
George Mason of Virginia

These days it is the "right to work." Yet the fervor put into this newfangled American ideal falls flat when we reflect that toil is on a par with disease in desirability. Men want things, not work. So that, when we shake down this right to work, the residue turns out to be the "right to a living and we don't give a damn how we get it."

What, specifically, are the advocates of this doctrine pumping for? Is it not a mess of gratuities? Is it not unemployment insurance, make-wage jobs, pensions, free doctoring, free schooling even up to the postgraduate courses? For such largess these idealists are quick to settle out of court. The right to work thus appears to be every individual's claim, inherent in citizenship, on the production of everybody else. The claim is made on government, of course, and therefore amounts to a demand to partake of the tax fund. Thus the privilege of being an American becomes the privilege of pushing one's snout into the public trough.

It was not always so. Before the fear of want became the national psychosis the word *rights* had an entirely different

"George Mason of Virginia" appeared as the lead article in the September 1945 issue of analysis.

connotation. There was nothing mundane or sordid about it; rather, it gave expression to a high moral value. And it was peculiarly American, for nowhere else in the world had there ever been an attempt to establish a polity based on this ethical principle. To be sure, the question of rights—or natural rights, as it was called—had been the subject matter of philosophic speculation for several centuries before America became a political entity, and it had also been the battle cry of a few rebellious undertakings in Europe; but never and nowhere was its content equivalent to that which it attained in the freak republic carved out of the western wilderness. Here it became a formula for the guidance of organized life, a standard by which to measure the correctness of political institutions. It was a principle, not a handout.

But what are rights? How did the idea originate? When we look to the background of rights, we see how the right to work is indicative of decadence in the American character. We have gone back in our political thinking—back to the theory that the state is some superior sort of person.

The earliest notion of a right came from the boon granted a slave by his master. It was the conqueror's voluntary restriction on the exercise of his power over the vanquished. The purpose of such self-imposed restraint was to further the economic purpose of conquest, for it was evident that the unlimited harassment of the slave would reduce his productive capacity and thus lessen the loot. The slave was advised how far the master would go and made his adjustment accordingly; the conqueror profited by the resulting orderly *modus vivendi*. In time these limitations became traditionalized, even put into legal form, and the conquered endowed them with the value of prerogatives, privileges, and immunities. The inhibitions of privilege became rights. So much so that when unscrupulous members

of the conquering class overstepped the bounds, the slave class could invoke their rights and demand that restraint be put upon the offenders; it was not uncommon for the rulers to enforce these rights with severe punishment of their own people.¹

The Romans, of all the ancients, were most adept at this procedure. It paid them to guarantee to their subjugated peoples noninterference in all matters relating to religious customs and social habits, limiting their overlordship to the maintenance of order and the collection of stipulated tribute. The story of the trial of Jesus illustrates the scrupulousness with which Pontius Pilate recognized the "rights" of the Jews and the manner in which the latter invoked them.

But the Romans always remained a people apart and the rights they established were concessions which might be conveniently withdrawn. Furthermore, whenever they left a territory, the rights disappeared with them. It was only where conquerors settled down and became integrated with the conquered, thus forming a new nation, that the doctrine of rights acquired a fixed place in the *mores* of the people. The best known of such integrations is the English nation, and since our modern concept of rights is a direct lineal descendant of the English concept, we might profitably look into the latter.

It was not long after William the Conqueror established himself on the British isle that demands were made on his suzerainty, not by the natives but by his own nobility. These demands amounted to nothing more than the privilege of retaining for

¹ The American army now in Japan has agreed to respect the "prerogatives" of the emperor. These rules of behavior, if the army stays there long enough, will come to be looked upon by the Japanese as their "rights"; infractions by American soldiers or politicians will bring complaints to the higher command or even to Washington. It now appears that the Russians will not move out of the territories they occupy and take their "rights" with them, but will settle down with and completely enslave the inhabitants.

themselves a greater share of the proceeds of exploitation. The culmination of this rivalry between king and barons was the affair at Runnymede. Tradition has made the Magna Carta the cornerstone of the British structure of rights; and so it is, but the structure and the cornerstone are not what romance has read into them, that is to say, a charter of human freedom; for all that happened at Runnymede was a clipping off of the king's power of exploitation in favor of the barons. Henceforth, John agreed, the sovereignty over their vassals which his kingship invested in him was to be shared with his tenants-in-chief, and in the exercise of these privileges they were to enjoy immunity; and he conceded, not as an article of justice but as a guarantee of noninterference, the trial by a jury of peers. Now, the point to be kept in mind was that the barons did not question the king's sovereignty, for to do so would have undermined the polity which supported their own prerogatives. The validity of his signature to the compact could not be doubted without throwing doubt on their own position. And so, Magna Carta established the underlying principle of British "rights," that they are patents and indulgences wrested from the higher political power.

The same holds with the Bill of Rights, of 1688. It came, be it noted, as a petition to the king, for the parliament was well versed in precedent and could not but acknowledge the necessity of the king's seal on the contract. Again we find a class—the rising industrialists—demanding privileges and immunities, and employing their coercive position to enforce these demands; for William and Mary were in need of war funds and the petition was presented as a *quid pro quo* for a tax levy. And, as in the case of the Magna Carta, the rights which were thus woven into the fabric of English law were mere pieces of power captured from the acknowledged source of power by a group

temporarily strong enough to rival it. That is the history and the theory of British rights. Throughout the years this clipping-off process has all but divested the kingship of its original prerogatives, but the tradition of a sovereign and transcendent state in which all political authority resides, and from which all privileges and immunities are derived, is still the basis of British polity. For the total of the contracts between this state and the long line of successful pressure groups forms that pattern of precedents known as the British constitution. It is a tacit compromise with conquest, not a stated philosophy of government.

And so we come to America.

We cannot know just when or how the concept of the primacy of the individual—as distinguished from the claims of his clan—took root in the human mind; most likely it was always there. Some are pleased to give credit for its discovery to the prophets of Israel, others find in the parables and the life of the Nazarene the finest, if not the first, expression of the idea. There are historians who trace to the Protestant Reformation the individual's revolt against his political debasement. Regardless of its original expression, for at least two centuries before the American Revolution political philosophy had been phrasing such ideas as—that the unit of social life is the individual, that political institutions derive their justification from his purposes, that the moral basis of political authority is the necessity of existence. They bolstered this thought with the hypothesis of a natural law, and pointed to the prevalence of friction and unhappiness as evidence that this law had been ignored and violated. The high goal of human endeavor could be achieved only in a condition of harmony or justice, and this condition, they maintained, can exist only when political institutions chart their course by the natural law.

But the speculations of Rousseau and Montesquieu and Locke and the physiocrats seemed destined to remain lost between the covers of their books. Then came the American Revolution, and out of the virgin soil of the spawning nation sprang an intrepid band of philosophic adventurers who made bold to give the ideal of freedom a working chance. Among these the foremost, because he held most closely to the visionary blueprint, was George Mason of Virginia.

Americans know but too little of this great American, and, what is most regretful, less about the definitive value he gave to Americanism. Now that we are on the high road of abandoning that value, substituting for it the opposite one, the one which the "well-born" strove so persistently and unscrupulously (and with some success) to incorporate into the basic law of the new nation, we would be well served by a full acquaintance with the work of Mason. A review of his arguments before the Constitutional Congress and the Virginia Convention for ratification would be mighty helpful in any discussions of current events. For Mason foresaw the dangers the new nation was heading for because its foundations did not rest foursquare on the law of justice, and now that these dangers have met up with us it might save us from further trouble if we gave thought to his reasoning. It is as sound today as it was then, and more pertinent. But in the space allotted to this article, all that is possible is an attempt to show how Mason tried to give the new nation a political soul.

On May 17, 1776, the state of Virginia having declared for independence, its delegates assembled at Williamsburg for the purpose of drawing up a constitution. It fell to the lot of George Mason who, although no lawyer, had already achieved some reputation as a political thinker, to frame a bill of rights as a guide in framing the constitution; the declaration he produced

was destined to become in effect part of each of the forty-eight state constitutions and is embraced in the first Ten Amendments to the federal Constitution. On the first and second articles all the others rest:

1. That all men are created equally free and independent and have certain inalienable rights, 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 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.

If we accept these two propositions as axioms of government, then any bill of rights based on them becomes a mere memorandum—a lest-we-forget reminder for every political situation. For here we have a philosophy to guide us, not a compendium of precedents; a light for the future not the past. The rights, be it noted, are not the subject of legislative action, which can only conform with or run contrary to them, for they existed before lawmakers were and will continue as long as human life persists; they inhere in the individual by the fact of existence and need no other confirmation; they are not to be gotten, hat in hand, by a supplicant citizenry. Indeed, it is to implement these rights that men institute government, appointing magistrates whose business it must be to carry on communal affairs according to these tenets.

The vision of Mason in proclaiming this moral basis for political authority is matched by his courage, for at the time all the known governments in the world were built on the conquest principle by which they came into being. Even among his contemporaries there were comparatively few who held with him in this departure from the established order, and it was only the

ardor of these few which prevented the establishment of a self-contained power instrument in the new nation. At the Philadelphia Convention he struggled vainly to hold the delegates to this new American ideal, and when the Constitution which emerged failed to live up to that ideal he not only refused to sign it but returned to Virginia resolved to fight its ratification by his home state. Though there again he lost in the fight against the centralizers, the "well-born" who relished political power in the European manner, the cogency of his argument had made a strong impression on the times, and at last the bill of rights which he had prescribed for the health of the new nation was ultimately, though grudgingly and only in part, incorporated into its Constitution.

Mason was a slave owner, but he opposed slavery; he was an aristocrat, by any standard, yet he rejected government by aristocrats; he advocated a single term of seven or eight years for the presidency lest an ambitious man seek to perpetuate himself in that office; he feared a standing army in peacetime, seeing how this instrument of force was the backbone of autocratic government, and declared a volunteer militia all the military a free nation should have; he anticipated Jefferson and Washington in opposing foreign alliances; he opposed federal power to regulate elections because he saw in this a centralizing force; he was a wealthy man, but he fought features of the federal judiciary which he knew would favor the wealthy litigant; he thought that tariff bills and all commercial measures should require a two-thirds vote of both branches of Congress; in the general-welfare clause of the Constitution he recognized the danger of undefined authority; taxation he feared because of its political potential and he espoused weak government because its corollary is a strong people. But in taking these positions on particular measures Mason had no choice. One

can always foretell the direction of thought which starts with a philosophy; the unpredictable is the expedient. Mason's contribution to America is not what he advocated or opposed, but the character he tried to give its political philosophy.

Factually, the doctrine of natural rights hasn't a leg to stand on. This is so by very definition. Nature has not made a right visible, nor does she notify us in unmistakable manner when we have hit on one. The niggardliness of nature in this instance is matched by her reluctance to identify other abstractions which we trace to her, like justice and freedom. To get to the bottom of the question: What exactly is nature? Who is the accredited liaison officer between nature and man?

On the basis of this lack of sensual evidence, the latter-day logicians who hog the front row of philosophic fashion peremptorily throw the doctrine out the window of reason. According to them, natural rights are an absurd assumption. They are an assumption, all right, but whether absurd is another question. When we reject this assumption we come logically to conclusions which in themselves are absurd, and because of these absurd conclusions we are forced to restore the unprovable hypothesis to its place as a starting point for our thinking. Thus, if we deny that in the nature of things a man has an exclusive right to the product of his labor—because we are not on speaking terms with “the nature of things”—then we actually deny him the right to life, and we are on the way to asserting that the master has a right to the property and life of the slave. But, where did the master get that right? From his good right arm, since, it is admitted, he also has no “pull” with nature. So then, by denying the hypothesis of natural rights we are forced to the conclusion that a right is a relationship between man and man, resting on power and shifting with the incidence and intensity of that power. And where does that conclusion

lead us to? To the absurdity that the only way for men to live together in harmony is for each one to maintain an arsenal as big as any likely combination of arsenals his neighbors might bring to bear on him.

Confronted with such logical though nonsensical conclusions, the show-me pragmatists—some of them—have come up with an *as if* escape. That is, even if the doctrine of natural rights is an unprovable assumption, they say, it is a necessity of experience that we accept it as a functional idea, and we must act and reason *as if* natural rights were factually demonstrable. They are willing to go along with the doctrine so long as they are not asked to take it as a fact. It would be poor sportsmanship to deny them this face-saving device.

But the harm of this pragmatic approach to political problems has been done. It is difficult to say whether the philosophy was the cause of it, or was merely an expedient accommodation to a *fait accompli*; but the fact of the matter is that opposition to the doctrine of rights, as exemplified by Mason, has been successful in liquidating the only norm by which freedom can be measured. The Constitution which Hamiltonian centralists forced upon the new country, against the advice of Mason, Henry, Gerry, and the other pleaders for government to serve, not to master, the people, has done its work; so that today the rights of an American, like those of an Englishman, are the privileges he can force a reluctant government to disgorge. Whereas our country began as a more or less voluntary association of freedom, while British polity was born in conquest, because our basic law permitted the concentration of power, our doctrine of natural rights has become a dead letter and we are operating on the British system. We have been conquered by our original error.

What is standard practice today in the relations between the

American government and the American people? When a group of us are determined to obtain certain privileges—which we euphemistically call rights—we organize ourselves and in various ways notify our representatives how many votes we control, and they had better be sensible and give us what we want. So long as they submit to our demands we have no objection to their acquiring additional power over us, by the imposition of more taxes or the passage of laws which restrict our freedom of action; we relish being subservient to benevolent despotism. And, are our representatives guided by basic principles in the handling of public affairs? Hardly. Their business is primarily to “keep their ears to the ground”—to ascertain which pressure group has the most to deliver and to make settlement accordingly. That is the conquest principle.

Mistakes multiply themselves. If the federal Constitution had been built in the spirit of Mason’s recommendations, it is quite likely that many of the economic errors which have since come home to plague us would have been avoided; certain it is that the institution of slavery would have been scotched, the Civil War prevented, and our stupid wall of protection would not have been built. When you study the Virginia Bill of Rights with an eye to economics, you see how a faithful adherence to its dictates could not but have suggested measures which would have avoided the economy of scarcity from which we suffer, and to overcome which we vainly pile power upon power on our government. For, in the final analysis, we get the kind of government our stomachs want.

Whether the situation can be righted at this late date is doubtful. As a people we have no knowledge of freedom and therefore no taste for it. So low has our concept of freedom fallen that we interpret it as the right to work. The old Greeks knew enough to let Fate have its way. So be it. But for some of us, the incor-

rigibly unadjusted, there are music and poetry and spiritual uplift in the advice given by George Mason, in his will, to his sons:

I recommend it to my sons from my own experience in life to prefer the happiness of independence and a private station to the troubles and vexation of public business, but if either their own business or the necessity of the times should engage them in public affairs, I charge them on a father's blessing never to let the motives of private interests or ambition induce them to betray, nor the terrors of poverty and disgrace or the fear of danger or of death deter them from asserting the liberty of their country and endeavoring to transmit to their posterity those sacred rights to which themselves were born.