

## **Civis Rusticus, Virginia *Independent Chronicle*, 30 January 1788**

*(The following was written previous to the publication of that in Mr. Dixon's paper of the 5th instant. but not sent to the printer when written from want of a conveyance, the person who wrote it living at a distance from Richmond.)*

To Mr. DAVIS.

*The following "objections to the Constitution of Government formed by the Convention," are stated to be Col. Mason's.*

I shall remark on them with that freedom which every person has a right to exercise on publications, but, with that deference, which is due to this respectable and worthy gentleman; to whose great and eminent talents, profound judgment, and strength of mind, no man gives a larger credit, than he, who presumes to criticise his objections—these, falling from so great a height, from one of such authority, may be supposed, if not taken notice of, to contain arguments unanswerable—not obtruding themselves on my mind in that forcible manner, I submit to the decision of the public, whether, what is now offered, contain declamation or reason; cavil, or refutation.

1st. "There is no declaration of rights; and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the separate states are no security. Nor are the people secured even in the enjoyment of the benefits of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.

2d. In the house of representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people; the laws will therefore be generally made by men little concerned in, and unacquainted with their effects and consequences.

3d. The senate have the power of altering all money bills, and of originating appropriations of money and the salaries of the officers of their own appointment, in conjunction with the president of the United States; although they are not the representatives of the people, or amenable to them. These, with their other great power (viz. their power in the appointment of ambassadors and other public officers, in making treaties, and in trying all impeachments) their influence upon and connection with the supreme executive from these causes, their duration of office, and their being a constant existing body almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.

4th. The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several states; thereby rendering law as tedious, intricate and expensive, and justice as unattainable by a great part of the community, as in England, and enabling the rich to oppress and ruin the poor.

5th. The president of the United States has no constitutional council (a thing unknown in any safe and regular government) he will therefore be unsupported by proper information and advice, and will be generally directed by minions and favorites—or will become a tool to the senate—or a council of state will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a council in a free country: For they may be induced to join in any dangerous or oppressive measures, to shelter themselves and prevent an enquiry into their own misconduct in office; whereas had a constitutional council been formed (as was proposed) of six members, viz. two from the eastern, two from the middle, and two from the southern states, to be appointed by vote of the states in the House of Representatives, with the same duration and rotation in office as the senate, the executive would always have had safe and proper information and advice, the president of such a council might have acted as vice-president of the United States, pro tempore, upon any vacancy or disability of the chief magistrate, and long continued sessions of the senate would in a great measure have been prevented.

From this fatal defect of a constitutional council has arisen the improper power of the senate in the appointment of public officers, and the alarming dependance and connection between that branch of the legislature and the supreme executive.

6th. Hence also sprung that unnecessary and dangerous officer the vice-president, who for want of other employment is made president of the senate: Thereby dangerously blending the executive and legislative powers; besides always giving to some one of the states an unnecessary and unjust pre-eminence over the others.—The president of the United States has the unrestraining power of granting pardons for treason; which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.

7th. By declaring all treaties supreme laws of the land, the executive and the senate have, in many cases, an executive<sup>5</sup> power of legislation, which might have been avoided by proper distinctions with respect to treaties, and requiring the assent of the house of representatives where it could be done with safety.

8th. By requiring only a majority to make all commercial and navigation laws, the five southern states (whose produce and circumstances are totally different from that of the eight northern and eastern states) will be ruined; for such rigid and premature regulations may be made, as will enable the merchants of the northern and eastern states not only to demand an exorbitant freight, but to monopolise on the purchase of the commodities at their own price, for many years, to the great injury of the landed interest, and impoverishment of the people: And the danger is the greater, as the gain on one side will be in proportion to the loss on the other: Whereas requiring two thirds of the members present in both houses would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of the government.

9th. Under their own construction of the general clause at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them; or the people for their rights.

10th. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil causes; nor against the danger of standing armies in time of peace.

11th. The state legislatures are restrained from laying export duties on their produce.

12th. The general legislature is restrained from prohibiting the further importations of slaves for twenty odd years; though such importations render the United States weaker and more vulnerable, and less capable of defence.

13th. Both the general legislature and the state legislatures are expressly prohibited making ex post facto laws; though there never was, nor can be a legislature but must and will make such laws, when necessity and the public safety require them; which will hereafter be a breach of all the constitutions in the union, and afford precedents for other invocations.

This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation produce a monarchy, or a corrupt oppressive aristocracy, it will most probably vibrate some years between the two, and then terminate between the one and the other.”

*Ob.* 1st. This objection proves too much, it goes against all sovereignty, “it being paramount to all laws of the several states, the declaration of rights in the separate states are no security,” if the declaration of rights in the separate states be no security, which it is confessed are not repealed, neither would a general declaration of rights be any security, for the sovereign who made it could repeal it; “the very title of sovereignty shews the absurdity of an irrevocable law.” The people have every security of enjoying the benefits of the common law, and all acts of parliament previous to the fourth of James the first, they ever had—they remain unrepealed, and are the palladium of the rights of the people: as long as *they* retain the spirit of freedom, these rights will exist, amidst the mighty shock of revolutions, the crush of power, the fall of colonies, and the rise of empires.

There are only five states in the union that have declarations of rights—the proposed government is thoroughly popular—the house of representatives are immediately chosen by the people, the senate mediately by their representatives *in Assembly*, and the president by electors, in such manner as the legislature of the state may direct—at the end of four years, he may, and will be removed from his situation, unless he discharge the duties of it, to the approbation of the people, and to the glory and advantage of America. A government thus constituted stands in need of no bill of rights; the liberties of the people never can be lost, until they are lost to themselves, in a

vicious disregard of their dearest interests, a sottish indolence, a wild licentiousness, a dissoluteness of morals, and a contempt of all virtue.

2d. "The house of representatives is not numerous enough," and yet they exceed in number the present Congress: there was a time when these could acquire information, and why should not their successors? the number from this state will be ten, besides two senators; the number at present only five.—The reason of not augmenting the representation, I take to be this; the fear of augmenting the expences of government; and considering the condition of America, it is wise to pay a particular respect to this circumstance.

3d. "The senate have the power of altering money bills;" and why not? because the Lords in England, an hereditary aristocracy, have not, of late years, been permitted by the commons to exercise this power, shall the senate, a rotatory body, chosen by the representatives of the people, be deprived of this essential right of legislation? the people cannot be taxed, but, by the consent of their immediate representatives. They can fix no salaries without the consent and approbation of the president: Here they are checked; if we suppose both these bodies colluding, (which would at once demonstrate their wickedness and folly) and setting salaries at an infinitely exorbitant pitch, and above services; will not the house of representatives reclaim against such measures, and refuse all grants of money, 'till these are altered, and redressed? Of this truly respectable part of the constitution, in my idea, there is not the least ground for apprehension or fear: they cannot take their seats, 'till thirty years of age: the presumption is not a violent one, that their integrity will be tried, and their abilities known and approved: most of them probably will be past, "the hey-day in the blood;" weaned from the intoxicating dissipation of youth, and the hot allurements of pleasure.

4th. The judiciary of the United States have *original jurisdiction only*, in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party—The convention has only crayoned the outlines, it is left to the Congress, to fill up and colour the canvas—To these able artists, the representatives of the states, the Wittenagemot of America (this task, the finishing of this piece) is left with great propriety—*It is taken for granted* by Mr. Mason that law will be rendered tedious and expensive, &c.—Let us pass over this begging of the question, and ask, what could this enlightened gentleman mean? by instancing England, as the place where justice is tedious and unattainable—"At the sittings in London and Middlesex there are not so few as eight hundred causes set down a year, and all disposed of; of these not more than twenty or thirty are ever afterwards heard of in the shape of special verdicts, special cases, &c.—Notwithstanding this immensity of business, it is notorious, that in consequence of method and a few rules, which have been laid down to prevent delay (even where the parties themselves would willingly consent to it) nothing now hangs in court—Upon the last day of the term there was not a single matter of any kind that remained undetermined" Burrow's Rep. 4th vol. p. 2583. May justice in America be always attainable as in England, and may it be administered here precisely as it is administered at Westminster-Hall! The rich here, as in all other countries, will have an

advantage over the poor, in all cases where the services of eminent and learned men are to be commanded by the influence of money.

5th. Had the convention left the executive power indivisible, I am free to own it would have been better, than giving the senate a share in it; or had they left the power to the president of appointing his own privy council, upon each of whom for every measure be advised and carried, responsibility should have been fixed, this blending of what should be separate would have been avoided—The following conjecture may explain the reason of this: A jealousy of executive government; and a jealousy in the minor states, which made them anxious to add every weight to the scale of the senate, considering it as the inexpugnable barrier of their privileges, and the soul of their existence.

6th. The powers of the vice-president do not strike me as dangerous; he will seldom or ever have that devolution of power by the death, resignation, or inability of the president; and, if he should, he will exercise it for a short time—The president's having the unrestrained power of pardoning for treasons is another objection; and why? "it may be sometimes exercised to screen from punishment those whom he, (the president) had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt"—I appeal to this worthy gentleman himself, I appeal to the public, whether there be in this objection, more of validity and force, or chimera and imagination.

7th. The infraction of the present treaty shews the necessity of treaties having the force of laws—When any publicity of them will not be injurious to America, they will be submitted to the representatives in Congress. The King of England can make peace or declare war; can make treaties, but, whenever the Commons disapprove of the measures by which these have been brought about, we know the consequences—Col. Mason is too well read in parliamentary history, not to know what the effects would have been, had the Commons frowned on those of Hanover, Seville, &c. negotiated in the administration of Sir Robert Walpole—The cast of the proposed constitution is surely more popular than the English.

8th. Our interest is variant, not opposite; different from, not contrary to, that of the eastern states: I confess, on this point I have had my fears: as a Virginian, it would be more to my mind not to have the possibility of restraint imposed on the free transport of our staple, but, as an American I would submit this to the general sense, rather than secede—If, as I believe, for I will not assert, the agricultural system in Pennsylvania prevail over the commercial, we need not fear monopolies in the carrying business, restrictions, and navigation acts. I believe too, but I will not assert, be this as it may,—that the representative Congress of the United States will not, in fifty years, make so large a sacrifice of the trade of Virginia on the altar of selfishness and monopoly, as her assembly has made of it, in four, on the altar of ignorance and absurd prejudice.

9th. The latter part of the answer to the 6th objection may suffice for this—*Valeat quantum valere potest.*

10th. “No declaration of the liberty of the press.” Our Bill of Rights declares, and it is not repealed, that the freedom of the press is one of the great bulwarks of the liberty of the people, and never can be restrained, but by despotic power. The people of England have no other security for the liberty of the press, than we have—Their own spirit, and an act of parliament—their act of parliament *may* be repealed—our Bill of Rights *may* be repealed. Of that no man has any fear, of this no man need have, while this spirit is in the people—“This peculiar privilege must last (says a learned writer) as long as our government remains, in any degree, free and independent—it is seldom that liberty of any kind is lost at once—slavery has so frightful an aspect to men accustomed to freedom, that it must steal upon them by degrees, and disguise itself in a thousand shapes in order to be received—But, if the liberty of the press ever be lost, it will be lost at once.—The general laws against sedition and libelling are at present as strong as they can possibly be made, nothing can impose a further restraint, but, either clapping an imprimatur on the press, or giving to the court very large discretionary powers, to punish whatever displeases them—but these concessions would be such a bare faced violation of liberty, that they will probably be the last efforts of a despotic government—Hume’s essay vol. 1. p. 17.

The last efforts of a despotic government! Can we then a popular government, a guaranteed republic, fear this more under the proposed, than the present constitution? A standing army without the consent of the representatives of the people in Congress there never can be: to their wisdom and their discretion we submit—Necessity may oblige America to raise an army—and who can judge of this necessity so well as Congress? Where can this power be more safely reposed? Dr. Smith (in his “Wealth of Nations,” book 5. ch. 1.) is of opinion in some cases, that a standing army is not dangerous to liberty—of this the people of America will judge, and a people jealous of their liberty, vigilant over executory magistracy, will oppose with their united voice this institution, when they discover its end to be usurpation and tyranny.

11th. Happy for Virginia, that this restraint is imposed. Laying duties on exports is the acme of impolicy, and has been the practice of our Assemblies.

12th. Not restraining for twenty years the importation of Africans will not effect us—This gives South-Carolina and Georgia that privilege, if it be their pleasure to avail themselves of it—Is not this objection, the excess of criticism?

13th. Ex post facto laws have ever been considered as abhorrent from liberty: necessity and public safety never can require them—“If laws do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort—The escape of one delinquent can never produce so much harm to the community, as may arise from the infraction of a rule, upon which the purity of public justice, and the existence of civil liberty essentially depend”—Pæley’s Principles of Moral Philosophy, vol. 2. p. 234.17 Oc[tavo] Ed.

14th. The last objection does not call for any particular animadversion—What the government may terminate in depends on the people—let them feel their importance,

be alive to their own interests; elect those of the best abilities and character; keep a jealous eye over their representatives, and over judicial and executory magistracy; be disposed to reverence the authority of laws, yet active to detect and expose malversation and wrong measures: the proposed government will then, not only induce external consideration and respectability, but will have internal efficiency and permanence, and will ensure to the present and future generations, security of property, and peace, happiness, and liberty, the great end of political and civil society. I have now finished, what I proposed to observe on these objections, and trust no person will conclude my design has been to condemn this respectable gentleman for not putting his signature to the constitution; on the contrary, thinking as he did, I commend him—The man of abilities, firmness, and integrity will dare to think, to judge, and act for himself, his principles have not the pliancy of his gloves, neither has he his mind to make up at every revolution of an hour: authority with him is not the guide to truth, nor does infallibility rest in numbers—He has a surer monitor; his own judgment and the dictates of his conscience of such stern matter is, if I am rightly informed, the mind of Mr. Mason composed, never yielding itself up, when convinced of its rectitude, at the arbitrium of the popular breath, nor giving into opinions that are not its own.  
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1On 23 January the *Virginia Independent Chronicle* reported that “Civis Rusticus” was received.

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