A Native of Virginia: *Observations upon the Proposed Plan of Federal Government*, 2 April 1788 (excerpt)

. . . Before we enter into a discussion of the different articles which compose the Constitution, it may not be improper to take into consideration the question respecting a Bill of Rights; which many, from habit and prejudices, rather than from reason, and truth, have thought necessary; and upon the want of it have founded one of their principal objections.

Few people know the origin of the term; still fewer have considered, without prejudice, the necessity of the thing. What is a Bill of Rights? A declaration insisted on by a free people, and recognized by their rulers, that certain principles shall be the invariable rules of their administration; because the preservation of these principles are necessary for the preservation of liberty. If this definition be just; can there be a difference, whether these principles are established in a separate declaration, or are interwoven and made a part of the Constitution itself? Is an infringement of a Bill of Rights by the Governing powers, of more serious consequence, than an infringement of the frame of government? The question carries the answer along with it. That there is no distinction between them is a truth, an attempt to prove which would be an offence against common sense.

Of all the European governments a Bill of Rights is known, I believe, to that of England alone. The cause of this is obvious. The liberty of that country has been procured and established by gradual encroachments upon the regal powers seized by, if not yielded to, the first Prince of the Norman family. The first declaration of this sort found in the history of that government, is the Charter of Hen. the 1st, obtained in consequence of that Monarch's feeble title to the Throne.[1] The frequent infractions of that Charter by Henry himself, as well as by subsequent Monarchs, produced the famous Magna Charta of John [1215], which is generally considered as the foundation of English freedom. But in those ages of darkness, when scarcely a rule of descent was fixed, much less principles in politics established, Charters, or Declarations of Rights, were soon lost sight of, whenever interest induced, and circumstances offered opportunities to the English Princes, to infringe them.

These violations gave rise to the Charter of Hen. 3d,[2] which was of much more importance than any of the preceding; and the discontents and confusions which led to it, in the end gave birth to the House of Commons. From this period some ideas of liberty began to prevail in the nation, but which for a long course of years were obscured by turbulent Barons, long and destructive civil wars,[3] and the arbitrary government of an able line of Princes. The art of printing, the reformation, and the restoration of letters, at length enlightened the minds of men: Just ideas

of liberty now prevailed, and the Commons saw, that if the powers exercised by the Tudors were to continue in their new Sovereigns, all hope of liberty was at an end. Their restless spirit frequently shewed itself during the reign of Elizabeth; but that prudent Princess had the address to allay their fears, and the vigour to repress their spirit. A new and foreign race of Princes now ascend the Throne.[4] The opportunity was not to be lost: Political positions were laid down in, and established by the House of Commons, which were considered by many as extraordinary, as they were true.

James, without the tallents, affected to reign with as high an hand as the Tudors. Charles unfortunately for himself, had been educated in the prejudices of his father. His ill-advised and arbitrary measures, involved him in difficulties which produced the Petition of Right in 1628. In this was set forth the unalienable rights of English-men. New infractions produced new quarrels; which terminated in a total change of government. At the restoration all was joy and festivity. The tide of royalty ran too high, to think of Bills of Rights, or privileges of English-men. The conduct of James the 2d, the last King of that ill-fated family, involved the nation in fresh discontents: The Prince of Orange is called to its assistance: The King quits the Kingdom: The Throne is declared vacant; and William ascended it upon terms stipulated in a Bill of Rights [1689]. It may be asked, why did the English consider a Bill of Rights necessary for the security of their liberty? The answer is, because they had no written Constitution, or form of government. For in truth the English Constitution is no more than an assemblage of certain powers in certain persons, sanctified by usage and defined by the authority of the Sovereignty; not by the people in any compact entered into between them and their rulers.

If at the revolution the English had fully marked out the government under which they chose in future to live, without contenting themselves with establishing certain principles, in a Bill of Rights, can there be a doubt, but that such frame of government would have supplied the place of, and rendered unnecessary, a Bill of Rights?

Former Princes had pretended to a divine right of governing: William acknowledged his to flow from the people; and previously to his ascending the Throne, entered into a compact with them, which recognized that just and salutary principle. Had the English at this time limited the regal power in definite terms, instead of satisfying themselves with a Bill of Rights, there would have been an end of prerogative; but they from habit were contented with a Bill of Rights, leaving the prerogative still inaccurately defined, to claim by implification, the exercise of all the powers not denied it by that declaration.

When the United Netherlands threw off their dependence on the Crown of Spain and passed their act of Union, they thought not of any Bill of Rights;[5] because they well knew that the States General could have no right nor pretext to pass the bounds prescribed by that celebrated act: So in the instance before us, Congress have no right, and can have no pretext to pass the bounds prescribed them by this Federal Constitution and the powers conceded to the Federal Government by the respective States, under this government, are as accurately defined, as they possibly could have been in a Declaration of Rights.

When Independence was declared by the Americans, they had no government to controul them: Were free to chuse the form most agreeable to themselves. Six of these States have no Bill of Rights; wisely judging, that such declarations tend to abridge, rather than preserve their liberties. They considered their Constitutions as the evidence of the social compact between the

governors and the governed, and the only proof of the rights yielded to the former. In all disputes respecting the exercise of power, the Constitution or frame of government decides. If the right is given up by the Constitution, the governors exercise it; if not, the people retain it. Each of the remaining seven States has a Declaration of Rights, adopted rather from habit arising from the use in the English government, than from its being necessary to the preservation of their liberties. . . .

1. The Coronation Charter or Charter of Liberties granted by Henry I in 1100.
2. The Confirmation of the Charters granted by Henry III in 1265.
3. A reference to "The Wars of the Roses."
4. A reference to the House of Stuart.
5. In 1579 the seven northern provinces of The Netherlands were joined by the Union of Utrecht and two years later they proclaimed their independence from Spain.

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