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James C. Welling

ADDRESSES, LECTURES

AND

OTHER PAPERS

BY

JAMES CLARKE WELLING, LL. D.

LATE PRESIDENT OF THE COLUMBIAN UNIVERSITY
WASHINGTON, D. C.



CAMBRIDGE

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To the Children of
JAMES CLARKE WELLING
this Book is dedicated, in loving Memory
of their Father.

C. L. D. W.

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BIOGRAPHICAL SKETCH¹

JAMES CLARKE WELLING, graduate of the Princeton class of 1844, and professor in 1870, was born in Trenton, N. J., on July 14, 1825.

While in college he attained distinction as a classical scholar and graceful writer, and for general excellence stood among the first in a class of sixty-five. The professor of Latin and belles-lettres, Dr. James W. Alexander, discerned in him those rare literary qualities by which he was always distinguished, and specially commended his essay on the "Causes of Historical Discrepancy," for its maturity of thought and style. He was also proficient in natural philosophy as then taught by Professor Joseph Henry, whose magnetic discoveries he was afterwards able to vindicate against rival claimants in Washington. The Princeton of that day, as represented by Professors Henry and Stephen Alexander, with President Welling, has had a moulding influence upon the Smithsonian Institution from its origin.

After his graduation, Mr. Welling at first turned his thoughts to the law as a profession. No doubt his legal studies and tastes, which he never quite abandoned, aided in fitting him for the career of journalist and educator, to which he was destined. He began his life work in 1848 in New York City, as principal of the Collegiate Institute and writer on

¹ Reprinted from the Princeton College Bulletin, April, 1895.

current topics in the higher class of journals. The beauty, correctness, vigor, and variety of these productions of his facile pen soon attracted general notice, and in 1850 he was secured by Messrs. Gales and Seaton as the literary editor of the *National Intelligencer*, at Washington. This journal was then a power throughout the country, with an influence such as no local or metropolitan press can now exert. Its editorials, emanating from the seat of government, as carefully written articles on national issues, became almost authoritative with an intelligent class of readers. It was said that a copy of the *National Intelligencer* would indicate the respectability of any one found reading it. For such a post he was specially qualified by his judicial temperament, his facility in writing, his accurate scholarship, his well-stored memory, and his direct acquaintance with public men and measures. As an old line Whig, he made the policy of the paper conservative, constitutional, and loyal; at first supporting the Bell and Everett ticket against the two sectional parties which were dividing the nation, and then consistently voicing the Union sentiment of the administration during the war. He enjoyed the full confidence of President Lincoln, who is known to have sought his counsel and had the aid of his editorial pen in commending some important measures to the people. It was at this critical period he advocated the President's proposition of emancipation, with compensation to loyal owners, the abolition of slavery in the District of Columbia, and its abolition throughout the Union by constitutional amendment; but he questioned the validity of the Emancipation Proclamation and strenuously opposed the constitutionality of military commissions for the

trial of citizens in loyal States — a practice which was subsequently condemned by the Supreme Court. This is not the only instance in which his political opinions were vindicated. The discussions of the *Intelligencer* at this time often took the form of elaborate papers on questions of international as well as constitutional law, such as the Monroe Doctrine and the seizure of Mason and Slidell, and exercised an acknowledged influence on public opinion. Some of them have been republished and are still cited in works of history and jurisprudence. They formed part of his equipment for a "Civil History of the Civil War," which he projected as a needed complement to the military history which hitherto has engrossed the attention of our historical writers.

On the natural decline of the *Intelligencer*, he withdrew from journalism, and after spending two years partly in European travel and partly in the office of clerk of the Court of Claims, he entered the academic career to which the rest of his life was to be devoted. This was in accordance with his expressed opinion that periods of civil commotion are usually followed by revivals of intellectual energy, "when arms must yield to the gown, and when the statesman and the scholar are called to untie with dextrous hand those Gordian knots which the sword left uncut." In 1867 he was chosen president of St. John's College, at Annapolis, Md., and in less than two years the number of pupils advanced from ninety to two hundred and fifty. He received the honorary degree of LL. D. from Columbia College, Washington, D. C., in 1868. At the same time the voice of his Alma Mater called him to the chair of belles-lettres at Princeton, with the prospect of a congenial field of study and in-

fluence. His public introductory lecture at the Commencement, on "The Sources of Literary Inspiration," may be said to have heralded that enthusiasm for English Letters by which the college has since been so distinguished.

The high esteem of his former colleagues has been fittingly expressed by Professor William A. Packard, in the following tribute: —

"I have very warmly cherished recollections of Dr. Welling. We lived side by side during the time of his residence in Princeton, and I very soon began to know the charm and value of a near personal friendship with one possessed of a most sincere and genial nature, and of eminent and varied qualifications for his work and influence in the professorship which he so ably filled.

"His thorough literary training and accomplishments for his special work, and the large experience of his previous life in Washington, in close contact with great public questions and eminent public men, at once raised his department of instruction to a very high degree of prestige and genuine interest. His lectures and personal intercourse with students were peculiarly fitted to quicken and train their taste in the best English literature, and to broaden the horizon of their interest by the subjects for thought and study which he set before them. His fidelity also in the daily and detailed work of the class-room, and in the discharge of all the minor obligations of an active member of a college faculty, was unflinching, and illustrated in a marked way the genuine conscientiousness of Dr. Welling's character.

"When he left us for the higher positions which he has since filled with such eminent usefulness and success, we deeply felt our loss, but have, throughout the years since, heartily appreciated his wider influence in the service of higher education, and his always ready sympathy in the

prosperity of his Alma Mater and the experiences of his former colleagues. His death has brought to us a deep sense of personal bereavement."

After a year at Princeton he was recalled to Washington, in 1871, to take the presidency of the institution now known as the Columbian University. Here his administrative powers soon found full scope and activity. He believed it possible to make the capital, in a sense, the intellectual as well as political metropolis of the country. Its libraries and museums, its Smithsonian Institution, its concourse of scientific men in the service of the government, its great legislature and court illustrating the origin and practice of law, all seemed to him available as the proper environment and educational plant of a national university. He was so far successful that he obtained from Congress a new charter with full university powers, and secured the erection of an academic building in the heart of the city, an enlarged corps of professors, the establishment of professional schools of law, medicine, and science, and the foundation of a free endowment. In the School of Law he became especially interested, securing not only a large attendance of government clerks as students, but courses of instruction by distinguished jurists in Washington. At one time, his friend, Governor William Beach Lawrence, of Rhode Island, by his invitation delivered some university lectures on international questions in our history, which were attended by members of the diplomatic corps, cabinet officers, and senators. His crowning effort in this direction was his project, already approved by the ablest publicists, for a school of comparative jurisprudence, in which "the law of the civil-

ized world should be taught as a history and as a philosophy, from the first rude germs of the clan stage of human government up to the highest evolutions of that international law which to-day sits supreme above all politics and all conventions of men."

During this period he received several invitations to the presidency of other leading colleges, besides offers of lucrative editorships in New York, but his friendship with Mr. Corcoran, the chief benefactor of the Columbian University, held him loyally at his post. He resigned it in June, 1894, with the hope of devoting himself to the favorite studies and projected works which would have made a congenial pastime for the evening of his life.

Outside of his academic labors, his services were sought in behalf of many other public interests. As President of the Corcoran School of Art, in which he took a lively concern, he visited, in 1877, the principal galleries and studios of Europe, and procured some valuable paintings. In 1884 he was appointed a Regent of the Smithsonian Institution, and soon afterwards elected Chairman of its Executive Committee. He was also at different times president of the Philosophical Society, of the Anthropological Society, of the Copyright League, of the Cosmos Club, and various charitable associations. His ready pen was at the command of every good cause, literary, artistic, humane, or religious.

The life and services of such a man naturally suggest his personality. It is little to say that so practiced a teacher was also an industrious student and an accomplished scholar. He had the skill of a linguist, as well as the taste of a writer, in his use of words, which was copious, elegant, and forceful. He touched

nothing that he did not adorn. His familiarity with the text of classical and English authors caused apt quotations to flow easily from his pen and to enrich his discourse. Yet he was no mere omnivorous reader. He discriminated and digested the material of his reading, as was shown by the notes and clippings inserted in his books for future reference. The Librarian of Congress, Mr. Spofford, who knew him more than twenty-five years, observes: "His frequent visits to the library were always with a definite purpose. His investigations were marked by a habit of thorough research characteristic of the careful scholar. He had an instinctive habit of weighing evidence, and the true critical spirit in dealing with authorities. He had a marked fitness for historical investigation, and might have become, had his associations permitted, one of our best writers of history. His style of composition was uniformly that of a man of refined taste, grave and elevated when treating of weighty themes; light and free when dealing with the weapons of ridicule or satire. Both in speech and in writing he was a purist, though without pedantry, and whoever might succumb to the ever-increasing popular slang which corrupts our noble English speech, one was always sure of finding Dr. Welling adhering to classic models of style. He spoke and wrote against the attempts of certain 'reformers' to destroy our orthography by the phonetic system of spelling the language."

It was not strange that he liked Washington, with its opportunities for keeping in touch with the higher interests of civilization, its ever-changing game of politics, its varied types of culture, its personages gathered from every part of the land and of the world, its companionship of scholars and statesmen like Henry,

Chase, Sumner, Blaine, Bayard, Wharton, Bancroft. In such circles his fine conversational powers, his wealth of personal, literary, and historical allusion, his sallies of humor, and his gentleness made him always welcome. The Columbian Historical Society, in their memorial tribute, dwell upon the worth of these engaging qualities: "No man ever ate less idle bread. His social duties were important accessories to his public employments; and few men discharged them so thoroughly and successfully as he. He had hosts of acquaintances and 'troops of friends,' whom he secured by willingness to serve them, and by a politeness and consideration that amounted to a real virtue."

None of his friendships were quite the same as one or two born of enthusiasm of his college days. For these I gratefully let another speak:—

"Fifty-one years ago," says Justice Hagner, "I made his acquaintance; at that time our friendship was formed, and it continued without interruption to the time of his death. 'He was my friend, faithful and just to me.' I am glad to believe he would have said the same of me.

"I never knew one in whose character and demeanor time made less change. The rather serious college youth, singularly diligent and studious, but cheerful and light-hearted, simply ripened into the indefatigable student and active man of business; but he still retained his elasticity of disposition and his youthful feelings and manners. Full of active sympathy with whatever surrounded him; alert in his movements, as in his mental activities; his capacity for the enjoyment of friendship appeared to increase with his years.

"The wounds from the loss of friends are of those

that heal slowly. But it is a satisfaction to me to recall that on a visit received from him just before he left Washington for the last time, his cheerfulness and charm of manner and conversation were as marked as ever, and to recall 'the touch of a vanished hand' that gave no distressing presage it was to be the last."

President Welling died in the early morning of September the 4th, 1894. As by a sudden translation, he was spared the pain of an earthly parting from those that he loved. Throughout life he had been a firm and devout believer in the Christian religion, and never wrote a line inconsistent with such a faith.

Distinguished associates and friends attended him to his burial. Memorial services were afterward held in Washington, with appropriate addresses, and learned societies recorded his varied services. The following list of his publications, though far from complete, may afford some glimpses of his literary activity in recent years: —

- 1871. Fundamental Elements of Intellectual Education. Inaugural Address as President of the Columbian College.
- 1874. The Mecklenburg Declaration of American Independence. *North American Review*.
Lincoln's Emancipation Proclamation. *North American Review*.
- 1878. Life and Character of Joseph Henry. *Bulletin of the Philosophical Society of Washington*.
- 1888. The Law of Malthus. *American Anthropologist*.
Anomalies of Sound Signals. *Bulletin of the Philosophical Society*.

- 1889-94. Reports as President of the Columbian University.
1889. The Atomic Philosophy, Physical and Metaphysical. Presidential Address to the Philosophical Society, in Bulletin.
1890. Problems in Higher Education. *Proceedings of College Association of Middle States.*
1891. Slavery in the Territories. *Annual Report of the American Historical Society.*
1892. The Law of Torture. Presidential Address to the Anthropological Society.
 Connecticut Federalism, or Aristocratic Politics in a Social Democracy. Lecture before New York Historical Society.
 The States' Rights Conflict over the Public Lands. *Annual Report of the American Historical Society.*
1893. The Columbian University in Relation to Washington as the Seat of a National University.
 The Last Town Election in Pompeii. Presidential Address to the Anthropological Society.
 Work in English in the Colleges and Preparatory Schools. *Proceedings of the College Association.*
 The Bering Sea Arbitration. *Columbian University Studies.*
1894. The Science of Universal History: Its Method and Its Relation to the Physical Sciences.

Dr. Welling contributed many papers of permanent interest to the "North American Review," the "Nation," the "Magazine of American History," and innumerable articles of literary merit to the great

daily journals. He is known to have made translations of important French and German works, and it is hoped that he left valuable historical manuscripts which may yet be published.

CHARLES W. SHIELDS.

ADDRESSES, LECTURES, AND OTHER PAPERS

I

THE FUNDAMENTAL ELEMENTS OF INTEL- LECTUAL EDUCATION¹

THE subject of Education offers a theme for discussion at once the most easy and most difficult; the most easy if we content ourselves with the rehearsal of commonplaces on the topic, such as are universally received among men; and the most difficult if we undertake to propound a theory of education which shall be in all respects true without being trite, or novel without being in some respects unsound. Education is a subject on which men have been thinking and writing from the very dawn of intellectual activity in the race, and yet it is a subject on which men widely differ, even at the present day, in regard to both the processes and the objects of that higher training which looks to the best attainable good of the human mind. This diversity of credence and practice springs, in a great degree, from the fact that all Education is partly an Art and partly a Science; so much an art that it must ever depend on the varying skill of different teachers, and on the varying aptitudes of different learners, but at the same time so much a science that all forms of edu-

¹ Inaugural Address as President of Columbian College, 1871.

education, having regard to any specific end, cannot be equally good, and, among the various competing theories of mental culture, there must be one which, on a consideration of all the elements involved in the problem, we can adjudge to be the best that the wit of man has thus far been able to devise. For, however the elements of the problem may differ according to the capabilities of the teacher, the capacity of the scholar, the ends which the scholar proposes to himself, and the general wants of society in any given age, there must still be a scheme of education which, "smoothed, and squared, and fitted to its place," shall be more wise and more expedient than any other—a scheme in which the applied art of education shall be based on such scientific foundations as the nature of the case may admit.

Accepting the theme thus suggested to me by the proprieties and formalities of this occasion, I have, in the first place, to inquire what is the object which we should set before us in determining the elements of higher academic learning. For with the lower stages of juvenile culture we are not directly concerned tonight, and, as to them, there is not so much room for difference among educators. According to the terms of the problem proposed by higher education, we are called, as I conceive, not to discuss the special adaptation of specific educational studies designed to meet the requirements of any particular vocation in industrial or professional life, but to investigate the fundamental elements of that more liberal and generous culture which looks to the symmetrical development of the whole man in all his powers and capacities. And as this is the object of higher academic education, it necessarily follows that any system of such

education must be defective if it omits from its purview any one of those essential studies by which the human race has been advanced to its present civil, social, intellectual, moral, and religious status. As in ancient Egypt men were able, it is said, by the graduated scales of the Nilometer, not only to measure the depth of the fertilizing waters that covered the land, but also to predict the extent of the coming harvest, so from the standard of education in any age we may not only gauge the degree in which it rises to the wants of the present time, but may also forecast the destiny it prefigures to the coming generation. Institutions of higher learning are founded among men to perpetuate and to transmit the existing stock of knowledge in all those departments which conduce to the intellectual progress of our race. Failing in this end, whether from a defect in the methods or means of education, they visibly fall below the standard erected for them in the requirements of the living age. But they do not subserve all the ends of their creation by achieving this purpose alone. It is not enough for educators, in the higher walks of their art, to preserve and propagate the elements of didactic knowledge, but they are bound so to impart these elements in all their fullness and vitalizing power as to create the conditions of a growing advancement in learning and civilization. To accomplish these great objects, the teacher must have equal regard to the number and quality of the subjects taught, and to the method and order and spirit of his instructions. "Teachers," says Bacon, "are not ordained for transitory uses, but for the progression of the sciences — *ad sufficiendam sobolem scientiæ in sæcula.*" No university, it is true, even in all its Faculties, can teach, as Sir William Ham-

ilton has said, the *omne scibile*, but a university can comprise in its curriculum such "a compend of the past thought and cultivation of the race" as shall be reduced to the shape and dimension best fitted to be taken in by the minds of the present generation, and therefore best fitted to promote the growth of culture.

It was from a disregard of this latter educational requirement that the progress of mental culture was arrested in Greece so soon as the pedagogues, who succeeded the age of original inquiry, contented themselves simply with the existing state of knowledge, instead of so learning it themselves and so teaching it to their pupils as to propagate, with knowledge, the love of it, and thus to stimulate and direct that spirit of inquiry which leads to never ending conquests in the world of Thought and of Nature. And so, too, during the Middle Ages, knowledge came to a standstill in Europe, not from any torpor of the mental faculties among the Schoolmen, for never were men more laborious and more acute than they; but because their mental activity revolved in the verbal philosophy of Aristotle as if in a treadmill, and was not suffered to go beyond the tether of that professorial and didactic discipline which bound it to the past, as if the past had contained in itself the be-all and the end-all of human philosophy. They failed to see in the successive stages of human history the stepping-stones of an ever advancing progress. Under such a theory science degenerated into a mere logomachy, and literature dwindled into a dry and formal rhetoric. Education was still conducted in the *Trivium* and *Quadrivium* of the cathedral and cloistral schools with a vast expenditure of logical apparatus

brought to bear on topics which lacked the quality of real truth, and which, from defects both of substance and form, failed to afford either the basis or the instruments of a higher intellectual proficiency. The world was not then indeed without its Doctors, "divine" and "transcendental" and "irrefragable;" but from Peter Lombard, its famous *Magister Sententiarum Sapientium*, to John of Occam, its redoubtable *Doctor invincibilis, singularis, et venerabilis*, it was without teachers who rightly apprehended either the elements or the methods of that true intellectual culture which teaches men not only what to know, but also how to learn. It is only in so far as the Occidental nations have made learning reproductive and progressive that "fifty years of Europe" are, as Tennyson tells us, better than "a cycle of Cathay."

But even when it is said that higher academic education must at least aim to transmit the existing sum of knowledge unimpaired, we have, by necessary implication, defined in a measure the methods and means of university culture, for it is obvious that the essential factors of that knowledge which constitutes the mental wealth of the present age must enter into the constitution of any scheme of studies designed to impart the higher education in its completeness. The education of the individual, as that of the race, may be said, indeed, to depend, in the most comprehensive sense of the word, on all those complex influences of the past and present which have combined to determine the resultant intellectual state of humanity. The present is what the past has made it, and bears in its bosom the germs of the future. But confining our view, as we do on this occasion, to a general survey of the fundamental elements which enter into the

present constitution of human knowledge, we may say, with Bacon, that out of the five and twenty centuries over which the memory and learning of men extend, we can hardly pick out six that were fertile in sciences or favorable to their development. Speaking from the point of view reached in his day, he adds : —

“Only three revolutions and periods of learning can be properly reckoned — one among the Greeks, the second among the Romans, and the last among us ; that is to say, the nations of Western Europe.”

In a still wider survey of human progress on the line of man's intellectual education, it may be said that three great civilizing nations have mainly determined the quality and the range of those studies which lay the basis of modern intellectual life and culture. We derive from the Hebrews the rudiments of that knowledge which ascertains the relations of man to God, and which lays in Divine Theology the foundations of both theoretical and practical ethics. Of this education, the family and the Christian Church are at once the peculiar guardians and the most efficient agents. But no scheme of university education can, even on intellectual grounds, ignore the Wisdom that cometh from above, and which is profitable to direct in all things. The college which does not write Jehovah-Nissi on its banners has already written Ichabod on its doorposts.

And as the elements of our religious culture have been transmitted to us by the chosen people of God, so the elements of our intellectual and political education have been primarily derived from the Greeks and Romans. It is the Greeks and the Romans who have been the federal representatives of humanity in all

that pertains to the original institutes of secular learning, literature, art, and polity — the great elements which have mainly combined to make our intellectual condition what it is to-day.

Now if it be true that a liberal education “consists in sharing in the best influences of the progressive intellectual refinement of man ;” if the present age is not independent of the ages that have preceded it ; but if the days of the race, as of the individual, are bound each to each by a sort of natural piety, it needs no elaborate argument to vindicate the place which the Grecian and the Roman languages and literatures must hold in any course of studies designed to furnish the basis of an integral education of the intellect.

When Dr. Arnold, the honored Master of Rugby School in England, first caught a view of Rome, as he drew near to that “City of the soul” on the occasion of his visit to Italy in the year 1840, he exclaimed : “Of earthly sights, this is the third — Athens and Jerusalem are the other two — the three peoples of God’s election, two for things temporal and one for things eternal.” As the thunders of Sinai still peal through the innermost recesses of man’s spiritual nature, so from the Acropolis of Athens we still catch, as it echoes down the “corridors of Time,” the reverberation of that resistless eloquence which once “fulminated over Greece,” while in Roman polity and in Roman literature we still find the traditions of a civilization which has become part and parcel of modern times.

But it is argued by some that for this very reason, because the modern civilization has absorbed the best elements of Greek and Roman life, we may omit the cultivation of Greek and Roman letters in order to

devote the more attention to the modern literatures of Italy, or France, or Spain, or Germany, with which we stand in more direct and immediate relations.

In reply to this allegation, I have only to say that when I am referred to the case of any scholar who, after mastering the tongues and familiarizing himself with the literatures of modern Europe, for purposes of mental culture, has been content to turn away from the great original fountains of culture in Greece and Rome, it will be time enough to reconsider my estimate of the place and value traditionally assigned to the ancient classics. Shall we put the study of the German in the place of the Greek? But we find Schiller, as he says, delightedly walking under the intellectual sky of Greece, that he may learn how to purify the strains of his German muse. Shall we put the Italian in the place of the Roman tongue? But we find Dante in his great poem referring to Aristotle as *il maestro di color che sanno*, and turning a reverential eye to Virgil as to the source from which he derived the beautiful style that has done him honor and immortalized the *Divina Commedia*.

Some years ago, when the subject of education was under discussion in the French Chamber of Deputies, M. Arago, then a member of that body, is represented to have held the following language : —

“I ask for classical studies. I require them. I deem them indispensable. But I do not think that they must necessarily be in Greek and Latin. I wish that in certain schools these studies should be superseded, at the pleasure of the municipal authorities, by a thorough study of our own tongue. I wish that in every college it might be permitted to put in the place of Latin and Greek the study of some living tongue. I require even that the language thus substituted may be

different according to the situation of the place — that at Perpignan and at Bayonne, for instance, it may be Spanish, at Havre the English, at Besançon the German.”

I entirely concur in this view of the French physical philosopher wherever the object of education is partial and not integral — aiming at professional or artisan dexterity as a means of livelihood, rather than to perfect the whole man by the full, harmonious, and thorough development of his capacities. If it be the mission of the French college, in the idea of Arago, to equip the stores of Perpignan and Bayonne, of Havre and Besançon, with fluent corresponding clerks and dispatchful commissionaires, it cannot be doubted that he has suggested the most expeditious means of reaching that object. But it has been commonly supposed that University education aims at something higher than this. It proposes to develop the whole man, that he may, in the truest sense of the term, be an end to himself, and not to the end that he may excel in any single manipulation of handicraft life. This minor and special education has, indeed, its uses, and for the great mass of mankind it is the only form of education which can be adjusted either to their condition or the wants of society; but it is not the education which will keep the great channels of thought and culture open to the influx of the mighty current which has thus far borne our race to higher and still higher levels in the world of science and in civilization. They who would take the tide of modern civilization at its flood in Germany or France, but who at the same time would dam up the stream of knowledge as it has descended to us from Greece and Rome, propose to themselves a problem no more sensible than that of the engineer who should think to improve the naviga-

tion of the Mississippi River below New Orleans by cutting off its affluents, the Ohio and the Missouri.

While I thus advocate the right of the ancient classical tongues to retain their hereditary place in the intellectual education ; and while I assert for them, considered as instruments of education, an advantage over the study of modern languages, I would not have it supposed that I am indifferent to the scholarly culture of our own noble language, and of that peerless literature which we inherit as a birthright. I advocate the study of ancient classics because I believe them indispensable to the thorough study and scholarly appreciation of any modern language, or of any modern literature, not excepting our own.

If, then, on historical and logical grounds, as well as from considerations of scholastic discipline and utility, we must claim for classical learning a necessary place in any scheme of university education, it is equally easy to establish the right of the higher mathematics to be included in any such scheme. Mathematical studies are an integral element, if not, as some maintain, the starting-point, of that intellectual reformation which dates from the time of Plato. And men have curiously speculated what the Greek civilization might have become if the Greek education had continued to be essentially mathematical, as it was in the days of Plato. It was not until this education had declined that the ancient astronomy became entangled in a cumbrous apparatus of fixed and crystalline spheres, —

“ With centric and eccentric scribbled o'er,
Cycle in epicycle, orb in orb,” —

a system incapable of reduction to any form of geometrical analysis, and which, therefore, failed to afford

the conditions of scientific progress, or to substantiate itself to the reason of men. It is because Numbers and Form and Motion in periodic times are the *principia* of the universe that the "Principia" of Newton can never perish from the memory of man. Whether regarded as a means of discipline or as an instrument of scientific research, the higher mathematics must ever assert their appointed place in any theory of education which proposes either to strengthen the reason of man or to explicate the phenomena of the universe.

If it be, as I have argued, the function of a University not only to embody and perpetuate the existing store of human knowledge, but also to consult for "the progression of the Sciences," it necessarily follows that the sciences based on physical research must occupy a prominent place in any system of modern intellectual education. Considered apart from the modifying force of Christianity, our modern age differs from that of Greece and Rome mainly by virtue of those positive sciences which have shed such a surpassing lustre on every path of modern art. And these sciences, more than any others, contain in themselves the conditions and the presage of a never ending advancement. Here are the fountains of a knowledge which wells up from the very bosom of Nature. Here are the rudiments of that "potential physics" which enables the finite mind of man to re-think the thought of God in creation, as, step by step, we retrace the presence and working of the Law whose "seat is His bosom, and whose voice is the harmony of the World." The Dervise of Balsora, in the Arabian tale, gave to Baba Abdalla a precious ointment that opened the eyes on which it was laid to behold all the riches hidden in the earth; but infinitely more precious is the

eyesalve of Positive Science, which not only opens our eyes to behold the riches of the earth, but purges our intellectual vision, that it may read the works of God with the light of reason, and no longer by the shadows they cast in passing before the senses of man.

If it be a ground of just wonder that the devotees of classical culture should have once denied to the physical sciences their legitimate place in any scheme of university education, it remains none the less a duty to resist the pretensions of those who would assign to these sciences a too exclusive position in the scholastic curriculum. Yet Mr. Herbert Spencer, in considering the question, "What knowledge is of most worth?" has not scrupled to say that the study of science (meaning physical science) "is the best preparation for every order of human activity."

Now, it cannot be doubted that an exclusive devotion to the physical sciences must wreak itself in a practical paralysis or distorted growth of those faculties which, under such a training, are left to pine without cultivation. We hold with Sir William Hamilton, that "a knowledge drawn too exclusively from without is not only imperfect in itself, but makes its votaries fatalists, materialists, pantheists; if they dare to think, it is the dogmatism of despair." And hence it is that the great founder of the so-called Positive Philosophy in France, M. Comte, has ventured to say that in his eyes "the heavens declare no other glory than that of Hipparchus, of Kepler, of Newton, and of all the rest who have helped to establish the laws of celestial phenomena." Such was the blindness of this great thinker as he sat enthroned amid the blazing hierarchy of the sciences, while to the ears of even a heathen philosopher of the fourth cen-

ture before Christ the planets rolled in their orbits with a rhythmic music which attested the master hand of the Divine Harmonist who first set the notes of their grand diapason; for the eyes of Plato were opened to see that the starry heavens, resplendent as they are with a beauty that surpasses "the beauty of figures wrought by the hand of Dædalus," were set before the mind of man to serve as "the patterns of knowledge," and not to feed the vanity of star-eyed Science:

It is in view of the extravagances which result from the perversion of the physical sciences when thus misdirected in their aims and exaggerated in the aspirations of their votaries, that we may next propound another kind of studies which constitute a necessary part of intellectual education, as they also furnish a corrective to the aberrations of a philosophy which moves exclusively in matter and in the phenomena of necessary law. I allude to speculative philosophy, as well in its ontological as in its psychological departments, — a study which, at its very outset, as a modern writer has remarked, calls up the great questions that pertain to the foundations of our knowledge, with the possibility of absolute truth, the limits of the human intellect, the reality and the nature of the distinction between object and subject; that is, the relation between the macrocosm without us and the microcosm within us; and, at a higher point of inquiry, the relations of the Finite to the Infinite, of the mind of man to the mind of God. These tremendous questions will not down at our bidding. They have haunted the minds of thinking men in all ages, and perpetually allure, as they perpetually baffle, the human understanding. No man can be called "educated" who remains ignorant of the at-

tempts that have been made by the great philosophers of different ages, from the dawn of speculation in Greece down to the present day, to furnish a solution, more or less satisfying, of these grand problems of human being and destiny. And this we must say, while freely admitting, with one who was the profoundest critic of all existing systems in philosophy, as he was also the profoundest speculative thinker of modern times, that "the past history of philosophy has been in a great measure a history only of variation and error." "If," as he argues, "it be right to philosophize, we must philosophize to realize the right; if to philosophize be wrong, we must philosophize to manifest the wrong; on either alternative, philosophize we must." The study of metaphysics cannot be sundered from the rational study even of physics. As Goethe tersely sings:—

"Willst du ins Unendliche schreiten?
Geh nur im Endlichen nach allen Seiten."

As in the farthest stretches of our vision the horizon of earth blends with and is lost in the ethereal blue of the sky, so our ultimate speculations on the smallest atom of matter or the vastest sphere in the stellar universe lead from the earthly horizon of the physical to the heavenly horizon of the metaphysical—from the realm of the Finite to the realm of the Infinite in Cause and Space and Time.

Nor is this study unpractical or alien to human history. The speculations of Plato enter as really into the intellectual and moral education of the human race as the poems of Homer, or the books of Euclid, or the "Institutes" of Justinian. It was the speculative philosophers of Greece who exalted the language of Greece to be the vehicle of those great ethical truths which were

deposited in the Hebrew mind by a long line of splendid miracles, and by the cumbrous media of types and shadows addressed to an unspiritual generation. It was because the philosophers of Greece had unconsciously filled an important place in the providential education of our race that Paul, the great Apostle of the Gentiles, could stand on Mars Hill and preach to the Athenians, in their own native language, the wonderful works of God — a proclamation which, on the day of Pentecost, required for its full utterance the miraculous tongues of flame. It was thus that St. Augustine, the great expounder of dogmatic Christianity in his day, delighted to confess in Plato a teacher second only to the Teacher of Galilee, and it is thus that the philosophy of Aristotle has organized the thought of men for twenty centuries, and under two dispensations — the heathen and the Christian; for it was not until Bacon had written his “*Novum Organum*” that the sceptre was wrested from the hands of this intellectual monarch among the sons of men. At more than one period the Christian Schools, as Jeremy Taylor expresses it, “have drawn some of their articles through the limbecs of Plato’s philosophy,” while the colossal figure of the great Stagirite casts such a mighty shadow across the ages that on historic grounds, if no other, we must study the nature and the bearings of Grecian speculation. And the later phases of modern inquiry, under this head, whether in France, or Germany, or Great Britain, or in our own country, must equally engage our attention if we are to scale the empyreal altitudes of thought, where “Alps on Alps arise.”

If in Language and Literature, in Mathematics, in the Physical Sciences, and in Speculative Philosophy, we find the great fundamental elements of intellectual

education, it is easy to perceive, as no less the law of necessity than of nature, that this education must proceed from the simple to the complex, from the concrete to the abstract, from the empirical to the rational. I do not fear that the art of education will ever be so far divorced from the science of education as to leave much room for error in fixing the order and succession of the studies that look to the equable and symmetrical development of the mental powers. If, as Horace says, we cannot drive out nature with a fork, neither can we prick on nature by a fork into premature intellectual activity without soon discovering the source of our error by the mischiefs to which it leads.

I cannot concur, therefore, with Mr. Herbert Spencer, when, as an inference from the manifold ways in which our mental powers may be excited and cultivated, he concludes that our most advanced modes of teaching "are not right ones, or nearly the right ones." This is the very "dogmatism of despair," and not an inference justified by either the history or philosophy of education. And he seems to have sufficiently answered himself on this point when, in another place, he propounds the doctrine that "the education of the child must accord both in mode and arrangement with the education of mankind, considered historically; or, in other words, that the genesis of knowledge in the individual must follow the same course as the genesis of knowledge in the race." If, therefore, we would know the logical order of studies in any given curriculum, we have but to learn their chronological order in the evolution and development of human knowledge. History is here our teacher — teaching us what to learn and how to learn if we would stand on the shoulders of the generations who have gone before us.

And hence it is easy to see that the number and quality and arrangement of studies in a university course are not arbitrarily fixed by educators, but are the outgrowth of man's intellectual tendencies in the past, and the highest expression of his intellectual wants in the present, as they are the indispensable conditions of future intellectual progress. They are not arbitrary, because they follow and reproduce the chronological order of the intellectual development in human history. And this is the order, by following which the student lives into the life of humanity, and reaches out his hand to that ideal man in whom Pascal personified the whole human race, — "a man who never dies, and who learns perpetually." The golden lamp of history sheds its light along the track of the past ages, that we may review the steps already trodden by the great intellectual masters of the race, and that we may *resume* in this generation the culture of all the generations that have yet appeared on the globe. Any general system of education which accomplishes less than this must lead to retrogression rather than to progress.

And it is this order of studies which best lends itself to the purposes of professional culture and to proficiency in any branch of technology. He who has been thoroughly grounded in the elements of intellectual education is fitted to approach the study of Law, or Medicine, or Theology, as from a "coigne of vantage" which gives him an incalculable superiority over one who is ignorant of the relation in which his profession stands to the affiliated branches of human learning and the existing intellectual status of humanity. True, we cannot expect, in the present stage of knowledges, to "drive all the sciences abreast," as

Leibnitz was said to do in his day, but we can aspire to such a universality of study as shall reveal to us the cross-lights by which the sciences reciprocally illustrate each other, bound as they are to one another by a certain tie of relationship which makes them members of an inseparable sisterhood, like that of which Tasso spoke : —

— “Ch’ in esser belle
Mostran disparita ma somigliante.”

“No perfect discovery can be made,” says Bacon, “on a flat or a level ; neither is it possible to discover the more remote and deeper parts of any science, if you stand but upon the level of the same science, and ascend not to a higher science.” And so, as he adds in another part of his treatise on the “Advancement of Learning,” “if any man think philosophy and universality to be idle studies, he doth not consider that all professions are from thence served and supplied.” And this he took to be the great cause that had hindered the progression of learning, “because the fundamental knowledges have been studied but in passage.”

And it is in immediate connection with this view of his that he deplored the segregation which resulted from the dedicating of foundations and dotations to single branches of “professory learning.” The foundations of university education should be as broad as the realms of knowledge in the sciences and in the arts of civilized life. In laying these foundations, we must understand our epoch ; and in building on them, we must look to the mark of our high calling.

The men who founded seats of learning in the past — the kings and queens and princes and prelates and statesmen, and the more than princely merchants who

have thus immortalized their names — may be truly said to have “builded wiser than they knew.” Eton College, on the banks of the Thames, was founded by Henry VI., “to endure in all future time,” as the residence of “twenty-five poor scholars, who were there to learn grammar, and also of twenty-five poor and infirm men, whose duty it should be there continually to pray for the King’s health and welfare so long as he lived, and for his soul after he had departed this life.” But what a long line of illustrious men among the temporal and spiritual rulers of England — statesmen, warriors, divines, scholars, and poets — has gone forth from those old monastic walls since the year 1440, when they were first dedicated to “Blessed Marie of Etone beside Wyndsore.” It is nearly five hundred years since the first serge-clad scholar was led to the feet of William of Wykeham at Winchester, and still with all the superadded lights of the nineteenth century: —

“His seventy faithful boys, in these presumptuous days,
Learn the old truth, speak the old words, tread in the ancient ways;
Still for their daily orisons resounds the matin chime;
Still linked in holy brotherhood, St. Catherine’s steep they climb;
Still to their Sabbath worship they troop by Wykeham’s tomb —
Still in the summer twilight sing their sweet song of Home.”

How has the name of Oxford been transfigured from glory to glory as, taking its original title from the cattle who here were wont to ford the shallows of the Isis, it has since become the Mecca of British scholarship, to which the tribes of English youth repair from year to year! How has Cambridge lengthened her cords and strengthened her stakes since the year 1110, when Master Gislebert, with three other monks, hired a barn on the banks of Cam, in which to

give public lectures ! “ Thus from this small source,” as the chronicle has it, — “ from this small source, which has swollen into a great river, we now behold the city of God made glad, and all England rendered fruitful by many teachers and doctors issuing from Cambridge, as from a most holy paradise.”

As there is no source of blessing so perennial as that of those who open the well-heads of learning in a dry and thirsty land, so there is no form of beneficence which preserves and hallows the memory like that which calls on the successive generations of men to rise up and bless the founders and benefactors of our colleges and universities. It is thus that at Oxford and at Cambridge a round of stated days is set apart for the solemn and grateful commemoration of all in their annals *quorum benefacta late patent*, to quote the words of the Cambridge statutes under this head. By what else in his unfortunate history is Henry VI. so favorably known as by the foundation of that college whose antique towers are to-day his best monument, as they “ crown the watery glades ” near the royal castle of England ? “ Nations and thrones and reverend laws,” says Sir Roundell Palmer, —

“ have melted like a dream,
Yet Wykeham’s works are green and fresh beside the crystal stream.”

In the light that streams through the stained-glass windows of his colleges at Winchester and at Oxford, towering monuments as they are to his large-hearted and clear-headed philanthropy, the world has actually forgotten that it was this same munificent prelate who rebuilt the royal castle of the British kings, erected the grand nave of Winchester Cathedral, repaired the highways of England, spanned her rivers with bridges

of solid masonry, recovered the Hospital of St. Cross from the rapacity of its masters, paid the debts of insolvent prisoners, and maintained at his hospitable board a retinue of daily pensioners.

How the name of Sir Thomas Gresham, the "Flower of Merchants," as he was called in the days of Queen Elizabeth, still smells sweet and blossoms in the dust, — leaving behind him, in the college which first gave shelter to the "Royal Society" of Newton and his associates, a fragrance and splendor which surpass all the flowers of chivalry that bloomed in the wide tract of the Middle Ages. And hence it was that the lovers and friends of the saintly Keble in England, after he had sung the "Christian Year," and been gathered to the sevenfold harpings of the chantry in Heaven, could find no memorial so suited to keep his name forever green as that which they reared in the college but recently dedicated to his memory, and which they have placed in the galaxy of Oxford, where it shall forever shine like a star in the firmament. If what he loved to call "the Oxford moral tone" shall ever die out at the university, we may be sure it will die out last of all in Keble College.

That was a wise choice and a noble which the sturdy burghers of Leyden made, when, after their dauntless struggle against the power of Spain, they were, as a reward for their valor, left to choose between the gift of a university and immunity from taxation. They chose the former, and thereby enriched not only themselves but their posterity to the latest generation. And not their posterity alone, for it was a professor of the University of Leyden who, as editor of the Leyden "Nouvelles Extraordinaires" ¹ in 1780, turned that in-

¹ A copy of this periodical for a series of years, embracing the

fluent organ of European public opinion in favor of American independence at a time when John Adams, our minister in Holland, could gratefully appreciate the value of such a championship, and it was this same professor who helped to mould the mind of John Quincy Adams, whose name we cannot mention to-night with other than the reverence due to one who filled the curule chair of the republic, and who was no less illustrious for his scholarship than for his public services. In this presence, I need but to recall the fact that this student of Leyden University, after he became President of the United States, was among the most steadfast friends, and in the hour of its greatest need one of the most liberal benefactors of the Columbian College, to establish in his favor, and in the favor of the university beyond the sea, an additional claim to our gratitude.

History tells us how the star of Prussia paled before the meteoric genius of Napoleon, and a scholarly tradition also records that when, in 1807, she had gained a nominal peace, the king sent for Fichte, the celebrated professor and speculative philosopher, to consult with him as to the best means for restoring Prussian prestige and power. Fichte was true to his character as a philosopher and a professor. He advised the king, if he wished to regenerate Prussia, to found a university which should make Berlin not only the political capital of his kingdom, but the intellectual capital of Germany, and even of Europe. Such, it is said, were the origin and motive of the University of Berlin, and from this heart of Prussia, as from a deep and ever gushing geyser, what a copious stream

term of John Adams's residence in Holland, may be found in the Library of Congress.

of learning has flowed out, not only to quicken that kingdom, but to gladden the world! And to-day, if you would read the secret of Sadowa and of Sedan, you must search for it, not in arsenals crammed with needle-guns, but in universities and in public schools, which make Prussia the most enlightened and therefore the most powerful nation of Europe.

Shall our College, with its fair beginnings, become a well-head of knowledge and of power throughout the land? How has Harvard College, from its small beginnings, grown into a great university? Let President Felton answer: "John Harvard's gift, and the contributions of successive friends of learning in the early times, followed by the Hollises, the Alfordes, the McLeans, the Gores, the Eliots, the Phillipses, the Lawrences, the Appletons, the Grays" (time would fail to name all the "saints" of the Harvard calendar), "have made the institution what it is to-day,"—the foremost university in the land. Our College, from the mere felicity of its situation at this metropolitan centre, where society is broad, liberal, and cultured, has many advantages. The learning of the present day, it is important to remark, no longer courts the shades of the cloister, but walks abroad along the highways of empire. Behold how, but a few weeks ago, the hand of Bismarck turned from protocols and papers of state to indite an autograph letter to a private citizen of Italy, the Count Trivulzio, begging, in behalf of Professor Mommsen, the loan of a few old Latin inscriptions which the professor needed to clear up some disputed question in the Roman history he is writing, not for Prussian scholars alone, but for the whole literary world. There is nothing esoteric in the learning of our day. And

what advantages are ours, both for gaining and diffusing the blessings of highest culture! For here, at our very doors, we have the Smithsonian Institution, perpetually working, under the guidance of its illustrious secretary, on the boundaries of knowledge in all departments, thus literally fulfilling the will of its founder and exemplifying the highest function of a university, by increasing and diffusing knowledge among men. And here is the National Library of Congress, with its well-filled alcoves, open alike to teachers and scholars for purposes of literary and scientific research; and here, for the study of technology, are the accumulated fruits of American inventive genius stored in the Patent Office; and here, for the progressive scientific study of astronomy, is the National Observatory; and here is that no less learned and useful school of practical geometers connected with the Coast Survey; and here are the gardens which, under the keeping of the Agricultural Department, invite to the study of botany, not in dry herbaria and in dryer tomes, but amid flowery walks through which Shenstone would have loved to ramble by the side of Linnæus or Hasselquist. And here, for the student of law, are the highest seats of our American Themis, as here, for the votaries of the healing art, are the priceless treasures of the Medical Museum, without any rival in the world among institutions of its kind; and here, by the munificence of him who stands at the head of the governing board of our College, is the Corcoran Gallery of the Fine Arts, to keep alive the love of beauty in the soul of man.

God grant that the day may not be far distant when our College, already a university in embryo, may be able, by the munificence of its endowments, and there-

fore by the range of its studies, to take advantage of all these singular opportunities for promoting true culture in all its departments. "Learning," says a modern educator, "may be got from books, but not culture. This latter is a more living process, and requires that the student shall at times close his book, leave his solitary room, and mingle with his fellow-men." Where can he do this so well and so profitably as here, in this Capital of the Nation, — here, where, as Bacon desiderated, we have "straitly conjoined" the conditions both of contemplation and action, "a conjunction like unto that of the two highest planets — Saturn, the planet of rest and contemplation, and Jupiter, the planet of civil society and action"? When our university, from these high places of the land, shall send her quickening beams throughout the length and breadth of the nation, we shall have realized equally the prayers of its pious founders and the patriotic aspirations of Washington and Jefferson, of Madison and Monroe, as of their illustrious compeers — but not till then. As they labored and prayed for a national university at the seat of the national government, so to this same end let us labor and pray in our generation, that we may build worthily and wisely and munificently on the foundations laid by the Fathers. And thus, perhaps, in this the fiftieth year of our academic history, the chime of the next Christmas bells shall sweetly blend with the trumpets of our jubilee.

II

LIFE AND CHARACTER OF JOSEPH HENRY¹

JOSEPH HENRY was born in Albany, N. Y., on the 17th of December, 1799. His grandparents on both his father's and mother's side emigrated from Scotland and landed in this country on the 16th of June, 1775, the day before the battle of Bunker Hill. At the age of seven or earlier, for what reason is unknown, he went to live with his maternal grandmother, who resided at Galway, in the county of Saratoga, N. Y., and his father having died soon afterwards, he continued to dwell for years under her roof. At Galway he attended the district school, of which one Israel Phelps was the master, and having there learned how "to write and cipher, too," he was placed at the early age of ten in a store kept in the village by a Mr. Broderick. Receiving from his employer every token of kindness, and, indeed, of paternal interest in his welfare, the boy clerk, already remarkable for his handsome visage, his slender figure, his delicate complexion, and his vivacious temper, became a great favorite with his comrades, who, according to the customs of the village store, were wont to saunter about the door in summer, and to gather round the stove in winter for the interchange of such trivial gossip as pertains to village life. Though released at this time

¹ A paper read before the Philosophical Society of Washington, October 26, 1878.

for the half of each day from the duty of waiting in the store, that he might attend the sessions of the common school in the afternoon, it does not appear that he had as yet evinced any taste for books, notwithstanding the fact, as he afterwards recalled, that his young brain was even then troubled at times with the "malady of thought," as he lost himself in the mazes of reverie or speculation about God and creation — "those obstinate questionings of sense and outward things," which the philosophical poet of England has described as the natural misgivings of a "creature moving about in worlds not realized." "Delight and liberty," as was natural to a bright boy in the full flush of his animal spirits, still remained the simple creed of his childhood, until one day his pet rabbit escaped from its warren, and ran into an opening in the foundation of the village church. Finding the hole sufficiently large to admit of pushing his person through it, he followed on all fours in eager pursuit of the fugitive, when his eyes were attracted in a certain direction by a glimmer of light, and groping his way towards it, beneath the church, he discovered that it proceeded from a crevice which led into the vestibule of the building, and which opened immediately behind a bookcase that had been placed in the vestibule, as the depository of the village library. Working his way to the front of the bookcase, he found himself in the presence of all the literature stored on its shelves, and on his taking down the first book which struck his eye, it proved to be Brooke's "Fool of Quality," a work of fiction in which views of practical life and traits of mystical piety are artfully blended, insomuch that even John Wesley was inclined to except it from the *auto-da-fé*, which, after the manner of the curate and

barber in the story of Don Quixote, he would have gladly performed upon the less edifying products of the novel-writing imagination. Poring over the pages of this fascinating volume, young Henry forgot the rabbit in quest of which he had crept beneath the church. It was the first book he had ever read with zest, because it was the first book he had ever read at the impulse of his "own sweet will." Mrs. Browning has told us that we get no good from a book by being ungenerous with it, by calculating profits — "so much help by so much reading."

— "It is rather when
We gloriously forget ourselves, and plunge
Soul-forward, head-long, into a book's profound,
Impassioned for its beauty and salt of truth —
'T is then we get the right good from a book."

Such was the "soul-forward, head-long plunge" which the boyish Henry now first took in the waters of romance, rendered only the sweeter to him, it may be, because, without affront to innocence, they took the flavor of "stolen waters" from the stealth with which they were imbibed. From that time forth he made frequent visits to this library, by the same tortuous and underground passage, reading by preference only works of fiction, the contents of which he retailed to listening comrades around the stove by night, until, in the end, his patron, who shared in his taste for such "light reading," procured for him the right of access to the library in the regular way, and no longer by the narrow fissure in the rear of the bookcase.

At the age of fifteen he left the store of Mr. Broderick in Galway, and, returning to the place of his birth, entered a watchmaker's establishment in Albany, but finding nothing congenial to his taste in the

new pursuit, he soon abandoned it. At this time he had formed a strong predilection for the stage. Two or three years before, while living at Galway, he had seen a play for the first time, on the occasion of a casual visit to Albany; and the impression it made upon his mind was as vivid as that left by the perusal of his first novel. He described and reënacted its scenes for the wonderment of the Galway youth, and now that he was living in Albany, he could give full vent to his new inclination. His spare money was all spent in theatrical amusements, until at length he won his way behind the scenes, and procured admission to the green room, where he learned how to put a play on the boards, and how to produce the illusion of stage effects. In the skill with which he learned thus early to handle the apparatus of the stage, we may discern, perhaps, the first faint prelude of the skill to which he subsequently attained in handling the "levers and screws" with which, according to Goethe, the experimental philosopher seeks to extort from nature the revelation of her mysteries.

Invited at this period of his life to join a private theatrical association in Albany, known by the name of "The Rostrum," the young enthusiast soon distinguished himself among his fellow-members of riper years by the ingenuity of his dramatic combinations and the felicity of his scenic effects, insomuch that he was made president of the society. Meanwhile, the watchmaker had left Albany, and young Henry, no longer having the fear of the silversmith's file and crucible before his eyes, was left free to follow the lead of his dramatic tastes and aspirations. He dramatized a tale and prepared a comedy, both of which were acted by the association. Indeed, so much was

he absorbed in this new vocation, that our amateur Roscius seemed, according to all outward appearance, in a fair way of making a place for himself among the "periwig-pated fellows who tear a passion to tatters" on the stage; or, at the best, of taking rank with the great dramatic artists who, standing in front of the garish footlights, "hold the mirror up to nature," in a sense far different from that of the experimental philosopher, standing in the clear beams of that *lumen siccum* which Bacon has praised as the light that is best of all for the eyes of the mind. But in the midst of these "unintelligible dumb shows," under which the unique and original genius of Henry had thus far seemed to be masquerading, we have now come to the time when his mind underwent a great transfiguration, which revealed its native brightness, — a transfiguration as sudden as it was great.

Minds richly endowed, if started at first on a wrong track, may sometimes have, it would seem, an intellectual conversion as marked as that moral conversion which is often visible in the lives of great saints. It certainly was so in the case of Henry. Overtaken in the sixteenth year of his age by a slight accident, which detained him for a season within doors, he chanced, in search of mental diversion, to cast his eyes upon a book which a Scotch gentleman, boarding with his mother, had left upon the table in his chamber. It was Dr. Gregory's Lectures on Experimental Philosophy, Astronomy, and Chemistry. It commences with an address to the young reader, in which the author stimulates him to deeper inquiry concerning the familiar objects around him. "You throw a stone," he says, "or shoot an arrow upwards into the air; why does it not go forward in the air, and in the

direction you give it? What force is it that presses it down to the earth? Why does flame or smoke always mount upward? You look into a clear well of water, and see your own face and figure, as if painted there; why is this? You are told it is done by reflection of light. But what is reflection of light?" etc., etc. These queries certainly are very far from representing the *prudens quæstio* of Bacon in even its most elementary form, but they opened to the mind of young Henry an entirely "new world of thought and enjoyment." His attention was enchained by this book as it had not been enchained by the fiction of Brooke, or by the phantasmagoria of the drama.¹ The book did for him what the spirits did for Faust when they opened his eyes to see the sign of the macrocosm, and summoned him "to unveil the powers of nature lying all around him." Not more effectual was the call which came to St. Augustine, when, as he lay beneath the shadow of the fig-tree, weeping in the bitterness of a contrite soul, he seemed to hear a voice that said to him: "Tolle, lege; tolle, lege," and at the sound of which he turned away forever from the Ten Predicaments of Aristotle, and all the books of the rhetoricians, to follow what seemed to him the

¹ He soon became so much interested in this book that its owner gave it to him, and in token of the epoch it had marked in his life, Professor Henry ever afterwards preserved it among the choicest memorials of his boyhood. In the fly-leaf of the book the following memorandum is found, written by Professor Henry in the year 1837: "This book, although by no means a profound work, has, under Providence, exerted a remarkable influence on my life. It accidentally fell into my hands when I was about sixteen years old, and was the first book, with the exception of works of fiction, that I ever read with attention. It opened to me a new world of thought and enjoyment, invested things before almost unnoticed with the highest interest, fixed my mind on the study of nature, and caused me to resolve at the time of reading it that I would devote my life to the acquisition of knowledge. — Joseph Henry."

“lively oracles of God.” No sooner had Henry recovered from his sickness, than, obedient to the new vision of life and duty which had dawned upon him, he summoned his comrades of “the Rostrum” to meet him in conference, formally resigned the office of president, and, in a valedictory address, announced to his associates that, subordinating the pleasures of literature to the acquisition of serious knowledge, he had determined henceforth to consecrate his life to arduous and solid studies.

There are doubtless those who, in the retrospect of Professor Henry’s youth, as contrasted with the rich flower and fruitage of his riper years, will please themselves with curious speculations on what “might have been,” if his rabbit had never slipped its inclosure, if there had been no crack in the wall behind the bookcase, or if Gregory’s Lectures had never fallen in his way at the critical juncture of his life, much as the great mind of Pascal pleased itself with musing how the fate of Europe might have been changed if the Providential grain of sand in Cromwell’s tissue had not sent him to a premature grave ; or how the whole face of the earth would have been changed if the nose of Cleopatra had been a little shorter than it was, and so had marred the beauty of face which made her, like another Helen, the *teterrima causa belli* for a whole generation. Such fanciful speculations, it seems to me, are well calculated to import into the philosophy of human life, and into the philosophy of human history, a theory of causation which is as superficial as it is false. As honest Horatio says to Hamlet in the play, when the latter proposes to trace the noble dust of Alexander the Great, in imagination, until perchance it may be found stopping a bung-hole, I feel

like saying in the presence of such fine-spun speculations, " 'T were to consider too curiously to consider so." The strong intellectual forces which are organic in a great mind, as the strong moral and political forces which are organic in society, do not depend for their evolution, or for their grand cyclical movements, on the casual vicissitudes which ripple the surface of human life and affairs. To argue in this wise is to mistake occasion for cause, and by confounding what is transient and incidental with what is permanent and pervasive, is to make the noblest life, with its destined ends and ways, the mere creature of accident, and is to convert human history, with its great secular developments, into the fortuitous rattle and chance combinations of the kaleidoscope. We may be sure that Henry was too great a man to have lived and died without making his mark on the age in which his lot was cast, whatever should have been the time, place, or circumstance which was to disclose the color and complexion of his destiny. The strong, clear mind, like the crystal, takes its shape and pressure from the play of the constituent forces within it, and is not the sport of casual influences that come from without.

Armed, however, with his new enthusiasm, the nascent philosopher hastened to join a night school in Albany, but soon exhausted the lore of its master. Encountering next a peripatetic teacher of English grammar, he became, under the pedagogue's drill, so versed in the arts of orthography, etymology, syntax, and prosody, that he started out himself on a grammatical tour through the provincial districts of New York, and returning from this first field of his triumphs as a teacher, he entered the Albany Academy

(then in charge of Dr. T. Romeyn Beck) as a pupil in its more advanced studies. Meanwhile, in order to "pay his way" in the academy, he sought employment as a teacher in a neighboring district school, this being, as he afterwards was wont to say, the only office he had ever sought in his life; and in this office he succeeded so well that his salary was raised from \$8 for the first month to the munificent sum of \$15 for the second month of his service! From pupil in the academy and teacher of the district school, he was soon promoted to the rank of assistant in the academy, and henceforward had ample means for the further prosecution of his studies. Leaving the academy, he next accepted the post of private tutor in the family of the Patroon in Albany, Mr. S. Van Rensselaer; and, devoting his leisure hours to the study of the higher mathematics, in conjunction with chemistry, physiology, and anatomy, he at this time purposed to enter the medical profession, and had made some advances in this direction, when he was called, in the year 1826, to embark in a surveying expedition, set on foot under the auspices of the State government of New York, for the purpose of laying out a road through the southern tier of counties in that State. Starting with his men at West Point, and going through the woods to Lake Erie, he acquitted himself so well in this expedition that his friends endeavored to procure for him a permanent appointment as captain of an engineering corps, which it was proposed to create for the prosecution of other internal improvement schemes; but the bill projected for this purpose having fallen through, Mr. Henry again accepted, though with some reluctance, a vacant chair which was offered him in the Albany Academy.

In connection with the duties of this chair, he now commenced a series of original experiments in natural philosophy, — the first connected series which had been prosecuted in this country. Dr. Hare, indeed, had already invented the compound blowpipe, as Franklin before him, by his brilliant but desultory labors, had given an immense impulse to the science of electricity ; yet none the less is it true that regular and systematic investigations, designed to push forward the boundaries of knowledge, abreast with the scientific workers of Europe, had hardly been attempted at that era in the United States.

The achievements of Henry in this direction soon began to win for him an increase of reputation as well as an increase of knowledge ; but in the midst of the fervors which had come to quicken his genius, he was visited by the fancy (or was it a fact ?) that a few of the friends who had hitherto supported him in his high ambition were now beginning to look a little less warmly on his aspirations. Suffering from this source the mental depression which was natural to a sensitive spirit, no less remarkable for its modesty than for its merit, he found solace in the friendly words of good cheer and hopefulness addressed to him by Mr. William Dunlap.¹ While one day making, with Mr. Henry, a trip down the Hudson River, on board the same steamboat, Mr. Dunlap observed in the young teacher's face the marks of sadness, and, on learning its cause, he laid his hand affectionately on Henry's

¹ This Mr. Dunlap had been the manager of the Park Theatre in New York, and combined with his dramatic vocation the pursuits of literature and the painter's art. He wrote the *History of Arts and Designs in the United States*, a work which was esteemed a standard one at the date of its first publication, in 1834.

shoulder, and closed some reassuring advice with the prophetic words, "Albany will one day be proud of her son." The presage was destined to be abundantly confirmed. Soon afterwards came the call to Princeton College, and, because of the wider career it opened to him, the call was as grateful to Henry as its acceptance was gratifying to the friends of that institution. And shortly before this promotion, a new happiness had come to crown his life in his marriage to the excellent lady who still survives him.

He entered upon the duties of his new post in the month of November, 1832, and bringing with him a budding reputation, which soon blossomed into the highest scientific fame, he became the pride and ornament of the Princeton faculty. The prestige of his magnets attracted students from all parts of the country; but the magnetism of the man was better far than any work of his cunning hand or fertile brain. It was in Princeton, as he was afterwards wont to say, that he spent the happiest days of his life, and they were also among the most fruitful in scientific discovery. Leaving the record of his particular achievements at this epoch to be told by Mr. Taylor, who is so well qualified to do them justice, I beg leave only to refer to this period in the career of Professor Henry as that in which it was my good fortune to come, for the first time, under the personal influence of the great philosophical scholar, who, after being my teacher in science during the days of my college novitiate at Princeton, continued during the whole of his subsequent life to honor me with a friendship which was as much my support in every emergency that called for counsel and guidance, as it was at all times my joy and the crown of my rejoicing.

In the year 1847, when Professor Henry was in the forty-eighth year of his age, he was unanimously elected by the Regents of the Smithsonian Institution as its Secretary or Director. At that time the institution existed only in name, under the organic act passed by Congress for its incorporation, in order to give effect to the bequest of James Smithson, Esq., of London, who by his last will and testament had given the whole of his property to the United States, to found at Washington, under the name of the "Smithsonian Institution," an establishment for "the increase and diffusion of knowledge among men." It does not need to be said that Professor Henry did not seek this appointment. It came to him unsolicited, but it came to him from the Board of Regents, not only by the free choice of its members, but also at the suggestion and with the approval of European men of science, like Sir David Brewster, Faraday, and Arago, as also of American scientific men, like Bache and Silliman and Hare. I well remember to have heard the late George M. Dallas (a member of the constituent Board of Regents by virtue of his office as Vice-President of the United States) make the remark on a public occasion, immediately after the election of Professor Henry as Director of the Smithsonian Institution, that the Board had not had the slightest hesitation in tendering the appointment to him "as being peerless among the recognized heads of American science."

At the invitation of the Regents he drew up an outline plan of the Institution, and the plan was adopted by them on the 13th of December, 1847. The members of this Society, living as they do beneath the shadow of the great institution to which Smithson

worthily gave his name and his estate, but of which Henry was at once the organizing brain and the directing hand from the date of its inception down to the day of his death, do not need that I should sketch for them the theory on which it was projected by its first Secretary, or that I should rehearse in detail the long chronicle of the useful and multiform services which in pursuit of that theory it has rendered to the cause of science and of human progress. And, moreover, in doing so I should here again imprudently trench on the province assigned to my learned colleague. But I may be allowed to portray the method and spirit which he brought to the duties of this exacting post, at least so far as to say that he proved himself as great in administration as he was great in original research; as skillful in directing the scientific labors of others as he was skillful in the conduct of his own. Seizing, as with an intuitive eye, the peculiar genius of an institution which was appointed to "increase knowledge" and to "diffuse" it "among men," he touched the springs of scientific inquiry at a thousand points in the wide domain of modern thought, and made the results of that inquiry accessible to all, with a catholicity as broad as the civilized world. And the publications of the Smithsonian Institution, valuable as they are, and replete as they are with contributions to human knowledge, represent the least part of his manifold labors in connection with the Institution. His correspondence was immense, covering the whole field of existing knowledge, and ranging, in the persons addressed, from the genuine scientific scholar in all parts of the world, to the last putative discoverer of perpetual motion, or the last embryo mathematician who supposed himself to have squared the circle.

In accepting a post where he was called by virtue of his office to fecundate the labors of other men rather than his own, Professor Henry distinctly saw that he was renouncing for himself the paths of scientific glory on which he had entered so auspiciously at Albany and Princeton. He once said to me, in one of the self-revealing moods in which he sometimes unbosomed himself to his intimate friends, that in accepting the office of Smithsonian Secretary he was conscious that he had "sacrificed future fame to present reputation." He was in the habit of recalling that Newton had made no discoveries after he was appointed Warden of the Mint in 1695,¹ and I believe that the remark is historically accurate, unless we should incline with Biot, against the better opinion of Sir David Brewster, to place after that date the "discoveries" which Newton supposed himself to have made in the Scriptural chronology and in the interpretation of the Apocalypse, — discoveries which, whenever made, provoked the theological scoff, as they perhaps deserved the theological criticism, of the polemical Bishop Warburton. Yet, having convinced himself that it was a duty which he owed to the cause of science to sink his own personality in the impersonal institution he was called to conduct, Henry never paused for an instant to confer with flesh and blood, but moved "right onward" in the path of duty,

¹ The effect of the wardenship on Newton's scientific labors may be seen in the warmth with which he rebuked Flamsteed for purposing to publish, in 1698, the fact that Newton was then engaged on a revision of the Horroxian theory of the moon. Newton wrote: "I do not love to be printed on every occasion, much less to be dunned and teased by foreigners about mathematical things, or to be thought by our own people to be trifling away my time when I should be about the king's business."

with only the more of steadfastness, because he felt that it was for him a path of sacrifice.

How sedulously he strove to maintain the Institution in the high vocation to which he believed it was appointed, no less by a sacred regard for the will of its founder than by an intelligent zeal for the promotion of human welfare, is known to you all. And the success with which he resisted all schemes for the impoverishment of the exalted function it was fitted to perform in the service of abstract science is a tribute at once to his rare executive skill, and to the native force of character which made him a tower of strength against the clamors of popular ignorance and the assaults of charlatanism. Whatever might be the consequences to himself personally, he was determined to magnify its vocation and make it honorable. And hence I do not permit myself to doubt that during the long period of his administration as Secretary of the Smithsonian Institution, covering a period of thirty years, he has impressed upon its conduct a definite direction which his successors will be proud to maintain, not simply in reverence for the memory of their illustrious predecessor, but also in grateful recognition of the fruitful works which, in the pursuit of his enlightened plans, will continue to follow him now that he has rested from his labors.

The rest into which he has entered came to him in a green old age, after a life as full of years as it was full of honors. He was not only blest with an old age which was

serene and bright,
And lovely as a Lapland night,

but he also had that which, according to the great dramatist, should accompany old age, — “as honor,

love, obedience, troops of friends." And the manner of his death was in perfect keeping with the manner of his life. Assured for months before the inevitable hour came that his days on earth were numbered, he made no change in his daily official employments, no change in his social and literary diversions. None was needed. Surprise, I learn, has been expressed that in the full prospect of death he should have "talked" so little about it. But the surprise is quite unfounded. Professor Henry was little in the habit of talking about himself at any time. Yet to his intimate friends he spoke freely and calmly about his approaching end. Two weeks before he died he said to one such, a gentleman from New York, to whom he was strongly attached, "I may die at any moment. I would like to live long enough to complete some things I have undertaken, but I am content to go. I have had a happy life, and I hope I have been able to do some good." In an hour's conversation which I had with him six days before he died, he referred to the imminence of his death with the same philosophic and Christian composure. And perfectly aware as he was on the day before he died, and on the day of his death, that he had already entered the Dark Valley, he feared no evil as he looked across it, but, poised in a sweet serenity, preserved his soul in patience, at an equal remove from rapture on the one hand, or anything like dismay on the other. For his friends he had even then the same benignant smile, the same warm pressure of the hand, and the same affable converse as of yore. With the astronomer Newcomb, he pleasantly and intelligently discoursed about the then recent transit of Mercury, — not unheedful of the great transit he was making, but giving heed none the

less to every opportunity for the inquiry of truth. Towards the attendants watching around his couch he was as observant as ever of all the "small sweet courtesies" which marked consideration for others rather than for himself, even in the supreme moment of his dissolution. The disciples of Socrates recalled, with a sort of pathetic wonder at the calm and intrepid spirit of their dying master, that as the chill of the fatal hemlock was stealing towards his heart, he uncovered his face to ask that Crito should acquit him of a small debt he owed to Esculapius; and so in like manner I recall that our beloved chief did not forget in the hour of his last agony to make provision for the due dispatch of a letter of courtesy, which on the day before he had promised to a British stranger.

And so in the full possession of all his great mental powers — in his waking hours filled with high thoughts and with a peace which passed all understanding; in his sleep stealing away

"To dreamful wastes where footless fancies dwell,"

and talking even there of experiments in sound on board the steamer *Mistletoe*, or haply taking note of electric charges sent through imaginary wires at his bidding¹ — the soul of Joseph Henry passed away from the earth, which he had blessed and brightened by his presence. He died ten minutes after twelve o'clock on the 13th of May, 1878.

¹ Professor Henry took great delight in the acoustical researches which, during the closing years of his life, he made at sea, on board the steamer *Mistletoe*, while it was in electricity that he won his first triumphs as a scientific man. That his first love and last passion in science still filled his thoughts in his dying moments was attested by the words which even then fell from his lips in sleep.

From these imperfect notes on the life of Professor Henry, I pass to consider some of his traits and characteristics as a man.

He was endowed with a physical organization in which the elements that composed it were not only fine and finely mixed, but were cast in a mould remarkable for its symmetry and manly beauty. The perfection of his "outward man" was not unworthy of the "inward man" whom it enshrined, and if, as a church father has phrased it, "the human soul is the true Shechinah," it may none the less be said that these "fleshly nooks" of ours never appear to so much advantage as when, transfigured by this Shechinah, they offer to the informing spirit a temple which is as stately as it is pure. When Dr. Bentley was called to write the epitaph of Cotes (that brilliant scholar of whom Newton said that "if he had lived we might have known something"), the accomplished master of words thought it not unmeet to record that the fallen professor, who had been snatched away by a premature death, was only "the more attractive and lovely because the virtues and graces which he joined to the highest repute for learning were embellished by a handsome person." The same tribute of admiration might be paid with equal justice to the revered professor whose "good gray head" has just vanished from our sight.

The fascination of Professor Henry's manner was felt by all who came within the range of its influence, — by men with whom he daily consorted in business, in college halls, and in the scientific academy; by brilliant women of society, who in his gracious presence owned the spell of a masculine mind which none the less was feminine in the delicacy of its percep-

tions and the purity of its sensibilities ; by children, who saw in the simplicity of his unspoiled nature a geniality and a kindliness which were akin to their own. A French thinker has said that *à mesure qu'on a plus d'esprit on trouve qu'il y a plus d'hommes originaux*. It was the breadth and catholicity of Henry's intelligence which enabled him to find something unique and characteristic in persons who were flat, stale, and unprofitable to the average mind.

Gifted with a mental constitution which was "feelingly alive to each fine impulse," he possessed a high degree of æsthetic sensibility to the beautiful in nature and in art. It cannot be doubted that a too exclusive addiction to the analytic and microscopic study of nature, at the instance of science, has a tendency to blunt in some minds a delicate perception for the "large livingness" of Nature, considered as a source of poetic and moral inspiration, but no such tendency could be discovered in the intellectual habitudes of Professor Henry. To a mind long nurtured by arts of close and critical inquiry into the logic of natural law he none the less united a heart which was ever ready to leap with joy at "the wonder and bloom of the world." When on the occasion of his first visit to England, in the year 1837, he was traveling by night in a stagecoach through Salisbury Plain, he hired the driver to stop, while all his fellow passengers were asleep, that he might have the privilege of inspecting the ruins of Stonehenge, as seen by moonlight, and brought away a weird "sense of mystery" which followed him in all his after life. At a later day, in the year 1870, after visiting the Aar Glacier, the scene of Professor Agassiz's well-known labors, he crossed over the mountain to the Rhone Valley, until,

at a sudden turn of the road, he came full in the presence of the majestic glacier of the Rhone. For minutes he stood silent and motionless; then, turning to the daughter who stood by his side, he exclaimed, with the tears running down his cheeks, "This is a place to die in. We should go no further."

And as he rejoiced in natural scenery so also was he charmed with the beauties of art, whether as seen in "the well-stained canvas or the featured stone," and hence it was that he felt as much at home in the *atelier* of the painter or sculptor as in the laboratory of the chemist or the apparatus room of the natural philosopher, and exulted as sincerely in the Louvre or the Corcoran Gallery of Art as in the cabinet of the mineralogist or the museum of the naturalist.

He was as remarkable for the simplicity of his nature as for the breadth of his mind and the acumen of his intellect. Those who analyze the nature and charm of simplicity in a great mind suppose themselves to find the secret of both in the fact that simplicity, allied with greatness, works its marvels with a sweet unconsciousness of its own superior excellence, and it works them with this unconsciousness because it is greater than it knows. Talent does what it can. Genius does what it must. And in this respect, as an English writer has said, there is a great analogy between the highest goodness and the highest genius; for under the influence of either, the spirit of man, "whenever it lifts up its head and shakes its locks," may scatter light and splendor around it, without admiring itself or seeking the admiration of others. And it was in this sense that the simplicity of Henry's nature expressed itself in acts of goodness and in acts of high intelligence, with a spontaneity which hid from himself

the transcendent virtue and dignity of the work he was doing ; and hence all his work was done without the slightest taint of vanity or tarnish of self-complacency.

As might be expected, he was a fervent lover of the best literature. His acquaintance with the English poets was not only wide but intimate. His memory was stored with choice passages, didactic, sentimental, witty, and humorous, which he reproduced at will on occasions when they were apt to his purpose. His familiarity with fiction dated, as we have seen, from early boyhood, and in this fountain of the imagination he continued to find refreshment for the "wear and tear" of the hard and continuous thought to which he was addicted in the philosopher's study. His knowledge of history was accurate, and it was not simply a knowledge of facts, but a knowledge of facts as seen in the logical coherence and rational explanation which make them the basis of historic generalization. The genesis of the Greek civilization was a perpetual object of interest to his speculative mind, as called to deal with the phenomena of Grecian literature, art, philosophy, and polity.

He was a terse and forcible writer. If, as some have said, it is the perfection of style to be colorless, the style of Henry might be likened to the purest amber, which, invisible itself, holds in clear relief every object it envelops. Without having that fluent delivery which, according to the well-known comparison of Dean Swift, is rarely characteristic of the fullest minds, he was none the less a pleasing and effective speaker — the more effective because his words never outran his thought. We loved to think and speak of him as "the Nestor of American Science," and if his

speech, like Nestor's, "flowed sweeter than honey," it was due to the excellent quality of the matter rather than to any rhetorical facility of manner.

He was blest with a happy temperament. He recorded in his diary, as a matter of thanksgiving, that through the kindness of Providence he was able to forget what had been painful in his past experiences, and to remember only and enjoy that which had been pleasurable. The same sentiment is expressed in one of his letters. Armed with this sunny temper which, like the dial, "marks only the hours that shine," he was in his family circle a perpetual benediction. And in turn he was greatly dependent on his family for the sympathy and watch-care due in a thousand small things to one who never "lost the childlike in the larger mind." His domestic affections were not dwarfed by the exacting nature of his official duties, his public cares, or his scientific vigils. He had none of that solitary grandeur affected by isolated spirits who cannot descend to the tears and smiles of this common world. He was never so happy as when in his home he was communing with wife and children around the family altar. He made them the confidants of all his plans. He rehearsed to them his scientific experiments. He reported to them the record of each day's adventures. He read with them his favorite authors.¹ He entered with a gleeful spirit into

¹ The following extract from a diary, kept by one of his daughters, is descriptive of his habits under this head: "Had father with us all the evening. I modeled his profile in clay while he read Thomson's *Seasons* to us. In the earlier part of the evening he seemed restless and depressed, but the influence of the poet drove away the cloud, and then an expression of almost childlike sweetness rested on his lips, singularly in contrast yet beautifully in harmony with the intellect of the brow above."

Or take this extract from the same diary: "We were all up until

all their joys, with a sympathetic heart into all their sorrows. And while thus faithful to the charities of home, he was intensely loyal to his friends, and found in their society the very cordial of life. Gracious to all, he grappled some of them to his heart with hooks of steel. The friendship, fed by a kindred love of elegant letters, which still lends its mellow lustre to the names of Cicero and Atticus, was not more beautiful than the friendship, fed by kindred talents, kindred virtues, and kindred pursuits, which so long united the late Dr. Bache and Professor Henry in the bonds of a sacred brotherhood. And this was but one of the many similar intimacies which came to embellish his long and useful career.

His sense of honor was delicate in the extreme. It was not only that "chastity of honor which feels a stain like a wound," but at the very suggestion of a stain it recoiled as instantly as the index finger of Mr. Edison's tasimeter at the "suspicion" of heat. I met him in 1847, when, soon after his election as Secretary of the Smithsonian Institution, he had just been chosen to succeed Dr. Hare as Professor of Chemistry in the Medical Department of the University of Pennsylvania, at a salary double that which he was to receive in Washington, and with half the year open to free scientific investigation, because free from professorial duties. It was, he said, the post which of all

a late hour, reading poetry with father and mother, father being the reader. He attempted *Cowper's Grave*, by Mrs. Browning, but was too tender-hearted to finish the reading of it. We then laughed over the *Address to the Mummy*, soared to heaven with Shelley's *Skylark*, roamed the forest with Bryant, culled flowers from other poetical fields, and ended with *Tam O'Shanter*. I took for my task to recite a part of the latter from memory, while father corrected, as if he were 'playing schoolmaster.' "

others he could have desiderated at that epoch in his scientific life, but his honor, he added, forbade him to entertain for a moment the proposition of accepting it after the obligations under which he had come to the interests represented by the Smithsonian Institution. At a later day, after he had entered on his duties in Washington, and found the position environed with many difficulties, Mr. Calhoun came to him, and urged his acceptance of a lucrative chair in a Southern college, using as a ground of appeal the infelicities of his present post, and the prospect of failing at last to realize the high designs he had projected for the management of the Smithsonian Institution. Admitting that it might be greatly to his comfort and advantage at that time to give up the Smithsonian, he declined at once to consider the proposal made to him, on the ground that his "honor was committed to the Institution." Whereupon Mr. Calhoun seized his hand, and exclaimed, "Professor Henry, you are a man after my own heart."

When in 1853, and again in 1867, he was entreated to accept the presidency of Princeton College, the college of his love and the scene of his "happiest days," he instantly turned away from the lure, as feeling that he could not love the dear old college so much if he loved not more the honor and duty which bound him to the establishment in Washington, with which, for good or for evil, he had wedded his name and fortune. And in all other concerns, from the greatest to the least, he seemed like one

"Intent each lurking frailty to disclaim,
And guard the way of life from all offence,
Suffered or done."

The "Man of Ross," portrayed by the pencil of

Pope, was not more benevolent in heart or act than Professor Henry. His bounty was large and free. The full soul mantled in his eyes at every tale of woe, and the generous hand was quick to obey the charitable impulses of his sympathetic nature. This benevolent spirit ran like a silver cord through the tissue of his life, because it was interwoven in the very warp and woof of his being, and because it was kept in constant exercise. It appeared not only in acts of kindness to the poor and afflicted, but interpenetrated his whole demeanor, and informed all his conduct wherever he could be helpful to a fellow man. He did good to all as he had opportunity, from "the forlorn and shipwrecked brother," who had already failed in the voyage of life, to the adventurous young mariner who sought his counsel and guidance for the successful launching of his ship from its ways. Many are the young men who, in all parts of the land, could rise up to-day and call him blessed, for the blessing he brought to them by the kind word spoken and the kind deed done, each in its season.

Unselfishness was a fundamental trait in the character of Professor Henry, and he made the same trait a fundamental one in his conception of the philosopher's high calling. The work of scientific inquiry was with him a labor of love, not simply because he loved the labor, but because he hoped by it to advance the cause of truth and promote the welfare of man. He never dreamed of profiting by any discovery he made. He would not even have his salary increased, so tenaciously did he hold to the Christlike privilege of living among men "as one that serveth." This was a crown which he would let no man take from him. To the government he freely gave, in many

spheres of public usefulness, all the time he could spare from his official duties. And it was in one of these subsidiary public labors, as Chairman of the Light-House Board, that he contracted, as he believed, the disease which carried him to the grave.

A sense of rectitude presided over all his thoughts and acts. He had so trained his mind to right thinking, and his will to right feeling and right doing, that this absolute rectitude became a part of his intellectual as well as moral nature. Hence in his methods of philosophizing he was incapable of sophistical reasoning. He sat at the feet of nature with as much of candor as of humility, never importing into his observations "the human being's pride," or the "mystical predominance" of an overweening fancy. He was sober in his judgments. He made no hasty generalizations. His mind seemed to turn on "the poles of truth."

I could not dwell with enough of emphasis on this crowning grace of our beloved friend if I should seek to do full justice to my conception of the completeness it gave to his beautiful character. But happily for me I need dwell upon it with only the less of emphasis because it was the quality which, to use a French idiom, "leaped into the eyes" of all who marked his walk and conversation. In the crystal depths of a nature like his, transparent in all directions, we discern as well the felicity as the beauty of that habit of mind which is begotten by the supreme love of Truth for her own sake, — a habit which is as much the condition of intellectual earnestness, thoroughness, and veracity in penetrating to the reality of things, as of moral honesty, frankness, sincerity, and truthfulness in dealing with our fellow men. The great expounder

of the Nicomachean Ethics has taught us, and one of our own moralists has amplified the golden thesis,¹ that high moral virtue implies the habit of "just election" between right and wrong, and that to attain this habit we need at once an intelligence which is impassioned and an appetite which is reflective. And so in like manner all high intellectual virtue implies a habit of just election between truth and error, — an election which men make, other things being equal, according to the degree in which their minds are enamored with the beauty of truth, as also in proportion to the degree in which their appetencies for knowledge have been trained to be reflective and cautious against the enticements of error. I never knew a man who strove more earnestly than Henry to make this just election between right and wrong, between truth and error, or who was better equipped with a native faculty for making the wise choice between them. He had brought his whole nature under the dominion of truthfulness.

But while thus eager and honest in the pursuit of truth, he had nothing controversial in his temper. It was a favorite doctrine of his that error of opinion could be most successfully combated, not by the negative processes of direct attack, rousing the pride and provoking the contumacy of its adherents, but rather by the affirmative process of teaching, in meekness and love, the truth that is naturally antagonistic to it. The king of Sweden and Norway made him a Knight of St. Olaf, but St. Olaf's thunderous way of propagating Christianity — by battering down the idols of Norway with Thor's own hammer — is not the way that his American votary would have selected. There was

¹ Dr. James H. Thornwell, *Discourses on Truth*.

nothing iconoclastic in Henry's zeal for truth. He believed that there is in all truth a self-evidencing quality, and a redemptive power which makes it at once a potent and a remedial force in the world. Hence he never descended to any of those controversies which, in the annals of science, have sometimes made the *odium scientificum* a species of hatred quite as distinct, and quite as lively, too, as its more ancient congener, the *odium theologicum*. When once it was sought to force a controversy of this kind upon him, and when accusations were made which seemed to affect his personal honor, as well as the genuineness of his scientific claims, he referred the matter for adjudication to the Regents of the Smithsonian. Their investigation and their report dispensed him from the necessity of self-defense. The simple truth was his sufficient buckler. And this equanimity was not simply the result of temperament. It sprang from the largeness of his mind, as well as from the serious view he took of life and duty. He was able to moderate his own opinions, because, in the amplitude of his intellectual powers, he was able to be a moderator of opinions in the scientific world. You all know with what felicity and intellectual sympathy he presided over the deliberations of this Society, composed as it is of independent scientific workers in almost every department of modern research. Alike in the judicial temper of his mind and in the wide range of his acquisitions he was fitted to be, as Dante has said of Aristotle, "the master of those who know."

And this power of his mind to assimilate knowledge of various kinds naturally leads me to speak of his skill in imparting it. He was a most successful educator. He had many other titles of honor or office,

but the title of "Professor" seemed to rank them all, for everybody felt that he moved among men like one anointed with the spirit and power of a great teacher. And he had philosophical views of education, extending from its primary forms to its highest culminations — from the discipline of the "doing faculties" in childhood to the discipline of the "thinking faculties" in youth and manhood. No student of his left the Albany Academy, in the earlier period of his connection with that institution, without being thoroughly drilled in the useful art of handling figures, for then and there he taught the rudimental forms of arithmetic, not so much by theory as by practice. No student of his left Princeton College without being thoroughly drilled in the art of thinking as applied to scientific problems, for then and there he was called to indoctrinate his pupils in the rationale as well as in the results of the inductive method. And I will venture to add that no intelligent student of his at Princeton ever failed, in after life, to recognize the useful place which hypothesis holds in labors directed to the extension of science, or failed to discriminate between a working hypothesis and a perfected theory.

Pausing for a moment at this stage in the analysis of Professor Henry's mental and moral traits, I cannot omit to portray the effect produced on the observer by the happy combination under which these traits were so grouped and confederated in his person as to be mutual complements of each other. Far more significant than any single quality of his mind, remarkable as some of his qualities were, was the admirable equipoise which kept the forces of his nature from all interference with the normal development of an integral manhood. He was courtly in his manners,

but it was the courtliness which springs from "high thoughts seated in a heart of courtesy," and had no trace of affectation or artificiality; he was fastidious in his literary and artistic tastes, but he had none of that dilettantism which is "fine by defect and delicately weak;" he was imbued with a simplicity of heart which left him absolutely without guile, yet he was shrewd to protect himself against the arts of the designing; he was severe in his sense of honor without being censorious; he was benevolent, yet inflexibly just; quick in perception, yet calm in judgment and patient of labor; tenacious of right without being controversial; benignant in his moral opinions, yet never selling the truth; endowed with a strong imagination, yet evermore making it the handmaid of his reason; a prince among men, yet without the slightest alloy of arrogance in the fine gold of his imperial intellect; in a word, good in all his greatness, he was at the same time great in all his goodness. Such are the limitations of human excellence in most of its mortal exhibitions that transcendent powers of mind, or magnificent displays of virtue exerted in a single direction, are often found to owe their "splendid enormity" to what Isaac Taylor has called "the spoliation of some spurned and forgotten qualities," which are sacrificed in the pursuit of a predominant taste or an overmastering ambition.¹ The "infirmities of genius" often attest in their subjects the presence of a mental or moral atrophy, which has hindered the full-orbed development of one or more among their mental

¹ The phrase, as originally applied by Taylor, is descriptive of certain incomplete ethical systems, but it is equally applicable to certain typical exemplifications of human character, in which "the strength and the materials of six parts of morality have been brought together wherewith to construct a seventh part."

and moral powers. But in Professor Henry no one quality of mind or heart seemed to be in excess or deficiency as compared with the rest. All were fused together into a compactness of structure and homogeneity of parts which gave to each the strength and grace imparted by an organic union. And hence, while he was great as a philosopher he was greater as a man, for laying as he did all the services of his scientific life on the altar of a pure, complete, and dignified manhood, we must hold that the altar which sanctified his gifts was greater than even the costliest offerings he laid upon it.

It will not be expected that I should close this paper without referring to the religious life and opinions of Professor Henry. If in moral height and beauty he stood like the palm tree, tall, erect, and symmetrical, it is because a deep religious faith was the tap-root of his character. He was, on what he conceived to be rational grounds, a thorough believer in theism. I do not think he would have said, with Bacon, that he "had rather believe all the fables in the Legend, the Talmud, and the Alcoran, than that this universal frame is without a mind," for he would have held that in questions of this kind we should ask not what we would "rather believe," but what seems to be true on the best evidence before us. He was in the habit of saying that, next to the belief in his own existence, was his belief in the existence of other minds like his own, and from these fixed, indisputable points he reasoned, by analogy, to the conclusion that there is an Almighty Mind pervading the universe. But when from the likeness between this Infinite Mind and the finite minds made in His image, it was sought, by *a priori* logic or by any preconceived notions of man,

to infer the methods of the Divine working, or the final causes of things, he suspected at once the intrusive presence of a false as well as presumptuous philosophism, and declined to yield his mind an easy prey to its blandishments. To his eyes much of the free and easy teleology, with which an under-wise and not over-reverent sciolism is wont to interpret the Divine counsels and judgments, seemed little better than a Brocken phantom, — the grotesque and distorted image of its own authors, projected on mist and cloud, and hence very far from being the inscrutable teleology of Him whose glory it is to conceal a thing, and whose ways are often past finding out, because His understanding is infinite.

As Professor Henry was a believer in theism, so also was he a believer in revealed religion, in Christianity. He had not made a study of systematic or of dogmatic theology, as they are taught in the schools, and still less was the interest he took in polemical divinity, but he did have a theology which for practical life is worth them all, — the theology of a profound religious experience. He was a fresh illustration of Neander's favorite saying: "*Pectus facit theologum.*" The adaptation of the Christian scheme to the moral wants of the human soul was the palmary proof on which he rested his faith in the superhuman origin of that scheme. The plan had to him the force of a theory which is scientific in its exact conformity to the moral facts it explains, when these facts are properly known and fully understood.

Hence he was little troubled with the modern conflict between science and religion. History, as well as reason and faith, was here his teacher. He saw that the Christian church had already passed through

many epochs of transition, and that the friction incident to such transition periods had only brushed away the incrustations of theological error, and heightened the brightness of theological truth. In a world where the different branches and departments of human knowledge are not pushed forward *pari passu*, — where “knowledge comes, but wisdom lingers,” — he held it nothing strange that the scientific man should sometimes be unintelligible to the theologian, and the theologian unintelligible to the scientific man. He believed, with the old Puritan, that “the Lord has more truth yet to break out of His holy word” than the systematic theologian is always ready to admit; and as the humble minister and interpreter of nature, he was certain that the scientific man has much truth to learn of which he is not yet aware. There must needs be fermentation in new thought, as in new wine, but the vintage of the brain, like the vintage of the grape, is only the better for a process which brings impurities to the surface, where they may be scummed off, and settles the lees at the bottom, where they ought to be. It is under the figure of a vintage that Bacon describes the crowning result of a successful inductive process. When this process has been completed in any direction, it remains for a wider critical and reconciling philosophy to bring the other departments of knowledge into logical relation and correspondence with the new outlook that has been gained on nature and its phenomena.

Erasmus tells us in his “Praise of Folly,” mingling satire with the truth of his criticism, that in order to understand the scholastic theology of his day, it was necessary to spend six and thirty years in the study of Aristotle’s physics and of the doctrines of the Scotists.

What a purification of method has been wrought in theology since the times of Erasmus! And for that purification the Church is largely indebted to the methodology of modern science, in clearing up the thoughts and rationalizing the intellectual processes of men. The gain for sound theology is here unspeakable, and amply repays her for the heavy baggage she has dropped by the way at the challenge of science, — baggage which only impeded her march, without reinforcing her artillery.

Hence, as a Christian philosopher, Professor Henry never found it necessary to lower the scientific flag in order to conciliate an obscurantist theology, and he never lowered the Christian flag in order to conciliate those who would erect the scientific standard over more territory than they have conquered. He had none of that spirit which would rather be wrong with Plato than right with anybody else. He wanted to follow wherever truth was in the van. But better than most men, I think, he knew how to discriminate between what a British scholar calls the duty of "following truth wherever it leads us, and the duty of yielding to the immediate pressure of an argument." He saw, as the same writer adds, that for whole generations "the victory of argument may sway backwards and forwards, like the fortune of single battles," but the victory of truth brings in peace, and a peace which comes to stay. He swept the scene of conflict with the field-glass of a commander-in-chief, and did not set up his trophies because of a brilliant skirmish on the picket lines of science. But he believed in the picket line, and rejoiced in every sharpshooter who fought with loyalty to truth in the forefront of the scientific army.

A man of faith, Professor Henry was a man of prayer. But his views of prayer were perhaps peculiar in their spirituality. There was nothing mechanical or formal in his theory of this religious exercise. He held that it was the duty and privilege of enlightened Christians to live in perpetual communion with the Almighty Spirit, and in this sense to pray without ceasing. Work was worship, if conducted in this temper. He accepted all the appointments of nature and Providence as the expressions of Infinite Wisdom, and so in everything gave thanks.¹ He believed that familiarity with the order of nature and scientific assurance of its uniformity need not and should not tend to extinguish the instinct or abolish the motives of prayer by seeming to imply its futility, but should rather tend to purify and exalt the objects of prayer. The savage prays to his idol, that he may have success in killing his enemies. The Hottentot whips and worships his fetich in blind but eager quest of some sensual boon, that he may consume it upon his lusts. The prayers of the Vedic Books are the childish

¹ The "sweet reasonableness" into which he had schooled his temper was manifested by the great trial which befell him in the year 1865, when the Smithsonian building suffered from the ravages of a fire, which destroyed all the letters written down to that date by Professor Henry, as Smithsonian Secretary, in reply to innumerable questions relating to almost every department of knowledge. Besides, the Annual Report of the Institution in manuscript, nearly ready for the press, a valuable collection of papers on meteorology, with written memoranda of his own to aid in their digest, and countless minutes of scientific researches which he purposed to make, all perished in the flames. Yet he was more concerned about the loss of Bishop Johns's library, which had been intrusted to his care, than about the loss of his own papers and records. Referring to the latter in a letter written to his friend, Dr. Torrey, a few days after the fire, he held the following language: "A few years ago such a calamity would have paralyzed me for future efforts, but in my present view of life I take it as the dispensation of a kind and wise Providence, and trust that it will work to my spiritual advantage."

prayers of an unspiritual and childish people. "They pray," says Max Müller, "for the playthings of life, for houses and homes, for cows and horses, and they plainly tell the gods that if they will only be kind and gracious they will receive rich offerings in return." And do *we*, asks the critic of comparative religions, we Christians of this nineteenth century, "do we do much otherwise," if regard be had to the quality of our petitions? Professor Henry held that it was both the duty and privilege of enlightened Christians to "do much otherwise" by praying preëminently, if not exclusively, for spiritual blessings. And hence he held that the highest natural philosophy combines with the highest Christian faith to transfer the religious thoughts, feelings, and aspirations of man more and more from things seen to things unseen, and from things temporal to things eternal. This view of his had nothing of quietism or of mysticism in it. Still less was it the expression of an apathetic stoicism. It was only the philosopher's way of praying to the great All-Father, in the spirit of St. Augustine, "Da quod jubes, et jube quod vis."

I have made this reference to the opinions of Professor Henry on the relations of science to religion, as also on the relations of natural philosophy to prayer, not only for the light they shed on the character of the man, but also for a reason which is peculiar to this Society, and which it may be a matter of interest for you to know. Immediately after his last unanimous election as the president of our Society, he communicated to me his purpose to make the relations of science and religion, as also the true import of prayer, the subject of his annual presidential address. He gave me an outline of the views he intended to sub-

mit, and I have here given but a brief résumé of them, according to my recollections of the colloquy, which was only one of many similar conferences previously had on the same high themes. He said that it would be, perhaps, the last time he should ever be called to deliver a presidential address before the Society he so much loved, and that he wished to speak as became an humble patron of science, believing fully in her high mission, and at the same time as an humble Christian, believing fully in the fundamental truths of Revelation. That he was not able to fulfill this purpose will be as much a source of regret to you as it is to me, but when I compare the valediction which it was in his heart to utter with the peaceful end which came a few months later to crown his days with the halo of a finished life, I console myself with the thought that no last words of his were needed to seal on our hearts the lesson taught by his long and splendid career. Being dead he yet speaketh.

It is, indeed, the shadow of a great affliction which his death has cast upon our Society, but the light of his life pierces through the darkness, and irradiates for us all the paths of duty and labor, of honor and purity, of truth and righteousness, in which he walked with an eye that never blenched and a foot that never faltered. We shall not see his face any more, beaming with gladness and with the mild splendor of chastened intellect, but we shall feel his spiritual presence whenever we meet in this hall. We shall never hear his voice again, but its clear and gentle tones, as from yonder chair he expounded to us the mysteries of nature, will reëcho in the chambers of memory with only a deeper import, now that he has gone to join the "dead but sceptred sovereigns who still rule our spirits from their urns."

III

WORK IN ENGLISH IN THE COLLEGES AND PREPARATORY SCHOOLS¹

FOR the purposes of the discussion to which I restrict myself in this paper, it is assumed that by the "study of English" is meant the study of our mother tongue with primary reference to its literature, and that by English literature is meant the artistic expression, in prose and verse, of the best mind of the English-speaking race, that is, the "literature of power" as distinguished, in the well-known terms of De Quincey, from the "literature of knowledge." In every work of high literary art we shall find certain elements which are ponderable in terms of knowledge, appealing, as they do, to the purely cognitive faculty, and certain others, which are imponderable in terms of mere knowledge because they appeal to feeling and to the sense of beauty in the soul of man. The ponderable elements lend themselves readily to critical judgment and intellectual appreciation. What Wordsworth called "the exceedingly valuable chains of thought" in his "Excursion" are quite ponderable by the pure reason; indeed, they are sometimes quite ponderous, but they do not weigh much in point of literary art. The imponderable elements, though they

¹ A paper read at the first annual convention of the Association of Colleges and Preparatory Schools in the Middle States and Maryland, December 2, 1893.

cannot be weighed quantitatively in the scales of the pure reason, can be felt qualitatively in the mental reactions which attest their presence wherever they find the appropriate æsthetic sense, that is, the spiritual discernment which has been touched by sentiment and culture into the finer issues of æsthetic perception. The bloom-like beauty of Shelley's lyrical verse; the recondite spirituality of Tennyson, half concealed, half revealed by his inimitable deftness of touch; the subtle intuitions of human character flashed upon us by the spectroscopic genius of Browning, are seen at once to be incommunicable by a cold and matter-of-fact analysis, but it is for this very reason that literary art comes in them to such fine and high expression.

It is not pretended that the "power" which is in literature can be as directly and as easily transfused from mind to mind as the "knowledge" which is in literature, but this fact makes only the stronger argument for a more direct and a more intense study of the literature which has power in it than of the literature that has only knowledge in it. It is not pretended that the power in literature can be as certainly transfused from mind to mind as the knowledge in literature, but it is precisely because the former depends so much more than the latter on what is called the "personal equation" that literary art demands a specialized culture for its due appreciation.

Such being the difficulties and such being the exacting of high literary art, it is seen at once that the presence and quality of this art ought to be best perceived and most surely felt in works of genius which are bodied forth in the reader's vernacular tongue. Our mother speech is the natural sounding-board of

the emotions. Outside of his native speech the most practiced literary critic may often err in his judgments, as we may see in Jean Paul when he held it to be "undoubted that there is nothing more splendid in the English language than Young's 'Night Thoughts,'" or as we may see in De Quincey when he averred that "Paganism has no more brilliant master of composition than Velleius Paterculus."

The order in which I shall here discuss the objects and the stages of study in our vernacular tongue would seem in large measure to dictate and to determine the methods that should be pursued. In the early stages of mental evolution very much will depend, of course, on the Minerva in the student and on the felicity or infelicity of his home surroundings. The important thing at the threshold of education is to generate in the student what Gibbon called in his own case "an invincible love of reading." Good digestion, if the mind be properly directed, will soon wait on literary appetite. The youngster may, like Shelley, begin with a fondness for Mrs. Radcliffe's novels, but this purely sensational love of reading must not be allowed to go unchecked till it stifle the fruits of taste and culture. The judicious and sympathetic teacher may here interpose with advantage, if he have the taste as well as the wisdom which is profitable for doctrine and correction. I say, "if he have the *taste* as well as the wisdom," for he who would teach the literature of power must himself feel its power, at least for all the purposes of sympathetic interpretation.

While the youthful memory is plastic and retentive, it should be made a repository of choice English literature, especially of good English poetry. This sug-

gestion with regard to the quickening uses of memory, when applied to poetry in early life, is supported by high literary authority from Horace to Hallam. And the choice may here be determined by motives which are didactic, patriotic, sentimental, or humorous, as well as for reasons which are preëminently cultural and artistic. Poems which are freighted with thought, like Goldsmith's "Traveller," or informed by the imagination, like Bryant's "Waterfowl" (simple poems are here instanced because they are level to the youthful sense), if once stored in the chambers of imagery, will be profitable in all after life for literary inspiration and intellectual refreshment. We cannot all hope to have the fathomless memory of Lord Macaulay, but we can all envy him the pleasure to which he confessed when, in once traveling by night from Holyhead to Dublin, he tells us that he sat in the starlight on the deck of the ship, "and went through 'Paradise Lost' in his head." Satan and Gabriel, with the ship's deck for a stage and with the ship's lamps for footlights, became to him, he says, "quite like two of Shakespeare's men," and he was sorry when the sights and sounds of Dublin Bay called him off from the colloquy between Adam and the archangel Michael.

I venture, moreover, to suggest that the student should not only familiarize himself with choice literature, learned by heart in his early years, but should also be encouraged to select and to cherish the masters of style who shall have for him the lifting power of high ideals in the art of expression. Not, indeed, that he is to hold them for purposes of low and servile imitation, but for purposes of high and liberal inspiration. Voltaire, we know, kept the "Athalie" of Racine

and the "Petit Carême" of Massillon on his writing-table. John Bright sustained his stately eloquence at concert pitch by the constant study of Milton's poetry. And the lover of literature will sometimes enjoy best the literary art which is of another kind than his own, as Byron, the poet of the passions, fed his taste on Pope, the poet of correctness. The prose style of Milton may be of perennial use to set the emotions in right time, though nobody in these days of "all men's and every man's best style" would think of opening its great organ-stops to intone over again "the sevenfold chorus of hallelujahs and harping symphonies" which still reverberate in one of his masterpieces.

As the shades of the schoolhouse begin to close around the growing boy, and as the visions of young romance, whether evoked by the "Arabian Nights," by Bunyan's Pilgrim, or by Robinson Crusoe, begin to fade into the light of common day, that is, into the dry light of knowledge, the youth is taking his first steps from the realm of crude fancy into the realm of crude cognition. This is a critical stage in the psychological development of every boy. "It is remarkable," says Goethe, "how the power of understanding gets the start of that of expressing, so that a man may comprehend all that he hears, while as yet he can express but a very small part of it." Indeed the cognitive faculty, if too much divorced from the faculty of literary expression, may work to the partial paralysis or even the partial atrophy of the latter, as we must have all seen in the case of eminent scholars who were dungeons of learning, but whose literary style was as juiceless as the cylinder of Nebuchadnezzar.

“Of all the arts in which the wise excel,
Nature’s chief masterpiece is writing well,”

and though this couplet is as true now as when Cumberland first wrote it, we shall still find many a wise man who does not know how to set his apples of gold in pictures of silver, because he has never given due care to the art of expression. This art of expression comes only by the most painstaking and unremitting practice, begun early and continued late. No “Open Sesame” leads into the Palace of Art, and no mauling of “Open Barley” or “Open Rye,” borrowed from the rhetoric books, can here be of the slightest avail. We know from Juvenal that the Roman schoolboys were drilled in constant thesis writing, and that, for culture in the art of expression, they were made to thumb Horace till the page grew dingy, and to pore over Virgil till the soot from their lamps made the volumes black.

“Cum totus decolor esset
Flaccus, et hæreret nigro fuligo Maroni.”

It should be added that this hard, careful, and untiring practice in the art of literary expression is especially obligatory on the student of English style. That master of our language, the late George P. Marsh, was wont to hold it a more difficult accomplishment among the English-speaking race to write correct English than the Frenchman finds it to write correct French. The inferiority of English prose to French prose was matter of doctrine with Matthew Arnold. And, as if this were not enough, Coleridge has expressed the opinion (an opinion, I think, in which the students of comparative literature will concur) that the genius of the English language demands a denser body of thought as the condition of high

literary polish than suffices for the purpose of the literary artist who works in certain other of the modern tongues. Beauty of literary form, though not fashioned primarily for the sake of containing the stint of intellectual or moral truth which it enfolds, will always be found to require a certain solidity of substance in the underlying thought. It was only the statue fashioned by Pygmalion in solid ivory which the goddess of beauty quickened into life and feeling. The myth may be treated as an allegory which, according to Coleridge, explains itself in English literary form.

There are those who would seem to hint to us that the study of literary art is of the more bounden obligation on the men of this generation. We are told, and not always sportively, that it is the ultimate mission of positive science to disenchant the world of the glamour wrought by the literature of power. "Knowledge," they tell us, is destined not only to "grow from more to more," but in the end to be all in all. In view of the vast deltas of technical terminology washed down by the swelling streams of modern science into our dictionaries and our daily speech, a great literary artist, the late James Russell Lowell, once confessed to the fear that we may soon have to dredge for our English through whole continents of scientific silt, and that "the well of English undefiled" may at length run dry because it will be filled up. Let there be no misgivings of this kind. True it may be, as Huxley says, that physical science, in these latter days, "has brought to the front an inexhaustible supply of heavy artillery, of a new pattern, warranted to drive solid bolts of fact through the thickest skulls." Literary art, speaking to the souls of men through their mother-tongues, will

continue to do its gentle spiriting in the face of this "heavy artillery," even though it be charged with smokeless powder. It would be better to say that the exact sciences call for precision and correctness of speech. That in fact they sometimes do promote felicity as well as accuracy of literary expression we may see in the example of Huxley himself, master of English style as he is.

But culture of literary expression is not enough for the scientific mind. The most illustrious votary of modern science has warned us against the Nemesis which may result from a too exclusive addiction to scientific method. Darwin tells us in his autobiography that "up to the age of thirty or beyond it" he found great pleasure in poetry of many kinds, such as the works of Milton, Gray, Byron, Wordsworth, Coleridge, and Shelley, but that after his mind became "a kind of machine for grinding general laws out of large collections of facts," he was visited with "a curious and lamentable loss of the higher æsthetic tastes." And the loss of these tastes involved, he thought, not only a loss of happiness, but might be presumed to have carried with it a possible damage to his intellect and a more probable damage to his moral nature. In this view he added that if he had to live his life over again, he "would make it a rule to read some poetry at least once every week."

I come in the next place to consider the historical, the linguistic, and the philological side of literary art. I hold, it will be seen, that we should approach the study of English from its purely literary side, for purposes of æsthetic culture rather than intellectual discipline. But good style, as Dean Swift reminds us, "is proper words in proper places," and good English style is proper English words arranged in proper places according to

English idiom. There comes a time when studies in the history of English literature, studies in its changing forms, studies in English idiom, and studies in English philology may be made ancillary to literary art, as they certainly are necessary, at a certain stage of culture, for the developed reason and the critical judgment. But from studies of this kind we must not hope for too much in the domain of either art or taste. Very true it is, as Henry Morley says, that "there is a reason for the form as well as the substance of every book that man ever wrote." And the reasons for both, when we take a great English classic in hand, should be studied as an integral part of liberal education. Indeed, studies under this head should begin in the preparatory school, and the conditions of admission into the Freshman Class of colleges should comprise examinations not only in English idiom and in English literary forms, but also in certain great English classics prescribed from time to time (if possible with uniformity) in the college year books. Yet these studies *in* literature should never be allowed to degenerate into mere studies *about* literature; least of all should they be allowed to degenerate into Dry-as-dustian commentations of the *grammatici*, — men whose learning, as Milton describes it, lies in "marginal stuffings," and who, "like good sumpsters, lay down their horse-loads of citations at your door." It is, we all admit, of great importance that we should know the lexical, the grammatical, and the prosodical system of Chaucer, but must we all drudge in the classroom over the six-text edition of the Chaucer Society? The economics of textual study has its division of labor, and there is a time for everything under the sun. We read in the "Dunciad" that the critic eye, when turned into "a microscope of wit" and

doomed to examine a work of art "bit by bit," will come at last to see only "hairs and pores." Philological science is indispensable in its time and place, but it should not be allowed to exact on taste and culture in the classroom. All experience shows that collateral studies about literature do not help us much toward the attainment of that which is inspiring in the direct study of good literature. Grammar does not help us much in the hour and article of composition, however much it may afterward help us to correct with "phlegm" what we may have written with "fury." And the uses of rhetoric are here so ambiguous that Quintilian was much puzzled to decide whether rhetoric were an "art" or a "science," and Cicero tells us that his brother Quintus was wont to say that one rhetoric master at a time was enough for the whole Roman commonwealth.

"Of all facts concerning art," says Ruskin, "this is the one most necessary to be known, that while manufacture is the work of the hands only, art is the work of the whole spirit of man, and as that spirit is, so is the deed." Of all truths respecting art, this is the one of which he holds the right understanding to be the most "precious," and denial of which is "the most deadly."

All history, indeed, points a moral against substituting studies about literature for direct and sympathetic studies in literature. Greek literature maintained its high tradition so long as its natural sap and blood were not tainted, but it went into decline as soon as men sought for brilliancy in the cosmetic arts of the rhetoric teachers. The Roman mind took its quickening from Greek literature, and this quickening worked at first creatively, to the purposes of a pure Latin style. But when masters of Latin style

began to crack jokes over "the myrrh-pot of Isocrates, the scent-boxes of his disciples, and the pigments of Aristotle," — I quote from a letter of Cicero to Atticus — the time was close at hand when Roman literature was ready to go to seed. And when Roman literature went to seed in what is perhaps the best book of rhetoric ever written, — I refer to the "Institutes" of Quintilian, — we find that accomplished teacher bewailing the fact that Greek, as taught in the Roman schools of his day, had come to be regarded with a kind of superstition, and so was, for the most part, a hindrance rather than a help to Latin culture, while everybody knows that the publication of the "Institutes," a work designed to show how orators could be made, marks the date at which true eloquence became extinct in Rome. What we call the Renaissance was a rejuvenation wrought in the European mind by transfusing into it the power drawn from the literatures of Greece and Rome, after the intellectual life-blood of Europe had been thinned by a too long and exclusive nurture on the chopped logic of the schoolmen. Today, when Greek has come to be taught for philology rather than for literature, and when college graduates who can at sight read Plato with understanding, or Aristophanes with zest, have become almost an extinct species, we are seriously discussing the place and value of Greek in the college curriculum.

The sap that runs in a green tree and the blood that courses in the veins of a living body are favorite metaphors with Cicero when he would describe the eloquence that has power in it. Emerson, in like manner, refers to certain books which have power in them when he says that they are "vital and spermatic." But books are "vital and spermatic" only

when the creative spirit from which they sprang is permitted to work creatively, not when they are stretched on the dissecting table for anatomical study.

Having made this plea for literary art, for the culture of literary expression, for the study of philology as ancillary to correctness of style, and for the direct, constant, and sympathetic study of great English classics, it remains to say, what hardly needs the saying, that the literature of knowledge, and the knowledge which concerns a due understanding of the literature of power, must have their rights in English study; and that this knowledge, whether it be historical or whether it be critical, should widen its horizons with the expanding powers of the reason and with the growing exactions of the critical faculty. The literature of power in English being the best expression of great writers, it follows that we should study great writers in their individuality; that is, in their biographies. This literature of power being the best expression of English mind, it follows that we should study a great English classic in its relation to the national psychology of which it is the bright consummate flower; that is, we should study the element which is peculiarly or distinctively national in our typical English writers. Taine's "History of English Literature," as we all know, is a study in the national psychology of the British race, with *pièces justificatives* drawn, by way of illustration, from all that seemed to him best in English literature. The literature of power in English, though written not for a day but for all time, must needs reflect the intellectual, civil, and social stir of the time in which it appeared, and should therefore be studied in that relation; that is, in its relation to history. This literature of power having come to

expression in English idiom, it follows that we should study this expression with the best resources and clearest lights of linguistic science, that is, with the appliances and helps of English philology, making philology the handmaid of literary art, and not making literary art the vassal and serf of philology. And, finally, as the literature of power in English comes to us at the end of a long literary tradition, which dates from Greece and runs through Rome, Italy, France, Spain, and Germany, it follows that the crown and culmination of studies in English should lead us at length to the comparative study of the best literature of the whole world, so far as this best literature has given color or complexion to the great English classics. The individual student can here hope by himself to do only a little; but there is room here for laboratory studies and for seminary studies in a thousand directions. Such advanced studies, if kept vital and vitalizing by being pursued at first hand, that is, with an adequate knowledge on the part of each student in the tongues and writers compared, may conduce as well to catholicity of taste as to breadth and purity of culture. The literature of the world is really one, only some of it is written in Hebrew, some in Greek, some in Latin, some in Italian, some in French, some in Spanish, some in Portuguese, and some in English. George Saintsbury tells us that he "would not dare to continue criticising so much as a circulating library novel, if he did not perpetually pay his respects to the classics of many literatures."

IV

THE MECKLENBURG DECLARATION OF INDEPENDENCE, MAY 20, 1775¹

IN the year 1819 the "Raleigh Register" surprised its readers and the general public interested in historical inquiries with the announcement that the people of Mecklenburg County, in the State of North Carolina, had, on the 20th day of May, in the year 1775, openly declared their independence of Great Britain, and in terms so similar to those employed by Mr. Jefferson in penning the national Declaration of July 4, 1776, as to create the suspicion that he had borrowed a portion of his phraseology from the earlier paper. The printed copy of the alleged Mecklenburg Declaration of Independence, as then given to the public for the first time, nearly forty-four years after the event it signalizes, was accompanied with an historical statement purporting to have been written contemporaneously with the original promulgation of the manifesto, and to recite the circumstances in which the manifesto had its origin and motive.

According to this statement, it would appear that in the spring of the year 1775 the leading personages of Mecklenburg County held several detached meetings, in which the sentiment was freely expressed that "the cause of Boston was the cause of all," and that the first shock of British power in its encroachments

¹ Reprinted from *The North American Review* for April, 1874.

on American liberty, if not resisted there, would ultimately overwhelm the people of the whole continent in a common calamity. In this state of public sentiment, and moved, it is said, by the solicitations of others, Colonel Thomas Polk, the commanding officer of the Mecklenburg militia, issued an order to each captain's company in the county to elect two persons from their number who should act as delegates at a meeting to be held in the town of Charlotte, the county seat, on the 19th of May in that year, "for the purpose of devising ways and means to aid and assist their suffering brethren in Boston, and also generally to adopt measures to extricate themselves from the impending storm."

It is stated that a delegation from the militia companies met in conformity with this order at the time and place appointed, and, by a fortuitous coincidence, the news of the battle of Lexington, fought on the preceding 19th of April, was brought by express to the town of Charlotte on that same day. The tide of popular indignation, swollen, it is said, by this exciting intelligence, could no longer be restrained within the bounds of moderation, and so, "after a full and free discussion," the following Declaration of Independence was unanimously adopted by the delegates: —

Resolved, That whosoever directly or indirectly abetted or in any way, form, or manner, countenanced the unchartered and dangerous invasion of our rights, as claimed by Great Britain, is an enemy to this country, to America, and to the inherent and inalienable rights of man.

Resolved, That we, the citizens of Mecklenburg County, do hereby dissolve the political bonds which have connected us to the mother country, and hereby absolve ourselves from all allegiance to the British crown, and abjure all

political connection, contract, or association with that nation, who have wantonly trampled on our rights and liberties, and inhumanly shed the blood of American patriots at Lexington.

“*Resolved*, That we do hereby declare ourselves a free and independent people, and of right ought to be a sovereign and self-governing association, under the control of no power other than that of our God and the general government of the Congress ; to the maintenance of which independence we solemnly pledge to each other our mutual coöperation, our lives, our fortunes, and our most sacred honor.

“*Resolved*, That as we now acknowledge the existence and control of no law, or legal officer, civil or military, within the county, we do hereby ordain and adopt as a rule of life, all, each, and every of our former laws, wherein, nevertheless, the crown of Great Britain never can be considered as holding rights, privileges, and immunities or authorities therein.

“*Resolved*, That it is further decreed, that all, each, and every military officer in this county is hereby reinstated in his former command and authority, he acting conformably to these regulations. And that every member present of this delegation shall henceforth be a civil officer, namely, a justice of the peace, in the character of a ‘committee-man,’ to issue process, hear and determine all matters of controversy, according to said adopted laws, and to preserve peace, union, and harmony in said county ; and to use every exertion to spread the love of country and fire of freedom throughout America, until a more general and organized government be established in this province.”

It is further stated that a number of by-laws were adopted at the same time to protect the association from confusion, and to regulate the general conduct of the people as citizens. The meeting and its deliberations lasted, we are told, far into the night of the

19th, and indeed it was not until two o'clock in the morning of the 20th of May that the work of the convention was completed.

A few days afterwards, proceeds the chronicler (still purporting to write on the 20th of May), Captain James Jack, of Charlotte, was deputed as a messenger to convey a copy of these resolves and proceedings to the Continental Congress then sitting in Philadelphia, as also to deliver a letter addressed to the North Carolina members in that body, — Messrs. Richard Caswell, William Hooper, and Joseph Hewes, — requesting them “to use all possible means to have the said proceedings sanctioned and approved by the general Congress.” On the return of Captain Jack, says the compiler of these annals, still professing to write under the date of the alleged Declaration, he reported that the proceedings were “individually approved by the members of Congress, but that it was deemed premature to lay them before the House.” And we are next informed that the regulations established at the time of the Declaration continued in force for months afterwards; that to them were due the subsequent harmony and exertions of the Mecklenburg people in the cause of liberty; that the acts of the delegation were also approved by the Council of Safety which met in the year 1776; and that from this delegation originated a court of inquiry whose jurisdiction, we are told, was “as unlimited as toryism” in the following years.

In the presence of such anachronisms the reader perceives at once that we are called to deal with a paper which, whatever may be said in defense of its genuineness or authenticity as an historical record, has been obviously antedated by its compiler. The

date which it bears on its face is discredited by the nature of its contents. But the Declaration of Independence above given, and the historical memorandum published in the "Raleigh Register" of April 30, 1819, purported to be authenticated in their present shape by the following certificate:—

The foregoing is a true copy of the papers on the above subject left in my hands by John McKnitt Alexander, deceased. I find it mentioned on file that the original book was burned April, 1800; that a copy of the proceedings was sent to Hugh Williamson, in New York, then writing a history of North Carolina, and that a copy was sent to General W. R. Davie.

J. MCKNITT.

At the date of the first publication of this paper, in the year 1819, it was not known to the public, at least outside of North Carolina, that the signature of "J. McKnitt" stood for the name of Dr. Joseph McKnitt Alexander, a son of the John McKnitt Alexander from whom the paper purports to have been derived. Nor was it known at that time that the certificate itself differs in the most essential particulars from the certificate affixed by the same hand to the copy placed in the care of General Davie. It will subsequently appear that the document thus mysteriously hidden from sight for forty odd years was very unfortunate in the auspices under which it emerged into publicity.

The paper, at its appearance, was greeted with universal expressions of amazement. Many among the most prominent actors of the Revolutionary era were then still living, and to them it came with an especial surprise. A copy having found its way to John Adams, he called the attention of Mr. Jefferson to the matter in a letter under date of June 22, 1819, in which he

described it as "one of the greatest curiosities and one of the deepest mysteries that had ever occurred to him." "How is it possible," he added, "that this paper should have been concealed from me to this day? Had it been communicated to me in the time of it, I know, if you do not know, that it would have been printed in every Whig newspaper on this continent. You know that if I had possessed it I would have made the hall of Congress echo and reëcho with it fifteen months before your Declaration of Independence." ¹

The eloquent advocate of the Revolution expressed himself in these emphatic terms under the impression, of course, that the Mecklenburg resolutions were genuine, and that the historical statement accompanying them was authentic. But Mr. Jefferson, in his reply, written under date of July 9, 1819, avowed the opinion that the paper purporting to emanate from Mecklenburg was little better than "a very unjustifiable quiz." In support of this opinion he instanced the following grounds of suspicion:—

"It appeals to an original book, which is burned; to Mr. Alexander, who is dead; to a joint letter from Caswell, Hewes, and Hooper, all dead; to a copy sent to the dead Caswell,² and another sent to Dr. Williamson, now probably dead, whose memory did not recollect, in the history he has written of North Carolina, this gigantic step of its county of Mecklenburg."

Mr. Adams, in writing again to another of his correspondents, Mr. William Bentley, on the 5th of July in that same year, and therefore before Mr. Jeffer-

¹ The *Works* of John Adams, vol. x. pp. 380, 381.

² A mistake of Mr. Jefferson's. He intended to designate General Davie, who was still living at that time.

son's reply could have been received, intimated the opinion that Mr. Jefferson must have seen the paper at the time of its appearance in 1775, because, adds Mr. Adams, "he has copied the spirit, the sense, and the expressions of it *verbatim* into his Declaration of the 4th of July, 1776." ¹

In so writing, Mr. Adams referred, we need not say, to certain forms of expression which are common to the Declaration penned by Mr. Jefferson, and to the document purporting to have been uttered by the patriots of Mecklenburg on the 20th of May, 1775. It was perceived at once that such phrases as "dissolve the political bonds which have connected," etc.; "are, and of right ought to be," etc.; "absolve ourselves from all allegiance to the British crown;" "we solemnly pledge to each other our mutual coöperation, our lives, our fortunes, and our most sacred honor," — were too many in number and peculiar in structure to be accidental coincidences. And so a battle was joined, which lasted for many years, between those who, on the strength of the Mecklenburg paper, charged Mr. Jefferson with stealing from it these "choicest of his phrases," and those who sought to vindicate him from this aspersion by impeaching the genuineness of the paper on the faith of which he was accused.

A little closer inquiry into the merits of this question would have disclosed to both parties that the issue between them was mistakenly joined. For, in point of fact, it is Richard Henry Lee, and not Mr. Jefferson, who is responsible for the introduction of all these phrases into the Declaration of Independence, except one. The committee charged with the preparation of

¹ John Adams's *Works*, vol. x. p. 381.

that Declaration had been instructed to draw it in conformity with the resolution passed by Congress on the 2d of July, 1776, which resolution, known to have been penned by Richard Henry Lee, ran as follows :—

“ *Resolved*, That these 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 of right, ought to be, dissolved.”

It will be seen, therefore, that as between Mr. Jefferson and the author of the Mecklenburg Declaration, the only question that can arise under this head relates to the origin of the famous phrase in which they both enunciate the pledge of “lives, fortunes, and sacred honor.” And from this phrase we ought to rule out the words, “our lives and fortunes,” for the pledge of these was among the commonplaces of that time. It occurs *passim* in the political literature of 1775 and 1776. It would appear, then, that those who have sought to find in the Mecklenburg Declaration a “coigne of vantage” from which to discharge their arrows at Mr. Jefferson’s literary fame have wasted their strength in an idle contention.¹

A few years after Jefferson’s death, the controversy

¹ What gossamer fancies the human mind can weave when it invents both its facts and its explanations of them may be seen in a curious tractate published by the Rev. Dr. Thomas Smyth of Charleston, S. C., in the year 1847, under the title of the *True Origin and Source of the Mecklenburg and the National Declaration of Independence*, in which, assuming the genuineness of the former, he argues that the authors of both, in the common use of certain peculiar expressions, may have drawn their inspiration from a common source, to wit, the Confessions, Covenants, and Bands of the Scotch Presbyterians in the sixteenth and seventeenth centuries! Needless to add that Dr. Smyth made this remarkable discovery with a pair of Presbyterian spectacles.

on this subject not having been yet composed, the legislature of North Carolina took the matter in hand as an inquiry deeply concerning the legitimate pride of the State, if, as many believed, it could be shown by indubitable proofs that the patriotic citizens of Mecklenburg had been the first of all the American people to formulate in express terms that full-voiced declaration which was not articulated by the chosen representatives of the United Colonies until thirteen months and more after the manifesto proclaimed at Charlotte in the "Old North State." The emulous North-Carolinian, noted among his countrymen as much for his modesty as his merit, not unnaturally dreamed again the dream of Joseph, and, as in a vision, saw his sheaf standing upright, and the sheaves of his brethren standing around and doing obeisance to his sheaf.

A committee of the General Assembly of North Carolina was appointed at the session of 1830-31 to "collate and arrange" all the documents accessible to them "touching the Declaration of Independence by the citizens of Mecklenburg," as also to collect new evidence in support of its genuineness and authenticity. The committee performed their task and submitted a report,¹ in which they expressed the opinion that the testimonials they had gathered respecting the authenticity of the Declaration would be sufficient to "silence incredulity." We proceed to give a digest of this evidence, following the order in which the testimonials are published by the committee.

¹ *The Declaration of Independence by the Citizens of Mecklenburg County on the 20th Day of May, 1775, with Accompanying Documents.* Published by the Governor, under the Authority and Direction of the General Assembly of the State of North Carolina. Raleigh, 1831.

Captain James Jack, the bearer of the "Declaration" to the Continental Congress at Philadelphia, being interrogated in the year 1819, when he was eighty-eight years old, as to the part he had taken in this transaction, certifies that he delivered "a Declaration of Independence of May, 1775," to Richard Caswell and William Hooper, but does not fix its precise date, merely premising that he "was privy to a number of meetings" about that time.

Messrs. Alphonso Alexander, Amos Alexander, and J. McKnitt certify in the year 1830 that they had frequently heard William S. Alexander, deceased, say that he was in Philadelphia on the day that General Washington left that city to take command of the Northern army, and that he then met Captain Jack, who informed him that he [Captain J.] was there as "the bearer of the Declaration of Independence, made in Charlotte on the 20th day of May."

The Rev. Francis Cummins, writing in the year 1819, "cannot as to date be so particular as he could wish," but is "perfectly sure" that the Mecklenburg Declaration was prior to the 4th of July, 1776.

General Joseph Graham, a son-in-law of John McKnitt Alexander, certifies in the year 1830 that, as "a lad about half grown," he was present when the Declaration was passed, and he fixes its date at May 20. He recalls the interesting fact that one among the reasons offered for making the Declaration was "that the king or ministry had, by proclamation, or some edict, declared the Colonies out of the protection of the British crown," and recites other incidents under this head.

Next comes an extract from an unpublished memoir by the Rev. Humphrey Hunter, purporting to be a manuscript account of the Revolutionary War in the South, but when the memoir was compiled we are not authentically informed. Mr. Hunter recites that the militia delegates met at Charlotte on the 19th of May, 1775; that they passed the Declaration in the shape ascribed to it by John McKnitt Alex-

ander ; that on the next day it was publicly read at the Court House door by Colonel Thomas Polk, and a copy then drawn off and sent to Captain Jack to Philadelphia. He further records that by-laws and regulations for the government of a standing Committee of Public Safety were enacted at the same time.

Messrs. George Graham, William Hutchison, Jonas Clark, and Robert Robinson, some time in the year 1819 or 1820, unite in a certificate, given at the request of Colonel William Polk (son of Colonel Thomas Polk), to the effect that the delegates met on the 19th of May, continued in session till late in the night of that day, and formed several resolves " which went to declare themselves and the people of Mecklenburg County free and independent." They express the belief that the Declaration was drawn by Dr. Ephraim Brevard, whom they name as the sole secretary of the meeting.

John Simeson, in the year 1820, writing at the instance of Colonel William Polk, certifies, with the hesitation incident to what he calls " a precarious feeble old age," that he is inclined to think the Declaration was drawn by Dr. Brevard, " from his known talents in composition ;" that " in substance and form it was like that great national act agreed on thirteen months after ;" that it was passed " towards the close of May, 1775," and that he heard Colonel Thomas Polk read it, together with a long string of grievances and a military order " appointing three men to secure all the military stores for the county's use, — Thomas Polk, John Pfifer, and Joseph Kennedy."

Isaac Alexander, in the year 1830, certifies that he was present at Charlotte on the 19th and 20th of May when the delegates, Ephraim Brevard being secretary of the meeting, declared their independence of Great Britain.

Samuel Wilson certifies, without date, that the Declaration was made in May, 1775 ; that he was present, and heard it read from the Court House door.

John Davidson, in the year 1830, states that he was then "the only person living who was a member of that convention;" that "being far advanced in years and not having his mind frequently directed to that circumstance," he can give "but a very succinct history of the transaction," and this, too, although he was a delegate from the same company as John McKnitt Alexander. He is confident, however, that "the Declaration of Independence by the people of Mecklenburg was made public at least twelve months before that of the Congress of the United States."

James Johnson certifies in the year 1827, when he was seventy-three years old, to the general fact that Mecklenburg County "declared independence and sent a man to Philadelphia with the proceedings."

The foregoing digest comprises, we think, all the essential facts disclosed by this testimony. The testimony itself was held by the believers in the genuineness of the Mecklenburg Declaration to substantiate the fact that such a Declaration was actually made, and that it was passed on the 20th of May, in the year 1775. On the strength of this evidence Dr. Hawks, in his address¹ delivered before the New York Historical Society on the 16th of December, 1852, held the following emphatic language:—

"First, then, no less than seven witnesses of the most unexceptionable character swear positively that there was a meeting of the people of Mecklenburg at Charlotte on the 19th and 20th days of May, 1775; that certain resolutions distinctly declaring independence of Great Britain were then and there prepared by a committee, read publicly to the people by Colonel Thomas Polk, and adopted by acclamation; that they were present and took part in the proceedings themselves, and that John McKnitt Alexander was

¹ *The Mecklenburg Declaration of Independence.* A lecture by the Rev. Francis L. Hawks, D. D., LL. D.

a secretary of the meeting. These seven swear positively to the date, the 19th and 20th days of May, 1775. In addition seven others, equally above suspicion, swear that they were present at precisely such a meeting as that described above. . . . Well, then, here are fourteen unimpeachable witnesses, who, either by positive statements as to time, or by facts proved to have occurred on a particular occasion, *which facts do fix the time*, — here, I say, are fourteen witnesses, who, if human testimony can prove anything, do show beyond all peradventure that on the 20th of May, 1775, a certain paper was read and adopted in their hearing, whereby the people of Mecklenburg County did adjure allegiance to the British crown, and did declare themselves independent. Such a paper, then, was in existence on that day, and was in the possession of the secretary, John McKnitt Alexander.”

If Dr. Hawks had wished to set the fallibility of human testimony in the light of a signal example he could not have written more to the purpose of those who would guard themselves against a too easy credulity in the case of his fourteen witnesses. With their published testimony before him he has, inadvertently we doubt not, misstated its most essential particulars. He speaks of them all as having been sworn. Not one of them was sworn. He says that seven of them swear that John McKnitt Alexander was a secretary of the meeting. Only one of them mentions Alexander as the sole secretary, and he was the son-in-law of that gentleman. One other mentions him as co-secretary with Brevard. Dr. Hawks says that seven of them swear to the precise date of the Declaration as May 20, 1775, and that the remaining seven certify to facts which “fix the time” at the same date. We shall soon see that the most significant of these facts directly rebut the inference that

he draws in the premises. And if under the bias of a *parti pris* it was possible for a man of Dr. Hawks's perspicacity to fall into such loose allegations of supposititious fact, what might we not expect at the hand of witnesses, however honest, with minds laboring under the same prepossessions and staggering besides under the burden of years?

Hence this array of testimony did not avail to "silence incredulity" at the time of its official publication. There were still those who urged, by way of exception to its cogency, that no original manuscript or printed copy contemporaneous with the date of the alleged Declaration was now in existence. And the reference which, in default of such primary proofs, was made to copies at second hand served rather to mystify than to elucidate the question at issue. A copy, it is said, was given to Dr. Williamson, and Governor Stokes avers in the year 1831 that he "well recollects" to have seen it in Williamson's possession in the year 1793, "together with a letter from John McKnitt Alexander;" but this copy has entirely disappeared. The copy given by Alexander to General Davie is certified to have been identical with that published in the year 1819. Besides all these copies, there is still another which first came to light in Martin's "History of North Carolina," published in the year 1829.¹ Martin's recension of the document is different from Alexander's, but nobody knows the source from which it is drawn. *Caput inter nubila condit*. Between these two copies — that of Martin and that of Alexander — there are material differences of phraseology in each resolution of the series com-

¹ *The History of North Carolina from the Earliest Period*. By François Xavier Martin. 2 vols. New Orleans, 1829.

posing the so-called Declaration, and one entire resolution contained in the Martin rendering is wanting in the Alexander version.

In view of these discrepancies, it was from the first an easy matter for the unbelievers in the genuineness of the so-called Mecklenburg Declaration of Independence to justify their incredulity by pleading that, as both the current versions could not be true copies of the original, it was competent to reject them both as unhistorical until the one should be authenticated to the exclusion of the other. After allowing all due weight to the testimony of the venerable men who alleged that they had participated in a meeting in which "independence" was declared, it still remained easy to object that such evidence could not be deemed conclusive when we reflect that they all testify on the strength of mere memory, after a lapse of more than forty or fifty years, concerning the peculiar phraseology and exact import of resolutions which they had heard only once, as read from the steps of a court house.¹ And the attestation which they gave labored necessarily under the suspicion attaching to all testimony given in answer to leading questions, for they were not called to testify until their minds had been pre-occupied by the publications made on this subject in the newspapers of the day between the years 1819 and

¹ If anybody among those present might have been expected to remember the events of the alleged meeting, it was certainly Colonel William Polk, the son of Colonel Thomas Polk; yet we find one of the witnesses, John Simeson, to whom he had applied for information, replying to him as follows: "Yourself, sir, in your eighteenth year, and on the spot, — your worthy father the most popular and influential character of the county, — *and yet you cannot state much from recollection.*" In point of fact, he left no written statement at all, but procured testimony to contradict some points of John McKnitt Alexander's story.

1830.¹ Moreover, we know how easy it is for men to accept and accredit as true anything which they do not distinctly perceive to be false, especially when their own inclinations jump with the prevalent emotions of the community in which they dwell. *Libenter homines id quod volunt credunt.*

While the question raised respecting the authenticity and genuineness of the Mecklenburg Declaration stood in the dubious attitude in which it had been left by the publication of the North Carolina Legislature, that indefatigable antiquarian and devoted student of American history, the late Peter Force of Washington, in compiling materials for his "American Archives," came upon a series of declaratory resolutions adopted by "the Committee-men" of Mecklenburg County on the 31st of May, 1775. This manifesto, it appears, had been widely disseminated at the time of its promulgation, but the memory, as well of its existence as of its precise form and contents, had entirely faded away from the public mind soon after the Revolutionary War. It was seen at once by Mr. Force that these resolutions, comprising as they did in their terms a virtual declaration of independence, offered themselves as "the missing link" which might serve to identify the ambiguous tradition of North Carolina with a veritable fact in her documentary history.² A full copy of these resolutions reads as follows:—

¹ Thus Captain James Jack begins his testimony as follows: "*Having seen in the newspapers some pieces respecting the Declaration of Independence by the people of Mecklenburg,*" etc. General Joseph Graham says the resolutions reported to the meeting were, "as near as I can recollect, in the very words *we have since seen them several times in print.*"

² Mr. Force announced the discovery of these resolutions in the *National Intelligencer* of December 18, 1838. He found them at first, as they had been partly reprinted, in the *New York Journal* of June

CHARLOTTETOWN, MECKLENBURG COUNTY,
May 31, 1775.

This day the Committee of this county met and passed the following resolves : —

Whereas, By an address presented to His Majesty by both houses of Parliament in February last, the American Colonies are declared to be in a state of actual rebellion, we conceive that all laws and commissions confirmed by or derived from the authority of the King and Parliament are annulled and vacated, and the former civil constitution of these colonies for the present wholly suspended, to provide in some degree for the exigencies of this county in the present alarming period, we deem it proper and necessary to pass the following resolves, viz. : —

I. That all commissions, civil and military, heretofore granted by the crown to be exercised in these colonies, are null and void, and the constitution of each particular colony wholly suspended.

II. That the Provincial Congress of each Province, under the direction of the great Continental Congress, is invested with all legislative and executive powers within their respective provinces, and that no other legislative or executive power does or can exist at this time in any of these colonies.

III. As all former laws are now suspended in this Province, and the Congress has not yet provided others, we

29, 1775, and subsequently he met with another condensed copy of them in the *Massachusetts Spy* of July 12 in that year. In the year 1847, Dr. Joseph Johnson found a copy of the entire series in the *South Carolina Gazette* of June 13, 1775; and Mr. Bancroft, while Minister of the United States at London, discovered in the British State Paper Office another copy of the entire series as preserved in the same journal, which, it appears, had been transmitted to the British Secretary of State by the colonial governor of Georgia in the year 1775, that "his Lordship might see the extraordinary resolves of the people of Charlottetown in Mecklenburg County." Governor Martin, of North Carolina, also sent a copy to the British Secretary on the 30th of June in the same year.

judge it necessary, for the better preservation of good order, to form certain rules and regulations for the internal government of this county, until laws shall be provided for us by the Congress.

IV. That the inhabitants of this county do meet on a certain day appointed by the committee, and, having formed themselves into nine companies (to wit, eight for the county and one for the town), do choose a colonel and other military officers, who shall hold and exercise their several powers by virtue of the choice, and independent of the crown of Great Britain and former constitution of this province.

V. That, for the better preservation of the peace and administration of justice, each of those companies do choose from their own body two discreet freeholders, who shall be empowered each by himself, and singly, to decide and determine all matters of controversy arising within said company, under the sum of twenty shillings, and jointly and together all controversies under the sum of forty shillings, yet so as their decisions may admit of appeal to the Convention of the Select Men of the county, and also that any one of these men shall have power to examine and commit to confinement persons accused of petit larceny.

VI. That those two Select Men thus chosen do jointly and together choose from the body of their particular company two persons to act as constables, who may assist them in the execution of their office.

VII. That upon the complaint of any persons to either of these Select Men, he do issue his warrant directed to the constable, commanding him to bring the aggressor before him to answer said complaint.

VIII. That these select eighteen Select Men thus appointed do meet every third Thursday in January, April, July, and October at the Court House in Charlotte, to hear and determine all matters of controversy for sums exceeding forty shillings, also appeals; and in case of felony to

commit the person convicted thereof to close confinement until the Provincial Congress shall provide and establish laws and modes of proceeding in all such cases.

IX. That these eighteen Select Men thus convened do choose a clerk to record the transactions of said convention, and that said clerk, upon the application of any person or persons aggrieved, do issue his warrant to any of the constables of the company to which the offender belongs, directing said constable to summon and warn said offender to appear before said convention at their next sitting to answer the aforesaid complaint.

X. That any person making complaint, upon oath, to the clerk, or any member of the convention, that he has reason to suspect that any person or persons indebted to him in a sum above forty shillings intend clandestinely to withdraw from the county without paying the debt, the clerk or such member shall issue his warrant to the constable, commanding him to take said person or persons into safe custody until the next sitting of the convention.

XI. That when a debtor for a sum above forty shillings shall abscond and leave the county, the warrant granted as aforesaid shall extend to any goods or chattels of said debtor as may be found, and such goods or chattels be seized and held in custody by the constable for the space of thirty days, in which time, if the debtor fail to return and discharge the debt, the constable shall return the warrant to one of the Select Men of the company, where the goods are found, who shall issue orders to the constable to sell such a part of said goods as shall amount to the sum due.

That when the debt exceeds forty shillings, the return shall be made to the convention, who shall issue orders for sale.

XII. That all receivers and collectors of quit rents, public and county taxes, do pay the same into the hands of the chairman of this committee, to be by them disbursed as the public exigencies may require, and that such receivers and

collectors proceed no further in their office until they be approved of by, and have given to, this committee good and sufficient security for a faithful return of such moneys when collected.

XIII. That the committee be accountable to the county for the application of all moneys received from such public officers.

XIV. That all these officers hold their commissions during the pleasure of their several constituents.

XV. That this committee will sustain all damages to all or any of their officers thus appointed, and thus acting, on account of their obedience and conformity to these rules.

XVI. *That whatever person shall hereafter receive a commission from the crown, or attempt to exercise any such commission heretofore received, shall be deemed an enemy to his country ; and upon confirmation being made to the captain of the company in which he resides, the said company shall cause him to be apprehended and conveyed before two Select Men, who, upon proof of the fact, shall commit said offender to safe custody, until the next sitting of the committee, who shall deal with him as prudence may direct.*

XVII. That any person refusing to yield obedience to the above rules shall be considered equally criminal, and liable to the same punishment as the offenders above last mentioned.

XVIII. That these resolves be in full force and virtue until instructions from the Provincial Congress regulating the jurisprudence of the province shall provide otherwise, or the legislative body of Great Britain resign its unjust and arbitrary pretensions with respect to America.

XIX. That the eight militia companies in this county provide themselves with proper arms and accoutrements, and hold themselves in readiness to execute the commands and directions of the General Congress of this province and this committee.

XX. That the committee appoint Colonel Thomas Polk

and Dr. Joseph Kennedy to purchase three hundred pounds of powder, six hundred pounds of lead, one thousand flints, for the use of the militia of this county, and deposit the same in such place as the committee may hereafter direct.

Signed by order of the committee,

EPH. BREVARD,
Clerk of the Committee.

It will be seen that these resolutions do not formally declare independence, but they assume its existence as an accomplished fact which had been brought about by the then existing posture of events. They premise as their basis that the British Parliament by declaring the Colonies in a state of actual rebellion had left the people of America free to assume that all laws and commissions emanating from the king or Parliament were annulled and vacated, and that the former civil constitution of the Colonies was, for the present, wholly suspended. To provide for the exigencies thus created in Mecklenburg County, they ordain that all civil and military commissions heretofore granted by the crown are null and void, and the constitution of each particular Colony wholly suspended; that all legislative and executive powers were then vested in the Provincial Congress of each colony under the direction of the Continental Congress; that as all former laws were then suspended in North Carolina, and as the Congress of the province had not yet provided others, the people of Mecklenburg should proceed to form certain rules for the internal government of the county until laws should be provided by the Congress; that the military officers of the county when chosen by the people should hold and exercise their several powers by virtue of the popular choice, "*and independent of the crown of Great Britain and*

former constitution of this province ;" that whatever person should hereafter receive a commission from the crown or attempt to exercise any such commission heretofore received should be deemed an enemy to his country ; that these resolutions should be "in full force and virtue until instructions from the Provincial Congress regulating the jurisprudence of the province should provide otherwise, *or the legislative body of Great Britain resign its unjust and arbitrary pretensions with respect to America ;*" and finally, as an evidence that these resolutions were not meant to be *brutum fulmen*, they direct the eight militia companies of the county to provide themselves with proper arms and accoutrements, and Colonel Thomas Polk and Dr. Joseph Kennedy were appointed to purchase on behalf of the county three hundred pounds of powder, six hundred pounds of lead, and one thousand flints.

With these resolutions before us, we are now able to perceive that some of the aged men who between the years 1819 and 1830 certified that they were present at a meeting in Charlotte on the 20th of May, 1775, and that the so-called Mecklenburg Declaration of Independence was then and there adopted, must be understood to have had the meeting of May 31, and the declaration then made, in the intendment of their minds. This is made apparent, not only by the general drift of the later manifesto, meeting, as it does, the precise conditions of the problem then presented to the minds of the American people, but also by certain particular facts to which these witnesses refer as having happened contemporaneously with the date of the Declaration, whatever may have been its substance or form.

For instance, General Joseph Graham, one of the most intelligent in their number, informs us that among other reasons offered at the time for making the Declaration was the fact that "the king or Ministry had, by proclamation or some edict, declared the Colonies out of the protection of the British crown." Now this statement is doubtless inspired by a reminiscence of the proposition contained in the preamble of the series adopted on the 31st of May; for that preamble substantially embodies the very reason which General Graham says he remembers to have been put forth in justification of the Declaration at the time it was made. Yet he says that the Declaration took place on the 20th of May, while making it plain that his recollections were reverting to the meeting and manifesto of May 31. The whole discussion, which he rehearses as being contemporaneous with the "Declaration," precisely fits the political situation revealed by that document. The echoes of the meeting held on that day must have been still ringing in his ears when he reproduced the debates of the village hustings. He was only slightly mistaken in the address he gave to them.

In like manner, Mr. John Simeson, in affirming that three men, Thomas Polk, John Pfifer, and Joseph Kennedy, were appointed to secure military stores for the county, on the same day when the Declaration was promulgated, must have meant to designate the meeting held on the 31st of May, for it was on that day that such a committee as he describes was created, and he erred only in adding one name too many to the list of its members.

The repeated references, moreover, which the witnesses make to the "setting up a government for themselves under the title of the Committee of Safety "

clearly point to the series of May 31. And the representations contained under this head in the so-called Declaration of May 20, and in its accompanying historical appendix, as transmitted by John McKnitt Alexander, are obviously nothing more than the "counterfeit presentments" of a memory striving to reproduce the authentic transactions of May 31. Else we must believe that Mecklenburg regulated "the general conduct of her citizens" twice, at the two dates, which stand only ten or eleven days apart.

Besides all this, the preponderance of the testimony borne by the witnesses with respect to the person who acted as secretary of the meeting which "declared independence" points rather to the meeting of May 31 than to that alleged to have been held on the 20th preceding. By only one witness is John McKnitt Alexander named as the clerk of the convention, while by six Dr. Ephraim Brevard is so designated, and another witness names them both in this relation. As we have record proof that Dr. Brevard was secretary of the meeting which passed the resolves of May 31, it certainly seems most probable that those who certify to his presence as secretary at a meeting in which a declaration of independence was adopted have slightly antedated and confounded their recollections by identifying them with the published document of the year 1819, which, till the year 1837, assumed to wear, without a rival, all the dignities of a great event in the annals of Mecklenburg.

It will thus be seen that the most significant facts proved to have occurred contemporaneously with the Mecklenburg manifesto, whatever its date and whatever its purport may have been, "and which facts do fix the time," in the idea of Dr. Hawks (and in fixing the

time ascertain also the nature of the declaration), are precisely the grounds on which we now can demonstrate that it was the meeting and declaration of May 31 to which the memory of these witnesses was involuntarily recurring. Even in assenting to another date and another transaction, they certify to facts which explode the very hypothesis they were cited to confirm.

But we are not left to rely only on historical probabilities and inferential reasoning in support of the opinion that it was the manifesto of May 31, and not one alleged to have been made on the 20th of that month, which was dispatched by a messenger to the Continental Congress at Philadelphia. Whatever was the paper thus forwarded, we know that Captain Jack was its bearer, and we have positive contemporaneous evidence that the paper which he bore was the series of resolves passed on May 31.

Before these resolves had been discovered by Mr. Force, it was historically known that Josiah Martin, the colonial governor of North Carolina, in a proclamation under date of August 8, 1775, written on board a British gunboat, the *Cruiser*, had aimed some very wrathful thunderbolts against the seditious practices of the North Carolina people, and among the proceedings signalized for special reprobation are "the resolves of a set of people styling themselves a Committee of the County of Mecklenburg." He wrote: —

"I have seen a most infamous publication in the 'Cape Fear Mercury,' importing to be resolves of a set of people styling themselves a *Committee of the County of Mecklenburg*, most traitorously declaring the entire dissolution of the laws, government, and constitution of this country, setting up a system of rule and regulation repugnant to the laws and subversive of his Majesty's government."

Now, it was not known until the resolutions of May 31, 1775, had been brought to light that there was any Mecklenburg manifesto about that time which could answer to the description of Governor Martin, except the resolves purporting to have been passed on the 20th of May. Hence it was held, not without much plausibility on the part of those who believed in the genuineness of the latter, that Governor Martin must have had a copy of *them* before him when he penned the above-cited paragraph. Mr. Jones so argued in his "Revolutionary History of North Carolina," published in the year 1834;¹ and Dr. Hawks took up the same parable on this point in his first publication on the "Mecklenburg Declaration," in the "New York Review" of March, 1837.

It ought to have been seen that the paper of May 20, restricted as it is in its scope to Mecklenburg County, could not have been intended by Governor Martin when he denounced a paper "declaring the entire dissolution of the laws, government, and constitution of *this country*;" but after the discovery of the later resolutions, no room was left for a doubt that it was to them the governor alluded in his proclamation. And thus what Mr. Jones had called "the best evidence of the truth" of the earlier Declaration was cut away under his feet. For the presumption that it was to them Governor Martin referred did not long remain a mere presumption; it was turned into a certainty by the discovery subsequently made, that just before the date of his proclamation he had transmitted a copy of the resolves of

¹ *A Defence of the Revolutionary History of the State of North Carolina from the Aspersions of Mr. Jefferson.* By Jo. Seawell Jones. Boston, 1834.

May 31 to Lord Dartmouth, the British Secretary of State for the Colonies, as being identical with the copy sent off by express to Philadelphia. Mr. Bancroft found the original of this letter in the British State Paper Office. It was written by Governor Martin from Fort Johnston, in North Carolina, under date of June 30, 1775, and contains the following important reference to this topic:—

“The resolves of the Committee of Mecklenburg, which your lordship will find in the inclosed newspaper, surpass all the horrid and treasonable publications that the inflammatory spirits of this continent have yet produced; and your lordship may depend its authors and abettors will not escape whenever my hands are sufficiently strengthened to attempt the recovery of the lost authority of government. A copy of THESE resolves, I am informed, was sent off by express to the Congress at Philadelphia as soon as they were passed in the committee.”

With such contemporaneous evidence before us, we are prepared to assert positively that the paper borne by Captain Jack to the Continental Congress was the manifesto of May 31, and not the alleged Declaration of May 20, which was never printed till the year 1819. It is not often easy to prove a negative, but in the present case we are able to prove that it was *not* the “resolves of May 20” which were sent by proving that it was a later set of resolves which was sent. And as it is agreed on all hands that if there was any declaration of independence made by the people of Mecklenburg in the year 1775, it must be sought in the paper that was sent to Philadelphia, it follows that there was no such declaration as has been imagined; for all admit that the paper of May 31 does not amount to a formal assertion of independ-

ence, brave and magnanimous as are its declarations of fact and principle.

It is easy to understand, but not easy to justify, the motives which have led the believers in the genuineness of the so-called resolves of May 20 to vilipend those of May 31. Thus Dr. Hawks, in an address delivered at Charlotte on the 20th of May, 1857, in celebration of the "anniversary of the Mecklenburg Declaration of Independence," has argued that as the document of May 31 "shows that the men who adopted it were not fools," a question presents itself which, as he thinks, it is not easy for those to answer who disbelieve in the existence of "the greater declaration." That question, as he formulates it, is this: —

"How could men, not fools, suppose it was of the slightest moment to the Continental Congress of all the Colonies in America to know how Mecklenburg County, in North Carolina, appointed her constables and justices of the peace, the extent of jurisdiction given to the latter, the mode of dealing with petty rogues and runaway debtors, and similar matters? What did the Continental Congress care for all these things?"

Forbearing criticism on the singular inaccuracy of Dr. Hawks in thus belittling the resolves of May 31 by taking no account of their Continental features, we beg leave to say that the matter which he thinks so piddling was then (in 1775) the great question of the hour in America. The people of Massachusetts are not commonly supposed to have been "fools" at this juncture, and yet it is known that the congress of this colony sent a "special post" on the 11th of June, 1775, to confer with the Continental Congress on this very subject, — the necessity of concerting

some form of civil government to take the place of that which had lapsed under the then existing rupture between the Colonies and the crown; and this "post" from Massachusetts must have been in Philadelphia about the same time with Captain Jack from Mecklenburg.¹ Cumberland County in New York asked for directions under this same head at the hands of its colonial congress on the 6th of June, 1775.² The proceedings of the Virginian House of Burgesses on the 14th of June, 1775, were entirely occupied with this emergency of the political situation.³ Everywhere in America this was the problem that most engaged the thoughts of men, perplexed as they were by the difficulties incident to that epoch of transition. The people of Mecklenburg were the first to cut this Gordian knot by their incisive declarations made and promulged on the 31st of May, 1775. It is strange that their descendants should be willing to tarnish this singular ornament on the armorial shield of their county to make room for a doubtful quartering. It was not till months after May, 1775, as we learn from the annals of that time, that the delegates in the Continental Congress were ready for the step initiated by Mecklenburg.⁴ The great mass of the people of North Carolina were not ready for this step, insomuch that when the delegates from Mecklenburg in the next Provincial Congress were charged by some "instructions" drawn up by Dr. Ephraim Brevard to vote for the application of these principles to the whole colony, they effected nothing in that direction.⁵

¹ See *American Archives*, fourth series, vol. ii. pp. 621, 955, 960. Cf. p. 1842.

² *Ibid.*, p. 918.

³ *Ibid.*, pp. 1210-1215.

⁴ *Ibid.*, vol. iv. pp. 1136-1140.

⁵ See these remarkable "instructions" in the Reverend William

Having thus shown that the intrinsic importance of the document, because of the relation it bore to the political situation of the American colonies in the year 1775, conspires with the documentary proof and with Governor Martin's information, obtained at the time, to demonstrate that it was the resolves of May 31 which the Mecklenburg courier bore to Philadelphia, we may add, *ex abundantia*, that all these indications are corroborated by the fact that so much of these resolves as was of general interest — to wit, the preamble, the first four resolutions, and the sixteenth in the series — was reprinted at the North contemporaneously with Captain Jack's sojourn near the Continental Congress. It will be remembered by the reader that among the witnesses cited by the North Carolina Legislature in the year 1830, three men testify that "they frequently heard William S. Alexander, deceased, say that he was at Philadelphia on mercantile business in the early part of the summer of 1775, say June; and that on the day that General Washington left Philadelphia to take command of the Northern army, he, the said William S. Alexander, met with Captain James Jack, who informed him, the said William S. Alexander, that he, the said James Jack, was there as the agent or bearer of a declaration of independence, made in Charlotte on the 20th day of May, 1775, by the citizens of Mecklenburg."

It is historically known that General Washington set out from Philadelphia to take command of the army at the North on the 23d of June, 1775. Cap-

tain Jack, it appears, was in Philadelphia at that time as the bearer of a declaration made by the citizens of Mecklenburg, and less than a week afterwards we know that the essential portions of the declaration of May 31 were published in the Northern newspapers.

It is admitted that the resolutions of May 20 were not published at the time of their alleged adoption, nor until more than forty years afterwards. And yet we are asked to believe that while the resolves of May 31, though pitched on a much lower key of patriotic rhetoric, were widely disseminated at the time of their promulgation, spreading, as we know they did, from South Carolina to Massachusetts, none were found that "moved the wing, or opened the mouth, or peeped," to give publicity to the more magniloquent manifesto. No wonder that John Adams, on his "sober second thought," came to believe that the Alexander version of the Mecklenburg Declaration was an impossibility. To this effect he wrote as follows, under date of August 21, in the year 1819, and therefore not very long after the first publication of Alexander's story : —

"I was on social and friendly terms with Caswell, Hooper, and Hewes, every month of their existence in Congress ; with Hooper, a Bostonian, and a son of Harvard, intimate and familiar. Yet from neither of the three did the slightest hint of these Mecklenburg resolutions ever escape. Is it possible that such resolutions should escape the vigilant attention and scrutinizing, penetrating minds of Patrick Henry, R. H. Lee, Mr. Jefferson, Mr. Gadsden, Mr. Rutledge, Mr. Jay, Mr. Sherman, Mr. Samuel Adams? *Haud credo.* I cannot believe that they were known to one member of Congress on the 4th July, 1776." ¹

¹ The *Works* of John Adams, vol. x. p. 383.

In so reasoning Mr. Adams did but draw an inference justified by a logical conversion of the legal maxim which declares that *de non apparentibus et non existentibus eadem est ratio*. This "Mecklenburg Declaration of Independence" did not "put in an appearance" at Philadelphia, and hence he held that this fact, under the circumstances, established a negative pregnant against its existence in the year 1776. And what is clear in the case of Mr. Adams is confirmed, not only by the silence of all contemporary witnesses, but by the express statements of some persons in North Carolina who were in a position where they must have heard of the Declaration if it had ever existed, but who testify in the years 1776 and 1777 that no such Declaration had come to their knowledge. For instance, it is incredible that so intelligent a citizen of North Carolina as James Iredell, afterwards appointed by President Washington one of the justices of the Supreme Court of the United States, should not have known of this manifesto, if it really appeared in the year 1775. Iredell was the early and intimate correspondent of William Hooper. He was the brother-in-law and constant correspondent of Samuel Johnston, that eminent North Carolina patriot who more than any other was the leader of his people in the years 1775 and 1776, and who, as the President of the North Carolina Provincial Congress during these years, was the associate of Colonel Thomas Polk, John McKnitt Alexander, and other alleged signers of the Mecklenburg Declaration. And yet we have the deliberate statement of Iredell, made in the year 1777, that "until very near the time" when "the arbitrary obstinacy" of the king left "no other alternative than indefinite submission or unreserved resistance," he "never heard a man speak on

the subject of independence who did not speak of it with abhorrence and indignation.”¹ This positive testimony makes it impossible to believe that a whole county of North Carolina had publicly declared independence in the year 1775.

And it cannot be said that these resolutions were not known at the time because “they were deemed too violent,” or because “a secret was made of their existence,” for the resolutions really sent to Philadelphia were not only communicated to the North Carolina members of Congress, but were allowed by Captain Jack to be publicly read while he was on his way northwards. He recites in his testimony that when passing through the town of Salisbury (the county-seat of Rowan, about forty miles from Charlotte), on his journey to Philadelphia, he found the General Court in session, and, “at the request of the Court, he handed a copy of the resolutions to Colonel Kennon, an attorney, and they were read aloud in open Court.” He further recites that on the evening after the public reading of the resolutions, two gentlemen, whom he names, called on him at his lodgings, and informed him that they had heard of but one person who did not approve of them, — a fact, by the way, of much significance in this discussion. For it is on record that the Committee of Rowan County, *on the 1st day of June, 1775*, had addressed a special communication to the Committee of Mecklenburg County, asking for an interchange of political proceedings, and expressing the pious hope that, in answer to their united prayers, the people of the two counties might be allowed to have their chartered rights as British subjects, “with the

¹ See McRee's *Life and Correspondence of James Iredell*, vol. i. p. 344. Cf pp. 321-323.

present House of Hanover in legal succession" as the defenders of those rights.¹ If there had been a Declaration of Independence at Charlotte on the 20th of May, 1775, it is impossible that the fact should not have been known at Salisbury, forty miles distant, twelve days afterwards, and, in that event, the Rowan committee would not have been so indiscreet as to plight the allegiance of their Mecklenburg compatriots to the House of Hanover.

Having thus traced the authentic history of the paper that was actually sent to Philadelphia, and having shown that the contemporaneous documentary evidence, that the historical surroundings, that the internal proofs, and that even the most salient facts contained in certificates procured to establish a contrary hypothesis all point to the declaration of May 31, 1775, as being the only one entitled to credence as a genuine document, we might here safely rest our argument and dismiss the further discussion of this long-mooted topic. But if enough has been said to lead irresistibly to the conclusion that the so-called Declaration of May 20 is unhistorical and spurious, it still remains to show that the honor of the Mecklenburg patriots is pledged to the same demonstration. For it is impossible to believe in the verity of the alleged Declaration of May 20, without binding ourselves, in the light of their subsequent conduct, to convict its assumed authors and abettors of base defection from principle and of moral perjury.

It has been urged, indeed, by Dr. Hawks and others, in their defense of the alleged Declaration of May 20, that the resolves of the following May 31 proceed on

¹ See John H. Wheeler's *Historical Sketches of North Carolina from 1584 to 1851*, p. 365.

the assumption of the independence declared at the earlier date. To this effect, referring to the resolves of May 31, Dr. Hawks says: —

“The whole document, . . . as it shows upon its face, is the necessary *consequence* of a previous declaration of independence and dissolution of connection with the parent country, but will scarcely pass for a declaration of independence itself.”

This statement, we submit, exactly inverts the logical relations of the two papers, and flies in the face of evidence lying upon the surface of both. The preamble of the series passed on the 31st of May expressly states the assumption on which the resolutions of that date proceed, and this assumption is no antecedent declaration of the people of Mecklenburg, but a declaration of the British Parliament with regard to the political status of the American Colonies. If there had been a declaration of independence on the 20th of May, is it at all probable that its authors would have ignored the existence of the fact eleven days afterwards? But, sooth to say, the alleged resolves of May 20 are not simply *ignored*, — the hypothesis of their existence is absolutely *excluded* by the particular contents and general tenor of that later series which we know to be authentic.

The resolves of May 31, so far from contemplating anything like a formal or definitive separation from Great Britain, distinctly avow that they are meant to be purely provisional, temporary, and contingent in their “force and virtue.” They declare that the former civil constitution of the Colonies is wholly suspended “for the present,” and enact certain regulations for Mecklenburg until “the Provincial Congress

shall provide otherwise, *or until the legislative body of Great Britain resign its unjust and arbitrary pretensions.*" If, then, the patriots of Mecklenburg *did* proclaim independence on the 20th of May, 1775, they took back their parlous words on the 31st of May, ten or eleven days afterwards. Were they heroes of the Bob Acres sort, that such an imputation should be fastened to their honorable names on no better evidence than that of a legend which is discredited equally by contemporaneous history and by their own acknowledged acts and principles?

But the argument on this point does not end here. The prime movers in the alleged Declaration of May 20 are said to have been Colonel Thomas Polk and John McKnitt Alexander. Among the putative signers of the paper, besides these conspicuous names, we find the names of Waightstill Avery and John Pfifer, whom we otherwise know to have been leading patriots of Mecklenburg at that time.

Now, it so happens that the four men whose names we have thus particularized were elected to represent the county of Mecklenburg in the Provincial Congress of North Carolina, which met at Hillsborough on the 20th of August, 1775, only a few months after, as tradition affirms, the people of that gallant county had solemnly and irrevocably declared themselves independent of the British crown. If there was a Declaration of Independence such as that represented by the paper of May 20, we may be sure that these men would not forswear it in the legislature of their native colony, and before the eyes of their countrymen.

How, then, let us ask, did these Mecklenburg representatives demean themselves in that Provincial Assembly? As independent citizens or as loyal subjects

of King George III. ? On these points let us refer to the law and to the testimony ; that is, to the official minutes of this North Carolina Provincial Congress.

It appears, then, that on the 21st of August, 1775, Messrs. Thomas Polk, John McKnitt Alexander, John Pfffer, Waightstill Avery, Samuel Martin, and James Houston — all reputed signers of the alleged Declaration except the two last named — appeared and took their seats in that body as delegates from Mecklenburg. On the 23d of August a committee, previously appointed for that purpose, reported a Test, which they had prepared to be signed by all the members of the Congress in affirmation of their loyalty to the crown, and in testimony to what they conceived to be their constitutional and hereditary rights as British subjects. The Test ran as follows : —

“ We, the subscribers, *professing our allegiance to the king, and acknowledging the constitutional executive power of government*, do solemnly profess, testify, and declare that we do absolutely believe that neither the Parliament of Great Britain nor any member or constituent branch thereof have a right to impose taxes upon these Colonies to regulate the internal policy thereof ; and that all attempts by fraud or force to establish and exercise such claims and powers are violations of the peace and security of the people, and ought to be resisted to the utmost,” etc.

• “ In testimony whereof we have hereto set our hands, this 23d of August, 1775.”

This “ Test of Loyalty and of Patriotism ” was signed by all the members of the Congress, and among them by Thomas Polk, John McKnitt Alexander, John Pfffer, and Waightstill Avery, the delegates from Mecklenburg, who, we are told, on the previous 20th of May had declared their independence

of Great Britain. Fancying himself present at the adoption of that Declaration, Dr. Hawks exclaims: "The deed was done; these men had pledged all they had, — lives, fortunes, honor; and, true as steel, from that hour to this they never shrank from meeting that pledge." What shall we say, then, of Colonel Thomas Polk, who, besides signing the Test of Loyalty, was a member of the committee which matured "a plan for the regulation of the internal peace, order, and safety of the Province," requiring all officers appointed under it to subscribe the same Test? What shall we say of Waightstill Avery, who, at a later day, again subscribed this Test as a member of the North Carolina Provincial Council? What of John McKnitt Alexander, who, notwithstanding that he supposed himself the clerk of the meeting which passed the Declaration, and the custodian of its records, is known to have protested his loyalty to the British crown as late as April 4, 1776, when, with his two colleagues, Robert Irwin and John Pfifer (both reputed signers of the Declaration), he put his name once more to the above-recited Test as a delegate from Mecklenburg in the North Carolina Provincial Congress which met at Halifax in that year?¹ To suppose that these men had made a "Declaration of Independence" on the 20th of May, 1775, and had pledged their "lives, fortunes, and most sacred honor" to maintain it, is to affix an ineffaceable stigma to their characters, in view of what we know to have been their subsequent acts and declarations.

Nor is this all. We have already seen how his Excellency Governor Martin regarded the resolves of May 31. In his proclamation of August 8, 1775, he

¹ See Force's *American Archives*, fourth series, vol. v. p. 1315.

had denounced them as "traitorous," yea, "most traitorous," because "declaring the entire dissolution of the laws, government, and constitution of this country." This Mecklenburg manifesto is, indeed, very far from being the only publication which his Excellency in that proclamation has denounced as "seditious." But in testimony of their deep indignation at all such calumnious charges, the members of the North Carolina Congress, including the delegates from Mecklenburg, unanimously passed the following preamble and resolution on the 25th of August, 1775:—

"A paper purporting to be a proclamation issued by his Excellency, Josiah Martin, dated on board his Majesty's ship Cruiser, at Cape Fear River, the 8th of August instant, directed to the Moderator of the Provincial Convention at Hillsborough, being read:

"Resolved unanimously, That the said paper is a false, scandalous, scurrilous, malicious, and seditious libel, tending to disunite the good people of this province, and to stir up tumults and insurrections dangerous to the peace of his Majesty's government, and highly injurious to the character of several gentlemen of acknowledged virtue and loyalty; and further, that the said paper be burned by the common hangman."

So sedulous were the members of this Congress, including the delegates from Mecklenburg, to keep themselves in the odor of loyalty! Nor did they rest satisfied with these protestations.

As if apprehensive that some one or another of the associated colonies then represented in the Continental Congress might wish to proceed further and faster in the widening revolt than was compatible with their own notions of duty and safety, these delegates, including those from Mecklenburg, determined

to take precautions against being committed to any rash measures in that direction. A plan of confederation among the insurgent colonies had been broached by Dr. Franklin in the Continental Congress on the 21st of July, 1775, for the purpose of consolidating the desultory opposition they were then waging against British aggression, and this plan was submitted to the North Carolina Congress.¹ But North Carolina was not ripe for such a decisive step, and accordingly the committee appointed to consider this subject reported on the 4th of September, 1775, that they "had taken into consideration the plan of general confederation between the United Colonies, and are of opinion that the same is not at present eligible. And it is also the opinion of the committee that the delegates for this Province ought to be instructed not to consent to any plan of confederation which may be offered in an ensuing Congress, until the same shall be laid before and approved by the Provincial Congress. *That the present association ought to be further relied on for bringing about a reconciliation with the parent state, and a further confederacy ought only to be adopted in case of the last necessity.*"

The Articles of Association, adopted by the Continental Congress October 20, 1774, commence with the declaration that their adherents are "his Majesty's most loyal subjects," and expressly avow allegiance to the Crown.² Moreover, as a loose and voluntary pact of commercial non-intercourse, they had failed to meet the growing demands of the time. Here, surely, was an opportunity for the delegates from Mecklenburg, if they had declared independence on the 20th of

¹ See Force's *American Archives*, fourth series, vol. ii. p. 1887; and vol. iii. pp. 189, 196.

² *Ibid.*, vol. i. p. 913.

May, 1775, to make some show of a stand in defense of their vantage-ground. But how entirely they shared the prudential views of their associates in that Congress will sufficiently appear from the fact that, in common with all the other delegates, they united in the unanimous adoption of an ultra-loyal address to the inhabitants of Great Britain, containing the most vehement asseverations, not only of their "loyalty," but of their "devotion" to the British crown. A few extracts will suffice to show the temper of this document:—

"Traitors, rebels, and every harsh appellation that malice can dictate, or the virulence of language express, are the returns which we receive to the most humble petitions and earnest supplications. *We have been told that independence is our object; that we seek to shake off all connection with the parent state. Cruel suggestion! Do not all our professions, all our actions, uniformly contradict this?*

"*We again declare, and we invoke that Almighty Being who searches the recesses of the human heart and knows our most secret intentions, that it is our most earnest wish and prayer to be restored with the other Colonies to that state in which we and they were placed before the year 1763, disposed to glance over any regulations which Britain had made previous to this, and which seemed to be injurious and oppressive to these Colonies, hoping that at some future day she will benignly interpose and remove from us every cause of complaint.*"

The alleged signers of the Mecklenburg Declaration of Independence who were present in that body, Messrs. Polk, Alexander, Pfifer, and Avery, united in this solemn purgation of their consciences from all taint of disloyalty to the British crown. As it is impossible to believe that such men could have con-

sented to enact a wicked farce before high Heaven, we should be willing on this ground alone to discard the fiction which plaits a crown of thorns for their brows, and puts them in a pillory for all time.

We have seen that Mecklenburg County by her resolves of May 31 had departed from the forms of the British colonial government, and had set up a temporary régime of her own. Other counties and the entire colony had in some respects imitated her example. But mark in the following passages of the same loyal Address how careful the members of this Congress were to guard these acts against misconstruction : —

“Whenever we have departed from the forms of the Constitution, our own safety and self-preservation have dictated the expedient; and if in any instance we have assumed powers which the laws invest in the sovereign and his representatives, it has been only in defence of our persons, properties, and those rights which God and the Constitution have made inalienably ours. As soon as the cause of our fears and apprehensions is removed, *with joy will we return these powers to their regular channels; and such institutions, formed from mere necessity, shall end with that necessity which created them.*

“*These expressions flow from an affection bordering upon devotion to the succession of the House of Hanover as by law established, from subjects who view it as a monument that does honor to human nature; a monument capable of teaching kings how glorious it is to reign over a free people. These are the heartfelt effusions of men ever ready to spend their blood and treasure, when constitutionally called upon, in support of that succession of his Majesty King George the Third, his crown, and dignity, and who fervently wish to transmit his reign to future ages as the era of common happiness to his people.*”

This language certainly does not sound much like "the Mecklenburg Declaration of Independence." And yet Colonel Thomas Polk, the alleged "herald" of that "Declaration," joined in this address to the British people; John McKnitt Alexander, the certifier of the "Declaration," united in these protestations of unswerving loyalty; Waightstill Avery and John Pfifer, alleged signers of the "Declaration," shared in these loyal prostrations before the British throne.¹ If they were honest men, that Declaration must be set down as the invention of a later age. There is not room even for interposing the deprecatory plea that these Mecklenburg delegates may possibly have been absent when this loyal Address was unanimously approved, for a record of absentees was kept by the secretary of the Congress, and their names do not appear in that record. In very mercy to them, as well as in justice to authentic history, we must assume that there neither was nor could have been any such Declaration. If contemporaneous testimony makes its existence historically incredible, the subsequent acts and declarations of its reputed authors and supporters makes its existence morally impossible.

We conclude, therefore, without hesitation, that the only supposition in the premises consistent with all historical probability, with all the known facts, with all contemporaneous documents, with the form and pressure of the times, with the local surroundings of

¹ It is not insinuated that there is anything derogatory to North Carolina patriotism in these loyal professions. We are simply measuring the influence of the alleged Mecklenburg Declaration, to see if we can discern any signs of its existence at that date. "During the course of my life and until the second petition of Congress in 1775," wrote John Jay, "I never did hear any American of any class or any description express a wish for the independence of the Colonies."

the question, with all subsequent testimony as duly weighed, and with the honorable character of the men involved in these transactions, is the supposition that the so-called Mecklenburg Declaration of Independence is a spurious document; not necessarily a document conceived in fraud, but rather, as we are bound to believe, a paper compiled by John McKnitt Alexander in an honest effort to reproduce, according to the best of his recollection, the facts and declarations contained in the genuine manifesto of May 31, after that manifesto had been forgotten, as we know it soon was. The precise terms of that manifesto in passing out of his sight had passed out of his mind, and hence it was easy for its acts and declarations to undergo a rhetorical transfiguration which, when reduced to the forms of speech, ran naturally into a travesty of the familiar phrases popularized in the common mind by the national Declaration of Independence.

It is no part, however, of *our* duty to explain the origin and genesis of the popular myth which came to be superimposed on the actual facts of history by a later tradition. It is with the actual facts that we are most concerned in this inquiry. We are, indeed, willing to believe that there *may* have been a meeting of Mecklenburg patriots at Charlotte on the 19th and 20th of May, 1775 (since it is in evidence that many meetings were held about that time); it may be that the news of the battle of Lexington was brought to this meeting by express; and that on this day a Committee of Public Safety was organized under the impulse of that exciting intelligence. But a Declaration of Independence at that time is shown to be neither credible nor possible.

And this fact would have been recognized at once

on the first publication of the paper in the year 1819, if it had then been known that the precisely similar paper which John McKnitt Alexander placed in the hands of General Davie *was expressly certified by its author to have been compiled from his recollections without the aid of any written records whatsoever.* This fact is not openly stated in the certificate published by his son under the signature of "J. McKnitt" in the year 1819. Whether the certificate in the two cases was different, or whether J. McKnitt, that is, Dr. Joseph McKnitt Alexander, omitted to reproduce this important admission, we are unable to say.¹ The certificate attached to the "Davie copy" was published (we believe for the first time) in the "North Carolina University Magazine" of May, 1853, as part of an article on the Mecklenburg Declaration from the pen of the Rev. Dr. Charles Phillips, an eminent scholar of North Carolina, and at that time a Professor in the University at Chapel Hill.² This certificate as cited by him runs as follows:—

¹ It is now known by all interested in this historical inquiry (what was not known at first) that the name of "J. McKnitt," under cover of which the Mecklenburg Declaration appeared in the year 1819, was really nothing more than the Christian name of Dr. Joseph McKnitt Alexander, the son of John McKnitt Alexander; and in the later stages of the discussion much surprise has naturally been expressed that this gentleman, in giving publicity to a paper received from his father, should have disowned his father's name, and appeared in a masquerade. We learn, however, that the name of "Alexander" was once so common in Mecklenburg as hardly to afford the means of discriminating the individuals who bore it, and that for this reason Dr. Joseph McKnitt Alexander sometimes dropped his patronymic. He unfortunately did so in this instance, and hence the injurious suspicions that have arisen at a later day.

² The "Davie copy" is now lost or mislaid. Deposited for a time in the State Department at Raleigh, it was removed by Governor Swain for the purpose of critically inspecting it, and this critical

It may be worthy of notice here to observe that the foregoing statement, though fundamentally correct, *may not literally correspond with the original record of the transactions of said delegation and court of inquiry, as all these records and papers were burnt with the house on April 6, 1800*; but previous to that time of 1800 a full copy of said records, at the request of Dr. Hugh Williamson, then of New York, but formerly a representative in Congress from this State, was forwarded to him by Colonel William Polk, in order that those early transactions might fill their proper place in a history of this State, then writing by said Dr. Williamson, in New York.

Certified to the best of my recollection and belief, this 3d day of September, 1800.

J. McK. ALEXANDER.

It is greatly to be regretted that this certificate was not published at the same time that the so-called Mecklenburg Declaration was first communicated to the American public, in the year 1819. In the presence of such a candid statement with regard to the untrustworthiness of the document, it would have been difficult to enlist the passions of men in the struggle which has been so long and so violently waged over this paper. The apocryphal recollections of an old man, who is careful to premise that they may not literally correspond with the original record, would have been received by all for what they were worth, without flinging at his head charges of forgery on the one hand, and without making them the gospel of North Carolina patriotism on the other.

It will be seen that in relegating the Mecklenburg inspection brought to light the certificate, which Professor Phillips published in the *North Carolina University Magazine* while Governor Swain was the president of the University.

Declaration to the domain of fable we are doing no despite to the memory of John McKnitt Alexander, and least of all are we detracting from the fame of his compatriots. It is only those who are pledged to the contrary theory who can find any difficulty in confessing their veneration for these "gray forefathers of the State." We have simply wiped the lichen and the moss from their gravestones, that we might the better place on their tombs a garland of immortelles.

Indeed, there is a sense in which we may be said to magnify their transcendent repnte for exalted patriotism by establishing the fact that, in the pious memory of their descendants, they have been so easily converted from flesh-and-blood men into the demigods of North Carolina story. It is only men of real worth who can lend their names to cover the exaggerations of the hero-worshipping fancy, for such men alone can send forth from their personality an influence strong enough to plant in the minds of others, and especially of those who cherish their memories, what Grote, the historian, has aptly called "an *æstrus* for creating and an appetite for believing the legends of the past." It is thus that the symmetrical and majestic proportions of Washington's real character readily expand into the colossal figure which is conjured up by American pride at the mere mention of his name. It is a proof as well of Lincoln's genuine greatness as of the pitying tenderness with which his tragical and untimely end was commiserated that he has been already canonized in our national pantheon. The popular fictions which consecrate and embellish the memories of departed heroes are rarely the inventions of a voluntary deception. Such fictions spring up spontaneously in the breasts of men as the natural reflex of a glory that was real in

their illustrious ancestors. It is enough to explain the origin of these traditions, if at the bottom of them a set of men are found peculiar enough to account for the shadows projected by the fame of their ideal exploits.¹ As Wordsworth sings, —

“Ne'er could the boldest eulogist have dared
Such deeds to paint, such characters to frame,
But for coeval sympathy prepared
To greet with instant faith their loftiest claim.”

The patriots of Mecklenburg in 1775 would seem to have been men of this stamp and mould. Almost more than any others among their contemporaries they are shown to have had “understanding of their times.” If their fame be rested on the resolves of May 31, it is safe to say that they were foremost in the clear and logical conception which they had formed of the civil status created for the American Colonies by the address of both Houses of Parliament to the crown, adopted February 7, 1775, declaring the Colony of Massachusetts in a state of “actual rebellion,” and constructively passing the same sentence of outlawry on all the other Colonies which were giving her aid and comfort. This is glory enough for the Mecklenburg fathers, and it is a glory which cannot be plucked from their brows, even by those who would fain put a false *nimbus* around their heads. It is an inverted and illusory image which, in the shape of the long-cherished legend, looms to the eyes of their

¹ What intractable materials the mythopoiesis can work into its legends we may see in a tradition preserved in the Brevard family, that their ancestor, Dr. Ephraim Brevard, was inspired to write the Mecklenburg Declaration by the Westminster Confession of Faith! The Mahabharata would have done as well if he had been supposed equally familiar with it.

posterity, but, like other shadows, it proves the substance true.

We are well aware that in bringing this pictorial "tale of a grandfather" to the "dry light" of prosaic truth we have discharged an ungrateful office. Men are slow to give up "the mock pearls of history." We still love to quote with a kindling enthusiasm the grand sayings which Plutarch puts in the mouths of the ancient heroes. We confess small thanks to Niebuhr because he has dispelled for us the splendid coruscations with which "the mythopœic fancy" has gilded the auroral dawn of the Roman Empire. With the Switzer we are loath to admit that the tale of William Tell with his bow and arrow is hardly more authentic than the story of Cock Robin, evaporated as it has been into a "solar myth," glancing from the legends of Denmark in the pages of Saxo Grammaticus, and from we know not how many chronicles besides in other lands. And if history could be properly written, as poetry is written, — to express the ideally true rather than the really true, — there might be as much to admire in such superstitions of the head as in those "superstitions of the heart" without which, as the poet tells us, our human life would be poor indeed. But when, as we have shown in the case of the Mecklenburg patriots, it is the sober facts which best illustrate the true nobility of their characters, we do but perform a duty equally to them and to the Muse of History by seeking to rescue their memories from the distortions of romance.

V

THE EMANCIPATION PROCLAMATION¹

THE Emancipation Proclamation is the most signal fact in the administration of President Lincoln. It marks, indeed, the sharp and abrupt beginning of "the Great Divide" which, since the upheaval produced by the late civil war, has separated the polity and politics of the *ante bellum* period from the polity and politics of the *post bellum* era. No other act of Mr. Lincoln's has been so warmly praised on the one hand, or so warmly denounced on the other; and perhaps it has sometimes been equally misunderstood, in its real nature and bearing, by those who have praised it and those who have denounced it. The domestic institution against which it was leveled having now passed as finally into the domain of history as the slavery of Greece and Rome, it would seem that the time has come when we can review this act of Mr. Lincoln's in the calm light of reason, without serious disturbance from the illusions of fancy or the distortions of prejudice.

In order to give precision and definiteness to the inquiry here undertaken, it seems necessary at the threshold to distinguish the true purport and operation of the Emancipation Proclamation from some things with which it is often confounded in popular speech. In the first place, it is proper to say that the

¹ Reprinted from *The North American Review* for February, 1880.

Proclamation, in its inception and in its motive, had nothing to do with the employment of slaves as laborers in the army. Fugitive slaves were so employed long before the utterance of such a manifesto had been contemplated, or the thought of it tolerated by the President. Just as little was the Proclamation a necessary condition precedent to the enlistment of fugitive slaves as soldiers in the army. Mr. Lincoln was averse to the employment of negroes as soldiers at the time he issued the preliminary Proclamation of September 22, 1862, and he remained in this state of mind until the final edict was issued on the 1st of January following. It was not until the 20th of January, 1863, that Governor Andrew, of Massachusetts, received permission to make an experiment in this direction.

We learn from the diary of Mr. Secretary Chase that at a meeting of the Cabinet held on the 21st of July, 1862, the President "determined to take some definite steps in respect to military action and slavery." A letter from General Hunter having been submitted, in which he asked for authority to enlist "all loyal persons without reference to complexion," it appears that Messrs. Stanton, Seward, and Chase advocated the proposition, and no one in the Cabinet spoke against it; but, adds Mr. Chase, "the President expressed himself as averse to arming negroes." On the next day the question of arming slaves was again brought up, and Mr. Chase "advocated it warmly;" but the President was still unwilling to adopt this measure, and proposed simply to issue a proclamation based on the confiscation act of July 17, 1862, "calling on the States to return to their allegiance, and warning the rebels that the provisions of that act would have full force at the expiration of sixty days,

adding, on his own part, a declaration of his intention to renew at the next session of Congress his recommendation of compensation to States adopting the gradual abolishment of slavery, and proclaiming the emancipation of all slaves within States remaining in insurrection on the 1st of January, 1863.”¹ So the first intimation made to the Cabinet of a purpose to proclaim the liberation of slaves in the insurgent States was made in connection with the President’s avowed opposition to the arming of negroes.

Writing from memory, Mr. Secretary Welles states, in his “History of Emancipation,” that the President, “early in August” — he thinks it was the 2d of August — submitted to the Cabinet “the rough draft” of a proclamation to emancipate, after a certain day, all slaves in States which should then be in rebellion, but that Mr. Seward argued against the promulgation of such a paper at that time, “because it would be received and considered as a despairing cry, a shriek from and for the administration, rather than for freedom.”² He further records that the President, impressed with this view, closed his portfolio, and did not recur to the subject until after the battle of Antietam, which was fought on the 17th of September.

Writing in his diary under date of August 3, but referring, doubtless, to the discussions held in the Cabinet on the previous day,³ Mr. Chase records that, “for the tenth or twentieth time,” he urged the adoption of a vigorous policy against slavery in the seceded States by “assuring the blacks of freedom on condi-

¹ Warden’s *Life of Chase*, p. 440.

² *Galaxy*, December, 1872, p. 845.

³ The meeting was held on a Saturday, according to Mr. Welles, and the 3d of August, 1862, was a Sunday.

tion of loyalty, and by organizing the best of them in companies and regiments." He further records that Mr. Seward "expressed himself in favor of any measures which could be carried into effect *without proclamation*, and the President said that he was pretty well cured of objection to any measure, except want of adaptedness to put down the rebellion, but did not seem satisfied that the time had come for the adoption of such a plan as I had proposed."¹

On the 22d of August, just one month after Mr. Lincoln had first opened the subject of emancipation to his Cabinet, he proceeded to take the whole country into his confidence on the relations of slavery to the war. On that day he wrote "the Greeley Letter," — a letter written in reply to an earnest and importunate appeal in which, assuming to utter the "Prayer of Twenty Millions," Mr. Greeley had called on the President, with much truculence of speech, to issue a proclamation of freedom to all slaves in the Confederate States. As this letter was the first as well as the most pithy and syllogistic public discussion which the President ever gave to the subject in hand, it seems proper not only to insert it here in its entirety, but, as a matter of literary curiosity, to reproduce it in its original form. The following is a copy of the letter:—

EXECUTIVE MANSION, WASHINGTON,
August 22, 1862.

HON. HORACE GREELEY :

Dear Sir,—I have just read yours of the 19th addressed to myself through the New York "Tribune." If there be in it any statements, or assumptions of fact, which I may know to be erroneous I do not, now and here, controvert them. If there be in it any inferences which I may

¹ Warden's *Life of Chase*, p. 446.

Executive Mansion,

Washington, August 22, 1862.

How. Horace Greeley:

Dear Sir =

= I have just read yours of the 19th addressed to myself through the New-York Tribune. If there be in it any statements or assumptions of fact, which I may know to be erroneous, I do not, now and here, controvert them. If there be in it any inferences which I may believe to be falsely drawn, I do not now and here, argue against them. If there be perceptible in it an impatient and dictatorial tone, I waive it in deference to an old friend, whose heart I have always supposed to be right.

As to the policy I "seem to be pursuing" as you say, I have not meant to leave any one in doubt.

I would save the Union. I would save it the shortest way under the Constitution. Tho

sooner the national authority can be restored,
the nearer the Union will be "the Union as it
was". ~~Broken eggs can never be mended, and~~
~~the longer the breaking process, the more will~~
~~be broken.~~ If there be ^{those} ~~any~~ who would not
save the Union, unless they could at the
same time save slavery, I do not agree with
them. If there be ^{those} ~~any~~ who would not save
the Union unless they could at the same time
destroy slavery, I do not agree with them.

My paramount object in this struggle is to
save the Union, and is not either to save
or to destroy slavery. If I could save the
Union without freeing any slave I would do
it, and if I could save it by freeing all
the slaves I would do it; and if I could
save it by freeing some and leaving others
alone I would also do that. What I do
about slavery, and the colored race, I do
because I believe it helps to save the Union;

and what I forbear, I forbear because I
do not believe it would keep to save the
Union. I shall do less whenever I shall be-
lieve what I am doing hurts the cause, and
I shall do more whenever I shall believe
doing more will keep the cause. I shall try
to correct errors when shown to be errors; and I
shall adopt new views so fast as they shall
appear to be true views.

I have here stated my purpose according
to my view of official duty; and I intend
no modification of my oft-expressed per-
sonal wish that all men everywhere could
be free.

Yours,

A. Lincoln

believe to be falsely drawn, I do not, now and here, argue against them. If there be perceptible in it an impatient and dictatorial tone, I waive it in deference to an old friend, whose heart I have always supposed to be right.

As to the policy I "seem to be pursuing" as you say, I have not meant to leave any one in doubt.

I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored, the nearer the Union will be "the Union as it was." If there be those who would not save the Union, unless they could at the same time *save* slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time *destroy* slavery, I do not agree with them. My paramount object in this struggle *is* to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do *not* believe it would help to save the Union. I shall do *less* whenever I shall believe what I am doing hurts the cause, and I shall do *more* whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my view of *official* duty; and I intend no modification of my oft-expressed *personal* wish that all men everywhere could be free.

Yours,

A. LINCOLN.

This letter appeared for the first time in the "National Intelligencer" of August 23, 1862.¹

¹ The letter came into my hands from the fact that I was one of

In his interview with the Representatives of the Border States, held on the 10th of March, 1862, Mr. Lincoln had said that, as long as he remained President, the people of Maryland (and therefore of the other Border States) had nothing to fear for their peculiar domestic institution "either by direct action of the government or by indirect action, as through the emancipation of slaves in the District of Columbia or the confiscation of Southern property" in slaves. In that same interview, while making a confidential avowal of these friendly sentiments, he had protested against their public announcement at that juncture, on the ground that "it would force him into a quarrel with 'the Greeley faction' before the proper time." He twice intimated that such a quarrel was impending, but added that "he did not wish to encounter it before the proper time, nor at all if it could be avoided."¹

It was no more than natural, therefore, that these representatives, on the appearance of "the Greeley Letter," should have read between its lines a supposed indication of the President's purpose to break with "the Greeley faction" at an early day. They believed that the President, at the bottom of his heart, was in sympathy with them, and with their theory of the war. They were not entirely disabused of this impression

the editors of the *Intelligencer*, to which Mr. Lincoln sent it for publication. The omitted passage — "Broken eggs can never be mended, and the longer the breaking proceeds the more will be broken" — was erased, with some reluctance, by the President, on the representation, made to him by the editors, that it seemed somewhat exceptionable, on rhetorical grounds, in a paper of such dignity. But it can do no harm, at this late day, to reveal the homely similitude by which Mr. Lincoln had originally purposed to reinforce his political warnings.

¹ McPherson, *Political History*, p. 211.

even after his interview with them on the 12th of July, when he made a last ineffectual appeal to them in behalf of "emancipation with compensation to loyal owners," and when he reinforced his appeal by urging that the acceptance of such a policy would help to relieve him from "the pressure" for military emancipation at the South.

The representatives from the Border States were strengthened in their delusion by a corresponding delusion of the Radical Republicans,¹ who weakly supposed the President at this juncture to be a nose of wax in the hands of what they called "the pro-slavery faction." As late as the 10th of September, ten days before the preliminary Proclamation of emancipation was issued, we find Mr. Chase lamenting in his diary that the President "has yielded so much to Border State and negrophobic counsels that he now finds it difficult to arrest his own descent to the most fatal concessions."² And this impatient insistence of his Radical friends was repaid by the President with gibes and sneers, as when, for instance, on this same 10th of September he taunted Mr. Chase with "the ill-timed jest" that some one had proposed, in view of the Confederate invasion of Pennsylvania, which was then believed to be impending, that he (the President) should issue a proclamation "freeing all apprentices in that State" — on the ground of military necessity!

It was with a like festive humor that, on the 13th

¹ The word "Radical" throughout this paper is used historically, and not in any invidious sense. It is the term by which Mr. Lincoln called the "Stalwarts" of that day, and by which they called themselves.

² Warden's *Life of Chase*, p. 471.

of September, he parried the arguments of the Chicago clergymen who had come to Washington in order to press for a proclamation of freedom. To their representation that the recent military disasters "were tokens of divine displeasure, calling for new and advanced action on the part of the President," he shrewdly replied that, if it was probable that God would reveal his will to others on a point so intimately connected with the President's duty, it might be supposed that he would reveal it directly to the President himself. To the argument that a proclamation of freedom would summon additional laborers to help the army, he replied by asking what reason there was to suppose that such a proclamation would have more effect than the late law enacted by Congress to this end; and, if they should come in multitudes, how, he asked, could they all be fed? To the suggestion that the able-bodied among them might be armed to fight for the Union, he ironically replied, "If we were to arm them, I fear that in a few weeks the arms would be in the hands of the rebels." To the plea that emancipation would give a holy motive and a sacred object to the war, he replied by saying that "we already had an important principle to rally and unite the people, in the fact that constitutional government was at stake — a fundamental idea going down about as deep as anything."

It is true that at the close of his interview the President assured the Chicago committee that he had not "decided against a proclamation of liberty to slaves," and that "the subject was on his mind by day and night more than any other;" but this statement only served to bring into bold relief the little faith he then seemed to have in a measure for which,

considered as a means to the ends proposed by its patrons, he could, with all his meditations, find no good and sufficient reasons. It is true that, on the preceding 22d of July, Mr. Lincoln had said that he was pretty well cured of objection to any measure against slavery except "want of adaptedness to put down the rebellion;" and now, too, he publicly announced that he "did not want to issue a document which the whole world would see must necessarily be inoperative, like the Pope's bull against the comet." It is true that he had previously sketched "the rough draft" of an emancipation proclamation, but he had put it back in his portfolio on the suggestion of Mr. Seward that practical measures against slavery could be carried into effect "without proclamation." It is true that only a few days previously ("when the rebel army was at Frederick"¹) he had registered a vow in heaven that he would issue a proclamation of emancipation so soon as the Confederates should be driven out of Maryland; but this was the conduct either of a man who, in a perplexing state of incertitude, resolves his doubts by "throwing a lot in the lap" and leaving "the whole disposing thereof to be of the Lord," or, as I prefer to believe, it was that prudent and reverent waiting on Providence by which the President sought to guard against the danger of identifying the Proclamation in the popular mind with a panic cry of despair, in which latter case the hesitation of Mr. Lincoln only serves to set in a stronger light the significant fact that other than considerations of military necessity were held to dominate the situation, for, if they alone had been prevalent, the Proclamation could never have come more appropriately than when the military need was greatest.

¹ September 6.

The proximate and procuring cause of the Proclamation, as I conceive, is not far to seek. It was issued primarily and chiefly as a political necessity, and took on the character of a military necessity only because the President had been brought to believe that if he did not keep the Radical portion of his party at his back he could not long be sure of keeping an army at the front. He had begun the conduct of the war on the theory that it was waged for the restoration of the Union under the Constitution as it was at the outbreak of the secession movement. He sedulously labored to keep the war in this line of direction. He publicly deprecated its degeneration into a remorseless revolutionary struggle. He cultivated every available alliance with the Union men of the Border States. He sympathized with them in their loyalty and in the political theory on which it was based. But the most active and energetic wing of the Republican party had become, as the war waxed hotter, more and more hostile to this "Border State theory of the war," until, in the end, its fiery and impetuous leaders did not hesitate to threaten him with repudiation as a political chief, and even began in some cases to hint the expediency of withholding supplies for the prosecution of the war, unless the President should remove "pro-slavery generals" from the command of our armies, and adopt an avowedly antislavery policy in the future conduct of the war. Thus placed between two stools, and liable between them to fall to the ground, he determined at last to plant himself firmly on the stool which promised the surest and safest support.

I am able to state with confidence that Mr. Lincoln gave this explanation of his changed policy a few days

after the preliminary Proclamation of September 22 had been issued. The Hon. Edward Stanly, the military governor of North Carolina, immediately on receiving a copy of that paper, hastened to Washington for the purpose of seeking an authentic and candid explanation of the grounds on which Mr. Lincoln had based such a sudden and grave departure from the previous theory of the war. Mr. Stanly had accepted the post of military governor of North Carolina at a great personal sacrifice, and with a distinct understanding that the war was to be prosecuted on the same constitutional theory which had presided over its inception by the Federal government, and hence the Proclamation not only took him by surprise, but seemed to him an act of perfidy. In this view he hastily abandoned his post, and came to throw up his commission and return to California, where he had previously resided. Before doing so he sought an audience with the President — in fact, held several interviews with him — on the subject, and knowing that, as a public journalist, I was deeply interested in the matter, he came to report to me the substance of the President's communications. That substance was recorded in my diary as follows: —

September 27th. — Had a call to-day at the "Intelligencer" office from the Honorable Edward Stanly, military governor of North Carolina. In a long and interesting conversation Mr. Stanly related to me the substance of several interviews which he had had with the President respecting the Proclamation of Freedom. Mr. Stanly said that the President had stated to him that the Proclamation had become a civil necessity to prevent the Radicals from openly embarrassing the government in the conduct of the war. The President expressed the belief that, without the Procla-

mation for which they had been clamoring, the Radicals would take the extreme step in Congress of withholding supplies for carrying on the war — leaving the whole land in anarchy. Mr. Lincoln said that he had prayed to the Almighty to save him from this necessity, adopting the very language of our Saviour, “If it be possible, let this cup pass from me,” but the prayer had not been answered.

As this frank admission, in the length and breadth here given to it, will doubtless wear an air of novelty to many readers, and may excite suspicions in some minds with regard to the accuracy of my chronicle, the faithfulness of Mr. Stanly’s report, or the sincerity of Mr. Lincoln in making his statements, it seems proper to vindicate the authenticity of the record by an appeal to other facts which abundantly corroborate its truth.

In his interview with the Border State Representatives on the 12th of July, 1862, the President had implored them to relieve him from the Radical “pressure” by espousing with him the policy of emancipation with compensation. This “pressure,” he said, was even then “threatening a division among those who, united, are none too strong.” On the next day, after the failure of this interview to make any impression on the Border State Representatives, the President, for the first time, opened the subject of military emancipation in a private conversation with two members of his Cabinet, — Mr. Seward and Mr. Welles. The President then said, as Mr. Welles reports, that emancipation “was forced upon him as a necessity,” “was thrust at him from various quarters,” but “*had been driven home to him by the conference of the preceding day.*”¹ On the 28th of the same month he

¹ *Galaxy*, December, 1872, p. 843.

wrote to Mr. Cuthbert Bullitt, of New Orleans, that it was "a military necessity to have men and money, *and we cannot get either in sufficient numbers or amount if we keep from or drive from our lines slaves coming to them.*"¹ Even at this date, when the enlistment of colored troops was not meditated, it will be seen that Mr. Lincoln confessed himself obliged to make concessions to the antislavery sentiment of his party in order to procure supplies of men and money, and thus early it was that, as a wary political pilot, he kept his weather eye fixed on the thickening clouds that rose higher and higher in the Northern sky, — clouds full of muttered wrath against him so long as he seemed to hold in leash the thunderbolt they were ready to discharge on slavery. For he prefaced this statement by saying that what he did and what he omitted about slaves "was done and omitted on the same military necessity," — the necessity of having men and money to carry on the war. And the President's apprehensions were not entirely groundless on this score. As early as in the month of May, 1862, Governor Andrew, of Massachusetts, had not hesitated to say "in writing" that the people of that State had come to "feel it a heavy draft on their patriotism" that they should be asked "to help fight rebels" without being allowed "to fire on the enemy's magazine." And, in the very act of submitting the preliminary Proclamation of September 22 to the consideration of his Cabinet, the President avowed that it was issued under the menacing frown of this "pressure;" for when Mr. Montgomery Blair argued against the timeliness of the measure, on the ground that it might "put the patriotic element of the Border

¹ Raymond, *Life and State Papers of Abraham Lincoln*, p. 484.

States in jeopardy," and even "carry those States over to the secessionists," Mr. Lincoln replied that "the difficulty was as great *not to act* as to act"¹ — that is, by not acting in the way proposed he feared a disaffection among his party friends at the North which would be as dangerous to the Union as the disaffection likely to be produced by the Proclamation among the Unionists of the Border States. The President remembered that the Massachusetts Republican Convention, held less than two weeks before, had omitted to pass a vote of confidence in his Administration, but *had* voted that "slavery should be exterminated." Even the Radical members of his own Cabinet had come to think of him and to speak of him as a political recreant. On the 12th of September, ten days before the preliminary edict was issued, Mr. Chase wrote of him as follows: "He has already separated himself from the great body of the party which elected him; distrusts most those who represent its spirit, and waits — for what?"²

The Proclamation when it came put an end, of course, to all this "pressure." Indeed, Mr. Chase admitted, when the President read the paper to his Cabinet, that it went "a step further than he had ever proposed." He had proposed that each commander of a department at the South should be instructed to proclaim emancipation within his district, assuring the blacks of freedom *on condition of loyalty*, and organizing the best of them in companies and regiments.³ But Mr. Lincoln promised and threatened that, on the 1st of January, 1863, "all persons held as slaves within

¹ *Galaxy*, December, 1872, p. 847.

² Warden's *Life of Chase*, p. 471.

³ *Ibid.*, pp. 440, 446.

any State, or designated part of a State, the people whereof should then be in rebellion against the United States, should be *then, thenceforward, and forever free,*" — a declaration which promised the largesse of freedom alike to the "loyal blacks" who escaped within our lines, and to the slaves who voluntarily stood by their masters, because they were unwilling to strike a blow for their own liberty.

If the Proclamation disarmed for a time the bitter opposition of the Radicals, its other political and practical effects were such as abundantly justified the long hesitation of the President in issuing it. It precipitated a crisis which threatened to divide the friends of the Union at the North by a new line of cleavage. If Governor Andrew and his political associates had previously found it a "heavy draft" on their patriotism to sustain the President in his constitutional theory of the war, it now became a heavy draft on the patriotism of conservative Republicans and of war Democrats to sustain him in his new departure. New elective affinities suddenly struck through the seething mass of public opinion, and led to new political formations. A spirit of political giddiness and revolt was shed upon the people in the loyal States. In the ensuing autumnal elections the Republican party was defeated in great States like New York, Ohio, Indiana, and Illinois. When Congress met in December the political signs of the times were full of portents. There was "uneasiness in the popular mind." The attitude of Europe toward us was "cold and menacing" where it did not express itself "in accents of pity" for a people "too blind to surrender a hopeless cause." These are not my words, but the words of Mr. Lincoln himself when, one year afterward, he was

called to review the political, civil, and military situation created by the Emancipation Proclamation. The utterance of the Proclamation, he said, "was followed by dark and doubtful days."¹

The Emancipation Proclamation united the South, where, however, there was but little room for further consolidation. Leading citizens in that section who had previously stood aloof from the war, so long as it was conducted at the South in the name of secession against the constitutional government at Washington, now hastened to give in their adhesion to the Richmond authorities. In his message of December, 1861, Mr. Lincoln had said that "in considering the policy to be adopted for suppressing the insurrection," he had been "anxious and careful that the inevitable conflict for this purpose should not degenerate into a violent and remorseless revolutionary struggle. . . . All indispensable means," he added, "must be employed," but "we should not be in haste to determine that radical and extreme measures, which may reach the loyal as well as disloyal, are indispensable." The Emancipation Proclamation was accepted by these halting Unionists at the South as an indication that the time for "radical and extreme measures" had come in the judgment of the President, and they acted accordingly. "For a time," says Mr. Welles, the proclamation "failed to strengthen the Administration in any section."²

Its effect on the slaves at the South was such as Mr. Lincoln had predicted in his interview with the Chicago deputation. Sanguine advocates of emancipation by edict of the President had risked the confident prophecy that it would be followed by a simultaneous

¹ Raymond, *Life and State Papers of Abraham Lincoln*, p. 454.

² *Galaxy*, December, 1872, p. 848.

exodus of negroes from the South, and that such an exodus would end the war by a *coup de théâtre*. As one of them wrote, "The plough would stand still in the furrow, the ripened grain would remain unharvested, the cows would not be milked, the dinners would not be cooked, but one universal hallelujah of glory to God, echoed from every valley and hill-top of rebellion, would sound the speedy doom of treason."¹ This bubble was pricked by the pen that wrote the Proclamation.

In all these respects the manifesto was comparatively a failure. But it accomplished at once the great end to which it was most immediately directed by the President, — it consolidated the Republican party, and made it more intensely than ever "the war-party of the country." It is true that veteran Republicans, like Thurlow Weed, shrank in dismay from the measure; but in the great body of the party it kindled a new flame of martial enthusiasm, albeit the "roads" in New England did not "swarm" with volunteer soldiers, as Governor Andrew had promised and predicted, during the "pressure" period, would be the case, provided the President would allow them to fight "with God and human nature on their side." The antislavery passions of the North, which had hitherto been kicking in the traces, were now effectively yoked to the war-chariot of the President. The Proclamation lessened for a time the number of his supporters, but it gave to them almost the compactness of a Macedonian phalanx. It put an end to political vacillation and *atermoiement*. Not that the measure in either matter or form was entirely satisfactory to the zealots of emancipation, and not that the President, as Lord

¹ *National Intelligencer*, July 31, 1862.

Lyons wrote to his government, "had thrown himself in the arms of the Radicals." While still refusing to walk altogether in the ways of these extremists, he established such a hold on the rank and file of the Republican army that they followed him without faltering through the shadow of the dim eclipse which obscured their fortunes in the autumn of 1862. A year later, after the victory at Gettysburg and after the fall of Vicksburg, when the shock of arms on a hundred battle-fields had come to supply the country with a new set of emotions, Mr. Lincoln was able to say, "We have the new reckoning."

Doubtless there are those who, on the view here presented, will tax Mr. Lincoln with undue subserviency to party. But it is only just to remember that he tried to avoid its necessity, as with strong crying and tears; that he was called in his political geometry to deal with problems, not theorems; and that he was a tentative statesman, who groped his way *à tâtons*, not a *doctrinaire*. If there be heroes, as Carlyle conceives them, bathed in the eternal splendors, and projected out of the eternities into the times and their arenas, Lincoln did not profess to be of their number.

I pass to consider the force and effect of the Proclamation viewed in the light of constitutional and of public law. And here, again, it is necessary to guard against a confusion of ideas. The question at issue does not concern the right of a belligerent to liberate slaves, *flagrante bello*, by military order accompanied with manucaption, or the right to enlist such liberated slaves in his army, so long as the war lasts. The employment of colored troops, as has been shown, did not depend on the Emancipation Proclamation, for the President was opposed to the arming of negroes when

he first embarked on his emancipation policy. The questions presented by the Proclamation of January 1, 1863, in the shape actually given to it by Mr. Lincoln, are these :—

Firstly. Had the President of the United States, in the exercise of his war powers, a right, under the Constitution and by public law, to decree, on grounds of military necessity, the emancipation and perpetual enfranchisement of slaves in the insurgent States and parts of States ?

Secondly. Did such proclamation work, by its own vigor, the immediate, the unconditional, and the perpetual emancipation of all slaves in the districts affected by it ?

Thirdly. Did such proclamation, working *proprio vigore*, not only effect the emancipation of all existing slaves in the insurgent territory, but, with regard to slaves so liberated, did it extinguish the status of slavery created by municipal law, insomuch that they would have remained forever free, in fact and law, provided the Constitution and the legal rights and relations of the States under it had remained, on the return of peace, what they were before the war ?

Unless each and all of these questions can be answered in the affirmative, the Emancipation Proclamation was not authorized by the Constitution or by international law, and so far as they must be answered in the negative it was *brutum fulmen*. It remains, then, to make inquiry under each of these heads :—

1. As everybody admits that the President, in time of peace and in the normal exercise of his constitutional prerogatives, had no power to emancipate slaves, it follows that the right accrued to him, if at all, from the war powers lodged in his hands by public law

when, as Commander-in-Chief of the army and navy, he was engaged in a life-and-death struggle with insurgents, whose number, power, and legal description gave them the character of public enemies. It is, therefore, to public law, as enfolded in time of war and for war purposes in the bosom of the Constitution, that we are primarily to look for the authority under which the President assumed to act.

Of international law no less can be said than has been said by Webster: "If, for the decision of any question, the proper rule is to be found in the law of nations, that law adheres to the subject. It follows the subject through, no matter into what place, high or low. You cannot escape the law of nations in a case where it is applicable. The air of every judicature is full of it. It pervades the courts of law of the highest character, and the court of *pie poudre*, ay, even the constable's court."¹

This international law, with all its belligerent rights, was everywhere present as a potent force in the civil war between the United States and the Confederate States, so soon as that war had assumed such character and magnitude as to give the United States the same rights and powers which they might exercise in the case of a national or foreign war, and everybody admits that it assumed that character after the act of Congress of July 13, 1861. But international law, in time of war, is present with its belligerent obligations as well as with its belligerent rights, and what those obligations are is matter of definite knowledge so far as they are recognized and observed in the conduct and jurisprudence of civilized nations.

The law of postliminy, according to which persons

¹ Webster's *Works*, vol. vi. p. 122.

or things taken by the enemy are restored to their former state when they come again under the power of the nation to which they formerly belonged, was anciently held to restore the rights of the owner in the case of a slave temporarily enfranchised by military capture. And, if it be admitted that, as regards slaves, this fiction of the Roman law has fallen into desuetude under the present practice of nations, it is none the less true that the government of the United States has earnestly contended, in its intercourse with other nations, for the substantial principle on which the rule is based. We insisted on restoration or restitution in the case of all slaves emancipated by British commanders in the War of 1812-15, and the justice of our claim under the law of nations was conceded by Great Britain when she signed the Treaty of Ghent, and when, on the arbitration of Russia, she paid a round sum, by way of indemnity, to be distributed among the owners of slaves who had been despoiled of their slave property.¹ In the face of a precedent so set and so adjudicated by these great powers acting under the law of nations (and one of them subsequently known as the leading antislavery power of the civilized world), it would seem that, as a question of law, the first interrogatory must be answered in the negative. Slaves temporarily captured to weaken the enemy and to conquer a peace are not lawful prize of war by military proceedings alone — proclamation, capture, and deportation. The more fully it be conceded that international law, in time and fact of war, knows the slave only as a person, the more fully must it be conceded that this law, by purely military measures, can take no cognizance of him as a chattel, either

¹ Lawrence's *Wheaton*, pp. 612, 659.

to preserve or to destroy the master's property right under municipal law. It leaves questions about the chattel to be settled in another forum, and by another judicature than the wager of battle.

Nor does it help the matter to say that in a territorial civil war the Federal government is clothed with the rights of a constitutional sovereign in addition to those of a belligerent; for, though this statement is entirely true, it is not true that both of these jurisdictions apply at the same time, or that it is lawful to import the methods and processes of the one into the domain of the other. A government, for instance, may proceed against armed rebels by the law of war — killing them in battle if it find them in battle array; by public law, confiscating their property; by sovereign constitutional law, condemning them to death, for treason, after due trial and conviction. But each of these proceedings moves in a sphere of its own, and the methods of the one sphere cannot be injected into the sphere of the other. It would, for example, be a shocking violation of both constitutional and public law to shoot down insurgent prisoners of war, in cold blood, because they were "red-handed traitors," and because they might have been lawfully killed in battle. The military capture of a slave and the confiscation of the owner's property rights in him fall under separate jurisdictions, and they cannot both be condensed into the hands of a military commander any more than into the hands of a judge.

2. No principle of public law is clearer than that which rules the war rights of a belligerent to be correlative and commensurate only with his war powers. "To extend the rights of military occupation or the limits of conquest by mere intention, implication, or

proclamation, would be," says Halleck, "establishing a *paper conquest* infinitely more objectionable in its character and effects than a *paper blockade*."¹ It is only so far as and so fast as the conquering belligerent reclaims "enemy territory" and gets possession of "enemy property" that his belligerent rights attach to either. And hence, when Mr. Lincoln, on the 1st of January, 1863, assumed authority, in the name of "military necessity," but without the indispensable *occupatio bellica*, to emancipate slaves in the territory held by the enemy, he contravened a fundamental principle of the public law, — a principle equally applicable to the relations of a territorial civil war and of a foreign war. It is important to observe that where this principle was guarded by the rights and interest of foreign nations, as in case of the Southern ports of entry while they were under the power of the Confederate authority, it was sacredly respected by our government. And in the light of this doctrine it follows that the second of the questions formulated above must also be answered in the negative; for as to large parts of the South Mr. Lincoln had no *de facto* power when he assumed to liberate slaves both *de facto* and *de jure* within all the "enemy territory" at that date.

3. Since the decision of Lord Stowell in the case of the slave *Grace*,² it has been an accepted doctrine of jurisprudence that the slave character of a liberated slave — liberated by residing on free soil — is reintegrated by the voluntary return of such slave to the country of the master. Unless, therefore, the Procla-

¹ Halleck, *International Law*, chapter xxxii. § 2. Cf. 2 Sprague's Reports, p. 149.

² 2 Haggard's Reports, p. 94.

mation of Freedom is held to have extinguished the status of slavery in the States and parts of States affected by it, it would have conferred a very equivocal boon on its beneficiaries. For, unless the municipal law of slavery were wiped out by the Proclamation, and by conquest under it, what prevented a reënslavement of such emancipated blacks as should return to their homes after the war? And this fact was made apparent to Mr. Lincoln and to the whole country as soon as an occasion arose for bringing the matter to a practical test.

On the 18th of July, 1864, when the famous "peace negotiations" were pending at Niagara Falls between Mr. Greeley and certain assumed representatives of the Confederate States, Mr. Lincoln wrote that he would receive and consider "any proposition which embraced the restoration of peace, the integrity of the whole country, *and the abandonment of slavery*, and which came by and with an authority *that can control the armies now at war against the United States.*" It was seen that the emancipation of individual slaves, even of *all* individual slaves in the insurgent States, was worth nothing without an abandonment of slavery itself — of the municipal status in which the slave character was radicated, and in which it might be planted anew by a voluntary return to the slave soil. It was seen, too, that the Proclamation of Freedom, considered as a military edict addressed to "rebels in arms," had created a misjoinder of parties as well as a misjoinder of issues, for the authority which controlled the Confederate armies was not competent to "abandon slavery" in the insurgent States, though it was competent to restore "peace and union" by simply desisting from further hostilities. A misjoinder

of issues was also created, for each State, under the Constitution as it stood, had a right, in the matter of slavery, to order and control its own domestic institutions according to its own judgment exclusively ; and the nation, by the conquest of its own territory, " could acquire no new sovereignty, but merely maintain its previous rights." ¹ The Proclamation proposed to leave the institution of slavery undisturbed in certain States and parts of States, while destroying it in certain other States and parts of States. Hence, on the supposition that the paper was to have full force and effect after the war, while our civil polity remained the same, a new distribution of powers as between certain States and parts of States on the one hand, and the Federal government on the other, would have been created by edict of the Executive. ² Without any express change in the Constitution of the United States, and without any express change in the constitutions of the insurgent States, the status of persons on one side of a State line, or even on one side of a county line, would have depended on municipal law ; on the other side of such State or county line it would have depended on a military decree of the President. In this strange mixture of what Tacitus calls "*res dissociabiles, principatum ac libertatem,*" it would have been hard to tell where the former ended and the latter began ; and to suppose that the civil courts, in the ordinary course of judicial decision, could have recognized such anomalies, while the rights of the States under the Constitution were still defined by that instrument, is to suppose that judges decree justice without law, without rule, and without reason.

¹ 2 Sprague's Reports, p. 148.

² 2 Hurd, *Law of Freedom and Bondage*, p. 787.

It is safe, therefore, to say that the third question above indicated must equally be answered in the negative.

And even if it be held that the President's want of power to issue the Proclamation without the accompanying *occupatio bellica* and that the consequent want of efficacy in the paper to work emancipation *proprio vigore* were cured by actual conquest under it on the part of the government, and by actual submission to it on the part of the seceded States, insomuch that it would have operated the extinction of the slave status in those States, it still remains none the less clear that, without a change in the Constitution of the United States prohibiting slavery in the South, the Proclamation must have failed, with the rights of plenary conquest limited by the Constitution, to insure the perpetual freedom of the slaves liberated under it; for what, under the rights still reserved to the States, would have prevented the future reëstablishment of slavery at the South after the return of peace?

Nobody was more quick to perceive or more frank to admit the legal weakness and insufficiency of the Emancipation Proclamation than Mr. Lincoln. Determined though he was never to retract the paper, or by his own act to return to slavery any person who was declared free by its terms, he saw that, in itself considered, it was a frail muniment of title to any slave who should claim to be free by virtue of its vigor alone. And therefore it was that, with a candor which did him honor, he made no pretense of concealing its manifold infirmities either from his own eyes or from the eyes of the people, so soon as Congress proposed, in a way of undoubted constitutionality and undoubted efficacy, to put an end to slavery every-

where in the Union by an amendment to the Constitution. Remarking on that amendment at the time of its proposal, he said, "A question might be raised whether the Proclamation was legally valid. It might be added that it aided only those who came into our lines, and that it was inoperative as to those who did not give themselves up; or that it would have no effect upon the children of the slaves born hereafter; in fact, it could be urged that it did not meet the evil. But this amendment is a king's cure for all evils. It winds the whole thing up."¹

In the light of these facts, of these principles, and of Mr. Lincoln's own admissions, it would seem that the Emancipation Proclamation was extra-constitutional — so truly outside of the Constitution that it required an amendment to the Constitution to bring the President's engagements and promises inside of the Constitution. And surely it will not be pretended that the President, even on the plea of military necessity, has a right to originate amendments to the Constitution, or to wage war on States until they agree to adopt amendments of his imposing. This would be to "theorize with bayonets, and to dogmatize in blood." This would be to make it competent for the President in time of war to alter the fundamental law of the land by *pronunciamiento* — a mode of proceeding which falls not only outside of the Constitution, but outside of the United States — into Mexico.

The Proclamation fell also outside of the jural relations of slavery under international law. Conceding that slaves, in time of war, are known under international law only as persons, we still have to hold that, as residents of "enemy territory," the slaves here in

¹ Raymond, *Life and State Papers of Abraham Lincoln*, p. 646.

question were by the terms of that code as much "enemies" of the United States as their masters.¹ But the Proclamation treated them as friends and allies. In the eye of municipal law, they were property, and the Proclamation acknowledged them as such in the act of declaring them free; but, as such, they were confiscable only by due process of law, after manucap- tion; and, whether they were confiscated under public law or under sovereign constitutional law would simply depend on the nature and terms of the confiscation act adopted by Congress. If they were confiscated as "enemy property" in order to weaken the enemy, the act would fall under public law. If they were confiscated in order to punish the treason of their owners, whereof such owners had been duly convicted, the act would fall under sovereign constitutional law. But the Proclamation assumed to confiscate the property rights of the slave-owners without any process of law at all; and so it fell as much outside of public law as it fell outside of constitutional law and of municipal law. Nor has any amendment of public law as yet brought within the sanctions of international jurisprudence the pretension of a belligerent to alter and abolish, by proclamation, the political and domestic institutions of a territory within which he has, at the time, no *de facto* power. On the contrary, the pretension is traversed by the latest codifications of international law,² and by the latest publications of our own State Department.³ And hence it is no matter of surprise that the first international

¹ "In war, all residents of enemy country are enemies." — Chief Justice Waite (2 Otto, p. 194), in common with all the authorities.

² Bluntschli, *Das moderne Völkerrecht*, p. 306. (Lardy's French version obscures and misinterprets the text of the original on this point.)

³ Cadwalader, *Digest*, pp. 56, 57, 148, 151.

lawyers of the country, like the Honorable William Beach Lawrence, and the first constitutional lawyers of the country, like the late Benjamin R. Curtis, have recorded their opinion as jurists against the legality of the Emancipation Proclamation.

Lawyers, as Burke said at the beginning of the American Revolution, "have their strict rule to go by," and they must needs be true to their profession, but "the convulsions of a great empire are not fit matter of discussion under a commission of Oyer and Terminer." The Emancipation Proclamation did not draw its breath in the serene atmosphere of law. It was born in the smoke of battle, and its swaddling-bands were rolled in blood. It was in every sense of the word a *coup d'état*, but one which the nation at first condoned and then ratified by an amendment to the Constitution. As Mr. Welles says, "It was a despotic act in the cause of the Union," — an act, he adds, "almost revolutionary," and it was *almost* and not *altogether* revolutionary simply because it fell short of the practical and legal effects at which it was nominally aimed. It was in fact martial law applied to a question of politics and of polity; and of martial law, Sir Matthew Hale has said that "in truth and reality it is no law at all, but something indulged." If we would look for its fountain and source, we must look to an institute which makes small account of all human conventions and charters, the *lex talionis*. The Proclamation was the portentous retaliatory blow of a belligerent brought to bay in a death-grapple, and who drops his "elder-squirts charged with rose-water" (the phrase is Mr. Lincoln's), that he may hurl a monstrous hand-grenade, charged with fulminating powder, full in the faces of the foe. The phenomenon is as old as the history of

civil war ; and because he saw it was likely to reappear, so long as human nature remains the same, Thucydides had a presage that his history of the civil war between Athens and Sparta would be " a possession forever." " War," he wrote, " is a violent master, and assimilates the tempers of most men to the condition in which it places them." So Cromwell, in the hour of his political agony, exclaimed against " the pitiful, beastly notion " that a government was to be " clamored at and blattered at," because it went beyond law in time of storm and stress.

And there *is* something worse than a breach of the Constitution. It is worse to lose the country for which the Constitution was made ; but, if the defense of the Proclamation can be rested on this ground, the fact does not require us to teach for doctrine of law that which is outside of law and against law. Mr. Jefferson held the Louisiana purchase to be extra-constitutional, but he did not try to bring it inside of the Constitution by construction. That he left to others. It seems a waste of logic to argue the validity of Mr. Lincoln's edict. It moved above law, in the plane of statecraft. Not that its author, in so proceeding, moved on the moral plane of the insurgents. He wrought to save, they to destroy, the Union. Not that he acted in malice, for, as he protested, the case " was too vast for malicious dealing." And not that he clearly foresaw the end of his step from its beginning. The fateful times in which he acted the foremost part were larger than any of the men who lived in them, tall and commanding as is the figure of the benigu war President ; and the events then moving over the dial of history were grander than the statesmen or soldiers who touched the springs that made them move. It was a day of elemental stir, and the

ground is still quaking beneath our feet, under the throes and convulsions of that great social and political change which was first definitely foreshadowed to the world by the Emancipation Proclamation of Abraham Lincoln.

VI

THE LAND POLITICS OF THE UNITED STATES¹

WE are all familiar with the large part which was played in the history of Rome by her public lands. They were the seed-plot of periodical public dissensions, and bore almost annually a larger crop of political agitations than of economic products. Every schoolboy knows the successive phases of this agrarian struggle. In the whole of Italy, as in Rome, two contending parties stood perpetually in presence of each other. On the one side was an aristocratic party contending for class privileges and proprietary dominion; on the other was a democratic party contending for larger measures of popular power and for larger shares of beneficiary right in the administration of the public domain.

Questions of land dominion and of land distribution have formed the ultimate ground of political division and debate among men ever since the human race, in the evolution of society, passed from political organization on the basis of common blood, to political organization on the basis of common territory. In this western world of ours, from its discovery by Columbus down to the epoch of the memorable "Monroe Doctrine," the partition of the North and South

¹ A paper read before the New York Historical Society, May 1, 1888.

American continents among the nations of Europe, under alleged rights of discovery, of settlement, or of conquest, formed the great animating motive of maritime adventure and colonial enterprise for more than three centuries, and gave rise to that tremendous activity which was then displayed by the commercial states of Europe in the fields of diplomacy, of war, and of international politics. What is true of Europe as a whole, so long as the appropriation and distribution of the New World were the procuring causes of political dispute, is equally true of the nations established on these continents, with their large tracts of unoccupied land, offering a perpetual bait to immigration, and laying the foundations of their internal policy and public economy in questions relating to the management of the public domain. It remains to add that what is true of all the American nations is especially true of these United States. The great leading factor in the formation of our governmental polity, and in the subsequent divisions of party among us, has always been, in the last analysis, a question relating more or less directly to the distribution of the national domain considered as the source and seat of political power. The salient features of this perennial controversy will engage our attention in the present paper.

The early cartography of North America was wild and fantastic. Supposititious "ways trendin to Cathaia" supplied the places of real bays or straits even on Frobisher's maps of the continent, as elephants supplied the place of towns on maps of Africa in the days of Dean Swift. The colonization of America began at a time when so little was known about the geography of the continent that the London Company, organized for the settlement of Virginia, sent

forth Captain Newport, in 1608, with instructions to sail up the James River till he came to the Pacific Ocean, as John Smith, of Pocahontas fame, was urged by the Council to seek a new route to China by ascending the Chickahominy.¹ The dimensions and the geographical configurations of the several colonies were not only involved in much obscurity, but, owing to the ambiguities of speech necessarily employed in the attempt to describe their respective limits, the metes and bounds of the several colonies were often found to conflict, insomuch that large areas, owing to the overlap of conflicting jurisdictions, were sometimes claimed by two or three, or even more, colonies at the same time. At the beginning of the Revolutionary War, for instance, Virginia asserted a claim, by charter and by military occupation, to the whole north-western territory, and had actually annexed a large part of that territory to her dominion, under the names of Kentucky and Illinois. Massachusetts disputed this claim as to what is now the southern part of Michigan and Wisconsin. Connecticut disputed it as to other portions of what is now Ohio, Indiana, Illinois, and Michigan. New York disputed it in part by virtue of claims based on treaty stipulations with the Six Nations, and so arrayed herself equally against the claims of Virginia, Massachusetts, and Connecticut.²

The British crown was the ultimate arbiter of all dissensions arising from these interfering claims so long as the Colonies were in a state of political vassalage; but when the Declaration of Independence came to break the bands which tied this litigation to the

¹ John Smith, *Discourses*, etc., chap. vii.

² *The Public Domain*, p. 161.

royal throne, the Continental Congress was charged with that high umpirage. It had been charged with this duty by common consent, even before the duty was formulated by the Articles of Confederation. In the Ninth of these Articles it was declared that "the United States, in Congress assembled, shall be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more States concerning boundary, jurisdiction, or any other cause whatever." In addition to this jurisdiction over the public territorial rights of the States, it was further provided that "all controversies concerning the private right of soil claimed under different grants of two or more States" should be determined by a like method of procedure.

This provision of the Articles of Confederation deserves to be lifted into prominence, because it was the germ of that grander and more comprehensive umpirage which afterward came to be lodged in the Supreme Court of the United States, under the Constitution. A High Court of Admiralty, and this High Court of Commissioners created from time to time for the settlement of interstate controversies about matters of territorial jurisdiction, were the only Federal judicatures known under the Articles of Confederation.

Again and again was the Continental Congress invoked for the pacification of public and private strifes about land claims. Even before the Declaration of Independence it was called to bear this heavy burden. In January, 1776, the hardy people who had settled on what was popularly called "the New Hampshire Grants" petitioned Congress to recognize their independence of New York, which from 1749 had asserted a historic claim against New Hampshire to the politi-

cal jurisdiction of the region covered by those grants. When the Declaration of Independence came, without any previous ascertainment of the status of Vermont, her people felt that they had been left outside of the Union, and in 1777 they formally declared themselves to be "a free and independent State." In the unsettled state of the conterminous limits of New York, New Hampshire, and western Massachusetts, so far as they bordered on this Green Mountain country, there was at one time a conflict among all these States as to the jurisdiction of parts of the territory now comprised in the State of Vermont. In June, 1779, the Continental Congress formally intervened to adjust this conflict by appointing a committee to advise and consult with the litigant parties. This committee failed to execute the business intrusted to it, but the Congress, on the 24th of September following, recommended that all the parties at variance should "forbear vexing each other" for the time being. The Vermont people, however, refused to have their rights placed in such indefinite abeyance, and boldly announced that "as they were not included in the thirteen United States, if necessitated to it they were at liberty to offer or to accept terms of cessation of hostilities with Great Britain without the approbation of any other man or set of men," and, furthermore, that "in the absence of protection from Congress they had not the most distant motive to continue hostilities with Great Britain and maintain an important frontier for the benefit of the United States, with the promise of no other reward than the ungrateful one of being enslaved by them."¹ British generals and emissaries

¹ Williams, *History of Vermont*, vol. i. p. 195. Cf. *Vermont State Papers*, p. 120.

from Canada sought for a season to profit by this grave dissension, and to detach the people of Vermont from the Continental alliance, while certain partisan leaders of the Vermont pioneers kept up, on their part, a shrewd parleying, now with the British authorities for the purpose of conjuring the storm of war from their borders, and now with the Continental Congress for the purpose of coercing that hesitating body into a compliance with their wishes, and a recognition of their territorial independence. This dalliance alternately with Congress and with the enemy was adroitly pursued by the Vermont chieftains till the close of the war, not without much current aspersion on their loyalty, because of the ambiguous voices scattered in their diplomatic correspondence, though, as we may well believe, without just disparagement to their patriotism.¹ Alexander Hamilton tells us that even the States which brought forward claims in opposition to those of New York seemed more solicitous to dismember her than to establish their own pretensions, while small States like New Jersey, Rhode Island, and Maryland betrayed a partiality for Vermont in the Continental Congress, until the alleged connection between the Vermont leaders and the British authorities in Canada led to a reaction in the case of the last-named State.²

The disaffection of the Vermontese spread in 1781 to the adjoining counties of New York, and created a revolt in certain regiments enlisted by that State on the east bank of the Hudson. The Vermont government seized upon this territory on the Hudson for a

¹ Elliot's *Debates*, vol. v. p. 10. Cf. *Vermont State Papers*, p. 142 *et seq.*

² *The Federalist*, No. 7.

time, but speedily renounced its pretension on a calm remonstrance made by Washington to Governor Chittenden. Governor Clinton was moved more than once to repel these aggressions by force of arms, and Vermont, on her part, bated not a jot of her contumacy.¹ While the controversy lasted, no quarrel between Highland and Lowland clans in Scotland could have been more bitter and inveterate. The echo of the feud still reaches us in the border minstrelsy of the time, full of taunt and delight of battle.²

¹ William L. Stone, *Life of Joseph Brant*, vol. ii. pp. 179-208.

² Here are a few snatches from one of these Tyrtæan lyrics: —

“Ho! all to the borders, Vermonters, come down,
 With your breeches of deerskin and jackets of brown;
 With your red woollen caps and your moccasins, come
 To the gathering summons of trumpet and drum.

“Come down with your rifles! Let gray wolf and fox
 Howl on in the shade of their primitive rocks;
 Let the bear feed securely in pigpen and stall,
 Here's a two-legged game for your powder and hall.

“On our South come the Dutchmen, enveloped in grease,
 And arming for hattle while canting of peace;
 On our east crafty Meshech has gathered his band,
 To hang up our leaders and eat out our land.

“Does the old Bay State threaten? Does Congress complain?
 Swams Hampshire in arms on our borders again?
 Bark the war-dogs of Britain aloud on the lake?
 Let 'em come! What they *can*, they are welcome to take.

“Come York, or come Hampshire, come traitors, come knaves,
 If ye rule o'er our *land*, ye shall rule o'er our graves!
 Our vow is recorded, our banner unfurled,
 In the name of VERMONT *we defy all the world!*”

The Continental Congress could not intervene with authority in a controversy like this until it had been clothed with plenary power under the Articles of Confederation; and before these Articles could be concerted and ratified among all the thirteen States a much larger question of territorial politics had to be settled.

It has been already intimated that many of the States, under the terms of their respective charters, held vast unappropriated tracts of land in the unexplored western country, extending in some cases from the Atlantic to the Pacific oceans. By some of these States it was at first claimed that, on the dissolution of the tie which had formerly bound them to the Mother Country, each separate State succeeded to the right of eminent domain previously vested in the Crown. The States so situated were quick to see, in the prospective sales of their boundless landed possessions, a vast capital from which they could indemnify themselves for all the losses and expenditures which fell to their share in the prosecution of the Revolutionary War. But the States whose metes and bounds were not of this expansible character were just as quick to protest against the rank injustice of such a pretension. They held that as each State could hope to succeed to the usufruct of its unoccupied lands only after the achievement of independence by the expenditure of the blood and treasure of all the States, it was no less just than logical that all such lands should be held and considered as the common possession of the United States, to be adminis-

From Henry W. De Puy, *Ethan Allen and the Green Mountain Heroes of '76*, p. 405. "Crafty Meshech," in the third stanza, refers to Meshech Weare, President of the Council of New Hampshire.

tered by Congress, and to be sold for the common benefit of the Union.

The landed States were slow to relax their grasp on their territorial possessions as the price of the Union. The landless States were slow to pay the price of Union at the expense of their rightful share in these lands. Even when New Jersey and Delaware acceded to the Confederation without having first obtained a cession of these lands, they did so in the avowed hope and expectation that the landed States would ultimately respond to the call of patriotism in this matter. But Maryland, as we all know, was more persistent in refusing to ratify the Articles of Confederation, and from 1776 down to 1781 kept reiterating her demand in the ears of the Continental Congress, that this vast unoccupied territory should be ceded to the United States as a common property, "subject to be parceled out by Congress into free, convenient, and independent governments in such manner and at such times as the wisdom of that assembly should direct."

At first the Continental Congress, under the predominance of the powerful landed States, had treated this claim with a very gingerly reserve, and had agreed to file the representation made by little Delaware in this matter only on condition that by so doing no presumption was to be raised in favor of the claim "set up or intended to be set up." But the discontent of the landless States was so outspoken, and the refusal of Maryland to ratify the Articles of Confederation was so stubborn, that the Congress was compelled in the end to implore the landed States to heed these clamors of their less richly endowed sisters, and especially the importunate demand of Maryland.

This it did by a formal resolution under date of September 6, 1780.

It is known that New York took the lead in this work of patriotic self-renunciation, and on the 1st of March, 1781, ceded her lands, with certain reservations, to the general government for the benefit of all the States then in the Union, or destined thereafter to become members of the Union. On that same day the delegates of Maryland signed the Articles of Confederation, and made the organic union of the thirteen colonies complete. But this consummation was not reached until after the Revolutionary War had been raging for five years, and until the revolted colonies were almost in sight of that Treaty of Peace which was signed about two years later. It will thus be seen that it was an agrarian question which well-nigh prevented the Union from ever being formed, even under the stress of the great struggle which invited the States to confederate.

And no sooner had the Articles been ratified by all the States than an occasion arose to tax the resources of our young Continental jurisprudence. Not only was Vermont the theatre of an agrarian civil strife, but also in the Valley of Wyoming there was a territorial controversy between the States of Connecticut and Pennsylvania, which dated from the year 1754, and which had four times rolled the tide of battle over its fields and hillsides. In 1782 a High Court of Commissioners was appointed by Congress to sit in Trenton, N. J., for the arbitration of a dispute which had not only drenched this valley with fraternal blood, but which had more than once disconcerted the military plans of Washington. And even after the feud had been superficially appeased by the

adjudication of the Court at Trenton, which decided in favor of Pennsylvania,¹ it broke out afresh at a later day in the shape of an armed crusade proclaimed by the Susquehanna Company, which claimed to hold the Wyoming Valley under authority from Connecticut, and which, at a later stage of its operations, proceeded to recruit armed emigrants for the forcible occupation of the disputed territory. This armed emigration had its *point d'appui* in Hartford, and was honored with the countenance and support of men like Oliver Wolcott and Ethan Allen.

After the treaty of peace with Great Britain had been signed, a new order of territorial complications arose to embarrass the public councils. The people of Vermont, it is true, relaxed for a time their pressure to be admitted into the Union, and consoled themselves with the thought that the Continental Congress, by denying to them the right of representation, had at least forfeited the right of levying taxes on their substance. The troubles in the Wyoming Valley proceeded in the meantime from bad to worse, while in the southwestern part of the country a new territorial disturbance came to perplex the interstate relations of that section. I refer to the agitation which now broke out for the formation of a new and independent State west of North Carolina.

As early as 1776 North Carolina had provided, in her Bill of Rights, "for the establishment of one or more governments westward of that State."² The movement had gathered such head in 1783 that the foreseen creation of the western part of North Caro-

¹ For findings of the court, see *Journals of Congress*, vol. viii. pp. 44 *et seq.*

² Ramsay, *Annals of Tennessee*, p. 284, cf. p. 439.

lina into a separate State led, in that year, to a motion in Congress that, whenever a fourteenth State should be added to the Union, the Articles of Confederation should be so amended as to require the concurrence of *ten* States in cases before requiring the concurrence of *nine*.¹ The people inhabiting this western region proceeded in 1785 to constitute themselves into a State, without waiting for permission either from North Carolina or from Congress.² Erecting an independent State of their own mere motion, they at the same time created an independent currency of their own invention, consisting chiefly of beaver-skins, deer-skins, raccoon-skins, and such like peltries, together with "good distilled whiskey and apple or peach brandy" at a fixed valuation per gallon, while, with genuine frontiersman pleasantry, it was further enacted that the salaries of all officials in the rising commonwealth should be paid in *minskins*! The State thus improvised, with John Sevier for its titular governor, took to itself the name of Franklin, though in the popular parlance of the day it was commonly called by the name of Frankland, — the land of the Franks. The Governor of North Carolina soon proclaimed the seceding Franks in a state of revolt, and this ban of incivism was straightway met by a doughty counterblast from Governor Sevier. The agrarian secession spread even to the adjoining counties of southwestern Virginia, and drew an indignant remonstrance from Patrick Henry, then governor of Virginia, whose legislature had just passed an act making it treason to erect a new State in any part of her territory without first obtaining permission from the General Assembly. In 1785 the

¹ Elliot's *Debates*, vol. v. p. 92.

² Ramsay, p. 293.

new State of Franklin began to treat with its Indian neighbors on an independent footing, as also with the Spanish authorities of the Mississippi Valley, in open contempt of the constitutional prerogatives of the Continental Congress.

It was in view of such proceedings, and of similar mutterings in Kentucky, that, on the 7th of October, 1785, a motion was made in Congress by Massachusetts, and seconded by Virginia, that a committee be appointed to prepare a report expressing "the highest disapprobation of Congress" in view of a disposition on the part of the people in several districts of country within the United States to be separated from the States which have exercised constitutional jurisdiction over them, and, further, signifying the intention of Congress to support any State in its opposition to "such unconstitutional attempts to destroy the fundamental principle of the Union."¹ Mr. Howell, of Rhode Island, proposed, on the same day, to make constitutional provision for the erection of new States within the territory of the Union by so amending the Articles of Confederation that two thirds of the existing States might authorize the creation and admission of new States carved out of any part of the territory of the United States, with the consent of the State interested.² Neither of these resolutions was adopted, but they serve to attest the spirit of agrarian secession, or of "squatter sovereignty," which was then prevalent in different parts of the country.

In the year 1786 the seceders of Franklin opened negotiations with North Carolina for a formal act of separation. Invited, in turn, by the governor of North Carolina to return to their allegiance, they

¹ *Journals of Congress*, vol. 2. p. 245.

² *Ibid.*

replied, through Governor Sevier, that they "would rather suffer death, in all its various and frightful shapes, than conform to anything disgraceful."¹

Meanwhile, John Sullivan, a soldier of fortune, armed with the copious dialect of a swashbuckler, was stirring up the Franks with his free lance, in the effort to enlist their coöperation in a filibustering expedition against the Spanish authorities. Bringing his insolence under the very nose of the Continental Congress, he addressed a rollicking and insulting letter to Gardoqui, the Spanish minister in New York City, and actually proceeded to recruit soldiers in South Carolina and Georgia for his "war of liberation." Writing to the governor of South Carolina he truculently said that the period was close at hand "when the intrepid Tartars of the West, the inexpugnable Kentuckians and the Franks, will dare to proclaim that the Natchez shall be restored, either by negotiation or by arms, and that the right of free navigation of the Mississippi should no longer be withheld by an indolent, jealous, and impolitic nation," to cite the "nice derangement of epithets" with which he characterized the Spanish court and people.²

It is proper to remark that at this epoch the whole southwestern part of the United States was thrown into a state of ferment by the well-understood disposition of a majority of the States in Congress to surrender the right of navigation of the Mississippi River for the next twenty or twenty-five or thirty years. Seven States — all of them Northern States — had voted an act of tolerance for this untoward measure ;

¹ Ramsay, p. 362.

² *American Museum*, vol. iii. p. 438.

not willingly, but under the conceived necessities of the political situation as reported to the Congress by Mr. John Jay, the Secretary of State for Foreign Affairs. The very suggestion of such a policy startled the whole Southwest from its propriety. The legislature of Virginia lifted up its voice in indignant protest, and declared, November 29, 1786, that such a surrender would not only be violative of the natural rights of the Western States, but would tend to destroy "that confidence in the wisdom, justice, and liberality of the Federal councils" which it was so necessary to preserve at a time when men were working for an enlargement of the Federal authority. From that time forth Patrick Henry walked no more with the friends of a stronger Federal Union. Writing from the city of Richmond (Virginia) under date of December 7, 1786, Mr. Madison said, "I am entirely convinced, from what I observe here, that unless the project of Congress [for surrendering the navigation of the Mississippi for twenty-five years] can be reversed, the hopes of carrying this State into a proper Federal system will be demolished."¹

When the echo of the proposed surrender reached Mr. Jefferson, at Paris, he characterized the measure as an "act of separation between the Eastern and Western country, as a relinquishment of five parts out of eight of the territory of the United States," and as "a clear sacrifice of the Western to the maritime States."² The mind of Patrick Henry was so "sour" by the project — the phrase is Mr. Madison's — that he would not even attend the Philadelphia Convention for forming the Constitution, in order

¹ Madison's *Works*, vol. i. p. 264.

² Jefferson's *Works*, vol. ii. pp. 105 and 153.

that he might be entirely free to oppose the instrument which should there be formed.¹ This project for "bartering away" the navigation of the Mississippi well-nigh imperiled the ratification of the Constitution by Virginia and North Carolina. The measure had been supported in Congress by the vote of the seven Northern States against the earnest opposition of the Southern States. It was discussed in secret session. In vain did the Southern delegates implore permission to advise their legislatures of what was meditated. In vain did Grayson, of Virginia, and his colleagues protest that such a surrender was a breach of the covenant made with Virginia when she ceded her "back lands," because it would lower their market value, and postpone indefinitely their formation into new States; that it would deprive the Western and Southern States of a natural right; that it would permanently fix the weight of population on the northern side of the continent, and operate a virtual dismemberment of the Union by occluding the Southern States from spreading westward on the territory allotted to them by the physical geography of the country.²

The Spanish minister, Gardoqui, emboldened on his part by the concessions made to the admitted strength of the Spanish position in the Mississippi Valley, was privately hinting to members of Congress, with a jocoseness exceeded only by its effrontery, that "the people of Kentucky would make good Spanish subjects, and would become such for the sake of the privilege annexed to that character."³ He openly argued with Mr. Jay

¹ Madison's *Works*, vol. i. pp. 264, 283.

² *Secret Journals of Congress*, vol. iv. pp. 44-130.

³ Elliot's *Debates*, vol. v. p. 97.

(playing upon a well-known sensibility in New England) that the rapid settlement of the West would be injurious to the old States.¹

We can now understand why it was that William Grayson, when he came to be a member of the Virginia Convention which sat, two years later, in judgment on the Constitution, opposed its ratification with a vehemence second only to that of Patrick Henry. Referring to this very issue, Grayson exclaimed, in the Virginia Convention : " I look upon this as a contest for empire. . . . This contest of the Mississippi involves this great national contest ; that is, whether one part of the continent shall govern the other. The Northern States have the majority, and will endeavor to retain it. This is, therefore, a contest for dominion, for empire."² Patrick Henry cited this same sectional spectre, in order to frighten the Virginia Convention from the ratification of the Constitution. He said : " To preserve the balance of American power, it is essentially necessary that the right of the Mississippi should be secured. . . . But the settlement of the country will not be warranted by the new Constitution, if it will not be forbidden by it."³ Colonel Bloodworth conjured up the same spectre in the North Carolina Convention, for he, too, had been a member of the Continental Congress of 1786, when the seven Northern States were willing to accept this provisional surrender. " When I was in Congress," he said, " the Southern and the Northern interests divided at the Susquehanna."⁴

¹ *Secret Journals of Congress*, vol. iv. p. 52.

² *Elliot's Debates*, vol. iii. p. 365.

³ *Ibid.* pp. 352, 353.

⁴ *Ibid.* vol. iv. pp. 167, 186.

North Carolina, we know, declined, on the 1st of August, 1788, to ratify the Constitution, and largely because of misgivings on this subject. Hence it was that, with the view of quieting these misgivings, the Continental Congress, on a motion made by her delegates, solemnly resolved, on the 16th of September, 1788, that the rumored disposition of Congress to surrender the navigation of the Mississippi was [then] unfounded; that the free navigation of that river was a clear and essential right of the United States; and that no further proceedings should be had in pursuance of the negotiations authorized to be undertaken by Mr. Jay in 1786.¹ In the meantime eleven States had ratified the Constitution, and so the whole subject of the navigation of the Mississippi was handed over to the new government. But Charles Pinckney, of South Carolina, who had been the file-leader of the Southern opposition in 1786, was careful to acquaint President Washington with the grounds of that opposition, for his information and guidance in the conduct of future negotiations with Spain.² A great peril, as well as a great panic, had now been safely overpast, but we can see that it was a question of territory, with political dominion annexed, which well-nigh defeated the adoption of the Constitution, as at an earlier epoch in our annals it was a question of territory, with political dominion annexed, which had long balked the ratification of the Articles of Confederation.

In justice to Mr. Jay, it should here be added that, with the candor which was an integral part of his nature, he openly confessed, in 1788, that subsequent developments in the shape of political "circum-

¹ *Secret Journals of Congress*, vol. iv. p. 453.

² *Correspondence of the Revolution*, vol. iv. p. 300.

stances" and popular "discontents" had interposed to render "questionable" the views and opinions which in 1786 had seemed to him "advisable."¹ In the game of applied politics — often a calculus of probabilities among contingent events and imponderable forces — a statesman may sometimes show more wisdom in being fortuitously wrong as the event turns out, than in being fortuitously right according to a drift and posture of events which could not be foreseen. The considerations which had reconciled the foreign secretary to tolerate a temporary waiver of our claim to the navigation of the Mississippi, as a choice of evils, in 1786, were national and not sectional, from his point of view. Southern men like Henry Lee, of Virginia, felt and acknowledged their full force in view of the commercial distress which then prevailed in the New England States, and for which a commercial convention with Spain was held to be the only remedy.² The extremity of that distress stirred the compassion of the friends of the Union even in South Carolina.³

No wonder that Jay deplored "the private rage for property" which at that time was suppressing public considerations and national interests. Few people at the present day have any adequate conception of the wild agrarianism which, alike in its private and public manifestations, was prevalent in the United States from the conclusion of the Treaty of Peace, in 1783, to the ratification of the Constitution, in 1788. It was not only in Vermont and Pennsylvania, in North Carolina and Virginia, that this spirit was rife. On

¹ *Secret Journals of Congress*, vol. iv. p. 452.

² *Correspondence of the Revolution*, vol. iv. p. 141.

³ *Elliot's Debates*, vol. iv. p. 284.

the soil of Massachusetts it came to the surface in the hideous shape of Shays's Rebellion, — a sort of social and agrarian Jaquerie. Suppressed in Massachusetts as a rebellion, it lingered as a discontent in her politics, and spread a leaven of unrest in the neighboring provinces of Vermont and Maine.¹ Among the members of the Massachusetts Convention which sat in judgment on the Constitution in 1788 were eighteen or twenty men who had been in Shays's army, while many of the delegates sitting in it from the province of Maine were "squatters on other people's lands."² In Connecticut this popular agitation took the form of a real or affected fear that the Continental Congress would seize and appropriate the ceded and unceded lands of the West for the benefit of the Southern States.³ Convention after convention of alarmists was called to emphasize this anti-Federal clamor.⁴ In New Jersey it took the form of a land-company enterprise, offering special inducements to encourage immigration into that State, for the avowed reason that the other States had not sufficiently considered her landed rights in the Confederation, but had — some of them, at least — reserved to themselves vast tracts of unlocated land, by the sale of which to avoid their comparative share in meeting the burdens of Federal taxation.⁵ New Jersey had, moreover, a special ground of offense, because the Continental Congress, after having affirmed, in 1782, the right of her citizens to "a tract of land called Indiana," on

¹ *Life of Timothy Pickering*, vol. ii. p. 374; *Works of Madison*, vol. i. p. 278.

² *Correspondence of the Revolution*, vol. iv. p. 207.

³ Stuart, *Life of Jonathan Trumbull*, p. 640.

⁴ *Connecticut Courant*, passim, in 1784.

⁵ See *Connecticut Courant*, April 20, 1784.

the Ohio, had refused, in 1784, at the instance of Virginia, to enforce that right, or even to entertain it.¹ While the people of Vermont were weighing the advantages of an exemption from Federal taxation against the disadvantages of political isolation, the friends of the Union in recusant Rhode Island were mourning the loss of their share in the proceeds from the sales of the ceded lands. In New York a powerful land-company, with John Livingston at its head, was bargaining with the Iroquois Indians for a nine hundred and ninety-nine years' lease of a large tract now embraced within the limits of the Empire State, — a proceeding which was solemnly annulled by the legislature of New York in 1788.² Kentucky was knocking at the door of Congress for admission into the Union, and at the same moment, in 1788, was holding, in the Virginia Convention, the balance of power on the ratification of the Constitution by that State, and so was in a position to decide whether there would be any Union worth the entering.³ In Pennsylvania the insurgent leader of the Susquehanna Land Company, John Franklin, had been arrested, and in the latter part of the year 1787 had been deported to Philadelphia, that he might there be put on trial for high treason against the State. In retaliation for this arrest, Timothy Pickering, the quartermaster-general of the Revolutionary army, and afterward Secretary of State of the United States, was kidnapped, carried into captivity, and held as a hostage for the safety of the Connecticut land-robber. In the would-be State of Franklin, John Sevier had

¹ *Journals of Congress*, vol. vii. p. 278; vol. ix. p. 45.

² *American Museum*, vol. iii. p. 448.

³ *Madison's Works*, vol. i. p. 399.

been arrested, imprisoned, held for trial, violently rescued by his adherents, declared civilly dead by the authorities of North Carolina, and then had gone into voluntary exile. South Carolina and Georgia were at loggerheads on a question of their respective boundaries. At the Muscle Shoals, in a bend of the Tennessee River, a band of land-pirates, composed of Spaniards, runaway negroes, Cherokee Indians, Creek Indians, refugee Canadians, and Tories, had long terrorized the country far and wide in their vicinage.¹ The impotence of the Federal Union lent itself to all forms of agrarian disorder, even within the bounds of the oldest and best settled States; for something of the frontiersman spirit still lingered at that day even in our Atlantic States, with their tales of the border rehearsed at the fireside, not as

“ Old unhappy, far-off things,
And battles long ago,”

but as a vivid reminiscence of recent history in Indian wars. The whole country seemed to be agonizing in the last throes of political dissolution. Washington wrote to John Jay, in 1786, that more of wickedness than of ignorance was mixed with our councils.² Jefferson wrote to Madison, in 1787, that a separation of the western part of the country from the Eastern States must be supposed possible at every moment.³ Even a patriot so true as Richard Henry Lee, sunk up to his eyes in a Slough of Despondency, could see in the whole United States only “two very unprincipled parties,” in the year 1787, — “one composed of little insurgents, men in debt who wanted no law, and

¹ *American Museum*, vol. ii. p. 3 of the Chronicle.

² *Life of John Jay*, vol. i. p. 243.

³ *Jefferson's Works*, vol. ii. p. 153.

who wanted a share in the property of others, levelers, Shaysites, etc. ;” the other composed of men who were “ avariciously grasping at power and property, aristocrats, Morrisites, etc.,” as he denominated them.¹

While these local troubles were becoming more and more endemic in our body politic, the Continental Congress had provided for itself a vast theatre on which to exhibit the storm and pressure of a territorial struggle for political power. Virginia, following the example of New York, had completed her cession to Congress in 1784. After the preliminary articles of peace had been signed in 1782, many delegates in Congress had urged that the Continental Congress should proceed at once to define the western boundaries of the landed States and assume control over all western territory of the Confederacy falling outside of the limits of the States as thus defined, without waiting for cessions from these States. In this opinion the delegates from New Jersey and Maryland were supported by the great authority of James Wilson, of Pennsylvania ; but the prevalent sentiment of Congress was in favor of waiting for a formal cession of the western territory before concerting measures for its sale and settlement.²

As regards the proper relations of the “ back lands ” to the Federal Union, three divergent opinions were in presence of each other at different periods under the government of the Continental Congress : first, that the lands should be ceded to the Union for fiscal purposes alone, and that each State should retain the political jurisdiction of the territory which it ceded ;

¹ *Observations, etc.*, p. 37.

² *Elliot's Debates*, vol. v. p. 83.

second (a phase of opinion which gathered strength after the preliminaries of the Treaty of Peace had been signed), that the Continental Congress should take possession of the "back lands," and assume paramount jurisdiction over them as of natural right, without deferring to the claims of the landed States; and third, that the Congress should adhere to its declared policy of waiting for a formal cession of these lands, with the political jurisdiction annexed, before proceeding to establish regulations for their government.¹

That the last-named view prevailed, and neither of the other two, is a fact of tremendous import in our political history. If the land-ceding States had retained their political jurisdiction over the territory as ceded by them for fiscal purposes alone, then new States would have been carved out of this territory at their instance, and not at the initiative of Congress; the Federal government would have lacked a great object of common political concern, and yet would not have escaped the bone of contention offered by the partially conceded territory, for the contention would have been sure to arise on the proposed admission of each new State that should have been formed under the auspices of the mother State.

If the second view had prevailed, a strong flavor of nationality would have been infiltrated into the government, even under the Articles of Confederation. For this view gave a large extension to the doctrine of construction and of national prerogative right as against the assumptions of the landed States.²

¹ *Ibid.* pp. 59, 83, 87, 93. Cf. *The Thomson Papers* (N. Y. Historical Collections for 1878), pp. 145-151.

² This difference of opinion as to the rights of the United States,

So soon as Virginia had completed her cession in 1784, Jefferson brought in a bill for the government of the western territory, with a proviso against slavery after the year 1800 in all the States, ten in number, that should be formed out of it. This slavery restriction failed to be adopted, but, with this exception, and with the omission of certain fantastic names for the proposed new States, the Jefferson ordinance was passed, April 23, 1784.

The next step in this territorial legislation was taken by Rufus King, the distinguished grandfather of the worthy gentleman who still adorns a historic name at the head of this Society. On the 16th of March, 1785, Mr. King submitted the following resolution: "*Resolved*, That there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d day of April, A. D. 1784, otherwise than in punishment of crimes whereof the party shall have been personally guilty. And that this regulation shall be an article of compact and remain a fundamental principle of the Constitution between the thirteen original States and each of the States described in the said resolve of the 23d day of April, 1784." ¹

This resolution was referred to Messrs. King, Howell, and Ellery. On the 6th of April following,

and of certain particular States, in the "back lands," crops out in the debates of the Federal Convention. It was at the heel of a long discussion turning on this difference that that body finally decided to leave the whole matter in abeyance under the Constitution, by simply providing that Congress should be empowered to make "all needful rules and regulations respecting the territory" of the Union, without prejudice to "any claims either of the United States or of any particular State." Elliot's *Debates*, vol. v. pp. 494-497.

¹ *Papers of Old Congress*, vol. xxxi. p. 327.

King reported the following modification of his motion: "*Resolved*, That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d day of April, 1784, otherwise than in punishment of crimes whereof the party shall have been personally guilty. And that this regulation shall be an article of compact and remain a fundamental principle of the Constitution between the thirteen original States and each of the States described in the said resolve of the 23d day of April, 1784, any implication or construction of the said resolve to the contrary notwithstanding; *Provided* always, That upon the escape of any person into any of the States described in the said resolve of Congress of the 23d day of April, 1784, from whom labor or service is lawfully claimed in any one of the thirteen original States, such fugitive may be lawfully reclaimed and carried back to the person claiming his labor or service as aforesaid, this resolve notwithstanding."¹

This resolution was appointed for consideration on April 14, but it was never called up for final action.²

Meanwhile the bonds of the Confederation were growing weaker and weaker, and the disposition of this public domain, enlarged by the cession of Massachusetts in 1785 and of Connecticut in 1786, was seen to be "an obvious and fruitful source of contest,"

¹ *Papers of Old Congress*, vol. xxxi. p. 329.

² Though the resolution is preserved in the handwriting of Rufus King, his well-known views on the subject of slavery make it probable that he was overborne in the committee by his two colleagues, and that for this reason he was little inclined to press for the adoption of the regulation in its altered shape.

whether in the Union or outside of the Union, if it were to be dissolved. *In* the Union, it would lead to a contest for political preponderance between the Northern and the Southern States. *Outside* of the Union, it would lead, as Alexander Hamilton forewarned, to a huge game of physical power between the land-ceding and the non-land-ceding States, — the former trying to regain their cessions, and the latter trying to retain their hold on what each might regard as its proportionate share in a property which had once been declared common.¹ After two abortive attempts had been made by the Seventh and Eighth Congresses to digest a new plan of government for the ceded territory of the Union, it was in July, 1787, when the spirit of giddiness and revolt among the people and the States was at its height, that the whole subject of the government of the Northwest Territory was reopened, and this renewed discussion it was which led to the adoption of the “Memorable Ordinance of 1787,” as it is popularly and properly called.

This ordinance put an immediate interdict on slavery, but the interdict was accompanied with the proviso suggested more than two years before, for the rendition of fugitive slaves. In this shape it was passed unanimously.² What, now, were the grounds of such a surprising unanimity among States which had previously shown so much jealousy of each other in this matter of the common territory? The reason is not far to seek. The ordinance of Jefferson was comprehensive in its scope, and, applying as it did to territory to be ceded as well as to territory already

¹ *The Federalist*, No. 7.

² That is, by the unanimous vote of the States. Only one member of Congress voted against the measure.

ceded, it would have been applicable to new States formed south of the Ohio as well as north of the Ohio. The States of South Carolina, North Carolina, and Georgia had not yet made their cessions, and the Southern States, for economic as well as political reasons, may have shrunk in 1784 from committing themselves to all the length and breadth of Jefferson's antislavery policy. But in 1787 they may have seen, in the lateral spread of the Northern States towards the west, the earnest and pledge of a similar lateral spread of the Southern States in the same direction, so soon as the opportunity should present itself. It is certain that Southern members of Congress were quick to avail themselves of this territorial precedent, so soon as the opportunity did present itself in the cession made by North Carolina three years afterwards.¹

To these special considerations it should perhaps be added that in 1787 Southern statesmen seem to have looked with more complacency on the westward growth of the Union than Northern statesmen. The one solitary vote recorded against the ordinance of freedom came from Abraham Yates, of New York. George Clymer, of Pennsylvania, with the ordinance before his eyes, did not hesitate to proclaim, on the floor of the Federal Convention, that the encouragement of the western country to form new States "was suicide on the part of the old States."² "Of what use will

¹ Mr. Madison hints that the primary motive of Congress in restricting the spread of slavery in 1787 may have been not so much to prevent the interior dispersion of slaves already in the United States as to discourage the importation of slaves from abroad, by narrowing the space open to occupation by that unfortunate class of beings. Madison's *Works*, vol. iii. p. 165.

² Elliot's *Debates*, vol. v. p. 487.

the western country be to the United States?" queried Fisher Ames, of Massachusetts, in 1790.¹ "An ineradicable dread of the coming power of the Southwest lurked in New England, especially in Massachusetts," says Bancroft.² Many of the Eastern and Northern States had "back lands" of their own to sell, and why should they be eager to impoverish their own fisc, deplete their population, and lower their political prestige for the benefit of the West?³ Gor-

¹ *Life, Journal, and Correspondence of Rev. Manasseh Cutler, LL.D.*, vol. i. p. 135.

² *History of the United States*, vol. vi. p. 263.

³ It was to these States that Grayson referred when, in writing to Washington from his seat in the Continental Congress in May, 1785, he held the following language: "Several of the States are averse to new votes from that part of the Continent [the western], and some of them are now disposing of their own vacant lands, and of course wish to have their particular debts paid, and their own countries settled in the first instance, before there is any interference from any other quarter." *Correspondence of the Revolution*, vol. iv. p. 103. Nathan Dane, it is true, appeared before the Massachusetts legislature in November, 1786, and made an argument for the proper disposition of the western lands, but he considered them mainly as a source of revenue to the Federal treasury. See full report of speech, *Pennsylvania Herald* (Philadelphia), Nov. 29, 1786.

The Ordinance of 1787 was gratefully accepted in New England, not only because it opened a path to freedom and enterprise, but also because it opened for the States of the East a way of escape from the impending peril of being stifled by a spawn of small-fry States at the West. Under the Jefferson ordinance each of the ten States for which it provided was entitled to enter the Union so soon as the number of its inhabitants was equal to that of the smallest State already in the Union, to wit, Delaware, with a population of only thirty-five thousand. Just a week before the Ordinance of 1787 was passed, Rufus King referred in the Federal Convention to the urgent necessity of altering an impolitic arrangement which made it possible for ten new States to be added to the Union without a greater addition to the population of the West than the number of people represented by a single one of the original States, to wit, Pennsylvania. This consideration doubtless helps to explain the unanimity of Congress in

ham, of Massachusetts, openly avowed in 1787 that he wished to see the Mississippi shut, for the advantage of the Atlantic States.¹

At the South, on the contrary, the friends of the Union, even in reluctant North Carolina, were exulting in the prospect that, because of their "large quantities of uncultivated lands," the Southern States would soon have greater weight in the Union than the Northern.² "The people and strength of America," said Butler, of South Carolina, in the Federal Convention, "are evidently bearing southwardly and southwest-erly."³

But, apart from such prospective advantages, there was another reason, based on grounds of private economics, why the Southern statesmen of 1787 easily reconciled themselves to the passage of the ordinance in the shape it finally took, with a proviso for the rendition of fugitive slaves. In 1785, a committee composed exclusively of Northern men had offered this compromise to the Southern States in return for the inhibition of slavery after the year 1800. But the Southern delegates were not ready at that date for such a transaction. The transaction involved a political concession on the part of the North, — a concession made in the well-understood hope at that time that slavery would be of only temporary duration in the Union.⁴ The far-reaching consequences of the

passing the measure, as also the dispatch with which it was passed, for at the time he spoke Mr. King expressed a fear that the evil was "irrevocable" as to one of these embryo States. Elliot's *Debates*, vol. v. p. 280.

¹ Elliot's *Debates*, vol. v. p. 103.

² *Ibid.* vol. vi. p. 186.

³ *Ibid.* vol. v. p. 309.

⁴ Such was the opinion of Oliver Ellsworth, of Connecticut. Even as to the slave trade he said: "Let us not intermeddle. As popula-

arrangement could not then be foreseen, though it must have been seen that the regulation added a new hardship to the lot of the slave. If the slave, to use the language of feudal law, was already a *villein in gross*, tied to the person of his master by the municipal law of the slave State, he now became, *pro hac vice*, and in the eye of national law, a species of *villein regardant*, tied to the soil of the slave State by Federal law. This latter feature was, however, so secondary, as compared with the former, that many determined haters of slavery in 1787 seem to have conquered their repugnance to it; perhaps it was because the incident, being political in its nature, and resting back on the law of a slave State, may have seemed to involve no element of personal responsibility for the status of the slave. Even Washington, with all his repulsion to slavery, was, says Bancroft, "severe" to the runaway slave.¹ The best men of the South in that day were not unwilling to regard slavery as a transitional and deciduous institution; yet, while it lasted, they wished to enjoy the full usufruct of their slave labor. Hence the unanimous compact made, in the Ordinance of 1787, for the recapture of fugitive slaves. By this compact the Southern States secured in the Northwestern Territory a privilege they did not possess in the States, for the States, at that time, were "uncharitable" to each other (as Mr. Madison phrased it) in the matter of returning fugitive slaves.

But this proviso in our Ordinance of freedom led

tion increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country." Elliot's *Debates*, vol. v. p. 458.

¹ *History of the United States*, vol. vi. p. 179.

the way to a portentous after-birth in the labor-pangs of that formative epoch in our annals. It was the precursor of the fugitive-slave clause which came soon afterwards to imbed itself in the Constitution of the United States. Between the Continental Congress sitting in New York and the Federal Convention sitting in Philadelphia, in 1787, there was a constant interchange, not only of ideas and proceedings, but also of members; for a few members of the one body were members as well of the other body, and so the fugitive-slave clause of the Ordinance trickled from that instrument into the Constitution, and the rendition of fugitive slaves, after being an "article of compact" among the States as to the common domain, became, *nemine contradicente*, an article of Constitutional agreement among the States as to their common Union.¹ In like manner, the clause of the Constitution which forbids the States to pass any law "impairing the obligation of contracts" took its norm from the Ordinance, the text of which was expressly cited by Rufus King, on the floor of the Federal

¹ Elliot's *Debates*, vol. iv. p. 286; vol. v. p. 492. In the unanimity with which this clause was adopted Judge Story finds "a proof at once of its intrinsic and practical necessity," as conceived by the framers of the Constitution in 1787. "Without it," he says, "the Union could not have been formed." (Prigg case, 16 Peters, 611.) Judge McLean, on information and belief purporting to be derived from Chief Justice Marshall, avers that without it "no Constitution could have been adopted." (McQuerry case, 5 McLean, 478.) Such negatives do not admit of strict proof, however great may be the probability in their favor.

The statement contained in the "Declaration of Independence" with which South Carolina accompanied her Ordinance of Secession in 1860, to the effect that a provision for the rendition of fugitive slaves was made by Virginia "the condition of cession of the territory which now composes the States north of the Ohio River," is entirely unhistorical, so far as I can discover.

Convention, as the justifying precedent for such a regulation.¹ That the Ordinance fell before the eyes of the Philadelphia Convention is proved by the fact that it was published in full in a Philadelphia newspaper, "The Pennsylvania Herald," on the 25th of July, 1787. It is a remarkable fact that, in the original documents connected with the passage of the Ordinance, as still preserved in the Library of Congress at Washington, the clause providing for the slavery interdict, accompanied with a proviso for the rendition of fugitive slaves, is entirely in the handwriting of Nathan Dane, while certain other amendments, in the body of the instrument, looking to more liberal rules for the descent of property, are in the handwriting of William Grayson, of Virginia.

While Southern statesmen, assembled in their State conventions in 1788 to pass on the Constitution, were recounting the advantages of the South under that instrument, to wit: The permission to import slaves till 1808, and to recover their fugitive slaves in all parts of America under Federal jurisdiction, Northern statesmen, assembled in similar convention, in their respective States, were recounting the advantages of the North under that same instrument, to wit, as Mr. Wilson expressed it in Pennsylvania: That the prohibition of the importation of slaves after 1808 would lay a foundation for ultimately banishing slavery from the country, while "the new States which were to be formed would be under the control of Congress" [in their condition of territorial pupilage], and, therefore, "slavery would never be introduced amongst them." This optimistic forecast of Mr. Wilson was justified by the facts before him in 1788, for

¹ Elliot's *Debates*, vol. v. p. 487.

the two Southern States which insisted, at the epoch of the formation of the Constitution, on reserving the right to import slaves till 1808, had insisted on that right for the benefit of *existing States alone*,¹ and not for the benefit of any new States which might be subsequently admitted into the Union, while South Carolina, less than a month after the passage of the Ordinance of 1787, had ceded her western lands to Congress, without making any reservation against the prohibition of slavery in the territory so ceded.

But North Carolina, by *her* deed of cession in 1790 — the first concluded under the present Constitution — was careful to make reservation against the right of Congress to establish any regulation tending to emancipate slaves in the territory so granted. Here was the entering wedge of that great dissidence between the Northern and the Southern States which, in the matter of the territories, was destined at a later day to rive the Union in twain for a time. It was the first beginning, under the Constitution, of that long politico-agrarian struggle which finally culminated in the outbreak of our late civil war.

In the year 1798, the Congress, in accepting a cession of land from Georgia, volunteered to exempt it from the antislavery clause of the Ordinance of 1787. The issue between the Northern and the Southern States was here distinctly joined as to territory every inch of which fell outside of the limits embraced in the so-called "compacts" of 1784 and 1787. The Congress was here dealing with a virgin soil, and

¹ The exact language of the Constitution is: "The importation of such persons as any of the States *now existing* shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808."

could wed it either to freedom or to slavery according to its own will and pleasure. Mr. Thatcher, of Massachusetts, moved, in the House of Representatives, to put an interdict on slavery in this territory. The motion received only twelve votes. In the presence of such a vote, we see at once that the idea of an equitable division of territory between the Northern and the Southern States had already imbedded itself in the political consciousness of the country. This idea was, indeed, openly avowed, in the course of the debate on Thatcher's motion, by Robert Goodloe Harper, of South Carolina.¹

We now come, in the order of time, to a new stadium in the portentous progress of territorial politics in the United States, — the acquisition of Louisiana by purchase from France. That that purchase was abundantly justified by indispensable considerations of national safety, unity, and expediency will now be denied by no American citizen; but at the time when Jefferson effected the purchase it was complicated not only with grave questions of constitutional right but with still more burning questions of sectional politics, arising from the antagonism between the slave-holding and the non-slave-holding States. At first, the Southern friends of the acquisition sought to appease the discontents of its Northern opponents by representing that the terms of the treaty made with France did not bind the United States to admit any new States carved out of this territory. It was so represented by John Taylor, of Carolina, in the Senate, and by John Randolph, of Roanoke, in the House of Representatives. It was a flimsy pretence which deceived nobody. In due time, Louisiana

¹ Annals of Fifth Congress, vol. ii. p. 1306.

was admitted as a State, but not until Josiah Quincy, of Massachusetts, had proclaimed, on the floor of the House of Representatives, that by that act "the bonds of the Union were virtually dissolved; that the States which then composed it were free from their moral obligations, and that as it was the right of all, so it would be the duty of some, to prepare definitely for a separation, — amicably if they can, violently if they must." It was the voice of the eloquent Northern Gracchus protesting that the tabernacle of the Constitution, beneath which Massachusetts sat, could not be stretched "to form a covering for the inhabitants of the Missouri and the Red River country."¹

The controversy which arose on the admission of Missouri was but the normal projection and culmination of the feud opened by the Louisiana purchase; and the compromise by which that controversy was temporarily composed did but give formal expression to a geographical line of partition between the two sections. The idea which had before been implicit in our politics now became explicit. It was this fact which gave to the Missouri Compromise line its tremendous significance in the eyes of Mr. Jefferson. He said that the question awoke him "like a fire-bell in the night." He predicted that such a line of demarcation between the two sections, when once conceived and held up to the angry passions of men, would never be obliterated, but would be marked deeper and deeper by every new irritation.

In studying our history by its epoch-making events, we have to note that, with the advent of the Missouri question, the slavery polemic in our country passed from the forum of economical discussion and ethical

¹ Speeches of Josiah Quincy, pp. 196, 214.

debate into the arena of politics. The epoch of this transition has, therefore, I repeat, a tremendous significance in our annals. Forty years later, the polemic passed from the arena of politics into the field of battle and shock of arms.

Meanwhile, in the first lull of the political storm excited by the Missouri question, the southeastern limits of the United States had been rounded off by the purchase of Florida from Spain, which was concluded in 1821. The acquisition was so obviously required by considerations of national advantage and territorial symmetry that it evoked no opposition, except from those who saw in the limited terms of the treaty a renunciation of certain territorial pretensions based on the supposed extent of the Louisiana purchase. Yet President Monroe acknowledged that he took, by the Florida treaty, less territory than Spain was willing to grant, because of the repugnance with which the eastern part of the Union had long viewed the aggrandizement of the country towards the south and west. So even here the spectre of sectional discord loomed above the horizon of our national diplomacy.¹

Moreover, the State of Maine was admitted into the Union about this time, as a counterpoise to Missouri, just as Kentucky and Vermont had been almost simultaneously admitted as counteracting make-weights at the beginning of the government under the present Constitution. The idea of a balance of power between the trading and the planting States had formed the basis of a compromise reached between these States in the formation of the Constitution. In the progress of events, this balance had been transferred from economics to politics, and, therefore, from States pitted

¹ Benton, *Thirty Years' View*, vol. i. p. 15.

against each other by difference in their industries to States pitted against each other by a difference in their social systems and political ideas. That is, the sectional equilibrium of the States comprised in the Union, from being avowedly economical and latently political, had now become avowedly political and latently economical. It is true that, in the closing years of his service as a Senator from New York, Rufus King had offered an olive-branch for the pacification of the standing feud between the sections. He proposed that the proceeds of the sales of the public lands should be applied to the emancipation of slaves and to their colonization outside of the United States. His plan of "compensated emancipation" awoke no echo at the time, — it came too soon for men whose ears were tingling with the strife of tongues; and when the echo did come, in the days of Abraham Lincoln, it came too late for men whose ears were stunned by the clash of arms. The Gulf Stream of American politics will henceforth be found in the trend of our national debates on the subject of slavery, considered in its relation to the sectional equilibrium between the North and the South, and this sectional equilibrium will henceforth be dressed and redressed within the Territories as the favorite seat of its oscillations.

It was this consideration which gave to the annexation of Texas its chief significance. Party lines as to this measure were not, it is true, distinctly drawn on geographical premises, but nobody doubts that it was the bearing of the question on the sectional equilibrium which procured for the project its warm support at the South, and its warm opposition at the North. When the question of annexation was first

mooted, in 1837, John Quincy Adams avowed the "solemn belief" that its consummation "would be, *ipso facto*, a dissolution of the Union;" and on the eve of its consummation, in 1844, the Legislature of Massachusetts declared that such an act of admission would have "no binding force whatever" on the people of that State, — a passionate threat which soon gave way before the sober second thought of her people as expressed by the patriotic toast of her honored son, Robert C. Winthrop, "Our country, *however bounded*, still *our* country." The extension of slave territory as an element of political power was at this time justified by Southern statesmen, not only in our domestic politics, but even in our international diplomacy. Interpreting the annexation of Texas to Mr. Pakenham, the British minister at Washington, Mr. Calhoun, then Secretary of State, wrote as follows, under date of April 18, 1844: "That which is called slavery is really a political institution, essential to the peace, safety, and prosperity of those States of the Union in which it exists." ¹

Then came the war with Mexico, a natural though not an inevitable sequel of the annexation of Texas. The war, in its latter stages, was prosecuted with an avowed sectional purpose, — the aggrandizement of the Southern States by the acquisition of new territory from which to carve out new States to redress the wavering balance of power in favor of pro-slavery politics. The Representatives and Senators of a majority of the Northern States threw the "Wilmot Proviso" in the opposite scale of the political balance. From this time forth the bitter waters of our political

¹ Twenty-Eighth Congress, First Session; Senate Document 341, p. 53.

strife were a Marah which never grew sweet, and a Meribah which knew no calm. In vain was it proposed by the South that the Missouri Compromise line should be extended to the Pacific. In vain was it proposed by the North that an absolute interdict should be formally put on the spread of slavery in any and every direction. In vain was it hoped that the sectional feud had been composed by the compromise measures of 1850, — a series of measures in which we meet precisely the same attempted reconciliation of irreconcilable elements which has already met us in the formation of the Ordinance of 1787, for, as in 1787 the Southern States accepted an inhibition on the spread of slavery into the Northwestern Territory if they could be favored with a compact for the rendition of slaves, so now, in 1850, they accepted the admission of California as a free State, and even the prohibition of the slave traffic in the District of Columbia, if they could be favored with a more stringent law for the recaption of their fugitive slaves.

Four years later came the formal repeal of the Missouri Compromise, with a fatuous effort to effect a new solution of the slavery problem by changing the field of its discussion from Congress to the Territories. The people of each Territory were to be free to prohibit or to establish slavery, "subject only to the Constitution of the United States," as expounded by the Supreme Court. This latter clause was the skulking Guy Fawkes, secreted, with powder and dark lantern, in the Kansas and Nebraska bill, for the explosion of the stately edifice reared on the basis of "Squatter Sovereignty." Under the lead of this essentially agrarian institute, the question of slavery passed from Congress to the territorial legislatures of Kansas

and Nebraska; from these courts of political *pie poudre* it passed to the Supreme Court of the United States; from the Supreme Court it passed to the Dred Scott decision; from the Dred Scott decision it passed to a sectional scramble of immigrants from the North and from the South for the first occupation of the disputed territory; from the scramble of angry and hostile immigrants it passed to armed politics in Kansas; from the tussle of armed politics in Kansas it passed to the formation of a powerful political party, organized in every Northern State, for a determined resistance to the further spread of slavery on the North American continent. As to the rest of this eventful history, is it not written in the election of Abraham Lincoln; in the attempted secession of eleven slave-holding States; in the Titanic war for the Union; in the abolition of slavery by constitutional amendment; and in the social and economic unification, for the first time, of the whole American people within the bounds of their common Union? Henceforth we may labor for social and economic progress without disturbance from the jar and jostle of the old sectional equilibrium.

From this abstract and brief chronicle of our history, it will be seen that the public lands, as complicated with two distinct classes of States differently endowed under this head, or as complicated with two distinct political economies, or as complicated with two distinct social systems comprised in the same Union, have been the great controlling factor in our Federal politics. At each stage of our national progress, we mark the presence of an unstable political equilibrium, produced by an antagonism of sectional interests; and this oscillation has always reached its

highest ascension and widest sweep in what Grayson, of Virginia, called, in 1788, "a contest for empire" through the possession of territory as the seat and source of political power in the Union. At the very threshold of our national life, in the formation of the Articles of Confederation, it was a question between the landed and the landless States. At the opening of the Philadelphia Convention in 1787, it was at first a question between the large and the small States, and when this ground of discrimination was lost from sight in the equality of suffrage, conceded alike to small and to large States, in the Senate, it became a question of comparative political power between the planting and the trading States. This economic distinction between these two classes of States was really produced by the presence of slavery in the one section, and by its absence from the other. As this fact became more and more obtrusive, the lines of party formation in the United States tended more and more to coincide with the geographical boundaries which separated these two divergent social systems from each other, and this schism in our body politic always came to its clearest line of cleavage in questions about territory, as the earnest and pledge of political power. It was nominally a struggle for the territories on the borders of the Union. It was really a struggle for empire in the government at Washington. From the beginning to the end of our annals, it is questions of land which have always created the great friction points and burning points of American politics. The "irrepressible conflict," in its form, was an agrarian struggle. It was agrarian ambition which, for a season, made Virginia unwilling to cede her public lands. It was an agrarian clamor for equal rights in the common lands which

made New Jersey and Delaware loath to sign the Articles of Confederation, and which caused Maryland to hold out in stubborn resistance for the term of five long and weary years. It was a feeling of agrarian inequality which pitted the small States against the large, in the opening discussions of the Philadelphia Convention. And, finally, it was a question of territorial politics, growing more and more clearly defined between the slave-holding and non-slave-holding States, which at last brought "these two great repulsive masses" into the collision and shock of our civil war.

It is a far cry from the valley of Wyoming, before the Constitution was formed, to the plains of Kansas, where our civil war found its first prelude skirmish; but the controversy in Wyoming was a small battle in which territorial politics were accentuated with flint-locks, while the controversy in Kansas was a large battle in which territorial politics were accentuated with Sharpe's rifles. In Wyoming, it was a controversy between the Susquehanna Land Company of Connecticut and the henchmen of the Penn proprietary and his assigns. In Kansas, it was a controversy between the New England Emigrant Company and the "Border Ruffians" of Missouri. In Wyoming, the controversy ultimated in an abortive attempt to carve a new free State — the so-called State of Westmoreland — out of the flanks of Pennsylvania. In Kansas, the controversy ultimated in an abortive attempt to carve a new slave State out of soil which had been dedicated to freedom. In Wyoming, the hotbed of territorial politics produced a partisan leader obscurely known to history by the name of John Franklin. In Kansas, the hotbed of

territorial politics produced a partisan leader conspicuously known to history by the name of John Brown. From Wyoming to Kansas, and from Kansas to "States dissevered, discordant, belligerent," the combat was constantly deepening in its elements and in its issues, but it is always a combat about land.

As it was, in its form, a territorial struggle which precipitated the great political land-slide attempted by the seceding States in 1861, so it was a modification of that same struggle, placed now on a military footing, which helped to close our "bloody chasm." If considerations of Federal politics had conspired with the physical geography of the country, and with its economic necessities, to dictate the acquisition of Louisiana in 1803, this same physical geography, and these same economic necessities, conspired with our Federal politics, in 1861, to decree that there should be no scission in the political geography of the country, and that no rival nation should be in a position to debar "the great West" from its natural right to the free navigation of the Mississippi River. The secession of Louisiana and of her sister States in the South and Southwest opened, it is true, a dreadful chasm in the forum of national politics, but into that dreadful chasm the armed chivalry of the land continued to run for four long years, after the manner of Curtius in the old Roman myth, until at last the chasm was closed. The very acquisition of foreign territory, and its incorporation into our body politic, which seemed to Josiah Quincy, in 1811, a sufficient cause for dissolving the Union, became, in 1861, our coigne of vantage in battling for "an indestructible Union of indestructible States."

When that steadfast Abdiel of the Union in South

Carolina, the late James L. Petigrn, was first informed on the streets of Charleston, in 1861, that Louisiana had passed an ordinance of secession, he exclaimed: "Well, well, that is too bad! Perhaps some show of argument may be made for the pretended right of secession in one of the old thirteen States which made the Union and the Constitution, but—*Louisiana!* By the infernal gods! we bought that State, and she certainly has no right to take *herself* out of the Union!" The grim pleasantry of the saying was meant to point a deeper moral, the moral that the political geography of the country is inextricably blended with the physical geography of the country, and that what God has joined together no man can put asunder. Just one hundred years ago William Grayson, of Virginia, saw, as in prophetic vision, that the Mississippi Valley was to be the valley of decision for the swarming multitudes of the South and West in their "contest for empire" with the North and East. The real tug of the contest came in a way which he foresaw as little as Josiah Quincy, of Massachusetts, foresaw its destined outcome; for when the smoke of battle was lifted from the bloody lists, at the close of our civil war, it was seen that the Mississippi Valley had put its determining weight in the scale of freedom, and not, as some men wished and as other men feared, in the scale of slavery. The agrarian politics of the North were sometimes as short-sighted as the agrarian politics of the South, but in all this strife, whether of tongues or of swords, the stars in their courses were fighting for "Liberty and Union, now and forever, one and inseparable."

VII

THE STATES'-RIGHTS CONFLICT OVER THE PUBLIC LANDS¹

EVER since the human race, in the evolution of political society, passed from the stage of clan government to that of government based on territorial occupation, questions about land, as the seat and symbol of political power, have formed the grounds of ultimate civil debate among men. Questions of land, whether arising from the impacts of population under the pressure of a conscious or unconscious Malthusianism, or whether arising from motives of pure and simple political aggrandizement, have arrayed continent against continent, people against people within the bounds of the same continent, and state against state within the bounds of the same confederation. The inter-continental proportions of this great secular conflict may be seen to-day in the eagles of war and diplomacy gathering around the carcass of Africa in the wake of the vultures formerly drawn by the ravin of the slave trade. The desolating wars waged for the establishment and maintenance of a balance of power in Europe illustrate the sway of the same principle among the great states comprised within the bounds of that continent. The chronic conflict between the states of the Germanic confederation, a conflict brought to an end, in some of its acuter symptoms, on the field

¹ A paper read before the American Historical Association, December 27, 1888.

of Sadowa, and the bitter feud which so long obtained between the slaveholding and non-slaveholding States of the American Union, a feud brought to an end at Appomattox, in Virginia, in the year 1865, will suffice to illustrate the tremendous pressure of this same principle within the bounds of the two greatest confederations of the modern world. It is to some of the salient features of "Land Politics" in the United States that the present inquiry will be directed.

The conflict over the public lands of the United States has been essentially a States'-rights conflict in point both of substance and of form. The roots of the conflict are deeply planted in the colonial history of the country. The American colonies, at the outbreak of the Revolutionary War, had not learned to love one another, or even to live together on terms of good neighborhood. The points of political difference between them were better defined than their points of political unity. They differed from each other in the nature of the charters by which they were held and administered. And these administrative differences were aggravated by a difference in the social and economic institutions of the several provinces. The Eastern colonies were democratic in their social tissue, being chiefly composed of moderate freeholders. The Southern colonies had but few moderate freeholders, and were dominated by a planting aristocracy, in whom the possession of slaves had generated the virtues and faults of feudalism, as described by Burke, — a spirit of freedom fortified by the haughtiness of domination. The population of the Middle colonies partook of a blended character compounded from both of these elements. These discriminations were distinctly recognized in the political literature contemporaneous with

the formation of the Constitution, and, as just stated, are almost textually cited from a well-known pamphlet of Richard Henry Lee.¹

But the distinction which more than any other imperiled the formation of our political union at the outbreak of the Revolutionary War was a distinction based on a difference in the territorial claims of the several colonies as organized by the Continental Congress for the maintenance of American independence. Several of the States comprised in the Union had definite and circumscribed boundaries. Others had indefinite and uncircumscribed boundaries stretching westward to the South Seas. By the "landless" States it was maintained that the unoccupied western territory, wrested from the British crown by the joint exertions of the States united, should enure, in reason, justice, and right, to the benefit of the United States. The landless States differed, however, among themselves in defining the terms on which the public lands should be held for the usufruct of the Confederation, all of them except Maryland holding that they should be used simply for the fiscal benefit of the Union, while the political jurisdiction should continue to vest in the States to which this vast domain was nominally and severally attached. Maryland, with a clearer insight into the conditions of the problem which Congress was called to solve, insisted that the political jurisdiction of the territory should be ceded to the Union, in common with the land itself, and that the said territory should be subsequently parceled out into free and independent States for admission into the Union. The great "landed" States of Massachusetts, Connecticut, New York, and Virginia scouted for a time this

¹ See Ford's *Pamphlets on the Constitution*, p. 296.

arrogant pretension of the "landless" States. In the successive stages and phases of this controversy the States' rights over the public lands came to a sharp definition. It was more and more accentuated, until at last the Maryland view prevailed. The great landed States, with a few reservations not needing to be recited in this general view, made a cession of their lands, with political jurisdiction annexed, to the government of the United States.

The political watershed of American history is to be found in this supreme determination of the territorial question presented to the American people in the interval from 1776 to 1781 and 1782. It is the "Great Divide" which has determined all the political strategy of subsequent times in regard to the disposition of the public lands. The dispute on this subject was so sharp, and the contumacy of Maryland against the pretensions of the landed States was so persistent, that it was not until 1781 that she signed the Articles of Confederation and completed the formal bond of the Union.¹ The Revolutionary War had meanwhile been lasting five years. The country was already in sight of the peace which came in 1783 to crown the struggle for independence. But the conflict over the public lands, instead of being appeased after 1781, was only the more definitely brought into the lists prepared for the joust and tourney of contending sections. Virginia, the most commanding of all the States in point of territorial possessions, had not yet completed her cession. Maryland, in spite of her long delay, had simply yielded her assent to the Articles of Confederation in the faith and hope that the example set by

¹ H. B. Adams, *Maryland's Influence upon Land Cessions to the United States.*

New York would be speedily followed by all the landed States. Long before her, New Jersey had acceded to the Union with the promise that she did so in the hope and expectation that the landed States would ultimately respond to the call of patriotism in this matter.

And after this controversy had wellnigh imperiled the formation of the Union, it returned to vex the negotiations connected with the conclusion of peace. It was a States'-rights conflict over the public lands which prevented, for a time, any agreement in the Continental Congress as to the terms on which peace should be concluded. Indeed, the question was distinctly presented and discussed, whether, on the cessation of hostilities with Great Britain, it might not become necessary for the landless States, with the power of the Union at their backs, so far as they could wield it, to take the State of Virginia in hand and reduce her to submission in the matter of her landed pretensions. Threats of civil war and portents of civil war were freely bandied about at that crisis on the floor of the Continental Congress. Persons are still living — the writer is one of them — who witnessed that remarkable scene on the floor of the United States Senate when, in 1856, the Hon. Benjamin F. Wade, of Ohio, naturally incensed at an expressed approval of the assault made upon Senator Sumner, openly challenged the Southern Senators then and there to the ordeal of mortal combat. Extraordinary as that defiance was, even on the eve of an armed conflict for the political possession of the territories, it was but the loud reverberation of a similar challenge uttered over the public lands in 1782, when, as in 1856, some men were eager for the fray, while others were seeking just as eagerly to put off

the evil day of military conflict over this burning question. As this prologue to the swelling scenes of our land politics at a later day is not so familiarly known in our annals, it may be well to reproduce some of its most striking notes.

It was while a hot discussion was pending in the Continental Congress as to the terms on which peace should be concluded with Great Britain, that this whole controversy between the "landed" and the "landless" States witnessed a sharp recrudescence. The representatives of the landless States were not eager for a peace which should enure to the special benefit of the landed States, by leaving them in the possession of a vast domain acquired by the common blood and treasure of all the States. The representatives of the landed States were not eager for a peace which should enure to the special benefit of the Union at their expense. In support of the former view, a special emphasis was laid by its advocates on the moral rights of the landless States and the moral rights of the Union, as against the technical rights of the landed States. In support of the latter view, a special emphasis was laid by its advocates on the reserved and sovereign rights of States as against those who would fain strip the landed States of possessions admitted to belong to them before the war, and of possessions which had not been surrendered by the Articles of Confederation. The pure and simple terms of this conflict over the public lands in 1782 will distinctly appear from the following résumé of the debate which was had at that period over this topic.

John Rutledge, of South Carolina, on the 8th of August, 1782, said that he did not enter into the war for himself or for those inhabiting the lands on the

waters falling into the Atlantic, but for posterity, — for those who would hereafter inhabit the country beyond the mountains, to the extent formerly claimed by the crown of Great Britain as belonging to these thirteen States. He would continue the war forever rather than be circumscribed in narrower bounds.¹

John Witherspoon, of New Jersey, held that the fixing of the boundaries among the States could not be made an ultimatum to the satisfaction of all the States; that the happiness of the people on this side of the Alleghany Mountains was a sufficient object to induce them to enter into the war; that some of the States had their boundaries fixed and determined; that the State he had the honor to represent was one of them; that it had not entered into the war, nor would it, he believed, be willing to continue it for the sake of boundless claims of wild, uncultivated country, more especially as it was a matter of dispute and would undoubtedly occasion much contention among the States as to whom the country, if ceded, would of right belong.

Mr. Telfair, of Georgia, “was for fixing our boundaries to the Mississippi. As to our claims beyond that to the South Sea, he would leave them to discretion.”

In the formal “Statement of Facts and Observations” drawn up by a Committee of the Continental Congress, in 1782, to support the territorial claims of certain States and of the United States (for the instruction and guidance of our negotiators in concluding a Treaty of Peace with Great Britain, which should also be a Treaty of Boundaries and Limits), the following doctrines were laid down: —

“1. That the territorial rights of the thirteen

¹ *The Thomson Papers*, New York Historical Society Collections for 1878, pp. 100 *et seq.*

United States, while in the character of British colonies, were the same with those defined in the instructions given to Mr. J. Adams on the —— day of August, 1779.

“ 2. That the United States, considered as independent sovereignties, have succeeded to those rights, or [and it was on this ‘or’ that the whole onus of the controversy turned]

“ 3. That if the vacant lands cannot be demanded upon the preceding grounds, that is, upon the titles of the individual States, they can be deemed to have been the property of his Britannic Majesty immediately before the Revolution, and to be now devolved upon the United States *collectively taken*.”¹

This third head is explicated in the body of the report as follows: “The character in which the king was seized was that of king of the thirteen colonies collectively taken. Being stripped of this character, its rights descended to the United States for the following reasons: 1. The United States are to be considered in many respects as an undivided independent nation, inheriting those rights which the king of Great Britain enjoyed as not appertaining to any particular State while *he* was, what *they* are now, the superintending governor of the whole. 2. The king of Great Britain has been dethroned as king of the United States by the joint efforts of the whole. 3. The very country in question hath been conquered through the means of the common labor of the United States.”²

The reading of this third clause, as thus expounded in three dimensions, was interrupted by a stern and peremptory protest from the great landed State of Virginia.

¹ *The Thomson Papers*, pp. 115, 116.

² *Ibid.* p. 139.

Mr. Bland, of that State, moved that the third clause be expunged. The motion was seconded by Arthur Lee. A long debate ensued. The members from States of which the boundaries were fixed and circumscribed defended the retention of the clause. The members from States which claimed territory to the Mississippi or the South Sea, as well as the members from States whose eastern boundary was undefined, opposed the retention of the clause. Mr. Madison avowed his willingness to retain the clause for the sake of public policy. He said that the clause had been imported into the discussion for the purpose of reconciling all the States to the report, but at the same time he expressed the opinion that "there was no solid foundation in the argument." Yet he said that he saw plainly "if the clause was struck out, sundry States would object to the rest of the report, and therefore he was for its standing." With a view, however, to the concealment of the differences of opinion which obtained on this topic, he thought it improper that any vote should be taken on the pending question.

Mr. Bland, however, insisted that a vote should be taken, and this brought Arthur Lee to his feet for the defense of the Virginian position. He argued that the supposition on which this third clause proceeded was groundless, and that the reasoning by which it was sought to defend the clause was fallacious. He contended that the claim to the western territory rested solely on the titles of the individual States, and that the Congress had no authority but what it derived from the States. The States, he said, were individually sovereign and independent, and upon them devolved the rights of the crown within their

respective territories. Could the sovereignty of the crown of Great Britain, he inquired, devolve on the United States in Congress assembled before such an assembly existed? If only after such an assembly had existed under the Articles of Confederation, it would still remain to inquire whence is the sovereignty of the United States derived? Is it in the Confederation? Is it in the Treaty of Alliance with France? Does it really exist?¹

John Witherspoon, of New Jersey, advocated in this debate the extremest national view, in opposition to the extreme States'-rights view championed by Arthur Lee. He said:—

“The several States are known to the powers of Europe only as one nation under the style and title of the United States. This nation is known to be settled along the coasts to a certain extent. If any European power were admitted to establish colonies or settlements behind them, what security could they have for the enjoyment of peace? What a source,” he exclaimed, “of future wars!”

Whether the uncultivated territory belonged to one State or the other, was, he said, a matter of no concern to the European powers, but they could all see the importance of the question to the general security of the United States, and the principle could therefore be a valuable one as a makeweight in the conduct of negotiations for peace.

¹ Recalling, besides, an old antagonism between himself and Franklin in the matter of the competing land-jobs known as those of the Ohio Company and the Walpole Grant, Lee objected to Franklin as one of the negotiators of peace, because Franklin was understood to be interested in western lands, and had, therefore, a personal interest in supporting the jurisdiction of the United States as against that of Virginia. *The Thomson Papers*, p. 143.

The antagonism on this question was too wide and deep to be bridged over by any compromise of opinions. The landed States would not yield their reserved rights. The landless States would not yield their national claims and pretensions. And, as the delegates from Virginia refused to practice the prudent *ménagement* recommended by Madison, it only remained to submit the question to the ordeal of a ye and nay vote.

Yet if the question were brought to such a definite issue, it was seen that the dissidence would reveal a split running through the ranks of the States embattled for the maintenance of their independence, and would reveal a damaging scission precisely at the moment when it was most necessary that they should present an undivided front in order to insure advantageous terms in the negotiations for peace. It was, we see, a States'-rights conflict over the public lands, which for a time imperiled the conclusion of a treaty of peace with Great Britain in 1782. As the bitter feud between the two classes of States could not be adjusted by any consensus of opinions, it only remained that for the present they should agree to disagree on the point in controversy. It was moved and carried that the whole report should be recommitted. The States'-rights conflict over the public lands was simply postponed.

This discordancy in the Continental Congress between the defenders of States' rights and the upholders of national rights in the matter of the public lands came still more prominently to the front on the 27th of August, 1782. On that day a petition was presented in Congress, signed by a number of inhabitants of "a tract of country called Kentuckey." The

petitioners alleged that they had taken an oath of allegiance to the United States; that they considered themselves subjects of the United States, and not of Virginia; that the charter under which Virginia claimed that country had been dissolved; that in consequence of this dissolution, the country had reverted to the crown of Great Britain, and that by virtue of the Revolution the right of the crown devolved on the United States. Therefore they prayed the Congress to erect them into a separate and independent State, and admit them into the Federal Union.¹

Arthur Lee, of Virginia, openly proclaimed that to countenance such a petition as that was to insult Virginia. Accordingly he moved that the petition be not received, but that it be referred to Virginia herself.

James Madison seconded the motion. He said: "As to the supposition that the right of the crown devolved on the United States, it was so extravagant that it could not enter into the thought of any man. If the right of soil devolved, why not the right to the quit-rents and confiscated estates?"

Mr. Williamson, of North Carolina, thought the question raised between the States and the government was a very serious one, and that whenever it was discussed it would be attended with most serious consequences, and he apprehended that the sword alone could decide it. He wished it might be put off a very long time, and not be reviewed in their time, nor in the time of their children, or their grandchildren.²

Mr. McKean, of Delaware, was sensible that it *was* a question of a very serious nature, but he thought that it *must* be discussed. He was not for putting off the discussion to so distant a day. He was not for

¹ *The Thomson Papers*, p. 145.

² *Ibid.* p. 147.

leaving it to posterity. He was willing to face it with all its consequences, and hoped it would be decided before the present war was concluded. If the people of "Kentuckey" had taken an oath of allegiance to the United States, he avowed a willingness to take them by the hand. He was not afraid of Virginia. He hoped no State in the Union would ever be so great as to give laws to all the rest, and that none would be suffered to acquire so much power that the others could not control it.

Mr. Clark, of New Jersey, wanted to be informed more particularly respecting the conduct and views of Virginia with regard to the western country. . . . He understood that the Virginians had it in contemplation to form the western country into distinct subordinate governments, and to send out lieutenant-governors to rule them. This would be going on the plan of Great Britain with regard to her former colonies, and must bring on another revolution, which will be attended with convulsion, and break the peace of the Union.

Mr. Howell, of Rhode Island, maintained that the right of granting western lands now devolved on the United States.

Mr. Witherspoon replied specifically to the argument of Madison. He said that it certainly could enter into the thoughts of men that the rights of the crown had devolved on the United States, because it had entered into his thoughts, into the thoughts of the petitioners from Kentucky, and into the thoughts of very many sensible men at the beginning of the present controversy. The western uncultivated lands had early been spoken of as a fund for discharging the debts that might be contracted in the war by the

United States. "It would appear a strange whim," said the New Jersey delegate, with genuine Scotch pleasantry, "if a sentiment which occupied the minds not only of speculative but of illiterate men, of the bulk of the inhabitants of many of the States, had no solid foundation to rest on. For his part, he thought it founded on truth, on justice, on the nature of things, and was warranted by the laws of society. This controversy was begun and the war was carried on by the united and joint efforts of the thirteen States. By their joint exertions, and not by those of any one State, the dominion of Great Britain was broken, and consequently the rights claimed and exercised by the crown devolved on all, and not on any individual State. Why should one State reap more advantage than another? . . . With regard to the powers of Congress, or of the United States collectively taken, they could not be exactly defined in the Articles of Confederation. Cases would arise for which no previous provision could be made. These came under and were decided by the great law of necessity, which was admitted as a law of nations. It might happen that a State would grow so powerful and so ambitious as to be dangerous to the other States in the Union. In such a case the law of necessity and of self-preservation might compel the others by a sovereign act of authority to abridge the power of that State, and even to divide it into two or more distinct and independent States."¹

It will thus be seen that the forcible reduction and even the violent partition of States were matters of public discussion in our Federal legislature more than eighty years before another States'-rights conflict over

¹ *Ibid.* pp. 145-150.

the public lands resulted in the military reduction of the Confederate States, and in the partition of the very State around which this battle of words was waged in 1782. The States'-rights conflict is older than the Constitution. It found a forum in the Continental Congress, as well as in that which afterwards met in Washington. "There is no place," wrote Abraham Baldwin, of Georgia, to Charles Thomson, under date of February 4, 1786, "where the clashing of State interests is so strongly marked as on the floor of [the Continental] Congress."¹

After the States'-rights conflict over the public lands had imperiled the formation of the Federal Union and the conclusion of peace with Great Britain, another phase of the same conflict returned to imperil the possession of the Mississippi valley. Spain was naturally angered by the stipulations of a secret article which had been inserted in our treaty of peace with England for the circumscription of her territorial claims southward and westward on the North American continent. "Castilian grandees went to bed and dreamed of invincible armadas," says John Fiske. "Congress was promptly informed that until this affair should be set right the Americans need not expect the Spanish government to make any treaty of commerce with them; and, furthermore, let no American sloop or barge dare to show itself on the Mississippi below the Yazoo, under penalty of confiscation. When these threats were heard in America, there was great excitement everywhere, but it assumed opposite phases in the North and in the South. The merchants of New York and Boston cared little more about the Mississippi River than about Timbuctoo, but they were

¹ *Ibid.* p. 204.

extremely anxious to see a commercial treaty concluded with Spain. On the other hand, the backwoodsmen of Kentucky and the State of Franklin cared nothing for the trade on the ocean, but they would not sit still while their corn and their pork were confiscated on the way to New Orleans. The people of Virginia sympathized with the backwoodsmen, but her great statesmen realized the importance of both interests and the danger of a conflict between them.”¹

Such were the elements of this new States'-rights conflict over public lands not yet reduced under our national authority. The new political cotillon reveals an entire change of partners in the contra-dance. The extreme States' rights emphasized by Virginia in 1782 for the assertion of her separate and individual claims are now emphasized in behalf of the rights not only of her sister States in the South and of the future States of the Southwest, but also in behalf of Federal rights accruing to the benefit of the common Union and newly placed under the safeguard of the treaty of peace with England. The commercial States of the North and East are now found ready to sacrifice the political interests of the Southern States and the economical interests of the whole Union in the Mississippi valley, with a view to the speediest possible reestablishment of their own commercial prosperity, which had been blasted by the war. It was insisted by the Spanish envoy that the United States should renounce the right to navigate the Mississippi below the Yazoo as the condition of procuring a commercial treaty. John Jay, the foreign secretary, recommended such a renunciation for the term of twenty-five years. The seven States of Massachusetts,

¹ John Fiske, *The Critical Period of American History*, p. 209.

New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania — all Northern States — voted for the untoward measure against the earnest opposition of all the Southern States then represented in Congress, — Maryland, Virginia, North Carolina, South Carolina, and Georgia. The measure was discussed in secret session. The mouths of the Southern delegates were gagged by the Northern majority, in spite of the vehement protests uttered by Grayson, of Virginia, and by his colleagues, who argued that such a surrender was a breach of the national covenant made with Virginia when she ceded her “back lands,” because it would lower the value of those lands in the market; because it would postpone indefinitely the formation of new States which were to be carved out of them; because it deprived the Western and the Southern States of a natural right vouchsafed to them by the physical geography of the country; and finally, because it operated a virtual dismemberment of the Union by permanently fixing the weight of population on the northern side of the continent.

A question of order was raised by the Southern delegates on constitutional grounds against a motion which proposed to compass a reversal of the instructions previously given to the Secretary of State in the matter of the Spanish treaty. The Articles of Confederation required the concurrence of nine States to establish regulations for the conclusion of a treaty, and the previous instructions had been given by this constitutional majority. But it was now proposed to repeal these instructions by the vote of less than a constitutional majority in such cases. In spite of this remonstrance the Northern States adhered to their determination.

No injunction of secrecy could keep a proposition so important as this from reaching the ears of the Southern people. The legislature of Virginia protested against it in tones at once "loud and deep." Indignation meetings were held in the South and Southwest. New Jersey countermanded the action of her delegates. Pennsylvania began to waver in her policy on the subject. And though a few delegates from the Eastern States, like Gorham, of Massachusetts, were still frank enough to avow that the shutting of the Mississippi would be advantageous to the Atlantic States, and that therefore they wished to see it shut, the illiberal sentiment was openly denounced by Madison as being "in strong contrast with the principles of the Revolution and with the language of American patriots." The hapless measure was finally allowed to perish by pure inanition, for the want of support from its Eastern and Western parents. Even Jay, its foster-father, with a candor which does him honor, was brought to disown this changeling offspring of a distempered time. But Gardoqui, the Spanish minister, was fain to recognize at the time that the proposition had probably received its death-blow from Virginia.¹ We are therefore called to thank this "Mother of States," not only for the great Northwestern Territory which she ceded to the Union and helped to dedicate to freedom, but also for the great Southwestern territory (this side the Mississippi), which she helped to rescue from weak surrender to a foreign power. In *this* States'-rights conflict over the public lands she certainly deserved well of the country.

How the tide of battle over the public lands ebbed

¹ *Correspondence of the Revolution*, vol. iv. p. 187.

and flowed in the Continental Congress, from 1784 to 1787, is matter of too common history to call for detailed recital in this paper. I pause at this stadium of the conflict simply to remark that it was at that epoch that our land politics became complicated for the first time with the question of slavery and its extension; with the question of slavery prohibition, and the recapture of fugitive slaves. The conflict was hushed by the Ordinance of 1787, because, under the terms of that ordinance the Northern States bated their breath to demand the prohibition of slavery in only a limited part of the unoccupied territory, and to concede a provision for the rendition of fugitive slaves from that defined region. The Southern States bated their breath to demand nothing more as to this region (which they could never hope to occupy) than that it should not be used as a harboring-place for their escaping slaves. The differentiation of political opinions between the Northern and the Southern States at that time, so far as they were influenced by slavery, seems to have been based rather on the economical than on the social or purely political aspects of the institution.

If the States'-rights conflict over the public lands was composed for a time by the Ordinance of 1787, the truce was only temporary. The debatable region north of the Ohio River was taken forever out of the doubtful wager of battle between the two sections of the Union, but the wager of battle which had come to a standstill in the Continental Congress did but wave its red flag only the more violently in the eyes of the Federal Convention which was then sitting within its closed doors at Philadelphia. After the crisis between the competing claims of the small States and of

the large States, the crisis between the competing claims of the planting States and the commercial States, the crisis between the States opposed to the continuance of the slave-trade and the States favoring it or winking at it, — after all these crises had been successfully passed, the Convention stumbled on the old rock of offense lying between the “landed” and the “landless” States. Whether the vast public territory then belonging to the Union had been surrendered (in the eye of constitutional and public law) by the States separately ceding it or by Great Britain in her treaty of peace, with its definition of the metes and bounds of the United States, was still an open question between the two classes of States so differently related to the public domain.

The land question had gathered head from a variety of causes. Mr. Madison, in his notes of the debates held in the Continental Congress in the early part of the year 1783, when peace with Great Britain was in sight, explains how the States'-rights conflict over the public lands, even at that early date, when Virginia had not completed her cession, was complicated with the abortive attempt of Congress to enucleate a fiscal policy for the whole country.¹ It was complicated besides with Federal relations of debit and credit at this period, when each State was prone to conceive itself a creditor as compared with its sister States, and when the Eastern States were especially convinced that they were creditors as compared with the Southern States. It was complicated, besides, with dynastic competitions arising between the old States and the foreseen new States, which were destined to be parceled out from the Northwestern and Southwestern

¹ Elliot's *Debates*, vol. v. p. 59.

territory, a species of jealousy which grew more and more venomous as the prospect of such States loomed more and more clearly above the political horizon in 1788. It was complicated, besides, with preferences for conflicting land systems, — with the New England preference for a township system, and with the Southern preference for indiscriminate locations.¹

Such was the tangled political embroglio which the Federal Convention was called to unravel when, in the course of its deliberations, provision had to be made for the admission of new States and for the government of the Federal territory under the Constitution. The dissidence came at once to a sharp and sheer division of opinions. Daniel Carroll, of Maryland, true to the settled policy of his State, wanted an express provision in the Constitution declaring that nothing in that instrument should affect the right of the United States to the "back lands." He would like to have this provision agreed to unanimously, but if such unanimity was impossible, he believed that "all risks would be run by a considerable minority sooner than give their concurrence." Williamson, of North Carolina, intimated that his State was well disposed to surrender her Western lands, but that she would not be coerced into it. Luther Martin, of Maryland, emphasized the unreasonableness of forcing the people of Virginia beyond the mountains, the people west of North Carolina and of Georgia, and the people in Maine northeast of Massachusetts, to continue under the States now governing them. He was unwilling that the small States should be called to guarantee the Western claims of the large ones. Gouverneur Morris expressed the opinion that if the

¹ Madison's *Works*, vol. i. p. 318.

forced division of the large States was to be the object of the new system of government, it might be expected that the gentlemen from the large States would "pretty quickly leave" the Convention. Luther Martin, in turn, expressed the opinion that if the small States were expected to guarantee the territorial claims of the large States, it would be found that the representatives of the former would, with equal firmness, take their leave of the document then lying unfinished on the table of the Convention. Mr. Wilson, of Pennsylvania, perceiving that the conflict of opinion under this head was irreconcilable, mildly proposed that nothing at all should be said on the litigated subject, either by way of affecting the claims of the several States or of the United States. Madison, too, with his mild wisdom, thought it best, on the whole, that the Constitution should be silent on the subject. So it was agreed to leave the whole matter *in statu quo*, and to remit the thorny topic to the legislative and judicial departments of the proposed new government; that they might settle, as best they could, a dispute too bitter for the Convention to allay.¹ For the nonce, it was found necessary to practice a policy of discretion and silence as to the point in controversy between the two classes of States differently interested in the disposition of the public lands. Such is the origin of the hesitating clauses in the Constitution which run as follows:—

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the

¹ Elliot's *Debates*, vol. v. pp. 492-497.

legislatures concerned, as well as of the Congress. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

Such was the drawn battle between the "landed" and the "landless" States in the Federal Convention of 1787. What wonder that a grant of power, which was rendered as colorless as possible to avoid giving umbrage to either of the two classes of States pitted against each other in this stage of the States'-rights conflict over the public lands, should have opened the flood-gates of controversy at a later day when a still more immitigable cause of strife had come to envenom the dispute which arose between two classes of States divided by a difference in their political rivalries because of a difference in their social institutions and economic interests? If an attempt had been made to insert in the Constitution a clear-cut definition of the respective prerogatives of the several States and of the United States in the matter of the territories and their government, we see that the Convention would have probably broken up without forming any Constitution at all. Disputes between the States as to their relative weight in the government because of a difference in their size or the number of their population, because of the repugnance of some States to the representation of slaves in the popular branch of Congress and in the electoral college, because of the repugnance of eleven States out of thirteen to the long toleration of the slave-trade, because of the reluctance of the planting States to grant to Congress the power

of passing commercial laws, — these disputes were all laid to rest by the compromises of the Constitution. The one spectre which would not down was the shadow of the conflict over the public lands.

The conflict adjourned from the lists of the Federal Convention was resumed in the wider lists of the States so soon as they were called to sit in judgment on the Constitution for its ratification or rejection. Men like Grayson, of Virginia, who had helped to pass the Ordinance of 1787, were swift to oppose the adoption of the Constitution, among other reasons for the paramount reason that the Northern States had already shown a disposition to surrender the navigation of the Mississippi River, and that with the powers conceded to them under the Constitution, they would be able to effect their sinister purpose against the interests and the just political preponderance of the Southern States. It was argued that the Eastern States had adhered for a time to the right of the South and West in the navigation of the Mississippi, because it was then regarded as a balance for the Newfoundland fisheries; but now that those fisheries had been secured to the North and East by the treaty of peace, the States of the North and East had shown a disposition to barter away the rights of the South and West in the Mississippi Valley; and it was predicted that they would proceed to execute this design so soon as they were vested with the new powers granted by the Constitution. If the Mississippi River be shut up, immigration, it was urged, would be stopped entirely. There would be no new States formed on the western waters. The new government would be a government of the seven Northern States. The contest for the Mississippi involved, therefore, “a great

national contest," — that is, whether one part of the continent should govern the other. The Northern States had the majority, and would endeavor to retain it. "This was therefore a contest for dominion, for empire."¹

It will thus be seen that the States'-rights conflict over the public lands imperiled the ratification of the Constitution by the powerful State of Virginia. What weight the same argument had in postponing the ratification of the instrument by the State of North Carolina is matter of recorded history in the debates of her Convention and in the closing pages of the Secret Journal of the Continental Congress in 1788.²

After the Constitution had been adopted it cannot surprise us to find that the first great issue ever joined between the jurisdictional rights of a State and of the United States should have arisen on a question of the public lands. The subject-matter of this controversy was the famous Indiana tract, which fills such a conspicuous space in the transactions of the Continental Congress. Virginia, by a formal act of her General Assembly, had declared in 1779 that the claim of the Indiana Company to certain lands "between the Alleghany Mountains and the river Ohio, above the mouth of the Little Kanawha Creek," was utterly void, and of no effect. After the Constitution had created a tribunal for the trial of controversies "between a State and citizens of another State," the Indiana Land Company brought a suit in the Supreme Court of the United States for the vindication of their alleged rights as nullified by the act of the Virginia legislature. Thereupon the Virginia legislature, in

¹ Elliot's *Debates*, vol. iii. p. 365.

² *Secret Journals of Congress*, vol. iv. p. 453.

December, 1792, solemnly declared that the decision made by the State previous to the adoption of the Constitution could not be called in question by any other than the General Assembly of the Commonwealth "without a dangerous and unconstitutional assumption of power;" that the jurisdiction of the Supreme Court of the United States could not extend to a case which had been already decided by a competent tribunal; and, finally, that the State could not be made a defendant in the Supreme Court at the suit of any individual or individuals.¹

As was to be expected, the ill-defined form of words, contrived by the framers of the Constitution for the purpose of slurring over an irreconcilable discordancy, became a source of chronic dissension in Congress, as well as of early appeal to the Supreme Court. The antithesis between the "landed" and the "landless" States in the Federal Convention passed, under the Constitution, into an antithesis between the Northern and the Southern States. At first the conflict purported to be based on economical distinctions of which slavery was recognized to be the implicit cause. In the year 1820 the implicit cause became explicit in the terms of the Missouri Compromise line. In 1861 the States'-rights conflict over the public lands, considered as the source and symbol of political power in the Federal Union, passed from the forum of politics into the battle-fields of civil war. The successive stages of this conflict in the halls of Congress, from 1790 to 1860, will be discussed in a separate chapter.

¹ The subsequent stages of this States'-rights controversy may be traced in Conway's *Omitted Chapters of History*, pp. 101, 102, 168-173.

VIII

SLAVERY IN THE TERRITORIES¹

IN every conflict of opposing and enduring forces in the sphere of politics, we must distinguish between the forces themselves and the point of their impact. Yet it is only as we take the forces at the point where they impinge that we can ascertain either their nature or their momentum, either the modes of their composition or the resultant direction in which they are tending at any given moment. The discovery of the New World brought into the sphere of European politics a vast complex of international forces which found their first collisions in the conquest, partition, and settlement of the North and South American continents, that is, in the seizure and occupation of waste and derelict lands in the domain of savagery, to be exploited under a higher civilization as new sources of economical advantage, as new fields of religious propagandism, and as new seats of political aggrandizement.

The independence of the United States, followed as it soon was by the independence of the Spanish-

¹ This paper is in part the fruit of studies which began more than thirty years ago, when, on the brink of our civil war, the writer was called, as one of the editors of the *National Intelligencer*, to review in that journal the successive phases of "The Territorial Controversy." The point of view is of course entirely changed, for what was then discussed as a lesson in politics is here discussed as a lesson in history, with the difference of perspective that is implied in the well-known saying of Freeman. [The paper was read at the meeting of the American Historical Association in December, 1891.]

American States, put the free play of these European forces in circumscription and confine, so far as they had previously moved in schemes of colonization or in projects of the Holy Alliance proposing to make these continents an appendix to the European equilibrium. "The Monroe doctrine," under the first of its heads, was a notice served on European States by the government of the United States that "the North and South American continents, by the free and independent condition which they had assumed and maintained (in the year 1823) were henceforth not to be considered as subjects for future colonization by any European power." From that day to this no European power has planted any new colony on any part of the American continents. "The Monroe doctrine," under the second of its heads, declared it "impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness." From that day to this the independent states of North and South America have been free to work out their own destiny apart from the dynastic schemes of Europe.

With the Declaration of Independence by the United States there arose, however, a new order of economical and political forces, and these new forces could but generate a new order of problems when they came to find new points of impact in the unoccupied territory comprised within the bounds of the Federal Union. The most difficult of all these problems, and therefore the point at which the conflict of opposing forces has always been hottest, must still be sought by the historian in questions relating to the occupation and government of land considered as the seat and symbol of economical precedence or political

supremacy. Everybody knows that the first great dissidence among the States of the American Union — a dissidence which parted States during the Revolutionary period as the distinction between Whig and Tory parted individuals — was that which arose concerning the ownership and political disposition of the so-called “back lands.” How this question delayed the ratification of the Articles of Confederation until the Revolutionary War was approaching its end is matter of familiar history.

But it is not so generally known, I think, that this same question interposed an almost insuperable barrier to the conclusion of peace with England in 1783, and wellnigh lighted up the flames of a civil war between the “landed” and the “landless” States at the moment of their free and independent autonomy. This same unsettled problem so perplexed the deliberations of the Federal Convention of 1787 that it was the one question which the patriots and sages of that body could neither solve nor abate. Hence it was that, as I have shown in a paper previously read before the American Historical Association, they agreed to confess and avoid the then existing antithesis between the “landed” and the “landless” States by leaving it behind them in the limbo of indefinite abeyance. It was because of an irreconcilable feud between these two classes of States that the adherents of each in the convention could agree on no form of words that should ascertain the relative rights of each class and of the United States in the matter of the new States that were to be erected on what was then the unoccupied territory formerly known as “the crown lands.”

On the 18th of August, 1787, and on motion of Mr. Madison, the committee of detail on the digest of

the Constitution was instructed to consider the expediency of adding to the prerogatives of the Federal legislature an express grant of power to institute temporary governments for new States arising on the lands not yet occupied. A discussion of the clause providing for the admission of new States into the Union brought the pending discord between the two classes of States to a violent rupture. Those members who believed that the United States had established a rightful claim to the "back lands" previously vested in the crown, but now wrested from the crown by the joint efforts of all the States, were vehement in demanding an express recognition of this claim in the terms of the Constitution, and when they could not extort such a concession from members representing States which had not yet ceded their unoccupied land, they were compelled to satisfy themselves with a simple plea that the Constitution should at least be silent on the subject.

Even Daniel Carroll, of Maryland, representing a State strenuous above all others in asserting the claims of the Union to a proprietary and political interest in the "back lands," was brought to such a mood of despondency by the conflict of opinion on this whole subject that, instead of pressing his motion that "nothing in the Constitution should be construed to affect the claims of the United States to vacant lands ceded to them by the treaty of peace," he was fain to withdraw that motion, and to propose that nothing in the Constitution should be so construed as to alter under this head "the claims of the United States *or of the individual States*, but that all such claims should be examined into, and decided upon by the Supreme Court of the United States."

It was immediately on the heel of this "irrepressible conflict of opposing and enduring forces" in the matter of new States to be carved out of public lands, that Gouverneur Morris moved to transfer the whole conflict from the question of admitting new States to the question of governing the territory considered as property of the United States. He proposed that the Convention should agree to disagree as to the application of the territorial clause to so much of the public lands as was still in dispute between two classes of States and the United States. Hence, the origin of the territorial clause as it stands to-day in the Constitution: "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States, *and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.*" That is, this grant of power was made absolute for the purpose of Congressional legislation respecting the territory, and was left as colorless, indefinite, and nugatory as possible in respect of its application to any conflicting claims which should be put forward by either the United States or any of the particular States at variance on this subject. And this was avowedly done in order to blink and leave *in statu quo* a feud which could not be adjusted, and in order to remit to the Federal judiciary the settlement of a question which the framers of the Constitution felt themselves unable to solve. We thus see that the same territorial quarrels which had dragged their slow length along through the Revolutionary period were the hissing serpents which came to the cradle of our infant Hercules before he was yet wrapped in the

swaddling bands of the Constitution ; and he had not strength to throttle them. We see, too, that before our present government had been framed the expedient of referring to the Supreme Court any Gordian knot which the politicians found themselves unable to untie was accepted by our fathers as the salutary makeshift of an incompetent statesmanship.

It is because the "territorial clause," in respect of its application to disputed territory covered by it, represented a drawn battle between two classes of States that it paved the way for any number of drawn battles between any other two classes of States which should subsequently find themselves at variance as regards the public territory. *Hoc fonte derivata clades.* The Congress of the United States, after passing through an Odyssey of wanderings and an Iliad of woes in this same matter of the public territory and its government, was compelled, in the year 1854, to face the same deadlock with which the framers of the Constitution had been confronted in 1787, and for the same reason, — the presence of two opposing and equipollent forces pulling in opposite directions. We shall see, too, that the politicians of the later period were equally doomed to seek a rescue from the Caudine Forks of an insolvable political dilemma by invoking the succor of the Supreme Court to determine for them the meaning of their own statute when, in the case of the Kansas and Nebraska bill, a disputed question had arisen under it, not only between two classes of States in the bosom of the Republic, but between two factions in the bosom of the same political party.

In the discussion before us it is proposed to deal with the government of the public territory only so

far as that government has been affected by the presence of divergent views concerning slavery in our Federal councils. The subject of slavery appears for the first time in this relation under cover of a bill submitted by Mr. Jefferson in the Continental Congress on the 1st of March, 1784, for the temporary government of the Western territory, "ceded or to be ceded by individual States to the United States." This bill provided for the prohibition of slavery, after the year 1800, in the ten States proposed to be carved out of the territory in question. This first attempt to secure the restriction of slavery fell through, because New Jersey had only one delegate present in Congress at that date, and therefore her vote could not be counted to make the requisite majority of all the States in favor of the measure. The States which voted in the negative were Maryland, Virginia, North Carolina, and South Carolina. Georgia was unrepresented. The bill was passed without the antislavery restriction on the 23d of April, 1784.

On the 16th of March, 1785, Rufus King, of Massachusetts, moved for the immediate prohibition of slavery in all the States "described in the resolve of Congress of April 23, 1784," and the motion was committed for discussion by the vote of eight States — Virginia, North Carolina, and South Carolina voting in the negative, the vote of Georgia not being counted, because she had but one delegate present, and Delaware not being represented at all at that moment. The territorial question was thus brought before Congress for renewed debate, and this debate resulted at length in the passage of the famous "Ordinance of 1787" on the 13th of July in that year. That ordinance provided for the prohibition of slavery

in the States to be formed in the Northwestern Territory, but provided at the same time for the rendition of fugitive slaves escaping from their owners to any part of said territory.

We do not know at the present day all the procuring causes of the bargain that was made between the delegates of the trading and of the planting States who (with the exception of Peter W. Yates of New York) gave their unanimous assent to this great measure, the matrix and norm of all our earlier legislation concerning the Territories. But we do know, on the testimony of William Grayson of Virginia, that the Southern delegates had "political reasons" as well as economical reasons in voting as they did at that juncture. It is obvious enough that the Eastern States voted for the ordinance from economical motives combined with their moral and political repugnance to the spread of slavery. *Their* gain was immediate and patent. The Southern States, on their part, gained new guards for the stability of slavery in the States where it already existed, by the stipulation for the recovery of their runaway slaves; they gained a reduction from ten to five, in the number of "free States" that were to be carved out of the territory in the Northwest; and they established a precedent which could be pleaded, and which three years later *was* pleaded, for the parallel and lateral extension of slaveholding States toward the west on the territory afterward ceded.

The Ordinance of 1787, two days after its passage, was communicated by Richard Henry Lee to General Washington, then presiding over the Federal Convention. It was published at length in a Philadelphia newspaper, and was formally cited in the debates of

the Convention. It doubtless furnished the germ from which the fugitive-slave clause was planted in the Constitution. The Ordinance of 1787 had converted the slave into a *villein regardant* as respects the Northwest Territory. The Constitution now proposed to make him a *villein regardant* as respects the territory comprised in the union of the States. In virtue of these two provisions General Charles Cotesworth Pinckney could say in the South Carolina Convention of 1788 that the slaveholding States had thereby "obtained a right to recover their slaves in whatever part of America they may take refuge, which was a right they had not before." (Elliot's Debates, vol. iv. p. 286.)

It was held alike by James Madison and Alexander Hamilton that the Ordinance of 1787 had been passed without the least color of authority under the Articles of Confederation. But the Sixth Article of the Constitution provided that "all engagements entered into before the adoption of the Constitution should be as valid against the United States under this Constitution as under the Confederation." This clause was held to have brought the engagements of the Ordinance of 1787 under the sanctions of the new charter. The first Congress which met under the Constitution passed an act to adapt certain provisions of the ordinance to the Constitution; and the State of Virginia on the 30th of December, 1788, and therefore after the ratification of the Constitution, assented to the Fifth Article of the ordinance — being the only one of the articles which required the assent of that particular State.

In the debates had on the Constitution while it was pending before the Conventions of the several States,

I do not find that "the territorial clause" was formally cited by more than a single individual, James Wilson of Pennsylvania, and his reference to it, in its relation to slavery, was perhaps more optimistic than critical. He expressed the opinion that the new States which were to be formed out of the territory ceded or to be ceded "would be under the control of Congress in this particular, and slaves will never be introduced among them." (Elliot's Debates, iv. 452.)

Less than a month after the passage of the Ordinance of 1787 the legislature of South Carolina ceded to the United States all her "right, title, and claim, as well of soil as jurisdiction," to the territory lying between her western boundary and the Mississippi River. This cession was made on the 9th of August, 1787, in full view of the legislation of the Continental Congress prohibiting slavery in the Northwest. Yet no reservation was made by South Carolina in favor of the right of her citizens to migrate to the ceded territory with their slave property.

But when North Carolina came in the year 1790 to make the cession of her "back lands," which bordered more or less closely on the Northwest Territory, she was careful to premise that the territory so ceded should be laid out and formed into a State or States, and that the inhabitants of such State or States "should enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late [Continental] Congress for the government of the Western territory of the United States, *Provided, always,* that no regulations made or to be made by Congress should tend to emancipate slaves." Congress accepted the deed of cession with the condition annexed, and organized the "Territory south of the Ohio" in

the same year. This Territory was admitted into the Union as the State of Tennessee on the 1st of June, 1796. In the interim no "regulation" was made by Congress respecting slavery.

It is plain that the stipulation made by North Carolina that no "regulations" should be made by Congress "tending to emancipate slaves" in her ceded territory, had been inspired by the terms of the Constitution empowering Congress to "dispose of and make all needful rules and *regulations* respecting the territory belonging to the United States." As showing the continuity of public thought in this matter, it may be interesting to state that the language of the Constitution under this head was doubtless inspired by the terms of the Resolution under which the Continental Congress, on the 10th of October, 1780, had requested the States to cede their vacant lands to the United States. In that resolution it had been promised that the said lands should be settled "at such times and under such *regulations* as shall hereafter be agreed on by the United States in Congress assembled." The power of Congress to prescribe "regulations" for the territory was therefore rooted not only in the text of the Constitution but in the past territorial policy of the government under the Confederation. And for this reason it was that North Carolina insisted in her deed of cession that Congress should make no "regulations tending to emancipate slaves." Congress in accepting the cession with the condition annexed by this particular State had trammelled its plenary power over the territory in question. To this extent the idea of a partition of the public territory between the planting and the trading States had begun to imbed itself in our polity and politics.

This idea was soon reënforced by the formal and deliberate initiative of Congress itself. In the year 1798 Congress solicited from Georgia "any proposals for the relinquishment or cession of the whole or any part" of her unsettled territory, with a proviso that any such ceded district should be erected into a temporary government under the name of the "Mississippi Territory;" and with a further proviso that this temporary government should be "in all respects similar to that existing in the territory northwest of the river Ohio, *excepting and excluding* the last article made for the government thereof by the late [Continental] Congress on the 13th day of July, 1787," that is, *excepting and excluding* the article which prohibited slavery. This is the first case in the history of the country under the present Constitution in which Congress was left perfectly free to regulate slavery in a Territory according to its own will and pleasure. It had inherited the "regulations" of the Northwest Territory under this head from the Continental Congress. Its hands had been tied as to this subject by North Carolina's deed of cession. But as regards the territory carved from Georgia, Congress volunteered of its own mere motion to make an exception in favor of slavery. The issue was distinctly brought to public notice while the Georgia cession bill was under consideration in the House of Representatives.

Mr. George Thacher, of Massachusetts, moved to strike out the clause which saved and excepted slavery from the inhibition prescribed by the Ordinance of 1787. An animated debate ensued. On the part of "the South" it was argued, to cite the exact words of Robert Goodloe Harper, of South Carolina, that "in the Northwestern Territory the regulation forbidding

slavery was a very proper one, as the people inhabiting that part of the country were from parts where slavery did not prevail, and they had of course no slaves amongst them ; but in the Mississippi Territory it would be very improper to make such a regulation, as that species of property already exists, and persons emigrating there would carry with them property of this kind. To agree to such a proposition would therefore be a decree of banishment to all the persons settled there, and of exclusion to all those intending to go there. He believed it could not therefore be carried into effect, as it struck at the habits and customs of the people." On the part of "the North" it was held by Albert Gallatin, of Pennsylvania, that the prohibition of slavery in the Mississippi Territory could not produce "a worse effect than the same regulation in the Northwestern Territory ;" that the jurisdiction of the United States was as complete in the one case as in the other ; that to legalize slavery under the temporary government of a Territory would be to fasten it on the same country "for all the time it is a State ;" and that, it having been "determined that slavery was bad policy for the Northwestern Territory, he saw no reason for a contrary determination with respect to this Territory." The sectional antithesis on this subject being thus distinctly presented, the House of Representatives rejected the amendment of Mr. Thacher by an almost unanimous vote, only twelve members voting in its favor. The legislature of Georgia formally closed with the bargain offered by Congress, and on the 24th of April, 1802, passed an act of cession which expressly stipulated that the Sixth Article of the Ordinance of 1787, so far as it prohibited slavery, "should *not* extend to the terri-

tory contained in the present act of cession." The idea of a partition of public territory between the slaveholding and the non-slaveholding States had now obtained a formal recognition.

Yet the Congress of that day, in the very act of making this concession to the spread of slavery in the Southwest, was careful to accentuate its discretionary power to regulate slavery in the Territories. It was ordained in the very bill which organized the territorial government of Mississippi that "no slave should be imported or brought into it from any port or place *outside of the United States.*" To understand the purport of this "regulation," we must remember that while Congress at that date, and until the year 1808, could not, in legislating for the States, prohibit the slave trade, it did not rest under any such disability in legislating for the Territories. That is, the national legislature, in the plenitude of its power over slavery in the Mississippi Territory, conceded to the citizen of any slaveholding State a right to migrate into that Territory with his slave property, but *not* the right to import slaves from abroad, and this, too, although that right inured to him so long as he retained his domicile in a State which still tolerated the slave trade. The slaveholding citizens, therefore, of States which still tolerated the slave trade were shorn of a measure of their "State rights" by the mere act of migrating into the Mississippi Territory, where they came under the exclusive jurisdiction of Congress. The plenary and discretionary power of Congress over slavery in the Territories was emphasized alike by what it permitted and what it prohibited in the premises.

So prevalent at this date, and for many years later,

was the popular impression as to the power of Congress to regulate slavery in the Territories, that we find individual citizens and organized communities in the Northwest Territory petitioning Congress to rescind or at least to suspend in their favor so much of the Ordinance of 1787 as placed an interdict on slavery. Not to cite all these instances, it may suffice to say that on the 25th of April, 1796, four settlers of the "Illinois country," speaking in behalf of the inhabitants of St. Clair and Randolph counties, in the Northwest Territory, presented a memorial to Congress representing that they were possessed of a number of slaves, "the right of property in which the Sixth Article of the Ordinance of 1787 seemed to deny without reason, and without their [the owners'] consent." Accordingly they prayed for the repeal of that restriction and for the passage of an act affirming their right to hold slaves "under such *regulations* as may be thought necessary." Contemplating nothing more than a provisional toleration of slavery, they further asked Congress to declare "how far or for what period of time masters of servants [slaves] are to be entitled [in the Northwest Territory] to the services of the children of parents born during such servitude, as an indemnity for the expense of bringing them up in their infancy." The committee of the House of Representatives to whom the memorial was referred made a report adverse to the petition on the 12th of May, 1796, and the matter was dropped.

At a subsequent day a similar petition, proceeding from a convention of the inhabitants of Indiana Territory, held at Vincennes, William Henry Harrison, the governor of the Territory, presiding, was submitted to Congress. The committee of the House of

Representatives, to whom the memorial was referred, reported adversely to the petition on the 2d of March, 1803, John Randolph, of Roanoke, being the author of the Report. The committee deemed it "highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier." The committee based their decision entirely on considerations of prudence and expediency, not at all on any question as to the power of Congress over the subject. The whole matter was again dropped. (House Journal, vol. iv. p. 381, Second Session, Seventh Congress.)

At a still later day, the Legislative Council and House of Representatives of the Territory of Indiana adopted a series of resolutions which Governor William Henry Harrison approved, praying a suspension of the Sixth Article of the Ordinance of 1787. As this document emanated from the territorial legislature it came before Congress with the force and effect of an official proceeding. It was referred to a special committee of the House of Representatives on the 6th of November, 1807; this committee made an adverse report in the premises, and the House concurred in their denial of "popular sovereignty in the Territories." The landmark of freedom set up by the Ordinance of 1787 for the benefit of the Northwest Territory was left undisturbed.¹

Meanwhile a new and larger territorial question had come to vex the councils of the nation. The status of the Louisiana country, under the stipulations of the treaty by which France ceded it to the United

¹ *Annals of Congress*, Tenth Congress, First Session, page 919.

States, could but give rise to questions which were entirely novel as to the constitutional power of Congress to regulate slavery in newly acquired territory, and therefore in territory outside of the Constitution at the date of its adoption. It is known that the treaty of cession contained a stipulation to this effect: "The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to all the rights, advantages, and immunities of citizens of the United States; and in the meantime shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

A question was early raised as to the quality and extent of the recognition implied by the word "property," as used in this clause. By the opponents of slavery it was contended that the term "property," as here employed, could import only such property as was universally recognized "according to the principles of the Federal Constitution," and therefore could not extend to "property in slaves," which was purely the creature of municipal law. But Congress soon came to the resolution of such questions by erecting the Louisiana country into two municipal communities, one of which, the southern, was called the "Territory of Orleans," and the other of which, the northern, was called the "District of Louisiana." In the southern territory the institution of slavery was left undisturbed, but the importation of slaves from abroad was prohibited. The northern district was summarily annexed to the jurisdiction of Indiana Territory, and so became subject to the principles of the Ordinance of 1787, including the Sixth Article,

which prohibited slavery. Again the discretionary power of Congress over slavery in the Territories was exemplified, and again did the policy of an equitable partition of territory between "the North" and "the South" receive a fresh affirmation.

Under a new charter of temporary government given by Congress to the Territory of Orleans on the 2d of March, 1805, and under the terms of which any implied restrictions on slavery had been expressly repealed, it was held by many persons that even the interdict previously laid on the slave trade from abroad had been also repealed. It is probable that this construction was not foreseen or intended by Congress, but in fact the foreign slave trade was revived for a season at the port of New Orleans under color of such an interpretation, and its prosecution was winked at by the Federal authorities. It should be recalled that South Carolina, after having interdicted the foreign slave trade for a time, had revived it in 1804, in prospect of its speedy termination by Federal enactment after 1808, and a new activity was thereby given to the nefarious traffic by vessels clearing from the port of Charleston to the port of New Orleans.¹

The attention of Congress having been called to this subject by a member of the House of Representatives from South Carolina, Mr. David R. Williams, and a committee having been raised on his motion to consider "what additional provisions were necessary to prevent an importation of slaves into the Territories of the United States," this committee, of which Mr. Williams was chairman, reported a resolution condemnatory of the foreign slave trade as to "any

¹ *Annals of Congress*, Sixteenth Congress, First Session, vol. i. pp. 263, 266.

of the Territories of the United States." The resolution was adopted, and a committee was appointed to bring in a bill pursuant to its terms, but the measure failed to be acted on, notwithstanding the energy with which it was pressed by Mr. Williams.

The foreign complications of the United States with England and France, which, extending from the beginning of our government, had resulted at last in a war with the former power, came in 1812 to transfer the stress of the sectional feud between "the North" and "the South" from questions concerning the power of Congress to regulate slavery in the Territories to questions concerning the power of Congress to regulate commerce, to pass embargo laws, and thus to impair the rights of shipping property in the trading States. The discontents of the Eastern States came to a head in the Hartford Convention, and when these discontents had been appeased by the repeal of the embargo act and the return of peace, the sectional feud again swayed back to the question of the Territories, and in the years 1819 and 1820 vented itself in a fierce struggle over the admission of Missouri as a slave-holding State, and over the organization of Arkansas as a slave-holding Territory.

We have seen that an impassable chasm had been opened in the Federal Convention of 1787, between two classes of States differently interested in the disposition that should be made of the vacant lands, and that this chasm was opened in the forum of the convention so soon as the question arose in that body as to the constitutional provision that should be made for the admission of new States into the Union. In the year 1820, in this same matter of the public territory, an irrepressible conflict arose between two classes of

States differing in their social systems, in their economic pursuits, and in their political predilections. The impassable chasm between the States was here opened in the forum of Congress on a question then and there raised as to the terms and conditions on which Missouri should be admitted into the Union of States. The chasm had been temporarily closed in 1819 by the allowance of slavery in the bill organizing the Territory of Arkansas.

Missouri, after having been temporarily included in the district annexed to the Territory of Indiana, and after passing through other stages of territorial subordination, had been erected into a separate Territory by act of Congress, approved June 4, 1812. In this act no restriction of any kind was laid upon slavery, and greater legislative power was vested by Congress in the General Assembly created under the act than had been previously conceded to the legislature of any Territory.

What is called "the Missouri question" arose in the first stage of its emergence, from an attempt made in the House of Representatives to insist on the prohibition of slavery in Missouri as the condition of her admission into the Union. It was proposed to put this condition in the act of Congress authorizing the Territory to frame a State constitution. The opponents of this restriction, while generally admitting the sovereignty of Congress over the Territories in the matter of slavery, were unanimous in denying this prerogative to Congress in the hour and article of admitting a *State* into the Federal Union, for the obvious reason that such a restriction, in the absence of any constitutional power to impose it, would be the exercise of arbitrary authority; would impair the auto-

nomy of a "sovereign State;" and would destroy the equality of the States in a matter left free to each under the Constitution. Southern statesmen like McLane, of Delaware, and Lowndes, of South Carolina, frankly admitted the discretionary power of Congress to regulate slavery in the Territories. So far as I can discover, John Tyler, of Virginia, then a member of the House of Representatives from that State and afterwards President of the United States, was the only person on the floor of either House of Congress who openly questioned it at that juncture.

Everybody knows that the scission between the slaveholding and the non-slaveholding States in this great crisis of our political history was closed by what was called "the Missouri Compromise." That celebrated compromise was brought forward in the shape of an amendment to the bill which provided for the immediate admission of Missouri as a slaveholding State, and provided further that slavery should be forever prohibited "in all the territory ceded by France to the United States, under the name of Louisiana, lying north of thirty-six degrees and thirty minutes north latitude, excepting only such part thereof as is included within the State of Missouri." The Compromise was adopted in the Senate on the 17th of February, 1820, by a vote of thirty-four yeas to ten nays. In the House of Representatives it was passed by a vote of one hundred and thirty-four yeas to forty-two nays. A partition of the territory of the United States between the two classes of States at variance was now enacted into the statute law of the land.

Florida was purchased from Spain in 1821, and was erected into a Territory in 1822, with the toleration of

slavery, but not without the intervention of Congress at a later day to revise certain "regulations" of the Territory which moved in the matter of slavery and its relations. The Legislative Assembly of Florida undertook to impose discriminating taxes on the slave property of non-residents. All such discriminating taxes were formally disallowed by Congress, which thus asserted its just supremacy over each of the Territories during the period of its territorial vassalage.

The passage of "the Missouri Compromise" marks the close of an old order and the beginning of a new in the secular controversy over the disposition and regulation of slavery in the public territory. Mr. Jefferson confessed at the time that this Missouri question, "like a fire-bell in the night, awakened and filled him with terror," as being "the knell of the Union." He predicted again and again that the geographical line fixed by that compromise, because it "coincided with a marked principle, moral and political," and because it thereby created a clean and clear line of cleavage between the slaveholding and the non-slaveholding States, would never be obliterated, but would be marked deeper and deeper by every new irritation in our Federal politics. He saw with the eye of a political philosopher that the controversy between our two classes of States differently related to the subject of slavery had passed from the sphere of *economics* into the sphere of *politics*, and that, too, into the sphere of politics made blood-warm by conflicting interests, and touched into a fine frenzy by conflicting views as to the ethics of slavery. From the first there had been a *tacit* attempt to effect the partition of public territory between the planting and the trading States, and to the end that the pending

equilibrium between the two classes of States might be maintained as far as practicable, it had not been uncommon to provide for the twin admission of a "slave State" and of a "free State" into the Federal Union. But now the antithesis between the "slave States" and the "free States" was distinctly articulated in the polity and politics of the country. Henceforth the feud between them would be as internecine, so Jefferson said, as the feud between Athens and Sparta. He described from afar the advent of a new "Peloponnesian War."

His vision was true, but his analysis was insufficient. For in truth it was no fault of "the geographical line" fixed by the Missouri Compromise that that line was so portentous, and that forty years afterwards, as Jefferson feared in 1820, it bristled with the bayonets of "States dissevered, discordant, belligerent." The fault was in the opposing and enduring forces which eagerly confronted each other across the line, — forces of thought and passion so persistent and immitigable, that even when the party leaders of each seemed to be singing truce with their bugles, they were really marshaling their clans for new civic feuds of ever widening sweep and ever deepening intensity.

In the year 1845 the Republic of Texas was admitted into the Union by joint resolution of both Houses of Congress, and with a provision, *inter alia*, that "the Missouri Compromise line," as a recognized compact between the sections, should be applied to the territory in case of its partition into States. The idea of territorial "partition" was again embodied in our polity and politics.

The annexation of Texas had for its natural, if not its inevitable, sequel, the war with Mexico, which

resulted in the treaty of peace concluded at Guadalupe Hidalgo, and the ratifications of which were exchanged between the two countries at Queretaro on the 30th of May, 1848. By this treaty a vast accession was made to the territorial possessions of the United States. The annexation of Texas had been avowedly prosecuted in the interest of slavery, considered as a political institution. It was so interpreted by Mr. Calhoun, as Secretary of State, in a letter written by him to Mr. Pakenham, the British minister, under the date of April 18, 1844. The Mexican War, though declared by our Congress to have been begun "by the act of Mexico," was held by many at the South as well as at the North to have been precipitated by the act of the Administration of President Polk in ordering an advance of United States troops on the territory in dispute between Texas and Mexico. Supporters of the war at the South had not hesitated to call it "a Southern war," because it portended the aggrandizement of slavery considered as a political institution. Such sectional irritations could but excite a counter-irritation among the representatives of "the North" in Congress. As early as the 9th of August, 1846, on the introduction of a bill in the House of Representatives appropriating \$2,000,000 to aid in the adjustment of our difficulties with Mexico, Mr. David Wilmot, of Pennsylvania, brought forward his celebrated proviso, drawn, *mutatis mutandis*, from the Ordinance of 1787, but denuded of the clauses enjoining the rendition of fugitive slaves. It was expressed in the following terms: —

" Provided, that as an express and fundamental condition to the acquisition of any territory from the Republic of

Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime whereof the party shall be duly convicted."

The bill with this proviso annexed was passed in the House of Representatives by a vote of eighty-five yeas to seventy-nine nays. The bill as thus amended went to the Senate, where, by parliamentary strategy (that is, by "talking it to death"), the opponents of the bill caused it to fall through for want of time to act upon it before the hour fixed for the adjournment of Congress at that session. At the next session a similar bill was passed, with a similar proviso, declared to be applicable "to all territory on the continent of America which shall hereafter be acquired by or annexed to the United States." The sweeping proviso, after being adopted in committee of the whole, was finally rejected in the House of Representatives on the 3d of March, 1847, by a majority of only five votes.

The treaty of Guadalupe Hidalgo was, therefore, concluded and ratified in full sight of the sectional exasperations it was designed to foment. Henceforth the "territorial question" assumed vaster proportions, commensurate not only with the extent of the newly acquired domain secured from Mexico, but also with the growing rivalry of the two antagonistic sections. The constitutional relations of the question were complicated, besides, with recondite questions of public law as to the force and effect of the local municipal law of Mexico in the matter of slavery. On the one hand it was contended that the slaveholder

had no right to migrate to the new territory with his slave property, because, by the constitution of Mexico, the institution of slavery, always the creature of positive municipal law, could have no recognized existence on the soil in question. On the other hand it was argued that the territory of the United States, as the common possession of the several States, was held in trust by the Federal government for the common enjoyment and equal benefit of all the people of the United States, with all the rights, privileges, and immunities severally secured by law to the inhabitants of the several States. It was further argued on this side that, at the moment the new acquisition was consummated, the antecedent municipal law of Mexico was superseded by the Constitution of the United States, which, *proprio vigore*, extended its sway over the annexed domain, and placed the rights of the slave-owner under its shield.

In this attitude of the question a proffer was made by Southern members of Congress to effect a truce between the sections by extending "the Missouri Compromise line" to the Pacific Ocean. The proposition was rejected by the Northern members, who, in the stage which the controversy had now reached, steadfastly resisted any further "partition" of territory for the extension of slavery. Many were the parleys held in hopes of effecting a political armistice. By what is known as "the Clayton Compromise," so named from the Delaware senator, Mr. John M. Clayton, whose name it bears, it was proposed that "the whole territorial question," as then pending in relation to Oregon, California, and New Mexico, should be referred to a special committee of eight senators, four from "the North," and four from "the South,"

who should also be equally divided in a party sense between Democrats and Whigs. In this committee it was proposed by a Southern member to reaffirm "the Missouri Compromise line" as a basis of settlement. The proposition was rejected by the Northern members. This deadlock caused, as Mr. Calhoun afterward said, "a solemn pause in the committee." When all prospect of an agreement on "the Missouri Compromise line" had vanished in this committee, it was proposed by the Southern members to "rest all hope of settlement on the Supreme Court as the ark of safety." The refuge sought by the fathers in the Federal Convention of 1787 now seemed the only asylum open to their children in the Congress of 1848. The fathers had eaten sour grapes and the children's teeth were set on edge. A bill was matured in the committee, providing for an appeal to the Supreme Court of the United States from all decisions of a territorial judge in cases of writs of *habeas corpus*, or other cases where the issue of personal freedom should be involved; the bill was reported from the committee with the approval of three fourths of their number, but, after passing through the Senate, was defeated in the House of Representatives by a vote of one hundred and twelve nays to ninety-seven yeas. Five sixths of the negative votes came from the Northern States.

After the failure of "the Clayton Compromise," a bill organizing the Territory of Oregon was passed as a separate measure, with a proviso annexed prohibiting slavery in the terms of the Sixth Article of the Ordinance of 1787. President Polk in an elaborate message to Congress justified his approval of the bill by reasons drawn from the precedent set in the Missouri Compromise act of 1820, as reaffirmed at the an-

nexation of Texas. If William Grayson avowed that the Southern delegates in the Continental Congress of 1787 had "political reasons" in voting for the prohibition of slavery in the Northwest Territory, President Polk made no secret of the fact that he had "political reasons" in accepting the prohibition of slavery in Oregon — because it laid the basis of an argument for the parallel and lateral spread of slavery to the Pacific Ocean, on the old theory of an equitable "partition" of territory between the two sections. So persistent, we see, was the stress of political motives in this struggle for a "partition of the Territories."

Rendered impotent by its dissensions, the Federal legislature, though clothed with plenary power over the territory of the Union, had virtually abdicated its functions with respect to the new domain acquired from Mexico. We had "conquered a peace" from Mexico, but had lost it among ourselves. In prudent forecast of such disaster, Mr. Calhoun, with a patriotism which does him honor, had introduced a resolution in the Senate on the 15th of December, 1847, shortly after the opening of the Thirtieth Congress, declarative of the opinion that "to conquer Mexico and to hold it either as a province, or to incorporate it into the Union, would be inconsistent with the avowed object for which the war had been prosecuted [the redress of grievances]; a departure from the settled policy of the government, in conflict with its character and genius, and, in the end, subversive of all our free and popular institutions." Mr. Webster was equally earnest in reprobating the dismemberment of Mexico, but these counsels of the two great opposing leaders passed unheeded by the zealots who at that time swayed the counsels of the administration.

On the 4th of March, 1849, the administration of Gen. Zachary Taylor was called to inherit the fateful legacy bequeathed to it by his predecessor. He favored the early admission of California and New Mexico as States, under constitutions which had been prepared at their own initiative, in the absence of enabling acts from Congress. Henry Clay, who had returned to the Senate at this crisis to lend his great abilities to the work of conciliation, proposed on the 29th of January, 1850, that the pending territorial questions should be settled as part and parcel of the wide agitations springing up from slavery in all its relations under the Constitution. The five measures which he advocated, to "staunch the five bleeding wounds of the country," were: (1) The immediate admission of California as a State; (2) the adjustment of the boundaries of Texas; (3) a more effective bill for the recovery of fugitive slaves; (4) the abolition of the slave traffic in the District of Columbia; and (5) the passage of organic acts for the territorial government of Utah and New Mexico. These propositions, with all others pending on the same subject, were on the 19th of April, 1850, referred to a select committee of thirteen members, consisting of Messrs. Clay (chairman), Cass, Dickinson, Bright, Webster, Phelps, Cooper, King, Mason, Downs, Mangum, Bell, and Berrien. This committee submitted a report covering all the points above enumerated, and accompanied the report with a bill which, from the comprehensiveness of its scope, was called at the time "the Omnibus Bill." This bill, in its relation to the Territories, provided for their organization by acts of Congress, but declared that the legislative power under them should not extend to the passage of "any law in re-

spect to African slavery." Pending the consideration of this bill, Jefferson Davis, of Mississippi, moved on the 15th of May to amend the bill by substituting for the words, "in respect to African slavery," the following clause: "No law shall be passed interfering with those rights of property growing out of the institution of African slavery as it exists in any of the States of the Union." At a later day a counter amendment was proposed by Salmon P. Chase, of Ohio, in the following terms: "*Provided, further,* That nothing herein contained shall be construed as authorizing or permitting the introduction of slavery or the holding of slaves as property within said Territory." These two amendments expressed the pro-slavery and the antislavery antithesis. After an animated debate they were both rejected in the Senate by a vote of 25 yeas to 30 nays. Various other amendments having then been offered and defeated, Stephen A. Douglas, of Illinois, moved to strike out the words relating to "African slavery," and to provide that "the legislative power of the Territory should extend to all rightful subjects of legislation, consistent with the Constitution of the United States." This amendment, after being at first treated with almost unanimous contempt, receiving only two votes, was finally adopted, and on the 31st of July, 1850, was incorporated in the Utah territorial bill, which was passed by a vote of 32 yeas to 18 nays. The lassitude of exhausted disputants rather than the cohesion of clear-thoughted opinion was represented in this majority vote.

It was sought by this amendment to remit the whole slavery discussion to the territorial legislatures, "subject only to the Constitution of the United States," as interpreted by the Supreme Court. The

expedient was unhappily open to a double construction at the moment of its invention. Some who favored it at the North supposed that the inhabitants of a Territory would be left "perfectly free" to prohibit as well as to establish slavery during their period of territorial dependence. Others who favored it at the South repelled this assumption as extra-constitutional so far as the prohibition of slavery was concerned, and held that all legislation of a Territory inimical to slavery would be null and void, because inconsistent with the Constitution of the United States. The bill as finally passed provided at first for the organization of Utah alone, but a few days later the Senate passed a similar bill for the territorial government of New Mexico, and the House of Representatives having concurred in both, they were both signed by President Fillmore on the 9th of September, 1850.

In order to measure by a few criteria the magnitude and intensity of the opposing forces which had now come to their impact on the public territory, it is only necessary to recall the fact that, as early as the winter of 1844-45, the legislature of Massachusetts, borrowing a leaf from the nullification history of South Carolina, had declared by a solemn act, on the eve of the annexation of Texas, that such an act of admission "would have no binding force whatever on the people of Massachusetts." On the other side the legislature of Virginia declared on the 8th of March, 1847, that in the event of a refusal by Congress to extend "the Missouri Compromise" line to the Pacific Ocean, or in the event of the passage of the "Wilmot Proviso," the people of that State "would have no difficulty in choosing between the only alternative that would then remain, of abject submission to aggression

and outrage on the one hand, or determined resistance on the other, at all hazards and to the last extremity." A similar resolution was reaffirmed by the Virginia legislature on the 20th of January, 1849, accompanied with a request that the governor of the State, on the passage of the "Wilmot Proviso," or of any law abolishing slavery or the slave trade in the District of Columbia, should immediately convene the legislature in extraordinary session "to consider the mode and measure of redress." Even after the so-called "compromise measures of 1850" had been enacted by Congress, declarations still more emphatic and proceedings still more positive were promulgated by the legislatures of Mississippi and South Carolina.

"The great pacification" of 1850 had failed to pacificate. How fond was the illusion wrought by it may be read in the fact that though the two great political parties of the country, the Whig and the Democratic, had accepted "the compromise measures of 1850" in their respective "platforms" for the presidential election of 1852, as putting "a finality" to the slavery agitation and as the supreme test of political orthodoxy; and though the candidates of the latter had prevailed over those of the former because they were supposed to stand "more fairly and squarely" on the basis of that adjustment, yet it was reserved for the leaders of the Democratic party, in this very matter of the Territories and their government, to reopen the whole slavery agitation with a breadth and violence never before known in our annals. Because the surface of our political sea was at that moment no longer swept by storm and tempest, men flattered themselves with the hope that the winds of sectional passion were dead, whereas they were only

tied for a season in the bag of Æolus. Their roar might still be heard by those who had ears to hear.

Congress in 1853 and 1854 was called to organize the Territory of Nebraska, carved out of that portion of the Louisiana Purchase which, lying north of 36° 30' north latitude, was covered by the Missouri Compromise of 1820 prohibiting slavery. At first the Committee on Territories in the Senate, Stephen A. Douglas being chairman, did not propose to disturb the terms of that compromise; but the territorial bill for Nebraska, in respect of the legislative power it conferred, was couched in the same terms as had been prescribed in the bills for the government of Utah and New Mexico. As those bills were meant to leave these Territories *tabulæ rasæ* in the matter of slavery and its relations, it was indeed hinted by the committee that the "principles" on which those bills proceeded were inconsistent with the retention of a "compromise" which had placed an invidious limitation on popular sovereignty in the Territories, under the guise of placing an invidious interdict on slavery. After hesitating for a time on the brink of the chasm which he saw to be yawning before him, Mr. Douglas, on the 23d of January, 1854, in the act of reporting a bill for the organization of two Territories, one to be called Nebraska and the other Kansas, boldly proclaimed the doctrine that the Constitution and all laws of the land extended to these Territories "except the Eighth Section of the Act preparatory to the admission of Missouri into the Union, approved March 3, 1820, which was superseded by the principles of the legislation of 1850, commonly called 'the Compromise Measures,' and is declared inoperative and void" — that is, the terms of "the Missouri Compromise,"

which the committee of the Senate were "not prepared to depart from" when they made their first report, were now declared to have been already repealed by the later compromises of 1850.

As two rays of light, when they impinge in the physical realm, may so neutralize each other as to produce darkness, so it would seem that two "compromises" when they impinge in the political sphere, may so neutralize each other as to produce an explosion. Certain it is that the repeal of "the Missouri Compromise," while having for its avowed object to effect the sempiternal banishment of "the slavery agitation" from the halls of Congress, and its localization in the distant domain of the Territories, had for its consequences to set the whole nation by the ears. It threw the apple of sectional discord into Congress, into the Supreme Court, into every home in the whole land.

How far our Federal politics in this recoil from a recorded precedent and an established landmark had swung from the moorings of the Constitution in the matter of the Territories and the power of Congress over them may be gauged by a single remark which Mr. Calhoun dropped in the last speech he ever delivered in the Senate (it was on the 4th of March, 1850), when he referred to the fact that as recently as during the debate on the organization of Oregon Territory, everybody in the Senate, if he mistook not, "had taken the ground that Congress has the sole and absolute power of legislating for the new Territories." Congress in 1855, smitten with paralysis by the shock of "an irrepressible conflict" between the "free States" and the "slave States," was compelled to declare its *déchéance* as to a power so singly vested in it that its power was "sole," and so fully vested in it that its

power was "absolute." In fact, it was not the quality or extent of the power, *but the incidence of the power*, which led the politicians to shuffle it out of sight.

The first effect of the effort to "localize" the "slavery agitation," by relegating it to the Territories, was to precipitate a political and military crusade alike from "the North" and from "the South" for the speediest possible seizure and occupation of the two strategic points of Kansas and Nebraska, which had been so rashly uncovered by the tactical blunders of politicians manœuvring for a position. A second effect of the new policy was to convert the form of the Supreme Court into the *champ-clos* of a judicial tourney which, by its decision, served only the more to embroil the fray it was sought to compose. The Dred Scott decision is commonly supposed to have placed its ægis over the rights of slave property in the Territories during the interim of their subordination to the power of Congress, but when the opinion of Chief Justice Taney, which was read as the opinion of the Supreme Court in that famous case, is collated and compounded with the separate opinions of the Justices who, it is supposed, "concurred" in that decision, this conclusion is by no means clear or certain. Among the "concurring" Justices there is surely no one who, whether for his learning or his character, is entitled to greater weight than Mr. Justice Campbell. But that great jurist, in passing on the merits of the case, expressly stated that he did not "feel called upon to decide the jurisdiction of Congress," and that "courts of justice could not decide how much municipal power may be exercised by the people of a Territory before their admission into the Union." Indeed the Dred Scott decision did but render the confusion worse con-

founded. It was discovered at last that "the ark of safety," to which our statesmen, from the origin of the government, had looked for refuge from the turbulence of the "territorial question," could not out-ride the storm.

It remains, then, to say that the dogma of "popular sovereignty in the Territories," never a principle of the Constitution, and never striking any root in the history of the country before the date of our Mexican acquisitions, was a mere expedient and makeshift, invented for the evasion of a duty which Congress had become incompetent to perform because of the schism in our body politic — a schism created by the wrench and strain of two distinct social systems contending for supremacy in the same national organism.

I have ventured on this long review not only for the historic interest of its separate stages, but also for the light it sheds on the difference between the opposing forces which at different epochs met and impinged at the same point of impact — the public territory. At the epoch of the ratification of the Articles of Confederation, at the conclusion of peace with Great Britain in 1783, at the formation of the Constitution in 1787, the great differentiation between two classes of States had turned on the question of the ownership, partition, and government of the unoccupied lands wrested from the British crown. The condition of unstable equilibrium was here produced by the presence and antagonism of two classes of States differently endowed with territorial possessions. Under the Constitution, from 1789 to 1860, this condition of unstable equilibrium resulted in the first stadium of our history from the presence and antago-

nism of two classes of States with different economic systems, determined by the waning profit of slave labor in the Northern States, and by the increasing profit of slave labor in the Southern States. From an unstable equilibrium swaying primarily in economics, this sectional counterpoise passed, in its second stadium, to an unstable equilibrium swaying in party politics; and this second stadium was reached at the advent of "the Missouri Compromise," with its geographical line of discrimination between "the two great repulsive masses," pitted against each other in the same parallelogram of forces — the Federal Union. From the year 1820 to the year 1860, the jar and jostle of these great repulsive masses continued to increase in vehemence of momentum and in amplitude of vibration, until at last they shook the Union to pieces for a season, in the secession of the Confederate States.

It was natural and inevitable that this great oscillation of opposing and enduring forces should have always come to its highest ascensions in the partition and government of the common territory, because it was there that the two contending sections could find the freest field for political rivalry and hope for the largest trophies of political conquest. After the bargain had been struck in the Federal Convention between the trading States of New England and the planting States of South Carolina and Georgia, in virtue of which the former secured the congressional regulation of commerce, and the latter secured the constitutional allowance of the slave trade till the year 1808, it was foreseen at the time that two great objects of sectional interest would still survive in the Union — the fisheries for the benefit of New Eng-

land, and the Mississippi Valley for the benefit of the Southern States. This fact was not only foreseen, but openly stated on the floor of the Federal Convention.¹ It does not need to be said that the question of the Mississippi Valley opened an immensely wider field for the play of economical and political forces within the Union than the question of the fisheries. The former, in its newly emerging issues, was destined to supply recurring questions of purely sectional and domestic politics. The latter, in its newly emerging issues, could but supply such questions in the second degree, for in the first degree they are always questions of international politics.

All this was clearly perceived, I say, in 1787 and in 1788, when Patrick Henry and William Grayson "thundered and lightened" in the Virginia Convention against the ratification of the Constitution. The struggle for the Territories under our present Constitution has always been, down to 1860, as Grayson phrased it in 1788, "a contest for dominion — for empire" in the Federal government. It has been a contest on the one side for the protection and extension of slave labor, with the order of economics and politics which such a social system implies; and a contest on the other side, for the protection and extension of free labor, with the order of economics and politics subtended by a diversified system of industry. The distinction between the opposing forces and the point of their impact was revealed at once when the shock of battle came in 1860; for, with the first shock of that battle, the question of the territories, as a watchword and challenge between the two sections, sank beneath the horizon of the national con-

¹ *Elliot's Debates*, vol. v. p. 526.

sciousness in the twinkling of an eye. The "territorial question" never had any significance, except as the earnest and pledge of political ascendancy in the Federal Union; and when the civil war came, that significance was buried out of sight by the new form which the impact had taken in passing from words to blows. The antagonistic forces now stood face to face in battle array. The house so long divided against itself had come at last to realize that, if it was not to fall, it "must become all one thing or all the other; and so it came to pass, rather by the logic of events than by the logic of human wisdom, that the war for the political union of the States passed into a war for the social and economical unification of the American people. It is sorrow and shame that this beneficent result could not have been reached without the rage and pain of a great civil war; but now that it has been reached, the sorrow and shame of the old epoch, with the rage and pain of the transition period, are slowly but surely melting away into a new and deeper sense of national unity, with its vaster problems of duty and opportunity. The problems before us are indeed of increased complexity and difficulty, but they move no longer in the political dynamics of two distinct civilizations, each boasting its superiority to the other, and each wasting its energy by working at perpetual cross-purposes with the other. The energies formerly expended in the "irrepressible conflict of opposing and enduring forces" can now be conserved in the political dynamics of a unified civilization, and can be correlated into new forms of social and economical evolution, without detriment to our "indestructible Union of indestructible States."

IX

CONNECTICUT FEDERALISM, OR ARISTOCRATIC POLITICS IN A SOCIAL DEMOCRACY¹

FOR all the purposes of the discussion before us, the State of Connecticut must be selected as the most typical of the New England communities. She must be so selected because of the greater simplicity of her social tissue during the early colonial period ; because of her priority in ordinating, under the new conditions of American life, a purely independent and popular form of self-government ; because of the preëminence she had, through her representative men in the Federal Convention, in determining the structure of our federative policy ;² because of the active share she took in dressing the balances of the Constitution in the fateful matter of slavery — thus helping to contrive the sectional equilibrium which she was afterward destined to shake ; and, finally, because of the greater tenacity with which she clung to the Federalist party in its origin, in the period of its proud ascendancy, and in the days of its decline down to the hour of its “dim eclipse” within the closed doors of the Hartford Convention. Hartford is at once “the birthplace of American de-

¹ An address before the New York Historical Society, November 18, 1890.

² “The government of the United States to-day is in lineal descent more nearly related to that of Connecticut than to that of any of the other thirteen colonies.” — John Fiske, *Beginnings of New England*, p. 127.

mocracy" and the old historic stronghold of aristocratic politics in the United States. The first written constitution ever adopted by the people in the name of the people was framed there in 1639. Hartford was the metropolitan see of Federalism from 1790 to 1815.

The preponderant strength of the Federalists had always been at the North. The preponderant strength of the anti-Federalists, or Republicans, as they soon came to call themselves, had always been at the South, and so it came to pass that the line of cleavage between the two parties was, from the first, identified in large measure with geographical boundaries determined by the greater or lesser prevalence of slavery in our country. It was this aspect of the schism in our body politic which gave to Washington his gravest concern, and hence the warning he pointed in his Farewell Address against "characterizing parties by geographical discriminations." It has been common to suppose that this adjuration of the *Pater patrie* was meant to serve as a general lesson in political didactics. In fact, the warning was inspired by the most exigent considerations of political opportunism at the moment when Washington wrote, as we shall see in the sequel of this paper.

The stratification of our politics by lines of geographical latitude was well defined in Washington's day, at least in the closing years of his second term. The marks of the stratification had been detected by Madison in the different trends of opinion in the Federal Convention; and in all periods of political upheaval the marks of this same stratification have come most visibly to the surface in the shape of disunion portents. Sometimes the strain of this upheaval has come from

the South ; sometimes the strain has come from the North ; sometimes the strain has come from both sections at the same time, as, for instance, during the administration of John Adams, when that "sectional equilibrium" of which I have spoken was put into a state of violent oscillation by the storm and pressure of our Federal politics. Everybody is familiar with this oscillation as observed at the southern end of the beam, for everybody has read, or read about, the famous Virginia and Kentucky "Resolutions of '98." It was in these resolutions, both emanating from Virginian pens, that the State's-rights theory of our Federal compact was put into its first concise and logical form of statement. In the Kentucky declaration of 1799 the ill-omened word "Nullification" first found a lodgment in our political lexicon.

But it is not so generally known, I think, that the oscillation was equally pronounced at the New England end of the beam, and that, in effecting what seemed a necessary counterpoise against political "Jacobinism" at the South, the heaviest of disunion weights were put in the Northern scales by certain Federalist leaders in Connecticut, who, from 1796 to the year 1800 and later, set on foot an open propaganda for the dissolution of the Union. That such an agitation was essayed by a few New England Federalists in 1804 because of the acquisition of Louisiana, with its consequent disturbance of the sectional equilibrium between "the North" and "the South ;" in 1808 because of the oppressions wrought by the Embargo policy of Jefferson ; in 1812 and later because of alleged perils and inequalities resulting from the war with England, are facts commonly known. But that a similar agitation was originated in Connecticut in the year 1796 ; that it obtained for

four years and longer, and that it was placed on the grounds of a permanent incompatibility between the politics of a slaveholding and of a non-slaveholding community comprised in the same civil polity, are facts which, so far as I am aware, have not received due notice from our historians.

It must not be supposed that the Federalists of Connecticut, who led in this movement, were men who welcomed disunion with gayety of heart. They wrought to what they believed the destined and necessary end of things, but they wrought with a "sad sincerity." It may be safely affirmed that these bold advocates of a reactionary Federalism were the first to seize and enunciate in our politics the truth expounded at a later date with startling emphasis by Abraham Lincoln, when, in the year 1858, he nailed up on the hustings of Illinois the clear-cut thesis that "this government could not endure permanently half slave and half free." The early emergence of this same slogan, in terms equally explicit but longer drawn out, is so interesting for its deeper philosophy as well as for its surface indications, that I propose to review at some length the disunion crusade which was proclaimed by certain of the Federalist leaders in Connecticut at the close of the last century. We shall see how it was that an aristocratic party, lodged in the bosom of a social democracy, for the reason that it was so lodged, undertook to impress into its service the forces of industrial liberty, of social order, and even of Christianity itself, as believed to be menaced by "French Democracy" under the ascendancy of Jefferson.

It is known that the Connecticut "Courant," published at Hartford, was the recognized organ of the Connecticut Federalists during the whole existence of

the Federalist party. It was not held too much to say of this sheet, in the very hour when the disunion cloud was lowering in the New England sky, that "the 'Courant' must be considered the political thermometer of Connecticut."¹ The political newspaper at the close of the last century was commonly conducted by practical printers, who were editors rather in the French than in the English sense of that term. The newspaper was used by party leaders at that time as their chosen vehicle for the dissemination of well-weighed opinions on all current issues. They wrote under assumed names. Hence it is that these periodicals swarm with communications from "Theramenes" and "Agesilaus" and "Aristides;" from "Cincinnatus" and "Marcellus" and "Cato;" from "Pelham" and "Burleigh" and "Hampden." Everybody knows that the matchless papers of Hamilton, Madison, and Jay in defense of the Constitution, while as yet it was pending before the States, made their first appearance as newspaper essays under the signature of "Publius." When Hamilton and Madison crossed swords with each other over Washington's Proclamation of Neutrality in 1793, it was under the masquerade of "Pacificus" and "Helvidius" that they entered the public lists. In like manner the Connecticut "Courant" offered a closed field to all valiant knights of the pen who were ready to shed the last drop of their ink for the honor of Federalism.²

¹ See letter of the Rev. Stanley Griswold to the Hon. Joshua Coit, under date of March 20, 1798, as published in the *Courant* of May 21, 1798. By the Republicans the *Courant* was denounced as "the organ of Beelzebub" (*Courant*, October 6, 1800).

² For the privilege of free access to the files of the *Courant* I am indebted to Dr. J. Hammond Trumbull, the learned librarian of the Watkinson Library, in Hartford, and to his accomplished assistant Mr. Frank B. Gay.

After carefully turning the files of this print for the years running from 1796 to 1801, and after comparing them for the corresponding period with the files of the "Columbian Centinel," the organ of Massachusetts Federalism, I have no hesitation in giving the palm of superiority to the Hartford journal. It is known that Hartford became at an early day in our post-Revolutionary history the seat of wits and poets who made Connecticut famous alike for political diatribe and for satirical verse. Professor Henry A. Beers has truly said that for twenty years, from 1787 to 1808, the city of Hartford "was the literary headquarters of that conservative party which favored a strong general government, and opposed French Democracy." It was here that Dr. Lemuel Hopkins mixed the black drops of his "Guillotina," while Joel Barlow with his slender pipe was meditating in mock heroics the praises of "Hasty Pudding." It was here that the choicest flowers of the "Political Greenhouse" were raised in the Federalist hotbeds of 1799. It was here, as in a whispering-gallery, that the voices of the "Echo" poems were caught on a sounding-board and reëchoed throughout the land.

But the squibs and firecrackers of the satirical bards did but kindle a straw blaze compared with the burning and the shining lights of the able prose-writers who kept up a constant torch-race in the contentions of the periodical press. If pamphlets sometimes fell in volcanic showers at this period, the newspaper was a live volcano in a constant state of eruption. It is among the ashes and scoriæ deposited by the eruptions of the "Courant," at the date indicated, that I shall rummage for fossil remains in our early politics.

A "Courant" writer under the signature of "Pel-

ham" was the first to break ground for a dissolution of the Union by the voluntary and concerted secession of the States north of the Potomac. The opening paper of his series appeared under date of November 21, 1796, while as yet Washington was in the presidential chair. The writer addresses his appeal to all his "fellow citizens north of the river Potomac." He commences by expressing the opinion that they had then "reached a critical period in their existence;" that "the question must soon be decided whether we will continue a nation at the expense of our union or sink encumbered with the present mass of difficulty into confusion and slavery;" that "when the Constitution of the United States was formed, it was deemed an object of the first importance so to conduct that great national bond as to bring together, in one firm union, the whole of the States;" that "as the interests of the various States were diverse and in some degree opposite, mutual concessions were required to accomplish a purpose by all thought desirable;" that "those concessions were made and a Constitution was agreed upon which *seemed* to secure to the whole as many benefits and as much freedom as was compatible with the frailties of human nature;" that "without undertaking to say from which quarter of the country the most important concessions were gained," it "would not be an easy task to discover anything like an equivalent gained by the Northern States for the admission of the negroes into the mass of the inhabitants in the Southern States in order to swell the size of their representation in the general Congress;" that "negroes were in all respects, except in regard to life and death, the cattle of Southern citizens," and as such were not entitled to be enumerated among "people;" that "if they had been

good for food the probability is that even the power of destroying their lives would be enjoyed by their owners as fully as it is over the lives of their cattle ; ” that “ if to balance this claim, the Northern States had demanded that three fifths of the whole number of their horses and cattle should be added to the amount of free persons, the claim would have been rejected with indignation ; ” that in the state of mind which existed at the formation of the Constitution “ reason yielded to fear, and the aid of the Southern States was considered by the Northern as of more importance than it was really worth. ”

The writer admits that “ this sentiment will be viewed by many as bold, rash, and possibly destructive in its consequences, ” but that none the less “ it is a question which merits consideration ; ” that even “ if his object be as wicked as human depravity can imagine, examples are not wanting to countenance him. ” “ Whoever shall execrate, ” exclaims “ Pelham, ” “ let the tongues of the Democrats ¹ lie sealed in silence, for the machinations of Pandemonium are outstripped in the career of guilt by the plots of Democratic citizens. ” The writer says that he “ is sensible that many excellent men, and among them the most highly revered of all, the great, the beloved Washington, contemplate the subject of this address with extreme anxiety ; ” that he “ also views it with anxiety, ” but that “ there are other subjects more interesting to us all ” [than the Union].

It should be explained that the Farewell Address of

¹ The writer explains in a note that wherever he “ uses this word he means nothing more by it than to point out a certain set of men who choose to call themselves by that name, as a term of distinction, without any regard to its real signification. ”

Washington, with its earnest deprecation of parties formed on lines of "geographical discriminations," had been published in the Hartford "Courant" of September 26, 1796, just about a month before the appearance of "Pelham's" communication.

Undeterred, however, by that dissuasive, he proceeds to argue that "the Northern States *can* subsist as a nation, a republic, without any connection with the Southern;" that a union of the former with the latter "would be more desirable than a separation if the Southern States were possessed of the same political ideas;" but in view of the fact that it had then "become a serious question whether we [the Northern States] should give up our government, or part with the States south of the Potomac, no man north of that river, whose heart was not thoroughly Democratic, could hesitate what decision to make." He avows the belief that "the question [of disunion] is nearly ripe for decision, and that therefore the time had come when the public mind should be employed in examining it attentively, in order that when the period arrives, the decision may be made coolly and with firmness."

He then states that in future papers he will consider "some of the great events which will probably lead to a separation of the United States;" will show to the Northern States "the importance of retaining their present Constitution even at the expense of a separation;" will "endeavor to prove the impossibility of a union [between the two classes of States] for any long period," as well from the contrariant moral and political sentiments as from the contrariant habits of the Southern States, and, finally, "will examine carefully

to see whether we have not already approached the era WHEN THEY MUST BE DIVIDED." ¹

In his second paper, in the "Courant" of December 12, 1796, "Pelham" commences by "correcting a mistaken notion which," he says, "many people have conceived from reading his first address," to wit, that his "object was merely to hold up the idea of a separation as a scarecrow, to intimidate those who think differently in politics from pursuing their favorite measures." Accordingly he explains that the point of immediate consideration in this second paper will relate to those "great events which will probably lead to a separation of the United States."

The first important fact which furnishes the prologue to his swelling theme is "the general opposition of sentiment which distinguishes the two great districts of territory" — an opposition "obvious," he adds, "both in politics and morals." John Adams was at that moment the candidate of the Federalists for the Presidency, and, pointing to the morbid humors of the then pending canvass, "what," cries "Pelham," "is the heaviest charge against the character of Adams at the South?" It is that "he wishes to establish a monarchy," while "all his friends (who comprise all the citizens of the United States in the NORTHERN DISTRICT except a few of the factious scattered in Pennsylvania) are ranked in the same opprobrious list." In view of the charges of "aristocracy" and "monarchy" so freely denounced in the Southern States against the Northern, the inference to be necessarily drawn on both sides is that "the political sentiments in the Northern and the Southern districts are directly

¹ Whenever italics or capitals occur in these citations, they are always found in the text of the *Courant* writer.

opposed to each other ;” for if, he adds, “ the Southern States believe that the Northern differ from them in points of such high importance, that belief will forever produce contention, discord, jealousy, and animosity.” “What is there,” he exclaims, “ to bind such discordant bodies together ? ”

He next institutes a comparison between the moral, religions, and economic habits of the Northern and the Southern peoples respectively, in order to evince the “ total contrast between them in every particular.” “ Which party,” he asks, “ is to yield for the sake of the Union ? Is there to be an accommodation from each, a partial reformation on their part, and a partial deprivation on ours ? ” “ There is little prospect of the first event,” he conceives, and, “ Heaven defend us,” he cries, “ from the latter.” So far from any abatement being likely to occur in this contrariety of moral and political temper in the North and the South, he predicts “ its rapid increase.”

He next proceeds to show how “ the existence of slavery may be viewed as one forcible cause of a final separation of the United States.” The operation of slavery to this end may be seen, he thinks, alike “ in a moral and a political sense.” “ Is there much probability,” he queries, “ that a system so inhuman and discordant, so violent and bloody as that of slavery, can possibly be kept in order for any length of time ? ”

At this stage of his argument the papers of “ Pelham ” come to a sudden pause, before he has described “ the great events ” which are likely to usher in a dissolution of the Union, and the reader might suppose that the lamentations of the Connecticut Jeremiah had come to an end. Such seems to have been the opinion of the late Professor Johnston, in his excellent little

“History of Connecticut,” for he appears to have been familiar with these two letters alone, and not to have been aware that “Pelham” desisted from his screed only for a season.

In this interval of his silence the same parable was taken up in the same journal by another correspondent, equally able, who wrote under the signature of “Gustavus,” purporting to be a citizen of the county of New London in Connecticut.

“Gustavus” begins his series in the “Courant” of July 3, 1797. He, too, proclaims in his exordium that the people of Connecticut “have now arrived at a period in the political drama in which it becomes them to pause, and seriously to contemplate the closing scene, before the curtain is drawn and all liberty of judging for themselves is taken away. From the complexion of the past we must infer the future, and it remains in us to determine what the future *shall be*—whether the closing part of the performance shall add strength and durability to our independent existence or whether it shall be a tragical catastrophe in which we are to behold our independence destroyed, ourselves confined to an unconditional vassalage, and our country covered with lamentation and mourning.” . . . “At the time of the formation of the Constitution,” he proceeds, “it was questionable how far it would answer in practice. This problem could be solved by experiment alone. To make the experiment time was requisite. The necessary time has elapsed, the experiment has been made, and the solution of the problem is that under a wise administration the theory of the Constitution is proved to have been just.” He laments, however, that this theory has been rudely disturbed by the intrusion of “Gallicanism” into our

politics; that "the plain and simple truth is that the French envied us our possession and set themselves seriously to work to destroy it;" that "with this constantly in view they have intrigued, they have flattered, they have caressed, they have defrauded," until in the end "it has become a serious question whether the citizens of the United States esteem the blessings they possess under their own independent government worth preserving." Considering the atrocities of the French Revolution and considering the mournful fate of the people at Cape François,¹ "Gustavus" thinks that the people of the Southern States, before giving in their adhesion to French Jacobinism, should have put themselves on guard [against slave insurrections]; but "though they have had line upon line and precept upon precept, they still continue to promote French interests by their elections, and French interests must ultimately prove their destruction. When this event shall take place (and it is not very distant), the inhabitants of New England will be able to console themselves with the reflection that they have unitedly opposed it. They have opposed it in all constitutional ways but one, and that is in the field. As the *dernier ressort*, to this they will have recourse, for while they are left with the liberty of fighting *in their own defense*, they will never tamely yield to any nation. And while they are beholding their fellow citizens in the Southern States sunk into servitude or massacred by their regenerated freedmen, the regret which they would otherwise feel at the sight will be lessened by the melancholy consciousness that the Southerners are reaping the fruits of their own labors and receiving the wages of their virtuous Democracy."

¹ In St. Domingo, in the years 1792, 1793.

In his next paper, in the "Courant" of July 10, 1797, "Gustavus" predicts the imminent danger of an invasion of the United States by French arms, as a natural consequence of the sympathy expressed for France by anti-Federalist members of Congress, and he concludes with a serious animadversion on the alleged moderatism of certain Federalist members in the House of Representatives — an animadversion aimed perhaps at Joshua Coit of New London, though he is not named. These moderates, the writer says, "are veering over to the anti-Federal side of politics." He counsels the people of Connecticut to "reject those who are constantly whiffing between foreign and domestic interests, whether they are *in* Congress or *out* of it."

The next paper, published under date of July 24, bristles with predictions of dire disaster in case Jefferson should be elected. "I pity my countrymen," says "Gustavus," "if Jefferson is 'their man.'" "If he is," the writer thinks that "the people of the United States had better strike their colors, attend the funeral rites of Liberty and Independence, assume the tri-colored cockade, divide their years into decades, establish French festivals as their days of worship, the red cap of Liberty as their Deity, and introduce *ça ira* and *carmagnole* for their church music. Thomas Jefferson," he adds, "would then dispense the rites of the altar with pious alacrity, and Thomas Paine would be his proper deacon to distribute the sacrament of the Devil's communion." He then argues that "a division of the United States will be the probable consequence of French influence in this country," and that the machinations of French emissaries, in league with Democratic politicians, are already working for a sep-

aration of the Western States from the Union. In proof of this charge citations are made from the well-known proclamations of Genêt, from the proceedings of certain Democratic societies, and, lastly, from the letters which had then recently passed between President Washington and Governor Shelby, of Kentucky.

“Gustavus,” in the next paper of the series, July 31, 1797, undertakes to show that “the causes for a division of the Union are in existence,” and must in due time produce their effect; that “the seeds of dissolution are sown;” that “they have taken deep root downward;” that “they are shooting upward;” that “they are progressing on to maturity,” and that “ere long we shall behold them yielding fruit in abundance.” He then states that for the nonce he will suspend the question of disunion, and will confine himself to current topics of political discussion, such as Blount’s conspiracy, Western plots with the Spanish authorities at New Orleans, etc. Accordingly his next paper, published under date of August 7, 1797, is designed to show that French emissaries are at the bottom of all these disorganizing schemes.

In his number for August 21, 1797, he resumes the subject of disunion and says: “In looking at the causes for a division of the Union, they are found to be various. An opposition in interest [between the Northern and the Southern States] will first call our attention.” He maintains that this opposition of interest is not of recent date, but was “strongly exemplified within the walls of the Continental Congress, during the Revolutionary War.” Although the men who contemplated continental subjects on a more enlarged scale, were able, by concession and coalition, “to keep up the appearance of harmony, yet it was in truth the

appearance only." The appointment of Washington as commander-in-chief of the army is cited as being no exception to this remark. But it is in the sectional aspects of the slavery question that "Gustavus" finds the main ground of his argument for the necessity of disunion. To this effect he says: "In the Northern States the accursed business of slavery is fast losing ground. . . . The *principle* of slavery scarcely finds a solitary advocate at the northward. In the Southern States it is still upheld, and on the continuance of it rests their principal wealth. . . . The Northern people found it for their interest to free their slaves; the Southern people to rivet the chains of theirs. Here, then, is another contending interest." He then points the moral of his argument by referring to the bloody example of St. Domingo as a warning to the Southern States, in case the French government should establish a colony upon Spanish territory in the vicinity of the Southern States.

In his next number (August 28, 1797) the writer dilates at much length on the "aristocracy of the Southern planters," and on the essential incompatibility of temper between the people of the Northern States, who are opposed to slavery, and the people of the Southern States, who "regard negroes as standing on a middle basis between human beings and the brute creation." He remarks that "the people at the southward who have an influence on the elections view this as a happy state of society — one which is peculiarly eligible," while "the Northern people think far otherwise." Hence, he says, a necessary antagonism between the two sections "on all questions of national importance." "The Southerners would rather overturn the government than have any change take

place in their aristocratic state of society." After further invidious reflections on the alleged "dissoluteness" of the Southerners and their "total disregard for all the sacred institutions of Christianity," he adds: "As these causes exist *in nature*, it follows regularly that the opposition [between the two sections] will also exist, and it is almost certain they will increase in number and magnitude until, by their influence, they have so attenuated the bond of the Union, which is already much enfeebled, that some violent concussion will suddenly rend it asunder."

In his paper published on the 11th of September, 1797, he discusses the financial and economic objections which might perhaps be alleged at the North against a dissolution of the Union — such as the consequent destruction of the United States funding system, in which the capital of the North was specially interested, and seeks to show that this financial view of the issue is without much weight. In drawing toward the close of his long discussion he sums up as follows: "Having shown that the present enmity to the government in the Southern States is not likely to be obviated; that it is progressing to a necessary division of the Union; that it is better to have it take place soon than to run the hazards of those consequences which must arise from some violent concussion effecting it; that the Northern States would be more eligibly situated when *united* among themselves, under a government of *their* choice, than whilst connected as they are at present with the Southern States by the Constitution, but *disunited* in their views and interests, I shall now retire to domestic seclusion, and with a philosophical calmness contemplate the future progress of my country as time bears it along." . . .

“It is probable that I shall never be recognized as any other than ‘Gustavus.’ My fellow citizens will not, therefore, have it in their power, were they otherwise disposed, to distinguish me by popular favor.” He admits that the Union might still be saved by a proper choice of rulers, but “if the people should choose men of an opposite description, men who are dishonest, opposed to government, opposed to peace, and men who ridicule Christianity, they must abide the awful consequences, for awful *they will be* indeed. They must expect to behold civil law trampled in the dust, to see anarchy taking the seat of regular government, with its hellish train of civil war with all its horrors; insecurity of life and property; a mockery of justice; fraud, perjury and murder, fire, sword, famine and desolation marching in sanguinary phalanx, sweeping the country with the besom of destruction, and leaving the silence of death in their train.” In the forecast of such horrors “Gustavus” comforts himself with the reflection that “under the silver mantle which is thinly scattered over his brow, he can look forward, through a limited prospect, to its speedy termination” for him, “but what,” he exclaims, “will be the fate of the myriads of my successors, just treading the broad theatre of life?”

In the concluding paper of his series, published on December 11, 1797, the venerable writer discusses the relation of Religion and Morality to politics, and points with pride to the felicity of Connecticut as illustrating this relation. He says: “The *real believer* in the Christian religion is, so far as his moral character is concerned, the best qualified for a legislator; in the State of Connecticut since its first organization our civil policy has been regulated by men of

such views. . . . What is the state of society which this has produced? Let the history of Connecticut furnish the answer. It is an acknowledged fact in all our sister States that in Connecticut there is, and not only is, but uniformly has been, the most peaceful, the most orderly, and the best, intrinsically the best, state of society of any in America. This is invariably ascribed to the wisdom and righteousness of our rulers. Saying this is saying *much* in our favor. For in New England may be found the happiest state of society of any in the world, and of all the New England States Connecticut holds the acknowledged pre-eminence."

After adverting to the fact that there were a few men, "usually denominated French partisans, Democrats, or Jacobins," who were seeking to introduce even into Connecticut a government and state of society similar to those of France, he piously adds: "We have reason to bless God that we have comparatively but few of them." He confirms this sense of relief by stating, as the result of his "general observations," that the private morality of the Jacobin Democrats is no better than their politics. "That kind of government and that state of society which authorizes every vice, which suspends all restraint, which winks at every enormity, and which votes religion out of existence, is," he says, "the state of society which would gratify our French partisans."

It will be seen that the papers of "Gustavus" are a polemic against Jefferson, and against his election to the Presidency. That event was indeed averted by the election of John Adams, but when it was averted by the narrow majority of three votes in the Electoral College, while Jefferson was seated in the vice-

presidential chair, it could be easily seen that "the demon of Jacobinism" was not exorcised from the body politic.

And now it is that "Pelham" prepares to resume his argument for the dissolution of the Union. In a communication made to the "Courant" on March 19, 1798, he reminds his readers that "about two years previously" he had sent to that journal for publication "two papers of a series on a subject highly interesting to the people of the United States." "At that time," he says, "a division of the United States had not become a topic of general reflection or conversation. Persons of a timid character heard it mentioned with a kind of dread approaching nearly to horror. Even minds of a more bold and decided cast shrunk from a consideration of it, as if they shuddered at conviction." He then explains that "the opinion of some persons to whom he ever submitted had induced him at that period to relinquish the subject," but that those very persons "had since embraced his doctrines in their fullest latitude." It is probable, he thinks, that many others who differed from him then have also experienced a similar change, but whether the fact be so or not, he is "fully convinced that the moment is not far distant when a perfect unity of sentiment on this great national question will pervade the northern part of the United States." Under this impression he announces that he shall renew the discussion, and he does so by republishing, *in extenso*, the two papers which had appeared at the close of the year 1796.¹ He now clinches his argument for a dissolution of the Union by dwelling with

¹ The first of these papers is republished in the *Courant* of March 19, 1798; the second, in the issue of March 26, 1798.

special emphasis on the strong disposition prevailing at the South "to adopt the French notions of government." This third paper of "Pelham" appears in the "Courant" of April 9, 1798.

In view of the French infection at the South he thinks that New England can save her religion and her civil system by nothing less than a separation from the Southern States. He adds: "If after a serious attention to the career of politics, every good man should be persuaded that the best chance which is left is for the preservation of part by the sacrifice of part; if he is morally assured that the plank on which his existence depends cannot support both himself and his neighbor to the shore, reason, justice, and conscience will vindicate him in the adoption of every measure necessary for his salvation. I view the United States as reduced to this fatal necessity. The question is simply this: Shall we part with the government, or shall we who inhabit the territory NORTH OF THE POTOMAC attempt to preserve it for ourselves by shaking off the incumbrance which hangs upon us SOUTH OF THE POTOMAC?"

These shadows of the evils to come from French Jacobinism, with adjurations for a dissolution of the Union in order to save the peculiar civilization and religion of New England, continue to meet us in the "Courant" during the presidential canvass of the year 1800, when everybody saw that a final struggle was impending between the adherents of Jefferson and the adherents of John Adams. Shriek "election cries" are echoed and reëchoed in the columns of the Federalist organ. Let us catch a few of their notes from a long series of papers which appeared in the "Courant" weekly from June 23, 1800, to October 6 in that

year. The author of this new series writes under the signature of "Burleigh," and addresses himself not only to the people of Connecticut, but to "the people of the country at large."

"Should a Jacobin government be established," he says in his first number, "and the Constitution of the United States fall a sacrifice to it, the Northern States, being much more generally Federalist, will be more united and better able to form a government for themselves than the Southern; or should the Southern States agree on a new form of government, it will, according to the spirit of a majority of the [Southern] people, be Jacobinical." In the successive numbers of his series "Burleigh" undertakes to show that Jefferson is animated by a spirit of "deadly hostility to the Christian religion and to the Federal Constitution;" that the Democratic party had always been a pure and simple party of negations, stubbornly resisting the positive measures of the Federalists while proposing none of their own; that Jefferson could not consistently be a moderate ruler, and that, even if he could be, "any mixing with Jacobinism would be like scattering poison in the ailments of life;" that as President he would reverse the whole policy of the preceding administrations and ostracize Federalist officials; that he would corrupt the sources of public intelligence by giving countenance to "vile publications;" that the Jacobin party, if intrenched in the Federal government, would subject the United States to France; that the election of Jefferson would probably lead to a civil war, because "Jacobins in all countries are destitute of morality and religion," and because our Jacobins, being as depraved as any, "only want an opportunity to be as cruel and abandoned as those of

France ;” that the United States are divided into two great territorial districts, and that the Southern district is incumbered with a multitude of slaves, who will be the natural tools of Jacobinism in working the horrors of a new and larger St. Domingo on Southern soil ; that to avoid the calamity of sharing in all those horrors, and perhaps with the hope of saving their government, the Northern States would probably be disposed to separate from the Union ; that disunion, though “ an evil of mighty magnitude, is less, *far less so*, than anarchy ;” that the dividing line between the North and the South is hard to fix, but whether fixed by the Potomac, the Delaware, or the Hudson, it would undoubtedly make a border line of perpetual hostility between the two sections and would be “ crimsoned with the blood of the inhabitants ;” that the animosities between the two sections would be envenomed by the memory of their former amity ; that the difficulties of the situation were increased for New England by the fact that “ the States of Pennsylvania and New York were among the most Jacobinical States in the Union ;” that “ it would be hard to induce them to join a peaceable body to the north of them,” and if they did join, “ it would be harder still to keep them quiet ;” that they would be dangerous neighbors, and perhaps more dangerous still as allies ; that the two belligerent sections, after long fighting, would probably both fall into the arms of some European power, or the one would enslave the other ; that France, disengaged from her projects of European conquest, could easily land an army on our coasts ; that those who thought our distance would exempt us from her armed propagandism had but to remember that “ neither Alpine frosts, nor African suns, neither the

mountains of Switzerland, nor the deserts of Arabia had hitherto restrained her fury or checked her career ;” that it was fallacious to hope for a reconstruction of the Federal government under Jefferson on lines of social order or civil security ; that France had constantly gone from bad to worse under Mirabeau, Pétion, Brissot, Marat, Barrère, Collot d’Herbois, Barras, Merlin, Sièyes, and Bonaparte ; that every leading Jacobin, wherever found, should be regarded “ as a ravening wolf, preparing to enter our peaceful fold, and to glut his deadly appetite on the vitals of the country.”¹

In view of these panic terrors, — terrors which wrought the more pervasively throughout New England because they were armed with the powers of religion and conscience as well as with the forces of political prejudice, — it need not surprise us to discover that, after the election of Jefferson was ascertained, a tremendous revulsion of feeling should have ensued in

¹ In the “ Guillotina ” for the New Year of 1797, published in the *Courant* of January 9, 1797, we find the following lines, supposed to be spoken by Swanwick, “ the little poet of Democracy : ” —

“ This once, O France, but stretch thy arm,
And snatch us from impending harm.
Make Thomas master of the State
And Colonel Burr the vessel’s mate.

• • • • •
And to prevent all future bickering,
Put Madison in place of Pickering.
Then, then, in closest bonds allied,
Our country shall to France be tied ;
Dependent on her pleasure move,
And taste of SWEET COLONIAL LOVE.
Then when France whistles we will run,
Bark, wag our tails, and gnaw the bone.
Trot at her heels, her battles fight,
And growl at all who come in sight.”

Connecticut. Writer after writer in the "Courant" was quick to show that the small electoral majority secured for Jefferson and Burr over Adams and Pinckney had been secured to them by the representative votes allotted to the Southern States in the name of three fifths of their slaves, and not by the votes of freemen enjoying a common elective franchise. "I may be mistaken in my ideas of the New England people," writes one of these remonstrants in the "Courant" of February 9, 1801, "but I will hazard the opinion that such practices will not be submitted to for a great length of time."

This angry prophet, as he sat like another Jonah under his withered gourd, had forgotten that Roger Sherman, the representative of Connecticut in the Federal Convention, felt free to avow in that body in 1787 that the admission of the negroes into the ratio of representation did not seem to him "liable to such insuperable objections,"¹ while Oliver Ellsworth, we know, dismissed the whole subject of slaves and their increase (when considered as a ground of apprehension) with the optimistic prophecy that "slavery in time would not be a speck in our country."²

At this early date we see it is proclaimed that an effort should be made to save New England from the infection of Jacobinism under the triumphant Democracy of Jefferson. "Touch not Saguntum!" was the cry which the old Roman senators hurled against Hannibal, when they would set a limit to the aggressions of the Carthaginians in Spain. "Touch not Connecticut!" was the cry which these old Federalist chiefs hurled against Jefferson when they would set a limit to the aggressions of Democracy at the South.

¹ Elliot's *Debates*, vol. v. p. 395.

² *Ibid.* p. 458.

“I have hoped to live and die,” says one of the writers for the “*Courant*” on August 20, 1800, “a witness to the continued union and harmony of this best portion of the human race, *this little corner of the world*, so famous for its stability and its thousand virtues.” It will be seen that Connecticut was already known as “the land of steady habits,” and that even some ninety years ago “this little corner of the world” was not without the modest assurance inspired by a sense of merit.

Let it not be supposed that I have undertaken this long study in the politics of a former period for the sake of bringing a railing accusation against the old Federalist party. I am frank to say that the *old* Federalist party seems to me the noblest and purest of all the political organizations that have ever existed in the annals of the United States — first in the lustre of its great names, George Washington, Alexander Hamilton, John Marshall, John Jay, Rufus King, and first in the services it rendered to a sinking land, by redeeming it from the anarchy of the Confederation, and by giving to it a stable government under an invigorated Constitution. Nothing could be greater than the glory of the party in its early days, unless, alas! it be the faults and foibles (the blunders worse than crimes) which came to obscure that glory in its later career. Its leaders have suffered from the Nemesis of history. The evil that they did has lived after them in a cloud of obloquy. The good that they did might have been interred with their bones, if happily it had not survived in that magnificent piece of constructive statesmanship, the Constitution of the United States. In its germs our Constitution is a hereditament from our

Aryan ancestors. Its elemental forms were revealed to our fathers on the mounts of British history, as the patterns of the tabernacle were revealed to Moses on Sinai, but in its artistic shape the Constitution was a Federalist creation.

It is true that the party fell on evil days, and fell on evil tongues in the evil days of its sad declension. It is not, as Gouverneur Morris said, that in the debauch of "Gallican" politics the Federalist party was in the awkward position of the man who keeps sober while all the rest of the company are drunk. It is not, as John Adams said, with a dash of Irish humor in his Yankee wit, that the party committed suicide and then laid the blame of its murder on him. The pity of it is that the party failed in critical conjunctures to have understanding of its times. It omitted to take at its flood the tide in human affairs which leads on to fortune. It went in to swim when the Atlantic was up, and got caught in the undertow. The Federalist chieftains could never understand that the great social and political cataclysm known as the American and French revolutions was really one event when considered as the sign and symbol of a new stage in the social and political evolution of the human race. They are more to be pitied than blamed for this lack of perspicacity. Edmund Burke, with all his philosophy, could not perceive this truth. The old Whigs of England could not perceive it. Still less could the Tories perceive it at the close of the last century, but the statesmen of England have learned the lesson well enough to-day, and accordingly have reduced monarchy to a fiction of law, have placed the hereditary House of Lords in a state of obsolescence, and have condensed all real power in the House of Commons.

We now see that nations move *en échelon* in the forward march of democracy. America was foremost in the files, and France was second, not simply by the accident of her participation in our Revolutionary struggle, but under the pressure of a chronic political unrest which caused the coming event to cast long shadows before it on the dial-board of French history.¹

It is a philosophical remark of Bagehot, in his "Physics of Politics," that the principles of the French Revolution are fitted to a new world in which society has gone through its early tasks, and reached a period in which the "inherited organization is already confirmed, when the soft minds and strong passions of youthful natures are fixed, and guarded by hard transmitted instincts. Till then," he adds, "not equality before the law is necessary but inequality, for what is most wanted is an elevated *élite* who know the law; not a good government seeking the happiness of its subjects, but a dignified and overawing government getting its subjects to obey."²

The old Federalists could never perceive that they had outlived the time when what the American people most wanted was an "elevated *élite*," and therefore they kept on contending for a strong and dignified government which should be able to overawe the masses who "do not know the law."³ And so it came

¹ The famous *mots*, "Nous dansons sur un volcan;" "Après nous le déluge," are historical commonplaces. The Earl of Chesterfield, writing from France in 1752, refers to the "Revolution principles" then current in that country, and adds: "I foresee that before the end of this century the trade of both king and priest will not be half so good a one as it has been." *Letters of Chesterfield* (Lord Mahon's edition), vol. ii. p. 237.

² Bagehot's *Works*, vol. iv. p. 447.

³ The Rev. Azel Backus, in preaching the funeral sermon of old Governor Oliver Wolcott in 1796, commented as follows on his sturdy

to pass that the party fell into stages of decline, because its old-school patriotism was too impracticable to meet the changed conditions of American society ; because in its horror of demagoguery it sometimes symbolized with the dialect of aristocracy ; because it was too prone to convert measures of administration into engines of government, and sought to rule by executive pressure rather than by moral suasion ; because it lacked a sense of humor and took itself too seriously ;¹ because in the long coquetry with Aaron Burr it lost the chastity of honor which feels a stain like a wound ; because, in the days of its despondency, it sacrificed principle to expediency ; and, finally, because in the person of some among its typical leaders it came to be identified in the popular mind with portents of disunion.

And I have not thumbed these forgotten calendars of the old Federalist star-gazers, as they watched the signs of the times, at the close of the last century, because I wished to show that portents of disunion had loomed above the horizon at that early day, and were as common at the North as at the South. If this had

conservatism : " He blushed at the thought of being ' the man of the people ' in the modern sense. . . He set his face like a flint against all the specious sophistry of new political theories."

When some Federalists in Harrison County, Va., wrote to President Adams in 1798, under the fervors of the X. Y. Z. excitement, that they hoped the " odious distinction of aristocrat and democrat " would be forgotten in the presence of a foreign foe, he replied : " The distinction of aristocrat and democrat . . . will never be done away as long as some men are taller and others shorter, some wiser and others sillier, some richer and others poorer. . . . The distinction was intended by nature for the order of society, and the benefit of mankind." — *Columbian Centinel*, August 18, 1798.

¹ For a quaint specimen of this over-seriousness, see *Annals of Congress*, Fifth Congress, vol. ii. p. 2094.

been my purpose, I could better have turned to the debates of the First Congress under the Constitution. The portents of this early period differed in kind as well as in degree from those of a later day. They sprang in New England from a sentiment of profound despondency as to the capacity of the American people for self-government. They sprang in Virginia, so far at least as color and shape were given to them, by the "Resolutions of '98," from a real or pretended fear that the rights of the people were in danger of being absorbed by the centralizing tendencies of the Federal government. Men in New England threatened the Union in prospect of Jefferson's election, because they were startled from their propriety by the spectre of French anarchy. Men in Virginia avowed their readiness in 1798 to "estimate the separate mass of Virginia and North Carolina, with a view to their separate existence," because they feared despotism.¹ The Federalists of New England could not endure Virginian democracy because they identified it with French Jacobinism. The Republicans of Virginia could not endure New England Federalism because they identified it with British monarchy. Federalist leaders in New England preached disunion to save religion and morality. Republican leaders in Virginia began to count the price of the Union to save personal liberty and the reserved rights of the States. The Federalist propagandists of disunion used slavery as their heaviest make-weight, because they saw in it the source and seat of an enduring antagonism between the North and the South. The Republican propagandists of disunion used the Alien and Sedition Laws as the lever of their revolt, because they saw in those untoward mea-

¹ Jefferson's *Complete Works*, vol. iv. p. 245.

sures the racks and thumb-screws of a political inquisition.

In our recoil from the "Resolutions of '98" because of the base uses to which they were subsequently put in the cause of nullification and secession, and in the obloquy rained upon the Hartford Convention, because of the seditious designs imputed to its members, we are apt to forget that confidence in the stability of the Union has been a plant of slow growth in the United States. It was not until our Federal bond had been welded by the fervent heats and trip-hammer blows of a great civil war that even *we* could feel assured of its indestructibility. Jefferson, with all his political optimism, could not feel sure that our government was in "the full tide of successful experiment" until he took his weather-gauge from the serene height of the presidential seat. The sky seemed gloomy enough while John Adams was at the helm. He thought the tiller shook even under the strong hand of George Washington, and that it would continue to shake unless the ship of state was put on her "Republican tack" and took a Republican pilot aboard.

I have delved in these Old Red Sandstone strata of the archaic period in our national politics for the sake of showing, in the first place, the deep sources of that profound antagonism which for so many years arrayed New England and especially Connecticut against the administration of Jefferson. That sanguine political philosopher could never quite understand either the depth or the intensity of the antipathy cherished for him in New England.¹ Even in the darkest days of

¹ A few extracts from the *Diary* of the Rev. Thomas Robbins, D. D., an eminent Connecticut clergyman, will show the temper of

the Embargo, he wondered that the people of this section did not take joyfully the spoiling of their goods when the people of the South endured still greater losses from that hapless measure without a murmur of repining. He did not scruple to ascribe to the New England people a natural perversity of temper, like that of the stiff-necked Jews, and he thought the best use which the Republicans could make of them was to keep them for the purpose of having somebody to quarrel with, outside of the Republican family, instead of quarreling among themselves. In his second Inaugural Address he covertly compared the Federalist clansmen of New England to Indian tribes under the domination of their sachems and medicine-men. The comparison has always seemed wanting in decorum, but this ponderous banter of Jefferson has been redeemed from opprobrium, at least as a specimen of Virginian insolence and sectional vituperation, by the fact that a typical son of New England, a Brahman

mind with which Jefferson was regarded by the clergy of New England. Under date of May 8, 1800, he writes: "I do not believe that the Most High will permit a howling atheist to sit at the head of the nation." (*Diary*, vol. i. p. 114.) In the month of July, 1800, the rumor reached Connecticut that Jefferson was dead. Dr. Robbins records the fact and adds: "It is to be hoped that the news is true." (*Ibid.* p. 118.) Under date of September 25, 1800, he writes, "I have written seven numbers to show that Jefferson will never be President, which have been published." (*Ibid.* p. 123.) On the 21st of December, 1800, he records: "It appears probable that Jefferson will be our President. I think I never heard bad tidings which gave me such a shock. . . . Our only consolation is this, that the Lord reigns." (*Ibid.* p. 127.) On the 23d of February, 1801, he writes: "Was informed that Mr. Jefferson is chosen President of the United States. I think it is clearly a great frown of Providence." (*Ibid.* p. 132.) September 27, 1802: "Some reports are circulating respecting Mr. Jefferson which it is thought will render his character infamous." (*Ibid.* p. 181.) November 9, 1808: "I think Mr. Jefferson is sinking to the lowest grades of contempt." (*Ibid.* p. 376.)

of her Brahmans, — I refer to Mr. Brooks Adams, — has recently instituted a serious comparison and tried to run a sober parallel between the Puritan clergy of Massachusetts and the howling priests of the Zuñi Indians.¹

In the second place, I have lifted the curtain for a moment on the joust and tourney of an old political conflict for the sake of emphasizing what I believe was the first clear enunciation of the theorem that there must be “an irrepressible conflict” between Freedom and Slavery even when the twain are joined in the lawful wedlock of organic law. This dogma excited much repulsion when it was propounded in public debate by the late William H. Seward, and it fell upon many ears like a tocsin of civil war when, as I have already said, Abraham Lincoln proclaimed his belief that the Union could not survive as a house divided against itself, and would become either all slaveholding or all free. This was a doctrine which the framers of the Constitution could not receive in 1787, and yet if history had taught anything with clearness and emphasis at that date, it was that slavery, in growing civilizations, had always and everywhere been a transitional institution — that it had never survived the expanding forces of national growth in any country, in either ancient or modern times. The keen-eyed publicists of the “*Courant*” had learned this lesson by heart as early as 1796, and they kept dinning it in the ears of the people, whether the people would hear or whether the people would forbear. Much of passion and of prejudice was mingled with their proclamations; but to this extent they had learned the true principles of historical and political causation. Because the

¹ Brooks Adams, *Emancipation of Massachusetts*, pp. 256-259.

American people would not and could not learn this lesson from the Cassandras of Connecticut Federalism in 1796, they were doomed to learn it in 1862 under the agony and bloody sweat of civil war.

Finally, I have gathered these analects from the political scribes who wielded such trenchant pens in the service of old-time Federalism, that I might use the fragments for the fresh illustration of what has always seemed to me the most curious phenomenon in American politics, to wit, that a social democracy, like that of New England, should have produced the most pronounced and the most inveterate type of *aristocratic* politics ever witnessed in our annals, and that a feudal aristocracy like that of slaveholding Virginia should have produced the most pronounced and inveterate type of *democratic* politics that has ever existed in our party formations. The antithesis is striking. It is not an antithesis which would have pleased an historian like the late Lord Macaulay, for he liked an antithesis best when it was fetched from afar; but this is one that "jumps in our eyes" and fills them with contrasted pictures at all points of view. The antithesis confronts us as well in the religious institutes as in the social and political structure of the two communities.

In political and social structure New England was a democracy based on free labor with its handicraft arts—slavery was exceptional. Virginia was a social feudalism based on predial and chattel slavery—free labor and the handicraft arts were exceptional. In New England distinctions of rank were functional—functions of office, of character, or of public service, because society at bottom was homogeneous. In Virginia distinctions of rank were organic, because society there was differentiated into separate layers from top

to bottom, with a planting gentry at the top, poor "white trash" in the middle, and slaves at the bottom. New England diffused political power through the mass of her freemen, and then concentrated it again in a few chosen leaders. Virginia concentrated power from the first in a few important county families. The unit of representation in New England was the township. The unit of representation in Virginia was the county. New England chose her "select-men" by popular vote in town meeting. Virginia made her "vestry-men" a close corporation. The New England system is seen at its best in great forensic orators, popular agitators, social reformers — Harrison Gray Otis, Samuel Adams, Fisher Ames, Daniel Webster, Rufus Choate, William Lloyd Garrison, Wendell Phillips, Charles Sumner. The Virginia system is seen at its best in great executive leaders, political philosophers, constructive statesmen, constructive jurists — George Washington, Thomas Jefferson, James Madison, George Mason, John Marshall.

In religion, during the whole pre-Revolutionary period, what was the "Established Order" in Connecticut was dissent in Virginia, and what was the "Established Church" in Virginia was dissent in Connecticut. The Puritan clergy of New England were often ascetic and severe, too often with a spice of the Rev. Habakkuk Mucklewrath in their homiletical methods. The Anglican clergy of Virginia were often jovial and easy-going, too often of the tantivy sort, bold timber-jumpers as they rode to the hounds in the fox-chase, jolly good fellows who rejoiced to hold their hearts in their hands, especially when hearts were trumps, skilled discerners of spirits when sack or canary was to be tried, and muscular Christians

who sometimes thrashed a whole vestry to keep the peace in their parish Zion.¹ After the Declaration of Independence, the socially aristocratic and prelatical State of Virginia hastened to declare religious liberty. The socially democratic and anti-prelatical State of Connecticut adhered to the forms of her Congregational Establishment till the year 1818. After the Revolution, Episcopacy in Virginia, where it once had been dominant, was called to suffer *deliquium*,² while Episcopacy in Connecticut, where it once had been oppressed, was called to take the lead in making provision for the Episcopal succession.

It is impossible to make a study of the politics of Connecticut at the close of the last century without considering the prevailing politics in connection with the prevailing religion of the State. The Congregational clergy constituted the nucleus of the Federalist party. If the Connecticut Federalist of the old school was, as Professor Johnston avers, "almost a peculiar type," the peculiarity of the type was largely due to the fact that the leading men in the politics of the State were also the leading men in the Congregational Establishment, and, as such, had a religious as well as a political antipathy to Jefferson. If in the politics

¹ See Rev. S. D. McConnell, D. D., *History of the American Episcopal Church*, p. 90.

² Bishop Meade tells us in his *Old Churches and Families of Virginia* (vol. i. p. 16), that among the Episcopal clergy, anterior to the Revolution, the Rev. Devereux Jarratt was "almost alone in preaching and living according to the doctrine, discipline, and worship of the Protestant Episcopal Church;" while after the Revolution, this same Mr. Jarratt once remarked to the Rev. Dr. Alexander that there was a time in the religious history of Virginia when "he knew of but one man in the ministry (Episcopal) whom he regarded as an experimental Christian." See *Life of Archibald Alexander, D. D.*, by his son James W. Alexander, D. D., p. 149.

of Connecticut, adds Johnston, a democratic element "was supplied by the town meeting, the element of dictatorship, which seems to lurk somewhere in democracy, was in the select-men." And if, as he says, in another place, the Congregational Church of Connecticut was "a Calvinistic democracy undefined in its powers," it was for that very reason a democracy ever ready on occasion "to claim the full powers of an ecumenical council." Nobody better understood the place and function of the Congregational clergy of Connecticut than the Rev. Jedidiah Morse when in his "American Geography" he described them as "a kind of aristocratical balance in the very democratical government of the State, which had happily operated as a check upon the overbearing spirit of republicanism."¹

Gershom Bulkeley, that soured Tacitus of the Andros and post-Andros period, would fain persuade us in his "Will and Doom" that the politics of Connecticut, even in his day, were flavored with "a tang of the Fifth Monarchy," which, he adds, "is a very churlish drug."² However that may have been, it is certain that zealotry in religion conspired with zealotry in politics to kindle the fires of much fanaticism

¹ *The American Geography* (edition of 1789), p. 219.

² Bulkeley's *Will and Doom, or the Miseries of Connecticut by and under an Usurped and Arbitrary Power* (1692), takes its title from the fact that when taxpayers were inclined to question the authority of the "revolutionary" government of 1689, after the overthrow of Andros, the General Assembly ordered that if any persons refused to give in a true account of their taxable property, it should be in the power of the listers or General Court to rate them "will and doom," that is, at discretion and without recourse. By the favor of Dr. Hoadley, the learned librarian of the Connecticut State Library, to whom I am indebted for many other courtesies, I have had the privilege of reading this book in an edition of which he owns the only surviving copy.

in both during the period we are passing under review.

In the strange vicissitudes of the times, when the political heavens were passing away in Europe and America, it seemed to many perfervid minds that the end of the world was at hand. It is to be observed that eschatological vagaries are specially liable to haunt the over-hasty expositors of sacred prophecy in times of civil convulsion and world-shaking catastrophe. The imagery of the Holy Book easily lends itself to the illusions of men who in such crises betray more zeal than knowledge. Hence we find the Rev. Andrew Lee adverting, in the Connecticut Election Sermon of 1795, to the probable near approach of the millennial era, as prefigured by the perturbations of the French Revolution. A whole cycle of scriptural prophecies was cited in support of the hypothesis. The Rev. David Austin, of Norwich, Conn., had become so distraught in his wits by his study of the prophecies that he ventured to proclaim that the personal reign of the Messiah would begin on the fourth Sunday of May, 1796, and refusing to be baffled by the failure of his prediction, he subsequently went to New Haven and there erected several large houses and built a wharf on the Sound for the use of the Jews, whom he invited to assemble at that point on the eve of embarking for the Holy Land.¹ That scourge of the Established Church of Connecticut, the Rev. John Cosens Ogden, published a pamphlet in 1798 for the express purpose of pouring ridicule on these millenary eccentricities. But this fierce polemic of Ogden was really inspired much more by the antagonisms of politics than by the antagonisms of theology. Each lent to

¹ Caulkins, *History of Norwich*, p. 285.

the other a double measure of bitterness, and wrath, and anger, and clamor, and evil speaking.¹

It would lead me too far afield at the heel of this long discussion of aristocratic politics in a social democracy if I should attempt anything like a formal resolution of such an historical paradox into the elements which shall explain its apparently contradictory terms. The paradox early attracted the attention and excited the curiosity of General Washington. While he was resting from the toils of war at Mount Vernon, and before as yet the Constitution of 1787 had been framed, we find him confessing that he was puzzled to account for the generation of "monarchical" ideas in New England, when, as he thought, it would be more natural to expect the emergence of such ideas at the South, where, however, they did not exist, in spite of the fact that the natural distinctions of Southern society might be expected with some show of reason to produce them. He can explain the paradox only

¹ The vehemence of religio-political controversy at this time may be seen in Ogden's pamphlet, published anonymously, and entitled "An Appeal to the Candid upon the Present State of Religion and Politics in Connecticut." A few extracts will suffice: "President Dwight is making great strides after universal control in Connecticut, New England, and the United States over religious opinions and politics. . . . The President is attempting to direct all public affairs, civil, ecclesiastical, literary, military, and political. . . . At this time Connecticut is more completely under the administration of a Pope than Italy — is more an ecclesiastical dominion."

President Dwight was a grandson of Jonathan Edwards. Accordingly the polemical writer charges that the Congregational body is aiming at "a Calvinistic Edwardsian supremacy" over the people of Connecticut, as also over the education of all the Northern States, and is pursuing its propaganda under the pressure of church discipline, of missionary activities, of college control, and, finally, of millenary theories and interpretations, in hope of attaining to a "universal dominion over the conscience."

on the assumption that there had been at that time a political reaction in New England from the "leveling" spirit which it was common to suppose had existed there in the earlier period even down to the outbreak of the Revolution.¹

In point of fact, if Washington had made a deeper study of New England society he would have found that with all the simplicity of its elements, it was remarkable for distinctions of rank — distinctions based on reverence for age; on deference to the clerical profession; on respect for official station (from that of constable to that of governor); on repute for learning; on the homage paid to that saving common sense, which is the very cement of primitive communities; and, finally, on the gratitude due for conspicuous public service. These distinctions of rank were visible in small things as well as great — in the seat occupied at church as well as the place held in the eye of the whole commonwealth. A people who under the *ancien régime* of Connecticut were wont to regulate, by vote of town meeting, the place of honor on each side of the pulpit in a village church; who legislated that "Mrs. Green, the deacon's wife, be seated on ye fore seat on the women's side, and that Mercy Jiggles is, by vote, seated on the third seat on the women's side, where she is ordered by the town to sit" — (I quote from the municipal statutes of New London in 1723)² — could not be justly taxed with indifference to questions of social caste and precedence, as social caste and precedence were measured by the standards of a nascent community in the seventeenth and eighteenth centuries.

¹ Sparks, *Writings of Washington*, vol. ix. p. 247.

² Caulkins, *History of New London*, p. 379.

I must add that the old electoral system of Connecticut was ingeniously devised to promote the genesis of a natural aristocracy — the aristocracy of talents and virtues. Each freeman in the colony was required in September of each year to name twenty men whom he wished to have placed in nomination for the office of “assistant” — the so-called “assistants” being the dignitaries who composed the council, or colonial senate. From the mass of nominations made at these primary assemblies of the townships, the general assembly, six months before each election, selected and published the names of the twenty men who had received the highest number of nominating votes, and these men alone could be voted for on the day of the final election, when twelve out of the twenty were to be elected. The names on the list were arranged according to seniority of service in the case of those who had previously held the office of “assistant,” and each name had to be voted for separately by each voter according to its place on the list — a rule which subjected the hindmost names to obvious disadvantage. Under this electoral system the advance toward public honors was necessarily slow. Only those who had become the objects of more or less general observation throughout the whole colony could hope to be even nominated for colonial office. As priority of advantage was given to names which stood at the head of the list, and as these were the names of men who had previously held office, it is easy to see how this electoral expedient might conduce to permanence of official tenure. As it was enjoined that affirmative votes could alone be counted, while blanks were thrown under the table, “it might easily happen,” says Dr. Hoadley, “that candidates who received more negative

than affirmative votes would, notwithstanding, be declared elected, and those who had received more affirmative than negative votes fail of being elected." Under this system, says Gershom Bulkeley, the people found it impossible to turn out their old rulers, "for blank them as much as they will, it is to no purpose."¹

It was in the nature of things that such a nominating and voting system should have lent itself to the selection and election of the *proceres populi*.² If the system explains how it was that office-holding became chronic in certain cases, it also explains how it was that the people of Connecticut, during the prevalence of this system, were ruled by men of mark and of approved public virtue. If the system did not lend itself to the surprises of modern politics, with its "ringsters" and its "dark horses," so much the better for the system and for the people who lived under it. John Adams used to say that "Connecticut had always been governed by an aristocracy more decisively than the empire of Great Britain,"³ and he thought that half a dozen or at most a dozen families could be named who had controlled that community down to the year 1814. He makes a similar remark about the natural aristocracy of Massachusetts under the old dispensation. He says that he had seen "four noble families rise up in Boston, the Crafts, Gores, Dawes, and Austins, who were as really a nobility as the Howards, Somersets, etc., in England."

¹ Bulkeley, *Will and Doom*, p. 85.

² In a pamphlet published at Hartford in 1792, entitled *The Security of the Rights of Citizens of the State of Connecticut*, the natural effect of this electoral system in procuring the permanence of the Federalist council, or senate, and in "forming a strong body of active influence for the purpose of strengthening the government," is explained at length.

³ *Life and Works of John Adams*, vol. vi. p. 530.

Compared with the modern doctrine of rotation in office — a doctrine so dear to demagogues, and in matters of pure administration so costly to the people — we might say that the annals of Connecticut office-holding read like an abstract from the chronicles before the Flood. The records would run as follows: John Haynes, the first Governor, governed eight years, and he died. John Winthrop governed eighteen years, and he died. William Leete governed seven years, and he died. Fitz John Winthrop governed eighteen years, and he died. Gurdon Saltonstall governed seventeen years, and he died. Joseph Talcott governed seventeen years, and he died. Jonathan Law governed nine years, and he died. Jonathan Trumbull I. governed fourteen years, and *he resigned*. Samuel Huntington governed nine years, and he died. Jonathan Trumbull II., son of Jonathan Trumbull I., governed eleven years and eight months, and he died. Offices sometimes ran in families. Joseph Whiting and his son John held the office of treasurer of the colony for seventy-one years. Hezekiah Wyllys was secretary of Connecticut for twenty-three years; George Wyllys, his son, was secretary for sixty-one years, and Samuel Wyllys, his grandson, was secretary for fourteen years, each holding office of course till he was gathered to his fathers. Offices sometimes came in a troop to the same beneficiary, as in the case of the pluralist who was clerk of his ecclesiastical society, clerk of the school district, clerk of the town, clerk of the probate court, clerk of the county court, and clerk of the superior and supreme court of the State. He held all these clerkships at the same time, and of course he held them all till he died. It is not for us to commit the irreverence of peering behind the

veil which hides from mortal eyes the employments of the blessed after they have passed through the gates of Paradise, but we may safely venture the opinion that when this Puritan worthy met the Recording Angel in heaven's chancery who wrote down Uncle Toby's oath and then blotted it out with a tear, he intimated in no ambiguous terms to that tender-hearted and moist-eyed official that "they ordered this matter better in Connecticut," and that clerks *there* were expected to keep tears out of their ink and not to use them for a blotter.

No wonder that these Connecticut saints were strong believers in the doctrine of election, and that they held the final perseverance of the saints to be as blessed a doctrine in office-holding as in the five points of Calvinism. No wonder, either, that Jefferson raised such a storm of indignation around his head, when, at the beginning of his administration, he removed Mr. Goodrich, the Federalist collector at New Haven. And we shall better understand the pathos of his remark, when in referring to the office-holding class he said that "few die and none resign,"¹ if we remember that it was *à propos* of a Connecticut officeholder who refused either to die or resign that the remark was originally made. We can also understand the special wonder with which this whole proceeding overcame the people of Connecticut if we recall the fact that Jefferson appointed as Goodrich's successor the venerable Samuel Bishop, when that patriarch was in the seventy-seventh year of his age, and when therefore his expectation of life, and his

¹ The exact words of Jefferson are, "Vacancies by death are few; by resignation, none." Jefferson's *Complete Works*, vol. iv. p. 404.

consequent expectation of life-tenure in office, were reduced to the merest span!

If we would look for the keystone of the arch on which the edifice of New England politics has been built, we should look for it, of course, in her township system. On this system a whole literature may be found in the political writers of New England from John Adams to John Fiske. The system conduces directly to the nurture of a political life which is vital in every part; which finds free play for its exercise at every local centre, and which at the same time provides a means for the ready coördination of all these centres of volition and action at the will of the most commanding intelligence. Hence it was that Jefferson has found in the New England towns "the vital principles" of government, and he has not hesitated to pronounce them "the wisest invention ever devised by the wit of man for the perfect exercise of government and for its preservation." He had winced under the power of these townships while sitting in his curule chair at Washington. "I felt the foundations of the government shaken under my feet by the New England townships," he says, in allusion to the stern resistance they made to his Embargo policy. "There was not an individual," he adds, "in all their States whose body was not thrown with all its momentum into action, and although the whole of the other States were known to be in favor of the measure, yet the organization of this little selfish minority enabled it to overrule the Union."

In view of such a testimony coming from Jefferson, pronounced by John Fiske "the profoundest political thinker" of America, it can excite no surprise that the Federalist bards of Hartford should have "dropped

into poetry" whenever they mused in wonder, love, and praise over the ancient township system, and especially over its good old election methods, which enabled the Federalists of Connecticut for so many years to keep the old aristocratic council in its place of power and to retain their "happy corner of the world" in its ancient ways. There is nothing dithyrambic in these Yankee Pindars, but the most insensible reader can discern a glow of patriotic ardor even in such doggerel rhymes as these:—

“Connecticut! thou wondrous State!
 Forever firm, forever great;
 Oft Faction here her tools employs,
 And oft we hear a mighty noise.

 But when the hour of trial's o'er,
 These short-lived tempests cease to roar;
 Sedition's vermin sink from day,
 And all goes on *the same old way!*
 Still the old Council keep their seats,
 Still wisdom there with honor meets.”

X

THE BERING SEA ARBITRATION

OR, "PELAGIC SEALING" JURIDICALLY CONSIDERED ACCORDING TO A PARTICULAR ANALOGY OF MUNICIPAL LAW¹

IN the primeval state of man property is supposed to have begun with the occupation of things for man's personal use. The Roman law of occupation was at once very simple and very strict. Wild animals, as being in their natural state *res nullius*, were held to be convertible into property by occupation; and this for the sufficient reason that what belonged to nobody could be made to belong to anybody who took it. Not, indeed, that *mere* taking gave ownership or value, but that it was only by the instrument of occupation, to the ends of possession, that wild animals could be made serviceable, and therefore valuable, to man. Hence, in enunciating the maxim of the civil law, *res nullius occupanti conceditur*, we must emphasize equally each word in the sentence.

In consistency with this maxim, it was held in early Roman law that the right of occupation which attached to wild animals was a pure *ius hominis*, belonging to any man who captured them, anywhere, for his personal benefit, and not an *ius domini* resulting from ownership of the soil on which the wild animals were found. The owner of the soil had, indeed, a right to prohibit the entrance of a huntsman on his farm, but

¹Originally published as one of the Columbian University Studies.

he could not claim the wild game which was killed or captured on his premises, even when the killing or capture was effected in violation of his interdict. His remedy was to sue for trespass. Yet as the landowner, by his interdict, could maintain, *de facto*, the exclusive privilege of hunting on his own grounds, the game found on his soil could be placed practically at his exclusive command.¹ In cases, therefore, where the game found on land was sparse, casual, and uncertain, it could not be held to constitute any part of the *fructus* of the farm; but in cases where the game could be singled out, as an object of economic significance, it was competent to hold and consider it as *fructus*. Hence the doctrine of Julian, when, as we read in the "Digest," "he denied that hunting was *fructus* of a farm, unless the *fructus* of the farm resulted from hunting."² In another part of the "Digest" we read, in consistency with this doctrine, that lucrative returns from fowling, fishing, and hunting pertained to the fructuary,³ and even where the hunting was not very important, because it took place in the woods and mountains of a landed estate, we are told that it could be "fairly asserted" (that is, could be asserted in equity) to constitute a part of the usufruct;⁴ while this was clearly the case where a hunting-staff or a working-plant was connected with the estate for the express purpose of capturing game.⁵

With regard to animals which were partially domesticated, and which, by reason of their habits,

¹ *Digest*, xli. 1, 3, §§ 1, 2.

² *Digest*, xxii. 1, 26: "Venationem fructus fundi negavit esse, nisi fructus fundi ex venatione constet."

³ *Digest*, vii. 1, 9, § 5.

⁴ *Digest*, vii. 1, 62.

⁵ *Digest*, xxxiii. 7, 12, §§ 12, 13.

whether natural or acquired, could be put under a partial human control, a somewhat different rule obtained. To the extent in which these animals, by virtue of their habit for locality, could be made self-subservient to the uses of man, it was held that they became the qualified property of the owner who had domesticated them, or who, by purchase or otherwise, had a right to profit from their custody. The rule under this head, as laid down by Gaius, is as follows:—

“As to animals, which, from habit, are wont to go away and return, such as pigeons and bees, likewise deer that are wont to go to the woods and return, we have this rule handed down, that if they cease to have a disposition to return [*revertendi animum*] they cease also to be ours, and may become the property of the first takers; and they seem, moreover, to cease to have a disposition to return when they may have abandoned the habit of returning.”¹

The same doctrine meets us in the “Digest”² and in the “Institutes.”³

It is easy to perceive the reason and ground of this rule of law. Certain animals, by reason of their *animus revertendi*, can, without their knowing it, be made subservient to the economic control of man. *Sic vos non vobis mellificatis apes*. The *animus revertendi*, as cited by Gaius, is not an index of mansuetude. It exists alike in wild bees and in tame bees,⁴ but in the

¹ Gaius, ii. § 68: In iis autem animalibus quæ ex consuetudine abire et redire solent, veluti columbis et apibus, item cervis qui in silvas ire et redire solent, talem habemus regulam traditam, ut si revertendi animum habere desierint, etiam nostra esse desinant, et fiant occupantium; revertendi autem animum videntur desinere habere cum revertendi consuetudinem deseruerint.

² *Digest*, xli. 1, 5.

³ *Institutes*, ii. 1, 15.

⁴ Pufendorf is careful to note this fact, as bearing on the logic of

case of the latter it has been seized on by man as an instinct which, under appropriate arrangements (that is, by the inclosure of bees in artificial hives), can be made tributary to economic ends at a spot selected by man and under his control. The animal's state of mind is important only because it serves as an index of the owner's prospect of retaining the animal in his possession.

Speaking in the language of the schools, we may say that man is the *efficient* cause of bee husbandry. The material with which he makes his hives is the *material* cause. The tools with which he constructs hives are the *instrumental* cause. The conditions which prescribe the shape and structure of the hives are the *formal* cause, while economic gain is the *final* cause of the whole proceeding. But in this array of causes, it is the *animus revertendi* which conditionates the whole process, and which, at bottom, is the conditioning factor of the whole process. As the logic of causation shifts with the point of view, if the point of view be shifted from the hives to the bees themselves it must be said that the bees are the *material* cause of bee husbandry, and that the *animus revertendi* is the *instrumental* cause of bee husbandry.

From this analysis it would appear that it is the qualified dominion of man over animals having an *animus revertendi* (that is, capable of being turned to economic uses) which gives rise to a qualified property in them. The right of free occupation comes, as to them, under restriction, because they are already the subjects of a prior, though qualified, occupation.

the law. He says: "Consuetudinem ad alvearia sua redeundi non adsuetudine hominum, sed propriæ naturæ instinctu, habent; de cætero plane indociles." Pufendorf, *De Jure Naturæ*, lib. iv. 6, 5.

As the commentators say, the occupation of animals which are by nature *feræ naturæ* implies four conditions: First, the animal at the time of capture must be really and entirely *res nullius*. Secondly, it must be taken with a view to possession. The man who kills a wild bird merely to show his skill as a marksman is not an occupant in even an inchoate sense. He may be shooting merely for a wager. Thirdly, the desire of possession, the *animus possidendi*, must be authenticated and effectuated by some definitive act which translates the desire of possession into an accomplished fact. The man who stumbles on a honeycomb in the forest and who desires to possess it does not make it his by marking the tree on which he finds it, however fixed and sincere may be his purpose to return and take the comb into possession at a future day.¹ Fourthly, the thing occupied must be of some value in use or exchange; otherwise the *animus possidendi* would not arise, and the act of possession would not be put forth. Rats and mice have an *animus revertendi* which man can only deplore in economics, because their *animus revertendi* cannot be made important from a utilitarian point of view. Dogs have an *animus revertendi*, but it is held by Blackstone that dogs have no intrinsic value at common law, as being "creatures kept for whim and pleasure" and not for food. Dogs have intrinsic value in Greenland, because there they are made ancillary to economic ends. A pack of dogs kept as an instrument of hunting would seem to have intrinsic value.

We see, therefore, that the law of occupation, as to

¹ Glück, *Ausführliche Erläuterung der Pandecten*, ser. xli. xlii. 174; cf. also 7 Johnson (N. Y.) 16.

animals, has its ultimate foundation in the destination of creatures *feræ naturæ* to subserve purposes of human utility. Hence, it does not surprise us to find that when the Roman jurists came to expound the law of usufruct they brought that law into careful coördination with the law of occupation. The law of occupation was subordinated to the law of usufruct. Whatsoever grew on a farm and whatsoever could be gathered from a farm (under the limitations prescribed by usufructuary law, to wit, *ut boni viri arbitratu fruatur*) was held to be *fructus* of the farm, for the reason that it had value in use and value in exchange. Hence, if there were bees on a farm, it was held that the usufruct of them pertained to the fructuary.¹ The reference here is not to swarms of wild bees flying across the fields or settling by accident on a tree, for they are not property,² but reference is made to domesticated bees kept in a hive for economic uses. In like manner we read in the same relation that pigeons which are wont to be let loose from a pigeon-house are liable to be counted among valuable assets in a proceeding at law for dividing an estate among the co-heirs, and this for the reason that "they are our property so long as they have a habit of returning to us." "If anybody shall capture them," adds the text-writer, "we can properly bring an action of theft against him."³

By parity of reason Pomponius argues, in another place, with regard to a tame fowl, in which the *animus revertendi* is the result of training and not, as in bees, the result of natural instinct, that "if you should

¹ *Digest*, vii. 1, 9, § 1.

² *Digest*, xlvii. 2, 26.

³ *Digest*, x. 2, 8, § 1.

hunt down my tame peacock, when it had escaped from my home, until it perishes, I shall, in such case, have it in my power to bring an action of theft against you, if anybody shall have commenced upon him an act of appropriation.”¹

The jurisprudence of the civilized world is essentially one. The rule of the common law coincides with the rule of the civil law in regard to domesticated animals which have an *animus revertendi* that is convertible to economic uses. Bracton early brought the doctrine into English jurisprudence as a direct importation from Roman law.² “The little busy bee” holds a high place in the legal literature of the world, as well as in descriptive and didactic verse, from the days of Homer to Dr. Watts. If Virgil devotes a whole book of the Georgics to apiculture, it is because of the place which apiculture had in Roman economics. If the text-books from Gaius to Blackstone take account of bees, it is because of the property right which attaches to them. It has been ruled that where bees escape from their owner’s hive and swarm on a neighbor’s land the owner may reclaim them if he can identify them, though he becomes liable to an action for trespass in entering on his neighbor’s land to repossess himself of them.³ The inability of the owner of a personal chattel to retake it on the premises of another without committing a trespass does not in the least impair the owner’s legal interest in the chattel. It only embarrasses the use or enjoyment of it.⁴

¹ *Digest*, xlvii. 2, 37.

² 1 Bracton (Twiss’s ed.) 66, 67; cf. 2 Blackstone, 392-394.

³ 2 Devereux (N. C.) 162; 3 Binney (Pa.) 546.

⁴ 15 Wendell (N. Y.) 550.

I have cited these principles in order to show in a clear light the ingredients which, according to the written reason of the Roman law and the rulings of the common law, are held to create a property right in animals having a habit of returning to a given spot, if they are there placed under human custody for economic ends. It is not, we see, the mere *animus revertendi* which constitutes value, but the economic uses to which that *animus revertendi* can be put after it has been husbanded by human art, and to which it can be rightfully put, because it represents, at that given spot, the husbandry of human labor and human skill. Where the *animus revertendi* cannot be made the basis of economic use, no effort is made by man to husband it. Where the *animus revertendi* already exists in the case of certain animals, but where it is so vagrant, inconsiderable, and unmanageable that it cannot be counted on with any degree of economic certitude, no effort is made by man to profit by it on any considerable scale. The wild goose in all her migrations has the instinct of return to her breeding-place, but it cannot be made the basis of economic purpose or valuation beyond that vagrant purpose and inconsiderable valuation which move in the right of individual capture — a right open to all men wherever they find wild geese, unless they find them flying over land which the proprietor has interdicted to the casual sportsman.

Modern jurisprudence, as everybody knows, has in great measure transformed the right of game capture from an *ius hominis* into an *ius domini*. Yet this transformation has wrought no change in the reason and ground on which value is attached to certain animals having an *animus revertendi*. The rule of law

continues to depend entirely on the degree to which that quality, under human regulation, can be utilized for economic ends, and this utilization for economic ends (as we see in the case of bees) is most immediately available in the case of animals which have, *by nature*, an habitual disposition of return which so ties them to a given place that the habit may be directly used for economic purposes. The economic aptitudes of such animals, if they be found in sufficient numbers to make their inclosure or husbandry an object of gain, can be made at once the basis of economic computation — a basis of computation almost as fixed as the soil to which they are tied by the habit of return.

For it is precisely in proportion as the *animus revertendi* of useful animals is a stable quality that it lends itself to economics. If at any place a breed of homing pigeons could be found which should have, *by nature*, the homing instinct, that breed would at once be taken under human tutelage. The industry spent in creating and conserving a homing instinct in the artificial variety would be spent in protecting and conserving the newly discovered breed which had, by natural heredity, that valuable peculiarity; and, other things being equal, still higher sanctions of property would attach to pigeons of such a breed, because, so far as they were taken into human custody, a violation of the property right in them would be still more injurious to the interests of public and of private economy based on the perpetuation of this more useful variety.

It would seem that these facts in the economics of natural history and the rules of law which have been based on them are not without their application to the controversy now pending between the United States

and Great Britain with regard to the capture on the high seas of fur seals which have their birthplace in Alaska, and which in all their pelagic migrations are known to have an *animus revertendi* which gives to the breed a calculable value at the point of fixed return. This *animus revertendi*, it is true, is not the creation of human art in seals, any more than in bees ; but for the very reason that it has a fixed quality it can be made, under proper control, the more tributary to man's emolument. On the faith of this instinct, and of the property right which it conditionates and assures so long as it is not disturbed, the government of the United States has done infinitely more for the Alaskan seals which it husbands than the most enthusiastic apiculturist has ever essayed to do for the honey bees which he may have domesticated, and inclosed in patent hives of the latest construction and most costly variety. The highest resources of statecraft, of administrative policy, of police control, and even of international diplomacy have been put in requisition for the protection of the fur seal breed, on the ground that the fur seal husbandry is a factor in our national economics, as well as in the economics of the world ; and on the further ground that depredations committed on the seal herds in their pelagic migrations must lead eventually to the destruction of the fur seal species in Alaska (as has happened elsewhere), and so must inure to the economic detriment of the United States. It is further argued that the capture of seals in their periods of annual migration is attended with circumstances of wanton barbarity and of wasteful excess, which should be prohibited in the interest of public and private morality.

The government of the United States avers that

the Alaskan seal is an amphibious animal, which has its fixed home on Alaskan islands, and that from this home it never long departs, because of its fixed *animus revertendi*; that this fixed *animus revertendi* gives to the breed an economic aptitude of great value; that the seal herds, in their periodical migrations, however far they may roam from land, can still be definitely related to the soil on which they increase and multiply; that the destruction of seals in their passage to their breeding-places, when the mother seals are heavy with young, or the destruction of seals as they go forth from the Alaskan rookeries to secure food on the high seas in order to nurture their new-born progeny, involves a reckless waste of valuable animal life, does despite to the qualified property right of the United States, evicts by violence the habitual *animus revertendi* which is the instrument of that right, and so tends to work the gradual but certain extinction, for commercial ends, of a species in which the economy of the civilized world has an interest; that the United States have in the seal husbandry of Alaska a vested right, in so far as the value of the fur seals may be said to have entered as a consideration into the purchase-money paid to Russia for Alaska, and in so far as the annual value of the fur seal usufruct, farmed out by the government of the United States, has been administered with a sedulous regard to the preservation of the breed.

The government of Great Britain is understood to affirm that fur seals are indisputably animals *feræ naturæ*; that these have universally been regarded by jurists as *res nullius* until they are caught; that property can vest in them only so long as a person has reduced them into possession by capture; that the

qualified right of property for which the United States contend in the case of the seal herds during their periods of pelagic migration is not sound, either in fact or in law, and that, as to such seal herds, on the high seas, it is not competent for the United States, or for any "private interest" holding under them, to assert any priority or preëminence of right. To this effect Sir Julian Pauncefote, in his communication of April, 1890, held the following language: —

"It has been admitted from the commencement that the sole object of the negotiation is the preservation of the fur seal species for the benefit of mankind, and that no considerations of advantage to *any particular nation or of benefit to any private interest should enter into the question.*"

In a dispatch under date of May 22, 1890, Lord Salisbury wrote: —

"Her Majesty's government would deeply regret that the pursuit of fur seals on the high seas by British vessels should involve even the slightest injury to the people of the United States. If the case be proved, they will be ready to consider what measures can be properly taken for the remedy of such injury, *but they would be unable on that ground to depart from a principle on which free commerce on the high seas depends.*"

For the purposes of the following discussion it is not pretended that the exploded doctrine of *mare clausum* should be installed in place and power to protect an interesting and valuable species of animals. The doctrine of *mare liberum*, as expounded by Grotius, need not be impeached; but the doctrine of *mare liberum* is itself a juristic conquest — a conquest which in the progress of juridical ideas among the nations of the earth has been slowly gained over

the doctrine of *mare clausum* as formerly asserted by Great Britain, Spain, and Portugal. The modern doctrine is juristic in its genesis, and therefore cannot come in conflict with the juristic rights of the United States, if they have any, in the Alaskan seal herds found on the high seas. The rationale of the doctrine of *mare liberum* is well summed up by Hall when he says: "It is commonly stated that the sea cannot be occupied, it is indivisible, inexhaustible, and productive, so far as it is productive at all, *irrespectively of the labor of man*; it is neither physically susceptible of allotment and appropriation, nor is there the reason for its appropriation which induced men to abandon the original community of goods."¹

But the government of the United States maintains that the Bering Sea, so far as it is "productive" of Alaskan seals, is not now and will not long remain a nursery of seals "*irrespectively of the labor of man.*" Much of labor has been expended by the United States for the safeguarding of the seals in their breeding-places. The sea has been patrolled by American cruisers for the protection of the seal herds. A "close season" has been concerted between the governments of the United States and Great Britain for the restriction of seal slaughter; and it is because the permanent protection of the seal herds calls for international action beyond the maritime jurisdiction of the United States that the arbitration of a mixed commission has been invoked, to the end that by its verdict the "important element of finality may be secured" as between the two governments most immediately concerned, and to the further end that a firm basis may be laid for the lasting settlement of the

¹ Hall, *International Law*, p. 148.

question by providing for the adhesion of other governments.

To the writer of this paper it does not seem that the United States, in the purchase of Alaska from Russia, bought along with it a *mare clausum* in the Bering Sea. The United States could not buy more than Russia had to sell. But the United States *could* buy from Russia a right to the undisturbed enjoyment of the Alaskan seal usufruct on sea, as well as on land, for this is a right which Russia enjoyed and a right which, attaching as it does to animals having the *animus revertendi*, is rooted in a rule of reason and of law as old as the property law of historical jurisprudence. The rule was old in the days of Gaius. He says it is one which in his day had been "handed down" as settled law.

It has been well said by Sir Travers Twiss that "the right of fishery comes under different considerations of law from the right of navigation, as the right of fishery in the *open sea* within certain limits [the three-mile zone] may be the exclusive right of a nation. The *usus* of all parts of the open sea, in respect of navigation, is common to all nations, but the *fructus* is distinguishable in law from the *usus*, and, in respect of fish or zoöphites or fossil substances, may belong in certain parts [that is, within the aforesaid zone] exclusively to an individual nation."¹

Sir Travers elsewhere argues that the right of fishing in the open sea is common to all nations "on the same principle which sanctions the common right of navigation, namely, that *he who fishes in the open sea does no injury to any one, and the products of the sea*

¹ Twiss, *Law of Nations* (in time of peace), 311.

are in this respect inexhaustible and sufficient for all.”¹

It would be impossible to conceive a negative pregnant more emphatic against the assumed right of fur-seal capture, for such capture of Alaskan seals works a positive “injury” to the United States, and tends to exhaust a supply which is *not* “inexhaustible” and *not* “sufficient for all.” The freedom of the ocean has no more vehement assertor than Calvo, yet he admits that, by international convention, there may be partial “derogations” from that freedom when such “derogations” are “dictated by a maritime interest of first order, notably, the exploitation of coast fisheries of an exceptional nature.” And what can be more “exceptional” than the exploitation of the “maritime interest” which the United States have in *fur seals born on their own soil?*

As the *animus revertendi* insures the owner’s property right in inclosed bees, when they have swarmed (in such way as to be identifiable) on the land of a neighbor, though they cannot there be reclaimed without “trespass,” it would seem not unreasonable to hold that the owner’s property right in inclosed seals should be secured by their *animus revertendi* during the period of their pelagic migrations, since, if they are of right reclaimable at all, they are there reclaimable without liability to indictment for “trespass.” Writs will not run either for the action in trover or of trespass on the case within the “no-man’s-land” of the inappropriable ocean; but the rules of right between two nations ought to be essentially the same as the rules of right between two individuals, however differ-

¹ Twiss, *Law of Nations* (in time of peace), 300; 1 Calvo, *Droit International*, 481.

ent may be the rules of procedure. Though our Archbold cannot help us here, the great maxim, "*Honeste vivere; alterum non lædere; suum cuique tribuere*," should certainly be as much the breviary of International Law in this year of grace as it was of Roman Law under the Cæsars.

The right of each nation to claim jurisdiction over its territorial waters to the extent of a marine league from the coast line is vindicated by Mr. Henry Sidgwick, among other reasons, on the ground that "each country should have the power of regulating the fisheries on its coast, to prevent wasteful exhaustion of the supply."¹ But to prevent the "wasteful exhaustion" of the seal supply, it is as necessary that seals should be protected in their pelagic migrations as in their breeding places; and the qualified property enjoyed by the United States in the Alaskan seal herds, by virtue of their *animus revertendi*, would seem to justify the claim that that right should be as sacred under international as under municipal law. It was held under the Civil Law that whether an animal has lost its *animus revertendi* or not is a question of fact, and that he who, while the *animus* still persists, seeks to dislodge it by a premature capture has committed upon that animal an act of theft.² It is on the fixed quality of this *animus* in the Alaskan seals, and on the property right which it authenticates so long as it persists, that the owner, it would seem, may base a reasonable claim that his property right in them shall not be divested by a premature, and therefore an unlawful, capture. And the question of fact as to the persistency of the *animus* does not depend at all on the distance

¹ Henry Sidgwick, *Elements of Politics*, p. 241.

² Glück, *Pandecten*, ser. xli., xlii., p. 46.

to which the normal excursions of the animal may extend in its outgoings and incomings. This distance, if great, only embarrasses the vindication of the property right by embarrassing the pursuit of the animal. It does not extinguish the right, if the *animus* continues to be lodged in the animal. In the case of the carrier-pigeon, the distance to which he extends his flight, while preserving the *animus revertendi*, does but increase his value. The honey-bee, the carrier-pigeon, and the Alaskan seal have each a radius of migration according to their kind. Ease or difficulty of perquisition in the case of estrays affects legal remedies rather than legal rights, just as formerly in the Isle of Man it was held to be no felony to take away an ox or an ass, but only a trespass, because of the difficulty in that little territory of either concealing or carrying off such big quadrupeds; while to steal a pig or a fowl was punishable with death, because the facility with which that crime could be committed seemed to require a strong deterrent.¹

To hold that the *animus revertendi* of Alaskan seal herds is sacred from assault within three miles from the shore, but is open to marauders' violence at a distance one mile further (while the *animus revertendi* remains just as strong in the remoter as in the nearer stretches of their migrations), is to play fast and loose with this rule of right, and so to convert it into a delusion and a snare. The seal husbandman who should learn that the *animus revertendi* of bees will protect the owner's right in them indefinitely, even when it runs on land where another has the *ius domini*, but that in the case of seals it will not run on salt water more than three miles, though outside of that limit

¹ 4 Stephen's Commentaries, 108.

nobody has a *ius domini* to plead against it (and though, too, it is just as strong at a distance of four miles or four hundred miles outside of that limit as at a distance of one mile inside of the limit), might be sorely tempted to commit even a worse irreverence than that of Mr. Bumble when, in his legal discomfiture, he exclaimed, "The Law is a ass, a idiot!"

For the purposes of this discussion it is not pretended that the government of the United States, by its unilateral act, has the right to declare, as a dictum of International Law, that the capture of pelagic seals is *contra bonos mores*. That maxim has a definite meaning in law, and cannot be stretched to cover newly emergent cases in international ethics. "Just as the legal obligations of an individual are defined, not by the moral ideal recognized in the society to which he belongs, but by the laws in force within it, so no state can have the right to demand that another state shall act in conformity with a rule in advance of the practical morality which nations in general have embodied in the law recognized by them."¹ Nations in general have not pronounced the capture of seals on the high seas to be *contra bonos mores*. The reply of Lord Salisbury under this head seems to be conclusive, but it is a reply which moves, and was intended to move, in *static* law alone. The argument of Mr. Blaine moves in what we may call the *dynamics* of International Law, because it moves in the direction of that "moral ideal" which is the perpetual *point de mire* of an advancing civilization—a moral ideal accepted by Lord Salisbury himself when he says that "her Majesty's government would deeply regret that the pursuit of fur seals on the high seas by British

¹ Hall, *International Law*, p. 5.

vessels should involve even the slightest injury to the people of the United States.”

That the capture of mother seals heavy with young is as morally barbarous as it is economically wasteful would seem to be clear in ethics. Under the Mosaic law it was forbidden to take the mother bird with her young, if she were found sitting upon her fledglings or upon eggs “in a nest on the ground or in any tree.”¹ The motive of the law was partly economic (to prevent the extinction of the bird species) and partly humanitarian (to prevent cruelty to animals and the human brutalization which such cruelty engenders). The economic motive of the law is so obvious that it was caught up and enshrined in the popular verse of the *Carmen Monitorium*, ascribed to the Greek poet Phocylides, but commonly supposed to have been written under his assumed name, in the fourth century of the Christian era.² The municipal law of the civilized world inhibits the slaughter of game during the breeding season.

For the purposes of this discussion it is not pretended that an assimilated “action in trover” should lie in the forum of International Law against the American or Canadian seal hunter who spears an Alaskan seal on the high seas and converts it into his private property under color of the law of occupation; but it is hoped that the same property right which in the case of honey-bees has been vindicated by the Municipal Law of the civilized world, and the same property right which in a suit at Common Law has

¹ Deut. xxii. 6, 7.

² Gaisford: *Poetae Minores Graeci*, 1823, vol. iii. pp. 252, 253.

Μηδέποτε χρήστης πικρὸς γένῃ ἀνδρὶ πένητι.
μηδέ τις ὄρνιθας καλιῆς ἅμα πάντα ἐλέσθω·
μητέρα δ' ἐκπ ρολίκοις, ἴν' ἔχῃς πάλι τῆσδε νεοσσούς.

been vindicated even in the case of dog whelps, musk-cats, and monkeys — “because they are merchandise”¹ — may now be found capable of substantiation and protection under the ægis of international convention. The Alaskan seals find, for the time being, a partial safeguard under the shield of the *modus vivendi* concerted between the two governments. It is simply proposed to put that safeguard under the terms of a permanent and effective international arrangement.

As has been well said by the German jurist Jhering, “He who battles for constitutional and international law is none other than he who battles for private law; the same qualities which distinguish him when struggling for his rights as an individual accompany him in the battle for political liberty and against the external enemy. What is sowed in private law is reaped in public law and the law of nations. In the valleys of private law, in the very humblest relations of life, must be collected, drop by drop, so to speak, the forces, the moral capital, which the state needs to operate on a large scale and to attain its ends.”²

As civilization advances, the law of occupation recedes.³ That law finds to-day its highest theatre in the *occupatio bellica* of “grim-visaged war,” but even grim-visaged war has learned to “smooth its wrinkled front” in the presence of private property. The jurisprudence of the world should keep pace with the prudence of the world. Among writers on the philosophy of law there is none who is more inclined to

¹ 3 Levinz, 336. ² Jhering, *The Struggle for Law*, p. 93.

³ See Glück, *Pandecten*, ser. xli., xlii., pp. 29, 30, for an exposition of this self-evident thesis.

glorify the law of force than Adolph Lasson; yet Lasson is quick to acknowledge the diminishing sway of the law of occupation. To this effect he says that as the domain of positive law widens, the domain of the law of occupation must needs shrink into a narrower and narrower compass.¹ And, at bottom, under the circumstances and conditions of the arbitration agreed upon, the question now pending between the United States and Great Britain with regard to the fur seals of Alaska is this, Will the property rights of the civilized world and the interests of a growing civility among nations be better subserved by remitting the capture of seals on the high seas to the primeval law of occupation, or by putting that law under the restrictions of international equity and of a progressive humanity?

Let it here be noted, says my learned colleague, Prof. Henry E. Davis, that "this is the question only under the circumstances and conditions of the arbitration agreed upon; for, the arbitration out of the account, this statement of the question would yield too much on the part of the United States. The relation of the United States to the seals is really analogous to, if not identical with, that of the individual who by domestication of animals *feræ naturæ*, such as bees, has acquired in them a recognizable and admitted property. In the case of animals *feræ naturæ* domesticated by man the property right is clear. In the case of the

¹ Lasson, *Rechtsphilosophie*, 606: "Mit dem Rechtszustande erst tritt die Forderung ein, dass fortan alle Eigenthumsveränderung auf rechtliche Weise zugehe, und dass Eigenthum erworben und verloren werde nur in den vom Rechte ausdrücklich vorgeschriebenen Formen, die sich dem Principe der Gerechtigkeit möglichst anzunähern trachten. Auf engsten Raum beschränkt bleibt fortan die Occupation, die blosse Aneignung der Sache aus eigenem Belieben."

seal we have an animal juridically *feræ naturæ* in a qualified sense only: for its *animus revertendi* is matter of nature, not of art, and is, besides, territorially circumscribed in operation; that is to say, in the case of the seal the *animus revertendi* has and can have operation only in respect of a territory the admitted property and in the conceded dominion of the United States. It is as though we had a species of the bee engendered, and capable of being engendered, upon a given spot only, and by force of its nature ineradicably instinct with the disposition — nay, under the necessity — of returning to that spot. In such a case the *ius hominis* really gives place to the *ius domini*, and the animal may justly be said to be no more *res nullius* than the tree and its fruit grown and growing on the soil of an individual proprietor.

“The question, arbitration apart, might then fairly be put thus: Given the seal, with its territorially circumscribed *animus revertendi* as part of its nature, — indeed, part of the animal, as much so as its instinct to maintain its life by food, — is such an animal juridically *feræ naturæ*? or is it not, by force of this very part of its being, a subject of property *per se*?”

“But, as above stated, the question, in view of the arbitration, may, for the purposes of the argument, be conceded to be as first expressed. And, the question thus put, what is its answer?”

It is not understood that the government of the United States has waived any of its property rights in Alaskan seals preliminarily to the impending arbitration. It has simply agreed to take the judgment of a mixed commission on the foundation, nature, and extent of its rights, and expects, of course, to abide by that judgment. It is certain that the author of this paper

has not intended to abate those rights when, to the extent of this argument, he seeks to identify them with the obligations and interests of that closer intercourse among civilized nations which seems to call for their free acknowledgment.

The *ius fruendi* of property in land carries with it a right to the products of the land. The *ius fruendi* of property in animals carries with it a right to the natural increase of such animals ; and not to the *natural* increase alone, but also to any increase which may come from what the Roman lawyers have called the right of "accession." The maxim of accession is, *Accessio cedat principali*, "Let the accessional thing follow the principal thing."¹ The doctrines of accession, says Blackstone,² "are implicitly copied and adopted by our Bracton in the reign of King Henry III., and have since been confirmed by many resolutions of the courts." Wild pigeons joining a flock of inclosed pigeons and wild bees joining a swarm of inclosed bees, says Ortolan, are gathered to the inclosed animals under the law of accession, and are no more open to occupation than the animals originally inclosed.³ The law of accession, we see, runs with the law of occupancy, with the rule of *animus revertendi*, and with the law of usufruct, while the comment of Ortolan meets very neatly the plea of the fur seal hunter who should allege that the seal which he speared in the Bering Sea was probably a "foreign "

¹ *Digest*, xxxiv. 2, 19, § 13.

² 2 Blackstone, 404.

³ 1 Ortolan, "*Explication Historique des Instituts*, liv. ii. 366, 367: "Ainsi, que des pigeons, que des abeilles sauvages, attirés par mes pigeons, par mes abeilles domestiques, viennent se joindre à eux et s'établir dans mon colombier, dans mes ruches, même à mon insu, ces animaux, et le produit qu'ils y donneront, m'appartiennent ; celui qui viendrait les y prendre commettrait un vol."

seal. There are, it is understood, no foreign fur seals in the waters covered by the pending arbitration, and if there were they would, when found in the company of the Alaskan seal herds, be gathered to those herds, and would be as much the property of the Alaskan seal husbandman as the members of the brood which originally started out from the Pribyloff Islands. And, when we consider the tie which binds the Alaskan seal herds to the Alaskan soil, it seems proper to ask whether these herds are more appurtenant to the land in which they have their native home and to which they have a fixed habit of return, or whether they are more appurtenant to the seas in which they make excursions? And whether, too, in point of public and of private economy, the petty interest of the pelagic sealer or the vast interest of the United States in the seal herds should be held "the principal thing" in this great concernment? To ask such questions is to answer them. The seal husbandry of the pelagic hunter is vagrant, casual, and desolating. The seal husbandry of the United States is stable, provident, and conservative, because it is based on property rights resulting from ownership of the soil on which the seals breed, from ownership of the herds on that soil, from control over the herds within "the three-mile zone," and from the legal rule of *animus revertendi*, which ties them juridically to that soil. The primeval law of occupation does not extend, as has been already said, to animals which are the subjects of prior, though qualified, occupation. To place amphibious animals, like seals, on the same level as creatures *feræ naturæ* born and living in the sea, is as illogical and unscientific as in point of juristic reason it is violent and inequitable.

It is at once a truism and a commonplace to say that progress in the social, economical, and political relations of the human race must of necessity work with a constant reformatory power on the body of law from age to age. It is this dynamic conception of the evolutionary process involved in the world's law-making which gives such a practical value to the study of the world's historical and comparative jurisprudence; for it is only by such a philosophical study that we can attain to the grounds of a scientific forecast where new social, civil, and international situations seem to call for new jural arrangements. The civilized nations of the earth form to-day a close society *Ubi societas ibi ius. Ubi ius ibi obligatio.* The Law of Nations, it is true, has neither law-giver nor supreme judge; but it has its own peculiar genius and its own peculiar sanctions. "Its organ and regulator is Public Opinion. Its supreme tribunal is History, which forms at once the rampart of justice and the Nemesis by which injustice is avenged." In the moral preparations which precede it, the Law of Nations comes slowly and comes from afar, but critical conjunctures are often the birth-pangs of its new deliverances; for though national morality is but the modified reflex of private morality, and though international morality is but the modified reflex of national morality, it is important to observe that when ameliorations of moral conduct are demanded among civilized nations they may often be more readily and speedily secured than the ameliorations of moral conduct which are demanded among individual men in the figure of civil society. So various, divergent, and mutable are the free wills of individual men that it is impossible to concert among them a forward moral movement,

along the whole line, in the bosom of any large civil community. The community of civilized nations, on the other hand, is small in its membership; the relations of independent states to each other are comparatively simple; their actions and interactions move on the broader lines of public policy, and move, too, in the sunlight of publicity. Where new moral and legal departures are required in international intercourse, they may come suddenly with the opportunism which paves the way for them. And they will come to stay in a Christian civilization, because they represent the sovereignty of moral ideas, and because they spring from a growing faith in the moral order of the universe.

It will be seen that this whole discussion has revolved around a single point of law, which, if well taken, would seem to be determinative of the main issue joined in the "Bering Sea Arbitration." A doctrine of law does not vary with the magnitude of the issues that turn on it. If it is sufficient to reclaim a flock of pigeons it *ought* to be sufficient to reclaim a herd of seals. If it be good as between neighbors under Municipal Law, it *ought* to be good as between neighbor nations under International Law. No attempt has here been made to argue the American case or to traverse the British case at any other point. Indeed, the student of international law has nothing to do with the *American* case as such or with the *British* case as such. He seeks simply to find in the pending litigation the rule of right which should obtain in a government of the nations, by the nations, and for the nations, to the end that righteousness may be as much the law of the sea as the law of the land.

XI

THE LAST TOWN ELECTION IN POMPEII

(AN ARCHÆOLOGICAL STUDY OF ROMAN MUNICIPAL POLITICS
BASED ON POMPEIAN WALL INSCRIPTIONS)¹

It has now been many years since I traversed the streets of Pompeii and began my study of its wall inscriptions. It chanced that my first visit fell on a day when the laborers engaged in the work of excavation were just laying bare the interior walls of a large mansion in the heart of the town. A French artist stood by my side, with pencil in hand, to transfer to his canvas the fresco (it was a picture of the goddess Flora scattering roses in her train), which had lain buried beneath its ashen shroud for 1800 years. But as a student of archæology I did not linger long over the wall paintings of a Pompeian interior. Such paintings, at their best estate, belong rather to the category of house decoration than of high art. Hence it is that I have always found myself greatly more interested in the inscriptions traced on the outside of the Pompeian houses than in the formal and conventional work of the journeymen artists who adorned the interiors with frescoes made to order according to the predominant taste of the time.

Since my studies in this direction were first begun a

¹ Address as retiring president of the Anthropological Society of Washington, May 16, 1893.

vast addition has been made to the literature of the Pompeian wall inscriptions, in such epigraphical works as those of Orelli, of Garrucci, of Mommsen, and especially of Zangemeister. The collection of the last-named author is almost a complete repository of the materials most essential to the archæological investigator, and such an investigator will be most intelligently guided by a Belgian scholar who has made this province peculiarly his own, so far as relates to the political significance of the Pompeian wall inscriptions. I refer to a scholarly monograph under this head by M. Willems, a professor in the University of Louvain, who is otherwise known to historical students by his masterly treatise on the "Public Administrative Law of Rome from the Origin of the City down to the Epoch of Justinian."¹

Important archæological "finds" in other parts of what was once the Roman Empire have come besides of late years to throw their cross-light on the electoral methods which were in vogue at the time of Pompeii's overthrow. In the year 1851 two brass tablets were dug up in Spain near the town of Malaga, and on these tablets were found engraved the fragments of a municipal charter granted by the Emperor Domitian to the towns of Salpensa and of Malaca between the years 81 and 84 of the Christian era, — a date which makes their enactment almost contemporaneous with the ruin of the Campanian town.² In 1870 and 1874 several tablets containing the organic act granted by Julius Cæsar to the municipality of Urso, now Ossuna, in Spain, were brought to light, and these precious archives have been edited by Berlanga in Spain, by

¹ P. Willems, *Les Elections Municipales à Pompeii*.

² Bruns, *Fontes Iuris Romani Antiqui*, pp. 136-148.

Mommsen in Germany, by Giraud in France, and by others.¹

In the fragments of these several charters the whole theory of Roman municipal government is expounded in detail. From the constitution, for instance, of Malaca we learn how candidates for public place were put in regular nomination; how supplementary candidates could be selected by the presiding judge of elections when a sufficient number of candidates failed to be designated in the regular way by popular initiative; how the elections were conducted; how the ballots were cast and how counted; how the result of elections was to be decided when two or more candidates had an equal number of popular votes in the same *curia* (or ward), or when two or more candidates had carried an equal number of the *curiæ* into which the town was divided for electoral purposes; how the successful aspirants were sworn into office, etc. It may be of interest to state, as illustrating a trait of manners at that time, that where two or more candidates had an equality of votes in Malaca, whether in a single *curia* or in the number of *curiæ* respectively carried by each, the preference was to be given by law to a married man over a bachelor, to a man who had more children over a man who had comparatively fewer, and, to the end that parentage might lose none of its political privileges, the law further ordained that two deceased children who had lived long enough to be named should be counted as equal to one child still surviving, while sons and daughters who had not deceased till after reaching the age of puberty should be counted on a perfect equality with their surviving brothers and sisters.

¹ Bruns, *Fontes Iuris Romani Antiqui*, pp. 119-136.

The denizen of a town could become *municeps*, a member of the voting population, by free birth, by manumission, by adoption, or by naturalization. The population of a town was divided into Decurions, Augustales, and Plebs, or the populace. The Decurionate of a town comprised its foremost citizens, and, on a small scale, corresponded in relative place and power to the Senate in Rome. This Decurionate was composed of a determinate number of members, generally a hundred, and its members were selected because of their high social positions, their wealth, their public spirit, and especially because of their presumed capacity to bear the public burdens of that day, — that is, to dispense largess, furnish gladiatorial games, and adorn the town with public buildings and monuments erected at their expense. It was in no sense a self-perpetuating body. Its members were subject to impeachment for crime or misdemeanor, and if any Decurion was successfully impeached for crime or misdemeanor, the prosecutor who took the brunt of such an accusation was entitled, if otherwise qualified, to step into the shoes of the dignitary whom he had evicted. A public list of Decurions was always kept on exhibition in the *Album* or White List of the town. This list was posted in the Forum, and was revised every five years by the *Duoviri* (or *Quatuorviri*); that is, by the chosen selectmen of the town. The duty of selectmen in a Roman town corresponded to that of burgomasters in an old Dutch town. The Decurionate was kept full by appointments which the Selectmen made from time to time when vacancies were created by death. To be eligible as a Decurion a citizen had to be twenty-five years old and to possess property worth at least 100,000 sesterces.

The Augustales were a corporation appointed originally by Augustus from among the rich freedmen, to occupy a place intermediate between the Decurions and the populace. It was their titular duty to watch over the Lares, whose images the Emperor set up in the cross-roads. The body came in the end to be composed of rich fools who were willing to pay for costly public sacrifices, sumptuous public entertainments, and large popular assemblies.

The ordinary magistrates of a Roman municipality, at the beginning of the Christian era, were two selectmen, called *Duoviri juri dicundo* (there were sometimes four of them, called *Quatuorviri juri dicundo*), who presided over the town and administered justice; two overseers of roads, markets, etc., called *ædiles*, who superintended the public markets, inspected the weights and measures of tradesmen, kept the roads in repair, and distributed provisions to the needy; and sometimes there was a *quæstor*, who took special charge of the public chest and of the public disbursements, when this duty was not distributed among the *Duoviri* or *ædiles*.¹

City officials were elected every year, generally in the month of March, because the fiscal year was closed on the last of June, and newly elected officers entered on their functions on the first of July. The politics of Rome and her municipalities had not yet reached the stage of the "nominating convention." All candidates were put in nomination by the spontaneous acclamation of their friends. The modest but acquiescent phrase of a modern politician that he "is in the hands of his friends" had its full and literal sig-

¹ There was no *Quæstor* in Pompeii after the Roman colony displaced the old Oscan natives.

nificance in a Roman town. Anybody, man, woman, or child, could make nominations and post them on any wall space which he or she owned or the use of which he or she was willing to hire for advertising purposes. The nominator wrote out the name of his favorite, the office for which this favorite was designated, and then begged the people to support his recommendation. Sometimes he put his signature to the appeal, and sometimes he blazoned the name of a budding politician at the street corner without putting any sign-manual to the electioneering manifesto. Sometimes the mere initials of a popular name were deemed enough. Municipal statesmen dragged to light in this spontaneous way, though each was doubtless in his own eyes "the rose and expectancy of the fair state," were wary against the risks of candidature when there was no prospect of an election. They waited till they could see how the cat was likely to jump. If their prospect of election seemed good they went to the senior of the selectmen, who was *ex officio* president of the election, and avowed themselves as candidates for the post in connection with which they had been named. This open avowal of a willingness to stand was called a *professio*, and from that moment a candidate's name was placed on the town "White List" and exposed to the gaze of all the townsmen in the most frequented part of the Forum.

Elections in Pompeii and elsewhere were not made by a gregarious vote of all the people. Every town was divided into *curiæ*, or electoral precincts, and the successful candidate was he who secured a majority of the precincts, whatever might be his strength or weakness as measured by the total popular vote. Nobody could pose as a candidate till after he had been en-

rolled on the White List, and every voter was limited in his choice of candidates to the names published in that list.

All the *curiæ* of a town were summoned to an election by a simultaneous call addressed to the voters in each. On election day the voters assembled by *curiæ* in the Forum around the election booth, an enclosure marked off by ropes or by palisades (*tabulata*) or by bars (*cancelli*). The presiding magistrate then read out the names of the candidates to be voted for from the list which had been posted on the public Album three market days before. The voters next received the tablets on which to write the names of the candidates, and at a given signal formed in line, *curia* by *curia*, as each was selected by lot, and, proceeding by a narrow raised walk (made of boards and called the *pons* or *ponticulus*),¹ they entered man by man into the voting pen, and as they entered dropped their ballot into the ballot-box.² This ballot-box was watched by three public inspectors, called *rogatores*. Besides these public inspectors it was competent for each candidate to station an inspector of his own choosing at the ballot-box to guard against frauds to his disadvantage. All inspectors, as well those of private as those of public appointment, were sworn to keep and return in good faith a correct tally of the votes.

With these preliminaries we are now prepared to

¹ Hence the origin of the Roman proverb, "Put men of sixty off the bridge" (*Sexagenarios de ponte*), used to signify that any old man might be "lagging superfluous on the stage." At the age of sixty men were exempt from public service.

² For a lively account of election riots at Rome, see Cicero: *Epist. ad Atticum*, iv. 3. How ballots were "fixed," see *Epist. ad Atticum*, i. 14.

understand the political statistics of Pompeii on the occasion of its last municipal election. Pompeii, as everybody knows, was overwhelmed by an eruption of Mount Vesuvius on the 23d and 24th of August, in the year A. D. 79. Her two selectmen and her two ædiles were therefore elected in the preceding month of March and had entered on their functions on the 1st of July. Within the already excavated part of the town the signs of that last municipal contest meet us on every hand in the shape of political manifestoes painted in red, scrawled in crayon, or cut with the stylus on the surface of a thousand walls. From the large number of these inscriptions already recovered it is plain that nearly two thousand of such proclamations must have been posted in the whole town. Some of these, however, are evidently the vestiges of electoral contests in former years. The great majority of them reveal the Roman electioneering process in the first stage of its manifestation, to wit, in the spontaneous nomination of candidates. The first suggestion of a new candidate was put forward as a "feeler," and, as has been just stated, proceeded from the neighbors, friends, or clients of any putative aspirant. This suggestion was made in the terms of a consecrated formula, and, to cite one example among a thousand, ran as follows: "Phœbus, with his customers, desires M. Holconius Priscus and Caius Gavius Rufus as Duoviri." "Parthope, with Rufinus, desires Helvius Sabinus as ædile." As a result of the spontaneous nominations made in the year 79 we know that only ten men, out of the hundred or more who received a filip of some kind, were willing to stand the risks of the electoral ordeal. For the office of Duumvirate four citizens made a public *professio*.

We know their names, their residences, and in some cases the quality of their supporters. Their names were Marcus Holconius Priscus, otherwise known to have been one of the most opulent citizens of Pompeii; Lucius Ceius Secundus, Caius Gavius Rufus, residing in the northern part of the town, and Caius Calventius Sittius Magnus. For the office of *ædile* six candidates put themselves in evidence: M. Casellius Marcellus, M. Cerinius Vatia, L. Popidius Secundus, C. Cuspius Pansa, Cn. Helvius Sabinus, and L. Albucius Celsus.

After the names of these candidates had been posted on the municipal bulletin-board — I should say the bulletin wall-space — it will be readily understood that there was a variation in the mode of popular appeal. As voters in their selection of candidates were confined to names on the official list, we observe that all the electioneering appeals after a certain date call for votes in behalf of some particular candidate or candidates. A single example will suffice to illustrate the changed formula: "We beg you to vote for Caius Gavius Rufus and Lucius Ceius Secundus as selectmen." "We beg you to vote for M. Casellius Marcellus and L. Albucius Celsus as *ædiles*."¹

Labor leagues, guilds, sodalities, political clubs, and religious associations had been of ancient date in Pompeii. All such voluntary organizations, as we

¹ The ordinary formula, written out in full, is "oro vos faciatis," or "oramus vos faciatis." Sometimes it is abbreviated into O. V. F., and sometimes into *OVF*. In the nominating stage of these inscriptions the word *cupit* is used interchangeably with *rogat*, and in the voting stage the writer sometimes gives emphasis to his suffrage by declaring that he votes for his favorite "with pleasure," "with eagerness," or with "very great eagerness" (*gaudeus facit, cupidus facit, cupidissimus facit*).

learn from Tacitus,¹ were suppressed at one time because of the riots to which their rivalries had led, but they soon reëstablished themselves, and their active intervention in this last town election may be read on every wall. Labor leagues were factors in politics, because every league had its patron, selected from among the rich inhabitants of the town, and the patron looked to his league for its organic support at the nominating period and on election days — that is, the leagues were political machines whose working gear was lubricated by the rich man's sesterces. Local and religious unions also took an active part in Pompeian politics.

Among the labor leagues which bore a hand in the municipal campaign of A. D. 79 were those of the "Goldsmiths," the "Workers in Wood," the "Wheelwrights," the "Fruiterers," the "Miller-Bakers," the "Pastry Cooks," the "Poulterers," the "Dyers," the "Barbers," the "Muleteers," the "Perfumers," the "Fishmongers," and, of course, the "Tavern-keepers." Among clubs we find the names of the "Ball-jugglers" (*Pilicrepi*), of the "Farmers," of the "Late Topers" (*Seribibi*), of the "Sleepy-heads" (*Dormientes*), and of the "Little Thieves" (*Furun-culi*), the last three being facetious names of which the origin is as obscure to us as the origin of our "Hunkers" and "Barn-burners" will probably be to the archæological student of American political nomenclature in the year 4000 of our era. The club of the "Late Topers" had their headquarters at the tavern of one Edone (the Latinized spelling of her name indicates that she was a Greek), situate between No. 10 and No. 11 in the street of the Augustales,

¹ Tacitus, *Annalium*, lib. xiv. 17. Cf. Suetonius, *Julius Cæsar*, § 42.

leading to the Forum. An inscription on the outside of the inn announces that the Late Topers, in a body, solicit the suffrages of the people for M. Cerrinius Vatia as ædile. (M. Cerrinius Vatiæm Æd. O. V. F. Seribibi Universi rogant. Scr. Florus cum Fructo.) Two doors further on the "Little Thieves" publish their adhesion to Vatia in like manner (Vatiæm Æd. Furunculæ rog.), and at the next entrance the "Sleepy-heads" call, as they say, with entire unanimity for the nomination of the same "favorite son" of Pompeii.

It must be confessed in my veracious chronicle of the last town election in Pompeii that the aforesaid M. Cerrinius Vatia had the bad fortune to be supported by all the self-styled "Tapsters," "Sluggers," and "Jeremy Diddlers" of the town. As Vatia was also patronized by the men of brawn combined in the labor union of the burly "Street Porters," and appears to have been a favorite with the coarse Oscan folk comprised in what was known as the "Campanian ward" of Pompeii, it is to be feared that he must be classified as a "sporting character," as a "stalwart," or even as a "tough." It is very certain, from the quality of his supporters, that his virtues could not have leaned to the side of too much asceticism.

We learn from the wall inscriptions that two of the guilds or sodalities which participated in this last town election were formed under the auspices of religion; that is, of such religion as passed current in Pompeii at that date. They were formed respectively by the votaries of Isis and the votaries of the physical Venus. Isis, the Egyptian goddess, whose worship was suppressed again and again at Rome by consuls and emperors because of the licentious orgies con-

nected with her mysteries, had a temple and a strong following in Pompeii. Indeed, she divided with Venus the religious cult of the town, and we may picture to our fancy the roystering crew of her devotees as, on election day, they marched to the polls with their dog-faced masks on their faces.¹ The Isis cult united on Cuspius Pansa and Helvius Sabinus for the ædileship. But the physical Venus—not the heavenly Venus, be it observed, but the *Venus fisica Pompeiana*, as she is described on these walls—was the patron goddess of this voluptuous town. Her votaries announced that in this election they would support Ceius Secundus as Duumvir and Popidius Secundus as ædile. In what is to-day called the street of the Soprastanti, not far from the Forum, we may remark on the wall of a shop the following inscription, appropriately placed under a picture of Bacchus: “Venus goes for Casellius as ædile.” We see that Bacchus and Venus were allied in Pompeian politics as well as in the old mythology of the time. Isis had her party and Venus had her party, but Pudicitia, the goddess of Chastity, appears to have had none. There is certainly no trace on these walls of any “sodality for the preservation of chastity” (*sodalitas pudicitie servandæ*), as we know there once was in Rome.²

The preparation of wall surfaces for the reception of inscriptions, and the writing of political advertise-

¹ Isis was so popular in Pompeii that when her temple had at one time been destroyed by an earthquake, probably by the earthquake of A. D. 63, and when Numerius Popidius Celsinus had caused it to be rebuilt from its foundation at his own expense, the Decurions annexed him to their order at once, though at the time he was only six years old. Orelli, vol. ii. p. 165.

² Orelli, vol. i. p. 418.

ments upon them, was evidently a thriving branch of business in Pompeii. We know the names of the men employed in each of these callings. They were the job printers and bill posters of the time. Among the wall-surface preparators one Onesimus and one Victor seem to have been conspicuous. Among wall-writers, Issus and Secundus and Fructus and Papilio and Protogenes and Infantio have been careful to hand down their names to us by appending them at the bottom of the political announcements of which they were the paid inscribers. Infantio at one time had evidently made a "corner" in the advertising business, for he writes that he had associated with him in his trade, "here and everywhere," a trio of partners — Florus, Faustus, and Sabinus — the first case on record, so far as I know, of a "trust" in bill-posting! Sometimes a thrifty citizen of Pompeii, whose house was well situated for the purpose, would rent out the whole broadside of his habitation for the reception of public advertisements. A case in point is that of the popular baker, Titus Genialis Infantio (was he a relative of Infantio the bill poster?), who sold bread and cakes on the southeast corner of a square not far from the middle of the via Nola. His house suffers to this day almost as much from the pock-marks of the political advertiser as from the volcanic peltings of Vesuvius. It is speckled with what Willems calls a veritable motley of electioneering cries. It ought, perhaps, to be mentioned that Mr. Cerrinius Vatia, our candidate with the scurvy following, appears to have employed careful scribes to indite his name where it could be best seen by an admiring public. Popidius Secundus, on the other hand, engaged mere scribblers, who were careless

even in their spelling. It is evident that he was not a "liter'ry fellow."

We have said that the *curia* or *tribus* was the electoral unit of a town. The number of these *curiæ* depended on the size of the town and the extent of its voting population. There were probably six wards in Pompeii, and from the electoral announcements we can conjecture the names of at least three of them: the ward of the "Forum," comprising the squares in its vicinity; the ward of the "Campanians," in the northeastern part of the town, where the old Oscan folk had their habitation; and the ward of the "Salt Yards," lying along the suburbs in the direction of Herculaneum. On the wall of a house in Crooked Street (*Vico Storto*, as the Italians to-day call it) we find this inscription, "Hurrah for the Salt-Yarders!" (*Saliniensibus feliciter!*) We may fancy that this exultant inscription was put up after the "Salt-Yarders" had gloriously carried their ward for their favorite candidates, and had thus saved Pompeii, as they fondly hoped, for at least one year, when Vesuvius came in the twinkling of an eye to put an end to low ambition and the pride even of Duoviri, in this public-spirited municipality where, as Cicero tells us, it was harder to become a Decurion than to become a Senator in Rome.¹

As Pompeii voted by electoral precincts and not by

¹ See the story in Macrobius, where, however, the point of the pleasantry is not so much the difficulty of becoming a Decurion in Pompeii as the facility with which one could become a Senator in Rome — by the favor of Julius Cæsar. "Cicero facilitatem Cæsaris in adlegendo Senatu inrisit palam. Nam cum ab hospite suo, C. Mallio, rogaretur ut Decurionatum privigno ejus expediret, adistente frequentia, dixit: 'Romæ, si vis, habebit; Pompeiis difficile est.'" *Conviv. Saturnal.* lib. vii.

a general vote of all the inhabitants, it is easy to see that this arrangement lent itself to "trades" and "combines" between candidates and their adherents in the several wards. The aim of each candidate was to secure a majority of the *curiæ*, however far he might lag behind in the popular vote. Hence the temptation to sell votes where they were not wanted for votes where they could do the most good,—to wit, in evenly divided *curiæ*. The evidences of such "trades" and "deals" are abundant.¹ For instance, on the house wall of Rufinus, a man of good family in Pompeii, but who evidently had a municipal bee buzzing in his bonnet, we read this inscription, put there by some fugleman for L. Popidius Secundus: "Rufinus, we beg you to vote for Popidius Secundus as ædile. He is an excellent young man and worthy of the commonwealth. Favor him and he will vote for you." (Popidium Secundum Æd. D. R. P., Pro-bissimum Juvenem, O. V. F., Rufine, fave et ille te faciet.) On another wall we read: "Proculus, vote for Sabinus as ædile, and he will vote for you." This Proculus was evidently a political "worker" and had a "machine." At a previous election we find this appeal to him: "Proculus, put in your full work (*officium commodu*) for your man Fronto." An order from one of our own municipal "machines" could hardly improve on such a choice bit of practical politics. Sometimes these appeals are of the whining or supplicatory kind, such as that addressed to one Diadumenus at a former election. Somebody has

¹ Such "trades" or "deals" were so common in Roman cities that in the political vocabulary of the time there was a technical name for the process of making them. It was called, "Coire ad deiciendum alium honore."

written on his house: "O Diadumenus, I know that you are going to vote for Lucretius as ædile." Sometimes a gleam of humor shines through these wall inscriptions, as when Sabinus, who describes himself as "usher" in the town theatre, and who therefore was used to the sound of applauding audiences, declares that he "votes" for M. Popidius Sabinus as Duumvir "with applause" (*cum plausu*).

It is some consolation to find that these "trades" were concerted between the friends of candidates for the ædileship and not of candidates for the office of Duumvir, which latter had judicial duties attached to it. Willems notes that among all these electioneering appeals there is not one emanating from a Duumvir in office at that time. These dignitaries appear to have abstained from all "pernicious activity," at least in the last town election held in Pompeii; and yet there was no civil service commission in Pompeii to keep them in order. Where there was political cheating we may be sure there was much of crimination and recrimination. The fidelity of clansmen and of "heelers" was often called in doubt. For instance, on the wall of a house situate on the street which leads to Stabia, and which was a popular thoroughfare, some "heeler" of Caius Calventius Sittius, who, we remember, was "running" for the office of Duumvir, has addressed the following significant admonition to a political confederate by the name of Ubonius: "Ubonius, be on your guard!" — "Keep your eye skinned," as we would say in modern parlance. This "heeler," I regret to say, like some of his congeners at the present day, was stronger in the art of voting a straight ticket than in the art of Latin orthography, for his spelling of "vigila" (which he spells "vigula")

would have made Quintilian gasp. On another wall we find some political friend of L. Popidius Secundus, whose name has met us before in these unsavory associations, pouring sarcasm on a fellow-worker who was, it seems, not sufficiently wide awake to the then pending "crisis" in Pompeian politics. He writes: "O Infans, you are asleep, and you are electioneering!" Besides these, one Attalus and one Magius are stigmatized on the walls of Pompeii as politicians who deserved the curse of Meroz, and who were "sleeping" on the parapets of the citadel when they should have been alert to foil the knavish tricks of the adversary.

The word "Mugwump" is said to be of Algonquian origin, but eighteen hundred years before our learned colleague, Mr. J. C. Pilling, had published his "Bibliography of Algonquian Languages" it would seem that Pompeii had her Mugwumps, of somewhat easy virtue, who satisfied themselves with making wry faces in public when they swallowed an unsavory candidate. At any rate, we have a wall inscription written by a man who gave only a squeamish support to M. Cerrinius Vatia, the same dubious worthy who rejoiced in the patronage of the "Late Toppers," of the "Sleepy Heads," and of the "Little Thieves." The inscription reads as follows: "M. Cerrinius for ædile. One man has his likes; another man is liked. I am squeamish. The man who is squeamish has his likes."¹ The language is slightly enigmatical, but

¹ In the compact Latin it is phrased and spaced as follows: —

"M. Cerrinium,
Æd. Alter amat; alter
Amatur. Ego fastidio.
Qui fastidit, amat."

the meaning is clear. The writer means to say that though he has what we should call to-day "Mugwumpian proclivities," he yet has a liking for Cerrinius and intends to vote for him without asking too nice questions for conscience' sake. Perfectly frank, outspoken, and thorough-going, however, is the political enthusiasm of other partisans, who evidently prided themselves on voting the "regular ticket" — such as that of the henchman who appeared to have supported one Quintus in some former election. He writes: "The man who refuses to vote for Quintus ought to be mounted on an ass."

The tavern and the eating-saloon were a political power in Pompeii. Most of the women who took a hand in Pompeian politics were, I regret to say, members of the "Tavern-keepers' Union" in Pompeii. There was such an union in Pompeii, as abundantly appears from the electioneering manifestoes. The names of Pollia, of Statia, of Petronia, of Helpis Afra, of Recepta, and others attached to these electoral broadsides, are significant at once of the humble origin and of the disreputable profession of their bearers. Sometimes they are associated with their husbands in this political "tooting," and in at least two cases the gray mare seems to have been the better horse, for the woman puts her name before that of her husband: ¹ "Recepta, nec sine Thalamo," is the

¹ It has sometimes been suspected that women voted in Pompeii, because there are two or three wall inscriptions which may seem to have such an implication; but the statement is doubted by Willems on what seems good grounds. In such phrases as "Little Sprite votes for Claudius as Duumvir" (*Claudium iiv. Animula facit*) we may much better suspect a pleasantry than a cold historical fact; just as when we read on another wall that "Venus goes for Casellius as ædile" we do not take the statement literally. Such pleasantries

quiet way in which one of these political landladies tucks away her husband under her apron-string in announcing their joint nominations.

That primary meetings and caucuses were sometimes held in tavern halls we know from this tell-tale inscription on the wall of a hostelry: "Landlord Seius, you did well in accommodating us with seats." It is evident that the caucus had been a little larger than usual on some night during the electoral canvass; that Landlord Seius had risen to the height of a great emergency, and had determined that the meeting of his crapulous political customers should not be broken up for want of sitting accommodations! If the "Loco-Foco match," suddenly improvised on a certain occasion to relight Tammany Hall, was sufficient to give its name for years to a great party in the United States, who shall say that the provident thoughtfulness of Landlord Seius might not well excite the admiration of a Pompeian "heeler"? How far off seems the sound of these ancient tosspots, as they jabber municipal politics over their cups of sour wine, and yet how near it is to us all, as we recall the publications of our own "municipal reform leagues"?

Paullo majora canamus. Let us turn from these surface indications and these minute curiosities of Pompeian politics to the deeper moral of our archaeological study. We catch here the institutes of Roman

are common enough in Cicero's Letters, where Mark Antony figures as "the Trojan Lady." And then, if women voted in Pompeii, what are we to do with the express statement of Anlus Gellius, who wrote about this time, when he says that "between women and elections there is no communion"? The passage may be found in the seventh book of his "Attic Nights," and seems to have been strangely overlooked by the critics.

municipal government in the transition epoch. Republican liberty was dead in the city of Rome, but the simulacrum of popular suffrage was allowed to survive for a time in the remoter municipalities. The servile collar was fastened on the neck of the Roman people, but the collar was gilded. The rude *ovilia* into which the tribes had flocked on the Campus Martius were converted into marble colonnades large enough to afford standing room to the whole voting population of Rome. Cicero tells us in one of his letters to Atticus that even in his days they were proposing to erect marble halls a mile long for political gatherings.¹ The halls were built and dedicated by Augustus, but with the accession of Tiberius the farce of popular elections was ended. All elections were transferred from the Campus Martius to the Senate. Municipal autonomy was abolished. Rome had purchased civil security at the price of political privilege, and was content with her bargain. Most interesting would it be to trace the successive stages of this great social and political transformation, for it was social before it was political, and it is in the later stages of this transformation that the seeds of the European feudal system were sown. The common people were cut and carved by the swords of their masters into artificial working gangs, and were planted on separate parcels of land under an arbitrary tie of allegiance. The unit of government passed from the clan with its tie of common blood to the feud with its tie of common land.

If the land law of England still welters in the dregs of feudalism (*in fœce feodorum*), as Sir Henry Sumner Maine declares, it is certain that the land

¹ Cicero, *Epist. ad Atticum*, iv. 16.

law of the feud drew its origin from the corruption of the blood tie, as a bond of government, in the last dregs of Romulus (*in fæce Romuli*), as Cicero phrased it. In the redistribution of social elements in this period of change, a separate and distinct stratification of social layers was being slowly effected throughout the whole Roman Empire. The upper classes were differentiated into finical strata based on mere distinctions of rank, the aristocracy of place and function, and no longer the aristocracy of character and service. What with titular rights of precedence among the *Nobilissimi*, the *Illustres*, the *Spectabiles*, the *Clarissimi*, the *Perfectissimi*, and the *Egregii*, the lines of social demarcation were arbitrarily drawn, because they were purely artificial in their institution. The public offices were gradually converted from posts of public trust into the seats of a centralizing despotism, which called for posture-masters of servility rather than for self-respecting rulers. The office of Decurion, from being sought because of its honorable insignia and its social privileges, came to be loathed and shunned for its intolerable burdens. Rich men hid themselves from publicity, and, like the martyrs they were, they wandered in deserts and in mountains and in dens and caves of the earth to escape the pains and penalties of office. They married slaves to work corruption of blood in order to disqualify themselves for public honors. They enlisted as common soldiers, preferring the horrors of war to the terrors of office. The only door of hope which opened to them a way of escape from this valley of Achor was to be the father of twelve children. The law of the Empire graciously assumed that the father of twelve children had done service enough to the state without being called to

make further contributions, and that he was likely to have cumber enough at home without bending his back to bear the burdens of the commonwealth. And as every benedict could not hope that his wife would prove such a fruitful vine by the sides of his house as to be the mother of twelve children, rich men at length sullenly forswore matrimony on the plea that they were tired of gendering servants who should be at the behests of an insatiate and bloodthirsty populace, which never wearied in its cry for bread and gladiatorial games.¹

In like manner the labor unions, from being self-protecting leagues which aimed to stimulate a wholesome emulation among their membership, were ultimately converted into so many bands of hereditary bondsmen, tied to the trades in which they were born, as serfs were tied to the soil on which they were born. The unions themselves were crushed under the iron wheel of imperial law.² It became a rule of law that a labor union could claim its runaway members as the curials of a town could claim their runaway officials. Theodosius launched his thunderbolt at the members of labor leagues who deserted handicraft service in the cities and betook themselves into the waste places of the earth. He proclaimed that all such shirks should be recovered from the solitudes into which they had fled, and should be bound afresh to the thralldom of their task-masters. There was no exit from the *status* of the laborer. The laboring masses were reduced to a common level of degradation, with no vicissitude except that determined by distinction of labor castes. The feudal system was in full process of formation.

¹ *Corpus Iuris Civilis*, Novella, xxxviii.

² *Digest*, xlviii. 22.

We see how true it is that the loss of freedom and of individual initiative brings with it the loss of all other boons. "Sow liberty in a lagoon," says Serrigny, "as at Venice, in her origin; in a fen, as in Holland; in a little island, as in England, and there will spring from it a nation great and glorious. . . . Give to despots the whole earth, as the empire of Rome, the capital city of the world, was given to the Cæsars (or, rather, as it was snatched by them), and they will raise great armies, will build magnificent structures and monuments, will create grand and beautiful highways, will organize an administration regular, uniform, and highly centralized, the instrument of domination, will achieve, if needs be, the conquest of the world. All this will produce for the inhabitants of that nation only ruin, misery, confiscation, desolation; and from all this there will emanate in the end only a putrid corpse, ready to be trampled under foot by barbarians."¹

¹ Serrigny, *Droit Public et Administratif Romain*, vol. ii. p. 448.

XII

THE SCIENCE OF UNIVERSAL HISTORY

ITS METHOD AND ITS RELATION TO THE PHYSICAL SCIENCES ¹

Die Totalität der Erscheinungen sind wir sicher zu umfassen, wenn wir sie uns nach Raum und Zeit geordnet denken, wenn wir sagen Natur und Geschichte.—*Droysen.*

SINCE the days of Heracleitus, the universe, with all that it contains, has been conceived as in a state of perpetual flux, and as therefore having a history, — a history of the fluxes, both quantitative and qualitative, which it has undergone in the process of time. Sir Robert Ball tells us that by our telescopes and on our photographs we can discern something like one hundred million luminous stars, and that the visible stars do not form the hundredth, probably not the thousandth, probably not even the millionth, part of the worlds which lurk unseen in the dark, unfathomed caves of the upper ocean. Each of these worlds has a history, if we could but know it. The solar system has a history which the science of men is slowly spelling out. The round world which we inhabit has a history, and all the sciences, in the ascending scales of their successive evolution, combine to set that history in a framework of periodic times and of systematic ideas. Geology tells us how our Mother Earth through long æons of the primeval night-time was balancing

¹ Inaugural Address at the opening of the School of Graduate Studies in the Columbian University, October 16, 1893.

and modulating the cosmic forces which were destined in the end to prepare a theatre for man. In palæontology we rehearse the story of epochs which have long since been surmounted, and move among the vanished forms of plants and animals which have long since perished from the face of the earth. "At the bottom of the ocean lie the mountains of former ages, on the summits of the Andes and Himalayas are the sands of ancient ocean-beds," while the ichthian and saurian monsters which lie sepulchred in those rock-ribbed pyramids have been described as the "mummied Pharaohs" of an extinct animal dynasty. The crystalline structures of our globe, themselves the result of a long historical process, have in turn been subjected to a thousand historical variations through the action of light and heat, of air and wind and water, of river denudation, of earthquake shock, and of volcanic tremor. The sedentary formations washed down from the mountain slopes are a historic deposit. The vegetable mould had a long and dateless chronology before it was friable enough to be ploughed by earthworms, and Darwin has but pointed out in a scientific way the place which earthworms have in the economy of nature when he says that "it may be doubted whether there are many other animals which have played so important a part in the history of the world as have these lowly organized creatures."¹ Even protoplasm, at the point where we examine it with our microscopes, is found to possess certain historical properties beyond and above its purely physical and chemical constitution. Even germ-plasm, at the point where Weismann conceives it as the medium and ground of heredity, is held to have attained a defi-

¹ Darwin, *Earthworms*, p. 313.

nite architecture, which, for the time being, has become definite because it has been modified by being transmitted historically.¹

Nature, says Coleridge, through the whole vast hierarchy of organic being, is "prophetic of man." After this prophecy had been fulfilled in the advent of man, there was a need that *human* history should come into the foreground, and should be esteemed *history* in the highest sense of the term, because it marks the times and the stages of the perennial universal flux in the highest of all realms. It is because man is the "roof and crown of things" that history, in the truest as well as the highest sense of the term, becomes the record and the vehicle of *his* achievements. The generations of men come and go like the leaves of the forest, as old Homer sings, but the race of man abides. The Science of Universal History has for its object to impart unity to the collective consciousness of the race by arranging and rehearsing the main elements of that consciousness in the logical, because the chronological, order of their evolution. History is, therefore, the most comprehensive and at the same time the most distinctive form of knowledge. The connecting link between all the periods before man, it is the golden clasp which binds the fixed past of the human race to that undeveloped future which ever lies before it, while in its chronicles of the living present it holds the nations under our ken in the very hour and article of their creative activities. What we may call the formula of evolution is to be seen to-day at its highest estate in the advancing columns of the most advanced civilizations. The work of creation is still going on, and is going on to-day at

¹ Weismann, *The Germ-Plasm*, pp. 38-61.

the point of its highest ascension in the readjustments of the cosmic order of human society. The tower of Babel is still building, and is building to-day wherever men are betrayed by confusion of thought and purpose into confusion of speech. The rational life of man begins its pure and specific activity at the point where, for his highest needs, he can no longer find help from the instincts of his animal nature, and with each advance in rationality he puts these instincts in a growing circumscription and confine, that he may the better live the higher life of reason. The science of universal history is nothing more than an orderly and reasoned exposition of the rational activities under the pressure of which the human race has moved from stage to stage in the subjugation of nature and in the development of its distinctive rationality. For this cause it is that the history of the present time lands the men of this generation, upon whom the ends of the world are come, in the very thick of the "evolutionary process." There was a time in the history of the solar system when the formula of evolution came to expression in the genesis of the planetary worlds; at a later stage, in the genesis of the chemical elements; at a still later stage (and for our globe), in the genesis of plants and animals; at still later stages, through the long cycles of geologic time, in the transformation of species, until at length we witness the arrival of man, endued with a psychical power to arrest the forces of natural selection and to substitute for them, in certain spheres and to a limited extent, an intellectual selection of his own devising. It is according to the measure of man's natural supremacy that the whole plant and animal kingdom is put under his sovereignty. In man, the centre of gravity of the

whole evolutionary process is shifted from mechanic law to teleologic purpose, but to teleologic purpose working in the framework of mechanic law, and for this very reason working the more effectively because assured of the fixed conditions on which it can operate to purposes beyond and above mechanic law. The forces of a natural selection which once worked blindly on the animal side of man, for the differentiation of races, while as yet a conscious mental purpose was feeble in the world, are now capable of being put in check on the physical side; and, on the basis of such arrested tendencies, a new order of evolution, working psychically, above and beyond these natural differentiations, is slowly bringing the men of varied races and tongues into a new species of moral and intellectual integration — an integration which, moving among the differential elements of civilized society, tends to assimilate them more and more into harmony with some predominant social synthesis. It is in the successive processes of the great moral and intellectual transformations which have been wrought in the civilization of the world, by a transmitted and hereditary culture, that the science of universal history finds its choicest subject-matter. What we may call the potential of civilization, at any given epoch, is to be determined for that epoch by marking the index of its collective culture, and by gauging the compulsive force which that collective culture impresses on the vast complex of forces comprised in political society.

Each individual man, says a British philosopher, is a microcosm of the whole intellectual and moral world, and, potentially speaking, may be said to contain within himself “an undeveloped infinity of individ-

uals ;” so that “each man is, in possibility, all men, and each life, renewed among other scenes, might be multiplied into a history of the world.”¹

In a word, each individual man, as he comes into the world, is destined to lead his highest life by virtue of his organic connection with the life of the whole human race, and it is the successive expansions and overlaps of this race life, as witnessed in the progress of men from savagery to barbarism, from barbarism to the rudiments of civilization, and from the rudiments of civilization to the highest culminations which civilization has reached to-day, that the science of universal history aims to unfold in an orderly and a logical continuity. In this way the calculus of universal history, working with the fixed points which mark the successive stages of the human race as it has moved along the ascending gradients of the world's culture, believes itself to be working with the factors of a positive knowledge in tentatively constructing from time to time the line and the law of the social evolution.

The human mind, in the prosecution of scientific discovery, moves along the lines of least resistance. The first sketch of the science of universal history was laid in the world's moral order, not by accident (there are no accidents in universal history), but because the moral order, implicit in human society, especially in the lower stages of the social evolution, is more simple than the complicated mechanical order which is implicit in the physical world at the present stage of the physical evolution ; and the moral order of society is not only more simple than the physical order (which comes from afar, even from the founda-

¹ Allen Butler, *Ancient Philosophy*, vol. i. p. 46.

tion of the world), but it is also more directly obtrusive on the reflective reason of man, as he lives and moves and has his being in civil society. The first expositors of the universal moral order were the Prophets of Israel, who were the politicians as well as the religious guides of Israel. The moral order involved in the family, by virtue of its natural constitution, was proclaimed by them to be equally involved, *mutatis mutandis*, in the clan, in the tribe, in the confederation of tribes; and this doctrine was affirmed by them to hold good, not only for social structures in Judea, but for social structures throughout the whole habitable world; that is, this implicit moral order, residing from necessity in civil society, was raised by them for the first time into the forms of an explicit and universal statement, as broad as humanity and as wide as the then known world. "The genius of Israel," says Renan, "was always beset with the problems of the human race."¹ The solidarity of the race, on the moral side of man, was so clearly perceived by the Hebrew vindicators of the universal moral order that they found in it the reason and ground why Jehovah punished nations *en masse*. So it came to pass that the Prophets figure among men as the moral reformers, the Protestants, the Puritans of their time, and not of their own time alone, but of all time. "They give us more than politics or statesmanship," says Baron Bunsen, "because they portray human events in the light of that world-history which transcends all relations of time and of national peculiarity." It is for this reason that Bunsen was wont to say that the backbone of universal history runs through Jerusalem, as thereby signifying that the moral order of the world

¹ Renan, *Histoire du Peuple d'Israel*, pp. 75, 477, 486, 487.

is the vertebral column of the social organism. The moralities of human life, the elements of the world's moral order, however they may vary in their angles of incidence and reflection with the ascending scales of social culture, are always and everywhere essentially the same, whether this moral order mirror itself in the gnomonic wisdom of Ptah-hetep among the Egyptians, in the Proverbs of Solomon, in the Institutes of Confucius, in the Nicomachean Ethics of Aristotle, or in the Offices of Cicero; but the moral law which came by Moses was fused into a white heat by the consuming zeal of the Hebrew Prophets, and, purified by them from the concretions of pagan sensuality and polytheism, it has ever since remained an integral part of the world's civilizing deposit. So sure were they of this moral order that, as lights shining in a dark place, they predicted its final supremacy in a reign of universal righteousness, extending over the whole human family, thus striking the keynote of that future state of terrestrial beatitude which meets us not only in the Apocalypse of St. John and in the historical configurations of the church fathers, but in the dialogues of Plato,¹ in the mythical oracles of the Cumæan sibyl, as transfigured by the muse of Vergil,² and even in the *Idee* of Immanuel Kant.³

If Judea had a genius for morals and for moral conduct, Greece had a genius for letters and art, as

¹ Phædo: The Blessed Land pictured in the Tale of Simmias. Cf. The Tale of Er in the Republic.

² The Happy Land described in the Fourth Eclogue:—

“Omnis feret omnia tellus:
Non rastros patietur humus, non vinea falcem.”

³ Man sieht: die Philosophie könne auch ihren Chiliasmus haben.—
Idee zu einer Allgemeinen Geschichte, achter Satz.

Rome had a genius for arms and polity. But we can easily see why it was that the analytical and constructive intellect of the Greeks, as well as the practical reason of the politic Romans, should have failed to grasp the conception of historical universality in any direction. Ancient society, among the Greeks and Romans, was essentially heterogeneous and repellant alike in its interior structure and in its external relations. The Jew had his Court of the Gentiles at the very entrance of his Holy Temple, and he looked forward to the day when all the nations of the earth should be blessed in Abraham, the Father of the Faithful. But the wall of partition between Greeks and Barbarians, between conquering Romans and their subject peoples, erected an impassable barrier to the very concept of human solidarity. And this barrier was as infrangible on the moral as on the political side. Even Aristotle, with all his learning and philosophy, thought it ethical to hold that Barbarians had no rights which Greeks were bound to respect, — a doctrine which we must not criticise too severely, in view of the conduct long allowed to themselves by European Christians and even by the founders of the American Commonwealth in their dealings with the African race. The moral order as expounded by Aristotle was pan-Hellenic, not cosmopolitan.

With the advent of Christianity a new theory of human history, a new *Weltanschauung*, came to the front. Christianity brought into the world what we may call an "enthusiasm for humanity," made that enthusiasm as broad as the race, and in some of its later phases exalted that enthusiasm into a fanatic passion for martyrdom. The reflective reason of the Christian Church early attempted to bring the drift

of the ages within the purview of a dogmatic philosophy of history. The first sketches of this dogmatic philosophy, to say nothing of the rude delimitations of time essayed by Eusebius, may be found in the writings of St. Epiphanius, of St. Jerome, of Orosius, and others, but above all in the elaborate expositions of St. Augustine in his *De Civitate Dei*. This same method of philosophizing on theological lines alone was naturally pursued during the Middle Ages, and may be said to have gone out with a blaze of light in the brilliant dialectic of Bossuet's *Histoire Universelle*, which, like the arrow shot from the sounding bow of Aestes, marked its path with flame and then vanished into the thin air, because it was not positive enough in its aim, and was indeed shot into a medium too ethereal to sustain its flight.

Yet we shall do something less than justice to this purely theological philosophy of history if we estimate its significance by the scientific value of the imperfect and one-sided inductions on which it was based, or by the logical validity of the reasoning with which it was buttressed under a fanciful and allegorical method of scriptural exegesis. When St. Jerome finds a full-orbed theory of eschatology in the Book of Daniel; when St. Epiphanius, acutely generalizing the stages of human history before Christ into "Barbarism," "Scythism," "Judaism," and "Hellenism," hangs this differentiation for its sufficient support on a single text of Scripture;¹ when St. Augustine projects his

¹ The text may be found in Colossians iii. 11, where St. Paul declares that in the renewal and transformation wrought by Christianity there was to be neither "Greek" nor "Jew," neither "Barbarian" nor "Scythian," but Christ was to be "all and in all,"—a statement by which the Apostle, as interpreted by Epiphanius, was held to signify that "Barbarism," "Scythism," "Judaism," and "Hellenism" were

whole theory of human history along the line of six successive ages, corresponding to the six demiurgic days of the creative week in the Book of Genesis,¹ and finds that this same number of ages was typified by the six waterpots which figured in the miracle of Cana of Galilee,² we are not to infer that these theological teachers drew their speculations out of the biblical texts alone, by sheer force of allegorical exegesis. The texts were rather used (for polemical and apologetic reasons) by way of accommodation to a preconceived theory of human history deeply imbedded in the Christian consciousness and resting on the express doctrine that Christ came "in the fullness of time." If in "the fullness of time," then the prior stages of human evolution were preparatory to his advent.

These crude and primitive theories of the philosophy of history are chiefly interesting to us as serving to show the theorizing and philosophizing bent impressed on the early Christian mind in the presence of the collective phenomena of human history, and as serving further to show that all such theories of progress must needs take their color and direction, their point of departure and their norm, from the prevailing intellectual method of the epoch in which they appear. The prevailing method of the Church Fathers was theological, and hence they naturally turned to theology for guidance and succor in framing a philosophy of history. As Christianity was the normal projection of Judaism, and as the middle wall of partition between human culture-stages preparatory to the coming of Christ. See the *Panarion*, lib. i. and elsewhere.

¹ *De Genesi contra Manichæos*, lib. i.; *De Trinitate*, lib. iv. cap. 4, and elsewhere.

² *Tractatus IX in Joannis Evangelium*.

Jew and Gentile had now been broken down, the doctrine of a world-wide morality, as taught by the Hebrew seers, could henceforth be supplemented and complemented by the doctrine of a world-wide scheme of human redemption, to be worked out on purely religious lines.

The historical philosophy of St. Jerome and of St. Augustine continued to be in the main the received philosophy of the Schoolmen, so far as they had any philosophy of history at all during the Middle Ages. In that time of storm and stress, when the Barbarians had brought a new social chaos into Europe, it was hard to see any "drift of the ages." And the piecemeal structure of the feudal system — a form of political organization in which each feudal molecule was repulsive to every other — had well-nigh come to destroy the very capacity of men to think *en grand* in the sphere of human society. The social elements had been ground up from top to bottom, and were waiting for new points of crystallization.

These new points of crystallization came with the Renaissance period. In its first flush this time of new birth brought to the European mind a season of rejuvenation with all that was hot and heady in the youthful senses. Next came a period of sobered thoughtfulness, under the sway of that larger discourse of reason which summoned the Humanists to grapple with the deeper problems of secular history. In the dawn of the Renaissance men were so absorbed in looking backward to the integral fountains of ancient culture that they may well be pardoned if they saw, at that stage, no forward movement in the stream of time. It was not until they had gained a soberer point of view in what we may call the autumn of the

Renaissance that they were prepared to grasp and to construct a scheme of progress in the affairs and ideas of the world.

Pattison in his *Life of Isaac Casaubon* has given us a vivid picture of the sombre thought which succeeded the wild outburst of joy and surprise when the European mind first escaped from the swaddling-bands of Scholasticism. A very malady of thought now settled on the minds of thinking men as they stood before the veiled Isis of history. They found it difficult to construe an ascetic Christianity with the flowers of Greek and Roman culture. A great step was taken in bridging over the chasm between the Pagan past and the Christian present when all that was best in the literature of Greece and Rome was accepted by scholastic thinkers as the propædeutic of theological culture. Universities were now founded in quick succession to keep alive the tradition of human learning. The dates at which the great universities of Europe were founded translate themselves for us into a philosophy of universal education, and into a philosophy of universal history as well. From these high points of observation the foremost minds of Europe were preparing to get the bearings of man's collective thought. The human race, in the person of its file-leaders, was for the first time "orienting" itself.

This process of intellectual orientation began to find clear expression in the seventeenth century. The seventeenth century must ever remain a most interesting period for the philosophical student of history. It was then that the foundations of the science of universal history were for the first time securely laid on the broad basis of the world's collective knowledge.

It was during this age that a few thoughtful scholars rose to challenge the pretensions of the Ancients in knowledge and of the Scholastics in philosophy. The fact of the continuity of human history slowly dawned on the perception of a few penetrating and clear-sighted intellects, and this sense of continuity came at length to full and clear expression in the now hackneyed saying of Pascal, that the succession of men, as measured along the lines of a progressive knowledge, ought to be considered as "one same man who lives always and learns continually." The saying was a spark of light thrown out in that collision of wits known in the literary history of the seventeenth century as the "Quarrel of the Ancients and the Moderns."¹ It was virtually a saying as old as the time of St. Augustine,² but when the idea was hinted by the Bishop of Hippo, while the ears of men were still tingling with the stupendous crash of the Roman Empire, it sounded in theological polemics rather than in historical philosophy. The fallow ground of the fifth century after Christ had no furrow in which such a seed-corn could lodge, and no prepared soil in which it could grow and fructify.

I have elsewhere remarked on the insufficiency of a statement made by the eminent historian, the late Dr. Edward A. Freeman, when, in referring to the fruitful results of the comparative method as applied to the phenomena of language, of mythology, of folklore, of politics, and of history, he characterizes that

¹ For a compendious history of this famous "Quarrel" the reader may consult the pages of Rigault, *Histoire de la Querelle des Anciens et des Modernes*, Paris, 1856.

² Sicut autem unius hominis, ita humani generis, quod ad Dei populum pertinet, recta eruditio per quosdam articulos temporum tanquam ætatum profecit accessibus." *De Civitate Dei*, lib. x. cap. 14.

method as a "discovery" of the nineteenth century equal in value to the revival of learning. The comparative method is as old as the reflective thought of man. It was used by Aristotle in the field of politics (he compared two hundred and fifty distinct polities) as freely as it has ever been used in modern times by Freeman or Herbert Spencer. But the organon of comparative method failed to prove an instrument of highest knowledge in the hands of the Stagirite because he failed to perceive and apply in connection with it an ancillary principle indispensable to its full fruitage, to wit, the continuity of human history, as marked by the Gulf Stream of human progress. He not only failed to perceive the unity of human history, but based his defense of the Greek social system on its positive denial. That he should have failed to perceive the continuity of human history is easily explained by the fragmentary state of civil society in his day and by the smallness of the arc through which the social oscillation of the race had moved when it was passed by him in review. It was only after the slow and gradual accumulation of social changes had reached a certain height that the continuity of the social movement could possibly come into clear perspective. As Comte well says, "The strongest head of all antiquity, the great Aristotle, was so dominated by his age that he could not even conceive of a society which was not necessarily founded on slavery, the irrevocable abolition of which began none the less a few ages after him."

From the day when this line and law of continuity became visible to speculative minds in the phenomena of history, it was seen that these phenomena could not only be *compared*, but that they could be *classified*

and grouped in a serial and successive order. And when, at a later day, it came to be clearly conceived that the bond of connection between events in their series and successions was a genetic connection, a positive Science of Universal History became possible, and not before.

Since the day of Vico, the "philosophies" of history have been in number numberless. Many and various are the spirals and curves which the ingenuity of men has projected on the dial-plate of time. In evaluating "the curve of progress," the speculative mind "loves to trace the contortions of the unruly spiral, and eschews a cusp as a historic anomaly." Too often, indeed, these "philosophies" have been little more than the counterfeit presentments of their framers, as the Brocken phantom, at sight of which the traveler sometimes starts on the Hartz mountains, is nothing more than an enlarged shadow of himself, projected on some floating tapestry of cloud and fog; but since the time when the law of a *genetic* continuity in the facts of human history, as measured along the lines of ethical, social, and intellectual progress, has become a fixed possession, the science of anthropology has handed to the scientific student of history the tape-lines and measuring-rods by which he can gauge the very age and body of the time, the very order and succession of human elaborations in the useful arts and in social institutions. From that time forth the philosophy of history marches side by side with the science of history, science giving to philosophy its fixed points of departure and its angles of vision, and philosophy giving to science the wider and higher perspectives which come from "thought's interior sphere."

A genetic conception of historical events is not peculiar to our modern age. The peculiarity lies in the universality and accuracy with which the conception is applied under modern scientific method. King Hezekiah, twenty-five hundred years ago, had a clear conception of historical genetics when, in the sore travail of Judea in his day, he exclaimed, "The children are come to the birth and there is not strength to deliver." By this genetic symbolism he pointed to helpful measures of state which were likely to perish in their birth-pangs for the want of a political opportunism which was equal to the crisis. St. Paul wielded this same genetic symbolism in the magnificent imagery under which he pictures the whole creation as groaning and travailing in pain together till now. This same genetic symbolism is caught up into verse by Matthew Arnold when he would portray a religious doubter wandering astray between an old faith which is extinct and a new faith which has not yet come to its full nativity: —

"Wandering between two worlds; one dead,
The other powerless to be born."

But between this rhetorical conception of historical genetics and the modern scientific conception of historical genetics there is a world-wide difference. The scientific worth of a conception depends, not on single observations used for purposes of literary emphasis, but on whole masses of observations, generalized, according to the homologies which they reveal, into principles of logical interpretation, and so made the basis of scientific systematization.¹ Homological rea-

¹ "Nicht die einfachst beobachtete Thatsache macht den Werth einer Entdeckung aus, sondern die Art ihrer Verwendung und was man daraus zu folgern vermag." — Ambros, *Geschichte der Musik*, i. p. 457.

soning depends, indeed, for its deepest root and firmest ground on the facts of a genetic descent, and for this cause has an obvious superiority over mere analogical reasoning in every department of philosophy.

Philosophy is organized thought moving along the lines of universality, and this organized thought becomes real and actual in history only when it is checked and verified at every point of its advance by the inductions of an exact and positive method. It was not until the science of anthropology had staked out the starting-points and the boundaries of the social and civil evolution in the successive stages and stadia of human culture that these fixed points could serve as the framework of a true and coherent philosophy of history. If there be a genetic connection among the events of the social world; if the days of the human race, like the days of the individual man, are bound each to each "by a natural piety" (and this is what the genetic conception of history implies and presupposes), then there must be an inherent connection in the series of events which mark the line and compose the law of human progress; and if there be an inherent connection, then this connection must be natural and necessary; and if there be a natural and necessary connection of human events (so far as that connection is inherent and genetic), then the scientific statement of that connection, in proportion to its continuity and its universality, will lend itself to the purposes of real truth in point of content and of logical perfection in point of form. There is, therefore, what we may call a dialectic of history. In the discussions of political society constant provision must be made for vast processes of intellectual division and subdivision, of political dissection and analysis, in order to

reach some new social, political, or economical synthesis. To the extent in which there is a logic of events and a natural order in the genetic evolutions of human society, there must be a dialectic of history. "What reason is to the individual man, history is to the race," says Schopenhauer; and as the individual man goes through his dialectical processes in reaching the conclusions which govern his conduct, so political society has its dialectical processes, organized on a vaster scale, for the purpose of reaching the political readjustments and the economic transformations required by a progressive civilization. But when this dialectic of the historic movement comes to be recapitulated in the terms of a synoptical review, if it is to have truth for its matter and logic for its form, it must at all points be subject to the syllogistic processes of a positive science of history, and cannot be left to the free expatiations of the philosophical intellect, even in the case of a mind as imperial as that of Kant or Hegel. Kant, writing in 1784, shows that he had missed the whole dialectic scope of the social and civil evolution by declaring that all secular history, beyond that of Greece, was a *terra incognita*, and that the sole beginning of all true history was to be sought in the first pages of Thucydides.¹ Hume had said the same thing before him. The attempt to construct a theory of human progress on such a narrow basis of human experiences was a predestined failure. It was as if men should undertake to discuss the ontogenetic characters of a given animal without any knowledge of its phylogenetic predecessors, or as if we should assume to discuss the hierarchy of animal forms without a knowledge of palæontology. To-day we dig for the

¹ Kant, *Werke*, Band iv. § 160 (Hartenstein's ed.).

beginnings of human history in the bone-caves of the Somme valley, in the lake habitations of Switzerland, in the kitchen-middens of Denmark, in the mounds of the American aborigines, or wherever else the gray forefathers of the human race have left the traces of their primeval existence. With the mete-wand of the comparative method in our hands, as swayed along the lines of a continuous genetic evolution, we can enter the domain of kindred and tribes known to us by only a few scattered relics that have come down from the buried generations of men, and with these relics in our hands we can, by homological reasoning, reconstruct the social states from which they sprang as surely as the comparative anatomist rebuilds the megatherium from its mandible or the dinornis from a fragment of its femur.

All our processes of historical construction in the domain of *Culturgeschichte* imply at bottom a logical process in the order of social evolutions. We do but bring our subjective logic into correspondence with the objective logic of human events. As palæontology places in our hands a measuring rod by which we read backward, in the successive forms of animal life, from the highest to the lowest, so, in the successive stages of human culture, we read backward from the highest to the lowest that we may then reason forward from the lowest to the highest. It was for the want of such a critical and dialectical method that a master of polemics like St. Augustine stumbled and fell over the fossil remains of a gigantic molar tooth which, as he tells us, he once discovered on the shores of the Mediterranean, and which, because it was so big that a hundred grinders like ours could have been carved from it, he assumed to have originally be-

longed to one of the giants supposed to have lived before the Flood.¹ If the good bishop had been armed with the homological method of modern comparative osteology, he would have known at once that the tooth belonged to some huge beast of the primeval period, and not to one of our antediluvian ancestors.

If it shall seem that I have been slow in leading up to the main topic of this discourse, I beg leave to premise that, by necessary implication, I had led up to it in what I have called the first sketch of universal history; that is, of history with universality in it. As it is impossible to construe the actual facts of universal history apart from the moral order lifted into consciousness by Judea, apart from the intellectual order of Greece, apart from the political order of Rome, apart from the religious order of Christendom, so, from the date of the instauration of scientific method it has become impossible to construe the fact and law of human progress apart from the physical sciences. The Science of Universal History has become to-day the indispensable complement of these sciences, because that history has come more and more to take from them its regulative and its directive forces. And these regulative forces, reacting on the mental outlooks of men, have transformed for this generation our whole *manière de voir*. Each vantage ground of truth gained from the conquered territory of ignorance and superstition is becoming more and more the *point d'appui* of further assaults on the kingdom and power of darkness. It is this war of mind against

¹ Vidi ipse non solus, sed aliquot mecum in Uticensi littore molarem hominis dentem tam ingentem, ut, si in nostrorum dentium medulos minutatim conideretur, centum nobis videretur facere potuisse. Sed illum gigautis alicuius fuisse crediderim. *De Civitate Dei*, lib. xv. cap. 9.

matter, of moral law against brute force, of scientific foresight against blind natural selection, which is destined, in the scientific vision of Clifford, to put a period to the fight of human poverty (so far as that poverty results from false and unscientific economics), in order that the human race, freed from the fetters of a false public economy, may at length have "a free hand and a free foot" with which to begin the fight against inexactness of thought in all realms of study, and against base aims and low ideals in all departments of human inquiry. This is only another way of saying that, in the stage of evolution which civil society has reached to-day among the foremost nations of the earth, economic questions are at the fore.

In the fluxes of human society, as in the fluxes of nature, nothing is done *per saltum*. Society has, indeed, its dynamic movement which works to definite ends and purposes by virtue of all the *vis a tergo* which comes from the past generations, and by virtue, too, of the new objective points which are found for this *vis a tergo* by the clarified reason. This social dynamic often works below the horizon of the collective social consciousness, and therefore works blindly and dimly, instead of working with the clear prevision of a teleologic purpose which can be verified by social science. In each and every one of the next stages which lie before it in the evolution of humanity, the human race is called to reproduce the conditions of an intellectual childhood, and has to learn by making mistakes. In this way, for the want of an experience which has clarified itself into a directive rule of wise conduct, much of the *vis a tergo* coming from the past generations is dissipated in the futilities of unscientific politics; but none the less do we see that a resi-

due of this dynamic is surely conserved and is slowly correlated into the new and the successive forms of human culture. As Tylor well says, "There is no human thought so primitive as to have lost its bearing on our own thought, nor so ancient as to have broken its connection with our own life."¹

The increasing purpose in social dynamics has its laws of development and its laws of arrested growth. The intellectual attitude in which man stands to nature will determine the extent of his dominion over nature. There are certain necessary facts and laws of nature which lie on the surface of things, and to the extent in which they control human action they may be said to enter into all the free activities of men and to conditionate those activities. In the lower stages of savagery man is held in servile subjection to even the surface facts of nature, and it is this subjection which constitutes the misery of savagery.

Where the surface facts of nature are observed with minutest care, where the relations of the family and of the whole social order are bound in a cast-iron system of ethics, politics, and economics, and transmitted from generation to generation by a rigid and mechanical system of education, we have all the natural conditions which explain the stationary civilization of a country so old and yet so unprogressive as the empire of China. The deeper resources of nature are a sealed book to the Chinese intellect, and the whole educational system of China is ingeniously contrived to train the memory at the expense of the reason. What wonder that men halt with their brains and that women halt with their feet in China, when brains and feet are alike put in constriction?

¹ Tylor, *Primitive Culture*, vol. ii. p. 409.

Besides the laws and facts of nature which lie on the surface of things, there are other laws and facts in nature which reside in the deeper relations of things, — laws and facts which, even in the most advanced civilizations, have been of slow and late discovery by the reflective reason of man. Now, to the extent in which these laws and facts, after discovery, are seen to enter into and to aggrandize the activities of men in the figure of society, they may be said to energize the enlarged activities which they conditionate, and so must needs accelerate the progressional force of society in all directions. Everybody sees that our whole civilization is to-day conditioned by the new appliances of modern life, — by the steam-engine, the telegraph, the telephone, the electric light, and the thousand other applications of scientific art. The new conditions thus created are vastly more significant for their reflex influence on the human mind than for their direct influence on human conduct. The modifications which these agencies have wrought in the mental habitudes of men are indeed a thousand times more important than the modifications which they have wrought in our business relations and in our social institutes. As civilization takes more and more into its bosom the resources and the agencies of a rational science, unlocking the deeper mysteries of nature, the forms of civilization are correspondingly changed, and the rates of the civilizing movement are correspondingly quickened. The civilized man of to-day is a transformed man living in a transformed environment, a transforming man living in an environment which he is daily transforming more and more according to the growing wants and aspirations of advancing civilization. The light of our best seeing and the thought of our best

thinking involuntarily turn to scientific method for their justification. We live and think and act in a world of concepts which science has slowly formed and slowly clarified. And "as the way in which these general conceptions are bound together has been determined for us by the previous thought of society, it follows that our ancestors have made the world to be what it is for us."

The subtle processes of the scientific mind have penetrated more and more deeply into the subtle processes of nature, and this penetration of the reason into nature has retroacted on the reason itself, and so has retroacted on our whole social and economic system and even on our public morality. Everybody sees that the discoveries of modern science have come, by their daily uses and applications, to lay new burdens of moral care as well as of intellectual accuracy and of economic thrift on the whole generation which they have invested with such vastly augmented physical powers, and which they have endued mentally with such a purified vision. As the scientific mind, in its present attitude toward nature, has been of slow genesis, so the greater mental exactitude wrought in our habits by scientific method is a late endowment of the human race, and may be said to have come in with the era of experimentation in the search for scientific truth in the domain of nature. As has been well said by a German thinker, "the more complete the conquered power of nature is, so much more splendid is the progress of reason in its conquering freedom, for so much the more excellent is the instrument which has been won from nature for the service of reason. In this way it is that the unlimited supremacy of reason over nature, through the operations of human free

agency, will bring about an universal harmony between nature and human free agency.”¹

The world is coming to be governed more and more by the verified thought of its collective intelligence, and this verified thought is more and more a distillation of scientific method. The problems which confront every advanced civilization to-day, whether in politics or economics, in sanitary reform or in criminal jurisprudence, are essentially scientific problems, and problems which increase in difficulty and complexity in proportion as civil society is translated further and further from the “state of nature,” and is raised into higher and higher altitudes of moral observance and intellectual foresight. The social problems of each living age are set for it by the range and gear of its social forces. Questions of the blood tie, of marriage law, and of rude atonement for crime dominated the primeval clan. Questions of political status dominated the Greek city-state. Questions of personal status dominated the feudal system. Questions of a balance of power dominated Europe after the great European states had formed themselves around their several centres, on the dissolution of the feudal system. As human society has moved further and further from status to contract, the individual opinion of men has been more and more free to move more and more widely in the domain of ideas, until at length we can say that “ideas govern the civilized world.”² And the ideas which govern the world to-day tend more and more to incarnate themselves into new forms of social right and new expedients of economic production and

¹ Wachsmuth, *Entwurf einer Theorie der Geschichte*, p. 60.

² See some interesting observations under this head in Bishop Stubbs's *Lectures on Mediæval and Modern History*, pp. 208 *et seq.*

distribution, working reconstructively on the whole existing figure of human society. What we call "civilization" is indeed nothing more nor less than a state of coerced and unstable equilibrium resulting from actions, reactions, and interactions in a vast complex of moral, social, political, and scientific forces generated by the restless activity of the human intellect, and perpetually stirred into new forms of genetic activity, as the condition of improving them in their working gear, and of thereby increasing their resultant energy, so far as they are comprised at any given epoch in what we may call the "parallelogram of organized society."

It is the obvious lesson of universal history that the stream of tendency sets more and more in all directions toward the control of individual thought and conduct by the moral and intellectual forces of the collective social intelligence; not indeed that the individual is to be "withered" by such control, but that he is to find only the freer and fuller play for all his faculties under a perfected science of sociology. Under such a perfected science men will have no more right to think and act wrong concerning scientific questions in finance or currency, in taxation or economics, than they have to think and act wrong today concerning scientific questions in geometry or astronomy, in physics or in chemistry. The bald enunciation of this Comtian canon of positive science,¹ with its applications to the phenomena of modern politics, will suffice at once to ascertain the wide distance

¹ Comte, *Appendice Général au Système de Politique Positive: Plan des Travaux Scientifiques nécessaires pour réorganiser la Société*, Paris: 1822: "Il n'y a point de liberté de conscience en astronomie, en physique, en chimie, en physiologie même, en ce sens que chacun trouverait absurde de ne pas croire de confiance aux principes établis dans ces sciences par les hommes compétents."

at which we stand to-day from a perfected science of human history, considered in its relation to the arts of statesmanship. And this Comtian canon ascertains equally well the wildness of the unscientific dreams with which a hysterical Socialism or a frantic Nihilism would fain perplex or shatter the political framework which enfolds the existing parallelogram of our social forces. Their schemes proceed on the basis of a process which is cataclysmal and revolutionary. The schemes of the scientific reformer proceed on the basis of a process which is genetic and evolutionary. But even these *Fata Morgana* of the Socialist and Anarchist may have their lesson for the student of universal history.

To suppose, with Immanuel Kant, that the human race, after having made progress through the past ages, will at some future day come to a standstill, or even begin to retrograde, is to presuppose that at some time there may be among all mankind a suspension, or even a reversed action, of all the motive powers which have brought the human race to its present altitudes of scientific and philosophic observation. The cavil ignores, besides, the momentum impressed on modern civilization by all the *vis a tergo* that stands behind it in the accumulated strivings of the past generations, — strivings which, as transmitted to us, have been harnessed into new forms and vehicles of social energy, working more and more dynamically.

In review of the past, who shall venture to say that the Science of Universal History has wandered into "the dark backward and abysm of time" to waft us back a message of despair? Is it in accordance with the laws of historical probability that the human race is even approaching its terminal dynasty, when to-day,

more than ever before, the bosom of civilized society is teeming with new births begotten by the *Weltgeist* at the highest stage of its creative energy? I answer, No, not in the name of a subjective or philosophical necessarianism, but in the name of positive science pledged to a career of boundless conquest over the forces of nature. I answer, No, in the name of all the Hebrew seers and Christian sages who divined the universality of the moral order and foretold a Reign of Righteousness on the earth. I answer, No, in the name of that clearly discovered law of human progress which has come to-day to set the seal of history to the forecast of prophecy. I answer, No, in the name of that Renaissance period which not only found a new earth for man through Columbus, and a new heaven through Copernicus, but helped man to "find himself" (so Michelet phrases it) by helping him, with observations however rude and imperfect, to get some hint of his true bearings on the stormy sea of Universal History. I answer, No, by all the agony and bloody sweat of the countless generations which toiled and suffered for us, and into the fruit of whose labors we have entered. I answer, No, by all the battles fought for truth and right which have been won in the ages past, and I answer, No, a thousand times, in the name of all the battles fought for truth and right which have been lost, *but must be won*.

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