



Liberty Tree

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WHAT'S **WRONG**

WITH

Rights



By Dick Greb

— Madison's address —

Governments don't like limits on their power.

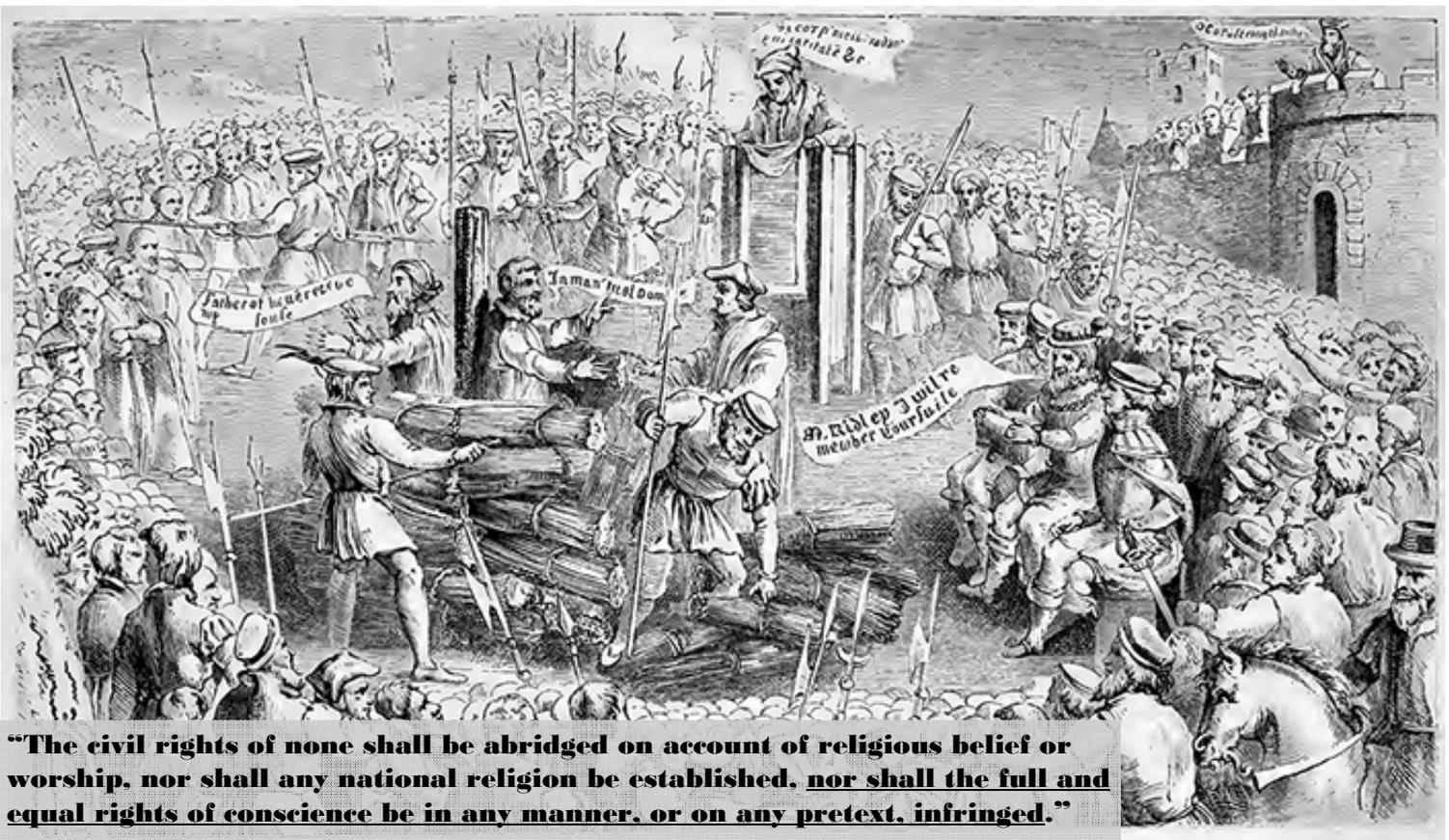
Some years ago, on one of many trips to the local college's library, I set out to copy those parts of the debates in Congress concerning the adoption of what would come to be known as the Bill of Rights. In the early years of the republic, they were published in volumes entitled *Gales & Seaton's History of Debates in Congress*. Recently I came across my collection of these photocopied pages, and got to thinking that many people might never have had the opportunity to read for themselves the positions of these early representatives on such an important subject. So I aim to rectify that situation by reprinting extensive excerpts of those discussions, with only the occasional interruption for my own opinions on the subject.

First, a little background to set the stage. It was Monday, June 8, 1789, and the day's session of the House was just beginning. James Madison rose and addressed the House, reminding them that this was the day that had been scheduled to bring forth the proposed amendments to the Constitution. Nevertheless, there was quite a bit of opposition to embarking on the discussion at that time. Some Representatives expressed a reluctance to interrupt the work of organizing the new government, and some felt that it was premature to make alterations in the Constitution before they had even gained any actual experience under its current provisions. In a general sense, it was felt that they just couldn't spare the time. Finally, Madison got the floor again, and after reproving his colleagues for wasting more time arguing against his motion to begin consideration of the subject than would have been necessary if they had just let him proceed, begins to lay out his position on the proposed amendments.

upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. *It appears to me that this House is bound by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures some things to be incorporated into the constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that those who have been friendly to the adoption of this constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this constitution in order to lay the foundation of an aristocracy or despotism.*¹ It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

1. All emphases throughout, unless otherwise noted, have been added.

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“The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.”

Depicted above is the burning of Bishop Nicholas Ridley and Master Hugh Latimer during the reign of Queen Mary (“Bloody Mary”), a tyrant determined to return England to the Roman Catholics. Her father, King Henry VIII, had broken with the papacy and established the Church of England. When Mary came to the throne, she had Ridley and Latimer arrested and “examined” at Oxford. Asked if the pope was heir to Peter as the foundation of the Church, Ridley replied that the Church was not built on any man, but on the *truth* Peter had confessed — that Christ, the spiritual rock, was the Son of God. Latimer told the examining commissioners he would not accept Catholic mass as the sacrifice of Christ, stating: “Christ made one oblation and sacrifice for the sins of the whole world, and that a perfect sacrifice; neither needeth there to be, nor can there be, any other propitiatory sacrifice.”

Latimer and Ridley’s beliefs were deeply offensive to the Catholic commissioners, and so they were condemned to death for failure to submit to the Queen’s religion. Both were chained to the same stake on October 16, 1555, and burned to death. They publicly commended their souls to the Lord’s keeping and Latimer was heard to say to Ridley: “Be of good comfort, Master Ridley, and play the man. We shall this day light such a candle, by God’s grace, in England, as I trust shall never be put out.” It is this type of tyrannical persecution for religious conviction that James Madison, and the framers of the Bill of Rights, sought to prevent by the First Amendment.

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It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it; among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object, is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this constitution. The acquiescence which our fellow-

citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the constitution may be amended; that is to say, if all

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power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revival of the constitution, we must feel for the constitution itself, and make that revival a moderate one. *I should be unwilling to see a door opened for a reconsideration of the whole structure of the Government—for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself.* But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration but is likely to meet the concurrence required by the constitution. *There have been objections of various kinds made against the constitution.* Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; *because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary power of the State Governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who oppose it, dislike it because it did not contain effectual provisions against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and*



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the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First. *That there be prefixed to the constitution a declaration, that all power is originally vested in, and consequently derived from, the people.*

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

[Second and third amendments in the list relate to the number of Representatives and pay of Congressmen, respectively.]

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, *nor shall any national religion*

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Samuel Adams Returns – The Anti-Federalists had it right!

Showtimes: Saturday 9:00 AM and 7:00 PM EASTERN

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be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath of affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to _____ dollars; nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this constitution are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments.

The powers not delegated by this constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered article 8th.

Such was the list of proposed changes to the constitution that James Madison brought to the table. Certainly, most of them look familiar enough, but if you read carefully, there are noticeable differences between this early version of them and what ultimately became the first ten amendments. And those differences can give us some valuable insight into what was originally intended. Next month, we'll take a look at some of the distinctions, and finish up with Madison's initial speech explaining the objectives of the amendments he offered.

