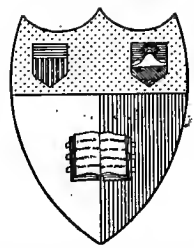

AMERICAN DEBATE

A HISTORY OF POLITICAL AND ECONOMIC CONTROVERSY IN THE UNITED STATES, WITH CRITICAL DIGESTS OF LEADING DEBATES

BY

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PART I

COLONIAL, STATE, AND NATIONAL RIGHTS

1761–1861

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PREFACE

FROM the days of Pericles and Thucydides the statesmen and historians of young democracies have paid great attention to the study of debates as recording the arguments by which the principles and institutions of their governments were established. This was notably the case with early American public men and political writers. For the first half century of the life of the Republic the records of Congress were not so extensive that a faithful student could not compass their contents, and statesmen such as Webster, Calhoun, and Benton largely owed their reputation to the thoroughness of their knowledge of the statements made by their predecessors in regard to constitutional law and governmental policy. Shortly before the Civil War, however, the recorded Congressional debates had become too voluminous for such first-hand knowledge, and ex-Senator Benton, impressed with the importance to public men of an acquaintance with at least the opinions and arguments of the more prominent of the elder statesmen on leading questions in our political history, published in 1857 in twenty volumes an *Abridgment of the Debates of Congress from 1789 to 1856*, which was designed to supply such material, although his selections from the debates after 1850 were exceedingly meager, owing to the advanced age of the editor. After the publication of this monumental work, states-

men, publicists, and even historians resorted to it rather than to the original records as a source of political information, supplying the gaps which Benton had left—for he "played up" subjects in which he was specially interested, notably the currency, to the minimization of equally or even more important ones such as slavery, and gave great space to the speeches of his favorite statesmen—especially himself—which should have been divided with other men whom time has proved to have been as worthy as these, and in some instances far greater than they. Thus in his abridgment of the speeches on the Mexican War Benton omitted entirely the arraignment of President Polk by Representative Abraham Lincoln, a masterpiece of satire, and reduced to a spiritless paragraph Senator Corwin's denunciation of the war, the only American oration which in daring attitude and fiery eloquence is comparable to the elder Pitt's great speech on behalf of the American revolutionists.

Lincoln was the last of our great statesmen to make a thorough examination of the official records to gain information first hand as to the ideas and ideals upon which the "Fathers" founded the Republic and their successors maintained and developed it. Thus, in preparation of the Cooper Union speech on "Slavery as the Fathers Viewed It" (February, 1860), which contributed so largely to his nomination for the Presidency, he analyzed Jonathan Elliott's *Debates on the Federal Constitution* (copyrighted in 1836), containing Judge Robert Yates's and James Madison's minutes of the same, and formed a perfect enumeration of the opinions therein expressed on the constitutional aspect of slavery.

The early American historians also employed as

their chief source of material the debates in the British Parliament concerning colonial affairs; in the colonial assemblies; in the Continental Congress; in the Congress of the Confederation; in the Constitutional Convention; and in the Federal Congress. Of these writers a much neglected historian, who had been a Representative in Congress of sterling ability as a debater, Timothy Pitkin, of Connecticut, is highly representative. His *A Political and Civil History of the United States . . . to the Close of the Administration of President Washington,* published in two volumes at New Haven in 1828, still forms the best handy collection and digest of the State papers and political speeches and debates relative to America from the original charters of the colonies down to the Farewell Address of the first President of the Republic. As such it has been largely drawn upon by the writer of the present book.

Owing to the vast and ever-increasing volume of Congressional discussions, and the lack of logical arrangement in presenting, and indeed in indexing, these in the official records, our more recent statesmen and writers have neglected the study of debates in their original form, and relied upon the summarizing statements of historians and publicists for information concerning the political issues and opinions of the preceding generations. Too often they have elected as the "authorities" to be followed those whose views supported their own partisan opinions.

The distortion and obscuration of truth which inevitably results from such a practice is fully recognized by conscientious scholars and teachers, and other conservators of accurate knowledge such as librarians and collectors of Americana. These persons welcome every authentic "source book" which presents in available

form the original expression of ideas which have influenced American thought and institutions. Accordingly, with faith in the immediate recognition by them of the value of the book, and in the ultimate appreciation of it by the public, the present writer edited in 1913 for the Current Literature Publishing Company of New York a work in fourteen volumes entitled *Great Debates in American History*, which presented in topical order the text of Congressional and other public discussions of the chief issues in our politics from the debates on the Stamp Act (1764–65) down to the close of the Taft Administration (1912–13). By the courtesy of the publishers the writer is permitted to use as a basis for the digests in the present book the more important debates in the compilation, thus saving him recourse again to official records and a repetition of the labor of excising unimportant material, the first process in an abridgment which would be necessarily extended to a far greater degree in the smaller work. It must not be inferred from this statement, however, that AMERICAN DEBATE is, either in material or editorial form, a "boiled-down" edition of *Great Debates in American History*. Entirely new debates essential to the author's purpose of presenting a connected political history of the country appear in the smaller work.

The plans of the two books are wholly different. The earlier work is a compilation in which the writer acted as an *editor*. The present book is a history and a treatise of which the writer may legitimately claim to be the *author*. Yet it is hoped that the reader will feel in the smaller work the spirit which animates the larger, concerning which a reviewer in the *New York Evening Sun* said: "Anybody who finds such debates unattractive must be insensible to the interest

of history, which is the very romance of the race in record."

While compiling the former work the writer was required by the ethics of his editorial position to exclude accounts of political events concerning which there were no debates, and to refrain from comments on the validity of the arguments set forth and on the skill of the debaters, however much he was impelled to make such observations. He therefore resolved to produce at a later time a short but continuous political history of the United States largely but not exclusively as reflected in debates on issues of supreme importance, which work should serve also as a manual upon the Art of Debate, to this end containing an exposition of forensic principles and practice as exemplified in the logic and parliamentary finesse of our greatest statesmen. Since many treatises exist upon the Art of Oratory with examples of American eloquence he determined to subordinate rhetoric to argument in his choice of selections, and his comment thereon. Nevertheless, so frequent, and, as a rule, so fitted to the purpose of the speaker are flights of oratory in the literature of American debate, that any work on the subject could not fail to afford examples of eloquence suited for declamation and exemplification of the rhetoric of public speaking.

AMERICAN DEBATE is in fulfillment of this plan. It is intended to serve as (1) an historical account of main subjects of public discussion in the United States down to the beginning of the Civil War; (2) an exposition of the chief political and economic principles which have been incorporated in the legislation and the governmental institutions of the country; (3) a history of American political issues and events; (4) a treatise upon the art of debate as exemplified in American fo-

rensic contests; (5) a guide to the Congressional records and the best compilations of debates and individual speeches; (6) a collection of examples of American eloquence; and (7) a collection of short biographies of leading statesmen, with appreciations of their abilities, particularly as debaters.

Abstracts of great debates, with verbatim quotations of the most significant passages in the speeches, form the nuclei of the book. These are introduced by recitals of the events leading up to the debates and expositions of the issues involved, and are accompanied by a running critical comment by the author upon the conduct of the argument and the ability of the debaters, which is occasionally enforced and supplemented by opinions, chiefly contemporaneous, of other critics.

Volume I is concerned with political, or, more strictly, constitutional debates: the controversies which occupied the chief attention of the American people from Colonial days until the Civil War, namely, those over Colonial Rights, Nationality, State Rights, and Secession. Volume II treats of economic debates: the controversies over Land and Slavery, which was the form that the Labor question chiefly assumed in the period of our national history before the Civil War.

The accounts of these debates are connected by an outline of intervening political events and discussions, the dates of the latter being given to enable the reader to find the texts of the same in full in the Congressional records, and volume and page references being made to the places where more or less abridged texts may be consulted in *Great Debates in American History*, and in compilations of speeches such as *American Orations*, edited by Alexander Johnston and James Albert Wood-

burn, and published by G. P. Putnam's Sons, New York. In order to save the reader troublesome resort to biographical dictionaries for personal data concerning the principal debaters, short sketches of the lives of these are presented in connection with the debates. The author has made it a rule to reduce reference to other books so far as the limitations of the book permit.

It is believed, therefore, that, owing to its unusual character, its visualizing and vitalizing point of view, the book will prove acceptable to all persons interested in American history, politics, civics, and economics, especially teachers and students in academies, colleges, and professional schools, and those outside of such institutions who desire to become forcible and persuasive speakers in legislative halls, at the bar, or on the public platform, or who wish to train themselves in writing intelligently and cogently on political and economic topics.

The effective speakers and writers on serious subjects are those who are in possession of exact information, whose principles are fundamental, whose logic is clear and sound, and who, by an imagination cultivated until it is spontaneous, can place themselves and the persons addressed in the situations which are described. The study of the principles of debate and their practical exemplification develop all these acquisitions and faculties. It was this that lifted the early American statesmen and writers, even authors in seemingly remote fields of literature, such as poetry, to a higher plane than that warranted by the general state of culture in the country. The citizens of that day were all vitally interested in politics, especially as revealed in public discussion. They fully realized that the generation of which they were a part was making basic history

—was establishing the principles upon which the nation was to develop not only along political and economic lines but also in social and artistic culture. As the writer said in his preface to *Great Debates in American History:* "Debate is the crucible of law, which is the metal of history." The modern method of acquiring general ideas of American legislation and government through the reflected views of historians and publicists can never be as impressive as a direct presentation of the acts of fusing and casting these laws and institutions. Until such processes are visualized, making the reader in effect a contemporary of the action, it cannot be said that he truly *knows* them. When he has felt in his own spirit the fervor of the builders of the nation, then only can he exclaim with the favorite poet of our fathers, the patriotic Longfellow:

> Thou, too, sail on, O Ship of State!
> Sail on, O Union, strong and great!
> . . . . . .
> We know what Master laid thy keel,
> What Workmen wrought thy ribs of steel,
> Who made each mast, and sail, and rope,
> What anvils rang, what hammers beat,
> In what a forge and what a heat
> Were shaped the anchors of thy hope!

M. M. Miller.

The Authors Club,
New York City,
1915.

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American Debate

CHAPTER I[1]

WRITS OF ASSISTANCE

1761

Navigation Acts—Acts of the British Board of Trade and Plantations—British Restriction of American Manufactures—Adam Smith's Indictment of the British Colonial System—Friendly Colonial Policies of Walpole and the Elder Pitt—The "Molasses Act"—British Attempt to Enforce it in Massachusetts by "Writs of Assistance"—Test Trial of the Writs—Argument of Jeremiah Gridley, King's Counsel, in Favor of the Writs—Arguments of Oxenbridge Thacher and James Otis, Opposed—Sketches of Counsel—Abstract, with Comments, by John Adams of Otis's Speech—Result of the Trial.

THE first considerable disagreement which rose between the American colonies and the mother country was in regard to the navigation acts.

Hardly had the Virginia colonists established themselves when the English government began to seek a revenue from them and to plan for a monopoly of their trade by English merchants and manufacturers. These ends they sought to accomplish by laying a tariff on their sole product at the time, tobacco, and by prohibiting their commerce in it with foreign nations.

[1] Chapter I., "Colonial Charters," in Volume II. forms also an introduction to this volume.

James I., consistently with his personal opposition to the use of the "Indian weed" (he had published anonymously in 1604 a *Counterblaste to Tobacco*), but undoubtedly more greatly moved by his royal desire for tribute, laid heavy duties on importation of that article from Virginia into his kingdom.

In consequence of this action the Virginia Company in 1621 sent all their tobacco to Holland, thereby occasioning a loss of revenue to the English government and of trade to English merchants and manufacturers. To prevent this in the future the Crown and Council, who then and long afterwards regulated the affairs of the American plantations, prohibited the exportation from the colonies of tobacco and all other productions to foreign ports unless they were first landed in England and the customs were paid, stating as an equitable reason for doing so that the colonies had received immunities from the Crown with a view to their incorporation into the English commonwealth, to which condition trading with a foreign nation was claimed to be repugnant. These orders, however, were not rigidly enforced, even by royal governors, and, in order to cure this negligence, soon after the Restoration the English Parliament passed a sweeping navigation act (12th Car. II.) enforcing the order of James I., and specially enumerating as monopolized products, sugar, tobacco, cotton, indigo, ginger, fustic, and other dyeing woods. This was followed in 1663 by an act limiting the *import* trade of the colonies to productions shipped in England and in English bottoms. The preamble of the act boldly confessed that it was framed for the benefit of the mother country, and cited as a precedent the usage of other nations in monopolizing their plantation trade.

These acts the colonists regarded as highly injurious to their interests, depriving them of the natural right to seek the best markets and procure the best goods at the least expense. Indeed, in some colonies, Rhode Island and Massachusetts in particular, they were held to be in violation of charter rights, and were totally disregarded. Virginia, which could not claim chartered immunity, humbly petitioned for repeal of the acts, but its prayer was not heeded. In 1671 Governor Berkeley protested to the Board of Trade that the restrictions of the navigation act, cutting off all trade with foreign countries, were very injurious to the Virginians, as they were obedient to the laws. And "this," says he, "is the cause why no small or great vessels are built here; for we are most obedient to all laws, whilst the New England men break through, and men trade to any place that their interest leads them."

In 1677 Edward Randolph, officer of the customs in New England, reported that Massachusetts paid no notice to these or any other laws made in England for the regulation of trade, but acted as if it "would make the world believe" it was "a free State." The King and his ministry were greatly displeased with the insubordinate colony, and the General Court of Massachusetts, fearing that non-compliance with the acts would lead to a total breach with the mother country and condign punishment of the colony, yet desiring to maintain the principle of independence of Parliament, whose authority they denied since Massachusetts was not represented therein, passed a law of the colony that the acts, despite the hardship they entailed, should be complied with.

In 1696 the affairs of the colonies were placed by the

British government in charge of "a Board of Trade and Plantations," with special instructions to inquire into the commerce of the colonies in order to discover how it could be regulated for the good of the mother country. About the same time Parliament passed an act clothing custom-house officers in America with the powers of those in England to visit and search vessels and houses for the purpose of seizing goods illegally imported. The act nullified all colonial laws and usages which were repugnant to the navigation acts, and even declared void any law relating to the colonies "*hereafter to be passed in this kingdom.*"

The "Molasses Act." The navigation acts continuing to be disregarded by the northern colonies, Parliament, in order to punish them, and to emphasize its displeasure by favoring, at the same time, the southern colonies, in which cane-growing had been introduced, imposed duties so heavy as to be virtually prohibitive on sugar and molasses imported into the plantations from foreign colonies, that is, from the West Indies. This law, called the "Molasses Act," was so oppressive, in that if enforced it would destroy a chief industry of New England, the manufacture of rum, and seriously cripple the main livelihood of the people, fishing, by which they were enabled to secure in exchange West Indian products, and it was also so palpably punitive in intent, that it could never be executed. The attempt to enforce it, as we shall shortly see, was the beginning of the breach between the colonies and the mother country.

Anti-Manufacturing Acts. Before coming to the controversy over this issue it is in place here to revert to the efforts of England to secure a monopoly of the *consumption* as well as of the production of the colonies.

In 1699 Parliament enacted that "no wool, yarn, or woollen manufactures of the American plantations should be shipped there, or even laden, in order to be transported from thence, to any place whatsoever." Later declarations confessed that this was to prevent manufacturing in the colonies, in order to maintain their dependence upon Great Britain. In despite of these restrictions, manufacturing increased in America so greatly that British manufacturers complained of it to Parliament, whereupon, in 1731, the House of Commons instructed the Board of Trade to inquire into the matter. The Board, however, made a report sympathetic with the colonists, even recommending encouragement of silk, linen, and woollen manufactures in New England as being of service to Great Britain, particularly in the supply of naval stores.

Nevertheless the company of hatters in London had sufficient influence with Parliament to procure in 1732 the prohibition of intercolonial commerce in hats, the limitation to two of the number of apprentices in each colonial hat factory, the requirement that these should serve seven years before being employed as laborers, and the exclusion of negroes from such employment.

The British iron manufacturers were next heard from. They were willing, they said, to permit the colonists to reduce the iron ore, in which America abounded, into pigs and bar iron, and to transport the same to England duty free, but they demanded for themselves a monopoly of the succeeding processes of manufacture. This was granted in 1750 by an act which prohibited under heavy fines the erection or maintenance of mills and engines for slitting or rolling iron, and of plating forges, tilt hammers, and furnaces for making steel.

Indictments of British Colonial Policy. Such was

the selfish colonial policy of Great Britain which was in 1776 to receive two notable indictments: that of the thirteen great provinces which had been lost by the system, framed in the immortal phrases of Jefferson; and the less known but equally condemnatory words of Adam Smith, whose *Wealth of Nations*, completed four years before, was published in the same year. Said the great British economist at the close of an outline of the system:

"To prohibit a great people . . . from making all they can of every part of their own produce, or from employing their stock and industry in the way they judge most advantageous to themselves, is a manifest violation of the sacred rights of mankind."

It must not be thought that there were no influential men in Great Britain before the time of Adam Smith broad-minded enough to see the folly of their country's colonial policy. Indeed, the most powerful statesmen, the prime ministers Walpole and the elder Pitt, did all they could to render inoperative the unwise acts of Parliament in respect to the colonies, ignoring in particular the navigation acts and the laws passed for the restriction of manufactures. Walpole went so far as to state boldly that his policy had always been to encourage American commerce to the utmost latitude, and that to this end he had passed over infractions of the navigation acts in respect to trade with European nations other than Great Britain. Such commerce, he claimed, would greatly increase the wealth of the Americans, and, since the bulk of their trade would naturally remain with Great Britain, more and more of British products would be taken by them in exchange profitable to both parties. "This is *taxing* them," he

astutely said, "more agreeably to their constitution and laws."

Writs of Assistance. Pitt, as we shall see later, held similar views. However, during the last two years of his glorious administration from 1757 to 1761, when there was need of revenue from every source owing to the wars incurred by his vigorous foreign policy, and when he had to meet opposition among the members of his ministry, who were narrow-minded "little Englanders," out of sympathy with his broad scheme of empire-building, an attempt was made to collect the odious duties on foreign sugar and molasses imposed on the colonies. In 1760, orders were sent to the American custom-house officers, particularly in Massachusetts, to enforce the orders of trade in this regard. These officers were directed to apply, if necessary, to the Superior Court of Massachusetts for "writs of assistance" to enable them legally to break open and enter shops, storehouses, etc., in order to search for foreign goods on which the duties had not been paid. This was in accordance with the usages of the court of exchequer in Great Britain.

The people were greatly aroused by the orders of the ministry. The enforcement of the "Molasses Act" they realized would destroy an important industry of New England, the manufacture of rum and its sale abroad, particularly in Africa, where it was largely exchanged for slaves, cut them out of the profitable trade as middlemen between the foreign West Indies and Europe, and greatly cripple their chief dependence for a livelihood, fishing, since it was fish that they gave in exchange for the West Indian products. The royal Governor of Massachusetts, Sir Francis Bernard, reported to the British Government that the publication of the orders had "caused a greater alarm

in the country than the taking of Fort William Henry by the French in 1757."

The first application for a writ of assistance was made at Salem, Massachusetts, in November, 1760, to Stephen Sewall, Chief-Justice of the Superior Court of the province. Judge Sewall, a learned jurist, expressed doubts as to the legality of the writ and his power to grant it, and directed the question to be argued at the next term of court, in Boston, in February, 1761. Before this date Sewall died, and Thomas Hutchinson was appointed in his place, a judge of incipient Tory proclivities which were shortly to be emphatically expressed.[1]

The merchants of Boston, being specially concerned over the outcome of the trial, resolved to resist the application with the best legal talent available. Accordingly they engaged Oxenbridge Thacher and James Otis, two of the most distinguished lawyers in Boston, being surpassed in reputation only by Jeremiah Gridley, the king's attorney, whose duty it was to support the application for the writs. Mr. Gridley was an older man than his opponents, having been graduated from Harvard in 1725; indeed, he had been the law teacher of Otis. He was a Whig in principle, and after the trial was probably glad in his heart at the triumph over him which was achieved by his brilliant pupil.

Thacher and Otis were both graduates of Harvard. Thacher at the time of the application for the writs was one of the four representatives of Boston in the legislature.[2] He had already asserted the rights of the

[1] See Chapter IV.

[2] The "General Court," as this was called, was composed of two branches: (1) the Council, of twenty-eight members, chosen annually by joint ballot of the old Council and the House of Representatives, the

colonists in a pamphlet, *Sentiments of a British-American, occasioned by an Act to Lay Certain Duties in the British Colonies and Possessions.* John Adams said, "the advocates of the Crown hated him worse than they did James Otis or Samuel Adams."

Sketch of Otis. James Otis was a fine classical and literary scholar, publishing a work on Latin Prosody and a dissertation on *The Power of Harmony in Prosaic Composition.* He is chiefly noted, however, for his political writings and orations, the latter procuring him the title in American history of "the Patrick Henry of New England." Though stout in figure he was very graceful. His face was handsome, his eye piercing, and his voice strong in quality and musical in modulation. His political works are *A Vindication of the Conduct of the Representation of Massachusetts Bay* (1762), *The Rights of the British Colonies Asserted and Proved* (1764), *Considerations on Behalf of the Colonists* (1765), and *A Vindication of the Colonies* (1765). John Adams said that these contained every argument to be found in the Declarations of Rights and Wrongs issued by Congress in 1774, the Declaration of Independence, the French constitutions, the writings of Price, Priestley, Paine, *et al.* In 1765–66 Otis represented Massachusetts in the Colonial Congress. As chairman of a committee to reply to Governor Bernard of Massachusetts, who had resented in a message the proceedings of the Congress, he revealed a refreshing spirit of fearlessness. Against strong objections by those who favored secrecy in legis-

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Governor having the power to reject thirteen of the number; and (2) the House of Representatives, chosen annually by the towns. The House had power over all money matters. The concurrence of both chambers was necessary to the adoption of acts, and the King had the power of annulling any act within three years after its passage.

lative proceedings he instituted the practice of opening the galleries of Congress to the public, which has been continued to the present as a vital feature of popular government. In 1767 he urged moderation in action against the tax on tea, the following of which advice caused Governor Bernard to assure the British government that it need fear no opposition. In the meantime Otis was inspiring his fellow-citizens with resistance to the subversion of their rights. His career came to a close in 1769, when he was assaulted by a gang led by a commissioner of customs whom he had offended in a newspaper controversy. Thereafter he was subject to fits of insanity. In one of his lucid intervals he served as a volunteer at the battle of Bunker Hill, and in another he tried a law case. He was killed by lightning in 1783, a form of death which he had often said he desired.

At the time when the writs of assistance were applied for Mr. Otis occupied the position of colonial advocate-general, an officer of the Crown whose duty it was to defend the writs. But, as he believed them "illegal and tyrannical," he resigned his lucrative office to appear as counsel for the people.

Mr. Gridley supported the grant of the writs as authorized by a statute of William III. passed in 1701 to enforce more effectually the old navigation acts. Mr. Thacher and Mr. Otis opposed it because it prayed for a writ unknown in the history of colonial jurisprudence, and which, if granted, would be an instrument of tyranny and oppression.

Unfortunately the speeches of Mr. Gridley and of Mr. Thacher were not recorded, and that of Mr. Otis was preserved only in part. The latter spoke for five hours, holding his hearers no less by the power of his arguments than by the spell of his eloquence. John

Adams, to whose recollection is due the preservation of the fragments of Otis's speech, after a lapse of fifty-seven years in a letter to his friend William Tudor recurred to the scenes then passing in Massachusetts, and the arguments of Mr. Thacher and Mr. Otis which he had heard when a young man of twenty-four, and was again animated with the spirit of his early years:

> Otis [he remarked] was a flame of fire! With a promptitude of classical allusion, a depth of research, a rapid survey of historical events and dates, a profusion of legal authorities, a prophetic glance of his eyes into futurity, and a rapid torrent of eloquence, he hurried away all before him. American independence was then and there born. The seeds of patriots and heroes to defend the *non sine diis animosus infans*[1] were then and there sown. Every man of an immense crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first opposition to the arbitrary claims of Great Britain.

John Adams summarized Otis's speech, mingling the report with his own comments. A further digest of this is as follows[2]:

1. *Introduction.* Otis adroitly "apologizes" for resigning his office to advocate the cause of the people.

2. *Postulate.* Every man by nature is an independent sovereign, with incontestable rights to life, liberty, and property.[3] These rights could never be surrendered nor

[1] "Spirited youngling, not without divine favor." This motto was furnished by Sir William Jones for the "Alliance Medal," struck in Paris to commemorate the alliance between France and America in 1778.

[2] The unabridged report is found in the complete works of John Adams, edited by his grandson, Charles Francis Adams.

[3] One of the first expressions, if not the first, of the postulate of the Virginia Bill of Rights (see Chapter VI), and its modification in the postulate of the Declaration of Independence.

alienated but by idiots or madmen. The "poor negroes," said Mr. Adams, "were not forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson in Virginia, ever asserted the rights of negroes in stronger terms. Young . . . and ignorant as I was, I shuddered at the doctrine he taught; and I have all my life shuddered . . . at the consequences that may be drawn from such premises. Shall we say that the rights of masters and servants clash, and can be decided only by force? I adore the idea of gradual abolitions! but who shall decide how fast or how slowly these abolitions shall be made?"

3. *Implication.* Individual independence, said Otis, implies the right of free association. Man is a social animal; individuals naturally came together for mutual aid and defense, long before any formal covenant was concluded, and when general councils began, these must have confirmed this purpose, unless primitive men were idiots or madmen. Thus every individual's rights to life, liberty, and property were strengthened, not surrendered. Granted that our ancestors were tricked or coerced into any other compact, such fraud and such force could confer no obligation, and every man had a right to trample it under foot whenever he pleased.[1]

4. *Thesis.* These principles and these rights were wrought into the English constitution as fundamental laws. Here he cited Magna Charta, the fifty confirmations of it in Parliament, the national vengeance taken on the violators of the constitution down to the Stuart kings, the Bill of Rights, and the Revolution of 1688. The security of these rights had been the object of all struggles, in every age, against arbitrary power—temporal and spiritual, civil and military. Americans as British subjects were therefore entitled to the said rights by the British constitution as well as by the laws of nature, and were not to be cheated

[1] Compare the theory of the "social contract" by Jean Jacques Rousseau, whose book on the subject was published in Amsterdam in the following year, 1762.

out of them by the phantom of "virtual representation," or any other casuistic fiction of law or politics.

5. *Application.* The acts of trade, if they conflict with natural rights, are unconstitutional, and as such constitute an invasion of the legal rights of the British in America. They do so conflict, as Otis showed in detail. If considered as revenue laws they destroy all our security of property, liberty, and life, and also violate the charter of Massachusetts. Here the speaker discussed the distinction between "external" and "internal" taxes, at that time, says Adams, a popular and commonplace distinction. Otis asserted there was no such distinction in theory, or upon any principle but "necessity"—the need that the commerce of the Empire[1] should be under one direction being obvious. The Americans, accepting this necessity, had connived at the fictitious distinction, and submitted to the acts of trade as "regulations of commerce," but never as taxations or revenue laws. Here Otis gave a history of the navigation act of 1660, the first year of Charles II., a plagiarism from Cromwell. This act lay dormant for fifteen years; in 1675, after repeated orders from the King, John Leverett, Governor of Massachusetts, candidly informed his Majesty that the law had not been executed *because it was thought unconstitutional*, Parliament not having authority over us.

In a letter to Mr. Tudor, John Adams supplemented this summary by saying that Mr. Otis viewed the "Molasses Act" as a *revenue* act, and as such declared it to be unconstitutional, being

a violation of all the rights of nature, of the English constitution, and of all the charters and compacts with the colonies; and, if carried into execution by writs of assistance and courts of admiralty, would destroy all security of life,

[1] Unless indicated otherwise by the connection, the word "empire," used here and in the following pages, implies only extensive domain, not necessarily under an "imperial" form of government.

liberty, and property; and that this and some other acts could never be executed. That the whole power of Great Britain would be insufficient for this purpose.

The text of the preserved fragments of Otis's speech will be found in volume one of *American Orations* (G. P. Putnam's Sons). The most striking passages in these are the following:

This writ of assistance . . . appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book.

In the first place the writ is *universal* . . . it is directed to every subject in the King's dominions. Every one with this writ may be a tyrant; if this commission be legal, a tyrant in a legal manner; also, may control, imprison, or murder any one within the realm.

In the next place it is *perpetual;* there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him until the trump of the archangel shall excite different emotions in his soul.

In the third place, a person with this writ may enter all houses, shops, etc., at will, and command all to assist him. . . . Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle. This writ, if it should be declared legal, would totally annihilate this privilege.

But to show another absurdity in this writ: if it should be established, I insist upon it every person, by the 14th Charles Second, has this power as well as the custom-house officers. The words are: "it shall be lawful for any person or persons authorized," etc. What a scene does this open! Every man prompted by revenge, ill-humor, or wantonness to inspect the inside of his neighbor's house, may get a writ

of assistance. Others will ask it from self-defense; one arbitrary exertion will provoke another, until society be involved in tumult and in blood.

Justice Hutchinson, in order to have time to deliberate on the question of granting the writ, postponed a decision until the next term; and in the meantime wrote to the British government for information on the subject. Writs were afterwards granted, but were extremely unpopular. In 1762 a bill passed the Massachusetts Assembly restraining the issuing of these writs, except to custom-house officers, and then only upon special information on oath. But Governor Bernard refused his assent to the bill, and the Assembly by way of revenge reduced his salary.

Writs of assistance were never granted in Connecticut, though the British Board of Trade, in July, 1763, in their letter to the governor of that colony on the subject of the navigation acts, declared that his Majesty's resolution was so fixed "to have the most implicit obedience to his commands for enforcing them that he would not pass unnoticed any negligence on the part of any person."

CHAPTER II

THE STAMP ACT

1764–1765

Autocratic Policy of George III.—Ministry of Bute—Treaty of Paris—Its Effect in America—Ministry of Grenville—It Proposes Revenue Taxes on America—Former Repudiation of these by Walpole and Pitt—"Molasses Act" Reënforced—Stamp Act Proposed—Boston Resolutions against It, Drafted by Samuel Adams—Protests by Colonial Assemblies—Debate on Act in the Commons: Townshend *vs.* Barré—Sketches of the Debaters—Act Passed—Troops Quartered on Colonies—Debate on Stamp Act in Virginia House of Burgesses: Patrick Henry and Richard Henry Lee *vs.* Peyton Randolph—Sketches of the Debaters—Stamp Act Congress—Its Resolutions and Petitions, Drafted by John Cruger [N. Y.], William Samuel Johnson [Ct.], and James Otis [Mass.]—Sketches of Cruger and Johnson—Various Colonial Protests—Non-Importation Agreements—"Sons of Liberty"—Books against Act by Richard Bland [Va.], Daniel Dulany [Md.], and John Adams [Mass.]—Sketches of Bland and Dulany—Stamp Act Riots—Arguments in Massachusetts against Act by James Otis, Jeremiah Gridley, and John Adams.

REVENUE taxation soon became the subject of controversy between Great Britain and America. This was largely due to the autocratic spirit of the young King, George III., who, from the time of his accession (1760), at the age of twenty-two, until his insanity caused the appointment of his son and heir as Prince Regent (1811), sought to revive the prerogatives of the Crown as exercised by the Tudors and Stuarts

before the Revolution of 1688. To this end he attempted to crush the Whigs, the civil rights party, by encouraging the formation of "coalition cabinets" with a majority of Tories, the "prerogative men," and factional Whigs—ministers of a subservient disposition and generally of inferior ability.[1] By this means such able Whigs as the elder Pitt and Charles James Fox, to whom could not always be denied high places in the administration, were hampered in their policies and forced to resign.

Ministries of Bute and Grenville. In October, 1761, Pitt resigned as Prime Minister, owing to the refusal of the King and a subservient majority in the government to declare war against Spain; and the King's favorite, John Stuart, Earl of Bute, the Secretary of State for the northern department, was advanced to the head of administration. Bute was greatly pressed for funds to refill the treasury depleted by Pitt's wars, and at first attempted to secure these by laying a tax on cider in the United Kingdom. This proved to be both

[1] The terms "Tory" and "Whig" were first popularly and contemptuously applied respectively to the upholders and opponents of royal prerogative in the controversy in 1679 over excluding Catholics from the throne, "tory" originally signifying an Irish Catholic outlaw who had taken to the bogs and there become a desperado, and "whig," a Scottish Presbyterian zealot. For various etymologies of the terms see the dictionaries. The upholders of civil rights in America proudly adopted about the time of the Stamp Act the name of "American Whigs" to signify their alinement with the upholders of civil rights in Great Britain. Thus, in 1769, James Madison, a student in Princeton, founded the "American Whig Society," still in existence as a debating club. These "Whigs" called the American defenders of Parliament's rule over the colonies "Tories," an appellation which was reluctantly accepted during the struggle with Parliament, and repudiated for "loyalist" when this contest developed into war against the Crown. The Whigs then called themselves "patriots," a term which will be used in these pages for convenience in designation.

unremunerative and unpopular, and largely contributed to Bute's downfall in April, 1763. George Grenville, as First Lord of the Treasury and Chancellor of the Exchequer, then took charge of the administration. Not daring to incur again the resentment of the British electors (for he had been spokesman for the cider tax), he looked to the American colonies, who were without representation in Parliament, for the needed addition to the treasury, justifying such resort by the plea that payment was due from them because of the expense incurred by Great Britain in ridding them of a powerful foe on their northern border by the Treaty of Paris concluded with France on February 10, 1763.

Treaty of Paris. This treaty, ceding to Great Britain all French possessions on the North American continent, including sparsely settled Canada and the vast unoccupied territory between the Ohio and Mississippi rivers, had opened to the eyes of the British colonists a vision of a mighty empire for their settlement and control. While some of the more prescient spirits, notably Benjamin Franklin, were hopeful that the event would lead to federation of the colonies, with an increase of self-government, they had no thought that the united provinces would ever throw off allegiance to the British Crown—on the contrary all the colonists were filled with gratitude to the mother country and loyalty to the young King under whom the conquest had been accomplished. Indeed, they, who had already contributed heavily in money and men to the conduct of the war so happily concluded, were willing to make further payments to defray its cost, *provided these were free-will offerings.*

The laying of internal, or revenue taxes, as opposed to external, or regulative taxes, had been suggested to

the previous ministries of Walpole and Pitt, but these statesmen were too wise to accept the proposal. Said Walpole, "I will leave the taxation of the Americans for some of my successors, who may have more courage than I have, and [may be] less a friend to commerce than I am." Pitt repulsed the suggestion with characteristic heat, saying that he would not "burn his fingers" with so impolitic and ungenerous an act, fining as it did the colonial trade so profitable to Great Britain, and offending the brave frontier guard of the Empire, who had gladly contributed more than their share of life and treasure in extending it.

Proposal of Stamp Duties. Grenville, however, had not the wisdom of his predecessors, and in the winter of 1763–64 gave notice to the colonial agents in London that in the ensuing session of Parliament he would propose stamp duties in America on publications and legal instruments. Soon after this resolutions were passed in Commons continuing and making perpetual the duties of the "Molasses Act," and adding other articles to the list of taxables. The expected revenue from this act was £50,000; that from the stamp duties proposed was £100,000. The cost of royal troops stationed and to be stationed in America was expected to be £300,000. So it was deemed fair that the colonists should contribute at least half this amount.

Colonial Protests. The colonists were greatly alarmed, particularly at the proposition to lay stamp duties, which they regarded as the entering wedge of a new kind of taxation, which was unlimited in its possible extension, and to the principle of which they were unalterably opposed. The people of Boston, in a town-meeting held in May, 1764, passed resolutions of protest (drafted by Samuel Adams) in which they

inquired: If our trade may be taxed, why not our lands, all our products, everything we possess?

"This, we conceive, annihilates our charter rights to govern and tax ourselves. It strikes at our British privileges, which, as we have never forfeited, we hold in common with our fellow-subjects who are natives of Britain."

They added that such taxes, laid without their consent, would reduce the colonists "from the character of free subjects to the state of tributary slaves," and they therefore called upon the people of the other provinces to join them in protest against the proposed duties. This was the beginning of national American union, and to Samuel Adams the credit is due for first enunciating the principles and program which were to make it effective.[1]

The Massachusetts House of Representatives in June, 1764, repeated the sentiments of the Boston town-meeting of the preceding month in a formal declaration and in instructions given to the agent of the province, Dennys Deberdt, in London, and it appointed a committee to secure joint action of all the colonies in applying for a repeal of the "Molasses Act" and protesting against the contemplated Stamp Act. In the course of the year petitions were sent by a number of the colonial assemblies to the King and both houses of Parliament. That of New York breathed the boldest spirit:

Exemption from involuntary taxes, it claimed, was the grand principle of every free state, a *natural right* inseparable from the very idea of property. Even conquered states, subject to a fixed periodical tribute, when they had paid this

[1] For a sketch of Samuel Adams see Chapter IV.

were freed from levy on the remainder of their property. "With how much propriety and boldness," therefore, might free colonists assert that "they nobly disdain the thought of claiming that exemption as a *privilege*," especially when it was granted to his Majesty's subjects at home, and denied to those abroad who had suffered "unutterable hardships" in enlarging "the trade, wealth, and dominion" of the Empire. The Assembly acknowledged that Parliament had a right to "regulate" the trade of the colonies, but claimed that in so doing they had no right to impose duties for revenue. The result of the latter action, they said, striking as it did at "rights established in the first dawn of our constitution" and "confirmed by invariable usage," would dispirit the people and lead to "discord, poverty, and slavery," thus shaking the wealth, the power, and the independence of the most opulent empire in the world.

The language of the New York Assembly was so audacious in its declaration of democratic rights that no member of Commons could be found who was willing to present the "petition." It was probably drafted by John Cruger, later a patriotic leader as Mayor of New York City, who was a member of the Assembly at the time.

Similar, but more conservatively worded, opinions were expressed by the other colonial assemblies, some of which stated their willingness to grant aid to the Crown whenever this should be requested in a constitutional manner, the assemblies to judge as to the amount of these gifts and the manner of granting them.

These protests were presented by Dr. Franklin[1] and other colonial agents in London at a conference held with Grenville in the winter of 1764–65. They earnestly

[1] Benjamin Franklin represented Pennsylvania and other colonies, notably Massachusetts (succeeding Deberdt as the agent of this province on Deberdt's death in 1770), from 1757 to 1762, and from 1764 to 1775.

advised him that, if money must be drawn from the colonists, to leave it to these to raise it themselves in such amount and manner as they thought proper and adapted to their abilities.

Passage of Stamp Act. Grenville nevertheless introduced the bill for the Stamp Act in the next session of Commons. It met with strong opposition. Pitt was absent, through sickness, and Colonel Isaac Barré led the anti-administration forces by right of eloquence. Charles Townshend and Grenville[1] were the chief supporters of the bill.

Isaac Barré was a native of Dublin, Ireland. As an officer under General Wolfe in Canada he became sympathetic with American political ideals, and on entering Parliament espoused the colonial cause. He was noted for his powers of invective; indeed, it was asserted that he wrote the celebrated letters of Junius, but this he denied.

Charles Townshend was Secretary of State for War under Mr. Pitt in 1761, and became the First Lord of Trade in 1763. Lord Macaulay says that he was a man of "splendid talents, of lax principles, and of boundless vanity and presumption, who would submit to no control. He had always quailed before the genius and the lofty character of Pitt; but when Pitt (becoming Lord Chatham) had quitted the House of Commons and seemed to have abdicated the part of chief minister, Townshend broke loose from all restraint."

Townshend, in the conclusion of a speech on February 7, 1765, exclaimed:

"And now these Americans, *planted* by our care, *nourished* up by our indulgence, until they are grown to a degree of

[1] A sketch of Grenville will be given in Chapter III.

strength and importance, and *protected* by our arms—will they grudge to contribute their mite to relieve us from the heavy burden we lie under?"

With a readiness which we commend as an example to debaters when called upon to answer extemporaneously an opponent, Colonel Barré seized upon the salient words of Townshend, which we have italicized, as the heads of his reply. With consummate irony he cried: "They nourished by your indulgence!" "They protected by your arms!" and after each exclamation he eloquently and comprehensively enumerated the facts, showing that the opposite had been the case. At the close he said in prophetic phrase and with admirable restraint:

"And believe me the same spirit of freedom which actuated that people at first will accompany them still. But prudence forbids me to explain myself further."[1]

The Government forces were stunned by the speech, and none of them made reply. Nevertheless the House refused to receive the colonial petitions (on the ground that it was a standing rule not to receive petitions against a money bill), and passed the bill by a vote of 250 to 50. It was adopted by the Lords almost unanimously, and received the royal sanction on March 22, 1765.

It imposed duties on most of the instruments used in legal proceedings and commercial transactions in the colonies, on newspapers, pamphlets, almanacs, etc., and even on degrees conferred by colleges. The Government declared, with paradoxical logic founded on amazing

[1] The speech appears in most collections of eloquence dealing with early American history.

psychology, that the act embraced so many objects that it would "execute itself." Nevertheless Parliament showed that it did not have the courage of its own insolence by passing a bill quartering troops on the colonies, and by directing the assemblies to furnish them with certain supplies not before required in such cases. This measure, even more than the Stamp Act, roused the indignation of the colonists.

Protest of Virginia. The Virginia Assembly was the first colonial legislature to meet after the news of the action of Parliament reached America. The leaders in the popular branch, the House of Burgesses, being unwilling to take up the delicate subject, about May 1st Patrick Henry, who, though reputed the most eloquent speaker in the colony, had hitherto taken "a back seat" in the House, introduced it in the form of strongly condemnatory resolutions.

Sketch of Henry. Henry had been an idler in boyhood, and a failure, first as a merchant and then as a farmer, in early manhood. Then at the age of twenty-four, with only six weeks' preparation, he was admitted to the bar by the brothers Peyton and John Randolph overcoming the adverse decision of their fellow law-examiners by pleading the applicant's evident ability as making up for his lack of legal knowledge. His practice for the first three or four years was so meager that he was forced to support himself by serving as a waiter in his father-in-law's tavern. However, in 1763, by the influence probably of Lee and the Randolphs, he secured representation of the House of Burgesses in a test case in Henry's county of Hanover against the clergy over the stipend of the latter. William Wirt, his biographer, has vividly depicted the effect of Henry's speech on his audience, the jury, and the court:

"On this first trial of his strength he rose very awkwardly, and faltered much in his exordium. The people hung their heads at so unpromising a commencement; the clergy were observed to exchange sly looks with each other; and his father is described as having almost sunk with confusion from his seat. But these feelings were of short duration, and soon gave place to others of a very different character. For now were those wonderful faculties which he possessed for the first time developed; and now was first witnessed that mysterious and almost supernatural transformation of appearance which the fire of his own eloquence never failed to work in him. For, as his mind rolled along and began to glow from its own action, all the *exuviæ* of the clown seemed to shed themselves spontaneously. His attitude by degrees became erect and lofty. The spirit of his genius awakened all his features. His countenance shone with a nobleness and grandeur which it had never before exhibited. There was a lightning in his eyes which seemed to rive the spectator. His action became graceful, bold, and commanding; and in the tones of his voice, but more especially in his emphasis, there was a peculiar charm, a magic, of which anyone who ever heard him will speak as soon as he is named, but of which no one can give any adequate description. They can only say that it struck upon the ear and upon the heart, *in a manner which language cannot tell.* Add to all these his wonder-working fancy, and the peculiar phraseology in which he clothed its images; for he painted to the heart with a force that almost petrified it. In the language of those who heard him on this occasion, 'he made their blood run cold, and their hair to rise on end.' The mockery of the clergy was soon turned into alarm; their triumph into confusion and despair; and at one burst of his rapid and overwhelming invective they fled from the bench in precipitation and terror. As for the father, such was his surprise, such his amazement, such his rapture, that, forgetting where he was, and the character which he was filling, tears of ecstacy streamed down his cheeks, without

the power or inclination to repress them. The jury seem to have been completely bewildered; for, thoughtless even of the admitted right of the plaintiff, they had scarcely left the bar when they returned with a verdict of *one penny damages*. A motion was made for a new trial; but the court, too, had now lost the equipoise of their judgment, and overruled the motion by a unanimous vote. The verdict and judgment overruling the motion were followed by redoubled acclamations from within and without the house. The people, who had with difficulty kept their hands off their champion from the moment of closing his harangue, no sooner saw the fate of the cause finally sealed than they seized him at the bar, and, in spite of his own exertions, and the continued cry of 'Order!' from the sheriffs and the court, they bore him out of the court-house, and, raising him on their shoulders, carried him about the yard in a kind of electioneering triumph."

The resolutions of Henry on the Stamp Act recited that:

The two charters granted to Virginia by James I. declared the colonists of that province entitled to all the rights enjoyed by the inhabitants of England; asserted that representation in the taxing power by the taxed was an intrinsic element in the British constitution, and that self-government in regard to taxes and internal police had thus far been exercised by Virginia, and recognized by the British government, and had never been forfeited; and that therefore (1) every attempt to vest the taxing power on Virginia in other persons than the Assembly of the province had a tendency to destroy British as well as American freedom; (2) that laws to this effect did not bind Virginians; and (3) that any person who maintained that they did should "be deemed an enemy to this his Majesty's colony."

The resolutions ending with the first conclusion were adopted, and the two last conclusions were rejected,

after what was denominated by one present "a most bloody debate." Henry in his argument premised that any act imposing internal duties on the colonists was tyrannical, and he did not hesitate to press home the logical conclusion that the present King was acting the part of a tyrant, at which bold deduction the conservative assemblymen were greatly agitated. Then, alluding to the fate of other tyrants, he cried: "Cæsar had his Brutus, Charles I. his Cromwell, and George III."—whereupon he was interrupted by the Speaker of the House and others with the cry of "Treason!" Henry paused, looked at the Speaker, and deliberately concluded—"may profit by their example. If this be treason, make the most of it."

Henry was supported by George Johnson, an able constitutional lawyer, who seconded the resolutions, and by Richard Henry Lee. Says a writer of the time: "People knew not which most to admire: the overwhelming might of Henry, or the resistless persuasion of Lee."

Sketch of Lee. Lee was a man of unusual attainments, and yet of great modesty. He was learned in classical literature, especially of the ancient republics. In 1757 he entered the House of Burgesses, where for a time he refrained from debate, devoting his time to a study of legislation and parliamentary procedure. One day, however, the subject arose of the suppression of the slave trade by heavy taxation, and he supported the proposition in a speech part of which has fortunately been preserved, and which remains the most eloquent of the early denunciations of slavery. Although the motion was defeated Mr. Lee's speech won for him the praise of the best men of the colony.

He was also bold against individual corruption,

exposing frauds committed by the colonial treasurer, a man of great wealth and political power as well as the Speaker of the House before which the denunciation was made.

After the Revolution, Lee served in the Virginia Assembly, frequently opposing Patrick Henry on important bills. An auditor of these debates thus characterizes the opposing styles of the two orators.

"These two gentlemen were the great leaders of the House of Delegates, and were almost constantly opposed. There were many other great men who belonged to that body, but as orators they cannot be named with Henry or Lee. Mr. Lee was a polished gentleman. He had lost the use of one of his hands, but his manner was perfectly graceful. His language was always chaste, and, although somewhat too monotonous, his speeches were always pleasing, yet he did not ravish your senses or carry away your judgment by storm. His was the mediate class of eloquence described by Rollin in his *Belles Lettres*. He was like a beautiful river meandering through a flowery mead, but which never overflowed its banks. It was Henry who was the mountain torrent, that swept away everything before it; it was he alone who thundered and lightened, he alone [who] attained that sublime species of eloquence also mentioned by Rollin."

Peyton Randolph was chief of the opponents of Patrick Henry's Stamp Act resolutions, feeling that they were precipitate and, by angering Parliament, would cause it to deprive the colonies of still more of their liberties. Thomas Jefferson reported that, as the delegates were leaving the hall, he heard Randolph say, referring to the fact that the most objectionable of the resolutions, the two last, were carried by a majority of one, "By God, I would have given five hundred pounds for a single vote!"

Sketch of Randolph. Peyton Randolph at this time was the most noted lawyer in Virginia. As King's Attorney for Virginia he resisted Governor Robert Dinwiddie's demand of fees on land patents, going to England and successfully maintaining the unconstitutionality of the exaction against the crown lawyers, one of whom, William Murray, afterwards became Lord Mansfield and the Chief-Justice of England. Randolph later served as chairman of the committee to revise the laws of Virginia.

Peyton Randolph was a man of fine and winning character. Jefferson, early in life, took him for a model, asking himself in a crisis how Randolph would act. He became the president of the First Continental Congress, and this preëminence, conjoined with his noble presence, gracious manners, and calm, judicial temper, caused him, first of our statesmen, to receive the appellation of "Father of His Country," this being given him by the *Gentlemen's Magazine* of July 1, 1775. He died of apoplexy in October, 1775.

On the day following the adoption of Henry's resolutions, on motion of some of the majority who were fearful of the consequences, the last two resolutions were reconsidered, and were finally stricken out.

The resolutions of Virginia aroused the other colonies to action, and a Stamp Act Congress was appointed to be held at New York City on the first Tuesday of October, 1765.

Stamp Act Congress. Delegates from nine colonies assembled at the place and time appointed. "Brigadier" Timothy Ruggles, a native of Rochester, Mass., the most distinguished living colonial soldier of the French War, and one of the best lawyers in his colony, was chosen president. He was a man of fine presence, being

six feet and a half in height, and of superior education, having been graduated from Harvard in 1732. Loyal to the Crown for which he had fought, he refused to sign the proceedings of the Congress, and thereafter sided with Parliament. He left the country for Nova Scotia with the British troops on the evacuation of Boston, suffering the confiscation of his considerable property. Only one other delegate, Robert Ogden, of New Jersey, stood with the stalwart soldier.

The Congress was organized on the principle that each colony should have "one voice" in the voting—a most important decision in that it established a precedent for the equal representation of States in Congress which continued down to the establishment of the Constitution in 1789, and even now prevails in the Senate. The delegates, on October 8, then took up consideration of the issue for which they were assembled. The subject was debated until October 19, when a declaration of the "rights and grievances" of the colonies was framed and adopted. It recited the argument against the Stamp Act with which the reader is already familiar, and in addition it maintained that the overriding by the act of trial by jury by extension of admiralty jurisdiction was a subversion of "the inherent and invaluable right of every British subject in the colonies." The declaration was framed by delegate John Cruger, Mayor of New York City.

Cruger afterwards became a member of the intercolonial committee of correspondence. In 1775 he became Speaker of the New York Assembly, and, early in that year, with thirteen other members, addressed a letter to General Gage, commander of the royal troops in America, asking that "no military force might land or be stationed in the province."

The Congress then adopted an Address to the King and a Petition to Parliament for repeal of the act. These papers enforced the arguments of the Declaration of Rights and Grievances, the Address in respectful and appealing tone, and the Petition for repeal by detailing the injuries which the act would inflict primarily on the business of the colonies, and secondarily on that of the British merchants and manufacturers engaged in colonial trade.

The Address to the King was drafted principally by William Samuel Johnson, of Connecticut, one of the ablest lawyers and most accomplished scholars in America. He successfully defended in England Connecticut's title to territory which had been the property of the Mohegan Indians, and while in London he formed the acquaintance of leading authors, including Dr. Samuel Johnson, with whom he corresponded after his return home. Perhaps it was the influence of this author of *Taxation No Tyranny* that caused the American Johnson to retire from Congress shortly before the signing of the Declaration of Independence, which he could not conscientiously support, and to take no part in politics during the remainder of the Revolution.

Judge Johnson (he was a member of the Superior Court of Connecticut in 1772) received from Oxford the degree of D.C.L., largely because of his able conduct of the Mohegan case, and from Yale the degree of LL.D., the first granted by that institution. He was esteemed a finished orator, his eloquent diction being supplemented by a noble presence, and a clear, ringing, and well-modulated voice.

The most prominent member of the committee to frame the Petition to the King of the Stamp Act Congress was James Otis, of Massachusetts, and it was

probably the work of his pen. Cæsar Rodney, a delegate to the Congress from Delaware, subsequently wrote on the margin of a copy of the *History of the American Revolution*, by David Ramsay:

"The historian passes by this Congress in a very light manner. It was this Congress in which James Otis, of Boston, displayed that light and knowledge of America which, shining like a sun, lit up those stars which shone on this subject afterward."

Yet Otis, soon after the passage of the Stamp Act, had declared:

"It is the duty of all humbly and silently to acquiesce in all the decisions of the supreme legislature. Nine hundred and ninety-nine in a thousand will never entertain the thought but of submission to our sovereign, and to the authority of Parliament in all possible contingencies."

If consistency and prescience be the marks of a great statesman this eminence must surely be denied James Otis. It was well for the cause of American independence that this erratic mind entirely lost its balance in insanity, since Otis's personal magnetism, equal to that of Patrick Henry, would have kept him in the fore of affairs.

The Address and Petition were approved, as has been noted, by all the delegates save two, but, owing to limitations in their instructions, those of three of the nine colonies represented, Connecticut, New York, and South Carolina, did not sign the documents. However, the proceedings were subsequently ratified by the assemblies of these colonies as well as by the assemblies of the four colonies unrepresented in the Congress.

Some of the assemblies also gave confirmatory instructions to their agents in London.

Agitation against the Act. Samuel Adams did not attend the Stamp Act Congress. He was busy in Massachusetts preparing resolutions for the House of Representatives, one set against a declaration of Governor Bernard that Parliament was supreme over the colonies, and another, known to fame as the "Massachusetts Resolves," expressing the determination of the House to refuse assistance to the execution of the Stamp Act. Adams, by his indefatigable correspondence, had generated the popular sentiment which gave the House courage to make the latter bold declaration. Inspired by him town-meetings all over Massachusetts passed resolutions condemning the Stamp Act and instructing their delegates in the House to vote for the "Resolves." The instructions of their representative by the citizens of Plymouth, the descendants of the Pilgrims who first settled New England, are typical. They close with the significant recommendation: "We think it by no means advisable for you to interest yourself in the protection of stamp papers or stamp officials."

The citizen meetings outside of New England passed cruder resolutions, in which nothing like the "fine Italian hand" of Sam Adams appeared. Thus the assembled freemen of Essex County, New Jersey, declared a social boycott against every "stamp-pimp, informer, and encourager of the execution of said act," by resolving to have no communication with such persons, "unless it be to inform them of their vileness."

The merchants of New York, Philadelphia, and Boston entered into associations agreeing to import no goods from Great Britain unless the Stamp Act should be repealed. This is of historical importance in that it

was the first use in America of the principle of the embargo, which was to play a leading part in our country's early resistance to foreign aggression, though an ineffectual one, since by its nature an embargo inevitably injures the parties concerned in the ratio of their commercial strengths, and young America, which thought itself too weak to oppose by arms British "orders in council" and French decrees, discovered in the end that it was at even greater disadvantage in the conduct of a trade war.[1]

John Adams, afterwards as President to enforce peace with France by a show of war, was the first American statesman to realize the impotence of non-importation agreements, scouting them when they were later proposed in the Continental Congress, and pointing to their failure in the case of the Stamp Act, for it was not they, but the spirit of forcible resistance manifested by the colonists, which caused Parliament to repeal the measure.

This spirit was seen in the organization in New York and Connecticut of the "Sons of Liberty," to prevent by force the execution of the act. Their manifesto repeated the familiar arguments against the act as a tyrannical measure and declared that the "Sons" would use the "utmost of their power" to bring to "the most condign punishment" as "betrayers of their country" all persons concerned in its enforcement, and would also "defend the liberty of the press" by protecting editors and other writers from punishment on account of their utterances against the act.

Newspaper editors, pamphleteers, and authors of books did not require the protection of the "Sons of

[1] The student of economics may apply this principle also to retaliatory tariffs.

Liberty" in opposing the act. The editors printed a death's-head on the space where the stamp was to be affixed, and underneath it denounced the measure.

This association was extended to other colonies and promised to spread through the entire country, when its purpose was rendered unnecessary by repeal of the odious measure. It was revived when the contest with Great Britain arose over the "Townshend Taxes."

American legal and political literature dates from the period of the Writs of Assistance and the Stamp Act. Before these measures books written in the colonies had been almost entirely of a theological nature, preparatory, however, to political treatises, since "obedience to God" dictated the spirit of "resistance to tyrants." Now the latter was exalted to a sacred duty, and admirable books were written on the burning subject which were far more eagerly devoured in America than the published sermons and religious treatises of the Mathers and Jonathan Edwards, depicting a conflagration which, however terrific in contemplation, dealt not with present life, and so could be postponed in consideration to a more convenient season. Indeed, these political works were, first of American books, widely read in Great Britain, where they won the admiration of the Whigs and the respect of the Tories.

The most notable of such productions were, *An Inquiry into the Rights of the British Colonies* (1766), by Richard Bland, of Virginia; *Considerations on the Propriety of Imposing Taxes on the British Colonies, for the Purpose of Raising a Revenue by Act of Parliament* (1766), by Daniel Dulany, of Maryland; and an *Essay on the Canon and Feudal Law* (printed in the *Boston Gazette* in 1765 and republished in book form in

London in 1768), by John Adams, then a young lawyer of Braintree, Massachusetts.[1]

Bland and Dulany were recognized as among the ablest lawyers and publicists of America. Bland's book was the first complete survey of colonial rights.

Richard Bland subsequently signed the non-importation agreement of 1769, and was a member of the inter-colonial Committee of Correspondence in 1773. He opposed Patrick Henry's militant resolutions of 1775. From his extensive knowledge of the affairs of his colony he was known as "the Virginia Antiquary."

Dulany's book not only proved the illegality of the Stamp Act, and prophesied the evils which would result from Parliamentary restrictions of colonial trade, but recommended as a practical remedy therefor the development of home industries. Dulany's eloquent appeal to the colonists to use home-made articles, crude and coarse as these were, in preference to foreign manufactures, is the first American classic on the subject, and applicable to the question of the tariff to-day, not as a permanent institution but as a temporary expedient, for Dulany admitted that "in theory . . . each [Europe and America] is equally important to the other; that all partake of the adversity and depression of any."

Dulany had already, however, indicated the spirit of conservatism by opposing in the Maryland Assembly reduction of provincial taxes, advocated by Charles Carroll, and, when the question of casting off allegiance to the British Crown arose, he took

[1] Educated by his parents at Harvard with the view that he should become a minister, Adams on graduation declared himself too liberal in his opinions for the pulpit, and so, asking no assistance, he studied law, supporting himself while doing so by teaching school. For a character sketch of John Adams see Chapter VI.

his stand with the loyalists, and saw his estates confiscated.

John Adams wrote with even greater eloquence than Dulany, despite the formal legal title of his book.

He appeals to his compatriots to defend their "blood-bought liberty." He decries the use of the phrase "mother countries and children colonies," asking, "Are we not brethren and fellow-subjects with those in Britain?" He invokes the pulpit to support the colonial cause as that of freedom, involving religious liberty; he summons the bar to proclaim the natural right of civil liberty the recognition of which was wrung by the British people from their lords. Another encroachment on this liberty, such as was made by James I. and Charles I., which "produced the greatest number of statesmen ever seen in any age or nation," he says is imminent, and he calls upon the colonial lawyers to combat it. "The [enslaving] canon and feudal laws," he says, "though greatly mutilated in England, are not yet destroyed." It is America's duty to resist their application to the colonists in the Stamp Act, not only for their own sake but for the sake of all Britons and of the world.

Stamp Act Riots. In justification of their acts against public order the militant woman suffragists of Great Britain claim that a British Government is not moved to grant justice by argument but by force. Unfortunately for peaceful reform in Great Britain they can cite instances of this. Among these is the repeal of the Stamp Act. Not to the petitions of the colonial assemblies nor to the logic of the colonial pamphleteers did the British ministry yield, but to the riots, especially in Boston, against the Stamp Act officers and the public officials supporting these. A

Boston mob raided the house of Chief-Justice Thomas Hutchinson, already unpopular because of his enforcement of the "Molasses Act," and destroyed his furniture, pictures, and valuable books and manuscripts. The houses of revenue officers, including that of Hutchinson's brother-in-law, Andrew Oliver, distributor of the stamps, were also injured. Others concerned with the enforcement of the act were compelled by threats to resign. Consequently, on the day set for the act to take effect, November 1, 1765, neither stamps nor stamp officers were to be found in the colonies except in Georgia, which, being the remotest and most recently settled province—and that by emigrants sent out by governmental direction—had the least unity of patriotic spirit. The courts were closed for a time, vessels were held in American ports, and commercial transactions in general were interrupted. However, by general consent, business shortly was resumed without the use of stamped paper. The better class of people reprobated the acts of violence, but afterwards welcomed the state of affairs which resulted from them.

Legal Protest against the Act. On December 18, 1765, a town-meeting in Boston petitioned the Governor and Council to remove the obstructions against business created by the Stamp Act, and appointed James Otis, Jeremiah Gridley, and John Adams to argue the case before these authorities. The hearing was held on December 20.

As stated many years afterwards by John Quincy Adams, his father took a bolder position than that of his associates.

"Mr. Otis reasoned with great learning and zeal on the judges' oaths, etc.; Mr. Gridley on the great inconveniences

that would ensue the interruption of justice, . . . Mr. Adams grounded his argument on the *invalidity* of the Stamp Act, it not being in any sense our Act, [we] *having never consented to it.*"

The petition was, of course, denied.

CHAPTER III

SUPREMACY OF PARLIAMENT

1766

Debate in the Commons on the Right to Tax America: Grenville *vs.* Pitt —Sketches of the Debaters—Debate in the Commons on the Supremacy of Parliament: Conway *vs.* Barré—Sketch of Conway—Examination of Benjamin Franklin—Sketch of Franklin—Debate in the Lords on Supremacy of Parliament: Mansfield *vs.* Camden—Sketches of the Debaters—Doctrine Since Maintained in Great Britain—Change of American View of the Subject—James Otis *et al.* on Practicability of American Representation in Parliament.

IN the meantime there had come a change in the British administration, largely owing to its ineffectual taxing policy. In July, 1765, the Marquess of Rockingham (Charles Watson Wentworth) became Prime-Minister with General Henry Seymour Conway and the Duke of Grafton (Augustus Henry Fitzroy) as his Secretaries of State. The cabinet was divided by intestine quarrels, and Pitt refused to have anything to do with it. Knowing its weakness the ministry was intimidated by the American opposition to the Stamp Act, strengthened as this was by the clamors of British merchants and manufacturers against the measure, which before its enactment had caused a serious diminution in American trade.

The debates which ensued on the question were the

most important that arose in England in the century, being the first serious discussion in Parliament since the Revolution of 1688 on the nature of the English constitution. Owing to this breadth, they more properly belong to the subject of "British Debate," and so we shall give here only a summary of the positions taken by the debaters which are applicable to the controversy between Great Britain and America.[1]

Repeal of Stamp Act. The question of repeal of the Stamp Act was brought before Parliament on January 14, 1766, by submission of reports from America showing that the measure was incapable of execution. On that day occurred the great debate between Grenville and Pitt on "The Right to Tax America."

George Grenville had entered Parliament in 1741. From 1744 onward he filled various government positions, becoming, as we have seen, Prime-Minister in 1763 and resigning in 1765. He was nominally a Whig but really a Tory. The *International Encyclopædia* says:

"Grenville was distinguished for eloquence, public spirit, business qualities, and extensive knowledge, but his imperious nature made him an unpopular minister, alike with the King, the Parliament, and the people."

Sketch of Pitt. Since the time when William Pitt had entered Parliament in 1730 at the age of twenty-six he had advocated the people's cause, whence, in time, the term was applied to him of the "Great Commoner." He particularly opposed Robert Walpole, the Prime-Minister, who preserved his supremacy by the most corrupt and dictatorial means, opposing by bribery

[1] For an extensive report of the debates see *Great Debates in American History*, vol. i., chap. ii.

and intimidation the rising democratic spirit of the nation.

In Pitt, however, he found an antagonist too clever for all his arts. This young Oxonian, naturally endowed with the voice and temperament of an actor, had thoroughly prepared himself for a political career by a painstaking study of forensic oratory and statecraft, especially as exemplified in Greek and Roman history.

Pitt's maiden speech was an ironical congratulatory address on the occasion of the marriage in 1736 of the Prince of Wales, Frederick Louis, who was in sympathy with the popular sentiment, and hence had incurred the displeasure of his father, George II., who forbade the Minister of the Crown to extend him the congratulatory address customary on such occasions. Pitt therefore seized the opportunity thus afforded to attack the Government covertly by a mock eulogy of the tender relations existing between the monarch and his son, so shrewdly phrased that no objections could be brought against it. Walpole was more perturbed than at any other time in his life. He remarked, "We must muzzle that terrible cornet of horse," referring to Pitt's military office, and two weeks thereafter he deprived Pitt of his commission.

This was the first and the fatal mistake of Walpole's hitherto triumphant career. It made Pitt a popular hero, placing him at the head of a new party known as the Patriots. From that time on until the fall of Walpole in 1741, the political tilts between Walpole and Pitt formed the chief events of Parliamentary history. With every encounter the power of Walpole waned, while that of Pitt grew apace.

In similar fashion Pitt opposed Walpole's successor,

John Carteret, Earl of Granville, causing his downfall in 1744, when Henry Pelham, who was in sympathy with Pitt's views, became Prime-Minister, Pitt taking office under him. Pelham died in 1754, and his brother, Thomas Pelham Holles, the Duke of Newcastle-under-Lyme, succeeded him. This ministry of only two years' duration was notable for British military disasters, and Pitt rose in opposition to it, and drove Newcastle from power, h mself becoming Prime-Minister in 1756. Newcastle by the aid of the King secured the defeat of Pitt's ministry in April, 1757, but an uprising of the people compelled his reappointment in June. Under Pitt British arms achieved an invariable succession of remarkable triumphs on the continents of Europe and America and on the high seas. This awoke the jealousy of George III. when in 1760 this ambitious young prince ascended the throne, and, in 1761, as we have seen, he brought about the downfall of the most glorious administration in English history. Thereafter, with one brief interval, Pitt remained in opposition to the King's undemocratic policy as the "Great Commoner" of the Commons, and, after 1767, as Lord Chatham in the Lords.

Says Professor Charles Kendall Adams in *Representative British Orations:*

"Pitt was not in a true sense a great debater. His ability lay not in any power to analyze a difficult and complicated subject and present the bearings of its several parts in a manner to convince the reason. His peculiarities were rather in his way of seizing upon the more obvious phases of the question at issue, and presenting them with a nobility of sentiment, a fervor of energy, a loftiness of conception, and a power of invective that bore down and destroyed all opposition."

Franklin said of Pitt: "I have sometimes seen eloquence without wisdom, and often wisdom without eloquence; but in him I have seen them united in the highest degree."

Of his oratory Macaulay writes, in a review of Thackeray's *Chatham*, as follows:

"On the stage, he would have been the finest Brutus or Coriolanus ever seen. . . . His figure, when he first appeared in Parliament, was strikingly graceful and commanding, his features high and noble, his eyes full of fire. His voice, even when it sank to a whisper, was heard to the remotest benches; when he strained it to the fullest extent, the sound rose like the swell of the organ of a great cathedral, shook the house with its peal, and was heard through lobbies and down staircases, to the Court of Requests and the precincts of Westminster Hall. He cultivated all these eminent advantages with the most assiduous care. His action is described by a very malignant observer as equal to that of Garrick. His play of countenance was wonderful; he frequently disconcerted a hostile orator by a single glance of indignation or scorn. Every tone, from the impassioned cry to the thrilling aside, was perfectly at his command. It is by no means improbable that the pains which he took to improve his great personal advantages had, in some respects, a prejudicial operation, and tended to nourish in him that passion for theatrical effect which, as we have already remarked, was one of the most conspicuous blemishes in his character."[1]

The argument of Pitt on the repeal of the Stamp Act revolved around the point that, according to the British constitution, while Parliament was supreme in legislation for the Empire, taxation was no part of the legislative power—that taxes were a voluntary gift and *grant*

[1] See also the eulogy of Pitt by Henry Grattan, found in most collections of British eloquence. It begins, "The secretary stood alone."

of the Commons alone, who represented the property of the United Kingdom only. That the colonies were *virtually* represented in the Commons he scouted as "the most contemptible idea that ever entered into the head of man." In this connection he alluded to the sparsely peopled "rotten boroughs" whose existence was justified as virtually also representing populous districts such as the newly arisen manufacturing towns to which members of Parliament continued to be denied, and he predicted that the system could not continue a century, a prophecy which was fulfilled by the abolition of such boroughs in 1832.

Grenville in his former defense of the cider tax had, by frequent queries as to *where* a new tax could be laid if not on cider, given Pitt the opportunity to whistle, from the floor of the House, the air of a popular song, *Gentle Shepherd, Tell me Where*, affixing thereby the nickname of "Gentle Shepherd" to the anxious inquirer, the amenity of which christening was heightened by the fact that Grenville and Pitt were brothers-in-law. This habit of rhetorical interrogation persisted in spite of the ridicule, and Grenville now asked:

Wherein lay the distinction between external and internal taxes? Were they not the same in effect? Had any gentleman objected to the right to tax America when he put the question on the occasion of the proposal of the Stamp Act? When were the Americans emancipated from obedience to Parliament, their protector? Then he directly charged that the "sedition" in America was due to encouragement by the Opposition in Commons.

Pitt boldly confessed that he was in hearty sympathy with resistance by the Britons in America to unconstitutional taxation.

"Three millions of people, so dead to all the feelings of liberty as voluntarily to submit to be made slaves would have been fit instruments to make slaves of the rest [of the British]."

He refused to enlighten the obtuse Mr. Grenville upon the difference between external and internal taxes, and, in reply to his question as to when the Americans became emancipated, he asked, "When were they made slaves?"

In the vein of Barré he discussed Parliament's "protection" of America, giving statistics to prove that, owing to the trade with the colonies, estimated at £2,000,000 a year, land values in England had increased fifty per cent.[1] "This is the price America pays you for her protection." And then, referring to a remark of Mr. Nugent, an administration speaker, that "a peppercorn [nominal payment] in acknowledgment of the right to tax America is of more value than millions without it," he scornfully asked, "And shall a miserable financier come with a boast that he can bring a 'peppercorn' into the exchequer by the loss of millions to the nation?"

Pitt concluded with a scathing indictment of not only the colonial, but the foreign "peace" policy of the administration:

"Is this your boasted peace—not to sheathe the sword in its scabbard, but in the bowels of your countrymen?" He prophesied ruin to the Empire if coercion of America were pursued, even if the colonists were defeated. "America, if she fall, would fall like the strong man; she would embrace

[1] This use of land values as an index of prosperity indicates an economic insight far in advance of other English statesmen of the time. It is a point for "Single Taxers."

the pillars of the state, and pull down the constitution along with her."

He moved that the Stamp Act be repealed "absolutely, totally, and immediately," with the reason assigned that it was based on an erroneous principle, and with an accompanying strong assertion of British authority over the colonies in every point of legislation whatsoever—every governmental power—"except that of taking their money out of their pockets without their consent."

The Supremacy of Parliament. A strong movement now arose in Parliament to repeal the Stamp Act, but before doing so, to assert the supremacy of Parliament "in all cases whatsoever." General Conway, on January 27, made a motion to the latter effect. Colonel Barré moved to strike out the final phrase. On this point the debate waged until four o'clock in the morning of the 28th, when the vote was taken on Barré's amendment, and it was negatived by an almost unanimous vote.

Henry Seymour Conway had been a member successively of the Irish and British Parliaments since 1741, serving frequently during this time in the army. He was liberal in his political views, supporting John Wilkes, the "tribune of the people" in his struggle to obtain the seat in Parliament to which he had been again and again elected. Later Conway opposed Lord North's American policy. Says the *Encyclopædia Britannica:*

"Conway was personally one of the most popular men of his day. He was handsome, conciliatory, and agreeable, and a man of refined taste and untarnished honor. As a soldier he was a dashing officer, but a poor general. He was weak,

vacillating, and ineffective as a politician, lacking in judgment and decision, and without any great parliamentary talent."

General Conway's resolution was passed on February 10, and an inquiry was begun on repeal of the Stamp Act. Among other American agents in London, Dr. Franklin was examined. To the question whether the Americans would submit to pay stamp duties if the amounts were reduced to nominal sums, he answered, "No, they never will submit to it." To the question whether the colonial assemblies would admit the right of Parliament to tax America, he replied, "They never will do it unless compelled by force of arms."

Sketch of Franklin. Benjamin Franklin was indisputably the leading citizen of America during the greater part of the eighteenth century, being foremost as a scientist, philosopher, public administrator, statesman, diplomatist, author, and man of business. From the time when, in 1729, he founded the *Pennsylvania Gazette* of Philadelphia until in 1787 he took a prominent part in the convention which framed the Constitution of the United States, he was connected with institutions and movements of every kind that looked to the commercial, educational, and political advancement of the country. He founded the Philadelphia Library in 1731; in 1737 he began the publication of *Poor Richard's Almanac*, a work of homely wisdom exactly adapted to the needs of the earnest, hardworking colonists; he entered upon his long and efficient career of administrative service in 1737, when he became postmaster of Philadelphia; in 1743 he founded the American Philosophical Society and the institution which is now the University of Pennsylvania; in 1752 he made

the fundamental discovery of modern electrical science, demonstrating that lightning was an electrical discharge by experiments made with a kite during a thunderstorm; in 1753 as deputy postmaster-general for the colonies he became the administrative head of the service.

Mirabeau, the great orator of the French Revolution, said of Franklin:

"Antiquity would have raised altars to his mighty genius, who, to the advantage of mankind, compassing in his mind the heavens and the earth, was able to restrain alike thunderbolts and tyrants,"

which thought was elsewhere expressed in the Latin epigrammatic verse:

"Eripuit cœlo fulmen, sceptrumque tyrannis."
(He snatched from heaven the thunderbolt, the scepter, too, from tyrants.)

Franklin's political philosophy, while of the democratic school of Jefferson and Paine, differed from theirs in compromising more with existing conditions. He had a genius for the formulation of plans that were both adoptable and adaptable. The well-known picture of him entering Philadelphia as a youth with a loaf of bread under his arm, to be truly symbolic of his character, should have the long loaf cut in two, for his maxim was that "the half loaf is better than no bread."

Besides a large amount of correspondence, and papers and pamphlets of many kinds, Franklin left behind him one of the most notable autobiographies in literature.

Of Franklin's literary style his biographer, John Bigelow, says:

"The Doric simplicity of his style; his incomparable facility of condensing a great principle into an apologue or an anecdote, many of which, as he applied them, have become folk-lore of all nations; his habitual moderation of statement, his aversion to exaggeration, his inflexible logic, and his perfect truthfulness,—made him one of the most persuasive men of his time, and his writings a model which no one can study without profit. A judicious selection from Franklin's writings should constitute a part of the curriculum of every college and high school that aspires to cultivate in its pupils a pure style and correct literary taste."

On February 18, 1766, the examination of Franklin was finished, and soon after this the Commons repealed the Stamp Act, and passed the declaration of the unlimited supremacy of Parliament. Both bills were sent to the Lords on March 5. This House had, on February 3, already debated the latter question. The two contestants were Lord Camden (Charles Pratt) and Lord Mansfield (William Murray).[1]

Sketch of Camden. Charles Pratt had been a schoolmate of Pitt at Eton, and always sympathized with the politics of the "Great Commoner." Admitted to the bar in 1738, he attained no distinction in his profession until 1752 when he successfully defended a bookseller charged with libelling the House of Commons. He was recognized as the chief authority on libels, being called "the maintainer of English constitutional liberty." In 1757 he was appointed Attorney-General, and in 1762 Chief-Justice of the Common Pleas, in which position he presided over the trial of John Wilkes, the radical

[1] For the speech of Lord Mansfield in full, with annotations, see *Representative British Orations*, by Charles Kendall Adams. Professor Adams in his notes reproduces a high tribute to Mansfield as a jurist by Justice Joseph Story.

to whom a seat had been denied in the Commons. In this case he declared the action of the Government illegal, an opinion which, coinciding with the sentiments of the common people, made him the most popular of judges. In 1765 he was made Baron Camden under the Rockingham administration, whose American policy, notwithstanding, he opposed, and in the same year became Lord Chancellor. In 1771 he joined with Chatham in opposing the Government, and resigned his office. He became a chief opponent of Lord North's American policy, and was hailed in the colonies as their stout defender, many counties and towns being named for him. He was president of the Council under Rockingham in 1782–83, and under the younger Pitt from 1783 until his death. He was created Earl Camden and Viscount Bayham in 1786.

Sketch of Mansfield. William Murray, a younger son of Lord Stormont, an extreme Tory, determined, like Pitt, at an early age on a political career, and performed even greater drudgery in preparing himself for it. At Oxford he translated all of Cicero's orations into English, and, after an interval, without consultation of the original, rendered them back into Latin. Admitted to the bar at the age of twenty-six, he was, says John Lord Campbell in his *Lives of the Chief-Justices of England*,

"already acquainted, not only with the international law, but with the codes of all the most civilized nations, ancient and modern; he was an elegant classical scholar; he was thoroughly imbued with the literature of his own country; he had profoundly studied our mixed constitution; he had a sincere desire to be of service to his country; and he was animated by a noble aspiration after honorable fame."

In 1742, at the mature age of thirty-seven, Murray entered the House of Commons, and took a commanding position among the Tories, becoming the leading forensic antagonist of Pitt. He was appointed King's Attorney in 1754, and became Chief-Justice two years later, entering the House of Lords under the title of Baron Mansfield. In 1776 he was made Earl of Mansfield. He died in 1793, in the eighty-ninth year of his age.

The question as to which was the greatest debater of their time, Chatham or Mansfield, raged during their era, and, though increasing democratic opinion has inclined the modern view in favor of the Whig statesman, Mansfield's claim to preëminence over Pitt, or at least equality with him, still has able supporters. Among the Tories of his day Mansfield was regarded as clearly the superior. Lord Waldegrave said in 1755: "In all the debates of consequence Murray, the Attorney-General, had greatly the advantage over Pitt in point of argument; and, abuse only excepted, was not much his inferior in any part of oratory."

Of the character of his eloquence Edmund Burton says in his work, *Character Deduced from Classical Remains* (1763):

"As a speaker in the House of Lords, where was his competitor? The grace of his action, and the fire and vivacity of his looks, are still present to imagination; and the harmony of his voice yet vibrates in the ear of those who have been accustomed to listen to him. His Lordship possessed the strongest powers of discrimination; his language was elegant and perspicuous, arranged with the happiest method, and applied with the utmost extent of human ingenuity; his images were often bold, and always just; but the character of his eloquence is that of being flowing, perspicuous, convincing, and affecting."

But the strongest testimony to the ability of Mansfield is that of the early American statesmen who regarded him as the subtlest and most persuasive advocate of the principles that were opposed to their theory of government. Thus Jefferson spoke of "honeyed Mansfieldianism" as the insidious enemy of popular liberty. The liberty of one class of present American citizens, however, is largely due to the influence of one memorable decision of Lord Mansfield on American jurisprudence. This was his liberation of the slave Sommersett, who claimed his freedom because of setting foot on free soil, namely that of Great Britain.

In the debate in the Lords on the repeal of the Stamp Act Lord Camden denied the right to tax America on the ground that taxation and representation were inseparably connected by an eternal law of nature, the right to property. In his argument he largely followed Pitt in the Commons.

He was replied to by Lord Mansfield, whose speech was by far the ablest presentation by any British statesman of the affirmative side of the question. While formally answering Lord Camden, he was really opposing the arguments of Pitt.

Mansfield attacked the central position of Camden and the "Great Commoner," that taxation without representation was a violation of the British constitution, by asserting that the constitution had "been always in a moving state, either gaining or losing something" and that, by the acts of Crown and Parliament, it had now become a different thing from the last definite statement of it in the Revolution of 1688, on which Camden based the Whig contention. The colonies, he said, under their continuing allegiance to Crown and Parliament, could not stand on their rights as these were at the time of their foundation. "They were

modeled gradually into their present forms, respectively, by charters, grants, and statutes; but they were never separated from the mother country, or so emancipated as to become *sui juris*."

Mansfield declared that, if there was no express law, or reason founded on inference from it, yet usage alone, the compliance of the colonies with English jurisdiction, was sufficient to support that authority.

He here cited various colonial appeals to the privy council on intercolonial disputes to be settled by English law, and the acceptance of its decisions. Without such acceptance, he said, so great was intercolonial jealousy that anarchy would prevail in America, for no other supreme authority would exist. If the colonies attempted to form a union independent of Great Britain, it could not be effected without great violences, so diverse and conflicting were the natures of the several governments. He admitted that the colonies had paid a heavy price in restrictions of trade for having a supreme power over them, but claimed that the protection afforded by the British government was worth it.

The colonies, he claimed, were as much represented in Parliament as eight of the nine millions of Englishmen. Was it proposed to "new-model" the constitution of Great Britain? The representatives of the voting million also acted for the non voters.[1] A member of Parliament represented not only his particular constituency, but the inhabitants of every other borough in Great Britain.[2]

He denied that there was any essential distinction between external and internal taxes, showing, by the chain

[1] A point which, whether sound or unsound, is applicable to the present question of woman suffrage.

[2] The same view has been urged many times by various eminent American statesmen in justifying their voting against the interests, and, in some cases, against the positive instructions, of their constituents.

of the incidence of taxation, that a duty of any kind or amount on a product affected production adversely.[1]

He advised lenity toward the colonies, but said that this should be manifested only after stern measures had compelled them to admit the supremacy of Parliament. He closed with the words of Maurice, Prince of Orange, concerning the Hollanders: "God bless this industrious, frugal, and well-meaning, but easily deluded people."[2]

The Stamp Act was repealed, and the declaration of the supremacy of Parliament was passed in the Lords, each by a large majority, and they became laws by the royal signature. Mansfield's view that the British constitution knows no limitation of the power of Parliament, nor distinction between taxation and other legislation, has been generally accepted in Great Britain. Edmund Burke upheld it in 1780 in his "Speech to the Electors of Bristol," with a qualification in the application of the principle to America. In 1868, in the trial of Edward John Eyre, Governor of Jamaica, on the charge of illegal and arbitrary acts committed by him subsequent to a negro insurrection in 1865, the British judge, Colin Blackburn (later Baron Blackburn), decided that, "although the general rule is that the legislative assembly has the sole right of imposing taxes in the colony, yet when the imperial legislature chooses to impose taxes, according to the rule of English law they have a right to do it."[3]

[1] A point in discussion of modern questions of taxation, particularly the tariff.

[2] Mansfield's speech is a model for debaters in its strict limitation to the fundamental issue, the question of *right*, that of *expediency* not entering into consideration. John Lord Campbell, in his *Lives of the Chief Justices of England*, though friendly to Whig principles, said of this speech of Mansfield that it was one of those arguments to which he had "never been able to find an answer."

[3] Yonge's *Constitutional History of England*, p. 66.

It should be noted that the planters of Jamaica at the time of the contest of the Americans for colonial rights were even more vehement than these against the rule of Parliament. However, the presence of the British fleet in the waters of the West Indies kept them from revolution.

The leading patriots in America soon began to accept Mansfield's view that there was no distinction between Parliament's right to tax and to legislate in other matters. Probably the first pronouncement of this in the colonies was by Joseph Hawley, member from Northampton, who declared in 1766, in the Massachusetts House of Representatives, that "Great Britain had no right to legislate [at all] for us." James Otis thereupon arose in his seat, and, bowing, said: "He has gone farther than I have yet done."

Colonial Representation in Parliament. Otis differed with most of the patriots, notably Samuel Adams, on the practicability of colonial representation in Parliament, which Otis asserted. Franklin also held this view, as did many statesmen and publicists in Great Britain, notably Adam Smith, who advocated representation in Parliament apportioned according to national revenue. Smith prophesied that, if this were granted to the colonies, some day the seat of British government would be transferred, and properly so, to America, as the central and most flourishing part of the Empire.

CHAPTER IV

MASSACHUSETTS *vs.* PARLIAMENT

1767–1774

The "Townshend Taxes"—Protest of Massachusetts—Intercolonial Correspondence—Controversy between Lord Hillsborough and Massachusetts Assembly on the Subject—Dissolution of the Assembly—Non-Importation Agreement—Controversy over Royal Troops—"Appeal to Americans" by Josiah Quincy, 2d—Parliament Proposes to Try American Patriots in England—Sketch of Samuel Adams—His Threat of American Independence—Controversy over Royal Troops between Governor Francis Bernard and Massachusetts Assembly—Protest of Virginia against Deportation of Americans for Trial—Thomas Hutchinson Succeeds Bernard—Sketch of Hutchinson—Boston's "Appeal to the World"—Controversy in South Carolina on Patriotic Associations: Christopher Gadsden *vs.* William Henry Drayton—Sketches of the Debaters—Lord North Becomes Prime Minister—Sketch of North—Taxes Removed Save on Tea—The "Boston Massacre"—Controversy between Governor Hutchinson and Massachusetts Assembly over Troops—Troops Removed—Burning of Revenue Schooner *Gaspée*—Controversy between Hutchinson and the Assembly over Supremacy of Parliament and Intercolonial Correspondence—Boston Tea-Party—Boston Port Bill—Suspension of Massachusetts Government—Barré on the Subject—Protest of Boston against Port Bill—Obstruction of New Government.

THE proposal to tax America for revenue purposes sprang up again, strange to say, in an administration organized by Pitt. In 1766 Rockingham was dismissed, and the "Great Commoner" was called upon to form a new ministry. In this he took the minor office

of Lord Privy Seal, which required his removal to the House of Lords; and in August he was created Earl of Chatham. The Duke of Grafton, First Lord of the Treasury, thereupon became the real head of the government. The cabinet was composed largely of "prerogative men," subservient to the will of the King, and these returned again to the project of making the colonies contribute to the expenses of the British government.

The Townshend Taxes. In May, 1767, the brilliant but erratic Charles Townshend, Chancellor of the Exchequer, instigated by ex-minister George Grenville, the ministerial leader in Commons, submitted to that House a bill imposing on the colonies import duties on glass, paper, painters' materials, and tea. The preamble declared that the impost was to defray the expenses of defending these provinces. Owing probably to Lord Chatham's absence from the deliberations on account of sickness, the bill passed both Houses in June with little opposition. Royal commissioners were appointed for the colonies to see that all the laws of Parliament were executed in regard to American trade. They were instructed to use for this purpose the royal troops quartered on the colonies. The new duties were to apply to the maintenance of Crown officers and royal troops in America, a provision which plainly showed that the duties were not so much occasioned by the need of British revenue, as by the desire to enforce the principle of the sovereignty of Parliament. The measure relating to the troops was popularly called the "Mutiny Act."

American Protests. These acts created great excitement in the colonies. In January, 1768, the Massachusetts House of Representatives protested to the

King and the Ministry against them, on the ground that the colonies were not represented in Parliament which enacted them. They were a violation, said the House, of the hitherto unquestioned original contract of the Crown with the first settlers in America, that "if these adventurers," at "their own cost" and "at the hazard of their lives," would "purchase a new world," and thereby "enlarge the King's dominions," they should enjoy all the rights of "His Majesty's subjects within the realm," including freedom from taxes in laying of which they had no voice.

In reference to the application of the taxes to the support of Crown officers and royal troops in the colonies, the House said that this would introduce an absolute government in America. The judges already were independent of the people in regard to term of office,[1] and if they were to have their salaries from the Crown, how easy would it be "for a corrupt governor to have a set of judges to his mind, to deprive a bench of justice of its glory and the people of their security."

The House addressed a circular letter to the other colonies requesting coöperation for redress. The British ministry, remembering the unity of opposition secured by the colonists by the Stamp Act Congress, determined to prevent such another assembly, and Lord Hillsborough, Secretary of State, instructed Governor Francis Bernard of Massachusetts to require the House of Representatives at its next meeting, on the ground of the "unconstitutionality" of the proceeding, to rescind its call for colonial coöperation, on penalty of dissolution. The other colonial governors were warned to use their endeavors to prevent the proposed "unwarrantable combination."

[1] A point applicable to the present issue of recall of judges.

The House refused compliance with the order, and wrote to Hillsborough a bold and indignant letter saying, "If the votes of the House were to be controlled by the direction of a minister, we have left us but a shadow of liberty." James Otis said: "When Lord Hillsborough knows that we will not rescind our acts, let him apply to Parliament to rescind theirs. Let Britain rescind their measures, or they are lost forever."

Governor Bernard, in compliance with the ministry's order, dissolved the House.

In the summer of this year (1768) the merchants of the principal colonies formed a non-importation agreement, particularly with regard to taxed articles. It was now fully recognized that America should develop its manufactures in order to be economically independent.

Royal Troops. The concomitant acts of Parliament, especially the further establishment of royal troops in the colonies, angered the people even more than did the taxes. The colonial assemblies had repeatedly protested against the presence of these troops since their introduction at the time of the Stamp Act, and on constitutional grounds had refused to vote supplies for their maintenance. New York had especially offended the British government in this regard, and in July, 1767, Parliament had inhibited the Assembly of that province from passing any act whatsoever until it had voted for supplies to the troops. This was called the "Billeting Act." The Assembly subsequently complied with the order, and was reinstated in its powers. On the rumor that new troops were coming to Boston, a convention representing ninety-six Massachusetts towns met in that city on September 22, 1768, and protested against such coercion. They denied that they were inspired by a desire for independence.

At this time the people of Massachusetts were aroused against the Townshend Taxes and the coming of new troops by a series of articles appearing in the *Boston Gazette* over the signature of "Hyperion." The author was Josiah Quincy, 2d, an able young lawyer of the town.

The most eloquent of the "Hyperion" articles appeared on October 3, 1768, shortly after the Massachusetts anti-military convention.

In the manner of Dulany in the case of the Stamp Act, Quincy pleaded with the colonial patriots to abstain from the imported luxuries, especially tea, which were taxed. He said:

"He who cannot conquer the little vanity of his heart, and deny the delicacy of a debauched palate, *let him lay his hand upon his mouth, and his mouth in the dust.*"[1]

Quincy was especially bitter against the quartering on the colonies of royal troops to enforce the Parliamentary acts.

"Are not our distresses more than we can bear; and, to finish all, are not our cities, in a time of profound peace, filled with standing armies, to preclude us from that last solace of the wretched—to open their mouths in complaint, and send forth their cries in bitterness of heart?"

He upheld the contentions of the colonists as the constitutional rights of Britons, the denial of which by their kinsmen abroad aggravated the oppression.

[1] The classic quality of the italicized passage has tempted many American orators to use it in other connections as if it were original with them—a reprehensible practice that has caused its original utterance to be ascribed to various statesmen other than Quincy, notably George E. Pugh, Senator from Ohio, who employed the figure in the Democratic Presidential Convention at Charleston, S. C., in 1860.

"Were a tyrant to conquer us, the chains of slavery, when opposition should become useless, might be supportable; but to be shackled by Englishmen—by our equals—is not to be borne!"

The theological tone had not yet departed from our political oratory. Quincy threatened his Calvinistic audience with the pains of hell hereafter should they submit to the unjust "whips and stripes" inflicted by their "master" on earth—an inferential comparison to his Satanic Majesty and his minions which King George and his ministers evidently did not relish, and kept in mind against him, for some years later, when Quincy went as an agent of Massachusetts to London, he was most coolly received by Lord North, the Prime Minister at that time.

"To hope for the protection of Heaven," said the devout orator, "without doing our duty is to mock the Deity." In phrases anticipating those of Thomas Paine, really the most reverent of our early statesmen, he asked: "Wherefore had man his reason, if it were not to direct him? Wherefore his strength, if it be not his protection? With the smiles of Heaven, virtue, unanimity, and firmness will ensure success. While we have justice and God on our side, tyranny, spiritual or temporal, shall never ride triumphant in a land inhabited by Englishmen."

Trial of Americans in England. The House of Lords, on December 15, 1768, passed resolutions censuring the proceedings at Boston as subversive of his Majesty's government, and manifesting the design to become independent thereof. In February, 1769, the Commons ratified these resolutions, and requested the King to direct the Governor of Massachusetts to report on the "treasons" in that province, in order that the accused

parties might be tried in the realm, if his Majesty saw fit. This was the revival of an obsolete act, 35 Henry VIII. The King in his answer to the Commons indicated that such a trial was his intention. The haling thus projected of American patriots to England on the mere suspicion of treason was regarded by the colonists as the crowning act of their subjugation.

Sketch of Adams. It is in place here to give a sketch of Samuel Adams, who now became the head and front of defense of American civil liberty as represented in Massachusetts, and the rock of offense to the British ministry, as represented in the royal government of that province. Samuel Adams (it is significant of his popularity with the common people that he was called "Sam" Adams) was born at Boston in 1722. His father, bearing the same name, was a rich man of great political influence, due in part to his wealth, but far more to his inventive ingenuity in organizing the first "political machine" in the country. This was the "caucus," an association of political workers for the purpose of privately "slating" men for office to be elected by the "free and independent" citizenry. With about twenty men of this class, some of them shipyard mechanics, Samuel Adams, Sr., formed a "Ca[u]lkers' Club," which secretly decided what names were to be presented to the town-meetings of Boston as proper persons to be chosen to administer the affairs of the city. By February, 1763, the name of the organization, or its successor, had been corrupted, or rather euphonized into "Caucus Club."[1]

[1] For other, and, to the mind of the author, more fanciful etymologies of the term "caucus," see the large dictionaries. For the development of the principle of the caucus in American cities see general treatises on municipal government, and special works, such as *The History of Tam-*

The younger Samuel was sent to Harvard, from which college he was graduated in 1740. In 1743 he took his master's degree, choosing as the subject of his Latin thesis: "Whether it be lawful to resist the supreme magistrate if the commonwealth cannot otherwise be preserved," and defending the affirmative. In choosing a profession he preferred law to the ministry, for which his parents designed him (indeed, he remained through life a strict Calvinist), but he compromised with their old-fashioned prejudices against lawyers by entering into mercantile business. Here he lost the money given him for the purpose. He then entered into partnership with his father in a brewery, which was a rather unsuccessful venture. At the same time the elder Adams lost his fortune in a banking enterprise, which failed owing to the passage of an act of Parliament forbidding the kind of incorporation under which it was organized. Samuel Adams, therefore, had personal reasons for his subsequent fight against the interference of Parliament in American affairs. The death of his father soon after this (in 1748) left Samuel to struggle alone to carry on the poorly paying brewery. In 1749 he married, and soon had an increasing family to support. However, by securing the position of tax-collector in Boston, he managed to make a living, being subjected the while to the taunts of the Tory wits, who called him "Sammy the maltster" and "Sammy the publican." In his double employment, however, he got into touch with the common people, and became a power in town-meetings. In these, with the high pur-

many Hall, by Gustavus Myers. For the development of the caucus in State and Federal government see *Political Parties and Party Problems in the United States*, by James Albert Woodburn, chap. xi., and the books therein mentioned.

pose of a patriotic statesman, he drafted resolutions against autocratic authority, and, with the self-abnegation of a shrewd politician, he inspired important persons, who might not otherwise have used their influence, to support these with arguments which he supplied and for which they obtained the credit. In this manner he inducted John Hancock, the richest merchant in Boston, into politics. Indeed, there is every reason to believe that he wrote out the notable speech which Hancock delivered in 1774 on the anniversary memorial of the "Boston Massacre."

From 1765 to 1774 Adams served as clerk of the Massachusetts House of Representatives, receiving a small salary, which, by his own frugality and that of his wife (his first wife dying, he had married again in 1764), sufficed for the family income.

As clerk of the Assembly he was in the best of all positions to influence public sentiment in resistance to British aggression through the town-meetings, and to unite the action of these by systematized correspondence with patriot leaders all over the province. This device of the "committee of correspondence" attracted particularly the hatred of the Tories, one of whom, Daniel Leonard, of Taunton, writing under the pen name of "Massachusettensis" in a newspaper controversy in 1774–5 with John Adams ("Novanglus"), characterized it as "an invention of the fertile brain of one of the Whig party's agents . . . amenable to no one . . . the foulest, subtlest, and most venomous serpent that ever issued from the eggs of sedition."

John Adams replied:

"I should rather call it the *ichneumon*, a very industrious and useful animal which was worshiped in Egypt because

it defended the country from the ravages of the crocodiles, whose eggs it searched out and crushed. That the invention is effective is clear from the unlimited wrath of the Tories against it, and from the gall which 'Massachusettensis' discharges upon it. And its inventor is one to whom America has erected a statue in her heart for his integrity, fortitude, and perseverance in her cause."

A portrait in 1770, when the subject was forty-eight years of age, made by the famous Boston painter of his time, John Singleton Copley, presents Samuel Adams's physical characteristics. It is enforced by a pen-portrait given by the biographer and great-grandson of Adams, William V. Wells, who describes him as above the medium height, of florid complexion, with dark blue eyes. He was careful in dress, dignified though cordial in manners, being, like Lincoln, a great story-teller; frugal; scrupulously honest (although, as tax-collector, his humane spirit in not pressing claims caused him to be heavily in arrears with amounts charged against him, and hence gave occasion to the Tories to call him a defaulter); and with an enormous capacity for work, writing under many pseudonyms countless patriotic contributions to the press, and carrying on a heavy correspondence with the "friends of American liberty" not only in every town in Massachusetts but throughout the other colonies. A physical infirmity, nervous trembling, aided him in moments of excitement by impressing spectators with a sense of his deep feeling.

Of his oratorical abilities, his second cousin in blood, and his "brother" in affectionate association, John Adams, said in reminiscence:

"He had an exquisite ear for music, and a charming voice when he pleased to exert it. Yet his ordinary speeches . . .

exhibited nothing extraordinary; but upon great occasions, when his deeper feelings were excited, he erected himself, or, rather, nature seemed to erect him, without the smallest symptom of affectation, into an upright dignity of figure and gesture, and gave a harmony to his voice which made a strong impression on spectators and auditors—the more lasting for the purity, correctness, and nervous elegance of his style."

In town-meetings he spoke in plain language suited to his hearers. On set occasions, with scholars in the audience, he made classical allusions with great aptness.

Jefferson, while comparing him to his disadvantage with John Adams as a debater (whom Jefferson considered the ideal of argumentative speakers), nevertheless remarked that Samuel Adams, "although not of fluent elocution," was "so rigorously logical, so clear in his views, abundant in good sense, and master always of his subject, that he commanded the most profound attention in an assembly by which the froth of declamation was heard with the most sovereign contempt."

As a writer Samuel Adams developed himself by assiduous practice from an indifferent newspaper contributor to a polemic of "great perfection," to quote from his chief antagonist, the Tory Governor of Massachusetts, Thomas Hutchinson. Said Hutchinson with deep personal resentment:

"He acquired a talent of artfully and fallaciously insinuating into the minds of his readers a prejudice against the character of all whom he attacked, beyond any other man I ever knew."

It was said that Governor Bernard, who, as Hutchinson's predecessor, was the victim of Adams's less per-

fected skill, used to exclaim: "Damn that Adams! Every dip of his pen stings like a horned snake."

In the friendly judgment of John Adams, as afterwards demonstrated by Wells, the voluminous writings of Samuel Adams, if collected, "would throw light upon American history for fifty years," and reveal "a nervous simplicity of reasoning and eloquence that have never been rivaled in America."

It was, however, as a political manager that Samuel Adams was supreme. Says James K. Hosmer[1]:

"He was the prince of canvassers, the very king of the caucus, of which his father was the inventor. . . . One hardly knows which to wonder at most, the astuteness or the self-sacrifice with which, in order to present a measure effectively, or to humor a touchy co-worker, he continually postpones himself while he gives the foreground to others."

In his address at Concord, Mass., in 1875, on the hundredth anniversary of the opening battle of the Revolution, George William Curtis characterized Samuel Adams as the master-spirit of the New England town-meeting, the great organizer and manipulator of that mighty embodiment of popular opinion which conquered the Crown and the Parliament of the most powerful Empire on earth.

"The town-meeting was the alarm-bell with which he aroused the continent. It was the rapier with which he fenced with the ministry. It was the claymore with which he smote their counsels. It was the harp of a thousand strings that he swept into a burst of passionate defiance, or an electric call to arms, or a proud pæan of exulting triumph—defiance, challenge, and exultation, all lifting the continent to independence. His indomitable will and command of the

[1] *Samuel Adams* in American Statesmen Series, pp. 363, 364.

popular confidence played Boston against London, the provincial town-meeting against the royal Parliament, Faneuil Hall against St. Stephen's. And, as long as the American town-meeting is known, its great genius will be revealed, who, with the town-meeting, overthrew an Empire. So long as Faneuil Hall stands, Samuel Adams will not want his most fitting monument, and when Faneuil Hall falls, its name, with his, will be found written, as with a sunbeam, upon every faithful American heart."

Adams carried this power from local into national affairs. Said Jefferson:

"In the Eastern States, for a year or two after it began, he was truly the Man of the Revolution. He was constantly holding [in Congress] caucuses of distinguished men (among whom was R[ichard] H[enry] Lee), at which the generality of the measures pursued were previously determined on, and at which the parts were assigned to the different actors who afterwards appeared in them."

By these arts Samuel Adams, more than any other one man, secured the adoption of the Declaration of Independence, and therefore it was fitting that he delivered the address to the people of Philadelphia on the day preceding the formal signing of the engrossed copy.

On March 18, 1769, the anniversary of the repeal of the Stamp Act, an appeal to the "Sons of Liberty" was found posted on the Liberty Tree at Providence, R. I. It was published also that same morning in the *Providence Gazette*, and later in the *Boston Gazette*. It was signed "A Son of Liberty." Samuel Adams was the author. It was possibly the first threat of American independence. It read:

"When I consider the corruption of Great Britain—their load of debt—their intestine divisions, tumults, and riots—their scarcity of provisions—and the contempt in which they are held by the people about them; and when I consider on the other hand the state of the American colonies with regard to the various climates, soils, produce, rapid population, joined to the virtue of the inhabitants—I cannot think but that the conduct of Old England towards us may be permitted by Divine Wisdom . . . for hastening a period dreadful to Great Britain."

In May of the same year Francis Bernard, Governor of Massachusetts, convened at Boston the House of Representatives, which had been suspended from its functions now more than a year for its circular letter to the other colonies. The House refused to proceed to business under duress of troops in the city, whereupon the Governor adjourned it to Cambridge, across the Charles River. Thither the members went under protest. When the Governor urged them to expedite their action in order to save time and expense, Samuel Adams voiced the sentiment of the House by saying:

"No time can be better employed than in the preservation of the rights derived from the British constitution. . . . No treasure can be better expended than in securing . . . liberty. . . ."

Earlier in the month the Virginia House of Burgesses had declared that the transportation of Americans to England for trial would be "highly derogatory of the rights of British subjects, as thereby the inestimable privilege of trial by a jury from the vicinage, as well as the liberty of producing witnesses on such trial, will be taken away from the party accused." The House sent a petition to the King on the subject.

News reached the Massachusetts House of the action of Virginia. Thereupon it passed resolutions of the same purport. These caused the Governor to recall a regiment about to sail to Halifax, and, in spite of the protest of Samuel Adams and other radicals, the House voted to modify the resolutions. The regiment then departed.

Governor Bernard then demanded that the House vote for supplies to the troops before passing other measures, this being in accordance with the terms of the Billeting Act. The House refused compliance, and was prorogued in July. On the last of this month Bernard was recalled to England, ostensibly to advise the ministry on colonial affairs, but really because of his inability to handle the Massachusetts Legislature. The British government demanded that the General Court (Legislature) of Massachusetts vote him full salary for the unexpired portion of his year of service. This the House of Representatives indignantly refused to do. On Bernard's departure, Boston made holiday, with the ringing of bells, roaring of cannon, and the blazing of a great bonfire on Fort Hill for him to look back upon when out at sea.

Lieutenant-Governor Thomas Hutchinson assumed the gubernatorial duties, Bernard being still nominal Governor, and was appointed Governor two years thereafter.

Sketch of Hutchinson. Thomas Hutchinson, the ablest of all the American loyalists, was the son of a wealthy merchant of Boston. He was graduated from Harvard in 1727, and for several years thereafter devoted himself to business. In 1737 he was elected to the Massachusetts House of Representatives, serving until 1740, and from 1742 to 1749, being Speaker the

last three years. He made a special study of finance, and opposed vigorously the unsound "Land Bank," and the inflated issue by the colony of bills of credit. In 1748 he secured the passage of a bill for redeeming and canceling the outstanding paper currency. One of his bitterest opponents on the question of colonial rights, John Adams, in 1809 paid this tribute to his financial ability:

"If I was the witch of Endor I would wake the ghost of Hutchinson and give him absolute power over the currency of the United States . . . provided always that he should meddle with nothing [else]. As little as I revere his memory, I will acknowledge that he understood the subject of coin and commerce better than any man I ever knew in the country."

Pity it is that Hutchinson did not follow his first inclination toward the colonial cause and serve in the Congress of the Revolution, which almost lost the war by unwise financial measures.

He was a member of the Governor's council from 1749 to 1756. In 1754 he was a delegate to the Albany Federal Convention, and served on the committee, of which Franklin was chairman, to draft a plan of colonial union. Appointed judge of probate in 1752, he became Chief-Justice of the Superior Court of Massachusetts in 1761, serving till 1769, at the same time holding the office of Lieutenant-Governor, to which he had risen in 1758. Upon the appointment of General Gage as his gubernatorial successor, he went to England and acted as adviser in American affairs to the King and ministry. Although his beautiful home and entire fortune were confiscated by the "rebels," he counseled moderation toward them. He died in England. In

argumentative ability he compared favorably with Lord Mansfield, whose praise he won, although his testy and vindictive character was far from the judicial ideal.

Contention for Self-Taxation. The British ministry, alarmed at the resistance of the colonists, sounded them through the royal governors as to the acceptance of removal of the taxes on all articles except tea, retaining this to maintain the right of Parliament to tax America. The various colonial assemblies repudiated the offer, as not being a concession of the principle of self-taxation for which they were contending.

On October 4, 1769, the people of Boston issued "An Appeal to the World," to this effect. They demanded the repeal of all taxes for revenue, the dissolution of the Board of Customs Commissioners, and the recall of the troops. The document was drafted by Samuel Adams.

In November the merchants of Philadelphia appealed to the merchants of London to use their influence in securing a repeal of the taxes, as oppressive to both parties in British-American trade.

Controversy over Patriotic Associations. The intimidating methods adopted by the patriotic party in America to force their fellows into associated resistance to Great Britain in a commercial and political way were opposed during 1769 by William Henry Drayton (1742–1779) of Charleston, S. C., probably the most learned man in the colonies in law, common and international, as well as in ancient and modern history, which studies he had pursued in England at Westminster School and Oxford University.

In a series of trenchant newspaper articles published over the signature of "Freeman," Drayton attacked "the mode of enforcing associations" which he deemed "encroachments on his private rights of freedom."

This led him into a controversy with Christopher Gadsden, a wealthy merchant of Charleston, who was an ardent patriot worthy of Drayton's steel, since he read seven languages, including Latin, Greek, and Hebrew. Gadsden's arguments were similar to those of Josiah Quincy, 2d.[1]

Gadsden subsequently became an officer in the Revolution. As Lieutenant-Governor of South Carolina he signed the capitulation of Charleston to Sir Henry Clinton in 1780. He devoted himself to the end of his long life to the public service, winning the ardent love of South Carolinians and the respect of the whole country.

Though probably because of Drayton's position in this controversy he was appointed by the King to the privy council of South Carolina in 1771, and in 1774 was chosen by Lieutenant-Governor Bull as assistant judge of the province, his patriotic actions in the latter capacity demonstrated that he had taken his stand on principle, and not to curry favor with the government.

Ministry of Lord North. Parliament met on January 9, 1770. Soon after this the Duke of Grafton, First Lord of the Treasury, resigned, owing to the general hatred he had inspired, which was fomented by the attacks of the anonymous "Junius" (probably Sir Philip Francis). Lord North (Frederick North, afterwards Earl of Guilford) took his place, acting as Prime Minister.

We condense an appreciation of North from the *Encyclopædia Britannica:*

Lord North was known as a skillful and ever-ready debater and was popular with the House because of his unruffled

[1] The student of debate should note that the issue in this controversy is also that in trade unionism.

temper and fund of humor. These qualities kept him in office as Prime Minister during the long period when party feeling was stronger than at any other time in English history. Even his bitterest opponents admired him personally. Edmund Burke, in his *Letter to a Noble Lord*, commended these elements in the character of North, together with his general knowledge and personal disinterest, but also spoke of his wanting "something of the vigilance and spirit of command which the times required."

Lord North remained Prime Minister throughout the Revolution.

Though in the speech from the throne early in 1770 Lord North indicated that he intended to bring America "prostrate at the feet of the ministry," on March 5 he introduced a bill taking off all duties imposed by the act of 1767 except that on tea. The preamble, upholding the right to tax America," was retained. The bill was enacted on April 12.

Boston Massacre. On the same day that the bill was brought before Parliament (March 5) a quarrel arose in Boston between the royal troops and a body of citizens led by Crispus Attucks, a mulatto. Four of the latter, including Attucks, were killed, and seven were wounded by the troops firing into the crowd, under order of their commander, Captain Thomas Preston.

On the day following the "Boston Massacre," as the affray was called, a public indignation meeting was held in Faneuil Hall, Boston, which demanded the withdrawal of the troops from the city, and sent a committee to present the demand to acting Governor Hutchinson. John Hancock, Samuel Adams, and Dr. Joseph Warren were members of this committee. They entered the council chamber of the State House where Hutchinson sat with the council (twenty-eight members)

and Lieutenant-Colonel Dalrymple, commander of the troops, all, except the officer, who was in uniform, being imposingly arrayed in large white wigs, scarlet coats, etc., says John Adams, who later graphically described the scene.

Samuel Adams was spokesman of the committee. He quietly asserted the illegality of quartering troops on the town in times of peace, without consent of the Legislature, and prophesied the trouble to come if they were not removed. Then he presented the demand of the town meeting.

Hutchinson answered as calmly, defending the legality and asserting the necessity of the presence of the troops, but disclaiming that they were under his authority.

Adams declared that his Excellency was in error. By the charter the Governor was commander of the military forces within the province. The people must be obeyed, or fatal consequences would ensue.

Hutchinson insisted that the order of General Thomas Gage, commander of the troops in America with headquarters in New York, must be obtained. However, the council and Lieutenant-Colonel Dalrymple at length signified their willingness to remove the troops by the end of the month. The people in the town meeting were informed of the acting Governor's solitary position, and sent word that he must give way or leave the province. He then formally requested Dalrymple to remove the troops, and the committee returned with the report of this to the town meeting, which thereupon dissolved.

The troops left the city in accordance with the agreement. The British ministry was incensed at the action of the authorities, civil and military, in bowing

to what the ministry called, in the slang of the time, the "bully" (*i. e.*, "bluff") of the colonials, and Lord North thereafter was wont to refer to the regiments removed (the 14th and 29th) as the "Sam Adams regiments."

In the fall, Captain Preston and several of the soldiers in the "massacre" were tried for murder, but, largely owing to the eloquence of their counsel, John Adams and Josiah Quincy, 2d, they were acquitted, with the exception of two privates, who were convicted of manslaughter, but, on pleading "benefit of the clergy," were let off with branding upon the hand in open court.

The arguments of Adams and Quincy are extant in an official report of the trial (1770). The speech of Robert Treat Paine, the prosecutor, was not preserved.

The anniversary of the "Boston Massacre," was observed annually until 1783. The orations upon the early occasions were daringly inflammatory, in view of the presence of British troops at the meetings, the addresses by John Hancock and Dr. Joseph Warren being notably so.[1]

Intercolonial Correspondence. For a year or so opposition to the Townshend Act as modified by Lord North, and to the proposal to try in England colonials suspected of treason, which, though not enforced, was held as a threat by the British ministry, remained quiescent in America. In 1772, however, the fear of enforcement of the latter was aroused by the Parliamentary inquiry which followed the burning in June of that year of the revenue schooner *Gaspée* while endeavoring to suppress illegal trade in Narragansett Bay. About the same time Parliament provided for the payment by

[1] These orations are found in various collections of American eloquence.

the Massachusetts House of Representatives of the salaries of the Governor and judges of the Superior Court, who were appointees of the Crown. These measures led to the revival of intercolonial correspondence for united defense of American rights, Massachusetts and Virginia heading the movement. Samuel Adams designed the Massachusetts committee of correspondence to act in conjunction with town meetings as the virtual popular government of the province. He wrote frequent letters in the press on the subject. One of them (on October 5, 1772) concludes:

"Let associations and combinations be everywhere set up to consult, and recover our just rights.

> "'The country claims our active aid.
> Then let us roam; and, where we find a spark
> Of public virtue, blow it into flame.'"

Controversy over Charter Rights. Samuel Adams was also leader in a controversy with Hutchinson, now Governor of Massachusetts, over Parliamentary authority in the colony. Hutchinson convened the House of Representatives on January 6, 1773, and sent to it a forcible argumentative message on the subject.

This authority, he said, had never been denied until the Stamp Act. The grants and immunities in the two Massachusetts charters (under Elizabeth and James) were not to be taken as relieving the province from Parliamentary supremacy, but as merely an assurance by the Crown to the first settlers and their descendants that they had not become aliens through their necessary relinquishment of representation in Parliament, which they could resume on return to Great Britain, but that they remained free British subjects. If the supremacy were disavowed, this would be tantamount to independence, because there could not be two independ-

ent legislatures in the same state. Independence would be disastrous to their liberties, since it would expose them to attacks of foreign powers.

This message was widely circulated in the other colonies and even in England, everywhere producing a profound impression. Tories on both sides of the sea, including Lord Mansfield, called it unanswerable.

The Massachusetts House appointed a committee with Samuel Adams at its head to reply to it. It reported on January 22, 1773.

The reply analyzed the charters, and showed that these did not imply the supremacy of Parliament—that Parliament had nothing to do with the provisions in them, the Crown alone giving the grants. If the settlers in removing to America preserved their British rights, they and their descendants held one of these, which was the right to be governed by laws in which they had a voice.

The House of Representatives accepted the alternative propounded, that, if the colonists were not under the authority of Parliament, they were independent—at least in legislation. That this was the fact, they asserted. As to disasters resulting from this state, they said that they feared them less than despotism.

This reply so greatly strengthened the patriots in their course that Hutchinson was sorry he had opened the discussion, especially as he was rebuked therefor by influential friends of the government in England. He wrote to the British colonial secretary, the Earl of Dartmouth (William Legge), that he did not intend ever to meet the assembly again.

"Your lordship very justly observes that a nice distinction on civil rights is far above the reach of the bulk of mankind to comprehend."

Hutchinson prorogued the House on March 6, 1773, after a dispute with it about the salaries of the Superior Court, which Samuel Adams contended should be paid by Great Britain, since the British government had made the court independent of the province. The House's committee of correspondence, however, continued its activities, and the Governor in May proclaimed the King's disapprobation of this virtual assembly sitting during recesses of the Assembly proper. The assembly replied that the Crown officers corresponded at all times, and that, owing to the proroguing of the Legislature, the House must do so in recess or not at all—that it was only fair that the people should present their grievances to the King in order to combat the misinformation supplied by the Crown officers.

In the meantime Dr. Franklin, agent of Massachusetts in London, had obtained in an unknown manner six private letters sent by Governor Hutchinson to England as well as letters from various Crown officers in the colony. The Massachusetts Assembly published these in a pamphlet. In Hutchinson's letters appeared such expressions as:

"There must be an abridgment of what are called English liberties."

"In a remove from a state of nature to the most perfect state of government there must be a great restraint of natural liberty."

"I doubt whether it is possible to project a system of government in which a colony, three thousand miles distant from the parent state, shall enjoy all the liberty of the parent state."

For his part in this publication of private correspondence Franklin, who had been a social favorite, was ostracized by the "best people" of London.

On June 23, 1773, the Assembly petitioned the ministry to remove from office Governor Hutchinson and Lieutenant-Governor Andrew Oliver, who had written some of the obnoxious letters. The memorial was disregarded.

The Boston Tea-Party. The East India Company, early in 1773, appealed to the British government for relief from the loss occasioned by the transfer of American trade in tea largely to Holland. In response to this in May of that year the ministry procured an act of Parliament permitting the Company to export their teas to America with a drawback of all duties previously paid in England, thus rendering the price to the colonists cheaper than that of Dutch teas. It was hoped that this would induce the Americans to pay the small nominal duty on the English article, and to resume its importation.

The Massachusetts committee of correspondence warned the country against taking advantage of this insidious act, so apt in the end to destroy the freedom of trade in the colonies. They realized that cutting off competition by lowering price is the first step in establishing a monopoly.[1]

The manner in which the colonists from Boston to Charleston treated the tea-ships is familiar to all readers of the school histories.

Parliamentary Acts against Massachusetts. On March 7, 1774, report of the "Boston Tea-Party" was laid before Parliament by the King, with a recommendation for drastic action "to secure the execution of the laws, and the just dependence of the colonies on the Crown and Parliament of Great Britain."

On March 31 a bill was enacted interdicting com-

[1] A point in the Trust question.

mercial intercourse with Boston, and prohibiting after June 1 the landing or shipping goods at that port. On May 20 by another act Massachusetts was deprived of the most important of its charter rights, the selection of the Council being transferred from the House of Representatives to the Crown, the towns being deprived of the selection of jurors, and all town meetings but the stated annual one in March or May being prohibited except at the call of the Governor. Soon after this a supplementary act was passed permitting the Governor, with the advice of the Council, to send persons suspected of sedition to another colony or to Great Britain for trial. These bills were vigorously opposed in both Houses of Parliament. Colonel Barré in the Commons charged the Government with changing its ground, becoming the aggressor instead of the aggrieved. He advised the extension of the olive branch instead of the sword, the repeal of oppressive laws instead of their imposition. He said that the colonists were Britons like themselves, susceptible of being flattered into anything, but too stubborn to be driven. The first step toward making them contribute to British needs was to reconcile them to British government.

General Thomas Gage was appointed Governor of Massachusetts. He arrived in Boston in May, 1774, together with the Port Bill—as the act closing the city's commerce was called. The citizens politely received their new executive, but in a popular meeting resolved against the bill as an act the "impolicy, injustice, inhumanity, and cruelty" of which exceeded all their powers of expression, leaving it therefore to the "censure of the world."

They also expressed the opinion that, if all the colonies would agree to stop all trade with Great Britain

till the Port Bill was rescinded, this would prove the salvation of American liberty.

While the Bostonians were suffering from the loss of their commerce the act depriving them also of their charter rights arrived, arousing their indignation in an even greater degree. The wrath of the people was especially directed against Governor Gage's appointees as councilors, and these, on account of the menacing attitude of the people, either resigned, or sought protection in Boston under the eyes of the Governor. The jurors appointed under the act refused to qualify, and in some of the counties of the province the people would not permit the judges so chosen to sit, by crowding the court rooms and their entrances, and refusing to obey the orders of the sheriffs to make way for these appointees. They declared, in phrases that ring like Magna Charta:

"They knew of no court, nor any other establishment, independent of the ancient laws and usages of their country, and to none other would they submit or give way on any account."

CHAPTER V

CONGRESS *vs.* PARLIAMENT

1774–1775

Sympathy of Virginia with Massachusetts—Virginia Suggests Continental Congress—Jefferson's Instructions to Virginia Delegates—John Adams Prophesies Revolution—Congress Meets—Debate on Representation of States in Congress between Patrick Henry [Va.], Joseph Galloway [Pa.], John Jay [N. Y.], Edward Rutledge [S. C.]—Addresses of the Congress—Sketches of Jay and John Dickinson [Pa.], their Drafters—The "Suffolk Resolves"—Measures of Colonial Defense—Interview of Joseph Quincy, 2d, with Lord North—Speech of Lord Chatham on Removal of Troops from Boston—His Plan of Conciliation is Rejected—Restriction of Colonial Trade and Fisheries—Dr. Franklin's Plan of Conciliation is Rejected—Lord North's Plan is Adopted—Plans of David Hartley and Edmund Burke are Rejected—Sketch of Burke—Burke's Speech "On Conciliation with America"—His Speech "On the Right to Tax America"—Speech of James Wilson [Pa.] "In Vindication of the Colonies"—Sketch of Wilson—Debate in the Virginia Convention on Patrick Henry's Militant Resolutions: Henry *vs.* Richard Bland, Benjamin Harrison, Robert Carter Nicholas, and Edmund Pendleton—Sketches of Harrison, Nicholas, and Pendleton —Resolutions Passed.

THE contest between Parliament and Massachusetts, in which the other colonies had aided their New England sister in unorganized fashion, now broadened and strengthened into a concerted national opposition to the British legislature and the Crown its supporter, although the politic patriots maintained the legal

fiction that the "King could do no wrong"—that he was "badly advised" by his ministers, and that these therefore, with Parliament, were the parties guilty of the unconstitutional acts against American rights.

The First Continental Congress. The people of the other colonies had shown their sympathy with Massachusetts—Boston in particular—by sending thither provisions and money. The Virginia House of Burgesses appointed June 1, 1774, the date when the port of Boston was to be closed, as a fast day, when the people of Virginia were to beseech God to avert the "heavy calamity which threatened destruction to their civil rights and the evils of a civil war," and to give them "one heart and one mind to oppose by all just and proper means every injury to American rights." Colonel George Washington stated in the House that he was ready to raise at his own expense one thousand men and march to the relief of Boston. The House instructed the Virginia Committee of Correspondence to recommend to the other colonies an annual Congress to protect the common interest.

At an adjourned session of the Massachusetts House of Representatives held at Salem in June, Samuel Adams moved that the colony send representatives to such a Congress, which he suggested should be held in Philadelphia on the first of September; Adams's motion was adopted, and he and John Adams, with Robert Treat Paine, Thomas Cushing, and James Bowdoin, were chosen as delegates. Bowdoin was kept from attending the Congress by the sickness of his wife. Governor Gage, hearing of what was going on in the House, sent his secretary to dissolve the Assembly. The House refused admission to the officer, who thereupon issued the proclamation from the steps of the

hall. The House then completed its business, and the members dispersed never again to assemble under royal authority.

The other colonies accepted the appointment of time and place for the Congress, and elected delegates to it. The Virginia Burgesses, in addition, formed a non-importation association, and agreed that, if colonial grievances were not redressed by August 10, 1775, they would not thereafter export to Great Britain tobacco or any other product.

Thomas Jefferson, a member of the House, drafted instructions for the delegates to the Congress, which maintained that the "Parliament of Virginia" had as much right to legislate for Great Britain as the British Parliament had for Virginia. They were not adopted (Patrick Henry, to whom Jefferson had intrusted them, failing for some reason to present them), yet, being published, they were circulated throughout all the colonies, and even in England, where Edmund Burke reprinted them with additions and favorable comments of his own. This caused the British government to list for "attainder" Jefferson along with Samuel Adams, Hancock, and other leading American patriots.

Though many of the delegates to the Congress, notably John Dickinson, were desirous and hopeful of coming to honorable terms with Great Britain, others, such as John Adams, did not delude themselves with this anticipation. In conversing with his cousin Samuel Adams soon after his appointment, John said:

"I suppose we must go to Philadelphia and enter into non-importation, non-consumption, and non-exportation agreements; but they will be of no avail; we shall have to resist by force."

It was with this conviction that he said to a friend: "As to my fate the die is cast, the Rubicon is passed—and, sink or swim, live or die, to survive or perish with my country is my unalterable resolution." [1]

The first Continental Congress, as the body was thereafter denominated, convened at Philadelphia promptly upon the day appointed, September 1, 1774, meeting in Carpenter's Hall. Delegates from all the colonies but Georgia were present. Peyton Randolph, leader of the Virginia delegation, was unanimously elected President.

After appointment of committees to draft various papers, a declaration of rights, addresses to the King and the British people, etc., the Congress sent a letter to Governor Gage of Massachusetts protesting against the fortifications he had raised around Boston to shut off communication with that city. It then approved of the opposition of the people of Massachusetts to the late acts of Parliament, and promised united resistance by America to the execution of these by force.

On October 14 it adopted the Declaration of Rights. [2] This affirmed that Americans by "the immutable laws of nature," "the principles of the English constitution," and the "charters or compacts" of the several colonies had the following rights which could not be abrogated or abridged without their consent:

1. To "life, liberty, and property."

2 and 3. To all the immunities of Englishmen at home which had been granted the ancestors of the colonists on emigration to America.

[1] This utterance in altered form Daniel Webster used in his "Supposed Speech of John Adams on the Declaration of Independence."

[2] For unabridged text see *Great Debates in American History*, vol. i., p. 88.

4. To participate in legislation affecting their interests, and, since they were not represented in Parliament, to have exclusive power of such legislation in their provincial assemblies, subject to royal veto, exercised in a manner heretofore accepted, on all matters of internal policy and taxation, except duties laid by the British government for regulation of trade to consolidate the commercial interests of the Empire.

5 and 6. To enjoy all the advantages of English common law, especially trial by a jury of their peers of the vicinity.

7. To the immunities granted by royal charters and secured by provincial codes.

8. Peaceably to assemble, and petition for redress of grievances.

9. To be free from a standing army in times of peace.

10. To have their popular houses in the various assemblies independent of those appointed during pleasure by the Crown.

All the sections were unanimously approved except number 4, on which there was much debate, the Massachusetts delegates opposing the admission of the right of Great Britain to tax the colonies in any manner whatsoever, for their experience had taught them that there was no real distinction between "internal" and "external" taxes.[1]

This Declaration of Rights was largely based on a "Bill of Rights," submitted for the consideration of the "High Court of Congress" by William Henry Drayton of South Carolina. Drayton was removed from his office because of the publication of this pamphlet. This made him the most popular as well as influential man

[1] "Politics makes strange bedfellows." Here were the Massachusetts Whigs adopting the contention of the British Tories such as Lord Mansfield, though with a different purpose and effect.

in his colony, and in 1775 he was elected president of the provincial convention.

Non-importation and non-exportation agreements were adopted by Congress, to come into force on September 10, 1775, in case the acts complained of were not repealed by that date.

The Congress was ordered to continue so long as these acts were in force.

Lord Chatham declared that he had studied the constitutions of the ancient democracies, "yet for solidity of reasoning, force of sagacity, and wisdom of conclusion, no body of men could stand in preference to this Congress."

The speeches made in this, the most important national assembly in our country's history (for it made inevitable the more spectacular one which declared our independence) have unfortunately not been preserved. The loss of Patrick Henry's speech at the opening of the Congress, on the method of voting, whether by colonies, by delegates, or by the interests represented, is especially deplorable, for it was the one which gave him a national reputation. However, an account of its deliverance has come down to us by one who was present:

"Mr. Henry rose slowly, as if borne down by the weight of the subject, and, after faltering, according to his habit, through a most impressive exordium, he launched gradually into a recital of the colonial wrongs. Rising, as he advanced, with the grandeur of his subject, and glowing at length with all the majesty and expectation of the occasion, his speech seemed more than that of mortal man. There was no rant, no rhapsody, no labor of the understanding, no straining of the voice, no confusion of the utterance. His countenance was erect, his eye steady, his action noble, his enunciation

clear and firm, his mind poised on its center, his views of his subject comprehensive and great, and his imagination coruscating with a magnificence and a variety which struck even that assembly with amazement and awe. He sat down amid murmurs of astonishment and applause; and, as he had been before proclaimed the greatest orator of Virginia, he was now, on every hand, admitted to be the first orator of America."

One fragment of the speech has been preserved. It is the first breathing of the national spirit which would disregard State lines when the interests of the country are at stake. Arguing for voting by delegates, a manner which, despite Henry's eloquence, was negatived in favor of voting by colonies, he said:

"Fleets and armies and the present state of things show that the government is dissolved. Where are your landmarks—your boundaries or colonies? We are in a state of nature! All distinctions are thrown down; all America is thrown into one mass. The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian, but an American."

It would be a service to American patriotism as well as to the literature of eloquence if a master orator, by a study of Henry's style and sentiments and with the aid of the above description and fragment, would write a "Supposed Speech of Patrick Henry at the Opening of the First Continental Congress" in the manner in which Daniel Webster so ably constructed the "Supposed Speech of John Adams on the Declaration of Independence." Henry's eloquence was more effective, later in the Congress, when his democratic opposition defeated a pretorian plan of union of the colonies proposed by Joseph Galloway, a wealthy lawyer of Philadelphia, and

supported by John Jay of New York, Edward Rutledge of South Carolina (both of them fine orators and strong debaters), and other conservatives.

The plan was similar to Franklin's Albany Plan of Union in 1754.[1]

It provided for a President-General, appointed by the Crown, as the executive, and a grand council of representatives, chosen by the colonial assemblies, as the legislature. The council was to meet annually and to have sole control over internal colonial affairs, its other acts being subject to review by Parliament. Henry objected to the plan as recognizing Parliament's right to rule the colonies, which he emphatically denied. His vehemence carried Congress against the proposal. Later, all reference to it was expunged from the record. Galloway afterwards justified the suspicion that he was secretly acting in the interests of Great Britain by turning Tory.

The Congress adopted an Address to the British People and an Address to the King. The former was drafted by John Jay, of New York. Thomas Jefferson, before he learned the name of the author, gave it Hubertian praise as "a production certainly of the finest pen in America."

Sketch of Jay. John Jay was a native of New York City, of Huguenot ancestry. He was graduated from King's College (now Columbia University) in 1766, and was admitted to the bar in the same year. Robert R. Livingston became his partner. On the closure of the port of Boston in 1774 Jay was appointed a member of the committee on correspondence with the other colonies. He was elected to both Continental Con-

[1] See *American Political History*, by Johnston and Woodburn, vol. i., p. 31.

gresses, drafting in the first the present address, and in the second the "Address to the People of Canada."

Jay's subsequent services to the country as foreign minister, contributor to the *Federalist*, and first Chief-Justice of the Supreme Court place him among the first statesmen of America.

Of Jay, Daniel Webster said: "When the spotless ermine of the judicial robe fell on John Jay, it touched nothing less spotless than himself." Says Henry P. Johnston, the editor of Jay's writings: "As nearly as anyone in our civil history he filled the ideal of a public servant."

Of his literary style Greenough White says, in his *Sketch of the Philosophy of American Literature:*

"Jay's short and terse sentences, straightforward and clear as crystal, with scanty illustration, manifest the lucidity of his mind and the sincerity of his convictions."

Jay's Address to the British People in the first Continental Congress, after enumerating the oppressive acts of Parliament, appealed to the generosity, the virtue, the sense of justice of the British nation for relief.

It reminded them of the benefits they had derived from a monopoly of American commerce, while the colonists nevertheless had remained loyal to the interests of the Empire, devoting thereto in foreign wars their lives and fortunes. This loyalty they still professed, repudiating the charge of sedition as calumny. However, they declared that they would not be "hewers of wood or drawers of water for any ministry on earth."

All they asked was to be put in the same situation that they were at the close of the late war [with France].

The cause of Boston, they said, they had made their own

by non-importation and similar agreements. They asked the British people to replace the present Parliament by one of wisdom, magnanimity, and justice, in order to save the violated rights of the whole Empire from the devices of "wicked ministers and evil counselors, whether in or out of office" [a shrewd appeal to such radicals as John Wilkes's adherents] and so to restore fraternal affection between all the inhabitants of his Majesty's dominions.

The Petition to the King was drafted by John Dickinson. It was highly praised by Lord Chatham and others, one of whom said that "it will remain an imperishable monument to the glory of its author . . . so long as fervid and manly eloquence and chaste and elegant composition shall be appreciated."

Sketch of Dickinson. John Dickinson, a native of Wilmington, Del., studied law in London. Returning to America he began the practice of law in Philadelphia, and soon pushed his way to the front in his profession. His firm opposition to the Declaration of Independence by Congress will be recorded later. Suffice it to say here that he was a true patriot, though an extremely conservative one. He founded and endowed Dickinson College, at Carlisle, Pa., in 1783. He collected and published his *Political Writings* in 1801.

In contradistinction to the writings of Thomas Paine, Dickinson's townsman, and rival for the title of the "Penman of the Revolution," Dickinson's productions rejected the speculative theories of "natural rights" and appealed to common sense only through simple, practical, and legal arguments. His most influential writings were *Letters of a Pennsylvania Farmer* (1767–68), and the *Letters of Fabius* (1788). The former were in opposition to the "Townshend Taxes." Written in a homely style, they were widely read throughout

the colonies, and unified sentiment against the acts of Parliament. But they exerted a still more important influence, in that they were translated into French, and so aroused that friendly interest toward the colonies of "perfidious Albion" which in time led France to aid American independence. The *Letters of Fabius* were written in the same popular style in advocacy of the ratification, by the people of the States, of the Federal Constitution.

The present Petition to the King was in a higher literary vein.

In flowers of satiric flattery it sheathed the steel-sharp reminder to the would-be absolute monarch of "that compact which elevated the illustrious (?) House of Brunswick to the imperial dignity" it now possessed.

King George's American subjects, said Dickinson, were loyally bound to give him faithful information of the feelings against his evil advisers which were rising in the country which these were oppressing. The colonists had been misrepresented to him by his advisers as refusing to pay their just share of the expenses of the Empire. They were willing to do so in a constitutional manner, one which did not reduce them from freemen to tributaries. "We solemnly profess that our councils have been influenced by no other motive than a dread of impending destruction."

The Congress also adopted "An Address to the Inhabitants of Quebec" in which they endeavored to convince the Canadian French that a late act of Parliament respecting that province was calculated to deprive them of many of their rights (no provision having been made for a provincial assembly), and to persuade them to protect their liberties by joining the confederacy.

The Congress on October 26 adjourned to meet

again on May 10, 1775, unless redress of grievances should have been obtained before that date. Most of the delegates were sanguine that this would be granted. George Washington and Richard Henry Lee expressed this opinion. Patrick Henry of Virginia, and John and Samuel Adams and others of New England were convinced that war with Great Britain was inevitable.

Colonial Protests against Taxes. The colonial assemblies and town meetings of the entire country endorsed the proceedings of Congress, adopting resolutions in some cases in an even bolder spirit. Already on September 9, 1774, a town meeting at Milton, Mass., had passed what were known as the "Suffolk Resolves" from the county in which the town was then included.

These declared that a sovereign who breaks his compact with his subjects forfeits their allegiance; that Parliament's repressive acts were unconstitutional; that tax-collectors should not pay over money to go into the royal treasury; that the towns should choose militia officers exclusively from the patriot party; that the citizens of Milton would obey the Continental Congress; that they favored a provincial congress; and that they would seize Crown officers as hostages for any political prisoners arrested by the Governor. They recommended, however, that all persons should abstain from lawless acts.

The patriots in all the colonies were not content with passing resolutions, but they appointed committees of vigilance to see that the resolutions were obeyed. The provincial convention of Massachusetts recommended by the townspeople of Milton was held in October, 1774, it being constituted of delegates to the House of Representatives, whose meeting at Salem, set for the fifth of the month, had been countermanded by Gover-

nor Gage, and who had thereupon adjourned to Concord and resolved themselves into such a convention. It adopted measures of defense for the colony, and sent Josiah Quincy, 2d, to England to represent to the British government the true state of the colonies, Massachusetts in particular, and to learn the intentions of the ministry towards them. Governor Gage, in opposition to these acts, continued his fortification of Boston, and prepared to seize the military stores which the patriots were now collecting in various places, Concord in particular.

It now seems fatuous that any of the delegates to the Congress, all of whom clearly recognized the arrogance of Parliament as constituted at the time, could believe that this body would not retaliate on America for the body blow it had directed at the commercial system of the Empire in the anti-trade agreements. On November 19, 1774, shortly before this Parliament reassembled, Josiah Quincy, 2d, had an interview with Lord North and the Earl of Dartmouth, President of the Board of Trade and Secretary for the Colonies, in which the Prime Minister affirmed that his government was determined to exert all its power to effect the submission of the colonies. He said: "Until we have tried what we can do, we can never be justified in receding." Quincy reported to a friend in America (Joseph Reed, of Philadelphia) his conviction that his countrymen "must yet seal their faith and constancy to their liberties *with blood.*" Quincy however did not live to see the fulfillment of his prophecy, dying of consumption on his return voyage.

Parliament met on November 29, 1774, and listened to the speech from the throne, which expressed the determination of the King and Prime Minister to

enforce the supreme authority of Parliament over all British dominions. A committee was appointed to report on American affairs. A recess over the holidays was then taken.

Efforts at Conciliation in Parliament. Parliament reconvened on January 20, 1775. Lord Chatham on that day moved in the Lords that the troops be removed from Boston, as a preliminary step to reconciling the colonies. He supported the motion by one of his most eloquent speeches.[1]

He said that he would not wait to examine the American papers. He and all the lords knew their purport already. Delay was dangerous. Evil counselors of the King were pressing coercion, and, if they were not balked, his Majesty and the country would be undone. The King would lose the brightest jewel in his crown, and the nation would be ruined. The Americans were right in their contention. Representation and taxation must go together. Property is the sole dominion of the owner. "The touch of another annihilates it."

He praised the Americans for their manly course under intolerable oppression, eulogizing the Continental Congress in words that have been already reported. "This wise people speak out. They do not hold the language of slaves. They do not ask you to repeal your laws as a *favor;* they claim it as a *right.*" The acts, he said, must be repealed; "you cannot enforce them. The ministry are checkmated, not a move but they are ruined. But bare repeal will not satisfy this enlightened and spirited people. What, repeal a bit of paper? You must go through the work—you must declare you have no right to tax—then they may trust you."

He pleaded for immediate action. "While I am now speaking the decisive blow may be struck, and millions

[1] An extensive transcript of this is found in *Great Debates in American History*, vol. i., p. 101.

involved in the consequences." The "first drop of blood" would be *immedicabile vulnus*, a festering wound which would "mortify the whole body."

He pledged himself "never to leave this business." When he looked at the invasion of the constitutional rights of the colonists, he owned himself an American, and would vindicate those rights to the verge of his life.

The motion of Lord Chatham was rejected by a large majority. Nevertheless he shortly afterward presented a bill containing a plan of conciliation, the preamble of which was a reiteration of the principles of colonial policy which he had supported when the oppressive taxes were proposed (see page 46).

The plan was that an American Congress be held, which should recognize the "superintending authority" of Parliament, and vote a "permanent revenue" to the alleviation of the national debt. That the vice-admiralty courts be reduced to their ancient limits. That no person be sent to Great Britain to be tried for crimes committed in America. That the acts complained of be suspended. That judges hold office during good behavior and be paid by the Crown. That the colonial charters be held inviolate unless legally forfeited. That royal troops might be sent to the colonies but not used to destroy the just rights of the people.

This bill was rejected on its first reading by a large majority. Owing to its assertion of Parliamentary supremacy in matters outside of taxation, which the colonists had now come to deny, it would, if adopted, have been opposed by the Americans also.

In preparing the bill Lord Chatham consulted Dr. Franklin, agent of Massachusetts in London, but presented it before the latter had submitted suggestions for alteration. Franklin was present on the occasion

of its introduction in the Lords. The Earl of Sandwich (John Montagu), the notoriously corrupt First Lord of the Admiralty,[1] moved that the bill be rejected immediately "with the contempt it deserved," as he "could never believe it was the production of a British peer," but was apparently "the work of some American." Turning toward Franklin, he added that "he fancied he had in his eye the person who drew it up, one of the bitterest and most mischievous enemies this country had ever known."

Lord Chatham asserted that the plan was entirely his own, but that he would have been glad to take the advice of

> "a person so perfectly acquainted with the whole of American affairs as the gentleman alluded to and so injuriously reflected on; one whom all Europe held in estimation for his knowledge and wisdom, and who ranked with our Boyles and Newtons; who was an honor, not to the English nation only, but to human nature."

Shortly before this, Dr. Franklin and other American agents in London asked to address the Commons on the American petitions. This request was refused on the ground that the petitions came from an "illegal assembly." Petitions from English merchants in favor of America were referred to a committee, which, because of its predetermined inaction thereon, was popularly known as "the committee of oblivion."

Immediately on the rejection of Lord Chatham's bill to remove the troops from Boston, Lord North proposed in the Commons a joint address to the King on American affairs. It was carried in both Houses by large majorities. It declared the sovereign authority

[1] See sketch of Sandwich in the *Encyclopædia Britannica*.

of Crown and Parliament over the colonies, and requested the King to enforce this, promising him the needed support. In the debate on the bill the ministerial adherents asserted the need of crushing at any cost the evident American design of *independence* at its inception. However, they claimed that, so incapable were the colonists of military discipline, only a small force would be needed to bring them to terms.

Parliament soon after (in February, 1775) increased the naval and military forces, and to starve America into submission it restricted the trade of the colonists, save those of New York, North Carolina, and Georgia, to Great Britain, Ireland, and the British West Indies, and prohibited their fishing on the banks of Newfoundland. The laws were opposed by the minority as not only cruel to the colonists but oppressive to British merchants, since the Americans with whom they traded would thereby be rendered unable to pay their debts.

Dr. Franklin held frequent conversations with English friends of America on terms of compromise which might be acceptable to both parties. The main suggestions of Franklin were that, on the part of the British government, the tea duty be repealed, restraint of colonial manufactures be reconsidered, the royal garrisons be removed, and popular government be restored to Massachusetts and given to Quebec; and that in return America should accept the navigation acts. Against the objection that the King would not consent to be limited in sending troops to any part of the Empire, Franklin urged that this involved the possibility of his raising troops in America to serve in England without consent of Parliament—a menace to British liberties at home. If troops were necessary in

America, he said, the colonial assemblies would assent to their presence. He therefore insisted on retaining this article in the terms.

When asked why he was so concerned about the liberties of the people of Quebec, he said that the colonists at great expense of blood and treasure had assisted in the expulsion of French power from Canada, and were determined to permit no new absolute government to be established on their borders.[1]

These propositions were placed before the ministry. Soon after (early in February, 1775), it was intimated to Dr. Franklin that, if he would modify them in favor of Great Britain and secure their acceptance, he could have any place or honor it was in the power of the government to grant him. He replied that the ministry would rather give him a seat in a cart to Tyburn than any other "place" whatever.

The ministerial agents then made counter propositions, including the repeal of the Boston Port Bill. Franklin replied that, as none of the other acts relating to Massachusetts were to be repealed, the terms could not be accepted. He added: "They who give up liberty to obtain a little temporary safety deserve neither liberty nor safety."

Suddenly, to the surprise of both his friends and opponents, Lord North changed his policy of oppression, and, on February 20, 1775, proposed in the Commons a plan of conciliation. It was shrewdly based on the Roman principle of "divide and conquer."

Whenever *any* colony (not all the colonies) should contribute its proportion of expense to the common defense and make provision for the support of the civil government

[1] This may be regarded as the inception of the Monroe Doctrine

and the courts in the colony, Parliament would *forbear* to levy any taxes on it except for the regulation of commerce.

The Prime Minister explained to his astonished party that the plan was a touchstone to try the sincerity of Americans. If they rejected it (which he evidently expected and hoped) the government would then be justified in adopting coercive measures. With this understanding Parliament adopted the plan. Nevertheless plans of conciliation were also presented in the Commons by David Hartley and Edmund Burke. Hartley's proposition was that the colonies should contribute to the general expense of the Empire, the amount and application of the contribution to be fixed by the colonial assemblies. Burke's proposition was that the colonies should be permitted to tax themselves according to ancient usage, and that all Parliamentary taxes on them should be repealed. Both plans were rejected by large majorities.

Sketch of Burke. Edmund Burke was a native of Dublin, and a graduate of Trinity College there. He studied law, but was never called to the bar, giving up his legal studies in 1755 to pursue literature.

In 1756 he published anonymously *The Vindication of Natural Society*, a parody, though with a sincere purpose, of the writings of Lord Bolingbroke, which was so successful that it was thought to be a posthumous work of that rationalistic philosopher. During the next year appeared his *Philosophical Inquiry into the Origin of Our Ideas of the Sublime and Beautiful*, a work, called by John Morley "a piece of hard thinking," which stimulated the German æsthetic philosopher Lessing, the author of *Laocoön*. In the same year, in collaboration with his cousin William Burke, he wrote

An Account of the European Settlements in America, in which he dwelt admiringly upon the colonists' indomitable love of liberty.

In 1759 he founded the *Annual Register*, a publication which has continued to the present day as a record of important current events throughout the world. Burke's first article in this was upon the relations of the American colonies to Great Britain.

As private secretary successively to two statesmen, Hamilton and Rockingham, he received a thorough apprenticeship in politics. In 1765 he entered Parliament, and in 1771 he was appointed Agent of the Province of New York. His knowledge of American affairs, and, what is still more important, of the American temper (for Burke was a profound psychologist), very soon made him a prominent figure in the discussions relating to the colonies, and he became the foremost advocate of the policy of conciliation.

The later career of Burke was chiefly concerned with British, French, and Irish politics, and needs not be discussed here.

Of Burke's character the best description is by his countryman Oliver Goldsmith, in the famous lines:

"Here lies our good Edmund, whose genius was such,
We scarcely can praise it, or blame it too much;
Who, born for the universe, narrowed his mind,
And to party gave up what was meant for mankind;
Though fraught with all learning, yet straining his throat
To persuade Tommy Townshend to lend him a vote;
Who, too deep for his hearers, still went on refining,
And thought of convincing, while they thought of dining;
Though equal to all things, for all things unfit,
Too nice for a statesman, too proud for a wit;

For a patriot, too cool; for a drudge, disobedient;
And too fond of the *right* to pursue the *expedient.*
In short, 'twas his fate, unemploy'd, or in place, sir,
To eat mutton cold, and cut blocks with a razor."

John Richard Green, in his *Short History of the English People*, says of the personal appearance and oratorical style of Burke:

"His speeches on the Stamp Acts and the American War soon lifted him into fame. The heavy Quakerlike figure, the little wig, the round spectacles, the cumbrous roll of paper which loaded Burke's pocket, gave little promise of a great orator and less of the characteristics of his oratory—its passionate ardor, its poetic fancy, its amazing prodigality of resources; and dazzling succession in which irony, pathos, invective, tenderness, and the most brilliant word-pictures, the coolest argument followed each other. It was an eloquence indeed of a wholly new order in English experience . . . The philosophical cast of Burke's reasoning was unaccompanied by any philosophical coldness of tone or phrase. The groundwork, indeed, of his nature was poetic. His ideas, if conceived by the reason, took shape and color from the splendor and fire of his imagination. A nation was to him a great living society, so complex in its relations, and whose institutions were so interwoven with glorious events in the past, that to touch it rudely was a sacrilege."

Charles James Fox, in reply to Lord Lauderdale's characterization of the orator as "a splendid madman," retorted: "It is difficult to say whether he is mad or not, but whether the one or the other, everyone must agree that he is a *prophet.*" To the truth of this Lord Brougham, long after the close of Burke's career, attested, saying, "All his predictions, except one momentary expression, have been more than fulfilled."

Burke's speech in support of his plan, *On Conciliation with America*, is one of six of his many hundred orations which have been preserved, due to the fact that Burke wrote the six out for publication.

On the occasion of this speech, Henry Flood wrote:

"His performance was the best I have heard from him in the whole winter. He is always brilliant to an uncommon degree, and yet I believe it would be better he were less so. I don't mean to join with the cry which will always run against shining parts, when I say that I sincerely think it interrupts him so much in argument that the House are never sensible that he argues as well as he does. Fox gives a strong proof of this, for he makes use of Burke's speech as a repertory, and by stating crabbedly two or three of those ideas which Burke has buried under flowers, he is thought almost always to have had more argument."

Charles Kendall Adams says in his *Representative British Orations*, in which the speech is given in full with annotations, that this oration "has more of the author's characteristic merits, and fewer of his characteristic defects than any other of his speeches." Sir James Mackintosh, indeed, pronounced it "the most faultless of Mr. Burke's productions."

The reader is referred to the speech, which consumed five hours in delivery, in Professor Adams's compilation. The exigency of space permits only an outline of his argument. Said Burke:

The *proposition* is peace; the *means*, restoration of confidence in the mother country by our plain good intention, which is as easily discovered at the first view as fraud is surely detected at the end [a hit at Lord North's plan]. There is nothing novel or captivating about my plan. It has none of the splendor of the project of Lord North. It does

not institute a magnificent auction of finance where captivated provinces come to general ransom by bidding against each other until you knock down the hammer and determine a proportion of payments beyond all the powers of algebra to equalize and settle.

The House has declared conciliation admissible *previously* to any submission by America, and, as a basis for this, has admitted error in its former method of taxation.

The proposals ought to originate with us, as the superior power. The capital questions are: (1) whether you ought to concede; (2) what this concession should be.

Preliminary to this discussion we should know the *nature* and peculiar *circumstances* of our object.

Here Burke drew upon his extensive economic knowledge of America, and described the vast natural resources of the country in enthralling eloquence. His panegyric on the whale-fishermen of New England is an English classic which should appear in every series of school reading books.

Gentlemen admit that America is a noble object—"an object well worth fighting for," they say. But *force* is not the means by which to acquire it. Force must be continually exercised. A nation is not governed which is perpetually to be conquered.

Then force *impairs the object* to be obtained. It is ruined in the contest. I contend for the *whole* America. Let me add that I do not choose wholly to break the American spirit, because it is the spirit that has made England.

We have no *experience* in employing force in America. If our ancient indulgence has been pursued to a fault, then was our sin far more salutary than would be our penitence.

The *love of freedom* is the predominating American characteristic, so strong that in the end it will triumph over all the force that Great Britain can exert.

Here Burke dilated on the subject, showing that Americans in their resistance to what they considered unjust taxation were true descendants of English patriots such as Hampden. He said:

This spirit had been enlarged: (1) by the nature of their *legislatures*, in which the popular branch was the more powerful; (2) by their *religion*, being largely Protestantism of a kind which is most averse to all implicit submission of mind and opinion; and (3) by their *education*, for in no country was *law* so general a pursuit, and this is the study that renders men "acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources."[1]

On the point of religion he anticipated the objection that the Church of England prevailed in the southern colonies, tending to make its adherents submissive to authority, by speaking of the counteracting influence of *slavery*, which made the spirit of liberty still more high and haughty than in the northern provinces, since freedom is to the southerners not only an enjoyment, but a kind of rank and privilege, and history proves that slaveholding freemen have ever been the most unconquerable.

On the point of law he anticipated the objection that its study should make men obedient to authority, by addressing with admirable effrontery a minister on the floor who was making signs of dissent to Burke's argument—Edward Thurlow (afterward Baron Thurlow), the Attorney-General, who venomously hated the Americans to the extent that he asserted in the debate on the American Prohibitory Bill that he might set aside by *scire facias* as forfeited every colonial charter—and by appealing to him as an authority on the subject (it was well known that Thurlow had arisen to power by his factious spirit)[2] if it

[1] Thus when the *calling* of the town meetings had been prohibited, the patriots kept them in continuous existence by the parliamentary device of *adjourning* them.

[2] See "Thurlow" in the *Encyclopædia Britannica*.

were not true that, when great honors and emoluments had not won over legal knowledge to the service of the state, this was a formidable adversary of government.

The fourth and last cause of the independent spirit of the colonists is *distance* from the parent government. This was a natural cause, not moral. In large bodies the circulation of power must be less vigorous at the extremities. Burke instanced the Turkish and Spanish empires as tolerant from necessity toward their distant provinces.

The question, however, resumed Burke, is not whether this spirit of liberty is commendatory in its extreme manifestation in America, but "what in the name of God shall we do with it?" What policy toward the colonists will give a little stability to our politics and prevent the return of such unhappy deliberations as the present? The Americans have developed an unexpected ability in self-government. Shall our policy take this into account, or continue on the exploded presumption of their return to their former docile spirit of reliance on Great Britain for such paternal legislation as she chose to grant? The laws they are now making for themselves, reports Governor Dunmore of Virginia, are infinitely better obeyed than the ancient government.[1]

Obedience is what makes government, not the names by which government is called. Will the colonists not struggle to retain the beneficent and effective new order? The "anarchy" which gentlemen expected to result from the denial of its old government to Massachusetts has proved tolerable. A vast province has subsisted nearly a year in health and vigor, without any machinery of government. This has taught us that many of those fundamental princi-

[1] That this is a general principle of the human mind, Burke might have shown by citing a similar report made of his own countrymen. In the time of Henry VIII., Finglass, the Chief-Baron of the Exchequer, reported: "That the English statutes passed in Ireland are not observed eight days after passing them; whereas those laws and statutes made by the Irish on their hills, they keep firm and stable without breaking them for any favor or reward."

ples, formerly believed infallible, are either not of the importance they were imagined to be, or that we have not at all adverted to some other far more important principles which overrule them.[1] With what consistency can Englishmen fight against the principle of self-government upon which their own liberties were founded?

There are but three ways of procedure toward this stubborn spirit in America: (1) to change it as inconvenient by removing the causes; (2) to prosecute it as criminal; (3) to comply with it as necessary.

The first plan is most systematic but it is radical, and attended with great difficulties, even impossibilities. The growing *population* can be checked, as already proposed in Parliament, by the Crown making no further grants of land. But the people would then settle these lands without authority. It would be impossible to stop them.

Here Burke presented a graphic picture of the pioneers swarming over the Appalachian range, and forming a free tribe of "English Tartars" in the lands beyond, conquering in time the British government of the eastern slope. Such, he said, would be the effect of forbidding men their natural right to the use of the earth.[2]

To restrict colonial *commerce* is an easier task, but the effect would be injurious on Great Britain, directly in the loss of trade, and indirectly in creating an enemy in the impoverished colonies. They who are too weak to contribute to your prosperity may be strong enough to complete your ruin. *Spoliatis arma supersunt.*[3]

The *temper.* of the colonists is unalterable by persuasion. An Englishman is the unfittest person on earth to argue another Englishman into slavery.

[1] A point for the "Philosophical Anarchist," or extreme individualist.

[2] A point for "Single Taxers."

[3] "To the despoiled arms still remain."

Their *religion* and *education* are equally unchangeable. The Inquisition and dragonnades were ineffectual in the old world and would be more so in the new. The burning of books and banishment of lawyers are similarly impossible. The annihilation of popular assemblies could be accomplished only by a great army, which would in the end prove fully as difficult to be kept in obedience.

The *enfranchisement of slaves*, proposed to reduce the aristocratic spirit of the southern colonies, is harder to accomplish than its panegyrists imagine. Slaves are often much attached to their masters. A general wild offer of liberty is not always accepted. History furnishes few instances of it. "It is sometimes as hard to persuade slaves to be free, as it is to compel freemen to be slaves." Then the American master may enfranchise, too, and arm servile hands in defense of freedom. Dull as the negro is from slavery, would he not suspect the gift offered him by a nation which has forced the slave trade on America—one of the causes of quarrel between the colonies and Great Britain?

But let us suppose all these moral difficulties got over. The *ocean* remains. You cannot pump this dry.

The second plan to reduce the spirit of the colonies is to prosecute it in its overt acts as *criminal*. It looks to me narrow and pedantic to apply the ordinary ideas of criminal justice to this great public contest. I do not know the method of drawing up an indictment against a whole people. I can scarcely conceive anything more imprudent than for the head of a great political union of communities to insist that if any *privilege* is pleaded against his acts, his *whole authority* is denied, and to beat to arms and put the offending provinces under ban. Will this not teach them to make no distinctions on their part? to think that the government against which a claim of liberty is treason is one to which submission is slavery?

We are by necessity both judge and litigant in all disputes with the colonies. In this responsible situation let us

ponder. What advantage have we derived from our penal laws against the Americans?

The third plan is to comply with the American spirit—if you please, as a necessary evil; *to admit the colonists into an interest in the British constitution*, and to this end to abolish revenue taxes in the laying of which they had no voice.

Here the speaker entered into the subject of the constitutional relations of England with Ireland and Wales, especially in regard to taxation and representation. He showed from English history that troubles with these Celtic nations never ceased until Parliamentary representation was given them. Ireland now had its own Parliament and Wales was a part of Great Britain.

"When the day-star of the English constitution had arisen in their hearts all was harmony within and without."[1]

Burke next discussed the ancient relations of England to Chester and Durham, which at one time were counties palatine, or possessed of royal privileges, and as such without representation in Parliament, and he showed from history the wisdom of having granted these districts equality with the rest of the kingdom.

Representation of America in the British Parliament is impracticable. *Opposuit natura.* The ocean intervenes. But what nature has disjoined in one way wisdom may unite in another. Give *legal competency* to the colonial assemblies to support their government in peace, and to grant aid to the Empire in war. They have always shown a readiness to do the latter.

Burke then proposed:

(1) That all colonial taxes and repressive acts, such as the Boston Port Bill, growing out of the same be repealed,

[1] A paraphrase of Horace, book i., ode xii.

and the act for the trial of treason committed outside of Great Britain (35th year of Henry VIII.) be amended to confine it to its original intended application, viz., to places outside the jurisdiction of the Crown; (2) that judges paid by the colonial assemblies shall hold office during good behavior, and be not removed except on complaint of the assemblies and colonial officers; and (3) that courts of admiralty be made more commodious for litigants, and the judges be paid decent salaries.

After supporting these propositions by showing that they were in harmony with the British constitution and would be acceptable to the colonists, Burke opposed the propositions of Lord North.

Ransom by auction is a new, an unheard-of, an anomalous project. It is without example of our ancestors, or root in the constitution, being neither regular Parliamentary taxation nor colony grant. It is an experiment which must prove fatal in the end to our constitution, being taxation in the antechamber of the ministry. The just proportion of taxes cannot be settled by it. It will not be acceptable to the colonists because it violates the principle of self-assessment for which they are contending, and so it will prove as impossible of execution as the present taxation, especially as it will be even more easily eluded. I allow that the Empire of Germany raises her revenue and her troops by quotas and contingents, but this revenue and this army are the worst in the world.

Instead of a standing revenue you will have a perpetual quarrel. "The intestine fire in the bowels of the colonies will be fed until in time it will consume the whole British Empire."

Burke then compared the simplicity of his plan with the intricacy of Lord North's; the mildness of the one with the harshness of the other; the certain efficacy, as

proved by experience, of his proposition with the unknown hazard of that of the Prime Minister; the universality of the principle in one case, with the partial applicability and opportunism displayed in the other.

He dilated on the historical fact that the principle of granted and unlimited, rather than enforced and fixed revenue, had established the greatness of Great Britain. The principle applied to the colonies, rich in natural resources, would have a like result, augmenting the resources of the Empire far more than stated compulsory taxation.

"What is the soil or climate where experience has not universally proved that the voluntary flow of heaped-up plenty, bursting from the weight of its own rich luxuriance, has ever run with a more copious stream of revenue than could be squeezed from the dry husks of oppressed indigence by the straining of all the politic machinery in the world?" If ever there was a country qualified to produce wealth, it is India. Yet, when you attempted to extract revenue from Bengal, you were obliged to return in loan what you had taken in imposition.

Let the colonies always keep the idea of their civil rights associated with your government, and no force under heaven will be of power to tear them from their allegiance. This is the true Act of Navigation which binds to you the commerce of the colonies, and through them secures to you the wealth of the world. Magnanimity in politics is the truest wisdom; and a great empire and little minds go ill together.

Burke then moved the first of his propositions, which was negatived by so decisive a vote (270 to 80) that he did not move the others, since it was evident that Parliament was determined to assert supremacy over the colonies—though as Burke continually reminded it,

it made no adequate military provision for enforcing this. Later, when war resulted from this determination, and disaster followed from this lack of preparation, Burke could not refrain from expressing his "I told you so" in the famous speech found in many collections of eloquence, beginning:

"But, Mr. Speaker, 'we have a right to tax America.' Oh, inestimable right! Oh, wonderful, transcendent right! the assertion of which has cost this country thirteen provinces, six islands, one hundred thousand lives, and seventy millions [of pounds] of money!"

King George's instigation and support of the despotic acts of Parliament against the colonies had by this time caused leaders of the patriots, especially those learned in constitutional law, boldly to arraign the Crown as an equal offender with the British legislature. However, they still were able to call themselves loyal subjects to the King (though they did so without the supplementary benediction), by preserving the political distinction between his person and his office, holding that "the King can do no wrong," and that his evil acts were the result of "bad advice" given by his counselors, who alone were responsible. By the term Crown, therefore, they implied the ministry, or the executive department of government as distinguished from the legislative, of whose control, indeed, it was independent in many respects, exercising in the name of the King various "prerogatives," which included certain rights of administration in the royal colonies.

James Wilson on the Powers of the Crown. One of the first American statesmen to turn his attention from Parliament and attack the tyrannical acts of the Crown was James Wilson, of Pennsylvania.

Wilson was a Scotsman, of university education, in which he had devoted special attention to rhetoric and logic, the perfect balance between which is nowhere better exemplified than in his speeches and his other than purely legal writings.

Coming to America in 1766 he entered the law office of John Dickinson in Philadelphia. After admission to the bar he removed from the city, and finally established himself at Carlisle, Pa., where he distinguished himself in the successful conduct of an important land case. He himself entered extensively into land speculation, which resulted disastrously. Although at times lacking money properly to support himself, he always contrived to send remittances to his widowed mother in Scotland, keeping her in ignorance of his straits.

He found time amid his harassing cares to speak and write for the colonial cause, doing so with a cogency of argument and beauty of style that won him nomination as a delegate to the first Continental Congress, though he was defeated by Joseph Galloway, who, as we have seen, afterwards became a Tory. He was, however, elected to the provincial convention which met at Philadelphia in January, 1775, to take action on the foregoing "speech from the throne" and the despotic acts of Parliament in relation to Massachusetts.

Mr. Wilson moved in the convention that these acts were unconstitutional and void. He supported his resolutions in a speech which was afterwards published under the title of *In Vindication of the Colonies.*

He asserted that the Crown by its prerogative could not alter a colonial charter; that such alteration could be legally made only by the assent of the colonial assembly; that force employed to execute the Crown's alteration was illegal and could be legally resisted, the

right to do so being founded upon both the letter and the spirit of the British constitution.

"'*Id rex potest,*' says the law, '*quod de jure potest*'—the king's power is a power according to law." His commands, if the authority of Chief-Justice [Matthew] Hale may be depended upon, are under the directive power of the law; and consequently are invalid if unlawful. "Commissions," says my Lord [Edward] Coke, "are legal, and are like the king's writs; and none are lawful but such as are allowed by the common law, or warranted by some act of Parliament."

The action complained of is not warranted by any act of Parliament, because any such act is void, and it is not pretended that it is warranted by the common law. It is not warranted by the royal prerogative, because it is directly opposed to the principles and the ends of prerogative. Upon what foundation, then, does it rest? Upon none. "Like an enchanted castle it may terrify those whose eyes are affected by the magic influences of the sorcerers, despotism and slavery; but, so soon as the charm is dissolved, and the genuine rays of liberty and of the constitution dart in upon us, the formidable appearance vanishes, and we discover that it was the baseless fabric of a vision that never had any real existence."

Parliament sent a circular letter to the colonial governors forbidding election of delegates to the Continental Congress to convene in May, 1775. Notwithstanding this all the colonies, including Georgia, which had not been represented in the first Congress, chose representatives to this one.

Patrick Henry's Militant Resolutions. The Virginia convention to choose such delegates met in the "Old Church" at Richmond in March. The leading spirit was Patrick Henry. His speech before the convention was even bolder than any he had yet delivered. It is

the most popular for recitation of all his orations, and therefore is found in many school readers and collections of American eloquence.[1] It has been called "Patrick Henry's individual declaration of war against Great Britain." It was delivered in support of Henry's resolutions to raise a force of provincial militia and put the colony in a state of defense. These were opposed as premature by the most prominent men in the convention. Henry was alone in their defense.

One who heard the debate thus describes Henry's delivery of the oration:

"Henry rose with an unearthly fire burning in his eye. He commenced somewhat calmly, but the smothered excitement began more and more to play upon his features and thrill in the tones of his voice. The tendons of his neck stood out white and rigid like whipcords. His voice roared louder and louder, until the walls of the building, and all within them, seemed to shake and rock in its tremendous vibrations. Finally his pale face and glaring eyes became terrible to look upon. Men leaned forward in their seats, with their eyes strained forward, their faces pale, and their eyes glaring like the speaker's. His last exclamation, 'Give me liberty or give me death!' was like the shout of the leader which turns back the rout of battle."[2]

The leading opponents of the resolutions were Richard Bland, Benjamin Harrison, Robert Carter Nicholas, and Edmund Pendleton.

Sketch of Harrison. Benjamin Harrison, though he opposed the Stamp Act resolutions of Patrick Henry as impolitic, became shortly thereafter one of the boldest of the patriots, serving on the intercolonial Committee

[1] It appears, with annotations, in volume i. of *American Orations*, by Johnston and Woodburn.

[2] From Tyler's *Life of Patrick Henry*.

of Correspondence, and representing his State in Congress for four successive terms, being a conspicuous advocate of united resistance to Great Britain at the outbreak of the Revolution, and an early promoter of separation from that country. As chairman of the committee of the whole he reported both Lee's and Jefferson's declarations of independence. Later in life he opposed the ratification of the Federal Constitution, but when this instrument was adopted, heartily supported it. He was a man of wisdom rather than talent, candid, courageous, unselfish. Although he had a keen sense of humor, his witticisms were chiefly directed at himself, his portly and gouty person forming the butt of a number of his reported remarks.

Sketch of Nicholas. Robert Carter Nicholas, a graduate of William and Mary, was a leading lawyer of Virginia and prominent in the House of Burgesses as a member of the conservative or "planter" party. When the colonial House was replaced in 1777 by the State House of Delegates he served as a member of this body until 1779. From 1766 to 1777 he was treasurer of Virginia. In 1773 he became a member of the intercolonial Committee of Correspondence. He took an active part in all the important conventions of the colony and State during his lifetime, which terminated in 1780.

Sketch of Pendleton. Edmund Pendleton, though he had little educational advantages, stood high among the lawyers and legislators of Virginia. He was a member of the House of Burgesses from 1752, and took a leading part in its debates. In 1764 he was one of the committee that petitioned the Crown against the threatened Stamp Act, and in 1766 he voted for the resolution that the Act "did not bind the inhabitants of

Virginia." He served on the intercolonial Committee of Correspondence in 1773, and in the Continental Congress. He presided over the Virginia convention from 1775 until the State constitution was adopted in 1776, when he was placed at the head of the Committee of Safety, and chosen as speaker of the House of Delegates and president of the Chancery Court. With Jefferson and Chancellor Wythe he revised the laws of the State. In 1779, when the Court of Appeals was established, he was made its president. He held the office until his death in 1803. He presided over the State convention of 1788 to pass upon the Federal Constitution, of which he was an active supporter. Said Jefferson, "Taken all in all he was the ablest man in debate that I ever met with." Washington Irving wrote of him that, "He was schooled in public life, a veteran in council, with native force of intellect, and habits of deep reflection."

Henry's resolutions were passed, and a committee was appointed to prepare a plan of armed defense of Virginia. Others than Henry upon it were George Washington, Thomas Jefferson, and Richard Henry Lee.

CHAPTER VI

INDEPENDENCE

1776

Mecklenburg [N. C.] Declaration of Independence—Controversy over its Authenticity—Proposal of American Independence by Thomas Paine [Pa.]—Sketch of Paine—*Thoughts on Government* by John Adams [Mass.]—Address of Judge William Henry Drayton [S. C.] to Charleston Grand Jury on American Independence—Sketch of Drayton—Opposing Views of Patrick Henry and John Adams on Foreign Alliances—Secret Committee of Congress Determines on Independence—Chairman Franklin's Letter to Dutch Friend on the Subject—Silas Deane [Ct.] Sent as Envoy to Secure French Alliance—Sketch of Deane—Congress Recommends Provincial Governments to Suppress British Authority—Congress Recommended by Provincial Governments to Declare Independence—The Virginia Bill of Rights, Drafted by George Mason—Sketch of Mason—Declaration of Religious Liberty—Modified by James Madison—Sketch of Madison—The Act Establishing Religious Liberty in Virginia—Resolution in Congress of Richard Henry Lee [Va.] to Declare Independence—Debate: for Postponement, James Wilson [Pa.], Robert R. Livingston [N. Y.], Edward Rutledge [S. C.], John Dickinson [Pa.]; for Adoption, Mr. Lee, John Adams [Mass.], George Wythe [Va.]—Sketches of Livingston, Rutledge, Adams, and Wythe—Congress Appoints Committee to Draft Formal Declaration of Independence: John Adams, Benjamin Franklin [Pa.], Livingston, Roger Sherman [Ct.], and Thomas Jefferson [Va.]—Sketches of Sherman and Jefferson—Jefferson Drafts the Declaration—Debate on Lee's Resolution Concluded—Triumph of John Adams—Resolution Adopted—Congress Amends and Passes Jefferson's Declaration—The Omitted Clause on the Slave Trade—Celebrations—Speech of Samuel Adams [Mass.] on "American Independence."

THE "next gale from the north," as Patrick Henry prophesied, bore the "clash of resounding arms" —at the battle of Lexington-Concord. The debate of the forum gave way to the bloody controversy of the

field. While the proceedings of the second Continental Congress, which met shortly after the battle, are intensely interesting to the student of history, they brought forward no vital issue in constitutional government, and so are here omitted. The same may be said of the debates on the American war in Parliament, in which oratory of the highest order was displayed, but no new principles were elucidated, except in relation to international law, such as the impressment of foreign seamen and the employment of mercenaries and savage allies. Discussion of the first of these issues will be reserved for presentation in connection with the Second War with Great Britain, and, since the debates on the second took place after the American Declaration of Independence, it cannot properly be treated in a history of American controversy. Indeed, so outrageous to the sentiment of humanity were the reasons presented for employing the red Indians in warfare, that the speeches in opposition are alone worth recording, and that as examples of oratorical invective rather than of argument. The student of public speaking in its general aspect is therefore referred to the collections of British eloquence, in which Chatham's great oration in condemnation of the British conduct of the war will be found, as well as the equally earnest, though inferior, speeches by other Whigs, such as Fox and John Wilkes.[1]

The great issue of the war on both sides of the Atlantic was, of course, American independence. Months before the rebellion assumed the formal character of a revolution by the Declaration of July 4, 1776, the ablest men in America began to advocate separation from the mother country, and the statesmen of continental Europe confidently to expect, and the Government of

[1] See *Great Debates in American History*, vol. i., chap. viii.

Great Britain guiltily to fear, this. Indeed, such English friends of America as Lord Chatham, who desired above everything else that the colonies be preserved to the Empire which he had done so much to extend, were sorrowfully apprehensive that the subjugating spirit of Great Britain would drive the Americans to the irrevocable act of casting off all allegiance to the oppressor.

Mecklenburg Declaration of Independence. It is claimed by some that the leaders of thought in the colonies were anticipated in advocating independence by a group of backwoods farmer folk, a community of Scotch-Irish Presbyterians in Mecklenburg County, N. C. While the second Continental Congress was in its first session, in May, 1775, a committee representing the militia companies of Mecklenburg County adopted certain resolutions. The set of these passed on May 31 is on record. Anticipating the action of Congress it declared that the royal commissions in the several colonies were null and void; that the constitutions of the colonies were suspended, the powers of government being vested in the provincial assemblies under direction of Congress; and that the inhabitants of Mecklenburg County should form a military and civil organization until the North Carolina provisional government to be established should otherwise provide, or until the British government should "resign its arbitrary pretensions with respect to America." It is alleged that the committee had previously passed (on May 20) a set of resolutions declaring that the "political bonds" between the county and Great Britain were "dissolved"; that the citizens of the county were "absolved" from "all allegiance to the British Crown"; and were "a free and independent people." These resolutions abounded in other phrases resembling those in the

subsequent national Declaration of Independence of July 4, 1776.[1]

The authenticity of the second set of resolutions has been the subject of considerable controversy at various times. The records of Mecklenburg County were destroyed by fire in 1800, and it is claimed that the resolutions of May 20 were destroyed with them. What purported to be a true copy of them was published in 1819, when a controversy had arisen throughout the country over the time and place of the beginning of the movement for independence. In support of the authenticity of the copy, evidence was produced that at least two newspapers of North Carolina had published the resolutions within a few days after their passage, though these issues had not been preserved; aged men testified that they had heard the resolutions read at Charlotte, the county-seat, in May, 1775, and that they were of the purport claimed; one of these men stated that he had carried the resolutions in question to Congress. On the other hand, it was suggested that the resolutions referred to in the contemporaneous newspapers were those of May 31, and that the memories of the witnesses were at fault through the same confusion. Thomas Jefferson and John Adams, then living, declared that, if the resolutions of May 20 had been presented to Congress, they did not know of the fact, and that they believed them spurious. But those who upheld their authenticity charged Jefferson with plagiarism from the resolutions, and therefore as interested in denying knowledge of them. The resolutions of May 20 were generally discountenanced until 1833, when their authenticity received support in

[1] The full text of this Declaration is found in *Great Debates in American History*, vol. i., p. 173.

the discovery of a proclamation of Josiah Martin, the royal Governor of North Carolina, dated August 8, 1775, denouncing a series of resolves by a committee of Mecklenburg County, printed in the *Cape Fear Mercury*, declaring "the entire dissolution of the laws, government, and constitution of the country." However, it was claimed on the other hand that the resolutions of May 31 could also be thus objected to. The last evidence in the controversy was brought forward in 1838–47, during which period copies of old newspapers were discovered containing the resolutions of May 31, but no record or mention of any previous ones. In July, 1905, there appeared in *Collier's Weekly*, New York, what purported to be a facsimile of the publication of the resolutions of May 20 in the *Cape Fear Mercury* referred to by Governor Josiah Martin, but evidence has been adduced that this was a forgery. The government of North Carolina has officially accepted the authenticity of the "Mecklenburg Declaration of Independence" by making May 20 a State holiday in its honor, and a statue has been erected at Charlotte in memory of the alleged signers of the document. Nevertheless the principle and spirit of independence were implicit in the second Mecklenburg resolutions (of May 31, 1775), as well as in the proceedings of the second Continental Congress which they anticipated.

Paine's Proposal of Independence. The first unquestioned proposal of American independence by a man of prominence was that of Thomas Paine, of Philadelphia.

Thomas Paine had been in the excise service in England where his activities in a local Whig club and a pamphlet he had written in favor of increasing the pay

of excisemen had given him the reputation of an undesirable agitator with the authorities, and in 1774 he was dismissed from the service. At this crisis he met Dr. Franklin, who suggested that a man of his talents and sentiments would do well for himself and the country in America. Accordingly, provided with letters to prominent patriots, he came to Philadelphia. With one of his new friends he founded the *Pennsylvania Magazine*, a patriotic publication, and edited it for eighteen months.

On January 9, 1776, at the suggestion of a fellow-citizen, Dr. Benjamin Rush, Paine published a pamphlet entitled *Common Sense*, addressed "to the Inhabitants of America." It advocated complete independence in a forcible popular style which at once made the author a man of note throughout the colonies —indeed far more influential than any other writer or even statesman of the time. Dr. Rush said that the book "burst forth with an effect that has rarely been produced by types and paper in any age or country." With less personal interest in the author General Washington said that "it worked a powerful change in the minds of many men." In later years Paine arrogantly claimed that he had done more than any other one man, even General Washington, in establishing the Republic.

In the second article of *Common Sense*, entitled "Thoughts on the Present State of American Affairs," Paine argued:

(1) That by its *physical nature* the continent of America was intended to be independent of an external power.[1]

(2) *Hatred* of America by Great Britain had pierced too deep for reconciliation. "Wherefore, for God's sake let us

[1] A point in favor of the "Monroe Doctrine."

come to a final separation, and not leave the next generation to be cutting throats under the violated unmeaning names of parent and child."

(3) Self-government is a *natural right.*

(4) *Now* is the time to obtain this; to delay is to invite some demagogue to assemble the desperate and discontented to seize the reins of power and establish a despotism. "Ye that oppose independence now . . . are opening a door to eternal tyranny by keeping vacant the seat of government."

In an appendix to the pamphlet Paine appealed to Americans to bury all former differences, and unite along the "single, simple line of independence." Let the names of Whig and Tory be extinct and let no other be heard than those of "a good citizen, an open and resolute friend, and a virtuous supporter of the *rights of mankind* and of the FREE AND INDEPENDENT STATES OF AMERICA."

Of Paine's political writings Leslie Stephen writes as follows in the *Dictionary of National Biography:*

"Paine is the only English writer who expresses with uncompromising sharpness the abstract doctrine of political rights held by the French revolutionists. His relation to the American struggle, and afterwards to the revolution of 1789, gave him a unique position, and his writings became the sacred books of the extreme radical party in England. Attempts to suppress them only raised their influence, and the writings of the first quarter of the century are full of proofs of the importance attached to them by friends and foes. Paine deserves whatever credit is due to absolute devotion to a creed believed by himself to be demonstrably true and beneficial. He showed undeniable courage, and is free from any suspicion of mercenary motives. He attached an excessive importance to his own work, and was ready to

accept the commonplace that his pen had been as efficient as Washington's sword. He attributed to the power of his reasoning all that may more fitly be ascribed to the singular fitness of his formulæ to express the political passions of the time. Though unable to see that his opponents could be anything but fools and knaves, he has the merit of sincerely wishing that the triumph should be won by reason without violence. With a little more 'human nature,' he would have shrunk from insulting Washington or encouraging a Napoleonic invasion of his native country [England]. But Paine's bigotry was of the logical kind which can see only one side of a question, and imagines that all political and religious questions are as simple as the first propositions of Euclid."

Paine, in his *Common Sense*, not only advocated American independence, but also outlined a scheme of government for the new nation. It was exceedingly superficial, the ideas being those which were "in the air" at the time, and were caught up by Paine, who had the absorbing instinct of a journalist (in general philosophy, too, as well as in political), instead of the constructive originality of a real statesman, and it is not worth presenting, especially as it had no influence upon the formation of either the Articles of Confederation or the Constitution.

Common Sense was by many ascribed to John Adams, who did not relish the attribution, being especially contemptuous of the shallowness of Paine's ideas in regard to government. Accordingly in the same year he published *Thoughts on Government*, a pamphlet which, owing to the necessity of the colonies establishing provincial governments, set all the constructive minds of the country to planning constitutions, so that, to use Adams's words, "the manufacture of governments"

became "as much talked of as that of saltpeter was before."

The pamphlet contributed more than any other influence to the uniformity of the new State constitutions. Especially was it of value to Virginia in forming its government.

Adams was especially insistent on the rule of the people. To a Mr. Hughes of New York he wrote advising against that province choosing governors and other officers for life or during good behavior.

"The people ought to have frequently the opportunity, especially in these dangerous times, of considering the conduct of their leaders, and of approving or disapproving. You will have no safety without it."

Drayton on Independence. Another early advocate of entire separation from Great Britain was William Henry Drayton, the leading jurist of South Carolina, already noted as largely the author of the Declaration of Rights by the first Continental Congress. By the advice of the second Congress, South Carolina formed in March a provisional government and adopted a constitution. In the framing of the latter Judge Drayton took a leading part, and was fittingly chosen Chief-Justice. In this capacity he delivered on April 23, 1776, a notable address to the grand jury of Charleston. This foreshadowed the Declaration of Independence by Congress on July 4, 1776, by its enumeration of the acts of the King and Parliament which justified the separation of the colonies from the Empire.

He congratulated the Grand Jury on the resumption of trial by jury in the province, which had been suspended by the royal government in violation of the principles of Magna

Charta, and which was now under the protection of a new constitution of government independent of royal authority —"a constitution which arose according to the great law of nature and nations, and which was established in the late Congress, on the 26th of March last."[1]

After enumerating the various oppressive acts of Parliament and the King, Judge Drayton related the recent aggressions of British arms in their enforcement: the expedition against the colonial military stores at Concord, which he claimed was an act of war, justifying the resistance of the patriots; and the burning by British forces of the unfortified towns of Charlestown, Mass., Falmouth, Mass., and Norfolk, Va., which he said was a series of acts of inhumanity unjustified by military necessity.[2]

He arraigned Governor Gage, the British general-in-chief, for his attempt, in conjunction with other governors and Colonel John Stuart, superintendent of Indian affairs in the southern colonial district, *to instigate the savage nations* to war upon the southern colonies, and indiscriminately *to massacre man, woman, and child.*[3]

He also arraigned the southern royal governors for *arming slaves* against their masters.

He arraigned the British government for passing a law, *ex post facto*, to justify what had been done not only without law, but by nature unjust—the act of December 21, 1775, to impress American seamen to fight against their countrymen. "The world, so old as it is, heretofore had never

[1] Judge Drayton refers to the provincial convention and not to the national Congress, which was then in session. This is a point bearing on the question which subsequently arose of the original nature of the State government of South Carolina, whether or not it was sovereign, and wholly independent of anything like Federal creation.

[2] A point in international law.

[3] See Dr. David Ramsay's *History of South Carolina.*

heard of so atrocious a procedure: it has no parallel in the registers of tyranny."

Judge Drayton then compared the old government of South Carolina under the King with that under the new constitution:

Under British authority the governors sent over to the colonies were totally unacquainted with "our local interests, the genius of the people, and our laws." They generally supported the arbitrary acts of the ministry, on whom they were dependent for retention in office, against the people, and there was no means whereby the people could get rid of them.

Under the rule of the people the magistrates were chosen according to the spirit and letter of the Bible: "*their governors shall proceed from the midst of them.*" The people were free to elect a man from their number intimately acquainted with their true interests, their genius, and their laws; and who could "without the least difficulty be removed and blended in the common mass."[1]

In the same manner Judge Drayton compared the British limitations of American property by taxation, of our manufacture by prohibition, and of our trade by monopolization, with the freedom from these restrictions under the new constitution. Liberty to buy in the cheapest market he especially extolled.[2]

While he expressed his willingness that the colonies should be reconciled with Great Britain on equitable terms, and with guaranties of their maintenance such as prescribed by Congress, he declared it his opinion that true reconcilement would never come except with

[1] A point in the question of the Recall of Officials, particularly judges.

[2] Had he lived in the time of Calhoun he would undoubtedly have been a "nullifier" in the Tariff controversy.

our complete independence. "The Almighty created America to be independent of Britain." He concluded with a prayer to God so to direct the judgment of his auditors that they might "act agreeably to what seems to be His will, revealed in behalf of America, bleeding at the altar of liberty."

Judge Drayton followed this address by others of the same cogent character, notably an answer to the "Declaration" of Admiral and General Howe of the 19th of September, 1776, proposing conditions of peace.

Judge Drayton was a delegate to Congress in 1778, where he took a prominent part in the deliberations on the conciliatory bills of Parliament. He also wrote a pamphlet ridiculing the royal "peace" commissioners sent to America. He died in 1779 in the midst of his Congressional labors. He left behind him a manuscript history of the American Revolution completed to the close of 1778, which was published by his brother, John Drayton, LL.D., in 1821.

Foreign Alliances. Long before the Declaration of Independence of July 4, 1776, the leading spirits in Congress had agreed among themselves to issue it when America was assured of the support of one or more of the powerful nations of continental Europe, preferably France and Spain, the inveterate enemies of Great Britain.

To secure such an alliance Patrick Henry was even willing to concede territory. John Adams was in favor of continuing the struggle alone rather than lay up trouble for the future of the nation they were founding. He believed that commercial considerations alone, a share in the rich and growing American trade of which Great Britain had hitherto possessed the monopoly, would be inducement enough to secure the monetary

aid, which was chiefly what the country required, of the continental powers. He therefore advised the making with these nations of treaties of commerce alone, saying, "We should separate ourselves as far as possible and as long as possible from all European politics and wars."

He thus anticipated the "Monroe Doctrine," which his son, John Quincy Adams, as Secretary of State under President Monroe, was to inaugurate in practical action.

As a result of the desire of Congress for foreign alliances, on November 25, 1775, a committee headed by Dr. Franklin was appointed for secret correspondence "with the friends of America in Great Britain and Ireland *and other parts of the world.*" The final general phrase covered the real purpose, which was to sound the foreign European powers, particularly France and Spain, on the subject of an alliance recognizing American independence. Shortly after the formation of the committee Franklin virtually confessed that this was its object, in a letter to a M. Dumas in Holland, a friend of America, asking him to "discover the disposition" toward it of the various courts through their ambassadors at The Hague. He suggested the arguments that M. Dumas was to use in inviting such alliance: the firm union of the colonies, and the success of American arms and of the new navy (which had already captured a number of British cruisers and transports).

On March 2, 1776, Silas Deane,[1] of Connecticut, was commissioned by the committee to go to Paris in

[1] Silas Deane (1737–89) was born at Groton, Ct.; graduated from Yale in 1758, and admitted to the bar in 1761, but entered into mercantile business. From 1774 to 1776 he was a delegate to Congress. For his later career as a foreign envoy, see the encyclopædias.

order to obtain money and war supplies and to sound the French court on the subject of alliance. Almost at the moment when independence was declared at Philadelphia, Deane assured the Minister of State at Versailles, the Count de Vergennes, that such a declaration was probably made at the time, which statement, because Deane had received no advices from America since his commission, is evidence that the action had been determined upon, if not in Congress, in the secret committee, at least four months before its execution.

Independent State Governments. On May 10, 1776, as a preliminary step to independence, Congress recommended to the provincial assemblies "to adopt such governments as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general." On May 15 Congress supplemented this recommendation by a statement of causes for such action, declaring it to be "absolutely irreconcilable to reason and good conscience for the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the Crown of Great Britain," whose authority ought to be "totally suppressed," and taken over by the people—a statement which John Adams, who had inspired it, said inevitably involved absolute independence in its extinguishment of all British authority, whether of Parliament, Crown, or nation. "It cut the Gordian knot," said Adams, "which bound America to Great Britain."

During the course of the next five years all the States adopted constitutions and formed governments in accordance with the recommendation of Congress.

State Proposals of Independence. Some of the

provincial governments had already expressed their desire for separation from Great Britain. On April 22, 1776, North Carolina empowered its delegates in Congress "to concur with those in the other colonies in declaring independency," this being the first pronouncement in favor of the measure by any colonial assembly or convention. On May 10 the General Assembly of Massachusetts directed the people at the approaching election of representatives to that body to instruct these on the subject of independence, and on May 23 the people of Boston declared that, if Congress decided on the measure, they would support it with "their lives and the *remnants* of their fortunes." On May 15, 1776, the convention of Virginia, which was met to form a State government, unanimously instructed its delegates in Congress to propose independence. On the 12th of June, being still in convention, it passed a "Bill of Rights" which anticipated the Declaration of Independence by Congress in its enunciation of natural rights, and was even more explicit as to the principles of democratic government. It was largely drafted by George Mason.

Sketch of Mason. More than any of the Fathers Mason set his mind to secure the vital union of the colonies. In 1769 he drafted the non-importation resolutions adopted by the Virginia convention, discerning in this common agreement of the colonies the most effective bond between them as well as the most telling action which could be taken against the commercial nation that was oppressing them; he shortly afterwards exhibited the substantial quality of his statesmanship by publishing *Extracts from the Virginia Charters with Some Remarks Upon Them*, to justify legally the acts of the Virginia patriots. On July 18,

1774, he presented to the people of his county a series of resolutions recommending a Congress of the colonies, and the policy of non-intercourse with Great Britain, which were afterwards adopted by the Virginia convention, and reaffirmed by the Congress to whose creation they had contributed. For family reasons he declined an election to Congress, taking, however, charge of the executive government of Virginia.

James Madison pronounced Mason the ablest debater he had ever known. Thomas Jefferson called him "a man of the first order of wisdom, of expansive mind, profound judgment, cogent in argument, learned in the lore of our former constitution (the Confederation) and earnest for the *republican* change on *democratic* principles"—the last being a remarkably significant phrase.

Mason was of commanding presence; his face was dark and grave, and his eyes were black and brilliant.

Virginia Bill of Rights. The following is a synopsis of the "Bill of Rights"[1]:

Section 1 declared "that all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

2. "All power is vested in, and consequently derived from, the people; the magistrates are their trustees and servants, and at all times amenable to them."

3. As a logical deduction from the above principles government should be for the benefit, etc., of the people,

[1] For unabridged text see *Great Debates in American History*, vol. i., p. 184.

and, when found not to be so, can by right be altered or abolished by them.

4. No emoluments or privileges should be granted except for public services, and offices should not be hereditary.

5. Legislative and executive powers should be distinct from judiciary.[1] Legislators and executives should be retired at fixed periods from office, and frequent elections should be held to choose their successors.

6. Elections should be free and "all men having sufficient evidence of permanent common interest with, and attachment to, the community have the right of suffrage," and cannot be taxed, governed, etc., without their consent or that of their representatives.

7. Laws should not be suspended, or authority executed, without consent of the people or their representatives.

8. Trial by jury, under the principles and practices of the common law, should be maintained.

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

10. Search warrants or body seizures on mere suspicion ought not to be granted.

11. Trial by jury is preferable to any other in property cases and personal suits.

12. Freedom of the press should be maintained.

13. Militia are the proper defense of a free state; standing armies are dangerous to liberty; the military power should be subordinate to the civil.

14. Uniformity of government is a right of the people, and therefore "no government separate from, or independent of, the government of Virginia ought to be erected or established within the limits thereof."[2]

[1] This provision was made in the Virginia constitution adopted on June 29, 1776—the first time the principle was ever adopted in government. See Resolve 10 of the Declaration of Rights of the first Continental Congress on page 88.

[2] A most important pronouncement in its bearing on the later controversies over State Rights and Secession.

15. Free government is based on justice, frugality, etc., and can be preserved only "by frequent recurrence to fundamental principles." ["Vigilance is the price of liberty."]

16. Freedom of religion should be maintained.

The last pronouncement read in its original form, as submitted by the drafting committee to the convention:

"That all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, happiness, or safety of society."

James Madison, who had just made his entrance into public life at the age of twenty-five through his election as delegate to the convention, was a member of the committee. Although there is no record of his urging any objection in committee to the form of the declaration, he probably did so, and was overruled, for when it was presented to the convention he made what was in effect a minority report by moving that the section be amended to read:

"That all men are equally entitled to the full and free exercise of religion according to the dictates of conscience, and that no man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless, under color of religion, the preservation of equal liberty and the existence of the State be manifestly endangered."

Madison supported his amendment by pointing out the distinction between *tolerating* religion, which assumed that the civil government had jurisdiction in

the matter, and asserting liberty of conscience as a *right*, which did not come under such jurisdiction except in the case of conflict with the State's fundamental right of self-preservation. This was the position afterwards ably maintained by Thomas Paine in his *Rights of Man* (1792).

The convention felt the force of Madison's argument, and struck out from the section the principle of toleration, but, with commendable restraint, omitted the condition limiting the exercise of free worship when destructive of civil liberty as obvious and hence unnecessary.[1]

The section in its adopted form read:

"That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion according to the dictates of conscience."

Madison was the most deeply versed American of the time in the subject of religious liberty. Indeed, it was to secure it that he had accepted election to the convention. It is true that he had carried with him to Princeton the general interest in civil rights prevalent in Virginia as in the other colonies, due to British aggres-

[1] This must have been already apparent to Madison, but then and throughout his career he believed in educating the people by expressing fundamental principles in detail, however plain and inevitable some of the implications might be. It would have been well if the limiting clause had been retained, for the Bill of Rights was largely incorporated into the constitution of the nation and of many States, and if the clause had been expressed in these, the chief argument in support of Polygamy, namely that it was a religious institution and so not under the jurisdiction of government, would have possessed even less effectiveness than it had among shallow thinkers.

sion in matters of taxation, for this is indicated by his foundation of the American Whig Society (see page 17), but he soon became specially concerned with the prior and still prevailing, though temporarily obscured, issue of religious freedom, occasioned by the British establishment of the Church of England in many of the colonies. He evidently contemplated the ministry as a profession, for, after graduation (his characteristic application is shown by his fulfilling the Junior and Senior courses in one year), he spent another year at the college chiefly in studying Hebrew. But ill-health, and his sense of duty toward his family, which was only in moderate circumstances, caused him to devote himself to the education of his younger brothers and sisters while pursuing his theological studies at home. Here, removed from the agitation in the east over civil rights, the religious intolerance of the Virginia clergy aroused his special animosity, overshadowing in importance every other question. In a letter to his friend, William Bradford, Jr., of Philadelphia, afterwards Attorney-General in Washington's Administration, Madison wrote in 1774[1]:

"But away with politics [*i.e.*, the controversy over taxation, etc., with Great Britain]. . . . That diabolical, hell-conceived principle of persecution rages among some; and, to their eternal infamy, the clergy can furnish their quota of imps for the purpose."

Here Madison cited the imprisonment of a number of men for publishing their religious sentiments, although these were in the main orthodox. He also observed that, if the Church of England had been established in the

[1] See *The Writings of James Madison*, vol. i.

northern colonies, the whole country would have already been reduced to "slavery and subjection."

Madison was elected to the Virginia Assembly under the new constitution of the State. He failed of reëlection because of his refusal to make a personal canvass of the district, "treating" by the candidates being a custom in Virginia which was expected by the electors. It was time, said Madison, that "a more chaste mode of conducting elections" be introduced, and he would set an example by refraining from electioneering, and allowing his actions as legislator to speak for him. To this resolution he adhered through his early career,[1] probably to the advantage of the country, for, in his frequent periods of retirement from public life, and in the conduct of his official sphere in a lower position than that to which he was entitled, he rendered service to the cause of free yet stable government greater than that performed by any man in high office in his generation. Thus to him, rather than to Jefferson (with whom he early established a political partnership which lasted until Jefferson's death, and in which Madison was the forensic representative and the most indefatigable worker), is really due the establishment of complete religious freedom in Virginia. It is true that, seven years before, Jefferson had drafted an "Act for Establishing Religious Freedom" in the State, but it was Madison who secured its passage in 1786 by the vigorous fight he made in the Assembly by postponing, when he could not defeat, propositions to lay a tax for the

[1] When the Constitution was adopted, largely by his efforts, Madison especially attracted the animosity of the Anti-Federalists in Virginia, and Patrick Henry, their leader, "gerrymandered" Madison's district to keep him out of Congress. Madison thereupon abandoned his early resolution, and made a successful electioneering campaign.

benefit of the clergy, and by agitating the question among the people by circulating arguments against the taxes with remonstrances to be signed by the citizens. The voice of the people evoked by this means was too strong to be resisted, and the legislature passed the act. Madison kept Jefferson, who was at the time Minister to France, in touch with the progress of the movement, and when the act was passed, Jefferson, after speaking of the enthusiasm it had evoked among European republicans, its translation into French and Italian, and its insertion in the monumental *Encyclopédie*, etc., wrote:

"It is comfortable to see the standard of reason at length erected, after so many ages during which the human mind has been held in vassalage by kings, priests, and nobles; and it is honorable for us to have produced the first legislature who had the courage to declare that the reason of man may be trusted with the formation of his own opinions."

Jefferson so highly regarded his part in this service to the cause of liberty that by his order his authorship of the act was joined with that of the Declaration of Independence in the inscription on his tomb. The acts themselves and the institutions which each perpetuates are monuments of James Madison, who made the bill of religious liberty a statute, and of John and Samuel Adams, who more than any of the Fathers of the Republic established our independence.

Backed by the support of patriots north and south, and the mandate of his own colony, Richard Henry Lee, of Virginia, on behalf of the delegates from that colony, submitted to Congress on June 7, 1776, the following resolution:

"*That the United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved.*"

There were two supplementary resolutions: (1) that foreign alliances be sought; (2) that a plan of State confederation be prepared and presented to the colonies for ratification.

Debate on Lee's Declaration. Thomas Jefferson, in his *Writings* (vol. i., p. 10), has given an account of this debate. In this debate, as in the subsequent one on the same resolution (on July 1), John Adams was the leader. Adams was at the height of his mental powers (forty-one years of age), and speaking on a subject to which he had devoted his mind and soul for years, unburdening himself of weighty thoughts that he had repressed in public for policy's sake. Indeed, he regarded the Declaration as his special "act." Many historians have observed that after this triumph Adams declined in intellectual power, or, rather, that this was impaired by an abnormal development of his moral characteristics, vanity, self-sufficiency, and censoriousness. Thus Charles Mackey says, in his *Founders of the American Republic:*

"'Whom the gods love, die young,' said the ancients. Perhaps, and most probably, if John Adams had died immediately after the Declaration of Independence, his name, next to that of Washington, might have stood highest and brightest in the long muster-roll of American worthies."

Of Adams's mental abilities Theodore Parker says, in his *Historic Americans:*

"Mr. Adams had a great mind, quick, comprehensive, analytical, not easily satisfied save with ultimate causes, tenacious also of its treasures. His memory did not fail until he was old. With the exception of Dr. Franklin, I think of no American politician in the eighteenth century that was his intellectual superior. For, though Hamilton and Jefferson, nay, Jay and Madison and Marshall, surpassed him in some high qualities, yet no one of them seems to have been quite his equal on the whole. He was eminent in all the three departments of the Intellect—the Understanding, the practical power; the Imagination, the poetic power, and the Reason, the philosophic power. . . . At the age of forty he was the ablest lawyer in America. He was the most learned in historic legal lore, the most profound in the study of first principles."

Of Adams's physical appearance and his social qualities his grandson and biographer, Charles Francis Adams, writes:

"In figure John Adams was not tall, scarcely exceeding middle height, but of a stout, well-knit frame, denoting vigor and long life, yet, as he grew old, inclining more and more to corpulence. His head was large and round, with a wide forehead and expanded brows. His eye was mild and benignant, perhaps even humorous, when he was free from emotion, but, when excited, it fully expressed the vehemence of the spirit that stirred within. His presence was grave and imposing on serious occasions, but not unbending. He delighted in social conversation, in which he was sometimes tempted to what he called 'rodomontade.' But he seldom fatigued those who heard him; for he mixed so much of natural vigor, of fancy, and of illustration with the stores of his acquired knowledge, as to keep alive their interest for a long time. His affections were warm, though not habitually demonstrated, towards his relatives. His anger, when thoroughly roused, was, for a time, extremely violent,

but when it subsided, it left no trace of malevolence behind. Nobody could see him intimately without admiring the simplicity and truth which shone in his action, and standing in some awe at the reserved power of his will. Mr. Adams was very impatient of cant, of sciolism, or of opposition to any of his deeply-established convictions."

In his famous speech on "Eloquence of the American Revolution," Rufus Choate places John Adams at the head of all the orators of that period.

"The leader in that great argument was John Adams, of Massachusetts. He, by concession of all men, was the orator of that Revolution. . . . Other and renowned names, by written or spoken eloquence, coöperated effectively, splendidly, to the grand result,—Samuel Adams, Samuel Chase, Jefferson, Henry, James Otis in an earlier stage. . . . Each brought some specialty of gift to the work: Jefferson, the magic of style, and the habit and the power of delicious dalliance with those large, fair ideas of freedom and equality so dear to man, so irresistible in that day; Henry, the indescribable and lost spell of the speech of the emotions, which fills the eye, chills the blood, turns the cheek pale,—the lyric phase of eloquence, the 'fire-water,' as Lamartine has said, of the Revolution, instilling into the sense and the soul the sweet madness of battle; Samuel Chase, the tones of anger, confidence, and pride, and the art to inspire them. John Adams's eloquence alone seemed to have met every demand of the time; as a question of right, as a question of prudence, as a question of immediate opportunity, as a question of feeling, as a question of conscience, as a question of historical and durable and innocent glory, he knew it all through and through; and in that mighty debate, which, beginning in Congress as far back as March or February, 1776, had its close on the second . . . of July, he presented, in all its aspects, to every passion and affection . . . the appeal . . . day after day, until, on the third of July, 1776,

he could record the result, writing thus to his wife: 'Yesterday the greatest question was decided which ever was debated in America; and a greater, perhaps, never was, nor will be, among men.'

"Of that series of spoken eloquence all is perished; not one reported sentence [of Adams] has come down to us. The voice through which the rising spirit of a young nation sounded out its dream of life is hushed. The great spokesman of an age unto an age is dead."

Sketch of Livingston. Robert R. Livingston's father, bearing the same name, was an energetic member of the Stamp Act Congress. The son is generally distinguished from the other members of the Livingston connection, the most powerful politically in the early history of the country, as "Chancellor Livingston," having held this office for the State of New York from 1783 to 1801. In this capacity he administered the oath to Washington on that General's inauguration as first President of the United States. In early life he was partner of John Jay in law. He was removed by the royal Governor Tryon from the office of New York City recorder in 1775 because of his sympathy with the patriots. He entered Congress in 1775, and served on important committees, the chief being that to draft the Declaration of Independence. However, he did not sign that instrument, having been called to New York to take part in the framing of the constitution of that State by the provincial convention.[1]

Sketch of Rutledge. Edward Rutledge, like most of the eminent lawyers, had studied his profession in

[1] For Livingston's later career, including his association with Robert Fulton in the steamboat *Clermont*, and his services to American agriculture, see Appleton's *Cyclopædia of American Biography*. Franklin called him " the Cicero of America."

London. A year after his return to his native city of Charleston he was elected with his brother John to the first Continental Congress, being the youngest member of that body. Less eloquent than John, whom Patrick Henry called "by far the greatest orator" of Congress, he nevertheless, by reason of superior ability, played a more active part in practical work, serving on important committees and missions. Later in the Revolution he fought gallantly in defense of Charleston. After the war he devoted himself to the service of his State as legislator and Governor. In the former capacity he opposed the slave-trade, and secured the abolition of primogeniture in South Carolina. He declined the office of Associate-Justice of the Supreme Court of the United States.

Sketch of Wythe. George Wythe was reputed the most learned lawyer in America. He was Jefferson's teacher, and, from 1776 to 1789, he was professor of law at William and Mary, instructing, among other men who became distinguished statesmen and jurists, James Monroe and John Marshall. He became Chancellor of Virginia in 1786. Henry Clay was clerk of his court, and was greatly inspired by him. As Chancellor he was the first judge to decide the vexed question of British debts contracted in America before the war; he held them recoverable, although there was high public feeling against such a view. He added to the *courage* and *integrity* thus displayed, *humanity*, freeing and providing for his slaves shortly before his death. His *Decisions* were published in 1795. Jefferson made notes for a biography of Wythe which he never completed. One note reads:

"No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest kind, his

integrity inflexible, his justice exact. He might truly be called the Cato of his country, without the avarice of the Roman, for a more disinterested person never lived. He was of middle size, his face manly, comely, and engaging. Such was George Wythe, the honor of his own and the model of future times."

We further condense Jefferson's account of the first debate on Lee's resolution to declare American independence.

On June 8 and 10, 1776, the resolution was opposed by James Wilson (Pa.), Robert R. Livingston (N. Y.), Edward Rutledge (S. C.), John Dickinson (Pa.) *et al.*, as *premature.*

Congress should wait until the people, without whose support the resolution would not be effective, "drove us into it." The middle colonies were not yet ready for the declaration, some of them having expressly forbidden their delegates to consent to it. They, however, were "fast ripening in its favor," and their conventions, now sitting, or shortly to sit, would declare the voice of their colonies. If Congress now passed the declaration, the delegates to it from these States must retire, and possibly their colonies might secede from the union, which would weaken it more than any foreign alliance possibly to be secured by the declaration would strengthen it. Perhaps these allies, recognizing the desperate situation in which the declaration would place us, would make severe terms with us. Probably France and Spain, jealous of a rising power which would certainly some day strip them of their American possessions, would prefer to join with Great Britain, in order to get back territory already lost. Certainly we should wait for a report of the agent [Silas Deane] sent to France. We should wait, moreover, for the result of the present military campaign (in which no foreign alliance, if now obtained, could

help us), and, if it were favorable, we could make better terms with allies.

Richard Henry Lee (Va.),[1] John Adams (Mass.), and George Wythe (Va.), supported the resolution. They declared:

No State could forbid its delegation to Congress from assenting to a statement of fact. Independence already existed. The King had dissolved the bond between him and the colonies by assenting to the late prohibitory act of Parliament, declaring us out of his protection, and by levying war on us. Allegiance and protection being reciprocal, we were absolved from the former.

The delegates from only two colonies, Pennsylvania and Maryland, were definitely instructed against the resolution. The former colony gave these instructions a year ago before independence was a fact. The resolutions of May 10 and 15 directing the colonies to form new governments had shown that the majority of the people of Pennsylvania and Maryland were more radical than their representatives in their colonial assemblies. The backwardness of these colonies was due to the influence of proprietary power and to freedom from hostilities in the war. These causes were not likely soon to be removed. It would be vain to wait for perfect unanimity, since it was impossible that all men should ever become of one sentiment on any question. The colonies that had taken risks in the war, and were now willing to put all to hazard, should not be held back by two colonies which had not suffered, and whose policy seemed to be to keep in the rear of the Confederacy. If these should secede, this would not be so dangerous as some apprehended. The Dutch Revolution, which was begun by only three of the states of Holland, succeeded.

[1] The speech of Lee is found in full in *Great Debates in American History*, vol. i., p. 197.

A *declaration of independence* alone can give a diplomatic basis for foreign nations to form an alliance with us, or even to receive our ambassadors, permit our vessels entry into their ports, or accept the adjudication of our admiralty courts in prize cases. [That is, as a revolted province, America could not be recognized in international law as a *belligerent*.] Though France and Spain may be jealous of our rising power, they must see that America alone will be weaker than with the power of Great Britain behind it. Should they refuse to prevent this coalition by an alliance with us, we shall still be where we are. Declare independence, and we shall know where we stand.

Our military campaign looks hopeful,[1] and so it is wise to propose foreign alliance *now*, as the campaign may prove unsuccessful. It is not true that France cannot aid us in the present campaign. It can cut off supplies from England and Ireland on which British armies are to depend, or threaten the British West Indies with the fleet it has now collected in those waters. Had we entered into alliance with France six months ago, she might have marched into Germany and prevented the petty princes there from selling their unhappy subjects to subdue us.

It will be time to settle terms of alliance when we have determined on alliance.

The needs of our people demand opening of foreign trade at once. They want money for taxes, on which our governments, colonial and federal, depend.

[1] In October, 1775, Sir William Howe succeeded Gage as commander of the British troops in Boston, Generals Sir Henry Clinton and John Burgoyne also being sent from England with reinforcements. General Washington compelled the evacuation of Boston on March 17, 1776, and Howe sailed with his troops and a large number of loyalist citizens to Halifax, Nova Scotia. The British generals recommended to the British government to shift the center of military operations to New York City. This was agreed upon, and, while Congress was deliberating on independence, the British troops were sailing to New York City, which Washington, anticipating the movement, had fortified.

At the end of the debate on Lee's resolution on June 10, the resolution was adopted in committee by a bare majority of the colonies, the minority being Pennsylvania and Maryland, whose delegates were instructed to oppose it, and New York, New Jersey, Delaware, and South Carolina, whose delegates were without instructions. In order to give these colonies time to instruct their delegates, it was decided to postpone final decision until July 1, but, in order that this might occasion as little delay as possible, a committee was appointed to prepare a Declaration of Independence fuller and more explicit than Lee's resolution. Lee, as the mover of the resolution passed in committee, would according to custom undoubtedly have been made chairman of the committee had he not been called home by the illness of his wife, and probably would have been delegated to draft the enlarged declaration. The committee chosen were John Adams (Mass.), Dr. Franklin (Pa.), Roger Sherman (Ct.), Robert R. Livingston (N. Y.), and Thomas Jefferson (Va.). Committees were also appointed to prepare a plan of confederation and the terms of foreign alliance.

Sketch of Sherman. In this distinguished company Roger Sherman was not unworthy to stand with Franklin as a high type of the self-educated American. The son of a poor farmer, he left school at an early age to become a shoemaker's apprentice. He studied at the bench, however, devoting himself particularly to mathematics, law, and political history. When he was nineteen, his father died, and Roger supported the family by his trade. In time he became a small merchant at New Milford, Ct., eking out his earnings by surveying and making astronomical calculations for a New York almanac. In 1754 he was admitted to the

bar and soon became a man of note in the community, serving in the Connecticut Assembly and on the bench of the county Court of Common Pleas. In 1761 he removed to New Haven, where he received the same court appointment, and also became treasurer of Yale College, which institution recognized his attainments by endowing him in 1765 with the master's degree. In 1766 he was appointed judge of the Superior Court, and a member of the governor's council. In 1774 he was elected to the Continental Congress.

Though not eloquent, he won the deference of his fellow-members by his great knowledge and sound judgment. Jefferson called him "a man who never said a foolish thing," and Nathaniel Macon declared that "he had more common sense than any man I have ever known."

It was through the absence of Lee that to Thomas Jefferson, as a Virginian, fell a place on the committee, he being chosen from the delegation of his province for his ability as a writer, his forcible resolutions rejecting the conciliatory plan of Lord North evidently suggesting the appointment.

Sketch of Jefferson. On his graduation from the College of William and Mary, Jefferson studied law under George Wythe, then a young lawyer in Williamsburg. Wythe particularly trained his pupil in the works of Lord Coke, of whom Jefferson afterward said: "A sounder Whig never wrote, nor one of profounder learning in the orthodox doctrines of the British constitution, or in what were called British liberties." Says Appleton's *Cyclopedia of American Biography:*

"It was Jefferson's settled conviction that the early drill of the colonial lawyers in 'Coke upon Lyttleton' prepared

them for the part they took in resisting the unconstitutional acts of the British government. Lawyers formed by Coke, he would say, were all good Whigs; but from the time that Blackstone became the leading text-book 'the profession began to slide into Toryism.' His own study of Coke led him to extend his researches into the origins of British law, and led him also to the rejection of the maxim of Sir Matthew Hale, that Christianity is parcel of the laws of England. His youthful treatise on this complex and difficult point shows us at once the minuteness and the extent of his legal studies."

In 1767 Jefferson was admitted to the bar, and during the eight years following he secured a highly remunerative practice for those days. At his suggestion and with the aid of his contributions, was made the compilation of Virginia laws known as "Henning's Statutes at Large."

In 1769 Jefferson entered the House of Burgesses. In this session he introduced four resolutions declaring against taxation of the colonies by a Parliament in which they were not represented, and recommending a union of the colonies for redress of their grievances. He also advocated, in the first important speech of his career, the motion of Richard Bland that the law be repealed whereby freed slaves had to be sent out of the colony—a motion which was promptly rejected, and for which Mr. Bland was denounced as an enemy of his country.

In 1772 Jefferson married Mrs. Martha Shelton, a young and childless widow, and settled in his new house at Monticello. The next year her father, a rich lawyer, died, leaving her 40,000 acres and 135 slaves. The management of this property, as well as of his own considerable estate, absorbed Jefferson for two years.

In 1774 he entered again into public life; his acts from this year to 1776 have already been related. For his subsequent career the reader is referred to the following pages and the encyclopedias.

Jefferson died on July 4, 1826, fifty years to the day after signing the greatest work of his pen, the Declaration of Independence, John Adams surviving him only a few hours. His other written work of importance is *Notes on Virginia* (1784), published, while Jefferson was at the French court, in both English and French, in order to give foreigners information concerning the State he knew and loved best in the "land of liberty and opportunity."

The biographers of Jefferson agree in extolling his preëminence among American statesmen, and, indeed, among all exponents of democracy, as a lawgiver, while admitting his subordination to others as an original writer, and his great inferiority as an orator. Says George Tucker, in his *Life of Thomas Jefferson* (1837):

"As an author he has left no memorial that is worthy of his genius; for the public papers drawn by him are admired rather for the patriotic spirit which dictated them than for the intellectual power they exhibited. . . . His purpose was only to make a judicious and felicitous use of that which everybody knew and would assent to."

Of his style James Schouler says, in his *Thomas Jefferson* (1893):

"Phrases from his letters and public documents, sometimes fervent, sometimes humorous, circulated through the land like silver coin. He wrote and he talked with warm blood coursing through his veins; and, though the shaft might rankle where it was driven, it struck the mark. Vigor, liveliness, and choice felicity of expression marked his style,

which was nevertheless scholarly; and, while so many of his age modeled their style upon Addison and the *Spectator*, sought out the sonorous and balanced their periods laboriously, admitting no word that might not be found in Johnson's dictionary, he preferred rather the figurative, and aimed to make the English vocabulary more copious. His style, like that of every master, was an image of himself and adaptive he meant it to be to the current American age and institutions."

Of Jefferson's abilities as an orator William Mathews says, in his *Oratory and Orators* (1878):

"There is no doubt that Thomas Jefferson failed as a speaker simply for lack of voice. He had all the other qualifications; but his voice became gutteral and inarticulate in moments of great excitement, and the consciousness of his infirmity prevented him from risking his reputation in debate."

Of Jefferson's influence on American politics Francis Newton Thorpe says, in his *Constitutional History of the American People* (1898):

"In later years when the very form of a State constitution became a party question, the influence of Jefferson largely dominated American thought. He stood for the rights of man as these were expressed in the Declaration of Independence, or were read into it by party interpretation. During the eighteenth century his influence fell far short of what it became after the party he was instrumental in organizing obtained possession of the national government. During the half century following his death, when in one form or another slavery and State sovereignty were national issues, and the extension of the franchise and the change from property to persons as the basis of representation were State issues, Jefferson was idealized as the political philo-

sopher and reformer, and his ideas, as interpreted by a powerful party, were of paramount influence in many States."

As an illustration of the truth of Mr. Thorpe's last statement, the close of a letter of Abraham Lincoln to a Jefferson Dinner Committee in Boston, April 6, 1859, is significant:

"The principles of Jefferson are the definitions and axioms of free society. And yet they are denied and evaded, with no small show of success. One dashingly calls them 'glittering generalities.'[1] Another bluntly calls them 'self-evident lies.' And others insidiously argue that they apply to 'superior races.' These expressions, differing in form, are identical in object and effect—the supplanting the principles of free government, and restoring those of classification, caste, and legitimacy. They would delight a convocation of crowned heads plotting against the people. They are the vanguard, the miners and sappers of returning despotism. We must repulse them, or they will subjugate us. This is a world of compensation; and he who would be no slave must consent to have no slave. Those who deny freedom to others deserve it not for themselves, and, under a just God, cannot long retain it. All honor to Jefferson—to the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, the forecast, and capacity to introduce into a merely revolutionary document an abstract truth, app icable to all men and all times, and so to embalm it there that to-day and in all coming days it shall be a rebuke and stumbling-block to the very harbingers of reappearing tyranny and oppression."

The committee on the Declaration of Independence naturally chose Jefferson, as Lee's virtual substitute, to

[1] Rufus Choate.

draft the immortal document. The draft was approved in committee, with changes made by Adams and Franklin, and then presented to Congress on Friday, June 28, when it was read and ordered to lie on the table.

The alterations in committee were immaterial. As Daniel Webster said in his memorial oration on Adams and Jefferson (1826):

"The merit of this paper is Mr. Jefferson's. . . . None [of the changes] altered the tone, the frame, the arrangement, or the general character of the instrument. As a composition the Declaration is Mr. Jefferson's. . . . To say that he did excellently well, admirably well, would be inadequate and halting praise. Let us rather say that he so discharged the duty assigned to him that all Americans may well rejoice that the work of drawing the title-deed of their liberties devolved on his hands."

Edward Everett, in his eulogy of Adams and Jefferson in the same year, said:

"To have been the instrument of expressing, in one brief, decisive act, the concentrated will and resolution of a whole family of states, of unfolding, in one all-important manifesto, the causes, the motives, and the justification of this great movement in human affairs; to have been permitted to give the impress and peculiarity of his own mind to a charter of public right, destined . . . to an importance in the estimation of men equal to anything human ever . . . expressed in the visible signs of thought—this is the glory of Thomas Jefferson."

On Monday, July 1, the House resolved itself into a committee of the whole and resumed the consideration of the original Virginia motion presented by Lee. A debate ensued in which, says Jefferson, John Adams was

a "colossus" in support of the resolution; though "not graceful, not elegant, nor always fluent in his public addresses, yet he came out with a power, both of thought and expression, that moved us from our seats."

Daniel Webster, in his memorial oration on "Adams and Jefferson" (who had died on the same day, July 4, 1826, the fiftieth anniversary of the Declaration), which he delivered in Faneuil Hall, Boston, on August 2, 1826, following the precedent of Thucydides, the Greek historian, reconstructed the speeches of the debaters in order to present the scene vividly to the audience and coming generations. In this he used words uttered by the speakers on other occasions (see page 87).[1]

Lee's resolution was carried by the votes of nine colonies, South Carolina and Pennsylvania voting in the negative, the vote of Delaware being divided, and New York, though in favor, abstaining from voting because of instructions against independence passed in the colony a year before.

The committee then reported the resolution to the House. Edward Rutledge (S. C.) requested a postponement of the decisive vote until the next day, stating that he believed that his colleagues, for the sake of unanimity, would after a conference vote for the resolution.

On July 2, the resolution was adopted by twelve votes, South Carolina fulfilling Rutledge's anticipation, the vote of Delaware being cast in the affirmative by the arrival of a favoring delegate post-haste from the colony, and Pennsylvania having accessions also to her

[1] This reconstruction of the speech is found in Webster's collected orations, and in *Great Debates in American History*, vol. i., p. 193. The "Supposed Speech of John Adams" appears in most collections of American eloquence.

delegation which changed its sentiment.[1] On July 9 the New York convention instructed the delegates in Congress from that State to vote for the resolution, making it unanimous.

Debate on Jefferson's Declaration. Immediately on the passage of the Virginia resolution, July 2, Congress took up consideration of the Declaration of Independence reported by the committee. After warm debate it was amended by the House. Says Jefferson:

"The pusillanimous idea that we had friends in England worth keeping terms with haunted the minds of many. For this reason, those passages which conveyed censures of the people of England were struck out, lest they should give offense. The clause, too, reprobating the enslaving of the inhabitants of Africa was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our northern brethren also, I believe, felt a little tender under those censures; for, though the people had very few slaves themselves, yet they had been pretty considerable carriers of them to others."[2]

[1] The Second of July, 1776, and not the Fourth, was therefore the real date of the birth of the Republic.

[2] The text of the Declaration, with all the amendments made in the committee and the House indicated, is found in *Great Debates in American History*, vol. i., p. 201. The passage on the slave-trade which was stricken out was the last indictment against King George and the bitterest in feeling:

"He has waged cruel war against liberty itself, violating its most sacred rights of life and liberty in the persons of a distant people [Africans], who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of *infidel* powers, is the warfare of the Christian King of Great Britain, determined to keep open a market where MEN should be bought and

The debate continued until July 4, at the close of which day the Declaration was adopted by the House, and signed by every member present, except John Dickinson (Pa.).[1] John Hancock, one of the patriots marked for attainder by the British government, signed his name first as President of Congress in a bold hand, saying, "There, I think old Mother Britain can see that without her spectacles." On this occasion, on someone making the rather banal remark that the members must "hang together," Franklin wittily rejoined, "Yes, or we shall all hang separately." Indeed it was the thought that Congress had already gone too far for royal forgiveness that chiefly won over the hesitating members to sign the Declaration.

The Declaration was published in the *Evening Post* of Philadelphia in the morning of July 8, and at noon was publicly read from a platform in the State House yard by John Nixon, a member of the Pennsylvania Committee of Safety. At the close the bell of the State House, since known as the "Liberty Bell," was rung, and the people dispersed to indulge in joyful demonstrations. These were later repeated over the country on report of the action of Congress, and this has continued to be the mode of celebrating the event on its

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sold. He has prostituted his negative for suppressing every legislative attempt to prohibit or restrain this execrable commerce, and, that this assemblage of horrors might want no fact of distinguished dye, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them by murdering the people upon whom *he* also obtruded them; thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another."

[1] Dickinson nevertheless proved his patriotism by afterward enlisting as a private in the Continental army, in which he rose to the rank of Brigadier-General.

anniversaries, thus fulfilling the desire of John Adams, expressed in a letter to a friend on the day following the Declaration, that the date ought to be universally and annually commemorated in America, "with pomp and parade . . . from this time forward, for evermore." On the day of his death, hearing the noise of bells and cannon, Adams asked the occasion. On being reminded that it was "Independence Day," he replied, "Independence forever!"

The Declaration was directed by Congress to be engrossed, and on August 2, 1776, it was signed by all the members then present, some of whom had not been members on July 4. Copies were sent to all the States and to General Washington for public proclamation to the citizens and soldiers, who received the Declaration with universal acclaim.[1]

On the day before the engrossed copy was signed Samuel Adams delivered an address in Philadelphia on "American Independence," the only speech of his which has been preserved.[2]

In the peroration he said:

"Our union is now complete; our constitution composed, established, and approved. You are now the guardians of your own liberties. We may justly address you, as the *decemviri*[3] did the Romans, and say: 'Nothing that we propose can pass into a law without your consent.' Be yourselves, O Americans, the authors of those laws on which your happiness depends."

[1] The original engrossed document is preserved in the State Department at Washington, D. C.

[2] It appears, with annotations, in *American Orations*, by Johnston and Woodburn, vol. i.

[3] The *decemviri* were a "committee of ten" that drew up the Twelve Tables of Roman law.

CHAPTER VII

THE ARTICLES OF CONFEDERATION

1776–1781

Dr. Franklin's Proposed Articles of Confederation [1775]—Plan of the Congressional Committee [1776]—Debate on Federal Revenue: Samuel Chase [Md.], John Adams [Mass.], Benjamin Harrison [Va.], James Wilson [Pa.], John Witherspoon [N. J.]—Debate on Representation of States in Congress: Mr. Chase, Benjamin Franklin [Pa.], Dr. Witherspoon, Mr. Adams, Benjamin Rush [Pa.], Stephen Hopkins [R. I.], Mr. Wilson—Sketches of Chase, Witherspoon, Rush, and Hopkins—Maryland's Protest against State Ownership of Western Lands—States Cede these to United States—Articles of Confederation Adopted.

ON July 21, 1775, Dr. Franklin drew up Articles of Confederation which were not formally acted upon by Congress since the delegates were not then prepared for the decisive step of independence which adoption of the articles would declare. The following is a synopsis of the plan:

I. A league, binding on the present generation and their posterity, shall be formed for common defense and security of the liberties and properties of the colonies, and for the mutual welfare of the people.

II. Each colony shall retain its present laws, etc., and peculiar jurisdiction.

III. Delegates to Congress shall be chosen annually.

Sessions of Congress shall be held annually in each colony and by rotation.

IV. Congress alone shall determine on peace and war; send and receive ambassadors; form treaties; settle disputes between colonies; organize new colonies; make ordinances for the general welfare, such as laws for general commerce and currency; establish Federal garrisons; regulate the general army and navy, and appoint the officers of the same; appoint civil officers of the Confederacy.

V. Federal expense shall be defrayed by quotas of funds contributed by each colony in proportion to male population between ages of sixteen and sixty, and raised by taxation in each colony. Census shall be taken triennially.

VI. Number of delegates to Congress from each colony shall be based on such proportion, one delegate for every five thousand. One half of delegates in Congress, proxies counted, shall form a quorum.

VII. An executive council of twelve delegates shall be appointed, in first appointment to be divided in three classes of four delegates each, class 1 serving one year, class 2 two years, and class 3 three years; as terms expire, vacancies shall be supplied by delegates elected for three years. Two thirds shall constitute quorum. Council shall execute acts of Congress, suggest legislation, fill vacancies, and administer funds appropriated by Congress.

VIII. No colony shall war with Indians without consent of Congress. League shall be formed with the Six Nations (Iroquois), fixing their territory, which shall not be encroached upon nor purchased by any colony, Congress making such purchases for the whole country. Congress shall appoint agents to live among Indians, prevent injustice in trade, and supply their necessities.

IX. Amendments to the Articles of Confederation shall be proposed by Congress and approved by a majority of the colonies in their assemblies.

X. The other British colonies in the continent of North America shall be permitted to join the Confederacy.

XI. Articles shall be ratified by the colonies in their assemblies.

XII. The Confederation shall be dissolved, and the colonies shall return separately to their British allegiance on reconciliation with Great Britain upon terms already proposed by Congress [see page 87]. Otherwise the league shall be perpetual.

Debate on Committee's Plan. As Jefferson has stated in his minutes, on June 11, 1776, Congress appointed a committee to prepare articles of confederation between the thirteen sovereign States to be called into existence by the anticipated Declaration of Independence by the colonial delegates in their recognized Federal assembly. This committee was naturally composed of one delegate from each colony. The most prominent members were Samuel Adams (Mass.), Stephen Hopkins (R. I.), Roger Sherman (Ct.), Robert R. Livingston (N. Y.), John Dickinson (Pa.), and Edward Rutledge (S. C.).

The committee, as is apparent, made Dr. Franklin's Articles (the manuscript of which had been preserved, although not copied in the Journal of Congress) the basis of their Plan of Confederation. This it reported on July 12, 1776. The first features discussed were the all-important ones of Federal revenue and representation of the States in Congress. These were debated from July 30 until August 1. The principal speakers were Samuel Chase (Md.), John Adams (Mass.), Benjamin Harrison (Va.), Dr. John Witherspoon (N. J.), James Wilson (Pa.), Dr. Benjamin Rush (Pa.), Dr. Benjamin Franklin (Pa.), and Stephen Hopkins (R. I.).

Sketch of Chase. Samuel Chase was an eminent lawyer, and, from the beginning of the strife with Great

Britain, an ardent patriot. During the Stamp Act agitation he was one of the "Sons of Liberty" who broke into the public offices, destroyed the stamps, and burned the collector in effigy, writing thereafter to the authorities avowing the deed and glorying in it. He was a member of Congress from 1774 to 1778, signing the Declaration of Independence. His later career, especially his impeachment, due to his partisan temper, as Associate-Justice of the Supreme Court, will be referred to in following pages.

Sketch of Witherspoon. John Witherspoon, a Scotch Presbyterian minister, came to America in 1768 to take the presidency of Nassau Hall, at Princeton, N. J., a college largely devoted to the training of ministers. He, however, made it distinguished as a school of patriotic statesmanship, introducing numerous subjects such as political science and international law, and teaching these with bold application to the justice of the colonial cause, being accounted "as high a son of liberty as any man in America." He dedicated a patriotic sermon to John Hancock, which procured for Witherspoon the distinction already achieved by Hancock of being denounced in Great Britain as a "rebel and traitor."

Without a known exception every one of the Princeton students under Witherspoon became an ardent patriot—a remarkable fact in view of the many Tories and peace advocates in New Jersey. A greater number of these rose to distinction as statesmen than the combined patriots graduated from Harvard, Yale, and Columbia (King's College) during this period, and only little William and Mary, with its students drawn largely from Virginia, could vie with Nassau Hall in the eminence of its sons who established the constitutional

government of the nation in the succeeding generation. Accordingly Witherspoon was preëminently the "Teacher of the Republic"—although to George Wythe of William and Mary may be reserved the title of its "Lawgiver." James Madison, who, as we shall see, had more to do with the formulation of the principles of the Constitution than any other man, came to Princeton attracted by the fame of Dr. Witherspoon's teaching.

Dr. Witherspoon not only led his students, but all the Scotch and Scotch-Irish Presbyterians of the country, bodily into the Revolutionary movement.

Witherspoon signed the Declaration of Independence, remarking as he did so, "Although these gray hairs must soon descend into the sepulchre, I would infinitely rather that they should descend thither by the hand of the public executioner, than [that I should] desert at this crisis the sacred cause of my country."

All of the distinguished lawyers in Congress deferred to Witherspoon in questions of constitutional and international law, and when the constitution of New Jersey was framed his fellows on the committee left the work largely to him. He was active in Congress in prosecuting the war, being a member of the board of war and the committee of finance, in which latter capacity his ability to raise funds came vigorously into play in supplying provisions for the famishing army. Indeed, he initiated the chief financial measures of Congress, such as the issue of paper currency, and the supply of the army by commission.

Sketch of Rush. Dr. Benjamin Rush, who has already been mentioned as the patron of Thomas Paine, was, next to Witherspoon, the most influential man not a lawyer in Congress. A graduate of Princeton in the

arts and of Edinburgh in medicine, he became in 1769 professor of chemistry in the Philadelphia medical college, and, by his writings soon after, a man of note throughout the colonies, with fame extending to Europe. In 1771 he published various essays on slavery, temperance, and health, and in 1774 delivered before the Philosophical Society an address, notable in the annals of medicine, on the "Natural History of Medicine among the Indians of North America."

Dr. Rush was an ardent patriot, exerting a wide influence in behalf of the colonies through his high standing in the community. He was chairman of the committee in the Pennsylvania conference which advised independence, and, being chosen a member of Congress, signed the Declaration of Independence. In 1777 he was appointed physician-general of the army, and was in constant attendance on the sick and wounded soldiers under Washington until in February, 1778, he resigned his position on account of wrongs done to the soldiers in the matter of medical stores. Though without private means he refused to take any compensation for his services. During this period he wrote four open letters urging a revision of the Articles of Confederation in order to adopt the bicameral system.

The interest in philanthropy, science, and religion which were characteristic of Dr. Rush are indicated by the facts that he succeeded Franklin as president of the Society for the Abolition of Slavery, and was a founder of the American Philosophical Society and of the Philadelphia Bible Society, where he advocated the use of the Bible as a text-book in the public schools. His profession was a passion with him. His only regret at the thought of death was that it would deprive

him of that "pleasure which to me has no equal in human pursuits; I mean, that which I derive from studying, teaching, and practicing medicine." Financial reward was never considered by him; his last words were an injunction to his son Richard: "Be indulgent to the poor."

Sketch of Hopkins. Stephen Hopkins was one of the oldest men in Congress in both years and patriotic service. Born in 1707, he entered the Rhode Island legislature early in life, becoming its Speaker in 1741. In 1751 he was appointed Chief-Justice, and in 1755 Governor. At first a farmer and surveyor, he removed to Providence in 1742 and shortly afterwards became a merchant and shipbuilder. He was a member of the intercolonial convention that formed the Albany Plan of Union in 1854. When the agitation against the Stamp Act broke out, he wrote an able pamphlet in defense of the American cause, and drafted instructions of a town meeting to the legislature in opposition to the Act. The resolutions which were reported by the Assembly were much the same as those of Patrick Henry in the Virginia House of Burgesses. In 1773 he emancipated his slaves, and in 1774 introduced a bill in the legislature which prohibited importing slaves into the colony.

He was a member of Congress from its beginning, and signed the Declaration of Independence with a hand that trembled from palsy, but not from fear. Indeed, he was noted for his powerful advocacy of decisive measures. Because of his knowledge of shipping he was a useful member of the naval committee.

Debate on Federal Revenue. The proposal of the committee on Federal revenue was that the contributions from the several States should be based on

population, excluding Indians not taxed, as determined by a triennial census.

Mr. Chase moved to amend by specifying "white" inhabitants.

While admitting that on principle taxation should be based on property he said that this was impracticable. The value of property in every State could not be equitably estimated. The number of inhabitants was a tolerably good standard, and ascertainable. Negroes, however, were property, and should not be included in this. The southern man invested in slaves, where the northern man invested in horses and cattle. Thus the committee's proposal was to tax southerners according to population and wealth, and northerners according to population alone. Negroes were no more members of the State than cattle.

Mr. Adams replied that the economic difference to the State between free and slave laborers was imaginary. It is a sad commentary on wages paid at the time—that these were at the margin of subsistence—that he asked: "What matters it whether a landlord gave his laborers as much money as would buy them the necessities of life, or supplied them with these, as did the slave owner?" The laborers added as much to the wealth of the State, and increased its exports in one case as in the other. The condition of the laboring poor in most countries—that of fishermen particularly in the northern States—is as abject as that of the slaves. How does the southerner procure his slaves? Either by importation or domestic purchase. In the former case, he adds one to his number of laborers in his country, and proportionately to its wealth. In the latter it is an exchange which does not affect the wealth, and therefore should not change the tax. The southern farmer with ten slaves is as free to buy as many cattle as the northern farmer with ten laborers.

Mr. Harrison proposed as a compromise that two slaves should be counted as one freeman.

A slave did not produce more than half what a freeman did. Indeed, a comparison of annual wages, £24 [$120] in the North to from £8 to £12 [$40 to $60] in the South, showed that he produced less than half.

Mr. Wilson opposed this amendment.

If it were adopted the southern States would have all the benefit of slaves, and the northern all the burden. Slaves increased the profits of a State, and at the same time added to the expense of defense, which is to borne by the nation. The South was under no compulsion to have slaves; dismiss them, and freemen would take their place. It was our duty to discourage importation of slaves, but the amendment would encourage it by giving the importer a sort of *jus trium liberorum* [the special privileges given in Roman law to the man with three children]. There were as many cattle in the South as in the North. It was the practice in the South to make every farmer pay a poll-tax on his laborers, white or black. He admitted that freemen produced more than slaves, but asserted that they also consumed more, leaving no greater surplus for taxation. Again, white women were generally exempted from labor but black women not. It was once claimed that slavery is necessary, because the commodities raised by slaves would be too dear if raised by free labor, but economists now claim that slave labor is the dearer measured by results.

Dr. Witherspoon (probably the best economist in Congress, since he had introduced the study of political economy at Princeton, and was teaching it there) opposed the proposition of the committee.

The value of houses and lands was the true barometer of a nation's wealth, and was ascertainable. The estimate now

proposed was imperfect in itself, and unequal between the States. It has been objected that negroes eat the food of freemen, and therefore should be taxed; horses do the same, therefore, to be logical, we should tax them.

Dr. Witherspoon's suggestion prevailed, and the article was finally amended in accordance with it (see Article VIII.).

Debate on Representation. The committee's article relating to representation was then taken up. It read: "In determining questions each colony should have one vote."

Mr. Chase observed that this article was the one most likely to divide the House.

Already the larger colonies had threatened not to confederate if their population did not give them proportionate weight in Congress, and the smaller colonies had demanded, as a condition of entering the federation, recognition of their equality as sovereign States with any other State. To avoid the disasters certain to follow disunion—probably civil war—mutual sacrifices should be made. He suggested that the smaller States be secured in all questions concerning life and liberty, and the greater ones in all respecting property, and therefore he proposed that in the votes relating to money the voice of each State should be proportioned to population.

Dr. Franklin thought that this should be the rule on all questions. He took notice that the Delaware counties (still under the same State government as Pennsylvania, but recognized as a separate State in Congress and shortly to have a State government of their own) had bound up their delegates not to agree to such a rule. This was an extraordinary position—not to confederate with us unless we would let them dispose of our money. Certainly if we vote equally we ought to pay equally. Now at the beginning of a

new order of things, was the time to establish this just principle. No injustice would result. At the time of union with England, Scotland feared that it would be at a disadvantage, but the contrary rather had proved to be the case. Jonah had swallowed the whale; the Scotch had possession of the government and gave laws to England.

Dr. Witherspoon opposed any alteration of the article.

If an equal vote be refused, the smaller States would become vassals to the larger, and history shows that vassals of free states are the most enslaved. He instanced the Spartan helots and Roman provinces. Instances of successful coöperation in which there was an equality of membership regardless of wealth and importance were the East India Company, where votes were by persons and not by stock, and the Belgic confederacy. In questions of war the smaller States were as much interested as the large, and, indeed, the larger ones, with their greater extent of frontier, were more likely to involve the country in war. Nothing relating to individuals would come before Congress, so why should there be representation according to population? Replying to Dr. Franklin he said that Scotland had not united with England on equal terms. Allowed nearly a thirteenth of representation, they were to pay only one fortieth of the land tax, which was a just concession.[1] Concession of equal representation therefore should be made to the small States.

[1] These statistics were evidently taken from a satirical pamphlet published anonymously by Jonathan Swift shortly after the union, entitled *The Public Spirit of the Whigs*. On the publication of this the Scots lords in London went in a body to Queen Anne, and complained of the affront put on them and their nation. The Queen thereupon proclaimed a reward of £300 for discovering the author (see *Swift's Works*, vol. iv., p. 97, edited by Thomas Roscoe, American edition published by P. O'Shea, New York).

John Adams advocated voting in proportion to numbers.

If Congress was to represent the people it should really do so. Reason and justice were not sufficient to govern the councils of men. Interest alone did this. The interests within Congress should be the mathematical representatives of the interests without; the individuality of a State is a figment—a mere sound. Does it increase the State's wealth or numbers? If it does, it should pay equally. If it does not weigh in material interests it cannot weigh in argument. A has £50, B £500, C £1000 in a partnership. Is it just that they should divide equally the profits? It has been said we are individuals bargaining together. The question is not what we are now, but what we ought to be when the bargain is made. The confederacy is to make us one individual only, to cast us like separate parcels of metal into one common mass.[1]

It has been objected that a proportional vote will endanger the smaller States. We answer that an equal vote will endanger the larger. There is no fear of consolidation of the larger States against the smaller. Virginia, Pennsylvania, and Massachusetts [then including Maine], the three greater colonies, are widely separated in distance and interests, and will have no reason to combine. Rhode Island would more naturally combine with Massachusetts, Jersey, Delaware. and Maryland with Pennsylvania.

Dr. Rush argued for proportional representation.

The decay of the Dutch Republic proceeded from three causes: (1) the unanimity required in legislation; (2) the obligation of representatives to consult their constituents[2]; (3) *their voting by provinces.*

[1] A point in the discussion of the Nature of the Union in the issues of State Rights and Secession.

[2] A point in discussion of Direct Legislation.

British liberty is also sinking from disproportionate representation. We have proportionate representation in our State legislatures, to preserve our rights. Why not in Congress for the same reason? An ideal Congress, if it were practicable, would be composed of the whole people, who would determine questions by majority. Why should not the same majority rule through their representatives? Voting by free inhabitants will have one excellent effect—to discourage slavery and encourage increase of free laborers.

Mr. Hopkins supported equal representation of the States.

Four States contained more than half the population of the colonies [New York being the fourth]. These would govern the Confederacy as they pleased under proportional representation. History affords no instances of confederacies voting by proportional representation. The Germanic, the Helvetic, and the Belgic confederacies vote by states.

Mr. Wilson advocated proportional representation.

A government is a collection of the wills of all the people, and it approaches perfection as it more nearly voices this combined will. It has been said that Congress will be concerned with States and not individuals. I say that the objects of its care are all the individuals of the States—the people as one large state. We lay aside smaller interests here. If annexing the name of State gives a body of 10,000 men equality with 40,000, there must be magic in the act —there certainly is not reason.

The gentleman from Rhode Island cites the German confederacy. This is a burlesque on government. Their practice on any point should be sufficient authority and proof that it is wrong. In the Belgic confederacy the interest of the whole is constantly sacrificed to that of the small states.

It is asked: shall nine colonies put it in the power of four to govern them as these please? I invert the question: shall two million of people put it in the power of one million to govern them? What is the statement that the smaller States will be in danger from the greater but saying that the minority will be in danger from the majority? Is there an assembly on earth where this danger may not be equally pretended? By proportional representation our proceedings will be consentaneous with the interests of the majority, and so they ought to be. A combination of Massachusetts, Pennsylvania, and Virginia to act for their interests in opposition to the interests of other States is inconceivable. I defy any man to invent a case of this kind.

The proposition of the committee for equal representation of States in Congress was adopted.

The Articles of Confederation were debated off and on in Congress for two years. On November 17, 1777, they were put in final form by Congress, then in session at York, Pa., on account of the British occupation of Philadelphia, and were submitted to the legislatures of the thirteen States for ratification. With the plan of union Congress sent an appeal for early action upon it:

"More than any other consideration it will confound our foreign enemies, defeat the flagitious practices of the disaffected, strengthen and confirm our friends, support our public credit, restore the value of our money, enable us to maintain our fleets and armies, and add weight and respect to our councils at home and to our treaties abroad.

"In short, this salutary measure can be no longer deferred. It seems essential to our very existence as a free people."

Controversy over Western Lands. The Articles were ratified on July 9, 1778, by eight States, but it was not until 1781 that the last State gave her consent, and

the Confederation went into effect. This was Maryland, who, with other States having no claims by charter or otherwise to the western lands, contended that these should be made the common property of all the States. In December, 1778, the delegates from Maryland were instructed by the State Assembly to insist on this provision.

"Is it possible," the instructions asked, "that those States who are ambitiously grasping at territories, to which in our judgment they have not the least shadow of exclusive right, will use with greater moderation the increase of wealth and power derived from these territories, when acquired, than what they have displayed in their endeavors to acquire them? We think not. We are convinced the same spirit which hath prompted them to insist on a claim so extravagant, so repugnant to every principle of justice, so incompatible with the general welfare of all the States, will urge them on to add oppression to injustice."

Maryland's animus was particularly directed against her neighbor Virginia, whose claims covered the larger part of the present Central States. The instructions said that:

Virginia, by selling cheaply a small part of the lands in question, would have a vast State revenue, and so could reduce taxes far below those of her less fortunate neighbors, and thereby induce the people of these States, and immigrants that would otherwise settle there, to come into her dominion.

The instructions claimed that the western lands, ceded by France in 1763, should be regarded as common property of all the States if wrested from Great Britain by the united efforts of these. They therefore demanded

that the Articles of Confederation give Congress power to "parcel the territory out into free, convenient, and independent governments in such manner and at such times as the wisdom of that assembly shall direct."

The justice of this contention was recognized by the States with claims to western lands. New York led the way. In February, 1780, the Legislature of that State, "to manifest the regard" of the people of New York "for their sister States," empowered the State's delegates in Congress to cede such part of New York's western territory as they saw fit to the United States. Congress earnestly recommended other States with western lands to follow New York's generous example, and, in order to induce them to do so, on October 10, 1780, declared that the territory so ceded should be disposed of for the common benefit of the Union, and formed in time into republican States, and that the States ceding such lands would be reimbursed for any expenses which had been incurred in acquiring them. In compliance with this request, Virginia, on January 2, 1781, ceded to the United States all her claim to lands northwest of the Ohio River. The influence of her Governor, Thomas Jefferson, was largely responsible for this.

Thereupon Maryland instructed her delegates in Congress to sign the Articles of Confederation, which was done on March 1, 1781. On the following day Congress assembled under the new powers.[1]

[1] The text of the Articles of Confederation is given in most books upon the Federal Constitution. It is found in *Great Debates in American History*, vol. i., p. 247.

CHAPTER VIII

THE CONSTITUTION

1787–1789

Failure of the Confederation—Weakness in Foreign Relations and Finance—Shays's Rebellion—Conflicting Opinions thereon by Jefferson and Washington—Madison on the Failure of the Confederation—Hamilton on Need of a New Government—The Annapolis Convention—Jay and Washington on Need of a Constitutional Convention—It is Called by Congress—Dr. Rush's Proposals—Pelatiah Webster's Proposed Constitution—Sketch of Webster—The Constitutional Convention—Jefferson Decries Secrecy of Its Proceedings—Records of the Convention—Sketches of Leading Delegates by Delegate William Pierce [Ga.]—Debates on State *vs.* Popular Representation in Congress—The Randolph Plan—The Pinckney Plan—The Committee's Plan (Virginia Plan)—The Paterson (Jersey) Plan—Arguments in Favor of the Virginia Plan: by James Wilson [Pa.], Charles Cotesworth Pinckney [S. C.], Edmund Randolph [Va.], James Madison [Va.]—In Favor of the Jersey Plan: by William Paterson [N. J.]—Plan of Alexander Hamilton [N. Y.]—Jersey Plan Rejected—Debate on Popular Representation in the Senate: in Favor, George Mason [Va.], Mr. Wilson, Charles Pinckney [S. C.]; Opposed, William Samuel Johnson [Ct.], Oliver Ellsworth [Ct.]—Debate on Length of Term for Senators: In Favor of a Long Term, George Read [Del.]; Mr. Madison, Mr. Wilson; In Favor of a Short Term at the Beginning, Elbridge Gerry [Mass.]—Present Term Adopted—Debate on the Virginia Plan: in Favor, Mr. Madison, Mr. Wilson, Mr. Hamilton; Opposed, Luther Martin [Md.], John Lansing, Jr. [N. Y.], Mr. Ellsworth, Roger Sherman [Ct.]—Suggestions of Benj. Franklin [Pa.], Rufus King [Mass.], Gouverneur Morris [Pa.]—Plans Referred to Committee—State Rights View of Committeeman Robert Yates [N. Y.]—Dr. Franklin's Compromise Proposal Accepted—Report of Com-

mittee—It is Opposed by James Madison [Va.]—Yates and Lansing Leave Convention—Report Adopted—Subsequent Proceedings of Convention—Ratification of Constitution—Essays in its Favor: *Letters of Fabius* by John Dickinson [Pa.]; *Federalist Papers* by Hamilton, Madison, and John Jay—Madison Quotes Hamilton in *Federalist* against Hamilton in Defense of President Washington's Proclamation of Neutrality (1793)—Speech by Fisher Ames [Mass.] in Favor of Ratification—Sketch of Ames—Debate on Ratification by Virginia: in Favor, John Marshall, George Wythe, James Madison; Opposed, Patrick Henry, William Grayson—Sketches of Marshall and Grayson—Debate on Ratification by New York: in Favor, Alexander Hamilton; Opposed, Melanct[h]on Smith—Sketch of Smith—Constitution Ratified and New Government Formed.

CONGRESS under the Articles of Confederation had virtually only advisory powers, and the States, possessing the real sovereignty, paid little heed to recommendations of the Federal legislature. Thus, when Great Britain had refused to form a commercial treaty with the United States on the conclusion of peace, and continued its "orders in council" excluding American ships from the British West Indies, and Congress asked the States, on April 30, 1784, to vest it with retaliatory power to prohibit importations from any nation with which a commercial treaty had not been contracted, the request was not heeded. Nor was Congress able to make the States conform to the terms of the treaty of peace especially in regard to amnesty toward the loyalists.

Failure of Federal Finance. In domestic matters, especially financial, the helplessness of Congress, while it could not be more abject or humiliating than in foreign affairs, was even more disastrous. The Revolution had left the country forty million dollars in debt—eight million dollars to France and Holland, and thirty-two million dollars to American citizens who had

patriotically come to the aid of their country in its need on the repeated and solemn assurances of Congress that the interest on the debt would be promptly met, and the principal be repaid within a reasonable time after the cessation of hostilities. Even the first of these promises could not be complied with except by borrowing more money to pay the annual interest, amounting to $2,415,976, of the old loans.

On April 18, 1783, Congress asked the States to vest it with power to levy specific duties on spirits, tea, sugar, etc., and an ad valorem duty of five per cent. on all other imports, the duties to be applied solely to payment of the national debt, and to continue for twenty-five years. The States were at the same time required to arrange systems of revenue whereby they could raise within twenty-five years their annual shares of the national debt, totalling $1,500,000, proportioned among them according to Article VIII of the Confederation. However, since the basis of this proportion, the valuation of houses and lands, had never been completed, owing to the great difficulty of estimation,[1] Congress proposed to the States that the article should be amended, making the standard the number of free citizens and those bound to service for a term of years, and three fifths of all other persons (*i. e.*, slaves).

This plan of national revenue was not to take effect until adopted by all the States, and was made irrevocable except by consent of a majority of Congress.

General Washington, on retiring from his command, lent his great influence to the proposal of Congress by writing a circular letter in its favor to the governors of

[1] A "Single-Taxer" would urge that, had land value irrespective of improvements been taken as a standard, such difficulty would not have arisen.

all the States, but to none effect. Now that the cohesive fear of a common enemy was removed, the bond of Federal Union relaxed, and self-interest reasserted itself. The States positively refused to bind themselves for twenty-five years to contribute directly their shares of the national debt, and Congress was obliged to confine its request to the grant of power to the Federal Government to lay import duties. To this the importing States, with tariffs of their own, strenuously objected. However, by 1786 all the States but New York had complied with this proposition of Congress.

Meanwhile Congress could raise no Federal revenue except by requisition on the States. Six million dollars were called for between 1782 and 1786 to pay interest on the domestic debt, yet only one million of this was contributed. The value of this debt accordingly subsided to one tenth of its face. The interest on the foreign debt was paid out of the principal of new foreign loans. Naturally the credit of the United States abroad tended to sink towards the low condition of that at home, impairing the formation of commercial treaties.

The financial condition of the separate States was even worse than that of the Confederation. Some of them had issued paper currency to such an extent that they became virtually bankrupt.

Shays's Rebellion. In 1786 the farmers of western Massachusetts, under the leadership of Daniel Shays, openly opposed the execution of the process for debt, and Congress was so powerless openly to aid the State government in suppressing the insurrection that it had to resort to the subterfuge of raising forces ostensibly to protect the frontier against the Indians, *enlisting the troops principally in New England.* However,

Massachusetts, with four thousand militia under command of General Benjamin Lincoln, was able to put down the rising without Federal aid. So sympathetic were the people with the insurgents that these were pardoned by the State legislature. Even Thomas Jefferson viewed the insurrection with leniency, saying (at various times):

"The commotions offer nothing threatening; they are a proof that the people have liberty enough, and I could not wish them less than they have. . . . To punish these errors too severely would be to suppress the only safeguard of the public liberty. . . . A little rebellion now and then is a good thing. . . . It is a medicine necessary for the sound health of government. . . . God forbid that we should ever be twenty years without such a rebellion. . . . What signify a few lives lost? . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."[1]

In a similar strain he alined himself with the philosophical anarchists.

"The basis of our governments being the opinion of the people, the very first object should be to keep that right. . . . Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. . . . I am convinced that those societies (such as the Indian tribes) which live without government enjoy in their general mass an infinitely greater

[1] Bertrand Barère, called the "Anacreon of the Guillotine" on account of the flowery language in which he supported the bloody measures of the Reign of Terror, declared in the French National Convention in 1792: "The tree of liberty grows only when watered by the blood of tyrants" —an evident echo of Jefferson's epigram, though it is commonly regarded in European literature as an original figure.

degree of happiness than those who live under European governments. Among the former, public opinion is in the place of law, and restraining morals as powerfully as laws ever did anywhere."

Washington, however, though a soldier, took quite an opposite view of Shays's Rebellion from that of Jefferson, the civilian. He wrote to one of his correspondents:

"What, gracious God, is man! that there should be such inconsistency and perfidiousness in his conduct. It is but the other day that we were shedding our blood to obtain the constitutions under which we live—constitutions of our own choice and making. And now we are unsheathing the sword to overturn them!"

James Madison, who, with Alexander Hamilton, had been most influential in formulating the revenue proposal of Congress to the States, returned to Congress in February, 1787, after service in the Virginia Assembly where he had secured the passage of Jefferson's statute of religious freedom [see page 140]. A letter which he wrote at this time to Edmund Randolph contains a summary of the deplorable situation of the Federal Government.

"Our situation is becoming every day more and more critical. No money comes into the Federal treasury; no respect is paid to the Federal authority; and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, particularly in the eastern district, are suspected of leaning toward monarchy.[1] Other individuals predicted a parti-

[1] Madison does not necessarily refer to a monarchy in form, but one in essential nature, that is, a consolidation of government in which the

tion of the States into two or more confederacies. It is pretty certain that, if some radical amendment of the single one cannot be devised and introduced, one or the other of these revolutions, the latter, no doubt, will take place."

Long before this, however, agitation had begun for the formation of a "more perfect union." In 1780 Alexander Hamilton, then only twenty-three years of age, proposed in a letter to James Duane that a convention of the States should be held to revise the Articles of Confederation. Largely by his influence the legislature of New York, in 1782, recommended such a convention. It is probably the greatest act of statesmanship in his career that General Washington early and earnestly endorsed the movement. In a letter to Governor Benjamin Harrison, of Virginia, in January, 1784,[1] he wrote that the United States was despised by the powers of Europe, chiefly Great Britain.

"They know that individual [State] opposition to their measures is futile, and *boast* that we are not sufficiently united as a nation to give a general one! Is not the indignity alone of this declaration . . . sufficient to stimulate us to vest more extensive and adequate powers in the sovereigns of these United States?"

The Annapolis Convention. Virginia took the first step toward a practical realization of the proposal of its greatest son, being stirred into action by conflict of its laws with those of Maryland in regard to traffic

States would be totally deprived of sovereign powers, these being concentrated in a national executive supported by a national legislature largely representative of aristocratic interests. Jefferson coined the term "monocrat" for all who held such views, aiming it particularly at Hamilton.

[1] See *North American Review* for October, 1827, p. 259.

on the waters intervening between the States. In January, 1786, the Virginia legislature appointed commissioners to meet with others who might be chosen by sister States to take into consideration the subject of *interstate commerce*, and to formulate an act which, ratified by the several States of the Union, would enable Congress to pass a uniform law on the subject. It was later agreed that such a convention should meet at Annapolis, Md., in September of the same year.

Before it was held, John Jay in March, 1786, wrote to General Washington, advising that the convention ought to consider more objects—indeed, that a general convention for revising entirely the Articles of Confederation would be expedient, and was in contemplation (evidently by Alexander Hamilton, and other friends and correspondents of Jay). In a letter in June to Washington, he intimated that the men of property in the country, disgusted and alarmed at the uncertainty and fluctuation of public affairs, were ready for almost any change that might promise them quiet and security.

In reply to these communications Washington wrote endorsing the idea of a national government radically different from the existing one in possessing mandatory instead of merely advisory powers.

"We have, probably, had too good an opinion of human nature in forming our Confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good without the intervention of coercive power.

"I do not conceive we can long exist as a nation without lodging somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extend over the several States. To be fearful of investing Congress, constituted as that body is, with

ample authority for national purposes, appears to me the climax of popular absurdity and madness. Could Congress exert this for the detriment of the people without injuring themselves in an equal or greater proportion? Are not their interests inseparably connected with those of their constituents? [Here he spoke of the necessity of representatives meeting popular approval in order to be reëlected.]

"Many are of opinion that Congress have too frequently made use of the suppliant humble tone of requisition in their applications to the States, when they had a right to assert their imperial dignity and command obedience. . . . Requisitions are actually little better than a jest and a byeword throughout the land. If you tell the legislatures they have violated the treaty of peace, and invaded the prerogatives of the Confederacy, they will laugh in your face."

Accordingly Washington agreed with Jay that it was to be feared that "the better kind of people" were prepared for "any revolution whatever," and said that he had heard some were speaking of a monarchical government "without horror."

"From thinking proceeds speaking; thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions! . . . Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend."

Virginia, Delaware, Pennsylvania, New Jersey, and New York alone sent delegates to the Annapolis Convention. In view of this partial representation the convention satisfied itself by drawing up an address to Congress and the State governments enumerating the defects of the Confederation and recommending a convention of all the States to meet in Philadelphia

in May, 1787, to devise a more adequate Federal Constitution.

In February, 1787, Congress recommended the project to the States, and, in consequence, all the States but Rhode Island appointed delegates to the convention.

Dr. Rush's Plan of Government. Shortly before the meeting of the convention Dr. Benjamin Rush delivered a speech in Philadelphia, to which has not been accorded the importance it deserves in American political history. It is a strong and admirable presentation of what was shortly to be denominated the "Federalist" as opposed to the "Anti-Federalist" view of government.

In this address he declared that "the Revolution is not over," only "the first act in the great drama is closed; it remains yet to establish and perfect our new forms of government, and to prepare the principles, morals, and manners of our citizens" for these forms when so perfected.

The Confederation, he said, was formed when, though we understood the *principles* of liberty, we were ignorant of the *forms* of republican government calculated to enforce these. There was war in the land, causing us to detest our enemies, and to refuse, therefore, to copy those excellent forms in the British government which "have made it the admiration and envy of the world."

"The temple of tyranny has two doors; we bolted one of them by proper restraints, but we left the other open by neglecting to guard against the effects of our own ignorance and licentiousness."

He desired that the convention recommend that the States surrender to Congress their power of emitting money, thus facilitating interstate commerce, and

affording them, because of the establishment of a strong common treasury from which to borrow in case of need, a better system of finance for State requirements than at present.

He advocated the system of national legislation in the form that was virtually adopted, an upper house with equal representation of the States, and a lower house with a varying number of State representatives.

He advised that a President be appointed by these houses, with a privy council (cabinet), and appointive power independent of Congress, to act as the Federal Executive.

"The custom of turning men out of power or office as soon as they are qualified for it has been found as absurd in practice" as in the case of removing a tried and approved general, a physician, or even a domestic—"for the sake of increasing the number of able generals, skilful physicians, and faithful servants! . . . Government is a science, and can never be perfect in America until we encourage men to devote not only three years, but their whole lives to it." Compulsory retirement from office, he said, was the cause of men of ability refusing to serve in the government of the Confederation. [This was a notorious fact, the grade of ability in Congress having sunk very low.]

"It is often said 'that the sovereign . . . power is seated in the people.' This is unhappily expressed. It should be: 'all power is derived from the people'—they possess it only on the days of election. After this it is the property of their rulers, nor can they exercise or resume it, unless it is abused.[1] . . .

"The people of America have mistaken the meaning of the word 'sovereignty'; hence each State pretends to be sovereign. In Europe it is applied only to those States which possess the power of making war and peace, cf forming

[1] A point in the discussion of Direct Government.

treaties and the like. As this power belongs to Congress, they are the only sovereign power in the United States.

"We commit a similar mistake in our ideas of the word 'independent.' No individual State, as such, has any claim to independence. She is independent only in a union with her sister States in Congress."

Dr. Rush most earnestly advised that the people be educated in these matters, and to this end he recommended that, instead of building a "federal town" (a subject already broached, and to which as a citizen of the existing capital he was naturally opposed), a federal university should be established, costing only one fourth the sum estimated for creating the proposed capital. In this university were to be taught the sciences of politics and economics (it is significant of the prevailing ignorance and contempt of the latter subject that he had to define it, and support the idea by special references to agriculture, manufacture, and commerce). In connection with the university, a correspondent was recommended, to travel abroad and report discoveries, etc., in agriculture and manufacture (the germ of our consular system). He thought that, in time, all federal offices should be confined to graduates of the institution.

With a curious mixture in his figure of speech of prescience and perversion of the future application of electricity, Dr. Rush advised the extension of the federal post-office:

"This is the true *non-electric* wire of government. It is the only means of conveying heat and light to every individual in the federal commonwealth." *Newspapers should be delivered free of charge*, as "not only the vehicles of knowledge . . . but the sentinels of the liberties of the country."

Some of his ideas Dr. Rush undoubtedly derived from Pelatiah Webster, a fellow townsman, whose *Dissertation on the Constitution*, published in 1783, had been extensively read in Philadelphia.

Sketch of Webster. Pelatiah Webster, a native of Connecticut, was for some years after his graduation from Yale a preacher. In 1755 he engaged in business in Philadelphia, where he accumulated a small fortune, part of which he devoted to the patriot cause during the Revolution. The British on their occupation of Philadelphia imprisoned him for some time in the city jail, and confiscated a portion of his property. He was frequently consulted by members of Congress, and wrote many articles on economic subjects. In 1779–1785 he published a series of *Essays on Free Trade and Finance* which won for him the title of the "Adam Smith of America." His most notable and influential work, however, was the *Dissertation on the Constitution*, amplified from one of his essays published in 1781. Its chief principles were:

I. There must be a supreme authority with power to effect its ends.

II. There must be checks to prevent abuse of this power, but not sufficient to diminish the dignity or effectiveness of the authority.

III. There must be an absolute transfer to the Federal Government by the States of such part of their sovereignty as necessary to make the union effectual.

Such a union would be effective for *common defense;* would enable *commercial treaties* to be formed with foreign powers, seeking the vast natural products of America; would *settle disputes* between the States, etc.

The *architecture* of such a constitution must be

carefully planned since, if one error is introduced leading to inequality or injustice, "one beam cut a foot too long or two short," it will in time cause the ruin of the whole. "A house divided against itself" cannot stand.[1]

For the plan of Webster in full the reader is referred to Appendix XI. of *The Origin and Growth of the American Constitution*, by Hannis Taylor. Its general nature will be indicated by a comparison which Webster instituted in 1791 between it and the Constitution adopted (see his complete works).

1. Legislative and executive departments to be distinct: the first to be composed of the two Houses of Congress (so that each should act as a check on the other); the second of a Grand Council of State. (Partially adopted.)

2. A Chamber of Commerce, consisting of merchants, to act as an advisory board of Congress in matters of trade and revenue, and to conduct the administration of revenue. (Not adopted.)

3. Public officers appointed by executive authority to be amenable to, and removable for just cause by, either the legislative or executive power. (Qualified.)

4. Election of the President, Senators, Representatives, *et al.*, to be left to the discretion of Congress and the States. (Not adopted.)

Minor points in Webster's *Dissertation* which are of interest to students of debate are:

1. Trade a chief concern of government.

2. Supreme importance of the taxing power.

3. Retention of efficient officers in the public service, as opposed to the prevalent theory of rotation in office. (A point in discussion of Civil Service.)

[1] How this pregnant prophecy was fulfilled will be seen in Lincoln's speech on the text. It was the ill-fitting timber of slavery which almost caused the downfall of the temple of liberty.

4. Frequent elections as a check on inefficiency and misconduct of public officers. (A point in discussion of the Recall of Officers.)

5. The value of land, being created by population, as a natural and just standard for determining contributions to public revenue. (A point in discussion of the Single Tax.)

6. Unsettled lands the common property of the nation.

7. Open debates in Congress, as a check on political scheming and hasty and ill-advised legislation. (For some time after the adoption of the Constitution the proceedings of the Senate were not published.)

8. Amendment, repeal, and new legislation as the proper cure for bad laws. (A point in the discussion of the Initiative and Referendum.)

9. Advantages of a dictatorship in war. (A point in the discussion of Military *vs.* Civil Power.)

10. Complete control of the purse by Congress.

11. All laws to carry power of enforcing them. (A point in the discussion of State Rights.)

12. Coercion of a State by the Federal Government for the national welfare. (The same.)

James Madison gave credit to Webster for influencing the public mind in favor of adopting a better form of government, without, however, ascribing to him the paternity of principles incorporated in the Constitution. For this omission Hannis Taylor, who claims for Webster the entire merit of "inventing" the plan of the new government, censures Madison, though unjustly, it would seem, in view of the deep thought which the young Virginian, and, indeed, all the constructive minds among our early statesmen, had given to the subject in connection with the adoption of constitutions by the several States and of the Articles of Confederation by them all. Madison, Charles Pinckney [S. C.], and Hamilton went to the Constitutional Convention

with plans of government already prepared. It is unlikely that Pinckney had ever heard of Webster, and we have already presented evidence to show that the ideas of Madison and Hamilton on the subject of government had already been fixed before Webster published his first essay on the subject.

Nevertheless Webster's plan, excelling all others in detail of practical political institutions, and in its economic features outrunning all the thought of his time, fully deserves Mr. Taylor's encomium as "the epoch-making achievement which must forever stand forth as a beacon-light in the world's political history."

The Constitutional Convention. The convention met, as appointed, in Philadelphia in May, 1787. As stated, Rhode Island was not represented, and the delegates from New Hampshire did not appear until late in the session, the legislature of the State having failed at an earlier date to provide their expenses.

George Washington was elected chairman. Questions were to be voted on by States, seven forming a quorum, and a majority deciding. All of the proceedings were to be secret, in order, wrote Madison to Jefferson in Paris, "to secure unbiased discussion within doors, and to prevent misconceptions and misconstructions without." Jefferson replied deploring the rule:

"I am sorry they began their deliberations by so abominable a precedent. . . . Nothing can justify this example but the innocence of their intentions and ignorance of the value of public discussions. I have no doubt that all their other measures will be good and wise. It is really an assembly of demigods."

Owing to this lack of an official record of the proceedings we must rely on Judge Robert Yates's and

James Madison's reports (both published in "Elliott's Debates"), and on letters of other delegates, documents, etc., which have been preserved. These latter have been gathered together by Professor Max Farrand of Yale University in his exhaustive compilation *The Records of the Federal Convention* (1911). The reader is particularly referred to page 87 of the "Records" for character sketches of the members, drawn by William Pierce, a delegate from Georgia, which were published long after the Convention in a Savannah newspaper. We reproduce here the sketches of the men most prominent in the proceedings, those at least deserving of the high encomium of Jefferson.

Pierce's Sketches of Prominent Delegates. Genl. Washington [Va.] is well known as the Commander in chief of the late American Army. Having conducted these states to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa, he may be said to be the deliverer of his Country;—like Peter the great he appears as the politician and the States-man; and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the Confederacy,—and now only seeks for the approbation of his Country-men by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52d. year of his age.

"Mr. [George] Wythe [Va.] is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a compleat knowledge of the dead languages and all the sciences. He is remarked for his examplary life, and universally esteemed for his good principles. No

Man it is said understands the history of Government better than Mr. Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age.

"Mr. [George] Mason [Va.] is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America. Mr. Mason is about 60 years old, with a fine strong constitution.

"Mr. [Edmund] Randolph [Va.] is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the States-man. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners. Mr. Randolph is about 32 years of age.

"Mr. [James] Maddison [Va.] is a character who has long been in public life; and what is very remarkable every Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any Man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council. Mr. Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper. He is easy and unreserved

among his acquaintance, and has a most agreeable style of conversation.

"Dr. [Benjamin] Franklin [Pa.] is well known to be the greatest phylosopher of the present age;—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age.

"Mr. [James] Wilson [Pa.] ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Greecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old.

"Mr. Governeur Morris [Pa.] is one of those Genius's in whom every species of talents combine to render him conspicuous and flourishing in public debate:—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him. With an infinite streach of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing. But with all these powers he is fickle and

inconstant,—never pursuing one train of thinking,—nor ever regular. He has gone through a very extensive course of reading, and is acquainted with all the sciences. No Man has more wit,—nor can any one engage the attention more than Mr. Morris. He was bred to the Law, but I am told he disliked the profession, and turned merchant. He is engaged in some great mercantile matters with his namesake Mr. Robt. Morris. This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth.

"Colo. [Alexander] Hamilton [N. Y.] is deservedly celebrated for his talents. He is a practitioner of the Law, and reputed to be a finished Scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory;—it is my opinion that he is rather a convincing Speaker, than a blazing Orator. Colo. Hamilton requires time to think,—he enquires into every part of his subject with the searchings of phylosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on.—His language is not always equal, sometimes didactic like Bolingbroke's at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable.

"Mr. [Robert] Yates [N. Y.] is said to be an able Judge. He is a man of great legal abilities, but not distinguished as an Orator. Some of his enemies say he is an antifederal Man, but I discovered no such disposition in

him. He is about 45 years old, and enjoys a great share of health.

"Mr. [William] Pat[t]erson [N. J.] is one of those kind of men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator;—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This gentleman is about 34 ys. of age, of very low stature.

"Mr. [Rufus] King [Mass.] is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty three years of age, about five feet, ten Inches high, well formed, an handsome face, with a strong, expressive Eye, and a sweet high-toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the Luminaries of the present Age.

"The character of Mr. [Elbridge] Gerry [Mass.] is marked for integrity and perseverance. He is a hesitating and laborious speaker;—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country.

Mr. Gerry is very much of a Gentleman in his principles and manners;—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age.

"Mr. [Oliver] El[l]sworth [Ct.] is a Judge of the Supreme Court in Connecticut;—he is a Gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. Mr. Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities.

"Mr. [Luther] Martin [Md.] was educated for the Bar and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but has a very bad delivery, and [is] so extremely prolix, that he never speaks without tiring the patience of all who hear him. He is about 34 years of age.

"Mr. Chs. Cotesworth Pinckney [S. C.] is a gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well,—but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American army, and served with great reputation through the War. He is now about 40 years of age.

"Mr. Charles Pinckney [S. C.] is a young Gentleman of the most promising talents. He is, altho' only 24 ys. of age, in possession of a very great variety of knowledge. Government, Law, History and Phylosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most Men. He speaks with great neatness and perspicuity, and treats every subject as fully, without

running into prolixity, as it requires. He has been a Member of Congress, and served in that Body with ability and eclat."[1]

The first question taken up by the Convention was as to whether they should amend the old government or form an entirely new system. By the resolution of Congress empowering the Convention to act, as well as by the instructions of some of the States, notably Virginia, to their delegates, they were met "for the sole and express purpose of revising the Articles of Confederation." So great were the defects of the Articles that a majority decided to construe the instructions liberally and form what was virtually a new Constitution.

The Randolph Plan. On May 29, Edmund Randolph, who, as Governor of Virginia led his delegation, submitted fifteen resolutions as the basis of a new constitution. They were inspired by James Madison, but with characteristic modesty and political shrewdness he had secured the reluctant consent of Randolph, as a man of position and influence, to "father" them.

The essential features of this plan were (1) a Congress of two Houses, the first directly elected by the people, and the second chosen by the first from nominees of the State legislatures, each branch to originate acts, and both together to possess the powers of the old Congress and also the power to legislate on national questions where the separate States are incompetent to act; (2) an executive chosen by Congress, with power to revise legislation in conjunction with the judiciary, but with the veto subject to overruling by Congress; and (3) a judiciary with power to pass with final force on foreign and Federal questions.

[1] "Mr. Pinckney frequently spoke of the deep diffidence and solemnity which he felt, being the youngest member of the body, whenever he addressed the Federal Convention."—J. B. O'Neall, *Biographical Sketches of the Bench and Bar of South Carolina*, Charleston, 1859.

The Pinckney Plan. On the same day Charles Pinckney [S. C.] also presented a plan of government.

It provided (1) for the division of government into the same three departments; (2) for a Congress of two chambers, the first a popular House with representation based on population, and with exclusive power over money bills and impeachment of Federal legislators and officers, the second a Senate to be chosen by the first and based on population; (3) for Congress to have power to lay taxes, duties, excises, etc.; to regulate foreign and interstate commerce, to borrow money, etc.; to establish post-offices and post-roads; to raise fleets and armies, control the militia of the States and suppress insurrections; to coin money; to establish rules for naturalization; to form a Federal district as a national capital, etc.; direct national taxation to be based on population; export taxes to be forbidden; freedom of religion and the press, trial by jury, etc., to be guaranteed; Senate to have exclusive power to declare war, make treaties, appoint ambassadors and Federal judges, and decide interstate disputes over territory; (4) for a President with virtually all the powers afterwards given him; (5) for a Federal judiciary of the nature of that afterwards established; (6) for denial to the States of conflicting sovereignty in the foregoing provisions; (7) for interstate extradition of persons charged with crime; (8) for admission by Congress of new States; and (9) for amendment of the Constitution by a convention, called by Congress on initiative of two thirds of the States.[1]

The plans of Randolph and Pinckney were referred to a committee of the whole, which debated the resolu-

[1] Shortly after the Convention Pinckney published a pamphlet containing his *Observations on the Plan of Government Submitted to the Federal Convention Delivered at Different Times in the Course of Their Discussions.* It is reproduced in full in Farrand's *Records* vol. iii., page 106.

tions until June 13, when the committee reported to the Convention nineteen resolutions.

The Committee's Plan. The salient features of this plan were:

(1) Three departments of government, legislative, judicial, and executive; (2) two Houses of Congress, the first to be elected by the people of the States, the second by the legislatures, and both to have power of initiating and enacting legislation; (3) this legislation to be of the character of that of the existing Congress, and, in addition, to cover all cases in which the separate States are incompetent or conflicting, with a veto on State acts contravening the Constitution or foreign treaties; (4) representation in both Houses to be based on population of free citizens and three-fifths of other persons, except Indians not taxed, in each State; (5) the executive to be a President chosen by Congress for a term of seven years, and ineligible for reëlection, with the powers that were afterwards adopted in the Constitution; (6) a Supreme Court and inferior Federal tribunals, both appointed by the second House of Congress, which should have jurisdiction over national revenue, impeachment of national officers, and questions involving national peace and harmony.

Paterson's Plan. On June 15, William Paterson [N. J.] presented an opposing plan to the Convention. This was a revision of the Articles of Confederation, giving Congress power to impose customs duties and stamp taxes; to regulate foreign and interstate commerce, and to make requisitions of funds on the States in proportion to free population.

The Federal executive was to be a fixed number of persons appointed for a fixed term by Congress and empowered to execute Federal acts, appoint Federal officers not other-

wise chosen, and direct military operations, though not in person.

A Federal judiciary was to be appointed by Congress, to serve during good behavior, and to adjudicate impeachments of Federal officers and to decide finally on cases concerned with foreign affairs and Federal revenue.

Debate on Popular *vs.* State Representation. The main issue was now fairly before the Convention. Behind the Virginia plan, as that of the committee of the whole was called, were arranged in the main representatives from the more populous States; behind the Jersey plan, as that of Mr. Paterson was denominated, were the delegates from the smaller States.

Alexander Hamilton, who opposed both plans, having one of his own ready for presentation, moved that they be referred to the committee of the whole in order that a comparison might be instituted between them. The motion was adopted, and upon June 16 the great debate began over the question whether the Federal Government should be representative of the people or the States.

Mr. Wilson, whose power of clear analysis has already been shown to the reader in the issue between the colonies and the Crown (see page 115), began with a tabulation of the salient differences between the two plans:

Virginia proposes two branches in the legislature; *Jersey*, one.

Virginia derives the legislative powers from the people; *Jersey*, from the States.

Virginia proposes a single executive; *Jersey*, more than one.

Virginia authorizes the legislature to act on all national concerns; *Jersey*, only on limited objects.

Virginia authorizes the legislature to negative State laws; *Jersey* gives power to the executive to compel obedience by force.

Virginia proposes to remove the executive by impeachment; *Jersey*, on application by a majority of the States.

Virginia establishes inferior Federal courts; *Jersey* makes no provision for this.

Mr. Wilson then attacked the strong position of the advocates of the Jersey plan that, by the terms of its call, the Convention was limited to a revision of the Articles of Confederation.

Back of the State legislatures and the Congress which authorized the Convention were the people, and these demanded relief from the embarrassed situation in which the country found itself. They had called a national convention, and they expected a national government. Such a government was framed in the Virginia plan and not in the Jersey plan and so the former was preferable. The Articles of Confederation could not be revised to afford a national government, since their essential feature, a Congress in which States, large and small, were equally represented, must be retained. Until this principle, prohibitory of equal representation of the people, was abolished, there could be no democratic government, and therefore he refused to give to a Congress so constituted the enlarged powers necessary to a national legislature. Inequality in government, he said, poisons every government, and he cited to prove this the venality of the British Parliament as opposed to the incorruptibility of the British courts, which were independent of Parliament.

The argument for the Jersey plan went too far: the plan could not be completed unless Rhode Island assented—and Rhode Island was not represented in the Convention!

Granted that it did assent, what kind of a national government would the Jersey plan afford if, by Rhode Island's subsequent refusal, or that of another single State, to act in accordance with the desire of the other members of the Confederation, the work of Congress was utterly nullified? Here he quoted Lord Chesterfield on the weakness of the government of the States of the United Netherlands as due to the same fundamental defect.

In behalf of the proposal of the Virginia plan for two legislatures, as opposed to the single chamber of the Jersey plan, he urged the need of a legislative check upon legislative action.

A single legislature is very dangerous: despotism may present itself in various forms. May there not be legislative despotism, if, in the exercise of its power Congress is unrestrained by another branch?

On the other hand, an *executive*, to be restrained, must be checked, not by another executive, but by a different branch of government. Executive power, to be both effective and democratic, must be single in responsibility, and placed in the hands of an individual, held accountable for his acts by the people as represented in a truly popular legislature. Here the speaker pointed to the two joint kings of Sparta and the dual consulate of the Roman republic as distracting to their respective governments, and to the triumvirates of Rome as fatal to the liberties of the people.

Judge Paterson, in support of his plan, replied to the able lawyer from Pennsylvania. With a simplicity characteristic of the highest order of debaters, the Attorney-General of New Jersey based his arguments on two propositions: that the Jersey plan accorded (1)

with the powers of the Convention; and (2) with the sentiments of the people.

The first of these was self-evident; the second was capable of demonstration by the instructions given to the delegates of a number of the States, and by the expression of opinion by popular leaders in the other States which, in view of the nature of the call of the Convention (that it was to revise the Articles of Convention), did not specifically instruct their representatives to limit deliberations to this action.

Therefore, concluded Judge Paterson, if it was true, as held by the advocates of the Virginia plan, that the subsisting Confederation was so radically defective as not to admit of amendment, the Convention had no authority to replace it by a new form of government, but must rest satisfied with reporting the insufficiency, and wait to receive from the States enlarged powers to draft the Constitution which in the opinion of the Convention was required for the nation.

The fundamental principle of the present government was that of all Confederations, that the constituent States should be equal in powers: the dissent of one State rendered every proposal null.

In this connection the speaker, by what, in view of subsequent American political history appears now to be a paradox, urged in behalf of State rights the strongest argument against secession.

The Confederation is of the nature of a compact. Can any State, unless by the consent of the whole, either in politics or in law, withdraw its powers? Let it be said by Pennsylvania, and the other large States, that they, for the sake of peace, assented to the Confederation; can she or they now resume the original rights without the consent of

the donee [*i. e.*, the States as a whole]? Let it be remembered that, while the larger States reluctantly agreed to equal representation, the smaller States were the last to approve the Confederation. On this ground representation must be derived from the States to maintain their independency, and not from the people composing those States.

The doctrine advanced by the learned gentleman from Pennsylvania that all power is derived from the people, and that in proportion to their numbers they ought to participate in the benefits and rights of government, is right in principle, but, unfortunately for him, wrong in the application to the question now in debate.

It is not proposed in the Virginia plan to abolish all State rights in order to have a national government. Will Pennsylvania admit a participation of its common stock of land to the citizens of New Jersey? I fancy not. It therefore follows that a national government upon the Virginia plan is unjust, and destructive of the common principles of reciprocity.

Much has been said that this government is to operate on persons, not on States. Nevertheless revenue will be proportioned among the States as States, and in this business Georgia will have one vote and Virginia sixteen. The truth is both plans compel individuals to comply with requisitions, though the requisition is made on the States.

On the question of a legislature of two branches or one the speaker expressed an opinion which shows how far our present national government, in the complexity of its functions and largeness of its enterprises, has departed from the expectations of the Fathers.

Much has been said in commendation of two branches in a legislature, and of the advantages of their being checks to each other. This may be true when applied to the State governments, but will not equally apply to a national legislature, whose objects are few and simple.

In conclusion Judge Paterson denied the assumption of the advocates of a new government that the old one could not be satisfactorily retained with amendments.

Let us fairly try whether the Confederation cannot be mended, and, if it can, we shall do our duty, and I believe the people will be satisfied.

Charles Cotesworth Pinckney [S. C.] supported the Virginia plan.

Saying that it was evidently the ruling sense of the Convention that the Confederation could not be made efficient, he declared that it was proper to proceed to plan a new national government, and to do this the Convention was competent, since its business was not to conclude, but merely to recommend.

Governor Edmund Randolph [Va.] declared that the sense of the Convention had been ascertained to be in favor of its power to frame a new government by the adoption of the Virginia plan, in committee of the whole, as a working basis.

Besides, said he, the Articles of Confederation themselves provided for amendment without reservation of what the advocates of the Jersey plan contended was the essential principle of the instrument, the equality of the States.

As to the question of whether the Convention was empowered to frame a new government, he dilated upon the weakness of the old, which had proved to be so destructive of the country's interests, and maintained that the best exercise of power was to exert it for the public good.

On June 18, Colonel Alexander Hamilton [N. Y.] reopened the debate with a speech of five hours' duration, at the close of which he submitted his scheme of government. He opposed both the Virginia and Jer-

sey plans. As a basis of his opposition he advanced the following principles as fundamental to effective national government:

(1) A good government ought to be *constant* [faithful to its national purpose], and contain an *active principle;* (2) it should consider *utility* and *necessity;* (3) it should possess an habitual sense of *obligation;* (4) be competent to exercise *force* and (5) *influence.*

A government therefore should be formed in which State interests would not predominate over national interests in the minds of the people, *e. g.*, Virginians, by the increase of the present preponderance of their State, should not be encouraged to become indifferent to the concerns of the Union.

By "force" I mean the coercion of *law* and of *arms.* By "influence" I mean the encouragement of *self-interest* in support of the Union among the people. To this end national sovereignty must replace that of the State. We must annihilate State distinctions and State operations. This would relieve the people of a present expense, and so enable them adequately to support a strong national government, which they cannot do under either of the two plans before us. As subsidiary corporations to the national government the States might be retained to execute its purposes locally, and so to economize national expenditure.

Hamilton frankly confessed that he despaired of the ability of republican government to remove the difficulties before the country, and declared that Great Britain offered the best model for government that the world had yet produced, in that by it were obtained *public strength* and *individual security.*

This ideal, said he, was held to be unattainable in America. But, if such a government were once formed here, he believed it would maintain itself.

All communities divide themselves into the few and the many, the one class rich and well-born, the other, the mass of the people. The voice of the people is said to be the voice of God; this is not true: the people are turbulent and inconstant, seldom determining rightly. The first class are more stable and wise. Give them, therefore, a distinct, permanent share in the government, to check the unsteadiness of the second class. As they cannot receive any advantage by a change, they will maintain good government.

It is admitted that you cannot have a good *executive* upon a democratic plan. Therefore, as in Great Britain, this department should be placed above temptation to follow interests distinct from the public welfare. *Foreign influence* is the great danger in republican government; hence strong men must be placed in power.

Hamilton therefore proposed:

(1) That one branch of the legislature be chosen for life or good behavior; (2) an executive be appointed who dares use his power.

It may be said, continued he, that this constitutes an elective monarchy. But the executive will remain subject to *impeachment*, and so the term cannot apply.

At this point Hamilton produced his plan.

(1) Two chambers of legislation with unlimited power of passing all laws: the Assembly to be elected for three years by the people, divided into districts; the Senate to be chosen by special electors for life or good behavior; the legislature to supersede the States in judicial appointments therein; (2) the executive to have full veto power, and to make war or peace, form treaties, grant pardons for crimes, treason excepted, and appoint Supreme judges, with advice of the Senate; to have sole direction of military operations and

foreign relations; on his death or removal to be replaced by the president of the Senate; (3) State laws contravening Federal to be negatived by a Federal officer appointed in each State for the purpose; (4) all the militia to be officered and directed by the Federal government.

Hamilton confessed that his plan, like that of Virginia, was remote from the ideal of the people. The Jersey plan was nearer their expectation.

But the people are ripening in their opinions of governments; they are tiring of an excess of democracy. Relief was not afforded by the Virginia plan; it was the same old pork with a little change of the sauce.

Judge Yates, in his minutes of the Convention, of which the foregoing is an abstract, remarked that "Hamilton was praised by everybody, but supported by none." His plan was not even referred to the "committee on detail" appointed on July 26.

On June 19 James Madison [Va.] made the closing argument against the Jersey plan. He first addressed himself to the competency of the Convention to frame a radically different form of government from that of the Confederation.

The difference between the Virginia and Jersey plans in one drawing the powers from the people and the other from the States does not affect the powers. Indeed, in two States members of Congress are now chosen by the people.

Here Madison discussed the weakness of the Confederation in points of conflict in national sovereignty: treaties; Indian wars; interstate agreements exclusive of other members of the Confederation; ineffectiveness of the Federal court to enforce its decisions, etc. These

he said were not cured by the Jersey plan, which was also defective in the provisions for a ratification by the States of the new powers with which it proposed to vest the Federal government. He severely criticized the plan for its inadequate judicial provisions, and for its neglect to prevent mischief arising from the infringement of rights of individuals by the States, such as issuing paper money and instituting modes for discharging debts, which acts were in violation of the contract with the creditors.

It is evident, if we do not *radically* depart from a Federal plan [as opposed to national], we shall share the fate of ancient and modern confederacies, which, like the American Confederation were dependent for their power, in the last resort, in war and peace, on force. [Here Madison displayed his extensive knowledge of political history by citing the destruction of the Amphictyonic council by Philip of Macedon, the weakness of the Dutch States, etc.]

How, he inquired, is military coercion to enforce government? True, a smaller State may be coerced into submission, but what of a larger State? In the event of failure to form a union of the States the greater commonwealths would retain the advantage over the rest which their size assures them. That they should forego this natural predominance is too much to expect.

At the conclusion of Madison's remarks the Convention, in committee of the whole, reported the Jersey plan as inadmissible.

On June 19, George Mason [Va.] spoke in favor of adoption of the Virginia plan. He answered the objections of incompetency of the Convention to institute it, and the want of practicability to carry it into effect. On the first point he cited the precedent of the Treaty

of Paris with Great Britain which ended the Revolutionary war.

This was negotiated by persons who exceeded their authorization, and yet it met with the approbation of the people who sent them. So in the present case the people, whose principles are fixed to no object except that a republican government is best, and that the Legislature ought to consist of two branches, would accept a frame of government which guaranteed these features.

As to the impracticability of the plan, he admitted that disputes and jealousies might arise under it between the general and the State governments, but claimed that this was a necessary possibility in any plan producing mutual safety. Patriotism and good sense could be relied upon to minimize the danger.

James Wilson [Pa.] enforced the final point of Mr. Mason by citing the voluntary relinquishment of their interests made by the larger to the smaller States during the Revolution.

The great States well knew that the loss of a limb would be fatal to the Confederation; through tenderness they sacrificed their dearest rights to preserve the whole. Now, however, that the danger was over, the time had come for justice to be done to their claims.

William Samuel Johnson [Ct.], in behalf of the small States, proposed that their rights be recognized and guaranteed by equality of State representation in the Senate, which was now generally agreed upon as the name of the second branch of the national legislature. Mr. Wilson offered for Judge Johnson's consideration the need of protection of the Federal government against the selfish interest of the State governments.

Where there was conflict between the parties, he thought that the States ought to yield. However, such a clash might be obviated by a clear designation and delimitation of Federal and State powers. Certainly the general government, composed as it would be of citizens of the several States, would have no ambitious views to encroach upon State rights.

Mr. Madison, in this connection, pertinently challenged the advocates of State rights to show that the States had ever encroached on the rights of municipalities within their borders.

If the national government should usurp the rights of a State, it would certainly be for the good of the whole, and so no mischief could arise.

The resolutions of the Plan of the Committee of the Whole, providing for a threefold division of the government, two branches of the legislature, and the composition of the popular branch (see page 201), were adopted. The resolution relating to the Senate was then taken up for discussion.

Charles Pinckney [S. C.], evidently with Hamilton's plan in mind, opposed taking the British House of Lords as a model in any respect. He gave an admirable historical sketch of the origin of British institutions, including the nobility, in the German forests, and of the transplanting and developing of the system in England. Fortunately for America the nobility was not brought thither.

I lay it down as a settled principle that equality of condition is a leading axiom in our government. If necessary, checks should be instituted lest ranks in society should arise, but the occasion would hardly be likely to occur, since our

leading pursuits of industry and commerce were not conducive to such distinctions.

Can we copy from Greece and Rome? We have no patricians, opposed in interest to the common people, and monopolizing the offices. We are a body of free yeomanry. Our situation is unexampled; and it is in our power to secure civil and religious liberty. Let us not pretend to rival Europe in grandeur. If we have any distinctions, it is between (1) professional men, (2) commercial men, (3) the landed interest. The last is the governing power, and the two other classes must be dependent upon it, but in mutual interest, the three thus composing essentially one order of society.

We should not, however, have a consolidated government. Such a project was contemplated by Great Britain, but was found impracticable, because of the extent and diversity of the country.[1]

State governments must therefore remain, if you mean to prevent confusion. Upon these considerations I am led to form the second legislative branch differently from the committee's plan. [Here Mr. Pinckney read the provisions of his plan (see page 199) relative to the Senate, and moved their adoption.]

Mr. Wilson opposed the appointment of Senators by the State legislatures as an improper exercise of power.

American citizenship is divided in its nature: each man is at the same time a citizen of the nation and of his State. In which character does he act in forming a national government? Plainly in the former. If the powers of peace and

[1] In 1686 Sir Edmund Andros was appointed Governor of the Dominion of New England (including New York), the colonial governments having been abolished. His arbitrary rule came to an end on the accession of William and Mary in 1689, when he was imprisoned by the outraged citizens of Boston, and the colonial charters were restored.

war, treaties, coinage, and regulation of commerce are to lie in the general government, as unanimously agreed upon, why not governmental functions of a national character? Equality of representation cannot be established if one branch of the legislature is elected by the State legislatures. If Senators are elected by the people, and if the national government does not act upon State prejudices, in time State distinctions will be lost. For the sake of the future millions of Americans, this is an end to be desired. I move that the second branch of the national legislature be elected by electors chosen by the people of the United States.

Oliver Ellsworth [Ct.] supported the committee's recommendation.

State legislators are more competent to make a judicious choice of Senators than the people at large, whose choice is pervaded by instability. In the second branch of the national legislature wisdom and firmness are desired in order to check the inconsiderate proceedings of the popular branch.

State governments ought not to be detached from the general government. Without a standing army the general government must rest for support upon the pillars of the State governments. The people are strongly attached to their State governments, and will oppose any plan destructive of their constitutional rights as embodied therein.

The Convention voted that Senators be elected by the State legislatures. The question of the term of service of Senators was then discussed.

George Read [Del.] proposed a term of nine years in triennial rotation.

Mr. Madison spoke in favor of the point raised by Mr. Charles Pinckney that the landed interest ought largely to form the Senate body.

With the growth of manufacture and commerce this interest may become overbalanced, and hence it should now be made secure, as the basis of civic and social order. In England at the present time, if elections were open to all classes of people, an agrarian law would undoubtedly be passed. The American Senate as at first constituted will naturally be composed of landed proprietors. Whatever conduces to the permanence and stability of this composition is therefore desirable. An extended term of office, on this account, should be agreed upon.

Elbridge Gerry [Mass.], a politician of the practical school, advised not too long a term, because this provision would endanger the ratification of the Constitution by the people, who feared any tendency toward monarchy, such as extended continuous service of public officers.

It would give an opportunity to the demagogues, who were the great pests of our government, having occasioned most of our distresses. He proposed a term of four years, which could be lengthened by a future constitutional convention.

Mr. Wilson thought that the provision of triennial rotation would obviate this objection.

The stability obtained by long service in the legislative branch dealing with foreign affairs would strengthen the confidence of other nations in our government. Distrust of the ability of our present Federal government to fulfill its obligations is the reason why the British Government has refused to form a commercial treaty with us.

A term of six years, with triennial rotation, was agreed upon, and also that each House should have the right of originating bills. The resolution of the com-

mittee's report on the powers of the national legislature was passed over. The first clause of the resolution relating to suffrage (representation) in the Senate was then discussed.

Luther Martin [Md.] spoke for three hours in desultory fashion, as was his habit, in opposition to the report.

This, he said, was a medley of a confederated and national government without precedent. He desired that the Federal principle be conserved. A general government may operate on individuals in cases of general concern, and still be Federal. The States will take care of their internal police and local concerns. The general government has no interest but the protection of the whole.

Individuals, by natural right, are equal. This equality is in some degree lost when they become members of a society. But these societies in turn, if they are democratic, are equal in rights with respect to similar bodies. Confederation of such States is for the good of the whole, and their individual rights must be safeguarded without consideration of size or importance. Vattel, Locke, and other authorities on public law, agree upon this point.

With representation in the Federal legislature based on population, four large States could control the Union.

Here Mr. Martin departed from the immediate question, and applied the statement to the proposed choice of the executive by the legislature.

The four States could control the appointment of the President, and, through him, of all Federal officers, civil, military, and judicial. Even his veto could not be overridden by the votes of the remaining States. This would destroy equality among the constituent parts of the Union.

If there exist no separate interests among the States there

is no danger in granting them equality of votes; and, if there be danger, the smaller States cannot yield this equality. In forming the present Confederation, it was the smaller States alone which yielded rights. Not partial representation is the cause of our government's weakness, but want of power. This can be given to the Federal government without impairing State equality. The latter must be preserved. I would not trust a government on the reported plan for all the slaves of Carolina or horses and oxen of Massachusetts.

On Federal grounds it is claimed that a minority will govern a majority; but on the Virginia plan a majority will tax a minority. In a Federal government a majority must and ought to tax. But this should be a numerical majority of the States, not of the people within the States. Why should our plan regard the rights of the people? These are already protected by their State governments, concerning which there is no complaint.

Representation controls taxation—not according to the *quantum* of property, but of freedom. Representatives of a State will not forget State interests. No mode of election will obviate this. Government on the Virginia plan will not, therefore, be just or equal, unless State interests are abolished. If this cannot be done you must go back to principles purely Federal.

The leagues of ancient States, which have been cited as warning examples, owed their failure, not to consideration for the equal rights of the smaller members, but to the violation of these by the larger constituents. The end of the Amphictyonic council was due to Lacedæmon, a large State, attempting to exclude three lesser States from equal rights. If the principle of equal representation is an evil one, why do we not hear complaints against it from the Dutch and Swiss confederacies?

I would rather confederate with any single State than submit to the Virginia plan. But we are already confederated, and no power on earth can dissolve the union but by the consent of *all* the contracting powers.

John Lansing, Jr. [N. Y.] moved that the word "not" be stricken out of the resolution.

Mr. Madison opposed this motion:

The gentleman from Maryland has erroneously considered confederacies and treaties to be on the same basis. In the one, the powers act *collectively;* in the other *individually*. When independent sovereignties form a league, surely the larger States may with justice refuse to give the smaller equal legislative powers in the new association.

Nor is the gentleman correct in stating that the powers of the present Congress apply only to States, and not individuals, for in some cases they affect the property, and in event of war, the lives of citizens.

The gentleman speaks of combinations of the larger States against the smaller. What are the inducements for this? The States referred to (Massachusetts, Pennsylvania, and Virginia) are remote from each other, and diverse in interests, customs, religion, etc. Do the larger counties in a State combine with each other? Are they not, rather, rivals? Has not contention chiefly been between larger States, such as Sparta and Athens, Rome and Carthage, Great Britain and France? Do the greater provinces in Holland endanger the liberties of the lesser? Let me remark that the weaker you make your confederation, the greater is the danger to the smaller States. They can be protected only by a strong Federal government. Those gentlemen who oppose the Virginia plan do not sufficiently analyze the subject.

The sarcastic note of Madison's remarks, imputing ignorance of law and history to a man claiming to be conversant with these subjects, was caught by other speakers on his side, and it awakened resentment in their opponents. Accordingly the venerated Dr. Franklin rose, and, after reading some remarks on the question, said:

We shall, I am afraid, be disgraced through little party views. The subject of our deliberations is a great and difficult one. Neither ancient nor modern history can give us light on it. But as a sparrow does not fall without God's permission, can we suppose that governments can be erected without His will? I move that *we have prayers every morning.*

This timely and gracious advice of the aged diplomat produced its desired effect, and the debate resumed the high impersonal tone of its early stage.

Mr. Wilson denied the contention of the State-rights men that the States were sovereign, saying that in point of fact they were merely political societies.

The States never possessed the essential rights of sovereignty. These were always vested in Congress. Voting as States in Congress is no evidence of State sovereignty. Maryland voted by counties. Did this make the counties sovereign? The States, at present, are only great corporations, having the power of making by-laws, and these are effectual only if they are not contradictory to the general Confederation. The States ought to be placed under the control of the general government—at least as much so as they formerly were under the British King and Parliament. If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all.

Mr. Hamilton enforced Mr. Wilson's position by showing that strict representation was not observed in any of the State governments.

In New York, for example, the Senate was chosen by persons of certain qualifications [such as possession of property to the value of $500.] to the exclusion of others.

The rights of individuals ought not to be sacrificed to the rights of artificial beings called States.

Mr. Lansing's motion was lost. The original clause was put to vote and failed to carry. Judge Ellsworth moved to amend it by giving equal votes to the States. He supported the amendment, saying:

The large States, though they may not have a common interest for combination, yet they may be partially attached to each other for mutual support and advancement.[1]

Mr. Madison spoke of the necessity of adopting right measures in the beginning, since it was difficult to secure constitutional amendments. He declared that the fear of the large States by the small was visionary.

The real danger is the great southern and northern interests of the continent being opposed to such other. Look to the votes in Congress, and most of them stand divided by the geography of the country, not according to the size of the States.

Mr. Wilson replied to the statement of State-rights men that, if the amendment were not agreed to, a separation of the country to the north of Pennsylvania might occur.

This staggers me neither in my sentiments nor in my duty. The opposition to the Virginia plan is as 22 to 90 in the general scale—less than a fourth part of the Union. Shall three fourths surrender their rights for the support of that artificial being called *State interest?* Let the mi-

[1] This is a suggestion of the practice which later developed in Congress under the name of "log-rolling," where representatives of constituencies of diverse interests bargain to vote together when these are under consideration.

nority separate the Union by refusing the Virginia plan—we shall stand all the stronger supported by better principles.

If the amendment is adopted seven States, related to the other six in population as 24 to 66, will control the government. For whom do we form the Constitution? For men, or for imaginary beings called States—a mere metaphysical distinction.

As has been said, the large States may be expected to contend against each other rather than to combine against the small States. Will they not also separately court the interests of the small States, to counteract the views of a favorite rival?

The State-rights advocates scent aristocracy in the Virginia plan. On the contrary the claims of the small States lead directly toward aristocracy, which is the government of the few over the many.

Mr. Wilson proposed one Senator for each one hundred thousand of population, every State to have at least one representative in the chamber.

Dr. Franklin made the clever suggestion that representation of States in the Senate should be equal, and that the vote should be taken on this basis on all acts of sovereignty, etc., but that in revenue legislation the Senators should vote in ratio to the sums their States respectively contribute.

Such a rule, said he, exists in the merchant marine for determining a ship's destination, etc., where the vessel is owned by several persons in varying degrees.

Rufus King [Mass.], also contributed an original point of view to the subject.

Let the Constitution we are forming be considered as a *commission* under which the general government shall act; as such it will be the guardian of the State rights. The

smaller States do not need to fear the tyranny of the larger ones. The rights of Scotland are secure, although she has a small representation in Parliament.

The Convention was evidently at a deadlock on the issue of State *vs.* popular representation in the Senate, and General Pinckney, therefore, moved for a select committee to take into consideration representation in both branches of legislation. Mr. Martin remarked that a compromise was evidently designed. This he opposed:

You must give each State equal suffrage, or our business is at an end.

Roger Sherman [Ct.], a conservative member of the State-rights party, upheld the motion:

It seems that we have got to a point where we cannot move one way or the other. Such a committee is necessary to set us right.

Gouverneur Morris [Pa.] expressed his opinion that the two branches of legislation should be radically different in composition.

The first branch, originating from the people, will ever be subject to *precipitancy, changeability*, and *excess*. This can be checked only by *ability* and *virtue* in the second. Therefore the Senate should be composed of men of great and established property—*aristocracy;* men who, from pride, will support consistency and permanency. And, to make them independent, they should be chosen *for life.*

The admitted tendency of a body so constituted is toward tyranny. This will be checked by the democratic branch.

Mr. Morris decried the suggestion that Senators be excluded from holding office in the general government.

This is a dangerous expedient. They ought to have every inducement to be interested in your government. The wealthy will ever demand honor and profit. Prevent them by positive institutions in this pursuit, and they will gain their ends by left-handed methods.

It is of little consequence whether or not States be equally represented in this body. The general government, if it is to exist, must have a large share in the division of "loaves and fishes." This will reduce the denationalizing influence of the States. Appointment for life would further this process—indeed, make the Senators wholly independent of the State governments.

Such a Senate is required if it is to control our foreign relations. We are a commercial people, and as such will be obliged to engage in European politics. For this we need a strong, responsible national government.

Report of Committee on Compromise. The Convention appointed a committee to report upon those provisions relating to the legislature which had not been agreed upon. The committee met on July 3, and Mr. Gerry was chosen chairman. Robert Yates [N. Y.], expressed his firm attachment to the national government on Federal principles. His remarks led Dr. Franklin to make a motion, which, after some modification, was agreed to, and was made the basis of the committee's report.

This was that, in the first branch of the legislature (House of Representatives), each State be allowed one member for every forty thousand inhabitants[1] of the de-

[1] At the suggestion of General Washington, chairman, this number was reduced to thirty thousand.

scription already agreed upon, one member being allowed each State with less than that number.

That money bills shall originate in this House, and be not amended by the second House.

That in the second branch (Senate) *each State shall have an equal vote.*

On July 5, the report was read to the Convention. Mr. Madison, the manager of the interests of the large States, expressed displeasure with it.

He saw nothing of concession. Originating money bills in the House of Representatives was not of this nature, for if seven States in the Senate (a majority) should want a particular money bill, their interest in the House could bring it forward.

The Senate, small in number, and well connected, will ever prevail. The power of regulating trade, treaties, etc., is of more importance than raising money, and no provision for these is made in the report. Two thirds of the people are to please the remaining third by sacrificing their essential rights. Only when we satisfy the majority have we nothing to fear; otherwise, everything.

On the same day, seeing that the party of the large States interest appeared to remain firm in its contention, Judge Yates and Mr. Lansing left the Convention. Later they wrote a letter to Governor George Clinton of their State justifying their secession on grounds which have already been presented. The Convention adopted the report, and then spent the remainder of the session in completing the Constitution upon the principles already adopted.

The only other subject in the Convention on which the country was divided was Slavery, which will be discussed in Volume II.

On July 23 the Virginia plan as amended was referred to a "committee of detail" to draft the Constitution for final approval. The plans of Paterson and Pinckney were also referred to them for suggestions. The committee gave in its report on August 6. This was debated until September 8, and then adopted. A committee "to revise the style of and arrange the articles" was appointed. On the 12th it reported its draft, and the draft of a letter to Congress urging the adoption of the Constitution. On the 15th, the Constitution was formally adopted by unanimous vote, and was ordered to be transmitted to Congress to be submitted by that body to conventions assembled in each State for its ratification or rejection.

Ratification of the Constitution. On September 20, 1787, Congress, then sitting in the City Hall, New York, took up the Constitution and debated it for eight days. The chief objection to the proposed government was that it consolidated too much power in the general government, thus endangering the independence of the States. Finally, on the 28th, Congress ordered the Constitution to be submitted to the States in the manner designated by the Convention. In the course of the next three years the State conventions were held on the call of the legislatures.

It was exceedingly doubtful from the beginning that the Constitution would be ratified by the number of States (nine) requisite for its adoption. Many attacks upon it were made in the newspapers. To these John Dickinson replied in his *Letters of Fabius*, written in the homely style of his *Farmer's Letters* in order to influence the common people, and Alexander Hamilton, James Madison, and John Jay in articles appealing to the more highly educated class published over the

common signature of "Publius," and under the title of *The Federalist.*[1]

The Federalist Papers were eighty-five in number, of which Hamilton wrote fifty-one, Madison twenty-nine, and Jay five. Hamilton discussed the Constitution in general and finance in particular; Madison the relation between State and Federal powers; and Jay foreign relations. Hamilton originated the idea of the series, with the special purpose of favorably influencing the New York convention, which was strongly inclined to reject the Constitution. Not only was this accomplished, but the Papers exerted a deep influence in all the States, and remain to-day the classic commentary on the Constitution, being recognized as such by the courts.[2]

The reader must be warned, however, that they partake of the nature of a "brief for the plaintiff," and as such do not always express the convictions of the authors. This is particularly true of the contributions by Hamilton, who, as we have seen, opposed the Virginia plan, which formed the basis of the Constitution, and the Jersey plan, which was used for modifications. However, he much preferred the Constitution, marking as it did an advance toward his ideal of a strong government, to the feeble Articles of Confederation. The fact that he outwardly supported provisions in it which he inwardly reprobated was strikingly shown in 1793 when, over the signature of "Pacificus," he defended President Washington's proclamation of neutrality in

[1] Digests of these famous defenses are found in *Great Debates in American History*, vol. i., chap. xv.

[2] Many editions of *The Federalist* have been published, the most fully edited and indexed being that by Paul Leicester Ford (1898). For one in text-book form, that by Henry Cabot Lodge (1888), the present Senator from Massachusetts, is recommended.

the Franco-British war which virtually construed the French-American Alliance of 1778 as no longer binding, although no consultation was had on the subject with the Senate, a body which Hamilton clearly stated in *The Federalist* must always jointly act with the President on treaties. This conflict Madison, who replied to "Pacificus" over the signature of "Helvidius," pointed out with great shrewdness. From the characteristic style of the papers in defense of the treaty it was a "secret of Punch" who was its author, and Madison took advantage of Hamilton's unwise resort to the prevalent practice of anonymity by asking, with pretended indignation: who was this upstart "Pacificus" to oppose the principles of the Constitution as laid down by its great expounder, Alexander Hamilton?

The Constitution was ratified unanimously by Delaware, New Jersey, and Georgia, and by large majorities in Pennsylvania, Connecticut, Maryland, and South Carolina. For some time it was doubtful whether the remaining States would assent to it without amendments of the nature of a "Bill of Rights."

The Massachusetts Convention, held in January, 1788, was won over in favor of the Constitution largely by powerful arguments eloquently presented by Fisher Ames.

Sketch of Ames. Ames, graduated from Harvard at the age of sixteen, owing to his youth and straitened circumstances, was obliged to spend some years in study and teaching before entering upon his chosen profession of law. He was a diligent reader of the ancient and modern poets, and of the Bible, thereby acquiring a beauty and fervor of style which was shortly to win him reputation as the most eloquent orator of his generation. He entered into the practice of law in

his native village of Dedham in 1781. Awaiting the advent of clients he devoted his time to writing political essays in the Boston papers under various pen-names, which, upon their authorship becoming known, brought him State-wide fame and a gratifying increase of clients. In 1788 he was elected to the Massachusetts Assembly where his eloquence was so highly rated that he was elected to the convention to pass upon the national Constitution. On the institution of the new government to which he had so effectively contributed, he was elected to Congress, where, for eight years, he was recognized as the ablest and most eloquent of the Federalist Representatives. His speech in 1896 in favor of the execution of Jay's Treaty with Great Britain was his masterpiece of eloquent argument, and, until the advent of Daniel Webster, was recognized as the greatest American oration delivered since the Declaration of Independence. Forced by ill-health to withdraw from public life, he retired to his farm, and took up the pen, writing in 1798 *Laocoön* and other essays intended to rouse the Federalists to more strenuous opposition to the aggressions of France. He declined the offer of the presidency of Harvard in 1804, and in 1808 he died, a staunch Federalist to the last in spite of the reaction against that party.

Says Henry Hardwicke, in his *History of Oratory and Orators* (1896):

"In person Mr. Ames was above middle stature and well formed. His countenance was very handsome, and his eye blue in color, and expressive. His features were not strongly marked. . . . His expression was usually mild and complacent when in debate, and, if he meant to be severe, it was seen in good-natured sarcasm rather than in acrimonious words."

E. L. Magoon, in his *Orators of the American Revolution* (1848), felicitously called Ames "an orator of genius and elaborate beauty"; and Charles Caldwell, in his *Autobiography* (1853–55), declared that he was "decidedly one of the most splendid rhetoricians of the age." Dr. Joseph Priestley, who had heard all the British orators of his time, the two Pitts, and Burke, and Fox, declared to Mr. Caldwell that the speech of Ames on Jay's Treaty was "the most bewitching piece of parliamentary oratory he had ever listened to."

Francis H. Underwood, in his *A Handbook of English Literature*, records that on one occasion Congress adjourned on motion of Ames's chief opponent, who urged that the members ought not to be called upon to vote while under the spell of Ames's extraordinary eloquence.

However, say Julian Hawthorne and Leonard Lemmon, in their *American Literature* (1891):

"With all his beauty and earnestness, Ames lacked the massive individuality, the overwhelming torrent of feeling, the towering strength that should be within the scope of the greatest statesmen."

Typical of Ames's eloquence are these passages from his speech in favor of ratification of the Constitution delivered at the Massachusetts Convention. He is talking of the danger of foreign aggression.

"If we reject the Constitution . . . we girdle the tree; its leaves will wither, its branches drop off, and the mouldering trunk will be torn down by the tempest. . . . We approve of our own form of government, and seem to think ourselves in safety under its protection. We talk as if there was no danger in deciding wrong. But when the inundation

comes, shall we stand on dry land? The State government is a beautiful structure. It is situated, however, on the naked beach. The Union is the dyke to fence out the flood. That dyke is broken and decayed, and, if we do not repair it, when the next spring tide comes we shall be buried in one common destruction."

Even though the delegates were permitted to vote under the spell of Ames's eloquence, ratification would hardly have carried had not the leader of the State rights party, the venerated Samuel Adams, declared himself in favor of the Constitution, provided that the Bill of Rights amendments were recommended for adoption. This recommendation was made when the Constitution was ratified on February 6, 1788, by a small majority.

In the Convention of Virginia, which met in June, 1788, all the talented men of that "Mother of Statesmen" were arranged in almost equal ranks against each other. Patrick Henry, George Mason, William Grayson, and James Monroe, Anti-Federalists, opposed Edmund Pendleton, Edmund Randolph, James Madison, John Marshall, and George Wythe, the Federalists.

The debates in the Convention are among the most brilliant in American forensic history, but, as the main arguments were those already urged in the Constitutional Convention, they must be excluded from the present work.[1]

Because it presents a new phase of the fundamental issue, the invasion of State rights by the Constitution, a forensic duel between the foremost orator of the older

[1] A digest of the debates is given in *Great Debates in American History*, vol. i., page 366.

day and a young lawyer who was to become the greatest American jurist demands presentation. The contestants were Patrick Henry and John Marshall.

Sketch of Marshall. John Marshall received an excellent education from private tutors, and at the age of eighteen had begun the study of law, when the outbreak of the Revolution called him to the field by the side of his father, who was major of the company, John being lieutenant. The young officer distinguished himself by his coolness and leadership on critical occasions, and on account of his calm judgment was frequently selected to settle disputes between his fellow officers, and, indeed, served as deputy judge-advocate. Promoted to captain in 1779 he was detailed to command new troops to be raised in Virginia. Awaiting the action of the legislature, he seized the opportunity to study law under George Wythe in the College of William and Mary, receiving admission to the bar in 1780. After military service for another year, the surrender of Cornwallis enabled him to begin law practice, and he rapidly rose to the front rank of his profession. From 1782 to 1788 he served intermittently in both branches of the State Legislature, and in the latter year was elected to the Virginian Convention as a pronounced Federalist. It was largely due to his arguments and Madison's that the Convention ratified the Constitution.

After the inauguration of the new government Marshall was recognized as a foremost supporter of Washington's administration. Nevertheless on the great trial which brought him national fame as a lawyer, the case of Ware *vs.* Hilton, where there was conflict between the United States and the Virginia governments over the payment of British debts contracted

before the war, he defended the State rights side. Although his old teacher, now Chancellor Wythe, decided against him, Marshall's argument was universally admired in the profession. His subsequent career as envoy to France, and (after service for one session in the House of Representatives, and for a year as Secretary of State under President John Adams) as Chief-Justice of the Supreme Court from 1801 to his death in 1835, is familiar to all readers of United States diplomatic and legal history. He presided at the trial of Aaron Burr for treason with rigid impartiality in the face of adverse public opinion against the accused. He wrote from records supplied by his subject's family the first authoritative *Life of Washington*, in which, however, judicial poise was somewhat disturbed by partisan purpose.

William Wirt, in *The Letters of a British Spy* (1803), describes Justice Marshall as in personal appearance and demeanor "as far removed from Lord Chesterfield as any other gentleman on earth," applying to him such terms as tall, meager, loose-jointed, with head disproportionately small and a swarthy countenance, lit, however, with great good humor, and dominated by black eyes of an "irradiating spirit which proclaims the imperial powers of the mind . . . enthroned within."

Of Marshall's intellectual character George Sharswood writes in his *Professional Ethics* (1854):

"As a judge the Old World may be challenged to produce his superior. His style is a model—simple and masculine; his reasoning direct, cogent, demonstrative, advancing with a giant's pace and power, and yet withal so easy evidently to him as to show clearly a mind in the constant habit of such efforts."

Of Marshall's services to the Constitution Senator Henry Cabot Lodge writes:

"That which Hamilton in the bitterness of defeat had called 'a frail and worthless fabric,' Marshall converted into a mighty instrument of government. The Constitution, which began as an agreement between conflicting States, Marshall, continuing the work of Washington and Hamilton, transformed into a charter of national life. When his life closed, his work was done—a nation had been made. Before he died he heard this great fact declared with unrivalled eloquence by Webster. It was reserved to another generation to put Marshall's work to the last and awful test of war, and to behold it come forth from that ordeal triumphant and supreme."

The question between Marshall and Henry in the Virginia Convention was the proposed jurisdiction in the Constitution of the Supreme Court in controversies between a State and a foreign government—an issue similar to that in which Marshall was later to defend the State rights side—the case of the British war debts.

Henry opposed this jurisdiction:

Would the foreign government be bound by the decision? And would not the State be barred from its claim if the court declared it unjust? The exclusion of trial by jury in such cases would destroy the rights of the people of the State. And if there were a jury trial, it would be held in the proposed Federal District, where juries would be apt to be mere tools of parties, especially since the right of challenge is not secured in the Constitution.

Marshall answered by saying that, as the previous consent of both parties was necessary in bringing the

case before the Court, each would be bound in honor as well as in law to accept the decision of the tribunal. Accordingly the Court would be a means of preventing disputes, instead of aggravating them, between the States and foreign nations.

Marshall denied that the Constitution in the cases referred to excluded trial by jury. Where facts were in dispute, the Court would necessarily employ a jury to ascertain them.

But, says the honorable gentleman, the juries in the ten miles square [of the proposed Federal District] will be mere tools of parties, with which he would not trust his person or his property—which, he says, he would rather leave to the Court. Will no man stay in the District but tools and officers of the government? Are there none but officers and tools of the government of Virginia in Richmond?

It is acknowledged by the gentleman that the judiciary is secure in England. What makes it so? Is it the British constitution? No, for that Parliament can alter in any part. Yet Parliament sacredly preserves the independence of the courts. Will the United States government be less honest than the British?

But it seems the right of challenging juries is not secured in this Constitution. Is this done in our own [Virginia] constitution? This privilege is founded on English law. If we are secure in Virginia without mentioning it in our constitution, why should not the same security be found in the Federal Court?

A majority of the Convention were in favor of material amendments to the Constitution in the nature of a "Bill of Rights," and, after twenty days' debate, the issue finally came upon whether the Constitution should be adopted before or after such amendments were made.

Chancellor Wythe moved that the Constitution be

ratified, with a preamble declaring that the powers granted were from the people, and that every power not granted remained with them. Among essential rights specifically mentioned as reserved to the people were liberty of speech and conscience. It was further declared that ratification ought not be delayed to the jeopardy of the country, and that the new government should be trusted to make the desired amendments.

The urgency of ratification was denied by William Grayson, who shared the leadership of the State rights party with Patrick Henry.

Sketch of Grayson. This statesman was a graduate of Oxford, England, and had studied law in the Temple, London. Returning to America he entered into practice at Dumfries, Maryland. In 1776 he was appointed aide on General Washington's staff, and shortly afterwards was made colonel of a Virginia regiment. He distinguished himself at the battle of Monmouth in 1778. He was one of the commission to treat with Sir William Howe respecting prisoners, and served on the Board of War in 1780–81. He was a member of the Congress of the Confederation in 1784–87, and, on adoption of the Constitution, he was chosen as one of the Virginia Senators, Richard Henry Lee being the other. He died within one year after the election, and therefore does not occupy the place in American history which his great political talents, fully recognized by the people of Virginia in honoring him above all the many great men of that State except Lee, had prepared him to take.

Mr. Grayson urged that the three remaining important States, Virginia, New York, and North Carolina, which had not yet passed upon the Constitution, should stand together

in insisting on its amendment before ratification. These States, separating the country into three isolated parts, would render formation of the new government by the other States impracticable. A coalition of the three would be able to command their terms for entering the Union. These would not be dictatorial in a partisan sense. We wish to remove the party spirit, but secure the liberty of the people. If the States that have ratified the Constitution should feel aggrieved at our blocking their expectation of an early union, they will be ready to receive us with open arms whenever it is to our interest to join them, for this will be to their interest also. We are too important commercially to be excluded. Tobacco will always make our peace with them.

The idea of subsequent amendments is preposterous. The little States will not agree to an alteration, having won their chief contention—equal representation in the Senate.

Madison replied to Grayson in the most effective speech of his long career of public service, in that it carried Wythe's motion, and assured the formation of the new government, it not being known at the time that New Hampshire, the ninth State had ratified the Constitution on June 21. He appealed to the noble, disinterested patriotism of the State which had been foremost in cultivating the national spirit of the country.

Virginia has always heretofore spoken the language of respect to the other States, and she has always been attended to. Will it be that language to call on a majority of the States to acknowledge that she has done wrong? Is it the language of confidence to say that we do not believe that amendments for the preservation of the common liberty and general interest will be consented to by them? It is a most awful thing that depends on our decision—free, peaceable, unanimous union, or embittering confusion and

disorder. Forty amendments have been proposed by this convention. Will not every State think herself entitled to as many? Suppose them to be contradictory; how will the States agree? Shall the great labors of the Constitutional Convention, which settled the main disagreements, be brought to nought?

In her ratification of the Constitution, (on June 25) Virginia submitted to the new government a Bill of Rights of twenty articles, the main ones of which were adopted as the first ten amendments to the Constitution within three years after establishment of the new government.

The New York Convention met at Poughkeepsie on June 19. The chief subject of controversy was the proportion of representation fixed for the popular House. Alexander Hamilton led in support of the Constitution, and Melanct[h]on Smith in opposition.

Sketch of Smith. Smith was a merchant who had lately removed from Poughkeepsie to New York City, taking with him his influence as a political leader in the Anti-Federalist party. During the Revolution he had ably served his State and the country in both the provincial and national congresses, and as commissioner for detecting conspiracies in New York. He was highly esteemed for his purity and sincerity of character. Chancellor Kent says that he was early noted "for his love of reading, tenacious memory, powerful intellect, and for metaphysical and logical discussion, of which he was a master."

As the main arguments of Hamilton and Smith were necessarily those which have already been presented, they need not be here reproduced. Suffice it to say that Hamilton made the most powerful speech of his

life, reducing the fear of "consolidation" in the mind of Smith and other Anti-Federalists to the point where they were willing to ratify the Constitution with a recommendation of amendments similar to those of Virginia.[1]

The Anti-Federalists were further moved to consent by the fact that, as ten States had ratified the Constitution, the alternative, was left to New York of coming into the Union or remaining out of it as a separate sovereignty. The ratification was consummated on July 26.

The ratifications by the first nine States being laid before Congress, that retiring national legislature, on July 2, 1788, referred them to a committee to prepare an act for instituting the new government. It reported on July 14, but, on account of a division as to the place to be chosen for the first capital, the act was not passed until September 13. It fixed the time of the election of Presidential electors and the meeting of the Electoral College then to be chosen,[2] and appointed New York as the place, and the 4th of March, 1789, as the time of the inauguration of the new government.[3]

North Carolina and Rhode Island were admitted into the Union upon their respective ratifications of the Constitution on November 19, 1789, and May 29, 1790.

[1] William Ordway Partridge selected Hamilton delivering this speech as the subject of his statue of the great statesman which stands in Columbia University.

[2] The College elected George Washington [Va.] and John Adams [Mass.] as President and Vice-President respectively.

[3] Owing to delay in assembling quorums of the two Houses of Congress, the inauguration was postponed to April 30, 1789.

CHAPTER IX

FEDERALIST *vs.* REPUBLICAN

1793–1801

New Alinement of Parties over Increase of Executive Power—Controversy between Hamilton and Madison over Proclamation of Neutrality in European War—The Sovereign Acts of Citizen Genet—Debate on Jay's Treaty: in Favor, Fisher Ames [Mass.], William Murray [Md.]; Opposed, James Madison [Va.], Albert Gallatin [Pa.], Edward Livingston [N. Y.], William Giles [Va.]—Sketches of Murray, Gallatin, Livingston, and Giles—Debate on the Breach with France: in Favor of War Preparations, Harrison Gray Otis [Mass.], Robert G. Harper [S. C.], James A. Bayard, Sr. [Del.], Thomas Pinckney [S. C.]; Opposed, Mr. Gallatin, Mr. Livingston, Mr. Giles—Sketches of Otis, Harper, Bayard, and Pinckney—The "X Y Z Mission"—Treaty with France—Debate on the Alien Laws: in Favor, Samuel Sewall [Mass.], John Rutledge, Jr. [S. C.], John Allen [Ct.], Mr. Bayard, Mr. Otis, Mr. Harper; Opposed, Mr. Gallatin, Mr. Livingston—Sketches of Sewall, Rutledge, and Allen—Debate on the Sedition Law: in Favor, Mr. Harper, Mr. Otis; Opposed, John Nicholas [Va.], Mr. Gallatin, Mr. Livingston—Sketch of Nicholas—The Kentucky and Virginia Resolutions—Election of President Jefferson—The "Midnight Judges"—The Know Nothing Movement—Debate in the House: in Favor, Nathaniel P. Banks [Mass.]; Opposed, William T. S. Barry [Miss.]—Sketches of Debaters.

THE advocates of State rights, though contending for an undemocratic principle in representation, made themselves, as we have seen, the special champions of civil and religious freedom in the successful contest to add to the Constitution a Bill of Rights

guaranteeing this liberty. Accordingly, the Anti-Federalist[1] party gradually gathered to itself the men of democratic tendency, such as Madison among the Federalists.[1] In like fashion the ranks of the Federalists were augmented by persons of aristocratic leanings in the early State rights party. Owing to the fact that men of higher education and greater property interests had come into executive and judicial office, and formed an overwhelming majority in the Senate, which was the predominant legislative chamber in honor at home, and in dignity and respect in the eyes of foreign nations (as recognized in the term "upper house" supplanting that of "second house" which had been invariably applied to it in the Constitutional Convention), the Federalist party became the Administration party; and the Anti-Federalist the Opposition, which was concentrated in the House of Representatives.

Increase of Power of the President. The main issue between these parties was the constitutional question of relative executive and legislative powers. The Administration, desiring to be as effective as possible in establishing a truly national government, naturally exercised to the full all its functions, including the implied powers which, by a broad construction of the Constitution, it might claim under that instrument. To these increased executive powers, or "prerogatives" as the Anti-Federalists styled them, the House of Representatives, which, unlike the Senate, had no association with the President in legislative and executive

[1] As Madison claimed, these names were misnomers, and should have been exchanged. "Federalist" logically applied to the State rights advocates who desired to maintain the federal principle of the old government, and "Anti-Federalist," or, in positive form, "Nationalist," to the champions of the new and more consolidated government.

acts such as treaty-making and appointments to judicial and executive offices, were through self-interest opposed.

The Administration of President Washington at first held the scales equal between the two principles of government. Gradually the balances inclined toward the Federalist or aristocratic principle, chiefly through the influence of Alexander Hamilton, Secretary of the Treasury, whose efficiency in finance, for the conduct of which he demanded the extreme of power which could be granted by a liberal construction of the Constitution, strengthened the President's own predilection for a strong, national government, and made him disposed to succumb to the persistent urge of the resolute Secretary broadly to construe the new charter of the Republic as permitting greater liberty in the exercise of his own functions. Thus in 1793 the President issued instructions as to the course to be pursued by American citizens in the European war occasioned by the execution of Louis XVI. by the French Republicans, which proclamation, while it omitted the word, commanded *neutrality*, and so in effect abrogated the French Alliance of 1778. Jefferson, as head of the State department, expected to have the drafting of the instrument, which he intended to make an evasion but not denial of our obligations under the Alliance, and at the same time a covert bid for recognition of our commercial rights as neutrals by either or both of the warring sides. President Washington, however, apparently under the influence of Hamilton, chose for the task Attorney-General Edmund Randolph, who, while recognized as belonging to Jefferson's faction in the Cabinet, was more amenable than its head to the Hamiltonian views of the President.

This proclamation presented a clear issue to the

unorganized Opposition, and solidified it into a party. Since Jefferson's mouth was closed by his enforced assent to the proclamation, Madison became spokesman of the anti-Administration sentiment, and, as has been noted, attacked Hamilton on the issue that the President's act was unconstitutional in that it construed a treaty without advice of the Senate.[1]

Madison won the forensic laurels of the debate, but the practical effect of the proclamation was not impaired, and it has remained as a precedent for executive action in such cases, affording a fine example of the manner in which Hamilton increased the prerogatives of the President without either legislative change or judicial interpretation of the Constitution.

The Sovereign Acts of Citizen Genet.[2] By the great mass of the Republicans the proclamation of neutrality was opposed for sentimental rather than constitutional reasons. The common people had a high regard for France on account of the aid she had rendered us in the War of Independence, and they heartily wished her success in what she claimed and they accepted was a struggle to redeem all Europe from the tyranny of monarchical and aristocratic rule. For a time this threatened to become the supreme issue, dividing the country into the pro-French, and, if not the anti-French or pro-British, at least the neutral party. Such a sad injection of foreign politics into domestic public concerns, embittering otherwise friendly dis-

[1] See page 227. For a digest of the newspaper controversy between Hamilton ("Pacificus") and Madison ("Helvidius") see *Great Debates in American History*, vol. ii., chap. i.

[2] The controversy over these acts is here given at a greater length than would have been allotted did not it so remarkably parallel in many particulars our present diplomatic situation in respect to Germany and Austria.

agreements on constitutional matters, and poisoning the healthful metabolism of our national development, was happily averted by the outrageous acts of the minister whom the regicide Republic sent over to enlist our aid, or, failing to do so, to commit us to her cause by involving us in infractions of the comity of nations.

Edmond Charles Edouard Genet, known more briefly by the democratic appellation upon which he insisted as Citizen Genet, was a young enthusiast to whose mind the "rights of man" as interpreted by his fellow revolutionists appeared as a sacred *kultur*, supplanting by virtue of its inherent superiority all ruling principles even in foreign countries, like our own, whose government was based on these rights differently viewed. Thus, when he entered Charleston harbor on April 9, 1793, his ship displayed flags inscribed with such mottoes as "Enemies of equality, change or tremble," and "We are armed to support the rights of man," and no sooner had he set foot on American soil than he began to perform acts forbidden by international law to a diplomat accredited to a sovereign government, justifying himself by saying that his real credentials were to the American people, whom he assumed to be at one with the French people in the cause of democracy *vs.* aristocracy. He commissioned American privateers to prey on British ships, and organized American volunteers into military expeditions against the Spanish possessions in Florida and Louisiana. Indeed, so contemptuous was he of his accredited mission to the Government at Philadelphia, that he remained for some weeks at Charleston engaged in this unlawful work.

Even when he departed for the national capital he delayed his journey to receive ovations from the com-

munities along the way, and to address the people thus assembled upon the world-emancipating mission of the European and American republics. When he arrived at the national capital he was welcomed by a gathering of citizens enthusiastic for the cause of France, and a banquet was tendered him at which the guests wore the red liberty cap of the French revolutionists, greeted each other by the levelling title of "citizen," and sang with wild abandon the "Marseillaise."

On May 18, Genet presented his credentials to President Washington, and was received as the representative of the French Republic. He assured the President that "on account of the remote situation of the United States, and other circumstances, France did not expect that they should become a *party* in the war but wished to see them preserve their prosperity and happiness in peace." At the same time he handed Washington a declaration of the French National Convention to this effect, which presented the inaction of the United States in the war as a necessary but "unfortunate" deprivation of the Western Republic of the high privilege of taking that part "in this glorious regeneration of Europe" which our "principles and past conduct" implied we were willing to assume.

Notwithstanding these open declarations (which had been published by the Convention to mislead France's enemies, and reprinted in America for a similar effect upon her friends), Genet possessed *secret instructions* from the executive council of the French government which, when later he was charged with exceeding his orders, he published in vindication of his conduct.

In case the American government, influenced by "false representations" of the weakness of the French republic,

should adopt "a timid and wavering conduct" in the negotiations which Genet was instructed to open, the executive council charged him, *in expectation that the American government would finally determine to make a common cause with France*, to take such steps as were required "to serve the cause of liberty and the freedom of the people."

On May 23 Genet wrote to Thomas Jefferson, Secretary of State, a letter proposing the "family compact" which he had been instructed to offer—commercial and political union of the two nations whose interests were so commingled. Accordingly he asked that the old alliance be enlarged and more fully defined especially in the matter of American protection of the French West Indies—which the former treaty required only in case of a defensive war by France. That is, the United States should pull French chestnuts out of the conflagration into which the European republic had thrown the world, and, while we were licking our burnt paws, the new mistress of the seas, secure on her western seat in the Caribbean, would assimilate at her leisure the rich spoils of the vast empire watered by the Mississippi.

President Washington discreetly informed the impetuous French minister that the Senate, which would not be in session until fall, would have to be consulted on the subject of the treaty. Genet then tried to expedite another of his missions, which was to secure funds for his government. He asked that the Revolutionary debt to France be paid in full and immediately, promising, as an inducement, to use the money in the purchase of American products. Alexander Hamilton, Secretary of the Treasury, told him that the payments on the loan would be made promptly when they fell due, but not before, as the issuance of government bonds to

clear off the debt would too greatly impair the public credit.

There was some murmuring at this among the pro-French party, against whose opposition Hamilton had established the credit by arranging for the payment in full and in due time of all the creditors of the United States, including the speculators who had bought up for a song the Continental currency.

Thomas Jefferson, though friendly to France, now felt impelled by the duty of his position to call Genet's attention to the acts of that minister in Charleston in violating the comity of nations in general and the hospitality of the United States in particular by commissioning privateers and endeavoring to raise troops against Spain. The French minister frankly admitted the charges against him, and in addition confessed that vessels armed and commissioned by him had taken prizes and brought them into American ports, but he justified his actions on the ground that the vessels belonged to French commercial houses, and were commanded and manned by French citizens, or by Americans "who, at the moment they entered the service of France, in order to defend their brothers and their friends, knew only the treaties and the laws of the United States, *no article of which imposes on them the painful injustice of abandoning us* in the midst of the dangers which surround us." In this he saw no encroachment "on the sovereignty of the American nation, its laws, and its principles of government," since those on board the vessels had "renounced the immediate protection of their country on taking part with us."

This astounding doctrine was sharply opposed by Jefferson.

He said that it was the right of every nation "to prohibit acts of sovereignty from being exercised by any other within its limits, and the duty of a neutral nation to prohibit such as would injure one of the warring powers; that the granting military commissions within the United States by any other authority than their own was an infringement on their sovereignty, and particularly so when granted to their own citizens to lead them to commit acts contrary to the duties they owed their own country."

Genet refused to accept this self-evident view by declaring that it operated against the doctrine of natural right, the ties which united America and France, and even the principle of neutrality. On the last point he said:

"If our merchant vessels are not allowed to arm themselves, when the French are alone resisting the league of all the tyrants against the liberty of the people, they will be exposed to inevitable ruin in going out of the United States, *which is certainly not the intention of the people of America.* . . . A true neutrality does not consist in a cowardly abandonment of friends in the moment when danger menaces them, but adhering strictly, *if they can do no better*, to the obligations they have contracted with them."

Jefferson patiently replied at length to these remarkable contentions, which he summed up in the *reductio ad absurdum* that "all the citizens may be at war, and yet the nation at peace." Dismissing this plain reasoning of the tolerant Secretary of State as "diplomatic subtleties," and discountenancing the apt citations by Jefferson of authorities in international law as the "aphorisms of Vattel," etc., Genet talked wildly of the right of free Americans to offer their services to France, and of France to accept the offer, all international law to the contrary.

"The true crime would be to enchain the courage of these good citizens, of these sincere friends of the best of causes."

Of course the American courts took charge of the prizes brought in by the privateers commissioned by Genet. At this he complained to the heavens, saying that French consuls alone should have jurisdiction over them. Indeed, these consuls attempted wherever possible to determine the validity of the prizes, and actually resisted the Federal courts. Thus by order of the French consul at Boston a French frigate in the harbor took one such prize forcibly from the custody of the United States marshal. President Washington at once revoked the *exequatur* of the consul, and restored the prize to its proper custodian. Genet himself forbade an officer to serve a process on a prize brought into New York, and gave orders to a French squadron in the harbor to protect the vessel against any one who should attempt to take her into custody.

The minister, however, was quick to plead international law when it would serve the French cause. Thus in most insulting fashion he complained to Secretary Jefferson that French property was taken from American vessels on the high seas by the British, contrary to the law of nations "that free ships make free goods," and that this was pusillanimously permitted by the American government.

"In vain does the desire of preserving peace tend to sacrifice the interests of France to that of the moment; in vain does the thirst of riches preponderate over honor; all this condescension ends in nothing; our enemies laugh at it; and the French, too confident, are punished for having believed that the [American] nation had a flag, that they had some respect for their laws, some conviction of their

strength, and entertained some sentiment of dignity. But, if our fellow citizens have been deceived, if you are not in a condition to maintain the sovereignty of your people, speak; we have guaranteed it when slaves, we shall be able to render it formidable, having become freemen."

The Secretary calmly replied to this outrageous letter, confining his remarks to the point of international law raised in it.

It is true, he said, that the advanced doctrine of free ships making free goods (adopted in the "armed neutrality" formed by neutral nations at the instigation of Catherine II. of Russia, at the time when the American Revolution had led to war against Great Britain by France, Spain, and Holland) had been incorporated into all treaties made with foreign nations by the United States, but with Great Britain, Portugal, and Austria we had formed no treaties, and so "had nothing to oppose to their acting according to the law of nations, that enemy's goods were lawful prize, though found in the bottom of a friend."

At last Genet performed an act which exhausted the patience of the American government. Contrary to the remonstrances of President Washington and Governor Thomas Mifflin of Pennsylvania, the French minister ordered the arming of a prize called the *Little Democrat* taken from the British, and, abusing the trust of Secretary Jefferson, who had assured the President that Genet would not disobey his injunction, he connived at the vessel shipping away down the Delaware to the high seas to devastate the shipping of the foes of France.

Genet, when taken to task for his action by Governor Mifflin, impudently said that he would appeal from the decision of President Washington to the American

people. In this attitude he was encouraged by the pro-French press, particularly the *National Gazette* of Philadelphia, edited by Philip Freneau, a protégé of Jefferson who had given him a clerkship in the State Department in order to enable him to exist while conducting the anti-Hamilton organ. Freneau wrote at this juncture:

"The minister of France, I hope, will act with firmness and spirit. The people are his friends, or the friends of France, and he will have nothing to apprehend; for as yet the people are sovereign of the United States."

Freneau also ascribed the "pusillanimous" course of the Administration to British influence. Another pro-French paper in Philadelphia, the *General Advertiser*, even charged the Administration with preparing "to join the league of kings against France." The so-called "democratic societies," formed in various parts of the country in imitation of the Jacobin clubs of Paris, also encouraged Genet to oppose the Administration.

On August 16, 1793, Gouverneur Morris, our minister to France, was instructed by Washington to communicate to the President of France the desire of the United States government that Genet be replaced by a more conservative minister, and to report the conduct of Genet which formed the reason for the request. At the close of the enumeration of all the attempts of this minister to act as co-sovereign of the United States, Washington said that the French government "would see that the case was pressing; that it was impossible for two sovereign and independent authorities to be going on, in one territory, at the same time without collision." He also intimated that in self-protection

he might be obliged to dismiss the unmanageable envoy before the arrival of his successor.

"If our citizens," he said, "had not already been shedding each other's blood, it was not owing to the moderation of Mr. Genet, but to the forbearance of the Government," and in this connection he cited orders of the minister to the crew of the *Little Democrat*, some of them Americans, forcibly to resist arrest.

A copy of this letter was sent to Genet, who, being occupied with organizing an expedition from the Carolinas against Florida, and one from Kentucky against New Orleans, deferred his reply, and it did not reach the President until December.

After accusing the President of assuming the exercise of powers not belonging to him and of tampering with treaties, he demanded "as an act of justice, which the American people, which the French people, which all free people are interested to reclaim, that there be made a particular inquiry in the next session of Congress of the motives on which the head of the executive power of the United States has taken on himself to demand the recall of a public minister whom the sovereign people of the United States had received fraternally, *and recognized before the diplomatic forms had been fulfilled, with respect to him, at Philadelphia.*"

The remainder of the letter was filled with petty demagogic accusations against Washington, such as that he decorated his parlor with "medallions of Capet and his family."

The contents of this abusive letter became known, and, when, soon after, Genet was replaced by M. Adet, a reaction set in against him even among the extreme French partisans; indeed, these were exceedingly glad

to get rid of one who had strengthened the Administration immeasurably by his outrageous charges against it and his vilification in general of the United States as a dollar-worshipping, treaty-breaking country.

Genet remained in the United States and became a citizen of the country. He married a daughter of Governor George Clinton of New York.

Federalist *vs.* Republican. The attitude toward France, while it had thus been reduced from the position of an essential issue between the Administration and the Opposition, remained as a minor discrimination, and contributed to the change in the name of their party by the Anti-Federalists to "Republican," the favorite designation of themselves by the French revolutionists. The Republican leaders were Jefferson, the Secretary of State, and Madison, the head of the Opposition in the House of Representatives. Hamilton was the acknowledged leader of the Federalists.

If American history were written in terms of dominant instead of official personality, the second term of Washington would be called the "Administration of Alexander Hamilton," and, if partnership in party leadership were ever recognized, the names of Jefferson and Madison would be hyphenated as a single personal influence, for these statesmen were at one in both opinion and program. Madison, by virtue of his freer position, was the mouthpiece of the association, and yet, because of his modesty and loyalty, he never assumed the superior position, in the minds of the people, which the occasion afforded. To this day the principles of Jefferson-Madison are known as "Jeffersonian," although from the beginning, as we have seen in the case of the Virginia Statute of Religious Liberty (page 140) Madison, as the man of action in a cause to which

he had devoted equal original thought, certainly had the greater claim to preëminence in the partnership.

Jay's Treaty. The differences between the French and American governments were intensified by the commercial treaty negotiated by John Jay in 1794 with Great Britain, the foe of France, and ratified by the President and the Senate on August 14, 1795.

In the spring of the following year the House of Representatives, which was largely controlled by the Republican spirit, as the Senate was dominated by Federalism, claimed the right to nullify the Treaty by refusing to appropriate the funds necessary to make it operative, on the ground that Congress, as the legislative body, had, save for the Presidential veto, the exclusive and unlimited power of the purse. The Administration won its contention that the Representatives had no voice in the matter of treaties, the House finally agreeing to the Treaty on April 29, 1796, when the Speaker, Frederick A. C. Muhlenberg [Pa.], with much hesitation, cast the deciding vote for making the required appropriation.[1]

In the House debates on the Treaty the Federalist leaders were Fisher Ames [Mass.] and William Vans Murray [Md.], and the Republican leaders were James Madison [Va.], Albert Gallatin [Pa.], Edward Livingston [N. Y.], and William Branch Giles [Va.].

Sketch of Murray. Murray was an eminent lawyer who had received classical and legal training in England. He was elected to Congress as a Federalist, and served from 1791 to 1797, when he was appointed minister to the Netherlands, and thereby was removed from participation in the culminating struggle of 1798–1800

[1] For a digest of the debates on this Treaty see *Great Debates in American History*, vol. ii., chap. ii.

between the Federalist and Republican parties. While in Congress he shone in debate as a man of learning, eloquence, and parliamentary *finesse*.

When the controversy with France reached a crucial point in 1799, Murray was appointed one of the envoys to that country and was mainly instrumental in negotiating the treaty which averted the threatened war. He then returned to his post at The Hague. He returned to America in 1801, and died in 1803.

He was the author of an able legal exposition of *The Constitution and Laws of the United States*.

Sketch of Gallatin. The two great foreign-born American statesmen, Hamilton and Gallatin, are strikingly representative of opposing theories in our politics, and, at the same time, are exemplars of supreme executive genius.

Hamilton, as we have seen, admired the semi-aristocratic government of Great Britain, where, as Tennyson says,

> "Freedom broadens slowly down
> From precedent to precedent,"

and, with the same poet, he reprobated

> "the schoolboy heat,
> The blind hysterics of the Celt."

Gallatin, a native of French Switzerland, and hence of the blood to which the English Laureate imputed this emotional impulse and intellectual instability, was a democrat to whom the term "ardent" applies as connoting the deep glow of conviction rather than the transitory flame of infatuation.

Like another great Celt, the Marquis de La Fayette,

Gallatin was attracted in youth to America in order that, to use the phrase of the Switzer, he might "drink in a love of independence in the freest country of the universe." Arriving in Boston in 1780 in the midst of the Revolution, he wandered to Maine where he engaged in petty trade. A threatened invasion of the British gave him a welcome opportunity to serve his new country as a volunteer soldier. His enterprise failed, and he returned to Boston, where he supported himself by giving French lessons in private classes and at Harvard. Receiving financial assistance from home, he went to Philadelphia, and there made a fortunate investment in lands in western Virginia which encouraged him to settle himself in that region as a storekeeper and land agent. Taking up his residence in Pennsylvania near the Virginia line, he interested himself in politics, and soon became the most influential man in the western part of the State, as a result of which he was sent to the United States Senate in 1793. However, after a short service, in which he won recognition as a Republican leader, he was excluded from his seat by a strict party vote of the dominant Federalists on the ground of a technical disqualification in the matter of length of his American citizenship. In 1794, though he had encouraged resistance to the excise on spirits, he made amends by using his great influence among the people of the region to desist from physical opposition to the United States government. His political enemies thereafter made much of his contributory part in "Whiskey Insurrection," while ignoring the patriotic service he had performed in dissolving it.

He entered Congress in 1795, and continued a member of that body until appointed by President Jefferson in 1801 as Secretary of the Treasury, a position for which

he had shown himself eminently fitted by his Congressional work in reforming the loose budgetary system of the government. It was at his instigation that the Committee on Ways and Means was instituted. Gallatin's Congressional career of three terms is concisely summed up by *Appleton's Cyclopaedia of American Biography:*

"In the first term he asserted his power, and took his place in the councils of his party. In the second he became its acknowledged chief. In the third he led its forces to final victory."

During this period he published two pamphlets on the finances of the United States.

In the first ten years of his service in the Treasury, Gallatin, by various economies, reduced the public debt almost one half, and that without resorting to new taxes or increasing the rates of the old. In view of the growth of the country in population, and the decrease of its commerce due to the embargoes against Great Britain and France, this is an even greater achievement than Hamilton's establishment of public credit at the beginning of our national government, since it was performed in undeniable obedience to the Constitution, while, as Gallatin claimed, Hamilton had in some respects exceeded his powers under that instrument. Jefferson as President also showed that the most literal construction of the Constitution afforded a statesman of executive ability opportunity to govern with the highest efficiency. He sought legislative authority for every executive act, even the Louisiana Purchase, which he acknowledged would be unconstitutional unless "cured" by Congress. That Congress refused to obey his earnest request for instituting

a Constitutional amendment to this end, on the ground that, with the exception of a few malcontent Federalists in New England, the whole country was in favor of the Purchase, surely affords no basis for the indictment of Jefferson that he violated his own theory of government.

Gallatin remained Secretary of the Treasury when Madison became President, resigning his position in 1813 in order to go with James A. Bayard to St. Petersburg to treat for peace with Great Britain under the mediation of Czar Alexander I. This mission failing, he was continued as commissioner, and subsequently was chiefly instrumental in securing, on Christmas day, 1814, the Treaty of Ghent, which ended the war. Appointed minister to France, he aided John Quincy Adams, the minister to Great Britain, in preparing a commercial treaty with that country in 1816; and was associated with William Eustis, minister to the Netherlands, in negotiating a treaty with that confederation in 1817.

He came home in 1823, and, after refusing the appointment of Secretary of the Navy, and declining to be Democratic candidate for Vice-President, accepted, in 1826, appointment as envoy-extraordinary to Great Britain, with which country he negotiated a commercial treaty that obtained compensation for American citizens for injuries sustained by infractions of the Treaty of Ghent.

Returning to America he settled in New York and engaged in banking. He wrote numerous books and pamphlets on scientific, financial, and political subjects, a book of the last character being in opposition to the Mexican War, which he regarded as "the only blot upon the escutcheon of the United States." This work greatly contributed to effecting peace with our

aggrieved neighbor republic. He prepared arguments on the disputes with Great Britain over the Maine and Oregon boundaries. He was interested in education and science, being one of the founders of New York University, and the first president of the American Ethnological Society.

John Austin Stevens says, in *Albert Gallatin*, of *The American Statesman Series:*

"To a higher degree than any American, native or foreign-born, unless Franklin, with whose broad nature he had many traits in common, Albert Gallatin deserves the proud title . . . of Citizen of the World."

Sketch of Livingston. Edward Livingston was the youngest son of Robert R. Livingston, Sr. Educated at Princeton, he studied law under John Lansing, Sr., father of the delegate who with Judge Yates left the Constitutional Convention in protest against its position on State rights. Admitted to the bar in 1785, he began practice in New York City, where he rose almost at once to the highest rank in the profession. He served in Congress from 1795 to 1801, sharing the leadership of the Opposition with Madison and Gallatin. In 1801, he was appointed United States Attorney for the district of New York, and, a few months later, was elected Mayor of New York.

Bankrupted by a subordinate's misappropriation of United States funds in his hands, Livingston resigned both his offices, and turned over all his property to apply on the debt. His brother Robert having negotiated the Louisiana Purchase, Edward removed, in 1804, to New Orleans to retrieve his fortunes by the practice of law. In this he was quickly successful. He codified the legal procedure of Louisiana in which there

was great confusion owing to the change of government. In prosecution of certain land claims he incurred the unjust accusation of being connected with Burr's conspiracy, and attracted the hostility of President Jefferson. Late in life, however, Jefferson and he become reconciled.

Livingston was on close terms of friendship with General Andrew Jackson, to whom he acted as an aide in the Second War with Great Britain. Reëntering Congress in 1822, and serving until 1829, he applied himself to the business of his office, laboring particularly to reform criminal legislation (as he had done in his State), to ameliorate the condition of seamen, and to promote the navy. In 1829 he was elected to the Senate. Having taken an active part in the long and carefully prepared campaign to place Jackson in the Presidential chair, he was appointed Secretary of State by that staunch supporter of friends and helpers on the resignation of Martin Van Buren in 1831 to become candidate for Vice-President. Livingston is credited with preparing Jackson's stern proclamation against nullification—a significant corroboration of Madison's claim that Calhoun had wrongfully applied the principles of the "Republican doctrine of 1798" as understood by the leading statesmen of that period.

As minister to France from 1833 to 1835, Livingston showed his diplomatic skill by settling the American spoliation claims arising out of Napoleon's decrees against neutral commerce which had been a long standing grievance between France and the United States.

As a legislator his power was chiefly due to his comprehensive and profound knowledge of law, which included acquaintance with the codes of all the civilized world. He wrote much on legal subjects, chiefly

treatises on criminal jurisprudence in which he advocated abolition of capital punishment.

As an orator his effectiveness was greatly due to literary style of expression. Henry Clay once asked Mrs. Livingston (a witty French woman whom Livingston had married in New Orleans as his second wife), why it was that her husband's speeches read so much better than his, which had been more effective in delivery. She dryly suggested that it was, perhaps, because they were so much better composed. It must not be thought, however, that Livingston's delivery was deficient. The charm of personality which was his most distinctive trait extended beyond his personal friends to his audiences. It was even felt by those whose contact with him was only through knowledge of his noble character and kindly deeds. Thus, when he was stricken down in an epidemic of yellow fever which swept through New York during his Mayoralty of that city, throngs of people filled the street before his house to catch word of his condition, and, on its becoming known that he was convalescent, and that he had exhausted his cellar in providing wine for victims in the same stage of the disease, the rejoicing citizens vied with each other in sending him cases of the rarest vintages.

Sketch of Giles. Though afforded an opportunity to acquire the best academic and legal education offered in America, having completed at Princeton the college course which he began at Hampden-Sidney, Va., and having studied law under Chancellor Wythe, William Branch Giles possessed a ruder, more intemperate nature than the other Republican leaders, and in this respect was a more typical representative of the body of his party. In a long service in Congress (from 1791

to 1803) he acquired the reputation of being the most forcible, while not the most intellectual, speaker on the floor, and was certainly its most accomplished parliamentary tactician. John Randolph considered him to be in the American House what Charles James Fox was in the British Commons: the most effective debater that his country had ever seen.

"But their acquired advantages were very different. Fox was a ripe scholar; Giles neither read nor studied. Fox perfected himself in the House, speaking on every subject; Giles out of the House, talking to everybody."

The bold character and partisan spirit of Giles were early displayed in an attack which he made in January, 1793, on Hamilton, charging that official with corruption in the conduct of the Treasury. Hamilton fully vindicated himself in a report to the House of Representatives, whereupon his accuser, who never acknowledged defeat, brazenly proposed resolutions censuring the Secretary for want of respect to the House!

Giles coöperated with Madison in procuring the passage in their State legislature of the Virginia Resolutions of 1798. From 1804 to 1811 he represented his State in the Senate. At the close of his term, having disagreed with President Madison, he was retired to private life. In 1826 he was elected Governor of Virginia. He took a distinguished part in the State constitutional convention of 1829–30. He was a polemic epistolary writer, publishing in 1824 an invective letter against President Monroe and Speaker Clay for riding such "hobbies" as the Monroe Doctrine, the Greek cause, internal improvements, and the tariff.

The Breach with France. Conjoined with the controversy over Jay's Treaty with Great Britain was that

over the strained relations with France, growing out of the Treaty. This continued intermittently from 1796 until a treaty settled the difficulties on December 21, 1801.

The Federalists, under the leadership of President John Adams, advocated presenting a stern front to France, even at the risk of war. The Republicans were the pacifists of the day.[1] Federalist representatives who came into prominence in the debates on the "Breach with France" were Harrison Gray Otis [Mass.], Robert G. Harper [S. C.], James A. Bayard, Sr. [Del.], and Thomas Pinckney [S. C.]. Gallatin, Livingston, and Giles retained their preëminence among the Republicans.

Sketch of Otis. Otis was a nephew of James Otis, and had much of the gifts of eloquence and winning personality which distinguished that early advocate of American rights. Two years after his graduation from Harvard he delivered the Independence Day oration at Boston, and quickly rose in repute in his chosen profession of law. His Federalist proclivities were shown by his service as an officer in suppressing Shays's rebellion. From 1797 to 1801 he was a member of Congress. From 1801 to 1811 he held various high offices in his State. He took a prominent part in the Hartford Convention of 1814, which partially diminished his popularity, but he was nevertheless chosen United States Senator in 1817, serving until 1822, when he resigned to become a candidate for Mayor of Boston, an office then established for the first time. Failing of election this time, he won the coveted place in 1829. In his inaugural address he repudiated the charge that the members of the Hartford Convention, or any of the

[1] For the debates on this subject see *Great Debates in American History*, vol. ii., chap. iii.

Federalists, contemplated secession of their States from the Union. Outside of his speeches in debate, his most notable address was a eulogy of Alexander Hamilton delivered shortly after the death of that statesman in the duel with Aaron Burr.

Sketch of Harper. Robert Goodloe Harper won his place among the statesmen of his generation by indomitable energy inspired by the purest patriotism. The son of poor parents in Maryland, he enlisted at the age of fifteen in the Continental army under General Greene, and, at the close of the Revolution "worked his way" through Princeton. Removing to Charleston, S. C., on his graduation, he studied law, and set up practice in an interior town in the State. After service in the legislature he was elected to Congress in 1795, where he remained until 1801, when he was retired in the general defeat of the Federalist party. He then took up residence in his native State and became eminent at the bar, being one of the counsel of Samuel Chase when that Federal Justice was impeached. He fought as an officer in the Second War with Great Britain. Elected to the Senate in 1816, he resigned in the same year to become a Federalist candidate for Vice-President. He was active in promoting internal improvements and African colonization.

His Congressional career, however, gave him chief claim for eminence. Not alone did he lead in the debates of that period, but he also published a number of widely influential pamphlets on the questions at issue.

Sketch of Bayard. James Asheton Bayard, Sr., was a member of a distinguished Delaware family. Graduated from Princeton in 1784, he studied law, and was admitted to practice at Wilmington in 1787. He entered Congress in 1797, becoming very shortly the

acknowledged leader of the Federalists, as indicated by his choice in that year as manager of the impeachment of Senator William Blount [Tenn.] for instigating the Southern Indians in their war against the Spanish possessions. In 1801 he led with great skill the Federalist forces in the contest of Jefferson and Burr for the Presidency which had been thrown into the House, inducing his fellow Federalists finally to vote in favor of Jefferson. In the same year he ably opposed the repeal of the Judiciary Act, which had been passed by the Federalist Congress in the closing days of John Adams's administration.

In 1804 Bayard was elected to the Senate. He opposed with great ability the Second War with Great Britain. In 1813 he was chosen by President Madison as one of the commissioners to conclude peace. His colleagues were John Quincy Adams, Henry Clay, Jonathan Russell, and Albert Gallatin. After the Treaty of Ghent was concluded, the place of minister to Russia was offered him, but he declined it as affording little chance of service to his country. Taken ill, he hastened home, and died soon after his arrival.

Sketch of Pinckney. Thomas Pinckney was a brother of General Charles Cotesworth Pinckney, and himself an officer (lieutenant) in the Revolution. Like most of the wealthy Carolinians of his generation he received his education in England—in the classics at Westminster and Oxford, and in law at the Temple. In 1772 he began the practice of his profession in his native city of Charleston. In 1789 he was elected governor of the State, and in 1792 was appointed minister to Great Britain. On the expiration of his term in 1794, he was sent to Spain, where he signed the treaty of St. Ildefonso which settled the vexed question

of the navigation of the Mississippi. Returning to America in 1796, he was the Federalist candidate for Vice-President, but was defeated by Thomas Jefferson, who, according to the rule in force at that time, running second to John Adams for President, received the second office. Pinckney served in Congress from 1797 to 1801. He fought as a major-general in the Second War with Great Britain, after which he retired to private life, and devoted himself to developing agriculture and mining in his State.

President Adams's Trap for the Republicans. President Adams, in furtherance of a promise to Congress to reopen negotiations with France, appointed Charles Cotesworth Pinckney, John Marshall, and Elbridge Gerry as envoys to that country. On March 19, 1798, he informed Congress, in general terms, of the failure of the mission, and recommended preparations for war. The fact that specific reasons for such defense were not given encouraged the Opposition in the House of Representatives to present "peace resolutions" to the effect that preparation for war was not expedient. In the debate which ensued it was charged that the President was withholding papers received from the peace commissioners, with the insinuation that there must be something in the dispatches which would show that the President had acted improperly. Thereupon a Federalist, John Allen [Ct.],[1] who would seem to have been inspired by the executive, moved that a request be sent to President Adams for the dispatches, *or such parts thereof as considerations of public safety and interest in his opinion may permit.* The trap was baited with the italicized passage. The Republicans moved to amend the resolution by striking

[1] For sketch see page 270.

the passage out, and sprang the trap by passing the amendment.

The President at once transmitted to the House all the papers in question. They showed that Talleyrand, the French foreign minister, had treated our envoys with grossest insult, refusing to negotiate with them until they had promised bribes in the guise of "loans" to the governments of France and Holland. Talleyrand's agents made the proposal under the signatures "X, Y, and Z," and so the affair became known as the "X Y Z mission."

The envoys spurned the offer, saying, "we will not give you sixpence"—a reply which was soon glorified by the proud Americans at home into the grandiloquent epigram: "Millions for defense, but not one cent for tribute!"

This revelation of infamy in the country which the Republicans had been defending reacted disastrously on that party. Those members who were more patriotic than partisan joined with the Federalists in putting the country into a state of defense. Commercial intercourse with France was severed, and our French treaties were annulled. A war tax was laid, and war loans were authorized. On April 30, 1798, the Navy, which had been a part of the War Department, was separated therefrom, and organized under a Secretary of its own, Benjamin Stoddert, who quickly put it on a war footing. The Army was increased, and placed under the control of ex-President Washington as Lieutenant-General. He appointed Hamilton, General Pinckney (who had returned with Marshall from France, Gerry, the Republican politician, who had kept on friendly terms with the French government having remained to take advantage of a favorable turn in

affairs), and General Henry Knox in respective order next in command.

Adams *vs.* Hamilton. Owing to Washington's age, Hamilton was certain to get the chief military glory of the war. Accordingly President Adams, who had long resented the preëminence of that statesman in the Federalist party and was now for the first time in his administration enjoying unalloyed popularity, the people resounding his praises in songs such as "Adams and Liberty," suddenly determined on peace. In so doing he hastened the downfall of his party, which seemed assured of continued rule for another term at least, if not indefinitely.

He was led to attempt to secure a new treaty with France by an intimation from Talleyrand, who had become alarmed at the storm he had raised, that William Vans Murray, minister to Holland, would be acceptable to him as minister to France. Accordingly the President appointed Murray to this place, and associated with him in the negotiations for peace, Oliver Ellsworth and Governor William R. Davie of North Carolina. The Hamilton faction in the Senate endeavored to defeat the appointments, but in vain, since Adams formed a coalition of his own faction and the Republicans (whose prejudices he played upon by stigmatizing the Federalist Opposition as the "British faction") which succeeded in confirming the nominations.

The envoys found a new Government awaiting them in France. Napoleon returning from Egypt had been made First Consul, and, with visions of Oriental conquest in his ambitious mind, was glad to come to terms with the Western republic. He signed a commercial convention with the envoys on September 30, 1800,

which became a treaty on its ratification by both governments on December 21, 1801.

The Alien Laws. Their necessary part in securing the object for which it had seemed at first hopeless to contend, peace with France, encouraged the Republicans greatly, and, when the Federalists, intoxicated with power, on the plea of defending the country in the critical time, attempted stringently to restrict naturalization, and thereby cut off Republican recruits (for the emigrants fleeing from Europe in those revolutionary days naturally allied themselves with the democratic party), they made a bold stand against the aristocratic measure.

On May 1, 1798, Samuel Sewall [Mass.], chairman of the Committee of Defense of the Country, reported resolutions in the House to increase the term of residence required for naturalization; to register aliens; and to deport, at the pleasure of the President, natives of countries at war with the United States.[1]

Sketch of Sewall. Sewall was a member of one of the original Puritan families in New England, his great-grandfather having been the famous judge of the same name who tried the Salem witchcraft cases. He was a graduate of Harvard and an eminent lawyer. He served in Congress from 1797 to 1800, when he resigned to accept appointment on the Massachusetts Supreme Court. He became chief judge in 1813, and died in the following year.

Sewall was a type of the best sort of New England Federalist, a man who believed that government should be in the hands of persons of education and property, inclined by birth, breeding, and interest to uphold

[1] For an extended report of the debates on the Alien Bill see *Great Debates in American History*, vol. vii., chap. ii.

prevailing political and social institutions, yet who would not carry the principles of aristocracy and nativism to the extreme of making legal limitations to this effect. For this reason he drew his naturalization resolution not to exclude the foreign-born from citizenship, but to enhance it a privilege in their eyes, to be won by a longer acquaintance with American ideals and institutions, and he made his deportation resolution apply to no alien but one whose allegiance to his government would be dangerous to the country of his residence because of war existing between that government and country. In short, he drafted his resolutions somewhat as a patrician, but more as a patriot, and in no wise as a chauvinist or politician.

Sketches of Rutledge and Allen. The debate, however, was begun by Federalists of the extreme type: John Rutledge, Jr. [S. C.], son of the great orator of the Continental Congress, and John Allen [Ct.], unknown save for his irrepressible speeches in this his only term in Congress.

Rutledge's eloquence was of the flaming sort which, in a later day, would have classed him with the Southern "fire-eaters." Indeed, on the subject of slavery he had already set a model for the Rhetts and Yanceys of the decade preceding the Civil War. On the Alien resolutions, however, he tempered his heat with some cold, justifying facts, such as the enlistment which was then being made in Kentucky of an expedition against New Orleans.

Allen, a man of ungovernable temper, revealed himself as a politician of the lowest order. He pointed to the vast number of naturalizations which had lately taken place in the city (Philadelphia) where Congress was now in session, and which had been engineered by

managers of the local Republican machine to secure control of the city. Referring evidently to Irish and Scotch journalists, who had been expelled because of their pro-French activities from Great Britain, and, fleeing to America, had here established radical republican newspapers which glorified the French revolutionists even in their excesses, and denounced everything British even in inherited form in the American government, with particular vilification of Hamilton and President Adams as exponents of the hated system, Allen said that the bill was too mild in confining deportation to natives of countries at war with the United States: that citizens of other countries than the one which threatened war (France) were even more hostile to our interests. He therefore moved that the resolutions extend to *all aliens* in the country.

Mr. Sewall opposed the amendment.

Civil policy regarded aliens in two lights: alien friends and alien enemies. His deportation resolution applied only to the latter class. He did not contemplate erecting a wall against all foreigners, or subjecting them, when here, to arbitrary authority such as is known only to the French Directory. If the placing of every alien in a dungeon was necessary to quiet the fears of the gentleman from Connecticut he would not be willing to grant it. This was not a country of Turks or Arabs.

Mr. Gallatin, in this connection, cited Article I., section 9 of the Constitution as restraining Congress from prohibiting, before 1808, the migration of such persons as any of the States thought proper to admit. Besides this, non-prohibition of friendly aliens was a principle existing before the Constitution, being coeval with the law of nations.

The resolutions were recommitted. Mr. Sewall reported on May 21: (1) that the term of residence for

citizenship be extended from five to fourteen years; (2) that no alien coming from a country at war with us shall be admitted to citizenship while the war continues. These resolutions were adopted, the first by a vote of 41 to 40, the second without division. When the Republicans came into power they repealed this bill (on April 14, 1802), and restored the former conditions of naturalization.

On May 22, 1798, the original resolution concerning deportation at the pleasure of the President, of aliens born in a country at war, or threatening war with the United States, was reported, with an added section committing persons suspected of harboring such aliens to State or Federal officers for examination and punishment, according to the rules of the President, "subject, nevertheless, to the regulations which Congress shall thereafter provide."

MR. GALLATIN opposed the section as instituting a new crime, that of being suspected, the punishment for which was arrest and imprisonment until it should be determined what the crime was. This was contrary not only to justice and reason, but to the Constitution which declared that "no person shall be deprived of life, liberty, or property without due process of law."

MR. BAYARD moved to amend the third section by defining the offense as a misdemeanor, punishable by imprisonment not exceeding seven years, and a fine not exceeding one thousand dollars.

The amendment was carried. After several vain attempts by Republican Representatives the bill was recommitted by a vote of 46 to 44. The objections having been removed, on June 26 it was again reported and passed without division, another more drastic

bill, sent down from the Senate, having been passed on the 21st.

The Senate bill empowered the President to order such aliens as he deemed dangerous to depart from the country, and, upon their failure so to do, to imprison them for three years and debar them thereafter from becoming citizens. If a deported alien should return he was to be imprisoned for life, with hard labor.

The arguments on the preceding bill were repeated. The debate, however, lifted from the particular issue as to the President's power over aliens to the general one as to all his powers and the powers of Congress under the Constitution. For the first time in American politics the line was clearly drawn between the *strict* and the *loose* construction of the Constitution, the Republicans adhering to the letter of the Federal charter, and the Federalists claiming implied powers in addition to those specifically granted.

The leading supporters of the bill were Messrs. Sewall, Bayard, Otis, and Harper. The leading opponents were Messrs. Gallatin and Livingston.

MR. SEWALL declared that the power over aliens was included in that for the *regulation of commerce.* Mr. Bayard found it in the power to provide for the *common defense and welfare.* Mr. Otis found it in the power of *self-preservation,* necessary to every government.

MR. GALLATIN denied Mr. Sewall's contention. The bill did not relate to commerce, but to *politics.* Aliens were not regarded as merchants, but as potential citizens—as men.

As to Mr. Bayard's contention, Gallatin said that the "general welfare" clause could not be construed independently of its context; it was an intrinsic part of the grant to tax, which immediately preceded it.

Mr. Otis's contention, he continued, would overturn the express prohibitions in the Constitution, such as that relative to suspension of *habeas corpus* in time of peace. It would justify the Federal government superseding the State governments.

If this bill were passed against aliens, a similar one might be brought against citizens. According to the doctrine of the advocates of this bill, the fifth amendment to the Constitution, prohibiting the depriving of any person (including alien and citizen) of life, liberty, or property without due process of law, is of none effect, for it gives to the President the power of arbitrary imprisonment.

MR. HARPER said that if the arguments of Mr. Gallatin were valid, then the Federal government was powerless to defend itself against destruction. There is no danger that the rights of citizens would be invaded under the bill. To argue the abuse of power from its existence would prevent the giving any power whatsoever.

The zeal shown against the bill evinces the deadly hatred of certain persons against its purpose, which is a patriotic one. Those European nations which have escaped the tyranny of the domineering spirit of France owe their safety to a bill like this; and, unless we follow their example and crush the viper in our breast, we shall not escape destruction.

MR. LIVINGSTON declared that there was no evidence that there was a viper at our breast. We must legislate upon facts, not surmises.

But he opposed the bill on higher grounds. The principles of our government constitute a difference between a free republic and a despotism. The division of government into its three branches is clearly defined in order to protect the liberties of the people. Every act which confuses these is destructive of our Constitution and free government. This bill introduces such confusion. The President makes the law; the President construes and applies it; and the same President executes the sentence at his pleasure.

The crime consists in "exciting the suspicions of the

President," but no man can tell what conduct will avoid that suspicion—a careless word, perhaps misinterpreted, may be sufficient evidence; an idle gesture may insure punishment; surrounded by spies, informers, and all that infamous herd which fatten under laws like this, the unfortunate stranger will never know either of the law, of the accusation, or of the judgment until the moment it is put in execution.

Mr. Livingston then recited the Constitutional provisions with which he claimed that the bill was in conflict:

1. The "migration" clause (Art. I., sec. 9) cited in the first debate by Gallatin.
2. The third Article, providing that all "judicial power shall be vested in the Supreme and Inferior Courts."
3. The provision in the same Article that "the trial of all crimes shall be by jury," except in the case of impeachment, enforced by the fifth and sixth amendments to the same effect.

Mr. Livingston continued:

So obviously do the constitutional objections present themselves that two wretched subterfuges are resorted to to remove them out of sight. First, that the bill does not contemplate punishment of a *crime* and so the provisions in the Constitution relative to criminal proceedings do not apply. But the bill speaks of "treasonable machinations against the government." And this, we are told, is no crime! a treasonable machination against the government is not the subject of criminal jurisprudence! Good Heaven! to what absurdities does an overzealous attachment to particular measures lead us!

So, too, it is claimed, that the penalty provided is no punishment—only a "prevention." Loss of business, loss of property, perhaps separation from his family, and the return

to a country whose government, irritated by his renunciation of its authority, will receive only to punish him—all this, we are told is no punishment!

Again, we are told that the constitutional compact was made between citizens only, and therefore that its provisions do not extend to aliens. But, unfortunately, neither common law, common justice, nor the practice of any civilized nation will permit this distinction. [Here the young statesman clearly elucidated what had never before been expounded in the halls of Congress, the authority in the United States of the common law, which made no distinction between aliens and citizens.]

Let us look now at the consequences of this illegal and heinous act. Will the people submit to it? Will the States sanction our usurped power? Sir, they ought not to submit; they would deserve the chains which these measures are forging for them, if they did not resist. For let no man imagine that a few unprotected aliens are to be affected by this inquisitorial power. The same arguments which enforce these provisions against aliens apply with equal strength to enacting them against citizens. Thus the first effects of this measure will be disaffection among the States, and, among the people, tumults and a recurrence to first revolutionary principles. Granted, however, that the government shall stand, what a fearful picture is presented! "The country will swarm with informers, spies, delators, and all that odious reptile tribe that breed in the sunshine of despotic power; that suck the blood of the unfortunate, and creep into the bosom of sleeping innocence, only to awake it with a burning wound."

Mr. Livingston then adverted to the loss of wealth, of population, and of commerce which would be occasioned by the act.

"But I ought to entreat the pardon of the House for having touched on this topic, to which, compared with the

breach of our Constitution, and the establishment of arbitrary power, every other topic is trifling.

"Do not let us flatter ourselves, then, that these measures will be unobserved or disregarded. Do not let us be told, sir, that we excite a fervor against foreign aggression only to establish tyranny at home; that, like the arch traitor, we cry '*Hail Columbia!*'[1] at the moment we are betraying her to destruction; that we sing out '*Happy Land!*' when we are plunging it in ruin or disgrace; and that we are absurd enough to call ourselves 'free and enlightened,' while we advocate principles that would have disgraced the age of Gothic barbarity, and establish a code compared to which the ordeal is wise, and trial by battle is merciful and just."

This bill was passed on June 21 by a vote of 46 to 40. No prosecutions took place under the act, which was repeated when the Republicans came into power.

The Sedition Law. In the course of the debate on the Alien Law Mr. Harper intimated that a bill against seditious practices was preparing. This was brought forward in the Senate on June 26, 1798, and passed on July 4 by a vote of 18 to 6. It was introduced the next day in the House.[2] It provided that persons conspiring to oppose any measure of the government, or to intimidate a Federal officer from exercising his trust, should be punished by fine and imprisonment. Any person who, by writing, speaking, or printing, should threaten a Federal officer with damage to his character,

[1] "Hail Columbia" had just been published. The words were written by Joseph Hopkinson, an eminent lawyer of Philadelphia and a prominent Federalist, to the air of "The President's March," composed in 1789 by a German named Feyles. It was intended to arouse patriotic fervor in support of the Administration, and therefore was taken up in the beginning by the Federalists almost as a party song.

[2] For an extended report of the debate see *Great Debates in American History*, vol. vii., chap. iii.

or should incite a riot, was to be fined not exceeding five thousand dollars and imprisoned for not less than six months or more than five years. If he traduced Congress, the President, or the Federal judiciary by imputing motives hostile to the Constitution, he was to be fined not more than two thousand dollars and imprisoned not more than two years. The bill was debated until July 10, when it was passed by a vote of 44 to 41.

The debaters were largely those of the Alien bill, John Nicholas [Va.], however, who had not figured prominently in the former debate, taking a leading part in this one.

Sketch of Nicholas. Nicholas was one of four distinguished sons of Robert Carter Nicholas, already noted as an opponent of Patrick Henry's Stamp Act resolutions. He served in Congress from 1793 to 1801. In 1803 he removed to Geneva, N. Y., and engaged in agriculture. He was the first judge of the court of common pleas in Ontario county from 1806 until his death in 1819.

The constitutional arguments on the Sedition bill were much the same as those on the Alien bill. The First Amendment of the Constitution guaranteeing liberty of speech and the press was particularly urged against the measure.

MR. HARPER, in order to be consistent with his position on the Alien Law, admitted that he held that there was no common-law jurisdiction in the courts of the United States, but he claimed that the common-law doctrine of libels was as applicable to the government of the United States as to any other government.

MR. NICHOLAS pertinently replied: If the common-law was not adopted by the Constitution and formed no part of

it, where is the rule by which to ascertain where the liberty of the press ends and its licentiousness begins?

He admitted that some of our printers had abused this liberty, but he was far from being convinced of either the propriety or necessity of legislative interference in the matter. Falsehoods issued from a press inflict no lasting injury, unless it be on the press from which they proceed. Every publisher who consults his interest and respectability will endeavor to make his newspaper a vehicle of correct information.

Legislators in particular should not fear to be charged falsely by the press, as they are in a position to refute the slander. This was recognized in England, where, even in time of alarm, there was no disposition to protect statesmen against examination in the public prints. He trusted that the representatives in this free country would not consent to pass laws preventing a similar examination. It was better that fifty slanderers should escape punishment than that a single oppression with respect to the liberty of the press should take place.

Mr. Otis held, in opposition to his fellow Federalist, Mr. Harper, that the common law was recognized in the Constitution.

The people of the individual States brought with them as a birthright into the country the common law of England, upon which all of the colonies founded their statute law. All the States afterwards erected from the colonies more or less explicitly recognized the common law in their constitutions, Maryland, for example, declaring it to be the law of the land. Therefore, when the Federal Constitution was formed, the people, without formal declaration, assumed that the common law prevailed in the new government, and implied this by such references in the Constitution as that the powers of the judiciary extended "to all cases in law and equity, arising under the Constitution, the laws of the

United States, etc.," which provision clearly shows that other laws than United States statutes were comprehended. These other laws referred to could only be the body of the common law. Besides, the Constitution uses such terms as "trial," "jury" and "impeachment," an explanation of which is afforded by the common law alone.

Accordingly a crime under the common law did not have to be specifically mentioned in the Constitution to come under the jurisdiction of the Federal government. As an illustration of this he cited the fact that bribery in a judge, and even a contract to give a bribe (which was a restraint upon the liberty of writing and speaking) were punishable, though not mentioned in the Constitution.

The language of the First Amendment, "freedom of speech and of the press," he contended, was a phraseology familiar in the jurisprudence of every State, and of a certain and technical meaning. This meaning was the liberty of writing, publishing, and speaking one's thoughts, *subject to being answerable to the injured party*, whether this be an individual or the government. In England libels against Parliament are offenses against the common law.

The gentleman from Virginia inquires how the line can be drawn between the liberty and the licentiousness of the press? He would answer, by an honest jury.[1]

Mr. Gallatin opposed Mr. Otis's argument.

The gentleman has confounded two distinct ideas: the *principles* of the common law, and the *jurisdiction* over cases arising under it. Had he proved that the Federal courts had jurisdiction over offenses (including libels) at common law, there would be no need to pass the present bill. Plainly the intent of the supporters of the measure

[1] For a brief on "The Common Law Jurisdiction of the Federal Courts," see an extract from Associate-Justice Joseph Story's *Commentaries on the Constitution* reproduced on page 115 of vol. viii. of *Great Debates in American History.*

is to write into the law of the United States the common law of libels, which has been so modified as to be dissimilar in every State. The present bill even adds a tyrannical feature to the law, in that it punishes the mere writing of what is adjudged to be libellous, without adducing proof that the writing has been communicated.

The gentleman speaks of an "honest jury." What security has a citizen charged with libelling the Administration, that the jury will not be packed by the Administration? He maintained with Mr. Nicholas that the proper weapon to combat error was truth, and that the use of coercion to suppress criticism of government measures was a confession that these could not otherwise be defended.

Mr. Livingston, in opposing the bill, quoted from John Adams's *Defence of the American Constitution* in which the present President, in whose interest the bill was framed, had shown that one of the insidious steps in the downfall of free government is restriction of free speech and opinion.

Mr. Harper in retaliation quoted from Dr. Franklin's essay *The Court of the Press* a passage recommending restoration of "the liberty of the cudgel"—that is, the right of an individual to inflict bodily punishment on his libeller.

"Now," says Dr. Franklin, "the right of making such returns is denied, and they are punished as breaches of the peace, while the right of abusing seems to remain in full force; the laws made against it being rendered ineffectual by the *liberty of the press*.

"I would humbly recommend our legislators to take up the consideration of both liberties, that of the press and that of the cudgel, and, by an explicit law, mark their limits, and at the same time secure the person of a citizen from assaults, and provide for the security of his reputation."

The bill was passed on July 10 by a vote of 44 to 41. It was repealed when the Republicans came into power.

The only prosecutions under the Sedition Law were of certain Republicans for circulating petitions against it or for such ridiculous offenses as the *lèse-majesté* of wishing, on the occasion of a military salute to President Adams, that the wadding of the cannon might strike him where it would render his seat in the executive chair an uncomfortable one. No one was convicted under the law. Federalists of the Hamilton faction contemptuously disregarded the law, Hamilton himself publishing, without incurring prosecution, an attack on the President charging him with "disgusting egotism, distempered jealousy, ungovernable indiscretion, and arrogant pretence to superior and exclusive merit."

The Kentucky and Virginia Resolutions.[1] To Jefferson and Madison it seemed that the Federal government was preparing to seize supreme control over the States such as Parliament exercised over Great Britain. Indeed, the Alien and Sedition Laws were modeled on those which had been enacted by Parliament in 1792–93. Even a convention of the States, called in accordance with the provisions of the Constitution to change that instrument by enabling a three-fourths vote of the States to nullify any act of the Federal government, might be prohibited as seditious. Accordingly the Republican leaders determined to sound the States on the question of whether such a convention would be acceptable or not. Kentucky, as almost unanimously Republican, was chosen as the State in which to begin the movement.

[1] For an extended account of the controversy over these Resolutions see *Great Debates in American History*, vol. vii., chap. iv.

It is a subject of historical controversy as to whether Jefferson, who in later years claimed their authorship, or the man who on Jefferson's accession to the Presidency became the Administration leader in the Senate, John Breckinridge [Ky.], wrote the Resolutions which were passed by the Kentucky legislature in November, 1798, against the obnoxious laws.[1] Whoever was their author, Jefferson fathered the Resolutions. These declared that the Union of the States was:

1. "A *compact* by which each State delegated to the Federal government definite powers, reserving to itself the residuary mass of right to its own self-government." Therefore Federal acts based on the undelegated powers are void, the Federal government not having been constituted a final judge in the matter, since this would have made its discretion, and not the Constitution, the measure of its powers. Since the Constitution established no judge between the Federal government and the States, according to the practice in such compacts, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

2. Congress has the right to pass laws to punish only those crimes expressly mentioned in the Constitution as under its jurisdiction.

3. Power over speech and the press is reserved to the States.

4–6. For these reasons the Alien Laws are void; also, because they are repugnant to Article I., sec. 9 of the Constitution (the "migration" provision), and to Amendments V. and VI., and Article III., sec. 1, securing regular process of law to the accused.

7. The broad construction by the Administration of the "general welfare" clause (Article I., sec. 8, par. 1), and of

[1] See "The Kentucky Resolutions," by Dr. Ethelbert D. Warfield, introduction to volume v. of *Great Debates in American History.*

the authorization of executory laws (*Idem*, par. 18), is inadmissible, since these grants are either subsidiary to the limited powers mentioned in the context, or, if construed independently, destructive of the whole Constitution.

Kentucky called on her co-States to declare whether the Alien and Sedition Acts were or were not authorized by the Federal compact, and, if they concurred with her contention, to join with her in requesting repeal of the Acts at the next Congress.

Only Virginia so concurred, her resolutions to the same purport as Kentucky's being drafted by Madison. The other States sent replies upholding the Acts complained of as constitutional and denouncing the Kentucky and Virginia Resolutions as revolutionary and dangerous.

The legislature of Kentucky, in reply to the answers of the other States to her resolutions and those of Virginia, passed a supplementary resolution in November, 1799. This declared:

"That a nullification by those sovereignties [the States] of all unauthorized acts done [by the Federal government] under color of that instrument [the Constitution] is the rightful remedy.

At the same time it recorded its solemn protest against the Alien and Sedition Acts as measures of the kind referred to.

The Virginia legislature referred the answers of the States to a committee of which Madison was chairman. During the session of 1799–1800 the committee made its report, which had been drafted by Madison.[1]

[1] For a digest of this Report, see *Great Debates in American History*, vol. vii., p. 105.

Madison's report was widely circulated throughout the Union, and furnished the Republicans an armory of arguments not only against the Alien and Sedition Laws, but against the fundamental principle of Federalism, the increase of Federal powers by a broad construction of the Constitution. It remains to-day as the most thorough exposition of early Republican doctrine, the State-rights theory in its first stage of development. It has been called by enthusiastic admirers the "Bible of Democracy" and "The Second Declaration of Independence."

The emphatic repudiation of the Kentucky and Virginia Resolutions by the other States effectually disposed of the plan of Jefferson and Madison to call a national constitutional convention of the States. Nevertheless, while they failed in their specific proposition, they succeeded beyond their greatest expectation in their general purpose, which was to induce the Federalist party "to show its hand," and so enable the Republican leaders to sound an alarm throughout the Union, rousing the people in defense of State rights and popular liberties. Their "campaign of education" resulted in the virtual destruction of the Federalist party, and the accession of the (Democratic) Republican party to national power in the Congressional and Presidential election of 1800, and its retention in this, with the exceptions of the "National Republican" administration of John Quincy Adams (1825–29), and the "Whig" administrations of Harrison-Tyler (1841–45) and Taylor-Fillmore (1849–53), down to the Civil War.

Indeed, so complete was this "Democratic Revolution," as it is known in American political history, that in the course of time such former strongholds of Federalism as Massachusetts and Pennsylvania passed reso-

lutions almost identical in sentiment with those of Kentucky and Virginia.[1]

Election of President Jefferson. The election of a Republican President being certain, and the choice of Jefferson for this honor being clearly the desire of the voters, Aaron Burr, the "boss" of the Republican party in New York ostensibly sought the position of Vice-President, while secretly determining to secure the chief place by seizing the occasion afforded by the bungling constitutional method of selecting the two officers which then prevailed in the Electoral College. Each Elector voted for two men without designating the office either was to fill, and the candidate receiving the most votes was declared elected President, and the one receiving the next highest number was designated as Vice-President. Burr, by clever manipulation, contrived that he and Jefferson headed the poll, receiving an equal number of votes. This, by the rule of the Constitution, cast the election into the House of Representatives, where, in such a decision, each State had one vote, and the majority decided. The Federalists had a small majority in the House.

Now the Federalists hated Jefferson more bitterly than any other Republican, and were anxious to save for themselves as many official positions as possible. So Burr made a bargain with the politicians of that party, that in the event of his election Federalists would be recognized in the dispensation of offices. To secure

[1] However, as Professor Alexander Johnston notes in his *American Political History*, Virginia, where Federalist sentiment was so strong at the time of Madison's resolutions that these were carried only by a small majority after strenuous opposition, also reversed her opinion, and censured severely the Democratic resolutions of Pennsylvania and Massachusetts.

the coveted place, the votes of nine out of the sixteen States then in the Union were required. The Burr-Federalist coalition secured eight of these. Jefferson had six States behind him. In the two remaining States the vote was equally divided.

The balloting in the House continued from February 11 to 17, 1801, amid the intense excitement of the country, many believing it was the Federalist intention to delay decision until after March 4 when they would make John Marshall (who had recently been appointed Chief-Justice) the chief magistrate. Such action, by nullifying the revolution of opinion in the country, would undoubtedly have incited a forcible overturning of the government, and so James A. Bayard, Sr. [Del.], the Federalist leader of the House, patriotically inducing his own State and the divided States to vote for Jefferson, secured the election of the man who was plainly the choice of the country. It was to prevent the recurrence of such "deadlocks" that the Twelfth Amendment to the Constitution was adopted in 1804.

The Midnight Judges. In order to provide places for "wheel-horses" of the party, the Federalist majority of the outgoing Congress had passed an act to create twenty-three new Federal judgeships, although there was insufficient business to occupy the attention of the existing judiciary. On the day following the election of Jefferson, President Adams signed the measure. However, he postponed, rather contemptuously of the party leaders who were urging his action, the appointment of the judges till the close of the last day of his administration. The story was told, although it is now generally discredited by historians, that he spent the time until midnight signing the commissions, and had not finished the work when, at the stroke of twelve,

a representative of the incoming President, having heard of the action, entered the executive office to take possession, thereby causing Mr. Adams to stuff the unfinished papers in his pocket, and hastily to depart to sign them elsewhere. Belief in this story caused all the appointees to be afterward styled "the midnight judges," and some of them "the pocket judges."

The new Congress repealed the act, and hence practically "recalled" the judges, on February 3, 1802. The Federalists, particularly Mr. Bayard, made strenuous objection to this as violating the Constitution.[1]

On the morning of the inauguration of his successor, Mr. Adams, believing Jefferson to be the instigator of much of the Republican abuse which had been heaped upon him, took his coach for Massachusetts, discourteously declining to be present at the ceremonies. In later life, as we have noted, he became reconciled with his great co-worker in the cause of American independence.

The Know-Nothing Movement. The distrust of the foreign-born, which occasioned the Alien and Sedition laws, remained in the country, and rose again to a political issue when abuses of naturalization had increased to an alarming extent.

Tammany Hall, the local Democratic organization of New York City, largely recruited its membership from immigrants, and, in conferring citizenship on these, the Democratic officials winked at the grossest violations of the law. In opposition to these a new party arose, calling itself the American Republican. Its growth was rapid. In two years it elected the Mayor of New York. The movement spread to Philadelphia, where the same abuses of naturalization

[1] See *Great Debates in American History*, vol. ix., chap. xiv.

existed. By 1844 it had six Representatives in Congress from these cities. Then its delegation suddenly dwindled to one Representative from Philadelphia. It now took the name of Native American. However, it revived again after the Presidential election of 1852, when the Whigs had become embittered by the overwhelming defeat, and were ready to form any combination which would oppose the triumphant Democracy.

The new organization had the form of a secret fraternity. Its name was said to be "The Sons of 76," or "The Order of the Star-Spangled Banner," though its members were sworn not to reveal this, and were instructed to reply to all inquiries concerning the nature of the society by the negation, "I know nothing about it," whence arose the popular designation of the party as "Know-Nothings." Its purpose was apparent: the restriction, so far as possible, of American citizenship and political preferment to persons born in the country, with especial exclusion of Roman Catholics, who, since the famine in Ireland and the revolutions in continental Europe, now formed the bulk of the immigrants. Its favorite countersign was an order which General Washington is reported (on uncertain authority) to have given on a critical occasion during the Revolution: "Put none but Americans on guard to-night."

On June 17, 1854, in the same year in which the Republican party was organized, the Know-Nothings formed a secret constitution under the name of the American party, the contents of which soon transpired. It proscribed from office-holding not only all foreign-born persons, but also native Americans who were members of the Roman Catholic Church, to whose hierarchical tendencies and not religious beliefs objec-

tion was made. Justification of this position was found in the assertion of the leading Roman Catholic papers of the right of the Church to dictate and review the acts of public executives and representatives, and in the demand of the Church dignitaries that Roman Catholic parochial schools be supported by public funds.

The Roman Catholic bishops of New York also demanded that Church property be placed in their hands, although the constitution of the State required that all religious bodies be incorporated and their property held by trustees. This demand was resisted by a number of Roman Catholic congregations, and Cardinal Bedini was sent over by Pope Pius IX. in 1853 to settle the difficulty. Now this nuncio had aided in suppressing the revolution in Bologna, one of the patriots being executed. Accordingly he was stigmatized as "Ugo Bassi's executioner," and publicly insulted. He decided in favor of the bishops, and, when the trustees legally resisted the transfer of property, excommunicated these, whereupon they petitioned the State legislature, complaining that the penalty had been inflicted on them because of their fidelity to the law. The legislature upheld the trustees, although eight years afterwards the law was amended so that the bishops obtained a virtual victory.

In the State elections of 1854 the American party carried Massachusetts and Delaware, and made a strong showing in New York. In the next year it gained the legislatures of New Hampshire, Rhode Island, Connecticut, New York, California, Kentucky, and Maryland, and was beaten by only small majorities in a number of Southern States. Encouraged by this success it prepared in the Presidential contest of 1856

to oppose to the anti-slavery principle of the other new party, the Republican, that of nativism, or opposition to foreign influence in American politics. On February 21, 1856, in secret convention at Philadelphia, the American party adopted a platform containing the following planks:

3. Americans must rule America, and to this end native-born citizens should be selected for all Federal, State, and municipal offices. 9. A continued residence of twenty-one years should be required for future citizenship. 12. All laws should be enforced until repealed or decided unconstitutional. 13. Opposition to Pierce's administration for expulsion of members of the party from office, and for reopening sectional strife by repealing the Missouri Compromise.

On February 22 the convention nominated ex-President Millard Fillmore [N. Y.] for President, and Andrew J. Donelson [Tenn.] for Vice-President. These nominations, though not the platform, were ratified by the Whig convention held at Baltimore on September 17. The issue of the party, however, could not replace that of slavery in the minds of the people, and only Maryland cast its votes for the American candidates. Nevertheless the party retained several Senators and from fifteen to twenty-three Representatives (largely from the Border States), until it was annihilated by the Civil War. Its principles, however, cropped out at times thereafter in minor political organizations such as the American Protective Association, known popularly as the "A. P. A."

The new party formed the chief subject of discussion in the House during the session of 1854–55. The

debate was inaugurated with an attack on the party by William T. S. Barry [Miss.][1] on December 18, 1854.

This association appeals to that which is strong in every country—that feeling of nationality without which a nation cannot exist as an independent government, but which, when kindled and maddened, may destroy all that is good in government, and subvert the very principles upon which it is established. Accordingly the loveliest influence of American institutions has been to mollify this prejudice against those outside our borders, and to bring the whole family of nations into a common brotherhood. A nation's place in civilization may be judged by the degree of its prejudice and hostility to foreigners.

The secret and unAmerican nature of this party is justified by the charge that there are secret associations of foreigners whose influence must be counteracted in the same manner. If the charge is true, then it certainly seems a strange method to rebuke the error by forming other associations in which is embodied all that is wrong in those we condemn. Rather should we infuse in the minds of foreigners broader and juster views of the duties of citizenship. Jefferson has said that "Little is to be feared from error, while reason is left free to combat it."

Secret political associations may be necessary in oppressed countries, but not in free. There has been a strong repugnance to exclusive associations in this country from the time of its foundation. The Society of the Cincinnati, formed immediately after the Revolution by men fresh from the baptism of fire and blood in that holy struggle, has decayed, and almost expired, under the distrust felt by the American people of such organizations, which might be wielded to the detriment of the public liberty, or to

[1] Mr. Barry was a lawyer. This was his only term in Congress. He presided over the Mississippi secession convention in 1861, and afterwards served in the Confederate army.

serve the ambitious purpose of men desirous of political advancement.

The speaker particularly attacked the opposition by the party to the Roman Catholic Church. After remarking the inconsistency in admitting to its membership Roman Catholics in Louisiana, where the Church was too strong to be opposed, and intimating that this showed that the real purpose of the new organization was merely political power, he said:

It will excite surprise through the civilized world when it becomes known that the people of this country, the first to practice in its fullest extent the great Christian doctrine of toleration, are engaged in discussing whether or not this government is safe while it continues. How can we plead to the Catholics of Europe for the toleration of Protestants in their dominions? The arguments by which Know-Nothings sustain themselves are those of the Inquisition.

Confederates who disfranchise one class of citizens soon turn upon each other—the proscriptionist of yesterday is the proscribed of to-morrow. Human judgment has recognized the inexorable justice of the sentence which consigned Robespierre and his accomplices to the same guillotine to which they had condemned so many thousand better men.

Persecution strengthens a new creed. This attempt at proscription will do more to spread Catholicism here than all the treasures of Rome or all the Jesuitism of the cardinals.

Now, sir, what is this movement at the North, and who are engaged in it? It is a combination of all the "isms" of that section—Abolitionism, Whigism, Woman's Rightism, Socialism, Anti-Rentism. Abolitionism and Know-Nothingism are especially akin; one is a crusade against the rights of the State, the other, against the

rights of individuals. In Massachusetts the Know-Nothings elected to Congress are all ultra anti-slavery men.[1]

The shrewdest, however, of the anti-slavery men refuse to be associated with this party. The sagacious Seward keeps out of its ranks. He could not fail to see that the whole movement will be short-lived, and that any public man who had been connected with it would be damned as effectually as the Federalists were who took part in the Hartford Convention. This new "ism," disguise it as you will, is the old Alien law under a new disguise. The ancient spirit of Federalism has insinuated itself in the new party. It is like Petruchio's nether wedding garment, "a thrice turned pair of old breeches," betraying the nakedness it was intended to conceal.

The speaker closed with a contrasting eulogy of the Democratic party, ever enduring through success and disaster, as "the guardian of every civil and political right of every individual and every section." In particular he mentioned as a fundamental principle of Democracy the Virginia Statute of Religious Freedom in which Jefferson declared:

"All men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and . . . the same shall, in no wise, *diminish, enlarge, or affect their civil capacities.*"

On the same day Nathaniel P. Banks [Mass.] defended his aspersed party.

Sketch of Banks. Nathaniel Prentiss Banks was the son of a superintendent in a cotton factory at Waltham, Mass., and learned the trade of a machinist. He studied at night, and became a lecturer at an early age. After a short editorship of a local paper, he

[1] This was shown shortly afterwards by their becoming Republicans.

became a lawyer, and was sent to the legislature, rising to be Speaker. In 1853 he presided over the State constitutional convention. In the same year he was elected to Congress by a Free-Soil—Democratic coalition. During the term he became a Know-Nothing, and was reëlected by that party, and was chosen Speaker after a long contest. He was elected to the next term as a Republican. From 1857 to 1859 he was Governor of Massachusetts. In 1860 he succeeded George B. McClellan as president of the Illinois Central railroad, but resigned the office at the outbreak of the Civil War. His acts as a general in this war belong to military history, and need not be here recited. He reëntered Congress in 1865, and with the exception of one term, when his activity in behalf of Horace Greeley in the Presidential campaign of 1872 caused his defeat, he served until 1877, being chairman of the Committee on Foreign Relations.

Mr. Banks excused the secrecy of the new party on the ground that it was the only way in which successfully to oppose what we would now call "the invisible government" of the political bosses of the old parties, acting in collusion.

A subterranean passage had been constructed by which men could pass from one camp to another, seeing nobody, knowing nobody, and saying nothing to anybody.

Michael Walsh, a Tammany Representative from New York City, the wit at that time of Congress, here asked if the "passage" referred to had any connection with the "underground railroad"—the name given to the Abolition means of spiriting away slaves from the South to Canada. When the laughter occasioned

by this shrewd question had subsided, Mr. Banks replied:

"It has not. It is altogether another line of business. I own no stock in that corporation."

He continued, declaring that Presidents were nominated, if not elected, by secret political combinations, and thus the government was taken out of the hands of the people. He also inveighed against secret diplomacy as the great instrument of world oppression, and in this connection condemned the Administration for withholding the proceedings of the Ostend conference, then in session.[1]

He declared that Roman Catholics were objected to on the ground not of their religion, but their allegiance in temporal matters to a foreign sovereign, the Pope of Rome.

If our foreign-born citizens consider Pius IX. as the supreme head of secular power, and think that he can in any case absolve them from their allegiance to State or nation, if they take directions from their spiritual guides in political matters, and form political associations of their own, they force upon native-born citizens either to make similar combinations against them, or to abdicate the seats of political power.

In this connection he told the story of an Irish-American politician, who in the Presidential election

[1] This was a meeting of James Buchanan, John Y. Mason, August Belmont, and Pierre Soulé, American ministers respectively to Great Britain, France, The Hague, and Spain, to arrange a plan for the purchase of Cuba, a pro-slavery project of the Pierce Administration. The Know-Nothings objected to Belmont and Soulé as not being native-born Americans, holding that the patriotism of all foreign-born ministers was under suspicion.

of 1848, though a Democratic henchman, prophesied the victory of the Whigs. When asked the reason for his opinion, he replied: "I am a Jesuit, and our instructions were to shout for Cass, but to vote for Taylor."

He spoke of the great onrush of immigrants bearing with them institutions and beliefs alien and inimical to our own.

Did the framers of the Constitution declare that foreigners had a right to participate in the affairs of government? Not at all! They declared that, after a brief period, every President must be a native citizen, and prescribed nine years of citizenship to be requisite for a Senator, and seven for a Representative. Citizenship was not regarded as a right, but as a privilege. Mr. Gerry said that he wished "in future eligibility might be confined to natives." Many other persons held the same view.

While our party denies no rights to a minority, it demands the rights of a majority. It assumes the prerogative of government is here the unquestioned right of Americans. In establishing religious freedom we neither avoid the responsibilities nor abdicate the duties of government.[1]

[1] For other debates on Citizenship in the period before the Civil War, see volumes vii. and viii. of *Great Debates in American History*. In volume vii., chapter i., deals with Naturalization; and chapter v. with Protection of Adopted Citizens (the Koszta Affair). In volume viii., chapters vii. and viii. deal with Indian Rights in connection with the Seminole War and the removal of the Southern tribes to the West.

CHAPTER X

NATIONAL DEFENSE

1803–1823

The Louisiana Purchase—Opposition to Admission of Louisiana as a State by Josiah Quincy, 3d—Sketch of Quincy—Sketch of President Jefferson by William Sampson—British Orders in Council and Napoleon's Decrees—The Non-Intercourse Act—Opposed by John Randolph [Va.]—Sketch of Randolph—Failure of the Monroe-Pinkney Treaty with Great Britain—The Embargo—Debate in the House: in Favor, George W. Campbell [Tenn.], Opposed, Mr. Randolph—Sketch of Campbell—Opposition to the Embargo—Embargo Repealed—British Minister David M. Erskine Suspends Orders in Council—Act Repudiated by Home Government, and Embargo Restored by United States—Napoleon Revokes Decrees, and Embargo against France is Removed—New Blood in Congress—Sketches of Henry Clay [Ky.] and John C. Calhoun [S. C.]—Debate in the House on Preparations for War: in Favor, Richard M. Johnson [Ky.], Mr. Calhoun; Opposed, Mr. Randolph—Sketch of Johnson—Debate on War Embargo: in Favor, Mr. Clay; Opposed, Mr. Quincy—Declaration of War against Great Britain—The Hartford Convention—Washington's Farewell Address [1796]—Debate in the House on Recognition of Latin-American Republics: in Favor, Mr. Clay; Opposed, Robert S. Garnett [Va.]—Sketch of Garnett—Sketch of James Monroe—The Monroe Doctrine.

AS has been already noted, President Jefferson, who had been the chief advocate of the limitation of Federal powers in general, and executive powers in particular to those explicitly granted in the Constitution, was, in the case of the Louisiana Purchase,

compelled by circumstances to make a greater extension of these powers than had ever before been attempted.

The Louisiana Purchase. In 1762 France ceded Louisiana to Spain, who held it until 1800, when it was retroceded to France, in exchange for European territory. During Spanish possession all other nations were excluded from the navigation of the lower Mississippi. Now from the beginning of the Republic all American statesmen, save a few in New England who selfishly feared the preponderance of the other States in the Union through the annexation of western and southern territory, were agreed that the free navigation of the terminus of the great central river system was essential to our national development, and, indeed, existence. During the Revolution, John Jay, our Minister to Spain, resolutely refused the aid which that country was willing to give us on condition that we relinquished this determination. In 1786 the same minister was compelled to be satisfied with a suspension of free navigation of the river for twenty-five years. Owing to the pressure brought upon the Federal government by our western States, Kentucky and Tennessee, through proposed expeditions against New Orleans in violation of international law, President Washington in the summer of 1795 sent Thomas Pinckney as an envoy to Madrid to negotiate a treaty which should secure free navigation at once. He arrived at a favorable time, Spain having just been compelled by arms to make a treaty of peace with France. After long negotiations Pinckney accomplished his mission by a treaty, signed in October, between Spain and the United States, which made navigation free to both parties, but to them alone. New Orleans was made a free port and place of deposit of merchandise to our

citizens for three years, with promise of a renewal of the privilege or the establishment of a new free port near by. The treaty was executed in 1798.

When Louisiana was receded to France in 1800, the United States was alarmed at the rumor that Napoleon intended to establish there a strong imperial government which would effectually check the western development of the Republic. This fear contributed greatly to the election of a Republican Congress and President, the New England influence in the Federalist party being antipathetic to the extension of territory.

President Jefferson was occupied for the first year of his administration in reforming domestic affairs in accordance with Republican principles. Soon after the beginning of the second year he turned his attention to the pressing foreign question. On April 18, 1802, he wrote to Robert R. Livingston, minister to France, directing him to inquire into the nature of the cession of Louisiana. Said Jefferson

"It [the cession] completely reverses all the political relations of the United States, and will form a new epoch in our political course. There is on the globe one single spot the possessor of which is our natural and habitual enemy. It is New Orleans, through which the products of three eighths of our territory must pass to market. France, placing herself in that door, . . . seals the union of two nations [Great Britain and the United States] who in conjunction can maintain exclusive possession of the ocean."

On October 2, 1802, the place of deposit for American merchandise was closed by the *Intendant*, the Spanish officer placed in charge of the territory until the cession was consummated. This act created great

indignation among the western American traders, who clamored for relief. The President determined to buy New Orleans from its new owners, and procured from Congress an appropriation of $2,000,000. for this purpose. He appointed James Monroe as special envoy to act with Minister Livingston in negotiating the purchase with Napoleon, and with Charles Pinckney, minister to Spain, to get the necessary renunciation of the lingering claims of that country to the city.

The Federalists, beaten in their opposition to the domestic policy of the Administration, grasped at the delay in the negotiations as an opportunity to regain popularity by presenting themselves as the patriotic party in foreign affairs, and they endeavored in the Senate, where their power was concentrated, to compel the President to seize the territory by force.[1] However, the West and the South were willing to trust their beloved leader for the peaceful accomplishment of the annexation, and the Federalist proposition was thereby demonstrated to be as insincere as it was partisan.

The European negotiations were finally completed on April 30, 1803, when a treaty was signed, whereby the whole territory of Louisiana, including the vast region between the Mississippi on the east, and Texas and the Rocky Mountains on the west, was transferred to the sovereignty of the United States for $15,000,000., $3,750,000. of this being set off to be paid American citizens holding claims against France for depredations to commerce.[2]

[1] For a debate in the Senate on this issue, Conquest or Purchase, which occurred on February 16–25, 1803, see *Great Debates in American History*, vol. ii., p. 90.

[2] For many years after this the settlement of these "French spoliation claims" arose again and again in Congress, creating extended discussions.

Napoleon ignored the rights of Spain in making this treaty, which replenished his coffers at a time when he was desperately in need of funds to prosecute his designs of European conquest. Spain at once protested against the transaction, for she saw that Florida, now isolated, would soon fall under American dominion.[1]

The Federalists in the Senate seized upon Spain's protest as a reason against ratification of the treaty, prophesying that the cloud upon our title would surely loom up into a vast storm of war with the injured country. The force of this argument, however, was dissipated by the one which they had previously made in urging the forcible seizure of New Orleans, while it was yet in possession of "the sluggish Spaniard slumbering on his post," and before it was occupied by "the vigilant French grenadier."

The Republicans were exultant over the treaty, exceeding as it did their wildest expectations, and hailed it as the greatest achievement yet accomplished by the nation—one that assured for all time the growth as well as the integrity of the Union. The effect on the Republican party was not the least of the nationalizing influences of the acquisition. Jefferson's administration and those which succeeded it became strongly Union in sentiment, while the Federalist Opposition resorted to sectional policies, and even adopted the theory of State rights (Nullification) which the Republicans began conveniently to forget they had ever upheld. It was known that the Federalist Senators would attack the constitutionality of the treaty. Accordingly Jefferson admitted that his executive

[1] Florida was ceded by Spain to the United States in 1819 for the sum of $5,000,000, all of which was paid to American claimants against Spain.

action was unauthorized, but that the Senate, by ratifying the treaty, and the people, the real sovereign, by endorsing the ratification, would "cure" all irregularity. He said, in a letter to Senator Breckinridge on August 12, 1803:

"It is the case of a guardian investing the money of his ward in purchasing an important adjacent territory, and saying to him when of age, 'I did this for your good; . . . you may disavow me and I must get out of the scrape as I can. I thought it my duty to risk myself for you.'"

This policy was adopted by the Republican Senators, and carried out with great skill. Fortunately the first Federalist opponent of the treaty presented as his chief argument, "the cloud on the title." This being easily disposed of, in the manner already presented, the Opposition was debarred from bringing forward as a fundamental objection that of unconstitutionality, especially as the Republicans, with seeming magnanimity admitted that in *minor* points (though really major) the action of the executive was unconstitutional, and appealed to the patriotism of the Opposition to remedy the flaw in the manner suggested by the President. This won over all but the extreme Federalist partisans, and the treaty was ratified on November 3, 1803, by twenty-six votes to five.[1] The country enthusiastically endorsed and applauded the Senate's action.

However, there were a few Federalists, men who would not admit defeat, who never became reconciled to expansion of national territory. Chief of these was Josiah Quincy, 3d [Mass.], who was a Representative

[1] For the Senate debate on this issue of constitutionality, occurring November 3, 1803, see *Great Debates in American History*, vol. ii., p. 104.

at the time the bill was proposed to admit Louisiana into the Union—an inevitable consequence of the Purchase—and who opposed it to the extent of threatening the secession of the New England States if the bill should pass.

Sketch of Quincy. Josiah Quincy, the third of that name, and the son of the fiery orator who resisted the British tea-tax, for a time after his graduation from Harvard divided his time between law and general study. At the age of twenty-eight he came into public notice by a display of eloquence akin to that of his father at an Independence Day celebration. Thereupon the Federalists nominated him for Congress. It was, however, before the day of the young man in national politics, and the jeers of the Republicans, calling for a cradle to rock him in, accomplished his defeat. Six years later, however, after service in the State Senate, in which he urged the recommendation that the Constitution be amended to drop the "three-fifths clause" relating to slave representation in Congress, he achieved the coveted seat. There he became an extreme partisan, a member of the "Essex junto" which opposed every policy of the Administration, and rallied in a hopeless stand against Republican principles the dwindling numbers of the defeated party around the Federalist standard, even refusing to make alliance with John Randolph's anti-Administration faction, the so-called "Quids." Quincy, in particular, refused to accept as final any triumph of the Administration. On January 4, 1811, he used this violent language against the admission of Louisiana:

"Why, sir, I have already heard of six States, and some say there will be at no great distance of time more [to be

carved out of the Purchase and admitted into the Union]. I have also heard that the mouth of the Ohio will be far to the east of the contemplated empire. . . . It is impossible such a power should be granted. It was not for these men that our fathers fought. It was not for them this Constitution was adopted. You have no authority to throw the rights and liberties of the people into hotch-pot with the wild men on the Missouri, or with the mixed, though more respectable race of Hispano-Gallic-Americans who bask on the sands in the mouth of the Mississippi. . . . I am compelled to declare it as my deliberate opinion that, if this bill passes, the bonds of the Union are virtually dissolved; that the States which compose it are free from their moral obligations; and that, as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation—amicably if they can; violently if they must."[1]

The bill was passed, yet Quincy's threat was not executed—a proof of his disqualification as a statesman, in whom prescience is a crowning active element, and reserve, especially in the acceptance of defeat, an essential passive attribute.

Quincy's later career will shortly develop in these pages.

Jefferson's Administration. Of all administrations in American history that of Thomas Jefferson was most successful in *internal* policy, and was the first thoroughly to vindicate to the world the power of an executive scrupulously obeying the will of the people as expressed in their legislature. As evidence of this, as well as because it presents an intimate and humorous character study of Jefferson, and of the attitude toward him of the American people, the following passage from the

[1] This, says the historian Richard Hildreth, was "the first announcement on the floor of Congress of the doctrine of secession."

Memoirs of William Sampson (New York, 1807) is in point. Sampson was an Irish patriot, who, after exile in Europe, finally obtained asylum in America, where he published his account of his troubles with the British government. At the close he wrote "A Few Observations of the State of Manners, etc., in America" in the form of a satirical letter to Lord Spencer, the British Home Secretary, in which the passage referred to appears.[1]

"As to the government: at the head of it is an old country philosopher. I wish your lordship could get a sight of one of his shoes, with quarters up to his ankles, and tied with leather thongs. He has neither chamberlain nor vice-chamberlain, groom of the stole nor of the bed-chamber, master of the ceremonies, nor gentleman-usher of the privy-chamber, nor black rod, nor groom, nor page of the privy-chamber, nor page of the back stairs, nor messenger to his robes—he has no robes—nothing but red breeches, which are now a jest and a threadbare one.[2] . . . He will talk with anybody, like the good-natured Vicar of Wakefield. If the stranger talks better than him, he is willing to learn; if *he* talks better, he is willing the stranger should profit. He is a simple gentleman every way, and keeps *his own conscience*, and . . . pays his own debts, and the nation's debts, and has hoarded up *eight millions and a half of dollars* in the treasury. Your lordship will smile at such an oddity.

[1] The copy of the *Memoirs* from which the extract has been taken bears the inscription, "Thomas Jefferson's Book, Monticello, 1813," indicating that Sampson's pen picture was not at all unpleasing to its subject. The owner of the copy is Professor Glanville Terrell of the University of Kentucky.

[2] Jefferson returned from his ministry in France wearing this garment, and affording the Federalist wits for many years thereafter a subject for gibes against his Republican simplicity.

"We do all we can to shake him—we do all we can to vex him—we do all we can to remove him. He is like a wise old Dervise. He will not be shaken—he will not be vexed—he will not be moved. If he gets up, we say he is too tall. If he sits down, we say he is too short. If we think he will go to war, we say he is bloody. If we think he is for peace, we say he is a coward. If he makes a purchase, we say he ought to take it by force. If he will not persecute, we say he has no energy. If he executes the law, we say he is a tyrant.—I think, my lord, with great deference, that a good London quarto might be written and thrown at his head.[1] He has no guards nor battle-axes, and dodges all alone upon his old horse, from the *President's house* to the CAPITOL. There might be an engraving to shew him hitching his bridle to a peg."[2]

In *external* policy, however, the administration of Jefferson, and that of Madison, based upon the same principles, which followed it, were, by far, the most disastrous in our history, being in special contrast in this respect to the preceding administration of John Adams. Success at home and failure abroad would seem to be the inevitable results of a pure democratic government. This arises from the natural antipathy of war and peace, and the opposition in mental attitude of the leaders who conduct these. It is an efficient and apparently necessary policy in time of threatened war to override the rights and liberties of individuals in order to preserve the integrity of the nation, and, as a corollary, an arbitrary, aristocratic temper in the

[1] A reference to an anti-American book by a Mr. Parkinson, published about this time on the author's return from a tour of the United States.

[2] A reference to the story that Jefferson had ridden in this fashion to the Capitol on the day of his inauguration, and, because of the early date of the reference, a corroboration of the story, which has been denied by historians.

executive would seem to be desirable. From this it would appear that the ideal head of a democracy would be a man of peace devoted to securing the utmost freedom of his people in their various industries and interests and the exercise of their civil rights, but who will greatly modify, or even reverse, his policy in the event of civil rebellion or foreign aggression. Not to speak of later Presidents upon whom history has not yet passed final verdict, such an executive was Abraham Lincoln, a man of Quaker blood and instincts, who nevertheless strained his constitutional powers to the utmost (in some instances to the breaking point) in order to suppress the Great Rebellion.[1]

The Non-Intercourse Act. While war had been formally declared between Great Britain and France in 1803, it was not until 1805 that hostilities really broke out. Realizing that the power of Napoleon, supreme on the land, must be broken on the sea, and that, not only by sinking her armed naval force, but by the still more effective act of sweeping her merchant

[1] Debaters should bear in mind this irreconcilable but not uncompromisable "conflict of Ormuzd and Ahriman" in the conduct of other controversies than "Pacifism *vs.* Preparedness." Thus in the question of "Free Trade *vs.* Protection," owing to an abnormal condition in the country in view of a late war or a prospective one, an otherwise improper policy may be the correct one. It may be cited on this point that in 1816 John C. Calhoun, in theory an absolute free-trader, introduced, as chairman of the Ways and Means committee, in the House of Representatives the first tariff act that was protective in practical operation, and that he did this in order to preserve manufacturing enterprises which had sprung up under the abnormal "protection" of the Second War with Great Britain. It is well to be ardent in a cause, but not to the point of despising opposing principles. Otherwise one may later be compelled to make the confession of Lord Melbourne, who, referring to a certain bill, said: "All the sensible men were on one side, and all the damned fools on the other. And, egad, sir, the damned fools were right!"

marine from the ocean, and further "starving her out" by preventing supplies reaching her from her colonies and elsewhere in neutral bottoms, Great Britain exerted all her sea-power to this end, deliberately violating the rights of neutrals which had been admitted and in part championed by herself.

In May, 1805, the British Court of Appeals, in the case of the captured American vessel *Essex*, reversed the former rule of the British admiralty courts, namely, that in time of war "landing goods and paying duties in a neutral country breaks the continuity of the voyage, and so legalizes the trade," and it held that such transshipment, *if evidently fraudulent*, did not absolve the vessel from capture and condemnation. As a result of this decision British warships and privateers began to prey on American vessels carrying through neutral countries the trade between France and her colonies. Also the old practice of impressing American seamen was put again in force.

President Jefferson protested in vain against this "interpolation of new principles in the law of nations," and the impressment of our seamen, and, on consultation with James Madison, Secretary of State, with whom commercial retaliation was a favorite weapon to oppose foreign aggressions on our commerce,[1] proposed to

[1] In January, 1794, Madison, then the Republican leader of the House of Representatives, at the suggestion of Jefferson, the Secretary of State, in his Report on American Commerce, secured the passage of "Commercial Resolutions" laying additional duties on manufactures of nations which had no commercial treaties with us. Great Britain was particularly aimed at, and when, during the debate on the Resolutions, she seized certain American vessels trading with the French West Indies, the imposition was laid aside for the more drastic method of an embargo. The obnoxious practice was quickly abandoned by Great Britain, and the embargo was removed.

Congress a "non-intercourse act," against Great Britain until the differences with that country were settled.

The Senate and the House passed the act by large majorities, most of the minority being New England members. John Randolph [Va.], who out-Catoed Cato in that the doomed as well as the defeated cause was pleasing to him, was, however, the leader of opposition to the measure.

Sketch of Randolph. John Randolph, called "of Roanoke" to distinguish him from other members of his famous family with the same Christian name, was the great-grandson of William Randolph who emigrated from England to Virginia in 1674 and became the owner of a great plantation on the James River. He was seventh in descent from Pocahontas, the Indian princess who married John Rolfe, and often in his speeches proudly alluded to his Indian blood—especially in excusing his high temper. His father died when the son was two years old, leaving him in trust a great landed estate. When John was fifteen years of age his mother, a lady of rare intelligence, married St. George Tucker, of similar character. The lad's education was acquired from the two. From his mother, who possessed a voice of great sweetness, he learned to recite with power and feeling—an accomplishment which enabled him to sway his audiences at will when he became a public speaker. The conjoined Tucker and Randolph libraries supplied him with the best books to be found in the colonies, and he became a diligent reader, storing his mind with historical and literary allusions which later he effectively used on the floor of Congress—too copiously, however, at times, since these excursions tempted him far afield from the course of his argument. He studied for brief periods at a grammar

school connected with William and Mary, and at Princeton and Columbia colleges. His tendency toward opposition of authority and accepted opinion was shown while a student in Columbia by his remark on the occasion of the establishment of the Federal government in New York, the speeches of which he heard:

"I saw what Washington did not see—but two other men in Virginia saw it, George Mason and Patrick Henry—the poison under the wings" [of the Constitution].

A year later the young man studied law at Philadelphia under his cousin, Attorney-General Edmund Randolph. Here he seems to have indulged in dissipation, leading to the breaking of her engagement to marry him by a famous Virginia beauty, Maria Ward, who shortly afterwards wedded Peyton Randolph, the son of the Attorney-General. He then came under the influence of religion. Indeed, throughout his life, he was distracted by conflicting opinions and impulses. In theory he was a democrat; in personal acts an aristocrat. The French Republic was his *beau ideal* of a government, and Burke, its greatest opponent, his pattern of statesmanship. He was pugnacious in temper, quarrelsome in debate, and ever ready to support his words on the duelling field, and yet he hated war to the extreme that he would have his country bow to any indignity to avoid it. He built up a small party of his own largely in defense of slavery, yet his utterances against that institution exceeded even those of Jefferson, and he liberated his slaves in his will on the ground that they were as much entitled to freedom as himself.

He lived on his estate in Virginia from 1795 to 1799, when he achieved a sudden and great reputation by a

powerful speech in defense of the Virginia Resolutions against Patrick Henry's denunciation of them. The result was that he was sent to Congress, where he was retained by his admiring constituents, in despite of his frequent changes of opinion on public policies, until 1813, when his opposition to President Madison in the conduct of the Second War with Great Britain at last destroyed their loyalty to him, and he failed of reëlection.

In his first speech in the House (January 10, 1800) in support of a resolution to reduce the army, Randolph indicated what his course in Congress would be by calling all men in the profession of arms "mercenaries," and so subjecting himself to public insult by army officers. Thereupon he wrote to the President a letter of protest which he addressed to "Mr." Adams, and signed, "your fellow-citizen, John Randolph." "His Excellency" sent the letter to the House, which discussed it as a "breach of privilege" without reaching a decision upon it.

On the accession to the Presidency of his cousin, Thomas Jefferson, Randolph became Republican leader of the House, receiving the important appointment of chairman of the Ways and Means committee. For a time he was loyal to the Administration, upholding the Louisiana Purchase as constitutional when even the President did not do so. Then his native combativeness, and, it must be said, his sincere sense of duty to the public, caused him to attack government abuses, and to endeavor to punish the guilty parties. A notable instance of this was his exposure of the great "Yazoo Fraud" of 1805, a scandalous transaction in government land in the pioneer territory of Mississippi in which a ring of officers in the government and members of

Congress were involved. Owing to his opposition the "deal" could be consummated in Congress only in his absence. Randolph became an admired character throughout the Union for his bold and public-spirited stand in the matter, of which popularity he thereafter took fair advantage by branding on every occasion the men connected with the fraud as infamous, and unfair advantage by suggesting that other men whom he was opposing for other reasons were also smirched with the scandal. He caused Associate-Justice Samuel Chase to be impeached for the expression of violent partisanship off the Supreme bench which showed that he was unfit for position upon it, and he conducted the prosecution, which, though unsuccessful, gained a moral victory in that a majority of the High Court of Impeachment, though not the requisite two thirds, supported the charge.

Randolph was returned to Congress in 1815. His ideal country was now England, and it would seem that he had dreams of reëstablishing his State as the "Old Dominion" with institutions modeled on the aristocratic plan of the land from which it had revolted. In any event he set to work to form a State-rights party by appealing to the fears of the Southerners that their domestic institution of slavery was in danger on account of the growing abolition sentiment of the North. The party was small, but loyal to its leader in face of the ridicule cast upon it by the name given it of the "Quids," suggested by his own phrase *tertium quid* used in justifying the formation of a third party opposed to the dominant ones. Much as he opposed the anti-slavery men of the North, he respected them, reserving his scorn for "the Northern men with Southern principles," whom he denominated "dough-faces."

In 1825 he was sent up from the House to the Senate to fill a two years' vacancy. He was not returned at the next election, at which there was great relief in that dignified "upper house," whose decorum he was continually breaking, since he seemed anxious to support his reputation acquired in the lower chamber as a political Ishmaelite by violent abuse of every eminent Senator. Thus he denounced the coalition of John Quincy Adams and Henry Clay, whereby Adams (who had received a minority vote in the Electoral College for President, where Jackson had the most ballots, but not sufficient to elect him) secured the coveted seat by vote of the House of Representatives, and Clay was at once appointed Secretary of State by the new Executive. Speaking of the manner in which his opposition to an Administration measure, representation of the United States at a Pan-American Congress to be held at Panama, had been overridden by the Senate, Randolph said:

"I was defeated, horse, foot, and dragoons—cut up—and clean broke down—by the coalition of Blifil and Black George[1]—by the combination unheard of till then, of the puritan with the blackleg."

It being reported to Clay that Randolph had charged him with forging public documents, he challenged him to a duel. Senator Benton who was Randolph's second, and very proud to be connected with such a "high-toned" affair, described the encounter that followed in his *Thirty Years' View.* Neither contestant was wounded at the first fire; at the second Randolph discharged his pistol in the air, and had the skirt of his

[1] Characters in Henry Fielding's novel *Tom Jones*: "Blifil" referred to President Adams; "Black George" to Secretary Clay.

coat ripped by Clay's ball. Randolph, saying, "You owe me a coat, Mr. Clay," extended his hand, which Clay grasped, saying, "I am glad the debt is no greater."

Appointed in 1830 to the Russian mission by President Jackson evidently to get him out of the country, Randolph disappointed this expectation, returning shortly to oppose Jackson on the Nullification issue. He died of consumption in Philadelphia in 1833 as he was about to go abroad for his health.

Randolph's personal appearance was very striking. His complexion was swarthy, and his frame tall and slender. In debate he was continually shaking his long, bony fingers at his opponents.

Randolph's speech against the Non-Intercourse Act may be entitled "The Folly of Retaliation." The measure, he said, was in pretense a substitute for hostilities, yet defended on principles which regarded it as a forerunner of war.

"If war is necessary—if we have reached this point—let us have war. But while I have life I will never consent to these incipient war measures which in their beginning breathe nothing but peace though they plunge at last into war."

Great Britain, he contended, was now too powerful for feeble America to contend against.

"Gentlemen who, it would appear from their language, have not got beyond the horn-book of politics, talk of our ability to cope with the British navy, and tell us of the war of our Revolution. [But] Great Britain . . . was then contending for the empire of the British Channel, barely able to maintain a doubtful equality with her enemies. . . . What is her present situation? The combined fleets of

France, Spain, and Holland are dissipated—they no longer exist."

He charged that the animus of the bill was "mercantile avarice"—a wholly unwarranted indictment in that the measure called for a suspension of all foreign trade, and as so operating was looked upon askance by the commercial interests of the country which, with the characteristic timidity of business, would

> "rather bear those ills [they] have
> Than fly to others that [they] know not of."

He was not surprised, he said, to see men, goaded by such a spirit, straining their feeble strength to excite the nation to war when they had reached the stage of infatuation that we were an overmatch for Great Britain on the ocean.

"It is a mere waste of time to reason with such persons. The proper arguments . . . are a strait waistcoat, a dark room, water gruel, and depletion."

Yet in the war that followed the Embargo it was on the sea that the United States gained all its telling victories!

Randolph then denounced the kind of trade that was intended to be protected by the Act.

"What is the question in dispute? The carrying trade. What part of it? The fair, the honest, and the useful trade that is engaged in carrying our own productions to foreign markets, and bringing back their productions in exchange? No, sir. It is that carrying trade which covers enemy's property, and carries . . . West India products to the mother country. . . .

"If this great agricultural nation is to be governed by Salem and Boston, New York and Philadelphia, and Baltimore and Norfolk and Charleston . . . let a committee of public safety be appointed from those towns to carry on the government. I, for one, will not mortgage my property and liberty to carry on this trade . . . —this mushroom, this fungus of war . . . which, as soon as the nations of Europe are at peace, will no longer exist. . . .

"I am averse to a naval war with any nation whatsoever. I was opposed to the naval war of the last administration . . . What! shall this great mammoth of the American forest leave his native element and plunge into the water in a mad contest with a shark? Let him beware that his proboscis is not bitten off in the engagement. Let him stay on shore, and not be excited by the mussels and periwinkles on the strand, or political bears in a boat, to venture on the perils of the deep."

He returned from this bizarre zoölogical metaphor to sober argument. He charged the Republicans with inconsistency in calling for war with Great Britain, when in 1798 they had opposed a far more justifiable war with France on the solid ground that the President would thereby be armed with a patronage and power which might enable it to master the people's liberties—a reason that equally prevailed in the present case.

"Are you not contented with being free and happy at home? Or will you surrender these blessings that your merchants may tread on Turkish and Persian carpets, and burn the perfumes of the East in their vaulted rooms?"

He frankly discarded considerations of "national honor." Self-interest, he declared, was the ruling principle in government.

"What is national law but national power guided by national interest? You yourselves acknowledge and practice upon this principle where you can, or where you dare—with the Indian tribes, for instance."

On this ground he justified Great Britain for her invasion of neutral rights:

She was not fighting for conquest but for defense—her very existence—while her enemy was violating at will the territories of other nations, acquiring thereby a colossal power that threatened the world, our country included. Now the vulnerable point, the "heel of Achilles" of France, was her commerce, and over this she drew the ægis of the neutral flag. In view of our own interest in the success of Great Britain in the conflict, should we attempt to prevent that country's single chance of victory?[1]

At the time the Non-Importation Act was passed, William Pinkney [Md.] was appointed a special envoy to assist James Monroe, minister to Great Britain, in securing a new treaty. This was negotiated on December 31, 1806. It restored the old rule superseded by the *Essex* decision. The American ministers, nevertheless, were compelled to yield the right of search and impressment, on the understanding, however, that it would be exercised only under extraordinary circumstances. Owing to the concession of impressment President Jefferson declined to submit the treaty to the Senate for confirmation, and ordered the American envoys to continue their negotiations. Against this action the sea-merchants, who had suffered greatly from the Non-

[1] The reader will note the close parallel between Randolph's objections to the Non-Intercourse Act and the protest of many Americans of the present day against our government's demand that Great Britain respect our neutral rights in the present European war.

Intercourse Act, vigorously protested, and the Federalist statesmen made the cause of these their own. Jefferson's rejection of the treaty on the ground of protecting our seamen from impressment exalted this principle to the chief place in our contention with Great Britain, and made war soon or late inevitable with that country.

The Embargo. On January 7, 1807, Great Britain issued an "Order in Council" prohibiting neutral vessels from trading between the ports of France and her Allies. This act created great resentment throughout the Union, which was intensified by the forcible impressment, on June 22, 1807, by the British frigate *Leopard*, of four sailors of the American *Chesapeake*.

Accordingly President Jefferson convened Congress in October, 1807, in advance of its regular time of assembly, and laid before them the actions of the British government which demanded redress. While Congress was in session (in November) Great Britain promulgated another Order in Council declaring a blockade of all ports from which Great Britain was excluded.

As soon as news of this reached America the President sent a special message to Congress recommending an embargo. This was passed in secret session on December 21.

In retaliation for the British Orders in Council, Napoleon on December 7, 1807, and January 11, 1808, issued the "Milan Decrees," so-called from the place of promulgation. These proclaimed that any vessel connected with British trade, or having submitted to British search, was "denationalized," and hence a good prize for France and her allies. On April 17, 1808, he added the "Bayonne Decree," which righteously pro-

fessed to support the American embargo by ordering the seizure and sale of all American vessels which should enter the ports of France or her Allies in violation of the act of Congress. The American shipowners and merchants bore their losses in grim silence for several months, but when no indication transpired that the embargo would cause Great Britain to withdraw her Orders in Council—that, on the contrary, she professed to be pleased with the transfer which it caused of the carrying trade to her own marine—they inspired a movement to repeal the act.

On April 7, 1808, John Randolph, who had advocated an embargo in substitution for the Non-Intercourse Act, permitted his hostility to the Administration to get the better of his consistency, and, in a speech against a bill to increase the army in prospect of war with Great Britain, included the embargo among other objects of his reprobation.

On April 8, George W. Campbell [Tenn.], for the Administration, moved that the President be empowered to suspend the embargo in certain contingencies (*i.e.*, settlement of our difficulties with Great Britain and France) which might arise in recess of Congress.

Sketch of Campbell. George Washington Campbell, a graduate of Princeton, was a Representative in Congress from 1803 to 1809, serving as chairman of the Ways and Means committee. He was elected to the Senate in 1811, and resigned in 1814 to take the position of Secretary of the Treasury. He was again elected to the Senate in 1815, and resigned in 1818, when appointed minister to Russia. When abroad he applied himself faithfully to prosecuting American claims against foreign governments. He returned in 1820, and

died in 1848. He was conscientious in the discharge of his duties—a "wheel-horse" of the Administrations he served, and, as such, a type of many otherwise undistinguished men deserving of honor for their part in the efficient conduct of our government.

Mr. Campbell denied that the embargo was pleasing to the country it was laid against.

We have abandoned our commerce *with* Great Britain, but not *to* her; in retiring from the ocean we have carried with us almost the whole commerce of the European world. The belligerent powers cannot carry on commerce with each other, and there are no neutrals in Europe with which they can trade—what commerce, then, is abandoned by us to Great Britain?

Look at the reports of Parliament. British statesmen are complaining against the Orders in Council since these caused our embargo which is producing destitution in their country. This proves in a very decided manner that our restriction is in full operation, and in a fair way toward effecting the object for which it was laid.

Mr. Randolph replied by describing the distress caused in America by the measure.

Every class of men feels it, but in most woful measure the poor. Like one of the blind visitations of nature, a tornado, while it merely strips the strong, it sweeps away the weak. The humble plant is uprooted; the oak escapes with the loss of nothing but its annual honors. Want knocks at the door of the poor man, and poverty thrusts in his face at the window. And what relief can the rich extend? They sit upon their heaps, and feel them mouldering into ruins under them. What was once property is property no longer, for property depends on circulation, on exchange, on ideal value. The power of property is all

relative: it depends not merely on opinion here, but upon opinion in other countries. If it be cut off from its destined market, much of it is worth nothing, and the value of the remainder is infinitely impaired.

But the *magnitude* of the embargo power is not more remarkable than its *novelty*. Such an experiment was never before tried—indeed, never before was conceived even in the realm of fiction. Five millions of people are involved. They cannot go beyond the limits of their once free country; they are not even permitted to thrust their own property through the grates. Who can foretell when the spirit of endurance will cease?

Mr. Randolph then instituted a parable of the situation, likening this to a physician experimenting on a healthy man by hermetically sealing his pores, and, when he became violently ill in consequence, telling the nurse to disregard any *internal* symptoms, but that if anything *external* should happen, to remove the bandages.

"But . . . if the sky should fall, and larks should begin to appear, if three birds of Paradise should fly into the window, the great purpose of all these sufferings is answered. Then, and then only, have you my authority to administer relief."

Mr. Campbell's bill was passed. During the following recess of Congress the feeling against the embargo became extreme in certain parts of the country, particularly New England.[1] The Federal courts there were unable to secure convictions from juries of violations of the act, and smuggling through Canada became a safe, profitable, and extensive trade. Some of the New

[1] See William Cullen Bryant's youthful poem on *The Embargo*.

England State courts held that the embargo was unconstitutional since it went beyond the *regulation* of commerce to its *annihilation*, and some of the New England legislatures passed resolutions denouncing the act as a sectional measure in favor of the agricultural Middle and Southern States at the expense of the commercial Northern ones.

At the next session of Congress memorials against the embargo poured in from various affected commercial interests. It appeared that every industry but domestic manufacture was suffering.

The President in his message upheld the act, as "saving our mariners, and our vast mercantile property, and "affording time for prosecuting the defensive and provisional measures called for by the occasion."

The Administration party was strong enough to pass on January 9, 1809, a drastic enforcing act supplementary to the embargo. This act was published in many New England newspapers inclosed in black borders and headed by such mottoes as "Liberty is Dead!" John Quincy Adams, who had resigned from the Senate because he could not conscientiously represent its sentiment against the embargo, informed President Jefferson in February that execution of the enforcing act might result in New England's secession from the Union—indeed, that negotiations were already in progress for British assistance to that end.

Opportunity was afforded the President to "back water" by intimations from the British government that its Orders in Council would be withdrawn if the United States government met it half way. Accordingly the Administration secured the passage by Congress of a "Non-Intercourse" bill which repealed the embargo after May 20, 1809, and empowered the

President to open trade with either Great Britain or France upon the repeal of her oppressive decrees in so far as these applied to the United States. The bill was enacted on March 1, 1809. The act was continued in force, with one short interval, until abolished by the Treaty of Ghent in 1814.

Second War with Great Britain. James Madison, Jefferson's Secretary of State and *alter ego*, became President on March 4, 1809. He continued Jefferson's policy. On April 19, 1809, David M. Erskine, the minister of Great Britain at Washington, withdrew the Orders in Council, and President Madison removed the embargo against that country. But, as soon as Erskine's action was reported to the British government, this repudiated it as unauthorized, and recalled the minister. President Madison thereupon restored the Non-Intercourse Act. F. J. Jackson, the new British minister, on his arrival at Washington, charged that the agreement with Erskine had been obtained by trickery, and Robert Smith, Secretary of State, refused to hold communication with him.

The Act was equally ineffective in bringing France to terms. In January, 1810, Napoleon informed John Armstrong, our minister to France, that the repeal of his "Decrees" was dependent on the withdrawal of the British blockade, and, on March 23, 1810, he issued his "Rambouillet Decree" by which 132 captured American vessels, of a value of $8,000,000, were condemned and sold. However, on August 5, 1810, Napoleon revoked his decrees as applied to America on condition that the United States would assert her rights against Great Britain. On November 2, President Madison accepted this arrangement, and soon afterwards pressed Great Britain to revoke its Orders in Council. This the British

government refused to do on the ground that Napoleon had not made a *bona fide* revocation in that he had retained the money from the sale of the American vessels, and the French prize courts had refused to accept the revocation. Nevertheless, President Madison, on March 2, 1811, continued the Non-Intercourse Act against Great Britain alone.

In the elections to the succeeding Congress the people, weary of temporizing measures, had replaced many of the old "peace-at-any-price" statesmen with younger men of a more aggressive temper. Among these may be mentioned Henry Clay [Ky.] and John C. Calhoun [S. C.]. Clay, owing to the reputation that he had achieved in filling two unexpired terms in the Senate, was elected Speaker of the House by the new element.

Sketch of Clay. Clay, a native of Hanover county, Va., in a district known as the "Slashes" (whence his popular appellation, the "Mill-boy of the Slashes"), was the son of a poor Baptist clergyman who died when the boy was four years of age. Henry, after a slight education in a country school, broken by farm work for his neighbors, secured work in a small shop in Richmond from which he advanced, at the age of fifteen, to a place in the office of the clerk of the high court of chancery. Here his ability attracted the attention of Chancellor Wythe, who directed his legal studies. Admitted to the bar in 1797, at the age of twenty, he began practice in Lexington, Ky., whither his mother, marrying again, had preceded him. At Richmond he had become the leading spirit in a debating club, and he at once achieved distinction in a similar society in his new home, which, together with his personal charm, resulted in a lucrative practice in his profession, and

launched him into a political career. He was elected on a committee to revise the constitution of the State, into which instrument he fought unsuccessfully to introduce a provision for the gradual emancipation of slaves. He became an ardent Republican in the agitation against the Alien and Sedition laws, captivating his audiences by the power and beauty of his eloquence. In 1803 he was elected to the State legislature, where he added to his oratorical fame the more important reputation of a powerful argumentative speaker. For the session of 1806–07 he filled an unexpired term as United States Senator, taking an active part in the debates, especially on internal improvements, in advocacy of which he began to depart from the Republican view of the limited power of the Federal government. In 1807 he returned to the Kentucky legislature as its Speaker. Here he introduced resolutions in favor of the embargo, and in unyielding opposition to all the aggressions of Great Britain. He offered another resolution recommending that the legislators wear clothing only of domestic manufacture. Thereafter he became a great champion of home industry, the encouragement of which was his chief purpose in causing him to advocate a more or less prohibitive tariff on imports. In 1809–11 he filled another unexpired term in the Senate, in which he promoted his new cause on every opportunity. He also showed his humane disposition by advocating reform in our Indian policy, into which abuses of these "wards of the nation" had begun to creep. Later in his career (in 1819), he denounced General Andrew Jackson for his arbitrary and cruel acts which inaugurated the long, bitter, and expensive Seminole war. Upon this question Clay rose to the supreme height of oratory, overcoming his one great fault as a speaker, a certain

inelegance of literary expression, apparent in the printed reports of his speeches. Here the ardor of his speech, usually leading him, by its amazing effect upon his audiences, to neglect precision of diction and consonance of rhetoric, was under perfect control. Realizing the importance of his utterances on the subject, he weighed his words, and so gave momentum to the charge he hurled against the popular idol of the West and South, the piercing power of which was assured by his impassioned eloquence, which always touched the hearts of his hearers. In the last year of this term in the Senate, Clay opposed as unconstitutional the renewal of the charter of the United States Bank, recommended by Secretary of the Treasury Gallatin, and contributed much to its defeat. His later support of the Bank, due to pressure of his constituents in its favor, is the one great blot on his record.

Clay served as Speaker of the House of Representatives from 1811 to 1814, when he was appointed on the peace commission to Great Britain. In 1815 he returned to America, and was again elected to Congress, becoming Speaker of House, and so remaining until 1820, when he retired for a short period to private life. Notwithstanding his position as presiding officer, he took a leading part in all the important debates. His career from this point will develop in the succeeding portions of this work. It will suffice to note here that he again served in Congress as Speaker of the House from 1823 to 1825; was a candidate for President in 1824; Secretary of State 1825–29; Senator, 1831–42 and 1849–52; National Republican candidate for President in 1832 and Whig candidate in 1844; a leading spirit in the Missouri Compromise of 1820, and the author of the Compromise of 1850; and prominently concerned

in all the protective tariff measures from 1816 to 1833, of the last of which, the so-called "Compromise Tariff," he was the author.

Epes Sargent, in his *Life of Henry Clay* (1848), thus describes the personal appearance of the statesman in his seventy-first year:

"In stature he is tall, sinewy, erect, and commanding, with . . . a frame capable of much endurance. From his features you might at first infer that he was a hardy backwoodsman who had been accustomed rather to the privations and trials of a frontier life than to the arena of debate and the diplomatic table. But when you meet his full, clear gray eye, you see in its flashes the conscious power of a well-trained and panoplied intellect, as well as the glance of an intrepid soul. Its luster gives animation to the whole countenance, and its varying expression faithfully interprets the emotions and sentiments of the orator. Much of the charm of his speaking lies in his clear, orotund, and indescribably melodious voice, which is of wide compass, and as distinct in its low as in its high tones."

Goldwin Smith, in his *The United States: An Outline of Political History* (1893), gives the following estimate of Clay as a statesman:

"Clay was perhaps the first consummate party leader of the Congressional and platform type, Jefferson having worked . . . in the closet and through the press. He was a paragon of the personal fascination now styled magnetism. Magnetic, indeed, his manner and voice must have been if he could make the speeches he has left us pass for the most cogent reasoning and the highest eloquence. Yet multitudes came from distances, in those days immense, to hear him. A cynical critic said that Clay could get more people to

listen to him, and fewer people to vote for him, than any other man in the Union. . . .

"He was ardently patriotic after the war-hawk fashion, but the Presidency was always in his thoughts, and its attraction accounts for the perturbations of his political orbit. He said that he would 'rather be right than President,' but . . . even at the moment . . . he was thinking more of being President than of being right.

"His policy and sentiment were intensely American, and by the cosmopolitans would now be designated as 'jingo.' He was a protectionist on what he deemed patriotic grounds, and the chief author of a system to which Hamilton had only moderately inclined."

Sketch of Calhoun. John Caldwell Calhoun was of Scotch-Irish Presbyterian stock, whence he derived his positive convictions and devotion to personal rights. His father, a State legislator of extreme democratic opinions, guided his early studies, which were largely historical and metaphysical. He took a partial course at Yale where his application to books and his originality of thought won him the respect of his professors and fellow students. As the result of a discussion with him on the rightful source of political power, President Dwight prophesied his eminence as a statesman, perhaps President. He was admitted to the bar in 1807. Largely as a result of an eloquent speech which he made on the *Chesapeake* affair in that year, he was elected to the South Carolina legislature. He entered Congress in 1811, in his thirtieth year. The chief events of his subsequent career will transpire in these pages.

Of his personal characteristics James Parton says, in an article, "John C. Calhoun," in *The North American Review*, vol. ci., p. 388:

"He was rather slender, but very erect, with a good deal of dignity and some grace in his carriage and demeanor. His eyes were . . . remarkably fine and brilliant. He had a well-developed and strongly set nose, cheek bones high, and cheeks rather sunken. His mouth was large. . . . His early portraits show his hair erect on his forehead. . . . His voice could never have been melodious, but it was always powerful. At every period of his life, his manners . . . were extremely agreeable, even fascinating."

Of his mental characteristics, Charles Cotesworth Pinckney says, in an article, "John C. Calhoun," in *Lippincott's Magazine*, vol. lxii., p. 81:

"He was a man of bold temper, of intense earnestness, and of deep convictions—convictions so strong as to have 'all the force of passions.' Such a man must needs antagonize where he could not convince. . . . He seldom quoted books or the opinions of others. A rapid reader, he would absorb the congenial thoughts of an author and reject whatever did not assimilate with his mental habits. His mind always seemed to work from within, by spontaneous impulse, not by external influences. . . . It drove on its rapid way like some mighty automatic engine, without friction, without noise, apparently without ever stopping for fuel or water. Its own ardor generated heat enough to sustain the rapid motion. No other mind has ever appeared to me so original, so full, so self-reliant."

Of his oratory Daniel Webster said, in the Senate on the announcement of Calhoun's death:

"The eloquence of Mr. Calhoun, or the manner in which he exhibited his sentiments in public bodies, was part of his intellectual character. . . . It was plain, strong, terse . . . sometimes impassioned, still always severe. Rejecting ornament, not often seeking for illustrations, his power

consisted in the plainness of his propositions, in the closeness of his logic, and in the earnestness and energy of his manner."

Of his influence as a statesman Benson J. Lossing says, in his *Eminent Americans*:

"Few men have exerted a more powerful and controlling sway over the opinions of vast masses of men than Mr. Calhoun, for his views on several topics coincided with those of the great majority of the Southern people; and he was known to be inflexibly honest and true. . . . No man of his faith ever doubted that leader any more than his creed. As a statesman he was full of forecast, acute in judgment, and comprehensive in his general views. He was eminently conservative in many things, and by precept and example recommended 'masterful inactivity' as preferable to mere impulsive and effervescent movements."

In 1850, as his life grew to a close (he knew that the end was near), Calhoun wrote a *Disquisition on Government* and a *Discourse on the Constitution and Government of the United States*, which Professor William P. Trent, in *Southern Statesmen of the Old Régime* (1897), calls "the most remarkable political documents the student of American history is called upon to read." In the first he fully explains his doctrine of the "concurrent majority"; in the second, his interpretation of the "compact" theory of the Constitution.

Among the embodiments of the "new blood" injected into Congress at this time may be mentioned two young South Carolinians, William Lowndes and Langdon Cheves, and a Tennesseean, Felix Grundy. In opposition to what had been the Republican policy Lowndes and Cheves became special promoters of a

strong naval establishment. Grundy expressed the war-spirit of the southwestern frontier in advocating resistance by force to the aggressions of Great Britain. Later, in the nullification controversy, he was the exponent of the strong Union sentiment of his State in opposition to the theory of Calhoun.

The war-spirit of the country swept the Government of the peace-loving, yet patriotic Madison into the gulf of war, unprepared as it was for the plunge. In his message at the opening of Congress on November 5, 1811, the President recommended "putting the United States into an armor and an attitude demanded by the crisis, and corresponding with the national spirit and expectations."

On the 29th of the month, Peter B. Porter [N. Y.], chairman of the Committee on Foreign Relations, reported resolutions advising armed resistance against Great Britain. In this the impressment of American seamen was made a chief cause for hostilities.

In the debate which followed, December 6, 1811, John Randolph was the only opponent of war. He advanced general pacifist arguments, and, in addition, blamed the government for causing the present unfortunate situation by its commercial restrictions. He ironically declared:

"Now that by our own acts we have brought ourselves into this unprecedented situation, we must get out of it in any way but by an acknowledgment of our own want of wisdom and forecast. But is war the true remedy? Who will profit by it? Speculators—a few lucky merchants who draw prizes in the lottery—commissaries and contractors. Who will suffer by it? The people. It is their blood, their taxes, that must flow to support it."

He repeated his favorite eulogy of Great Britain as our kindred country, the land of Shakespeare and Newton, etc., and his former denunciation of regular soldiers as mercenaries.

This specially aroused Richard M. Johnson [Ky.], who was representative of the anti-British sentiment of the frontier which had been set in bitter hostility by British instigation of Indian uprisings, and he excoriated Randolph for his unpatriotic sentiments.

"I have never thought that the ties of religion, of blood, of language, and of commerce would justify or sanctify insult and injury—on the contrary, that a premeditated wrong from the hand of a friend created more sensibility and deserved the greater chastisement and the higher execration."

In answer to Randolph's charge against the regular soldiers, Johnson gave with great feeling a graphic report of the gallant action of such troops (including personal friends of the speaker) under General William Henry Harrison at the defeat of Chief Tecumseh at the battle of Tippecanoe, which had been fought less than a month before (November 9).

Sketch of Johnson. Richard Mentor Johnson, a Kentuckian in birth, education (at Transylvania College), and fervent loyalty, had served in the legislature of his State, from which he was sent to Congress in 1807 as a Republican. Upon declaration of war with Great Britain, he raised Kentucky troops and at their head as colonel, fought under General Harrison at the battle of the Thames on October 5, 1813, when Tecumseh was killed—it was said by

Colonel Johnson.[1] The Colonel was borne terribly wounded from the field. On the following February, still unable to walk, he was carried to his seat in the House of Representatives amid cheers of the populace and members. In 1819 he was advanced to the Senate, where he served until 1829. He returned to the House, and continued as Representative until 1837, when he took the chair of the Senate as Vice-President. In Congress he was especially active in Indian affairs, and in securing pension legislation for veteran soldiers.

Mr. Calhoun, with the cutting scorn of which he was master on occasion, animadverted on the spirit, or, rather, lack of spirit, exhibited by the freakish Virginian.

"Our . . . maritime rights, and the personal liberties of our citizens employed in exercising them . . . are essentially attached, and war is the only means of redress. The gentleman from Virginia has suggested none—unless we consider the whole of his speech as recommending patient . . . submission. . . . Sir, which alternative this House ought to embrace it is not for me to say. I hope the decision is made already by a higher authority than the voice of any man. It is not for the human tongue to instill the sense of independence and honor. This is the work of nature—a generous nature, that disdains tame submission to wrongs."

Mr. Calhoun was led by his patriotic feeling to institute an ungenerous comparison between Lord

[1] When Johnson ran for Vice-President on the Democratic (Van Buren) ticket, his Whig opponents ridiculed the putative exploit in a ribald song:

"Rumpsy, dumpsy,
Colonel Johnson killed Tecumseh."

Chatham and Mr. Randolph, against which Randolph protested. After reflection the conscientious young South Carolinian withdrew the remark—an instance which unhappily has occurred infrequently in Congress and should exalt Calhoun in our esteem for his sense of justice and moral courage. At the close of the debate Randolph spoke in defense of his position, particularly his opposition to the regular army, with whose hireling spirit he proudly contrasted the free patriotism of the militia.

"In what school [but the British] had the illustrious men of the Revolution formed those noble principles of civil liberty asserted by their eloquence and maintained by their arms? Among the grievances stated in their remonstrance to the king a 'standing army' meets us at the threshold. It is curious to see in that list of wrongs so many that have since been self-inflicted on us. . . .

"Well might the father of political liberty [Lord Chatham] say to the Parliament of England: 'entrench yourselves in parchment to the teeth, the sword will find a passage to the vitals of the constitution.'"

In accordance with the recommendations of the Committee on Foreign Relations the House voted an increase of the army, a refitting of the navy, and resort to privateering.

On April 1, 1812, President Madison recommended the adoption of his favorite weapon, an embargo. The issue of the debate which resulted was whether the measure was what it purported to be, a genuine preparation for war, or another link in the chain of ineffectual commercial restrictions intended to avert hostilities.

Mr. Clay took the former view; Messrs. Randolph

and Josiah Quincy 3d, the latter. Mr. Quincy ironically defended the merchants who, it was charged, had instigated Jefferson's embargo, which, when it was put into operation with none of the effects they had hoped, the bringing of Great Britain and France to terms, but only with disaster to themselves, they clamorously denounced.

"It is true that, in 1805, the merchants did petition, not for embargo, not for commercial embarrassment and annihilation, but for *protection*. They at that time really thought that this national government was formed for protection, and had at heart the prosperity of all the great interests of the country. If 'it was a grievous fault, grievously have *the merchants* answered it.' . . . They 'asked bread *and you* gave them a stone'—'fish, *and you* gave them a serpent.' Grant that the fault was great, suppose that they did mistake the nature and character of the government, is the penalty they incurred by this error never to be remitted?"

Opposed as Quincy was to the war with Great Britain, he was so confirmed a Federalist that he could not resist advocating a consistent policy of the party, the building up of sea-power, that on January 25, 1812, he made a great speech on the navy which won applause from all parties, and did much to redeem his character in respect to patriotism.

Following this he declined reëlection to Congress, and thereafter devoted himself to New England interests, becoming successively a member of the Massachusetts legislature, mayor of Boston, and president of Harvard. Retiring from the last position in 1848 he spent the remaining years of his life in literary and social pursuits. He wrote a number of historical works relating to

Boston and Harvard, and a memoir of John Quincy Adams.

Seeing the war spirit in Congress, President Madison indicated that his real intention in recommending commercial retaliation had been a peace measure by laying it aside and reluctantly resorting to armed resistance. On June 1, 1812, President Madison sent a message to Congress in which he submitted the question of war with Great Britain to that body for decision. War was declared on June 18. As no new arguments were presented in the debates on the measure, and upon the subsequent conduct of the war, an account of the discussions is here omitted.[1]

The Hartford Convention. Because of its bearing on the questions of State Rights and Secession it is well, however, to note the proceedings of an anti-war convention of New England Federalists. In the congressional elections of that year all but three of the Representatives chosen in New England were opposed to the continuance of the war. Emboldened by this, on October 18 the Massachusetts legislature proposed a convention of the New England States "to lay the foundation of a radical reform in the national compact by inviting to a future convention a deputation from all the other States of the Union." Agreeably to this proposition delegates from Massachusetts, Rhode Island, Connecticut, and the Federalist counties of New Hampshire and Vermont met at Hartford, Ct., on December 15. It continued in session until January 5, 1815, when it presented a report in which a number of constitutional amendments were proposed, which, owing to the signing of the treaty of peace at

[1] The reader is referred for a report of these debates to *Great Debates in American History*, vol. ii., chap. vii.

Ghent on December 25, were not acted upon by any of the State legislatures or county organizations represented.

The report cited the invasions of State and popular rights which it considered were being made by the Administration. The two main abuses claimed were (1) *military conscription*, thereby converting the free militia into a standing army which was under exclusive executive control as evidenced by the sending of such troops raised by States for home defense into Canada as an invading force, and so converting the war, undertaken for defense into one of offense; and (2) *sectional discrimination* in legislation, whereby the burden of taxes fell more heavily on the States north of the Potomac than on those south of it, and commerce, "the vital spring of New England's prosperity," was annihilated, to the relative aggrandizement of the other more agricultural States.

Nine minor abuses were mentioned, chief of which were: (1) the seizure of the chief executive offices by a political combination of certain States in order to control public affairs in perpetual succession; (2) deprivation of judges of their offices in violation of the Constitution; (3) abuse of patronage in order to acquire willing and unscrupulous tools of the Administration; (4) admission of new Western States, unfitted for the privilege of membership in the Union in order to destroy the original balance of power; (5) the easy admission of aliens to citizenship, operating as an inducement for malcontent subjects of foreign governments to flock to this country in quest of executive patronage, to be repaid by servile devotion to the Administration, and (6) cultivation of prejudice against Great Britain and of partiality toward France by false statement of the relative resources of these nations, and of our political relations toward them.[1]

[1] It will be noted that the Convention, in its endeavor to present an imposing indictment of the Madison Administration were compelled to

These, said the report, were "the principal objections against precipitate measures tending to disunite the States, and, when examined in connection with the Farewell Address of the Father of his Country, they must, it is believed, be deemed conclusive." If the measures are not removed, or if the causes of sectional bitterness are found to be radical and permanent, "a separation, by equitable arrangement, will be preferable to an alliance by constraint, among nominal friends, but real enemies, inflamed by mutual hatred and jealousy, and inviting, by intestine divisions, contempt and aggression from abroad."

Accordingly the Convention proposed the following amendments to the Constitution:

1. Abolition of the section counting five slaves as three freemen in apportioning Representatives.
2. Modification of the terms of admission of new States.
3. Restriction of the power of embargo, etc.
4. Restriction of the war-making power to defensive war.
5. Exclusion of future foreign-born citizens from office.
6. Limitation of a President to a single term.

The Convention dissolved with the statement that, if its demands were not heeded, another convention would be called "with such powers and instructions as the exigency of a crisis so momentous may require." This was accepted at the time and thereafter as a threat of secession.

The ending of the war rendered such a further convocation unpropitious, and thereafter the New England

include all the acts that had been opposed by the Federalists from the beginning of Jefferson's Administration. This proved that the Federalists, like the Bourbons, "never learned nor forgot," even when events had thoroughly proved the wisdom and stability of the measures which they had unsuccessfully opposed.

States never contemplated secession, but became more and more national in sentiment. Nevertheless Southerners continually cast up to the North the Hartford Convention as interdicting any complaint from that quarter against secession by the South.

The same spirit which had caused the United States to purchase Louisiana—the fear of a monarchical power as a neighbor—actuated the various measures which culminated in the promulgation of the Monroe Doctrine as a comprehensive policy of national defense.

Washington's Farewell Address. All these measures had as their principle the dictum, "America for Americans." This was complementary to the foreign policy of the Republic, "No entangling alliances with Europe," which received its fullest expression in the Farewell Address of President Washington when, in September, 1796, he declined another election.[1]

After warning his countrymen, to avoid sectional jealousy and partisan strife as tending to disrupt the Union, Washington had said, with special reference to Great Britain and France:

"Nothing is more essential than that permanent, in-

[1] Thus establishing a precedent which thus far no President had broken by serving more than two terms, although Theodore Roosevelt sought an election which, if successful, would have resulted in an administration longer in total duration than Washington's.

Indeed, at the close of his first term, Washington contemplated refusing a second election, and submitted to James Madison certain sentiments on the subject which he desired him to incorporate for him in a "Farewell Address." Owing to the general pressure brought to bear upon him to continue in office, Washington did not use this composition. When the second "Farewell Address" was delivered, Madison surmised that Washington had employed some one else to phrase his sentiments — and opined that this was Hamilton. The address is given in full on page 58 of volume two of *Great Debates in American History.*

veterate antipathies against particular nations, and passionate attachments for others, should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness, is in some degree a slave. It is a slave to its animosity or its affection, either of which is sufficient to lead it astray from its duty and its interest. . . .

"Against the insidious wiles of foreign influence . . . the jealousy of a free people ought to be constantly awake. . . . The great rule of conduct for us in regard to foreign nations, is in extending our commercial relations to have with them as little connection as possible. . . . Europe has a set of primary interests which to us have none, or a very remote, relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves . . . in the ordinary combinations and collisions of her friendships and enmities.

"Our detached and distant situation invites and enables us to pursue a different course. . . . Why forego the advantages of so peculiar a situation? Why quit our own, to stand on foreign ground? . . . 'Tis our true policy to steer clear of permanent alliances with any portion of the foreign world."

Recognition of Latin-American Republics. The necessity for the promulgation of the Monroe Doctrine arose as a result of controversy over what should be our attitude toward other republics on the American continent, which, as we had done, were establishing themselves as independent of European sovereignty. During the first quarter of the nineteenth century there occurred a general revolt under the leadership of General Simon Bolivar against Spanish rule in South America. Among the first of the Spanish colonies to

revolt and establish fairly stable republican governments were the provinces of the river Plata. The question arose in 1818 as to the recognition of these governments, which was opposed by the Spanish minister, Señor Onis. On March 24 Henry Clay proposed in the House to appropriate money to send a minister to Buenos Aires, and on the next day supported the resolution. He said:

"I am no propagandist. I would not seek to force upon other nations our principles and our liberty if they did not want them. . . . But if an abused and oppressed people will their freedom; if they seek to establish it; if, in truth, they have established it, we have a right as a sovereign power to notice the fact, and to act as circumstances and our interest require. I would say, in the language of the venerated Father of our Country: 'Born in a land of liberty, my anxious recollections, my sympathetic feelings, and my best wishes are irresistibly excited whensoever, in any country, I see an oppressed nation unfurl the banners of freedom.'[1]

"We are the natural head of the American family. . . . I would not intermeddle in the affairs of Europe. I would not even intermeddle in those of other parts of America farther than to exert the incontestable rights appertaining to us as a free, sovereign, and independent power; and I contend that the accrediting of a minister from the new republic is such a right. We are bound to receive him if we mean to be really neutral. If the royal belligerent is represented . . . at our government, the Republican belligerent ought also to be heard. Give Señor Onis his *congé*, or receive the Republican minister. Unless you do so your neutrality is nominal."

[1] President Washington's reply to the address of M. Adet, the French minister, on his presentation to the United States of the colors of France in 1796.

On March 8, 1822, President Monroe, in a message to Congress, advised recognition of the *de facto* republican governments. The House voted to extend this on March 28, by a vote of 167 to 1, Robert S. Garnett [Va.][1] casting the sole negative vote. Suffering from the odium of his action he later asked to have his reasons therefor recorded on the Journal. This was at first refused, but afterwards, on sober second thought, granted.

Mr. Garnett declared that, in his opinion, recognition was an empty form unless it involved us in aiding, by armed force, the republics to maintain their independence, and to this he was opposed. Let the republics first demonstrate their capacity for self-government.

In his message of December 2, 1823 President Monroe announced the famous Doctrine that bears his name, and, because it was the crowning act of his career, it is in place here to recount his former services to the country.

Sketch of Monroe. James Monroe was born in Westmoreland county, Va., in 1758; was graduated from William and Mary in 1776; rose to the rank of major in the Revolution, acquiring a reputation as a faithful and brave soldier. After the war he studied law under Thomas Jefferson, imbibing also his political principles in which he never wavered. He served in the Virginia legislature (1782) and in the old Congress (1783–86). As we have already seen, he opposed ratification of the Constitution in the Virginia convention on State Rights grounds. He was a member of the

[1] Robert Selden Garnett, Sr., was a graduate of Princeton and a lawyer. He served in Congress from 1817 to 1827. He was a political supporter and personal friend of Andrew Jackson.

Senate from 1790 to 1794, when he was sent as minister to France. He ardently supported the revolutionary principles and aspirations of the French Republic, with the result that he was recalled by President Washington, who was desirous of maintaining an impartial attitude in foreign controversies. On his return to America he was hailed as a hero by the pro-French Opposition. In 1797 he published *A View of the Executive*, which reflected on Washington's conduct in defending his own. Monroe was at once elected Governor of Virginia by the Republicans, holding the office from 1799 to 1802. In 1803 he was sent to France to assist Minister Livingston in negotiating the Louisiana Purchase. Monroe proceeded from Paris to London as minister to the Court of St. James. Here, as has been related, he negotiated in conjunction with William Pinkney the abortive treaty between Great Britain and the United States. Monroe returned home in 1807, and published an elaborate defense of his conduct. Again he won popular approval, being sent to the Virginia legislature, and, in 1811, receiving election to the office of Governor, where he remained for only a short time, President Madison appointing him Secretary of State. This office he held until 1817, also acting in 1814–15 as Secretary of War. His natural succession to the highest place in the government was recognized, and he was elected President in 1817 by the overwhelming majority of 183 votes to 34, these being cast by New England for Rufus King, the Federalist candidate. He was reëlected in 1821 by an almost unanimous vote, one elector alone refusing to cast his ballot for him in order that Washington's unanimous choice for the place might remain without parallel. Owing to the lack of party strife in

Monroe's Administration it was called the "Era of Good Feeling."

His career after retiring to private life may be found in the encyclopedias.

Richard W. Thompson, in his *Recollections of Sixteen Presidents* (1894), after a description of the rather commonplace physical characteristics of Monroe, praises with moderation his mental and moral qualities:

"He was a fine specimen of what, in my boyhood, was called an 'old Virginia gentleman'—sincere in manner, simple in tastes, courteous in deportment, and manly in intercourse with all."

Of his qualities as a statesman Daniel C. Gilman remarks, in his *James Monroe* (1883) in the *American Statesmen Series:*

"His numerous state papers are not remarkable in style or in thought, but his views were generally sound, and . . . approved by the public voice. . . . The one idea which he represents consistently from the beginning to the end of his career is this, that America is for Americans."

The Monroe Doctrine. The two declarations which compose his famous Doctrine appeared in widely separated parts of his Message. The first was:

"That the American continents, by the free and independent conditions which they have assumed and maintain, are henceforth not to be considered as subjects for future *colonization* by any European power."

The occasion for this declaration was as follows: Russia claimed the Pacific coast as far southward as fifty-one degrees north latitude. Great Britain and the

United States opposed this claim below fifty-four degrees and forty minutes, and disputed between themselves the possession not only of the coast but of the interior western country, Great Britain claiming as her southern boundary the line of the mouth of the Columbia river (forty-six degrees) and the United States as her northern boundary fifty-four degrees and forty minutes. In 1818 the two countries agreed by treaty to a joint occupancy for ten years of the disputed territory. Great Britain began at once to explore the country to establish a claim to its possession on the expiration of the treaty.[1]

On July 2, 1823, John Quincy Adams, Secretary of State,[2] wrote to Richard Rush, American minister to Great Britain, a declaration for Rush to present, to that government that the continent of America "is occupied by civilized nations, and is inaccessible to Europeans and to each other on that footing alone," meaning that no more original titles could be secured by discovery, exploration, or settlement. Five months later Adams caused the President to insert such a declaration in his Message without the knowledge of the rest of the Cabinet. The British Government denied that the declaration was in accordance with the facts, asserting that land still remained to which there was as yet no original title.

The second declaration in the Message followed a statement of our national policy, as expressed by Washington in his Farewell Address, toward foreign powers. It ran:

"We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on

[1] See Vol. II., Chap. VI.

[2] The sketch of Adams is reserved for Volume II.

their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we . . . shall not interfere; but with the governments who have declared their independence, and maintained it, and whose independence we have . . . acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States."

This declaration was inspired by George Canning, British Secretary of Foreign Affairs, on account of the following situation. The "Holy Alliance" of continental European monarchies, at its congress at Verona in 1822, had agreed to check the spread of republicanism throughout the world by interfering with its greatest source of propagation, America. This threatened the subjugation of the revolted Spanish-American provinces, and, possibly, of the United States. Canning, fearing for his own country the aggrandizement of absolutism, wrote to Mr. Rush to urge our government to oppose the contemplated intervention. The American minister sent the letter to President Monroe, who, after consultation with ex-President Jefferson, followed its advice, as we have seen.

The determined attitude of the United States caused the Holy Alliance to hold in abeyance its contemplated action. Thus was fulfilled the first statement in Canning's famous prophecy that

"The New World had been called into existence to redress the balance of the Old, and would in time outweigh and topple over the fabrics of kingcraft upon which so many wise men had labored for thousands of years."

CHAPTER XI

NULLIFICATION

1828–1833

Protests of South Carolina and Georgia against the Tariff of 1828—President Adams on the Subject—Senate Debate on the Nature of the Union: in Favor of State Rights Theory, Robert Y. Hayne [S. C.]; Opposed, Daniel Webster [Mass.]—Sketches of the Debaters—Threats of Secession in Connection with Tariff of 1832—House Debate on the Bill: in Favor, Henry Clay [Ky.]; Opposed, Augustine S. Clayton [Ga.]—Sketch of Clayton—Ordinance of Secession by South Carolina—President Jackson's Proclamation and Messages against It—Senate Debate on the "Force Bill": in Favor, Felix Grundy [Tenn.] and Mr. Webster; Opposed, John C. Calhoun [S. C.]—Sketch of Grundy—Bill is Passed, and South Carolina Succumbs.

THE Act of 1828, called the "Tariff of Abominations," roused the ire of the South, especially South Carolina and Georgia. Mass meetings were held in these States at which resolutions were passed threatening secession from the Union unless the bill were repealed, and calling on the other Southern States to adopt the same attitude. However, this call was not heeded, since there was general expectation that a Southern man, Andrew Jackson [Tenn.], would be chosen President in the coming election, and that he would uphold the cause of his section. Indeed, South Carolina and Georgia, after recording their formal

protests in the Senate against the Tariff Act,[1] also decided to cease their agitation and await results.

The North in general failed to realize the gravity of the situation. President Adams, however, felt it, and in his message of December 2, 1828, recommended that, if it were found that the Act "relieved the manufacturer" only by "aggravating the burden of the planter," a careful revision of it should be made to remedy the inequality. Secession he conceived to be theoretically possible but not probable in execution.

"The members of the State and general governments are all under oath to support both. . . . The case of a conflict between these two powers has not been supposed; nor has any provision been made for it in our institutions—as a virtuous nation of ancient times [Rome] existed for more than five centuries without a law for the punishment of parricide."

Influential Northern statesmen supported the President in his laudable attempt to avert the peril of secession, and a virtual armistice between the sections of the country ensued. Arms gave way to the toga; indeed, the conflict in Congress became one of ideas rather than of opposing legislative acts, especially since it was a traditional policy of the Republican party, instituted by its founders, Jefferson and Madison, in the case of the Kentucky and Virginia Resolutions, to prepare the way for radical constitutional changes by academic discussion of theories of government.

Upon the elevation of Calhoun to the office of Vice-President in 1825, his mantle as floor leader of his party fell upon his successor as a Senator from South Carolina, Robert Y. Hayne.

[1] See *Great Debates in American History*, vol. v., pp. 28 and 30.

Sketch of Hayne. Robert Young Hayne, admitted to the bar before he was twenty-one, enlisted at that age in the Second War with Great Britain. At its close he established practice in his profession in Charleston, and was sent to the State assembly, becoming in 1818 its Speaker. From 1818 to 1822 he was Attorney-General of the State, and in 1823 was elected to the United States Senate. In both rhetoric and delivery his speeches were distinguished by beauty and grace, and the charm of the orator's personality soon caused him to be looked upon by the South as the ablest champion of the rights of that section of the Union.

In the minds of the State Rights advocates Hayne's superiority in eloquence to Calhoun more than compensated for his inferiority in argument to that most intellectual and astute of all Southern statesmen, and their unquestioned belief in the invincible prowess of their leaders and in the invulnerability of the doctrines of their party (which is a temperamental characteristic of Southerners) caused them, with few exceptions, to expect, and even to assume, a triumph over whatever Northern statesman should dare to accept their champion's challenge to debate the issue between the sections, namely, the nature, powers, and limitations of the Federal Government.

The Webster-Hayne Debate. The broad scope of such a subject and its fundamental reference to American government made possible its parliamentary application to almost any subject which might be brought before Congress, and Hayne seized the opportunity for its discussion which was presented by a motion that on its face seemed far removed from any relation to the State Rights doctrine. This was a resolution introduced in the Senate on January 19,

1830, by Samuel A. Foot, of Connecticut, inquiring into the expediency of suspending the sale of public lands.

Senator Hayne began by deprecating the sale of the public lands for money to accumulate in the Treasury, since this would lead to corruption and the "consolidation" of Federal power, which by its "control over States as well as over great interests in the country, nay, even over corporations and individuals" would be "utterly destructive to the purity and fatal to the duration of our institutions," and "equally fatal to the sovereignty and independence of the States."

"It is," continued Hayne, "only by a strict adherence to the limitations imposed by the Constitution on the Federal Government that this system works well and can answer the great ends for which it was instituted." He therefore proposed a relinquishment of Federal public lands lying in organized States to these States upon indemnification at cost, and the administration of the rest of the public domain with a view to the creation from them of "great and flourishing communities, to be formed into free and independent States, to be vested in due season with the control of all the lands within their respective limits."

This introduction of the State Rights theory in connection with a proposal to make a revolutionary change in one of the most important policies of the Republic, amounting to the relinquishment by the Federal Government of its greatest material asset, brought to his feet in unrestrainable protest the leading statesman of the North, Daniel Webster, Senator from Massachusetts.

Sketch of Webster. In boyhood Daniel Webster was of puny frame and weak constitution, which relieved him from the hard work of the farm on which his

father eked out his small earnings as a country lawyer. This gave the lad leisure for reading which he improved so well that his parents made great sacrifices to educate him, and he was sent to his father's Alma Mater, Dartmouth College. Here he overcame his natural shyness, and won such a reputation for eloquence that he was chosen to deliver the formal oration at an Independence Day celebration in the college town (Hanover). The themes he touched upon were those that remained the passion of his life—love of country, fidelity to the Constitution, and the necessity and nobility of the Union. After graduation (at the age of nineteen) he began the study of law, but relinquished it for a time to earn money by teaching to help his elder brother through college. Securing a position as clerk in a Boston law office, he completed his studies and was admitted to the bar at the age of twenty-three, and opened an office in a small town. Two years later, having acquired a good practice, he turned it over to his brother, and removed to Portsmouth, N. H., where he soon achieved a reputation second only to that of Jeremiah Mason, one of the most noted lawyers of the country, to whom he was frequently opposed in cases. He was a Federalist, and opposed Jefferson's Embargo and the war with Great Britain. An eloquent speech on the latter subject in 1812 led to his election to Congress, where he was placed on the Committee on Foreign Relations. He rapidly rose to leadership in the Opposition, speaking against the various war measures of the Administration, especially conscription and the invasion of Canada. Like Quincy, however, he supported the increase of the navy. Wiser and more patriotic than others of his party, he kept New Hampshire as a State out of the Hartford Convention.

In June, 1816, he removed to Boston, and, on the expiration in 1817 of his second term in the House, retired to law practice in order to accumulate a competency. Soon he was earning $20,000 a year, a great sum in that day. He was the attorney for the college in the famous Dartmouth College case, before the Surpeme Court, which he won, preserving his Alma Mater from the grasping control of the State of New Hampshire, and establishing the independence of corporations in their chartered rights. As the Republicans, who were in power in the State legislature, had made the case a party question, this was hailed as a great Federalist triumph. Indeed, the decision is reckoned as having gone farther than any other of our highest court in limiting State sovereignty and extending Federal jurisdiction.

Mr. Webster was a member of the Massachusetts constitutional convention of 1820. His argument in favor of property representation (in the Senate) is, probably, the ablest on that subject. In the same year, at the celebration of the second centennial of the landing of the Pilgrims, he delivered the finest commemorative oration ever heard in the country—to be excelled, however, in 1825, in his speech on the foundation of the Bunker Hill monument. He reached the pinnacle of classic oratory in the following year in his eulogies of Adams and Jefferson. The unifying spirit of this oratorical trilogy is patriotism in the special form of sacrifice of selfish individual interests for the common good. Like the Dartmouth case they greatly contributed to nationality, the cause of the Union.

From 1823 to 1829 Webster again served in Congress, being appointed Chairman of the Judiciary Committee. In this capacity he drafted and secured the passage of

a "Crimes Act" which remodeled the entire criminal jurisprudence of the United States. In January, 1824, he proposed a resolution to send a commissioner to Greece, which was in the throes of revolution. It was not adopted, but materially contributed toward the creation of that sympathy throughout the civilized world which led to the liberation of a portion of Greece from Turkish rule. In the debate on the resolution (January 19–24, 1824) he was opposed by John Randolph.[1] For Mr. Webster's debates on economic issues the reader is referred to Volume II.

At this time he was an independent in party politics. The Federalist party was in ruins, and the National Republican party was only beginning to form out of its wreckage under the leadership of Adams and Clay. Webster was not yet in entire sympathy with their purposes, opposing in particular Mr. Clay's self-styled "American system" of high protective duties.

In 1827 Webster was elected to the Senate. In the following year he reversed his position of 1824, and supported the act of that year known as the "Tariff of Abominations," and became the forensic protagonist in the opposition to the resultant "Nullification" movement led by Calhoun.[2]

Of his personal appearance and characteristics at this period Charles Lanham writes, in *The Private Life of Daniel Webster* (1852):

"At the age of forty [he] was considered the handsomest man in Congress. He was above the ordinary size, and stoutly formed, but with small hands and feet, had a large

[1] See *Great Debates in American History*, vol. ii., chap. ix.

[2] For the events of Webster's subsequent career the reader is referred to following pages and the encyclopedias.

head, very high forehead, a dark complexion [whence his appellation "Black Dan"], large, black, deeply sunken and solemn-looking eyes, black hair, very heavy eyebrows, and fine teeth. To strangers his countenance appeared stern, but, when lighted up by conversation, it was bland and agreeable. He was slow and stately in his movements, and his dress was invariably neat and elegant. His manner of speaking, both in conversation and debate, was slow and methodical, and his voice generally low and musical, but when excited, it rang like a clarion."

Thomas Carlyle wrote to Ralph Waldo Emerson, on June 24, 1839, of Webster:

"He is a magnificent specimen; you may say to all the world, This is your Yankee Englishman, such Limbs *we* make in Yankeeland! As a Logic-fencer, Advocate or Parliamentary Hercules, one would incline to back him at first sight against all the extant world. The tanned complexion, that amorphous craglike face; the dull black eyes under their precipice of brows, like dull anthracite furnaces, needing only to be *blown;* the mastiff-mouth, accurately closed:—I have not traced as much of silent *Berserkir*-rage . . . in any other man. 'I guess I should not like to be *your* nigger!'"

William Cleaver Wilkinson, in an article on Webster in the *Century Magazine,* vol. xxiii., p. 538, enumerates the various appellations given to him by his contemporaries:

"He was the 'godlike Daniel' to his countrymen in general; . . . [to] the educated men . . . 'the Olympian.' If he went abroad, some Englishman said he 'looked like a cathedral,' or Sydney Smith, with irreverent homage to his Titan might, said he 'was a steam-engine in breeches.'"

Of his moral qualities Senator Henry Cabot Lodge writes in his *Daniel Webster* (1883) in the *American Statesmen Series*:

"His moral character was not equal to his intellectual force. All the errors he ever committed, whether in public or in private life, in political action or in regard to money obligations, came from moral weakness. He was deficient in that intensity of conviction which carries men beyond and above all triumphs of statesmanship, and makes them the embodiment of the great moral forces which move the world. If Mr. Webster's moral powers had equalled his intellectual greatness, he would have had no rival in our history."

Senator Lodge continues, with a tribute to Webster for the central principle of his statesmanship:

"He stands today as the pre-eminent champion and exponent of nationality. He said once, 'there are no Alleghanies in my politics,' and he spoke the exact truth. . . . There is no taint of sectionalism or narrow local prejudice about him. He towers up as an American. . . . He did not invent the Union, or discover the doctrine of nationality. But he found the great fact and the great principle ready to his hand, and he lifted them up, and preached the gospel of nationality throughout the length and breadth of the land. In his fidelity to this cause he never wavered nor faltered."

Of Webster's oration on the Pilgrims John Adams said:

"If there be an American who can read it without tears, I am not that American. Mr. Burke is no longer entitled to the praise—the most consummate orator of modern times."

Francis Lieber, in 1860, wrote comparing Webster's speeches to those of Demosthenes for "simplicity and manliness":

"They bring before my mind the image of the Cyclopean walls,—stone upon stone, compact, firm, and grand. After I had perused, and aloud, too, the last speech . . . I took down Demosthenes, reading him aloud, too. It did not lessen my appreciation of Webster's speech. . . . Everything in Webster was capacious, large; he was a statesman of Chatham's type, I think."

Of Webster's power in debate, William Mathews, in his *Oratory and Orators* (1878), says:

"In debate Webster was quick at retort. If it was a personal insult that aroused the slumbering lion, the roar of rage was appalling, and the spring and death blow that followed were like lightning."

Of the "Reply to Hayne" in particular, Robert C. Winthrop in an article on the subject (1894) in *Scribner's Magazine*, vol. xv., p. 120, says:

"A single night was . . . all that he had for immediate preparation for the first day's effort, and one other night for that of the second day. . . . Before going to the Senate Chamber on the morning of the first day he told Mr. [Edward] Everett that as to the defense of the Constitution he had no misgivings, that he was always ready for that; and that his only anxiety was in regard to the personal and sectional parts of Colonel Hayne's attack. As he entered the Chamber, John M. Clayton, Senator from Delaware, said to him, 'Webster, are you primed and loaded?' 'Seven fingers,' was his only reply, with a gesture as if pointing to a gunbarrel.

"He spoke under great excitement, and with almost an

air of inspiration. Of his emotions he said himself not long afterward, 'I felt as if everything I had ever seen or read or heard was floating before me in one grand panorama, and I had little else to do than to reach up and cull a thunderbolt and hurl it at him [Hayne].'"

Senator Webster began his reply by expressing deep regret and pain at hearing the sentiments of the Senator from South Carolina, which, he was aware, were shared by "certain persons out of the Capitol," but which he did not expect so soon to find uttered within its walls.

"Consolidation!—that perpetual cry, both of terror and delusion—consolidation! Sir, when gentlemen speak of the effects of a common fund, belonging to all the States, as having a tendency to consolidation, what do they mean? Do they mean, or can they mean, anything more than that the Union of the States will be strengthened by whatever continues or furnishes inducements to the people of the States to hold together?"

To this species of "consolidation," said the Senator, every true American ought to be attached. It was that contemplated by the Fathers of the Republic when they had used the word in submitting the Constitution to the consideration of the country, and had said that in it were "involved our prosperity, felicity, safety; perhaps our national existence."

The tendency of such sentiments as those uttered by the Senator from South Carolina was "obviously to bring the Union into discussion as a mere question of present and temporary expediency; nothing more than a mere matter of profit and loss. The Union to be preserved while it suits local and temporary purposes to preserve it; and to be

sundered whenever it shall be found to thwart such purposes." Standing with the framers of the Constitution he deemed far otherwise. "What they said I believe—fully and sincerely believe—that the Union of the States is essential to the prosperity and safety of the States. I am a unionist, and in this sense a National Republican. I would strengthen the ties that hold us together. Far indeed, in my wishes, very far distant be the day when our associated fraternal stripes shall be severed asunder, and when that happy constellation under which we have arisen to so much renown shall be broken up, and be seen sinking, star after star, into obscurity and night."

The debate on Senator Foot's resolution had now lost its original relation to the public lands, and become a controversy on the nature of the Union between the South and the North as represented by their respective champions, the Senator from South Carolina and the Senator from Massachusetts. In his reply Senator Hayne chose to regard the speech of Senator Webster as an uncalled for personal attack on himself as a representative of the South in general and of South Carolina in particular.

He repudiated indignantly that he and those whom he represented constituted a party looking to disunion. The Senator from Massachusetts, he said, "had crossed the border, had invaded the State of South Carolina, and was making war upon her citizens and endeavoring to overthrow her principles and her institutions." He therefore felt it his duty, though with reluctance, "to carry the war into the enemy's country," and not to lay down arms until he should have obtained "indemnity for the past and security for the future."

Accordingly he entered upon a eulogy of his native State for its patriotism in the Revolution, which is a

classic of American eloquence too well known to require reproduction here. What is more to our purpose is his succeeding exposition of the "South Carolina doctrine," as presented in the protest of the State legislature against the tariff of 1828, and his support of it by citing and endorsing the Kentucky and Virginia Resolutions of 1798, and Madison's report on the latter, a document which he said deserved to last as long as the Constitution itself.

Senator Hayne specially dwelt upon the "compact theory" of Jefferson as to the nature of the Union, which has already been presented in these pages. The substance of this theory is that there is no common judge established between the two parties to the compact, the Federal Government and the State governments, and therefore in case of contest between them appeal must be made to neither, but to the original source of the powers of both, namely, the people, "peaceably assembled by their representatives in convention." In this connection he quoted from the protest against the tariff and the Federal acts for internal improvements which was prepared by Jefferson for the Virginia legislature in December, 1825, and in which it was declared that, evil as would be the dissolution of the Union, there was one calamity yet greater: "submission to a Government of unlimited powers."

Having fortified his position by such eminent authority, the Senator from South Carolina, resorting to the *argumentum ad hominem*, adverted to a speech of Mr. Webster, made as a Representative from New Hampshire, in which he upheld New England's opposition to President Jefferson's Embargo in threatening appeal to the State governments for relief against the unconstitutional Federal act.

Said Mr. Webster at that time: "This opposition is constitutional as well as legal; it is also conscientious. . . . Men who act from such motives are not to be . . . awed by any dangers. They know the limit of constitutional opposition; up to that limit . . . they will walk fearlessly."

Senator Hayne sarcastically commented:

"How 'the being of the government' was to be endangered by 'constitutional opposition to the Embargo' I leave to the gentleman to explain."

Hayne stated that it made little difference in his opinion whether Congress or the Supreme Court was vested with the exclusive power of judging the constitutionality of the acts of the Federal Government, since such a power was "utterly subversive of the sovereignty and independence of the States."

Great were the evils which had been brought upon the South by unconstitutional Federal acts, but were these less oppressive, still that liberty-loving section of the country would resist them as stoutly, since it contended for a sacred principle, resistance to unauthorized taxation, and against the substitution of the discretion of Congress for the limitations of the Constitution. He concluded with an eloquent peroration asking indulgence if he and his colleagues had in their ardor overstepped "the bounds of a cold and calculating prudence," since, in the language of Burke, "something must be pardoned to the spirit of liberty."

Upon the conclusion of this speech the Southern statesmen and newspapers hailed it as unsurpassed in American oratory, and equalled only by the great speeches of Burke and Chatham in the annals of British eloquence. However, Senator James Iredell of North

Carolina remarked: "Hayne has aroused the lion; wait till we hear his roar and feel his claws."

On the evening before the day set for Webster's reply the hotels of Washington were filled with visitors who had hurried to the Capitol to hear the "Lion of the North" respond to the "Achilles of the South," as the contestants were respectively appellated, and early next morning crowds poured into the Capitol. C. W. March, a contemporary journalist vividly described the scene:

"At twelve o'clock, the hour of meeting, the Senate Chamber . . . was filled to the utmost capacity. The very stairways were dark with men who hung on one another like bees in a swarm. The House of Representatives was early deserted . . . the members all rushed in to hear Mr. Webster. . . . The courtesy of Senators accorded to the fair sex room on the floor—the most gallant of them their seats. The gay bonnets and brilliant dresses threw a varied and picturesque beauty over the scene, softening and embellishing it."

Early in his reply Senator Webster courteously complimented his opponent upon his eloquent eulogium of his native State, which, he said, met with his own hearty concurrence, since he, too, was proud to claim the Revolutionary patriots of South Carolina as his countrymen—"Americans all." Further, he called the Senator's attention to the unity both of principle and feeling that existed between South Carolina and Massachusetts in the days of colonial struggle, and uttered a fervent wish for the restoration of that harmony which false principles, since sown, had converted into alienation and distrust.

He then entered upon the eulogy of Massachusetts

which, next to the peroration of the entire speech, has become the favorite selection from all his orations, and therefore does not require presentation here. In the rhetorical sense of the term it presents the finest example of "ironic denial" in literature, since, in the guise of disclaiming encomium upon the State as unnecessary in view of her patent greatness, he paid her the highest tributes both in general and particular. Indeed, in argument as well as oratory Webster was prone to use the legal device of presenting evidence in fact, while professing in form that he was withholding it. In the impression of reserved force which this imparted, lies, perhaps, the chief reason for his acknowledged supremacy among the orators and debaters of his day.

With consummate art Webster combined with his encomium upon Massachusetts a noble eulogy of the Union, of which tribute his personal devotion to the national ideal, whatever should be its fate, was the main and moving spirit. The dignity and grace of the appeal to the patriotism of his auditors contrasted effectively with the impassioned and unnecessary proclamation by Hayne of his loyalty to the country, and prepared for a favorable reception of the presentation and defense of what he held to be the true principles of the Constitution.

Before proceeding, however, with exposition, he gave a summary of what he understood his opponent to hold as the "South Carolina doctrine," namely, that a State had not only the conceded revolutionary right, but also the constitutional right to arrest the operation of Federal laws which it regarded as contrary to the Constitution.

Senator Hayne arose and agreed that this was the proper understanding of the doctrine by quoting with

his endorsement the statement of the "compact theory" in the words of the Virginia Resolutions, which he implied upheld this view.

Senator Webster construed this statement in different fashion, saying that the right of a State to oppose the "deliberate, palpable, and dangerous exercise" by the Federal government of "powers not granted by the compact" (to use the words of the Virginia Resolutions) was a conceded revolutionary right, and this alone was expressed by the Resolutions. Senator Hayne in reply contented himself with saying that he did not contend for the mere right of revolution, but for the right of constitutional resistance, failing to seize the opportunity of showing, as was easily possible by other passages of the Virginia Resolutions, that this was the meaning of that exposition of State Rights doctrine.

Senator Webster resumed his argument on the issues that were now agreed upon between himself and his opponent, namely, the constitutional right of a State to decide upon the constitutionality of Federal legislation, and to resist it in case of an adverse decision. He, on his part, admitted the right to make such resistance by lawful procedure, but not by force, and denied that decision by a State as to unconstitutionality of Federal legislation was a constitutional right. The latter question, he said, was the crucial issue, and to this he accordingly addressed his argument.

What, he inquired, was the source of the power of the government? It was the people, he claimed, not the State governments: one comprehensive and common sovereign and not four and twenty masters, any one of whom could repudiate the acts of its agents. Of the written agreement between the true master and agent he said, in a cogent

sentence to which Lincoln afterwards gave classic beauty in paraphrasing it in his Gettysburg speech: "It is, sir, the people's Constitution, the people's Government; made for the people; made by the people, and answerable to the people."

"The people of the United States," he said, "have declared that this Constitution shall be the supreme law. We must either admit this proposition or dispute their authority." The States, he conceded, are sovereign, but only so far as their sovereignty is not affected by the supreme law. The national government and the State governments are both agents of the people, coördinate in their authorization and with different powers, those of the national government being definite and restricted, and those of the State governments being general and residuary. The sovereign people by creating the Federal government definitely controlled the State governments. He therefore denied that the claim of his opponents that "State sovereignty" is to be "controlled only by its own feeling of justice," that is, not to be controlled at all in the legal sense.

Here the Senator enumerated various prohibitions of the power of the States which were specifically stated in the Constitution, namely, in regard to making war and treaties, and coining money.

The power to impose a tariff was reserved to the Federal Government, and clearly authorized. The objection of South Carolina and Georgia to the Tariff of 1828 as unconstitutional because designed to promote one industry at the expense of another, if it were admitted, equally prevailed against other tariff acts, notably that of 1816, which was established to promote the interest of manufacturers of American cotton to the admitted injury of the Calcutta cotton trade.

This was a telling reference, since the leader of the Southern opposition to the Tariff of 1828, John C. Calhoun, who sat in enforced silence in the seat of the Senate's presiding officer, had, as chairman of the Ways and Means Committee of the House, introduced the Tariff Bill of 1816. Senator Webster continued:

At the very moment when South Carolina is declaring the Tariff of 1828 unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. If duties are to be paid in the latter States and not in the former State, how will the application of the principle of the gentleman relieve us? His construction gets us into the difficulty; how does he propose to get us out? For we live under a government of uniform laws, and under a Constitution, too, which contains an express provision that all duties shall be equal in all the States.

Accordingly he asked: "If there be no power to settle such questions independently of the States, is not the whole Union a rope of sand? Are we not thrown back again precisely on the old Confederation?"

After quoting from a number of Southern utterances advising open resistance to the laws of the Union, Senator Webster proceeded to refute the charge that New England had ever taken the same attitude.

He admitted that that section of the country had bitterly opposed Jefferson's Embargo, but declared that the records of the New England State legislatures proved that no suggestions of forcible resistance to the measure had met with favor. No public man of reputation had ever advanced the "South Carolina doctrine" in Massachusetts even in the warmest times, or could maintain himself upon it there at any time. As for himself he repudiated the whole of it: "it has not a foot of ground in the Constitution to

stand on." On the contrary the very chief end, the main design, for which the whole Constitution was framed and adopted was to establish a government which should not be obliged to sit through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Hence they declared that "the Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding."

Who shall decide the question of interference of State laws with Federal? To whom lies the last appeal? The Constitution declares that "the judicial power shall extend to all cases arising under the Constitution and laws of the United States," and Congress at its first session established the mode of bringing all questions of constitutional power to the final decision of the Supreme Court. How reasonable was this plan! How preposterous would it have been to make a government for the whole Union, and yet leave its powers subject not to one interpretation, but to thirteen or twenty-four interpretations! Instead of one tribunal, established by all, responsible to all, with power to decide for all, shall constitutional questions be left to four and twenty popular bodies, each at liberty to decide for itself and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members?

The Senator then asked how State interference with Federal acts could practically be applied without bloodshed and rebellion. Taking resistance to the tariff act as an example, he imagined the procedure in South Carolina, and with graphic humor of the mock-heroic order frequent in early American oratory, he represented his honorable opponent, who, fortunately for the speaker's purpose, commanded the militia of

the State, as leading his troops, under the nullifying act as a standard, against the Charleston custom house, to be met there by the Federal officer in charge with the discomposing question: how, as a lawyer, the Senator could construe his act by Blackstone and other authorities as anything else than treason; and he asked how the officer, in case of compliance with the demands of the State, was to be protected along with the Senator and his associates from the capital punishment for this offense.

Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying that a State cannot commit treason herself is nothing to the purpose. Can she authorize others to do it? The gentleman could see, or think that he saw, how the judgment by Congress or the Supreme Court of the Federal government's powers subverted State sovereignty, but could not perceive that judgment by the State subverted the government. Perhaps he was right in his view of what the nature of the Union ought to be, but was this true of what it actually was? If the fact was not to his liking, let him and his associates peaceably proceed to persuade the people to adopt the prescribed constitutional method for changing the nature of the Union. Effective persuasion to this end he admitted would be difficult, since the people has willingly chosen to trust themselves to four guaranties: (1) the plain words of the Constitution, and the construction put by responsible Federal legislators, and administrators, under their oaths of office, on their respective powers; (2) frequent elections permitting the retirement of unworthy officers; (3) the Federal judiciary, made as respectable, disinterested, and independent as practicable; and (4) the power to amend the Constitution. Further the people of the United States had never authorized any State legislature to interpret the Constitution, or to arrest its oper-

ation. The South Carolina doctrine would enfeeble the Constitution to exist as a poor dependent on State permission.

There was, in his opinion, no fear of such a subversion. The people, viewing the blessings which Union under the Constitution had brought them, the restoration of the disordered finance, prostrate commerce, and ruined credit of the country which had prevailed under the Confederation, and the ample protection of widening territory and increasing population, were attached to it by bonds of reverence and gratitude which time was ever strengthening. With the future of the country under the Union so bright in prospect, he did not dare even to consider what it would be if the principles of his opponent should in time prevail, and the Union be destroyed. God grant that he should never see that day!

The Senator then ended his speech with an amplification of this prayer, which, in the classic perfection of its rhetoric and the sublimity of its appeal to the patriotism not only of the day, but of all time, remains the finest peroration of all orators ancient or modern.[1]

"When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the Republic, now known and

[1] Webster did not deliver the passage precisely in its present form. Recognizing that it was destined to stand as his highest achievement as an orator, he withheld for a long time its publication in the record of Congress, and carefully revised its rhetoric so that in rhythm and vocal quality as well as in the artistry of vocabulary and figure it should be as perfect a specimen of oratorical literature as he could make it.

honored throughout the earth, still full high advanced, its arms and trophies streaming in their original luster, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, What is all this worth? nor those other words of delusion and folly; Liberty first and Union afterward; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty *and* Union, now and forever, one and inseparable!"

As the Senator closed, the audience was profoundly thrilled, and the National Republicans passed out of the Capitol to walk the streets of Washington with high heads, facing down the subdued Democrats with a partisan pride that in its identification with national patriotism imparted an exaltation of spirit which, according to the testimony of many, formed the greatest psychical experience of their lives.

Senator Hayne now fully realized the disadvantages under which he had placed himself by injecting into a practical discussion of purely administrative method a question of idealistic principle, thereby permitting his opponent to break the same law of parliamentary appositeness to a far greater extent without fear of criticism. Like Don Quixote, Hayne had seized an inappropriate occasion to proclaim his devotion to his mistress, the Dulcinea del Toboso of State Rights, to challenge denial that she was the supreme lady of the land, and to charge with treason and threaten with condign punishment the wight who should be so bold as to prefer another, and he had thereby made it opportune for a champion to come forward in behalf of a mistress whose rank and attributes upon their mere

statement appeared to the impartial auditor as far transcending those of his own claimant. The majestic figure of Columbia, the emblem of the Union, sprang at once into the mind of his hearers when Webster proclaimed the sovereignty of the Federal Government in all national aspects. Imagination instantly fixed a conception which reason could not without great and prolonged effort remove.

In further likeness to the infatuated Knight of La Mancha, the chivalric Senator from South Carolina had rushed to the attack equipped with an ancient blade, which, though it had been potent in the hands of the mighty warriors who forged it from the metal of the Constitution, was unavailing in his weaker grasp to pierce the parries and oppose the counter thrusts of a master of fence whose sword was wrought of weightier steel from the same source, and was newly tempered in the expanding spirit of the time to a degree of elasticity far beyond that of his own weapon. Indeed, Hayne had invited defeat by basing his argument almost entirely upon the Kentucky and Virginia Resolutions, which one of their master spirits, James Madison, had subsequently refused to apply to the concrete and extreme case of forcible nullification of the Federal tariff by South Carolina. Indeed, in his previous speech Hayne had quoted without condemnation the statement of the other master spirit, Thomas Jefferson, that appeal on disputed questions between the Federal Government and a State was to neither party, but "to their employers, peaceably assembled by their representatives in convention."

Above all, by his own graceful, lark-like flights from the solid ground of argument into the airy regions of oratory, Hayne had given license to his opponent to

soar majestically far above him into an empyrean which was native to his eagle spirit.

He now returned to plain argument, cautiously defensive in character and based on premises which were more original and less equivocal than those of his former speeches. The proposition that South Carolina should appeal to her sister States to join with her in amending the Constitution he refused on the ground that such a course would admit the exercise of an authority already unconstitutional, and that it was absurd to suppose that redress could ever be obtained by such an appeal.

In support of his first objection he quoted a passage from President Adams's late message in which he stated that "we are chiefly indebted for the success of the Constitution . . . to the watchful and auxiliary operation of the State authorities," and warned Congress "against all encroachments upon the legitimate sphere of State sovereignty."

That such a determination of the nature of the Union would make it "a rope of sand" he emphatically denied. It would simply keep the Federal government within its proper constitutional limits, and preserve the Union from ultimate destruction by continuing the "checks and balances" devised by the wise fathers of the Federal system to prevent that overaction which is the besetting sin of all governments and the foe of freedom the world over.

Nullification by a State of unconstitutional Federal acts he declared was the safest of all checks, and least liable to abuse. The Supreme Court did not afford an equal safeguard. Three of the seven constituting the court formed a majority of its quorum of four, and, since all were without direct responsibility in matters of opinion, this triumvirate might certainly be influenced by inequitable motives such as were supposed would exist in the case of a State legislature deciding upon the constitutionality of a Federal act.

Surely a power which the gentleman is willing to confide to three judges might safely be intrusted to a sovereign State! In his opinion the State would not rashly exercise this trust in view of the powerful patriotic motives restraining it from taking the high ground of interposing her sovereign power to protect her citizens. Indeed, he feared that the State would fail to exert this power even on proper occasions, so great was the devotion of the people to the Union, and so solicitous were they of the friendship and good opinion of the citizens of the other States. Up to the present the State Rights advocates had not put their doctrine into practice. Their protest alone in the case of the Alien and Sedition laws had secured the repeal of these despotic acts. President Jefferson said he had yielded up the Embargo rather than force New England into open opposition to it, and he (Hayne) approved of the concession in view of the honest convictions of the unconstitutionality of the Embargo which were held by so large a portion of our fellow citizens. Were such results not desirable?

It was a disputed point whether Congress had the right to repass an act which the Supreme Court had nullified by declaring it unconstitutional. In case of such legislation the remedy would be an appeal by Congress, the party proposing to exercise the disputed power, to its creator, the States, to amend the Constitution. Why then should a sovereign and independent State be bound to submit to the operation of a Federal act which grossly violates her rights and which she believes to be unconstitutional? On the contrary, he believed the Federal Government was bound to acquiesce in a solemn decision of a State in the case of a Federal act, at least so far as to make an appeal to the pe ple for an amendment to the Constitution [a concession which the Senator had in the beginning of his speech refused to consider], and not to resort to coercion against the citizens of the State if this decision should be adverse. Such a repudiated law could be enforced only by unconstitutional

means, such as the coercion of juries at the point of the bayonet to find verdicts against citizens who had defended what they had reason to believe were their constitutional rights.

In answer to Webster's question as to how he would reply to the officer of the Charleston custom house demanding legal authority for the resistance of himself and his followers to an act of government, he said that they would not read out of musty law books to justify their enterprise, but would look to the Constitution, and claim as warrant the sovereignty of their State therein reserved.

In turn he put a personal question to Webster: Could there be any Federal violation of the constitutional rights of the States and of the liberties of the citizen (such as trial by jury, and freedom of religion and the press) which he believed it the right and duty of a State to resist? This interrogation he made rhetorical by answering it himself. Of course not; but Webster would call such resistance a revolutionary act, while he (Hayne) contended that it was a constitutional right. In order to present a favorable contrast between the "force" to which his opponent would resort, and the peaceful measure which he would employ, again he abandoned his initial repudiation of remedy by constitutional amendment, and supported this procedure, citing for the second time the recommendation of Jefferson to hold a popular convention that should call for a change in the nation's charter to decide definitely where authority should lie.

Having refuted himself on this, the crucial point of the discussion more effectually than any opponent could have done, he closed his speech and the debate by a graceful but unimpressive rhetorical figure parallel-

ing in form but opposing in thought the peroration of Webster.

"The gentleman is for marching under a banner studded all over with stars, and bearing the inscription Liberty and Union. I had thought, sir, the gentleman would have borne a standard displaying in its ample folds a brilliant sun, extending its golden rays from the center to the extremities, in the brightness of whose beams the 'little stars hide their diminished heads.' Ours, sir, is the banner of the Constitution; the twenty-four stars are there in all their undiminished luster; on it is inscribed, Liberty—the Constitution—Union. We offer up our fervent prayer to the Father of all Mercies that it may continue to wave, for ages yet to come, over a free, a happy, and a united people."

The weakness of Hayne's Mercurial effort to rival the Apollonian accents of the orator who was endowed thereafter by his followers with the grandiose title of "The Expounder and Defender of the Constitution," was recognized by his most ardent followers, and they bitterly regretted that they had not had as champion of their cause the man in the presiding chair, whose adherence to unrhetorical argument would not have permitted such an unfavorable comparison. Thereafter they looked to Calhoun as their leader.

Hayne made a still graver mistake by condoning the one pervading element of falsity in his opponent's rhetoric, namely the unfitness of his thought and its expression as related to himself (*i.e.* his own record), to the subject, and to the occasion. It remained for Thomas H. Benton,[1] Senator from Missouri, a week later (on February 2, 1830), to point out the essential flaw in Webster's effort, particularly the peroration.

[1] For a sketch of Benton see Volume II., Chapter II.

As an example of rhetorical criticism which is itself a rhetorical masterpiece, it is here reproduced for the benefit of readers who desire to attain discrimination in estimating the character of statesmen and the argumentative and oratorical quality of their utterances. Commenting on Webster's peroration as "one of the novelties of the debate," Senator Benton spoke of its "elaboration of argument and ornament upon the love and blessings of Union—the hatred and horror of disunion"—as a rhetorical device "which brought into full play the favorite Ciceronian figure of amplification," but violative of a higher rule—that of propriety.

"It came to us when we were not prepared for it; when there was nothing in the Senate, nor in the country, to grace its introduction. . . . It may be it was the prophetic cry of the distracted daughter of Priam breaking into the council and alarming its tranquil members with vaticinations of the fall of Troy; but to me it sounded like the sudden proclamation of an earthquake, when the sun, the earth, the air announced no such prodigy; when all the elements of nature were at rest, and sweet repose pervaded the world."

A fitting time, for such a discourse, he said, was on the occasion of the Hartford Convention.

"If it had been delivered then, either in the hall of the House of Representatives, or in the den of the Convention . . . what effects must it not have produced! What terror and consternation among the plotters of disunion!"

Threats of Secession. In 1832, when a new and even more protective tariff than the "abominations" one of 1828 was enacted in violation of the promise of reduction made by Henry Clay, the father of the bill,

threats of secession arose again in South Carolina and Georgia. In the debate on the bill, Clay, referring to the proposition of the South Carolina legislature to resort to counteracting measures, declared that, as the bill was for the good of the *whole* of the Union, any *part* of it must submit—the majority must rule.

"The majority ought to govern wisely, equitably, moderately, and constitutionally, but govern it *must*, subject only to the terrible appeal of revolution." If a minority succeed by threats in forcing an abandonment of what is for the general welfare, then "the Union, from that moment, is practically gone. It may linger on in form and name, but its vital spirit has fled forever!"

He appealed to the patriotism of South Carolina that it "pause and contemplate the frightful precipice before them," since "to advance is to rush on certain and inevitable disgrace and destruction."

In reply to this, Augustine Smith Clayton [Ga.],[1] on a later occasion, voiced the determination of his State to secede from the Union if the act was put into forcible operation.

"The South is attached, warmly attached to the Union; not, it is true, for its money, for we pay all and get nothing[2]; but for those free and liberal principles so dear to the

[1] Mr. Clayton was a distinguished jurist who had upheld the supremacy of the State over the Federal government in the matter of jurisdiction over the Cherokee Indians within the limits of Georgia, but was overruled by the Supreme Court. He served in Congress from 1831 to 1835.

[2] The South then had no manufactures, but imported all its supplies except main articles of food, largely from abroad in exchange for its cotton and from the North in exchange for this and other products. Hence it paid more for commodities under the tariff and received no benefits from it.

rights of man; those principles that form the best security for his life, liberty, and property, without which neither union nor anything else is worth preserving. In the words of a great man,[1] give us union, but give us liberty first. Do not deprive us of all our blessings under the empty sound of union. Do not steal from us our senses under the bewitching charm of union. Do not, like the Madagascar bat, suck us to death while you are fanning us to sleep by the cooling breezes of your widespread wings of union. We begin to understand all this delusion, and we are awake to the sufferings you have insidiously inflicted upon us by the talisman of union. If you will not withdraw your exactions, if you will not live with us upon the terms of equal rights, I tell you in the language of plain truth, to which, perhaps, you are unaccustomed, we shall certainly part from you—I hope, in peace."

In the ensuing Presidential election, South Carolina, in protest against the leading candidates, Jackson (the incumbent) and Clay, both of whom had declared against Nullification, voted for Governor John Floyd of Virginia, a pronounced Nullificationist.

Ordinance of Nullification. On November 24, 1832 (two weeks after the election), the people of South Carolina, in convention assembled, passed an Ordinance of Nullification against the tariff.

This asserted that the recent tariff act was *unconstitutional*, in that it discriminated in favor of class and sectional interests and "collected unnecessary revenue for objects [protection] unauthorized in the Constitution," and therefore that the act was "null and void" in the State, and to be resisted, if necessary, by force; and that, if the Federal government employed force to execute it, the State would organize itself as a separate and sovereign government.

[1] Patrick Henry in the Virginia Convention of 1788.

President Jackson[1] was reëlected, and in his Annual Message of December 4, 1832, after stating that the public debt would shortly be extinguished, and therefore proposing a reduction of the tariff—a conciliatory proposal to the South—he nevertheless firmly stated that the Federal laws in any event would be executed—by force if necessary.

On December 10 he issued a proclamation against Nullification, written by Edward Livingston, Secretary of State. After reciting the ordinance of South Carolina, he said:

"The ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional and too oppressive to be endured, but on the strange position that any one State may not only declare an act void, but prohibit its execution; that it may do this consistently with the Constitution; that the true construction of that instrument permits a State to retain its place in the Union, and yet be bound by no other of its laws than those it may choose to consider as constitutional. . . . [This] is to give the power of resisting all laws. For as, by the theory, there is no appeal, the reasons alleged by the State, good or bad, must prevail. . . .

"[Now] there are two [appointed] appeals from an unconstitutional act passed by Congress—one to the judiciary, the other to the people and the States."

The proclamation then discussed the "compact" theory upon which nullification was justified by its adherents. It claimed that the people as a whole were represented in the Federal government organized under the Constitution, exemplifying this in the choice of the

[1] The sketch of Jackson is deferred to a later volume.

President and the Vice-President, the electors of whom are chosen by popular vote.

"The electors of a majority of States may have given their votes for one candidate, and yet another may be chosen. The people, then, and not the States are represented in the executive branch."

The proclamation similarly showed that the House of Representatives was a popular legislature.

"The Constitution, then, forms a government, not a league; and, whether it be formed by compact between the States, or in any other manner, its character is the same. . . . Each State, having expressly parted with so many powers as to constitute, jointly with the other States, a single nation, cannot, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation."

The President besought the people of South Carolina, by the memory of their Revolutionary fathers, who had fought not only for the State but for the Republic, to retrace their steps, that they should not be "stigmatized when dead, and dishonored and scorned" when alive, "as the authors of the first attack on the Constitution" of their country.

To the citizens of the entire Union he appealed for undivided support in his determination to execute the laws of the United States, by moderate means if possible, but by drastic ones if necessary.

Despite the President's proclamation, South Carolina proceeded, in the same month, to elect Senator Hayne Governor, with the declared purpose to organize the State as a government independent of Federal control. In obedience to his first message it "resumed the sovereign powers which the State had resigned to the

Federal government under the Constitution." Governor Hayne put the State in readiness for war. However, the State still retained its Senators and Representatives at Washington.

In reply to the action of the Governor, President Jackson, early in January, 1833, sent a special message to Congress, asking it to take such measures as would vindicate the just power of the Constitution, preserve the integrity of the Union, and execute the laws.

The "Force Bill." In accordance with this recommendation the Judiciary Committee of the Senate reported a bill to employ the land and naval forces of the United States, if necessary, to put down resistance to the collection of customs duties. This was denounced by Southern Senators as a "Force Bill."[1]

The issue of the constitutional nature of the Union was presented in opposing sets of resolutions offered by John C. Calhoun [S. C.] and Felix Grundy [Tenn.].

Sketch of Grundy. Grundy, a native of Virginia, was taken in infancy by his parents westward, finally reaching Kentucky. Three of his brothers were killed by the Indians. He received his early education from his mother, a woman of forceful character, and his later, at a Kentucky academy. He studied law under George Nicholas, whose Republican principles he imbibed. He was a member of the State constitutional convention of 1799, and of the legislature from that year to 1806. In the latter body he crossed swords with Henry Clay in a debate on banking, which foreshadowed their future divergence in political faith. In 1807 he became Chief-Justice of the State, but, the salary being too small to live upon comfortably, he

[1] For an extended account of the debate see *Great Debates in American History*, vol. v., p. 92.

resigned, and removed to Nashville, Tenn. Here he achieved a great reputation as a criminal lawyer. As we have seen, he was elected to Congress in 1811 as a war Republican. He resigned in 1814 on account of the illness of his wife. In 1819 he was elected to the Tennessee legislature, where he opposed meretricious laws for the relief of the financial depression which was occasioned by the Second War with Great Britain, and succeeded in establishing a State bank to solve the difficulties. In 1830 he was elected to the Senate and placed on the Judiciary Committee. He made a speech on the Foot resolution which inclined toward Nullification, but on this issue in 1832–33 he supported his friend and party leader, President Jackson. In 1839 he was appointed by President Van Buren Attorney-General but resigned the next year to reënter the Senate. He supported a tariff for revenue with incidental protection, and followed his theory of representative government by obeying the will of his constituents and voting against the Sub-Treasury bill, though personally he was in favor of it. He died in 1840. Says *Appleton's Cyclopædia of American Biography:*

"He was a man of commanding presence, gentle and amiable. The legal literature of the southwest is filled with anecdotes about him. His last political act was to speak in Tennessee for Van Buren against Harrison. During the contest Henry Clay, who was passing through Nashville, visited Mrs. Grundy, and, on being told where her husband was, said: 'Ah, I see! Still pleading the cause of criminals.'"

Senator Calhoun's resolutions were to this effect:

1. The Union is a *compact,* to which the people of the several States are parties, each having acceded thereto as a separate sovereign community by ratifying the Constitution.

2. In forming the compact the people of the States delegated to the Federal government for the purposes of the Union certain definite powers, to be exercised jointly, reserving to each State the residuary mass of powers. Therefore when the Federal government assumes the exercise of undelegated powers its acts are of none effect. This government is not made the final judge of the disputed powers, since this would make it, and not the Constitution, the measure of its powers; therefore, according to the rule in such cases, judgment remains to the States, the parties to the compact.

3. All assertions to the contrary of these principles are contrary to plain historical fact and reason, and all exercise of Federal power based thereon is unconstitutional, tending to the subversion of the sovereignty of the States, the destruction of the Federal character of the Union, and the establishment of a *consolidated government*, without constitutional check or limitation, and which must necessarily terminate in the loss of liberty itself.

Senator Grundy's resolutions accepted the theory of delegated and reserved powers, and, by asserting that the laying of import duties was of the former class, declared that the tariff acts of 1828 and 1832 were constitutional, whatever opinions might exist as to their policy and justice, and therefore that any attempt to annul them by a State was an unconstitutional encroachment on Federal power and rights, and so dangerous to the political institutions of the country.

In a speech defending his resolutions Senator Calhoun stated that the South, being in a minority in the general government, was the natural champion of the reserved powers, and the North, being in a majority in that government, was the natural champion of the delegated powers.

The contest was one in which the weaker section, with its peculiar labor, productions, and situation, has at stake all that can be dear to freemen.

He rejoiced in the situation for certain reasons: if the South did not yield, while it would not participate in the privileges of government, it would not be exposed to its corruptions; and the fight to maintain its rights would call forth the highest qualities, moral and intellectual, as would be witnessed by the high proportion, with respect to population, of distinguished statesmen it would produce. If the South, however, gave up the contest, then would its state be more wretched than that of the slaves, or of the aborigines whom its people had expelled,[1] while the state of the entire country would be one of the most debasing calamity and corruption.

Senator Webster denied the proper derivation of the twin doctrines of Nullification and Secession from the Constitution:

The Constitution does not provide for events which must be preceded by its own destruction. Secession and Nullification are therefore *revolutionary*, for they seek to introduce a new paramount authority into the state. This does not imply, any more than did the Revolution, the subversion of government in all its branches—local laws and municipal administration, for example.

The revolution of South Carolina if permitted will spread throughout the country, leading to a total dismemberment of the Union. The gentleman seems not conscious of the direction or the rapidity of his own course. The current of his opinion sweeps him along, he knows not whither. To begin with Nullification with the intent of stopping before Secession is as if one were to take the plunge of Niagara and cry that he would stop half-way down.

[1] A significant confession of the oppressive treatment by the South of the negroes and Indians.

Nullification is *anarchy* as well as revolution. It raises to supreme command four-and-twenty distinct powers, each professing to be under a general government, and yet each setting its laws at defiance at pleasure. If the laws cannot be executed everywhere they cannot long be executed anywhere. Duties and imposts must be uniform throughout the country. We cannot have one law for South Carolina, and another for other States. The gentleman must see that the only alternative is repeal throughout the Union or enforcement in South Carolina.

It was anarchy of this sort in the old Confederation that caused us to adopt the Constitution—anarchy, moreover, in the very matter of national revenue against which South Carolina is revolting. And this is the foundation of government. She may protest against the tariff for its feature of protection, but the effect of her action is to arrest national revenue—the sole reliance of the government for maintaining itself and performing its duties.

Webster then expressed in four propositions his view of the nature of the Federal Union:

(1) That the Union is not a league, but a government proper, founded by the people and creating direct relations between itself and individuals; (2) that it is indissoluble except by revolution; (3) that it is under the sovereignty of the Constitution, the constitutional acts of Congress, and treaties, Congress, in cases not capable of assuming the character of a suit in law or equity, being judge of this supreme law, and the Supreme Court, in such cases, being the final interpreter; and (4) that nullification of such a law by a State is a revolutionary act.

He then concluded:

"Sir, the world will scarcely believe that this whole controversy, and all the desperate measures which its support

requires, have no other foundation than a *difference of opinion* upon a provision of the Constitution between a majority of the people of South Carolina on one side, and a vast majority of the whole people of the United States on the other. . . . And well may the whole world be incredulous. We, who hear and see it, can ourselves hardly believe it. . . . It is incredible and inconceivable that South Carolina should thus plunge headlong into resistance to the laws, on a matter of opinion, and on a question in which the preponderance of opinion, both of the present day and of all past time, is so overwhelmingly against her."

The "Force Bill" was passed, and South Carolina admitted that she was beaten by succumbing to the collection of the customs duties, and failing at this time to execute her threat of secession.

CHAPTER XII

SECESSION

1860–1861

Initiation of the Secession Movement in South Carolina—Sketches of Senators James H. Hammond and James Chesnut, Jr.—Speech of Chesnut—Debate on Secession in South Carolina Legislature: in Favor of Delay, Mr. McGowan; of Immediate Action, Mr. Mullins—Latter Course Adopted—Ordinances of Secession by the Cotton States—Protest of Governor Beriah Magoffin [Ky.]—General Winfield Scott Vainly Advises Strengthening of Southern Garrisons—Cabinet Changes—Opinion of Attorney-General Jeremiah S. Black on Coercion—Sketch of Black—President Buchanan Consults with Senator Jefferson Davis [Miss.] on His Message to Congress—Sketch of Davis—Digest of the Message—Debate in the Senate upon It: Northern Views by John P. Hale [N. H.] and Stephen A. Douglas [Ill.]; Southern Views by Alfred Iverson [Ga.] and Louis T. Wigfall [Tex.]—Sketches of Hale, Iverson, and Wigfall—London *Times* on the Message—Lazarus W. Powell [Ky.] Moves in Senate to Appoint Committee on Plan of Conciliation—Amended by Milton S. Latham [Cal.]—Sketches of Powell and Latham—Debate on Secession in Senate: in Favor, Judah P. Benjamin [La.]; Opposed, Edward D. Baker [Ore.]—Sketches of Debaters—Plan of Compromise Presented by John J. Crittenden [Ky.], Amended by Robert M. T. Hunter [Va.], and Opposed by Daniel Clark [N. H.]—Sketches of Debaters—Plan Defeated—Futile Peace Negotiations—Controversy over Garrisoning Fort Sumter—Aid Given to Southern Confederacy by United States Cabinet Ministers John B. Floyd [Va.] and Jacob Thompson [Miss.]—Seizure of Federal Property in the South—Organization of the Southern Confederacy—Inaugural Addresses of President Jefferson Davis and Vice-President Alexander H. Stephens [Ga.]—Sketch of Stephens.

THE prediction made by President Jackson in the Nullification contest that the next pretext for secession which the Calhoun party would seize upon would probably be slavery was fulfilled in 1860.

Owing to the fact that slavery was fundamentally an economic question and only secondarily a constitutional one, the story of the bitter controversy over it, which raged intermittently from the time when the first abolition petition was presented in the First Congress under the Constitution until Abraham Lincoln was elected President on the anti-slavery issue, will be given in Volume II.

On October 25, 1860, two weeks before Lincoln's election, which had been rendered certain by the division of the Democratic party into a Northern and a Southern faction, a meeting of South Carolina statesmen was held at the residence of Senator James H. Hammond,[1] at which there were present Governor William H. Gist, and the Senators and Representatives of the State in the Federal legislature, together with many other men of mark. The meeting resolved that the State should secede upon the event of Lincoln's election. Similar meetings were held about the same

[1] James Henry Hammond, a lawyer, became editor of the *Southern Times* of Columbia, S. C., in 1830, at which time he advocated Nullification. He was elected to Congress in 1835, but resigned in 1836 on account of ill health. From 1842 to 1844 he was Governor of the State. He was chosen to fill the incompleted term in the United States Senate of Andrew P. Butler (1857–1860). In March, 1858, he delivered a speech on the admission of Kansas, which won for him in the indignant North the title of "Mudsill Hammond," because in it he declared that society was necessarily divided into two classes, the people of leisure to lead in "progress, refinement, and civilization," and the laborers who, by doing the drudgery of the world, relieved the upper class to perform their function. Referring to the lowest foundation of a house (houses were then constructed in Southern country districts with beams laid directly on the ground), he said that the laborers constituted "the very *mudsills* of society and of political government." In the same speech he said that "Cotton [the chief product of the South, on which that section relied for economic independence and political predominance] is King," a phrase whose insolence also incensed the North.

time in Georgia, Alabama, Mississippi, and Florida, at which like resolutions were passed.

Governor Gist called the legislature to meet in extraordinary session on November 5, the day before election, ostensibly to appoint presidential electors (those of South Carolina being so chosen, instead of by the people directly, consistently with the State's theory that the Federal government dealt with the people only through the State governments), but really to declare in favor of secession and adopt military measures to maintain it.

James Chesnut, Jr.,[1] one of the Senators, was serenaded on the evening of the first day of the session. Replying to the ovation he said:

"The question now was, Would the South submit to a Black Republican President and Congress, who would construe the Constitution and administer the government in their own hands, not by the law of the instrument itself, nor by that of the Fathers of the country . . . but by rules drawn from their own blind consciences and crazy brains? . . . They claim the dogmas of the Declaration of Independence as part of the Constitution, and that it is their right and duty so to administer the government as to give full effect to them."

Other South Carolina statesmen spoke in a similar vein.

Debate on Secession in the South Carolina Legislature. There was unanimity in the legislature in favor

[1] Chesnut was a graduate of Princeton. From 1842 to 1852 he was an assemblyman, and from 1854 to 1858, a senator, in the South Carolina legislature. He was elected to the United States Senate in 1859. He entered the Confederate army and rose to the rank of brigadier-general. In 1868 he was a delegate to the National Democratic Convention which nominated Horatio Seymour for the Presidency.

of secession, but an animated debate ensued on the question of whether South Carolina should wait for the coöperation of the other "Cotton States" to declare it.

Mr. McGowan of Abbeville county was in favor of the latter course.

"South Carolina has sometimes been accused of a paramount desire to lead or to disturb the councils of the South. Let us make one last effort for coöperation, and, in doing so, repel the false and unfounded imputation. Then, if we fail, and a convention is called under these circumstances, I, and all of us, will stand by the action of that convention."

Mr. Mullins, of Marion county, advised instant action. He spoke of the rebuff that a commissioner on the subject of coöperation had received from Virginia, that State having as much as said that no indignities could drive her to take the leadership for Southern rights.

"If we wait for coöperation, slavery and State rights will be abandoned, State sovereignty and the cause of the South lost forever, and we will be subject to a dominion the parallel of which is the poor Indian under the British East Indian Company."

He also urged as a reason for immediate and independent secession the high probability of recognition of South Carolina as a sovereign government by the imperial powers of Europe, saying he had authentic information that propositions to this effect had been made by a representative of one of these countries, who was desirous to assure to that power such a supply

of cotton for their future as their increasing demand for that article would require.

On November 7, the legislature decided on immediate secession. Edmund Ruffin [Va.], the influential editor of an agricultural paper circulating widely through the South, and an ardent advocate of slave labor, had come to Columbia to urge immediate secession. He was serenaded on the evening of the passage of the ordinance, and said in response that "the first drop of blood spilled on the soil of South Carolina would bring Virginia and every Southern State with them."

Ordinances of Secession. The legislature issued a call for elections to a secession convention to be held on December 17. Hammond and Chesnut resigned their seats in the United States Senate,[1] and the leading Federal officers in the State followed their example.

The action of South Carolina met with quick response in the other Cotton States, the legislatures being called in special session to act on secession. Governor Samuel Houston [Tex.], a veteran general of the war for Texan Independence, and inclined toward the Union, refused to issue such a call, whereupon sixty of the legislators did so unconstitutionally, the governor weakly submitting, and shortly afterwards resigning his office. The governors and legislatures of the slave States of Delaware, Maryland, Kentucky, and Tennessee, being Unionist in sentiment, refused to call conventions. Governor Beriah Magoffin [Ky.] issued an address to all the Southern States protesting against the contemplated action:

The geography of this country does not admit of a division; the mouth and sources of the Mississippi river cannot

[1] Their resignations were not accepted, and, on July 11, 1861, the Senate expelled them as traitors.

be separated without the horrors of civil war. We cannot sustain you in this movement merely on account of the election of Lincoln. . . .

Kentucky claims that, standing upon the same sound platform [of State Rights], you sympathize with her in her exposed, perilous border position. . . . If you secede, your representatives will go out of Congress, and leave us at the mercy of a Black Republican Government.

He declared that the wise policy to protect Southern rights was for the slave States to remain in the Union in united opposition to the anti-slavery plans of the Administration.

Arkansas, North Carolina, Virginia, and Missouri held conventions in which Union men were in a majority and the secession of these States was thus postponed. The later secession of Missouri was the work of persons unauthorized not only by the people of the State, but also by the Confederacy itself, and, while it was formally recognized by the Confederate government, was invalid on every count, including the theory of secession.

The South Carolina convention adopted an Ordinance of Secession on December 20, 1860, with a Declaration of Causes, the chief of which was the failure of the Northern States to fulfil the constitutional obligation to return fugitive slaves; this broke the "Federal contract" said the convention, and so gave South Carolina a right to recede from it, there being no common arbiter between the States. Three commissioners were sent to Washington to treat with President Buchanan for the delivery of the United States property in South Carolina to the new nation, to adjust her share in the public debt of the United States, etc. The United States executive department very properly refused to treat with them, for the literal construction of the

Constitution insisted on by the extreme State Rights theory, as well as the view that the Union was sovereign and indissoluble, forbade this.

On January 9, 1861, the Mississippi legislature passed an Ordinance of Secession by an overwhelming vote. On the 10th the Florida convention took similar action, and on the 11th the Alabama convention declared for secession by a vote of 61 to 39. On the 19th, after an animated debate, in which Alexander H. Stephens and Herschel V. Johnson, who had been the candidate on the Douglas ticket for Vice-President, opposed the measure, the Georgia convention passed an Ordinance of Secession by a vote of 208 to 89. On the 26th the Louisiana convention passed such an ordinance by a vote of 103 to 17. The opponents claimed fraud in the elections to the convention, and demanded a referendum to the people. This proposition was voted down, 84 votes to 45. On February 1, the Texas convention passed an Ordinance of Secession by an almost unanimous vote. The measure was referred to the people and ratified by a large majority.

Course of President Buchanan. While State after State was thus departing from the Union President James Buchanan[1] made but the feeblest efforts to assert Federal authority over them, especially over the Federal property within their limits. Shortly before the election of Lincoln, the commanding general of the army, Winfield Scott (who had been the hero of two wars, the Second with Great Britain, and the Mexican War, and the unsuccessful Whig candidate for President in 1852, and was a Virginian of the most fervent loyalty to the principle of nationality, believing in extreme measures to suppress secession in its incipiency), wrote

[1] The sketch of Buchanan is deferred to Volume II.

to the Secretary of War, John B. Floyd, expressing the fear that the South, before seceding, would endeavor to get possession of the nine Federal forts within their borders, and therefore urging that these forts be fully garrisoned to resist such an attempt. No action was taken on his recommendation, and later, when, events having shown the wisdom of his warning, he published the letter to exonerate himself, he aroused the wrath of the President with the result that the heads of the Administration and the army were alienated at the crucial time when their coöperation was supremely needed by the country.

The indecisive course of the President also had a disintegrating effect on his Cabinet, pleasing neither the Southerners nor Northerners who composed it. On December 10, 1860, Howell Cobb [Ga.], Secretary of the Treasury, resigned, alleging as his excuse the hopeless condition of the public funds. Philip F. Thomas [Md.], appointed in his stead, resigned within a few days, and was replaced by John A. Dix [N. Y.], a Democrat of the most sterling metal of patriotism, as was shortly indicated by his telegram to an agent he had sent to the South to prevent the surrender of Federal revenue cutters: "If any person attempts to haul down the American flag, shoot him on the spot." On December 14, Lewis Cass [Mich.], Secretary of State, resigned because of the President's refusal to reinforce and provision the Federal garrison in Charleston harbor. He was replaced by Attorney-General Jeremiah S. Black [Pa.], who had long been Buchanan's closest friend and adviser, and Edwin M. Stanton [O.], succeeded to Black's vacated position.

Constitutionality of Coercion. On November 17, 1860, the President, in preparing his annual message to

Congress, had asked Attorney-General Black[1] for an opinion upon the legal status of the situation. Mr. Black gave it as his opinion that, where, owing to resignations, there were no Federal judges in a State to issue judicial process, nor officers to execute it, the use of Federal troops would be illegal, since these were intended to *aid* the courts and marshals, and not to *replace* them. He therefore concluded:

If war cannot be legally declared, then an attempt to use force against a State would be *ipso facto* its expulsion from the Union, and, being treated as an alien and an enemy, she would be compelled to act accordingly. And if Congress shall break up the Union by such an unconstitutional act, all the States will be absolved from their Federal obligations; no part of the people is bound to contribute money and men to carry on such a contest.

The right of the Federal government to preserve itself in its whole constitutional vigor by repelling aggression on its property and officers cannot be denied. But this is a totally different thing from an offensive war to punish the *people*[2] of a State for the political misdeeds of its government, or to prevent a threatened violation of the Constitution, or to enforce an acknowledgment that the government of the United States is supreme. The States are colleagues of one another; and, if some of them should conquer the rest,

[1] Jeremiah Sullivan Black was elected to the Supreme Court of Pennsylvania in 1851, and was appointed Attorney-General of the United States in 1857. After his transfer to the State Department in 1860 he exerted himself to oppose the plans of the secessionists. Late in life he had a newspaper controversy with Jefferson Davis on the question of secession.

[2] The Attorney-General ignored the fact that the people of South Carolina had authorized, through their legislative representatives, the acts of secession, and the seizure of Federal property and opposition to Federal officers which this involved.

and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected.

The President also sought the advice of Senator Jefferson Davis [Miss.] in preparing his message. According to Davis's testimony,[1] Buchanan read to him the rough draft of the document, and accepted all the modifications which he suggested. Says Davis:

"The message was, however, somewhat changed, and, with great deference to the wisdom and statesmanship of the author, I must say that, in my judgment, the last alterations were unfortunate."

Sketch of Davis. Jefferson Davis was born in 1808 in Kentucky, but his father, a veteran of the Revolution, removed shortly after this to Mississippi. Young Davis entered Transylvania College at Lexington, Ky., but left it in 1824 to accept an appointment of President Monroe in West Point. Soon after his graduation (in 1828) he served in the Black Hawk War of 1831–32 (in which Abraham Lincoln was a militiaman). Though advanced to the rank of lieutenant, he resigned in 1835, and, eloping with the daughter of Colonel Zachary Taylor, settled near Vicksburg as a cotton planter. In 1844, as an elector on the Polk and Dallas ticket, he attracted public attention by his able speeches, and in the following year was sent to Congress. Here he took active part in the debates on the Mexican War, the Oregon boundary, and the tariff. On the outbreak of the war with Mexico he resigned his seat to become colonel of the First Mississippi Volunteers. His

[1] *Rise and Fall of the Confederate Government*, vol. i., p. 59.

gallantry in action, proved by a severe wound, caused President Polk at the close of the war to offer him the commission of brigadier-general, but this he declined on the ground that a militia appointment by the Federal executive was unconstitutional. He was elected to the Senate in 1847, and placed on the military committee as chairman. He took a leading part in the slavery controversy which arose to its greatest intensity at this period. In 1851 he resigned to become the extreme State Rights, or "resistance" candidate for Governor of his State. His so-called "Union" opponent, Senator Henry S. Foote, was elected. In 1852 Davis actively supported the candidacy of Franklin Pierce for the Presidency, and, on Pierce's election, was appointed Secretary of War. He administered his office with notable efficiency, especially in the introduction in the army of the most modern scientific weapons. Having, as a Senator, advocated the construction of the Pacific railroad as a means of unifying the nation, he took charge with great zeal of the survey of the possible routes.

At the close of Pierce's administration he reëntered the Senate, where he served until his State seceded from the Union, when he resigned in a speech remarkable in the annals of American eloquence for its high and noble tone of sincerity and conviction, and its deep feeling. Indeed, as a debater Mr. Davis was the soul of courtesy —a gentleman in every sense of the word. He did not indulge in the bitter and brutal attacks upon the anti-slavery men of the North to which a large number of Southern statesmen were prone, giving currency to the term of "plantation manners." Wherever possible he touched upon slavery in its economic and constitutional, rather than partisan aspect, despite the fact that in

political action he was an extreme sectional and party man. He particularly opposed the "popular sovereignty" theory of Senator Stephen A. Douglas [Ill.], and led in the fight which, early in 1860, "read him out" of the regular (Administration) Democratic party, and so defeated all chance of union upon him as presidential candidate by the Northern and Southern Democrats.[1]

Congress assembled on December 3, 1860, the Senators from South Carolina being absent. The last annual message of President Buchanan began with a discussion of the great crisis before the country, and followed the argument of the Attorney-General. After a review of the slavery question, in which he cast the blame for dissension in the country upon the Abolitionists who had circulated pictorial pamphlets throughout the South, of a character calculated "to excite the passions of the slaves," and, in the language of President Jackson, "to stimulate them to insurrection, and produce all the horrors of a servile war," Buchanan said:

"How easy would it be for the American people to settle the slavery question forever, and to restore peace and harmony in this distracted country!

"They, and they alone, can do it. All that is necessary . . . and all for which the slave States have ever contended, is to be let alone, and permitted to manage their domestic institution in their own way. As sovereign States, they, and they alone, are responsible before God and the world for the slavery existing among them. For this, the people of the North are no more responsible, and [in this] have no more right to interfere, than [for and] with similar institutions in Russia or Brazil. Upon their good sense and patriotic forbearance I confess I still greatly rely. Without their aid it is beyond the power of any President,

[1] See *Great Debates in American History*, vol. v., chap. vii.

no matter what may be his own political proclivities, to restore peace and harmony among the States. Wisely limited and restrained as is his power, under our Constitution and laws, he alone can accomplish but little, for good or for evil, on such a momentous question. . . .

"The election of any one . . . to the office of President does not of itself afford just cause for dissolving the Union. . . . In order to justify a resort to revolutionary resistance, the Federal government must be guilty of a 'deliberate, palpable, and dangerous exercise' of powers not granted by the Constitution. . . Reason, justice, a regard for the Constitution, all require that we shall wait for some overt and dangerous act on the part of the President-elect before resorting to such a remedy. . . .

"The most palpable violations of constitutional duty which have yet been committed consist in the acts of different State legislatures to defeat the execution of the Fugitive Slave law. It ought to be remembered, however, that for these acts neither Congress nor any President can justly be held responsible. . .

"The Southern States, standing on the basis of the Constitution, have a right to demand [the repeal of these State acts]. Should it be refused, . . . the injured States, after having first used all peaceful and constitutional means to obtain redress, would be justified in *revolutionary* resistance to the government of the Union. . . .

"In order to justify secession as a *constitutional* remedy, it must be on the principle that the Federal government is a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties. If this be so, the Confederacy [Union] is a rope of sand, to be penetrated and dissolved by the first adverse wave of public opinion in any one of the States. . . .

"Such a principle is wholly inconsistent with the history as well as the character of the Federal Constitution. . . . It was not until many years after the origin of the Federal government that such a proposition was first advanced.

It was then met and refuted by the conclusive arguments of President Jackson.

"It is not pretended that any clause in the Constitution gives countenance to such a theory. It is altogether founded upon inference . . . from the sovereign character of the several States. . . . But is it beyond the power of a State, like an individual, to yield a portion of its sovereign rights to secure the remainder? In the language of Mr. Madison, who has been called the Father of the Constitution, 'it was formed by the States—that is, by the people of each of the States, acting in their highest sovereign capacity; and formed, consequently, by the same authority which formed the State constitutions.' . . .

"That the Union was designed to be *perpetual* appears conclusively from the nature and extent of the powers conferred by the Constitution on the Federal government. These powers embrace the very highest attributes of national sovereignty. They place both the sword and the purse under its control . . . and [provide] effectual means to restrain the States from interfering with their exercise, . . . [the Constitution declaring] that 'this Constitution and the laws of the United States . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, *anything in the constitution or laws of any State to the contrary notwithstanding.*' . . .

"It may be asked, then, are the people of the States without redress against the tyranny and oppression of the Federal government? By no means. [Here he stated the right of revolution, expressed in the Declaration of Independence.] Secession is neither more nor less than revolution.

"What, in the meantime, is the responsibility and true position of the Executive? He is bound by solemn oath . . . 'to take care that the laws be faithfully executed.' But what if [as in the present case] the performance of this duty . . . has been rendered impracticable by events over which he could have exercised no control?"

Here he recited the acts of Congress of February 28, 1795, and March 3, 1807, authorizing the President to call forth in such cases, the militia, and to employ the army and navy to enforce the laws, having first, by proclamation, commanded the insurgents to disperse. Now in the present case, he said, this action cannot be legally taken, there being no Federal judicial authority in South Carolina to issue process, and no Federal marshals to execute it. Congress therefore must remedy the deficiency if this is constitutionally possible.

"The same insuperable obstacles do not lie in the way of executing the laws for the collection of the customs. The revenue still continues to be collected . . . at Charleston.

"In regard to the property of the United States in South Carolina. . . . The officer in command of the forts has received orders to act strictly on the defensive. [In event of attack] the responsibility for consequences would rightfully rest upon the heads of the assailants.

"Apart from the execution of the laws . . . the Executive has no authority to decide what shall be the relations between the Federal government and South Carolina. . . . It is therefore my duty to submit to Congress the whole question. . . .

"This, fairly stated, is: Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw . . . from the Confederacy [Union]? . . . This power . . . was expressly refused by the convention which framed the Constitution.[1]

"It may be safely asserted that the power to make war against a State is at variance with the whole spirit and intent of the Constitution. Suppose such a war should result in

[1] See speeches of Madison on May 31 and June 8, 1787, in *Elliott's Debates on the Constitution.*

the subjugation of a State; how are we to govern it afterward? Shall we hold it as a province, and govern it by despotic power? . . . Congress possess many means of preserving [the Union] by conciliation; but the sword was not placed in their hand to preserve it by force."

The President then suggested as a conciliatory expedient an amendment of the Constitution clearly stating the assertions of the disputed Dred Scott decision, namely (1) the right of property in slaves in States where they now or may hereafter exist; (2) recognition of Slavery in the Territories; and (3) validity of the Fugitive Slave law.

The President's message was debated at length in both the Senate and the House. In the former, the Republican view of the message was voiced by John P. Hale [N. H.]. Varying Southern views were expressed by Alfred Iverson [Ga.] and Louis T. Wigfall [Tex.].

Sketch of Hale. John Parker Hale, before he joined the Republican party, was a Free State Democrat. Five years after his graduation from Bowdoin, and two after his admission to the bar, he was elected to the New Hampshire assembly as a Democrat. In 1834 he was appointed a Federal district-attorney by President Jackson. He was removed in 1841 by President Tyler on party grounds. He served in Congress from 1843 to 1845, when he virtually declined reëlection by refusing to support the annexation of Texas, a Democratic measure. On this subject he held a memorable debate with Franklin Pierce at Concord, N. H., June 5, 1845. In 1846 he was elected by the Whigs and independent Democrats to the State legislature, of which he was made Speaker. He entered the United States Senate in 1847, and in the same year declined the nomination of

President by the National Liberty party, supporting, however, ex-President Van Buren, who accepted this nomination in 1848. He was the only distinctive anti-slavery man in the Senate until joined by Salmon P. Chase [O.] in 1849, and by Charles Sumner in 1851. In 1852 he was nominated for President by the Free-soil party. Owing to his anti-slavery views, he failed of renomination by the Democrats for the Senate, and in 1853 he retired to law-practice in New York City. In 1855 he was elected to the Senate as a Republican to fill an unexpired term, and continued in this body until 1865, when he was sent abroad as minister to Spain. Owing to a dispute with his secretary of legation, due probably to Hale's failing health, he was recalled in 1870. He died in 1873.

Senator Hale was probably the most sarcastic of American statesmen, and was both feared and hated by his opponents. He was imposing in appearance, and had a clear voice and ready use of language, being a master of pathos, as well as of wit and humor.

Sketch of Iverson. Alfred Iverson was a graduate of Princeton, and a lawyer of repute in Columbus, Ga. After service in the legislature of the State, and as judge of the superior court, he entered Congress in 1846. He took his seat in the Senate in 1855. On January 6, 1859, he made a notable reply to the "Irrepressible Conflict" speech of Senator William H. Seward.[1]

Sketch of Wigfall. Louis Trezevant Wigfall was a native of South Carolina, in the College of which State he received his education, leaving before graduation, however, to go to Florida as a lieutenant of volunteers to fight the Seminoles. He subsequently studied law

[1] See *Great Debates in American History*, vol. v., p. 180.

at the University of Virginia. Removing to Texas he there entered into the practice of his profession. After service in the State assembly and senate, he was elected to the United States Senate, taking his seat in January, 1860. Here he won recognition by his brilliant, impassioned speeches as one of the ablest and most uncompromising advocates of "Southern rights," especially slavery. At the next session he did not return to Washington, but, as an aide to General Beauregard, took part in the bombardment of Fort Sumter, and was that officer's emissary to Major Anderson to demand the surrender of the fort. On July 11, 1861, he was expelled from the Senate. He rose in the Confederate army to the rank of brigadier-general. He also represented Texas in the Confederate House and Senate. At the end of the war he went to England, but returned in 1873 and settled in Baltimore. He died while on a lecture tour in Texas. He was an ardent partisan, and took part in a number of duels which resulted from his speeches.

Senator Hale was quite sarcastic in discussing President Buchanan's message.

"I have read it somewhat carefully, and, if I understand it, it is this: South Carolina has just cause in seceding from the Union; that is the first proposition. The second is that she has no right to secede. The third is that we have no right to prevent her from seceding. . . . The power of the country, if I understand the President, consists in what Dickens makes the English constitution to be—a power to do nothing at all.

"Now, sir, I think it was incumbent on the President to point out definitely and recommend to Congress some rule of action. . . . But . . . he has entirely avoided it. . . . He has acted like the ostrich, which hides her

head, and therefore thinks to escape danger. Sir, the only way to escape danger is to look it in the face. . . . As I understand the aspect of affairs [the South] looks to nothing else except unconditional surrender on the part of the majority. . . . If it is preannounced and determined that the voice of the majority expressed through the regular and constituted forms of the Constitution will not be submitted to, then, sirs, this is not a union of equals; it is a union of a dictatorial oligarchy on the one side, and a herd of slaves and cowards on the other."

Senator Iverson denied that the first part of the message was inconsistent.

"It is true that the President denies the constitutional right of a State to secede . . . while, at the same time he also states that the Federal government has no constitutional right to coerce a State back into the Union. . . . I do not see any inconsistency in that." . . . . Secession is an act of *revolution*. It is for the Federal government to decide whether it will war on the revolted State, or let her remain in peace as an independent sovereignty. This is a question of *expediency*.

Certainly the Federal government has no *constitutional* right to compel a State to come back into the Union. It may be a *casus omissus* in the Constitution, but I should like to know where the power exists in that instrument to coerce a sovereign State.

But the President is inconsistent when he declares that the laws of the United States operate directly on each *individual* in a State, and yet that the *State* is not to be coerced. Of course, if you compel obedience to the laws from all the citizens you enforce them against the State, which is the sum of its inhabitants.

You talk about concessions—the repeal of the personal liberty bills.[1] Repeal them all to-morrow, sir, and it would

[1] The State acts against the Fugitive Slave law were so denominated.

not stop the progress of this revolution. The personal liberty bills are merely an evidence of that deep-seated, widespread hostility to our institutions, which must sooner or later end, in this Union, in their extinction.

Nor do we suppose there will be any overt acts by Mr. Lincoln. For one, I do not dread these. I do not propose to wait for them. Why, sir, the power of this Federal government could be so exercised against slavery that, without an overt act, the institution would not last ten years. Seeing the storm in the distance, we are seeking our safety before it shall burst upon us when we are not in a situation to defend ourselves.

I do not think there will be war. I believe that the Northern States, under the Federal government will see that the true policy is to let us go in peace, and make treaties of amity and commerce with us, from which they will derive more advantages than from any attempt to coerce us. I have no doubt but that both of us would then live more happily and prosperously and with greater friendship than we live now in this Union. Sir, disguise the fact as you will, there is an enmity between the Northern and Southern people which you cannot eradicate while we are bound together. Look at the spectacle on this floor. You sit upon your side, silent and gloomy; we sit upon ours with knit brows and portentous scowls. This is a type of the feeling that exists between the two sections. I believe that the Northern people hate the South worse than ever the English people hated France; and I can tell my brethren over there that there is no love lost on the part of the South.

Senator Wigfall differed with Senator Iverson on the nature of secession.

In 1852 the Democratic party at Baltimore adopted the Kentucky and Virginia Resolutions, with Mr. Madison's Report as their creed. No man who professes to believe those doctrines can deny that the States are sovereign,

that the Constitution is a compact between the States, that the States are the final judges of the compact, and therefore that a State has a right to secede whenever it sees fit. Secession is a constitutional and not revolutionary act.

When Texas ratified the Constitution, the laws of the United States became operative within the limits of the State. When Texas, in her sovereign capacity, shall revoke the ratification these laws will cease to operate there, for it no longer will form a part of the United States.

A State has a right to withdraw from the Union whether there be cause or not for doing so. The Federal government may then, with or without cause, declare war on her, as a foreign nation, if it will. Then all citizens of the State fighting under its banners must be treated as prisoners of war if captured in battle by the United States, and all citizens of that State fighting for the United States, if so captured by the State, may be executed as traitors.

The United States cannot with grace coerce a seceded State back into the Union, for the Declaration of Independence declares that every people have a right to live under such form of government as suits them. This is a right that cannot be impaired by the fact that a State, such as Texas, Louisiana, or Florida, was originally purchased by the rest of the Union.

The President has declared that the doctrine of secession is of late origin. I beg to differ with him. The New York convention, in ratifying the Constitution, declared: "That the powers of government may be reassumed by the people whensoever it shall become necessary to their happiness."[1] As in every contract, such a reservation permits the party making it to recede from the contract.

The Senator from New Hampshire says we are reversing the rule that the majority should govern. Now if we proposed to remain in the Union we should undoubtedly submit to the inauguration of any man elected President by a

[1] *Elliott's Debates on the Federal Constitution*, vol. i., p. 361.

constitutional majority. But we intend to leave the Union. Then, if you desire it, try to bring us back. If you succeed, you may be like the man who purchased the elephant—you may find it rather difficult to decide what you will do with the animal.

The President says that there is no power in the government to keep the Union together by force; and yet, in the same breath, he says he will collect the customs in Charleston because there is a collector there, but will not enforce the Federal judicial power because there are no Federal judges or marshals. Is there anything to prevent him from appointing judges and marshals?

It is important to know what the President really means. If he intends to coerce South Carolina, were I a citizen of that State, I would, at the first moment the fact became manifest, seize upon the forts, the arms, and the munitions of war, and raise the cry, "To your tents, O Israel! and to the God of battles be the issue."

On January 3, 1861, Senator Stephen A. Douglas[1] [Ill.] replied to the contention of Senator Wigfall that the right of secession superseded all claims of the Union on a State because of money paid by all the States for its purchase. Referring to a recommendation in the President's message that Congress appropriate money to purchase Cuba, he said:

"What a brilliant achievement it would be to pay Spain $300,000,000 for Cuba, and immediately admit the island into the Union as a State, and let her secede to Spain the next day, when the Spanish Queen would be ready to sell the island again for half price, or double price, according to the gullibility of the purchaser!

"Out of the annexation of Texas grew the war with Mexico, in which we expended $100,000,000, and were left

[1] The sketch of Douglas is deferred to Volume II.

to mourn the loss of ten thousand as gallant men as ever died . . . for the honor and glory of their country! We have since spent millions . . . to defend her against the assaults of all her enemies until she became strong enough to protect herself. We are now called upon to acknowledge that Texas has a moral, just, and constitutional right to rescind the act of admission into the Union; . . . seize the forts and public buildings which were constructed with our money; . . . and leave us to pay $100,000,000. and mourn the death of the brave men who sacrified their lives in defending the integrity of her soil. In the name of [these] gallant spirits . . . I protest against the right of Texas to separate herself from the Union without our consent."

The effect of the President's message was most disastrous to the prestige of the United States abroad. Said the London *Times* on January 9, 1861:

"Never for many years can the United States be to the world what they have been. Mr. Buchanan's message has been a greater blow to the American people than all the rants of the Georgian governor or the 'ordinances' of the Charleston convention. The President has dissipated the idea that the States which elected him constitute one people. We had thought that the federation was of the nature of a nationality; we find that it is nothing more than a partnership.

Conciliation. On December 6, 1860, Lazarus W. Powell [Ky.][1] moved in the Senate to refer that part of the President's message which referred to the present

[1] Powell was admitted to the bar in 1835; was Governor of Kentucky 1851–55; and United States Senator 1859–65. During the Civil War he opposed strenuously and in one case, that of military interference with elections (see *Great Debates in American History*, vol. vi., p. 336), successfully, encroachments by the military power upon the civil.

crisis to a Committee of Thirteen, to report a plan for averting disunion. He suggested that this plan should recommend legislation of the kind indicated by the President, guaranteeing no interference with slavery, and said that, while this might not restore harmony to the country, it would show good feeling of the States in the Union toward those out of it, and so prepare for friendly relations.

Various amendments to the proposal were made. Milton S. Latham [Cal.],[1] taking advantage of the crisis in behalf of his State, urged the building of the Pacific railroad as a means of insuring the loyalty of the Pacific coast. This was later made a part of the Republican program, passing the Republican House, though defeated in the Democratic Senate.

The committee was appointed, but it was unable to agree on a plan, so reporting on December 31. In the meantime the proposition was extensively debated in both the Senate and the House.[2] Upon the report, Senator Judah P. Benjamin [La.] moved a dissolution of the committee, saying that, owing to the irreconcilable difference of opinion between the sections on the constitutional relation of the States to the Federal government, it would be impossible to form any plan of conciliation.

Sketch of Benjamin. Judah Philip Benjamin was esteemed to be the greatest constitutional lawyer on the Southern side. His parents were English Jews who emigrated to America, the son being born in 1811 while

[1] Latham was admitted to the bar in 1848; was a member of Congress 1853–55; Governor of California three days in 1860, resigning to accept election to the Senate where he served until 1863.

[2] For an extensive report of the Senate debate see *Great Debates in American History*, vol. v., pp. 324–380.

on the way. Benjamin's boyhood was spent in Wilmington, N. C. He was three years at Yale, leaving before graduation to study law in New Orleans, where he was admitted to the bar in 1832. He soon arose to the head of his profession in the State, in 1840 becoming associated with John Slidell, afterwards his colleague in the Senate, in a law firm. Much of his business was with the Supreme Court at Washington. Elected as a Whig to the Senate in 1852, he nevertheless supported Senator Douglas on the Popular Sovereignty issue until the promulgation of the Dred Scott Decision, which he accepted as conclusive, and thereafter became a leader of the extreme wing (Southern) of the Democratic party, advocating the legal right of slavery with such vehemence that Senator Benjamin F. Wade [O.] called him "a Hebrew with Egyptian principles."

He became successively Attorney-General, Secretary of War, and Secretary of State in the Confederate government, being known as "the brains of the Confederacy." At the end of the war he escaped to England, where he supported himself by journalism while studying English law and acquiring a practice. In 1868 he published a work, which has become standard, on *The Law of Sale of Personal Property*, and this established his reputation throughout the United Kingdom, bringing him a highly remunerative practice, and causing his appointment in 1872 as Queen's Counsel. Owing to failing health he retired in 1883, a famous farewell banquet being tendered him on the occasion by the British bar. He died in Paris in the next year.

In the great debate on Conciliation Senator Benjamin discussed the constitutionality of secession, presenting what was admittedly the best argument for the Southern view. He was opposed by Edward D. Baker [Ore.]

with equally clear-cut legal arguments, thus causing the debate to be the greatest upon the subject in American forensic history, being so fundamental and at the same time so comprehensive that the arguments of the other Senators and of the Representatives, able and brilliant as these were, as well as representative of the entire political talent of the country (for every statesman of any prominence took part in the discussion), may be omitted in the present history of American controversy, limited as it is by the exigency of space.

Sketch of Baker. Edward Dickenson Baker came to Philadelphia at the age of five with his English parents. His parents dying a few years afterwards, the boy supported himself and his younger brother by working as a weaver. He occupied his leisure hours in study. With commendable enterprise, as soon as he had accumulated sufficient funds he removed with his brother to Springfield, Ill., where he studied law. Shortly after his admission to the bar he entered politics as a Whig, and made himself a leader of the party by his remarkable eloquence, no man in Illinois approaching him in ready oratory. Because of this facility, Abraham Lincoln, his townsman, whose best forensic efforts at that time were the result of careful preparation, looked up to him with admiring regard.

After service in the State assembly and senate Mr. Baker was sent to Congress in 1844, being Lincoln's predecessor. When the Mexican war began, he raised a regiment, and fought gallantly in every action on the march to the Mexican capital. When General James Shields was wounded at Cerro Gordo, he took command of his brigade, and led it throughout the rest of the war. On his return to Illinois Brigadier-General Baker settled at Galena, and was returned to Congress in 1849. In

1850, he resigned a renomination, and, having become interested in the Panama railroad, went to San Francisco, where he became at once the leader of the California bar, and achieved the fame of the most eloquent orator in the new State. Removing to Oregon he was elected to the Senate in 1860 by a coalition of Republicans and Douglas Democrats, his colleague, Joseph Lane, an ardent champion of the South, being elected by the Administration Democrats.

When Fort Sumter was fired upon, Senator Baker resigned his seat, and, going to New York City, recruited there, by his impassioned eloquence in Union Square, and in Philadelphia, a California regiment. He was killed at the first engagement, that at Ball's Bluff, Va., October 21, 1861, while leading a desperate charge.

Baker's fiery spirit, had he lived, would probably have impaired his usefulness as a general, since the rash gallantry that was effective against Mexicans generally proved disastrous when exhibited against the high-spirited and capable Americans of the South. But his loss to the statesmanship of the country is deplorable in every respect, being the greatest occasioned by the war. While his foreign birth excluded him from the Presidency, Baker's unsurpassed gift of eloquence and his magnetic personality would have certainly placed him on equal rank with Clay and Blaine as a popular statesman, and his profound knowledge of constitutional law, conjoined with these gifts, might have recorded his name in American history by the side of Webster's.

Senator Benjamin began his speech by answering arguments presented by various Northern Senators.

"Gentlemen deny that the citizen of South Carolina is bound to obey his [State] government. To this I reply, in

the language of Vattel, that it is a principle of the law of nations that the citizen owes obedience to the command of his sovereign, and he cannot enter into the question whether the sovereign's order is lawful or unlawful except at his peril."

The Senator from Illinois [Mr. Douglas] says there will be no war, nor coercion of a State—only the execution of the laws against individuals in South Carolina. But there is no machinery for this. Perhaps you will remove the individual elsewhere for trial. The Constitution expressly forbids this. You cannot take him out of the district where he committed the offense, much less the States.

The Senator from Ohio [Mr. Wade][1] says the United States Government will execute the laws to collect revenue by blockading the South Carolina ports. That is, you will collect revenue by stopping all revenue—a most amusing mode. But does any man suppose that a blockade can exist by a nation at peace with another? Perhaps you mean an embargo. The Constitution forbids you to lay it against one port alone; it must be complete throughout the Union.

Gentlemen argue as if the President may determine when laws are not obeyed, and force obedience by the sword without the interposition of courts of justice. The Senator from Tennessee [Andrew Johnson][2] cited in this connection President Washington's suppression of the Whiskey Insurrection. Does he not know that Washington called forth the militia of Pennsylvania and other States upon a

[1] Benjamin Franklin Wade, an Ohio judge, was the Senator from a strong anti-slavery district, and the most extreme of Northern radicals in advising coercive measures against the South, not alone at this time, but after the war, when the question of Reconstruction came forward. His service as Senator extended from 1851 to 1869. As President of the Senate in Andrew Johnson's administration he would have become President of the United States had Johnson been successfully impeached, and the Administration party contended that the impeachment was instituted by the radicals in order to obtain the control of the executive department, as they already held that of Congress.

[2] The sketch of Johnson is deferred to Volume II., Chapter II.

requisition by a judge of the Supreme Court of the United States certifying that the marshal was unable to carry out the judgment of the court?

Reverting to Senator Douglas's contention, Senator Benjamin showed the impracticability of collecting the customs by coercion of individuals, by telling in detail the legal obstructions which might be offered, with the result that the entire machinery of collection and the whole warehouse system would be broken up in every port in the country.

"The whole fancy that you can treat the act of a sovereign State, issued in an authoritative form, and issued in her collective capacity as a State, as being utterly out of existence; that you can treat the State as still belonging collectively to the Confederacy [Union], and that you can proceed, without a solitary Federal officer in the State, to enforce your laws against private individuals, is as vain . . . and delusive as any dream that ever entered into the head of man. The thing cannot be done. It is asserted only to cover up the true question: . . . you must acknowledge the independence of the seceding State, or reduce her to subjection by war."

Senator Benjamin then proceeded to justify secession as a constitutional right on the ground of previous violations by the Northern States of the compact of Union.

You, Senators of the Republican party, deny that our slaves, of a value of $4,000,000,000., are property, at all, and so encourage the robbery of this property by legislating in the Northern States so as to render its recovery as difficult as possible. You hold us up to the ban of mankind, in speech, writing, and print, as thieves, murderers, criminals

of the blackest dye, because we continue to own property which we owned at the time we and you signed the compact. You say it is right that we shall spend our treasure in the purchase, or blood in the conquest, of foreign territory, but that we shall not enter it with this property. You surround us with a cordon of hostile communities to confine, in dense masses and within restricted limits, our population, and thereby force us, if we would spread beyond the bounds, to sacrifice property nearly sufficient in value to pay the public debt of all Europe.

You do not propose, you say, to meddle with our States, and ask of what do we then complain? That is, you do not propose to fell the tree—you promised not—but to girdle it, so that it dies. And, when we say that we did not understand our bargain in this way, that your acting upon it in this spirit releases us from the obligations which accompany it, that we cannot live together under your interpretation of the compact, and so desire to depart from you in peace, we are answered by your leading spokesman [Mr. Wade]: "Oh, no; you cannot do that; we have no objection to it personally, but we are bound by our oaths; if you attempt it your people will be hanged for treason." That is, you can find no warrant in the Constitution to give us the benefits of Union, but your oaths force you to tax us—your consciences will be sorely troubled if you do not take our money!

Anticipating the secession of his State, the Senator from Louisiana in dignified terms made a parting appeal to the North not to attempt to bring back the South into the Union by force.

"If, however, the appeal shall prove vain, if you are resolved to pervert the government framed by our fathers for the protection of our rights into an instrument for subjugating and enslaving us, then, appealing to the Supreme Judge of the universe for the rectitude of our intentions, we

must meet the issue that you force upon us as best becomes freemen defending all that is dear to man."

Senator Baker began his reply by complimenting the speech of the Senator from Louisiana as the ablest of the long debate, and the one most respectful in manner and elevated in tone. Yet he could not refrain from saying that it reminded him of Dr. Samuel Johnson's criticism of a book: "Sir, the fellow who has written that has done very well what nobody ought ever to do at all."

The object of the philosophical and constitutional disquisition, he said, was to prove that the government of the United States was, in fact, no government at all—with no principle of vitality, to be overturned by a touch, dwindled by a doubt, dissolved by a breath; not by maladministration only, but in consequence of organic defects.

"In the judgment of the honorable Senator, the Union is this day dissolved; civil war is a consequence at once necessary and inevitable. Standing in the Senate Chamber he speaks like a prophet of woe—'Too late! too late!' Yet, sir, the gleaming and lurid lights of war flash round his brow, and, if it were not for the exquisite amenity of his tone and manner, we could easily persuade ourselves that we saw the flashing of the armor of the soldier beneath the robe of the Senator.

"My purpose is far different; sir, I think it is far higher. I desire to contribute my poor argument to maintain the dignity, the honor, of the government under which I live and beneath whose august shadow I hope to die. I propose to show that it is in very deed a real, substantial power, ordained by the people, not dependent upon States; sovereign in its sphere; a union, and not a compact between sovereign States; that, according to its true theory, it has the inherent capacity of self-protection; that its Constitu-

tion is a perpetuity, beneficent, unfailing, grand; and that its powers are equally capable against domestic treason and against foreign foes."

Senator Baker, stating that Senator Benjamin's "compact theory" of the Constitution was that of Calhoun, repeated the arguments of J. Q. Adams, Webster, and Jackson against it.

Adams said that the people were sovereign, and the State and Federal governments its creations, *each sovereign for its limited purpose.* Webster observed that there can be in this country no sovereignty in the European sense, which is a feudal idea; and, therefore, that all assumptions arising out of such a proposition, such as the supremacy of a State over its citizens as liegemen, were fallacies.

If the people were then sovereign, the ordainers of the Constitution as that instrument expressly states, then it was they, and not the States, who reserved to the States the functions of sovereignty not given to the Federal government.

Having opposed the constitutional right of secession, the speaker then denied that the grievances complained of by the South were of a nature to justify secession on revolutionary grounds. The grievances could be *adjudicated.*

Does not the honorable Senator remember that, although he may have one construction of the Constitution, and I another, there is between us a supreme arbiter, and that upon every conceivable clause about which we may differ, or have differed, that arbiter has always decided on the Southern side?

Here the speaker mentioned the two principles of the Dred Scott decision of the Supreme Court, the return

of fugitive slaves, and the admission of slavery into the Territories. In respect to the latter he referred to the arrangement assented to by the South in the Missouri Compromise not to take their slaves into certain Territories, and asked Senator Benjamin if that was not an admission of the constitutional right of Congress to "draw the cordon" around slavery in the States where it existed.

The Senator from Louisiana replied that the agreement by the South was merely not to insist on its constitutional right.

Senator Baker pertinently answered that the South then had no authority under its view of the Constitution to make such an agreement, and illustrated the position of Senator Benjamin by a story of Bolling Green, a justice of the peace near Springfield, Ill., who had asked the opinion of Baker, then a young lawyer, upon his (Green's) jurisdiction in a certain matter. Baker replied that he could not do the action in question, as this would be illegal. Green retorted: "I know, I can; for, by Heaven, I have done it!" So the Southerners said of the Missouri Compromise:

"Theoretically we have not the power; constitutionally we have not the power; but, by Heaven, we have done it!"

Senator Baker then denied what he understood to be a complaint of Senator Benjamin that Congress interfered with slavery in the States. Benjamin replied that not Congress, but the States interfered. Baker then asked that this exoneration of Congress from the charge of unconstitutional action be put on record, as removing a valid justification for secession.

But he further denied that any action by a State

could interfere with slavery in another State. How could Illinois frame a bill against it in Virginia? Benjamin replied that Northern States interfered with slavery in Virginia, if not by bill, by acts, and cited John Brown's raid, which was endorsed by the people of Massachusetts in electing to the governorship John A. Andrew, who had publicly approved the raid. Baker replied that the raid and its approval were both acts of *individuals*, and therefore did not present a case of interference with slavery by constituted government, either national or State.

"We agree now that Congress never interfered, and that States never can interfere.

"Now as to interference with slavery in the States by individuals. There are people in Massachusetts and Illinois who will not only violate the rights of the slave States, but the rights of the free—who will not only steal niggers but horses. . . . It is the duty of the distinguished Senator and myself sometimes as counsel to defend such men, for they are not confined to the North. I apprehend, if a grateful procession of the knaves and rascals who are indebted to the distinguished Senator from Louisiana for escape from the penitentiary and the halter were to surround him to-day, it would be difficult for even admiring friends to get near him to congratulate him upon the success of his efforts on this floor." [Laughter.]

Senator Baker then stated that he did not know of one Republican who proposed to interfere with slavery in the slave States by legislation or force. Senator Benjamin admitted that the Republicans did not intend to violate the letter of the Constitution to this end, but that it was their desire as a party to close up the slave States with a cordon of free States, in order to

compel emancipation. He also said that Massachusetts had passed a "personal liberty" law in violation of the rights of slaveholders, which all her eminent lawyers were urging her to repeal. Baker replied to the first statement by saying that it in effect withdrew the charge against any body of individuals as interfering with slavery in the States, and to the second by denying the need of precipitant action by the South since united legal opinion always won its point in due time in changing legislation in any State.

"The South's complaint has narrowed itself down to this: that, as a people, the North desires to circle the slave States with a cordon of free States, and thereby destroy the institution of slavery; to treat it as a scorpion girt by fire. Is that, I ask the Senator, a ground of separation?"

MR. BENJAMIN: "I say, yes; decidedly."

MR. BAKER. "And I say, more emphatically, no! It is no greater crime for a Massachusetts man to circle, to girdle, and thereby to kill slavery, than for a Frenchman, an Englishman, or a Mexican. It is as much a cause of war against France, or England, or Mexico, as against us."

And what will war accomplish? Slavery is circled by destiny, by Providence, and by human opinion everywhere. The South's contention, if it is to have any force, is like the wish of the old farmer who said he would be perfectly happy if he only had all the land that joined him. It seems to me that the Senator's complaint is that slavery does not extend everywhere, without girdle or circle in the world. Where slavery is circled it is by the elastic, expansive *economic* power of free labor, operating in spite of laws and *political* government.

Does the Senator ask us to destroy the liberty of our press, of free association for the purpose of promoting abolition or any other cause? There are abuses connected with these institutions which affect ourselves, but which,

being incident to free government, we must endure. Will you make war upon us because we cannot alter the frame of our free government for which your fathers and ours fought side by side? You will not do that.

Now as to *territory*. I will not yield one inch to secession, save it be the concession of Harold of England to the invader Hardrada: "We will allow to Hardrada seven feet of English ground, and if he be, as they say, a giant, some few inches more."

Sir, in that spirit I speak. I will agree to anything which is not to force upon me the necessity of protecting slavery in the name of freedom.

The gentleman asks, "What will you do if you will not recognize the independence of South Carolina, and you do not make war; how will you collect your revenue?" And he goes on to show very conclusively, to his own mind, that we cannot. He says if we attempt it, there will be all sorts of legal delays interposed, and when that is done a great government will be kicked out of existence by the tumultuous and vulgar feet of a mob—at which he seems to rejoice. If we do not attempt to collect the revenue, he says, "Why do you not advance?" much in the vein of the fellow in *London Assurance* who insults Cool, and says, when Cool does not kick him, that "he is a low, underbred fellow; he cannot afford the luxury of kicking me; he knows he would have to pay for it."

If the gentleman wants to know the manner in which revenue is to be collected near the sovereign State of South Carolina when she is in revolt, I will show him what General Jackson ordered to be done when South Carolina revolted once before.

There is nothing practical in the idea that we cannot compel an individual to obey the law because a sovereign State will undertake to punish him. The Duke of York [afterwards George IV.] was both commander-in-chief of the British army and titular Bishop of Osnaburgh, a German principality. He was reminded of the latter fact by an

aged clergyman who reproved him for profanity. He replied: "I do not swear as the Bishop of Osnaburgh, but as the Duke of York, the commander-in-chief. "Ah, sir," said the old man, "when the Lord shall send the duke to hell what will become of the bishop?"

Now if, in consequence of an attempt to violate the revenue laws, some persons should be hurt, I do not think that it will better their condition at all that South Carolina will stand as a stake to their back.[1]

On January 3, 1861, Senator John J. Crittenden [Ky.] presented again, with additions, a plan of compromise which he had submitted on December 18, 1860.

Sketch of Crittenden. John Jordan Crittenden was the most revered man in the Senate, being seventy-three years of age. He was graduated from William and Mary in 1807; appointed Attorney-General of Illinois Territory in 1809; fought in the Second War with

[1] If conclusiveness be the main object of forensic argument then to this speech of Senator Baker cannot be denied preëminence in American debate, for no other deliverance in our legislative halls, not even the majestic oration of Webster against Hayne, so effectively beat down, one by one, the arguments of an able opponent, extorting from him either an admission of their untenability, or an easily answered parry, and so thoroughly built up, stone upon stone, the speaker's own position, establishing it as a strong fortress for his party which was never thereafter successfully assailed. Unlike Webster's speech, in which the classic form bordered on artificiality, and the theme was academic and unsuited to the occasion, Baker's, which began in much the same manner, soon developed into a delightfully free yet definitely purposed discussion of the burning issue of the day as presented in concrete propositions which were either before the Senate or which the speaker called forth by tilts with his opponent in the course of the debate. Indeed, Baker represents in this speech the epochal passing of the old "Columbian orator" into the modern American debater, equally facile in eloquence and well-grounded in his subject, but quicker to take advantage of situations which arise in the discussion, and even to create these, and far more zealous to achieve victory for his cause than a Ciceronian reputation for himself. The speech is a model for debaters of the present day

Great Britain; served in the Kentucky legislature in 1816; in the United States Senate 1817–19. He engaged in law practice in Frankfort, Ky., achieving distinction as a criminal lawyer. After several terms in the legislature, he was appointed, in 1827, United States District-Attorney, but, being a Whig, was removed by President Jackson in 1829. He served in the Senate again from 1835 to 1841, when he was appointed Attorney-General in Harrison's Cabinet. He retired with most of his colleagues soon after Tyler became President and abandoned Whig policies, and reëntered the Senate in 1842. In 1848 he was elected Governor of Kentucky, resigning to become Attorney-General in Fillmore's Administration. In this capacity he declared the constitutionality of the Fugitive Slave law. He was elected to the Senate in 1855. He set himself to the special task of reconciling the North and South, divided on slavery. At the close of his senatorial term in 1861, he returned to Kentucky, and contributed much by his efforts to keep that State in the Union. He then entered the House of Representatives, where he supported the prosecution of the war solely to suppress secession, opposing enlistment of negro soldiers, the organization of the State of West Virginia, etc. He died in 1863. Senator Thomas Corwin [O.] considered Crittenden the ablest debater in the Senate.

Senator Crittenden's plan of compromise in 1860–61

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in minor respects also: courteous and even complimentary raillery of an opponent; the use of illustrative anecdotes, witty or otherwise significant in themselves, and apt for their purpose; and, above all, the appeal to deep-seated convictions of justice, liberty, and humanity in the hearts of all good men. Credit must also be given to the honesty of Senator Benjamin, remarkable in a partisan, in conceding the force of points raised against him, without which admission the triumph of Baker would not have appeared so complete.

provided for various amendments to the Constitution, such as:

1. Restoration of the Missouri Compromise.
2. That Congress have no power to abolish slavery in the States or the District of Columbia.
3. Transportation of slaves from one State to another.
4. That owners of fugitive slaves be indemnified where recovery of slaves is prevented by force.

The debate now was concentrated upon this plan. On January 11, Robert M. T. Hunter [Va.] proposed even more drastic constitutional amendments.

Sketch of Hunter. Robert Mercer Taliaferro Hunter was educated at the University of Virginia, and began law practice in 1830. After serving in the Virginia legislature, he entered Congress in 1837 as a Democrat, and in 1839 was chosen Speaker of the House. He was defeated in 1842, but reëlected in 1844, and in 1846 was chosen Senator, becoming chairman of the Finance Committee. He framed the Tariff Act of 1857. He was a leading advocate of Southern rights. In 1860 he received the next highest vote to Douglas for President at the Charleston Democratic convention.

Taking an active part in the secession movement he was expelled from the Senate in July, 1861. He became Secretary of State for a time in the Confederacy, and, later, Senator. In February, 1865, he was one of the Confederate peace commissioners, whom President Lincoln refused to recognize. He was arrested at the close of the war, but pardoned by President Johnson.

Hunter's "conciliatory" amendments supplemented Crittenden's by preventing the abolition of slavery in Federal arsenals and dockyards in the South; by providing that Territories on admission into the Union

should be free or slave States as the inhabitants should vote; that a Southern and a Northern President should alternate, both being chosen at one election, and the prospective President to preside over the Senate, having veto power over treaties and acts of Congress,[1] that the Supreme Court be enlarged to ten members and be equally divided between North and South, and judge between States as to fulfilment of interstate constitutional obligations, enforcing the penalty for non-reparation of the wrong by permitting the unoffending States to deny privileges to the citizens of the offending ones, and to tax their commerce.

On January 16, the Crittenden resolutions came to a vote. A substitute offered by Daniel Clark [N. H.],[2] which declared that the Constitution as it stood afforded all the means necessary and advisable upon which to base the Union, was adopted by a vote of 25 to 23, thus effectually disposing of all plans of conciliation by constitutional amendment, the House taking similar action.

Farewell Addresses of Southern Senators. As soon as their respective States passed ordinances of secession, Senators and Representatives resigned their positions. The former made farewell speeches, all of which are memorable for the spirit of conviction which informed them, and most of them for their dignified eloquence. The Senators repeated the familiar arguments for secession. One passage of Jefferson Davis's speech, how-

[1] A proposition of Calhoun.

[2] Clark was admitted to the bar in 1837; after service in the State legislature, he was elected to the United States Senate in 1857. In 1866 he was appointed United States District Judge. He was an ardent anti-slavery man before the war, a supporter of the Lincoln Administration during it, and a radical Republican thereafter.

ever, should be presented for the distinction he drew between nullification and secession.

"Nullification and secession, so often confounded, are antagonistic principles. Nullification is a remedy which it is sought to apply within the Union and against the agent of the States [the Federal government]. It is only to be justified when the agent has violated his constitutional obligation, and a State, assuming to judge for itself, denies the right of the agent thus to act, and appeals to the other States of the Union for a decision; but when the States themselves, and when the people of the States, have so acted as to convince us that they will not regard our constitutional rights, then, and then for the first time, arises the doctrine of secession in its practical application."

Acts of the Secessionists. About the middle of December, 1860, President Buchanan had sent to Charleston Caleb Cushing [Mass.], who, as a renegade to the anti-slavery cause (he had been John Quincy Adams's chief supporter in the Right of Petition, yet now was strenuous in defense of the Dred Scott Decision, the Fugitive Slave Act, etc.), was likely to be *persona grata* to the secessionists, to arrange that affairs should remain *in statu quo* during the remaining ten weeks of the Administration. Mr. Cushing returned almost at once, with the report that the secession leaders would make no promises except upon the unconditional recognition of the independence of South Carolina.

On December 26, Robert W. Barnwell, James L. Orr, and ex-Governor James H. Adams, the commission from South Carolina to negotiate a cession to the State of the Federal property there, arrived at Washington. The President informed them that he could meet them only as citizens of the United States, and they returned

South after writing him letters which, says Horace Greeley in his *The American Conflict*, "are scarcely average samples of diplomatic suavity."

The most important Federal property in South Carolina consisted of forts in and around Charleston harbor on islands and sites ceded by the State to the United States. These forts were garrisoned by a small force of Federal troops under Major Robert Anderson, a Kentuckian who had been recently sent there to replace a Northern officer, in order to remove a possible cause of irritation in a high-strung community which was as yet only contemplating secession. Secretary Floyd, either in furtherance of this policy, or, as charged by the North, in conspiracy with the secessionists to make the seizure of the troops an easy matter to accomplish, had also promised that no changes would be made in the garrison. Accordingly the secessionists were greatly incensed when on the night of December 26, after affairs had assumed a menacing aspect, Major Anderson removed his troops from their old station in Fort Moultrie, an ancient and weak fortification near the city, to Fort Sumter, stronger and more securely situated on an island in the harbor. On December 29, the Charleston *Courier* said:

"Major Robert Anderson, United States Army, has achieved the unenviable distinction of opening civil war between American citizens by an act of gross breach of faith."

Shortly after this the Federal arsenal in Charleston was seized by volunteers who were flocking to the city at the call of the State government. The custom-house, post-office, and lighthouse service were also

appropriated without resistance, those in charge being ardent secessionists. The harbor lights were extinguished, and the buoys marking the channels were removed in order to obstruct provisioning or reënforcing Fort Sumter by ships from the North.

Secretary Floyd asked President Buchanan to order Major Anderson back to Fort Moultrie, and, on the President's refusal to do so, resigned his office on December 29; Joseph Holt [Ky.] was appointed in his stead. Floyd had, however, already rendered the secessionists all the help in his power by transferring arms, especially heavy ordnance, from Northern to Southern and Far Western arsenals, until stopped by the President on protest from citizens of Pittsburgh, near which city was situated the Alleghany Arsenal which Floyd was about to deplete. The Secretary's resignation was also hastened by an investigation into a defalcation in the Interior Department, in which his own department was involved. This had come to light on December 24 during the absence of the Secretary of the Interior, Jacob Thompson [Miss.], who, with the permission of the President, had left his post to visit North Carolina in the capacity of a secession commissioner from his State. It was found that a clerk in the Interior Department had hypothecated $870,000. in bonds held in trust for the Indian Bureau, in order to take up Secretary Floyd's acceptance of drafts on the empty Treasury by a contracting firm engaged in the transportation of army supplies, the firm having demanded payment in advance. On December 30, the grand jury at Washington indicted ex-Secretary Floyd for malfeasance, and for conspiracy to defraud the government. He was, however, safely beyond the power of the Federal authorities, being engaged in the

agitation to take his State of Virginia out of the Union.[1] Secretary Thompson resigned his office on January 8, 1861.

On January 9, the steamer *Star of the West*, bringing reënforcements and supplies to Fort Sumter, was fired on by the secessionists from Fort Moultrie and a battery on Morris Island. Being struck by a shot she returned to New York. On January 14 the South Carolina legislature resolved that "any attempt by the Federal government to reënforce Fort Sumter will be regarded as an act of open hostility, and a declaration of war." Colonel Isaac W. Hayne, as agent of Governor Francis W. Pickens of South Carolina at Washington, on January 16 demanded of the Federal government the surrender of Fort Sumter as a pledge of non-intervention in the affairs of the State. This was, of course, refused.

Federal forts and arsenals were seized by the State authorities in Georgia, Alabama, Louisiana, and North Carolina even before ordinances of secession had been passed by these States. Toward the end of February Brigadier-General David E. Twiggs [Ga.], commanding the Federal military department of Texas, turned over his entire army, with arms, fortifications, etc., to General Ben McCulloch, representing the authorities of Texas. It has been computed, by Southern as well as Northern historians (*e. g.* Edward A. Pollard [Va.], in his *Southern History of the War*, and Horace Greeley [N. Y.], in his *The American*

[1] Floyd, however, returned and faced the charges. In January, 1861, a committee of the House of Representatives made an investigation and completely exonerated him. He then entered the Confederate army as brigadier-general. He was relieved from command by President Jefferson Davis for his part in the surrender of Fort Donelson, February 16, 1862.

Conflict), that the South, at the time of Lincoln's inauguration, had secured the possession of Federal property to the value of $20,000,000, including 150,000 rifles of the latest patterns, and of half the regular army.

Organization of the Confederacy. On February 4, 1861, delegates from the seven seceded States, South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas, met at Montgomery, Ala., and organized "The Confederate States of America." The constitution (adopted on the 14th) was substantially the same as the Federal Constitution except in the following particulars:

1. President and Vice-President to be chosen for six years; President ineligible for reëlection while in office; he may remove Cabinet officers at his pleasure, but must refer other removals to the Senate.
2. Heads of executive departments to have seats in either House, with privilege of discussing matters relating to their departments.
3. No bounties nor duties on importations.
4. Right of property in slaves not to be impaired by passing through, or sojourning in another State.
5. Fugitive slaves to be delivered up on claim of owner.
6. Slavery to be established in all territory to be acquired by the Confederacy.

The convention elected Jefferson Davis [Miss.] President, and Alexander H. Stephens [Ga.] Vice-President.

Sketch of Stephens. Alexander Hamilton Stephens was left an orphan at the age of fifteen and received an education at Franklin College (now the University of Georgia), having his expenses paid by a Presbyterian

educational society on the understanding that, if he decided not to become a minister, he was to refund the money. He was graduated with the first honor, and choosing law as his profession taught school in order to clear himself of his indebtedness. In 1834, after only two months' study, he was admitted to the bar, being congratulated by the two eminent jurists in charge of the admission as passing the best examination they had ever heard. In 1836, after acquiring a good law practice, he was elected to the legislature against strong opposition, because he had opposed Nullification. In 1843 he was elected to Congress as a Whig on the "general-ticket" system, for which, on taking his seat, he moved to substitute division by Congress of the State into congressional districts—an assertion of the right of the Federal government to interfere in State matters in order to regulate its own organization, which was enacted. When, at the close of the war, he was elected to the United States Senate, the principle of this rule was successfully urged against seating him, Georgia not having complied with the terms of Congress laid down for its readmission into the Union. While in Congress, with most of the Whig members, including Abraham Lincoln, who greatly admired him, he opposed President Polk on the Mexican war. In a quarrel growing out of the matter, although of feeble frame, he refused to retract charges he had made, and, when his opponent drew a knife against him, grasped the blade, and so severely cut his hand that he never again wrote plainly. For a time he made his speeches seated in a chair. While still regarding the Union as of paramount importance, he was an earnest advocate of the extension of slavery in the Territories, opposing in 1852 the Whig candidate for President, General Scott, for his

position in the matter, and so materially contributing to his defeat and the resultant dissolution of the party. He carried his devotion to slavery to the extreme of claiming that the economic value of slave labor was greatly superior to that of free labor. In one speech on this subject he challenged comparison of Georgia with Ohio, and met with overwhelming defeat at the hands of a Representative from that State, Lewis D. Campbell (afterwards minister to Mexico), who convicted him of unpardonable juggling with statistics, such as omitting all mention, in his comparison of products, of the Ohio hay crop, which, though a minor product in that State, was greater in value than the premier crop of Georgia, cotton. In 1859, foreseeing a "smash-up" of the country, he retired from Congress, and, in a farewell speech in Augusta, Georgia, advocated reopening the African slave-trade in order to get more negroes to take to the Territories, and so increase the domain of slavery. When secession began to be moved in his State, he stoutly opposed it, but was won over to its acceptance by the proffer of the Vice-Presidency of the Confederacy. Within one year thereafter he was opposing the conduct of the war by President Davis. In 1864, he headed the Georgia peace party, and in 1865, the Confederate peace commission to the United States government. At the close of the war he was confined for five months as a prisoner of State in Fort Warren, Boston, and, on his release, entered energetically into promoting the reconstruction of the States lately in rebellion. In 1867–70 he published a book on the origin and conduct of the Rebellion called *The War between the States*. He also supported himself by teaching a law class. He lost the money made by writing and teaching in a newspaper venture. In 1874 he was

elected to Congress, and took active part in the debates on the Tilden-Hayes election controversy, advising acquiescence, however, in the seating of Mr. Hayes. He was elected Governor of Georgia in 1882, and died in the following year.

No man in American politics was so erratic and inconsistent as Mr. Stephens, unless it was John Randolph. It is hard for the student of his career and his speeches to understand how he played so prominent a part in our history, and won the admiration of such men as Lincoln. Certainly his wild inaugural address as Vice-President of the Confederacy, compared with that of President Davis, so admirable in its dignified reserve, would indicate that he did not deserve the reputation accorded him by his generation.

The inaugural ceremonies took place at Montgomery on February 18, 1861. In his address President Davis stated that he expected that the United States government would decide to cultivate peace with the Southern Confederacy, for the sake of cotton, if for no other reason. Nevertheless, there was an undertone in the speech which indicated that this was not his real belief:

"We have entered upon a career of independence, and it must be inflexibly pursued through *many years* of controversy with our late associates of the Northern States."

Foreseeing the possibility of secession of States in turn from the new government, and admitting their right so to depart, he spoke of the necessity of preserving homogeneity in the composition and interests of the new nation, and to this end advised that, if any States in the old Union sought for admission into the new, they should not be received.

Vice-President Stephens made his first public speech in his new capacity (virtually his inaugural address), at Savannah, Georgia, on March 21. In this he declared that the new Confederacy was founded on the ideal labor system of slavery, and so not only would endure but set an example which all the world would in time follow.

"The prevailing ideas entertained by Jefferson and most of the leading statesmen at the time of the formation of the old Constitution were that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. . . . These ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of race. This was an error. It was a sandy foundation, and . . . when the storm came, and the wind blew, the government fell.

"Our new government is founded on exactly the opposite ideas; . . . its corner-stone rests upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and normal condition. This, our new government, is the first in the history of the world based upon this great physical, philosophical, and moral truth."

Mr. Stephens, accordingly, prophesied the ultimate full recognition of the principle of slavery "throughout the civilized and enlightened world."

INDEX

This index has been made exceptionally full, with topical classification and copious cross-reference, for the guidance of teachers and students of American history, politics, civics, and economics, as well as of rhetoric (oratory and debate), and for the use of writers upon these subjects. To save the reader recourse to the dictionary and encyclopædia, the meaning and origin of political terms (*e.g.*, "gerrymander"), and historical and biographical data of subjects and persons are supplied in cases where such information does not appear in the text.

The chief abbreviations employed are: b. = born, d. = died, *et seq.* = and pages following, f. n. = footnote; the meaning of other abbreviations used will be evident from the context.

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