

**The Fight for Our Rights: Federalists v. Antifederalists: The Fight for the Bill of Rights: Patrick Henry's Oratory Leads to Adoption of the Constitution's First Ten Amendments**

## **I. The Fight for a Bill of Rights:**

When Patrick Henry arrived in Richmond to participate in Virginia's consideration of the Constitution he felt confident that his arguments held enough weight to convince the delegates to withhold its vote for ratification. If Virginia, the largest state in the Union, declined to ratify, then New York would follow dealing a vital blow the success of the venture.

Henry was adamant that if the Constitution were to become law it must be amended with a Bill of Rights. Otherwise, he had serious objections to allowing the document to stand alone.

The Declaration had specifically cited King George III "for imposing Taxes on us without our Consent" yet the Constitution gave Congress unlimited power to tax the people without consent of their legislatures.

The Declaration challenged England's deployment of a standing army in the colonies while the Constitution authorized a standing army which could be sent into any state to enforce federal laws.

Henry was also leery of the Constitution's provision in Article VI which stipulates that "all Treaties made, or which shall be made, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Henry's recall of the narrowly defeated Gay-Gardoqui Treaty made him highly suspect of this provision.

Once convened, Henry opened the debates and, as was the custom, he addressed his comments to the Chairman George Mason:

Mr. Chairman, I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feeling when I say that they are exceedingly uneasy. Before the meeting of the late Federal Convention at Philadelphia, a general peace and a universal tranquility prevailed in this country. But since that period I conceive the republic to be in extreme danger.

Whence has risen this fearful jeopardy? It arises from this fatal system—it arises from a proposal to change our government. A proposal that goes to the utter annihilation of the most solemn engagement of the states. That this is a consolidated government instead of a confederation is demonstrably clear, and the danger of such a government is, to my mind very striking.

Henry then accused the Convention of a coup d'état since its permission to assemble in Philadelphia was granted by Congress for the purpose of revising the Articles of Confederation and reporting to the state legislatures alterations and provisions, yet instead it had created a new government. To this he directed his comments to the presumptuousness of its Preamble:

I have the greatest veneration for those worthy characters who composed a part of the late federal convention but, sir, give me leave to demand what right they had to say, *We, the People*? My political curiosity leads me to ask who authorized them to speak the language of *We, the People*? The people gave them no power to use their name. That they exceeded their power is perfectly clear. The federal convention ought to have amended the old system—for this purpose they were solely delegated. The object of their mission extended to no other consideration.

I would demand the cause of their conduct even from that illustrious man who saved us by his valor. I would demand a faithful historical detail of the reasons that actuated its members in proposing an entire alteration of government—and to demonstrate the dangers that awaited us. Disorders have arisen in other parts of America, but here, Sir, no dangers, no insurrection or tumult has happened—everything has been calm and tranquil. What are the causes for this proposal to change our government?<sup>1</sup>

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<sup>1</sup> Ibid., 211–12.

One of the most prominent Antifederalists, the sitting governor of Virginia, Edmund Randolph, followed Henry and it was expected that he would complement Henry's remarks. That he did not resulted in the tide shifting in Washington and the Federalists' favor:

... as a member of the Constitutional Convention, I refused to sign, and if the same were to return, again would I refuse, but I never will assent to the scheme that will operate a dissolution of the Union or any measure which may lead to it. The Union is the anchor of our political salvation, and I will assent to the lopping of this limb before I assent to the dissolution of the Union.

I shall follow the honorable gentleman in his enquiry ... why we assumed the language of "We, the People." I ask why not? The government is for the people. Is it unfair? Is it unjust? I take this to be one of the least and most trivial objections that will be made to the Constitution. In the whole of this business, I have acted in the strictest obedience to my conscience, in discharging what I conceive to be my duty to my country. I refused my signature. I would still refuse, but as I think that those eight states which have adopted the Constitution will not recede, I am a friend to the Union.

Henry and George Mason were livid at the betrayal by Randolph and Henry believed the Tidewater aristocracy of Virginia of which Randolph was one, sought to recapture the powers it held in the state's colonial House of Burgesses.

Federalist Lighthorse Harry Lee began the next day's debates by taking up where Randolph had left off:

I feel every power of my mind moved by the language of the honorable gentleman yesterday. The éclat and brilliancy which have distinguished that gentleman, the honors with which he has often been dignified, and the brilliant talents which he has so often displayed have attracted my respect and attention. On so important an occasion I expected a new display of his powers of oratory, but instead of proceeding to investigate the merits of the new plan of government, the worthy character informed us of the horrors which made him tremblingly fearful of the fate of the commonwealth.

The gentleman sat down as he began, leaving us to ruminate on the horrors which he opened with, but, sir, this system is to be examined on its own merit. Mr. Chairman, was it proper to appeal to the fear of this house? I trust he is come here to judge and not to alarm.

All Lee's comments did were to steel Henry's resolve even more than did Randolph's the day before. Henry's retort to Lee isolated the reasons free men should be wary of offering unfettered power to a central government:

I am much obliged to the very worthy gentleman for his encomium. I wish I was possessed of talents, or possessed of any thing that might enable me to elucidate on this great subject. I rose yesterday to ask a question. I thought the meaning was obvious. Here is a revolution as radical as that which separated us from Great Britain ... if in this transition, our rights and privileges are endangered, and the sovereignty of the states be relinquished. And cannot we plainly see that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges are rendered insecure, if not lost.

Is this tame relinquishment of rights worthy of freemen? Is the relinquishment of the trial by jury necessary and the liberty of the press necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? The new form of government will oppress and ruin the people! It is said eight states have adopted this plan. I declare if twelve and one half had adopted it, I would with manly firmness reject it! But I am fearful I have lived long enough to become an old-fashioned fellow. If so, I am contented to be so. Twenty-three years ago I was supposed a traitor to my country. I was then said to be a bane of sedition, because I supported the rights of my country. I say now our privileges and rights are in danger. Is not the ancient trial by jury preserved in the Virginia Bill of Rights? And is that the case in the new plan? No, sir!

Why do we love this trial by jury? Because it prevents the hand of oppression from cutting yours off. They may call everything rebellion and deprive you of a fair trial by an impartial jury of your neighbors. Shall Americans give up that which nothing could induce the English people to relinquish? The idea is abhorrent to my mind. It gives me comfort that as long as I have existence my neighbors will protect me. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately nothing will preserve it but downright force; whenever you give up that force you are inevitably ruined. Something must be done to preserve your liberty and mine.

The Constitution is said to have beautiful features. But when I come to examine these features, Sir, they appear to me horribly frightful. Among other deformities, it has awful squinting; it squints towards monarchy. And does not this raise indignation in the breast of every American? Your President may easily become King. Where are your checks in this government? There will be no checks, no real balances in this government. It is on a supposition that your American governors shall be honest that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men.

Show me that age and country where the rights and liberties of the people were placed on the sole chance that their rulers being good men, without a consequent loss of liberty. If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute!

If Congress in the execution of their unbounded powers shall have done wrong, how will you come at them to punish them?<sup>2</sup>

Henry then focused his attention on arguments in favor of ratification without the appending of a Bill of Rights. He reviewed the powers given the president and Congress: the power of unlimited direct taxation, powers to counteract and suspend states laws, and powers to send troops into any state to enforce federal laws – powers that in the hands of Parliament had provoked the War for Independence. The dangers were amplified by the power granted Congress under Article 1, Section 8, “to make all laws necessary for carrying their powers into execution.” Then he shouted:

Will you be safe when you trust men at Philadelphia with power to make any law that will enable them to carry their acts into execution? By this, they have a right to pass any law that may facilitate the execution of their acts. Is there any act, however atrocious, which Congress cannot do by virtue of this clause? Congress will become the supreme power.

A wonderful and unheard experiment it will be, to give unlimited power unnecessarily. This is dishonorable and disgraceful. It will be as oppressive in practice as it is absurd in theory.

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<sup>2</sup> Ibid., 216–20.

I trust that gentlemen will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right secured before they agree to that paper. You have a bill of rights to defend you against the state government and you have none against Congress. If you intend to reserve your unalienable rights, you must have the most express stipulation. It is expressly declared in our Articles of Confederation that every right was retained by the states which was not given up to the government of the United States. But there is no such thing here. You therefore by a natural and unavoidable implication give up your rights to the general government.

Why not give us our rights? In express terms! In language that could not admit of evasions or subterfuges? We are giving power. They are getting power!

If you will stipulate that there are rights which no man under heaven can take from you, you shall have me going along with you. Not otherwise. I speak as one poor individual—but when I speak, I speak the language of thousands!

As the Convention continued Henry continued to plead for the inclusion of rights before ratification could be voted.

Washington consistently rebuked the need for amendments since the document contained a “constitutional door for amendment,” to which Henry fired back his polemic:

I am constrained to make a few remarks on the absurdity of relying on the chance of getting it amended afterwards. When it is confessed to be replete with defects, is it not offering to insult your understandings to attempt to reason you out of the propriety of rejecting it till it be amended? Does it not insult your judgments to tell you—adopt first, and then amend? Is your rage for novelty so great that you are first to sign and seal, and then to retract? You agree to bind yourselves hand and foot—for the sake of what? Of being unbound? You go into a dungeon—for what? To get out? Is there no danger when you go in that the bolts of federal authority shall shut you in? Human nature never will part from power! Have we not a right to say, “Hear our propositions.” If this moment goes away we will never see its return.

By the next morning, James Madison approached moderate Antifederalists with the pledge to fight for passage of a bill of rights in the First Congress if they switched their votes for ratification. The result of the crossover voters gave the Federalists an 89-79 vote in favor of ratification. It was agreed by most of the delegates that Madison’s pledge to promote a bill of rights was the key factor in the Federalist victory.

After the vote the delegates assumed Henry would again regale the convention about the inherent dangers lurking behind their act. He was however quite constrained:

If I shall be in the minority, I shall have those painful sensations which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceable citizen! My head, my hand, my heart shall be at liberty to retrieve the loss of liberty and remove the defects of that system—in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that Government changed so as to be compatible with the safety, liberty and happiness of the people.

Once the new government was seated, Washington gave Madison approval to fulfill his pledge to Henry to propose a bill of rights. After taking his seat in the House of Representatives, he moved for “Amendments that may serve the double purpose of satisfying the minds of well-meaning opponents, and of providing additional guards in favor of liberty.” Madison failed to address the issue of states’ rights, however, and Antifederalist Senator Grayson expressed his outrage to Henry:

Some gentlemen here have it in contemplation to effect amendments which shall affect personal liberty alone, leaving the great points of the judiciary, direct taxation, etc., to stand as they are. Their object is unquestionably to break the spirit of the Antifederalist party. After this I presume many of the most sanguine expect to go on coolly in sapping the independence of the state legislatures.

Four months later, Madison resolved that the Constitution be amended with “a declaration of the rights of the people” to ensure “the tranquility of the public mind, and the stability of the government.” Although members proposed seventy-five amendments, the House approved only seventeen, and the Senate reduced the number to twelve. The states ratified ten, which became known collectively as the Bill of Rights.

After reading them, Henry exploded with rage over the failure of the amendments to restrict the national government’s powers over the states:



“I wrote the first of those amendments in these words, ‘Each state in the Union shall respectively retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States or to the departments of the Federal Government.’ But they have omitted it and changed it into this *equivocal* thing ‘or to the people.’ My sons, this Constitution cannot last. It will not last a century. We can only get rid of it by the most violent and bloody struggle.”<sup>3</sup>

The South would long remember his words.

## II. Epilogue:

Despite Henry’s objections to the amendments, Americans of all political persuasions hailed him as father of the Bill of Rights and champion of individual liberties.

In retrospective analysis we in the twenty-first century can see clearly the dangers contained in the illegally conceived Constitution left without restricting alterations or restraining amendments on the powers of the central government.

All that Henry perceived as possible arrogations of government authority to itself at the expense of the states have come to pass. All the rights that he insisted should be enumerated have in some manner or fashion come under Progressive attack.

The states that ratified did so under the supposition that alterations would be made to correct the document’s inadequacies. None of this was done and the seventeen Amendments that have followed have done nothing to stem the Federal power grab but rather have facilitated it.

The Bill of Rights has proved to be a godsend especially over the course of the last century. Were it not for the untiring efforts and relentless oratory of Patrick Henry our individual rights would have long since been taken away and the tyranny about which he worried would have surely come to pass and it may yet still.

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<sup>3</sup> Ibid., 244.



As we celebrate our independence tomorrow remember to offer a prayer of thanksgiving to the Father for the foresight, the wisdom, and the courage of Patrick Henry and for the individual rights that enable us to freely study His Word and with its doctrines the privilege of serving Him in the Invisible War that continues to rage in this client nation.

### III. Prayer:

Heavenly Father, we extend to you our thanks for those patriots who were motivated to accumulate within their souls the principles of establishment truth and with a firm regard for the protection of Your Providence to establish for this nation a system of government that has sustained freedom for two-hundred and thirty-five years.

Men of different opinions and rationales debated the content of the foundational documents of this country and although great compromise was required to reach a consensus, You have graciously provided the protection that the State Papers of human origin did not supply.

It is our prayer that You will preserve our individual freedoms to pursue Your Truth while there is still time. By means of the Holy Spirit, incite the requisite interest required to study Your Word and apply its directives. The right of free exercise is in jeopardy. Before it becomes yet another relic of a bygone era, may we capitalize on its protection to grow in grace and fulfill in this church what Paul petitioned for the church at Colossae:

**Colossians 1:9** - ... we have not ceased to pray for you and to ask that you may be filled with the knowledge of His will in all spiritual wisdom and understanding,

**v. 10** - so that you will walk in a manner worthy of the Lord, to please Him in all respects, bearing fruit in every good work and increasing in the knowledge of God;

**v. 11** - strengthened with all power, according to His glorious might, for the attaining of all steadfastness and patience.

And we lift our prayer in the name of our Lord and Savior,  
Jesus Christ, Who is *Yahweh Sebaoth*, the Lord of the Armies.  
Amen.

Please stand and face the colors as we sing the first and last  
stanzas of “The Star-Spangled Banner.”

#### IV. The Star-Spangled Banner:

Verse 1:

Oh, say, can you see, by the dawn's early light,  
What so proudly we hailed at the twilight's last gleaming?  
Whose broad stripes and bright stars, thro' the perilous fight,  
O'er the ramparts we watched, were so gallantly streaming?  
And the rockets' red glare, the bombs bursting in air,  
Gave proof thro' the night that our flag was still there.  
Oh, say, does that star-spangled banner yet wave  
O'er the land of the free, and the home of the brave.

Verse 4:

Oh, thus be it ever when free-men shall stand  
Between their loved homes and the war's desolation;  
Blest with vict'ry and peace, may the Heav'n-rescued land  
Praise the power that hath made and preserved us a nation!  
Then conquer we must, when our cause it is just;  
And this be our motto: “In God is our trust!”  
And the star-spangled banner in triumph shall wave  
O'er the land of the free, and the home of the brave.

#### V. Suggested Reading:

For an overview of the ratification of the Constitution, the  
subsequent state conventions, and the debates at the Virginia  
Convention, see:

Unger, Harlow Giles. *America's Second Revolution: How  
George Washington Defeated Patrick Henry and Saved the  
Nation*. Hoboken, NJ: John Wiley & Sons, 2007.

———. *Lion of Liberty: Patrick Henry and the Call to a New  
Nation*. Cambridge, MA: Da Capo Press, 2010.

For the complete speeches by Federalists and Antifederalists  
during the ratification process, see:

*The Debate on the Constitution: Federalist and Antifederalist  
Speeches, Articles, and Letters During the Struggle over  
Ratification: Part One: September 1787 to February 1788*. New  
York: The Library of America, 1993.

*The Debate on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification: Part Two: January to August 1788.* New York: The Library of America, 1993.

For an in-depth treatment of the Jay-Gardoqui Treaty and its implications, consult:

**Kukla, Jon.** *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America.* New York: Alfred A. Knopf, 2003, repr., New York: Anchor Books, 2004.

For a copy of the Constitution with its Bill of Rights and Amendments, see:

*Forty Proclamations: The Theology of Grace Doctrine Church.* St. Charles, MO: Joe Griffin Media Ministries, 2011. (55–91)

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