Ibid, p. 259

<sup>141</sup> Ibid, p. 259



alliance with the smaller southern states to support the three-fifths ratio and prevent the continuation of the one state-one-vote scheme of the Confederation. But now a new alliance, with a different dynamic, was forming. For the rest of the Convention New England was an ally of the South, and in King's speech we get an idea on what basis this alliance formed. He said, "[I] had always expected that the southern states are the richest, they would not league themselves with the North unless some respect were paid to their superior wealth." He continued, "If the [North] expects preferential distinction in commerce and other advantages" from creating a Union with the South, "then they must not expect to receive them without giving some advantage in return." King concludes by saying, "Eleven out of 13 of the States [of the Confederation] had agreed to consider slaves in apportionment of taxation; and taxation and representation ought to go together."<sup>142</sup>

Massachusetts was the first colony in America to free their slaves, and 40 years later they will lead the abolitionist movement, but at the Federal Convention they were not critical of the institution of slavery. Indeed, indirectly they were supportive of slavery. New England was the shipping center of the country. They made huge profits transporting the staples the South produced by slave labor. The delegates of New England were not unaware of their economic relationship with the South and their responsibility to protect the economic interests of their constituents.

On July 10, the committee given the task of re-calculating the number of representatives in the national legislature issued their report, but this did little to squelch the slavery debate. Their report increased the total number of representatives to 65 and allotted the North five more seats and the South four more seats. Again, Rufus King

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<sup>142</sup> Ibid, p. 260

stood up and warned the Convention that the South may not join the Union if they are treated unequally. King, finally giving recognition to Madison's speech, said he was "fully convinced that the question concerning a difference in interests did not lie where it had been previously discusses, between the great and small states; but between the southern and eastern." (When the delegates said "Eastern," they usually referred to New England, but sometimes to the North in general). For this reason, King said he was for the three fifths ratio which gave them more representation "for the security of the southern [interests]... and he was not averse to giving them a still greater security, but did not see how it could be done."<sup>143</sup> General Pinckney of South Carolina followed this by saying he was glad Virginia and Georgia picked up a few seats but he was hoping for more equality with the northern states. He reminded everyone of the South's "superior wealth...and insisted on its having its due weight in government."<sup>144</sup> Gouverneur Morris, who will be the most consistent opponent of slavery at the Convention, responded to this by saying the South was "greatly overrating" its wealth and the allocation was fair.<sup>145</sup>

The next day, Edmund Randolph opened the session by suggesting that Congress ought to conduct a periodic national census in order to properly maintain fair representation because as it now stands it is based on "pure conjecture." George Mason supported the idea of reapportioning representation to reflecting the growing population. He said it was proper that the northern states had a majority now because of their larger population, but he predicted that in time, with the South's size and fertile soil, they might be larger than the North. He added, perhaps giving implicit approval of the three fifths ratio, that he was in favor of calculating representation solely on the number of

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<sup>143</sup> Ibid, p. 261

<sup>144</sup> Ibid, p. 262

<sup>145</sup> Ibid, p. 263

inhabitants which was also a fair enough assessment of wealth.<sup>146</sup> Williamson of North Carolina said a census, on the basis of the three-fifths ratio, should be made within the first year and then a census taken on regular intervals after that.

Suddenly General Pinckney and Pierce Butler of South Carolina “insisted that blacks be included in the rule of representation equally with whites,” and moved that the three-fifths clause be struck out.<sup>147</sup> But Gerry and Ghorum of Massachusetts stood up to them and insisted that the three-fifths ratio was more than fair. Butler countered that slave labor was the equivalent of northern free labor in production and value and so ought to be represented. Further, referring to Locke, he said “equal representation ought to be allowed for [slaves] in a government which was instituted principally for the protection of property.”<sup>148</sup>

### **Mason Supports the Three Fifths Ratio**

It was at this heated juncture in the debate that George Mason stood up and made his first explicit remarks concerning slavery at the Federal Convention. On July 11, Mason said, he could not agree with Butler’s proposal of striking out the three-fifths clause “even though it was favorable to Virginia because he thought it was unfair.” Mason always tried to be an impartial statesmen and did not want to appear to be a provincial partisan. He then went on to give his overview of the slave question, which must have drawn particular attention because everyone knew he was one of the biggest slave owners at the Convention. He said:

***It was certain that the slaves were valuable, as they raised the value of the land, increased the exports and imports, and of course the revenue, would supply the means of feeding and supporting an army, and might in cases of emergency***

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<sup>146</sup> Ibid., p. 266

<sup>147</sup> Ibid., p. 268

<sup>148</sup> Ibid., p. 268

*become soldiers themselves. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of Representation. He could not however regard them as equal to freemen and could not vote for them as such.*<sup>149</sup>

Mason's speech supporting the three fifths ratio and opposing counting blacks equal to whites is interesting for several reasons. First, in almost all of Mason's speeches and writings against slavery, he highlighted the security and military dangers slavery poses. But here he suggested slaves contribute to the defense of a state. Second, Mason said he supported the three-fifths ratio because as property slaves do contribute to the wealth of a state. This indeed will be the argument that wins over most northerners to accept the three-fifths ratio. And lastly, and this is perhaps one of the most revealing statements Mason makes with regards to his understanding of the status of slaves in society, he says, "*he could not however regard them as equal to freeman and could not vote for them as such.*" He seems to be saying that he did not want to give any implication that blacks were legally and politically equal to whites, but as property they contributed to the economic assessment of the state. Mason concluded by saying "*that the southern states have this peculiar species of property, over and above the other species of property common to all state.*"<sup>150</sup> Following this the delegates voted on, in Madison's words, "the motion for considering blacks as equal to whites for the apportionment of Representation." The motion failed, with only South Carolina, Georgia, and Delaware voting yes.<sup>151</sup>

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<sup>149</sup> Ibid., pp. 268-69

<sup>150</sup> Ibid., p. 269

<sup>151</sup> Ibid., p. 269

### **The Three Fifths Ratio Rehashed**

Now, a whole month after the Convention first voted to support the three-fifths ratio, the delegates debated the merits of the three-fifths clause. Hugh Williamson, a 52 year old physician from North Carolina, reminded the delegates that the southern states did not want to count the slaves for purposes of taxation, but they wanted to count them for purposes of representation, so three fifths was a fair compromise.<sup>152</sup> Morris, who had been away from the Convention for a couple of weeks, and must have been surprised they were still arguing about this provision, eagerly jumped into the slave debate. He stated he was opposed to the three-fifths ratio. "If slaves were to be counted as inhabitants," asks Morris, "not as wealth, then why is not other wealth besides slaves included?" And if our goal is to assess state wealth, he did not think population alone accurately reflected the wealth of a state.<sup>153</sup> King of Massachusetts, once again supporting the slave states, said he agreed with some of Morris' points, but thought the delegates should go along with three fifths for the sake of moving the Convention along.

John Rutledge suggested that the Constitution could simply leave out the three-fifths ratio and state in vague terms that Congress should conduct a census every year and "the Legislature shall proportion the Representation according to the principles of wealth and population."<sup>154</sup> Some liked the idea of leaving it up to future Congresses to decide the specifics of representation and that they should only set the broad principles. But Mason, never trusting the legislature to do anything right, opposed this. He disagreed

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<sup>152</sup> Ibid., p. 269

<sup>153</sup> Ibid., p. 269

<sup>154</sup> Ibid., p. 270

with this notion saying it was “too indefinite and impracticable” and it would leave Congress with the excuse to do nothing.<sup>155</sup>

Madison then stood up and made a long speech. He said it had been a constant theme of the delegates that we cannot trust the motives and judgment of men and now there is talk of leaving this most contentious issue up to future generations to decide. He gently chided the delegates who were fighting over southern and northern power that soon they will both be minorities to the “western majority.” Since taxation and representation go together, and since labor is a measure of wealth and the ability to pay taxes, he said he was for the three-fifths ratio and that they should decide on a “fixed number for the perpetual standard of representation” and not leave it vague.<sup>156</sup> Again Mason gave his support for a providing a fixed number for representation in the Constitution because as the population changes the majority section will want to make rules that benefit their circumstances. “The majority will never yield to the minority,” he warned, “unless provided for by the Constitution.”<sup>157</sup> So both Madison and Mason expressed their support for including a specific ratio or principle for calculating representation in the Constitution to prevent future sectional conflict. The vote on Rutledge’s proposal that they leave the principle for representation vague was rejected.

Now that the delegates decided not to leave the rule for proportioning representation vague, the northern delegates expressed their fear that if the Constitution explicitly stated the three-fifths ratio it could jeopardize ratification. King said he would prefer to keep the number indistinct because “it will excite great discontent among the states with no slaves” when they see that slaves will be counted along with whites for

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<sup>155</sup> Ibid., p. 270

<sup>156</sup> Ibid., pp. 272-73

<sup>157</sup> Ibid., p. 274

representation.<sup>158</sup> But Nathaniel Gorham, also of Massachusetts, said that there was little excitement in the New England states when three fifths was first proposed in the Confederate Congress for the purposes of taxation. James Wilson, (who first proposed three fifths as a way of getting the southern states to vote against equal representation), stood up and said he could not “see on what principle the admission of blacks in the proportion of three fifths could be explained. Are they admitted as citizens? Then why are they not admitted on equality with white citizens. Are they admitted as property? Then why is not other property admitted in the computation? But even though this will “give disgust” to the people of Pennsylvania, he was for the three fifths number due to the “necessity of compromise.”<sup>159</sup>

Then Morris had the last word before the vote. He said he was stuck on the horns of a dilemma. Should he do “injustice to the southern states,” and vote against the three fifths clause, “or [do injustice] to human nature,” and vote for it. He declared he would not do an injustice to humanity by allowing this compromise. Further, he said the three-fifths ratio would only encourage the slave trade by giving slave masters more representation. Amazingly, Morris won. The vote for accepting the three-fifths clause was denied 5-4. Maryland was split. Massachusetts, New Jersey, Pennsylvania, Delaware voted no. Even South Carolina voted no.<sup>160</sup> But this would prove to be a short lived victory.

### **The South Threatens to Bolt the Convention**

On July 12, Morris sought unsuccessfully to find an alternative to the three-fifths clause, but by this point William Davie of North Carolina had had enough. Silent up to

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<sup>158</sup> Ibid., p. 274

<sup>159</sup> Ibid., p. 275

<sup>160</sup> Ibid., p. 276

this day, Davies finally stood up and declared “it was high time now to speak out.” He said that it became apparent that some gentleman were seeking to “deprive the southern states any share of representation for their blacks” and that he was sure that North Carolina would not join the Union on any terms that would count the slaves less than by the three fifths ratio. He concluded by saying “if the eastern states meant therefore to exclude them altogether the business was at an end.”<sup>161</sup> In response to this speech, Dr. Johnson of Massachusetts, continuing the New England appeasement of the South, offered to count slaves equally with whites. This was quite remarkable. He was proposing that the state that he was there to represent should get less seats in the national legislature than the southern states.

With this, Gouverneur Morris, in a mocking tone, said it was “high time he spoke out.” He said he came here to make a “compact for the good of America,” and he was just as certain that the people of Pennsylvania would never agree to a representation of Negroes.<sup>162</sup> General Pinckney reiterated his early point that the institution of slavery should not be exposed to danger under a government erected for the protection of property. At this stage in the debate it appears many delegates finally concluded that the three-fifths ratio was the only practical compromise. Oliver Ellsworth of Connecticut stood up and suggested they return to three fifths. Butler, Randolph, and Wilson all agreed. Always seeking a compromise with the South, King then stood up and said that if “justice was not the basis of the connection the [republic] could not be of long duration.” He said soon the southern states will be more numerous and then their threats will be

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<sup>161</sup> Ibid., p. 278

<sup>162</sup> Ibid., p. 278



backed with “force.”<sup>163</sup> Mr. Pinckney, always more impetuous than his older cousin General Pinckney, followed this by once again urging that blacks and white should be represented equally. “Blacks were the laborers, the peasants, of the southern states” he argued, and they add to the wealth and strength of the South in the same way as northern labor adds to their wealth and strength. Then they voted on Mr. Pinckney’s measure and it failed. With all the threats of de-confederating and counting blacks as equal to whites, the ground was set for another vote for the three-fifths clause. This time the vote for three fifths passed 6-2, with Massachusetts and South Carolina divided.<sup>164</sup> So, after over a month of arguing about the three-fifths clause, they were back where they started on June 11.

### **What about the Western States?**

On the next day, July 13, now that the three-fifths ratio was settled, Randolph wanted to make it clear that this would apply to the new states as well.<sup>165</sup> This was significant because up to this point the talk centered on protecting slavery only in the original states. Now Randolph opened the possibility of allowing the spread of slavery to the western territory. In a strange coincidence of history, at the exact same time, the current session of the Confederate Congress prohibited slavery into the Ohio Valley—land gained from Britain as a result of the War of Independence. In New York on July 13, Congressman Nathan Dane of Massachusetts introduced an amendment to the Northwest Ordinance, which stated that “There shall be neither slavery nor involuntary servitude in the said territory.” Incidentally, Article Six of the Northwest Ordinance also included a

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<sup>163</sup> Ibid., p. 280

<sup>164</sup> Ibid., p. 281

<sup>165</sup> Ibid., p. 285

fugitive slave clause. Now the members of the Convention would have to face the same issue, but they will arrive at a different solution.<sup>166</sup>

Morris saw the implications of Randolph's proposal and sprang to his feet. He said that when Madison first brought up the notion that the real distinction in the country was between the northern and southern states, not the large and small, he thought this idea was groundless. He sees, however, that it has persisted and "the southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public council." He said he thought it would be vicious to transfer this slave power to the interior, but more to the point: If the distinction between slave states and free states is real, and not fictitious, he said, "let us at once take a friendly leave of each other." He concluded by saying that North Carolina, South Carolina, and Georgia, will "in a little time be a majority of the American people" and now they plan on including the "great interior of the country" and this was something to be "apprehended."<sup>167</sup>

It must be noted that Morris expressed the common assumption that the southern states would grow in population and soon outstrip the other states. This was a faulty premise. What eventually happened was that free labor streamed to the north to work in manufacturing and to acquire their own farms. Slave labor not only inhibited the growth of manufacturing in the South, but it also discouraged immigration to the slave region. It is difficult to judge what impact this false assumption had on the Convention. Perhaps it gave the South a little less to fear than if they thought they would remain a minority in population.

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<sup>166</sup> Stewart, pp. 137-149. Bowen, pp. 173-184

<sup>167</sup> Ibid., p. 286

Major Butler of South Carolina stood up and responded to Gouverneur Morris. He said, “The security the southern states want is that their Negroes not be taken from them, which some gentlemen within or without doors, have a very good mind to do.” Nobody in the convention uttered the word abolition. But they were struggling with how slavery would fit into a Republic. And he agreed with Morris’ prediction that the real future growth in America will be “southwardly and westwardly.”<sup>168</sup> And when the vote came, Randolph’s motion to extend the three-fifths ratio to the new states won unanimously. Not even Morris’ state of Pennsylvania, voted against it.

### **The Three Fifths Ratio and the Executive Branch**

As the Convention turned to a new topic, how to elect the executive, slavery came up a couple more times in July. On July 17, when the delegates were debating whether the president should be elected directly by the people rather than by Congress (as the Virginia Plan first proposed), Hugh Williamson of South Carolina said unlike now when there is a national figure whom is known to every man, in the future most people will vote for some man of their own state. This will give candidates from the large states an advantage, and he added “it will not be Virginia, however. Her slaves will have not suffrage.” He was implying that this would give the large states of Pennsylvania or Massachusetts an advantage.<sup>169</sup> Perhaps this had its intended effect. The delegates then voted against the motion of allowing the people the power to vote for the president and kept the provision giving Congress this power.

On July 19, the issue of slavery was raised, and it surfaced again in connection to the debate on how to elect the president. Madison made a speech against giving Congress

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<sup>168</sup> Ibid., p. 286

<sup>169</sup> Ibid., p. 309

the power to vote for the president, saying it would not give the president sufficient independence from the legislative branch. He added that one problem of having the people vote for the president is in the South the right of suffrage is denied to the Negroes and this will give an advantage to the North. This, he said, could be rectified by “the substitution of electors to obviate this difficulty.”<sup>170</sup> By implication this meant that the number of electors would also be calculated on the three-fifths ratio. Then on July 25, Madison said of the three leading proposals—election by the Congress, by electors, and by the people—he favored election by the people although the southern states would be at a disadvantage because of a lack of “qualified voters in the...southern states.” However, the southern states would make up for this in their growing population. As a member of a southern state, he was willing to make this sacrifice because “local considerations must give way to the general interest.”<sup>171</sup> On the vote whether Congress should elect the president, the vote failed four to seven.

### **Conclusion for July**

Mason played a prominent role in the Convention in July and made his first speech about slavery. On July 11, Mason supported the three-fifths ratio. He said blacks contributed to the state in a variety of ways: they raised the value of the land, increased exports and imports, they could help to support and supply an army, and, in emergencies, could even serve in the army. He also said slaves were a type of property unique to the southern states. For these reasons, they “should not be excluded from the estimate of representation.” At times during the convention Mason expressed the idea that representation should correspond to the wealth of the state. At other times, he said the

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<sup>170</sup> Ibid., p. 327

<sup>171</sup> Ibid., pp. 365-66

principle of republicanism means in at least one house representatives should be the representatives of the people. But in this speech he indicated that he did not think blacks fit the later category. He saw black slaves as property and not to be politically represented in a national assembly. As Mason said, ***“He could not however regard them as equal to freeman and could not vote for them as such.”*** This July 11 speech shows Mason’s tendency to think of slavery in purely utilitarian terms of how it benefits and hurts the state. He never seemed to look at them as human being with individual rights.

## **CHAPTER VI**

### **AUGUST CONVENTION**

On July 26, the Convention finished debating the nineteen resolutions of the Virginia Plan and so then they created a Committee of Detail, chaired by John Rutledge of South Carolina, to draw up a more polished document reflecting all the votes as they now stood. As the committee worked on this task, the rest of delegates took an eleven-day recess. However, when they returned on August 6, the document the committee produced was so transmuted that few delegates could recognize it. And the most controversial changes were the new slave provisions. This sparked the most sustained and fervent debates on slavery. George Mason in particular became disillusioned with the process after the Rutledge Report, and during August he started to express doubts about the Constitution. It is also in August that Mason gave the most passionate speech against slavery during the Federal Convention.

#### **The Rutledge Report Attempts to Protect South's Slave Interests**

The Committee of Detail consisted of five delegates from the three different geographic sections: Nathaniel Gorham from Massachusetts, Oliver Ellsworth from Connecticut, James Wilson from Pennsylvania, Edmund Randolph from Virginia, and John Rutledge from South Carolina. Rutledge was chosen to chair the committee. It was a very important task to write the first draft of the Constitution. But they did not merely cut and paste the original document into a more pleasing order, they transformed the Virginia

Plan into a different creature. The original nineteen resolutions were only 1,200 words; the committee report was three times longer with twenty-three articles and forty-one sections. They added provisions from the Articles of Confederation, from state constitutions, from the New Jersey Plan, and from Charles Pinckney's plan (which he submitted on the first day but everybody ignored). They also added provisions that nobody debated and changed other provisions that the delegates already agreed on.<sup>172</sup> Most importantly for our focus, they changed or added several provisions dealing with the hotly debated topic of slavery. And Rutledge appears to be the prime mover behind the changes on slavery.

The handwritten drafts and edits of the report show that most of the work of the five member committee was done by James Wilson, Edmund Randolph, and John Rutledge. Randolph and Rutledge inserted language and provisions designed to strengthen state's rights, and Wilson did his part to strengthen the national government. Randolph's draft had the Senate appoint ambassadors and make treaties and it gave the states, not the national treasury as the Convention earlier agreed, the power to pay the salaries of Congressmen. All this gave the states more power. And Randolph and Rutledge wanted to expressly define and limit the powers of the national government. In Article VII of their draft, they listed eighteen "enumerated" powers of Congress, starting with the power to "collect and lay taxes." This will eventually become Article I, Section 8 of the Constitution. But Wilson was able to add the necessary and proper clause, which worked as a way for Congress to get free of the strict enumerated powers. And Wilson further strengthened the national government by writing the supremacy clause, making the Constitution the "supreme law" of the land. And to weaken the states, he added a

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<sup>172</sup> Stewart, pp. 164-65. Bowen, p. 192

section with eight provisions expressly limiting state powers. Wilson's notes also reveal he was the first to coin the phrase "we the people."<sup>173</sup>

Most of these provisions dealing with national versus state powers were accepted. Indeed this was the great achievement of this committee. It skillfully balanced the powers between the state and national government, which are one of the great hallmarks of the Constitution. However, the slavery provisions were much more controversial.

Before the Committee of Detail was sequestered, there was some indication that it would be concerned with the slave issue. On July 23, when the Convention made the decision to select a committee to work on a report, General Pinckney of South Carolina made an undisguised threat: "If the committee should fail to insert some security to the southern states against emancipation of slaves, and taxes on exports, he should be bound by duty to his state to vote against their report."<sup>174</sup> But it is doubtful many delegates paid too much attention to this, and nobody could have predicted the extent of the slave provisions the committee would add to the Constitution.

Also, it is interesting to note that all five members of the committee, even the northern ones, were not hostile to slavery. Of course, Randolph and Rutledge owned large plantations. But Wilson of Pennsylvania at one time owned two house slaves. And Gorham of Massachusetts and Ellsworth of Connecticut will never speak out against slavery during the Convention.

Rutledge, however, had the most influence in protecting the institution of slavery. In his book, *The Summer of 1787*, David Stewart charged that Rutledge "hijacked" the Constitution. "Rutledge knew what he wanted," says Stewart, "a weaker central

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<sup>173</sup> Stewart, pp. 168-172. Bowen, pp. 197-201

<sup>174</sup> NFC, p. 355



government, and watertight protections for the South, particularly its slave system.”<sup>175</sup>

Rutledge is going to get five key slave provisions added to the committee report: One) Article VII, Section 3 and Section 5 stated that for purposes of taxation and representation state population will be calculated using the three fifths ratio. Two) Article VII, Section 4 stated that Congress cannot lay a tax on exports, Three) Congress cannot tax the importation of slaves, Four) Congress cannot prohibit the importation of slaves. And Five) Article VII, Section 6 requires that all “navigation acts,” legislation concerning interstate and foreign trade, be approved by a supermajority of two-thirds in both houses of the national legislature.<sup>176</sup> The last four of these provisions were never approved, or even debated, by the Convention. And all five greatly favored the South. In essence, the Rutledge provisions state that the slave trade could never be interfered with, that the products of slavery (tobacco, rice, and indigo) could not be taxed, and that Congress required a two-thirds vote to pass any law which might interfere with the South’s shipping or slave trade interests.

After their eleven-day vacation, the delegates returned on August 6 and the Rutledge Committee report was read out loud to the Convention. Each delegate was given a seven-page copy of the report with wide margins for notes. Mason’s copy of the report is full of annotations.<sup>177</sup> Mason’s response to the Rutledge Report will be mixed. On the one hand, he ardently supported the two-thirds requirement for congressional navigation acts and the ban on export taxes. On the other hand, he will oppose the provisions to protect the slave trade.

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<sup>175</sup> Stewart, p. 167

<sup>176</sup> NFC, p. 390

<sup>177</sup> PGM, pp. 934-48

### **Rutledge Report Sparks Zenith of Debate on Slavery**

If the delegates were shocked, nobody said anything on that first day. They simply proceeded, as they did with the Virginia Plan, in an orderly manner to debate and vote on each provision down the list. The issue of slavery, however, came up on the second day of debate on the Rutledge Committee report. When the delegates were discussing Article IV, section 4—that there will be one member of the House of Representatives for every 40,000 inhabitants—Hugh Williamson of North Carolina suggested that this was too vague and the phrase “according to the rule provided for direct taxation,” meaning the three fifths ratio, ought to be inserted.<sup>178</sup> This was approved by nine to one vote. After this, Rufus King of Massachusetts stood up and asked what effect this vote would have on the slave trade—a subject the Convention had not seriously discussed before this date.

King then launched into a remarkable speech questioning many aspects of slavery, which is especially surprising considering that previously he had been the great southern appeaser. He said up to now he had not made any strenuous opposition to the three-fifths rule because he was willing to make certain compromises to strengthen the general government. But after reading the Rutledge Committee report, he said, “the admission of slaves was most grating circumstance to his mind & he believed it would be so to a great part of the American people.” Then King asked the Convention a series of pointed questions: Is it “reasonable” for the Constitution to prohibit a ban on the importation of slaves and to prohibit a tax on exports? Shall all the states be bound to defend each other while other states “introduce a weakness which will render defense more difficult?” If slaves are to be imported, shall not the exports they produce be taxed

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<sup>178</sup> NFC., p. 409

and provide revenue for the defense of the whole country, including the slave masters of the South? He concluded by saying that the report contained so much inequality that “the people of the northern states could never be reconciled to it.” Then he added that at a very minimum we should place a time limit on the importation of slaves.<sup>179</sup>

Roger Sherman of Connecticut then attempted to keep things calm and not allow the slave debate to spin out of control. Sherman said that “he regarded the slave trade as iniquitous,” but after much difficult deliberations the delegates agreed to the three fifths ratio and he did not think it should be discarded now.<sup>180</sup> But this did not placate Gouverneur Morris. At this point he launches into perhaps the most famous anti-slave speech of the whole Convention. Morris proposed a motion to insert the word “free” in front of inhabitants, thus eliminating the three-fifths rule. He said domestic slavery was a “nefarious practice” and a “curse of heaven.” Advancing an argument the abolitionists will make during the antebellum period, Morris said that if one looks at the free states the people are “rich and noble” and bear the “marks of prosperity and happiness.” On the other hand, he said the slave states are filled “with misery, poverty...and barren waste.” Then he repeated an argument made before by other people at the Convention about the rationale for the three-fifths ratio. He asked upon what principle should slaves be counted: “Are they men? Then make them citizens and let them vote. Are they property? Why then is no other property included?”<sup>181</sup>

Then Morris spelled out the brutal reality of allowing the three-fifths ratio. He said:

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<sup>179</sup> Ibid., pp. 409-10

<sup>180</sup> Ibid., p. 410

<sup>181</sup> Ibid., p. 410-11

The inhabitant of Georgia and South Carolina who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondage, shall have more votes in a government instituted for the protection of rights of mankind, than the citizens of Pennsylvania or New Jersey who views with a laudable horror, so nefarious a practice.<sup>182</sup>

Not only will the northern states receive less representation in Congress because of the three-fifths ratio, he continued, but they also will have to march their militia into the South to defend masters against a slave uprising. Moreover, the North will have to pay a tax on all the imports they buy, but the South will import slaves duty free and thereby “increase the danger of attack and the difficulty of defense” for the whole country. He ended by saying he would never “saddle posterity with such a Constitution.”<sup>183</sup>

The normally quiet Jonathan Dayton of New Jersey, who at 26 was the youngest delegate at the Convention, stood up and agreed with Morris at this tense moment and seconded the motion to get rid of the three fifths clause. But others tried to diffuse the situation. Sherman said the three-fifths ratio did not present “insuperable objections.” Nonsensically, Pinckney said the “fisheries and the western frontier were more burdensome to the U.S. than the slaves.”<sup>184</sup> When the vote came for Morris’ motion, only New Jersey voted in the affirmative. The delegates once again voted to support the three-fifths clause, but Morris did raise serious moral questions about the slave trade. And these questions will come up later.

Interestingly, Mason stayed quiet at this point in the debate even though he had a longer record of opposition to the slave trade than any other delegate, however he began to grow more hostile towards the Convention. The next topic was whether the House

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<sup>182</sup> Ibid., p. 412

<sup>183</sup> Ibid., p. 412

<sup>184</sup> Ibid., p. 412

should have the sole power to originate money bills. This was one of the issues that he was most passionate about and he said the Senate, the “aristocratic body,” should never get the purse strings in their hands. Then Mason made a threat. If the delegates did not support the origination of money bills in the House, “the immediate choice of the people,” then he would not support equal representation in the Senate.<sup>185</sup> Since the Rutledge Committee report, it becomes more apparent that Mason was less conciliatory and more petulant. On August 14, the delegates debated Article VI, which stated that representatives and senators should be ineligible to hold other offices while in Congress. Mr. Pinckney thought they should still be able to hold state offices. Mason then said, in what Madison described as an “ironic” tone, that they should just throw out this provision so that they can more quickly “complete the aristocracy, which was probably in contemplation of some among us.”<sup>186</sup>

Mason then came out in support of one of the Rutledge Committee report’s key pro-slavery provisions. On August 16, when the delegates were debating Article VI, the powers of Congress to collect taxes, Mason took the floor and urged the Convention to consider the Rutledge provision in Article VII that prohibited Congress from laying a tax on exports. In Madison’s words, Mason “*professed his jealousy for the production of the southern states or as he called them the staple states.*” Mason said “*he hoped the northern states did not try to deny the southern states this security.*” And he proposed this wording: “*no tax duty or imposition shall be laid by the Legislature of the United States on articles exported from any state.*”<sup>187</sup> Morris did not like this and he took the floor. He objected to this motion by saying the proposed provision was “so radically

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<sup>185</sup> Ibid., pp. 443-444

<sup>186</sup> Ibid., p. 450

<sup>187</sup> Ibid., p. 467

objectionable that it might cost the whole system the support of some members.”

Presciently, he said it will be a long time until America will pay a direct tax, in the mean time taxes on exports “are a necessary source of revenue.”<sup>188</sup> Madison agreed saying all the states should pay an export tax, in part, to fund the collective defense. The delegates voted to postpone this debate until Article VII was considered.

### **Debate on Article VII of the Rutledge Report**

It was not until August 21 that the Convention got to the pro-slavery Rutledge Committee provisions. First, they rather quickly voted to affirm Article VII, Section 3—that taxation and representation will be calculated by the three fifths ratio—with only Delaware voting no. It was at this point that Mason brought up one of his main concerns. He took the floor and once again moved that the Convention vote in support of giving the lower house the sole authority to originate money bills. In his mind, his vote for the three-fifths ratio and equal representation in the Senate, are conditioned on giving the House the power of the purse. But to Mason’s astonishment, once again the proposal failed five-six.<sup>189</sup>

Then the delegates got to the heart of the Rutledge Committee proslavery provisions found in Article VII, Section 4—Congress cannot lay a tax on exports, nor can they tax or prohibit the importation of slaves. After several delegates expressed opposition to a prohibition on a tax on exports, Pierce Butler of South Carolina stood up and said that “he was strenuously opposed” to an export tax and that it was “unjust and alarming to the stable states.”<sup>190</sup> Hugh Williamson of North Carolina said rejection of this provision would “destroy the last chance of an adoption of the [Constitution].” But

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<sup>188</sup> Ibid., pp. 467-68

<sup>189</sup> Ibid., pp. 496-97

<sup>190</sup> Ibid., p. 499

Morris and Madison said the general and permanent interests must supersede local considerations and that the power to tax exports is proper and at times may be necessary. Once again Massachusetts flew to the defense of the South. Eldridge Gerry said that he too was “strenuously opposed to an export tax” because this will give the general government too much power over the states. “We have given it more powers already,” said Gerry, and “it will enable the general government to oppress the states as much as Ireland is oppressed by Great Britain.”<sup>191</sup>

George Mason then rose to defend the congressional ban on export taxes. He said that “if he were for reducing the states to mere corporations as seems to be the tendency of some arguments,” then he would give the general government the power of taxation over exports.” It is a maxim,” he continued, “that a majority when interested will oppress the minority.” Doing some quick calculations, Mason pointed out that the “eight northern states have a different interest than the five southern states,” and this will result in 36 to 29 majority in the House, and an 8 to 5 majority in the Senate. Then he made his strongest case for why exports are different from imports. Mason explained that imports affect all states equally, but exports are different for each individual state. To make this point clear, he said no other state can produce tobacco as well as Virginia, and it would be “impolitic” to give the general government the power over their major export.<sup>192</sup> To Mason this was critical. He feared the larger population of the North would have a stranglehold on southern commerce the same way Great Britain dominated America with the Navigation Acts. Under the new system, a minority section of the country must have the means to protect their economic interests.

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<sup>191</sup> Ibid., p. 500

<sup>192</sup> Ibid., p. 501

After this speech, James Madison appeared to shift his position slightly and he proposed that Congress can only tax exports with a two-thirds majority. But Madison's proposal was defeated by a six-five vote, with Connecticut joining the southern states and Virginia split: with Mason, Randolph, and Blair voting no, and Washington and Madison voting yes. Then on the vote for the original Rutledge provision prohibiting Congress from taxing exports, the vote was exactly the same, six to five, with Virginia split.<sup>193</sup> The New England / southern alliance held, and Mason lost.

Then the fiery Luther Martin of Maryland brought up the second and third provisions in Article VII, Section 4. Martin probably shocked his fellow southerners, barely giving them any time to enjoy their victory, when he said he was opposed to prohibiting Congress from taxing or banning the importation of slaves. As he took the floor he said he wanted to make three points: 1) the three-fifths ratio will further encourage the slave trade. 2) Slavery will weaken one part of the Union that the other parts are obligated to defend, and this is unreasonable. And 3) he concluded admirably by making the moral statement that "It was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution."<sup>194</sup>

Chairman Rutledge defended his provisions. He said he did not see how the three-fifths ratio would encourage the slave trade. And he did not fear insurrection but that he would exempt the northern states from the obligation to protect the South if they so wanted. And then to counter Martin's moral conclusion, he said, "Religion and humanity have nothing to do with this question. Interest alone is the governing principle with nations." He reminded the northern states that it is in their interest to increase slavery

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<sup>193</sup> Ibid., p. 502

<sup>194</sup> Ibid., p. 502



because it is the commodities that the slave states produce that will fill their ships. Then he turned and warned the whole Convention that “The true question at present is whether the southern states shall or shall not be parties to the Union.”<sup>195</sup> With this threat, yet again a New England delegate was willing to appease the South. Oliver Ellsworth of Connecticut said he supported the clause to ban Congress from prohibiting the slave trade. And he agreed with Rutledge that “morality or wisdom of slavery are considerations belonging to the state themselves.” What enriches part of the Union enriches the whole and each state must pursue their own interests. Then he told the convention that the old Confederation did not meddle in these issues and he did not think the new government should either.<sup>196</sup>

The next day, August 22, when the Convention resumed its debate on Article VII, Section 4, Roger Sherman continued the New England/southern alliance. He was the first to speak that day. He said that even though he was personally opposed to the slave trade, he supported the clause as it stands. “The states now possess the right to import slaves,” he said, so it will be contrary to the general interests in creating more potential opponents to the new Constitution. He suggested the delegates leave this subject alone because forces will play themselves out anyway. “The abolition of slavery seems to be going on in the Unites States,” he said, “and the good sense of the several states would probably by degrees complete it.”<sup>197</sup> He therefore urged his fellow delegates to not meddle with this business.

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<sup>195</sup> Ibid., p. 502

<sup>196</sup> Ibid., p. 503

<sup>197</sup> Ibid., p. 503

### Mason's Great August 22 Anti-slavery Speech

It was at this moment that Mason launched into his great speech against slavery. The scope and structure of the speech give it the earmarks of a prepared speech. We know that he did write out his thoughts on paper the night before he made important speeches at the Convention, but unlike some other speeches, we do not have the notes for this one. On the other hand, in this speech he made several of the same points he articulated on previous occasions, so perhaps it was spontaneous. Nevertheless, Mason opens by blaming Britain for introducing and promoting slavery in the colonies. ***“This infernal traffic originated in the avarice of British merchants,”*** said Mason, ***“The British government constantly checked Virginia’s attempts to stop this infernal trade.”*** Virginian planters have long blamed the “avarice” of the British merchants for many of their troubles. And it is true that in Mason’s creation of the Non-importation Association he tried to get Britain to stop importing more slaves, but blaming Britain for slavery was a favorite refrain of the Virginian aristocracy.

Jefferson in his original draft of the Declaration of Independence blamed the monarch of Great Britain for promoting the slave trade. He said the King “has waged a cruel war against human nature itself, violating the most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation.”<sup>198</sup> The Continental Congress deleted this section. But this assertion was often voiced by the Virginian planters and Mason in his speech at the Constitutional Convention and later at the Virginia Ratification Convention also blamed the greed of British merchants for preventing the House of Burgesses from curtailing the slave trade.

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<sup>198</sup> Jefferson, p. 25

There is some truth to their allegations. In 1752 Virginia did impose a duty on imported slaves for 10 years. This tariff was renewed in 1763 and expanded in 1766 to include slaves bought from the neighboring states of Maryland, the Carolinas, and the West Indies. Mason's close friend, Richard Henry Lee, published a public letter in the Virginia Gazette proposing the abolition of slavery. And Lee also submitted several much more restrictive duties on imported slaves to the House of Burgesses in the 1760s, which were passed, but did not receive royal consent. And indeed, the Liverpool and Lancaster merchants did petition the Lords of Trade to veto these measures, which they did. And in April of 1772 the House of Burgesses sent the king an official address requesting the curtailment of the slave trade. It said some merchants may make short term monetary gains from this "trade of great inhumanity," but "it will greatly retard the settlement of the colonies with more useful inhabitants and it may in time have more destructive influences."<sup>199</sup> But again the British government refused to consent to the proposed laws. And finally, in 1774, Richard Henry Lee, once again submitted a bill to raise slave duties, but the governor dissolved the House.<sup>200</sup> So, in Mason's mind he was starting his speech on solid ground.

Once George Mason put the blame on Britain for getting America into this mess, he then described the harm slavery poses. He said, *the present question is what is best for the "whole Union, not just the slave importing states," and he lists several reasons why slavery is harmful. "The evil of having slaves was exposed during the late war" he said, when slaves were used as a "dangerous instrument" in the hands of our enemies.* This refers to the British tactic of offering slaves their freedom if they fought on the side

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<sup>199</sup> Copeland and MacMaster, pp. 164

<sup>200</sup> Ibid., pp. 163-65. Kaminski, pp. 194-95

of the Tories. About 10,000 slaves fought against America during the Revolution. *Then he reminded the delegates of the trouble slave insurrections caused the Ancient Greeks and Romans.* Next he cited the deleterious effect slavery has on society. *“Slavery discourages the useful arts and manufacture,” he said, “and the poor despise labor when performed by slavery.* Then he explained how slavery effects immigration. *He said slavery will discourage white European immigrants, “who really enrich and strengthen the country,” from moving to slave regions.* This point turned out to be true. Many of the delegates, including Mason himself, had repeated the canard that the southern states would soon be more populous, but they failed to fully understand that almost all the immigrants were going to go to the northern and western sections because they did not want to compete with southern slave labor.<sup>201</sup>

Mason then discussed how the evils of slavery threaten to damn the individual master and the nation as a whole. *“[Slaves] produce the most pernicious effects on the manners,” he explains, “every master of slaves is born a petty tyrant.” Then he warns that slavery will “bring the judgment of heaven on our country.”* Assuming the role of Jeremiah, he says, *“As nations cannot be punished in the next world they must be in this. By an inevitable chain of cause and effect providence punishes national sins by national calamities.”* Perhaps turning to the delegates from New England who joined an alliance with the slave states, he said, *“He lamented that some of our Eastern brethren had from lust of gain embarked on this nefarious traffic.” He then concluded by saying in forming a general government many states are going to have to give up some rights.*

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<sup>201</sup> Ibid., pp. 503-04

*And, for the good of the country, the South must give up the right to import slaves in order to “prevent the increase of slavery.”*<sup>202</sup>

Some historians, such as Bowen and Miller, have called this an abolitionist speech, and he does bitterly attack the institution of slavery on many fronts. However, some recent historians, like Peter Wallenstein, claim that this speech only spoke out against the importation of slaves. Indeed, as Wallenstein points out the concluding sentence urges delegates to stop the slave trade and the purpose of the speech was to persuade the delegates to vote against Article VII, Section 4. This paper concludes that Mason’s views of slavery were complex, and that his true position was in the middle of these two interpretations. True, his main political objective was to stop the slave trade, but this was to “prevent the increase of slavery.” Throughout Mason’s life, he consistently cites the harmful economic, military, and social effects slavery poses to the country. But more than that, it is an evil that debases the slave master and will bring God’s condemnation. But at the same time, he never calls for the manumission of all slaves. In essence, he seems to think slavery is a bad thing, so let us not make the situation worse by increasing the percentage of slaves in America. Yet, our economy is based on slave labor, and until we figure out how to operate otherwise, we cannot abolish slavery now.

Mason’s speech shows he shared held some common beliefs with Jefferson on slavery, but they also had important differences. As stated above, Mason agreed with Jefferson that Britain initiated and perpetuated the slave trade. In the *Notes on Virginia*, Jefferson made several points Mason made in his August 22 speech. Jefferson said slavery hurts the manners and morals of the master and it also destroys the industry of the

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<sup>202</sup> Ibid., p. 504

people. And Jefferson also predicted God's retribution for the sins of slavery. He said, "I tremble for my country when I reflect that God is just; that his justice cannot sleep forever."<sup>203</sup> Mason must have read Jefferson's *Notes on Virginia*, which was published in 1784. But Mason said the same things as far back as 1774. There are things, however, which Jefferson said that Mason never uttered. In the *Notes* Jefferson said the slave master "tramples on the rights" of the slaves. He expanded on this notion in a particular eloquent passage when he said, "And can the liberties of a nation be thought secure when we removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?"<sup>204</sup> In all of Mason's writings and speeches, he never admitted that slaves possess God given natural rights. Perhaps intellectually, he did not want to admit that point, because once one admits that slaves have the rights of life, liberty, and property, slavery is not tenable. And indeed, in the *Notes* Jefferson expressed the hope for the eventual "total emancipation" of slavery, something Mason never does.<sup>205</sup> Yet, Jefferson, like Mason, never freed his slaves.

### **The Slave Debate Continues**

When Mason was finished with his speech, the debate on slavery continued but he remained silent. Possibly he was shamed into silence by the next speaker, Oliver Ellsworth of Connecticut, who made several sharp statements. Perhaps turning to Mason, Ellsworth said, "As he never owned slaves he could not judge of the effects of slavery on character." But if it is indeed a moral evil, he said, "we ought to go further and free those already in the country." This went right to the heart of the Virginian's dilemma. Mason had plantations worked by hundreds of slaves. He made his wealth off slavery, and

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<sup>203</sup> Jefferson, p. 279

<sup>204</sup> Ibid., p. 278

<sup>205</sup> Ibid., p. 278

Ellsworth knew he was not willing to give this up. He also knew Virginia had a surplus of slaves. He said, “Slaves are multiplying so fast in Virginia that it is cheaper to raise than to import them,” while in the “sickly rice swamps” of South Carolina and Georgia they need to import slaves. He concluded that it would be unjust at this point to stop the slave trade. But he indicated that in the future as more immigrants come from Europe, “slavery will be but a speck in our country.”<sup>206</sup>

Charles Pinckney then launched into a broad defense of slavery. He said that slavery existed all over the world and throughout history. The ancient Greeks and Romans had slaves as well as contemporary Europe. “In all ages,” he said, “one half of mankind have slaves.” Then he said that if the southern states were left alone they would likely stop the slave trade in the future, yet at this point “as a citizen of South Carolina, he was still for it.” He finished by warning that “any attempt to take away the right as proposed will produce serious objections to the Constitution.”<sup>207</sup>

Next his older cousin, General Pinckney, took the floor. He said the southern delegates are bound to the wishes of their constituents back home, and “South Carolina and Georgia cannot do without slaves.” Virginia, on the other hand he explained, will actually gain if the slave trade is stopped because “her slaves will rise in value as she has more than she wants.” This is not fair, he said, “and it would be unequal to require South Carolina and Georgia to confederate on such unequal terms.” Foreshadowing the antebellum slavery apologists, Pinckney then defended slavery not as “our peculiar institution” but as a positive good. He countered Mason’s remarks by saying slavery does not hurt the whole country but benefits it. “The importation of slaves would be for the

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<sup>206</sup> NFC, p. 504

<sup>207</sup> NFC., p. 505

interest of the whole Union,” explained Pinckney, “[because] the more slaves, the more produce to employ the carrying trade; the more consumption...the more revenue for the common treasury.” He concluded with a gesture of reconciliation and a final threat by saying he thought it was fair that slaves should be open to duties like any other import, but the rejection of the whole article would mean “the exclusion of South Carolina from the Union.”<sup>208</sup>

Abraham Baldwin of Georgia stood up and said that he thought the delegates were here to discuss national objects, not local interests. Georgia was apprehensive about the Convention from the start, he said, because they were afraid that a strong central government would cater to the interests of the middle states and ignore Georgia because of her position on the periphery of the Union. Now, he said, “her favorite prerogatives” is being threatened. Then Baldwin made the morally disgusting implication that Blacks were akin to animals. “A respectable class of people, who carried their ethics beyond mere *equality of men*,” he said, “are extending their humanity to the claims of the whole animal creation.”<sup>209</sup>

At this point the northern delegates dug in. They had been silent on the slave issue during the whole Convention, but they would not stomach a continuation of the slave trade. James Wilson of Pennsylvania made several incisive points. Perhaps looking at Mr. Pinckney, he said, that if you claim that South Carolina and Georgia may eventually get rid of the importation of slavery in a short time, why would this article be a make or break issue? Then he said the article as it now stands allows a duty on all imports except

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<sup>208</sup> Ibid., p. 505

<sup>209</sup> Ibid., p. 505-06



slaves, “This is in fact a bounty on this one article.”<sup>210</sup> Gerry of Massachusetts said the Constitution should be neutral on the subject of slavery, but certainly “not give sanction to it.”<sup>211</sup> John Dickinson of Delaware took the floor. His voice had extra moral authority because having inherited 37 slaves, he just a year ago freed them all at a substantial financial loss. He said, “It is inadmissible on every principle of honor and safety that the importation of slaves should be authorized. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Government and not the states.” And then Dickinson turned to the historic defense of slavery. If England and France allowed slaves in the past, he said, they have excluded them now. And Greece and Rome were made unhappy by their slaves. He concluded by saying he “could not believe the southern states would not confederate overt this issue.”<sup>212</sup>

The argument continued between southern and northern delegates. Hugh Williamson of North Carolina said that it was not true that North Carolina had ended the importation of slaves, but that they do have a 5 pound duty on each slave imported from Africa and a 10 pound duty on slaves from elsewhere. Then he too made the threat that “the southern states could not be members of the Union if the clause be rejected.”<sup>213</sup> Then Rufus King of Massachusetts, who before consistently defended the southern interest, now said it would be an “inequality” between north and south if the only exemption from duties was for slaves while all other imports were subject to the tax. John Langdon, a merchant from New Hampshire, who had been rather quiet, said he “could not in good

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<sup>210</sup> Ibid., p. 506

<sup>211</sup> Ibid., p. 506

<sup>212</sup> Ibid., p. 506

<sup>213</sup> Ibid., p. 507

conscience leave it to the states who could then go on with the [slave] traffic.” He was “strenuously” for the general government deciding this issue.<sup>214</sup>

Seeing that the north was resolved to not give in on the slave trade issue, and that repeated threats were not working, the southerners started to offer some concessions. General Pinckney was the first to give a little budge. He said that “candidly” South Carolina will probably need a little more time to import slaves in the future, but that “we can remove one difficulty” and get rid of the duty exemption for slaves as long as it is equal with all other imports. And he suggested that they assign a special committee to deal with Article VII, Section 4. Then Rutledge said, “If the Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the [Constitution], unless their right to import slaves be untouched, the expectation is vain. The people of the South would “never be such fools as to give up so important an interest.” However, after this blustering warning, he seconded Pinckney’s motion to form a special committee.<sup>215</sup>

On August 22, as the delegates decided whether to form a special committee to deal with the sticky slave questions, they faced a tremendous dilemma—the most difficult dilemma of the Constitutional Convention. Should the northern delegates forsake their political and moral principles, ignore the anti-slavery beliefs of many of their constituents, and compromise with the South in order to achieve their main objective, to form a stronger national government and save the Union? Roger Sherman concluded that they should make a compromise, but in such a way that the Constitution does not openly sanction slavery. He said, “it is better to let the southern states import slaves than to part with [the South], if they made this a sine qua non.” He said he was opposed to a tax on

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<sup>214</sup> Ibid., p. 507

<sup>215</sup> Ibid., p. 507

slave importation because this would mean the Constitution recognizes slaves as property. And he acknowledged that if the general government were given the power to prohibit the slave trade, it would be its duty to exercise that power.<sup>216</sup>

Then Edmund Randolph, a man with a deserved reputation for vacillation, spoke out against a Congressional ban on slave duties, which as a member of the Rutledge Committee he helped write. Now he said he could not abide by Article VII, section 4 in its present form and he was willing to risk the Constitution for this stand. He said this is the problem the delegates now face: if they agree to the clause, it would revolt the Quakers, the Methodists, and many others in the states with no slaves, but on the other hand, at least two southern states would leave the Union. He concluded therefore that it is worth a chance to form a committee.”<sup>217</sup>

### **The Livingston Committee Report Seeks a Compromise**

On the question of forming a committee to deal with Article VII, Sections 4, 5, and 6, the Convention voted in the affirmative nine to two. There was no need to deal with Section 3, because the three-fifths ratio had already been agreed to. This eleven member committee would deal with the most controversial pro-slavery, pro-southern provisions of the Rutledge Committee report, which had caused the Convention to grind to a halt. They had to resolve the issues of whether slave imports could be taxed, if slave importation could be prohibited, if exports could be taxed, and if Congress needed a 2/3 vote to make laws dealing with navigation acts. The Convention selected one delegate from each state and they very carefully picked moderates on the slave issue. For example, they selected Madison (not Mason) for Virginia, General Pinckney (not Rutledge) for

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<sup>216</sup> Ibid., p. 507

<sup>217</sup> Ibid., p. 508

South Carolina, George Clymer (not Morris) for Pennsylvania, and William Samuel Johnson (not Sherman or Ellsworth who were involved in the southern alliance) for Connecticut. However, there were still some strong personalities on the committee, namely the cerebral John Dickenson and rambunctious Luther Martin. Interestingly, Governor William Livingston of New Jersey, who up to this point had been almost silent, was chosen to chair the committee. It is doubtful that many of the delegates were aware that two years before the Convention he had joined the New York Abolitionist Society. And one year before the Convention he freed his two slaves and pushed through the New Jersey legislature a ban on the slave trade.<sup>218</sup>

Two days later, on Friday, August 24, Livingston stood and read the committee's report to the Convention. Letters written years later by Martin and Pinckney indicate a compromise was reached within the committee. They said the New England delegates were rather eager to allow the slave trade to continue if no restrictions were placed on navigation bills, but the middle states and Virginia wanted an immediate halt to the slave trade.<sup>219</sup> In the end, the Livingston Committee report allowed the slave trade to continue to the year 1800. It permitted a duty on slave imports. And like the Rutledge Report, it used a euphemism for slaves, which were called "such persons," instead of explicitly using the contentious word that might discourage northern ratification. Finally, to Mason's dismay, the committee concluded that Section 6, stating that navigation bills needed a two thirds vote, was to be stricken out.<sup>220</sup>

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<sup>218</sup> Stewart, p. 201. Whitney, David C. *Founders of Freedom in America: Lives of the Men Who Signed the Constitution*. (Chicago: J. G. Ferguson Publishing Company, 1966), 140

<sup>219</sup> *Ibid.*, p. 201-02

<sup>220</sup> NFC, p. 522

The Convention ignored the report until the next day. Then General Pinckney moved to extend the importation of slaves from 1800 to the 1808. Ghorum of Massachusetts seconded the motion. Madison responded to this by saying that “Twenty years will produce all the mischief that can be apprehended from the liberty to imports slaves. So long a term will be more dishonorable to the national character than to say nothing [about slavery] in the Constitution.”<sup>221</sup> But the vote passed 7-4, with Virginia and the middle states voted no. Then Morris objected to the vague euphemisms and wanted the provision to use the word “slavery.” He wanted the provision to state: “the importation of *slaves* into North Carolina, South Carolina, and Georgia shall not be prohibited...” He said he wished it to be known that “this part of the Constitution was in compliance with those states.”<sup>222</sup> George Mason then *said he was not opposed to using the word “slaves” but that he was against naming those particular states and giving offense to their people.* Then Hugh Williamson, who was a physician from North Carolina, said that “in opinion and practice he was against slavery; but thought it more in favor of humanity, from view of all circumstances, to let in South Carolina and Georgia on those terms, rather than exclude them from the Union.”<sup>223</sup> With this last plea for compromise, Morris withdrew his motion, and the delegates voted to affirm the Livingston Committee report by a seven to four vote.

After this vote, the debate turned to the duty on the importation of slaves, which was set at \$10. Sherman and Ghorum did not like this because if the Constitution allows such a duty it is implying that human slaves are property. But Mason said, “*Not to tax,*

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<sup>221</sup> Ibid., p. 530

<sup>222</sup> Ibid., p. 531

<sup>223</sup> Ibid., p. 531

*will be equivalent to a bounty on the importation of slaves.*”<sup>224</sup> Madison agreed with Sherman and Ghorum that “it is wrong to admit in the Constitution the idea that there could be property in men...as slaves are not like merchandize.” The delegates agreed to make the clause read: “But a tax or duty may be imposed on such importation not exceeding ten dollars per person.”<sup>225</sup>

It seemed for a time that the thorny issues related to slavery were settled by the Livingston Committee compromise report and the delegates could get on to the many other pressing issues. However, just three days later the South Carolinian delegation moved to add another slave provision to the Constitution. On August 28, at the end of the long and hot day, General Pinckney stood up and said he “was not satisfied” and wanted some further protection of slave property. This motion was quickly seconded by Pierce Butler. What they wanted was “to require fugitive slaves and servants to be delivered up like criminals.”<sup>226</sup> The Confederation Congress at the same time also added a fugitive slave clause to the Northwest Ordinance and it is possible the delegates read about this in the papers. The initial reaction by the rest of the delegates was dubious. Wilson said that “this would oblige the Executive of the states to do it at public expense.” But Sherman said, “He saw no more propriety in the public seizing and surrendering a slave or a servant, than a horse.”<sup>227</sup> Perhaps sensing the need to do some after hours politicking, Butler withdrew the provision, and the delegates debated other issues until that session ended.

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<sup>224</sup> Ibid., p. 532

<sup>225</sup> Ibid., p. 532

<sup>226</sup> Ibid., p. 545

<sup>227</sup> Ibid., p. 546

### **South Carolina and New England's Last Backroom Deal**

The next morning, Mr. Pinckney moved to reopen debate on the two-thirds requirement for navigations acts found in Section VII, Article 6, which the Livingston Report deleted. Ostensibly, he appeared to be trying to win approval for the essence of the provision by changing the language, but it may have been a ruse. Mr. Pinckney proposed that the language of Section VII, Article 6 be changed to: "That no act of the Legislature for the purpose of regulating the commerce of the U.S. with foreign powers, or among the several states, shall be passed without the assent of two thirds of the members of each House." Then Pinckney made an argument in favor of the proposed provision, but the logic of the argument actually ran to the opposite conclusion. Pinckney launched into a lecture on the commercial landscape of America at the end of the eighteenth century and said there were five distinct sectional interests: New England in fisheries and shipping to the Caribbean, New York in international commerce, the Middle States in wheat and flour, the Upper South in Tobacco, and the Lower South in exporting rice and indigo.<sup>228</sup> He concluded by saying that each interest could be exposed to the oppression of the majority if no check were provided. But the premise of his argument was actually the same one Madison articulated in Federalist Paper 10, which stated that in a large diverse economy no one interest could dominate the whole country and therefore a tyranny of the majority was impossible. Perhaps Pinckney's true motive was to lead the delegates down this path of reasoning, and set up things up for his uncle.

Next, General Pinckney took the floor. Before getting to his main point, however, Pinckney tipped his hat to New England, suggesting some agreement had been made the night before. Pinckney made a curious speech in which he recognized New England's

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<sup>228</sup> Ibid., p. 547

commercial loss during the Revolution. Then he said that he admitted that before the Convention he was “prejudiced against the Eastern states,” but now he realizes they are as “liberal and candid as any man whatever.” He said he appreciated their “liberal conduct towards the views of South Carolina,” meaning their permission to extend the slave trade. General Pinckney then announced that he did not think it proper for any “fetters” to be placed on Congress when making commercial laws.<sup>229</sup> Then Roger Sherman of Connecticut, referring to Mr. Pinckney’s speech, drew the Madisonian conclusion and said, “diversity was of itself a security” and that requiring more than a majority vote was unnecessary.<sup>230</sup>

Sensing that some kind of corrupt bargain between South Carolina and New England had been orchestrated, Mason, stood up to refute Pinckney’s argument. He did not see five commercial interests, just two: the North and the South. In typical fashion, he always prefaced his argument with a general principle: “The *Majority* will always be governed by their interest.” Then he said, “The southern states will be the *minority* (italics by Madison) in both houses and it is expected that they will deliver themselves bound and foot to the eastern states.”<sup>231</sup> But once again Mason lost this fight. The vote to eliminate the two-thirds requirement for commercial acts passed 7-3 with South Carolina voting with the northern states, and Virginia voting against. Randolph, perhaps voicing Mason’s own thoughts—and he would join Mason in not signing the final document—announced that “there were features so odious in the constitution as it now stands he doubted whether he would be able to agree to it.”<sup>232</sup>

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<sup>229</sup> Ibid., p. 548

<sup>230</sup> Ibid., p. 548

<sup>231</sup> Ibid., p. 550

<sup>232</sup> Ibid., p. 551



Having giving New England what they wanted, now it was time for South Carolina to get her part of the bargain in their *quid pro quo* arrangement. As soon as the vote was completed, John Butler promptly made a motion to insert the following provision in Article XV: "If any person bound to service or labor in any of the United States shall escape into another state...they shall be delivered up to the person justly claiming their service or labor."<sup>233</sup> It passed unanimously without debate or objection.

### **August Conclusion**

In August, Mason gave his great speech against slavery, but he became increasingly dissatisfied with the Convention. On the last day of August, Mason bitterly said, "I would rather chop off my right hand than put it to the Constitution as it now stands." And then he suggested the need for another "general convention" if the points he was concerned about were not properly settled.<sup>234</sup> This sentiment is in stark contrast to the statement he made early in early July when he said he would rather "bury his bones in this city" rather than leave without a Constitution. This change in heart reflects the fact that although he was constructively engaged in many issues in August, such as the structure of executive branch and the acceptance of new states on equal footing with the original states, he nevertheless lost a few key arguments that were paramount to him. First, in August he had still not received the assurance that only the lower house could originate money bills. Second, the Convention ignored Mason's August 22 anti-slave trade speech and extended the slave trade to 1808. And third, they decided against two-thirds requirement for Congress to pass navigation acts.

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<sup>233</sup> Ibid., p. 552

<sup>234</sup> Ibid., p. 566

## CHAPTER VII

### SEPTEMBER CONVENTION

In September, Mason was one of the three dissenters of the Convention, along with Edmund Randolph and Elbridge Gerry. After the Rutledge Committee report, Mason appeared to be more discontent with the proceedings. Years later, Luther Martin wrote that after the Rutledge report, Mason and Gerry had lead several meetings with other delegates who “thought the report had a tendency to destroy the rights and liberties of the United States.”<sup>235</sup> But it looks like little came from these meetings. As the Convention comes to a close, Mason would make a few barbed remarks against the Constitution’s leanings to create an aristocracy, but for the most part he was a constructive agent. His tone, however, was getting more acerbic and he sensed that secrete alliances formed outside the walls of the Convention were working against him—and there were. In July and especially in August he spoke out against slavery, but in September he was silent on the slave issue. This makes it more difficult to determine whether slavery was one of the main reasons he left Philadelphia without signing the Constitution.

The slave debate only bubbled up a few times over the last weeks of the Convention—from September 1 to September 17. On September 10, the delegates agreed to an amendment process whereby the Constitution could be changed with a 2/3 approval

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<sup>235</sup> Stewart, p. 219. McDonald, *E Pluribus Unum*, pp. 295-96

of both houses of Congress and a  $\frac{3}{4}$  approval from the states. Rutledge, fearing that perhaps in the future a majority of the states might be opposed to slavery, opposed this provision. He took the floor and said, “He could never agree to give power by which the articles relating to slaves might be altered by the states not interested in that property.”<sup>236</sup> To secure the slave trade agreement made earlier, he proposed a provision forbidding an amendment prior to the year 1808 that can in any way effect the slave trade. He won the vote. Then on September 13, Randolph made a motion to substitute the word “service” for “servitude” in the three-fifths clause to make sure the provision referred to slaves and not indentured servants. It was unanimously affirmed.<sup>237</sup>

The last mention of slavery at the Constitutional Convention was made by Roger Sherman of Connecticut on September 15. This was the last, and in some ways most remarkable, attempt to by New England to appease the slave states. He proposed to add a provision in “favor of the states importing slaves” that Congress cannot pass a law which would interfere with or affect a state’s “internal police, or deprive of its equality in the Senate.”<sup>238</sup> In other words, in case the abolitionist movement spreads, as some suggested it might, this provision would prevent the general government from making any laws dealing with slavery within various states. Nobody seconded his motion.

The Committee of Style, whose most active member was Gouverneur Morris, was given the task of writing the final draft of the Constitution, which they submitted on September 12. Morris, as one of the most outspoken delegates against slavery, did not try to sneak in any provisions favorable to his views the way John Rutledge did when he was given the task to writing a polished draft. But Morris must have had a heavy heart as he

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<sup>236</sup> NFC, p. 610

<sup>237</sup> Ibid., p. 633

<sup>238</sup> Ibid., p. 648

saw that his southern and New England opponents won several pro-slavery provisions in the Constitution. Indeed, General Pinckney thought the slave states were very successful in winning many safeguards to protect slavery. After the Convention, in a speech to the South Carolina House of Representatives, he said:

We have thus obtained a representation for our property, and I confess I did not expect that we should have been told on our return, that we had conceded too much to the Eastern states, when they allowed us a representation for a species of property which they have not among them...As I said two years ago, if there remained one acre of swamp land uncleared of in South Carolina I would raise my voice against restricting the importation of negroes...[But] by this settlement we have secured an unlimited importation of negroes for twenty years; nor is it declared that that the importation shall then be stopped; it may be continued—we have a security that the general government can never emancipate them, for no such authority is granted, and it is admitted...that the general government has no powers which are not expressly granted by the constitution; and that all rights not expressed were reserved to the several states<sup>239</sup>

### **Slavery Provisions in the Constitution**

The US Constitution signed on September 17 was a strong pro-slavery document. There are five explicit provisions in the final draft of the Constitution that protect the institution of slavery, although the word slavery was never used. *Article I, Section 2, Paragraph 3* provided counting three fifths of all slaves for the purposes of representation in Congress and for direct taxation. *Article I, Section 9, Paragraph 1* prohibited Congress from banning the slave trade for twenty years, to the year 1808. It did not say they had to end it after that date, merely that it could not be stopped before that date. *Article I, Section 9, Paragraph 4* also makes the redundant point that slaves will be counted as three fifth for the purposes of a direct tax. *Article V, Section 2, paragraph 3* requires fugitive slaves to be returned to their owner. And *Article V* prohibits any amendment of the slave importation or tax provisions before 1808.

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<sup>239</sup> Kaminski, John. P, editor. *A Necessary Evil? Slavery and the Debate Over the Constitution*. Madison, Wisconsin: Madison House, 1995), pp. 169-70

But there were also several indirect protections of slavery. *Article I, Section 8, Paragraph 15* provided Congress with the power to call the militia to “suppress insurrections,” including slave rebellions. *Article I, Section 9, Paragraph 5* prohibits Congress from taxing exports, including the tobacco, rice and indigo that the slave states exported. *Article II, Section 1, Paragraph 2* says the Electoral College will be calculated using the three-fifths ratio and thus it gives southern white voters greater influence in presidential elections. *Article IV, Section 4* insures that the federal government would protect states from “domestic violence,” which includes slave rebellions. And *Article V* requires three fourths of the states to ratify a proposal for a constitutional amendment, thus protecting the slave states from any anti-slave changes to the Constitution. Paul Finkelman has listed seven more implicit protections of slavery in the Constitution, but these are the most obvious ones.<sup>240</sup>

The compromise with the slave states and the failure to live up the ideals of our founding document, the Declaration of Independence, was America’s original sin, which would effect generations of Americans until the culmination of the Civil War. George Mason knew this when he told the Convention “that by an inevitable chain of cause and effect, Providence will punish national sins with national calamities.” The extension of the slave trade to 1808 brought in about 170,000 additional African slaves.<sup>241</sup> Over the four generations to the Civil War this probably grew by natural increase to 600,000. And the three-fifths ratio gave the South greater political influence by which they protected slavery. And because slavery was embedded into the Constitution in so many explicit and implicit ways, there would be no constitutional way to resolve the slave issue. Even the

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<sup>240</sup> Finkelman, pp. 6-10

<sup>241</sup> Stewart, p. 205

great political skills of Abraham Lincoln could not find a peaceful a way out of the conflict between free government and slavery.

About 600,000 thousand people die in the Civil War, and this is about the same number resulting from the extension of the slave trade. Lincoln was right when he said in his Second Inaugural Address:

One eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constitute a powerful and peculiar interest. All knew that this interest was, somehow, the cause of the war... Yet if God wills [the war] to continue until all the wealth piled up by the bond man's two hundred and fifty years of unrequited toil, and every drop until every drop of blood from the lash, shall be paid by another drawn from the sword... The judgments of the Lord, are true and righteous altogether.

Seventy-eight years earlier George Mason too feared God's retribution for the America's sin of slavery. But two questions remain with regards to Mason. Did he refuse sign the Constitution because of the slave issue? And what were Mason's true views on slavery?

Some Mason historians, such as Copeland and MacMaster, said that the main reason he did not sign the Constitution was that it did not prohibit the slave trade and it did not contain a bill of rights. But if one looks at Mason's words and actions in September, these do not appear to be paramount in his mind. He never brings up the slave issue, and he only made once push for a bill of rights. Mason seemed not to have made up his mind about whether to sign the constitution right up to the end. Most days in

September he productively engaged in the debate and made several important contributions. But on other days he expressed frustration and doubt about the document.

Mason did win several important battles in September. After giving up on the idea that the president should be chosen by Congress, he supported the new Electoral College proposal. But he did not like the provision that stated that the Senate would decide a run-off among the top 5 candidates. He was certain that 19 out of 20 elections would result in a run off and he thought the small, aristocratic Senate, was the wrong body to make this decision.<sup>242</sup> He favored the House, but he lost on the first vote. Then he made another speech warning of the dangers of giving the Senate this power. He said the mode of elections for the presidency was “utterly inadmissible” and that “he would prefer the government of Prussia to one which would...fix an Aristocracy worse than absolute monarchy.”<sup>243</sup> Perhaps heading his warning, the next day the Convention changed its mind and voted to have the top three candidates engage in a runoff in the House with each state getting one vote. Further, he won on his proposal to have the states, not just Congress, propose amendments. And he also won one of the issues he spoke most passionately about since June—that only the House could introduce money bills. For these victories, he must have been pleased.

But Mason lost several other battles in the last weeks of the Convention. He did not want the vice president to preside over the Senate because it mixed the two branches. Then he made an unusual and highly sectional proposal. He urged for a privy council of six members to advise the president, with two members taken from the southern, middle, and New England states. When he lost this vote he warned that “we are about to try an

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<sup>242</sup> NFC, p. 583

<sup>243</sup> Ibid., p. 586

experiment on which the most despotic government had never ventured. The Grande Signor himself had his Divan.”<sup>244</sup> But this time he could not convince his fellow delegates, although he did win the support of Ben Franklin. In the last couple of days he made a flurry of suggestions and he lost on all of them. He wanted Congress to have the power to make a bill of attainder, he proposed to bar Congress the power to grant monopolies to build canals, he proposed national sumptuary laws (again he won the support of Franklin, but few other), and he wanted a prohibition on a national standing army in times of peace.

Perhaps Mason’s most significant proposal during the last days of the Convention was for the Constitution to be prefaced with a bill of rights. He said, “It would give great quiet to the people; and with the aid of the state declarations, a bill might be prepared in a few hours.”<sup>245</sup> His claim had a ring of credibility because everyone knew he was the author of the Virginia Declaration of Rights. Roger Sherman said a national bill of rights was not necessary because the Constitution does not “repeal” the bill of rights of each state. Paraphrasing the supremacy clause, Mason countered by saying “the laws of the U.S. are to be paramount to State Bill of Rights.”<sup>246</sup> But by this point, however, the delegates were simply too fatigued to open up a whole new area of debate. And perhaps he knew that this would result in several more days or even weeks in Philadelphia and he too was eager to return to Gunston Hall. The delegates voted unanimously not to add a bill of rights. Mason did not bring up the issue again.

On 15 September, Edmund Randolph said he could not sign the Constitution as it now stood, but perhaps if the states were given an opportunity to add amendments he

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<sup>244</sup> Ibid., p. 601

<sup>245</sup> Ibid., p. 630

<sup>246</sup> Ibid., p. 630



then could put his name to the document. Mason seconded the motion, adding that because of the “dangerous power and structure of the government...it would end either in monarchy or a tyrannical aristocracy.” Therefore, he said it was necessary to hold a second convention because this one was held in secrecy and “formed without the knowledge or ideas of the people...and a second convention will know more the sense of the people and be able to form a system more consonant with them.”<sup>247</sup> Pinckney responded that only confusion would result in such an experiment. Franklin said, “He doubted whether any other convention...may be able to make a better Constitution.”<sup>248</sup> All the states voted against Randolph’s motion. Mason’s speech for the need for a second convention was his last. Mason and Randolph, along with Gerry, refused to sign the Constitution.

Looking at Mason’s speeches during September, it is unclear what his true motives were for not signing the Constitution, but he did write an interesting note. On September 16, while still in Philadelphia, Mason scribbled a list of objections to the Constitution on the back of his copy of the Committee of Style report. Apparently he passed it around to a few friends for private viewing, perhaps at the meetings he and Gerry were leading. Somehow the Philadelphia press got hold of a copy and printed it in October, as Mason later wrote, “very incorrectly, and without my Approbation.”<sup>249</sup> Mason’s “Objections” were soon printed widely and were one of the first Anti-Federalist writings, and as such, had a great influence on the movement to oppose the Constitution. In it Mason predicted the government will devolve into either a monarchy or an aristocracy, but at “present it is impossible to foresee,” and he listed 13 objections. The

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<sup>247</sup> Ibid., p. 651

<sup>248</sup> Ibid., p. 653

<sup>249</sup> PGM, p. 993

first objection complained the document contained no bill of rights. This would become the Anti-federalist's most effective argument. Mason also protested that the Senate was too strong and would collude with the President, the President did not have a privy council, the Supreme Court would dominate the state courts, and, in his largest paragraph, a mere majority of Congress was required to make commercial and navigation laws. The last objection stated that "*The general legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importation renders the United States weaker, more vulnerable, and less capable of defense.*"<sup>250</sup>

And at the Virginia Ratification Convention held in Richmond in June 1788, Mason will cite these same objections. In Richmond, James Madison, James Monroe, and John Marshall were the leading figures arguing for the new Constitution and George Mason and Patrick Henry will argue against it. Mason made several speeches on slavery at the Ratification Convention, but some of his remarks were rather ambiguous, even contradictory. For example, on June 11, he said, "*This government does not attend to our domestic safety...it authorizes the importation of slaves for twenty odd years...the continuation of this detestable trade adds to our weakness.*"<sup>251</sup> However, in the very next sentence Mason's said, "*No clause in the Constitution will prevent the Northern and Eastern interests from meddling with our whole property of that kind.*"<sup>252</sup> In one breath, Mason denounces the Constitution for permitting the "detestable" slave trade, and in the next he denounces the Constitution for not giving the slave master protection to hold his property.

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<sup>250</sup> Ibid., p. 993

<sup>251</sup> Kaminski, p. 185

<sup>252</sup> Ibid., p. 185

Although Mason seemed to be corned in a contradiction, this does not negate his strong feelings against the slave trade. On June 17, he makes even a stronger speech against the African slave trade calling it “*diabolical*,” “*disgraceful to mankind*,” and “*detestable*.” He finished this speech by saying “*I have ever looked upon this as the most disgraceful thing to America; I cannot express my detestation of it.*”<sup>253</sup> Like many of the arguments of the Anti-Federalists, Mason’s speeches at the Ratification Convention reflect the complexities and contradictions of his views on the slavery issue. He hated the slave trade and he hated a high percentage of slaves in Virginia, however he believed in private property and he was afraid of giving the national government the power to confiscate even slave property, though “it is far from a desirable property.”<sup>254</sup>

At the Ratification Convention, the other paramount issue for Mason was the two-thirds requirement for navigation acts. He believed a secret compact in Philadelphia worked against him on this issue as well. On June 24, Mason made a speech saying he had a majority of the delegates ready to support the measure requiring a two-thirds majority for Congress to pass commerce or navigation acts until a secret “compromise took place between the Northern and Southern states.”<sup>255</sup> This was the Livingston Committee, which did indeed make a sectional deal. Mason said, “The northern states agreed to a temporary importation of slaves, and the Southern States conceded, in return, that navigation and commercial laws should be on the footing which they now stand.”<sup>256</sup> Mason’s failure to get the two thirds requirement to pass navigation laws, made worse by

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<sup>253</sup> Ibid., p. 187

<sup>254</sup> Ibid., p. 187

<sup>255</sup> Ibid., p. 194

<sup>256</sup> Ibid., p. 194

his long standing hatred of backroom deals, was the second main reason he did not sign the Constitution.

The last piece of evidence on Mason's true motives for not signing the Constitution comes from a meeting with Thomas Jefferson. In 1792 Jefferson was traveling north through Fairfax County and he decided to stop in and visit Mason because he heard he was ill. This was the last time the two met before Mason died. The visit occurred on September 30, and Mason died October 7. Because Jefferson realized Mason was dying, he made notes on their conversation after their visit. According to his notes, Mason told Jefferson that the reason he did not sign the Constitution was because "the 2 southernmost states...struck up a bargain with the 3 New England states, if they would join to admit slaves for some years, the 2 southernmost states would join in changing the clause which required 2/3 of the legislature in any vote."<sup>257</sup>

Some post World War II historians have cited the lack of a bill of rights and the protection of slave property as the reasons why Mason refused to sign the Constitution. Yet the two consistent objections Mason had to the Constitution, present in his "Objections," his speeches at the ratification convention, and in his last conversation with Jefferson, are the continuation of the slave trade and the simple majority for navigation laws. These, therefore, must be considered the two key reasons why Mason refused to sign the document that framed the new nation.

### **Conclusion**

On one level, it appears that the two issues Mason cared most about, the end of the slave trade and protection of navigation rights, are contradictory. He refused to sign the Constitution because it allowed the slave trade to continue, and he refused to sign the

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<sup>257</sup> PGM, p. 1275

Constitution because it did not provide Virginia with the protection it needed to protect the sale of the products of slave labor. With regard to slavery, this is morally contradictory. If slavery was evil, then the importation of slavery was evil and the plantation system that produced the staple crops was evil. Mason seemed willing only to prohibit one aspect of slavery, though he fully recognized the institution of slavery negatively impacted many aspects of southern society.

On an economic and political level, however, Mason was consistent. As a planter with a surplus of slaves, he would have benefited from the end of the slave trade, and as a tobacco exporter (he diversified his plantations, but tobacco was still his main crop) he would have benefited from greater protection of the carrying trade. Mason never lost sight of the economic interests of his section. He did not accept the Madisonian argument that a large republic with a diversity of economic interests would prevent a tyranny of the majority. He feared the unchecked power of a northern majority against the commercial interests of the tidewater planters and he sought constitutional protections. This is why he proposed a privy council with members representing the three sections; and this is why he fought hard for a supermajority requirement for Congress to pass navigation and commercial laws—to give the minority tools to protect themselves. This is also consistent with Mason's support for a bill of rights. A bill of rights would provide further protect individual and minority rights. In Mason's mind he was presented with two evils, slavery and tyrannical government. In framing a government, the dangers of a tyrannical government were his primary concern. An absolute government that had the power to interfere with the free commerce and trade of a state and confiscate the private property

of an individual, was the exact type of government the revolutionary Mason spend most of his adult life fighting against.

Mason, however, consistently opposed to the slave trade for numerous reasons, so one cannot conclude Mason was solely motivated by economic self interest. In his various writings and speeches he said slavery hurt the morals of the slave master; it taught future leaders to be cruel; it presented a threat of internal insurrection; it provided an extra threat in times of war; it slowed technical advancement; it created a culture where labor is looked down upon; and it discouraged free immigration. It is wrong to assert that Mason was only opposed to the slave trade as an isolated issue. Mason clearly made the general assertion that slavery was a moral wrong and a sin. Although he made several of the same points in his August 22 speech at the Constitutional Convention, perhaps his most eloquent attack on slavery was in his 1773 “Extracts of the Virginia Charters,” in which he says:

***[Slavery] is a slow poison, which is daily contaminating the Minds & Morals of our people...Practiced in Acts of Despotism & Cruelty, we become callous to the Dictates of Humanity...Taught to regard a part of our own species in the most abject & contemptible Degree below us...The Laws of Impartial Providence may even by such Means as these, avenge upon our Posterity the Injury done a set of Wretches.***<sup>258</sup>

However, the truth is that his focus is on the harm slavery does to the master and not the harm it does to the slave, therefore it is not proper to call him an abolitionist. All his objections list the various ways slavery hurts the white population morally, militarily, politically, and economically. Mason was never able to transcend his worldview as a plantation owner. Jefferson said slavery “tramples on the rights” of slaves and destroys

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<sup>258</sup> PGM, p. 173

their “*amor patriae*” (love of country).<sup>259</sup> He therefore admitted that slaves had citizen rights and America was their country. Mason, on the other hand, never wrote or uttered that slaves had rights. He was very careful to always classify them as property. That is why the slave trade was the only point of interference he would consider. One could prohibit the entry of slaves into the country, but once a slave was bought, then his concerns for protecting private property became paramount. He was not an abolitionist. He never advocated freeing the slaves. He never joined an abolitionist society. And he never freed his own slaves. Slaves were property, a property that posed serious problems, but property nonetheless. At the Convention he tried to protect Virginia’s exported property by trying to secure a two-thirds requirement for Congress to interfere with shipping. And at the Ratification Convention he complained that the Constitution did not do enough to protect slave property.

It is a common fallacy to impose contemporary values on historical figures, but if we judge Mason by his peers, he does deserve some credit. Like most slave masters in Virginia, he could have remained mute or defended slavery as Landon Carter did. In several public forums, Mason did boldly attack slavery on several fronts. At the Constitutional Convention, he was one of the few slave owners who denounced slavery and fought to end the slave trade. And in his Virginia Declaration of Rights, he laid the theoretical foundation for future abolitionists to fight for greater racial equality. However, he did not manumit his slaves in his lifetime as Richard Randolph did, and he did not free his slaves in his will as George Washington did. Mason fit into the category with Jefferson and Madison. They were revolutionary leaders who created a democracy based on the individual rights of liberty and equality, yet they owned slaves. They all made

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<sup>259</sup> Jefferson, p. 278

eloquent and passionate denunciations of slavery during their political careers, yet they did not free their own slaves or call for the abolition of slavery in Virginia. In the end, they remained more concerned about the economic, political, and social welfare of Virginia, and could not accept African Americans as their social equals (just as the great majority of Americans would perhaps not until after WWII). But they did suffer pangs of guilt for owning slaves. Both Jefferson and Mason predicted God's retribution for the nation's sin of slavery.

*“As nations cannot be punished in the next world they must be in this. By an inevitable chain of cause and effect Providence punishes national sins by national calamities.”*



### ABBREVIATIONS

- NFC James Madison. *Notes of Debates in the Federal Convention of 1787*. New York: W.W. Norton & C0, 1987
- PGM Robert A. Rutledge et al., eds. *The Papers of George Mason*, 3 vols. Chapel Hill: University of North Carolina Press, 1970

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