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Claude M. Fues

Caleb Cushing

A Memoir

by

Claude Moore Fues

Boston, Massachusetts

MCMXXXII

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CALEB CUSHING · A MEMOIR

BY

CLAUDE MOORE FUESS

ON FEBRUARY 10, 1859, Caleb Cushing, a citizen of Newburyport, was elected a Resident Member of this Society. At that moment he was the leader of the Democratic minority in the Lower House of the General Court, where, with unusual patriotism, he was content to serve after having long occupied a conspicuous position on the stage of national affairs. He was still much in the public eye, for he had just been defeated by Henry Wilson for the United States Senate and had dared to defend the right of German and Irish aliens to prompt naturalization. It was rather remarkable that Cushing should have been admitted at that period to a Society whose members have usually been conservative in their opinions. His open friendliness to the South and his vigorous condemnation of abolitionists made him *persona non grata* in many Boston houses. Yet Bostonians forgot their prejudices and honored him for his talent and accomplishments.

Unpopular though he was in certain quarters, Cushing was undeniably a leading statesman of the Commonwealth. Born on January 17, 1800, he had entered upon a political career with an equipment seldom equalled in his generation. From a long line of distinguished forbears extending back to Matthew Cushing, his immigrant ancestor, who landed in Boston in 1638, Caleb Cushing inherited a sound body and the physical strength to endure hard work and fatigue. He graduated from Harvard at seventeen, studied law, and returned to the college as a tutor when he was only twenty. His social position was unquestioned, and the family fortunes were such as to relieve him from any embarrassment about money. Finally, he was lucky enough early in his progress at the bar to attract the attention of Daniel Webster, whose political heir in a sense he became.

In appearance, Cushing was a tall, robust figure, with bright restless eyes, a resolute jaw, a dignified bearing, and handsome

features. At an early age he displayed an amazing capacity for sustained labor, together with a faculty for intense concentration on the subject immediately at hand. Through sheer perseverance and systematic methods of study he acquired a vast fund of information even on obscure topics, and his store of legal knowledge was the wonder of his associates. His extraordinary ability as a linguist stood him in good stead on several occasions. He wasted no time in frivolity, or even in recreation, but, by force of mind and will, made himself into something of a literary man and, aided by his rich and resonant voice, into an orator comparable with Edward Everett and Wendell Phillips. His skill as a logician compensated for his lack of imagination. Although he was more critical than constructive, his thinking did not paralyze his resolution, and, when the moment for decision arrived, he could act as well as reflect. Everybody who came within his range conceded that he possessed a first-rate mind.

Temperamentally, Cushing was disposed to be autocratic, relying on force and reason rather than on conciliation. Disdaining to be suave, he was often exceedingly, even irritatingly, positive. He seldom wavered between two courses of conduct, but usually espoused one with a militant partisanship. Although he was highly ambitious, he seems to have been intellectually courageous, and he refused to resort to those arts which are supposed to lead to popularity. Largely because of his lack of tact, he was greatly misunderstood; and even now he is sometimes mentioned half sneeringly as if he had been a renegade or a traitor. This opinion does an injustice to a man who customarily fought his enemies in the open, who held to his beliefs in the face of party denunciation and social ostracism, and who was as loyal to the Union as was his mentor, Daniel Webster. If Cushing had possessed the social graces of Franklin Pierce, he could have been President of the United States. As it was, he was saddened by missing his loftiest ambitions.

Thus equipped physically and mentally, Caleb Cushing entered politics at a time when the slavery question, after some years of abeyance, was being reopened by the Missouri Compromise of 1820; and with its agitation and ostensible settlement, his public life almost exactly coincided. In the

beginning, he met it as Webster did — with a profound conviction of the iniquity of human servitude, joined with the feeling, natural enough to a lawyer, that the bargain made between North and South at the establishment of the Federal Union could not easily be repudiated. Like Webster, moreover, he could not see how breaking up the Union would eradicate slavery. In the end, however, Cushing went farther than Webster and came, without intending it, to be regarded as a typical “Northern man with Southern principles.”

A brief summary of his career will help to explain its enigmas. For more than half a century, Caleb Cushing was in the public eye. Following an apprenticeship in the Massachusetts General Court and a disconcerting defeat for Congress, he broke down in health and sailed for Europe, returning late in 1830, fully restored and ready for the fray. After a long series of deadlocks had ended in the failure of another Congressional campaign, he was again nominated in 1834 and elected, partly because of Webster’s intervention in his behalf. For four terms, as the Representative from the Essex North District, Cushing grew in power and reputation. His fortunes as one of the founders of the Whig party were linked with those of Daniel Webster and Edward Everett, both older than he, and his advancement depended largely on their success. In Congress he took an active share in the floor discussion, toiled indefatigably on committees, and showed himself to be facile in debate and convincing in argument. He was a very useful member. In 1840, he worked faithfully for Harrison’s victory and was evidently marked by the new President for preferment. Up to this date, Cushing’s progress had been normal and comparatively uneventful. And then Harrison unexpectedly died, and his mantle fell upon the shoulders of John Tyler, of Virginia.

When Henry Clay at that moment assumed the dictatorship of the Whig Party, both Webster and Cushing resented it and rebelled. Webster, in defiance of Clay, remained as Secretary of State when the other members of the cabinet resigned; while Caleb Cushing helped to organize the “Corporal’s Guard,” a small group of Tyler Whigs in the House of Representatives. For his adherence to Tyler’s failing cause, Cushing was nominated as Secretary of the Treasury, but

the Senate, controlled by Clay men, refused confirmation. Finally, on May 8, 1843, during the Congressional recess, Cushing was rewarded by an appointment as Commissioner to China.

As the negotiator of the Treaty of Wang Hiya (July 3, 1844) with the Imperial Chinese Government, Cushing added luster both to himself and to the slowly fading Tyler administration. When he reached New York on January 1, 1845, Polk had been elected President, and Tyler, although still in the White House, was discredited. At the outbreak of the hostilities with Mexico, Cushing, who had cherished military aspirations, aided in raising a regiment, was chosen its colonel, and was later promoted to be brigadier general. Although he was never under fire, he led his brigade over the National Highway from Vera Cruz to Mexico City in the wake of General Scott. During his absence, he was nominated by the Democrats for Governor of Massachusetts and, against the popular Governor George N. Briggs, increased the vote for his party by more than 9000 over the previous year. The campaign was enlivened by the clever but unjust satire of Lowell's *Biglow Papers*, in which Cushing figured as "Gineral C." He was again defeated in 1848, running third to Briggs, who was reelected, and to Stephen C. Phillips, the Free-Soil candidate.

In January, 1851, as a Representative in the General Court, Cushing, together with his followers, refused to vote for Charles Sumner as United States Senator. Never having pledged himself to the coalition between Democrats and Free-Soilers, he was not bound by the action of the Democratic caucus, which had agreed to accept Sumner. Through his recalcitrancy, Cushing became even more obnoxious than before to the radical abolitionists, who rejoiced when Sumner was finally elected by a margin of one vote. Later in the year, Cushing became the first mayor of Newburyport, then recently incorporated as a city; and in July, 1852, he was appointed by Governor Boutwell as Judge of the Supreme Judicial Court of the Commonwealth. During his few months on the bench he became conspicuous for his knowledge, industry, and fairness.

Cushing entered aggressively into the presidential campaign

of 1852 as one of the little group who plotted to make Franklin Pierce the Democratic nominee. On the floor of the Baltimore Convention he shrewdly directed the Pierce forces, and, when the New Hampshire man was elected and inaugurated, it was to be expected that Cushing would be in his cabinet. As Attorney-General for four years, Cushing proved to be the ablest incumbent of that office in our history. He was the first holder of that position to devote himself exclusively to its responsibilities; and he established a series of precedents which have been indispensable to his successors, rounding them out by a full discussion of the functions and traditions of the attorney-generalship. His opinions, filling three volumes, have been repeatedly quoted as authoritative on many subjects. In Pierce's cabinet, Cushing exercised great influence, and several of the administration policies can be traced to him. Thrown into contact with southern statesmen, he became more tolerant of their views on slavery; indeed one of his opinions anticipated the doctrine of the Dred Scott decision.

Cushing did not like the young Republican party, which he described in 1857 as "a jumble of freaks and follies." When Pierce's term was over, he came back to Boston, where he was again elected to the General Court and, although the Democrats were in a minority, was conceded an intellectual leadership. At the Boston Union meeting (December 8, 1859) in Faneuil Hall, he joined Everett, Levi Lincoln, and others in denouncing John Brown's raid. He was chosen Chairman of the Democratic Convention held at Charleston in April, 1860. Accepting the Dred Scott decision as final, Cushing, though impartial in his rulings as presiding officer, favored the anti-Douglas faction; and when the delegates, after disbanding in confusion, reassembled at Baltimore, he appealed for harmony. After it became evident that the Douglas element was in control, Cushing led the "bolters" who nominated Breckinridge and Lane. He felt that the South had been badly treated and, even after the election of Lincoln, urged his fellow-northerners to make concessions. President Buchanan sent him on a mission to plead with South Carolina, and he was actually in Charleston when the Ordinance of Secession was signed. In a mood of despair, he reported to the Presi-

dent and, when war was declared, reaffirmed his loyalty to the Union by offering his services to Governor Andrew. To the latter's enduring shame, Cushing's request for a commission was refused. From then until his death, Cushing voted the Republican ticket.

During the Civil War, Cushing, as one of Lincoln's informal legal advisors, rendered important aid to the Department of State. He resumed his profitable law practice, making notable arguments before the Supreme Court of the United States. Meanwhile he transferred his residence to Falls Church, Virginia, only a few miles from the national capital. In 1868, he was appointed by President Johnson as a special Minister to Colombia, and spent some weeks in Bogota furthering negotiations for a ship canal across the Isthmus of Panama. In the proceedings leading up to the Treaty of Washington in 1871, Caleb Cushing was a leader; and President Grant selected him as one of three counsel to represent the United States at the Geneva Conference for the adjustment of the so-called *Alabama* Claims. It was largely Cushing's astute brain which guided the deliberations, arranged a basis of compromise, and secured a favorable decision for his country. His ability to speak French fluently astounded the representatives of other nations and brought prestige to the American delegation.

Cushing's declining years were darkened by what to him was a culminating tragedy. His highest ambition was to be Chief Justice of the Supreme Court of the United States. On January 9, 1874, President Grant nominated him for that position, and his qualifications were so obvious that no opposition was expected. But attacks upon him soon developed from his enemies, especially from Senator Aaron Sargent, of California, with whom he had once quarreled, and it was soon apparent that he could not be confirmed. He withdrew his name and accepted the post of minister to Spain to which he had already been appointed before the vacancy on the Supreme Bench occurred. He remained in Madrid until 1877, when he resigned and settled down in his boyhood home at Newburyport, where he is still remembered as an austere, rather lonely person, who wanted to be loved but did not understand how to win affection. He died January 2, 1879,

on a night as stormy as his life had been. He was interred in the New Burial Ground, in Newburyport, and a memorial service was held in that city on October 8, 1879.

Cushing married, in 1824, Caroline Elizabeth Wilde, daughter of Judge Samuel Sumner Wilde of the Supreme Judicial Court of Massachusetts, by whom he had no children. In spite of his wife's persistent ill health, the marriage was very happy, and her early death in 1832 left him inconsolable. He was devoted to his parents and to his brothers and sisters. Caring little for money as an end in itself, Cushing earned a large income whenever he was willing to accept retainers. His tastes were very simple, even abstemious, and he was indifferent to luxury.

Caleb Cushing was not precisely a contributing member of this Society. So far as I can ascertain, he never attended a meeting, although, on May 8, 1873, through William Gray Brooks, he presented to it "a manuscript volume, finely illustrated with engravings, of the genealogy of the Cotton family, prepared for Mr. Cushing by the late H. G. Somerby." This interesting book is still preserved in the archives. At the first meeting after Cushing's death, President Robert C. Winthrop remarked: "He was too busy, and too often absent from home, to take part in our historical work, or even to attend our meetings." Winthrop did, however, pay a sincere tribute to Cushing, and his eulogy was supplemented by George B. Emerson and Charles W. Tuttle. On February 13, 1879, Mr. Tuttle was designated to prepare a Memoir for the Society and went so far as to examine some of the Cushing papers. When he died on July 18, 1881, he had made little progress, and no one seems to have been appointed as his successor. Now, many years later, the duty of refreshing the recollections of posterity has devolved upon the present writer.

Perhaps, however, it is easier today to recognize Caleb Cushing's notable accomplishments than it would have been fifty years ago. Studying him with a mind free from controversial prejudice, we can perceive that he was an able lawyer, a thrilling orator, a shrewd diplomatist, an almost omniscient scholar, a versatile and far-sighted statesman, and an honest man. He made his mistakes, for which he paid in full, and he died disappointed. But he is not forgotten. Other men

who seemed to their contemporaries more spectacular have vanished into oblivion; while Caleb Cushing's more substantial qualities have given him a permanent niche in history. His memoir will appear belatedly in our *Proceedings*, but at a time when the vindication of his much-maligned character is conceded by well-informed historians.



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