Arguments Against Ratification of the Constitution at the Virginia Convention (1788)

When the delegates to the Virginia convention debated the Constitution in June 1788, they did so under the assumption that an aye vote there would provide the vital, deciding ninth affirmative needed for ratification. As it turned out, New Hampshire provided that necessary vote; but acting without that knowledge and aware that other states deemed Virginia's acceptance critical to the success of a new government, these delegates were especially primed to do battle. Adding to the dynamism of this particular convention was the caliber of the participants: there were exceptional men among both the proponents of and opponents to the Constitution. Among its champions were Edmund Pendleton, James Madison, George Nicholas, and John Marshall. Opposing them was a formidable team that included, to name just a few, George Mason, Richard Henry Lee, James Monroe, and its leader Patrick Henry. Henry had served as a wartime governor of the state but had made his reputation through his inflammatory rhetoric as a young revolutionary. In the following selection he once again uses his oratory talents as well as legal skills to try to guide public affairs as he presents impassioned, imaginative, and negative arguments.

Wednesday, 4 June 1788

The Convention, according to the order of the day, resolved itself into a committee of the whole Convention, to take into consideration the proposed plan of government, Mr. Wythe in the chair.

Mr. HENRY moved,— That the act of Assembly appointing deputies to meet at Annapolis to consult with those from some other states, on the situation of the commerce of the United States—the act of Assembly appointing deputies to meet at Philadelphia, to revise the Articles of Confederation—and other public papers relative thereto—should be read.

Mr. PENDLETON then spoke to the following effect: Mr. Chairman, we are not to consider whether the federal Convention exceeded their powers. It strikes my mind that this ought not to influence our deliberations. This Constitution was transmitted to Congress by that Convention; by the Congress transmitted to our legislature; by them recommended to the people; the people have sent us hither to determine whether this government be a proper one or not. I did not expect these papers would have been brought forth. Although those gentlemen were only directed to consider the defects of the old system, and not devise a new one, if they found it so thoroughly defective as not to admit a revising, and submitted a new system to our consideration, which the people have deputed us to investigate, I cannot find any degree of propriety in reading those papers.

Mr. HENRY then withdrew his motion.

The clerk proceeded to read the preamble, and the two first sections of the first article.

* * *
Mr. HENRY. Mr. Chairman, the public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation, and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say that they are exceedingly uneasy at being brought from that state of full security, which they enjoyed, to the present delusive appearance of things. A year ago, the minds of our citizens were at perfect repose. Before the meeting of the late federal Convention at Philadelphia, a general peace and a universal tranquillity prevailed in this country; but, since that period, they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the situation of public affairs. I conceived the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen 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 engagements of the states—a proposal of establishing nine states into a confederacy, to the eventual exclusion of four states. It goes to the annihilation of those solemn treaties we have formed with foreign nations.

The present circumstances of France—the good offices rendered us by that kingdom—require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians; those treaties bound us as thirteen states confederated together. Yet here is a proposal to sever that confederacy. Is it possible that we shall abandon all our treaties and national engagements?—and for what? I expected to hear the reasons for an event so unexpected to my mind and many others. Was our civil polity, or public justice, endangered or sapped? Was the real existence of the country threatened, or was this preceded by a mournful progression of events? This proposal of altering our federal government is of a most alarming nature! Make the best of this new government—say it is composed by anything but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. . . . It will be necessary for this Convention to have a faithful historical detail of the facts that preceded the session of the federal Convention, and the reasons that actuated its members in proposing an entire alteration of government, and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, We, the people? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, We, the people, instead of, We, the states? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. . . . It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. Disorders have arisen in other parts of America; but here, sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. . . . 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. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

* * *

Mr. GEORGE MASON. Mr. Chairman, whether the Constitution be good or bad, the present clause clearly discovers that it is a national government, and no longer a Confederation. I mean that clause which gives the first hint of the general government laying direct taxes. The assumption of this power of laying direct taxes does, of itself, entirely change the confederation of the states into one consolidated government. This power, being at discretion, unconfined, and without any kind of control, must carry every thing before it. The very idea of converting what was formerly a confederation to a consolidated government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the state governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harassed? These two concurrent powers cannot exist long together; the one will destroy the other: the general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former. Is it to be supposed that one national government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained, by history, that there never was a government over a very extensive country without destroying the liberties of the people: history also, supported by the opinions of the best writers, shows us that monarchy may suit a large territory, and despotic governments ever so extensive a country, but that popular governments can only exist in small territories . . . . It would be impossible to have a full and adequate representation in the general government; it would be too expensive and too unwieldy. We are, then, under the necessity of having this a very inadequate representation. Is this general representation to be compared with the real, actual, substantial representation of the state legislatures? It cannot bear a comparison. To make representation real and actual, the number of representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel,—ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition. Now, these great ingredients are either not at all, or in a small degree, to be found in our federal representatives; so that we have no real, actual, substantial representation: but I acknowledge it results from the nature of the government. The necessity of this inconvenience may appear a sufficient reason not to argue against it; but, sir, it clearly shows that we ought to give power with a sparing hand to a government thus imperfectly constructed. To a government which, in the nature of things, cannot but be defective, no powers ought to be given but such as are absolutely necessary. There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and, considering the natural lust of power so inherent in man, I fear the thirst of power will prevail to oppress the people. . . . But my principal objection is, that the Confederation is converted to one general consolidated government, which, from my best judgment of it, (and which perhaps will be shown, in the course of this discussion, to be really well founded,) is one of the worst curses that can possibly befall a nation. Does any man suppose
that one general national government can exist in so extensive a country as this? I hope that a
government may be framed which may suit us, by drawing a line between the general and state
governments, and prevent that dangerous clashing of interest and power, which must, as it now
stands, terminate in the destruction of one or the other. When we come to the judiciary, we shall
be more convinced that this government will terminate in the annihilation of the state
governments: the question then will be, whether a consolidated government can preserve the
freedom and secure the rights of the people.

If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it.
When such amendments as shall, from the best information, secure the great essential rights of
the people, shall be agreed to by gentlemen, I shall most heartily make the greatest concessions,
and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity.

Thursday, 5 June 1788

Mr. HENRY.

I rose yesterday to ask a question which arose in my own mind. When I asked that question, I
thought the meaning of my interrogation was obvious. The fate of this question and of America
may depend on this. Have they said, We, the states? Have they made a proposal of a compact
between states? If they had, this would be a confederation. It is otherwise most clearly a
consolidated government. The question turns, sir, on that poor little thing—the expression, We,
the people, instead of the states, of America. I need not take much pains to show that the
principles of this system are extremely pernicious, impolitic, and dangerous. Is this a monarchy,
like England—a compact between prince and people, with checks on the former to secure the
liberty of the latter? Is this a confederacy, like Holland—an association of a number of
independent states, each of which retains its individual sovereignty? It is not a democracy,
wherein the people retain all their rights securely. Had these principles been adhered to, we
should not have been brought to this alarming transition, from a confederacy to a consolidated
government. Here is a resolution as radical as that which separated us from Great Britain. It
is radical in this transition; our rights and privileges are endangered, and the sovereignty of
the states will 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, by this change, so loudly talked
of by some, and inconsiderately by others. Is this tame relinquishment of rights worthy of
freemen? Is it worthy of that manly fortitude that ought to characterize republicans? You are
not to inquire how your trade may be increased, nor how you are to become a great and powerful
people, but how your liberties can be secured; for liberty ought to be the direct end of your
government.

What, sir, is the genius of democracy? Let me read that clause of the bill of rights of Virginia
which relates to this: 3d clause:—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 effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate, or contrary to those purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

This, sir, is the language of democracy—that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If, then, gentlemen, standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. . . .

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimited, exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession. . . .

* * *

. . . An opinion has gone forth, we find, that we are contemptible people: the time has been when we were thought otherwise. Under the same despised government, we commanded the respect of all Europe: wherefore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions where it has never been expected; it has gone to the people of France, in search of a splendid government—a strong, energetic government. Shall we imitate the example of those nations who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government—for the loss of their liberty? If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the
genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir: go to the poor man, and ask him what he does. He will inform you that he enjoys the fruits of his labor, under his own figtree, with his wife and children around him, in peace and security. Go to every other member of society,—you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. . . .

* * *

Monday, 14 June 1788

Mr. HENRY. Mr. Chairman, the necessity of a bill of rights appears to me to be greater in this government than ever it was in any government before. I have observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained which are not expressly relinquished. I repeat, that all nations have adopted this construction—that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, is within the king's prerogative. It is so in that country which is said to be in such full possession of freedom. . . .

* * *

If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, 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.

* * *

. . . A bill of rights is a favorite thing with the Virginians and the people of the other states likewise. It may be their prejudice, but the government ought to suit their geniuses; otherwise, its operation will be unhappy. A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected
places, or seize persons not named, without evidence of the commission of a fact, &c. There was
certainly some celestial influence governing those who deliberated on that Constitution; for they
have, with the most cautious and enlightened circumspection, guarded those indefeasible rights
which ought ever to be held sacred! . . .

* * *

Tuesday, 24 June 1788 [Mr. Henry]

* * *

With respect to that part of the proposal which says that every power not granted remains with
the people, it must be previous to adoption, or it will involve this country in inevitable
destruction. To talk of it as a thing subsequent, not as one of your unalienable rights, is leaving it
to the casual opinion of the Congress who shall take up the consideration of that matter. They
will not reason with you about the effect of this Constitution. They will not take the opinion of
this committee concerning its operation. They will construe it as they please. If you place it
subsequently, let me ask the consequences. Among ten thousand implied powers which they may
assume, they may, if we be engaged in war, liberate every one of your slaves if they please. And
this must and will be done by men, a majority of whom have not a common interest with you.
They will, therefore, have no feeling of your interests. It has been repeatedly said here, that the
great object of a national government was national defence. That power which is said to be
intended for security and safety may be rendered detestable and oppressive. If they
give power to
the general government to provide for the general defence,
the means must be commensurate to
the end. All the means in the possession of the people must be given to the government which is
intrusted with the public defence. In this state there are two hundred and thirty-six thousand
blacks, and there are many in several other states. But there are few or none in the Northern
States; and yet, if the Northern States shall be of opinion that our slaves are numberless, they
may call forth every national resource. May Congress not say,
that every black man must fight? Did we not see a little of this last war? We were not so hard pushed as to make
emancipation general; but acts of Assembly passed that every slave who would go to the army
should be free. Another thing will contribute to bring this event about. Slavery is detested. We
feel its fatal effects—we deplore it with all the pity of humanity. Let all these considerations, at
some future period, press with full force on the minds of Congress. Let that urbanity, which I
trust will distinguish America, and the necessity of national defence,—let all these things operate
on their minds; they will search that paper, and see if they have power of manumission. And
have they not, sir? Have they not power to provide for the general defence and welfare? May
they not think that these call for the abolition of slavery? May they not pronounce all slaves free,
and will they not be warranted by that power? This is no ambiguous implication or logical
deduction. The paper speaks to the point: they have the power in clear, unequivocal terms, and
will clearly and certainly exercise it. As much as I deplore slavery, I see that prudence forbids its
abolition. I deny that the general government ought to set them free, because a decided majority
of the states have not the ties of sympathy and fellow-feeling for those whose interest would be
affected by their emancipation. The majority of Congress is to the north, and the slaves are to the
south.
In this situation, I see a great deal of the property of the people of Virginia in jeopardy, and their peace and tranquillity gone. I repeat it again, that it would rejoice my very soul that every one of my fellow-beings was emancipated. As we ought with gratitude to admire that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellowmen in bondage. But is it practicable, by any human means, to liberate them without producing the most dreadful and ruinous consequences? We ought to possess them in the manner we inherited them from our ancestors, as their manumission is incompatible with the felicity of our country. But we ought to soften, as much as possible, the rigor of their unhappy fate. I know that, in a variety of particular instances, the legislature, listening to complaints, have admitted their emancipation. Let me not dwell on this subject. I will only add that this, as well as every other property of the people of Virginia, is in jeopardy, and put in the hands of those who have no similarity of situation with us. This is a local matter, and I can see no propriety in subjecting it to Congress.

With respect to subsequent amendments, proposed by the worthy member, I am distressed when I hear the expression. It is a new one altogether, and such a one as stands against every idea of fortitude and manliness in the states, or any one else. Evils admitted in order to be removed subsequently, and tyranny submitted to in order to be excluded by a subsequent alteration, are things totally new to me. . . . I ask, does experience warrant such a thing from the beginning of the world to this day? Do you enter into a compact first, and afterwards settle the terms of the government? . . .

* * *