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Louise Ellyson Wiley

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THE COLONIAL SOURCES OF GEORGE MASON'S DECLARATION
OF RIGHTS

Louise Ellyson Wiley
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I am attempting in this paper to describe the colonial ideas and institutions, which must have influenced George Mason in the writing of his Declaration of Rights for the Virginia Convention of 1776. First, I will show the effect of European thought and customs in the colonies. The English liberal tradition, which culminated in the seventeenth century struggle for civil liberties and a constitutional monarchy, is quite important. Since the Declaration of Rights can not be understood unless its immediate background is known, I will discuss the more American aspects of colonial life, which must have affected George Mason's political thought. The status of government, justice, religion and civil liberties in colonial Virginia should be investigated. The Declaration, as a revolutionary document, instead of summing up the rights achieved by the colonists, contains a blueprint for the future rights and government, not only of Virginians but also of all men who wish to maintain a democratic way of life.

In the last section I will deal with the more pertinent aspects of Mason's life. John Mercer, his guardian, started him in his interest in law, government and the rights of man. As a trustee of the town of Alexandria, a vestryman of his parish church, a justice of the Fairfax court, a great landowner, a member of the Ohio Company and as one of the Virginia
Burgesses, Mason was well acquainted with all phases of Virginia life. He had a large share in the conflict over colonial rights, and we can see the growth of Mason's political beliefs, which resulted in 1776 in his draft of the Virginia Declaration of Rights.
The Colonial Sources of George Mason's Declaration of Rights of 1776

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On May 17, 1776 George Mason arrived in Williamsburg to take his seat in the Virginia colonial convention. The next day he was added to the committee to prepare a Declaration of Rights and a Constitution. A little more than a week later, on May 27, the chairman of the group read a Declaration of Rights to the Convention. This draft was largely the work of George Mason. This can be verified by a comparison between the adopted draft and Mason's copy of his original sent to George Mercer in 1778, now preserved in the Virginia State Library. A few alterations were made, and two additional articles, which prohibited the issuance of general warrants and the establishment of another government within the limits of Virginia territory, were put into the final draft.\(^1\)

George Mason's Declaration of Rights is a remarkable document, for in fourteen brief clauses he had placed the basic principles of a democratic government. The first three articles state the fundamental purpose of government. It exists for the benefit of its citizens, who may revolt against it if their natural rights of life, liberty, property and the pursuit of happiness and safety are injured. The power of any government is invested by God and the Natural Law of the universe in the common people to whom all officials are amenable. The thirteenth clause states that a firm adherence and frequent recurrence to moral principles are essential to a free government. Articles four, five, six, seven and twelve, deal with the nature of and regulations for public officials, the

\(^1\)Helen Hill, *George Mason Constitutionalist*, 1938, pp.135-144.
2.

legislature, elections and militia. Mason believed that public ofifices should not be the private privilege of one man, and he also advocated rotation in public office. He wrote of three separate departments of government, legislature, executive and judicial. Men with sufficient interest in the community should vote and freedom of elections is guaranteed. There can be no taxation, confiscation or destruction of property without compensation or consent. To prevent tyranny laws may not be suspended without the approval of the legislators and the militia should be subordinate to civil power. Articles eight, nine and ten are concerned with the judicial rights of a citizen - the right to trial by one's peers, trial by jury, just fines and punishments, and so on. The eleventh and fourteenth Articles guarantee the civil liberties of freedom of the press and religious liberty.¹

In writing these principles Mason was influenced by philosophical writings and legal practices, found in both common and statute law. Although he lived in the American hemisphere he inherited much of European tradition and culture. Like other Virginia gentlemen of his time he was bound by various ties to Europe.

George Mason was bound to England socially, culturally and commercially. Although he was the fourth George Mason

¹See appendix for a copy of George Mason's entire Declaration of Rights, now in the Virginia State Library.
in Virginia he had relations and friends in England. His great grandfather, the first George Mason of Virginia, had come over from England in 1652. In spite of having been a Cavalier, this George Mason was on the side of Bacon in the struggle between popular representatives and the royal governor. His son, the second Virginia George Mason, was a liberal and an outspoken adherent of William and Mary. He was connected with English merchants by a growing and prosperous tobacco trade. His son, George Mason the third, helped further the tobacco trade, as county lieutenant. He was honored not only in Virginia but also by the city of Glasgow.

The fourth Virginia George Mason like his father was keenly interested in the tobacco trade. There are some records left of George Mason's numerous transactions with London merchants. Letters to friends and relatives in England have been preserved. In such letters he was apt to discuss the political situation's influence upon tobacco prices and other current topics. Virginia plantation owners secured the large proportion of their supplies from England from paint to the latest journals. In Helen Hill's *George Mason* there are some of his detailed instructions.

1Hill, op. cit., pp. 3-8.
2Ibid., p. 25.
4Hill, op. cit., p. 25.
for a silversmith in England. In the records of the Norton Company we can see the close commercial ties between the Virginia planters and the English merchants.

Most of George Mason's life he was corresponding with some friend or relative in England. Two letters have been preserved, written in 1743 by George Mason's mother concerning the property of her uncle, Sir William Thomson of Bath, England. Mason continued these contacts with the Mother country. His maternal grandfather and great grandfather had read law at the Middle Temple, and so George Mason helped to send his brother, Thomson Mason, there in 1751. As an important shareholder in the Ohio Company Mason frequently corresponded with its agent in London.

During Mason's lifetime there was a more or less continual stream of persons traveling from the colonies to Great Britain, at least before the Revolution. Considering the meager transportation facilities of the times it is remarkable that George Mason was so well informed about conditions in the mother country. It took five weeks to travel from the Potomac to the Thames. However the navigable water ways of Virginia helped to bind her culturally and commercially to Great Britain.

George Mason was influenced by the cultural tradition of Europe. Two of his children's tutors were engaged to

1Hill, op.cit., pp. 264-265.
2Frances Norton Mason, Editor, John Norton and Sons, 1937.
4Hill, op. cit., p. 8.
come over from Scotland. There are no definite records which show that George Mason ever had any formal education. Yet his writings show a great familiarity with European thought. In a letter to the Committee of Merchants in London Mason discusses the general European state of affairs in relation to the struggle for colonial rights. He refers to Pericles and Greek civilization. He writes with familiarity concerning the British government, its common law and constitutional documents. He makes an interesting reference to the Dutch Revolution.

Also in his "Extratits from the Virginia Charters, with Some Remarks On Them Made in the Year 1773" George Mason shows great familiarity with the English common and statute law. He makes further observations on the British constitution and government. Also he writes of the pertinence of the Treaties of Utrecht and Aix la Chapelle to the Ohio Company's rights to their Ohio territory.

In the Fairfax County Resolutions George Mason discusses the principle, that laws are based upon the consent of the people's representatives, as being a fundamental part of the British Constitution. Again in the statement to the Fairfax Independent Company, written about the same

2 Hill, op. cit., p.12.
5 Ibid., Vol. I, p.419.
time in 1775, he devotes a long paragraph to rotation in office as being a source of strength for the Roman Commonwealth, and its dissolution due to the abolition of this principle of government.1

When he came to write the Declaration of Rights Mason was naturally influenced by his reading of European philosophers and his observations upon their political ideas. Many of his opinions undoubtedly came from reading in the large library of his guardian, John Mercer.2 Certainly the Declaration of Rights reflects many ideas of European philosophy.

Mason knew about the democratic Greek city states. The more direct Greek democracy3 would have been impossible in colonial Virginia. However Mason's reference in the Virginia Declaration of Rights Article 10/to the principles of temperance, frugality, justice and morality as essential to government is very similar to the suggestions of Plato.4

Mason, as mentioned above, was influenced by rotation of office in the Roman Commonwealth, and he advocates this principle in Article 15 of his Declaration. Indirectly other Roman political ideas affected the Declaration of Rights. The separation of powers in government, discussed in Article 15 was discussed by Polybius, a Greek historian and student

1 Ibid., Vol.I, p.432.
2 Ibid., p.12.
4 Ibid., pp.67-76.
of Roman government. His ideas were followed up by Cicero and later by Bodin, Montesquieu and Blackstone. Mason through John Mercer's legal library was probably familiar with Montesquieu and Blackstone. Their writings were well known in the colonies.

Roman law was a second indirect influence. The great Roman jurists had emphasized "human rights as based on a more fundamental moral law than mere custom or arbitrary legislation". Many of the articles in Mason's Declaration of Rights are based upon this principle.

Since the philosophers of the Middle Ages concentrated more on theological doctrines than on political writings there is little trace of their influence in Mason's Declaration. However the end of the Middle Ages witnessed the gradual defeat of the church in its conflict for supremacy over the state. Protestantism encouraged the separation of church and state. Instead of only one interpretation of Christian teachings there came to be many of them.

The struggle of dissenting religious groups, particularly in England, culminated in the advocacy of religious toleration. Article 14 of the Declaration of Rights is partly a result of this struggle.

2 Sanders, Early American History, 1938, p. 592.
The historical precedents of seventeenth century England and the theory developed by the revolutionary party of that time were an important source of the political ideas of the American colonists. Outstanding doctrines advocated by seventeenth century Englishmen, such as Locke, Milton, Sydney and Harrington, were natural rights, social contract, popular sovereignty and the right of revolution. In addition through these philosophers the colonists were influenced by an emphasis upon natural law as discussed by Grotius, Pufendorf and Vattel. Finally the Americans were affected by some of the communistic ideas of the English Levellers. 

Such English political theory was a great influence upon George Mason. Articles four and five are from the republican writings of John Milton and James Harrington of the Puritan Revolution. Article eleven advocating a free press is derived from John Milton's "Aeropagitica". John Locke was a very important influence upon George Mason. The principles of freedom of election and the right of representatives freely chosen and so chosen freely act are derived from him. The first three sections of the Declaration of Rights follow him "almost point for point".

3 Hill, op. cit., p. 140.
George Mason made use of many principles of English law. Article nine of the Declaration of Rights is taken verbatim from the Bill of Rights of 1689. Articles six, seven, and twelve and the clause on fixed elections in Article five are also derived from this English Statute. The law of the land clause of Article eight is from the Magna Carta. The independence of the judiciary, advocated in Article five, was provided for in England by the Act of Settlement of 1701. Articles eight and ten are ancient privileges of English criminal and civil procedure.\(^1\) Truly almost every article in Mason's Declaration of Rights might be traced from English philosophy or precedent.

Whereas the influence of the institutions and ideas of seventeenth century England are important, George Mason must have been affected by eighteenth century rationalism.\(^2\) He was a product of the period called "the Age of Reason", when Voltaire, Hume, Godwin, Paine and Adam Smith insisted that all men were "reasonable and reasoning beings".\(^3\) Many Southern colonial gentlemen were part of this European movement of enlightenment. Their free thinking was the result of faith in "reason". Mason showed the influence of this, for his "philosophical detachment" enabled him

\(^1\) Helderman, op. cit., p. 238.
\(^2\) Hill, op. cit., p. 139.
\(^3\) Joad, op. cit., p. 139.
to "rise above the viewpoint of his own class and think in terms of the welfare of the whole people". ¹

The doctrine of Natural Rights was another characteristic principle of eighteenth century philosophy. John Locke and Thomas Paine were outstanding advocates of the natural rights of man. ² Although John Locke was a product of seventeenth century England he was a profound influence in eighteenth century English thought. ³ As has been discussed above, much of Mason's Declaration of Rights is derived from Locke's writings. However it is hard to state the exact influence of Thomas Paine upon George Mason. Paine, an Englishman, shortly after coming to America, published his pamphlet, Common Sense, in January, 1776. He stated the colonies' case against England and advocated an immediate break with the mother country. ⁴ Mason must have known about Thomas Paine's pamphlet, as it was widely read and discussed in Virginia. ⁵ Yet Thomas Paine's The Rights of Man, in which he writes at length upon natural rights, did not appear until 1791. ⁶ George Mason's principle of natural rights of men seems more to be a product of John Locke than of Thomas Paine.

¹ Clement Eaton, Freedom of Thought in the Old South, 1940, pp. 10-25.
² Joad, op. cit., pp. 539-542.
³ Stephens, op. cit., p. 94.
⁴ Sanders, op. cit., pp. 525-527.
⁵ Hill, op. cit., p. 126.
Although the English political heritage was a great influence in the colonies, the colonists had actually created a more democratic society than was possible in England. In the colonies were found certain principles resulting from peculiar American institutions, such as the general equality of social and economic conditions, the absence of feudal customs, and the congregational system of church organization. Americans prohibited monarchy, a privileged aristocracy, the hereditary principle of office holding. Also they advocated an elaborate system of checks and balances in government, for they feared executive authority. They were more confident in representative assemblies, popularly elected for short terms. The military was to be subordinated to civil authority and there were to be no large standing armies. Opposing central authority they emphasized local government.¹

This American doctrine of equality, mentioned above as a peculiar American characteristic, is found in the Virginia Declaration of Rights and the Declaration of Independence. This doctrine is based upon American living conditions, the type of American colonists and religious and political theories evolved out of European

¹Gettell, op.cit., p.500.
conditions. De Tocqueville wrote that democracy was "indigenous to American soil". Living conditions in America were opposed to territorial aristocracy and compelled society to be democratic. In the struggle to tame the wilderness of this continent aristocratic institutions could not have been maintained. Cooperation was a necessity of early American life and theories grew up around the practice of equality. Furthermore, the majority of American settlers were people who crossed the Atlantic to make a new life for themselves. Prosperous persons, who would have created an aristocratic society tended to remain in the home country.1

Since the living conditions did not favor aristocracy, the meager resources of the colonies would not permit it, and the temper of the people was not favorable, a rapid growth of the democratic spirit is found in all the colonies. This democratic movement in the colonies centered in the conflict between the governors and the colonial legislatures. A precedent for the colonists was the action of Parliament in seventeenth century England. Also they wished to escape the administrative control of the home government. By controlling the governors' finances the colonial legislatures sometimes managed the agents of administration. In addition

they might regulate Indian affairs, intercolonial relations and military matters. There was an almost continuous struggle in all the colonies for more colonial freedom.\(^1\)

The Quakers in Pennsylvania and the Puritans in New England created the most original colonial political theory. Yet the Puritan movement was only incidentally political, for the Bible was the guide to all their conduct including the foundation of the state. The clergy tended to have a predominant position in their colonies, but in Rhode Island Roger Williams had established a state, distinct from the church. Democratic features of Puritanism were their emphasis upon local self-government and the careful provision for the adequate protection of civil rights.

The Quakers, in Pennsylvania, were about as democratic as the Puritans. They lacked an emphasis upon a contract theory of government. Lacking the Puritan theocratic element they granted religious toleration for all except deists. No religious qualifications were needed for office except a belief in Christianity, but after 1705 Roman Catholics could not hold office. They had a more democratic ecclesiastical organization. The Frame of Government drawn up by William Penn states that a free government exists when the laws rule and the people are a

party to those laws.¹

Mason was probably indirectly influenced by the political theories and institutions of the Quakers and Puritans in colonial America. However we can trace the direct influence of many colonial Virginia institutions and ideas upon Mason's Declaration of Rights. George Mason was well informed concerning Virginia history. His "Extracts from the Virginia Charters, with Some Remarks Upon Them Made in the Year 1773" is a very interesting document. Although it was written primarily to justify the rights of the Ohio Company to their territory in Ohio, it contains many observations upon colonial government, and colonial rights.² Certainly Mason was familiar with his guardian John Mercer's "Abridgement" of the laws of Virginia, which contained not only British law but other statutes in force in the colony of the Virginia legislature.³ Finally due to his numerous activities, as justice of the Fairfax county court, trustee of the town of Alexandria, vestryman of Truro Parish and a member of the Virginia House of Burgesses George Mason was familiar with all the important phases of Virginia life.

The status of justice, government, the church and civil liberties in colonial Virginia is reflected in Mason's

¹Ibid., pp. 2-50.
Declaration of Rights. The central government of colonial Virginia consisted of the governor, his council and the House of Burgesses. The Burgesses were elected from the local units of government, and they formed the lower house in the legislature. Their wishes were checked, to a certain extent, by the governor and his council. The governor had many duties. He was president of the council, which served at times as "the first American supreme court, and he was also head of the state government, as the representative of the Crown, and in the early days of the colony, leader of the established church in Virginia. The governors of the Virginia colony were not absolutely independent because they were dependent on the House of Burgesses for their salaries.

The council combined the judicial, executive and legislative functions of government. Three or four times a year they served as the highest court in the colony. In addition to criminal cases they heard those connected with abandoned estates and land grants. They were the official collectors of customs and recommended the appointments of tobacco inspectors. In addition they kept an eye open for threatened insurrections, controlled the county militia and watched for suspicious Indian movements. They approved the lists of county justices, issued land grants, and gave visas to incoming ships. Finally the council served as an upper house of the Legislature, and
sometimes disallowed or amended bills from the House of Burgesses.1

At first the Burgesses were elected in free elections by all freemen, but at the end of the colonial period some property qualifications were necessary. "They voted themselves a modest per diem and insisted upon freedom from arrest while engaged in their duties. They had no thought of allowing governors to lay taxes, appoint clergymen or issue decrees in lieu of statutes which they knew so well how to wrangle over and work into law. . . the burgesses were building a structure and laying foundations in the popular will and tradition that would one day withstand the storms of a war with England and prove equal to the creation of a new empire."1

It should be mentioned that this democratic system of government in colonial Virginia was largely the work of the liberal Sir Edwin Sandys and a few of his friends. In 1619 he helped create "the first democratic constitution that was ever applied in North America". Although James I won many points in his conflict with Sandys, the "habit of self-government" remained in Virginia.2

In Article five of the Declaration of Rights, the legislature be continued. Yet he showed great disapproval of the too centralized aspect of Virginia government. In the

1William E. Dodd, The Old South Struggle for Democracy, 1937, pp. 54-56 and pp. 102-117.
2Ibid., pp. 31-36.
same article he urged that the legislative and executive functions of government should be separate from the judicial. Articles six and seven advocated free elections, and no taxation or suspension of laws without the consent of the representatives of the people. They were derived from Mason's observations of the House of Burgesses's fight against autocracy.

Article four against public office as a private or hereditary privilege was the result of the dislike of a characteristic of Virginia local government. The sheriff county was the most important official in Virginia local government. Frequently he amassed a large fortune, for he received most of the administrative remunerations. He named the constables and coroners. He also brought prisoners into court and looked after the jail or the personal custody of the prisoners. He collected taxes and paid county bills. Frequently he received advance information about bankruptcies, lands about to escheat or removal of Indians. Often the sheriff was escheat officer, clerk of the court and surveyor of public lands. Officials of this type were greatly disliked in colonial Virginia. ¹

During the later period of colonial history the Virginia governor in chief remained in England a smaller portion of his salary went to the lieutenant governor in Virginia. ² This was a further reason for the colonial revolt against considering a public office as a personal privilege.

¹ Ibid., pp. 100-101.
Articles eight, nine and ten were influenced by the English common and statute law as worked out in the Virginia colony. The county court was the second most important institution in colonial Virginia. It was presided over by local justices. The law followed was similar to that used in England, but there was greater equality in the administration of the law in the colonies than in England. The local people prevented the justices from assuming too much importance. The jury system existed, but all the more complicated cases involving life or limb were sent to the governor and his council. As mentioned previously, the provisions of Articles eight, nine and ten were old principles of English law. Mason, in providing against excessive bail and fines, cruel and unusual punishments and for trial by jury, speedy trial by one's peers, the right to call witnesses in favor of the accused and the right of the accused not to be compelled to give evidence against himself, reflected the English legal system of colonial Virginia.

Another indirect influence upon the Declaration of Rights was the custom of giving persons just recompense when they or their property were impressed to help on the public works. This affected clause of Article six, which

1 Dodd, op. cit., pp. 95-102.
2 Hill, op. cit., p. 51.
states that citizens cannot be deprived of property for public uses without their consent.

The county court also dealt with the administration of certain religious laws. It heard the oaths, prescribed by the Test Acts for public officials. These prevented a Catholic from taking public office. Persons who had been absent from the established church or broken the Sabbath were dealt with.¹

During the seventeenth century and most of the eighteenth the church was the greatest institution in colonial Virginia. All persons were taxed ten pounds of tobacco for the minister's salary. Church affairs were managed by the vestrymen, usually twelve leading men in the community. They were assisted by wardens in collecting the general tithe and extra assessments. The wardens and vestrymen helped the minister to maintain the moral standards of the community.² Their decisions were enforced by the courts. In addition to its legal and social power the established church in colonial Virginia wielded great financial power. Truro Parish, in which George Mason lived, spent around thirty-eight thousand pounds annually in the years just before the Revolution. Yet Fairfax County which included the two parishes of Truro and Fairfax collected less than the budget for one parish.³

¹Hill, op.cit., p. 52.
²Dodd, op.cit., pp. 82-95.
³Hill, op.cit., p. 58.
Considering the importance of the established church in colonial Virginia it is remarkable that there existed so much religious toleration. The Edict of Toleration was applied in Virginia. There were some persecutions of the Quakers now and then, but not as harsh as those in Great Britain or in New England. Frequently Quakers annoyed officials by their hostility to all military measures. "The easy tolerance (ignoring) which most Virginians so greatly preferred to harsh enforcement was severely strained when the orthodox clergy were called mere ("hirelings "dwellings in "steeple houses")." Even though the Quakers defied the magistrates and encouraged others to do so they continued to hold meetings during the colonial period. "In fact, in 1737 the Quakers presented a memorial to the General Assembly in which they professed gratitude for the treatment accorded them. These and other nonconformist groups could practice their respective faiths and establish churches and assemble congregations, but their ministers or preachers were required to take out licenses. This many of the "Separate Baptists", active during the decade immediately preceding the Revolution, refused to do, and these were jailed for preaching in defiance of the law."¹

¹Andrews, op.cit., pp. 174-175.
"habeas corpus" was brought over as a new privilege for the Virginia colonists by Governor Spotswood in 1710. Actually the writs of "habeas corpus" had been used in Virginia for a long time before 1710. It is difficult to ascertain exactly which English rights and liberties pertained to the American colonists. However by 1776 the American colonists were quite aware of the rights and privileges of those living in the mother country. Some of George Mason's writings influenced the resolutions of the Continental Congress passed in October 14, 1776. These resolutions stated:

"That the inhabitants of the English Colonies in North America, by the immutable law of nature, the principles of the English constitution, and the several charters or compacts, had certain rights which were forsworn enumerated. They were entitled to life, liberty, and property, for they had never "ceded" to any sovereign power the right to dispose of these without their consent. Their ancestors were entitled to all the "rights, liberties, and immunities" of free and native born persons of the realm, and these rights were not forfeited by emigration. The "foundation of English liberty, and of all free government" was the right of the people to participate in the legislative body and, since they could not be represented in Parliament, they were entitled to a free and exclusive power of legislation in their several provincial legislatures." There was no objection to measures of Parliament limited to the regulation of external commerce, "excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent." The colonists were entitled to the common law of England and the privilege of trial by their peers in the vicinage; they were like-

1 Sanders, op.cit., p. 220.
2 George Lewis Chumbley, Colonial Justice in Virginia, 1938, p. 72.
3 Hill, op.cit., p. 117.
wise entitled to such statutes as existed at the time of colonization and which had been found applicable to their needs. Furthermore, they were entitled to the immunities and privileges granted by royal charters or secured by provincial codes of laws, and any interference with their right to peaceably assemble, consider grievances, and petition the king was illegal. Moreover, the keeping of a standing army in time of peace without the consent of the legislature of the colony in which they were stationed was "against the law." It was necessary to good government, ran the resolutions, that the branches of the legislature be kept independent of each other; hence, the exercise of legislative power by a council appointed to serve during pleasure was "unconstitutional, dangerous, and destructive to the freedom of American legislation." 1

In addition it is hard to discover exactly how much freedom of thought existed in Virginia and the other colonies. It is true that "the American colonists in the eighteenth century were among the freest people of the Western World." 2 Perhaps much of this freedom was due to the distance between England and the colonies. In the Declaration of Rights Mason only guarantees the freedom of the press. We might assume from this that freedom of speech existed already in the colony and would be taken as a matter of course. Freedom of speech on religious matters was limited. Swearers and unregistered dissenting preachers were prosecuted. In the early days of the colony persons were punished for speeches and utterances against the governor and others in authority. 3 Yet we find a great deal of criticism of

1Sanders, op. cit., pp. 512-513.
2Ibid., p. 451.
3Chumbley, op. cit., p. 21.
the existing regime in the years just preceding the
Revolution. If freedom of speech had not been present
in the Virginia colony Patrick Henry could not have
been as outspoken as he was, even during the case of
the Parson's Cause.1

Even as late as 1693 printing was forbidden in the
colony.2 However, concerning the freedom of the press
in colonial Virginia, Thomas Jefferson wrote this to
Isiah Thomas in July, 1808:

"I do not know that the publication of newspa-
pers was ever prohibited in Virginia. Until
the beginning of our revolutionary disputes,
we had but one press, that having the whole
business of the government and no competition
for public favor, nothing disagreeable to the
government could be got into it. We procured
Purdie to come from Maryland to publish a free
paper."3

The Virginia papers were filled with many stirring
articles during the Revolutionary period. Frequently
letters were quoted. This is an extract from a letter
from an eminent merchant in London, printed in the
Gazette in 1769.

"I had, as you observe, heard of the dissolu-
tion of the Assembly of Virginia, and wish I
had the honor to have my name recorded in the
list to the resolves. I always did, and always
shall think those laws of taxation unjust and
oppressive; and I highly applaud those who
stood up bravely in defense of their country."4

1Sanders, op. cit., p. 467-470.
2Chumbley, op. cit., p. 40.
3Douglas C. MacKurtrie, The Beginnings of Printing
4Mason, op. cit., p. 82.
It was articles such as these that made George Mason state in the Declaration of Rights, Article eleven, that freedom of the press was essential in a democratic government.

There were many conditions in Virginia colonial life conducive to the writing of such a document as the Virginia Declaration of Rights. However the Declaration is more than a summary of such democratic tendencies. It is a creative work and cannot be understood without a knowledge of the more pertinent phases of the life of its author, George Mason.

George Mason's family were well known Virginia liberals. His father died, when George Mason was ten years old. His mother was a very careful and wise guardian. The principles of democracy were innate with her. She took care that her younger children should not feel unequal because their eldest brother, George, inherited all of his father's property. By her own investments and speculation she secured large estates for her two younger children.

"She devoted herself to her children and her sons owed much to this wise and affectionate parent. She is said to have possessed all the brilliant intellectual qualities of her father, Stevens Thomson, and she was also a woman of great personal charms and most amiable and domestic disposition."  

1Hill, op. cit., pp. 3-9.  
A great influence upon George Mason was John Mercer, his guardian. John Mercer, a brilliant lawyer of the Virginia colony, was a "second father" to George Mason. Mercer had one of the best private libraries in the Virginia colony. George Mason benefited from his uncle's library and also from his uncle's scholarship.¹ In the colony a small library would include such books as those of Milton, Pope, Swift, Grotius and Voltaire. Mercer's library consisted of over a thousand books on general subjects and about five hundred on law. Also John Mercer, during the years when George Mason was growing up, was working on his "Abridgement" of the Virginia laws.¹ George Mason owed to John Mercer his classical scholarship, his familiarity with the law and many of his liberal ideas.

We have some records left concerning the payment of two of George Mason's tutors, but there is no record that he ever had any formal schooling. His brother, Thomson Mason studied Law in London, but George Mason was primarily a self-educated man in the best sense of the word.²

On reaching his majority in 1746 Mason went to live on his plantation at Logue's Neck. He served continuously in the local government of his community. "Throughout

²Ibid., p. 12.
his life, his name is to be found connected with the affairs of his vicinity. As town trustee, he fostered the development of Alexandria. As gentleman justice, he helped to administer his county. As vestryman, he brought his influence to bear upon the program of his parish. Out of this constant experience of the problems of local government grew the ideas and policies which he subsequently expressed in more developed detail for jurisdictions of larger scope. The significance of his later work can be fully understood only when he has been seen against the background of his local habitation, in the activities of his neighboring town, his county court, his parish church."

With his good friend George Washington, George Mason was trustee of Alexandria from 1754 to 1779. Mason had his office for public business on the corner of King and Royal streets. The trustees were responsible for all the ordinary matters of town government, such as keeping the streets clean, policing, preventing fires and so on. It was in Alexandria that Mason became familiar with other religious groups. Several Dissenting sects were active in Alexandria, but the Baptists stirred up the most excitement. "The frequent arrest and imprisonment of their preachers for failure to take out licenses kept them much in the public eye; in the eight years before the Revolutions some thirty were so imprisoned, of whom Jeremiah Moore was jailed in Alexandria ...

1 Ibid., pp. 35-36.
The contrast between the fervor with which certain dissenters courted punishment for their religious and the levity with which certain Church of England rectors took their office (Townshend Dade, who became rector of the Christ Church congregation in 1765 was forced to resign after repeated reprimands had proved ineffective) inevitably gave the community a growing respect for the non-established sects.¹ This respect can be seen in Article fourteen of the Virginia Declaration of Rights, in which Mason advocates "the fullest toleration" of religion.

The Fairfax county court, of which Mason was a justice, was also held in Alexandria. A variety of subjects claimed Mason's attention, the executive and administrative matters of the community, public prosecutions and private cases. Mason helped to administer the county taxation for civil and church levies.² I have already mentioned where part of Article six and Articles eight, nine and ten are derived from Mason's experience on the bench in the Fairfax county court.

In addition to the administration of religious laws as justice George Mason was concerned about the moral and charitable affairs of the community, as a vestryman of Truro parish. Vestrymen were responsible for the supervision of the support of the sick and poor. In 1745 the

¹Ibid., pp. 37-46.
²Ibid., pp. 47-56.
the vestry of Truro parish started a public health service. In addition they found work for the unemployed, looked after orphans and went over land boundaries to prevent disputes.\textsuperscript{1} By his activities as a vestryman, as a county justice and as a town trustee George Mason spoke from personal experience when he wrote that "government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectively secured against the dangers of mel-administration;...".\textsuperscript{2}

From the 1760's on Mason was drawn more and more into active politics, concerning all Virginia and not just his locality. As an active member of the Ohio Company Mason was affected by the royal Proclamation of 1763 forbidding settlers to go beyond the watershed of the Appalachians and declaring that the Northwest Territory was to be an Indian Reservation. This was against the privileges granted to the Ohio Company. Mason's "Extracts from the Virginia Charters, with Some Remarks upon Them" was written to justify their claims to the territory.

Whereas before Mason had stayed mainly at Gunston Hall, his home, and in Alexandria now he went often to Williamsburg, the colonial capital of Virginia, for

\textsuperscript{1}\textit{Ibid.}, pp. 57-72.
\textsuperscript{2}\textit{Ibid.}, pp. 136-137.
meetings of the Ohio Company and sessions of the Assembly.  
Before the Revolution Mason was a member of the House of Burgesses only for the session of 1759. However his good friend George Washington kept him in touch with matters in the legislature. Their friendship was particularly close during the six years after 1769. Mason wrote the Non-Importation Resolutions of 1769. Washington saw that these were accepted at Williamsburg. "Washington was chairman of the county assembly at which Mason brought forward the Fairfax Resolves in 1774, and of the meeting of the Fairfax County Committee at which Mason presented the plan for the organization of the Fairfax Independent Company of volunteers in 1775; under Washington's captaincy of the latter Mason read the statement regarding rotation in office which contains many of the fundamental points later developed in the Declaration of Rights. Washington's diary shows that each of these events was preceded by joint consultation, usually at Mount Vernon."  
Although Mason lived during the last part of the pre-Revolutionary period in semi-retirement he was a great influence in Virginia. He served as a "consultant, adviser, and advance guard to the political thinking of his contemporaries."  

1 Ibid., pp. 30-31.  
2 Ibid., p. 104.
and radical Revolutionary leader, most concerned about the colonial rights and liberties. Mason was certainly familiar with the political writings of Jefferson, but Jefferson was a younger man than Mason and probably had, therefore, less influence upon Mason in the writing of the Declaration of Rights. Mason did make use of Jefferson's preliminary section for the Virginia constitution, and Jefferson used Mason's Bill of Rights in the Declaration of Independence. 2

Mason's participation in the struggle for independence is an important influence upon his Declaration of Rights. Although the Declaration reaches back in European history even to the time of the Greeks and the Romans, it is a product of the growing difference between the British colonial policy and the more democratic attitude of government, held by the Virginia colonists. Whereas many of the local government institutions in Virginia were not changed by the Revolution, governmental theory was reorganized.

"The revolution was a revolution in the ideas of those men as to the ends which the machinery of government ought to further." 3

"The revolutionary theory which justifies the break with the crown was sketched in its main outlines rather earlier than is sometimes supposed." Richard Bland's

1 Ibid., p. 107.
2 Ibid., Foot note to p. 144.
3 Ibid., pp. 88-89.
pamphlet concerning the pistol fee, written in 1753, expresses the view that taxation must be consented to. Bland suggested that the principle was more important than the sum involved. Liberty and property he compared to vessels whose value is lost by the smallest hole. During this time the Burgesses sent a representative to London to plead their case. After the Two Penny Act and the Persons' Cause they kept a permanent representative in London.

The Stamp Act precipitated a crisis between the American colonists and the Crown. The colonists argued more and more vehemently that they could not be taxed except by representatives of their own choice. The Virginia House of Burgesses passed several resolutions, drawn up by Patrick Henry against the act. The fifth was most outspoken and was later struck from the record. However it was circulated throughout the colonies. Mason like other colonists was undoubtedly influenced by its statements that:

"Resolved that the General Assembly of this colony have the sole right and power to lay taxes and impositions on the inhabitants of this colony, and that every attempt to vest such power in any person or persons whatsoever other than the General Assembly aforesaid has a manifest tendency to destroy British as well as American freedom."

Mason was asked to draw up a plan for the House of

*ibid.*, pp. 90-92.
Burgesses which would avoid the use of stamped paper while permitting a landlord to recover the usual bond in case of continued nonpayment. Richard Bland in his "Inquiry into the Rights of the British Colonies" wrote that the colonies are joined to the mother country only through the Crown. Even when the Stamp Act was repealed Mason showed in a letter to the London merchants, dated June 6, 1766 that he was aware that the fundamental differences still remained. Whereas Mason was still loyal to the Crown and the British Constitution he stood firmly for colonial rights.

Although the Townsend Duties, passed next, were later all repealed except the duty on tea, they caused further excitement and indignation in the colonies. Mason was active in formulating colonial policies which would bring the British government around to the colonists' point of view. In December of 1770 he showed his attitude at this time in a letter to one of his relatives in England. This is a very important passage to show the gradual change in his thought.

"There are not five men of sense in America who would accept of independence if it was offered; we know that our own happiness, our very being, depends upon our being connected with our Mother Country. We have always acknowledged, we are always ready to recognize, the Government of Great Britain, but we will not submit to have our own money taken out of our pockets without our consent, because if any man or any set of men take from us without our consent or that of our representatives one shilling in the pound we have no security for the remaining nineteen."
We owe our Mother Country the duty of subjects; we will not pay her the submission of slaves. "1

The underlying grievances continued for the next four years with matters growing gradually worse. In 1773 intercolonial committees of correspondence were started. The tax on tea had still not been repealed and the Boston Tea Party, now so familiar, brought things to a head in December of 1773. It was uncertain at first what the British Government would do. Mason was active in achieving continental unity in this hour of crisis. Finally the news reached Virginia of the Port Act, which would close Boston to commerce from the June 1. The House of Burgesses ordered that June 1, 1774 should be a day of prayer and fasting in Virginia. Although the governor dissolved the House of Burgesses, business was still carried on by that body in the Raleigh Tavern. They passed resolutions against the Boston Act, and asked the Committee of Correspondence to see about the setting up of a Continental Congress. In addition members were asked to Williamsburg for a convention on August 1.

Mason prepared his Fairfax Resolves, a most important pre-Revolutionary document, when a subscription to help the people of Boston was opened in Fairfax county by Washington and Mason. Again Mason showed his loyalty to the Crown, but he insisted strongly upon the rights of the

1Ibid., pp. 93-105.
American colonists. This document contains many principles expressed in the Declaration of Rights. This passage very pertinent:

"...the most important and valuable part of the British Constitution, upon which its very existence depends, is, the fundamental principle of the people's being governed by no laws to which they have not given their consent by representatives freely chosen by themselves, who are affected by the laws they enact equally with their constituents, to whom they are accountable, and whose burdens they share, in which consists the safety and happiness of the community; for if this part of the Constitution were taken away or materially altered the government must degenerate either into an absolute and despotic monarchy, or a tyrannical aristocracy, and the freedom of the people be annihilated." 1

Other political resolutions were being discussed in colonial Virginia. Two days before the August convention in Williamsburg, Thomson Mason published the last of several letters in which he advocated recognizing none of the English laws since the date of the first settlement in Virginia. Jefferson in the Albemarle Resolutions wrote that Parliament could not legislate fairly for the colonists about any matter. Jefferson's "A Summary View of the Rights of British America" and James Wilson's "Considerations" were much discussed.

In September the Fairfax Independent Company of volunteers was created. The pretense was so-called Indian dangers but its actual purpose was to protect the rights

1 Ibid., pp. 105-113.
of the inhabitants of Fairfax county. The purpose, written by Mason for a meeting of the Fairfax Committee, in January, 1775 is a direct antecedent of Article twelve in the Declaration of Rights for Virginia.

It is interesting to note also how similar are the clauses of the Proposal for the Independent Company in June, 1775 to the clauses of the Declaration of Rights. His Proposal advocated rotation in officers by annual elections of the officers of the company.

In the spring of 1775 occurred the Battles of Lexington and Concord. Mason on June 1, 1775 wrote to a London correspondent that - "The Americans were pretty unanimous before, but the acts of the present session of Parliament, & the blood lately shed at Boston have fixed every wavering mind, & there are no difficulties or hardships which they are not determined to encounter with firmness & perseverance." 1

The Revolution had now definitely started. Mason spent the winter of 1775 and the spring of 1776 in seeing about the military preparations on the Potomac. In the beginning of 1776 a definite change in the colonial attitude appeared, mainly as a result of the publication of Thomas Paine's "Common Sense". Virginia was as much influenced by it as the rest of the colonies.

In May, 1776 the Virginia convention met in Williamsburg and passed the famous resolutions for independence.

1Ibid., pp. 113-121.
Among them was this resolution which resulted in the creation of Mason's Declaration of Rights:

"Resolved, unanimously, that a committee be appointed to prepare a DECLARATION OF RIGHTS & such a plan of Government as will be most likely to maintain peace and order in this Colony, a secure substantial and equal liberty to the people."\(^1\)

Like all great liberal documents the Declaration of Rights for the Virginia convention of 1776 was more than the work of one man. It was the result of the growth in political philosophy through many centuries and the result of the rights and freedom achieved from the long struggle between tyranny and its opposing forces. The two outstanding contributions which produced the Declaration of Rights of Virginia were the liberal tradition of seventeenth century England and the American democratic atmosphere. Little progress was made in England in the eighteenth century towards achieving a more liberal government. Instead freedom was fought for in France and in America. George Mason created one of the foundations of our present democratic life from his familiarity with European liberal tradition, especially the English Constitution and common law; from his wide experience in American local government; from a democratic attitude toward life, first established in Virginia by Sir Edwin Sandys, and from the Revolutionary struggle, which made men aware of the value of their liberty and civil rights.

\(^1\)Ibid., pp. 121-123.


Mason, Frances Norton, Editor, *John Norton and Sons, Merchants of London and Virginia, being the Papers From their Counting House for the years 1750 to 1795*, Richmond, Virginia, The Dietz Press, 1937.


Appendix

Virginia Declaration of Rights in 1776.
Copy of First Drafted by G. M.

A Declaration of Rights made by the Representatives of the good people of Virginia, assembled in full and free convention, which rights do pertain to them and their posterity as the basis and foundation of government.

1. That all men are created equally free and independent, and have certain inherent natural rights, of which they cannot, 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 all 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, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectively secured against the dangers of mal-administration; and that whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such a 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 services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

5. That the legislature and executive powers of the State should be separate and distinct from the judicial; and that the members of the two first may be restrained from oppression by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, and return to that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections.

6. That elections of members to serve as representatives of the people in the legislature ought to be free, and that all men, having sufficient evidence of permanent, common interest with and attachment to the community, have the right of suffrage, and cannot be taxed, or deprived of their property for public uses, without their own consent, or that of their representatives, so elected, nor bound by any law to which they have not, in like manner, assented for the common good.
7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and to be held sacred.

11. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

12. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free state; that standing armies in time of peace should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

13. That no free government, or the 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.

14. That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or the safety of society. And that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.*

*This is a copy of the draft in the Virginia State Library, and can be found in Helen Hill's George Mason pages 136 to 138.