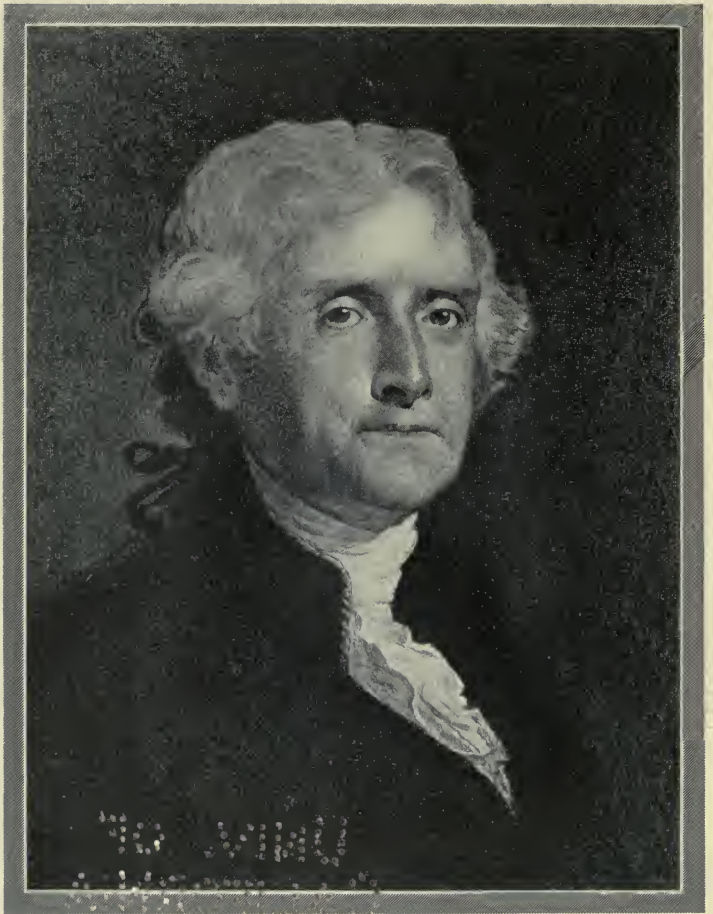








THE  
OF  
COLUMBIA



THOMAS JEFFERSON

Author of the Declaration of American Independence and the  
Statute of Virginia for Religious Freedom.

# SAFEGUARDS *of* LIBERTY

OR

## LIBERTY PROTECTED BY LAWS

BY

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“No Free Government or the  
Blessing of Liberty Can Be  
Preserved to any People . . .  
but by Frequent Recurrence  
to Fundamental Principles”

*(Virginia Bill of Rights)*

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INSCRIBED TO  
HON. JAMES MARSHALL HEAD,

OF THE BOSTON BAR, FORMERLY OF THE GALLATIN  
AND NASHVILLE, TENNESSEE, BARS, AS A SLIGHT  
TOKEN OF MY APPRECIATION OF HIS FRIENDSHIP  
AND SERVICE AS TUTOR IN THE LAW. HAD HE BEEN  
MY BROTHER HE COULD NOT HAVE SHOWN ME  
MORE CONSIDERATION OR GIVEN ME MORE ATTEN-  
TION WHILE I STUDIED THE HARVARD LAW COURSE  
FOR OVER THIRTY MONTHS UNDER HIS DIRECTION.



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## FOREWORD

MR. SWANEY has made a most interesting and valuable contribution to the literature and discussions of the day in the chapters of this book. A colossal war like that from which the world has just emerged, destroying autocratic governments, shaking others to their foundations, and testing anew the strength of those principles which have conferred upon the human race the great boons of liberty and democracy, is too frequently followed by a period of general collapse and reaction with an accompaniment of moral and intellectual astigmatism which prevents men from seeing and thinking clearly at the very time when straight thinking and clear vision are the essential safeguards of civilization.

To have presented to us in compact form and pleasing literary style the origin, growth, and progress of that civil and religious freedom which is the very lifeblood of modern democracy, is a genuine service to humanity. It is of the utmost importance that the people of the world should understand more than ever before the true meaning of democracy and of the principles which should guide and control democratic governments.

A study of our own Constitution and of the great



## FOREWORD

debates which led to its formulation and adoption, as well as of the works of so profound a democratic philosopher as Jefferson, convincingly proves the wisdom which led the founders of our Government to declare for freedom of speech, of the press, and of peaceable assembly. These are, to my mind, the surest antidotes for the false and poisonous doctrines of agitators and unsound thinkers. So long as these constitutional guarantees are preserved false opinion can be met and countered in the open arena of debate and discussion and the concealed evils which will be bred by foolish attempts at repression can be combated at their source.

It is a time to drink deeply from the fountains of wisdom and knowledge established by our forefathers and those who preceded them in the struggle for religious and civil liberty. Many gave their lives for this great cause with a heroism and nobility which must for all time command the admiration and affection of every lover of humanity and every champion of genuine democracy.

W. G. McADOO.

NEW YORK,  
*May, 1920.*

## PREFACE

THIS small volume is a by-product of the war between Autocracy and Democracy. There is nothing so conducive to the study of history and geography as war. It naturally followed from the issues involved that the question of government would be paramount. With the irresistible tendency to free governments nothing can be more instructive and helpful than the study of English and American theories and practices in self-government.

For many years, while teaching Contracts and Private Corporation, in the Chattanooga College of Law, it has been the privilege of the writer to make addresses on the life and writings of Thomas Jefferson, and to urge upon law students from practically all of the States the careful study of the Declaration of Independence, the Statute for Religious Freedom of Virginia, and the other priceless blessings conferred on the world by him, as the result of his life-long devotion to the causes of truth, freedom, and justice.

The more one studies the great charters of English and American liberty, the more one realizes law is a growth, and that the only way to get a thorough grasp of the fundamental principles of the governments of these nations is by the study of

## PREFACE

these charters. Educators have long since learned the difference between text-books on literature which contain opinions of authors and those which give enough of the writings of the authors for the pupil to form his own estimate of them. Modern historians have learned the intrinsic worth of documentary evidence, until it has now become a truism that there can be no genuine history without documents; or, as Langlois tersely says: "There is no substitute for documents; no documents, no history."

The three great American charters of liberty made the basis of this volume contain the fundamental principles of the English and American governments, and when fully understood they furnish the only antidote to all of the erroneous and dangerous ideas of government now rampant in the Eastern Hemisphere and threatening this country. The only effectual method of combating error is with the truth; hence the necessity for a careful and thorough study of these great documents.

Well aware of the many defects that are apparent, and regretting my inability to continue the subject and discuss the Constitution of the United States and its various amendments, and especially the sixteenth, seventeenth, and eighteenth amendments, I have decided to trust a generous public with this first serious effort in a new rôle.

W. B. SWANEY.

CHATTANOOGA,  
*June, 1920.*

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SAFEGUARDS OF LIBERTY;  
OR,  
LIBERTY PROTECTED BY LAWS





## CHAPTER I

### THE DECLARATION OF INDEPENDENCE, THE DECLATORY CHARTER OF OUR RIGHTS AND THE RIGHTS OF MAN

LIBERTY! FREEDOM! On what do they rest? Is liberty more than a name? The titanic struggle which has been going on between the allied forces of Autocracy and the governments friendly to Democracy since 1914, now so happily ended, was without question one of the most momentous in the history of mankind. Not only was the life of one of the greatest nations of Europe in modern times involved, but the cause of liberty throughout the world was at stake.

In view of such a catastrophe, it is of the utmost importance to consider how in the future the liberties of nations may be protected, and all kinds of tyranny may be obliterated. As a result of this war there will be a greater interest taken in the study of government everywhere. There will necessarily be a most searching inquiry by students of government here and in all other countries as to the methods of safeguarding liberty.

This inquiry will obviously not be confined to any

nation, but will be most actively displayed in the new nations coming into political existence as the result of the war. There will also be a most thorough re-examination in our own country and in Great Britain of these fundamental questions, since many new and difficult problems will, without doubt, call for solution as the result of the war. For this purpose can anything be more helpful, nay necessary, than a careful and thorough study of the great charters of English and American liberty?

While so wise a statesman as Edmund Burke has said, "It is always to be lamented when men are driven to search into the foundations of the commonwealth", it must be remembered that during the last half-century a new method of making this research has been adopted by historians, and especially by students of government, in dealing with such inquiries. All of the great charters of England have been explored and made available to the layman, as well as to the student of laws, and a vast fund of new facts has been gathered, and new and improved methods have been adopted in studying and writing the history of laws and institutions.

This work has been most admirably done by such great scholars as Pollock, Maitland, and others, not to mention the epoch-making works of Stubbs, Freeman, Hannis Taylor, John Fiske, and others on constitutional law. Select English charters have been made available to the general reader in English

by Adams and Stephens and other publications; and Mabel Hill has edited a selection of English and American charters under the title of "Liberty Documents", with a few contemporaneous comments thereon. Unfortunately Miss Hill failed to develop the Declaration of Independence, and assign to it its rightful position as the greatest charter of human liberty, as it manifestly is, and no effort was made by her to do the scantest justice to its author.

The object of the present treatise is to present, in the briefest manner possible, a synopsis of this masterly and epoch-making document; to endeavor to show the far-reaching effect of the great truths of constitutional law constituting the framework of this charter of our liberties; and in some measure to do justice to its author and his contemporaries. As a prelude to this investigation the reader is requested and urged to read over carefully the Declaration of Independence, which is made Appendix A.

The following brief analysis of this great document will be made the basis of this discussion:

(1) The Declaration of Independence is the charter of our liberties and was intended as such by its framers.

(2) In order properly to understand it, it is indispensably necessary to have a thorough knowledge of the men who framed it and the conditions and circumstances which called it forth.

(3) Its author, Thomas Jefferson, is necessarily the central figure of this inquiry; and all English history, and especially that of the laws and jurisprudence of England, constitutes its background.

(4) Though its central theme is liberty, yet the immediate subject is the vindication of British liberty as enjoyed by the British Colonies in North America at that time.

(5) It is in the form of an indictment against George III for abuses and usurpations practiced by him against the Colonies, coupled with an appeal to mankind for a justification of their rebellion from his tyrannical acts, and a declared purpose to organize a new and independent government for themselves.

(6) The fact is recorded that warnings had been given the British people of the numerous attempts made by Parliament to extend unwarrantable jurisdiction over the Colonies and that a deaf ear had been turned to all appeals for protection of their rights.

(7) It is shown that all appeals to George III and their British brethren for the protection of their liberties having failed, the only relief found was, as stated, to "acquiesce in the necessity which denounces the separation from Great Britain and hold them, as they hold the rest of mankind, enemies in war, in peace, friends".

(8) The concluding paragraph contains the formal Declaration of Independence of the United



States of America from the British Government and asserts their rights as "free and independent states to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do".

(9) The omissions from the original draft made by Mr. Jefferson are significant in many respects, but especially of those showing his views on African slavery at that early period.

The opening sentence of the Declaration of Independence furnishes a striking contrast to any other form of government that was ever attempted to be organized in this, that it asserted the right of the Colonies to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, and that a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.

The first part of the second paragraph deals with the rights of individuals and fixes the basis of our government on the only true foundation of genuinely democratic institutions—to-wit:

"We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

Had the author of this great instrument never written anything except the preamble and the foregoing portions of this charter he would have been entitled to the first place in the ranks of the world's greatest patriots and constructive statesmen.

These truths are immortal, but we must remember they did not originate with Mr. Jefferson. He enjoys, however, the unique distinction of having been the first to embalm them in such simple and lucid language that they cannot be improved upon; hence they will survive the wreck of empires and principalities, and they have become the beacon light of all peoples struggling for liberty throughout the world and will so continue in all future generations. Under one form or another these words have been a target for the enemies of popular government both in this country and elsewhere. The more, however, they have been subjected to the test the greater has been their triumph. Indeed, just now they are more potential than they have ever been, for they constitute the best and only solution for all forms of Autocracy now existing in Europe and elsewhere.

If there be any fact fully demonstrated by the history of England, the United States of America, and the Anglo-Saxon people, it is that the truths here uttered are the cornerstones of Anglo-Saxon institutions, and although often obscured and held in check by tyrants or other enemies of the people, they have persistently asserted themselves and are



today the bulwarks of English and American liberty.

John Milton, Edmund Burke, and Abraham Lincoln have stated these truths in striking terms, worthy to be compared to that of Mr. Jefferson.

Milton said :

“No man who knows aught, can be so stupid as to deny that all men were naturally born free; born to command and not to obey. They agreed by common league to bind each other from mutual injury and jointly to defend themselves against any that gave disturbance or opposition to such agreements. Hence came cities, towns, and commonwealths. This authority and power being originally and naturally in every one of them, and unitedly in them all, they communicated and derived to one or more than one. The first was called a king; the other magistrates. Not to be their Lords and Masters, but to be their deputies and commissioners. It follows that since the king or magistrate holds his authority of the people, for their good in the first place, and not his own, then may the people as oft as they shall judge it for the best either choose him or reject him, retain him or depose him, though no tyrant, merely by the liberty and right of free-born men to be governed as seems to them best. That Governors are not lightly to be changed is true with respect to the people's prudence, not to be the king's right.”

“Nature teaches us to bear with oppression so long as there is a necessity for so doing.”

“What the people may lawfully do against a tyrant no man of clear judgment need go further to be guided than by the principles of nature in man.”

Burke said:

"In all forms of government the people is the true legislator; and whether the immediate and instrumental cause of the law be a single person or many, the remote and efficient cause is the consent of the people, either actual or implied; and such consent is absolutely essential to its validity. In reality there are two, and only two, foundations of law; and they are both conditions without which nothing can give it any force: I mean Equity and Utility."

Lincoln said:

"I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. . . . The nation must control whatever concerns the nation. The State, or any other minor community, must control whatever concerns them. The individual shall control whatever exclusively concerns him. This is real popular sovereignty. . . . That this nation under God shall have a new birth of freedom; and that government of the people, by the people, for the people shall not perish from the earth."

Freeman in his short treatise entitled "The Growth of the English Constitution," and John Fiske in a small volume entitled "American Political Ideas," trace local self-government to its common source and demonstrate conclusively that the Anglo-Saxons rested their governments upon the

consent of the governed. The best proof of this fact, however, is found in the charters of English liberty.

The remainder of this paragraph is in keeping with the parts quoted, and it naturally follows, if we concede the first to be true, "That whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

"The Tenure of Kings and Magistrates," by John Milton, is a masterly and indisputable argument in support of the right of the people to throw off the dominion of tyrants. The Acts of the British Parliament, in establishing the Protectorate of Oliver Cromwell, and the election of William and Mary to succeed James II as a result of the "glorious revolution" of 1688, are sufficient precedents, if any were needed, to justify these declarations.

The great indictment against George III properly begins with this sentence: "The history of the present king of Great Britain is a history of repeated injuries and usurpations all having in direct object the establishment of an absolute tyranny over these States." The colonists appealed to the public opinion of mankind, a new tribunal in politics at that time. The indictment then proceeds to go into particulars and the proof is adduced in the most cir-

cumstantial way, and public records are made the basis of each charge.

Attention is called to the brevity, simplicity, and directness of each charge, freedom from all legal phraseology common to lawyers, statesmen, and jurists of former times, and the striking contrast between this charter and all of the great English charters.

Each count in the indictment begins with "He". Now adverting again to the text:

"The history of the present King of Great Britain is a history of repeated injuries and usurpations all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

"He has refused his assent to laws the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved representative houses repeat-



edly for opposing with manly firmness his invasions of the rights of the people.

“He has refused for a long time after such dissolutions to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the State remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

“He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

“He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

“He has made judges dependent on his will alone for tenure of their offices, and the amount and payment of their salaries.

“He has erected a multitude of new offices, and sent hither swarms of new officers to harass our people and eat out their substance.

“He has kept among us in times of peace standing armies without the consent of our legislatures.

“He has affected to render the military independent of, and superior to, the civil power.

“He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws, giving his assent to their acts of pretended legislation for quartering large bodies of armed troops among us.

“For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these States.

“For cutting off our trade with all parts of the world.

“For imposing taxes on us without our consent.

“For depriving us in many cases of the benefits of trial by jury.

“For transporting us beyond seas to be tried for pretended offences.

“For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies;

“For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

“For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

“He has abdicated government here declaring us out of his protection and waging war against us.

“He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

“He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

“He has constrained our fellow citizens taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

“He has excited domestic insurrection among us,

and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of war-fare is an undistinguished destruction of all ages, sexes and conditions."

The gravamen of the charges constitute violations of rights belonging to the colonists as British subjects, and are either omissions to protect certain rights or willful violations of others; and when combined they cover almost all of the well-known rights, privileges, and immunities of the subject, which were known to exist by virtue of the great charters and laws of Great Britain, at that time.

The first paragraph was intended by Mr. Jefferson to assert in general terms the nature and character of the rights of the British colonists as well as the rights of man generally, and the specifications in the many counts of the indictment were intended to show that George III, as the responsible head of the British nation at that time, was directly responsible for the "abuses and usurpations" alleged, which if tolerated by the colonists would "reduce them under absolute despotism".

In concluding the indictment it is averred that "in every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injuries".

The conclusion inevitably follows: "A Prince whose character is thus marked by every act which



may define a tyrant, is unfit to be the ruler of a free people."

The omitted sentence just here predicts that future generations will scarcely believe it possible for these charges to be true, and concludes with this significant phrase, "for tyranny over a people fostered and fixed in principles of freedom". Upon what legal basis do these various allegations of "abuses and usurpations" against this tyrant rest and how was it possible for them to be true in view of "fixed principles of freedom"?

Herein will be found a historical development of the "ancient liberties" of the English people, beginning with the Anglo-Saxons and guaranteed in every charter and added to in progressive ratio, the most notable being Magna Charta (1215), Parliament (1295), Petition of Right (1628), Habeas Corpus Act (1679), Bill of Rights (1689), and Act of Settlement (1700-1701).

One noticeable characteristic of these and other English charters is the covenant made with the king which in the most explicit terms obligates him to support and uphold the liberties of his subjects; and nothing is left to inference.

These "ancient liberties" did not originate with the charters, but were simply confirmed by them and were added to from time to time as they grew up, and become "fixed principles of freedom".

A careful analysis of the various counts in this indictment shows the grossest violations of rights of

freemen guaranteed under these old charters and other laws.

Kipling expresses in verse this story in "The Old Issue," as follows:

"All we have of freedom, all we use or know,  
 This our fathers bought for us long and long ago,  
 Ancient right unnoticed as the breath we draw—  
 Leave to live by no man's leave, underneath the law.  
 Lance and torch and tumult, steel and grey-goose  
     wing,  
 Wrenched it, inch and all and all, slowly from the  
     King.  
 Till our fathers 'stablished, after bloody years,  
 How our King is one with us, first among his peers.  
 So they bought us freedom—not at little cost—  
 Wherefore must we watch the King, lest our gain be  
     lost.  
 Over all things certain, this is sure indeed,  
 Suffer not the old King; for we know the breed."

In this connection it should be noted that Mr. Jefferson in 1774 had written a pamphlet entitled "A Summary View of the Rights of British America", a copy of which had found its way to England, and with a few changes was used by Mr. Burke as a document for opposition purposes. The members of the Continental Congress were also familiar with this pamphlet and the reputation acquired by Mr. Jefferson in writing it led to his appointment as a member of the Committee to draft the Declaration and the request made of him to prepare it. It is also worthy of notice that Richard Henry Lee, who made the original motion on be-

half of Virginia and ably and eloquently advocated it, would doubtless have been the Chairman of the Committee had he not been compelled to leave on account of the illness of his wife.

This "Summary View" was in the form of a resolution which was intended to be adopted as instructions to the delegates to the Continental Congress from Virginia. It set forth the theory of the rights of the British Colonies as having arisen from freemen who had conquered the savages and cleared the forests on their own account, and established their own government and supported themselves after the example of the Anglo-Saxons when they conquered England, and claimed to have all of the rights, privileges, and immunities of freemen, and that the only tie between them and Great Britain was a common sovereign.

The abuses and usurpations of Parliament are set out with considerable detail, and especially all those acts attempting to interfere with the commerce of the Colonies, and their right to engage in certain manufactures and granting monopolies to court favorites, as well as attempts to intermeddle with the internal affairs of the Colonies.

It then deals in abuses of executive power by George III and points out the various acts of omission and commission with greater detail than in the more celebrated instrument drafted later. It is a truly republican instrument and enunciates substantially the same doctrines as the Declaration. It is

framed as a petition for redress of abuses of Parliament as well as the executive, but there is no expression of a desire to separate from Great Britain. It says: "It is neither our wish nor our interest to separate from her. We are willing on our part to sacrifice everything which reason can ask, to the restoration of that tranquillity for which all must wish. On their part, let them be ready to establish union on a generous plan."

The petition is a bold and fearless one and asserts doctrines in keeping with the author's later teachings. The following sentences are truly Jeffersonian:

"The abolition of domestic slavery is the great object of desire of those Colonies where it was unhappily introduced in their infant state." "Kings are the servants and not the proprietors of the people." "The whole art of government consists in the art of being honest." "The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." "But let them not think to exclude us from going to other markets to dispose of those commodities which they cannot use, nor to supply those wants which they cannot supply." "Still less, let it be supposed that our properties within our territories shall be taxed or regulated by any power on earth, but our own."

The proverbial conservatism of the English nation, and especially their disinclination to make radical innovations and follow theorists in matters of



government, is illustrated again and again in these great charters and is set forth in the Declaration of Independence in these words:

“Prudence, indeed, will dictate that governments long established should not be changed for slight and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.”

“The long train of abuses and usurpations,” set out in the Declaration, and the “patient sufferance of these colonists”, which had continued for a period of over eleven years—1765 to 1776—in their struggle against these acts of “absolute despotism”, had gradually developed a fixed belief permeating the masses of the colonists that George III and his advisers had “in direct object the establishment of an absolute tyranny over these States”.

While the Declaration is in its form an indictment against George III, as before stated, and has by many been considered and treated as merely a recital of grievances resulting from abuses of executive powers, or royal prerogatives claimed by the King of England at that time, a more careful analysis will show that the grounds of the quarrel were deeper and extended to the claims made by Parliament from the beginning.

The reasons for attacking George III, and mak-

ing the issues directly against the king rather than the British people and Parliament, were strategical and followed the English precedents established in the reigns of John and Charles I, when Magna Charta and Petition of Right were extorted by the contesting forces which represented the rights of such freemen as existed during those periods from John and Charles I.

The Declaration records this fact in these words :

“Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity and we have conjured them by the ties of our common kindred to disavow these usurpations which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and consanguinity. We must therefore acquiesce in the necessity which denounces our separation and hold them as we hold the rest of mankind, enemies in war, in peace friends.”

The reason for eliminating from the original draft the severe strictures upon the people of England for upholding George III and his ministers in the perpetration of these abuses and usurpations is stated by Mr. Jefferson in his Autobiography in these words :

“The pusillanimous idea that we had friends in England worth keeping terms with, still haunted the minds of many. For this reason, those passages which conveyed censures on the people of England were struck out, lest they should give them offence.”

The attack against George III was a wise one, from every point of view, not only on account of the deep-rooted antipathy against tyrants, always predominant in the English people; but more especially because of the fact that the influence of the Crown had gradually become weak in the Colonies owing to the distance intervening, as well as the unpopularity of many, if not all, of the king's governors and other representatives in the Colonies.

The colonists had also for generations exercised the right of self-government under their charters, and were skilled in all of the branches of government, having had their own legislatures and domestic courts. The fact that a not inconsiderable number of the inhabitants were, or their ancestors had been, refugees from England on account of political or religious persecutions, and that the dissenting churches all had the most democratic forms of government, should not be overlooked.

Another potent influence, which in a large measure controlled the political aspect of this period, was the fact that a custom had grown up for many of the wealthy colonists to send their sons to the English Inns of Court for their legal education.



Warren's "History of the American Bar" estimates the number at nearly one hundred and fifty between the years 1750 and 1775, and calls attention to the fact that the American lawyer of the late eighteenth century was the product of either these English Inns of Court or of the American colleges, Harvard, Yale, Princeton, Brown, and the College of William and Mary in Virginia, and that it was this superior training which made them the spokesman, writer, and orator of the people when they were compelled to resist the pretensions of the British Parliament and George III.

Warren says:

"The training which they (the Colonial lawyers) received in the Inns, confined almost exclusively to the Common Laws, the habits which they formed there of solving all legal questions by the standard of English liberties and of rights of the English subject, proved of immense value to them when they became later (as so many did become) leaders of the American Revolution."

Several of the Colonies sent petitions to the Continental Congress prior to the adoption of the Declaration of Independence, seeking advice in regard to framing new forms of government, which after some delay were granted. The Colony of Virginia was the first to frame and adopt a written constitution, and it also adopted a bill of rights as a part thereof. Both were adopted in June,

1776. The Virginia Bill of Rights, and most of the Constitution, were prepared by George Mason. Mr. Jefferson was then at Philadelphia serving as a member of the Continental Congress, and he prepared a complete instrument embracing a bill of rights and a constitution, which he forwarded to the Convention for its consideration, but it was not received by them until after they had completed their work and were about ready to adjourn. However, the preamble to the Constitution, as prepared by Mr. Jefferson, was accepted and used out of respect to him, and this accounts for its similarity to the language of the Declaration of Independence.

The statement made by several writers that Mr. Jefferson borrowed many ideas and phrases from the Virginia Bill of Rights is erroneous for the evident reason that he was in Philadelphia and Mason was in Williamsburg, and neither was a plagiarist. Besides, the undisputed facts show that Mr. Jefferson had first written on the same general subject in 1774, and in 1775 in the "Summary View," and his reply to Lord North's conciliatory proposition. Both were men of extraordinary ability and were fluent writers, and were in accord in their views on these issues. There is absolutely no ground for charging plagiarism against either, and neither had or claimed a monopoly on the ideas, most of which were as old as Magna Charta; or of the language, which was a common inheritance.

## DECLARATION OF INDEPENDENCE 25

Section 1 of Virginia's Bill of Rights of 1776 is somewhat more definite as to what was intended to be conveyed by the phrase "pursuit of happiness" used by Mr. Jefferson, and is here quoted in full:

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

The Virginia Bill of Rights is the model upon which all future bills of rights were framed by the States, and it had a marked influence in causing the adoption of the first ten amendments to the Constitution of the United States. All of the fundamental rights of the British people, guaranteed by their great charters and acts of Parliament, tested by the experience of hundreds of years of self-government, suited to the condition of the Colonies, were incorporated in this first bill of rights.

For the first time in history the legislative, executive, and judicial powers were decreed to be separate and distinct, and were made so by the Constitution of Virginia in solemn written form.

A question arose in the Continental Congress as to how these colonies should provide for "administering justice and regulating civil police", and the matter was referred to a committee, who, after

many conferences, made reports on the various petitions, in substance recommending that the Colonies call "a free and full representation of the people, and that the representatives, if they think it necessary, establish such a form of government as in their judgment will best produce the happiness of the people and most effectually secure peace and good order" during the continuance of the dispute between Great Britain and the Colonies.

In three of the Colonies no changes were made in their Colonial charters, except so far as the authority of the king was concerned; viz., in Massachusetts till 1780, in Connecticut till 1818, and in Rhode Island till 1842. These conventions were, as Jameson states, revolutionary in their character and did not arrogate to themselves the right to do more than frame governments suited as they believed to the crisis then impending.

The processes of thought by which these State constitutions and bills of rights were worked out afford a most interesting and instructive study in government. The account given of these deliberations of the Continental Congress by John Adams is most helpful and enlightening and indicates the line of thought pursued, as well as the deliberation and dread with which these conservative students of government and practical lawyers went about the work. Mr. Adams expressed the opinion that it was the duty of the Continental Congress to recommend to the people of the Colonies to call con-



ventions of representatives of each colony at once, and set up governments of their own, "for the people are the source of all authority and original of all power", to use Mr. Adams' language. He further says:

"These were new, strange, and terrible doctrines to the greatest part of the members, but not a very small number heard them with apparent pleasure, and none more than Mr. John Rutledge, of South Carolina, and Mr. John Sullivan, of New Hampshire. . . .

"Mr. Rutledge asked me my opinion of a proper form of government for a State. I answered him that any form that our people would consent to institute would be better than none, even if they placed all power in a house of representatives, and they should appoint governors and judges; but I hoped they would be wiser, and preserve the English Constitution in its spirit and substance, as far as the circumstances of this country required or would permit. That no hereditary powers ever had existed in America, nor would they, or ought they be introduced or proposed; but that I hoped the three branches of legislature would be preserved, an executive, independent of the senate or council, and the house and, above all things, the independence of the judges. . . .

"Although the opposition was still inveterate, many members of Congress began to hear me with more patience, and some began to ask me civil questions. 'How can the people institute governments?' My answer was, 'By conventions of representatives, freely, fairly, and proportionably chosen.' 'When the convention has fabricated a government,

or a constitution rather, how do we know the people will submit to it?' 'If there is any doubt of that, the convention may send out their project of a constitution to the people in their several towns, counties, or districts, and the people make the acceptance of it their own act.' 'But the people know nothing about constitutions.' 'I believe you are much mistaken in that supposition; if you are not, they will not oppose a plan prepared by their own chosen friends; but I believe that in every considerable portion of the people there will be found some men who will understand the subject as well as their representatives, and these will assist in enlightening the rest.' 'But what plan of a government would you advise?' 'A plan as nearly resembling the government under which we were born, and have lived, as the circumstances of the country will admit. Kings we never had among us. Nobles we never had. Nothing hereditary ever existed in the country, nor will the country require or admit of any such thing. But governors and councils we have always had, as well as representatives. A legislature in three branches ought to be preserved, and independent judges.' 'Where and how will you get your governors and councils?' 'By elections.' 'How—who shall elect?' 'The representatives of the people in a convention will be the best qualified to contrive a mode.' "

The highest tribute that could be paid to the ability, manhood, and sterling character of the framers of these revolutionary forms of government is the fact that the States which were erected out of these Colonies never saw proper or deemed

it expedient to change these original drafts of constitutions until after many years of experience, when new conditions made it advisable so to do.

The outstanding fact in all of the State constitutions then adopted, as well as all subsequently adopted during the history of the United States, is that they have followed the Virginia plan in the main, invariably coupling a Bill of Rights with the Constitution, and have incorporated these "ancient liberties" belonging to them as a part of the common inheritance of the Anglo-Saxon people, and have made the central truth the same as that so admirably stated by Mr. Jefferson in the Declaration of Independence, viz., "that all governments derive their just powers from the consent of the governed".

The insistence of certain writers that the Declaration of Independence deals in "glittering generalities" and is only fit for Fourth of July orators is not supported by the facts; and the custom adopted by most Americans never to read it or to hear it read, except on the anniversary of its adoption, is most unfortunate.

It is not only a masterly production from a literary point of view, and well calculated to arouse the patriotism of our common countrymen, but it is a state paper of the highest dignity and importance, and has placed its author on a pedestal of well-merited fame in his own country, as well as in every country where there is a spark of liberty left



in the bosoms of men. These great truths of liberty so eloquently portrayed in the Declaration of Independence by Mr. Jefferson are not of French origin, as was later claimed for political reasons by his enemies.

John Adams and Benjamin Franklin made a most careful scrutiny of this instrument before it was submitted to the Continental Congress, and only slight verbal changes were made in the fundamental propositions set forth, and there was no change whatever made in this vital point, to-wit: "That all governments derive their just powers from the consent of the governed."

This was the first and greatest step taken by our ancestors to rid themselves and the Western Hemisphere of kings; and the Monroe Doctrine was its natural outgrowth. They were thoroughly satisfied to part company with King George III, and Mr. Jefferson's indictment was heartily concurred in by the greatest of the leaders and the people as the result of more than ten years' agitation and study of British laws and institutions in an effort to safeguard their liberties.

The majority of the members of the Continental Congress were certainly in point of ability and wide knowledge of the laws of England and in statesmanship equal to the membership of the British Parliament, and were in a pre-eminently better position to lead the colonists.

In addition to this, the active support given to

the cause of the Colonies by Burke and Pitt was far-reaching in its influence not only on the direct issues involved, but in arousing that "fierce spirit of liberty" mentioned by Mr. Burke in his memorable speech on "Conciliation with the Colonies". Mr. Burke was the only man of his age who could have made this unparalleled speech, and the fact that the British Parliament could not and did not grasp the facts and arguments presented by him, and solve the problems which were then comparatively easy of solution, demonstrates conclusively the danger to any country of allowing a weak king, surrounded by mediocre court favorites, to dominate the brains and heart of a nation.

No one can properly understand the magnitude of the issues involved without reading and studying this speech of Mr. Burke. Nowhere else can be found a more exhaustive discussion of the subject or a more lifelike picture of the American Colonies, with the vast and limitless resources of the country. The delineation of the colonists, and especially their love of freedom, is incomparable. The imagination required to paint the picture of the people and country by one who had never visited the country is only equaled by Mr. Burke's masterly speeches in the trial of Warren Hastings, when he duplicated, but did not excel, this speech in the pictures which he portrayed of the East Indies. The long, tedious, patriotic, brilliant, and unselfish efforts of Mr. Burke in behalf of the Colonies of

North America and East India constitute his best title to fame as a statesman.

Underlying all of these speeches will be found the same great truths upon which all good governments should and must rest, as well as a historic development of English liberty, and the conclusion necessarily follows that English liberty has ever been more than mere abstractions. To prove these assertions let Mr. Burke speak for himself:

“In this character of the Americans, a love of freedom is the predominating feature which marks and distinguished the whole; and as an ardent is always a jealous affection, your Colonies become suspicious, restive, and untractable whenever they see the least attempt to wrest from them by force, or shuffle from them by chicane, what they think the only advantage worth living for. This fierce spirit of liberty is stronger in the English Colonies probably than in any other people of the earth, and this from a great variety of powerful causes; which, to understand the true temper of their minds and the direction which this spirit takes, it will not be amiss to lay open somewhat more largely.

“First, the people of the Colonies are descendants of Englishmen. England, Sir, is a nation which still, I hope, respects, and formerly adored, her freedom. The Colonists emigrated from you when this part of your character was most predominant; and they took this bias and direction the moment they parted from your hands. They are therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles. Abstract liberty, like other mere ab-

stractions, is not to be found. Liberty inheres in some sensible object; and every nation has formed to itself some favorite point, which by way of eminence becomes the criterion of their happiness.

"The Colonies draw from you, as with their life-blood, these ideas and principles. Their love of liberty, as with you, fixed and attached on this specific point of taxing. Liberty might be safe, or might be endangered, in twenty other particulars without their being much pleased or alarmed. Here they felt its pulse; and as they found that best, they thought themselves sick or sound. . . .

"They were further confirmed in this pleasing error by the form of their provincial legislative assemblies. Their governments are popular in an high degree; some are merely popular; in all the popular representative is the most weighty; and this share of the people in their ordinary government never fails to inspire them with lofty sentiments, and with a strong aversion from whatever tends to deprive them of their chief importance.

"If anything were wanting to this necessary operation of the form of government, religion would have given it a complete effect. Religion, always a principle of energy, in this new people is no way worn out or impaired; and their mode of professing it is also one main cause of this free spirit. The people are Protestants; and of that kind which is the most adverse to all implicit submission of mind and opinion. This is a persuasion not only favorable to liberty, but built upon it. I do not think, Sir, that the reason of this averseness in the dissenting churches from all that looks like absolute governments is so much to be sought in their religious tenets as in their history. Every one knows



that the Roman Catholic religion is at least co-eval with most of the governments where it prevails; that it has generally gone hand in hand with them, and received great favor and every kind of support from authority. The Church of England too was formed from her cradle under the nursing care of regular governments. But the dissenting interests have sprung up in direct opposition to all the ordinary powers of the world, and could justify that opposition only on a strong claim to natural liberty. Their very existence depended on the powerful and unremitted assertion of that claim. All Protestantism, even the most cold and passive, is a sort of dissent. But the religion most prevalent in our Northern Colonies is a refinement on the principle of resistance; it is the dissidence of dissent, and the protestantism of the Protestant religion. This religion, under a variety of denominations agreeing in nothing but in the communion of the spirit of liberty, is predominant in most of the Northern Provinces, where the Church of England, notwithstanding its legal rights, is in reality no more than a private sect, not composing most probably the tenth of the people. The Colonies left England when this spirit was high, and in the emigrants was the highest of all; even that stream of foreigners which has been constantly flowing into these colonies has, for the greatest part, been composed of dissenters from the establishments of their several countries, who have brought with them a temper and character far from alien to that of the people with whom they mixed.

“ Sir, I can perceive by their manner that some gentlemen object to the latitude of this description, because in the Southern Colonies the Church of England forms a large body, and has a regular

establishment. It is certainly true. There is, however, a circumstance attending these colonies which, in my opinion, fully counterbalances this difference, and makes the spirit of liberty still more high and haughty than in those to the northward. It is that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, that freedom, as in countries where it is a common blessing and as broad and general as the air, may be united with much abject toil, with great misery, with all the exterior of servitude; liberty looks, amongst them, like something that is more noble and liberal. I do not mean, Sir, to commend the superior morality of this sentiment, which has at least as much pride as virtue in it; but I cannot alter the nature of man. The fact is so; these people of the Southern Colonies are much more strongly, and with an higher and more stubborn spirit, attached to liberty than those to the northward."

Mr. Burke discusses his subject under "six capital sources—of descent, of form of government, of religion in the Northern Provinces, of manners in the Southern, of education, of the remoteness of situation from the first mover of government" to account for this "fierce spirit of liberty".

To a student of government and law generally there is no part of this speech of Mr. Burke so interesting and instructive as his comments on the education and training of the Colonial lawyer, and



here again it is highly proper to let Mr. Burke speak for himself :

“ In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to the Congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering in that science. I have been told by an eminent bookseller that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the Plantations. The Colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England. General Gage marks out this disposition very particularly in a letter on your table. He states that all the people in his government are lawyers, or smatterers in law; and that in Boston they have been enabled, by successful chicane, wholly to evade many parts of one of your capital penal institutions. . . .

“ This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. In other countries, the people more simple, and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze.”

Maitland estimates that nearly twenty-five hundred copies of Blackstone's Commentaries were ab-

sorbed by the Colonies before they declared their independence, among the first subscribers being John Adams and John Marshall; and he attributes the fact that the common law of England became the basis of our laws to the circumstance that James Kent and John Marshall made Blackstone's Commentaries their chief authority on the laws of England.

From these facts it should not be hastily concluded that the Colonies adopted Blackstone's theory of government, because they did not. It was due to Mr. Jefferson and a few of the choice spirits of that period that the robust and virile opinions of Coke, Milton, Pitt, Burke, and other great Englishmen were adopted and that the safeguards of English liberty as set forth in the great charters, and especially Magna Charta, Petition of Right, Habeas Corpus Act, Bill of Rights, and Act of Settlement, were followed.

The boast of Mr. Jefferson throughout his entire life was that he and his immediate friends were disciples of Coke, and not Blackstone. Mr. Jefferson often refers to the fact that in New England there were no "common lawyers"—those grounded in the common law of England—and he attributed the lack of trust in the rule of the common people to this deficiency.

The divergence of opinion which arose long after the Declaration of Independence was adopted between Mr. Jefferson and John Adams, Hamilton,

and other Federalists, grew out of this one thing, and it required the masterly pens of James Kent and John Marshall to, in a measure, check the strong tendency to popular liberty which might later have been engrafted upon our government as a result of the French Revolution. The truth of the matter is that while all parties in the United States, as well as the courts from the lowest to the highest, have recognized the central truth that our government rests upon the "consent of the governed" or the people, their practices have not always been consistent. Yet at every step in the growth and development of the States, the tendency and practice has been, when changes were made in the fundamental law, to throw off, as far as prudence would dictate, all restraints upon the people.

None of our parties have been entirely consistent, and few, if any, of our leading statesmen have adhered at all times to the ideals embodied in the Declaration of Independence.

The most significant fact illustrating this will be found in the Constitution of the United States and the circumstances attending the Convention that adopted it. Mr. Jefferson was in France in 1787, while the Convention was in session, but he was kept advised in a measure as to what was being done, by his most intimate friend and neighbor, James Madison, who was a leading member. The Convention was held behind closed doors, and the Journal of its proceedings was delivered to George

Washington, its presiding officer, with the understanding that it should be kept subject to the order of Congress.

The members agreed among themselves that the profoundest secrecy should be maintained as to the speeches or opinions expressed by all the members, so that they could not be used thereafter to their prejudice. Mr. Madison kept his notes of the proceedings of the Convention also under this same pledge of secrecy. It was not until 1818 that the Journal of the Convention was published, and it was as late as 1841 when Mr. Madison's papers were published. If any evidence were needed to show that the colonists understood the inestimable value of the safeguards of their liberty, it is shown in the vigorous and persistent demand that was made for a bill of rights by a powerful minority in many of the States. This was especially true as to Virginia and Massachusetts, where some of the strongest men, including many of the patriots who had been most active in bringing about the separation from Great Britain, such as Patrick Henry, the Lees, Hancock, vigorously opposed the Constitution. It is exceedingly doubtful whether the Constitution would have been adopted had not a tacit agreement been made that certain amendments would be added in the form of a bill of rights. The faith of the people in the character and judgment of Washington and the writings of Madison, Hamilton, and Jay afterwards compiled and pub-



lished in "The Federalist" were the controlling factors in the contest.

Mr. Jefferson was strongly in favor of a bill of rights, but advised the adoption of the Constitution as framed and was willing to trust to the good sense of the people to make such amendments as time and experience might prove were necessary and advisable. Later Mr. Madison drafted the first ten amendments to the Constitution, and it is needless to say that Mr. Jefferson was consulted in this undertaking. The amendments constitute a bill of rights after the same general plan as that of Virginia with such changes as were necessary to fit into the new government.

In this connection, it is pertinent to remark the foresight and unprecedented zeal exhibited by Mr. Jefferson for the cause of liberty when he presented in his original draft of the Declaration of Independence a count indicting George III for forcing slavery on the Colonies. This was unfortunately struck out by John Adams and Benjamin Franklin for reasons stated by Mr. Jefferson in his Autobiography in these words:

"The clause too, reprobating the enslaving the inhabitants of Africa, was struck out in compliance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our Northern brethren also, I believe, felt a little tender under those censures; for though their people



had very few slaves themselves, yet they had been pretty considerable carriers of them to others."

Mr. Jefferson was a student at William and Mary College from 1760 to 1762, and a student of law under George Wythe at Williamsburg from 1762 to 1767. He heard the matchless speech of Patrick Henry in the House of Burgesses in 1765, when he denounced George III as a tyrant.

Mr. Jefferson's mottoes, which he consistently followed throughout his life, were the result of this early atmosphere and association with such characters as Patrick Henry, the Lees, Wythe, and others, viz.: "Abeo libertas aquo spiritus;" "Resistance to tyrants is obedience to God;" "For I have sworn, upon the altar of God, eternal hostility against every form of tyranny over the mind of men;" and the motto of the University of Virginia—"Ye shall know the truth and the truth shall make you free."

When in 1769 Mr. Jefferson was elected a member of the House of Burgesses for Albemarle County, the first act introduced by him of any consequence was for permitting the emancipation of slaves, which was promptly rejected.

The severest language used by Mr. Jefferson in his original draft of the Declaration, which was struck out by John Adams and Benjamin Franklin, is in part as follows:

"He has waged cruel war against human nature itself, violating its most sacred rights of life and

liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the Christian king of Great Britain. Determined to keep open a market where men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce."

This question was again brought up for consideration before a committee for the revision of the laws of the Colony of Virginia to make them in keeping with the new Constitution and Bill of Rights, of which Mr. Jefferson was chairman, and it was considered in the committee and a plan agreed upon by the committee for the emancipation of slaves after a certain future date with provisions for deportation after a certain age; but it was found that nothing could be accomplished. In recording this incident in his Autobiography, Mr. Jefferson used these prophetic words:

"But it was found that the public mind would not yet bear the proposition, nor will it bear it even at this date. Yet the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them. It is still in our power to direct the process

of emancipation and deportation, peaceably, and in such slow degree, as that the evil will wear off insensibly, and their place be, *pari passu*, filled up by free white laborers. If, on the contrary, it is left to force itself on, human nature must shudder at the prospect held up."

In his proposed draft for a constitution for Virginia in 1776, these two provisions were inserted:

"No person hereafter coming into this country shall be held within the same in slavery under any pretext whatsoever." "The General Assembly shall not have power to ... permit the introduction of any more slaves to reside in this State, or the continuance of slavery beyond the generation which shall be living on the 31st day of December 1800; all persons born after that date being hereby declared free."

In his draft of a bill in 1784 for the government of the proposed Western Territory, which embraced all of the Northwestern Territory, and also what afterwards became Alabama, Mississippi, Tennessee, and Kentucky, Mr. Jefferson had the following:

"After the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."

This clause failed of passage by the vote of a single individual. Mr. Jefferson's comment on this incident is characteristic. He says:

“The voice of a single individual of the State which was divided, or one of those which were of the negative, would have prevented this abominable crime from spreading itself over the new country. Thus we see the fate of millions unborn hanging on the tongue of one man, and heaven was silent in that awful moment! But it is to be hoped it will not always be silent and that the friends of the rights of human nature will in the end prevail.”

In his “Notes on Virginia,” Mr. Jefferson expressed his views fully on the subject of slavery in language as strong as, if not stronger than, any thus quoted, and in his subsequent writings, both public and private, speaking of slavery, he used such terms as “abomination”, “sacred side”, “this enormity”, and went so far as to write Mr. E. Rutledge: “This abomination must have an end, and there is a superior bench reserved in heaven for those who hasten it.”

This apparent digression on the subject of slavery has not been made without a reason, and that is to most thoroughly impress upon the reader the deep, consistent, and undying dedication and consecration of Mr. Jefferson, the author of the Declaration of Independence, to the cause of liberty. If time and space permitted, abundant evidence could be adduced to show that the same “fierce spirit of liberty” existed among the leaders in all the Colonies, and especially in New England, where for generations the purest forms of democracy had ex-





DRAFTING THE DECLARATION OF INDEPENDENCE  
Franklin, Jefferson, Adams, Livingston, Sherman.





isted in local self-governments in the typical township of New England.

This is especially true as to John Adams, whom Mr. Jefferson described as "the Colossus of that Congress, the great pillar of support to the Declaration of Independence and its boldest advocate and champion on the floor of the House".

Without making invidious distinctions between the immortal band of patriots who pledged each other their lives, fortunes, and sacred honor in support of the Declaration, it is only proper to say that Jefferson, Adams, and Franklin are the greatest celebrities. Their names are indissolubly connected with it, as the writer, orator, and philosopher, by all mankind. Each of them was signally honored by the American people and each has left a record for achievements for the benefit of mankind unparalleled in history. The temporary estrangement between Jefferson and Adams caused by their too zealous and indiscreet friends, was happily healed many years before their death, and the warm friendship which grew up between them while members of the Continental Congress was fortunately restored, as is shown by their incomparable correspondence. The happy coincidence of the deaths of Jefferson and Adams on July 4, 1826, when the fiftieth anniversary of the Declaration was being celebrated, added a double apotheosis to these grand old patriots without a parallel. Their last verbal and written utterances were about liberty and inde-

pendence, and the prayer of each that he might survive until Independence Day was graciously vouchsafed. Nothing could be added to the joint tributes paid to these heroes by William Wirt and Daniel Webster, the two greatest orators of those times, and each a personal friend and warm admirer of the life and teachings of these immortal sons of Virginia and Massachusetts.

May we not say that Mr. Jefferson was correct when, in 1819, he described this great charter as "The Declaration of Independence, the Declaratory Charter of our Rights and the Rights of Man"?

May we not also conclude with Henry Cabot Lodge in speaking of the adoption of the Declaration:

"From that day to this it has been listened to with reverence by a people who have grown to be a great nation and equally from that day to this it has been the subject of severe criticism. The reverence is right, the criticism misplaced and founded on misunderstanding."

On the 4th day of July, 1918, at a celebration in London by the English people, Winston Churchill said in part:

"The Declaration of Independence is not only an American document, it follows on Magna Charta and the Petition of Right, as the third of the great title-deeds on which the liberties of the English-speaking race are founded. By it we lost an Em-

pire, but by it we preserved an Empire. . . . The political conceptions embodied in the Declaration of Independence are the same as those which were consistently expressed at the time by Lord Chatham and Mr. Burke, and by many others who had in turn received them from John Hampden and Algernon Sidney."

## CHAPTER II

### THOMAS JEFFERSON AS THE BUILDER OF A STATE

HAVING shown in the first chapter that the Declaration of Independence is the charter of our liberties, and that it rests upon the solid foundation of Anglo-Saxon principles of government and not upon mere glittering generalities, and shown in a general way the intentions of its framers, it is highly proper that something should be said more in detail about its author—Thomas Jefferson. No effort will be made to convey more than the merest outlines of the life and character of Mr. Jefferson in this one particular. In order, however, fully to appreciate the services to his country and mankind in drafting the Declaration of Independence, and the constructive work performed by him in State and national affairs, it is highly important that a brief statement should be made of the outstanding facts in his early life and environment.

No attempt will be made to eulogize Mr. Jefferson or to portray his life other than as a man thoroughly devoted to the cause of liberty and having the sagacity to do the practical thing, and his refusal to rest upon his laurels already so worthily won while yet a young man.



The full measure of Mr. Jefferson as a man, scholar, patriot, statesman, and world character, can only be taken after one has devoted years of study to his life, and read the complete record left by him of it in his Autobiography, the *Anas* and other inestimable productions of his pen, including all of his state papers and messages as President; and especially all of his private correspondence which shows his views on all questions public and private. These alone furnish the true measure of the man.

Mr. Jefferson kept a copy of all letters written by him. His correspondence was most extensive and varied and it furnishes a complete record of his opinions on all matters pertaining to government and politics during his life. In these letters he poured out his heart to his friends and rarely ever failed to inculcate the fundamental principles of republican government, which he unfalteringly proclaimed and maintained with ability and eloquence.

The noblest and most perfect monument ever erected to the memory of any man will be found in the latest, most complete, and best edition of the writings of Thomas Jefferson by the Thomas Jefferson Memorial Association of the United States in 1903. The general introduction was written by the late U. S. Senator George F. Hoar, of Massachusetts, and a preface to each of the remaining nineteen volumes, devoted in each instance to some one characteristic quality of his mind, or the fruits thereof, by men of distinction, as follows:

“The University of Virginia, and Thomas Jefferson, Its Father,” by James C. Carter; “The Louisiana Purchase,” by Charles Emory Smith; “General Education,” by Charles Needham; “Jefferson as a Citizen of the Commonwealth of Virginia,” by Andrew J. Montague; “Jefferson as a Tactician,” by G. W. Atkinson; “Jefferson’s Services to Civilization during the Founding of the Republic,” by B. O. Flower; “Religious Freedom,” by W. J. Bryan; “Jefferson and the Constitution,” by C. A. Culberson; “Jefferson’s Faith in the People,” by Alton B. Parker; “Jefferson’s Versatility,” by Champ Clark; “Jefferson’s Passport to Immortality,” by George C. Vest; “Jefferson as a Geographer,” by A. W. Greely; “The Memory of Thomas Jefferson,” by John B. Stanchfield; “Jefferson in His Family,” by T. Jefferson Coolidge; “Jefferson and the Land Question,” by Henry George; “Jefferson’s Religion,” by Edward N. Calisch; “Jefferson’s Contribution to a Free Press,” by Josephus Daniels; “Jefferson as a Man of Science,” by Cyrus Adler; and “Jefferson’s Quest of Knowledge,” by Charles W. Kent.

The most casual examination of the external facts surrounding the life and character of Mr. Jefferson, and his vast influence in helping to mold the government of our great Republic, and in a large measure fix its destiny for all time, cannot be easily traced unless we take into consideration that he was a great scholar and had a bold and fearless intellect,

as well as moral courage of the highest order. The question to determine, then, is what was the ruling passion of this man, from whence did he get his ideas, and what did he accomplish in a concrete way as a statesman?

Thomas Jefferson was born on a farm called Shadwell, now Monticello, near Charlottesville, Albemarle County, Virginia, on April 13, 1743. His father, Peter Jefferson, was a Welshman, a surveyor and planter of substantial character, and his mother was Jane Randolph, a member of one of the most aristocratic families in the Virginia Colony, whose pedigree, it is said, could be traced to royalty. Thus in parentage he was half democratic and half aristocratic, and was by birth entitled to a social position equal to the highest and best. In disposition he was naturally a student, having early developed a taste and love for letters; and being permitted to indulge it, he soon became a brilliant and versatile scholar. He completed in 1762 his literary education at the College of William and Mary at Williamsburg, the capital of the Colony of Virginia.

That same year he became a student of law with George Wythe at the same place and pursued his studies under his direction until some time in 1767, when he was admitted to the Bar. It is needless to say that Mr. Jefferson acquired a thorough knowledge of the English and Roman systems of laws and jurisprudence and international law, and

otherwise laid a broad foundation which led to his wide knowledge of history, politics, and general culture of the best then in the Colonies, which he cultivated so assiduously throughout his life and that it resulted in his becoming one of the greatest scholars of his generation.

His career was largely influenced by Dr. Small and Mr. Wythe, and he expressed his lasting obligations to them in his Autobiography as follows:

“It was my great good fortune, and what probably fixed the destinies of my life, that Dr. William Small, of Scotland, was then Professor of Mathematics, a man profound in most of the useful branches of science, with a happy talent of communication, correct and gentlemanly manners, and an enlarged and liberal mind. He, most happily for me, became soon attached to me, and made me his daily companion when not engaged in the school; and from his conversation I got my first views of the expansion of science, and of the system of things in which we are placed. Fortunately, the philosophical chair became vacant soon after my arrival at college, and he was appointed to fill it, per interim; and he was the first who ever gave, in that college, regular lectures in Ethics, Rhetoric, and Belles Lettres. He returned to Europe in 1762, having previously filled up the measure of his goodness to me, by procuring for me, from his most intimate friend, George Wythe, a reception as a student of law, under his direction, and introduced me to the acquaintance and familiar table of Governor Fauquier, the ablest man who had ever filled that office. With him, and at his table, Dr. Small



and Mr. Wythe, his amici omnium hararum, and myself formed a *partie quarree*, and to the habitual conversations on these occasions I owed much instruction. Mr. Wythe continued to be my faithful and beloved mentor in youth, and my most affectionate friend through life. In 1767, he led me into the practice of the law at the bar of the General court, at which I continued until the Revolution shut up the courts of justice."

From notes left by Mr. Jefferson for a biography of George Wythe, as well as numerous expressions found in his letters about him, it can easily be seen that five years of study of law under such a preceptor was well calculated to lay the foundation for a great lawyer, jurist, and statesman in Mr. Jefferson. The distinguished part taken by Mr. Wythe in Virginia and the Continental Congress, where he became a signer of the Declaration of Independence, and his subsequent career as the occupant of the office of Chancellor of Virginia, in which he achieved such great distinction; as well as the lasting impress made by him as a teacher of law at the College of William and Mary, are sufficient evidences of his great abilities. Among other distinguished students of law of Mr. Wythe were John Marshall, the great Chief Justice, James Monroe, and Henry Clay.

The leading traits of Mr. Wythe's character, as portrayed by Mr. Jefferson, were his "superior learning, correct elocution, and logical style of



reasoning . . . in addition to the exalted virtue of the man, which was a polar star to guide in all matters which may touch that element of his character ”.

From the seven years' residence in Williamsburg by Mr. Jefferson, from 1760 to 1767, and his ample opportunities, while there at the very center of the political life of the Colony, to hear discussed all of the controversies between Great Britain and the Colonies, and thus obtain at first hand all of the information upon which to form opinions for himself, it will be seen that his environment was the very best.

In fact, Mr. Jefferson gives the views of Mr. Wythe on many vital questions, and some of them were incorporated in the “ Summary View ” heretofore mentioned.

The abilities of Mr. Jefferson were amply vindicated, not only by his appointment to important positions, and generally to the chairmanship of important committees, while a member of the House of Burgesses, of which he first became a member in 1769, and also as a member of the first Continental Congress, in company with such men as Mr. Wythe and others much his seniors in point of age and length of service.

It was not only the great zeal that he displayed in the cause of liberty, which he had imbibed from the matchless eloquence of Patrick Henry, but his thorough knowledge of the grounds of the disputes

between Great Britain and the Colonies, and his mastery of English laws, and the study of government generally, including civil law and international law; but the wonderful ease and facility displayed in using his pen, that won him this early pre-eminence. It is needless to argue that it required the highest order of literary skill and legal ability to produce such documents as the "Summary View" and the Declaration of Independence.

The power to make a clear, orderly, and forceful statement of a controverted matter is one of the highest evidences of a great intellect. It requires not only great knowledge of facts and principles, but power to reason and skill to make an orderly and logical arrangement and combination of facts and principles, in order to succeed. All of this presupposes mastery of language and of the subject-matter. The most significant facts developed thus early in Mr. Jefferson's life were his ability to discover simple, elemental truths from the complicated mass of facts, obscured by volumes of metaphysical learning, bigotry, and prejudice; and his unusual and extraordinary power to convey such truths in plain, elegant, simple language. This fact was most potent in the life of Mr. Jefferson, and without it he could not have succeeded in competition for leadership against great soldiers and orators, who were the natural leaders of the people in those times. Mr. Jefferson was a most attractive man in his conversation, and had a personal mag-

netism which enabled him to make and hold his friends; and in this way he always had about him during his life an able corps of aggressive followers. But it was chiefly by his letters that he built up an unlimited following, and furnished arguments and practical suggestions which proved to be political maxims and truths amounting to a gospel to his party. This can be easily verified by consulting Foley's "Jeffersonian Encyclopedia", which is a most convincing proof of his genius and versatility, as well as of his literary talent. John Adams said of Mr. Jefferson that he had a cunning pen, but the record shows that he was a veritable wizard with his pen. But this mastery of language without more, and especially without great constructive powers as a lawmaker, would not have sufficed. The fact has heretofore been mentioned that, while a member of the Continental Congress, Mr. Jefferson had drafted a bill of rights and a constitution for Virginia and forwarded them to the Convention.

Realizing that declarations, bills of rights, and paper constitutions would not accomplish all that was needed to make Virginia a republican State, Mr. Jefferson voluntarily gave up his seat in Congress and took a seat in the House of Delegates, to which he had again been elected, and entered upon the most important work of his life, excepting alone the drafting of the Declaration of Independence.

It was as a legislator of Virginia that he did his most important constructive work. Mr. Jefferson

had while at Philadelphia kept up a correspondence with Mr. Wythe and other friends, and urged upon them the great importance of framing a constitution and a bill of rights in keeping with the principles above referred to; and it is apparent that most, if not all, of his sentiments were known to Mason and others who did most of the work. They paid a merited tribute to Mr. Jefferson in adopting his preamble, and probably many other suggestions, as before stated. This Convention was truly independent, and before it adjourned unanimously adopted a resolution instructing Mr. Jefferson and other Delegates from Virginia to declare the United Colonies free and independent States.

After leaving Philadelphia and before taking his seat in October, 1776, in the Legislature of Virginia, Mr. Jefferson was elected by Congress one of the Commissioners to France with Dr. Franklin, but declined the honor because he felt he could do more lasting work at home, and that it could be done most effectively while the spirit of liberty was at its highest.

On October 11th Mr. Jefferson presented and had enacted a bill, in due course, establishing Courts of Justice. This is the initial law on that subject and is the same system that was adopted by other States generally throughout the Colonies. It divided the State into counties and established three kinds of courts—County, Superior, and Supreme. The jurisdiction of the courts was defined and the



original draft provided for jury trials in all cases in law and chancery, but this was amended so as to make jury trials optional with the parties in chancery cases.

The next day, October 12th, Mr. Jefferson brought forward his most celebrated bill for abolition of the Law of Entails, then in full force in Virginia. This was the cornerstone on which the vast landed aristocracy of Virginia rested, and it is needless to say that it was bitterly opposed. It was only adopted after a severe contest with a most powerful opposition controlled by the Speaker of the House—Edmund Pendleton. The preamble to this bill shows the deep-seated evil, and, as was later said by Mr. Jefferson, “by this bill was broken up the hereditary and high-handed aristocracy, which by accumulating immense masses of property in single lines of family, had divided our country into two distinct orders of nobles and plebeians”.

The next bill brought forward by Mr. Jefferson was against general assessments for the support of the Anglican Church, then the State Church in Virginia. This was the severest controversy in which Mr. Jefferson was ever engaged and was only won after a contest of more than three years. This measure, and his celebrated bill for religious freedom later adopted, were considered by Mr. Jefferson second in importance only to the Declaration of Independence.



In keeping with the tenor of his life, and properly viewed by him as a reproach to our pretenses as a free people, Mr. Jefferson next presented a bill forbidding the further importation of slaves; but this was not enacted into a law until 1778.

The most thorough, systematic, and far-reaching work done by Mr. Jefferson as a State legislator was as chairman of a commission to revise the entire body of the laws of Virginia, appointed under a resolution introduced by him on October 24, 1776. The other members of this commission were Edmund Pendleton, George Wythe, George Mason, and Thomas Ludwell Lee. After agreeing upon the general plan on which the work should be done, Mason and Lee, not being lawyers, turned over the task to the other members for execution. Mr. Jefferson was assigned the task of compiling the body of the Common Law and the Statutes to 4th James I. This work required over two years' time, and the part done by Mr. Jefferson shows a careful, painstaking, thorough, and systematic effort to simplify the laws with a deliberate effort to republicanize them, where any changes could be made.

The most radical changes were proposed in the descent of real estate and other vital matters under the following heads:

1. "The repeal of the Law of Entails, which, though separately enacted at the first republican session, he incorporated into the Revised Code.

2. "The abrogation of the right of Primogeni-

ture, and the equal division of inheritances among all children, or other representatives in equal degree.

3. "The assertion of the right of Expatriation, or a republican definition of the rules whereby aliens may become citizens, and citizens make themselves aliens.

4. "The establishment of Religious Freedom upon the broadest foundation.

5. "The emancipation of all Slaves born after the passage of the act, and deportation at a proper age (not carried into effect).

6. "The abolition of Capital Punishment in all cases, except those of treason and murder; and the graduation of punishments to crimes throughout, upon the principles of reason and humanity (enacted with amendments).

7. "The establishment of a systematical plan of general Education, reaching all classes of citizens and adapted to every grade of capacity (not carried into effect)."

The revised code was not enacted as a whole, as was contemplated, but parts of it were passed from time to time as public sentiment developed. Mr. Jefferson justly ascribed to Mr. Madison's unwearied exertions the final enactment of the great bulk of these reforms.

Mr. Madison's comment on these bills prepared by Mr. Jefferson was that they were "A mine of legislative wealth and a model of statutory composition, containing not a single superfluous word and preferring always words and phrases of a meaning

fixed as much as possible by oracular treatises or solemn adjudications ”.

Mr. Jefferson has left a brief description of the vast labor bestowed upon this most important work by him and the result thereof in his Autobiography, part of which is as follows :

“ Early, therefore, in the session of ’76, to which I returned, I moved and presented a bill for the revision of the laws, which was passed on the 24th of October; and on the 5th of November, Mr. Pendleton, Mr. Wythe, George Mason, Thomas L. Lee and myself, were appointed a committee to execute the work. We agreed to meet at Fredericksburg, to settle the plan of operation, and to distribute the work. We met there accordingly, on the 13th of January, 1777. The first question was, whether we should propose to abolish the whole existing system of laws, and prepare a new and complete institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in favor of ancient things, was for the former proposition, in which he was joined by Mr. Lee. To this it was objected, that to abrogate our whole system would be a bold measure, and probably far beyond the views of the legislature; that they had been in the practice of revising, from time to time, the laws of the Colony, omitting the expired, the repealed, and the obsolete, amending only those retained, and probably meant we should now do the same, only including the British statutes as well as our own; that to compose a new institute, like those of Justinian and Bracton, or that of Blackstone, which was the model proposed by Mr. Pendleton, would be an

arduous undertaking, of vast research, of great consideration and judgement; and when reduced to a text, every word of that text, from the imperfection of human language, and its incompetence to express distinctly every shade of idea, would become a subject of question and chicanery, until settled by repeated adjudications; and this would involve us for ages in litigation, and render property uncertain, until, like the statutes of old, every word had been tried and settled by numerous decisions, and by new volumes of reports and commentaries; and that no one of us, probably, would undertake such a work, which, to be systematical, must be the work of one hand. This last was the opinion of Mr. Wythe, Mr. Mason and myself. When we proceeded to the distribution of the work, Mr. Mason excused himself, as, being no lawyer, he felt himself unqualified for the work, and he resigned soon after. Mr. Lee excused himself on the same ground, and died, indeed, in a short time. The other two gentlemen, therefore, and myself divided the work among us. The common law, and the statutes to the 4th James I, were assigned to me; the British statutes, from that period to the present day, to Mr. Wythe; and the Virginia laws to Mr. Pendleton. As the law of Descents, and the criminal law fell of course within my portion, I wished the committee to settle the leading principles of these, as a guide for me in framing them; and, with respect to the first, I proposed to abolish the law of primogeniture, and to make real estate descendible in parcenary to the next of kin, as personal property is, by the statute of distribution. Mr. Pendleton wished to preserve the right of primogeniture, but seeing at once that that could not prevail, he proposed we should adopt the Hebrew principle, and give a double portion to the



elder son. I observed, that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers and wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony; and such was the decision of the other members.

“On the subject of the criminal law, all were agreed, that the punishment of death should be abolished, except for treason and murder; and that, for other felonies, should be substituted hard labor in the public works, and in some cases, the *lex talionis*. How this last revolting principle came to obtain our approbation, I do not remember. There remained, indeed, in our laws, a vestige of it in a single case of a slave; it was the English law, in the time of the Anglo-Saxons, copied probably from the Hebrew law of ‘an eye for an eye, a tooth for a tooth’, and it was the law of several ancient peoples; but the modern mind had left it far in the rear of its advances. These points, however, being settled, we repaired to our respective homes for the preparation of the work.

“In the execution of my part, I thought it material not to vary the diction of the ancient statutes by modernizing it, nor to give rise to new questions by new expressions. The text of these statutes had been so fully explained and defined, by numerous adjudications, as scarcely ever now to produce a question in our courts. I thought it would be useful, also, in all new draughts, to reform the style of the later British statutes, and of our own acts of Assembly; which from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty, by *said*s and *aforesaid*s,



by ors and by ands, to make them more plain, are really rendered more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves. We were employed in this work from that time to February, 1779, when we met at Williamsburg, that is to say, Mr. Pendleton, Mr. Wythe and myself; and meeting day by day, we examined critically our several points, sentence by sentence, scrutinizing and amending, until we had agreed on the whole. We then returned home, had fair copies made of our several parts, which were reported to the General Assembly, June 18th, 1779, by Mr. Wythe and myself, Mr. Pendleton's residence being distant, and he having authorized us by letter to declare his approbation. We had, in this work, brought so much of the common law as it was thought necessary to alter, all the British statutes from Magna Charta to the present day, and all the laws of Virginia, from the establishment of our legislature, in the 4th Jac. I. to the present time, which we thought should be retained, within the compass of one hundred and twenty-six bills, making a printed folio of ninety pages only. Some bills were taken out, occasionally, from time to time, and passed; but the main body of the work was not entered on by the legislature until after the general peace, in 1785, when, by the unwearied exertions of Mr. Madison, in opposition to the endless quibbles, chicaneries, perversions and delays of lawyers and demi-lawyers, most of the bills were passed by the legislature, with little alteration.

“The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but with some mutilations in the preamble, it was finally

passed; and a singular proposition proved that its protection of opinion was meant to be universal. Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word 'Jesus Christ', so that it should read 'a departure from the plan of Jesus Christ, the holy author of our religion'; the insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohometan, the Hindoo, and Infidel of every denomination."

The question of education came under that part of the work assigned to Mr. Pendleton, but Mr. Jefferson having urged the Committee to propose a "systematized plan of general education", he was requested by the Committee to prepare some bills on that subject, which he did. He prepared three bills covering this subject providing for three distinct grades of education, reaching all classes; viz.:

1. "Elementary schools for all children generally, rich and poor alike.
2. "Colleges for a middle degree of instruction, calculated for the common purposes of life and such as would be desirable for all who were in easy circumstances.
3. "An ultimate grade for teaching the sciences generally, and in their highest degree."

These bills were not acted on until much later, and, unfortunately, did not accomplish the ends desired because of amendments, and it was not until

after Mr. Jefferson had retired from public life that he was able to again take up the third and last of the great undertakings of his long and useful life, when he succeeded in having Virginia establish the University of Virginia along educational lines of his own choosing.

From this brief review of the constructive work of Mr. Jefferson it will be seen that he was a most practical man; and only departed from the past history of English laws and institutions when he deemed it absolutely necessary to do so in order to lay the foundation for republican government and destroy what he believed to be great evils.

In commenting on this work as a whole, Mr. Jefferson, in his Autobiography, says:

“I considered four of these bills, passed or reported, as forming a system by which every fiber would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican. The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, and preserve the soil of the country from being daily more and more absorbed in mortmain. The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws. The restoration of the rights of conscience relieved the people from taxation for the support of a religion not theirs; for the establishment was truly of the religion of the rich, the dis-

senting sects being entirely composed of the less wealthy people; and these, by the bill for a general education, would be qualified to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government; and all this would be effected, without the violation of a single natural right of any one individual citizen”.

In order to appreciate the full significance of Mr. Jefferson's constructive ability as a statesman, and its influence upon this country, and the world at large, it is only necessary to let Mr. Jefferson's handiwork speak for itself.

Next to the Declaration of Independence stands his statute for religious liberty in Virginia, which finally resulted in separating the church and state in this country. This will be found as Appendix B.

Mabel Hill, in “Liberty Documents”, fails to include this statute for religious liberty or to give credit to Mr. Jefferson for the part he took in achieving religious liberty in Virginia. She quotes with approval Channing's comments in which he says that the earliest enunciation during the Revolutionary war on that subject was contained in the Bill of Rights, which was probably the work of Madison and Patrick Henry, as he infers. There is no dispute that George Mason drafted the Bill of Rights, including Article XVI. It is equally true that Mr. Jefferson drafted this act and that it was finally enacted as drawn in 1785, under the leadership of Mr. Madison. It will thus be seen that



there is glory enough for all. The concrete result, however, necessarily belongs to Mr. Jefferson and Mr. Madison, but they were recording the deliberate judgment of the people of Virginia on this subject.

This same doctrine was in part set forth in the two great documents of the Puritans prepared by Ireton and Lambert, respectively, known as the Agreement of the People and the Instrument of Government in 1649, and 1653, but the war between the churches in Virginia did not begin until about 1760 when the Baptists established their first church organization in the Valley of Virginia.

All of the dissenting churches joined in the attack against the Established Church. The civil authorities began their persecutions against the Baptists. John Esten Cooke, in his "History of Virginia," relates the incidents connected with this persecution as follows:

"In June, 1768, three preachers of the new church, John Waller, Lewis Craig, and James Childs, were arrested by the sheriff of Spotsylvania. They were offered their liberty if they would promise to discontinue preaching; but that had no more effect in their case than in the case of John Bunyan. They gloried in their martyrdom. As they went to prison through the streets of Fredericksburg, they raised the resounding hymn, 'Broad is the road that leads to death'. Through the windows of the jail they preached to great throngs of people. When this had gone on for more than a month they were



released; they had resolutely resisted in making no promises to discontinue their efforts. Their persecutors were even ashamed. When they were arraigned for 'preaching the Gospel contrary to law', Patrick Henry, who had ridden fifty miles to witness the trial, suddenly rose and exclaimed: 'May it please you worships, what did I hear read? Did I hear an expression that these men whom your worships are about to try for misdemeanor are charged with preaching the Gospel of the Son of God?'

The solemn voice is said to have deeply moved all who heard it. The State prosecutor "turned pale with agitation", and the court were near dismissing the accused. Elsewhere the persecution went on; in Chesterfield, Middlesex, Caroline, and other counties. Men were imprisoned for their faith; it was a reproduction of the monstrous proceedings in the mother country. But the result was what might have been foreseen by any but the judicially blind. The Baptists only grew stronger. In 1774 the Separates had fifty-four Churches, and the Regulars were steadily increasing also. One and all of these and other Dissenters were actuated, says one of their advocates, by two strong principles—love of freedom and "hatred of the Church Establishment". They were "resolved never to relax their efforts until it was utterly destroyed", and they lived to see the wish fulfilled.

In this bitter antagonism to the Establishment the Methodists had no part; they were "a society within the Church", and advocated only a more evangeli-

cal spirit in worship. But the Quakers and Presbyterians co-operated with the Baptist Dissenters and were unresting in their hostility to the union of church and state. The noble memorial from the Presbytery of Hanover, which may yet be seen on the yellow old sheet in the Virginia Archives, sums up the whole case with admirable eloquence and force. It is trenchant and severe, but that was natural. It is the great protest of Dissent in all the years.

It may as well be added here that the long wrestle went on into the Revolution and after its close, and nonconformity grew lusty with the rich food fed to it. The Act of Religious Freedom did not satisfy the nonconformists. They took fire at the very terms "Dissenter" and "Toleration". Why were they dissenters from the Episcopal Church any more than the Episcopalians were dissenters from them? Why were they to be "tolerated"? The truth is, a great legacy of hatred had been bequeathed to the new generation who remembered the persecutions to which their fathers had been subjected. They were relentless in their hostility. An earnest advocate of their views in our own day writes:

"The patriots of Virginia were not content with victory half won. They knew that their principles were sound and they followed them out to their extreme results. While life lingered in any severed limb of the Establishment they did not feel safe. They renewed their attacks until they had not merely hewn down the tree, but had torn it up by

the roots, and had destroyed the last germ from which it might be reproduced."

This act for religious freedom was passed in 1785 while Mr. Jefferson was in France, and a copy of it was sent to him. It was the most progressive piece of legislation ever enacted by an American State and expressed in concrete form the result of the most advanced thought on the subject, and it provoked the admiration of the most distinguished men in Europe. As usual it brought down on the head of its author the unremitting hatred and bitter opposition of the hierarchy which had for generations been the beneficiaries of this abuse of government. As long as this most salutary principle was allowed to remain in declarations of rights, and not embodied in legislation, no objection was registered against it; but the moment it was attempted to make it operative the vials of wrath were let loose upon the author, and he was denounced as an enemy to religion and to established laws and order.

Of this statute, Willian Wirt in his "Eulogy on Jefferson and Adams" says:

"The preamble to the bill establishing religious freedom in Virginia, is one of the most morally sublime of human productions. By its great author it was always esteemed as one of his happiest efforts and the measure itself one of his best services, as the short and modest epitaph left by him attests. Higher praise cannot and need not be given to it,

than to say, it is in all respects worthy of the pen which wrote the Declaration of Independence; that it breathes the same lofty and noble spirit, and it is a fit companion for that immortal instrument."

Ex-Governor Montague of Virginia, speaking of the bill on the subject of descents and distributions, says:

"He wrote the statute of descents and distributions within one page, and hardly eighteen sections, thus exhibiting the most luminous condensation found in the statutes of the world. Over one hundred years have passed and only one case of litigation has arisen for the purpose of construing this statute. The statute of frauds and perjuries drawn by a great English lawyer, is said to have cost one tithe of the entire income of Great Britain for a long period of years, yet Jefferson was so clear in thought and perspicuous in style that no room for litigation followed his labors. Well might the makers of statutes for the American Commonwealths adopt him as a model."

In a letter dated, Paris, August 13, 1786, written by Mr. Jefferson to Mr. Wythe about the educational bill, he said:

"I think by far the most important bill in our whole code, is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness. If anybody thinks, that kings, nobles, or priests are good conservators of the public happiness, send him here. It is the best school in the universe



to cure him of that folly. He will see here, with his own eyes, that these descriptions of men are an abandoned confederacy against the happiness of the mass of the people. The omnipotence of their effect cannot be better proved, than in this country particularly, where, notwithstanding the finest soil upon earth, the finest climate under heaven, and a people of the most benevolent; the most gay and amiable character of which the human form is susceptible; where such a people, I say, surrounded by so many blessings from nature, are loaded with misery by kings, nobles, and priests, and by them alone. *Preach, my dear Sir, a crusade against ignorance: establish and improve the law for educating the common people. Let our countrymen know, that the people alone can protect us against these evils, and that the tax which will be paid for this purpose, is not more than the thousandth part of what will be paid to kings, priests and nobles, who will rise up among us, if we leave the people in ignorance."*

The crowning work of Mr. Jefferson's whole career, the founding of the University of Virginia, was the direct result of the plan he had devised in the bill for education, and its full development shows the highest order of constructive genius. Any one of these achievements would be sufficient to demonstrate his practical ability, but what shall be said of all these and others that might be cited, as a whole?

The one sovereign remedy used by Mr. Jefferson consistently as a great practical reformer was freedom of thought, as is set forth in the preamble to the statute for religious liberty.



The keynote to his public life was faith in the people to govern themselves, but this did not imply that all possible safeguards should not be thrown around them, and that government should not have an orderly and natural growth. Indeed, in some respects Mr. Jefferson was, as stated by John Fiske, a most conservative reformer.

The fundamental difference between our institutions and those of England is that the people here are made the source of all power in the State and national constitutions, and that magistrates are their trustees and servants, and in England it is theoretically in the king. Mr. Jefferson and his co-laborers were fortunate in the fact that the colonists had real and not imaginary grievances against the king and his ministers, and that they could retain the best parts of the English system of jurisprudence as the foundation of our system of laws. The bills of rights of our States are predicated upon the charters and laws of England, and the most advanced ideas of justice, sound morality and virtue, and this is especially true of the Bill of Rights of Virginia.

It required centuries to demonstrate the truth that the state is the creature of the people and belongs to them, and that the people do not exist for the purpose of being governed. This difference in the conception of a state is fundamental and was never fully appreciated until modern times. Louis XIV threw off all disguise and said, "I am the State." There is a wide gulf between kings and

their subjects and a representative republic based on the consent of the governed, with citizens having equal rights, and who create their own instrument of government and elect their own servants to control their affairs. In the one all power comes from the king, who is above the people; in the other all power comes from the people, and the magistrate is a servant.

The colonists had exercised these fundamental rights for generations and were not mere theorists; and their attachment to the English Government was therefore deep-rooted. They reluctantly withdrew from the mother country, and held with the utmost tenacity to the best parts of the English laws and institutions.

The importance of our State governments, for these and other reasons, cannot be overestimated. The theory of our State governments is based upon the original Anglo-Saxon idea that the people are the source of all power, and that magistrates are their servants and not their masters, which is the antithesis of autocracy, the divine rights of kings, and all forms of government based on force. Mr. Jefferson and his associates did not, therefore, run after wild theories and visionary philosophers in framing our States; but clung to the old landmarks, and only made changes where it was necessary to do so to rid themselves of abuses. However, they were progressive to a degree far beyond any law-makers of their times and adopted ideas of justice,

moderation, tolerance, and virtue in consonance with the teachings of the New Testament, which has placed our government upon the highest plane possible, and thereby entitled us to the admiration of all right-thinking men in all nations. Mr. Freeman has called attention to the fact that English law-makers, in attempting reforms of their laws, have often found it advisable to search for precedents in the early history of the nation instead of trying experiments along wholly novel theories.

The Virginia Bill of Rights declares that no free government can be preserved but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles.

It is doubtful whether a better statement has ever been made of the fundamental principles of our government than is found in this bill of rights drawn by George Mason, who was not a lawyer, but had a broad and liberal education and was a man of extraordinary ability. The reader is requested to read over and study carefully this great document of liberty, which is made Appendix C.

It is an orderly and logical statement of the great truths which had become maxims of government, as the result of experience in Great Britain, and the American colonies to a limited extent, from centuries of self-government, and embodies the opinions of the best writers and statesmen at that time. 'An epitome, with a brief discussion of these funda-

mental principles, will be helpful, at least to laymen.

It will be observed that there are sixteen articles and that they are set forth as rights belonging to the good people of Virginia and their posterity, as the basis and foundation of government, as follows:

1. This is practically the same as the Declaration of Independence and asserts that all men are by nature equally free and independent, and are before entering into a state of society entitled to the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety, and that they cannot by any compact deprive or divest their posterity of said rights.

The two fundamental principles here stated pertain to persons and property, and, as Mr. Jefferson has tersely said, "Persons and property make the sum of the objects of government."

It should also be observed here that all of these safeguards of liberty concern the person in his various relations, and property in its acquisition, ownership, and disposition.

2. This enunciates also the same great truths set out in the Declaration and in the "Summary View", and is so admirably stated that it would be almost criminal to change it; viz., "That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them."

3. This is also the same as appears in the Declara-



tion and also in the English Bill of Rights and Act of Settlement, viz., "That government exists for the common benefit and protection and security of the people; that that form of government is best, which is capable of producing the greatest degree of happiness and safety, and that when a government shall be found inadequate a majority has the right to reform, alter or abolish it in such manner as shall be judged most conducive to the public weal."

4. This provides that no one is entitled to exclusive emoluments or privileges from the community but in consideration of public service, and that the offices of magistrates, legislators, and judges should not be hereditary.

5. This is the first written recognition of the separation of legislative, executive, and judicial powers practiced in part in England for centuries, and first fully enlarged upon by Baron Montesquieu in "The Spirit of Laws". It also demands rotation in public offices, regardless of the department, by frequent, certain, and regular elections.

6. This declares that all elections ought to be free and that suffrage should be granted to all men having sufficient evidence of permanent interest with and attachment to the community; that no person should be taxed or deprived of his property for public uses without his consent or that of his representative so elected, and should not be bound by any law to which he has not in like manner assented.

This is an elaboration of Article 6 of Confirmatio



Chartarum of Edward I (1297) and contains the essence of "no taxation without representation".

7. This prohibits the suspension of laws or the execution thereof by any authority, without the consent of the representatives of the people, as provided in Article 1, Bill of Rights (1689).

8. This contains guarantees of personal liberty as set forth in Articles 39 and 40 of Magna Charta (1215), Habeas Corpus Act (1679), and Trial by Jury, an established institution of England, in substance as follows: The right in all criminal prosecutions to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can be compelled to give evidence against himself, and that no man shall be deprived of his liberty except by the law of the land or the judgment of his peers.

9. This also touches the liberty of the person, and is covered in part by Article 10 of the Bill of Rights (1689), as follows: "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

10. This is a prohibition against general warrants, as held by Lord Camden in 1763 (19 State Trials, 1067) and Lord Mansfield in 1764 (19 State Trials, 1026-1027), whereby an officer or messenger may be commanded to search suspected places without

evidence of an offense committed or to seize a person not named or offense described and supported by evidence.

11. This provides for jury trials in civil suits respecting property, in accordance with the laws of England and the Colonies at that time in these words: "That in controversies respecting property and in suits between man and man, the ancient trial by Jury of twelve men is preferable to any other and ought to be held sacred."

12. This provides for the freedom of the press in general terms, as follows: "That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."

This antedates the celebrated Fox libel Act (1792). John Milton's "Areopagitica; or, A speech for the liberty of unlicensed printing," is the greatest document ever penned on this subject; and, as has been aptly said, "It is one of the immortal glories of English literature." A few only of the most striking sentences are here quoted, to-wit:

"Who kills a man kills a reasonable creature, God's image; but he who destroys a good book, kills reason itself, kills the image of God, as it were, in the eye. Many a man lives a burden to the earth; but a good book is the precious life-blood of a master-spirit, embalmed and treasured up on purpose to a life beyond life." "We should be wary, therefore, what persecution we raise against the living labors of public men, how we spill that sea-



JOHN MILTON



soned life of man, preserved and stored up in books." "Truth and understanding are not such wares as to be monopolized and traded in by tickets and statutes and standards." "Well knows he who uses to consider, that our faith and knowledge thrives by exercise as well as our limbs and complexion." "Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making." "If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild and free and humane government; it is the liberty, lords and commons, which your own valours and happy counsels have purchased us; liberty which is the nurse of all great wits; this is that which hath rarefied and enlightened our spirits like the influence of heaven; this is that which hath enfranchised, enlarged and lifted up our apprehensions degrees above themselves. You cannot make us now less capable, less knowing, less eagerly pursuing of truth, unless ye first make yourselves that made us so, less the lovers, less the founders of our true liberty." "Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties." "For who knows not that truth is strong, next to the Almighty; she needs no policies, nor stratagems, nor licensing to make her victorious; those are the shifts and the defences that error uses against her power; give her but room and do not bind her when she sleeps, for then she speaks not true as the old Proteus did who spoke oracles only when he was caught and bound."

"For when God shakes a kingdom with strong and healthful commotions to a general reforming it



is not untrue that many sectaries and false teachers are then busiest in seducing. But yet more true it is that God then raises to his own work men of rare abilities and more than common industry not only to look back and revive what hath been taught heretofore, but to gain further and to go on some new enlightened steps in the discovery of truth."

"Methinks I see in my mind a noble and puissant nation raising herself like a strong man after sleep and shaking her invincible locks; methinks I see her as an eagle mewing her mighty youth, and kindling her undazzled eyes at the full midday beam; purging and unscaling her long abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms."

Macaulay in his magnificent essay on Milton calls the *Areopagitica* "that sublime treatise which every statesman should wear as a sign upon his hands, and as frontlets between his eyes." Macaulay further says: "It is to be regretted that the prose writings of Milton should in our time be so little read. As compositions, they deserve the attention of every man who wishes to become acquainted with the full power of the English language. They abound with passages compared with which the finest declamations of Burke sink into insignificance. They are a perfect field of cloth of gold."

13. This approves a well-regulated militia of the

body of the people, trained to arms, disapproves of a standing army in times of peace as dangerous to liberty, and makes the military in all cases subordinate to the civil power.

14. This shows a strong leaning to local self-government and opposition to foreign control in these words: "That the people have a right to uniform government; and therefore, that no government separate from or independent of the government of Virginia ought to be erected or established within the limits thereof." The same prejudice against foreign dictation existed to a marked degree in all the Colonies, and led the framers of the Articles of Confederation to designate it "a firm league of *friendship*."

15. This is worthy of being printed in letters of gold and hung on the walls of every legislative hall in the universe, and is in fact the golden text of this great instrument. It is therefore copied in full: "*That no free government or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.*"

It cannot be disputed that the laws of England and America are laid deep in the moral law, and this is especially true in regard to the web and woof of it, which has had a gradual evolution and growth, as is demonstrated by the customs and usages and judge-made law. As has been aptly and truly stated

by Judge Holmes in his great work on "The Common Law":

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become."

Truth, justice, righteousness, as well as convenience, have generally speaking been the controlling factors. This element of moral substratum in the English people, as pointed out by Taine in his "History of English Literature", is one of our most precious inheritances. The attitude of our greatest and best judges in deciding lawsuits is fittingly and briefly stated by Chancellor Kent in a letter written to Thomas Washington, a lawyer of Nashville, Tennessee, in 1828, as follows:

"My practice was first to make myself perfectly and accurately [mathematically accurately] master of the facts. It was done by abridging the bill and then the answers and then the depositions, and by the time I had done this slow, tedious process I

was master of the cause and ready to decide it. *I saw where Justice lay and the moral sense decided the cause half the time*, and I then sat down to search the authorities until I had exhausted my books. I might once in a while be embarrassed by a technical rule, *but I most always found principles suited to my views of the case*; and my object was to discuss a point so as never to be teased with it again, and to anticipate an angry and vexatious appeal to a popular tribune by disappointed counsel."

16. This declares in favor of freedom of religious faith as a governmental proposition, and is in harmony with Mr. Jefferson's famous statute for Religious Liberty, heretofore discussed, and was in fact the initial declaration upon this most vital question, as follows: "That religion, as the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not force or violence; and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience; and that it is the duty of all to practice Christian forbearance, love and charity to each other."

The recognition and enforcement of this provision has done more to emancipate the mind of man and prevent wars than any other of these fundamental principles. This is one of the greatest contributions made by the American people to the happiness of the race.

Viewing this great document as a whole, it evinces



a grasp of the elementary doctrines of government which is truly wonderful, and entitles George Mason to a niche in the Temple of Fame along with Washington, Jefferson, Madison, Adams, Franklin, Hamilton, and others whose names are household words in this country.

The experience of 142 years in the United States has fully vindicated the soundness of every single one of these articles in the Bill of Rights, and hence we are justified in stating that the foundation is sound and good, and the superstructure should be also good provided we make laws worthy to rest upon such a splendid foundation.

No government on earth is perfect. Abuses will naturally and inevitably creep into all forms of government. Our form of government is best adapted to reform these abuses, but all reforms should be largely constructive and not destructive. In other words, when an abuse is discovered is it not the part of wisdom to consider what the abuse is and how far it can be remedied under our present form of government by statute or decision of court, and if neither affords the desired relief then amend the Constitution rather than destroy the entire government and trust to mere theorists to give us a new one at the end of a revolution? There are only two great systems of jurisprudence in the world today—the English and American System and the Roman System. One is based on individualism and the representative idea grounded on public education



and public opinion, and is today the most progressive and is the embodiment of liberty; and the other, while it is most admirable in many respects, and was for generations far in advance of the Common Law, is devoid of the necessary principles to guarantee the freedom of the individual, representative government, and all the blessings connected with and growing out of a government of the people, by the people, and for the people. This policy does not by any means deprive any one or more of the right to advocate changes in the form of our State and national governments, constitutional or statutory, as the Declaration of Independence and the Bill of Rights expressly confer this privilege. But it requires that the established order shall continue until the necessary majority is obtained, in an orderly way, to accomplish the change. Can any plan of government be fairer or more just in its requirements? This is the plan that was adopted by Mr. Jefferson, Mason, and the other framers of our Constitution, bills of rights, and statutes placing our governments, State and national, on republican principles.

Washington's Farewell Address contains the following wholesome advice on this subject :

“This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within

itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter the Constitution of Government. But the Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacred and obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

“All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the nation the will of a party—often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common councils and modified by mutual interests.

“However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to sub-

vert the power of the people and to usurp for themselves the reins of government; destroying afterward the very engines which have lifted them to unjust dominion."

## CHAPTER III

### MR. JEFFERSON'S CONTRIBUTIONS TO THE NATION AND TO THE WORLD

HAVING shown in the preceding chapters Mr. Jefferson's inestimable devotion to the cause of liberty and his great work in constructing a model republican State along the most practical lines, it shall be attempted in this chapter to show his contributions towards erecting and putting into actual operation his principles of government in the National Government and indirectly his vast contributions towards the liberties of mankind.

Probably the most remarkable and unaccountable thing in Mr. Jefferson's entire career is the fact that his intensely active mind did not suggest to him the idea of framing a form of government for the Colonies as a whole. While he was a member of the Continental Congress the debate was going on in regard to adopting the Articles of Confederation and he kept minutes of the arguments made thereon; but he does not appear to have taken an active part in the proceedings. The only proposal made by Mr. Jefferson, apparently, was for the appointment of a Committee to be called the "Committee of the States," to consist of a member from each

State, who should remain in session during the recess of Congress; which was adopted, and proved to be abortive. This can be accounted for probably because of the custom, usually followed by Mr. Jefferson, not to take an active part in debates or measures not championed by him, and rarely ever to engage in what he considered to be useless debate. The fact that Dr. Franklin had this measure in charge also doubtless had great influence with Mr. Jefferson. In his Autobiography he refers to the fact that there was a great deal of contention and idle debate in Congress and his own willingness to listen, and mentions the practices of General Washington, as a legislator in Virginia, and of Dr. Franklin in Congress, never to speak more than ten minutes on any subject, and then only on the main point. The defects of the Articles of Confederation did not, however, become so apparent until after the treaty of peace.

In the meantime Mr. Jefferson had left Congress, and after devoting many years toward helping to build a State, as recited, and served as Governor of Virginia, he was elected a delegate to Congress, where he, as usual, took an active part. This was during the closing scenes of the war, and Mr. Jefferson was present when General Washington resigned his commission. A public audience was voted General Washington by Congress and he delivered a fitting speech on the occasion. The answer of Congress on this memorable occasion was made in



a paper which was prepared by Mr. Jefferson in his most felicitous style, as is shown by the following extracts :

“ Called upon by your country to defend its invaded rights, you accepted the sacred charge before it had formed alliances, and whilst it was without funds, or a government to support you. You have conducted the great military contest with wisdom and fortitude, invariably regarding the rights of the civil power through all disasters and changes. You have, by the love and confidence of your fellow-citizens, enabled them to display their martial genius, and transmit their fame to posterity. You have persevered, till these United States, aided by a magnanimous king and nation, have been enabled, under a just Providence, to close the war in freedom, safety and independence; on which happy event, we sincerely join you in congratulations.

“ Having defended the standard of liberty in this new world; having taught a lesson useful to those who inflict, and to those who feel oppression, you retire from the great theater of action, with the blessings of your fellow citizens—but the glory of your virtues will not terminate with your military command, it will continue to animate remotest ages.”

The most distinguished service rendered by Mr. Jefferson in his second and last congressional course was in the establishment of a money unit and a uniform system of coinage and currency, and various reports made in regard to the public debts, his reports in regard to the Western Terri-

tory, and the laws framed by him in regard to their government.

The fact is not generally known that it was due to his mathematical ingenuity and his original method of simplifying complex problems, that our simple system of money units, based on the decimal system, was adopted.

The report made in regard to the Western Territory has been heretofore referred to in connection with his effort to abolish slavery. It was due to Mr. Jefferson's great ability as a constructive statesman that the fundamental rights of American citizens were therein enunciated, and such a wise and simple method of erecting new States in the Western Territory was established. The Ordinance of 1787 was based on this act, and that part pertaining to slavery, which failed of passage by one vote, was copied and amended so as to provide for the return of fugitive slaves.

The authorship of the Ordinance of 1787, and especially the section in regard to slavery, has been the subject of much controversy, in Congress and elsewhere, and owing to sectional animosity, most of it growing out of slavery, it has been difficult to obtain a correct statement of the exact facts. Now that the subject can be viewed without prejudice or partiality to any one, or any section, the truth of history should be vindicated without regard to any ulterior consideration. Mabel Hill, in "Liberty Documents", which is approved by Dr. Albert Bush-

nell Hart, Professor of Government in Harvard University, claims that:

“The document was the conception of Dr. Manasseh Cutler, of Massachusetts: that it was reported to Congress by Nathan Dane, as Chairman of a Committee, to whom the subject had been referred, and it passed with almost no alteration.”

The only authorities given by Miss Hill for this statement are the letter of Nathan Dane to Rufus King dated New York, July 16, 1787, and a quotation from a speech of Daniel Webster in the U. S. Senate in 1829, while attempting to allay sectional feeling which was aroused over a bill for disposing of lands in the Northwestern Territory.

Mr. Webster claimed in this speech that

“the Ordinance of 1787 was drawn by Nathan Dane, then and now a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men to be the authors of a political measure of more large and enduring consequence. It fixed forever the character of the population in the vast regions, northwest of the Ohio by excluding from them involuntary servitude. It impressed on the soil, itself, while it was yet a wilderness, an incapacity to sustain any other than freemen.”

Nathan Dane in a letter to King says:

“We have been employed about several objects—the principal ones of which have been the Government inclosed, and the Ohio purchase. The former

you will see is completed; and the latter will be probably completed tomorrow— We tried one day to patch up M. S. P. Systems of W. Government—Started new ideas, and committed the whole to Carrington, Dane. R. H. Lee, Smith & Kean—We met several times and at last agreed on some principles, at least, Smith, Lee and myself . . . When I drew the Ordinance, which passed (a few words excepted) as I originally formed it, I had no idea the States would agree to the Sixth art—prohibiting slavery, as only Massa—of the Eastern States was present and therefore, *omitted it in the draft*; but finding the House favorably disposed on this subject, after we had completed the other parts, I moved the art; *which was agreed to without opposition.*

“P.S. States present; Massa, N. Y. N. J. Delaware, Virga, N. Carolina S. Carolina and Georgia.”

As heretofore shown, Mr. Jefferson, as chairman of a committee composed of Chase, Howell, and himself, made a report on the Government of the Western Territory on April 19, 1784, which contained the following: “That, after the year 1800 there shall be neither slavery nor involuntary servitude in any of said States, otherwise than in punishment of crimes, whereof the party shall have been convicted.” This paragraph was struck out upon motion of Mr. Spaight by the narrow margin of one vote—and the bill was passed in that way.

In March, 1785, an effort was made by King of Massachusettes to amend the act by adding to this rejected paragraph the following: “And that this



regulation shall be an article of compact and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the resolve," but without success.

In July, 1787, a committee composed of Edward Carrington, Nathan Dane, Richard Henry Lee, Kean, of South Carolina, and Melancthon Smith, of New York, made a report which did not contain Article 6 prohibiting slavery; on the second reading the sixth article, which was an identical copy of the paragraph stricken from Mr. Jefferson's report of April 19, 1784, with the following addition:

"Provided always, that any person escaping into the same from whom labor or service is lawfully claimed in any of the original States such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service aforesaid," was carried—a concession Mr. Jefferson would not have granted to South Carolina and Georgia.

This act also repealed the resolutions of April 23, 1784, relative to the subject of this Ordinance. In Benton's "Thirty Years' View," Vol. I, pp. 133-136, will be found a full report of the debate between Webster, Benton, and others, in which Benton cited the Journal of Congress to show that Jefferson was the author of the first report and that three out of the five members of the last committee were



from the South and that the Ordinance, as amended, was passed by the unanimous vote of the delegates from Virginia, North Carolina, South Carolina, and Georgia; that Nathan Dane was not the Chairman of the last Committee and that Mr. Webster never attempted to deny the correctness of Mr. Benton's statements from the record. A full and correct statement of the facts in regard to this Ordinance will be found in Taylor's "Origin and Growth of the American Constitution", pp. 255-65—in which the following is quoted with approval from Bancroft, Vol. II, pp. 115-116:

"Obeying an intimation from the South, Nathan Dane copied from Jefferson the prohibition of involuntary servitude in the territory, and quieted alarm by adding from the report of King a clause for the delivering up of the fugitive slave. This at the second reading of the ordinance he moved as a sixth article of compact, and on the thirteenth of July 1787, the great statute forbidding slavery to cross the river Ohio, was passed by the votes of Georgia, South Carolina, Virginia, Delaware, New Jersey, New York, and Massachusetts, all the States that were then present in Congress. . . . Thomas Jefferson first summoned Congress to prohibit slavery in all the territory of the United States; Rufus King lifted up the measure when it lay almost lifeless on the ground, and suggested the immediate instead of the prospective prohibition; a Congress composed of five Southern States to one from New England and two from the Middle States, headed by William Grayson, supported by Richard Henry Lee, and using Nathan Dane as scribe, carried the

measure to the goal in the amended form in which King had caused it to be referred to a committee; and as Jefferson had proposed, placed it under the sanction of an irrevocable compact."

It should not be omitted, however, in this brief epitome to state that thus early Mr. Jefferson set his first example of retrenchment when, as the result of a report made by him, reductions were made in the civil list and in salaries amounting to \$24,000.00 per year.

The celebrated letter written by Mr. Jefferson to General Washington on April 16, 1784, in reply to an inquiry calling for his opinion in regard to the institution of the Order of the Cincinnati, has an important bearing in this connection, and shows his deep solicitude for democratic ideas and practices, as is shown by the following extracts:

"The objections of those who are opposed to the institution shall be briefly sketched. You will readily fill them up. They urge that it is against the confederation—against the letter of some of our constitutions—against the spirit of all of them—that the foundation on which all these are built, is the natural equality of man, the denial of every pre-eminence but that annexed to legal office, and, particularly, the denial of a pre-eminence by birth; that however, in their present dispositions, citizens might decline accepting honorary instalments into the order; but a time may come, when a change of dispositions would render these flattering, when a well directed distribution of them might draw into the order all the

men of talents, of office, and wealth; and in this case, would probably procure an ingraftment into the government; that in this, they will be supported by their foreign members, and the wishes and influence of foreign courts; that experience has shown that the hereditary branches of modern governments are the patrons of privilege and prerogative, and not of the natural rights of the people, whose oppressors they generally are; that besides these evils, which are remote, others may take place more immediately; that a distinction is kept up between the civil and military, which it is for the happiness of both to obliterate; that when the members assemble they will be proposing to do something, and what that something may be, will depend upon actual circumstances; that being an organized body, under habits of subordination, the first obstruction to enterprise will be already surmounted; that the moderation and virtue of a single character have probably prevented this revolution from being closed as most others have been, by a subversion of that liberty it was intended to establish; that he is not immortal, and his successor, or some of his successors, may be led by false calculations into a less certain road to glory."

On the 7th of May, 1784, Mr. Jefferson was unanimously elected a Minister Plenipotentiary to assist Dr. Franklin and Mr. Adams, then in Europe, in negotiating treaties of commerce with foreign nations. After considerable delay, which enabled him to pay his first and only visit to New England, where he gained much valuable information at first hand in regard to the commerce of that section, he arrived at Paris on the 6th of August. The draft

of instructions given these Commissioners by Congress was prepared by Mr. Jefferson, and it covered many important matters, and especially some rather original suggestions concerning privateering, blockades, contraband, and freedom of fisheries; but Mr. Jefferson admitted thereafter that Dr. Franklin was entitled to the credit due on account of these. It is safe to say that no country in the world at that time had abler or more broad-minded representatives. France had already made a satisfactory treaty with the United States. The Commissioners negotiated with Prussia, Denmark, Tuscany, and other powers and concluded a treaty with Prussia; but were not willing to press their claims with other nations under such disadvantageous circumstances. About this time Mr. Jefferson and John Adams visited England on a like errand and were granted an audience by George III, but their reception was so cool and embarrassing that they did not attempt to negotiate a treaty.

On March 10, 1785, Mr. Jefferson was elected Minister Plenipotentiary to France to succeed Dr. Franklin, and filled that important post until October, 1789. Dr. Franklin was exceedingly popular with the French, and it was no easy task to fill his place. Mr. Jefferson paid a distinguished compliment to his old friend and fellow-countryman when, asked if he was going to fill Dr. Franklin's place, he said: "No one can fill Dr. Franklin's place. I merely succeed him."



Mr. Jefferson and Mr. Adams continued as joint representatives of the United States in endeavoring to make commercial treaties and looking after the finances of the United States in Europe, and distinguished themselves by introducing plain dress and speech as our representatives. They were especially opposed to paying tribute to the Barbary pirates, so common then in Europe among all nations. It was on this occasion that Mr. Jefferson went so far as to recommend that the United States join with the European nations in a war for the subjugation of this piratical power.

Mr. Jefferson proved himself to be a most practical, powerful, and popular minister. He was a close student of European politics and especially of the French nation, which he admired very much. He won the confidence of all classes and never failed, on all proper occasions, to advocate his ideas of government and show his devotion to the cause of freedom for mankind.

While in France he had his "Notes on Virginia" published for distribution among his friends, and in that way gave a clear and candid expression of his views on all of the most important questions pertaining to our republican institutions, and a brief description of the resources of his native State and its government and certain improvements suggested by him. This is a masterpiece, and deserves careful study.

Mr. Jefferson's correspondence with friends in



this country while in France shows his impressions and opinions of persons, society, politics, literature, science, the resources of the country, royalty, and, in fact, everything coming under his observation.

There is found running through all of his voluminous correspondence his abhorrence of the abuses of the rights of the people, and a warning to his countrymen to cherish and preserve our free institutions.

He kept himself fully advised about everything in a political way that was transpiring at home, and was especially solicitous about the inefficiency of the general government under the Articles of Confederation. He was in thorough accord with General Washington, Mr. Madison, and others, who favored a Constitutional Convention as to the necessity for one, as is fully shown by his letters to them. He had the highest esteem for the ability and character of the men who attended the Convention and framed the Constitution, and expressed great admiration for the Constitution; but he did not agree in principle with some of its provisions, and always lamented the fact that the Convention was held behind closed doors. He deeply regretted that there was no bill of rights ensuring freedom of religion, freedom of press, freedom of the person under the writ of habeas corpus, and trial by jury in civil as well as in criminal cases, and provisions against monopolies and standing armies. He advised his friends to vote for the ratification of the Constitution and

trust to the good sense of the citizens to see that it was amended in the respects named; which was later done by the adoption of the first ten amendments, which he aided in having accomplished.

A slight disturbance in Massachusetts resulting from having commercial connections cut off with England, which was greatly exaggerated, afforded Mr. Jefferson an opportunity to draw a comparison between our government and those in Europe in letters to Colonel Carrington, Mr. Madison, and other friends.

The letter to Colonel Carrington is as follows:

“I am persuaded myself, that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves; the people are the only censors of their governors; and even their errors will tend to keep these to the true principles of their institutions. To punish such errors too severely, would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people, is to give them full information of their affairs, through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should *have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.* But I would insist, that every man should receive those papers, and be capable of read-

ing them. I am convinced that those societies, (as the Indians) which live without government, enjoy in their general mass an infinitely greater degree of happiness, than those who live under the European governments. Among the former, public opinion is in the place of law, and restrains morals as powerfully as laws ever did anywhere. Among the latter, under pretence of governing, they have divided their nation into two classes, *wolves* and *sheep*. I do not exaggerate. This is the true picture of Europe. Cherish, therefore, the spirit of our people, and keep alive their attention. Do not be too severe upon their errors, but *reclaim them by enlightening them*. If once they become inattentive to the public affairs, you, and I, and Congress, and assemblies, judges and governors, shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions; and experience declares, that man is the only animal which devours his own kind; for I can apply no milder term to the governments of Europe, and to the general prey of the rich on the poor."

The fullest expression of Mr. Jefferson's views on the Constitution, showing his likes and dislikes, is contained in a letter of December 20, 1787, to Mr. Madison as follows:

"I like much the general idea of framing a government, which should go on of itself peaceably, without needing continual recurrence to the State legislatures. I like the organization of the government into legislative, judiciary, and executive. I like the power given the legislature to levy taxes, and for the reason solely, I approve of the greater house being chosen by the people directly. For

though I think a house, so chosen, will be far inferior to the present Congress, will be very illy qualified to legislate for the union, for foreign nations, &c; yet this evil does not weigh against the good of preserving inviolate the fundamental principle, that the people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great and little States, of the latter to equal, and the former to proportional influence. I am much pleased, too, with the substitution of the method of voting by persons, instead of that of voting by States; and I like the negative given to the executive, conjointly with a third of either house; though I should have liked it better, had the judiciary been associated for that purpose, or invested separately with a similar power. There are other good things of less moment.

“I will now tell you what I do not like. First, *the omission of a bill of rights, providing clearly*, and without the aid of sophism, for freedom of religion, freedom of the press, protecting against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by a jury in all matters of fact triable by the laws of the land, and not by the laws of nations. To say, as Mr. Wilson does, that a bill of rights was not necessary, because all is reserved in the case of the general government, which is not given, while in the particular ones, all is given which is not reserved, might do for the audience to which it was addressed; but it is surely a gratis dictum, the reverse of which might just as well be said; and it is opposed by strong inferences from the body of the instrument, as well as from



the omission of the clause of our present confederation, which had made the reservation in express terms. It was hard to conclude, because there had been a want of uniformity among the States as to the cases triable by jury, because some have been so incautious as to dispense with this mode of trial in certain cases, therefore the more prudent States shall be reduced to the same level of calamity. It would have been much more just and wise to have concluded the other way, that as most of the States had preserved, with jealousy, this sacred palladium of liberty, those who had wandered, should be brought back to it; and to have established general right, rather than general wrong. For I consider all the ill as established, which may be established. I have a right to nothing, which another has a right to take away; and Congress will have a right to take away trials by jury in all civil cases. Let me add, that a bill of rights is what *the people are entitled to against every government on earth, general or particular*; and what no just government should refuse, or rest on inference.

“The second feature I dislike, and strongly dislike, is the abandonment, in every instance, of the principle of rotation in office, and most particularly in the case of the president. Reason and experience tell us, that the first magistrate *will always be re-elected* if he may be re-elected. He is then an officer for life. This once observed, it becomes of so much consequence to certain nations, to have a friend or a foe at the head of our affairs, that they will interfere with money and with arms.”

Mr. Jefferson was on terms of the closest intimacy and friendship with Lafayette and witnessed



the opening scenes of the French Revolution with the deepest interest and solicitude, attributing it directly to the doctrines of liberty and free government taught by himself and other American patriots and the impressions brought from our country by Lafayette and his French comrades who had aided so nobly in winning our liberties. He was the trusted friend and adviser of the French patriots as far as he could consistently advise them while a minister at that Court. Unfortunately Mr. Jefferson's advice was not accepted when the king and his ministers agreed to a compromise yielding every safeguard provided by the British Constitution and the fundamental doctrines of our system except a king and nobility.

Mr. Jefferson in his Autobiography records his recollection of these scenes, in part, as follows:

"I considered a successful reformation of Government in France, as insuring a general reformation through Europe, and the resurrection to a new life, of their people, now ground to dust by the abuses of the governing powers. I was much acquainted with the leading patriots of the Assembly. Being from a country which had successfully passed through a similar reformation, they were disposed to my acquaintance, and had some confidence in me. I urged, most strenuously, an immediate compromise; to secure what the government was now ready to yield, and trust to future occasions for what might still be wanting. It was well understood that the King would grant, at this time, 1. Freedom of the person by habeas corpus:

2. Freedom of conscience: 3. Freedom of the press: 4. Trial by jury: 5. A representative legislature: 6. Annual meetings: 7. The origination of laws: 8. The exclusive right of taxation and appropriation: and 9. The responsibility of ministers; and with the exercise of these powers they could obtain, in future, whatever might be further necessary to improve and preserve their constitution. They thought otherwise, however, and events have proved their lamentable error. For, after thirty years of war, foreign and domestic, the loss of millions of lives, the prostration of private happiness, and the foreign subjugation of their own country for a time, they have obtained no more, nor even that securely. They were unconscious of (for who could foresee?) the melancholy sequel of their well meant perseverance; that their physical force would be usurped by a first tyrant to trample on the independence, and even the existence, of other nations: that this would afford a fatal example for the atrocious conspiracy of Kings against their people; would generate their unholy and homicide alliance to make common cause among themselves, and to crush, by the power of the whole, the efforts of any part to moderate their abuses and oppressions.

. . . . .

“The King was now become a passive machine in the hands of the National Assembly, and had he been left to himself, he would have willingly acquiesced in whatever they should devise as best for the nation. A wise constitution would have been formed, hereditary in his line, himself placed at its head, with powers so large as to enable him to do all the good of his station, and so limited, as to restrain him from its abuse. This he would

have faithfully administered, and more than this, I do not believe, he ever wished. But he had a Queen of absolute sway over his weak mind and timid virtue, and of a character the reverse of his in all points. This angel, as gaudily painted in the rhapsodies of Burke, with some smartness of fancy, but no sound sense, was proud, disdainful of restraint, indignant of all obstacles to her will, eager in the pursuit of pleasure, and firm enough to hold to her desires, or perish in their wreck. Her inordinate gambling and dissipations, with those of the Count d'Artois, and others of her clique, had been a sensible item in the exhaustion of the treasury, which called into action the reforming hand of the nation; and her opposition to it, her inflexible perverseness, and dauntless spirit, led herself to the Guillotine, drew the King on with her, and plunged the world into crimes and calamities, which will forever stain the pages of modern history. I have ever believed, that had there been no Queen, there would have been no revolution. No force would have been provoked, nor exercised."

Mr. Jefferson paints a vivid picture of the opening scenes of the French Revolution and relates with perfect candor the advice given by him to Lafayette and his friends, and closes his account as follows:

"The appeal to the rights of man, which had been made in the United States, was taken up by France, first of the European nations. From her, the spirit has spread over those of the South. The tyrants of the North have allied indeed against it;

but it is irresistible. Their opposition will only multiply its millions of human victims; their own satellites will catch it and the condition of man through the civilized world, will be finally and greatly ameliorated. This is a wonderful instance of great events from small causes. So inscrutable is the arrangement of causes and consequences in this world, that a two penny duty on tea, unjustly imposed in a sequestered part of it, changes the condition of all its inhabitants."

Mr. Jefferson pays the following beautiful tribute to the French people in his Autobiography:

"And here, I cannot leave this great and good country, without expressing my sense of its pre-eminence of character among the nations of the earth. A more benevolent people I have never known, nor greater warmth and devotedness in their select friendships. Their kindness and accommodations to strangers is unparalleled, and the hospitality of Paris is beyond anything I had conceived to be practicable in a large city. Their eminence, too, in science, the communicative dispositions of their scientific men, the politeness of the general manners, the ease and vivacity of their conversation, give a charm to their society, to be found nowhere else. In a comparison of this, with other countries, we have the proof of primacy, which was given to Themistocles, after the battle of Salamis. Every general voted to himself the first reward of valor, and the second to Themistocles. So, ask the travelled inhabitant of any nation, in what country on earth would you rather live?—Certainly, in my own, where are all my



friends, my relations, and the earliest and sweetest affections and recollections of my life. Which would be your second choice? France."

From a close scrutiny of Mr. Jefferson's life up to this period, and a thorough examination of all his public acts and writings, it will be discovered that instead of having borrowed his ideas of government from the French and become contaminated by his residence in France. as his enemies claimed, he had performed his most important work at home, as heretofore shown, and was in reality an adviser of the French patriots along the most conservative and practical lines.

In "Notes on Virginia" Mr. Jefferson gives a brief sketch of the Constitution of Virginia and expressed the opinion that it was no more than an act of the legislature, and could be changed by any subsequent legislature, and insisted that a constitutional convention should be held and a binding constitution be framed, and that many new and important additions should be made. Anticipating that such a convention would be held he drafted a tentative bill of rights and constitution to submit for its consideration.

In speaking of the origin of our form of State governments he says:

"It is for the happiness of those united in society to harmonize as much as possible in matters which they must of necessity transact together. Civil government being the sole object of forming so-



cieties, its administration must be conducted by common consent. Ours perhaps are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies."

Mr. Jefferson, as before shown, was a scholar of the widest attainments, and his knowledge of ancient and modern languages, including Greek, Latin, French, Italian and Spanish, and also his love of science, fine arts, and other accomplishments, were of great service to him in France. As Minister he never failed to do something practical to benefit his government and obtain every advantage possible for his countrymen. The burden of all his efforts was to accomplish some lasting benefit, especially in adding some useful plant to the culture of the country; and his efforts were devoted especially toward rice and olives. He succeeded in sending a very rare specimen of upland rice seed to some friends in South Carolina and Georgia, where he believed it could be grown to advantage, which proved to be very successful; and also sent olive plants to them.

Mr. Jefferson also devoted considerable time to the study of the sciences and arts, especially sculpture, painting and architecture, and was instrumental in improving the architecture of Virginia especially, as a result of this knowledge. He was

an inventive genius of no small proportions also, and while in Paris invented a moldboard for a plow for which he was voted a gold medal in 1790. Eighteen years later the Royal Agricultural Society of the Seine, to which he gave his original plow, presented him a superb up-to-date plow containing his improvements. He also invented the folding camp-stool, the revolving office chair, the two-wheeled sulky, the copying press and the pedometer; and as an architect, designed his own beautiful home, Monticello, and all of the buildings on the campus of the University of Virginia.

Before Mr. Jefferson reached home he received a letter from President Washington offering him the position of Secretary of State in his Cabinet, which was accepted.

The new government had been in existence for about a year before Mr. Jefferson assumed his duties as Secretary of State, and Alexander Hamilton, as Secretary of the Treasury, had already become the controlling factor in directing the measures of the administration. It is not necessary for the purposes of this discussion to go into any lengthy details as to Mr. Jefferson's services as Secretary of State, as the record made by him amply justifies the statement that he is the author of the new diplomacy introduced by the United States, so steadily adhered to since that time, of combating all schemes based on lying and deception, and insisting upon the simple rules of honesty

and good faith resulting from an application of the rules of international law.

The most difficult and delicate subject managed by him, without doubt, was the affair with Genet, the French Ambassador, and this was so skillfully managed by him without brag or bluster as to forever vindicate the rule of reason and justice and fair play in dealing with nations.

It very soon developed that there was a wide divergence of opinion between Mr. Jefferson and Mr. Hamilton as to the proper construction to be placed on our Constitution, and as to whether the republican or monarchical view should prevail. Mr. Hamilton was in favor of a strong, centralized government and had little or no confidence in the ability of the people to govern themselves or republican institutions generally. In the Anas left by Mr. Jefferson he does not hesitate to state that the members of the Cabinet were inimical to his opinions, and that he believed Mr. Hamilton was the controlling factor in the Cabinet and dominated the administrations of Washington and Adams, and was at heart a monarchist.

It was only natural, therefore, that Mr. Jefferson should resign his position, as Secretary of State, notwithstanding his warm attachment for President Washington.

From this time forward there have been two leading political parties in this country based in reality upon the ideas of Mr. Jefferson and Mr. Hamilton,

but it is not intended to assert that any one party has consistently held to the opinions of either. At the beginning Mr. Jefferson had to combat what he called Monarchists, or the worshipers of the British Constitution, and from his notes it is easy to see that he did not have very congenial company in Mr. Adams and Mr. Hamilton. In one of the many conversations on this subject, Mr. Adams observed, as reported by Mr. Jefferson, in speaking of the British Constitution: "Purge that Constitution of its corruption and give its popular branch equality of representation and it would be the most perfect Constitution ever devised by the wit of man." Hamilton paused and said: "Purge it of its corruption and give to the popular branch equality of representation and it would become an impracticable government; as it stands at present, with all of its supposed defects, it is the most perfect government which ever existed."

In commenting on this Mr. Jefferson says:

"And this was assuredly the exact line which separated the political creeds of these two gentlemen. The one was for two hereditary branches and an honest elective one; the other for an hereditary king, with a house of lords and commons corrupted to his will, and standing between him and the people. Hamilton was, indeed, a singular character. Of acute understanding, disinterested, honest, and honorable in all private transactions, amiable in society and duly valuing virtue in private life, yet so bewitched and perverted by the



British example, as to be under thorough conviction that corruption was essential to the government of a nation."

In another conversation on August 13, 1791, Mr. Jefferson says:

"Alexander Hamilton, in condemning Mr. Adams' writings, and most particular 'Davila', as having a tendency to weaken the present government, declared in substance as follows: 'I own it is my own opinion, though I do not publish it in Dan or Beersheba, that the present government is not that which will answer the ends of society, by giving stability and protection to its rights, and that it will probably be found expedient to go into the British form. However, since we have undertaken the experiment, I am for giving it a fair course, whatever my expectations may be. The success, indeed, so far, is greater than I had expected, and therefore, at present, success seems more possible than it had done heretofore, and there are still other stages of improvement, which, if the present does not succeed, may be tried, and ought to be tried before we give up the republican form altogether; for that mind must be really depraved, which would not prefer the equality of political rights, which is the foundation of pure republicanism if it can be obtained consistently with order. Therefore, whoever, by his writings disturbs the present order of things is really blameable, however pure his intentions may be, and he was sure Mr. Adams' were pure.'"

From the last day of December, 1793, when Mr. Jefferson resigned his Cabinet position, until March



4, 1797, when he assumed the duties of Vice-President, Mr. Jefferson was engaged in trying to build up his magnificent landed estate near Charlottesville, Virginia, and continued his extensive correspondence with friends in two hemispheres, and his incessant propagation of republican ideas of government through his friends and admirers, as well as the delightful studies which he never ceased to pursue, in season and out of season.

During this period of comparative rest he was highly honored by being elected President of the American Philosophical Society, the most distinguished society in the United States; which position had been held alone by Dr. Franklin and Rittenhouse. This honor was greatly prized by Mr. Jefferson, and he was a most active member and ornament of the society for many years, and did much by his example to encourage the growth and development of the sciences and arts in this country.

Mr. Adams and Mr. Jefferson were the opposing candidates for the Presidency to succeed General Washington, and the contest between them was waged with considerable acrimony. The election was very close, Mr. Adams receiving seventy-one electoral votes and Mr. Jefferson sixty-eight, which as the law then stood made Mr. Adams President and Mr. Jefferson Vice-President.

Mr. Jefferson made an ideal presiding officer for the Senate and during his term of office gath-

ered the data for "Jefferson's Manual" of parliamentary usage, which he published, and which has ever since been the guide of both houses of Congress. During the administration of Mr. Adams party spirit ran high and the contest between the ideas of government advocated by Mr. Hamilton, who still controlled the policies of the Federalists, and Mr. Jefferson, who was recognized as the leader of the school of republican policies. The excesses of the French Revolution had a decided tendency to alarm all conservatives, and it caused all sorts of exaggerated misrepresentations to be made against Mr. Jefferson, who still had faith in the ability of the people to govern themselves, and was not willing to join in the conspiracy to crush liberal views in France.

This lack of faith on the part of the Federalists in popular government caused them to enact what are known as the ALIEN AND SEDITION LAWS, which authorized the President to have any undesirable foreigners sent out of the country, and made it highly criminal for any one to write or speak against the President or any one in authority. These laws proved to be very unpopular, and were used by Mr. Jefferson and his friends with most telling effect at the next election. The contest was between Adams and Pinckney, and Jefferson and Burr, and the result was in favor of the latter ticket. Jefferson and Burr having received the same number of electoral votes, it was incumbent

upon the House of Representatives, as the Constitution then stood, to decide who should be President. Owing to the bitterness engendered by the election, the contest was a protracted and bitter one, lasting five days and nights when, after thirty-five ballots, Mr. Jefferson was elected President by one vote.

Without doubt this was the bitterest and most vindictive campaign ever conducted in this country, and Mr. Jefferson was made the target for every form of abuse, both political and personal, and had a thorough exemplification of his favorite saying, "that freedom of discussion, unaided by power, was sufficient for the protection and propagation of truth".

Mr. Jefferson honestly believed that the very life of republican institutions was at stake, and that the Federalists, under the leadership of Mr. Hamilton, were at heart in favor of what he called the "British Example"; and, on the contrary, the Federalists honestly believed that Mr. Jefferson was a dangerous leader and at heart a revolutionist after the order of the Jacobins of France.

The circumstances causing Mr. Adams to be misled by Mr. Hamilton, and ultimately to be defeated, are related by Mr. Jefferson in the *Anas*, as follows:

"Mr. Adams had originally been a republican. The glare of royalty and nobility during his mission to England, had made him believe their fascina-

tion a necessary ingredient in government; and Shay's rebellion, not sufficiently understood where he then was, seemed to prove that the absence of want and oppression, was not a sufficient guarantee of order. His book on the American constitutions having made known his political bias, he was taken up by the monarchical Federalists in his absence, and on his return to the United States, he was by them made to believe that the general disposition of our citizens was favorable to monarchy. Mr. Adams, I am sure, has been long since convinced of the treacheries with which he was surrounded during his administration. He has since thoroughly seen, that his constituents were devoted to republican government, and whether his judgment is resettled on its ancient basis, or not, he is conformed as a good citizen to the will of the majority, and would now, I am persuaded, maintain its republican structure with the zeal and fidelity belonging to his character. For even an enemy has said, 'he is always an honest man, and often a great one'. But in the fervor of the fury and follies of those who made him their stalking horse, no man who did not witness it can form an idea of their unbridled madness, and the terrorism with which they surrounded themselves. The horrors of the French revolution, then raging, aided them mainly, and using that as a raw head and bloody bones, they were enabled by their stratagems of X. Y. Z. in which \* \* \* \* \* was a leading mountebank, their tales of tub-plots, ocean massacres, bloody buoys, and pulpit lyings and slanderings, and maniacal ravings of their Gardeners, their Osgoods and parishes, to spread alarm into all but the firmest breasts. Their Attorney General had the impudence to say to a republican member, that deporta-



tion must be resorted to, of which, said he, 'you republicans have set the example'; thus daring to identify us with the murderous Jacobins of France."

"This has been happily done. Federalism and monarchism have languished from that moment, until their treasonable combinations with the enemies of their country during the late war, their plots of dismembering the union and their Hartford convention, have consigned them to the tomb of the dead; and I fondly hope, 'we may now truly say, we are all republicans, all federalists', and that the motto of the standard to which our country will forever rally, will be, 'federal union, and republican government'; and sure I am we may say, that we are indebted for the preservation of this point of ralliance, to that opposition of which so injurious an idea is so artfully insinuated and excited in this history.

"Much of this relation is notorious to the world; and many intimate proofs of it will be found in these notes. From the moment where they end, of my retiring from the administration, the federalists got unchecked hold of General Washington."

The Reign of Terror in France was calculated to shake the faith of most men in democratic government, more especially those who were in sympathy with English ideas at that time. The saddest spectacle in the life of any modern statesman was the loss of equilibrium by Mr. Burke at this time. His rantings against the French nation can only be explained upon the theory that he not only lost his powers of discrimination and departed from



his own incomparable teachings that it was dangerous to indict a nation, but that he was mentally unbalanced as the result of the loss of his son and other misfortunes so pathetically recounted by Buckle.

In a letter written by Mr. Adams July 13, 1813, to Mr. Jefferson, reviewing their differences of opinion as to the French Revolution, he said :

“ The first time that you and I differed in opinion on any material question, was after your arrival from Europe, and that point was the French Revolution.

“ You were well persuaded in your own mind, that the nation would succeed in establishing a free republican government. I was as well persuaded in mine, that a project of such a government over five and twenty millions of people, when four and twenty millions and five hundred thousand of them could neither read nor write, was as unnatural, irrational and impracticable as it would be over the elephants, lions, tigers, panthers, wolves and bears in the royal menagerie at Versailles. Napoleon has lately invented a word which perfectly expresses my opinion, at that time and ever since. He calls the project Ideology; and John Randolph, though he was fourteen years ago, as wild an enthusiast for equality and fraternity as any of them, appears to be now a regenerated proselyte to Napoleon’s opinion and mine, that it was all madness.

“ This gross Ideology of them all, first suggested to me the thought and the inclination which I afterwards hinted to you in London, of writing something upon aristocracy.

“In truth my defence of the constitution and ‘Discourses on Davila’ laid the foundation for that immense unpopularity, which fell like the tower of Siloam, upon me. Your steady defence of democratical principles, and your invariable favorable opinion of the French revolution, laid the foundation of your unbounded popularity.”

Mr. Jefferson deliberately undertook to restore the government to the people and make it truly republican in all of its parts. His first Cabinet was a model one to carry out his plans and was as follows:

James Madison, Secretary of State; Albert Gallatin, Secretary of the Treasury; General Dearborn, Secretary of War; Robert Smith, Secretary of the Navy; and Levi Lincoln, Attorney General.

He made radical changes in many of the customs and usages which had grown up around the executive with a purpose to eradicate every vestige of royalty and began by avoiding all ostentation and show in his inauguration by walking to the Capitol with a few friends and being sworn in by the Chief Justice in the presence of Congress, and later sending his messages to Congress, instead of going in state as his predecessors had done before him.

He also abolished levees, and used every means possible to cut down the expenses of every department of the government, and reducing the number of employees to the lowest.

In his inaugural address, Mr. Jefferson defined with admirable clearness and directness his ideas of republican principles, and made an appeal to the people, as a whole, for the support of the government. This address in part is as follows:

“Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies; the preservation of the general government in its whole constitutional vigor, as the sheet anchor of our peace at home and safely abroad; a jealous care of the right of election by the people,—a mild and safe corrective of abuses which are lopped by the sword of revolution, where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well disciplined militia,—our best reliance in peace and for the first moments of war, when regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burdened; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of public reason; freedom of religion; freedom of the press; freedom of person under the protection of the

habeas corpus; and trial by juries impartially selected. These principles form the bright constellation, which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and the blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touch-stone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety."

The definition of republican principles of government, as applicable to our dual system of government, given by Mr. Jefferson in this address, has never been excelled, and certainly no better chart can be found in all his writings of his own conception of a truly federated republic.

Mr. Jefferson visited in person every department of the government and obtained a list of the officers employed, the salaries paid each and their duties, and he had a most thorough and searching investigation made of the finances and sources of revenue, and with the aid of his Cabinet reduced the expenses of the government by cutting down the number of employees and their salaries as far as possible. In his first message he presented plans for further cutting down expenses and reducing the burdens of taxation.

It is only necessary in a general way to call at-



tention to the most important reforms accomplished by him during his two terms.

The diplomatic establishment was reduced to three ministers, namely, to England, France, and Spain. The Army and Navy were reduced to the lowest limits possible. All internal revenue taxes were repealed, which abolished a horde of inspectors and collectors. All persons convicted of violating the sedition laws were pardoned. The public debt was greatly reduced, and the policy theretofore pursued, "that a public debt is a public blessing", was eradicated.

The statute creating sixteen new federal districts, which had been so hastily enacted and new Judges appointed to fill the positions by Mr. Adams, was repealed and the "Midnight Justices" so called, were thus disposed of after a contest in the courts, the repealing act being held constitutional. Another act was also passed forbidding the further importation of slaves after the year 1808 under the provision in the Constitution.

The greatest single achievement, however, was the acquisition, by purchase, of a vast territory comprising now fifteen States from the French Government, known as the Louisiana Purchase.

Considering the Louisiana Purchase as a whole, and viewing Mr. Jefferson's far-sightedness in dealing with it in all its aspects, it is beyond all question the greatest act of any executive since the



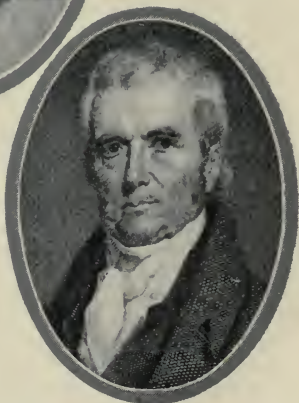
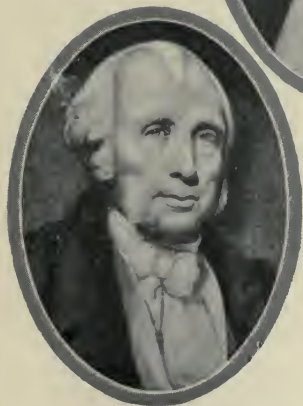
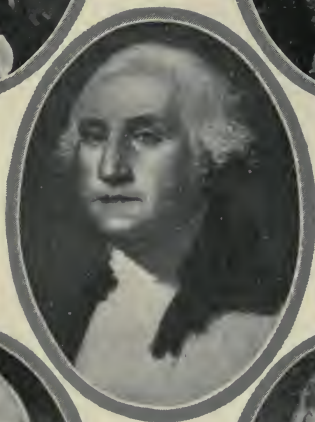
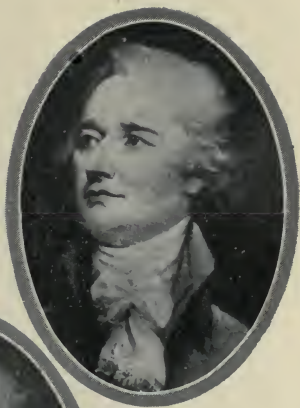
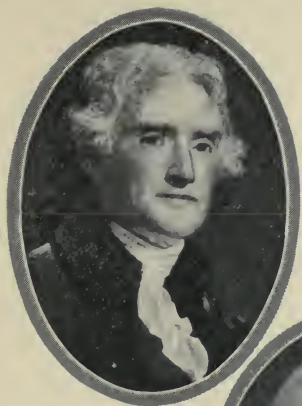
adoption of the Constitution. The Federalists were opposed to it for many reasons, chief of which doubtless were their fears of loss of political power in New England and that a republic could not govern so extensive a territory and the possibility of two republics resulting therefrom. Mr. Jefferson realized the importance of controlling the navigation of the Mississippi River and the dangers from a monarchical government controlling that vast territory and causing friction, and possibly wars, with the United States. His sagacity in taking advantage of Napoleon's financial embarrassment, and in conducting secret negotiations for a considerable time before the purchase, and his willingness to take the responsibility for the successful consummation of the deal, although he was of the opinion that it would require an amendment to the Constitution, are truly remarkable. The thoroughness and system used in exploring the new country, and laying all the facts before Congress, having the treaty adopted, and the money voted for the purchase were characteristic of Mr. Jefferson; and in fact the entire transaction was largely the result of his initiative. It required courage and unlimited faith in republican institutions to accomplish this gigantic undertaking.

There was naturally considerable opposition to many of Mr. Jefferson's other recommendations, but this gave him an opportunity by his messages and correspondence to fully develop his ideas of

republican institutions, and as a result of eight years' service, in which he generally had his way, the last vestige of monarchical and aristocratic ideas, which he had so bitterly opposed, was banished from the executive and legislative branches of the government.

The effect of Mr. Jefferson's democratic manners while an occupant of the White House in contrast with the aristocratic customs of Washington and Adams, as well as the general policies of his administration, was to inspire confidence in the masses of the people in the security of their liberties from the encroachments of the central government. The policies advocated by Mr. Jefferson were extremely popular with the people, and his second election was well-nigh unanimous. The Federalists only carried fourteen electoral votes in opposition. At the end of his second term the Federalist party was practically extinct.

Madison and Monroe were both disciples and warm personal friends of Mr. Jefferson, and both looked to him for advice on important matters. Monroe's administration is known as the "era of good feeling", when all factions became thoroughly reconciled to the Constitution and a national spirit was plainly evident. John Fiske, in a masterly essay on "James Madison as a Constructive Statesman", makes the following comments on the men who were instrumental in establishing our government:



MAKERS OF THE UNITED STATES GOVERNMENT



“In the work of constructing our national government and putting it into operation there were five men distinguished above all others. In an especial sense they deserve to be called the five founders of the American Union. Naming them chronologically, in the order of the times at which the influence of each was most powerfully felt, they come as follows: George Washington, James Madison, Alexander Hamilton, Thomas Jefferson, and John Marshall. But for Washington it is very doubtful if independence would have been won, and it is probable that the federal Constitution would not have been adopted. The fact that the experiment of the new government could be tried under his guidance made quite enough votes for it to turn the scales in its favor. His weight of authority was also needed to secure the adoption of Hamilton's measures and to prevent the half-formed nation from being drawn into the vortex of European war. As to Madison, he was the constructive thinker who played the foremost part among the men who made the Constitution, besides contributing powerfully with tongue and pen to the arguments which secured its ratification. In this work of advocacy Hamilton reënforced and surpassed Madison, and then in the work of practical construction, of setting the new government into operation, Hamilton, with his financial measures, took the lead. But the boldness of Hamilton's policy alarmed many people. There was a widespread fear that the government would develop into some kind of a despotism, and this dread seemed presently to be justified by the alien and sedition laws. Other people were equally afraid of democracy, because in France democracy was overturning society and setting up the guillotine. There was such a



sad want of public confidence among the American people between 1790 and 1800, that an outbreak of civil war at the end of that period would not have been at all strange. To create the needed confidence, to show the doubters and scoffers on the one hand that the new government was really a government of the people, by the people, and for the people, and on the other hand that such a government can be as orderly and conservative as any other,—this was the noble work of Jefferson, and it was in his presidency that the sentiment of loyalty to the Union may be said to have taken root in the hearts of the people. One thing more was needed, and that was a large, coherent body of judicial decisions establishing the scope and purport of the Constitution, so as to give adequate powers to the national government, while still protecting State rights. It was that prince of jurists, John Marshall, who, as chief justice of the United States for one-third of a century, thus finished the glorious work.”

John Marshall was appointed Chief Justice of the Supreme Court of the United States by Mr. Adams, and assumed the duties of office February 4, 1801, just thirty days before Mr. Jefferson was inaugurated as President. Judge Marshall was a Federalist after the strictest sect and was hence the antithesis of Mr. Jefferson as to his opinion of the nature of our government; and there was a never-ending dispute between these two sons of Virginia, both of whom were men of the highest character for integrity, probity, ability, and patriotism. Each

thoroughly distrusted the other as to his views of government, and each did his utmost to write the other down politically.

The one act for which Mr. Jefferson never forgave the leaders of the Federalists was the deliberate effort made in the last hours of Mr. Adams' administration to create new Federal Judgeships and to fill the offices with the most uncompromising Federalists for life, to checkmate Mr. Jefferson in every way possible, and retain, if possible, that branch of the government under their control. Many commissions for these new appointees were hurriedly filled out the night of March 3, 1801, and were found undelivered on March 4th, when Mr. Madison took charge of the office of Secretary of State. Proceedings were brought by Marbury and others against Mr. Madison for the possession of these commissions by original suit, in the nature of a mandamus, in the U. S. Supreme Court, and the opinion was delivered by Chief Justice Marshall. The Court very properly held that it had no jurisdiction, and in strictness this would and should have ended the case. But the Chief Justice went further and, in an opinion of great clearness and masterly logic, undertook to and did lay down the rule of law that the Judiciary have the power and are in duty bound under the Constitution of the United States to declare an Act of Congress null and void, whenever it is in conflict with the Constitution. Mr. Jefferson combated this holding of

the Court and always insisted that it was a dictum pure and simple. These issues involved the nature of the general government, Mr. Jefferson insisting upon a strict construction of the Constitution, and around this he organized the Republican party. Chief Justice Marshall gave the Constitution a liberal construction and enlarged the functions of the government under the implied powers and the General Welfare Clause. Every decision extending the powers of the government was made a political issue by the Republicans at that time; and the contest did not cease as long as Chief Justice Marshall was on the bench. Interesting and instructive accounts of these controversies will be found in Carson's "History of the Supreme Court of the United States", and Warren's "History of the American Bar", as well as in Mr. Jefferson's correspondence.

The contest between Mr. Jefferson and Chief Justice Marshall never ceased during Mr. Jefferson's life, and it is needless to say that it was a battle between giants. The result was that Mr. Jefferson's ideas prevailed in the executive and legislative departments of the government for at least two generations and the Federalist party was destroyed; on the other hand, the ideas of Chief Justice Marshall have prevailed in the Judicial department practically to date.

Prior to the appointment of Chief Justice Marshall the Supreme Court had attracted little or no attention and the Court had a small volume of

litigation before it. In fact, both Jay and Ellsworth, his predecessors, had held political offices while serving as Chief Justice and both resigned because, as stated by Jay, he was convinced that the system was so defective that it would never obtain the energy, weight, and dignity which were essential to its affording due support to the government.

During the service of Chief Justice Marshall, which continued for a period of thirty-four years, 1,106 opinions were filed, of which 519 were delivered by him. Sixty-two decisions were given upon constitutional questions, in thirty-six of which the opinion was by him, the remaining twenty-six being by one of seven associate Justices. Only one of Chief Justice Marshall's opinions on the constitution has ever been overruled.

President Garfield pertinently said: "Marshall found the constitution paper; and he made it power. He found a skeleton, and he clothed it with flesh and blood."

Warren's "History of the American Bar", in commenting on these decisions, says:

"In his five great cases—the Marbury case, the Cohens case, the McCulloch case, the Dartmouth College case, and the Sturgis case—Marshall did not cite a single decision as authority. His only light was the inward light of reason. He had 'no guides but the primal principles of truth and justice'. The decisions of no other eminent judges have so few



citations of authorities. It used to be said of him that, when he had formed his conclusions, he would say to one of his colleagues, 'There, Story, is the law. Now you must find the authorities.' Story himself said, 'When I examine a question, I go from headland to headland, from case to case; Marshall has a compass, puts out to sea, and goes directly to the result.'

"In thirty years Marshall had transformed the Supreme Court, from a weak and uncertain body, hesitating to measure its strength against the prevailing jealousy of the federal power, into an acknowledged supreme authority."

Hannis Taylor, in his splendid treatise on the "Origin and Growth of the American Constitution", asserts that Mr. Jefferson failed to appreciate the "importance of judicial power as a supreme arbitrating power". With all due respect to such a high authority, it is submitted that this opinion is erroneous. Mr. Jefferson always insisted that the three departments of our government, the executive, legislative, and judicial, under the terms of the Constitution, were created as separate, distinct, and independent departments, and that each was supreme within its own sphere; and that, in the nature of things, neither had the power or right to control the other, and that each was charged with the duty and responsibility to act for itself, subject to accountability to the power that created them. This view he expressed fully, in speaking of the Sedition Laws, as follows:



“ You seemed to think it devolved on the Judges to decide on the validity of the sedition law. But nothing in the Constitution has given them a right to decide for the executive, more than to the executive to decide for them. Both magistracies are equally independent in the sphere of action assigned to them. The Judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment; because the power was placed in their hands by the Constitution. But the executive, believing the law to be unconstitutional, were bound to remit the execution of it; because that power has been confided to them by the Constitution. That instrument meant that its co-ordinate branches should be checks on each other. But the opinion which gives to the Judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the legislature and executive also in their spheres, would make the judiciary a despotic branch.

“ If this opinion be sound, then indeed is our Constitution a complete *felo de se*. For intending to establish three department, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scarecrow; that such opinions as the ones you combat, sent cautiously out, as you observe also, by detachment, not belonging to the case often, but sought for out of it, as if to rally the public opinion beforehand to their views, and to indicate the line they are to walk in, have

been so quietly passed over as never to have excited animadversion, even in a speech of anyone of the body entrusted with impeachment. The Constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law."

Mr. Jefferson felt deep solicitude as to the dangers which he anticipated might accrue from this "Supreme Arbitrating Power", which was being gradually developed to checkmate and curb the power of the people through the other departments of government. In his Autobiography, as late as 1821, he expressed his final opinion in the following language:

"But there was another amendment, of which none of us thought at the time, and in the omission of which, lurks the germ that is to destroy this happy combination of National powers in the general government, for matters of National concern, and independent powers in the States, for what concerns the States severally. In England, it was a great point gained at the Revolution, that the commissions of the Judges, which had hitherto been during pleasure, should thenceforth be made during good behavior. A Judiciary, dependent on the

will of the King, had proved itself the most oppressive of all tools, in the hands of that Magistrate. Nothing, then, could be more salutary, than a change there, to the tenure of good behavior; and the question of good behavior, left to the vote of a simple majority in the two Houses of Parliament. Before the Revolution, we were all good English Whigs, cordial in their free principles, and in their jealousies of their Executive Magistrate. These jealousies are very apparent, in all our State Constitutions; and, in the General Government in this instance, we have gone even beyond the English caution, by requiring a vote of two-thirds, in one of the Houses, for removing a Judge; a vote so impossible where any defense is made, before men of ordinary prejudices and passions, that our Judges are effectually independent of the nation. But this ought not to be. I would not, indeed, make them dependent on the Executive authority, as they formerly were in England; but I deem it indispensable to the continuance of this government, that they should be submitted to some practical and impartial control; and that this, to be impartial, must be compounded of a mixture of State and Federal authorities. It is not enough that honest men are appointed Judges. All know the influence of interest on the mind of men, and how unconsciously his judgment is warped by that influence. To this bias add that of the esprit de corps, of their peculiar maxim and creed, that 'it is the office of a good Judge to enlarge his jurisdiction', and the absence of responsibility; and how can we expect impartial decision between the General government, of which they are themselves so eminent a part, and an individual State, from which they have nothing to hope or

fear? We have seen, too, that contrary to all correct example, they are in the habit of going out of the question before them, to throw an anchor ahead, and grapple further hold for future advances of power. They are then, in fact, the corps of sappers and miners, steadily working to undermine the independent rights of the States, and to consolidate all power in the hands of that government in which they have so important a freehold estate. But it is not by the consolidation, or concentration of powers, but by their distribution, that good government is effected. Were not this great country already divided into States, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every State again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed each by its individual proprietor. *Were we directed from Washington when to sow, and when to reap, we should soon want bread.* It is by this partition of cares, descending in graduation from general to particular, that the mass of human affairs may be best managed, for the good and prosperity of all. I repeat, that I do not charge the Judges with wilful and intentional error; but honest error must be arrested, where its toleration leads to public ruin. As, for the safety of society, we commit honest maniacs to Bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or in fortune; but it saves the Republic, which is the first and supreme law."



There is another opinion expressed by Mr. Taylor in regard to Mr. Jefferson, which does a gross injustice to his memory, to the effect that Mr. Jefferson's teachings were the cause of the War between the States in 1861-1865. The right of a State to secede did not originate with Mr. Jefferson and it was never seriously disputed by any party until the debate between Webster and Hayne. The question in each instance, where it was threatened, was not as to the abstract right, but as to the expediency of it.

It is needless to trace the history of the Hartford Convention and other occasions when this theory was set forth. Mr. Jefferson, in common with all of the early writers on the subject, believed in the doctrine, but he was as a practical statesman at all times opposed to it, except in extreme cases, and after repeated abuses making it absolutely necessary to preserve liberty; and so expressed himself, as is shown by the following excerpts from his writings:

"But if on a temporary superiority of the one party, the other is to resort to a scission of the Union, no federal government can ever exist. . . .

"If the game is sometimes against us at home we must have patience till luck turns, and then we shall have an opportunity of winning back the principles we have lost. For this is a game where principles are at stake."

In speaking of the Hartford Convention, he said:



“We might safely give them leave to go through the United States recruiting their ranks, and I am satisfied they could not raise one single regiment (gambling merchants and silk stocking clerks excepted) who would support them in any effort to separate from the Union. The cement of this Union is in the heart blood of every American. I do not believe there is on earth a government established on so immovable a basis. Let them, in any State, even in Massachusetts itself, raise the standard of separation, and its citizens will rise in mass and do justice themselves on their own incendiaries. . . .

“No event more than this has shown the placid character of our Constitution. Under any other their treasons would have been punished by the halter. We let them live as laughing stocks for the world, and punish them by the torments of eternal contempt.”

It most assuredly cannot be argued that Mr. Jefferson would have been willing to involve this country in a fratricidal war over the question of negro slavery, after he had throughout his entire public life consistently favored the emancipation of the black race. The truth of the matter is that the Declaration of Independence, and his writings on the subject of slavery, were the most powerful weapons Mr. Lincoln used in accomplishing the freedom of slaves—a burden that was so much upon the mind and conscience of Mr. Jefferson during his long and useful life.

The celebrated Kentucky and Virginia resolutions

were used by Mr. Jefferson to check, as far as possible, the extension of doctrines favorable to a strong centralized Government, especially the Alien and Sedition Laws; but Mr. Jefferson was a practical statesman and in the Virginia resolutions he showed distinctly how such questions should be settled, viz: by amending the Constitution. The supposition that Mr. Jefferson was not a progressive statesman and that he would not have yielded any mere theory, short of the great and fundamental one that all government is based on the consent of the governed, is refuted by his own writings, as is shown by the following:

“Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book reading: and this they would say themselves were they to rise from the dead. We had not yet penetrated to the mother principle, that ‘governments are republican only in proportion as they embody the will of their people, and execute it’. Hence our first constitutions had really no leading principle in them. Though we may say with confidence, that the worst of the American constitutions is better than the best which ever existed be-

fore in any other country, and they are wonderfully perfect for a first essay, yet every human essay must have defects. It will remain therefore to those now coming on the stage of public affairs to perfect what has been so well begun by those going off it. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill defects. But I know, also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual changes of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses, entrenched themselves behind steady habits, and obliged their subjects to seek through blood and violence, rash and ruinous innovations, which, had they been referred to the peaceful deliberations and collected wisdom of the nation, would have been put into acceptable and salutary forms. Let us follow no such examples, nor weakly believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs. Let us avail our-

selves of our reason and experience, to correct the crude essays of our first and unexperienced, although wise, virtuous, and well-meaning councils.

“ . . . If this avenue be shut to the call of suffering, it will make itself heard through that of force, and we shall go on, as other nations are doing, in the endless circle of oppression, rebellion, reformation; and oppression, rebellion, reformation, again; and so on, for ever.”

In concluding this brief and imperfect sketch of the main contributions of Mr. Jefferson to the cause of liberty in this country it has been necessary to omit many of his great practical creations, such as the University of Virginia, and his life work in helping to spread freedom of thought, freedom of religion, tolerance to all nations, and the many exemplifications of his patience, under most severe trials, when he was made a victim of a licentious press; as well as his sacrifice of his own considerable fortune for those days, peace of mind, love of learning, family and friendships for the cause he loved so devotedly.

The resolution of congratulation voted Mr. Jefferson by the General Assembly of Virginia upon his retiring from the Presidency, summarizes the achievements of his administration, as follows:

“ We have to thank you for the model of an administration conducted on the purest principles of republicanism; for pomp and state laid aside; patronage discarded; internal taxes abolished; a host



of superfluous officers disbanded; the monarchic maxim that 'a national debt is a national blessing' renounced, and more than thirty-three millions of our debt discharged; the native right to nearly one hundred millions of acres of our national domain extinguished; and without the guilt or calamities of conquest, a vast and fertile region added to our country, far more extensive than her original possessions, bringing along with it the Mississippi and the port of Orleans, the trade of the West to the Pacific Ocean, and in the intrinsic value of the land itself, a source of permanent and almost inexhaustible revenue. These are points in your administration which the historian will not fail to seize, to expand, and teach posterity to dwell upon with delight. Nor will he forget our peace with the civilized world, preserved through a season of uncommon difficulty and trial; the good will cultivated with the unfortunate aborigines of our country, and the civilization humanely extended among them; the lesson taught the inhabitants of the coast of Barbary; that we have the means of chastising their piratical encroachments, and awing them into justice; and that theme, on which, above all others, the historic genius will hang with rapture, the liberty of speech and of the press, preserved inviolate, without which genius and science are given to man in vain."

It is only fitting that a few extracts from the eloquent tribute of Senator Hoar of Massachusetts, and a letter of Mr. Lincoln should be added. Senator Hoar said:

"If we want a sure proof of Thomas Jefferson's greatness it will be found in the fact that men of



every variety of political opinion, however far asunder, find confirmation of their doctrine in him. Every party in this country today reckons Jefferson as its patron saint. In my youth the political Abolitionists made appeals to Jefferson the burden of their song. In the late discussion, which rent the country, about the Philippine Islands, one side quoted what Mr. Jefferson said in the Declaration of Independence, and the other what they thought he did, in the acquisition of Louisiana. I do not know of any other American of whom this is true, unless it be that the different schools of theology and ethics seem inclined to do the same thing just now as to Ralph Waldo Emerson.

"I can think of no other man in history, like Jefferson, leader as he was of two Revolutions and founder of a political party; one of which accomplished the independence of his country from a foreign yoke, the other overthrew by peaceful means the party at home which had been founded by Washington, and his great companions and counselors, of whom such a thing as this can be said. Every political sect finds its political doctrine in Jefferson, almost as every religious sect finds its doctrine in the Saviour of mankind. . . .

"The mighty figure of Thomas Jefferson comes down in history with the Declaration of Independence in one hand, and the title deed of Louisiana in the other. He acquired for his country a territory of 1,171,931 square miles, now fifteen States, to be hereafter the seat and center of empire certainly of this continent, and, as we confidently believe, of the world. Yet I believe, in the estimate of mankind, that achievement is insignificant compared with the other. The author of the Declaration of Indepen-

dence stands in human history as the foremost man who ever lived, whose influence has led men to govern themselves in the conduct of States by spiritual laws. That was Jefferson's mission—to teach spiritual laws. Observe that I say spiritual laws, not spiritual truths merely, not formulae to be assented to, but rules of life to be governed by and acted upon.

"It was due to Jefferson that our fathers laid deep the foundation of the State in the moral law. They first set to mankind the great example, and exhibited the mighty spectacle—the sublimest spectacle in the universe—of a great and free people voluntarily governing itself by a law higher than its own desire.

"He was Secretary of State. He was Governor of Virginia. He was Minister to France. He was Vice President. He was President. He acquired Louisiana. Yet, when he gave direction for his own epitaph, he cared to have none of these things remembered. The simple inscription on his tomb at Monticello sums up in his language as no other orator can, the character and career of Thomas Jefferson.

"'Here was buried Thomas Jefferson, author of the Declaration of American Independence, of the Statute of Virginia for religious freedom, and father of the University of Virginia.'

"Political freedom, religious freedom, and the education that makes these possible and safe were the ends for which he strove, the monuments by which he desired to be remembered. Neither power, nor honor, nor office, nor popularity, nor fame entered into the mighty heart that stirred that mighty soul. . . .



ABRAHAM LINCOLN



"Thomas Jeffereson was one of those men who can differ from hemispheres, from generations, from administrations and from centuries with the perfect assurance that on any question of liberty and righteousness, if the opinion of Thomas Jefferson stands on one side and the opinion of mankind on the other, the world will, in the end, come around to his way of thinking."

#### LINCOLN'S TRIBUTE TO JEFFERSON

Springfield, Ill., April 6, 1859.

To H. L. PIERCE AND OTHERS.

*Gentlemen:—*

Your kind note inviting me to attend a festival in Boston, on the 28th instant, in honor of the birthday of Thomas Jefferson, was duly received. My engagements are such that I cannot come.

Bearing in mind that about seventy years ago two great political parties were first formed in this country, that Thomas Jefferson was the head of one of them and Boston the headquarters of the other, it is both curious and interesting that those supposed to descend politically from the party opposed to Jefferson should now be celebrating his birthday in their own original seat and empire, while those claiming political descent from him have nearly ceased to breathe his name everywhere.

Remembering, too, that the Jefferson party formed upon the supposed superior devotion to the personal rights of men, holding the rights of property to be secondary only and greatly inferior, and assuming that the so-called democracy of today are the Jefferson, and their opponents the anti-Jefferson party; it will be equally interesting to note how



completely the two have changed hands as to the principle upon which they were originally supposed to be divided. The democracy of today hold the liberty of one man to be absolutely nothing, when in conflict with another man's right of property; Republicans, on the contrary, *are for both the man and the dollar, but in case of conflict the man before the dollar.*

I remember being very much amused at seeing two partially intoxicated men engaged in a fight with their greatcoats on, which fight, after a long and rather harmless contest, ended in each having fought himself out of his own coat and into that of the other. If the two leading parties of this day are really identical with the two in the days of Jefferson and Adams they have performed the same feat as the two drunken men.

But soberly, it is now no child's play to save the principles of Jefferson from total overthrow in this nation. One would state with great confidence that he could convince any sane child that the simpler propositions of Euclid are true, but nevertheless he would fail, utterly, with one who should deny the definitions and axioms.

The principles of Jefferson are the definitions and axioms of free society and yet they are denied and evaded, with no small show of success. One dashingly calls them "glittering generalities". Another bluntly calls them "self-evident lies" and others insidiously argue that they apply to "superior races". These expressions, differing in form, are identical in object and effect—the supplanting the principles of free government, and restoring those of classification, caste, and legitimacy. They would delight a convocation of crowned heads plotting

against the people. They are the vanguard, the miners and sappers of returning despotism. We must repulse them, or they will subjugate us. This is a world of compensation; and he would be no slave must consent to have no slave. Those who deny freedom to others deserve it not for themselves, and, under a just God, cannot long retain it. ALL HONOR TO JEFFERSON—TO THE MAN, WHO IN THE CONCRETE PRESSURE OF A STRUGGLE FOR NATIONAL INDEPENDENCE BY A SINGLE PEOPLE, HAD THE COOLNESS, FORECASTE, AND SAGACITY TO INTRODUCE INTO A MERELY REVOLUTIONARY DOCUMENT AN ABSTRACT TRUTH, APPLICABLE TO ALL MEN AND ALL TIMES, AND SO EMBALM IT THERE THAT TODAY AND IN ALL COMING DAYS IT SHALL BE A REBUKE AND A STUMBLING-BLOCK TO THE VERY HARBINGERS OF RE-APPEARING TYRANNY AND OPPRESSION. YOUR OBEDIENT SERVANT.

A. LINCOLN.

## CHAPTER IV.

### GROWTH AND DEVELOPMENT OF CIVIL AND RELIGIOUS LIBERTY IN MODERN TIMES

“ That ‘ All governments derive their just powers from the consent of the governed ’ is but a corollary from the divine injunction ‘ All things whatsoever ye would that men should do to you, do ye even so to them ’. Together these two great truths embrace all the rights and duties of mankind.”—VEST.

FROM what has been said in former chapters, it can readily be seen that liberty, like law, has had a slow and checkered growth, and that the former, if not the latter, has reached its highest and greatest development in the United States; and that there has been an intimate, though at times obscure, connection between law and religion.

Law and religion have both had their greatest and noblest developments under the governments which have allowed the greatest freedom to the individual in all of his relations. In government, there are two extremes which are to be avoided: tyranny, on the one hand, representing the centripetal forces; and anarchy, on the other, representing the centrifugal forces. In religion, the centripetal forces are bot-

tomed on selfishness, while the centrifugal forces are represented by the loftiest conception of the Creator, love; for "God is love". There are certain fixed truths in both, which are the fundamentals to the growth of liberty. Indeed, no free government can exist without the recognition of these truths. In religious freedom, we find St. Augustine pitted against Pelagius elaborating a metaphysical scheme of free agency, which implied an opposing one of necessity. In later centuries, these ideas were disputed and elaborated by the Arminians and the Calvinists.

As has been said by John Fiske: "In the spiritual life of modern times there have been two great uplifting tendencies, one derived from the Bible, and the other from the study of Greek. The former tendency produced the Protestant Reformation, the latter produced what we call the Renaissance or New Birth of Art and Science."

No more interesting, instructive, and thrilling chapters in history can be found than in tracing the spiritual growth of what may be justly called the Puritan nations of the world who took the Bible as the guide of their lives, beginning with the Jews, when Abraham, in 1921 B.C., was called from Ur of the Chaldees to the advent of the Christian era when a new order of living and higher ideals for all humanity were inaugurated. Not only are principles of sound morality inculcated for the individual, but new and nobler conceptions of the dig-

nity of man and the true grandeur of Nations are plainly taught, especially in the New Testament. The fundamental principles of civil and religious liberty are plainly taught in the Bible, and religious liberty has uniformly preceded civil liberty, but they have more generally, since the close of the eighteenth century, gone hand in hand.

Individualism, which is confessedly the foundation of all civil and religious liberty, had its beginning, in the modern acceptation of the term, at Geneva, where the school led by Calvin, a learned Frenchman, first set forth the modern conception of the true relation of man to God, and threw off the yoke of bondage to traditions based on ignorance and superstition.

The story of the struggles for civil and religious liberty in Scotland, Holland, England, the United States of America, and France, has been written by the greatest historians of these countries, and it is needless to do more than to refer to the fact that the student of government should learn to discriminate between the true and the false in studying history, as well as in other matters; more especially as the tyrant in power with favors to bestow on his favorites has ever found apologists even among the so-called great. So great a man as Dr. Samuel Johnson, after he had accepted a small pension from George III, wrote his almost forgotten pamphlet, entitled "Taxation no Tyranny", and did not hesitate to brand the colonists as scoundrels.



The underlying truths of civil and religious freedom, as before stated, are few and simple and they are as old as the race, because they are implanted in the bosom of man. Truth, righteousness, and justice are nowhere so admirably stated as in the Bible; and as has been so eloquently stated by John Milton, Edmund Burke, and Thomas Jefferson, all that truth needs is a free forum. The arguments for unlicensed printing made by Milton in his "*Areopagitica*" are based on the teachings of the Bible and Greek and Roman history, and are unanswerable. Mr. Jefferson sets forth most succinctly the true grounds for religious freedom in the preamble to his statute for religious freedom in Virginia, and the final thought is the gist of the whole argument, viz.: "that truth is great and will prevail if left to herself; and that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless, by human interposition, disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them."

The same idea in similar language is found in the Old Testament, in the Vulgate: "Great is truth and it prevails," and in the King James version: "Great is truth and mighty above all things."

Gamaliel's advice to the council in regard to the preaching of Peter and the other Apostles, as recorded in the Acts, V, 38-39, is most apposite, viz.:

"Refrain from these men, and let them alone; for if this council or this work be of men, it will come to naught; but if it be of God, ye cannot overthrow it, lest haply ye be found even to fight against God."

The divine nature of truth is also taught by the greatest poets of all nations and especially by the Greek dramatists, Euripides and Sophocles, the latter asserting in *Antigone* that the truth is always right.

In the United States the two most dominant types, and, in fact, the controlling factors in formulating our government, were the Puritans of New England, and their descendants in the north and northwest, and the Scotch-Irish in Virginia, the Carolinas and Georgia, and their descendants in the south and southwest; and both of these were thoroughly trained and drilled in the Bible and drew their ideas of freedom from that source. They were also great devotees to education, and as pointed out by Burke, Bancroft, Buckle, and other historians, the doctrines which in England and America are called Calvinistic have always been connected with a democratic spirit.

The same has also been true of the republics of Switzerland and Holland. Carlyle says that "the spiritual will always body itself forth in the temporal history of men".

This great truth has most assuredly been exemplified in the case of the Genevan Church, more especially in the history of Holland, Scotland, France,

England, and America. The highest tribute to the faith of these great people who have made the Bible the standard of their lives and government, is found in the character of the men they have produced, as well as in the free governments and powerful and great nations which they have established.

Among the Jews we find in their early history such characters as Abraham, Isaac, Jacob, Joseph, Moses, Joshua, David, Solomon, Isaiah, and others; and they established the first democracy in the world during the times of Moses. The Jews were also idealists and great educators, and furnished the men of brains and sound moral character who could and did grasp the immortal truths taught by Jesus, whose life and teachings changed the currents of history and gave the world truths and ideals of right, justice and freedom which have produced the greatest nations of all times, and in grateful recognition of the manifold blessings flowing therefrom, they have altogether assumed the name of a Christian civilization.

In an admirable paper written by Joshua W. Caldwell, late of Knoxville, Tennessee, entitled "Puritan Races and Puritan Living", these ideas are splendidly developed, and he recounts in glowing language the part taken by the Calvinists in the achievement of civil and religious liberty in Holland, Scotland, England, France, and the United States. He properly calls all those people who made the Bible their guide in life and were animated with the

ethical impulse and optimistic idealism found in its pages, Calvinists and Puritans, and shows that they were democrats in the broadest and best sense of that much abused word. Speaking of Holland, he says:

“There is no country of modern times whose history contains more to justify pride than Holland. [This little people led the way to the enlightenment of modern Europe. The Dutch were the first real bankers in Europe; the first to understand the principles of modern economy; the first to systematize trade; the first to establish a satisfactory system of exchange; the first to realize that in commerce the thing most essential is honesty; the first to develop agriculture; and among the first to attain excellence in art. They were the leaders of modern democracy. They made the first written constitution to bind men together in free community. They made the grandest fight for liberty that is recorded in human history. The struggle between the Netherlands and Spain is, I believe, the most tragic, the most cruel and relentless on the one hand, the most heroic and admirable on the other, that ever occurred. And this was a struggle of a handful of Puritans against the dominant world-power. The Dutch revival was a Puritan revival. The Dutch civilization was a Puritan civilization.”

Motley, another distinguished American historian, has written the best history of these remarkable people in his “Dutch Republic”.

Caldwell also gives brief sketches of the English Puritans, the French Huguenots, the Scotch Cove-



nanters, and traces the influx of these people into North America and shows that the New England Puritans, and the Scotch-Irish of the Southern Colonies became the dominant and controlling factors in the establishment of our government. The following extracts show the trend of his argument:

“Turning now to the Scotch Puritan movement, we find it essentially an uprising of the people; it is typified and represented by its great leader, John Knox. He was a man of the people and fitted to be a leader of the people. His courage knew no limits. He withstood persecution with unflinching fortitude, served as a galley-slave for the sake of his convictions, and, recovering his freedom, resumed his work with unabated zeal and energy. The fascinating Queen of Scots had no charms for him, and he did not hesitate to denounce her sins to her face. As strong in his convictions as it is possible to be, he approved, in his zeal, things that we, in our sober judgment, must condemn. But the Scotch covenant was a covenant of righteousness.

“Andrew Melville, who succeeded Knox as leader, was the real founder of the University system of Scotland. The authors and scholars who made the Scotch name illustrious in the eighteenth century were mainly Covenanters, and the intellectual movement which inspired them was of Covenanter origin. In Scotland, as in England, and in Holland, the cause of enlightenment and of liberty rested for a time mainly on the Puritans. The Scotch intellect owes its development and its splendid achievements to the Covenanter impulse.



“In the course of time a great colony of Covenanters was planted in the north of Ireland. These people found their new home a waste, but in a few years made it one of the most productive and attractive regions in Europe. And to this day Ulster thrives as no other part of Ireland. The political and religious opinions of these Scotch-Irishmen and their posterity aroused persecution. They resisted strenuously, but in the end many sought refuge and freedom in the wilds of America, whither presently we shall follow them.

“But we first turn to another Puritan exodus. It was in the year 1621, that the first English Puritans came to America. In a few years, forty thousand had come. They were ‘a picked company’. They were of good repute, and nearly all fairly educated. About the middle of the second quarter of the eighteenth century the Scotch-Irish began their migration to America. Landing mainly at Philadelphia, and at Charleston, they sought homes on the frontier, especially in the Southwest, and led the way to the conquest and civilization of all that region. According to our distinguished townsman, Judge Temple, there were not less than six hundred thousand Scotch-Irishmen in America in 1776. Thus the Covenanters and the Puritans made nearly one-half of the white population of the colonies. Add to these the people of Dutch descent in the middle colonies, and it is reasonably certain that half the people were of Puritan extraction.

“The Puritans were democrats. They believed in equality, and hated every form of oppression. Democracy is a corollary of the Puritan faith. That the Scotch Covenanters were the most pronounced and persistent in their democracy, I believe to be

true. Buckle says of Calvinism: 'It is an interesting fact that the doctrines which in England have been called "Calvinistic" have always been connected with a democratic spirit.' Fiske refers to John Calvin as the spiritual father of William of Orange, Coligny, and Oliver Cromwell.

"When independence had been established, these two races—the English and Scotch Puritans—were dominant influences in their respective sections. At the present time there are fifteen million descendants of the New England Puritans in this country; and I believe there are as many descendants of the Scotch-Irish. That is to say, that one-half of our people have in their veins one strain or the other of the Puritan blood. Consider for a moment what the Puritans have accomplished in America. The great lighthouses of education, Harvard and Yale, were begun by them, and in the dawn of history. The rich libraries of the East have been gathered, and popular education established and constantly advanced. The literature of America belongs to New England. If we omit from our annals the names of Edwards, Channing, Motley, Bancroft, Prescott, Parkman, Lowell, Longfellow, Whittier, Thoreau, Emerson, Hawthorne, how little remains! How ill could our political history afford to lose Samuel and John Adams, Otis, Webster, Choate, Sumner, Wilson, Hale, Hamlin, Pierce! And how many names of the history of the Northwest are Puritan! Immense tracts, as for instance the Western Reserve of Ohio, were peopled, almost exclusively, from New England. For a long time the East has controlled the policy of the country by the aid of her colonies in the West. Wherever the American free school system may have originated, it was developed and

improved mostly in New England. The average of education and of intelligence has always been higher there than in any other part of our country. That the Covenanters, if settled in compact communities, would have equaled the New Englanders in this respect, I do not doubt, for stauncher friends of education never lived; but conditions in the South and West were such that the Scotch-Irish schools could only be established in widely separated communities. By thus training the minds as it trained the morals of its people, New England became not only the most intelligent, but the most influential portion of our country. She produced the greatest of our writers; and fifty years ago had grown in intellect so that she was able and bold enough to make a declaration of intellectual independence.

“If we turn to the Covenanters, we find them doing in the South, so far as conditions have permitted, the same things that the New Englanders did in the North. In Scotland and in Ireland they had been an educated people. All their preachers had been school teachers. In America, they were no less the friends of education. The memorials of the Scotch Presbyterian preachers are found in almost every institution of learning in the Southwest. Princetown was their first great work; and as they came south and west their landmarks were the log colleges that sent to Princetown a steady stream of sturdy, pious men, who returned to the wilderness to civilize it. These Presbyterians founded Washington and Lee University, Washington College, the University of Tennessee (or its germ, Blount College), the Southwestern Presbyterian University, Maryville College, Davidson College, Transylvania University, Greeneville College, Tusculum College,

and a multitude more. Wherever they went, they carried knowledge and religion. In our immediate neighborhood they furnished such teachers as Doak, Carrick, Craighead, and Anderson. In the catalog of the great men of our nation are the Scotch-Irishmen,—Jefferson, Jackson, Polk, Lincoln, Calhoun, Sam Houston, Patrick Henry, Hugh Lawson White, the Breckenridges, McKinley, Bryan, the Prestons, and the great inventors, Morse, Fulton, and McCormick.

“The Scotch-Irish led the way to the settlement of the States of Tennessee, Kentucky, Missouri, Texas, Arkansas, and much of Ohio, Indiana, and Illinois. They possessed also Western Pennsylvania, the valley of Virginia, and western North Carolina, and found a foothold in every western and southern state. Wherever they went it was as Presbyterians, until, early in this century, the Baptists and Methodists had made heavy inroads upon them. At the present time, probably the majority of the Scotch-Irish are not of the old communion. But whether they be Baptists, Methodists, or Cumberland Presbyterians, the race characteristics, as developed in the old Covenanters, are still strong and prominent, and the Methodists and the Baptists are just as much Puritan Bible lovers as the Presbyterians.

“And so we have in America fifteen million of English Puritan stock, fifteen millions of the Covenanter stock, and I should say at least two million of the Dutch and Huguenot stock together. These races have, so to speak, projected solid bodies of influence into affairs, and have thus afforded large and indisputable proofs that it pays, mentally, morally, socially, and financially, to live according



to the Puritan plan. They are health, wealthy, and wise. What they are they became by right living."

There is no disputing the fact that climate, food, soil, and the general aspects of nature of these countries have had a great deal to do with the growth and development of laws and institutions favorable to freedom in all of its manifold relations, as has been so forcibly stated by Buckle. There is also no disputing the fact that all democratic governments in modern times have had a common origin. No greater contributions have been made to the cause of education in matters pertaining to law and the cause of freedom than the monumental works of Stubbs and Freeman, and the study of the great documents illustrative of English history which has resulted therefrom. The memorable descriptions given by Mr. Freeman of the assemblies of the Swiss Cantons of Uri and Appenzell, in the opening chapter of his small volume entitled "The Growth of the English Constitution from the Earliest Times" are vivid and realistic pictures of priceless value, as a concrete illustration of what self-government means, and no process of abstract reasoning can visualize them. He might, however, have witnessed the same scenes in Massachusetts or any of the New England States.

The government established in 1772 on the Watauga River in the wilderness west of the Alleghanies, now in Tennessee, is a better illustration of



self-government, however, than either of these, for the reason that there was no superior restraining power over these people. They organized and conducted a successful government for some time without seeking to declare themselves independent of Great Britain or the Colonies of Virginia and North Carolina, near whose borders they were located.

This Watauga colony was composed chiefly of Scotch-Irish who in the main were Presbyterians, and their capacity for self-government has been the subject of encomiums at the hands of Bancroft, Roosevelt, and Caldwell. Caldwell, in his "Constitutional History of Tennessee", says:

"It has been called the 'first free and independent government in America', and in a sense this is true. It was the first of the series of temporary, self-dependent, and thoroughly American Governments established on our western frontier in the Revolutionary period. The Tennessee historians, as a rule, are content to say that its Compact was the first written Constitution west of the Alleghanies, and Roosevelt concurs in this and adds that it was the first free and independent government established on this continent by men of American birth.

"In 1772, this country was almost ready for revolution. The growth of the spirit of independence had been demonstrated by the persistent assertion of the right of self-taxation and by such occurrences as the Tryon rebellion in North Carolina. Owing, as it appears, to purely fortuitous circumstances the Watauga settlers were the first to em-

body the principles of American democracy in actual institutions. It may be claimed, justly, that they were the best prepared for this step as well as compelled to it by their conditions, but, however this may be, they were the first native Americans to establish a pure democracy."

Mr. Freeman wrote this little book over forty years ago when there was no special reason to draw any line of demarkation between Teutons and Anglo-Saxons, as there is at present. He begins with the first authentic account we have of the Teutons which is found in the "Germania" of Tacitus, the great Roman historian. Tacitus says:

"They choose their kings on account of their nobility, their leaders on account of their valor. Nor have the kings an unbounded or arbitrary power, and the leaders rule rather by their example than by the right of command; if they are ready, if they are forward, if they are foremost in leading the van, they hold the first place in honor. . . .

"On smaller matters the chiefs debate, on greater matters all men, but so that those things whose final decision rests with the whole people are first handled by the chiefs. . . . The multitude sits armed in such order as it thinks good; silence is proclaimed by the priests, who have also the right of enforcing it. Presently the king or chief, according to the age of each, according to his birth, according to his glory in war or his eloquence, is listened to, speaking rather by the influence of persuasion than by the power of commanding. If their opinions give offense, they are thrust aside with a shout; if they

are approved, the hearers clash their spears. It is held to be the most honorable kind of applause to use their weapons to signify approval. It is lawful also in the Assembly to bring matters for trial and to bring charges of capital crimes. . . . In the same assembly chiefs are chosen to administer justice through the districts and villages. Each chief in so doing has a hundred companions of the commons assigned to him, as at once his counselors and his authority. Moreover, they do no matter of business, public or private, except in arms."

These customs are the germs of a free constitution based on individualism and were carried to England by the Angles, Saxons, and Jutes, there to be developed during many centuries into the most orderly and well-matured system of government in the world excepting in the United States. As stated by Mr. Freeman:

"On the Teutonic Mainland, the old Teutonic freedom, with its full assemblies, national and local, gradually died out before the encroachment of a brood of petty princes. In the Teutonic Island it has changed its form from age to age; it has lived through many storms, and it has withstood the attacks of many enemies, but it has never utterly died out. The continued national life of the people, notwithstanding foreign conquests and internal revolutions, has remained unbroken for fourteen hundred years."

Taking Europe as a whole, the hordes of barbarians destroyed the Roman Empire, but the laws

of Rome in turn superseded the customs and usages of the invaders and almost eradicated all traces of the robust individualism so predominant among the Teutons and Aryan peoples generally. Thus it will be seen that this strong, unconquered, and unconquerable spirit of individualism in Great Britain has slowly but surely developed a nation capable of self-government which has never lost its individuality, but has on the contrary appropriated the best parts of the laws of Rome and made them serve its purposes. The "fierce spirit of liberty" described by Mr. Burke as prevailing in the American Colonies during the American Revolution, prevailed equally among the Virginia Cavaliers and the New England Puritans or Roundheads, and these characteristics have persisted here. This same apparently contradictory condition has always prevailed in England, taking it as a whole. No better illustration can be found of this fact than in Magna Charta.

While Magna Charta was a compact between John and the Barons and Archbishops, it will be noticed that the fundamental rights of all freemen were safeguarded, especially concerning personal liberty and property. What before had been customs, existing as traditions, were made definite and certain, as will appear from Articles 12, 36, 39, and 40—as follows:

"12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our



eldest son a knight, and once for marrying our eldest daughter; and for these three shall be paid no more than a reasonable aid. In like manner it shall be concerning the aids of the City of London.

“36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

“39. No freeman shall be taken or imprisoned, or disseized, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgement of his peers, or by the law of the land.

“40. We will sell to no man, we will not deny or delay to any man, either justice or right.”

This custom of the English and Americans to impose written guarantees upon their rulers, and to make a solemn written record of every advance in government, has been of incalculable value to the cause of freedom, thus guaranteeing that no permanent backward step shall be taken in vitally important matters.

It is noticeable, however, that of the sixty-three articles of Magna Charta how few of them are today of any consequence in England or elsewhere.

The most valuable rights of persons and property are embodied in this great charter, and from the time it was signed, June 15, 1215, to the present it has been the chief mainstay of freedom in Great Britain and her colonies, and in the United States. Around this great charter as the veritable



gospel of freedom the English-speaking peoples have built their governments, and have clung to its principles as the ancient Jews did to the Ark of the Covenant. The development and growth of these fundamental principles in England have chiefly been the result of contests between the so-called rights of the king and the rights of the people—the king acting under one pretext or another, generally divine right and usage and the plea that the people were not capable of self-government, and the people claiming the right of self-government as a natural right and by virtue of their charters, and that all officers, including the king, were servants and not masters. As has been so well said by Mr. Burke, from the earliest times the great contests for freedom in England have been chiefly upon the question of taxation; and hence the additions to Magna Charta have been principally on this subject. The same has been true also as to the United States, as will appear from the first ten amendments to the Constitution at first adopted and the thirteenth, fourteenth, and fifteenth amendments which were added as a result of the Civil War. The rights of individuals have also been enlarged and made more definite and certain in both countries. The love of liberty is the strongest and noblest characteristic of the Anglo-Saxon, and it has never been eradicated from either the classes or the masses in England, and withal, the good common sense of the nation has always demanded the protection and

safety of property as a necessary and indispensable means of procuring happiness.

The English have until recently been provincial in this respect and their charters of liberty have thus far been confined to British liberties.

The American colonists were the first to frame a charter of liberty for "*all men*". The idealism of the English has also been provincial, while that of the American has been cosmopolitan. Read the Declaration of Independence and compare it with Magna Charta and all other British charters. The Declaration of Independence says: "That *all men* are created equal; that they are endowed by their Creator with certain inalienable rights, etc." Magna Charta says: "That all men in *our Kingdom* have and hold all the aforesaid liberties, rights, and concessions, etc."

The "British example", as Mr. Jefferson called the British Constitution, has had an indirect influence upon France and other countries, while the "American example" has been in the nature of a propaganda for freedom, and was the immediate and direct cause of the French Revolution; and ultimately of the present great Republic in France. The success of a republican form of government in the United States has resulted in the Western Hemisphere becoming free republics and the adoption of the Monroe Doctrine.

There is nothing so favorable to the extension of freedom as colonization and successful wars, as was

demonstrated by the American Revolution. No part of the civilized world, including China and Japan and the Far East, has been exempt from the beneficent influences of the Declaration of Independence and our republican institutions, except Germany and Austria, where Autocracy has been intrenched for centuries by militarism. These ideals of freedom have been cherished and cultivated by the English-speaking peoples with the result that a great and powerful civilization has been established upon them. The right of the individual to think as he pleases on all questions, the right to express his opinions, the right of the citizen to the protection of his person and property are fixed in the fundamental law, thus producing a condition which has made possible the cultivation of the arts and sciences and trade and intercourse among the nations—ever active only in intervals of peace. Autocracy as exemplified by a Prussianized Germany is the antithesis of the English and American plans of government.

The stupendous war between Germany and her allies and France and her allies was to decide which ideals and fundamental principles shall govern and control the so-called civilized nations in the future. The signing of the armistice on November 11, 1918, which marks the downfall of Autocracy in Europe for all times, it is to be hoped, is one of the greatest triumphs in the history of the human race and certainly in the history of human freedom. Never

before in the history of the race has it been of such vast importance that a new record shall be made in harmony with the high ideals and noble aspirations of the free nations. Fortunately for mankind, Great Britain, France, the United States, and Italy each has a forward-looking statesman representing the best traditions of his nation, and equally fortunate is it that the United States has produced a great statesman who represents the highest scholarship and the best and most matured judgment of our people, a man who had the wisdom to make a declaration on behalf of the Entente Allies setting forth the aims and purposes of the war in their behalf. Our example in dealing with the Cubans and Filipinos and Porto Ricans will be of incalculable value as object-lessons in dealing with the newly liberated peoples.

It can be readily seen that these principles are fundamental and that they are the natural outgrowth of the great charters of liberty of the English-speaking people.

The period of reconstruction in Central Europe and in Russia will naturally be along the lines herein analyzed, but much patience and supreme faith will be required to establish stable governments based upon the consent of the governed.

No lover of liberty need be afraid to trace the history of these fundamental principles of government, or doubt for a moment their ultimate triumph. There are a few epochs in English history which



should be studied critically and from original sources, as far as possible. Care should be taken not to be misled by histories such as Hume's "History of England", Mitford's "History of Greece", and others which were written to cover up these truths and exaggerate the unpleasant and disagreeable concomitants of all revolutions.

It is exceedingly helpful to study the lives of forward-looking men and these great documents of liberty. The greatest characters in English history will be found coupled with these events. As practical examples in the effort to master these fundamental principles of freedom, we need only begin with the Rebellion of 1649, and study the careers of Hampden, Pym, Sidney, John Milton, and Oliver Cromwell; the "glorious revolution" of 1688, and the careers of William of Orange and his advisers, as portrayed by Macaulay in his History of England, and especially in his incomparable essay on Milton in which he records in language that has become classic the grandeur and nobility of that freedom now existing among English speaking people, as the result of these two momentous events. We should also study the lives of such men as Burke, Pitt and Fox, in England, and of Washington, Jefferson, Adams, Franklin, Madison, Hamilton, Mason, Henry, and many others of the long line of heroes who made the American revolution possible and formed our forward-looking government.



Macaulay's incomparable essay on Milton, and Carlyle's "Cromwell" are the greatest contributions to English history touching the revolution of 1649, and are recognized as classics. Macaulay's "History of England" begins with the revolution of 1688, and is also a notable contribution to freedom worthy of serious and careful perusal; and while written from the standpoint of an advocate his genius as a writer has given to the world a magnificent picture of the grandeur and nobility of that form of freedom now existing among all English speaking people.

Following out the plan for writing history upon the theory first definitely expressed by Carlyle, that history consists of the biographies of great men, to which he has added the inestimable value of documentary evidence in reproducing the history of institutions, John Fiske in a series of essays, historical and literary, has traced the development of American political ideas from the time of Tacitus to the administration of Cleveland. In three lectures entitled, "The Town Meeting", "The Federal Union", and "Manifest Destiny", he unfolds in a broad and comprehensive manner the development of Anglo-Saxon ideas of government in England and the United States, and, with an optimism rarely encountered, he predicts the ultimate extension of these ideas over the world, when the whole of mankind shall become one huge federation "each little group managing its local affairs in entire inde-

pendence, but relegating all questions of international interest to the decision of one central tribunal supported by the public opinion of the entire human race ”.

In the remarkably able and discriminating papers on “Alexander Hamilton and the Federalist Party”, “Thomas Jefferson the Conservative Reformer”, “James Madison the Constructive Statesman”, “Andrew Jackson and American Democracy Seventy Years Ago”, “Harrison, Tyler, and the Whig Coalition”, and “Daniel Webster and the Sentiment of Union” will be found the ablest, fairest, and most candid exposition of political parties in this country that has ever been written. While we do not agree fully with Mr. Fiske in the relative merits of the men who have been made the central figures in the history, nor in all of the views expressed, he has, without doubt, touched the vital points and evolved them with singular fairness and with a thoroughness of comprehension unequaled by any one who has written on the subject within our knowledge.

These views may be epitomized under the following heads:

(1) Local self-government in the United States in the form of the town meeting in New England, the county court in the South, and a combination of the two in other sections, can be traced to the old Teutonic constitution, as described in the “Germania” of Tacitus.

(2) The principle of representation, which was an invention of the Anglo-Saxon mind in England, has had its greatest development in the United States and has solved the chief problem of civilization, from the political point of view, by securing concerted action among men on a great scale without sacrificing local independence.

(3) Political parties in the United States owe their origin to a difference between Hamilton and Jefferson as to the construction of the Constitution of the United States, the one insisting upon a "loose construction" and the other a "strict construction" of that instrument; but the fundamental idea goes back into English history and has been kept up in England to the present, under different names, as here. Fiske says:

"As a rule the Republican party of Jefferson, with its lineal successor the Democratic party from Jackson to Cleveland, has advocated strict construction; while loose construction has characterized the Federalist party of Hamilton with its later representatives, the National Republican party of Quincy Adams, the Clay and Webster wing of the Whig party, and the Republicans of the present day. This general rule, however, has been seriously complicated by the fact that the same party is apt to entertain very different views when in power from those which it entertains when in opposition. The tendency of the party in possession of the government is to interpret its powers liberally, while the party in opposition seeks to restrict them."

(4) Hamilton dictated the general policies of the government until 1801, when Jefferson was elected on account of the blunder of the Federalists in the enactment of the Alien and Sedition laws. Jefferson was a conservative reformer and made few changes in the personnel of the government and by his sympathetic insight into the popular mind and his magnetic personality he won the confidence of all classes of people and made the greatest strides towards creating a genuine sentiment for national union. Fiske says:

“The American people took Jefferson into their hearts as they have never taken any other statesman until Lincoln these latter days. . . . Jefferson’s influence had become great because he had absorbed all the strength of his adversary. He had not approved of Hamilton’s acts, but he knew how to adopt them and appropriate them, just as Hamilton had adopted and appropriated Madison’s theory of the Constitution.”

(5) From 1815 to 1860, owing to the rapid growth and development of the United States in population and wealth, many new questions arose and a new society was formed much more democratic than had theretofore existed. All of the States remodeled or amended their constitutions so as to make them more democratic, extending the right of suffrage, making the terms of office shorter and generally elective.

The great leader in this movement was Andrew



Jackson, the first President from west of the Alleghanies. The new spirit was intensely American, with a decidedly popular feeling towards pure democracy and for the first time what is known as the "spoils system" was introduced. Fiske says:

"The pure American spirit first came to maturity in the breasts of that rugged population that, since the days of Daniel Boone and James Robertson, had been pouring down the western slope of the Alleghanies and making the beginnings of two commonwealths, Kentucky and Tennessee. These were States that from the outset owed no allegiance to a sovereign power beyond the ocean.

"The importance of this new development for a long time passed unnoticed by the older communities on the Atlantic Coast, and especially by the New England States.

"This feeling has been apt to color the books on American history written by Eastern men. There could be no better illustration of this than the crudeness of the opinions current about it in our literature and taught in our text-books concerning the career of Andrew Jackson. In studying the life of this great man, we must first observe the characteristics of the people among whom his earlier years were spent and of whom he was to such a marked degree the representative and leader. If we were required to give a receipt for compounding the most masterful race of men that could be imagined, one could hardly do better than say 'To a very liberal admixture of Scotch and Scotch-Irish, with English stock, with a considerable infusion of Huguenot, add a trace of Swiss and Welsh and set the whole to work for a half-century, hewing down



the forest and waging an exterminating warfare with Indians'. Originally their theology was Calvinistic, but during the latter part of the eighteenth century a great wave of Wesleyanism swept over this part of the country, and Baptist preachers also made many converts. . . . The period of Jackson's presidency was one of the most remarkable in the history of the world, and nowhere more remarkable than in the United States. As the typical popular hero of such a period, Andrew Jackson must always remain one of the most picturesque and interesting figures in American history. The crudeness of some of his methods, and the evils that have followed from some of his measures, are obvious enough, and have often been remarked upon. Now in the case of Andrew Jackson, while he was not versed in the history and philosophy of government, it is far from correct to say that there was nothing of the statesman about him. On the contrary it may be maintained that in nearly all his most important public acts, except those that dealt with the civil service, Jackson was right. His theory of the situation was not reached by scientific methods, but it was sound, and it was much needed. Among the ablest books that have ever been written—books that ought to be carefully read and deeply pondered by every intelligent American man and woman, are the three works of Herbert Spencer, entitled, 'Social Statics', 'The Study of Sociology', and 'Man and the State'. The theory of government set forth in these books is that of the most clear-headed and powerful thinker now living in the world, a man who, moreover, is thinking the thoughts of tomorrow as well as of today. In spirit it is most profoundly American, but not in the sense in which that word was understood by Clay and the Whigs. It

was Jackson whose sounder instincts prompted him to a course of action quite in harmony with the highest philosophy."

(6) The spirit of paternalism that had grown up in connection with tariffs for protection, internal improvements, and the United States bank, and the effort of South Carolina to nullify the Acts of Congress gave Jackson an opportunity to create a precedent in favor of the Union that proved to be of incalculable benefit when he said to the nullifiers in substance, "Gentlemen, if you attempt to put your scheme into practice, I shall consider it an act of war, and shall treat it accordingly." Fiske says:

"During the administration of John Quincy Adams, there was fast growing up a tendency toward a molly-coddling, old granny theory of government, according to which the ruling powers are to take care of the people, build their roads for them, do their banking for them, rob Peter to pay Paul for carrying on a losing business, and tinker and muddle things generally. It was, of course, beyond the power of any man to override a tendency of this sort, but Jackson did much to check it, and still more would have come from his initiative if the questions of slavery and secession had not so soon come up to absorb men's minds and divert their attention from everything else. The protection theory of government has too much life in it yet; but without Jackson it would no doubt have been worse. His destruction of the bank was brought about in a way that we cannot wish to see often repeated; but there can be little doubt that it has saved us from a great

deal of trouble and danger. By this time the bank, if it had lasted, would probably have become a most formidable engine of corruption."

(7) The speeches of Daniel Webster in support of the Union, and especially his "Reply to Hayne", supplemented Jackson's "Force Bill" against South Carolina and aided greatly in saving the Union in 1861. Fiske says:

"The question as to whether the federal Constitution created a nation or not, was never really settled until it was settled by war. Previous to Jackson's presidency, people's ideas on the subject were very hazy, and when single States, or sections of the country grumbled and threatened, nobody knew exactly what ought to be done about it. It was significant that Webster's great speech and Jackson's decisive action should have come as close together. Webster's speech was not only a most masterful summing up of the situation, but for sublime eloquence, we must go back to the time of Demosthenes to find its equal. Among the forces that have held the Union together, the intelligent response of the popular mind to that speech, and the strong emotions it awakened, must be assigned a very high place."

As stated by Mr. Lincoln, the Republican party of today was founded on the principles of the Declaration of Independence, and its first great issue was the freedom of slaves, unfortunately incorporated in the Constitution by inference, if not in express terms. Had the advice of Jefferson, Washington,

Mason, and other great Virginians been followed the Civil War would have been averted.

Great Britain was more fortunate than the United States in the settlement of this great moral issue. The public sentiment of intelligent mankind, after centuries of oppression and abuses that were thought to be ineradicable, suddenly realized, after a most persistent agitation in Great Britain and the United States, that all men should be free. The Declaration of Independence and the success of our republican government made the profoundest impression in favor of this movement. In England slavery was destroyed by a decision of a court of law, as the result of a strong popular sentiment aroused by Wilberforce and others.

The decision of the Supreme Court of the United States in the Dred Scott case, holding that slavery was protected by the Constitution, was the immediate and moving cause of the war between the States, but it can readily be seen that the decision was correct from a purely legal standpoint.

Mr. Jefferson's prophecy was fulfilled, and the entire world shuddered while the issue was fought out, theoretically how the Constitution should be construed, but practically over the question of slavery. The thirteenth, fourteenth, and fifteenth amendments were added to the Constitution as the result of the war, it is true, slavery was abolished and further restraints were imposed on the States with reference to persons and property. The great



issue, however, as to how the Constitution should be construed is still unsettled, and can never be settled as long as we have a free government. The same general issues as to national policies continued after the war, as well as the same inconsistencies in parties, in power and out-of power; but fortunately the same strong tendency towards Union and love of liberty has never died out.

The Spanish-American War during McKinley's administration had a most wholesome influence in destroying the sectional feeling and restoring the sentiment for the Union. During recent years all parties have vied with one another in an effort to build up a robust and healthy Americanism and there have been fewer differences of opinion on vital questions than at any other period in the history of the country, unless it was during the "era of good feeling", while Monroe was President.

Theodore Roosevelt, William Howard Taft, and Woodrow Wilson are each entitled to a great share of credit for this wonderful transformation. The crowning achievement, however, in the accomplishment of this most salutary undertaking was the entrance of the United States into the world war between Autocracy and Democracy.

Mr. Burke's characterization of liberty in the American colonies does not overdraw the picture at this time, and we can truly say that it was not only fierce but chivalrous and inspired with the



spirit of the early Crusaders. The unanimity with which the American people of all sections entered this war, and the self-sacrifice and idealism manifested, are without a parallel in the history of the world, and will ultimately produce a higher and nobler type of American citizenship and a greater and nobler nation. It has also demonstrated that a republican form of government is the strongest in the world, as contended by Mr. Jefferson in his first inaugural address. Had not this unanimity of sentiment existed, the stringent laws against freedom of speech and freedom of the press could never have been enacted or enforced.

However, it should not be forgotten that these safeguards, like the writ of habeas corpus, can never be safely suspended except in times of war. There is a striking similarity in the conditions now prevailing over the entire world and those prevailing in Europe and the United States in the first years of the nineteenth century. No better advice can be given in dealing with them here at home than is contained in Mr. Jefferson's first inaugural heretofore referred to, in these words :

“During the throes and convulsions of the ancient world during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be felt and feared by some and less by others; that this

should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all republicans; we are all federalists. If there be among us those who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know, indeed, that some honest men fear that the republican Government cannot be strong; that this Government is not strong enough, but would the honest patriot, in the full tide of successful experiment, abandon a Government which has so far kept us free and firm, on the theoretic and visionary fear that this Government, the world's best hope, may, by possibility, want energy to preserve it? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it is the only one where every man, at the call of the law, would fly to the standard of the law and would meet invasions of the public order as his own concern. Sometimes it has been said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question."

A remarkable coincidence in the history of the United States is the fact that the issues making the war between the States inevitable should have brought forth a man like Abraham Lincoln, whose faith in the ability of the common people to govern

themselves should rival that of Thomas Jefferson, and that old Virginia should have produced such men as Robert E. Lee and "Stonewall" Jackson.

The glory of the English-speaking people has ever been that at no time have they failed to produce a great man to lead them in national crises, and this is and has ever been the severest test. This has been especially true of the United States from Washington to Wilson. That Mr. Wilson will be the spokesman and writer of the new declaration of freedom from the tyranny and autocracy in Europe, and will give the belligerents a program for a just and righteous peace, now, with safeguards for the future, no one can successfully deny who has thoughtfully watched and studied the trend of events during the last few years, and has faith in the ability of the people to govern themselves.

The vast strides in transportation and means of communication and the destructive agencies of war, such as the submarine and aeroplane, have forced the United States to abandon, temporarily at least, her policy of isolation. The British Channel for centuries enabled England to avoid conflicts with European nations, just as the Atlantic Ocean has protected the United States, but these natural barriers no longer avail. The problem, therefore, for the Entente Allies to solve is how to establish governments in Central Europe based, as theirs are, upon the consent of the governed, and thus restore

to the Teuton and other Aryan peoples the birth-right which they so foolishly and ignorantly surrendered to petty princes.

This problem is now thoroughly understood, and the details will be worked out in a League of Nations. Final success must come, and whether war be abolished or not immediately, the causes for wars will be vastly diminished, and the happiness and safety of freemen will be so advanced as to justify the belief that a millennium of peace is approaching.

A century of peace between Great Britain and the United States, and the fact that there is not a single military post or fort along the boundary line between Canada and the United States, covering a distance of over three thousand miles, more than justifies the belief that peace is not only possible, but probable, among self-governing nations.

When we contrast the visit of Wilson to England, and the reception given him by George V and the masses of the English people, with the conduct of George III before and during the American Revolution and the visit made to him by Thomas Jefferson and John Adams, seeking to make treaties of commerce and friendship, we can truly say that the world has changed for the better.

The speeches of George V and Mr. Wilson mark an epoch in the history of the world, and both are worthy of perpetual remembrance.

King George V said in part:



"You share with us the traditions of Magna Charta. We recognize the bond of still deeper significance in the common ideals which our people cherish. First, among these ideals you value, and we value, freedom and peace. Privileged as we have been to be the exponents and the examples in national life of the principles of popular self-government, based upon equal laws, it now falls to both of us alike to see how these principles can be applied beyond our own borders for the good of the world.

"It was love of liberty, respect for law, good faith, and the sacred rights of humanity that brought you to the old world to help in saving it from the dangers that were threatening and that arraigned those soldier citizens of yours, whose gallantry we have admired, side by side with ours in the war.

"You have come now to help in building up new states amid the ruins of those that the war has shattered and in laying the solid foundations of a settlement that must stand firm, because it must rest upon the consent of the emancipated nationalities. You have eloquently expressed the hope of the American people, as it is our hope, that some plan may be devised to attain the end you have done so much to promote by which the risk of future wars may, if possible, be averted, relieving the nations of the intolerable burden which fear of war has laid upon them."

Mr. Wilson said in part:

"There is a great tide running in the hearts of men. The hearts of men have never beaten so singularly in unison before. Men have never before



been so conscious of their brotherhood. Men have never before realized how little difference there was between right and justice in one latitude and in another, under one sovereignty and under another.

“And it will be our high privilege I believe, Sir, not only to apply the moral judgment of the world to the particular settlements which we shall attempt, but also to organize the moral force of the world to preserve those settlements, to steady the forces of mankind and to make the right and the justice to which great nations like our own have devoted themselves the predominant and controlling force of the world.

“There is something inspiring in knowing that this is the errand that we have come on. Nothing less than this would have justified me in leaving the important tasks which fall upon me upon the other side of the sea—nothing but the consciousness that nothing else compares with this in dignity and importance.”

May we not confidently hope and pray that in future years Woodrow Wilson shall be known as the liberator of Central Europe, as Lincoln is known as the liberator of the Negro race?

In order to fully appreciate the significance of the great truths pertaining to government and especially the fundamental principles now recognized in all English-speaking nations as the safeguards of liberty, it should be remembered that they are the result of centuries of actual experience, and that they have stood the supreme tests in peace and war.

The greatest statesmen and writers on political

economy have come to recognize the truth that law is a growth and is a thing to be discovered, rather than a thing to be made. As has been said by Jenks:

“Law is made unconsciously by the men whom it most concerns; it is the deliberate result of human experience working from the known to the unknown, a little piece of knowledge won from ignorance, of order from chaos. It is begun by the superior man; it is accepted by the average man. So law must be declared and after that enforced. This declaration and enforcement are the work of the official few, of the authorities who legislate and execute. There was plenty of law in the Middle Ages; but it was for the most part ill declared and badly enforced. The great problem which lay before the statesmen of the Middle Ages was to devise a *machine* which should declare and enforce law uniformly and steadily. The supreme triumph of English statesmanship is that it solved this problem some five hundred years before the rest of the Teutonic world. By bringing together into one body representatives of those who made her laws, by confronting them with those who could declare and enforce them, England was able to know what her law was, to declare it with certain voice, and to enforce it thoroughly and completely.”

The processes have been broadened and improved in the United States, and federal union has been made not only possible but workable. This same capacity for governing large areas and innumerable individuals combined in local groups having and

retaining their separate autonomy, is a great discovery belonging to American statesmen alone. Napoleon called it ideology, thereby inventing a new word to express his lack of faith in the experiment.

A League of Nations is not half so utopian a scheme to the thoughtful student of government today as was the experiment made by the framers of our National Constitution to English and European statesmen. There was violent opposition to the adoption of the Constitution here in America, as has been shown, and all sorts of prognostications of failure and utter ruin were made by many of the most patriotic man who had taken the lead for independence. The opposition in the United States to the League of Nations are following the same tactics as did their progenitors to our Constitution.

Shall it be said that with the great mass of superb laws which have existed for centuries constituting a code of laws for the government of nations, known as international law, the statesmen of the world have not the ability and ingenuity to devise a machine which shall enforce it? The conditions were never so propitious as now, and the best brains of the world are consciously co-operating with the members of the Peace Tribunal to help solve it. One has only to read carefully the most remarkable letter ever written by Mr. Jefferson—to-wit, his letter to James Monroe, dated October 24, 1823, when he was requested to give his opinion

which led to the adoption of the Monroe Doctrine—to discover that the objections urged by him to entangling alliances with European nations, while he strongly favored an alliance with England, was because of the despotic governments having different interests from those of our free republic, and that the Holy Alliance was a league to protect kings and crush democratic ideas which threatened them.

The English and American ideas of popular sovereignty are now for the first time predominant, and the divine right of kings and other monstrosities belonging to Autocracy have found at last a temporary defeat in the demise of the Hohenzollern and Hapsburg dynasties.

The slow but sure process of settling disputes between nations by arbitration, which has been adopted by Great Britain and the United States for nearly a century with entire satisfaction to both countries, shows not only the feasibility of the idea but its absolute utility. The Supreme Court of the United States, another of the great inventions of American statesmanship, is a model for one of the tribunals, as it was the first that ever undertook to settle political controversies between States. By a process of evolution intelligent mankind has long since determined that it is better to settle controversies between individuals, even when questions of honor are at stake, by courts of justice, rather than by the code duello; that it is more expedient to grant the utmost liberty to the individual and



subordinate communities, upon the theory that man is capable of self-government, than to attempt to maintain order with standing armies, and that finally public opinion, where there is freedom of speech, freedom of the press, and freedom of religion, under a free government having all of the safeguards of liberty herein attempted to be explained, is the safest and best foundation for that perpetual peace which has been the dream of ages when "Nations shall beat their swords into plowshares, and their spears into pruning-hooks, and nation shall not lift sword against nation, neither shall they learn war any more."

With the Associated Press in every nook and corner of the world, wireless telegraphy, wireless telephony, naval seaplanes crossing the Atlantic ocean in twenty-six hours and forty-one minutes, there should be no difficulty in establishing a world public opinion and thus formulate a guide to world statesmanship as trustworthy and reliable as public opinion in the great free governments which are forming the League of Nations.

The policies of the United States must be enlarged so as to cover and protect our foreign commerce, now that we are to have a merchant marine commensurate with the growth and development of our manufactures and other surplus commodities. Commerce has ever been the prolific cause of war, and without some tribunal to regulate and control foreign commerce and adjust differences



growing out of sharp conflicts arising therefrom between rival nations, further wars will be inevitable. The happy results following our adoption of the Constitution by Washington and other statesman, in avoiding conflicts which would have terminated in war between colonial states, should hearten Mr. Wilson and his co-laborers in the solution of the greatest problem ever undertaken by men. When we contemplate for a moment the generous and whole-hearted support being given Mr. Wilson by the best brains of Puritan New England, under the leadership of President Lowell and the able and patriotic faculty of Harvard, and Judge William Howard Taft, of Yale, and others too numerous to recount, and that constructive force representing the Scotch-Irish and its great educators, as well as the representatives of every great university in the country, and see the same alinement of men and institutions in other countries taking part in the Peace Conference, and that the prayers of the Church and its whole life and aspirations are wrapped up in the success of their efforts, the spectacle rises to the morally sublime.

Remembering that Mr. Wilson is the son of the Old Dominion and the representative of all that is best in the Scotch-Irish race and its noblest traditions of love for freedom and of education, and his idealism resulting therefrom, it is not difficult to understand how it was that he had an irresistible impulse to go to Paris to represent the United

States at the Peace Tribunal. The constructive ability of Mr. Wilson has been taxed as no President has ever been in the history of the United States, and he has been equal to every emergency, and left a record without parallel for constructive statesmanship. By education, experience as president of Princeton University, Governor of New Jersey, and President of the United States, he has had rare opportunities to display his genius as an educator and statesman. In this unprecedented emergency, demanding the very best that a Christian nation can produce, are we not justified in concluding, with John Milton, the first and grandest of democrats in the true sense of the word, that "God then raises to his own work men of rare abilities, and more than common industry, not only to look back and revive what hath been taught heretofore, but to gain further, and to go on some new enlightened steps in the discovery of truth", and that Woodrow Wilson is that man?

## APPENDIX A

### DECLARATION OF INDEPENDENCE

IN CONGRESS JULY 4, 1776

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, That all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

[See Milton, "Tenure of Kings and Magistrates," and Locke, "On Government".]

That to secure these rights, Governments are instituted among Men, deriving their Just powers from the consent of the governed.

[See Milton, *Ibid.*; Burke, "On Conciliation with the Colonies"; Freeman, "Growth of English Constitution"; John Fiske, "American Political Ideas".]

That whenever any Form of Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

[See Virginia Bill of Rights, 1776.]

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes, and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

[See Milton, *Ibid.*; "Agreement of the People of England" (1649); "The Instrument of Government" (1653), and Bill of Rights (1689).]

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

[Here follows List of Grievances.]

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

[See Magna Charta, Art. 17.]

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

[Assemblies in Virginia, Massachusetts, and elsewhere.]

He has refused for a long time, after such dissolutions, to cause others to be elected; Whereby the Legislative powers, incapable of Annihilation, have returned to the people at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of land.

[England required the Colonial Governments to issue no more grants of



land and to allow no settlements west of the sources of the Atlantic Board Rivers.]

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices; and the amount and payment of their salaries.

[Bill of Rights, 1689, and change of tenure and salaries of Judiciary in reign of William and Mary.]

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace Standing Armies without the consent of our legislature.

[See Bill of Rights, 1689.]

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

[Parliament.]

For quartering large bodies of armed troops among us;

For protecting them, by mock Trial, from punishment for any Murders which they should commit on the inhabitants of these States.

[Bill of Rights, 1689, etc.]

For cutting off our Trade with all parts of the world:

[Boston Port Bill.]

For imposing Taxes on us without our Consent:

[Stamp Tax, Tea Tax, etc. Summary View.]

For depriving us in many cases, of the benefits of Trial by jury:

[Jury changed Vice-Admiralty Court.]

For transporting us beyond Seas to be tried for pretended offenses:

[Transportation Bill.]

For abolishing the free Systems of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

[Quebec Bill, 1774.]

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

[Connecticut, Rhode Island, Massachusetts, etc.]

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever:

[Virginia, Georgia, Massachusetts, Maryland, New York.]

He has abdicated Government here, by declaring us out of his Protection and waging War against us:

[So-called abdication of James II in Bill of Rights, 1689.]

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy scarcely

paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

[Hessian troops.]

He has constrained our fellow-citizens taken captive on the high seas to bear Arms against their country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have petitioned for Redress in the most humble terms:

[Virginia Resolutions and Declaration of Rights and Grievances, 1765.]

Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence.

[Address to the People of Great Britain.]

They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE THEREFORE, the REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN GENERAL CONGRESS, Assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the Name, and by authority of the good people of these Colonies, solemnly PUBLISH AND DECLARE, That these United Colonies are, and of Right out to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, We mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

[The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:]

JOHN HANCOCK.

*New Hampshire.*

JOSIAH BARTLETT, MATTHEW THORNTON.  
WM. WHIPPLE,

*Massachusetts Bay.*

SAML. ADAMS,	ROBT. TREAT PAINE,
JOHN ADAMS,	ELBRIDGE GERRY,



## APPENDIX

*Rhode Island, etc.*

STEP. HOPKINS, WILLIAM ELLERY.

*Connecticut.*

ROGER SHERMAN,      WM. WILLIAMS,  
SAM'EL HUNTINGTON,      OLIVER WOLCOTT.

*New York.*

WM. FLOYD,                      FRANS. LEWIS,  
PHIL LIVINGSTON,              LEWIS MORRIS.

*New Jersey.*

RICHD. STOCKTON,  
JNO. WITHERSPOON,  
FRAS. HOPKINSON,

JOHN HART,  
ABRA. CLARK.

*Pennsylvania.*

ROBT. MORRIS,	JAS. SMITH,
BENJAMIN RUSH,	GEO. TAYLOR,
BENJA. FRANKLIN,	JAMES WILSON,
JOHN MORTON,	GEO. ROSS.
GEO. CLYMER,	

*Delaware.*

CESAR RODNEY,  
GEO. READ,

*Maryland.*

SAMUEL CHASE,  
WM. PACA,

THOS. STONE,  
CHARLES CARROLL,  
OF CARROLLTON.

*Virginia.*

GEORGE WYTHE, THOS. NELSON, JR.,  
RICHARD HENRY LEE, FRANCIS LIGHTFOOT LEE,  
TH JEFFERSON, CARTER BRAXTON.  
BENJAMIN HARRISON,

*North Carolina.*

WM. HOOPER, JOHN PENN.  
JOSEPH HEWES,

*South Carolina.*

EDWARD RUTLEDGE, THOMAS LYNCH, JR.,  
THOS. HEYWARD, JR., ARTHUR MIDDLETON.

*Georgia.*

BUTTON GWINNETT, GEO. WALTON.  
LYMAN HALL,

RESOLVED, That copies of the Declaration be sent to the several assemblies, conventions, and committees or councils of safety, and to the several commanding officers of the Continental Troops: That it be PROCLAIMED in each of the UNITED STATES, and at the Head of the Army.

(*Jour. Cong.*, Vol. I, p. 396.)

## APPENDIX B

### A BILL FOR ESTABLISHING RELIGIOUS FREEDOM

SECTION I. Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested His supreme will that free it shall remain by making it altogether insusceptible of restraint: that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His almighty power to do, but to exalt it by its influence on reason alone; that the impious presumption of legislature and ruler, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time: that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical; that even the forcing him to support this or that teacher of his own

religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind, that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; and therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to office of trust or emolument, unless he profess or renounce this or that religious opinion, is depriving him injudiciously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of wordly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminals who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty, because, he being of course judge of that tendency, will make his opinions the rule of judgement, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for



the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless, by human interposition, disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them;

SECTION II. We, the General Assembly of Virginia, do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, or shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

SECTION III. And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

(VIII, 454; Ford Ed., II, 237 [1786].)

## APPENDIX C

### VIRGINIA BILL OF RIGHTS

#### A DECLARATION OF RIGHTS (JUNE 12, 1776)

Made by the Representatives of the good people of Virginia, assembled in full and free Convention, which rights to pertain to them and their posterity as the basis and foundation of government.

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

II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all time amenable to them.

III. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when a government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and

indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

IV. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

V. That the legislative, executive and judicial powers should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain and regular elections, in which all, or any part of the former members to be again eligible or ineligible, as the laws shall direct.

VI. That all elections ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to the community have the right of suffrage, and cannot be taxed, or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented, for the public good.

VII. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

VIII. That in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of twelve

men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man can be deprived of his liberty, except by the law of the land or the judgment of his peers.

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

X. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the ancient trial by jury of twelve men is preferable to any other, and ought to be held sacred.

XII. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

XIII. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies in time of peace should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

XIV. That the people have a right to uniform government; and therefore, that no government separate from or independent of the government of Virginia, ought to be erected or established within the limits thereof.

XV. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance,



frugality and virtue, and by frequent recurrence to fundamental principles.

XVI. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience, and that it is the duty of all to practice Christian forbearance, love and charity towards each other.



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