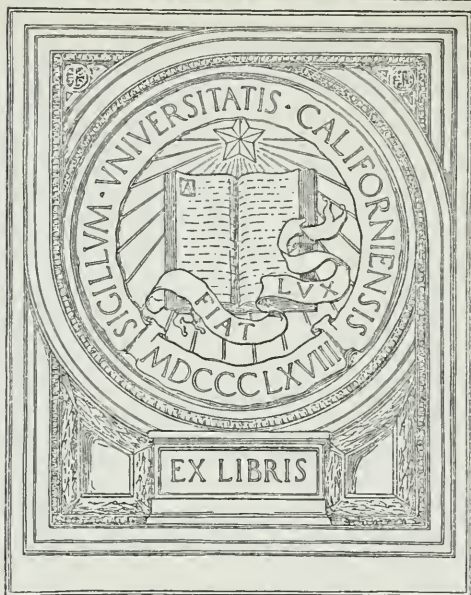




UNIVERSITY OF CALIFORNIA  
AT LOS ANGELES



THE GIFT OF  
MAY TREAT MORRISON  
IN MEMORY OF  
ALEXANDER F MORRISON

















***American Political History***  
**1763-1876**

By ALEXANDER JOHNSTON

Edited and Supplemented by James Albert Woodburn,  
Professor of History and Political Science,  
Indiana University

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*In Two Volumes. Octavo*  
(Each complete in itself and indexed)

- 1. The Revolution, the Constitution, and the Growth of Nationality. 1763-1832**
- 2. The Slavery Controversy, Secession, Civil War, and Reconstruction. 1820-1876**

# AMERICAN POLITICAL HISTORY

1763-1876

BY

ALEXANDER JOHNSTON

EDITED AND SUPPLEMENTED BY

JAMES ALBERT WOODBURN

PROFESSOR OF AMERICAN HISTORY AND POLITICS  
INDIANA UNIVERSITY

*IN TWO PARTS*

I

THE REVOLUTION, THE CONSTITUTION, AND THE  
GROWTH OF NATIONALITY, 1763-1832

G. P. PUTNAM'S SONS  
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## PREFACE

THESE volumes have been prepared to present in more convenient form for present reference the series of articles on "American Political History," contributed to Lalor's *Cyclopædia of Political Science, Political Economy, and Political History*, by the late Professor Alexander Johnston. Lalor's *Cyclopædia* has, since its first publication a quarter of a century back, been recognized by teachers and students as the most valuable compendium of information on the various subject matters considered. The task of preparing the whole series of articles relating to the various divisions of the political history of the United States was placed by the editors in the hands of one contributor, Professor Alexander Johnston, of Princeton University. During the quarter of the century that has elapsed since the first publication of these papers, they have been constantly referred to and drawn upon by the teachers and students of the subject. The articles, while presented under different headings, are characterized by a specific unity of purpose and of plan. The series taken together presents a substantially complete outline of the political history of the Republic, while certain of the more important phases of this history are presented with a detail of information and of reference that it would be difficult to find within the same compass elsewhere.

The untimely death of Professor Johnston in 1889, at the early age of forty, was a serious loss to historical study and teaching in America. His several volumes—A

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*Brief History of American Politics, Connecticut : A Study of a Commonwealth-Democracy, History of the United States for Schools, and The United States, Its History and Constitution* (the latter reprinted from the *Cyclopædia Britannica*)—secured for their author a high reputation as an authority on the several subject matters and as a writer who had an exceptional capacity for well-proportioned and effective presentation of any subject. More comprehensive and (in the judgment of the editor of the present series) more permanently valuable, however, than any of these works were the contributions prepared by Professor Johnston for the *Lalor Cyclopædia*, under the general heading of "American History." The conclusions and suggestions presented in this series of papers have been found to possess continued value for readers and students of the twentieth century, and the editor does not find that their text calls at this time for any material changes.

The editor of the present volumes has attempted so to arrange, connect, and supplement these papers as to present in a compact but readable narrative a consecutive political history of the United States from the opening of the American Revolution to the close of the period of reconstruction.

The chapter-subjects in the table of contents indicate the material selected. These papers deal with the more important epochs and distinctive features in the development of the nation. For certain articles, it has been found desirable, in order to make the proper connection between the several papers of the series and to bring the record down to date, to add new material, and in a few of the chapters the amount of such new material is considerable. No changes have, however, been attempted in the conclusions and suggestions of the original author, and the new material will be found to be fully in harmony with the character of the original papers.

The introductory chapter and the chapter on the "Monroe Doctrine" are the work of the present editor.

The article on "Tariffs in the United States," originally contributed to the Lalor *Cyclopædia* by Mr. Worthington C. Ford, has, with the courteous permission of the author and of the publishers of the *Cyclopædia*, been included in this volume in the chapter on the "American System."

The papers from Lalor's *Cyclopædia* are reprinted in the present volumes under arrangement with the present owners of the *Cyclopædia*, Messrs. Maynard, Merrill & Co., whose courtesy is hereby acknowledged.

It is believed by the publishers and the editors of the present work that readers and students of American history will appreciate the service that has been rendered in putting into the form of a continuous narrative these distinctive contributions of Professor Johnston.

J. A. W.

INDIANA UNIVERSITY, BLOOMINGTON, IND.,  
February 11, 1905.





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The Revolution and the Constitution

1763-1800



# American Political History

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## CHAPTER I

### INTRODUCTION

IT is the purpose of these volumes to present the principal features in the political history of the United States from the opening of the American Revolution to the close of the Era of Reconstruction. As an introduction to the beginnings of the Revolution the attention of the student may properly be directed to the final result of nearly a century of conflict between England and France for empire in America.

American colonial history may be said to have ended with 1763, the date of the famous Treaty of Paris closing the Seven Years' War. This war ended the long struggle between England and France over their American claims and dominions. The treaty which closed the war was one of the most important in its effects on the state life of Europe since that of Westphalia established the balance of modern Europe. It marked an epoch in history, a turning point, not only in the history of America, but in the history of the world. "Three of the many victories of the Seven Years' War," says Green, in his *History of the English People*, "determined for ages to come the

## 2 The Revolution and the Constitution

destinies of mankind." Quebec was one of these three victories, and "with Wolfe's triumph at Quebec began the history of the United States."<sup>1</sup>

By the conclusions of this famous Seven Years' War, Austria was compelled to accept an equal rival in the affairs of the German states. Prussia was advanced, by the successes of Frederick the Great, to a high rank among the nations; the Hohenzollerns became the equal rivals of the Hapsburgs, and German unity began under Protestant leadership, and it has been said that the scene then opened which closed at Sadowa and Sedan, in 1866 and 1871.

The war brought France deep humiliation. "Dupleix and Montcalm had aimed at building up an empire which would have lifted France high above her European rivals. The ruin of these hopes in the Seven Years' War was the bitterest humiliation to which French ambition had ever bowed." Green here expresses an obvious historical conclusion; because by this war France lost her merchant and military marine and was compelled to surrender her American claims and possessions. She surrendered Canada to England and Louisiana to Spain and retired from the American continent.

Another result of the war was the splendid and imperial advancement of Great Britain. By the achievements of this war Pitt had established England's world empire. After this war it might be said for the first time that the sun never set upon England's dominions. The war gave to Britain India, America, and the mastery of the sea. Frederick the Great said: "The war began over a few miserable huts and by it England gained two thousand leagues of territory and humanity lost a million of men."

It was this war, from 1756 to 1763, that finally estab-

<sup>1</sup> Frederick the Great's victory at Rossbach and Clive's at Plassy were the other two victories referred to by Green.



lished the British power on the American continent. In the territorial readjustment following the war, (1) Canada passed from France to Britain, (2) Florida passed from Spain to Britain, and (3) Louisiana (west of the Mississippi) and the island of New Orleans passed from France to Spain, while the part of Louisiana east of the Mississippi—in general, the eastern Mississippi valley—passed from France to England. This brought all eastern America, the valleys of the St. Lawrence and the Mississippi, and the region of the Lakes, under English control. As to the American Colonies, therefore, France had departed from their north side and Spain from their south side, and the colonists “were no longer between the upper and the nether millstone.” “America was English. By removing an enemy whose dread had knit the colonists to the mother country, and by breaking through the line with which France had barred them from the basin of the Mississippi Pitt had laid the foundation of the Great Republic of the West.”<sup>1</sup>

The French scheme, by which the English were to be barred from the basin of the Mississippi, was to connect the mouths of the two great rivers, the St. Lawrence and the Mississippi, by a line of forts and garrisons at strategic points, on the Lakes, the Ohio, the Wabash, and the Illinois,—and thus establish connection, communication, and defence. If this design had not been defeated by the English victories of the Seven Years' War, a New France instead of a New England might have dominated North America.

At the close of the seventeenth century France was at the zenith of her power. It was the age of Louis XIV. In a wonderful array of great names produced in a half-century of that exceptional reign none stands higher for distinguished services to the state than the name of Colbert. No statesman of his day did more for the

<sup>1</sup> Green, *History of the English People*, Ch. on America.

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expansion of his nation than Colbert. He was the great colonizer of France. By his far-sighted and sagacious plans the French navy was increased, the revenues were saved from waste and corruption, and the colonizing expeditions of Frontenac, Marquette, Joliet, and La Salle were liberally sustained for the upbuilding of New France in the New World. Largely through Colbert's influence and statesmanship the French, by 1690, besides their well-grounded hope of empire in India and their power in Cayenne and the West Indies, had in North America, Canada, Cape Breton, the fishing banks of Newfoundland, the mouths of the Mississippi and St. Lawrence, and inland Louisiana. "France held America by its two ends, the mouths of its great rivers," as Duruy, the French historian, expresses it. The reflective historian of that day might well have concluded that America was to become French.

In this time of promise for the French power, at the close of the seventeenth century, the thirteen English Colonies in America (except Georgia, settled in 1732) had been well established, with common institutions and common laws. They were in process of slow and hardy development. The dominant fact in their history for the first half of the eighteenth century was their struggle in support of the mother country for their territorial rights and possessions. This struggle from 1690, when France seemed so dominant, to 1763, when France finally retired from the continent of North America, is to be regarded as a single struggle, to be studied as a single movement. Let us notice the respective claims of Britain and France and the foundations upon which they rested.

The Treaty of St. Germain (1632) had recognized the French as in possession of the St. Lawrence, and of Nova Scotia and New Brunswick, substantially as described at present on our maps. In 1697 Iberville had settled lower Louisiana. The explorations of Marquette, Joliet, and

La Salle gave claim to the basin of the Mississippi. Cartier and Champlain had prepared for French claims and ownership in the regions of the lower St. Lawrence. By 1700 military connection between these regions had been designed, and in a measure accomplished, and this was supposed to guarantee French possession.

As for the English, they were to be hemmed in on the Atlantic coast east of the Alleghanias. Their claim was both ancient and extensive. Originally based on the discovery of the Cabots, the English claims had been re-asserted in their early charters, and they were generally made to extend along the coast from Maine to Georgia "up into the land west and northwest from sea to sea." But of these vast claims the British had realized comparatively little by actual possession.

"On the maps of British America in the early part of the eighteenth century," says Parkman, "one sees the eastern shore from Maine to Georgia garnished with ten or twelve colored patches very different in shape and size and more or less distinctly defined. These colonies had indefinite claims westward to the Pacific, claims to vast interior tracts, founded on ancient grants, but not made good by occupation, or vindicated by any exertion of power."

These little English Colonies on the Atlantic were living separate lives, each a life of its own. It was difficult for them to unite in any common endeavor. They were not conscious of any common aims and interests, and their appreciation of the great West, and its possibilities and importance to them, was meagre indeed. On the other hand, the French power in America represented enterprise, ambition, and adventure. Great minds among them had explored and had come to appreciate the prize that was at stake. "The English colonies were strong in numbers, but their numbers could not be brought into action. The French forces were small, but they were

## 6 The Revolution and the Constitution

vigorously commanded and were always ready at a word. It was union confronting disunion, energy confronting apathy, military centralization opposed to industrial democracy; and for a time the advantage was all on one side."<sup>1</sup> When the Anglo-Saxon frontier line moved westward according to natural laws and came in contact with the French forts on the upper Ohio, the conflict between these two forces was inevitable. The issue of the conflict was doubtful until Wolfe's great triumph at Quebec in 1759.

This half-century of conflict, which Parkman has so brilliantly described and which we have spoken of as a single movement, has generally been described in American history under four distinct inter-colonial wars:

(1) King William's War, from 1689 to the peace of Ryswick in 1697. (2) Queen Anne's War, from 1702 to the peace of Utrecht in 1713, or the "War of the Spanish Succession." (3) King George's War, from 1745 to the peace of Aix-la-Chapelle, in 1748 (preceded by the Spanish War of 1739 over the right of search in the Spanish Main and over the disputed boundary between Spanish Florida and English Georgia). (4) The French and Indian War, or the Seven Years' War, from 1756 to the famous peace of Paris in 1763.

The treaties prior to 1763 left great disputes unsettled. As far as American disputes were concerned, the treaty of Ryswick (1697) and that of Aix-la-Chapelle (1748) were mere truces, providing only for restoration of conquests and cessation of hostilities. At Utrecht (1713) the French made some important concessions to the British, including the Hudson Bay country and "Acadia with its ancient limits." But the "ancient limits of Acadia" were not defined; the boundary line, and the control of the Indian country, between French Canada on the north and the English Colonies on the south, were left unsettled; and

<sup>1</sup> Parkman, *Half-Century of Conflict*, vol. ii., p. 65.

the great question as to which power should control the basin of the Mississippi had to be adjusted by the final war of 1756 to 1763.

This final conflict for possession by the English race, which came to so favorable a conclusion in 1763, prepared the way for the American Revolution in several ways. It afforded the colonists military training and service. Washington and many of his subordinate officers of the Revolution received important experience in the struggle of the British against the French. It united the Colonies in closer friendship and mutual helpfulness. The effort of Franklin for a constitutional union in 1754 had not been without its moral effect, and the experiences of the war had emphasized the wisdom of his suggestions. The war had released the Colonies from dread of the French and the Spanish, and had led them to feel their own strength and to believe in their own great future. By leading to westward expansion the same conflict that had been inevitable between the French and the English was to be realized between the Colonies and the mother country. After the security of the American colonies and their progress in commerce and wealth had been assured, by the successes of the British arms and by the self-reliance manifested by the Colonies in this war, the British Ministry were led to adopt the fatal policy which led to the political schism of the English race. Grenville's Ministry resolved to enforce the trade laws, to quarter troops in the Colonies for their security, and to tax America for imperial purposes. By the introduction of this policy the controversy of the American Revolution began, a controversy that ended, in the forum, with the Declaration of Independence which proclaimed "that a new nation had arisen in the world, and that the political unity of the English race was forever at an end."

J. A. W.

## CHAPTER II

### THE AMERICAN REVOLUTION

PRIOR to 1760 the constitutional relation of the Colonies to the mother country and the powers of Parliament over the Colonies were unsettled and undefined. The imperial development of the British Constitution was for centuries very steady. The first strain upon it came from the conquest of Ireland. Wales and Scotland were tacitly or formally absorbed in the kingdom of Great Britain, in which the Parliament had fairly defined rights: Ireland remained a foreign and allied or subject kingdom, in which the British Parliament had all the rights which it could succeed in maintaining. The result was the genesis of the idea that the British Parliament was in some sense an imperial Parliament, with undefined power to legislate for those portions of the Empire which were outside of its original jurisdiction.

English colonization in America brought with it a far more severe strain, for which the British Constitution was totally unprepared. A new order of things, the indefinite extension of the Empire, was to be provided for; and unfortunately the task of providing for it was assumed by a legislative body whose constituents and members were equally purchasable in open market, and were equally indifferent to any consideration except present interest. To these the grand idea of an imperial Parliament, clothed by the lofty patriotism of Burke and Chatham in language well worthy of it, meant only the opportunity

to escape part of the burden of present taxation by transferring it to the Colonies. They undertook to make an every-day matter of that which Burke and Chatham would have reserved to meet some overmastering emergency; and they lost the Colonies.

The English colonists in America always insisted that they had lost none of their hereditary rights by migrating from the king's British to the king's American dominions, and that they were still entitled to the "free privileges of free-born Englishmen," which the king's word had confirmed to their fathers and to them,—the right to personal liberty, to private property, and to representation in the taxing body. They acknowledged that distance made it practically impossible for them to be represented in Parliament; and they therefore insisted that their taxes must be levied by their own parliaments, the colonial assemblies. Two irreconcilable theories of the Constitution were thus gradually developed in Great Britain and in America; and, after 1760, circumstances brought them face to face, and compelled a settlement by force.

*The American Theory.*—The American theory really made the Empire a confederation, the king being the bond of union. In his kingdom of Great Britain the king had certain prerogatives, such as the power to make peace, war, and treaties; while Parliament alone had the power to grant or withhold supplies and to levy taxes to provide them. In his other kingdoms, Ireland, New York, Massachusetts, or South Carolina, the respective parliaments had just as much power, and the king just the same prerogatives, as in Great Britain. But in each kingdom the jurisdiction of the Parliament was territorially limited: the Parliament of Great Britain had no more rightful jurisdiction in Ireland or in Massachusetts than the parliaments of Ireland or Massachusetts had in Great Britain. Franklin formulates the theory as follows:

## 10 The Revolution and the Constitution

“Our kings have ever had dominions not subject to the English Parliament.

“At first the provinces of France, of which Jersey and Guernsey remain, always governed by their own laws, appealing to the king in council only, and not to our courts or the house of lords. Scotland was in the same situation before the union. It had the same king, but a separate Parliament, and the Parliament of England had no jurisdiction over it. Ireland the same in truth, though the British Parliament has usurped a dominion over it. The colonies were originally settled in the idea of such extrinsic dominions of the king, and of the king only. Hanover is now such a dominion. . . . America is not part of the dominions of England, but of the king's dominions. England is a dominion itself, and has no dominions. . . . Their only bond of union is the king. . . . The British legislature are undoubtedly the only proper judges of what concerns the welfare of that state; the Irish legislature are the proper judges of what concerns the Irish state; and the American legislatures of what concerns the American states respectively.”

The Americans felt that the words “colony” and “colonist” were themselves misleading, as importing some superiority of privileges in the Englishmen who had remained at home; and they maintained that every charter granted by the king was a compact between him and the people of a new kingdom.

*The British Theory.*—On the contrary, the whole feeling of Great Britain spoke in Grenville's pithy statement that “colonies are only settlements made in distant parts of the world for the improvement of trade, and that they would be intolerable except on the conditions contained in the acts of navigation.” The colonists, then, did not escape from the jurisdiction of Parliament by migrating. Parliament might allow them a temporary latitude of self-government; but its absolute power, though latent, could be called forth at any moment, and the colonists,



in the view of the law, were still Englishmen and under control of the British Parliament.

This theory was maintained on the grounds, 1, that the omnipotence of Parliament was not limited by the four seas which bounded Great Britain; but that, by the extension of the Empire, Parliament had acquired a nobler position as an imperial body, with, as Burke expresses it, "a reserved power in the Empire to supply any deficiency that may weaken, divide, and dissipate the whole"; 2, that the Colonies were "virtually represented" in Parliament, since each member of that body represented not a particular constituency, but the whole Empire and all its interests; 3, that the colonists had no more claim to a more direct representation than Birmingham, Manchester, Leeds, and other unrepresented cities, but must be content with the Constitution as it was; 4, that it was patently unjust that the expensive duty of maintaining fleets and armies for the defence of the whole Empire should be imposed upon the imperial Parliament without the corresponding right to insure proportional contributions from the parts of the Empire; and 5, that the colonists themselves had always acknowledged the right of Parliament to levy American customs duties, from which the right to levy internal taxes could not logically be distinguished. This last assertion could not be disputed, and when it was seriously advanced as an argument it put an end to the tacit compromise which will next be considered.

*Compromise.*—It will readily be perceived that these two theories were irreconcilable, and that both were equally impracticable. On the American theory it would have required superhuman tact and discretion in the king to avoid constant and ultimately fatal conflicts with his twenty different parliaments; on the British theory, the Parliament would have become, under the guise of imperialism, an exasperating instrument of British selfishness. The American Union has solved its similar

territorial problem by giving Congress the imperial power over the territories, while holding out to the latter the promise of admission to the National Government as soon as they shall develop the necessary powers and interests.<sup>1</sup> Until 1760 the Colonies and the mother country lived under a tacit compromise of a far clumsier sort. The home Government made no attempt to assert any power to levy taxes within the limits of the Colonies; these were levied by the colonial assemblies, on a requisition, or request, from the king, through one of his secretaries or the governor. The supplies voted were always liberal, and sometimes so lavish that Parliament voted to return a part of them. On the other hand, the Colonies made no objection to the exercise by Parliament of complete control over foreign trade, and in many cases over domestic trade also; and no resistance was made to the abrogation or alteration of the Massachusetts charter in 1685, 1691, and 1724. The navigation act of 1651 confined the colonial export trade to Great Britain in English-built ships; and in 1663 this was extended to the import trade also, so that the colonies could legally trade only to and from Great Britain. In the commercial colonies, however, these laws were felt but little before 1760; smuggling and bribery of custom-house officers opened the free foreign trade which the laws forbade. In 1672 duties were imposed on the trade from one colony to another. In 1699 the colonists were prohibited from exporting their wool, yarn, or woollen manufactures to any place whatever. In 1719 the House of Commons formally condemned all American manufactures as tending to independence. In 1732 the export of American hats was prohibited. In 1750, rolling mills, iron furnaces, and forges in the colonies were declared public nuisances, to be suppressed by the governors. At first all these restrictions were submitted to, partly from

<sup>1</sup> See Ordinance of 1787.

indifference, as they were not extensively felt, and partly from inability to resist; and for some years after 1760 the right of Parliament to impose them was still acknowledged, this being a point on which the colonists were prepared to yield. So late as 1774, Congress, in its Declaration of Rights, "cheerfully consented" to such Parliamentary restrictions on commerce as should be intended in good faith to benefit the whole Empire. When it was at last found that this concession was only accepted as a basis for further demands, it was withdrawn, and all the colonists were ready to echo Franklin's language: "That is a wicked guardian and a shameless one, who first takes advantage of the weakness incident to minority, cheats and imposes on his pupil, and, when the pupil comes of age, urges those very impositions as precedents to justify continuing them and adding others." This language, though natural, was to a great extent unjust. The fault really lay in that narrow colonial system which was then and long afterward the law of every European nation, and is still a part of the English theory, though it is very seldom enforced in practice.

The open struggle between the two theories, which began in 1760-63, came from an unlucky combination of causes: the accession of a king who was determined to "reign"; the influence of the old Whig notion of the omnipotence of Parliament; the high feeling of a nation flushed with successful foreign war; the increase of the national debt, and the consequent necessity of an increase in the revenue; the increase of wealth in the American Colonies, and the comparative meagreness of receipts from that quarter of the Empire. The initiation of the struggle was facilitated by the fact that there was practically no denial in Great Britain of the abstract right to tax the Colonies. Even when the Stamp Act was introduced in Parliament, the opposition was publicly challenged to make such denial, and not a voice

was raised to make it, though many, like Burke, considered it highly impolitic to exercise the right, and wished to restrain the controlling power of Parliament to commercial regulations and to cases of supreme necessity. This, indeed, was the original ground of the colonists themselves, but it was a poor barrier to the usurpations of a hungry Parliament.

In 1760 the first effort was made to enforce the Navigation Act. Instructions were sent to the American custom-house officers to spare nothing of the revenue laws, and to obtain from the courts "writs of assistance" in order to enter houses and stores and search for goods which had not paid duty or were forbidden to be imported. The first application for such writs was at Salem, in November, 1760, and their issue and enforcement at once brought a few radical men, like Otis, to deny Parliament's right to levy the duties. In the great commercial colony, Massachusetts, colonial and loyalist parties were at once formed. The former was headed by James Otis, Samuel Adams, John Adams, Oxenbridge Thacher, James Bowdoin (afterward Governor), and Thomas Cushing. The latter was headed by Francis Bernard, the Governor; Thomas Hutchinson, the Lieutenant-Governor, a native and the best historian of Massachusetts, the ablest royalist leader, but unscrupulous in method; Andrew Oliver, Hutchinson's brother-in-law; Jeremiah Gridley, Attorney-General, and Timothy Ruggles. Behind these stood the great mass of royal office-holders in the Colonies; much of the subsequent action of the ministries must be attributed to their persistent advice to establish a regular army in the Colonies, and tax the Colonies for its support.

February 23, 1763, Charles Townshend became First Lord of Trade, with the administration of the Colonies, and he inaugurated, with the support of the Ministry, the new system of colonial government. It was announced by authority that there were to be no more

requisitions from the king to the colonial assemblies for supplies, but that the Colonies were to be taxed by act of Parliament. Colonial governors and judges were to be paid by the Crown; they were to be supported by a standing army of twenty regiments; and all the expenses of this force were to be paid by Parliamentary taxation. It is unnecessary to follow all the windings of British politics for the next few years: the above programme was the chart of all the ministries, which each followed as closely as it dared. Governor Hutchinson tells us that the American use of the terms Whig and Tory dates from this step.

In March the naval officers on the American coast were given the duties and fees of custom-house officers, in order to enforce the Navigation Acts. In April the head of the Ministry, Bute, retired, and George Grenville took his place under pledge to the programme above. May 5th, the Lords of Trade were requested to sketch for the Ministry a safe and easy method of Parliamentary taxation of the Colonies, but Shelburne, the head of the board of trade, declined to commit himself to any plan. September 23d, by direction of Grenville and North, the First Secretary of the Treasury (Jenkinson) wrote to the commissioners of stamp duties to draft a bill for extending the stamp duties to the Colonies. Close investigation has failed to fix the real authorship of the Stamp Act, but the responsibility for it rests most probably on Jenkinson. March 9, 1764, Grenville announced that he intended to introduce the Stamp Act at the next session; and in the meantime he suggested to the colonial agents in London that their assemblies should formally approve it, in order to make a precedent for their being consulted in future taxation, or that they should propose some more palatable mode of Parliamentary taxation. But the principle was carefully asserted: a bill of April 5th purported, for the first time, to "grant duties in the colonies and plantations of America."

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The stamp duty was not objected to in itself: it was a convenient mode of making a tax collect itself, and for that reason was employed in 1759 by the Massachusetts Assembly, and in subsequent years by the new Federal Government. The objection lay wholly to Parliament's power to tax, which was thus forced into the foreground of discussion. In June the Massachusetts Assembly sent a circular letter asking the "united assistance" of the other Colonies; and during the year nearly all the colonial assemblies petitioned against the new scheme. But the idea of forcible resistance does not seem to have occurred to the King, to the Ministry, to Parliament, to the colonial agents, or to the colonial assemblies. All believed that the tax would execute itself. The act was framed, imposing stamp duties on legal documents, marriage licenses, and publications of every description, and making offenses against it cognizable in the admiralty courts, without a jury. Petitions against it were refused a hearing, on account of an ancient and convenient rule forbidding the reception of petitions against a money bill. The bill was passed with hardly any opposition in either House; the King was by this time a lunatic, and his signature was attached by a commission; and with this evil augury the Stamp Act became law, March 22, 1765. With it went a suggestive act to authorize the quartering of troops in the Colonies, and to require the assemblies to furnish them with subsistence.

The first answer came from the Virginia Assembly, which adopted a series of resolutions offered by Patrick Henry, May 30th. These declared that the Colony had never forfeited and had always enjoyed the right to be taxed by their own representatives; but the Assembly rejected two further resolutions, declaring that the people of the Colony were not bound to obey the Stamp Act, and that he who should obey it would be an enemy to the Colony. June 8th, the Massachusetts Assembly took

the more important step of calling a congress of all the Colonies.<sup>1</sup> Through the summer the resistance took the form of an inchoate revolution. Associations, the "Sons of Liberty," were formed; stamp agents were compelled to resign, either by ostracism, or, in some few cases, by actual violence; and the inflammatory resolutions of public meetings were steadily carrying the assemblies to the point of resistance. November 1, 1765, was the day fixed for the operations of the act to begin; but there were by that time neither stamps nor stamp agents in the Colonies, and the judges, like the merchants, were compelled to ignore the absence of stamps upon documents. Hutchinson wrote home that the people were "absolutely without the use of reason."

In the meantime the opponents of the *policy* of taxing the Colonies had come into power, under the Rockingham Ministry, in July, 1765. Their first design was not to repeal, but to modify the act, and make it more acceptable. But when Parliament met, its right to tax the Colonies was at last denied by some of its own members, though even these still asserted its power to lay duties and regulate trade. Said Pitt: "In an American tax, what do we do? We, your Majesty's commons of Great Britain, give and grant to your Majesty—what? Our own property? No! We give and grant to your Majesty the property of your Majesty's commons in America. It is an absurdity in terms"; and he "rejoiced that America had resisted." The majority, however, followed the ministerial programme. The reception of the petitions of the American Congress was evaded. A declaratory House resolution was passed, February 10, 1766, by almost unanimous vote, that the King, with the advice and consent of Parliament, "had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient validity to bind the Colonies and people of

<sup>1</sup> See Stamp Act Congress.

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America, subjects of Great Britain, in all cases whatsoever." This was followed up by four others: that there had been tumults and insurrections in the Colonies; that these had been encouraged by the colonial assemblies; that the assemblies must make recompense for property destroyed; and that the House would sustain the lawful authority of the Crown and the rights of Parliament, and would favor and protect the loyal people of the Colonies. Under cover of this hot fire of resolutions the Stamp Act was repealed, March 18th. The repeal was wholly on the ground of policy, and was accompanied by a declaratory act in two clauses: 1, containing the first resolution above named; and 2, declaring null and void the votes and resolutions of the colonial assemblies in regard to taxation. One of the most valuable incidents in the repeal was the examination of Franklin before the House of Commons, February 13th. The questions put to him numbered 174; and his answers sum up calmly, but fully, the American theory of the connection between Great Britain and the Colonies, and the compromise to which the Americans were willing to agree.

Hutchinson dates the revolt of the Colonies from the repeal of the Stamp Act. As soon as the rejoicings over that event had subsided, premonitory symptoms of trouble again began to appear. The Massachusetts Assembly refused to make recompense for the losses in the riots without an accompanying bill of indemnity. Other assemblies refused to comply with the act of 1765 for billeting and subsisting the army. In November, 1766, the first declaration that Parliament had no right to "legislate" for the Colonies was made in the Massachusetts Assembly; and there was a growing party everywhere which held to the advanced doctrine of "*no legislation without representation.*" And all this time political events in Great Britain were tending against the Colonies. In July, 1766, Chatham had formed a ministry



composed mainly of friends of America; but Chatham's continued illness was steadily throwing the real leadership into the hands of the Chancellor of the Exchequer, Charles Townshend. His political creed he summed up as follows: "I would govern the Americans as subjects of Great Britain. These, our children, must not make themselves our allies in time of war, and our rivals in peace." In March, 1767, Chatham really, though not formally, retired from public affairs, and Townshend was master of the situation. He made use now of the Parliamentary control over commerce, which colonial assemblies had so often expressly acknowledged; and in July a bill was passed granting duties in America on glass, lead, paints, paper, and tea. But the insidiously perilous feature of the act was, that the proceeds were to go into the exchequer, and were to be distributed at the King's pleasure in paying the salaries of governors, judges, and other civil officers. These would thus be, as they had never been before, completely independent of the American assemblies, and not only able but willing to make political war upon them. By other acts, writs of assistance were legalized, and the New York Assembly was suspended altogether, until it should obey the billeting act. In September, Townshend died, but his mantle fell on Lord North, his successor.

It was difficult, at first, to find any means of opposition to the new revenue laws. Isolated agreements were indeed made by the people of various districts, to abstain from the use of any of the articles taxed; but these, depending on the persistence of individuals, were no safe reliance. January 12, 1768, the Massachusetts Assembly formally protested against the new system; and February 11th, it sent a circular letter to the other Colonies, asking advice. April 21st, the colonial office sent a mandate to each of the governors to prorogue the Assembly of his Colony rather than allow the circular letter to be

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discussed. To Massachusetts further orders were sent to prorogue the Assembly if it should not recant the letter, and to continue the process indefinitely until submission should be made; and in June this penalty was enforced. June 8th, four regiments under Gage were ordered to Boston permanently; five vessels took possession of the harbor; and the fort was repaired and occupied. Every petty disturbance, every expression of popular indignation, had been magnified and distorted by colonial officers, until the Ministry really believed a rebellion imminent, and took this sure means to provoke it. Even then, it required seven years' wrangling to break the bond of union.

Massachusetts, however, was now very close to rebellion. Her Assembly, like that of several other Colonies, had been dissolved; and a convention of town delegates met, September 22d, protested against the revenue laws, and petitioned the King. "I doubt whether they have been guilty of an overt act of treason," said the British Attorney-General, "but I am sure they have come within a hair's breadth of it." In February, 1769, Parliament requested the King to have the ringleaders in Massachusetts sent to England to be tried for treason, under an old statute of Henry VIII. One step further, an attempt to arrest for that purpose, and the rebellion would have begun; but the step was not taken. Nevertheless, the troops were left in Boston, a firebrand near a powder magazine; and the next six years are one long record of bickerings between the townspeople and the military, arrests of soldiers for violations of town laws, indictments of officers, even of the commander-in-chief, for "slandering the town of Boston," and similar legal proceedings, blotted by the Boston Massacre of March 5, 1770, in which five lives were lost.

The whole of the year 1769 was taken up by the full development of the colonial claim of rights. The Vir-

ginia Assembly, May 16th, passed a series of resolutions, declaring its right of taxation, of petition, and of concurrence with other Colonies, and the right of its people to a trial by a jury of the vicinage; and these, for which the Assembly was dissolved, were copied by other assemblies, and the fault met the same punishment. The Massachusetts Assembly absolutely refused to make provision for the troops, and was, for that reason, dissolved. Whenever an assembly was dissolved, its members at once formed a non-importation league, so that the agreement not to use taxed articles had become much more general than was to be expected. It was effective enough to extort from the Ministry a circular letter, in May, 1769, promising to impose no more such duties, and to abandon all those already imposed, except that of three pence per pound on tea, which yielded about \$1500 per annum of revenue. The repeal, in these terms and to this extent, was formally enacted April 12, 1770. But there remained the preamble, the declaration of the right and expediency of taxation of the Colonies by Parliament. This was still to be resisted; and the Revolution, as Webster afterward remarked, was fought upon this preamble. The only result of the repeal was the dissolution of the non-importation associations, and the renewal of trade with Great Britain, except in the matter of tea.

The first few years after 1770 are mainly occupied by apparent efforts on the part of the King and the Ministry to put the colonists so far in the wrong as to excuse the use of force. The struggle against the carefully guarded and almost pedantically legal methods of the Colonies was growing vexatious. In July and September, 1770, the King made preparations to declare martial law in Massachusetts, filled Boston harbor with war vessels, and even seized the castle guarding the harbor, though this had been built by the Colony, and the control of it was reserved to the governor by the charter.

Still the colonists avoided any open provocation, and there was no fighting except in North Carolina, where the Governor, Tryon, provoked and suppressed an "insurrection," and in Rhode Island, where the *Gaspée*, a revenue cutter, was burned, June 9, 1772, by a boat party from the shore, after she had run aground. The whole period was marked by exasperating legal battles between the governors, under royal instructions, and the various assemblies. In most of the Colonies the Upper House, or Council, was selected by the Lower House, with a power of veto by the governor. Whenever persons were selected who had taken part against the Parliament, their nominations were vetoed, and the war of retaliation, thus begun, kept the continent in a ferment. In Massachusetts the higher step was taken of paying the salaries of the governor and principal officials directly from the royal treasury, thus not only violating the charter by making them independent of the Colony, but provoking a conflict, for it should have been evident that the Assembly would never recognize or act with a governor or judges salaried by the Crown. This step, like others equally ruinous, was the fruit of constant pressure by the office-holders in America. In December, 1772, Franklin obtained and sent from London to the Assembly the treacherous letters of Massachusetts officers, advising these coercive measures, and these did much to undermine all public confidence in the royal civil service. Every one lived in an atmosphere of distrust, more destructive to loyalty than the open excitement produced by the Stamp Act.

November 2, 1772, in Boston town-meeting, Samuel Adams obtained the appointment of a committee of correspondence with other towns. This was the real opening of the Revolution, the installation of the first of those revolutionary bodies which within three years had practically superseded the legitimate governments in the conduct of the struggle. Other towns followed the example;

and Virginia laid the basis of the Union, March 12, 1773 by appointing a committee of correspondence with the other Colonies.

All this time the tax on tea had been collected, though it had shrunk to \$400 per year. In April, 1773, the East India Company applied for permission to export free of duty the ruinously large stock of tea which it had accumulated. This offered a fair opportunity to settle discontent, but Lord North induced Parliament to vote the company a drawback of the duties, the repayment of the duties, after May 10th, to the company after collection. The duties would thus be collected, the principle maintained, and yet the price of the tea would not be increased. After all, the meanness of this evasion, and of the trap which it attempted to set, seems to have had much to do with the result. It early led to the appointment of revolutionary committees by other Colonies, and thus to a union antecedent to the meeting of Congress. Consignments of tea were sent to Charleston, Philadelphia, New York, and Boston. At Charleston it was stored in damp cellars, and destroyed; at Philadelphia and New York the ships were forced to return; but at Boston the officers would not permit the ships to return without discharging. December 16th, the revolutionary committee took further discussion out of the hands of the town-meeting, sent a body of men, and threw the tea into the harbor.

Boston at once became the focus of interest. It had placed itself in the forefront of resistance, and behind it were the revolutionary committees of all the thirteen Colonies. Its conduct was noticed severely in the King's Speech, March 7, 1774; and on the 31st the Boston Port Bill became law. It forbade the landing or shipping of goods in Boston after June 1st, until the owners of the tea should be recompensed, and the King should be satisfied of the town's future obedience. Lord North also

declared in debate that the act would be enforced by the use of the army and navy. Salem was made the capital of the Colony, and Marblehead a port of entry. Gage, the commander-in-chief for North America, was made civil governor of Massachusetts, with instructions to bring the ringleaders to punishment.

The Boston Port Bill was followed, May 20th, by a bill for the government of Massachusetts, which abrogated a large part of the charter. It took away the choice of the Council by the Lower House; forbade town-meetings, except for elections or on the governor's permission; and gave the appointment of sheriffs to the governor, and the selection of juries to the sheriffs. This might have been fairly termed a bill to transfer the *de facto* government of Massachusetts to revolutionary committees. With it went a supplementary act "for the impartial administration of justice in Massachusetts" by transferring to Nova Scotia or Great Britain the trial of officers or soldiers indicted for murder. Another act legalized the quartering of soldiers in Boston; and another, the "Quebec act," extended the jurisdiction of that province over the whole of that which was afterward called the "Northwest Territory,"<sup>1</sup> and to which various Colonies laid claim by charter. These were untraceable steps. The first four called for united resistance by all the Colonies which had charters; the last called for united resistance by all, for this territory was already blindly felt to be the common property of the whole, and the basis of future union.

Gage arrived May 17th. The revolutionary committees all over the country had already begun to obtain a popular suspension of commerce with Great Britain; and the New York committee had proposed a general congress. This last measure met with general approval; and the Massachusetts Assembly, June 17th, formally proposed it for September 1st, at Philadelphia, having first locked

<sup>1</sup> See Ordinance of 1787.

the doors to prevent the Governor from proroguing them. Two days before, the Rhode Island Assembly had chosen delegates to the congress; five days after, Maryland took the still more ultra step of electing delegates by a popular convention or provincial congress. This last step was even more decisive than the calling of a congress. It was imitated in the other Colonies during the summer; and though these "provincial congresses" ventured at first no further than the preparation of non-importation agreements, promises of support to the general, or continental, congress, or contributions for the assistance of the people of Boston, they were evidently the germ of rebellion, and within a year were to assume the practical government of their Colonies.

The Congress met in Carpenter's Hall, Philadelphia, September 5, 1774.<sup>1</sup> Gage had already begun to fortify himself in Boston, and had seized the Colony's stores, as if in an enemy's country. False alarms had already led to more than one mustering of the militia of Massachusetts and the neighboring Colonies. Nevertheless, the only measure of active resistance adopted by the Congress was the preparation of an "American association," October 20, 1774, which was signed by the delegates and then circulated for general signature. It not only bound the signers to non-importation, non-exportation, and non-consumption of British goods, and to prohibition of the slave trade, but it provided for local committees, chosen by popular vote, to enforce the provisions of the association. This was the first effective step toward national union and preparation for war; and it is noteworthy that it was taken by general popular action, not by State action; and yet that State lines, and even town boundaries, were carefully observed in its execution. The peculiar combination of national and local government in the United States could hardly be better illustrated.

<sup>1</sup> See Chapter III. for its further history.

From this time revolution in British North America was a certainty. It proceeded steadily at first as a mere protest against, and passive resistance to, the unconstitutional measures of the Ministry; then, after April 19, 1775, as a scission of the British Empire and the formation of an American nation, George III. being still recognized as its King; then, after July 4, 1776, as the establishment of a self-governing republic under the Revolutionary Congress, to be succeeded by the Articles of Confederation and the Constitution.

See 7-10 Bancroft's *United States*; 1-3 Hildreth's *United States*; 1 Pitkin's *United States*; 1 Tucker's *United States*; 1-3 Spencer's *United States*; 1-3 Bryant and Gay's *United States*; Holmes's *Annals of America*; 1 Adolphus's *History of England*; 5 Mahon's *History of England*; 2, 6 Burke's *Works*; J. M. Ludlow's *War of American Independence*; Grahame's *History of the United States*; Gordon's *History of the Independence of the United States*; Force's *Tracts*, and *American Archives*; Chalmers's *Introduction to the Revolt of the American Colonies*; Walsh's *Appeal*; 1 Story's *Commentaries*; Doyle's *American Colonies*; Marshall's *American Colonies*; Lodge's *English Colonies in America*; Greene's *Historical View of the American Revolution*; Botta's *American Revolution* (Otis's trans.); Ramsay's *History of the Revolution*; Frothingham's *Rise of the Republic*; Stedman's *History of the American War*; Niles's *Principles and Acts of the Revolution*; Moore's *Diary of the Revolution*; E. Abbott's *Revolutionary Times*; Dillon's *Historical Evidence*; *Journals of Congress, 1774-88*; 1 Elliot's *Debates*; 4 Franklin's *Works*, 162 (his examination), 223, 270, 281, 406; Sparks's *Writings of Washington, Correspondence of the Revolution*, and *Diplomatic Correspondence of the Revolution*; Trescot's *Diplomacy of the Revolution*; Lyman's *Diplomatic History of the United States*; 1 Bishop's *History of American Manufactures*;



Wells's *Life of Samuel Adams*; 2, 3, 5 John Adams's *Works*; for authorities on special topics see Winsor's *Reader's Handbook of the Revolution*, and C. K. Adams's *Manual of Historical Literature*, 605.

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See also Lecky's *American Revolution* ("England in the Eighteenth Century," vol. iii.); Fiske's *American Revolution*; Trevelyan's *American Revolution*; Channing, *Students' History of the United States*; MacLaughlin, *History of the American Nation*; Tyler's *Literary History of the American Revolution* (see bibliography); Beer, *The Commercial Policy of England toward the American Colonies*; Weeden, *Economic History of New England*; see Hart and Channing's *Guide to American History* for further references; Winsor's *Narrative and Critical History of America*, vol. vi.; consult this work and the bibliographical note in the introduction to Lecky's *American Revolution* and Winsor's *Handbook of the American Revolution* for suggestions of other material. For source material, in addition to the references above, see Hart's *American History as Told by Contemporaries*, Hart's *Source Book of American History*, and MacDonald's *Select Chapters of American History, 1608-1776*.—ED.

## CHAPTER III

### THE CONTINENTAL CONGRESS : INDEPENDENCE AND THE BEGINNINGS OF THE UNION

THE meeting of the First Continental Congress in 1774 may be said to mark the beginning of the American Union. It was that Congress, and its successors of 1775 and the following years, that defended the constitutional rights of America, declared our independence, called an army into the field, appointed Washington to the chief command, contracted a foreign alliance, achieved recognition of independence by success in diplomacy and arms, and consummated a compact of a constitutional union under the Articles of Confederation. The nature of this Congress, its relation to the States, and the extent and character of its work, are of prime importance in our early constitutional and political history.

Before considering the Continental Congress directly it is well to notice the movements and attempts toward union prior to 1774.

1. *The New England Union of 1643.*—In 1643, the section now known as New England consisted of the following Colonies: Connecticut and New Haven (now included under Connecticut); Massachusetts Bay and Plymouth (now included under Massachusetts); New Hampshire (claimed by Massachusetts and by Mason); and Maine (claimed by Massachusetts and the Gorges family). The church connection between the first four Colonies was intimate, and at one of the annual synods, held at Boston

in 1637, a civil alliance was proposed. Connecticut at first refused her consent, unless a veto power should be reserved to each Colony; but an increasing pressure from the Dutch forced her to withdraw her opposition, and in 1643 the union was perfected, under the name of "The United Colonies of New England."

The union was confined to the first four Colonies named above. Rhode Island applied for membership in 1648, but was refused, on the ground that her territory was properly a part of the patent of the Plymouth Colony. The affairs of the union were administered by two commissioners from each Colony, the votes of six of the eight commissioners being necessary for valid action. Its action was to be confined to such matters as were "proper concomitants or consequents of a confederation," such as peace, war, and Indian affairs; the control of local affairs was reserved to each Colony; and expenses were to be assessed according to population. The commissioners, all of whom were to be church members, were to hold sessions annually at Boston, Hartford, New Haven, and Plymouth, Boston being given a double share of sessions. Provision was made for the extradition of criminals and runaway servants.

The union endured nominally for half a century, but its period of real life was about twenty years. At first its authority, or rather its advisory power, was actively exercised: it undertook the formation of a system of internal improvements, by laying out roads; exercised the treaty power with its Dutch and French neighbors; declared and waged a war against the Indians; and decided territorial disputes between the Colonies. But the union had not been in existence ten years before signs of disintegration appeared, arising mainly from the unwillingness of the strongest Colony, Massachusetts, to submit to the general authority. In 1650, the union having upheld the right of Connecticut, under an ancient grant, to levy tolls

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on commerce at the mouth of the Connecticut River for the support of a fort there, Massachusetts retaliated by levying tolls on Boston commerce belonging to other Colonies, nominally for the support of the forts at Boston; and this proceeding almost broke up the union. In 1653 the union determined to declare war against the Dutch in New Netherland; but Massachusetts denied the right of the union to declare "offensive war" without unanimous consent. The General Court, therefore, refused to levy its quota of men, and the war fell through. At the restoration of the Stuarts no formal condemnation of the union was made, but its functions were practically resumed by the Crown. After 1663 the meetings of its commissioners became triennial, and soon ceased altogether.<sup>1</sup>

It will be seen that this union was but temporary, for common defence against common dangers. As these dangers disappeared, the union dissolved. It was only a loose league, exercising none of the functions of a real government. All authority over individuals, all real power over matters of war, peace, money, taxes, law, and the control of individuals, rested with the several Colonies. The Union of 1643 came to be only a reminiscence.

From 1684, the time of the formal dissolution of the Confederacy of 1643, to the attempt at union proposed by Franklin at Albany in 1754, there were a number of futile proposals and attempts of union. In 1685, James II. attempted by the government of Andros to unite the New England Colonies for commercial purposes. This attempt at consolidation (which was made without reference to the interests of the Colonies) failed, partly because

<sup>1</sup> See 1 Bancroft's *United States*, 420, and authorities there cited, 1 Hildreth's *United States*, 285, 326, 386, 463; 1 Spencer's *United States*, 94; 1 Pitkin's *United States*, 51; Chalmers's *Political Annals*, 178; 1 Chalmers's *Revolt of the American Colonies*, 86; 9 *Mass. Hist. Soc. Coll.*, 3d ser. (J. Q. Adams's article on the confederacy of 1643.

of the stout opposition in the Colonies, partly because of an early change of government in England. In 1696 a suggestion of a captain-general for the Colonies was made by the English Board of Trade. In 1697, William Penn made a notable proposition for an annual colonial congress. In 1721 and 1722 there were renewed suggestions looking toward consolidation and a captain-general. These schemes came to nothing, though they indicated a realization, on the part of those who were thinking of the whole body of colonial interests, that some union and a common organ of government were needed to provide for colonial defence and to promote colonial trade. Especially was union needed to provide for the common defence against the dangers and aggressions of the French and the Indians. Franklin was one of the few Americans who, by the middle of the eighteenth century, urged the importance of a continental union, and his scheme submitted to the congress of the Colonies at Albany in 1754, known as the "Albany Plan," is one of the landmarks in the growth of the American Union.—ED.

2. *The Albany Plan of Union.*—The Lords of Trade, in 1754, directed that commissioners from the several provinces should assemble at Albany, N. Y., to arrange a treaty with the Six Nations. June 19, 1754, commissioners from New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland met, and, after concluding their business with the Indians, proceeded to consider a plan of colonial union, proposed by Franklin, one of their number, which was adopted, July 10–11. It comprised the appointment by the Crown of a president-general for all the Colonies, with the veto power; the election by the colonial assemblies of a grand council, who, with the assent of the president-general, should make Indian treaties, regulate Indian trade, purchase and dispose of Indian lands, raise and equip armies and navies for colonial defence, and lay

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taxes to support them. Members of the grand council were to serve three years, and to be chosen in proportion to the amount paid by the Colony to the general treasury; but no Colony was to have more than seven members or less than two. Laws were to be valid unless disapproved by the king in council within three years. It was agreed that this plan, in order to prevent a possible secession by any Colony, should be made binding by act of Parliament. The whole plan was disapproved by the Crown, on the ground that it gave too much power to the Colonies, and by the Colonies that it gave too much power to the Crown.<sup>1</sup>

The fate of Franklin's scheme shows the fear of the mother country that the Colonies would, by the strength of union, achieve their independence; and it shows, also, the jealousy of each Colony for its local independence. The administrative functions of the united council were to be limited to (a) defensive war, (b) Indian trade, and (c) the distribution of unoccupied land; yet the Colonies showed a jealous fear that too much government and interference might be exercised by some outside power within their limits and jurisdiction. The next representative meeting or congress of the Colonies was called in opposition to the Stamp Act.

3. *The Stamp Act Congress* was a body of delegates from all the Colonies, except New Hampshire, Virginia, North Carolina, and Georgia, which met at New York, October 7, 1765. It differed from the Continental Congress which succeeded it in that it took no steps toward forcible resistance. The delegates from New York were named by the committee of correspondence; from Delaware and New Jersey, by informal action of the members of Assembly; from the other Colonies, by formal action

<sup>1</sup> See Franklin's *Life and Writings*, iv., 22-68 containing the plan in full, and the letters to Shirley; <sup>2</sup> Trumbull's *History of Connecticut*, 355; <sup>3</sup> Hutchinson's *History of Massachusetts*, 23; <sup>1</sup> Pitkin's *United States*, 142; <sup>2</sup> Hildreth's *United States*, 443.

of the Lower House of Assembly. The action of the Congress was confined to an address to the King, petitions to Parliament, and a declaration of the rights and grievances of the Colonies. The last named paper acknowledged "all due subordination" to Parliament; but declared that the Colonies could only be taxed by their own representatives in the colonial assemblies; that the colonists had the inherent right of trial by jury; that the Stamp Act and other legislation to extend the jurisdiction of the Admiralty Court, without trial by jury, had "a manifest tendency to subvert the rights and liberties of the colonists"; and that Parliamentary restrictions on colonial trade were burdensome. The Congress recommended to the several Colonies the appointment of special agents "for soliciting relief from their present grievances" in England. The petition of the Congress was offered in the House of Commons January 27, 1766. It was objected to, 1, as the act of an unconstitutional gathering and, 2, because of its denial of the right of Parliamentary taxation. After some debate the order of the day was voted, and in this summary manner the first request of the united Colonies for a hearing was passed over.<sup>1</sup>

Opposition and resistance to the Parliamentary policy of taxation and internal control continued in the various Colonies,—the Colonies co-operating, in a measure, by their committees of correspondence.

4. *The Continental Congress*.—When the attempt of George III. to govern his American dominions through his British Parliament had become patent, it was evident that separate resistance by the individual American assemblies would only result in failure, and that some representative body for all the Colonies was a necessity

<sup>1</sup> See Niles's *Principles and Acts of the Revolution*; Niles's *Register*, ii., 337, 353; Frothingham's *Rise of the Republic*; MacDonald's *Select Documents Illustrative of American History, 1608-1776*, p. 313; Lecky's *American Revolution*, p. 80.

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for united resistance. Such a union had been attempted for other purposes in 1754, as we have noticed, and Franklin, who had then been a leading advocate of union, now first renewed the suggestion in a letter of July 7, 1773, to the Assembly of Massachusetts, of which Colony he was the agent in London.

The first step was taken by the Virginia Assembly in May, 1774, upon receipt of news of the passage of the Boston Port Bill. Its members advised the local committee of correspondence at Williamsburgh to suggest to the other colonial committees the calling of a Continental Congress, that is, a meeting of delegates from all the English Colonies on the continent—for the hope was long cherished that the Canadian Colonies would make common cause with their brethren south of the Great Lakes and the St. Lawrence. June 7th, the Massachusetts Assembly named a time and appointed delegates to the proposed Congress. Other Colonies followed the example, and the result was the meeting of the First Continental Congress, "the delegates appointed by the good people of these Colonies," which met at Philadelphia, September 5, 1774, Georgia alone being unrepresented, though it took part in succeeding Congresses. The North Carolina delegates did not arrive until September 14th.

In calling any such deliberative assembly of their own volition, and without the previous assent of him whom they still ingenuously acknowledged to be "their sovereign lord, the king," the Colonies evidently took the difficult first step on the straight road toward rebellion and revolution. Neither the delegates nor their principals, however, thought of such a result. The powers given by the Colonies were all alike advisory, and limited to the recommendation of such measures as would restore harmony between Great Britain and the Colonies. The action of this Congress was therefore confined to a



declaration of the rights and wrongs of the Colonies, the recommendation to their Colonies of an agreement not to import British goods after December 1, 1774, and not to export goods to Great Britain, Ireland, or the West Indies after September 10, 1775, unless their wrongs should be righted, and the preparation of addresses to the King, to the British people, to their own constituents, and to the people of the province of Quebec. But the germ of measures of a stronger nature may be seen in a resolution commending the people of Massachusetts for their temperate resistance to the objectionable measures of Parliament, and declaring that if these acts "shall be attempted to be carried into execution *by force*, in such case all America ought to support them in their opposition."

The first Congress recommended the immediate selection of delegates to a second Congress, to be held at Philadelphia, May 10, 1775. Surely every man who, personally, or by his acknowledged representatives, ratified the action of the first Congress by choosing delegates to the second, with the resolution just cited staring him in the face, did so with the full consciousness that the proposed second Congress was, in case of the application of force by the British Parliament, to be a different body from the first, a revolutionary assembly, plenipotentiary in its nature, and empowered by its constituents to use, if necessary, every means of resistance. The delegates, therefore, when first appointed, though nominally retaining allegiance to the British Crown, were potentially members of a National Assembly; and the first shot fired at Lexington, April 19, 1775, crystallized thirteen of the King's American Colonies into a separate nation, with their own full concurrence previously and advisedly given.<sup>1</sup>

The new nation, it is true, was still bound to the old

<sup>1</sup> See subsequent discussion by the Editor, pp. 51 *sq.*

by the frail tie of allegiance to a common King, but the great appanages of sovereignty, the power to make peace, war, treaties, and foreign alliances, to send ambassadors, to control commerce and open the ports of the nation to all the world, to raise and equip armies and navies, to issue national currency, to authorize letters of marque and reprisal, to create a national postal system, many of which were never enjoyed by the rival Parliament of Great Britain, were exercised by the Second Continental Congress with the hearty acquiescence of the people at large, who thus continually re-confirmed their former grant to Congress of temporary but unlimited power. Indeed, the impatience of the people outran the moderation of the Congress.

Provincial congresses called upon the Continental Congress for advice, direction, and complete national action; and even when the King had proclaimed the American people out of his protection, and had declared war against them by land and sea, only a strong outside pressure at last impelled Congress to assume before the world the station as a National Assembly which it had held for more than a year in reality, to renounce allegiance to a tyrant, and to make the United States foreign soil forever to the King and people of Great Britain. The scission between the two nations was thus final; the union between the constituent units of the American nation on the one hand, and of Great Britain on the other, remained undisturbed and complete as before.

The appointment of the delegates to both these Congresses was generally by popular conventions, though in some instances by State assemblies. But in neither case can the appointing body be considered the original depository of the power by which the delegates acted; for the conventions were either self-appointed "committees of safety" or hastily assembled popular gatherings, including but a small fraction of the population to be repre-

sented, and the State assemblies had no right to surrender to another body one atom of the power which had been granted to them, or to create a new power which should govern the people without their will.

The source of the powers of Congress is to be sought solely in the acquiescence of the people, without which every Congressional resolution, with or without the benediction of popular conventions or State legislatures, would have been a mere *brutum fulmen*; and, as the Congress unquestionably exercised national powers, operating over the whole country, the conclusion is inevitable that the will of the whole people is the source of national government in the United States, even from its first imperfect appearance in the Second Continental Congress.<sup>1</sup>

The power to select delegates to what might perhaps be called the third Continental Congress, December 20, 1776, and to succeeding sessions until the adoption of the Articles of Confederation, was appropriated by the State legislatures. No such right could be drawn from the Articles, for they were not binding until ratified by all the States in 1781. In eight of the ten States by which constitutions were adopted in 1776-7 the power to appoint delegates to Congress was vested in the legislature. But no such power was given by the new constitution of New Jersey in 1776; no such power was given in Massachusetts until 1780, or in New Hampshire until 1784; and Connecticut until 1818, and Rhode Island until 1842, remained under the royal charters, which of course gave no such power to the legislature. And yet the legislatures of these five States continued to exercise a power of delegation to Congress to which they had no claim by the organic law of State or nation.

In this respect, indeed, they were only imitating their sister legislatures, most of which had actually seized the power of delegation before it was formally granted by

<sup>1</sup> See p. 52.

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the State constitutions; and this whole course of legislative appropriation of ungranted powers is of interest and importance as explaining the manner in which the Continental Congress was becoming the creature of the State legislatures even before the close of the year 1776, and the underlying cause of the peculiar character of the confederation which follows.

The "first" and "second" Continental Congresses have been so called, but after the first meeting of the second Congress it is impossible to specify any other distinctive congresses. The State legislatures, from their first appropriation of the right to choose delegates, chose them for varying times, and recalled them at pleasure, so that Congress became a body, theoretically in perpetual session, subject to perpetual change, but with no distinct period of renewal.

From the first meeting of the first Congress, the delegates of each Colony had but one vote; not because the collective body of delegates from each Colony were the ambassadors from a sovereign and independent State, but because, as the first Congress was careful to specify, there was no present means of ascertaining the relative number of citizens in the separate Colonies. By usage this mode of voting soon hardened into custom, and the smaller States finally claimed as a right, and embodied in the Confederation, that which was originally due only to the lack of a census, and of which the Constitution retained a remnant in the Senate.

A comparison of the machinery and functions of the old Germanic Diet with those of the Continental Congress would very plainly show the marked differences between an assemblage of ambassadors and the true, though imperfect, National Government of the American Revolution.

It has just been said that the Revolutionary Congress was a true, though imperfect, type of national government. It was imperfect in that it never ventured to claim

three important functions of a National Assembly: 1, it never attempted to lay general taxes, or control individuals, being content with recommendations to the States to lay the taxes and make the laws necessary for each case as it arose; 2, it made no attempt to regulate the mode of election or term of service of its members, leaving those matters also to the discretion of the States; and 3, it did not lay claim to the allegiance of the citizens of the whole country, but yielded that badge of sovereignty to the States.

On the slender foundation of these three omissions, which passed into the frame of the Confederation, has been erected the whole argument against the national nature of the Revolutionary government; and the mere statement of the basis of this objection, as compared with the mass of national power actually exercised by the Continental Congress, is sufficient to show the weakness of the argument. But it is necessary to notice, further, that the Continental Congress, to which the power of the sword had been confided by the will of the people, had an unquestionable right, by the laws of war, not only to regulate these three unregulated matters, but even to abolish slavery, to order a general draft, and to confiscate the last dollar in the country, so long as the country remained the theatre of a war which *the people* were bent upon continuing.

The doctrine is harsh, but it is the recognized law of war, and controls, by the necessity of the case, the laws and constitution of every civilized nation in which war is flagrant. Of course it does not apply to a country which is waging a war beyond its own limits; only the right of self-preservation can thus stand above the laws. The few omissions of the Revolutionary government, then, to do that which it had a right to do, cannot militate against the evident intention of the people to establish and support a national government.

Apart from its assumption of such national powers as the poverty of the country, the difficulties of communication, and the lack of material left feasible, the most important political work of the Continental Congress was its long continued effort to transform itself from a revolutionary assembly into a representative body limited by law.

June 10, 1776, the day on which the committee was appointed to prepare a declaration of independence, a committee of one from each Colony was appointed "to prepare and digest the form of a confederation to be entered into between these Colonies." Its report was made July 12th, debated until August 20th, and dropped until April 8, 1777. It was then resumed, debated, and amended, and was finally adopted November 15th, and recommended to the State legislatures for ratification in a circular letter of November 17th. By instructions from the State legislatures the Articles were signed by the delegates of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia, and South Carolina, July 9, 1778; of North Carolina, July 21st; of Georgia, July 24th; of New Jersey, November 26th; of Delaware, May 5, 1779; and of Maryland, March 1, 1781.

The delay of the last three States in signing was due to the omission of the Articles to make any provision for dividing the Western lands among all the States, and they only signed at last in the full confidence that those States whose nominal boundaries extended indefinitely west would resign their pretensions to the lands which were conquered by the common exertions of all the States. New Jersey interposed the further and more far-sighted objection that the articles were defective in not giving the General Government the control of commerce. March 2d, the Revolutionary Congress changed its basis of ex-

istence, and began its short-lived career as the Congress of the Confederation.<sup>1</sup>

Most of the State legislatures, as has been said, originally usurped the power to choose delegates to Congress. When we come to the further question of the right of the legislatures to ratify and make valid that which their new servant, the Continental Congress, had offered for their ratification—a scheme of government which was professedly a league or treaty between sovereign and independent States—the usurpation becomes yet more glaring. Whence did the legislatures derive those “competent powers” with which the Congress invited them to invest the delegates of their States for signing the Articles of Confederation? They cannot be found in the State constitutions, not one of which authorized its legislature to form any league or treaty with other States; nor in any claim of a revolutionary and unlimited character for the legislatures, for they were all expressly limited by the organic law of the States, their charters or constitutions; nor in the undefined boundaries of legislative power, for the treaty power is essentially an executive, not a legislative, power, except so far as the legislative is admitted to it by the organic law.

If, then, we are not to consider the Articles of Confederation as the extra-legislative and usurping action of State legislatures, we must look for their basis in the revolutionary character of the Congress which framed them and which chose to offer them to the State legislatures for decision; and thus we are forced back again to the will of the whole people as the source even of the clumsy National Government of the Confederation. [The many instances in which the particularist bias of the American people caused their actions, and those of their representatives, to swerve from the straight line of theory, are considered under Declaration of Independence, and State Sovereignty.]

<sup>1</sup> See Confederation, Articles of.

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Appended is a summary of the successive sessions and locations of the Continental Congress, before and after the adoption of the Articles of Confederation. After October 21, 1788, the Congress was nominally kept in existence in New York City by occasional meetings of a few delegates for the purpose only of adjournment, until the inauguration of the new Federal Government under the Constitution. September 5, 1774–October 26, 1774, Philadelphia, Pa.; May 10, 1775–December 12, 1776, Philadelphia, Pa.; December 20, 1776–March 4, 1777, Baltimore, Md.; March 4, 1777–September 18, 1777, Philadelphia, Pa.; September 27, 1777, Lancaster, Pa.; September 30, 1777–June 27, 1778, York, Pa.; July 2, 1778–June 21, 1783, Philadelphia, Pa.; June 30, 1783–November 4, 1783, Princeton, N. J.; November 26, 1783–June 3, 1784, Annapolis, Md.; November 1, 1784–December 24, 1784, Trenton, N. J.; January 11, 1785–November 4, 1785, New York City; November 7, 1785–November 3, 1786, New York City; November 6, 1786–October 30, 1787, New York City; November 5, 1787–October 21, 1788, New York City.

5. *Declaration of Independence.*—The struggle against Great Britain was begun by the English-speaking American Colonies without any general idea of independence as a possible result.<sup>1</sup> Any such intention, however warmly favored in New England, was very distasteful to the other Colonies, and was formally disavowed by Congress, July

<sup>1</sup> To see that independence was not the purpose in view of the colonists even as late as 1775, consult the "Declaration of the Causes and Necessity of Taking up Arms," July 6, 1775, in MacDonald's *Select Charters Illustrative of American History*, p. 374. This state paper says: "Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored. Necessity has not yet driven us to that desperate measure, or induced us to excite any other nation to war against them. We have not raised armies with ambitious designs of separating from Great Britain and establishing independent states."—ED.



6, 1775. Pennsylvania, Maryland, and New Jersey, before the spring of 1776, had enjoined upon their delegates in Congress the rejection of any proposition looking to a separation, and New York, Delaware, and South Carolina were so much opposed to a separation that their delegates took no prominent part in promoting it.

The transfer of the war to the South in May and June, 1776, did much to advance the idea of independence there, and in May the Virginia Convention instructed the delegates of that State in Congress to propose a resolution declaring for independence, which was done, June 7th, by Richard Henry Lee, though his resolution was not formally adopted until July 2d. Before July 1st, Pennsylvania, Maryland, and New Jersey had rescinded the former instructions, and ordered their delegates to vote for the Declaration. After debating Lee's resolution, June 8th and 10th, in Committee of the Whole, and appointing a committee of five to draw up a Declaration, the question was dropped until July 1st, when the Declaration, which the committee had reported June 28th, was taken up and debated in Committee of the Whole through July 3d.

By this time the delegates of South Carolina, who had hitherto voted against it, came over to the majority. Delaware's two delegates were divided, and the New York delegation refused to vote, although personally in favor of the measure. July 4th, Rodney, the third delegate from Delaware, was brought hurriedly about eighty miles to secure the vote of his State, and in the evening of that day the Declaration of Independence was passed, no State in opposition, but New York still refusing to vote. July 9th, the New York Convention ratified it, and it thus became "The Unanimous Declaration of the Thirteen United States of America." The New York delegation did not sign until July 15th, nor six new Pennsylvania members until July 20th. One

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member from New Hampshire did not sign until November 4th.

The committee appointed to draft the Declaration were Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingston. Jefferson, who was no speaker, but had the reputation of being an able writer, was appointed to make the draft, and his draft was accepted, with some few changes, by the committee and by Congress. The changes were generally omissions rather than alterations, so that the whole document, as we have it now, contains hardly any words which were not those of Jefferson.

The most noteworthy omissions were those of the last two counts of his original indictment of the King, which were as follows:

“ He has incited treasonable insurrections of our fellow-citizens, with the allurements of forfeiture and confiscation of our property.—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; and, that this assemblage of horrors might want no fact of distinguished dye, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them by murdering the people upon whom *he* also obtruded them: thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.”

The last of these two charges fully expressed Jefferson's theoretical sympathy for the negro race, and it is the

only place in the whole document where his draft descended to italics to express feeling. But slavery was already too delicate a subject to be rudely touched, and the matter above given was stricken out in obedience to the wish of Southern delegates.<sup>1</sup>

The debates upon the Declaration are not sufficiently preserved to give us any adequate idea of their nature, but from all the concurrent testimony of the time it is evident that, though Jefferson was the author of the Declaration, to John Adams must be given the credit of its passage. His eloquence and his great influence over the Northern delegates insured a hearty support to that which was originally a Virginia measure. Jefferson acknowledges that in the debates he was of necessity a passive auditor of the opinions of others, while Adams "supported the declaration with zeal and ability, fighting fearlessly for every word of it."

By a singular coincidence, the deaths of the two men were almost simultaneous, occurring on the same day, July 4, 1826, the fiftieth anniversary of their joint success in producing the Declaration of Independence.

Few state papers have been drawn up with more skill, or with greater adaptation to the purposes in view, than the Declaration of Independence. Jefferson's first object was to impress upon the whole document the consistent character of a renunciation of future allegiance *to the King*, while avoiding anything that could be construed into an acknowledgment that the British Parliament had ever had any rightful authority over the Colonies. The skill with which this difficult path is pursued until the end is most admirable. Parliament, the head and front

<sup>1</sup> The passage relating to the slave trade was stricken out from the original draft of the Declaration of Independence, as Jefferson testified, not only because of "deference to Southern delegates," but "because our Northern brethren being considerable carriers of slaves to others were a little sensitive on that point."—ED.

of the enemies of America, is not even mentioned, except by implication, and then only as a number of lawless and usurping persons with whom the King had combined and confederated to procure the passage of certain unconstitutional acts of pretended legislation.

Beyond this, of course, a further object was to exhibit such a catalogue of grievances as would justify every American to his own conscience in throwing off the royal authority, and this also was attained with wonderful ability. There is no unseemly violence of language in the Declaration. The slow and stately scorn with which the successive counts of the dreadful indictment against the King are rehearsed, is massive in its impressiveness even to us, who have not the living and burning feeling of injury which was in the hearts of its first hearers. Even as a piece of literary workmanship, to be judged by its capacity to affect Anglo-Saxon minds and hearts, Jefferson had a right to be proud of it, and it is not wonderful that his first claim to remembrance, as given upon his tomb by his own wish, is that he was the "Author of the Declaration of American Independence."

The general principles with which the Declaration proper begins, the equality (meaning the equality of privilege) of all men, and popular will as the true basis of government, seem to us trite enough now, and are accepted in fact by every government whose subjects have capacity enough to comprehend and assert them. In 1776 they had been asserted again and again in theory, and Jefferson was accused of having stolen them from the Declaration of Rights by Congress in 1774, from James Otis, from Samuel Adams, or from Locke's *Treatise on Government*.

A long list might easily be made of writers who had maintained, in the closet and on paper, sentiments identical with those of the Declaration; but, with the possible exception of the English commonwealth, which, however,

was *sui generis*, this was the first time in modern history that these ideas had appeared armed and demanding a hearing. By their successful establishment the Declaration has taken, in American history, the place which *Magna Charta* and the death warrant of Charles I. occupy in English history.

Upon the essential nature of the Declaration there are two opposite opinions, which may be called the *Story theory* and the *Calhoun theory*, from their ablest supporters.

The Story theory is that the Colonies did not severally act for themselves and proclaim their own independence; that the Declaration was the united act of all for the benefit of the whole, "by the representatives of the United States of America in Congress assembled"; that it was therefore a national act, by the sovereign and paramount authority of the people at large; and that, therefore, from the moment of its passage, the united Colonies must be considered a national government *de facto*, acting by the general consent of the people of all the Colonies.

The Calhoun theory is that the words "one people" in the preamble refer to the people of each Colony severally, not jointly, as the source and fountain of all rightful power; that the Congress which made the Declaration was a Congress of States only; that the delegates of each State signed and joined in the Declaration by direction of the several State governments, not in deference to the decision of a majority of Congress or of the people at large; that the independence of each separate Colony not only of Great Britain, but also of its neighbors, was established before the Declaration, by popular assumption of power; that the Declaration itself was only an assignment, out of a decent respect to the opinions of mankind, of reasons for the previous exercise of independency by the States; and that the separate States,

though acting in common for self-defence, were so far from being a nation in reality that they did not even form a confederation until five years afterward.<sup>1</sup>

The Story theory must be taken as generally most correct. From the inception of Anglo-Saxon political organization upon this continent, growth was a certainty, and, by the circumstances of its surroundings, growth could only take place along the line which is marked out by the Story theory. If the doctrine of the Declaration, that popular consent is the basis of government, be accepted, the thirteen Colonies were already united by their own consent, before 1774, in a common membership in the British Empire, as they afterward remained united from 1774 until 1789 under two classes of revolutionary governments, and since 1789 under the present Constitution. The *form* of the government during the interregnum period, 1774-89, which by the Calhoun theory is all-important, is in reality of no importance at all; it is the *fact of union* which is all-important, and against which it is useless and absurd to argue.

Popular consent to union has been continuously and progressively in force from the beginnings of English colonization in America until the present time, and logic is wasted against the patent fact while the consent is not rescinded. As the Declaration expressly rescinded the popular consent to further union or political connection with the rest of the British Empire, its very silence as to the continuance of union between the Colonies themselves is the strongest of affirmations.

The union which theretofore existed, by common consent, between the thirteen Colonies and the rest of the British Empire was dissolved by common consent as the result of civil war; but no such common consent to a further dissolution has ever been obtained, and no such common consent can ever be presumed, or arise by in-

<sup>1</sup> See State Sovereignty.

ference or implication. It must be express. Nor does the confederating of the States, after the Declaration, alter the case, as is contended by the Calhoun theory, for the truth is<sup>1</sup> that this scheme of government was either the extra-legislative action of State legislatures, or was as essentially revolutionary as the Continental Congress. The union must be regarded as continuous, under the British Constitution until 1774, under a revolutionary interregnum during the period of 1774-89, and since 1789 under the practical supremacy of the general popular will which had been theoretically declared in 1776 to be the true basis of government.

But it would be misleading if we should leave it to be inferred, as the Story theory usually does, that the American statesmen and people of 1776 were in all points perfectly cognizant of the full scope and meaning of their action. If the Story theory had been fully explained to the Congress of 1776, we would certainly never have had the Declaration in exactly its present form. Some of the signers read the instrument with the light of the future upon it, but the great mass acted simply because they were in the full drift of the current which has regularly governed successful political action in this country. In that current, however, there were many strong eddies. State feeling, distrust of other commonwealths, and the strong individualistic bias of the Anglo-Saxon character were constantly prompting the delegates and their State governments to action which was entirely inconsistent with the Story theory and is usually ignored by its supporters.

Such are, for example, the emphatic declaration of the Virginia Convention, June 20, 1776, that the political connection between *that colony* and the British Empire was totally dissolved; the resolutions of Congress, June 24, 1776, that allegiance was due to the separate Colonies

<sup>1</sup> See Continental Congress.

and that treason was an offence against the Colony in which it had been committed; the title given to the Declaration by order of Congress, "The *unanimous* Declaration of the *Thirteen* United States of America"; and other instances given under State Sovereignty. All these are constantly quoted as convincing proofs of the soundness of the Calhoun theory; but the candid student, while allowing them their fair value as militating against the general current of American political history, must look upon them as only eddies.

Whatever may have been the feeling of any American statesman in 1776, it must be evident that a declaration of the several as well as the joint independence of the Colonies, a resolution of the American portion of the British Empire into its constituent elements, could never be valid without the express action of each Colony at the time, and its successful establishment by separate warfare. To assume it, to obtain it by inference or implication, or to attempt to establish it by argument, would be to erect a monstrosity in the generally orderly history of American politics.

6. *Mecklenburgh Declaration*.—The authorized account of this document is that it was adopted at two o'clock in the morning of May 20, 1775, at Charlotte, by a convention of two delegates from each militia company of Mecklenburgh County, N. C.; that the papers of John M. Alexander, the secretary of the convention, were accidentally burned in April, 1800; that copies of the minutes and Declaration were then sent to Hugh Williamson, at New York, the historian of North Carolina, and to W. R. Davie; and that another copy was finally published by the *Raleigh Register*, April 30, 1818. From this last publication the Declaration first became generally known.

The Declaration purports to "dissolve the political bands which have connected us to the mother country, and absolve ourselves from allegiance to the British Crown,



and abjure all political connection, contract and association with that nation"; to declare that the people of Mecklenburgh County are "a free and independent people," who "are, and of right ought to be, a sovereign and self-governing association, under the control of no power other than that of our God and the general government of the congress"; and to establish a revolutionary government for the county.

The Declaration is historically suspicious from its use of phrases used in the Declaration of July 4, 1776; from the facts that Williamson, and the contemporary writers of this and neighboring States, show no knowledge of it, and that it was entirely ignored in and out of Congress at a time when resolutions coming far short of independence were heralded by every newspaper in the country; and from its inability to appeal to any better evidence in support of it than that of dead men, burned papers, and a missing letter of approval from the three North Carolina delegates in Congress, two of whom were notorious Tories. Nevertheless Bancroft accepts it without hesitation; but the probability is that resolutions, of the kind which were common at the time, were passed May 31st, that the "copies" of 1818 were from recollection, with strong traces of the Declaration of July 4, 1776, and that the Mecklenburgh "declaration" was not of its purported date, or essentially of its purported nature.

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In the articles above Professor Johnston saw fit to present a view in support of the national theory of the origin of the Union. Was the Continental Congress a national body holding and exercising sovereign powers? Or were the States sovereign and supreme? Was the Union older than the States? Was the Union formed by a *national people*, or by independent and sovereign States that only delegated without surrendering their sovereignty? These

questions are not now of any political significance, because the national character of the Federal Union has been determined by a century of experience and by four years of civil war. But these questions present *historically* an interesting problem,—the problem of determining to what extent, if any, the Continental Congress represented a *nation*, to what extent it was a sovereign national power, such as the United States Government represents to-day. That problem should be approached not from the standpoint of any theories as to our national existence—a Story theory or a Calhoun theory,—not from the point of view of the arguments and conflicts of later days between the national and the confederate idea, but from the standpoint of pure history, to ascertain from the evidences and sources, as far as may be, how the united action of the Colonies in the Continental Congress actually appeared to the men of that day. The student who is interested in this important early aspect of our national history is referred to Professor Albion W. Small's *Beginnings of American Nationality*.<sup>1</sup> This study presents the query: Do the records of the Congress and of the Colonies and the history of the times prove whether the Continental Congress was—

(a) A central committee of observation to consult, to advise, then to await directions? Was it merely a conference to debate what would be best for the Colonies to do?

(b) Or, was it a committee of delegates to consult, to decide and to lead, to go ahead and act, expecting to be sustained by their principals, the States, who sent them?

(c) Or, was it a real government,—a body with power to consult, to decide, and then to carry out its decisions, enforcing its decrees against individuals and against the Colonies?

The conclusions of Professor Small's monograph are

<sup>1</sup> Johns Hopkins University Studies, Series VIII.

that the Continental Congress represented the second of these three views. Professor Small says in his conclusion:

“It is not necessary to build our nationality on a misconception of history. The term ‘union’ can be used in connection with the agitations of 1774 only by the most liberal accommodation. There were *common grievances*; there was prospect of remedy only in combination of the colonies for mutual counsel and support. There was *common indignation* against the mother country, with almost universal hope that reconciliation, not separation, would result. There was *common determination* to insist upon constitutional rights and to grant moral and material aid to the colony or colonies that might make test cases with the home government. There was *common recognition* of co-ordinating effort under leadership competent to survey the whole situation and point out suitable lines of action. There was *common willingness* to adopt the advice of a central committee of observation. . . . Concert only to this extent was, in some respects, more difficult than it would be to-day for all the Republics of America to form a commercial alliance. To use the term ‘union’ (in relation to the Congress of 1774) with its present conception and association is to introduce an historical misconception.”

“To admit the terms ‘sovereign’ and ‘nation’ into a description of American conditions at this stage is to abandon investigation and classification and to deliberately beg the issue. For the moment government, even within the colonies, was partially paralyzed. It was doubtful who might command and who must obey. There is not a trace in any popular or official act of the time that can be rationally expounded as evidence of a claim, on the part of the Continental Congress, to power of inter-colonial control. Persons in South Carolina denounced Georgia, to be sure, and there was talk of forcing that colony into participation with the rest. The argument was supposed expediency, justifying extraordinary action, not the assertion of any general principle subordinating the will of one colony to the command of all. The formation of a Continental Congress was the beginning of inter-colonial de-

liberation which broadened the horizon of the people, which emphasized the reasons for unity, which brought to popular attention the increasing number and importance of common interests, which created a continental opinion upon subjects of the most obvious common concern. The function of the first Continental Congress was not to express a 'sovereign will,' but to assist in the development of a common consciousness, so that there would be, by and by, a sovereign will to express. By creating this continental committee, the widely separated colonies became simply colonies testing the actuality and potency of their common ideas. They were no more a nation than twelve neighbors meeting (under some pressure) for the discussion of a possible business venture would be a partnership."<sup>1</sup>

It will be noticed that this view is quite different from that presented by Professor Johnston. But it is not a matter of different "views." It is a question of evidence and facts. The student should go to the sources and learn for himself—which Professor Small's monograph will help him to do—what was the real character of the Continental Congress as to the source and extent of its powers and its relation to the States. George Ticknor Curtis, in his *Constitutional History of the United States* (which the student should consult), gives what appears to be a fair judicial summary:

"There seems to have been no reason upon principle why they [the Continental Congresses] should not have adopted decrees to be executed by their own immediate agents and by their own direct force. . . . But the government of the Congress rested on no definite legislative faculty. When they came to a resolution, or vote, it constituted only a voluntary compact, to which the people of each colony pledged themselves by their delegates as to a treaty, but which depended for its observance entirely on the patriotism and good faith of the colony itself. No means existed of compelling obedience

<sup>1</sup> Small's *Beginnings*, pp. 40, 42.

from a delinquent colony, and the government was not one which could operate directly upon individuals, unless it assumed the full exercise of powers derived from its revolutionary objects. These powers were not assumed and exercised to their full extent, for reasons peculiar to the situation of the country, to the character, habits, and feelings of the people.”<sup>1</sup>

“It was a congress of deputies, not of legislators. Its executive operations were vicarious, not functional. It performed no single act which did not derive viability from sustentation by the local powers. Its history forms a record of localism rising superior to itself, to meet the demands of a crisis. That imagination runs riot which turns this magnificent effort into the definitive abdication of localism. Not constitution-building but constitution-saving was the object now. The colonies combined not to substitute one dependence for another, but to make their relation to England one of independence.”<sup>2</sup>

ED.

On the Continental Congress see 8 Franklin's *Works*, 63; 1 Pitkin's *United States*, 282; 3 Burk's *History of Virginia*, 379; 1 Gordon's *History of the Revolution*, 239; 1 Marshall's *Washington*, 29; 7-9 Bancroft's *United States*; 3 Hildreth's *United States*; 1 von Holst's *United States*, 1-30; 1 Schouler's *United States*, 1-56; 1 Curtis's *History of the Constitution*, 1-137; Story's *Commentaries*, §§ 198-228; Frothingham's *Rise of the Republic*; Niles's *Principles and Acts of the Revolution*; Greene's *Historical View of the Revolution*, 78-135; 2 Adams's *Works of John Adams* (notes of debates in Cont. Cong.); 1-4 *Public Journals of Congress* (to March 3, 1789); 1 *Secret Journals of Congress* (domestic affairs, 1774-88); 1 *Stat. at Large* (Bioren and Duane's ed.), 1-60; 1 Stephens's *War Between the States*, 52-81; 1 Calhoun's *Works* (disq. on government); Pollard's *Lost Cause* (cap. 1); Poore's *Political Register*, and *Federal and State Constitutions*.

<sup>1</sup> Vol. I., p. 43.

<sup>2</sup> Small's *Beginnings of American Nationality*, p. 76.

For the Declaration of Independence see 8 Bancroft's *United States*, 373; 4 Grahame's *United States*, 315; 1 J. C. Hamilton's *United States*, 110; Frothingham's *Rise of the Republic*, 245-509; 3 J. Adams's *Works*, 45; 4 *Mass. Hist. Soc. Coll.* (5th Ser.), 300; 2 Wells's *Life of S. Adams*, 352; 1 Randall's *Life of Jefferson*, 124; 1 Rives's *Life of Madison*, 108; Greene's *Historical View of the Revolution*, 58; 1 Pitkin's *United States*, 362. For a facsimile of Lee's resolution, see 6 Force's *American Archives* (4th Ser.), 1700. For a facsimile of the Declaration in Jefferson's writing, with the alterations, see 1 Jefferson's *Works* (ed. 1829), 146. For a fair summing up of the conflicting statements of Jefferson and John Adams, see 1 Curtis's *History of the Constitution*, 81. See also 1 Lee's *Life of R. H. Lee*, 275; *Letters of John and Abigail Adams*, 190; 3, 7 *Harper's Magazine; Scribner's Monthly*, July, 1876; *Potter's American Monthly*, December, 1875; *Story's Commentaries*, § 205; 1 Calhoun's *Works*; 1 A. H. Stephens's *War Between the States*, 58; and in general Winsor's *Reader's Handbook of the Revolution*, 102; and authorities under Massachusetts, and under articles above referred to.

On the Mecklenburgh Declaration, see 7 Bancroft's *United States*, 370; 3 Hildreth's *United States*, 74; Frothingham's *Rise of the Republic*, 422; 3 Randall's *Life of Jefferson*, App. 2; 4 Jefferson's *Works* (edit. 1829), 314; Jones's *Defence of the Revolutionary History of North Carolina*; Graham's *Address on the Mecklenburgh Declaration*; W. D. Cooke's *Revolutionary History of North Carolina*; 2 Lossing's *Field Book of the Revolution*, 617; *North Carolina University Magazine*, May, 1853; *North American Review*, April, 1874; Niles's *Principles and Acts of the Revolution*, 132.

## CHAPTER IV

### THE OLD CONFEDERATION, 1781-1787

NOVEMBER 15, 1777, the Continental Congress adopted *Articles of Confederation and Perpetual Union* between the thirteen Colonies which had united in the Declaration of Independence. These were as follows, the more important being given in full. Art. I. "The style of this confederacy shall be 'The United States of America.'" Art. II. "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled." Art. III. "The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever." Art. IV. secured to the free inhabitants of each State the privileges and immunities of free citizens in the several States, and provided for the mutual extradition of fugitives from justice. Art. V. related to the organization of Congress. It was to consist of one house, whose members were to be appointed annually by the State legislature, and were to be liable to recall by the Legislature at any time. Each State was to have not less than two or more than seven delegates, paid by the States,

but each State was to have but one vote. Art. VI. prohibited the States from alliances or treaties with any foreign state, or with any one of the United States without consent of Congress; from granting titles of nobility; from laying imposts or duties which should interfere with treaties *already* proposed to France or Spain; from keeping vessels of war or soldiers, excepting militia; and from engaging in war unless declared by Congress, or unless imminent danger should arise. Art. VII. allowed the States to name the army officers except those of the rank of general. Art. VIII. directed Congress to make requisitions upon the States for their respective quotas of the money necessary for national expenses, and ordered the State legislatures to levy the taxes necessary, "within the time agreed upon by the United States in Congress assembled." Art. IX. gave Congress the right to make peace and war, treaties and alliances, and prize rules, to grant letters of marque and reprisal, and to constitute admiralty courts; but no treaty was to restrain the State legislatures from laying prohibitory duties, or such duties as should be binding upon their own citizens. It made Congress a court for the trial of territorial disputes between the States. It gave Congress power to regulate the value of coin and the standard of weights and measures; to manage Indian affairs subject to the legislative rights of the States; to control the postal service, and direct land and naval forces and their operations; to borrow money; to make requisitions upon the States for their quotas of men and money; and to appoint a "committee of the States," consisting of one delegate from each State, and any other executive committees or officers as might seem necessary. But the more important powers, such as making war, peace, treaties, or requisitions, borrowing, coining, or appropriating money, forming an army or navy, or appointing a commander-in-chief, were not to be exercised without the affirmative vote of



nine States; nor should any other power, except that of adjournment from day to day, be exercised without the affirmative vote of seven States. Art. X. authorized the "committee of the States," nine of their number being present, to act for Congress in its recess, except in the more important points above mentioned. Art. XI. authorized Canada to join the confederacy; but no other Colony was to be admitted without the vote of nine States. Art. XII. "solemnly pledged" the public faith of the States for the payment of the money borrowed or appropriated by Congress. Art. XIII. "Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislatures of every State."

These articles were ratified, upon the order of the State legislatures, by their delegates in Congress, who "solemnly plighted and engaged the faith of their respective constituents" that the articles should be obeyed both by the State governments and by their people, and went into operation March 2, 1781.

The relative viciousness of the articles above given is difficult to determine. Perhaps the palm in this respect should be awarded to the theory of Article II., exemplified in practice by Article IX. By Article II. the new government was made in every sense a league, formed by State legislatures, ratified by State legislatures, and checked, controlled, and dominated by State legislatures. Whence the legislatures derived their authority to form, *proprio vigore*, any such general league cannot be known, for the question was never mooted at the time. They

had never enjoyed any such authority under the British Constitution, for there<sup>1</sup> the treaty power was a royal prerogative, and not in the legislature at all. But the root principle asserted and maintained in the Revolution was "the right of the *people* to alter or abolish" their governments, and to assume the royal prerogatives.

It was the part of the people, then, and not of the State legislatures, to establish the new government, and, had the people framed these articles, the act, however unwise, would have been perfectly legal. But the seizing of the royal prerogative, in the confusion of war, by the State legislatures was evidently usurpation, extra-legislative, and to be palliated only on the assumption that popular acquiescence gave popular consent.

The whole system must therefore be considered, in our political history, as a period of interregnum, covering the time between the downfall of royal authority under the British Constitution in 1776-80, and the final establishment of the popular will in its place in 1789 under the American Constitution.

Of the practical application of the general theory to the other articles it is difficult to speak temperately. Congress had no power to prevent or punish offences against its own laws, or even to perform efficiently the duties enjoined upon it. It alone could declare war, but it had no power to compel the enlistment, arming, or support of an army. It alone could ascertain the needed amount of revenue, but the taxes to fill the requisitions could only be collected by the State legislatures at their own pleasure. It alone could borrow money, but it had no power to repay. It alone could decide territorial disputes between the States, but it had no power to compel either disputant to respect or obey its decisions. It alone could make treaties with foreign nations, but it had no power to prevent individual State legislatures or

<sup>1</sup> See State Sovereignty.

private citizens from violating them at pleasure. Even commerce, foreign and domestic, was to be regulated entirely by the State legislatures.

The complete nullity of Congress was further assured by the provision which required the vote of nine States to pass important measures, for, the absence of a State delegation being as effectual as a negative vote upon matters affecting the interests of a State, the State legislatures, in order to avoid the expense of maintaining delegates, might safely take refuge in neglect to choose members of Congress.

The only guarantee for the observance of the Articles was the naked *promise* of the States, and this was almost immediately found to be utterly worthless. The two essential requisites were supplied by the Constitution, which, first, provided that the supreme law of the land, above and beyond State laws or constitutions, should flow from it, and, second, created a system of United States courts, extending throughout the Union and empowered to define the boundaries of Federal authority and to enforce its decisions by Federal power.

The United States thus lost its factitious character of a league, and took on that of a national government based on popular will. The period of gestation, beginning in 1776 with the theoretical assertion of popular will as the basis of government, ended twelve years afterward with the birth of the Constitution.

The short and inglorious history of the Confederacy, covering a period of less than eight years in all, is a dismal record of requisitions by Congress for money, of neglect or refusal of payment by the States, of consequent default in the payment of the principal and interest of the Federal debt, of treaties violated with impunity by State legislatures, private citizens, and foreign nations, and of foreign aggressions on American commerce, intestine disorders in the States, and Indian depredations on

the western frontier, against which the impotent Congress could give no protection.

The public debt amounted, January 1, 1783, to \$42,000,375, the annual interest charge being \$2,415,956. Seven years afterward, by Hamilton's report, it had increased, through fresh loans, lapsed principal, and unpaid interest, to \$54,124,463. In October and November, 1781, Congress made requisitions for \$8,000,000; in January, 1783, \$500,000 had been collected. During the next four years, 1782-6, Congress made requisitions for \$6,000,000 to pay the interest on the public debt, and received \$1,000,000.

In 1787, the first instalment of the principal of the foreign debt was to fall due, and as a preparation for this new demand the State legislatures of New Jersey and Rhode Island, in 1786, made their own paper currency legal tender for Federal requisitions. Congress was justified in the declaration, in 1786, that any further reliance upon "requisitions" would be no less dishonorable to the understandings of those who entertained such confidence than dangerous to the welfare and peace of the Union.

The needful remedy, the grant of a permanent Federal revenue, was very apparent. February 3, 1781, before the final ratification of the Articles, Congress appealed to the States to give Congress power to levy an *ad valorem* duty of five per cent. to pay the interest and principal of the debt. Rhode Island refused, and Virginia, at first consenting, afterward withdrew her consent. The second of Rhode Island's three objections, that the plan "proposed to introduce into that and the other States officers unknown and unaccountable to them, and so was against the constitution of the State," marks with singular clearness the utter lack at the time of even the conception of a real national government. March 15, 1783, after mentioning the "delay and repugnance" of the States in paying the public debt, the French Minister informed the

Federal Superintendent of Finance that "without a speedy establishment of solid general revenue, and an exact performance of the engagements which Congress has made, you must renounce the expectation of loans in Europe."

April 18, 1783, Congress again appealed to the State Legislatures, this time for a grant of power to Congress to levy duties for only twenty-five years, through officers appointed by the States but accountable to Congress; and also for the establishment by the States of special taxes for the payment of \$15,000,000 annually of the debt already due. The latter request proved so unpopular that it was very soon abandoned, and every effort was made to gain the necessary consent of *all* the States to the former. In 1786 New York, all the other States having consented, accepted the plan, but reserved the power of levying and collecting the duties, and appointing and removing the officers. Such an acceptance was of course a refusal, and New York's veto seemed for the moment to destroy all hope of the continuance of the Union. Congress, which was then in session in New York, twice appealed to the Governor to re-convene the Legislature, and the Governor twice refused, on the ground that he had no right to do so except on "extraordinary occasions." It had become evident that some power stronger than the persuasions of Congress was needed to wrest from the reluctant legislatures the control over the revenues and commerce of the country.

That the unpaid, half-fed, and half-clothed Continental soldiers should have disbanded at the close of the war without any attempt to obtain their dues after the manner of the Spanish regiments in the Netherlands, by forcible levy upon a portion of the country, is attributable rather to their own patriotism, and to the commanding influence of Washington and his lieutenants, than to the gratitude of the people or the fair dealing of the States.

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In 1778-9 provision had been made for half-pay for the officers of the army; the soldiers had not even been paid since 1777, when their arrearages had been settled in Continental money, the dollar being "worth about four pence."

After the adoption of the Articles in 1781, when the vote of nine States became necessary for appropriations, all prospect of liberality, or even of common honesty, toward the army disappeared. March 10, 1783, while the army was encamped at Newburgh, an anonymous address called a meeting of the officers, rehearsed their grievances, and advised, in case of further refusal of justice by Congress, that "courting the auspices and inviting the direction of your illustrious leader, you should retire to some unsettled country, smile in your turn, and mock when their fear cometh on." Washington, by personal influence and entreaty, averted the danger, but his urgent representations induced Congress, March 22d, to make the army creditors of the United States to the amount of \$5,000,000. With this act of doubtful liberality the army was perforce content, and was disbanded with no further token of gratitude from the States whose independence it had won.

Most of the States disapproved of the prodigality of Congress, and the Massachusetts Legislature solemnly protested against it as tending to "raise and exalt some citizens in wealth and grandeur to the injury and oppression of others."<sup>1</sup>

In April, 1783, before the formal conclusion of peace, but after the actual close of the war, the British Parliament intrusted the regulation of commerce between the United States and Great Britain to the King in Council. The Council's design was to disregard Congress, treat the

<sup>1</sup> For the retention by Great Britain of military posts in the west, see Jay's Treaty; for the loss of the navigation of the Mississippi, see Louisiana.

several States as independent republics, and conclude consular conventions with each on England's own terms. In July, by orders in Council, all American commerce was excluded from the West Indies, and, in trading with Great Britain, American ships were to carry only the produce of their respective States. April 30, 1784, Congress asked the State legislatures to grant to Congress power for fifteen years to prohibit the entrance into the United States of vessels belonging to a foreign nation not having a commercial treaty with the United States. This grant was also refused, except on conditions, by ten States, and entirely refused by three. Apparently the States preferred to be subject to Great Britain rather than be subject to their own creature, the "fæderal" Congress.

*Shays's Rebellion.*—The close of the war found the people of Massachusetts with no money and little property, manufactures, fisheries, or commerce, and distressed not only by State taxes but by suits for long dormant debts. During the autumn of 1786 tumultuous gatherings of people in Western Massachusetts, roused by "the extortions of the lawyers," surrounded the court-houses and stopped the operations of the courts. Congress, under the subterfuge of levying 1300 men in New England to take part in a mythical Indian war, made a feeble attempt in October to sustain the State government; but, before the levy was made, Governor James Bowdoin had borrowed money in Boston and sent a militia force under General Lincoln against the insurgents, who were now mustered into an army of about 2000 men under Daniel Shays, lately a captain in the Continental army. In February, 1787, Lincoln succeeded in scattering Shays's force, and driving the leaders into New Hampshire.

No extra-political event had so strong an influence in compelling the formation and adoption of the Constitution as this rebellion, for it showed that the State legislatures severally could not enforce that public order the

care of which they had refused to intrust to the Central Government.

A full Congress would have consisted of ninety-one delegates. In practice the presence of thirty was an unusual event, and these were not the first-rate men of the country. With some exceptions the State governments were most attractive to the able and ambitious. In June, 1783, Congress was driven from Philadelphia by a handful of dissatisfied and insubordinate militiamen. December 23, 1783, by resolution, Congress informed the States that less than twenty delegates, representing seven States, had been present since November 3d, and that at least two more States must be represented to ratify the treaty of peace. The treaty was at last ratified January 14, 1784, twenty-three delegates, representing nine States, being present.

During the summer of 1787, while the convention which was to change the form of government was in session,<sup>1</sup> Congress passed the Ordinance of 1787, which secured freedom to a large part of the country and furnished a model for the organization of future territories. July 14, 1788, Congress announced the ratification of the Constitution by nine States, and made arrangements for the day and place of its formal inauguration, at New York, March 4, 1789. After January 1, 1789, Congress was kept in formal existence by the presence of one or two delegates who adjourned from day to day. March 2d, it flickered and went out without any public notice.

During its existence as a Continental and a Confederate Congress the American people had suffered distress great in comparison with the periods before 1775 or after 1789, but it had at least maintained the union of the States and prepared the way for a union more intimate than would have been practicable in 1776. The hand could not have been altogether nerveless which caught the sceptre as it

<sup>1</sup> See Convention of 1787.



dropped from the hands of the King, and transferred it in safety to a government of the people.<sup>1</sup>

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Reasons for the long delay in adopting articles of union (1776-1781) have been given as follows:

(1) The absence of leading men from Congress. Many of the leading spirits of the Colonies were in the service of their respective States, in this time of State-building or constitution-making; or they were in the service of their country abroad.<sup>2</sup>

(2) The controversy over the method of voting in the proposed new Congress.

It was decided that each State should have one vote,—owing to the lack of adequate information for determining a proportionate basis. For interesting discussions on this subject by Chase, Franklin, Witherspoon, John Adams, and others, the student should read Jefferson's "Notes on the Formation of the Confederacy."<sup>3</sup>

(3) The controversy over the method of apportioning troops and taxes.

This arose, like the issue over the method of voting, in a conflict of interests and opinions between the large States and the small. It was decided in favor of the small States,—that all charges for war and other expenses should be in proportion to the value of all land and houses, to be assessed by the legislatures of the States. The States were to raise the funds upon requests, or requisitions, by Congress. This was a fatal weakness of the Confederacy and one of the principal causes of its breakdown. The student should by all means read on this subject the proposed "Revenue Amendment of April 18, 1783," and the "Address to the States" in sup-

<sup>1</sup> See United States, Revolution, Declaration of Independence, Continental Congress, State Sovereignty, Convention of 1787.

<sup>2</sup> Schouler.

<sup>3</sup> Elliot's *Debates*, vol. i., pp. 70-78.

port of this amendment, written by Madison, Ellsworth, and Hamilton.<sup>1</sup> This address is one of the notable public documents of the times and helps to throw light on the financial conditions of the Confederacy. It was New York's final veto of this proposed new revenue scheme which Marshall said "virtually decreed the dissolution of the existing government."<sup>2</sup>

(4) Controversy over foreign trade. This suggests New Jersey's objection to the Articles of Confederation,—a State which, like "a cask tapped at both ends," insisted that the regulation of commerce, foreign and domestic, should not be left to the States, but should be placed under the control of Congress. New Jersey's objection was sound, but it was not heeded, and the commercial weakness of the Confederacy, like its revenue defects, was one of the prime causes leading to the adoption of the new Constitution. The student should by all means read the "Objections of New Jersey," as laid before Congress.<sup>3</sup>

(5) The controversy over the public lands in the West.

Maryland insisted that these lands should come into the common possession of the United States, and she persistently refused to ratify the Articles of Confederation until a guarantee of such possession were given. On this subject the student should use H. B. Adams's *Maryland's Influence upon the Land Cessions*.

The student should read, also, the brief "Official Letter to the States Accompanying the Articles of Confederation," when they were submitted for the approval of the States, November 17, 1777.<sup>4</sup>—ED.

<sup>1</sup> Elliot's *Debates*, vol. i., pp. 93-100.

<sup>2</sup> Marshall's *Life of Washington*, vol. ii., p. 123. See, also, Winsor's *Narrative and Critical History of America*, chapter on the "Confederation," by the Editor.

<sup>3</sup> Elliot's *Debates*, vol. i., pp. 87-90.

<sup>4</sup> *Ibid.*, i., pp. 69, 70.

On the Confederacy, see 3, 4 *Public Journals*, and 1 *Secret Journals of Congress* (Confederacy); 10 Bancroft's *United States*; 3 Hildreth's *United States*; 2 Pitkin's *United States*; 2 Hamilton's *United States*; H. Sherman's *Governmental History*; Story's *Commentaries*, § 218; 1 von Holst's *United States*, 27; Blunt's *Formation of the Confederacy*; Frothingham's *Rise of the Republic*; Prince's *Articles of Confederation*; 1 Curtis's *History of the Constitution*, 124; 2 Rives's *Life of Madison*; 2 Marshall's *Life of Washington*, 108; 6 John Adams's *Works* ("Discourse on the Constitution"); Sheffield's *Observations on American Commerce; Addresses and Recommendations of Congress* (containing the "Newburgh Addresses"); 8 Washington's *Writings*, 396; 1 Sparks's *Life of Morris*, 253; 2 Hamilton's *Life of Hamilton*, 185; Minot's *History of Shays's Insurrection*, and other authorities under Massachusetts; authorities under Revolution and Continental Congress. The text of the Articles, with proceedings thereon, is in 1 *Statutes at Large* (Bioren and Duane's edition), 10-20; in 2 *Public Journals of Congress* (Confederacy); in 4 Elliot's *Debates*; and in Hickey's *Constitution*, 129, 483.

For the text of the Articles of Confederation, see, also, the *American History Leaflets*, No. 20, which contains the original drafts of Franklin and of Dickinson; MacDonald's *Select Documents, 1776-1861; American History Leaflets*, No. 28, for "Proposals to Amend the Articles." See, also, Fiske's *Critical Period of American History*; Morse's *Life of Hamilton*, ch. on "The Confederation"; Hunt's *Life of Madison*; McMaster's *History of the United States*, vol. i.; Gordy's *Political History of the United States*, vol. i.; Schouler's *History of the United States*, vol. i.

## CHAPTER V

### THE CONVENTION OF 1787

THE fatal defects of the Confederacy had become obvious even during the long space of time between its adoption by Congress and its ratification by all the States. In 1780 Hamilton, then a young man of twenty-three, stated elaborately, in a private letter, the evils of the existing government and the necessity of its reformation by a convention of all the States. In May, 1781, the first public proposal of this means of revisal was made by Pelatiah Webster in a pamphlet. In the summer of 1782 the Legislature of New York, and in 1785 the Legislature of Massachusetts, by resolution recommended such a convention. But even after the convention had been called, Congress only approved of it at the last moment, impelled thereto by the failure of the impost plan of 1783, which New York alone refused to ratify.

The hesitation of Congress had reason. The only method of amendment allowable by the Articles of Confederation was a unanimous concurrence of the States; but, as the evils of the Confederacy became more glaring, the flat impossibility of unanimity among the States became more evident. If such a convention was merely to recommend changes, it must act as a body of private persons, and its recommendations could have no legal or official weight except through the approval of Congress. If its recommendations were to be adopted by the ratification of all the States, the convention could plainly do no more than Congress had repeatedly and vainly done.

If its recommendations were to be adopted by a smaller number than *all* the States, then plainly a real, though peaceable, revolution was to be accomplished, and this was the final result.

In the spring of 1785 the legislatures of Virginia and Maryland, in the exercise of their plenary power to regulate commerce, had appointed commissioners to lay down joint rules for the navigation of the Potomac. Washington's attention was fixed on the matter, and in March, during a visit to Mount Vernon, a plan was concerted by the commissioners for the general commercial regulation of the Chesapeake Bay and its tributaries. As this was a subject of general interest, it naturally grew into a resolution, which was passed by the Virginia Legislature, January 21, 1786, appointing eight commissioners to meet delegates from the other States at Annapolis, in the following September, to consider the trade of the United States and its proper regulation, and report to the States.

Five States (New York, New Jersey, Pennsylvania, Delaware, and Virginia) sent delegates to the meeting; four others appointed delegates who failed to attend; and the other four made no appointments. Representing a minority of the States, the delegates merely reported that the defective system of the General Government absolutely prevented any hope of a proper regulation of trade, and recommended another convention for the single object of devising improvements in the Government. As the report cautiously provided that the improvements were to be ratified by the legislatures of *all* the States, Congress could properly sanction the proposed convention, and did so, February 21, 1787. May 14th had been appointed for the meeting of the convention, but a quorum of seven States was not secured until May 25th, when George Washington, who had with extreme difficulty been induced to act as delegate from Virginia, was made president.

The delegates (fifty-five during all the four months' sittings) represented the conservative intelligence of the country very exactly; from this class there is hardly a name, except that of Jay, which could be suggested to complete the list. Of the destructive element, that which can point out defects but cannot remedy them, which is eager to tear down but inapt to build up, it would be difficult to name a representative in the convention; and as the debates were wisely made secret, this element had no power, during the convention's four months' session, of influencing its action, or exaggerating its difficulties. Of these difficulties the first was the balancing of the opposing ideas of the large States and the small States, and the second and third were created by the opposite feelings of the two sections, North and South, on the subject of commerce and the slave trade.

In short, the task of the convention was to frame such a plan of government as should induce two almost distinct nations, one with six, and the other with seven, separate constituent commonwealths, to unite into one representative republic; and the secret and method of its success will be found under the subject "compromises."

May 25th, seven States were represented (New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, and South Carolina); May 28th, Massachusetts and Connecticut, May 31st, Georgia, and June 2d, Maryland, had competent representatives present; but New Hampshire had no delegates present until July 23d. Rhode Island was not represented at all. A more fortunate union of accidents for even-handed compromise could hardly have been imagined. The "large" States had, through all the preliminary debates, a majority of six to five, large enough to insure a general run of success in nationalizing the new government, but not so large as to obviate the necessity of deference to the minority.

In the proceedings of the convention the nationalizing

party was first in the field. Hardly had the convention been organized, and rules adopted, when, May 29th, Edmund Randolph, of Virginia, presented the *Virginia plan*, designed to establish "a more energetic government," and reduce the "idea of States" to a minimum. It consisted of fifteen resolutions, in substance as follows: 1. That the Articles of Confederation should be corrected and enlarged. 2. That the representation in both branches of Congress should be proportioned to the quotas of contribution, or to population. 3. That Congress should have two branches. 4. That the first branch (Representatives) should be chosen by the people. 5. That the second branch (Senate) should be chosen by the Representatives out of a number of nominations by the State legislatures. 6. That Congress, besides the powers of the Confederacy, should legislate wherever State legislation might interrupt the harmony of the United States (that is, as to commerce, taxation, etc.), should have a veto power on State laws, and should coerce delinquent States. 7. That Congress should choose the Executive. 8. That the Executive, with a part of the Judiciary, should have a limited veto on acts of Congress. 9. That a Judiciary should be formed. 10. That new States should be admitted. 11. That the United States should guarantee a republican government to each State. 12. That all the obligations of the Confederacy should be assumed. 13. That provision should be made for amendments. 14. That members of State governments should be bound by oath to support the new government. 15. That the new Constitution should be ratified, not by the State governments, but by popular conventions.

Charles Pinckney, of South Carolina, the same day submitted a draft of a constitution in sixteen articles, which, as printed, follows the general idea of the Virginia plan, but agrees in so many particulars with the

Constitution as finally adopted that it is probable that it was altered as the debates proceeded.

May 30th, the convention, in committee of the whole, took up the Virginia plan, and continued the examination of each resolution in turn until June 13th, when the plan, in nineteen resolutions, was reported favorably to the convention. The main changes produced by the debate had been, that a *national* government ought to be established; that the Representatives should hold office for three years, and the Senators (chosen directly by State legislatures) for seven years; that the power of coercing delinquent States should not be granted; that the Executive should consist of one person, elected for seven years and ineligible the second time; and that the Executive alone should possess the veto power. The next day a request was made for adjournment, as a federal, or league, system was in preparation. It was offered the following day, June 15th, by William Paterson, of New Jersey, and was therefore generally known as the *Ferisey plan*. It was in substance as follows: 1. That the Articles of Confederation should be revised, corrected, and enlarged. 2. That Congress (remaining still a single body) should be given the additional powers of taxation and regulation of commerce. 3. That the system of requisitions should be continued, with power in Congress to enforce their collection in delinquent States. 4. That Congress should choose the Executive. 5. That a Judiciary should be established. 6. That members of State governments should be bound by oath to support the Constitution. 7. That acts of Congress and treaties should be "the supreme law of the respective States," "anything in the respective laws of the individual States to the contrary notwithstanding"; and that the Executive should coerce refractory States or individuals. 8. That new States should be admitted. 9. That provision should be made for deciding State disputes as to territory.



10. That naturalization should be uniform. 11. That citizens of a State, committing crimes in another State, should be punished by the State whose peace had been broken.

June 16th, the convention again went into committee of the whole on both plans, and, June 19th, reported the inadmissibility of the Jersey plan, and an adherence to the Virginia plan. During the debate, June 18th, Alexander Hamilton, of New York, objecting very strongly to the Jersey plan, as a continuation of the vicious State sovereignty of the Confederation, and almost as strongly to the Virginia plan, as only (to use his own phrase) "pork still, with a little change of the sauce," proposed a plan of his own, whose main features were that the assembly (Representatives) were to be chosen by the people for three years, the Senate to be chosen for life by electors chosen by the people, and the governor (President) to be chosen for life by electors, chosen by electors, chosen by the people; and that the State governors should be appointed by the Federal Government, and should have an absolute, not a limited, veto on the acts of their State legislatures. His plan was "praised by everybody and supported by none."

Until July 23d, the convention was busy in debating the nineteen resolutions referred to it, and in compromising the opposite views of its members. July 24th, its proceedings and compromises, Pinckney's plan, and the Jersey plan were given to a "committee of detail," consisting of five members, and July 26th, three new resolutions were given to the same committee, and the convention adjourned until August 6th, when the committee of detail reported a draft of a constitution, in twenty-three articles. This draft, in essentials, begins already to bear a strong resemblance to the present Constitution, in which, however, the twenty-three articles are consolidated into seven. In the draft, the preamble

read, "we, the people of" the several States (naming them in order). By its ninth article the Senate was made a court to try disputes between States as to territory.<sup>1</sup> By other articles the President, with the title of "His Excellency," was to be chosen by Congress for seven years, and not eligible for a second term, and was to be impeachable by the House of Representatives and tried by the Supreme Court; and there was no provision for a Vice-President, the Senate choosing its own president.

During the debate on the draft, which lasted for over a month, the third great compromise, giving to Congress complete control over commerce, and to Georgia and South Carolina in return twenty years' continuance of the slave trade, was adopted; the Vice-President's office was created; the electoral system was introduced, and the fugitive-slave clause added to Article IV.

September 12th, the amended draft was given to a committee of five, Gouverneur Morris, Johnson, Hamilton, Madison, and King, for revision of its style and arrangement. In the committee, by common consent, the work was intrusted mainly to Morris, who could therefore fairly claim, nearly thirty years afterward, that "That instrument [the Constitution] was written by the fingers which write this letter."

September 13th, the Constitution was reported to the convention very nearly in its present form. Some few changes were made: the three-fourths vote required to pass bills over the veto was changed to a two-thirds vote; the method of amendment by general convention was added; and a motion for a bill of rights was lost by a tie vote. Several propositions for new articles were voted down, as introduced too late in the day. The convention then settled on a rule which, however necessary, was to hazard most seriously the adoption of its work. It voted down a proposition for a new convention, to consider the

<sup>1</sup> See Confederation, Articles of, IX.

amendments which might be proposed by the States, thus throwing down the gage of battle to the destructive element, and forcing upon the States the alternative of unconditional adoption or rejection of the Constitution as it came from the convention's hands.

The consequences were at once apparent. Many delegates, such as Randolph, Gerry, and Mason, who had entered the convention with the most angry antipathy to the State sovereignty of the Confederacy, were now taken aback by a complete view of the very national system which had grown up under their fingers. In spite of an urgent appeal from Washington, and a dexterous suggestion of Dr. Franklin that the Constitution should be signed only as "Done in Convention by the unanimous consent of the States present," without expressing any approval of it, sixteen of the fifty-five delegates who had personally attended refused or neglected to sign it. Of these, two, Yates and Lansing, of the three New York delegates, had left the convention in disgust, July 5th, on the adoption of the first compromise. September 17th, having by resolution requested the Congress of the Confederacy to submit the Constitution to popular State conventions, and to provide for putting it into effect when ratified, the convention adjourned finally.

The Constitution, the resolutions of the convention, and a letter from Washington, its president, were transmitted to the Congress of the Confederacy, then in session, and that body, September 28th, by resolution unanimously passed, directed copies of these papers to be sent to the State legislatures, to be submitted to State conventions.

No attempt has been made to give any details of the extended and voluminous debates of the convention, but they constitute an essential part of its history. In the debates the leaders of the nationalizing party were Hamilton, Madison, King, Wilson, and Gouverneur Morris;

of the decentralizing, or State rights, party, Lansing, Yates, Paterson, Luther Martin, and Bedford; of those who began with the former, and ended with the latter, Gerry, Mason, and Randolph; and of the shifting vote, which, with a natural bent one way or the other, was always anxious for conciliation and compromise, Franklin, Johnson, Sherman, Ellsworth, and the two Pinckneys.

The injunction of secrecy laid upon the debates and proceedings was never removed. The last act of the convention was a resolution that its papers should be left with Washington, subject to the order of the new Congress, if ever formed under the Constitution. March 19, 1796, Washington deposited in the State Department three manuscript volumes; the first (in 153 pages) being the journal, the second (in 28 pages) the proceedings in committee of the whole, and the third (in 8 pages) the yeas and nays. The whole was published, with additions from Madison's notes, by the State Department in October, 1819.

*Ratification.*—In accordance with the desire of the convention, the Congress of the Confederacy, by resolution of September 28, 1787, referred the Constitution to State conventions, to be called by the State legislatures, for their approval or rejection. As the main work of the new instrument was the creation of a stronger Federal Government, the people divided at once into Federalists and Anti-Federalists. The ratifications were as follows: Delaware, December 7, 1787, unanimously; Pennsylvania, December 12th, 46 to 23; New Jersey, December 18th, unanimously; Georgia, January 2, 1788, unanimously; Connecticut, January 9th, 128 to 40; Massachusetts, Feb. 7th, 187 to 168; Maryland, April 28th, 63 to 12; South Carolina, May 23d, 149 to 73; New Hampshire, June 21st, 57 to 46; Virginia, June 26th, 89 to 79; New York, July 26th, 31 to 27 (on the final vote). North Carolina, August 2d, by 184 to 84,

refused to ratify without a bill of rights and amendments. In February, 1788, the Rhode Island Legislature refused to call a convention, and referred the Constitution to the town meetings, where it was rejected in March by 2708 votes to 232. The ratification of the ninth State, New Hampshire, gave the Constitution life, and announced that the Confederacy was to be succeeded by a new form of government which, while retaining many league features, should rest upon national popular will as its basis.

It would hardly be inaccurate to say that the friends of the Constitution would have been found between the coast and a line fifty miles west of it. West of the latter line lay the opposition. The States where ratification was easy were mainly commercial States. Of these, New Jersey had originally objected to the Articles of Confederation because they gave no protection to commerce; South Carolina's commerce was a far larger part of her wealth in 1788 than at any time since; Georgia was further influenced by her position as a frontier State, exposed to the powerful Southern Indian tribes, and anxious for protection by a strong Federal Government; and Maryland and Connecticut, having large and vague claims to territory in the Northwest, had solid hopes of justice from a firm Federal Government than from the Confederacy.

In the agricultural States ratification was difficult. Massachusetts was not then, as now, packed with manufactories. Her strength lay in agriculture, and her farmer delegates, with only Samuel Adams as a leader, and John Hancock as a doubtful ally, held their ground obstinately from January 9th until February 7th, against the arguments of such able Federalist advocates as Fisher Ames, Theophilus Parsons, Rufus King, Theodore Sedgwick, Dana, Gorham, and Bowdoin.

The final action was called the "Massachusetts plan," a ratification supplemented by a warm recommendation

of certain amendments. Only one of these (Amendment X.) was afterward adopted. The New Hampshire convention met February 17th, a majority of its delegates being instructed against ratification, and adjourned until June, when a majority of eleven was obtained for ratification on the "Massachusetts plan."

In Virginia the Anti-Federalists had able leaders, including George Mason, James Monroe, and the eloquent and popular Patrick Henry; the Federalists were led by James Madison, John Marshall, and Edmund Randolph who had drawn up the "Virginia plan" for the convention, had refused to sign the completed Constitution, but now decided to support it. The essence of the Virginia opposition may be found in two sentences in the debate: "Why are such extensive powers given to the Senate? *Because the little States gained their point.*" It was only very reluctantly that Virginia, then more powerful than New York, gave up her commanding position of sovereignty for membership in the Union.

In New York the agricultural delegates preferred a continuance of the privilege which they had enjoyed under the Confederacy, of exempting themselves and their constituents from taxation by retaining to the State the power of levying duties at the port of New York. They were headed by Governor Clinton, Robert Yates, and John Lansing (the last two having been delegates to the convention), and at first had a strong majority over the Federalists, who were led by Alexander Hamilton, John Jay, and Robert R. Livingston. The ratifications of New Hampshire and Virginia weakened the opposition of the New York Anti-Federalists so far that they offered a conditional ratification, reserving to New York the right to secede if the amendments which she offered were not acted upon within six years. This was rejected as worse than no ratification, and the Federalists, July 23d, by a vote of 31 to 29, succeeded in changing the words "on

condition" into the phrase "in full confidence" that New York's list of amendments would be acted upon. In this halting and ungracious form the ratification was finally passed, July 26th.

In Rhode Island the country or agricultural party were fanatical believers in the virtues of their State paper currency, and refused even to consider a Constitution which would destroy their fetish. The city or commercial party were at first powerless, though they assured the convention of their sympathy; but they were enabled to bring the State into the Union in 1790 by virtue of the strong hints conveyed in propositions before Congress for the restriction of Rhode Island commerce. North Carolina's action was due to her desire to compel a second general convention, which New York had demanded and Virginia had recommended. North Carolina finally ratified in November, 1789.

On the Convention of 1787, see 1 Hamilton's *Life of Hamilton*, 284; 3 Hildreth's *United States*, 477, 482; 3 Hamilton's *United States*, 520; 9 Washington's *Writings*, 509; 2 Marshall's *Life of Washington*, 105; 2 Rives's *Life of Madison*; 1 Curtis's *History of the Constitution*, 341; 1 Elliot's *Debates*, 116 (Report of the Annapolis Convention); 2 Hamilton's *Works*, 336, 409; 12 *Journals of Congress* (edit. 1800), 15; Story's *Commentaries*, § 272; 2 Curtis's *History of the Constitution*; Jameson's *Constitutional Convention*; *Journal of the Convention of 1787*; Yates's *Secret Proceedings of the Convention*; 5 Elliot's *Debates* ("Madison Papers"); 3 Sparks's *Life of Gouverneur Morris*, 323; H. B. Dawson's *The Federalist* (Introduction), and Jay's *Letters* in answer.

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The material for the study of the Constitutional Convention of 1787 is now very extensive. Besides Madison's *Journal of the Convention*,<sup>1</sup> which all students

<sup>1</sup> Elliot's *Debates*, vol. v.  
VOL. I.—6.

should use, we have now the *Documentary History of the Constitution, 1787-1870*.<sup>1</sup> There are also numerous secondary authorities of value, of later date than those mentioned by Professor Johnston. See for a bibliography, W. E. Foster's *References to the Constitution of the United States*; Edwin D. Mead's *The Constitution of the United States*, with bibliography; Johnston's "United States," in *Encyclopædia Britannica*, bibliography at the end of the article; Woodburn's syllabus, *The Making of the Constitution*, an outline of Madison's *Journal*, with bibliography; and Carson's *History of the Celebration of the 100th Anniversary of the Constitution*. Among recent valuable articles the student is referred to Professor Ferrand's "The Compromises of the Constitution," in the *American Historical Review*, for April, 1904; and "Pinckney's Plan for a Constitution," in the same magazine for July, 1904.—ED.

<sup>1</sup> Two vols., Washington, 1894. *Bulletins* of the Bureau of Rolls and Library of the Department of State.



## CHAPTER VI

### THE TERRITORIES AND THE ORDINANCE OF 1787

**B**EFORE the American Revolution the thirteen Colonies were "territories" of the British Empire; that is, they held much the same relation to the British Empire that the present Territories hold to the United States. They had many political privileges: they had assemblies of their own, which made their local laws, laid their local taxes, and paid their local officers; three of them until 1691, and two of them thereafter, elected their own governors (Massachusetts, Connecticut, Rhode Island); and in very many respects all of them were self-governing commonwealths. But, whatever the Colonies may have thought of the matter, in the view of the mother country these privileges had their basis in the continuing will of the British sovereignty.

The king had no right, theoretically, to alienate permanently any of the prerogatives of the Crown; and when his judges or his Parliament advised him that any of the privileges which he had granted to the Colonies were abused, or proved to be inherently vicious, it was his duty to revoke or alter them. Even a "charter," in this way of looking at it, had no inherent sanctity; it was no contract between king and people, but a grant by the king of privileges whose permanence was conditioned on the advantage of their results to the mother country.

Connecticut had the privilege of electing its own governors down to the Revolution; but the privilege had no

solider basis than in Massachusetts, where it was revoked in the Charter of 1691. Of course the Colonies saw the matter differently. But we are considering now only the view taken by the sovereignty in both cases; and from that point of view it is difficult to see any great difference between the status of the Colonies under the British Empire and of the Territories under the United States. Both had political privileges, but in both the continuance of the privileges was dependent on the continuing will of the superior, and on the advantages of the arrangement to the superior.

The history of the Territories of the United States will, it is confidently submitted, show the infinite superiority of the American over the British colonial policy. Indeed, its superiority has become so apparent that the British policy has of late years been radically altered in the direction of the American policy.

ACQUISITION. 1. *Under the Colonies.*—Six of the Colonies, New Hampshire, Rhode Island, New Jersey, Delaware, Pennsylvania, and Maryland, had defined western boundaries; the other seven, Massachusetts, Connecticut, New York, Virginia, North Carolina, South Carolina, and Georgia, had none, unless we may consider the Pacific Ocean, assigned in the charters and grants of most of them, as a western boundary.

There were some irregularities. The boundaries of New Hampshire were always exceedingly vague; and, though most of them were settled by convention with Massachusetts, the New Hampshire authorities asserted an indefinite claim to the territory to the west, to which New York long opposed an equally indefinite claim.

New York, as it came into the hands of the English, consisted only of the strip of land on both sides of the Hudson River which the Dutch had settled. To the north and west of Albany there was a vast extent of Indian territory, whose tribes had either been conquered by

the Dutch or had made treaties with them. New York, therefore, claimed a sort of suzerainty over it, without any express grant from the king. The claim was in effect recognized by the king's proclamation of 1763, constituting the province of Quebec, and by the act of Parliament of 1774, defining its boundaries: the two ran the boundary line between Canada (Quebec) and New York very much as at present. This really satisfied New York, and yet that Colony, perhaps to call attention away from the vagueness of its acknowledged title, continued to assert a much vaguer claim to still further Western territory.

Massachusetts, Connecticut, Virginia, and the Colonies to the south were bounded west by the Pacific Ocean in their grants. Virginia asserted that her northern boundary ran northwest, instead of west, so that her territory was continually widening as it went westward. The boundaries of Maryland and of the western part of Pennsylvania conflicted with Virginia's claim, but Virginia yielded in these respects, for the purpose of establishing the rest of her claim. South Carolina had really been given a western boundary by the formation of the Colony of Georgia, which cut off her further expansion to the west; but it was not yet known whether Georgia covered the whole western boundary of South Carolina, and the latter Colony claimed that a narrow strip along the northern edge of its former territory still remained. If there was any such strip it was not more than a dozen miles wide.

The king's proclamation of October 7, 1763, after constituting the new provinces of Quebec and the Floridas, declared it to be his "royal will and pleasure," as to the territory between them, "to reserve under our sovereignty, protection and dominion, for the use of the said Indians, . . . all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from

the west and northwest." This was clearly the establishment of a western boundary for all the Colonies which had hitherto had none; and the ground of the establishment was as clearly the asserted right and duty of the king to modify his grants and charters, when their results proved to be injurious to the interests of the Empire. The right was always denied by the Colonies, and their resistance to it was one of the most powerful forces which led to the Revolution; and yet, curiously enough, when independence was established, this very proclamation was asserted by the States which had original western boundaries as a valid assignment of a western boundary for the others.

Virginia hardly showed enterprise in asserting western claims commensurate with their magnitude and importance. The first Virginia exploring party crossed the Blue Ridge in 1666; but it was not until 1712, under Spotswood's administration, that the country beyond the mountains was reduced to possession. Before the middle of the eighteenth century, settlements had crossed the mountains. The organization of the Ohio Company in 1748-9 was due to individual Virginia enterprise; but in the French and Indian War, which followed it, Virginia supported the Company with her whole force. The place of the first struggles, though now in Western Pennsylvania, was then supposed to be in Virginia. In 1774, Governor Dunmore led the Virginia forces against the Scioto Indians, and compelled them to make peace; but his motives in the expedition were strongly suspected to be selfish.

The settlement of Kentucky was also due to individual enterprise; and its formal establishment as a Virginia county in 1776 was almost forced on Virginia by George Rogers Clark, a Virginia surveyor resident in Kentucky. Clark at once became the champion of Virginia's interest in the Northwest. In 1778-9 he led a Kentucky

force into Illinois, and conquered that territory and Vincennes, now in Indiana; and the whole was made the county of Illinois by the Virginia Legislature. But little attempt was made by Virginia to incorporate the conquest; and at the time of the first cession in 1784 it is improbable that there was any Virginia government in Illinois.

North Carolina asserted her western claims with more energy and success. The first assertion was due to individual enterprise. The first settlement of Tennessee was by hunting parties, and by persons who had found the disturbed state of North Carolina under the royal governor unpleasant. In 1776 their settlements were made "Washington district" of North Carolina; and, as settlements increased, other counties were formed. After the first cession, in 1784, the Tennesseans revolted, and formed the State of Franklin, or Frankland; but North Carolina revoked her cession, and suppressed the Franklin revolt. The authority of the State was thus established from the Atlantic to the Mississippi.

Other Colonies dealt in nothing but assertions. None of them made any practical effort to maintain their claim to territory beyond their present western boundary, with two exceptions. Connecticut made a long but finally unsuccessful attempt to oust Pennsylvania from a part of her territory, and Massachusetts compromised her claims to the territory of New York.

2. *Under the Confederation.*—The essential importance of the Western territory was as a bond for holding the States together during and after the Revolution. The Revolution was undoubtedly begun under a vague idea of separate State action in theory, with a controlling necessity for national action in practice; and the Articles of Confederation were carefully framed with the view of securing as much of the former and as little of the latter as possible. So strong was the particularist feeling in the

different States that they were only held firmly together by the first flush of the war feeling; and as this influence relaxed, the tendency to disintegration grew more plainly evident.

At first sight, the most powerful opposing force to this disintegrating tendency was the common commercial interest which grew up throughout the States; but the possession of the Western territory was a more powerful, though more silent, force, for it reached States which the other force did not touch. If the Western territory was to be retained and utilized, but two courses were open: to allow all the States to engage in a general scramble for it, in which each State should secure as much of its claims as it could enforce; or to accept it as national property, defend it by national force, and govern it by national authority. To allow the national bond to break altogether, through the default of the Articles of Confederation, would have had the former result; and in this instance, as in others, the prejudices of the people at last gave way to their common-sense, and they chose the latter. But the process by which they were brought to this conclusion made up one of the vital issues of American politics from 1778 until 1784.

In the beginning Congress seems to have had no notion that the Western lands were national property. Among its measures to raise an army, September 16, 1776, it promised grants of lands to officers and soldiers, but was careful to provide that the money necessary "to procure such lands" should be assessed upon the States like other expenses. October 15, 1777, before the Articles of Confederation were proposed to the States, a motion was made in Congress to add a provision that Congress should be empowered to fix the western boundaries of the claimant States, and to divide the Western territory into independent States; but only Maryland voted for it. Clark's expedition to the Illinois country in 1778, and

Virginia's sudden prospect of boundless territorial wealth, threw the apple of discord among the States.

Heretofore the claimant States had been content to claim, without taking active steps to enforce their claims; and their extreme demand had been only the negative provision of the ninth article of confederation, that "no State shall be *deprived* of territory for the benefit of the United States." Ten of the States, all but New Jersey, Delaware, and Maryland, had already ratified the Articles; but most of them had ordered their delegates to propose alterations before signing. When the proposed alterations were considered in Congress, June 22-25, 1778, it was found that Maryland proposed to alter the ninth article by empowering Congress to fix the western boundaries of the claimant States; that Rhode Island proposed to alter it by empowering Congress to sell Crown lands within the States; and that New Jersey only protested against the article as it stood, as unfair to the non-claimant States. All amendments were voted down. Eight of the States signed the Articles, by their delegates, July 9th; North Carolina, July 21st; and Georgia, July 24th. New Jersey, Delaware, and Maryland refused to sign. New Jersey yielded first: her delegates signed the articles November 26, 1778, relying on "the candor and justice of the several States" for cessions of their claims. The Delaware delegate signed February 22, 1779, protesting at the same time that his State was justly entitled to a share in the territory which had been won "by the blood and treasure of all."

Maryland was now the only obstacle, but it proved for some time insuperable. December 15, 1778, that State formally instructed her delegates "not to agree to the Confederation," unless the ninth article should be amended as she had desired; and the letter of instructions demanded that the Western territory "should be considered as a common property, subject to be parcelled

out by Congress into free, convenient, and independent governments, in such manner and at such times as the wisdom of that assembly shall hereafter direct."

This seems to have been the first official proposal of that extension of the Federal system which had been first suggested in 1777, probably also by Maryland, and which has been the secret of the success of the American policy.

Maryland held out for three years; and during that time the Articles hung fire. At first her opposition threatened to provoke an explosion, for some of the claimant States seem to have been willing to break up the Union rather than surrender their claims. December 19, 1778, Virginia formally offered to put the Articles in force with any one or more States which should ratify them as they stood, so that Maryland at least would have been left out of the Union; and Connecticut agreed, April 7, 1779. But Maryland remained firm; and her firmness, and perhaps the discovery that Virginia's claim, if allowed in full, would neutralize those of the Northern States, gradually turned the scale of opinion against Virginia. February 19, 1780, New York led the way by empowering her delegates to agree to a western boundary, and relinquishing all claims beyond.

The ceded territory was to be held for the use of "such of the United States as shall become members of the federal alliance," and for no other purpose. By this New York really gave up nothing, and gained a certain instead of a doubtful boundary. But the precedent was a promising one, and Congress used it to pass a resolution, September 6, 1780, "earnestly recommending" the other claimant States to follow New York's example, and "earnestly requesting" Maryland to ratify and sign the Articles. This was followed, October 10th, by another resolution, in which Congress committed itself to Maryland's proposed extension of the Federal system, promising that the territory ceded should be "formed into



distinct republican States, which should become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States."

From this line of policy Congress has never swerved, and it has been more successful than stamp acts or Boston port bills in building up an empire.

In October, 1780, Connecticut offered to cede her claims, reserving a tract along Lake Erie. January 2, 1781, while Arnold was ravaging Virginia, that State offered to cede her claims northwest of the Ohio, on condition that Congress would guarantee her possession of Kentucky and the larger part of Tennessee. Neither of these offers was accepted by Congress, but the prospect was so encouraging that Maryland at once empowered her delegates to sign the Articles, and they did so, March 1, 1781. On the same day the New York delegates assented to the western boundary of the State, on condition that the same guaranty should be given to New York as to any other State. Thus the Articles of Confederation went into force without any real settlement of the territorial question, for the only cession likely to be accepted had amounted to nothing.

October 30, 1779, Congress had passed a resolution, against the votes of Virginia and North Carolina, recommending Virginia to close her land office and forbear issuing land warrants until the end of the war. October 29, 1782, the persistent Maryland delegates moved that the cession of New York be accepted by Congress, and the motion was carried against the vote of Virginia, North and South Carolina being divided, and Massachusetts having but one delegate and no vote. The purpose of this action was to get a fulcrum from which to operate on the claim of Virginia, and it was effective.

The claim of New York to her own territory west of Albany was derived from her supremacy over the "Six Nations"; and this was now recognized by all the States.

But the Six Nations had always asserted a general right by conquest to all the territory west of New York, Pennsylvania, Virginia, and North Carolina. If this also were admitted, it also had passed to New York, and had been ceded by New York to Congress; and the whole Western territory was already national property, without the formality of a cession by Virginia or any other State. May 1, 1782, a committee had made an elaborate report to Congress. It upheld the claim of New York to its full extent; considered the jurisdiction of the whole Western territory, including Virginia's claim, to be already vested in Congress by New York's cession of it; and recommended Virginia to make a new and full cession. Consideration of the report was postponed, but it was evidently high time for Virginia to cede the Northwest Territory absolutely and gracefully, if she desired to save Kentucky and her land warrants there.

The act of cession was passed by the Virginia Legislature, October 20, 1783, and the deed was executed by her delegates in Congress, March 1, 1784. Under the circumstances, the terms accorded to the State were sufficiently liberal; the land titles of Virginia settlers were to hold good; the expenses of the State in conquering the territory were to be repaid to her; 150,000 acres were reserved for Clark and his troops; and any deficiency in Virginia land warrants in Kentucky and Tennessee was to be made good in the Northwest Territory.

The ceded territory was to be organized according to the Federal policy which Congress had outlined in October, 1780. A supplementary act of cession was presented in Congress, December 30, 1788; but this was only to conform the original act to the terms of the Ordinance of 1787. Virginia's cession was complete in 1784.

Massachusetts made an unqualified cession of her claims west of Niagara River, April 19, 1785, in accordance with an act of the Legislature of November 13, 1784.

Congress had not as yet accepted Connecticut's proffered cession, on account of the reservation of a tract extending from the Pennsylvania line 120 miles westward. But Connecticut had loyally accepted the award of Congress against her in the case of Wyoming, and Congress at last accepted her cession, May 26, 1786. April 28, 1800, an act of Congress authorized the President to deed to Connecticut the title to this "western reserve," on condition that Connecticut should surrender all claim to its jurisdiction, and abandon any claim to the territory within the limits of New York; and the State fulfilled the conditions, May 30th.

August 9, 1787, South Carolina made an unqualified cession of her claims west of a line from the head of Tugaloo River to the North Carolina boundary. The actual cession was a strip of land about twelve miles wide. That portion of it which is now a part of Georgia was transferred to that State in part return for its cession in 1802.

The South Carolina cession closed the formal record of acquisitions of territory under the Confederation; but there were two more cessions, which, though made under the Constitution, were only belated completions of Confederation arrangements. North Carolina ceded Tennessee in 1784; but, before Congress could meet, and accept the cession, it was revoked on account of the anger it excited in Tennessee. Five years later, this feeling had disappeared. In December, 1789, the North Carolina Legislature made another cession of Tennessee, which was accepted by act of Congress of April 2, 1790. The North Carolina titles and military land warrants were to hold good, and the territory was to be organized as the Northwest Territory had been, "provided always, that no regulations made or to be made by Congress shall tend to emancipate slaves."

Most difficulty was met in the case of the claims of

Georgia, covering the present States of Alabama and Mississippi, north of parallel  $31^{\circ}$  and south of the South Carolina cession. It had been claimed by South Carolina, because the original grant to the Carolina proprietors covered the territory between parallels  $31^{\circ}$  and  $36^{\circ}$  west to the South Seas. But the proprietors had transferred their rights to the king; the king had formed the Colony of Georgia in 1732, and given to it the territory between the Altamaha River and the most northern part of the Savannah, westward to the South Seas; and his proclamation of 1763 had annexed to Georgia the territory between the Altamaha and the St. Mary rivers. In 1787 the two States made a treaty at Beaufort, by which South Carolina obtained the territory afterward ceded by her, and Georgia the rest. Georgia took no steps to cede her share to the United States, but made preparations to reduce it to possession.

April 7, 1798, an act of Congress organized the Territory of Mississippi, but it covered less than half of the present extent of the State. Its southern boundary was parallel  $31^{\circ}$ ; its northern boundary a line due east from the mouth of the Yazoo to the Chattahoochee. This territory had been annexed by the king to West Florida, and was claimed by the Congress of the Confederation as common property under the treaty of peace in 1783. February 1, 1788, Georgia had passed an act ceding this part of the territory to the United States, on condition of being guaranteed the rest of her claims. This Congress refused to do, July 15, 1788, and the cession fell through.

Spain, by the Treaty of 1795, abandoned all claim to this part of the territory, and the act of 1798 proceeded to organize it into a territory, in spite of Georgia's claims to it; but the same act authorized the appointment of commissioners to treat with Georgia for all her western claims. Madison, Gallatin, and Lincoln were appointed

commissioners; and the act of May 10, 1800, gave them full power to treat, provided that no money was to be paid by the United States except out of the proceeds of the lands ceded. April 24, 1802, the commissioners agreed upon an arrangement by which Georgia was to cede all her western claims, and receive in return the proceeds of not more than 5,000,000 acres, or \$1,250,000. Previous titles were to hold good; and slavery was not to be prohibited in the new territory.

The agreement was confirmed by the Georgia act of June 16, 1802, and the act of Congress of March 3, 1803; and the ceded territory was added to Mississippi Territory by act of March 27, 1804. A provision in the cession for the extinguishing of Indian titles in Georgia by the United States gave some further trouble.

*The Ordinance of 1787* was the organic law under which took place the organization of the territory west of Pennsylvania, east of the Mississippi, and north of the Ohio.

After the completion of the Virginia cession, Jefferson, as chairman of a committee of three on the subject, reported to the Congress of the Confederation a plan for the temporary government of the Western territory.

As the conflicting claims of the partisans of Jefferson, Rufus King, and Nathan Dane are apt to confuse the reader, it seems best to give the peculiar features of Jefferson's report, which was adopted April 23, 1784. 1. It covered the whole Western territory, ceded or to be ceded, south as well as north of the Ohio. 2. Seventeen States, each two degrees in length from north to south, were to be gradually formed from it; one between Pennsylvania and a north and south line through the mouth of the Great Kanawha; eight in a north and south tier, bounded on the west by a north and south line through the great falls of the Ohio; and the remaining eight in a corresponding tier bounded west by the Mississippi.

Even the names were to have been provided for the prospective States of the Northwest, including such singular designations as Chersonesus, Sylvania, Assenisipia, Metropotamia, Polypotamia, and Pelisipia, together with the less remarkable titles of Saratoga, Washington, Michigan, and Illinoia. 3. "After the year 1800 there shall be neither slavery nor involuntary servitude in any of the said States other than in the punishment of crimes, whereof the party shall have been duly convicted." This prohibition, therefore, was to have been prospective, not immediate, and to have applied to *all* new States from the Gulf of Mexico to British America. This proviso was voted on April 19th. New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and Pennsylvania voted for it; Maryland, Virginia, and South Carolina, against it; North Carolina was divided; and New Jersey, Delaware, and Georgia were unrepresented. Not having seven States in favor, the proviso was lost. Delaware and Georgia were entirely unrepresented; New Jersey had one delegate present, who voted for the proviso, but a State was not "represented" except by at least two delegates. The language of the proviso, however, became a model for every subsequent restriction upon slavery. 4. The States were forever to be a part of the United States, to be subject to the government of the United States, and to the Articles of Confederation, and to have republican governments. 5. The whole was to be a charter of compact and fundamental constitutions between the new States and the thirteen original States, unalterable but by joint consent of Congress and the State in which an alteration should be proposed to be made.

With the adoption of the report, except the anti-slavery section, Jefferson's connection with the work ceased. He entered the diplomatic service in the following month, and remained abroad until October, 1789.

March 16, 1785, Rufus King, of Massachusetts, afterward of New York, offered a resolution that slavery in the whole Western territory be immediately prohibited. The language is Jefferson's, excluding the words "after the year 1800," and changing "duly convicted" into "personally guilty." By a vote of eight States to three this was committed, and a favorable report was made, April 14 (probably); but it was never acted upon.

In September, 1786, Congress again began to consider the government of the territory, and a committee, of which Nathan Dane, of Massachusetts, was chairman, framed the "Ordinance of 1787," which was finally adopted, July 13, 1787.

The fairest view is that Jefferson's report was the framework on which the Ordinance was built: the general scheme was that of the former, but the provisions were amplified, and the following changes and new provisions were made: 1. The prohibition of slavery followed Jefferson's, excluding the words, "after the year 1800," thus making it immediate, and adding a fugitive slave clause. This article, says Dane, in a letter of July 16, 1787, to King, "I had no idea the States would agree to, 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 article, which was agreed to without opposition." 2. On the other hand, as this was an ordinance for the government only of the territory northwest of the Ohio, its prohibition of slavery was territorially only about half as large as Jefferson's; and this may help to explain the different fates of the two. A further explanation of the passage of Dane's ordinance, even with a prohibition of slavery, has recently been brought to light by Mr. W. F. Poole (see *North American Review*, among the authorities): in 1787 Dr. Manasseh Cutler, agent of the Ohio Land Company in Massachusetts, was ready to purchase 5,000,000 acres of

land in Ohio if it should be organized as a free territory, and his judicious presentation of this fact to Congress had a powerful influence upon the result. 3. Article III., and the conclusion of Article IV., guaranteeing the freedom of navigation of the Mississippi and St. Lawrence, were new, and seem to have been due to Timothy Pickering, of Massachusetts.

The Ordinance proper began by securing to the inhabitants of the Territory the equal division of real and personal property of intestates to the next of kin in equal degree; and the power to devise and convey property of every kind. Congress was to appoint the governor, the secretary, the three judges, and the militia generals; and the governor was to make other appointments until the organization of a General Assembly. The governor and judges were to adopt such State laws as they saw fit, unless disapproved by Congress, until there should be five thousand "free male inhabitants of full age" in the district: a curious slip, considering the prohibition of any other than "free" inhabitants. On attaining this population the Territory was to have a General Assembly of its own, consisting of the governor, a House of Representatives of one to every five hundred free male inhabitants, and a Legislative Council of five to be selected by Congress from ten nominations by the Lower House, and to serve for five years. The Assembly was to choose a delegate to sit, but not to vote, in Congress; and was to pass laws for the government of the Territory, not repugnant to the principles of the following "articles of compact between the original States and the people and States in the said Territory," which were to "forever remain unalterable, unless by common consent." I. No peaceable and orderly person was ever to be molested on account of his mode of worship or religious sentiments. II. The people were always to enjoy the benefits of the writ of *habeas corpus*, trial by jury, proportionate representation in the



Legislature, bail (except for capital offences, in cases of evident proof and strong presumption), moderate fines and punishments, and the preservation of liberty, property, and private contracts. III. Schools and the means of education were forever to be encouraged; and good faith was to be observed toward the Indians. IV. The Territory, and the States formed therein, were forever to be a part of "this confederacy of the United States," subject to the Articles of Confederation, and to the authority of Congress under them. They were never to interfere with the disposal of the soil by the United States, or to tax the lands belonging to the United States; and the navigation of the Mississippi and St. Lawrence was to be free to every citizen of the United States, "without any tax, impost, or duty therefor." V. Not less than three nor more than five States were to be formed in the Territory. The boundaries of three of these, the "western, middle, and eastern" States (subsequently Illinois, Indiana, and Ohio, respectively), were roughly marked out, very nearly as they stand at present; and Congress was empowered to form two States (Michigan and Wisconsin) north of an east and west line through the southern end of Lake Michigan. Whenever any one of these divisions should contain sixty thousand inhabitants it was to be at liberty to form a State government, republican in form and in conformity with these Articles; and was then to be admitted to the Union "on an equal footing with the original States, in all respects whatsoever." VI. "There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid." This

proviso was the first instance of a fugitive slave law; it was afterward added to the Constitution.

The general scheme of the Ordinance, with the exception of the prohibition of slavery, was the model upon which the Territories of the United States were thereafter organized.

Upon the inauguration of the new government under the Constitution an act was passed, August 7, 1789, recognizing and confirming the Ordinance, but modifying it slightly so as to conform it to the new powers of the President and Senate. When the territory south of the Ohio came to be organized, the organization was controlled by the stipulation of the ceding States that slavery should not be prohibited; and in the case of other Territories the language often differed widely from that of the Ordinance of 1787; but in all cases the underlying principles have been identical, so that the Ordinance might be called the *magna charta* of the Territories. The difference in statesmanship between the British and the American methods of dealing with problems closely similar is elsewhere noted.<sup>1</sup>

In the organization of the five States which have been formed under the Ordinance, the privileges secured by it to the inhabitants of the Territory have been imbedded in the State constitutions, usually in the preliminary bill of rights. In Indiana, in 1802, a convention, presided over by Wm. H. Harrison, sent a memorial to Congress, asking a temporary suspension of the sixth article; but a select committee, John Randolph being chairman, reported that such action would be highly dangerous and inexpedient. In 1805-7 successive resolutions of Governor Harrison and the Territorial Legislature to the same end were followed in each year by favorable reports from the committees to which they were referred; but Congress took no action. In the summer of 1807 the

<sup>1</sup> See Revolution, p. 12, and p. 91.

effort was again renewed; but the new committee reported, November 13, 1807, that a suspension of the article was not expedient.

By this time opposition to the suspension was growing stronger in the Territory itself, so that the attempt was not renewed. But the Legislature, the same year, passed laws allowing owners of slaves to bring them into the Territory, register them, and hold them to service, those under fifteen years to be held until thirty-five for males and thirty-two for females, and those over fifteen for a term of years to be contracted for by the owner and the negro. In the latter case, if the negro refused to contract, he was to be removed whence he came; and in both cases the children of registered servants were to be held to service until the ages of thirty for males and twenty-eight for females.

Illinois, being then a part of Indiana Territory, lived under these laws until her admission as a State, in 1818, when she enacted in her Constitution that "existing contracts" should be valid. In this way slavery remained practically in force all over Illinois, and the pro-slavery party controlled the State. In 1822 an anti-slavery man was elected Governor, by divisions in the pro-slavery ranks, and in his inaugural he reminded the pro-slavery Legislature of the illegal existence of slavery in Illinois. That body retorted by an act to call a convention to frame a new constitution. The act had to be approved by popular vote, and, after a contest lasting through 1823-4, was defeated by a vote of 6822 to 4950. In both States provisions forbidding future contracts for service, made out of the State, or for more than one year, gradually removed this disguised slavery.

The preambles to the Constitutions of Ohio, Indiana, and Illinois all recite that the prospective State "has the right of admission to the Union" in accordance with the Constitution, the Ordinance of 1787, and the enabling

act. In the case of Michigan, Congress long neglected to pass an enabling act; the people of the Territory, therefore, resting on the fifth article of the Ordinance, and claiming that the only condition precedent to admission (the increase of the population to sixty thousand) had been fulfilled, formed a Constitution, and were admitted without an enabling act.

It should also be noticed that the extreme northwestern part of the Territory, south and west of the head of Lake Superior, was not finally included in any of the five States named, but is now a part of Minnesota.

The second of the Articles of Confederation declares that each State retains "every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." The power to acquire, the jurisdiction to govern, and the right to retain territory outside of the limits of the States are nowhere in the Articles, even by implication, given to the United States. Whence, then, did Congress draw the power to vest in itself the title to the Northwest Territory, to frame this Ordinance for its government, to abolish slavery therein, and to provide for the admission to the Confederacy of five new States?

The *Federalist* answers the question thus briefly: "All this has been done, and done without the least color of constitutional authority; yet no blame has been whispered, no alarm has been sounded." In other words, we are to suppose that the States, tempted partly by a willingness to despoil Virginia of her vast western claims, and partly by a desire to share in the proceeds of the Western territory as a common stock, were willing to allow their imbecile Congress to appropriate a source of revenue to which it had no shadow of claim, and which, as it then seemed, would so increase in a few years as to make Congress independent of the States.

Such a supposition does far less than justice to the

acuteness of the State politicians who were then the controlling class; they would have been glad to withhold the power to govern the Territories from Congress, and yet how were they to avoid granting it? The reason for their "whispering no blame, sounding no alarm," lay in the patent necessity of the case, in the political law which finally forces a recognition under any form of government that it is only in non-essentials that a limitation on sovereignty can be deduced by implication, and that there are certain essential attributes of sovereignty which can only be restricted in express terms.

The right to acquire property is as much the natural right of a government, however limited, as of an individual; and a government, if restricted so far as to be denied this right, is either non-existent or impotent. It is not true that circumstances, in this case, compelled the States to allow a violation of the Articles of Confederation; it is rather true that circumstances, in this case, compelled the State politicians to respect the natural rights of the National Government, which, in so many other cases, they had attempted to limit by the general phrases of the second article.

We are therefore to take the sovereign right to acquire territory as the justification of the Ordinance of 1787, just as in the case of the annexation of Louisiana, which was equally unauthorized by the Constitution.

Undoubtedly the greatest benefit of the Ordinance to the Territory which it covered was its exclusion of slavery from it. It thus received the full sweep of that stream of immigration, foreign and domestic, which so carefully avoided slave soil; the strictness with which this westward stream confined itself to the comparatively narrow channel bounded by the lakes and the Ohio is of itself a testimony to the wisdom of the sixth article.

Beyond this, however, there were countless other benefits. The enumeration of the natural rights of the

individual was a political education for the people of the new Territory, as well as a chart for the organization of the new State governments. The stipulations for the encouragement of education, though too indefinite to be binding, have exerted an enormous influence upon the demands of the people and upon the policy of the legislatures. This whole section was thus, from the beginning, the theatre of a conscious and persistent attempt to combine universal suffrage and universal education, each for the sake of the other; and the success of the attempt though still far from complete, has already gone far beyond any possible conception of its projectors.

Most important of all, from a political point of view, the Ordinance was the first conscious movement of the American mind toward the universal application of the federal principle of State government to the continent. The original States owed their formal individuality to accident or the will of the king; the inchoate States of Vermont, Kentucky, and Tennessee were the accidents of accidents; here, in the Northwest Territory, the nation first consciously chose the State system for its future development.

Major-General Arthur St. Clair, a delegate from Pennsylvania, and President of Congress during the adoption of the Ordinance, was the first Governor of the Territory, 1788-1802. His biography, cited below, is the best exposition of the practical workings of the Ordinance. When the portion of the Northwest Territory outside of Ohio was organized as Indiana Territory, William H. Harrison became its Governor, 1800-11, and was succeeded by John Gibson, 1811-13, and Thomas Posey, 1813-16, until Indiana became a State. When the separate Territory of Illinois was organized, Ninian Edwards became its Governor, 1809-18. Michigan, as a Territory, had as governors William Hull, 1805-13, Lewis Cass, 1813-31, Geo. B. Porter, 1831-4, and Stevens T. Mason, 1834-5. When Wisconsin was separated from Michigan

as a Territory, its governors were Henry Dodge, 1836-41 and 1845-8, James D. Doty, 1841-4, and N. P. Tallmadge, 1844-5. The small remainder of the Territory, after the admission of Wisconsin as a State, was added to Minnesota.

#### On the Ordinance of 1787:

The text of the Ordinance is in 1 Poore's *Federal and State Constitutions*, 7; 1 *Stat. at Large* (Bioren and Duane's edition), 475; Duer's *Constitutional Jurisprudence*, 512; Andrews's *Manual of the Constitution*, App. xiii.; see also *North American Review*, April, 1876; Hildreth's *Pioneer History*, 193 (Ohio Company); Taylor's *History of Ohio*, 493; 1 Bancroft's *Formation of the Constitution*, 177, and 2: 98; H. B. Adams's *Maryland's Influence in Founding a National Commonwealth*; Coles's *History of the Ordinance of 1787* (read before the Penn. Hist. Soc., June 9, 1856); 4 *Journals of Congress*, 373, 379; 3 Hildreth's *United States*, 449; 1 von Holst's *United States*, 286; 1 McMaster's *History of the American People*, 505; 1 Schouler's *United States*, 98; 2 Pitkin's *United States*, 210; 1 Curtis's *History of the Constitution*, 291; 1 Draper's *Civil War*, 180; 1 Wilson's *Rise and Fall of the Slave Power*, 31; 1 Greeley's *American Conflict*, 38; 2 Holmes's *Annals*, 354; 1 *Stat. at Large*, 50 (act of August 7, 1789); Smith's *Life of St. Clair*; Burnet's *Settlement of the Northwest Territory*; Washburne's *Sketch of Edward Coles*; Story's *Commentaries*, § 1310; *The Federalist*, xxviii. (by Madison); and authorities under articles referred to. For Jefferson's claims to the authorship of the Ordinance, see 1 Benton's *Thirty Years' View*, 133; 1 Randall's *Life of Jefferson*, 397; for Dane's, see 3 Webster's *Works*, 397; for Dane's, King's, and Pickering's, see 2 Spencer's *United States*, 202; Pickering's *Life of Pickering*; Moore, Charles, *The Northwest under Three Flags*; Fiske's *Critical Period*; Hinsdale's *Old Northwest*.

## CHAPTER VII

### THE ORGANIZATION OF THE NEW GOVERNMENT; HAMILTON'S FINANCIAL MEASURES

THE new Government of the United States under the Constitution was to have gone into effect on March 4, 1789. The dilatory practices of the old Confederation were, however, still in vogue, and a quorum of the House was not present till the 30th of March nor of the Senate till April 6th. The electoral votes for President were then counted and it was found that Washington had received a unanimous vote. He was inaugurated in New York City on April 30, 1789, the oath of office being administered by Chancellor Livingston, of New York.

Only eleven of the thirteen States had adopted the Constitution in time to take part in the election of Washington. North Carolina and Rhode Island had rejected the Constitution. North Carolina came into the Union in November, 1789, and Rhode Island in May, 1790. New York did not participate in the first election on account of the failure of her Legislature to pass a law regulating the mode of choosing electors. Of the sixty-nine electors, all of whom voted for Washington, only thirty-four voted for Adams, who, being second on the list, became Vice-President. A majority vote was required for President, but not for Vice-President.

Washington made Thomas Jefferson, of Virginia, Secretary of State, Alexander Hamilton, of New York, Secretary of the Treasury, Henry Knox, of Massachu-



setts, Secretary of War, and Edmund Randolph, of Virginia, Attorney-General. These appointments were made September 29, 1789, after Congress during its first session had created the office of Attorney-General and the three departments of State, Treasury, and War.

Congress in its first session, during the summer of 1789, enacted some noteworthy legislation. In addition to organizing the executive departments, it organized the national judiciary in the notable Judiciary Act of 1789, written by Ellsworth, which gave a form and constitution to the Supreme Court which have been substantially retained ever since; it passed the first tariff act under the Constitution, chiefly for revenue, but also for "the protection and encouragement of manufactures"; it approved sixteen amendments to the Constitution, ten of which were adopted by the States; approved the territorial government for the Northwest; provided for salaries and appropriations; and it gave its official legislative opinion that the power of removal lay with the President alone, without the concurrence of the Senate.

No such official body as the President's Cabinet is recognized by the Constitution. That document provides that the President may "require the opinion in writing of the principal officer in each of the executive departments on any subject relating to his office." It was not Washington's custom to call his Cabinet into council; he called for their individual written opinions. Had the decision of the first Congress leaving with the President the sole power of removal been otherwise, the heads of departments might have been able, by cultivating personal and political relations with the Senate, to intrench themselves against the President's power, or to make themselves co-ordinate with the President as in an Executive Directory. Washington looked upon the Presidency as a non-partisan office, and he, therefore, did not suppose that the Cabinet needed to be harmonious

and homogeneous from a party point of view. Jefferson and Hamilton were the antipodes of one another in politics, and the presence of these two men in the same Cabinet indicates Washington's purpose to govern without regard to parties. Washington supposed the Presidency would not be a party office.

The Secretaryship of State is now regarded as the first office in the Cabinet. But in 1789 the Treasury Department had more business to take care of and was the more difficult to organize. No better man than Hamilton for the head of the department could have been chosen. The act creating the Treasury (September 2, 1789) provided that "it shall be the duty of the Secretary of the Treasury to digest and prepare plans for the improvement and management of the revenue and for the support of public credit." Hamilton spent the interim between September and January in preparing his first report. This report is a marvel of vigor and brilliancy which takes rank as one of the great state papers of our history.

The chief documentary sources for the study of Hamilton's financial and political policy are in three of his great state papers:

- (1) The First Report on the Public Credit, January 9, 1790.
- (2) The Second Report on the Public Credit, December 13, 1790.
- (3) The Report on Manufactures, in 1793.<sup>1</sup>

The proposals of Hamilton, as summarized from these reports, are:

- (1) The full payment of the foreign debt.
- (2) The funding of the "National" or "Domestic" debt and provision for its payment.

In the funding process it was proposed that all domestic creditors were to be paid in full; there should be no discrimination between the holders of government securities,

<sup>1</sup> For these, see Hamilton's *Works*.

but each should be paid at par, whether an original purchaser of a government certificate or a speculator who may have bought at an enormous discount.

- (3) The assumption of the State debts.
- (4) An Excise Tax.
- (5) The first United States Bank.
- (6) A Protective Tariff.

The Excise and the Bank were proposed in his second report; the policy of the protective tariff was based upon his famous Report on Manufactures, though this was not included in his early public measures.

The first report sets forth the condition of the public debt to be provided for. The foreign debt was estimated at \$11,710,000, including arrears of interest. The domestic debt was placed at \$42,400,000, the unpaid interest amounting to half the principal. The State debts, in Hamilton's too high estimate, amounted to about \$25,000,000. This made about \$79,000,000 to be provided for.

Hamilton's proposal to provide for full payment of the foreign debt passed Congress without opposition. His proposal to fund the domestic debt, issuing for the old certificates of debt the promissory notes of the new Government, dollar for dollar, without discriminating and without reference to the way these old certificates came into the possession of the holders or how much had been paid for them,—this proposal created a heated contest. It was opposed as being in the interest of creditors and speculators, and, its opponents urged, it was not necessary for the maintenance of the public credit. By paying in full now, the opposition argued, the nation would not be rewarding its original creditors, but simply enriching a horde of assignees. The case of the soldier-creditor was urged against that of the grasping speculator. The first self-sacrificing holder who had given his services to his country would have to pay to the assignee in taxes

nearly as much as he had received. When this proposal of Hamilton was known indoors, and before it could be known in distant parts of the country, swift-sailing vessels were sent to the South, and horsemen were sent to the back country to buy up these certificates for a mere song, and they were sometimes bought for fifteen cents or twenty cents on the dollar. Shall the worthy creditors who gave real service and value to their country be deprived of their due, while the money sharks are rewarded ten times over for their investments? Scott said in Congress: "The actual, not the nominal value of the certificates when obtained was the thing to be regarded. To redeem at that rate would be a fair fulfilment of contract." "American Farmer" said:

"Can it be thought reasonable or just that the assignee should now be entitled to that which the assignor honorably relinquished to the distressed state of the country? Must it not rather be regarded as the most atrocious act of iniquity and injustice that ever disgraced the annals of civil society that, to secure the full payment of the debt to the assignee, a funding system should take place by which the original creditors will become hewers of wood and the drawers of water to a foreign moneyed interest?"

Equity in the case was not easily arrived at. Madison, able and liberal-minded as he was, while he felt that the public faith must be kept inviolable, urged that there was an inequity in giving to speculators all the benefit of the public sacrifice. He proposed a compromise: (1) That only original holders of the government certificates should be paid in full; and (2) that the latest assignee should be paid the highest market value of the stock, the balance to go to the original holder.

The summary of Hamilton's argument in opposition to this and all other schemes than his own was as follows:

1. His plan was necessary to the maintenance of the

public credit. The contract was to pay to the holder or his assignee,—a plain promise. (2) The depreciation was not chargeable to the buyer, but to the Government. The seller's necessity, of which much had been made, was occasioned by the Government's not making proper provision for its debt; the buyer should have the benefit of his risk; if the seller is to be indemnified, it should be by the Government. (3) Discrimination would be found to be practically impossible. Collusion and fraud could not be prevented, if Government attempted to redeem at any other than the face value of the stock. (4) If the transferee be not protected the facility of transfer would be reduced, the future usefulness of the certificates as money would be annihilated, and the credit standing of government stocks would be impaired. To maintain the public credit was the primary object. To sudden emergencies all nations were subject and would, at times, have to borrow; the resources of immediate taxation were insufficient. The only way to maintain public credit is by faithful payment of public debts according to the terms of the contract. The equality of the assignee with the original holder was a prime quality in public securities; an attack on that equality was an attack on the public credit. If compensation be made to those who had sold at a loss, it should come from the Government, not at the expense of the assignees. The assignment was lawful; each holder parted with his certificate upon his own estimate of the public faith. Should not those who trusted more implicitly to the public honor be rewarded? (5) Discrimination was unconstitutional. All debts contracted and engagements entered into before the adoption of the Constitution should be as valid under it as under the Confederation. (6) The new stock would act like new capital: it would give new impulse to industry and raise the price of cultivated lands. (7) It would tend to strengthen the National Government.

The influential creditor class and dealers in money would be brought to the support of the new Government. Herein lies the political significance of Hamilton's policy upon this point.

This part of Hamilton's scheme was carried in Congress only after a close and bitter struggle.

The second part of Hamilton's plan that aroused a severe contest was that for the assumption of the State debts. This proposal was favored, generally, by States having large debts, while it was opposed by States that had small debts or that had already paid a portion of their debts. The arguments urged by Hamilton in its favor were: (1) It would consolidate the national influence. The measure was both favored and opposed for this reason. To strengthen the Central Government at the expense of the States was the constant purpose of Hamilton, and his opponents joined issue with him on this purpose. All the creditor class, those who had been looking to the States for payment as well as others, would be attached to the Federal Government. All creditors, State and national, would be put on the same footing and would alike favor new taxes and new power for the new Government. Stone of Maryland, said in opposition: "A greater thought than this of assumption had never been devised by man, and if adopted and carried into execution it would prove to the Federal Government a wall of adamant, impregnable to any attempt on its fabric or operations." (2) The debts were contracted for the common benefit; they should be paid by the common effort. The large debts of Massachusetts and South Carolina (\$4,000,000 each) had been contracted because of the efforts made in the common cause. Equity required that all should help bear the burden. (3) This would justify if it would not make necessary a Federal excise. Thus the nation would be able to reach the citizen directly and would

be able to assert the right of taxation within the State.<sup>1</sup>

Assumption was opposed (see Gallatin's criticism especially) as being unsolicited by the States; as premature and ill-considered, and therefore without equity; and on the ground that it would reduce the States to entire dependence on a consolidated Federal Government.

"Wherever the property is there will be the power. If the general government has the payment of all the debts, it must have all the revenue. If it possesses the whole revenue it is equal to the whole power; and the different States will then have little to do. Important talents will not be necessary in the employ of the States and where they are not necessary they will not be employed."—Stone, *Annals of Congress*.

Assumption, carried by a small margin at first, was, upon the arrival of the North Carolina members, reconsidered and recommitted, and it was impossible to carry it again except by connecting it, in a log-rolling scheme, with the question of the location of the Federal Capital—one of those pieces of out-of-doors management that often controls in legislation. Jefferson tells the story as to how he was "ignorantly and innocently made to hold the candle" to this part of Hamilton's fiscal scheme.

"Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the Legislature had been wrought, the disgust of those who were called the creditor States, the danger of the secession of their members, and the separation of the States."

Hamilton urged on Jefferson the support of assumption, the need of unity in the Cabinet, and that all should rally to the support of the President. Jefferson pleaded that

<sup>1</sup> See Whiskey Insurrection.

he was a stranger to the business; but that "undoubtedly if the rejection of assumption endangered the union at this incipient stage I should deem that the most unfortunate of all consequences, to avert which all partial and temporary evils should be yielded." Jefferson arranged a dinner party, and there it was agreed that Hamilton and Morris should secure enough votes from the North and East to locate the Federal Capital on the Potomac, and Jefferson in return would induce some of his friends in Virginia to carry assumption.

"So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive) agreed to change their votes and Hamilton undertook to carry the other point. In doing this the influence he had established over the eastern members with the agency of Robert Morris with those of the Middle States, effected his side of the engagement, and so the assumption was passed, and twenty millions of stock divided among favored States and thrown in as a pabulum to the stock-jobbing herd."<sup>1</sup>

The next great controversy that arose over Hamilton's measures was on the proposal to establish the *First United States Bank*.—Ed.

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*The Bank Controversy*.—The Constitution (Article I, section 8) enumerates among the powers of Congress:

"1. To lay and collect taxes, duties, excises, and imposts, to pay the debts and provide for the common defence and general welfare of the United States; . . . 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

From these two paragraphs broad constructionists have inferred the power of Congress to charter a national

<sup>1</sup> *Writings of Jefferson*, i., 161-164.



bank, or any other corporation of national extent, which strict constructionists have denied. Under the Confederation, Robert Morris, Superintendent of Finance, had drawn up the plan of the first national bank, which was chartered by Congress, December 31, 1781, for ten years, under the name of *The Bank of North America*, with a capital of \$400,000, afterwards increased to \$2,000,000. The general doubt of the power of Congress to create a corporation cast a cloud upon the Bank's title to existence, and it was chartered by the State of Pennsylvania in 1783. In 1785 a change of parties in the State Legislature brought about a repeal of the charter, and in 1787, after another party change, the charter was renewed. In January, 1791, a bill to incorporate *The Bank of the United States* passed the Senate without division, and the House, February 8th, by a vote of 39 to 20. Its capital was to be \$10,000,000, of which \$2,000,000 was to be subscribed by the United States; its charter was to continue for twenty years; its bills were made receivable in all payments to the United States; and it had the power to establish branch banks, the headquarters remaining at Philadelphia.

Immediately upon the passage of the bill a strong pressure was brought to bear upon President Washington to induce him to veto it, and he therefore called for the written opinions of his Cabinet upon the constitutionality of the proposed bank. The opinions submitted by Jefferson and Hamilton are most interesting, as they map out with great exactness the opposite views of the Federal Government's powers which were to control party conflict for the succeeding three quarters of a century.

Jefferson's opinion, which was first given, begins with the following text:

"I consider the foundation of the constitution as laid on this ground, that 'all powers not delegated to the United

States by the constitution, nor prohibited by it to the states, are reserved to the states or to the people' (XII. amendment). To take a single step beyond the boundaries thus specially drawn around the powers of congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

After showing that there was no power to establish a national bank under the special powers to lay taxes, to pay the debt of the United States, to borrow money, and to regulate commerce, he proceeds to consider

"the general phrases, which are the two following: 1. 'To lay taxes to provide for the general welfare of the United States;' that is to say, 'to lay taxes *for the purpose* of providing for the general welfare.' For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. Congress are not to lay taxes, *ad libitum*, for any purpose they please; but only to pay the debts, or provide for the welfare of the Union. In like manner, they are not to do anything they please, to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase; that of instituting a congress with power to do whatever would be for the good of the United States; and as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they pleased. . . . Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. . . . 2. The second general phrase is 'to make all laws necessary and proper for carrying into execution the enumerated powers.' But they can all be carried into execution without a bank. A bank,

therefore, is not necessary, and, consequently, not authorized by this phrase. It has been much urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the constitution allows only the means which are 'necessary,' not those which are merely 'convenient' for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase, as to give any non-enumerated power, it will go to every one; for there is no one which ingenuity may not torture into a *convenience in some way or other, to some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one phrase, as before observed." (Italics as in original.)

Jefferson's opinion that the paying of debts and providing for the general welfare is not a *power* but a *purpose*, is fully argued and accepted by Story and by the Supreme Court (in *7 Howard*); but a colon, which the original has not,<sup>1</sup> is often, but unjustifiably, inserted between the power and the purpose, so as to give the latter the appearance of a separate power. The second part of his opinion has been ruled against by the Supreme Court in the case of *McCulloch vs. Maryland* (*4 Wheaton*). See Bank Controversy under Jackson, Ch. on The American System.

Hamilton's opinion, though very much longer, may be clearly given in his own summary:

"1. That the power of the government, as to the objects intrusted to its management, is, in its nature, sovereign. 2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power. 3. That the position that the government of the United States can exercise no power but such as is delegated to it by its constitution, does not militate against this principle. 4. That the word *necessary*, in the general clause, can have no *restrictive* operation, derogating

<sup>1</sup> See Constitution.

from the force of this principle; indeed, that the degree in which a measure is or is not necessary can not be a *test of constitutional* right, but of expediency only. 5. That the power to erect corporations is not to be considered as an independent and substantive power, but as an incidental and auxiliary one; and was, therefore, more properly left to implication than expressly granted. 6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to incorporate for purposes *within the sphere of the specified powers*. And lastly, that the right to exercise such a power, in certain cases, is unequivocally granted in the most positive and comprehensive terms. To all which it only remains to be added that such a power has actually been exercised in two very eminent instances, namely, in the erection of two governments; one northwest of the river Ohio, and the other southwest; the last independent of any antecedent compact.”<sup>1</sup>

It will be perceived that the essence of Hamilton’s opinion, which is entirely lacking in Jefferson’s but which the courts have since very steadily accepted, is the *sovereignty* of the Federal Government within its specified bounds—the principle that, when a people have found it necessary to create a sovereignty even for specified purposes, a further and interior limitation upon the sovereignty within its own sphere must be express to be valid.

Hamilton’s opinion prevailed with the President, and the bill was signed and became law. The Bank, thus chartered, went at once into active and successful operation. It had occasion to bring suits in Federal and State courts, and was always recognized as a legally incorporated body. March 23, 1804, an act was passed without a division to allow it to establish branches in the Territories, and, having been signed by Jefferson himself, now President, became law; and February 24, 1807, an

<sup>1</sup> See Ordinance of 1787, Territories.

act to punish forgery of the Bank's notes was similarly passed. The charter was to expire in 1811.

In 1809 the Bank applied for a recharter, and its application was warmly indorsed by Gallatin, Secretary of the Treasury. In 1810 a bill for a recharter was introduced, met with some opposition on the grounds laid down by Jefferson, and went over to the next session. In the next session the Bank's application was renewed and finally defeated, January 24, 1811, by the casting vote of Vice-President Clinton. The Bank then wound up its affairs and went out of existence.

*Excise and Whiskey Insurrection.*—An excise is a tax on a home product,—a duty working as an indirect tax on the consumer laid on products of home industry and consumption. Hamilton's excise tax on distilled spirits was held to be made necessary by the assumption of the State debts. By this increase of debt more annual revenue was necessary. This excise tax resulted in the revolt against the execution of a Federal excise law which came to a head in Western Pennsylvania and was suppressed in 1794.

The series of disorders to which the above general name is given, were the outcome of a number of moving causes.

1. The western counties of Pennsylvania, Virginia, and North Carolina, among or beyond the Alleghanies, were far removed from the main body of American civilization. The distance to the seaboard was three hundred miles; roads were few and bad; to secure any profit from grain it was necessary to convert it into the more portable form of whiskey; and whiskey was the money of the community, in the general scarcity of cash.

Under these circumstances a tax levied specially upon the distillation of whiskey seemed to the mountaineers an invidious selection of themselves for imposition, a singling out of a few counties for taxation in order to relieve the richer East.

2. The people of these counties had been so long exempt from the fetters of the law that they felt the first touch keenly. Lying within an area whose jurisdiction had been long disputed by Virginia and Pennsylvania, they had generally escaped any troublesome interference from either State. In 1783 the Supreme Executive Council of Pennsylvania had sent a special agent to remonstrate with "those deluded citizens in y<sup>e</sup> western counties who seemed disposed to separate from y<sup>e</sup> commonwealth and erect a new and independent state."

Canada was not far away to the north; Spain not much farther to the southwest; and between the two lay the great and unoccupied "northwest territory," to the west of Pennsylvania. Who can tell how many abortive negotiations with agents of one or the other power, with the erection of a new and nominally independent north-western power as an ultimate object, were never committed to paper, but died with the backwoodsmen who had conducted them?

It is certain that when Genet<sup>1</sup> reached the United States in 1793, his infallible instinct for troubled waters at once led him to send his agents to Kentucky and Western Pennsylvania; and when the last scene in the present insurrection was being acted the more reckless leaders showed their hand by urging the formation of a new State. When vague dreams of empire had been so long cherished, it was intolerable that they should be broken in upon by the summons of a Federal exciseman, and this sudden dissolving of frontier independence had very much to do with the whole difficulty.

3. In any event, an excise law had always been odious to English and Americans from the necessary power given to officers to enter houses and search. Blackstone had curtly said that "from its original to the present time its very name has been odious to the people of England";

<sup>1</sup> See that title.

and Noah Webster's predecessor, Dr. Johnson, had defined it as "a hateful tax, levied upon commodities, and adjudged not by the common judges of property, but by wretches hired by those to whom excise is paid."

The Continental Congress, in a proclamation to the people of Canada, in October, 1774, had warned them that they would be "subjected to the impositions of excise, the horror of all free states"; and an English pamphleteer, long before, had said, "We know what a general excise is, and can not be ignorant that it hath an army in its belly." The Constitution plainly gave Congress power to lay and collect excises; but it was certain that the exercise of the power would be difficult and dangerous; and the first project of an excise was defeated in Congress, June 21, 1790. In the following year, when the project was revived, the Pennsylvania Senators were instructed by their Legislature to oppose such a law, "established on principles subversive of peace, liberty, and the rights of the citizens."

4. Complicated with all these reasons was a political opposition to the excise, which will be more in place under the main reason for its passage. Hamilton's reason for insisting upon the passage of an excise law must be judged from the standpoint of the statesman, not from that of the financier, though a hope of future revenues might have been considered. If we take into account the expense of suppressing the inevitable insurrection which it provoked, the excise cost as much for collection as it produced, and the sides of its account were fairly balanced.

Hamilton had prescience enough to forecast this immediate result, and yet he felt that great gain would come from the passage of the law. His reason, as given in the letter to Washington cited below, was, that it was necessary to assert at once the power of the Federal Government to lay excises, which the people were

accustomed to look upon as a State prerogative, and that "a thing of the kind could not be introduced with a greater prospect of easy success than at a period when the Government enjoyed the advantage of first impressions, when State factions to resist its authority were not yet matured, and when so much aid was to be derived from the popularity and firmness of the actual chief magistrate." But this last paragraph shows that there was an ulterior design, and that Hamilton was endeavoring to find the line of least resistance in exhibiting to the States for the first time that which had never before been heard of, "the authority of the national government."

Heretofore, "authority" had been in the State governments, and the functions of the National Government, if there ever was any, were to recommend, to remonstrate, to soothe, and to bear rebuffs with patience and becoming humility. Somewhere the new national authority must be first brought upon the stage, and no safer or more undeniably legal opportunity could be imagined than in the suppression of an insurrection against an excise law.

To assert that Hamilton wilfully sought to provoke as weak a sedition as possible in order to make its suppression easy and certain, would be a hard saying if his object had been personal advantage, or if a hecatomb of innocent victims could be invoked in condemnation of his plans. But neither was true: not only was the success of his plan perfect and bloodless, but there seems to have been no trace of self-seeking in it. He was playing for high stakes, and he played, as his antagonists did in 1800-1, with the rigor of the game. That he used opportunity, the disorganization of the opposition, the constitutional permission to lay excises, and the Presidency of Washington, with such skill and effect, shows only what a master of the game he was.

Had Hamilton's purpose been plainly stated, to force



an issue on which he could safely introduce the "authority of the national government" to popular view, the excise law would have received little support from a people or from politicians accustomed to regard the States as sovereign and independent, and the Federal Government as their creature. But he took one step after another so skilfully that he ended, as he began, with the almost unanimous support of the people, who concurred in maintaining a national authority which they had hardly dreamed of ten years before.

Nevertheless, there were some of the opposition, particularly Jefferson, who detected and vainly endeavored to counteract Hamilton's design. Their failure was one great moving cause of the rise of the new Republican party, but it also helped to give the leaders of the new party the bitter dislike which they always cherished for Hamilton. That he had forced them to learn new ideas was bad enough, but it was intolerable that he should also compel them to kiss the rod to which they had unwillingly submitted. Their evident wrath has given some credence to a notion that some of them had been laying plans for a general disruption of the Union, and that Hamilton's shrewdness in provoking a premature explosion had balked them.

The only documentary evidence to this effect is in a passage of an intercepted dispatch of Fauchet, Genet's successor, in 1794, that the insurrection was "indubitably connected with a general explosion for some time prepared in the public mind, but which this local eruption would cause to miscarry, or at least check for a long time." But the Frenchman's characteristic use of the word "indubitably," his failure to support it by any evidence from Randolph or elsewhere, and the failure of every other attempt to find any such evidence, put his passage out of court.

Democratic anger came altogether from the discovery

that the power of the Federal Government must thereafter be considered as a factor in American politics, together with the independence of the States and of the citizen. They could no longer say, as was said in Congress in 1794, that their constituents "love your government much, but they love their independence more"; for the Federalists could retort, as Tracy, of Connecticut, did to Gallatin in 1796, that, "whatever might be the case in other parts of the Union, his constituents were not of a temper to dance round a whiskey pole one day cursing the government, and sneak the next day into a swamp on hearing that a military force was marching against them." In this alteration of the fundamentals of political discussion was the head and front of Hamilton's offending.

The excise bill became a law March 3, 1791. Little open resistance was made to it in Virginia or North Carolina, but in Pennsylvania the agitation was headed not only by violent men, one Bradford being the most noted, but by abler and quieter leaders, such as William Findley, then and for many years afterward a member of Congress, John Smilie, also a member of Congress after 1792, and Albert Gallatin.

The first meeting to protest against the law was held at Redstone old fort, now Brownsville, July 27th. Its proceedings were moderate; but another meeting, August 23d, in Washington County, nearest to the Virginia line, and most disordered, resolved to consider as an enemy any person who should take office under the law. Violence could not but follow this, and it began, September 6th, with the tarring and feathering of a revenue officer.

Throughout the winter the disturbance smouldered, but it was so threatening that an act was passed, May 2, 1792, empowering the President to use militia in suppressing disturbances within a State. With it went another act, May 8th, reducing the duties. An attempt to hire an

office in Washington County for the revenue officers, in August, led to renewed disorder, and the President felt compelled to warn the rioters, by a proclamation of September 15th, to abandon their unlawful combinations. Occasional tarrings and featherings followed throughout the year 1793, but the law itself was not as yet very effectively exercised.

Early in 1794 the organization of secret societies began, coincident with the introduction into the House of Representatives of a plan to secure and collect the excise duties; and these seem to have made full preparations for resistance.

One great reason for the popular dislike to this particular law was that offences under it were cognizable only in Federal courts, and that an accused person would therefore be compelled to journey to Philadelphia, at the other end of the State, to answer the charge. To backwoodsmen this was certainly no slight grievance; and Congress very justly removed it in the act of June 5, 1794, giving State courts concurrent jurisdiction of excise offences, so that accused persons might be tried in their own vicinage. But while the law was in process of passage, and before its mitigation could be taken advantage of, some fifty writs were issued at Philadelphia, May 31st, against various persons in the western counties. These were served in July; as each was served, the person served joined the mob which followed the marshal; the cry was raised that "the Federal sheriff was taking away people to Philadelphia"; and the short-lived Whiskey Insurrection began. The marshal was captured, and sworn to serve no more processes; the inspector fled down the Ohio, and thence around through a wilderness to Philadelphia; and within two days the operation of the law was stopped.

It is not known who was responsible for the issue of the writs of May 31st, which were the spark for the

explosion. There is no evidence whatever that Hamilton had anything to do with it.

The insurgents, two days after the outbreak, seized the mail from Pittsburgh, in order to ascertain the names of those of their fellow-citizens who were opposed to them. A mass meeting was called for August 1st, on Braddock's Field. Some seven thousand armed men were present; a county judge presided, and Gallatin acted as secretary; none, even of those who disliked the posture into which affairs were growing, dared to remonstrate; and a reign of terror was begun, Bradford being the ruling spirit. Personal violence was offered to any person suspected of obeying the law, and the more reckless spirits began active preparation to call out the whole force of the counties for a defensive war against the United States.

The emergency had now come, and the manner in which it was met showed to the dullest understanding the difference between the present Government and that which had been balked by Shays's Rebellion.

The Federalist members of the Cabinet instantly advised the calling out of militia; and, when Governor Mifflin of Pennsylvania declined to take the initiative, the "national authority" showed that it no longer was absolutely dependent on the State governments. A certificate of the existence of the insurrection was obtained from a Federal judge; a proclamation from the President, August 7th, ordered the insurgents to disperse; a requisition for fifteen thousand militia was issued to the Governors of Pennsylvania, New Jersey, Virginia, and Maryland; and September 1st was fixed as the date for the departure of the troops. A Federal commission of three persons, and a State commission of two, preceded the troops with offers of amnesty on full submission.

The mission was apparently a failure. It found Gallatin, Findley, Brackenridge, and the other leaders of

standing engaged in a desperate effort to induce submission, but impeded by Bradford and the reckless borderers, who terrorized every meeting they attended.

August 28th, the controlling committee of sixty met at Redstone old fort. Bradford urged armed resistance, but Gallatin, by securing a secret ballot, obtained a resolution, 34 to 23, to accede to the proposals of the Federal commissioners. These proposals were mainly that town meetings should be held September 11th, that the people should vote yea or nay on the question of submission, that those who voted yea should obtain amnesty by signing a declaration of submission, and that the unanimity of the vote should govern the movements of the troops. Many, however, refused to sign the declaration, for the reason that they had taken no part in the outrages, and had no need of amnesty; and the reckless part of the insurgents supplemented the meagreness of the vote by a renewal of the outrages, and even by an attempt to seize the commissioners on their way home.

The report of the commissioners was so unfavorable that the President issued a new proclamation, September 25th, giving notice of the advance of the troops, mostly volunteers. Washington accompanied them to Carlisle, where he left the chief command to Governor Lee, of Virginia. The Pennsylvania and New Jersey troops were led by Governors Mifflin and Howell; the Virginia troops by General Morgan; and the Maryland troops by Samuel Smith, a member of Congress from Baltimore. Hamilton accompanied the expedition throughout.

In the meantime a new popular convention, October 2d, had sent Findley and another commissioner to the President with unanimous assurances of submission; but the President could see no evidence that the assurances represented any general feeling. Another meeting, October 24th, therefore declared that all suspected persons ought to surrender at once for trial, and that it would be

perfectly safe to open inspection offices and put the excise laws in operation immediately; and four commissioners were appointed to carry these resolutions to the President.

No halt took place in the movement of the troops, however. They arrived in the disturbed district early in November, and their commander, after giving the inhabitants time to obey his proclamation and take advantage of the proffered amnesty, arrested by a general sweep those accused persons who had not yet exonerated themselves. These culprits, however, were insignificant. Bradford and the more violent leaders had fled the country, and the more moderate leaders had protected themselves by taking advantage of the amnesty: as Wolcott, a warm Federalist, expressed it, "all the great rogues, who began the mischief, had submitted and become partisans of the government."

The result was that two or three were tried and convicted, and these were pardoned. But there was for a long time an angry feeling that Hamilton, Knox, and Judge Peters had acted as a "star chamber" in their manner of taking testimony, and in their sending a number of accused persons to Philadelphia, "to be imprisoned for ten or twelve months without even an indictment being found against them."

The first show of force had suppressed the insurrection, and the troops returned home, leaving 2500 men, under Morgan, who encamped in the disturbed district throughout the winter. Its suppression had been almost bloodless, but two persons having been killed, and these in personal conflicts with soldiers for which the soldiers were punished. But the effects were greater than if a "Peterloo" battle had been fought.

The early political struggles of the United States are none the less important because they were peaceful; and the bloodless suppression of the Whiskey Insurrection is as significant in its way as the bloody emergence of the

English nation from the chaos of the heptarchy. For five years the people had been enjoying all the comforts of a national government without feeling any of the responsibilities which accompanied them; and the politicians had been developing the idea that individual obedience to the Federal Government under the Constitution was to be as fundamentally voluntary as State obedience had been under the Confederation, that all Americans were by nature good citizens, and that discontent with a law was *prima facie* evidence that the law was bad and ought to be repealed.

The year 1794 completed what the year 1787 began; it revealed a power which, though seldom exerted, must always be finally decisive. The swiftness and thoroughness with which the resistance had been put down; the evident fact that, as Wolcott said, "the whole resources of the country would be employed, if necessary"; and the reflection that a part can never be equal to the whole: all combined to show the hopelessness of any future insurrection which individual dissatisfaction could be expected to produce.

It is clearly within bounds to say, that this single lesson would have been sufficient to free the United States from future danger of insurrection but for the influence of slavery in binding together a number of States in organized insurrection. Its influence is certainly evident in a comparison of the Congressional debates before and after it occurred. Before 1794 there is in many of the speakers almost an affectation of voluntary obedience to Federal laws, and of monition to others not to provoke resistance. After that year, this characteristic disappears almost entirely, and the debates have no longer the background of possible club law.

A broader result is easily visible now, though few others than Jefferson and Hamilton saw it then. If a Federal army, without the summons of the Governor or

Legislature, was to march through a State to suppress resistance to Federal laws within the State, State sovereignty, in its hitherto accepted sense, could hardly be found by searching. Little was said at the time, but when the Federal party was finally overthrown, one of the first steps in reform was the abolition of the excise laws by the act of April 6, 1802.

On the Whiskey Insurrection, see Gordy's *Political History of the United States*; Morse's *Life of Hamilton*; Lodge's *Hamilton*; Lodge's *Washington*; Stevens's *Gallatin*; Hamilton's *Works*; Hunt's *Madison*; Bolles's *Financial History*; 4 Hildreth's *United States*, 498; 1 von Holst's *United States*, 94; 1 Schouler's *United States*, 275; 2 Pitkin's *United States*, 421; 1 Tucker's *United States*, 552; Bradford's *Federal Government*, 84; 1 Gibbs's *Administrations of Washington and Adams*, 144; Wharton's *State Trials*, 102; 3 Jefferson's *Works* (edit. 1833), 308; 4 Hamilton's *Works*, 231 (letter to Washington); 6 *Pennsylvania Hist. Soc. Memoirs*, 117 (Ward's "Insurrection of 1794"), 188 (James Gallatin's "Memoir on the Insurrection"); Findley's *History of the Insurrection*; Brackenridge's *Incidents of the Insurrection*; 11 *Pennsylvania Archives*; the acts of March 3, 1791, May 8, 1792, June 5, 1794, and April 6, 1802, are in 1 *Stat. at Large*, 202, 267, 380, and 2: 148; the proclamation of September 25, 1794, is in 1 *Statesman's Manual*, 54.



## CHAPTER VIII

### FOREIGN AFFAIRS UNDER WASHINGTON

FOREIGN relations under Washington are to be studied in connection with (1) the influence of the French Revolution, (2) the status of war in Europe as the result of that upheaval. The subject may be regarded in two aspects:

1. American relations with France; 2. American relations with Great Britain.

Affairs in relation to France centre about the mission of Genet, the Minister of the French Revolution to America, and the interpretation and execution of the French treaties of 1778.

The first stages of the French Revolution excited interest in America, as in all other civilized countries. But this interest was purely speculative and involved no questions of practical statesmanship. The Revolution had its friends and sympathizers among the Jeffersonian Republicans; it had its opponents among the Hamiltonian Federalists. It was not, however, until the violent stages of the Revolution were reached in 1793 and war broke out between France and Great Britain that Washington's Administration was forced to announce a policy as to the European situation.

The execution of the king was given, and taken, as a defiance to every neighboring monarchy; the declaration of war against England and Holland, February 3, 1793, was the first movement of the expansion which was soon

to make all Europe the theatre of the Revolution; and it was inevitable that this outward movement of the Revolution should involve somewhere a call for active sympathy and assistance upon France's only ally, the United States. To obtain this assistance Genet was sent in January in the *Ambuscade* frigate, and arrived at Charleston, April 8th, bringing with him three hundred blank commissions for privateers.

Genet was only in his twenty-eighth year, but a master of that half-purposed and half-delirious declamation, which seems absurd now, but which was then the surest weapon of a French revolutionary envoy: he came to a country whose people were already very strongly disposed to war against Great Britain on their own account, and equally disposed to consider the French Revolution as having every claim upon their active support; and, for the moment, he swept the American people off their feet and almost into the war. That he was not entirely successful was altogether due to the overmastering influence which Washington possessed, and which he did not hesitate to use for the maintenance of neutrality.

The whole web of difficulties of which Genet became the centre turned upon the treaties with France of February 6, 1778. There were two treaties of this date, the first of alliance and the second of amity and commerce, and the general meaning of the former and the special applicability of two articles of the latter were the questions at issue in 1793.

The treaty of alliance<sup>1</sup> is by its terms a treaty "eventual and defensive"; the "essential and direct end of this defensive alliance" is stated in the second article as the maintenance of the liberty, sovereignty, and independence of the United States; and to every intent and purpose its provisions are confined to the then existing war between the United States and Great Britain, and the

<sup>1</sup> See Revolution.

French intervention therein, with the exception, perhaps, of the mutual guaranty of possessions in the last two articles.

Genet claimed, and many Americans were inclined to agree with him, that the treaty of alliance was still in existence and binding on both parties, and that it had not been terminated by the peace of 1783. It was not difficult to disprove the claim, in itself considered, but it was re-enforced by another consideration, invulnerable to reason, which weighed still more heavily with the mass of the American people. The selfish reason of the French court for making the treaty, its desire to dismember the British Empire, was then a state secret to all but a few, and the sentimental obligations to alliance seemed far more binding upon the United States in 1793 than they had been upon France in 1778. The burden of the argument for maintaining the alliance was therefore the idea that the United States was under obligations to requite the assistance which France had rendered during the Revolution.

The treaty of commerce offered more difficulties. In its terms it was to be permanent, not limited to a single object; by its seventeenth section free entrance was to be allowed to prizes made by either party into the ports of each nation, and enemy cruisers against one party were not to be allowed to remain in the ports of the other; by its twenty-second section privateers of a third power at enmity with either nation were not to be permitted to fit out or sell prizes in the ports of the other; and, by the twenty-ninth section, each nation was allowed to have consuls in the ports of the other. In themselves considered, it is plain that the first two of these provisions, however beneficial to the United States in 1778, were very embarrassing in 1793, but Genet succeeded in rendering them even more embarrassing. He insisted on turning the prohibition of the arming, in this instance,

of British privateers into a permission to arm French privateers and enlist men on the soil of the United States; and he also insisted that the powers of French consuls should include that of complete admiralty jurisdiction, in condemning and selling prizes. These were the two main questions at issue in 1793; the other exasperating pretensions and the unbounded insolence of language of Genet were only subsidiary to his main design, the exercise of such powers of sovereignty as would really convert the United States into French soil.

Five days before Genet's arrival at Charleston, a British packet had brought to New York City the news of the French declaration of war against Great Britain. April 18th, Washington sent to his Cabinet thirteen questions, probably drawn up by Hamilton. The most important of these were: 1, should a proclamation issue to prevent American interference in the war, and should it contain a declaration of neutrality; 2, should the French Minister be received, 3, absolutely or with qualifications; 4, should the United States consider the treaties abrogated or suspended during the present state of government in France; 8, whether the war was offensive, defensive, or mixed and equivocal on the part of France; 11, whether the twenty-second section of the treaty of commerce, applied to privateers only, or to ships of war also; and 13, whether Congress ought to be called together.

By the unanimous advice of the Cabinet a proclamation of neutrality was issued, April 22d, declaring the neutrality of the United States between the parties to the war, exhorting citizens of the United States to avoid infractions of neutrality, and giving notice that violators of neutrality would not be protected by the United States, but would be prosecuted, whenever possible, by Federal officers.

The Cabinet was also unanimous in advising in favor of the reception of the French Minister, and against an extra session of Congress. As to the treaties the Cabinet was

divided: Hamilton and Knox thought that France, while so acting as to provoke war against her, had no right to hold the United States to treaty stipulations made for entirely different circumstances; Jefferson and Randolph considered the treaties as made with the French nation, not with the king alone, and as unaffected by the change of government and policy. No reasoning, however, can reconcile the treaty of alliance and the declaration of neutrality; in so far, then, the whole Cabinet seem to have considered the treaty of alliance really at an end, including its guaranty. Among the conflicting arguments and statements as to the treaty of commerce, it is only clear that Washington decided not yet to hold it abrogated: in plain words, to say nothing about it, but to follow it until forced to abrogate it.

Genet soon gave Hammond, the British representative, good cause for complaint. Immediately after his landing, he had fitted out two privateers which made captures of British vessels along the coast. His own frigate, the *Ambuscade*, arrived at Philadelphia May 2d, bringing with her a British merchantman, the *Grange*, which she had captured within the capes of the Delaware. Genet had not yet been recognized or received by the Federal Government. His progress northward had been marked by expressions of popular enthusiasm as warm as those which had first met him, and misled him, at Charleston. He arrived at Philadelphia May 16th; banquets were arranged in his honor, at which Genet himself sang the *Marseillaise*, and the guests, wearing the red cap of liberty, took turns in plunging a knife into the severed head of a pig, which represented the late king; British and French sailors engaged in armed conflicts in the streets of Philadelphia, the latter being generally supported by the populace; and all the initial steps of the process by which French agents of the time were in the habit of "revolutionizing" other peoples were successfully taken.

The first damper upon this process in America was the calm and entirely businesslike tone of the President's answer to Genet at the latter's official reception, May 18th. The next was a refusal of his request, May 23d, that the United States should pay \$2,300,000 of their French debt, not yet due, though Genet offered, as an inducement, to expend the amount in the United States.

These rebuffs were followed by a notification from Jefferson to Genet, June 5th, that "the arming and equipping vessels in the ports of the United States, to cruise against nations with whom they are at peace, was incompatible with the territorial sovereignty of the United States," and must be stopped; and this notification was emphasized by the arrest of two of Genet's American recruits, Henfield and Singletary, and their indictment for breach of neutrality, for a crime, Genet wrote, with almost frantic indignation, "which my mind cannot conceive, and which my pen almost refuses to state, the serving of France and the defending with her children the common and glorious cause of liberty." This last step, indeed, was the most serious of all to Genet's plans, and, if submitted to, cut the ground from under his feet; and in protesting against it, he first began to show that insolent ill temper which for the next four months was the most prominent feature of his intercourse with the State Department. He was now convinced that the neutrality proclamation of April 22d was no legal fiction, designed to delude Great Britain, but was to be literally fulfilled by the Executive.

Had Genet been fortunate enough to find Congress in session, he would certainly have now precipitated matters by endeavoring to open direct communication with that branch of the Government, and would probably have been supported by some of the more reckless Gallicans among the Representatives. It can hardly be supposed that the attempt would have succeeded. Congress can-

not officially know of the existence of a foreign minister except through the President; and the exercise even of consular functions is dependent on revocable permissions, known as *exequaturs*, from the President. Congress, however, was not regularly to meet for six months.

June 14th, in a letter relating to the payment of the debt due to France, Genet very directly intimated that the Federal Government had "taken it on itself" to decide the question "without consulting Congress upon so important a matter." He then repeated without success official and unofficial demands for an extra session of Congress until, September 18th, in a final burst of passion, he declared that he was "persuaded that the sovereignty of the United States resides essentially in the people, and its representation in the Congress; that the executive power is the only one which has been confided to the President; that this magistrate has not the right to decide questions, the discussion of which the Constitution reserves particularly to the Congress; and that he has not the power to bend existing treaties to circumstances and to change their sense." In this connection it is worthy of note that Genet's instructions of the previous January had designated him as "minister plenipotentiary to the Congress of the United States," a phrase which, if construed by the knowledge of the American Constitution elsewhere shown in the instructions, could only argue a possible view to this very phase of affairs.

In this general manner, by passing over the executive and interfering with domestic concerns, the revolutionary envoys had usually succeeded in making the friendship of France almost as dangerous as her enmity to any government with which they came in contact; and in this case it must be acknowledged that the trial was a severe one for a form of government as yet hardly four years old. It was increased by the facts that the only definite, active sympathy of the country was with France; that

the mass of the people was indifferent to, or strongly inclined to approve, any course of action which would make against Great Britain; and that the only opposing influence was negative, rather an incipient dislike to the violence of the French Revolution than any active sympathy with Great Britain. In the Cabinet Jefferson represented the first class, Randolph and Knox the second, and Hamilton the third. Hamilton undertook the defence of the Administration in a series of seven letters, signed "Pacificus," in which, with great ability, he defended the proclamation on the very evident ground that, while a declaration of war lay in the power of Congress, it was the President's duty to see that the peace was kept, until war was declared. Madison, at Jefferson's request, replied in five letters, signed "Helvidius."

From Genet's first arrival he had encouraged the formation of the French faction into associations, known as Democratic Clubs, to further "the principles of the Revolution," and these, and their newspaper organs, Bache's *Advertiser* and Freneau's *Gazette*, attacked the President freely.<sup>1</sup> One of them in a pasquinade called "the funeral of Washington," went so far as to represent him upon the guillotine. The President seems to have kept his equanimity until, at a Cabinet meeting, August 2d, when Genet's race had been almost run, he got, says Jefferson, "into one of those passions when he cannot command himself," and declared "that he had never repented but once the having slipped the moment of resigning his office, and that was every moment since; that by God he had rather be in his grave than in his present situation; that he had rather be on his farm than to be made emperor of the world; and yet that they were charging him with wanting to be a king."

<sup>1</sup> For the influence and importance of the Democratic societies under Washington, see *Early Political Machinery in the U. S.*, by George D. Luetscher, thesis in University of Pennsylvania, 1903. Also Fisher Ames's speech, *Annals of Congress, 1793-1795*, pp. 927, 928.—ED.



About July 1st, Genet seems to have become satisfied that the Government of the United States was not composed of easily inflammable material, and that Congress was not to be called together at his bidding, and to have decided upon the next step in such cases, an appeal to the people. He had hitherto disregarded the prohibition of the equipment of privateers; and had equipped and sent to sea eight privateers, which, with two French frigates, had captured about fifty British merchantmen, some of them, like the *Grange*, within the jurisdiction of the United States. When he proceeded to equip another privateer, the *Little Democrat* (formerly the *Little Sarah*), in Philadelphia itself, then the national capital, he seems to have sought to force an issue with the Government. Orders were sent to detain her, July 6th; Genet, after threatening an appeal to the people, evasively declared that the vessel was not ready, and was not yet going to sea; and, July 8th, when the guards had been removed, the vessel sailed.

The acquittal of Henfield by a jury, in spite of evidence, led Genet further in the course he had marked out. Passing to New York City, he had begun to expedite the cause there, when he found himself impeded, rather than helped, by a rumor of his threat to appeal from the Government to the people. Some of his partisans denied the story, whereupon Chief Justice John Jay and Senator Rufus King, of New York, issued a card in the newspapers, August 12th, vouching for the truth of it. This practically closed Genet's career. Hitherto he had been a danger; henceforth he was only a nuisance. The drift of the public meetings began to run continually more strongly against him personally, not against France or in favor of Great Britain. He took the liberty of demanding a contradiction of the story from the President himself, who refused to hold communication with him except through the State Department; he then demanded a

prosecution of Jay and King for libel; and when this was refused, he published the whole correspondence and began a prosecution on his own account in November, but soon abandoned it. The "appeal to the people," which Genet had threatened and Hamilton had urged upon the President in July, had thus been finally made, to Genet's complete discomfiture and astonishment.

The whole episode is interesting as almost the only case in which a French revolutionary envoy, having a fair opportunity and freedom of speech in a neutral or friendly country, failed to overthrow or convert the constituted authorities to the "principles of the Revolution."

A request for Genet's recall had already been determined upon at three Cabinet meetings, August 1-3, and it was made in a long and able letter of August 16th, to Morris, the American Minister in Paris, written by Jefferson. It rehearsed Genet's persistent misconstructions of the treaties, his disregard of American neutrality, and his various insolences of language to the President in his state papers, declared the continued friendship of the United States for France, and asked the recall of Genet. A copy of the letter was sent to Genet. Hammond had previously been informed, August 5th, that the United States would make compensation for British vessels captured by French privateers equipped in American ports after June 5th, the date on which Genet had been informed that such equipments must cease; but that, after August 5th, the British Government must be satisfied with the active exertions of the Federal Government to maintain neutrality.

August 7th, Genet had been informed that his illegal captures must be restored; otherwise the Federal Government would make restitution for them and look to France for indemnity. The French Government, October 10th, disavowed all responsibility for the "punishable conduct" and "criminal manœuvres" of their agent in the United

States, and promised his prompt recall; but at the same time they requested, in return, the recall of the American Minister at Paris, Gouverneur Morris, whose active antipathy to the dominant party of France had operated to lessen his usefulness in that country. Genet's recall was not known until the following January. Before the middle of September, 1793, he had been compelled to perceive that he would only be recognized through his official intercourse with the Executive; that the Executive was determined to maintain neutrality, not active alliance with France; and that he had nothing to hope from an appeal to the people, further than barren editorials in a few newspapers. His mission, therefore, as far as its essential object was concerned, was already a failure; but he still had some power, personally or by his subordinates, to annoy the Administration, and this power he exercised throughout the remainder of the year.

Some of the French consuls persisted in attempting to exercise admiralty jurisdiction in prize cases; and the Administration, September 7th, threatened to revoke the *exequatur* of any consul who should so offend. The penalty was enforced in the case of the French vice-consul at Boston, A. C. Duplaine, who had rescued a libelled French prize from the United States marshal, August 21st, with the help of a body of marines from a French frigate in the harbor. Genet's agents had two expeditions under way, one from Georgia against Florida, and the other from Kentucky against New Orleans, France being now at war with Spain also. For the support of his soldiers and sailors, whose number he stated, November 14th, to be about two thousand, he again urged the United States to pay in advance a portion of the debt to France. This was refused, for the assigned reasons that payments had already been made in advance to cover the year 1794, and that there was no fund from which to legally draw the money for any more payments; a

still more cogent reason was the natural unwillingness of a neutral administration to furnish Genet with funds whose expenditure could only involve fresh breaches of neutrality.

Before the month of November the Administration felt strong enough to take a higher tone toward Genet; but a fair opportunity did not come until November 14th. In a letter of that date, in reply to one from Jefferson objecting to certain French consular commissions which had not been addressed directly to the President, Genet assumed to state the constitutional functions of the President, relative to the reception of foreign ministers, as "only those which are fulfilled in courts by the first ministers for their pretended sovereigns, to verify purely and simply the powers of foreign agents accredited to their masters and irrevocable by them when once they have been admitted." In his answer, November 22d, Jefferson emphatically stated that the President was the only channel of communication between this country and foreign nations; that foreign agents could only learn from him what was or had been the will of the nation; and that no foreign agent could be allowed to question what he communicated as the will of the nation, to interpose between him and any other branch of the Government, under pretext that either had transgressed its functions, or to make himself the arbiter between them.

"I am therefore, sir, not authorized to enter into any discussions with you on the meaning of our constitution, or to prove to you that it has ascribed to him alone the admission or interdiction of foreign agents. I inform you of the fact by authority from the President. In your letter you personally question the authority of the President, making a point of this formality on your part; it becomes necessary to make a point of it on ours also; and I am therefore charged to return you these commissions and to inform you that the President will

issue no *exequatur* to any consul or vice-consul whose commission is not directed to him in the usual form."

To restrict Genet to legitimate diplomatic functions was to deprive him of most of his capacity for mischief; accordingly his career in the United States may be considered finally ended. A message from the President, January 20, 1794, announced that the request for the recall of Genet had been agreed to by the French Government; but the utter destruction which had already overtaken his party, the Girondins, at the hands of the Jacobins, was a plain warning to Genet not to return to France. He therefore remained in New York, where he married a daughter of Governor Clinton. He attracted no further public attention until his death in 1835.

The most ambiguous position in regard to the whole affair of Genet and his mission is that of Jefferson. *Prima facie*, the whole case is strongly in his favor: his state papers are all exceedingly creditable, being frank, explicit, and yet very temperate, even including the last crushing letter of November 22d. His private correspondence, however, and, still more, two dispatches of Genet to the French Government, July 25th and October 7, 1793, have thrown some doubts on Jefferson's earnestness: Genet says, in terms, that Jefferson had at first fraternized with him, had cautioned him against the influence which Hamilton and Gouverneur Morris were exerting on the President's mind in favor of Great Britain, and had aided him in organizing his expedition against New Orleans. In an official letter of September 18th to Jefferson, Genet did not hesitate to charge him with having made himself the "generous instrument" of the request for Genet's recall, "after having made me believe that you were my friend, after having initiated me into mysteries which have inflamed my hatred against all those who aspire to an absolute power," and significantly remarked

that "it is not in my character to speak, as many people do, in one way and act in another, to have an official language and a language confidential." The last covert charge is utterly unwarranted: so far as all the evidence goes, Jefferson's language, both official and confidential, was at first cordially in Genet's favor, and as cordially against him when his plan of action had become evident. In the authorities cited at the end of the chapter, the reader will find the case fairly given in von Holst, unfavorably to Jefferson in Hildreth, and favorably to him in Randall.

The case of Genet got little notice from Congress, whose attention, in the winter of 1793-4, was entirely taken up by the first proposition to attack the commercial intercourse of Great Britain and the United States.<sup>1</sup> Both the Genet episode, and that of Jay's treaty which immediately followed it, are instructive instances of the almost invariable influence which successive Presidents have exerted in favor of peace abroad. Washington's example was closely followed by Adams in 1798, by Jefferson during his terms of office, and by Madison until he yielded to the force of the war feeling in 1812.<sup>2</sup>

American relations with Great Britain under Washington centre around (1) the violations of the Peace Treaty of 1783, (2) Britain's commercial aggressions and her disregard of neutral rights, (3) the efforts to settle the differences by Jay's Treaty of 1795.

1. The acknowledgment of the independence of the United States by the definitive treaty of peace of September 3, 1783, made the United States a member of the family of nations *de jure*, but not *de facto*. The Articles of Confederation had given Congress the power of "entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of

<sup>1</sup> See Embargo, Jay's Treaty.

<sup>2</sup> See Democratic-Republican Party, III.; Monroe Doctrine.

the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever." This restriction upon the powers of Congress practically prohibited the negotiation of any commercial treaty, since it was impossible that any other government would knowingly concede valuable commercial privileges to the citizens of the United States in return for a treaty which the Government of the United States had no power to enforce, and which the respective States had a vested right to nullify at pleasure. Under the Confederation, treaties, having more or less bearing upon commerce, were, it is true, negotiated with the Netherlands (October 8, 1782), with Sweden (April 3, 1783), with Prussia (September 10, 1785), and with the Barbary States<sup>1</sup>; but all these treaties contained stipulations really beyond the powers of Congress, and were only allowed to exist without objection because of the almost entire absence of present commercial intercourse between the United States and the other contracting parties.

The most important commerce of the United States was then with Great Britain, and that country not only refused to make any provisions for commercial relations in the definitive treaty of peace, but continued her refusal to make a commercial treaty with the United States throughout the period of the Confederation and until 1794. Powers to make such a treaty were given to the American commissioners in 1783, to John Adams in 1785, to Gouverneur Morris in 1789, and to Thomas Pinckney in 1792, but the British Government preferred to regulate trade with America by act of Parliament.

By the terms of the definitive treaty of peace special obligations were imposed upon both parties. Great

<sup>1</sup> See Algerine War.

Britain agreed to withdraw her fleets and armies from the United States without carrying away negroes; and the United States agreed that there should be no lawful impediment to the collection of debts due to British subjects, and that Congress should "recommend" to the States the restoration of the confiscated estates of Tories and a cessation of confiscations for the future. The use of the word "recommend," and the contemporary debates in Parliament, show that the British commissioners fully understood the limitations upon the powers of Congress at the time; nevertheless, though Congress punctually fulfilled its agreement by twice strongly recommending the State legislatures, in 1783 and 1787, to abstain from further confiscations, the British Government chose to consider the inattention of the State legislatures an infraction of the treaty, and refused to withdraw its troops from the Northwestern forts.

Until 1796, therefore, the posts of Michilimackinac, Detroit, Fort Erie, Niagara, Oswego, Oswegatchie (on the St. Lawrence), and Point au Fer and Dutchman's Point (on Lake Champlain), all lying within the territory of the United States, were garrisoned by British troops, whose officers exercised jurisdiction over the surrounding country. After Wayne's victory over the Indians in 1794, it was with great difficulty that the American General restrained his troops from assaulting and capturing a newly built British fort, just south of Detroit, which they met in the pursuit. As a matter of course, this refusal to withdraw the British troops was a very fair excuse for the State legislatures to continue their inattention to the recommendations of Congress.<sup>1</sup>

After the inauguration of the new form of government in 1789, under which entire constitutional power over treaties was intrusted to the Federal Government, two

<sup>1</sup> See Prof. A. C. McLaughlin's essay on "The Western Posts and the British Debts," in *American Hist. Assoc. Papers*, 1894.—ED.



efforts were made by President Washington, as above stated, in 1789 and 1792, to establish commercial relations with Great Britain on a treaty basis; but the British Government, apparently unconscious or unwilling to believe that a vigorous national government, capable of retaliation, had been developed in the United States, persisted in its course of unfriendliness, refusing to send a minister resident to the United States, to pay for about three thousand negroes carried away by retiring British fleets, to enter into a commercial treaty, or to order the evacuation of the Northwestern posts.

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2. Great Britain's unfriendly attitude toward the United States in refusing to assume diplomatic relations and to make a commercial treaty providing for reciprocal benefits, and, upon the outbreak of the French war in 1793, her aggressions upon neutral rights and interests, raised a number of other irritating differences between the two nations.

(a) *Impressment*.—This was a cause of considerable irritation. England asserted the right of impressing British subjects. This she claimed was a legal prerogative of the Crown which was founded on the English law of perpetual and indissoluble allegiance of the subject and his obligation under all circumstances to render service to the Crown whenever required. Under this law England claimed the right to make up deficiencies in her crews by pressing into her service British-born seamen found anywhere, no matter if out of her immediate jurisdiction. Many British seamen were employed in American merchant vessels, which were liable to be stopped at sea and deprived of their seamen. As it was hard to distinguish between American and British seamen, native-born Americans were often violently forced from their own vessels and condemned to a life of slavery as seamen on British

ships of war. These instances of impressment became so numerous as often to exceed one thousand a year. Morris in England sought to obtain protection for our seamen, but was only met with the apology that it was not the *intention* of England to impress American seamen, and that it was very difficult to distinguish between American and British seamen. Wheaton says:

“The impressment of seamen not of England was an interference with the rights of other nations, and was but an attempt to enforce a peculiar law of England beyond the prerogatives of her Crown and the jurisdiction of her power. English soil, territory, and jurisdiction were the appropriate sphere for the operation of English law; the ocean was the sphere of the law of all nations.”

(b) *The Rule of 1756*.—In 1756, when France and Britain were at war and France was being aided by the Dutch traders, Britain established a maritime ruling, afterwards called the Rule of 1756, which prohibited the trade of colonies in times of war which the mother country did not permit in times of peace. England did not propose to allow a peaceful Dutch trade under the name of neutrality that was calculated to accrue to French benefit. In 1793 England enforced this rule against the interests of the United States. France had opened her colonial and coasting trade to neutrals, which greatly benefited American commerce. England thereupon not only proposed to prohibit neutrals from carrying goods between France and her colonies, but to expose them to penalties for carrying neutral goods from their own ports to those of the belligerent, or from one port to another belonging to a belligerent. The defence for this was expressed by Lord Stowell:

“A belligerent would not relax a colonial or coasting trade unless he felt himself disabled from carrying on such a trade.

So by engaging in the trade the neutral must be aware that he is benefiting not only himself but one of the belligerents. When he knew that he was helping one of the contending parties he ceased to be neutral."

(c) *The Question of Blockade*.—In January, 1794, England ordered that vessels attempting to enter ports of France (declared to be in a state of blockade), if laden wholly or partly with naval or military supplies, should be liable to seizure anywhere on the high seas. Against this the United States protested, and insisted that unless there was a blockading force outside the port the notice of blockade had no force. The American position was that now recognized by modern nations, that a blockade to be binding must be effective. Britain's rule of blockade was a serious detriment to our neutral interests and rights.

(d) *The Question of Contraband, and the Provision Order*.—Great Britain wished to enlarge the list of contraband goods subject to capture by one of the belligerents. All provisions destined for the ports of France were declared to be contraband. This order (June 8, 1793) was very obnoxious to the United States. What America claimed, when two other nations went to war, was the right to remain in peace, retaining her agriculture, manufacture, and the right to go and come freely in exchange with all nations. The usage of nations had not included provisions among contraband goods, and the United States claimed that the state of war furnished no legitimate right to interrupt in such a way her agricultural interests.

France by treaty with America (1778) had excluded provisions from belligerent capture, and we wished Britain to come on the same footing. Her attempt to starve France by shutting neutrals off from carrying provisions to French ports excited popular opposition in America

and made Washington's neutral policy much more difficult.

(e) *Britain's Refusal of a Commercial Treaty.*—The differences on the subjects recited above arose, for the most part, out of the Franco-English war. Since 1783 America had sought access to the British West Indian trade and repeatedly endeavored to establish the commercial relations between the two countries by friendly treaty on principles of reciprocal benefits. Great Britain constantly refused a commercial treaty, and as early as July, 1783, by orders in council for regulating the trade between the United States and the British dominions, entirely excluded American vessels from the British West Indies, and much of our food stuffs were not allowed to be carried there even in British bottoms. This prohibition was continued by temporary acts until 1788, when it was permanently established by act of Parliament.—ED.

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In arranging the duties on imports the 1st Congress made no attempt at retaliation upon Great Britain, but was governed mainly by the pressing necessity for raising a revenue, though protection to American interests was also kept in view. Great Britain's continued refusal to enter into a commercial treaty gradually brought up the idea of retaliation, and a House resolution of February 23, 1791, called out an elaborate report from Jefferson, Secretary of State, dated December 16, 1793, upon "the nature and extent of the privileges and restrictions of the commercial intercourse of the United States with foreign nations."

The strongest points which this celebrated report made against Great Britain were that Parliament had only consented to modify the original prohibition of any American trade with Great Britain by allowing American productions to be carried thither in American ships; and that even this privilege was made dependent on the king's

permission, given annually by proclamation, in default of which American vessels would be again entirely interdicted from British ports. The report advised a resort to the power of Congress to "regulate commerce with foreign nations," (1) by favoring the commerce of any nation which should remove or modify its restrictions upon American commerce, and (2) by an exactly equivalent retaliation upon any nation which should impose high duties upon American productions, prohibit them altogether, or refuse to receive them except in American vessels.

Jefferson's report fired a train which very nearly resulted in a war with Great Britain. To the inflammable material previously accumulated in the grievances against that country, the interests attaching to the French Revolution had already been added, and the anti-neutral "orders in council" to the British navy raised popular excitement almost to the war point during the winter of 1793-4; so that the proposal of retaliation was not at any time discussed from an economic point of view, but was supported by the Republicans (or Democrats), and opposed by the Federalists, mainly because it was considered a means of throwing the moral weight of pronounced American sympathy into the anti-British scale, while avoiding open war in alliance with the French Republic.

The first step was the introduction of a series of resolutions in the House, January 3, 1794, by Madison, designed to carry Jefferson's second recommendation into effect. The first resolution, asserting the general principle of retaliation, passed the House, February 3d, by a vote of 51 to 46, and the other resolutions were postponed until March by their supporters to await the progress of events. But in the meantime the anti-British feeling in the House had been growing steadily stronger. Madison's resolutions were practically superseded, March 26th, by the passage of a joint resolution laying an embargo on ships in American ports; on the following day a

proposition was introduced by Jonathan Dayton, a New Jersey Federalist, to sequester all debts due by Americans to British subjects, and turn them into a fund for indemnifying American sufferers from British spoliations; and this, in its turn, was superseded by a proposition, April 7th, to prohibit commercial intercourse between the United States and Great Britain, after November 1st following, until the latter country should cease its anti-neutral naval policy and evacuate the Northwestern posts.

Before the non-intercourse resolution could be passed, President Washington again intervened, as he had done a year before, to check the torrent of anti-British feeling and action, and, April 16th, sent to the Senate the nomination of John Jay as Minister Extraordinary to Great Britain, for the purpose of securing peace and "a friendly adjustment of our complaints." The nomination was confirmed by the Senate, 18 to 8; nevertheless the House persisted in passing, by a vote of 58 to 38, April 21st, its non-intercourse resolution, which was only defeated in the Senate by the casting vote of the Vice-President.

The President had abandoned his first selection, Hamilton, for the mission, chiefly on consideration of the bitter opposition which would inevitably meet any treaty negotiated by him. His second choice, Jay, was a much more fitting one; his great ability, tact, diplomatic skill and experience, popularity, known moderation, and freedom from partiality either to France or to Great Britain, made him, to quote Hamilton's own words to the President, "the only man in whose qualifications for success there would be thorough confidence, and him whom alone it would be advisable to send." There were but two objections to his nomination, his position as Chief Justice, and the needlessness of any extraordinary nomination while there was already a Minister to Great Britain. It is difficult to answer the former objection; only imperative necessity and the lack of pressing occupation for the

court itself could excuse such an experiment upon the independence of the judiciary. In the second objection there was no force. In nominating Jay, the President had made an opportunity to declare that his confidence in Mr. Pinckney, the resident Minister in London, was undiminished.

The *extraordinary* nomination had a different reason; it was intended and seems to have been taken as an assurance to Great Britain that the *executive* of the United States intended, if possible, to maintain neutrality. No such assurance was necessary to France, for that country was already assured of the mass of popular sympathy in the United States. In this case, therefore, Washington deliberately cast the weight of his personal and official influence into the lighter scale, as Adams, his successor, in the exactly parallel case of 1798-9, threw his into the opposite scale when it became the lighter.

Jay reached London June 15th, and entered without difficulty or delay upon the work of his mission with Lord Grenville, the English negotiator; and the two arranged the terms of a treaty, November 19th, in twenty-eight articles. Of the three American claims, the treaty settled but one outright: the Northwestern posts were to be surrendered on or before June 1, 1796, but no compensation was to be paid for their previous wrongful detention; the American claims for compensation for illegal seizures were to be referred to commissioners for settlement; and the claims for compensation for negroes carried away were waived by Jay because of the flat refusal of the English negotiator to consider them.<sup>1</sup> Joint commissioners were to settle the northeastern and the (then) northwestern boundary of the United States, and the British debts whose collection had been prevented during the Confederation; and no debts were in future to be confiscated by either party in the event of war. These

<sup>1</sup> See Slavery.

points having been settled in the first ten articles, which were to be permanent, the other articles made up a treaty of commerce and navigation, limited to twelve years. Trade between the United States and the British dominions in Europe was to be reciprocally free; direct American trade to the British East Indies, but not the coasting trade there, was permitted; trade to the British West Indies, in vessels of not more than seventy tons, was permitted; and neither country was to allow its citizens to accept commissions of war against the other, or to permit privateers of a third (enemy) power to arm, enlist men, or take prizes within cannon-shot of its coast. Neutral persons unlawfully commissioned or enlisted were to be considered pirates. Contraband goods were specified in general terms, and it was agreed that such articles as provisions, when made contraband by particular circumstances, should be paid for, and that the forfeiture of contraband goods should not forfeit the whole cargo. The article relating to West Indian trade was specially limited to two years after the conclusion of peace between Great Britain and powers at war with her in 1794, and the Americans were to renounce, in return for it, the exportation of sugar, molasses, cocoa, coffee, and cotton to Europe.

June 8, 1795, the treaty was laid before the Senate in special session, and after a secret debate of over two weeks it was ratified, June 24th, by a vote of 20 to 10, the exact two-thirds majority necessary for the ratification of a treaty; but the ratification was made conditional on the addition of an article to suspend that part of the 12th article relating to the West Indian trade. The principal objection to this article arose from its prohibition of the exportation of certain articles, above named, from the United States. The colonial system of European nations then included a general prohibition of trade to their colonies; and when Great Britain permitted a



modified trade to her West Indian colonies, she demanded in return a renunciation of American trade in sugar, etc., in order that these colonial productions should not thus be indirectly transmitted through the United States to foreign nations. Jay seems not to have known that the culture of cotton had already been introduced into the United States. The additional article was finally added to the treaty, October 28, 1795, but full navigation with the British West Indies was not obtained until October, 1830.

Jay had reached New York May 28th, and from that time the whole country had been intensely anxious to know the nature of the treaty. After its ratification by the Senate that body had still prohibited its publication; but, while the President was still in doubt whether or not to complete the conditional ratification by his signature, Senator Mason, of Virginia, sent a copy of the treaty, June 29th, to the Philadelphia *Aurora*, a Democratic newspaper, for publication. Its appearance in print, July 2d, was the signal for an outbreak of political excitement which was probably never paralleled until slavery took a place in politics. The newspapers were filled with articles, signed with Latin names, Cato, Camillus, Caius, Atticus, Decius, and Cinna, in the fashion of the time, mainly against the treaty; and town meetings and mass meetings, from Boston to Savannah, passed resolutions calling upon the President to withhold his signature. The ablest series of letters was that of Hamilton, in defence of the treaty, over the signature of Camillus; the most venomous was that of "A Calm Observer," in the *Aurora*, commonly attributed to John Beckley, clerk of the House.

At first the attacks were directed against Jay; and the treaty, in its implied recognition of the British right of search, impressment, and power to make any class of goods contraband, in its regulation of the West Indian

trade, and in its failure to obtain compensation for the retention of the Northwestern posts or for the negroes carried away from New York City, offered so many vulnerable points that attack was easy. The opponents of the treaty, however, went further than mere resolutions. Jay was repeatedly burned in effigy and one society "lamented the want of a guillotine" for him; in New York Hamilton was stoned while defending the treaty at a public meeting; in Philadelphia the mob burned a copy of the treaty before the British Minister's house; and in Charleston, after a meeting led by John Rutledge, who had just been appointed Chief Justice in Jay's place, the British flag was dragged through the streets and burned before the house of the British consul.

Notwithstanding the defects of the treaty, Washington believed it to be the best that could be obtained, and signed it, sending to the British Government, at the same time, an urgent remonstrance against a recent order in council which made provisions contraband. The remonstrance secured the repeal of the order.

The Democratic leaders<sup>1</sup> of the Republican party at once attacked the President personally, with the object of destroying his influence in Congress and of inducing the House to deny the appropriation (about \$90,000) necessary for carrying the treaty into effect. From August until the following spring the attacks upon the President became progressively more open and bitter. From the beginning he was accused of usurpation, in collusion apparently with the Senate majority, in having negotiated a treaty which endeavored to shut out the House of Representatives from a share in the constitutional powers of regulating commerce, of establishing rules of naturalization, of defining piracy, of making rules concerning captures, and of laying taxes. Side issues were then brought in: he was accused of having neglected

<sup>1</sup> See Democratic-Republican Party.

to ransom American captives in the Barbary States, of having written letters designed to procure submission to Great Britain during the Revolution, and of having drawn more than his salary from the treasury.

Only the last-named charges seem to have moved the President, though he complained that they were all couched "in terms so exaggerated and indecent as could scarcely be applied to a Nero, a notorious defaulter, or even to a common pickpocket." The alleged letters he demonstrated to be forgeries, and the Secretary of the Treasury disproved the other charge. But toward the time when Congress was to meet, the attacks on the main issue grew warmer; an impeachment of the President was suggested; hints were given of the necessity of a Brutus for this "step-father of his country"; and some effect was produced not only on Congress but on State legislatures. The House of Delegates of Virginia, November 20th, voted down a resolution expressing their undiminished confidence in the President; and the Federal House of Representatives, December 16th, struck out a paragraph declaring their confidence in the President, which their committee had inserted in their draft of a reply to the message.

On the other hand, the tide had really been turning, throughout the country, not so much in favor of the treaty as in support of Washington. The other State legislatures, with the exception of South Carolina, refused to follow Virginia's lead, and either voted strong declarations of their confidence in the President, or refused to consider the matter; commercial bodies of all the States approved the treaty; and the current of public meetings, at first entirely against the treaty, had turned before February, 1796.

Nevertheless, a struggle in Congress was inevitable, and it began with a resolution offered in the House, March 2, 1796, by Edward Livingston, of New York,

calling on the President for Jay's instructions. Upon this resolution the debate lasted from March 7th until March 24th, when it was passed by a vote of 62 to 37. March 30th, the President, although he had already published the instructions by sending them to the Senate, refused, as a matter of precedent, by yielding to the demand for the envoy's instructions, to countenance the idea that the assent of the House was necessary to the validity or execution of a treaty. April 7th, the House, by resolution, which was passed by a vote of 57 to 35, declared that it claimed no agency in the making of treaties, but that it claimed, as part of Congress, a right to deliberate upon the expediency of carrying into effect a treaty containing regulations on the subjects given by the Constitution to the control of Congress. April 15th, debate began upon a Federalist resolution that the treaty ought to be carried into effect. The first vote was taken in committee of the whole, April 29th, and stood 49 to 49; but the Speaker, though opposed to the treaty, voted for the resolution in order to give further opportunity to consider it. The report of the committee of the whole was considered in the House, on the following day, and a proposition was made to amend the resolution so as to read "That, although, in the opinion of this House, the treaty was highly objectionable," it was nevertheless expedient, considering all the circumstances, to carry it into effect. By the casting vote of the Speaker, the vote standing 48 to 48, the word "highly" was stricken out; the entire amendment was then lost by a vote of 49 to 50; and the original report was adopted by a vote of 51 to 48. This ended the first and greatest struggle in Congress against the application of the treaty power.

The conflict had the good result of laying open to view a difficulty in the practical workings of the Constitution, which could not well have been guarded against, and which has only been avoided by the steadily forbearing

and pacific policy of successive executives. The treaty power is certainly limited, but it is impossible to locate the limiting line exactly. Treaties are not, as it is sometimes loosely said, "the supreme law of the land"; "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States," together make up the supreme law of the land, and treaties, therefore, can at best hold but a co-ordinate rank. It is easy to see that a treaty involving the establishment of a foreign prince upon the throne of the United States, though made under every constitutional form, would be invalid, and that Jay's treaty, though clashing slightly with the powers of Congress, was not invalid; but between these two extreme cases there are countless supposable cases open to question.

It is impossible, for instance, to believe that in 1798 a Federalist House of Representatives would have voted money for the execution of a treaty of offensive and defensive alliance with France, passed by a Democratic President and Senate. It is equally impossible to conceive a Republican House of Representatives in 1882 submitting to the abolition of the protective system and the establishment of free trade by treaties made by a Democratic President and Senate. And yet the reasoning of Washington's message of March 30, 1796, makes it the duty of the House in *all* these cases to remain entirely passive. Perhaps the easiest solution of the difficulty is that offered by Story, as cited below: "Whether there are any other restrictions [than that treaties shall not abrogate the organic law] necessarily growing out of the structure of the government, will remain to be considered whenever the exigency shall arise."

Curiously enough, when the difficulty next appeared for consideration, upon the annexation of Louisiana by treaty in 1803, the Federalists opposed, and the Repub-

licans supported, the supremacy of the treaty power and the obligation upon the House to execute its arrangements. In 1819-20 the difficulty did not appear naturally, but was forced in, for it is not easy to see, in a treaty stipulation for all "the privileges of citizens" to the people of Louisiana, an obligation upon Congress to admit any State government which they might form. The question was again unsuccessfully raised when the bills appropriating money for the Gadsden purchase in 1854 and for the Alaska purchase in 1867 came before the House. In future discussions of the question, however, it must be remembered that the final decision of the House to vote the money necessary for the execution of a treaty has never yet been made on the distinct ground of obligation to do so; expediency has so far been the only test.

In examining the question the reader will find most useful an opinion of Caleb Cushing and an article by Dr. Spear, both cited among the authorities; the former inclines toward, and the latter against, the supremacy of treaties over laws.

On American relations with France, see 4 Hildreth's *United States*, 413; 1 von Holst's *United States*, 113; 2 Pitkin's *United States*, 357; 1 Schouler's *United States*, 246; 1 Tucker's *United States*, 504; 2 Spencer's *United States*, 318; 2 Marshall's *Washington* (ed. 1831), 260, and note ix.; 31 *Atlantic Monthly*, 385; Sparks's *Life of Washington*, 452, and 10 *Washington's Writings*, 534; Trescott's *Diplomatic History*, 91; 2 Sparks's *Life of Gouverneur Morris*, 288; 1 Jay's *Life of Jay*, 298; J. Q. Adams's *Life of Madison*, 53; 2 Rives's *Life of Madison*, 322; 1 Wait's *American State Papers* (2d edit.), 157, 198; 4 Hamilton's *Works*, 360; 4 Jefferson's *Works* (ed. 1829), 490; De Witt's *Jefferson*, 221; 2 Randall's *Jefferson*, 157; 1 Tucker's *Jefferson*, 432. The proclamation of April 22, 1793, is in 1 *Statesman's Manual*, 46.

See also Jefferson's letter to Morris requesting the recall of Genet, August 16, 1793; and "Origin of Genet's Projected Attack on Louisiana and the Floridas," by F. J. Turner, in the *American Historical Review*, vol. iii., July, 1898.

On American relations with Great Britain, see authorities under Confederation, Articles of; 1 Lyman's *Diplomacy of the United States*, 190; Trescott's *Diplomacy of the Administrations of Washington and Adams*, 119; 4 Hildreth's *United States*, 522, 544; 1 Schouler's *United States*, 289; 2 Sparks's *Life of Gouverneur Morris*, 4; 1 Benton's *Debates of Congress*, 22, 458, 639; 1 Wait's *State Papers* (2d edit.), 422 (Jefferson's report); 2 J. Adams's *Letters*, 156; 1 Flanders's *Lives of the Chief Justices*, 401; 4 Hamilton's *Works*, 519, 531; Jay's *Life of John Jay*, 310; 7 Hamilton's *Works*, 172 (the Camillus letters); 1 von Holst's *United States*, 121; 6 Hamilton's *United States*, 272; 2 Adams's *Life of John Adams*, 195; 11 Washington's *Writings*, 36, 513; 1 Gibbs's *Administrations of Washington and Adams*, 218; 3 Rives's *Life of Madison*, 511; 2 Randall's *Life of Jefferson*, 267; 2 Benton's *Debates of Congress*, 23; 2 Marshall's *Life of Washington* (edit. 1838), 370; Hunt's *Life of Edward Livingston*, 67; Monroe's *Conduct of the Executive*, 147; 4 Jefferson's *Works* (edit. 1829), 317, 464, 498; 2 Elliot's *Debates*, 367; *Federalist*, 64, 75; Rawle's *Commentaries*, 171; Story's *Commentaries*, § 1499; Carey's *American Remembrancer* is a useful collection of essays, etc., on both sides; for the treaty of peace of September 3, 1783, and Jay's treaty, see 8 *Stat. at Large*, 80, 116; 6 *Opinions of the Attorneys General*, 291 (Cushing's opinion); 17 *Albany Law Register*, 460 (Dr. Spear's article on Extradition); 1 Gordy's *Political Parties in the United States*; Speech of Gallatin and of Ames in Johnston's *American Orations*; Woodburn's *American Republic and Its Government*.

## CHAPTER IX

### JOHN ADAMS AND THE BREACH WITH FRANCE

THE relations between the French Republic and the United States had been steadily becoming more tightly strained for years before the inauguration of President John Adams in 1797, more especially by reason of the manner in which France had seized American provision ships,<sup>1</sup> and permitted illegal captures of American vessels by her privateers. The position of France was more advantageous from the fact that she respected, and pretended to respect, no international law whatever. Her assumed place was not that of a coequal unit in the family of nations, but that of an apostle of liberty, limited in her action only by her own conceptions of expediency. Appeals to treaties violated by France met an easy answer in declamatory references to liberty; and any nation refusing to strengthen the hands of France was a self-confessed enemy to liberty and to France.

In dealing with both France and Great Britain, Washington's policy was an armed neutrality, but no party supported him cordially in all its features. The Republicans (Democrats) tended from the beginning to an unarmed dependence upon France; and the Federalists, as they grew to be more openly a commercial party, tended to an armed dependence upon Great Britain. Washington's policy was successful in checkmating Genet, and in

<sup>1</sup> See Embargo, I.



keeping succeeding French envoys within limits for some years. But even Washington had to yield to the growing change in the Federal party which dates from Jay's treaty with Great Britain; and Adams, at his inauguration, found his party as much disposed to pick a quarrel with France as France was certain to furnish the opportunity, and far less disposed to submit to a counterbalancing influence from him than from his predecessor.

In return for the recall of Genet, the French Republic had asked and obtained the recall of Gouverneur Morris, the American Minister, who had not even affected any sympathy with the course of the French Revolution. In his place was sent James Monroe, who proved much more acceptable to France.

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In sending Monroe to France, Washington ran the risk involved in commissioning an ambassador not in harmony with the foreign policy of his Administration. Monroe was a pronounced Republican, an ardent friend of the French Revolution, an opponent of Morris's nomination as Minister to France, and of Jay's mission to England. Monroe believed that France was fighting the battle of liberty for the world, and his desire was to do what he could to cement more closely the alliance between the two Republics. He was willing to link the interests of America with the interests of France, and to trust to the generosity of our ally for the redress of grievances and future fair play.

Monroe's instructions contained friendly expressions toward the French Revolution, authorized Monroe to disarm all prejudice of Jay's mission by giving assurance that Jay is positively forbidden to weaken our engagements with France, and that the motives of Jay's mission are "to obtain immediate compensation for our plundered property and restitution for the posts." In the light of

these instructions Monroe cannot be greatly blamed for assuring the French Government that Jay's mission was "strictly limited to demanding reparation for injuries." He was too much distrusted and kept in the dark as to the purpose of Jay's mission. Either he should not have been appointed, or, having been appointed, he should have been trusted with all information necessary to enable him to carry out the policy of the Administration. Washington's motive was to disregard parties in such appointments and to secure a Minister acceptable to France, which would especially stand America in good stead if a breach with England became inevitable. Monroe secured a friendly attitude toward America on the part of France so long as he misled the French Government on the scope and outcome of Jay's mission and on the purpose of Washington's Administration to maintain a strict neutrality. On May 9, 1793, a French decree authorized ships of war and privateers to seize merchant vessels laden with provisions, being neutral property bound to an enemy's port, or carrying enemy's goods. This made provisions contraband and denied "free ships, free goods," and thus it violated the Treaty of 1778 at two points. The claims of Americans intrusted to Monroe's care were (1) Indemnity for these violations of the Treaty of 1778 and of neutral rights; (2) damages for the detention of more than one hundred American vessels by the embargo at Bordeaux; (3) claims for supplies sold to San Domingo.—ED.

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These were French interferences with American commerce which provoked English retaliatory interferences; and these consequences, in their turn, made the French aggressions increasingly annoying. Most of the English annoyances were removed by Jay's treaty; as to France the United States still depended upon the old treaty of

alliance of 1778. But France, in addition to her long-standing grievance arising from Washington's policy of neutrality, of which she could hardly complain openly, had now a plausible ground of complaint in what she chose to consider the American alliance with Great Britain. In February, 1796, one of the Directory informed Monroe that the Treaty of 1778 was at an end from the moment of the ratification of Jay's treaty; to which Monroe very properly replied that the treaty had already been brought to nothing by the constant French captures of American vessels.

In other points of his diplomatic intercourse Monroe had not so well satisfied either Washington or the Cabinet. He had been given in advance a complete vindication of Jay's treaty for the information of the French Government, but had not presented it, believing that it was intended to be held in readiness to answer formal complaints. And in general his diplomatic language was altogether ill-advised and unfitting an ambassador. As a single instance, his letter of September 3, 1794, to the Committee of Public Safety, declared that, if they should be of opinion that the French infractions of the treaty were productive of "any solid benefit to the republic, the American Government and my countrymen in general will not only bear the departure with patience, but with pleasure." Their tone of pitiful subservience makes it difficult to read Monroe's official communications, as collected and published by himself, with either pleasure or patience; and, after a sharp rebuke from Pickering, in June, 1796, he was recalled, and Charles Cotesworth Pinckney was sent in his place.

By this time the control of the French Revolution had passed from the madness of the many to the selfishness of the few. The executive Directory now enjoyed a power of which the military ability of Napoleon had been the first foundation and was still the principal buttress;

and under its leadership the French Republic was employing for pure self-aggrandizement the exemption from international law which it had at first asserted in the name of liberty. And Napoleon, from the beginning, saw the limit which the British channel would put to the conquest of Europe, and the manner in which alone he could pass it, by giving the English fleets employment elsewhere. In 1797, after the peace of Campo Formio, he wrote: "We must set all our strength upon the sea; we must destroy England; and the Continent is at our feet." But the same year had already seen the destruction of the Spanish fleet off St. Vincent, and of the Dutch fleet at Camperdown; and from this time until 1812 Napoleon never ceased the effort, by bluster, by kindness, or by fraud, to make the long and stormy coast of North America his most efficient ally against Great Britain.

A few days before Pinckney's arrival the French Minister of Foreign Relations informed Monroe what formalities were to be observed in taking leave. December 9, 1796, Monroe presented his letter of recall, and Pinckney his letter of credence. Two days after, Monroe received written notice that no American Minister would be received until the French grievances should be redressed, and that the French Minister to the United States would be recalled; and yet, at the end of the month, he accepted a public reception from the Directory, at which the President, Barras, without remonstrance from him, publicly announced that France, "would not stoop to calculate the consequences of the condescension of the American Government to the wishes of its ancient tyrants."

Pinckney was left in Paris, refused recognition by the Directory, and even threatened with police surveillance until the latter part of January, 1797, when he received written notice to quit France, and retired to Holland to await instructions from home.

Adams was intent upon following up the policy of neutrality, but this news left him little option. He called a special session of Congress for May 16, 1797, and stated his intention of sending a new mission to France, to conciliate that country, if possible, but at the same time recommended the prompt formation of a navy and a general permission to private vessels to arm in self-defence. For the mission he named Pinckney, John Marshall, and Francis Dana, Chief Justice of Massachusetts, and these were confirmed by the Senate. Dana declining, Elbridge Gerry was substituted, being specially acceptable to his close personal friend, the President, and, as a Democrat, to France also. In October, 1797, the three met at Paris, and undertook to open negotiations with the Directory. One leading complaint on the part of France evidently awaited them.

The Treaty of 1778 had established the principle (between France and the United States) that "free ships made free goods," that enemy's property, excepting contraband of war, was not to be captured in a friendly ship. Jay's treaty, on the contrary, allowed the capture of enemy's property in friendly ships; so that France complained that her ships could not lawfully take English property from American vessels, while British ships were not so restrained as to French property. On this head, the commissioners were empowered to grant to France the same privilege which Jay's treaty granted to Great Britain. They were also directed to demand, but not as a *sine qua non*, compensation for past injuries to American commerce; and they were forbidden to consent to any loan, under any guise.

While the commissioners were engaged in Paris during the winter, and while little was known of their proceedings, owing to difficulty of winter communication, politics in the United States came to a complete standstill. The Federalists were thoroughly alarmed by the state of affairs

in Europe, and the dubious prospects of a single-handed war with France. The French armies had the Continent at their feet, and even Great Britain had become anxious for peace. A conflict with France, that is, with Continental Europe, was certainly not at any time to be sought wantonly by a backwoods nation of 3,000,000 souls, inhabiting an enormous territory and politically divided among themselves; but the case was infinitely worse if the British navy was to leave the ocean open to the unopposed transport of French troops.

Both political parties were afraid to take a step forward, and their uneasiness was increased by the fact, that, though the Federalists controlled the Senate, there was no party majority in the House of Representatives. That body was controlled by a number of members of doubtful political sympathies, without whose support neither party could do anything. Thus, in spite of the President's recommendations to equip a navy, arm private vessels, and fortify the coast, nothing was done throughout the winter.

March 5, 1798, the President notified Congress that cipher dispatches, dated from November until January, had arrived from the commissioners; and March 19th, having deciphered them, he sent another message, in which, without detailing the contents of the dispatches, he summed them up in the information that the commissioners could gain no terms that were "compatible with the safety, the honor, or the essential interests of the nation." This first thunder-clap was so effective that the House promptly passed bills to equip three frigates, and to prohibit the exportation of arms; and the Senate passed bills to authorize the lease of cannon foundries and the purchase of sixteen additional vessels of war.

In spite of the long series of aggressions upon American commerce by both Great Britain and France, these were the first belligerent preparations made by the United

States under the Constitution. To check them, it was at first hoped by the Democrats that an adjournment of Congress might be secured; but this was impossible without the consent of the Senate. As a second choice, resolutions were offered, March 27th, that it was not expedient, under existing circumstances, "to resort to war" against France, or to arm merchant vessels.

One of the leaders, Giles, during the debate, attacked the President for not communicating the dispatches; whereupon the Federalists offered a resolution calling on the President for copies of such dispatches as were proper to be communicated. To prevent an invidious selection from the dispatches, the Democrats insisted on making the call for *all* the dispatches; and in this form the resolution was passed, April 2d. The copies were sent the next day, the President being willing to gratify Democratic curiosity to the fullest extent. One may imagine the absolute stupefaction of the Democratic leaders as the *coup de théâtre*, which they themselves had assisted in preparing, fell upon them as the dispatches were read.

In brief, the commissioners had been kept waiting in Paris for six months without official recognition, had been approached by unofficial go-betweens with proposals for bribes to the Directory and the French treasury as indispensable prerequisites to peace, and, on their refusal, had been ordered out of France. On reaching Paris, they had found that Talleyrand, lately a royalist exile, was now the Minister of Foreign Affairs. They had applied to him at once for an interview, but had been informed that he could not grant it until he had finished a report to the Directory on American affairs. This answer had hardly been given when Talleyrand's unofficial agents appeared on the scene, and opened communications with the commissioners. In the dispatches, as sent to Congress, the names of the agents were honorably kept secret, letters of the alphabet being substituted for them.

The principal agents were M. Hottinguer (designated as X), M. Bellamy, a Hamburg merchant (Y), and M. Hauteval, formerly resident in Boston (Z); and from these the whole transaction took its popular name of the "X Y Z Mission." Their appearance had been heralded by information, through Talleyrand's secretary, that the Directory were greatly exasperated by some passages in the President's message, that persons would be appointed to conduct the negotiations, and that they would report to him (the secretary).

October 18th X called on Pinckney with a message from Talleyrand: it would be necessary, in order to calm the exasperation of the Directory, that a bribe of 1,200,000 livres (£50,000) should first be given them. Pinckney refused to discuss the matter without his colleagues, and X the next day laid written propositions before the envoys. The bribe to the Directory was now supplemented by the demand of a "loan" to the French Republic: if both were agreed to, the Directory would restore the Treaty of 1778, and submit American claims for damages to arbitration, provided also that the American Government would "advance" money to pay any damages awarded against France.

Within the next few days, Y and Z appeared, and the proposed form of the loan was explained. France had extorted from her "sister republic" of Holland, and still held, shares of stock amounting to 32,000,000 florins (£2,560,000), worth about half their par value. The United States envoys were to offer to buy these at par; and, as Holland was certain to pay them at par after the war, the whole transaction would really be only a loan. But Y put the whole negotiation into a nutshell thus: "I will not disguise from you that, this satisfaction being made, the essential part of the treaty remains to be adjusted: *il faut de l'argent, il faut beaucoup d'argent*—'you must pay money, you must pay a great deal of



money.' ” They informed the envoys that nothing could be done in Paris without money; that one of the Directory was in the pay of the privateersmen who had been plundering American commerce; that Hamburg and other European states had been compelled to buy a peace; and that the United States must do the same.

The envoys nursed the negotiation very skilfully, proposing to send one of their number home for instructions, to suspend French captures in the meantime, and to do various inadmissible things, until they had accumulated a most unsavory mass of “diplomatic” matter. October 27th, X became impatient. “Said he: Gentlemen, you do not speak to the point; it is money; it is expected that you will offer money. We said that we had spoken to that point very explicitly: we had given an answer. No, said he: you have not; what is your answer? We replied. It is no; no; no; not a sixpence.” This plain, manly, and simple answer is probably the one which was distorted into the more bombastic form, much more popular in America: “Millions for defence, but not a cent for tribute.”

The next day Talleyrand himself had an interview with Gerry, Z acting as interpreter. He informed Gerry that unless the envoys “assumed powers, and made a loan” within a week, the Directory would issue a decree demanding an explanation of objectionable passages in Adams’s message. On Gerry’s report, the envoys unitedly sent word to Talleyrand that they would assume no such powers, and that he need not delay the decree on their account. On the following day X became still more urgent. He offered to allow the envoys to remain in Paris and communicate with their government as to the “loan,” provided the bribe to the Directory was paid; but, in default of this condition, threatened the expulsion of the envoys from France, and a declaration of war against the United States. This the envoys

answered by flatly declining any further negotiations with unofficial agents, and here their mission really ended. The remainder of their six months in Paris was spent in preparing memorials to Talleyrand, writing dispatches to their own government, and repulsing the continued efforts of X, Y, and Z to renew their negotiations.

It was not until April 3, 1798, that Talleyrand dismissed Pinckney and Marshall, and then only by a letter to Gerry stating that he supposed they had "thought it useful and proper," by this time, to quit the Territories of the Republic. Marshall sailed for home April 16th, but Pinckney was detained for several months by the illness of a daughter.

The powers given to the envoys had been joint and several, and Talleyrand, ever since the preceding December, had tried to persuade Gerry to use his own power and make a treaty. Now, on dismissing Pinckney and Marshall, he expressed his desire that Gerry should remain so emphatically that Gerry obeyed, fearing a declaration of war if he should depart unauthorized. At the same time he informed Talleyrand that he would only confer informally and unaccredited. He remained in Paris until early in August, when he at last received a passport, and obeyed the imperative directions of his Government to return at once. Before his departure news arrived of the explosion which the dispatches of the envoys had caused in America, whereupon Talleyrand indignantly denied all knowledge of the X Y Z negotiations, and called upon Gerry to give him the names of the "wretched intriguers" who had taken advantage of the envoys. This indignation blinded no one; and Y, who had taken refuge in Hamburg, made a counter-declaration that he had never taken a step in the negotiations without Talleyrand's knowledge and direction.

The effect of the dispatches upon the Democrats in Congress was increased by the persistence with which both

Talleyrand and his agents had returned to the assertion that their friends in America would believe and trust them rather than the Federalist commissioners. They had so far mistaken the party, said Jefferson, "as to suppose their first passion to be attachment to France and hatred of the Federal party, and not love of their country." At any rate the allegation made the Democrats (or Republicans) for the time a highly unpopular party. A flame of warlike feeling burst out from the country at large, and war meetings, processions, and addresses to the President, volunteering, and private subscriptions of money and war vessels for government use, became the order of the day. The black cockade, the revolutionary badge, was generally worn; two new patriotic songs, *Hail Columbia* and *Adams and Liberty*, became highly popular; and the President, careering at the head of the storm, felt for once that he liked the people and that the people liked him. In the only doubtful portion of Congress, the House of Representatives, all the doubtful members, and many of the Democrats, fell instantly into line with the Federalists. The Senate bills for increasing the navy and purchasing foundries were passed at once, and the necessary appropriations were made. The navy, hitherto under control of the Secretary of War, was made a separate department (April 30th). The President was authorized to enlist 10,000 regular troops, and 10,000 volunteers, if any foreign Power should invade or declare war against the United States within three years (May 28th). American vessels of war were authorized to capture any "armed vessels, sailing under authority or pretence of authority from the Republic of France," which should commit depredations on American commerce (May 28th). American merchant vessels were authorized to resist capture by French vessels (June 25th); and American war vessels and privateers were finally authorized (July 9th) to capture armed French vessels of every

description. Commercial intercourse between the United States and France and her dependencies was suspended (June 13th); and a brief act of July 9th declared the treaties with France no longer binding upon the United States, since France had repeatedly violated them, refused reparation, and "repelled with indignity" all attempts to negotiate. Acts were also passed for the imposition of a direct tax, for a loan upon the credit of the direct tax, and for a general loan of \$5,000,000.

In strong contrast to the vulgar notion of the beligerency of democracies, the American Republic has always aimed at peace. Nevertheless, its people have always been proud of its potential weight in war, and have been fond of looking forward to the day when its irresistible growth in power should reduce to an evident littleness the high-sounding international wars of the continent of their forefathers. In any such point of view the little history of the nation's first defiance to an equal member of the family of nations, of the *quasi* war of 1798 against France, and of the scattered sea battles in which the little navy acquitted itself so brilliantly, must always be an interesting point of departure.

Had the dominant party stopped with the preparations above detailed, even its opponents must have acknowledged the vigor and success of its administration. But the time was one of political passion more intense than can well be conceived now. Each party had inherited many of the practices, and still more of the apprehensions, arising from previous party conflict in the mother country, where parties had not hesitated to assail one another, if not by force, at least by a forcible wrenching of the laws from their proper purposes. To the Democrats, the provisional army, officered almost exclusively by Federalists, seemed to be not only a means to provide salaries for their opponents, but a possible weapon of offence in party warfare. The step was defended by the

Federalists on the ground of the danger of an invasion of the Southern States by a force of negro soldiers from the French West India Islands, who would excite a slave insurrection.

For the more flagrant measures, the Alien and Sedition Laws,<sup>1</sup> little defence could be offered. They were distinctly partisan. Under the operation of the Sedition Law, Hamilton published with impunity a pamphlet attack on the President, holding up to view his "disgusting egotism, distempered jealousy, and ungovernable indiscretion," and styling him an "arrogant pretender to superior and exclusive merit"; while Democratic politicians were arrested and tried for even circulating petitions against the Sedition Law, or for expressing a wish that the wadding of a cannon might strike the President in the broadest part of his person. Supposing the next Congress should prevent the embarrassing feature of a Democratic majority in the House of Representatives, was the majority to be removed by a series of arrests under the Sedition Law, supported by the provisional army? The counter-movement of the Democratic leaders is elsewhere given.<sup>2</sup> Whatever its objects may have been, it need only be said here that the apprehensions which led to it were unfounded, and that the Federalists attempted no such use of the Sedition Law.

Even before Gerry's departure, Talleyrand had received news of the stir which the dispatches of the envoys had excited in the United States, and the effect was instant. The Directory protested their desire for peace, and in August issued several decrees, releasing American prisoners, raising the embargo on American ships, and cautioning French vessels to do no injury to legitimate American vessels. They even drew a veil over the language of President Adams's messages, for which they had formerly demanded satisfaction, but which had now grown into an

<sup>1</sup> See that title.

<sup>2</sup> See Kentucky Resolutions, Nullification.

indictment of the Directory's principles, practices, and manners, of a warmth unheard of elsewhere at the time; and they semi-officially offered to receive a new American Minister. But Adams, in his message of June 21, 1798, announcing Marshall's arrival, had declared that he "would never send another Minister to France without assurances that he would be received, respected, and honored as the representative of a great, free, powerful, and independent nation."

And in his annual message of December 8, 1798, his language rose to concert pitch: he declined to send another Minister to France without more determinate assurances, left it to France to take the requisite steps to accommodation, and gave that country "deliberate and solemn" warning that, "whether we negotiate with her or not, vigorous preparations for war will be alike indispensable."

Meanwhile Talleyrand had been casting about for a channel through which to convey the assurances necessary; and had found it in William Vans Murray, the American Minister to Holland. Nor was Adams unwilling to receive the assurances, for he had already found that war with France involved the elevation of Hamilton, whom he cordially detested. Washington had accepted the position of Lieutenant-General, conferred upon him at the previous session, on condition that he should be allowed to name his subordinates. As the three next in rank to himself he had named Hamilton, C. C. Pinckney, and Knox, who were confirmed; but the President insisted on making Knox the senior, on the ground of his superior revolutionary rank, and only yielded before Washington's threat of a resignation of his own commission.

Hamilton was thus to be practically commander-in-chief of the provisional army. He had already become commander-in-chief of the President's Cabinet, which

had been inherited from Washington; its members maintained a close and confidential intercourse with him, in striking contrast to the increasing contempt which their correspondence expressed for their nominal chief. To refuse Talleyrand's overtures in order to put Hamilton at the head of an army for the invasion of Florida and Louisiana, perhaps to make him a conquering hero and a popular candidate for the Presidency, was more than could be expected from Adams. He could not trust his Cabinet; and, without giving its members any hint of his intention, he nominated Murray as Minister to France, February 18, 1799, and a week afterward added Chief Justice Ellsworth and Patrick Henry to the commission. Henry declined, and Gov. William R. Davie, of North Carolina, was named in his place. The blow confounded the President's party. Every influence was unsuccessfully brought to bear on the President and on the Senate to balk the nominations. The Cabinet officers lost their heads: instead of either resigning or keeping silence, they protested against the step, and thus finally lost the President's confidence.

The Federal party, which had begun the year in high and united confidence, was now convulsed by sudden feud, the President stigmatizing his Federalist opponents as a British faction; and the latter equally dreading, distrusting, and disliking the President. The new mission to France had not only dissolved the provisional army; it had thrown the whole Federal policy into the air. It is in itself a condemnation of the party that its policy should have been reduced by this time to a single card—the continuance of the hostile attitude toward France; when this was gone, the fire of the party was out.

At first everything seemed to promise quick success to the new mission. Murray had been informed of his appointment, with the reservation that the other two members would not set sail until full assurances had been

received as to their reception. Talleyrand hastened to give such assurances in the amplest terms. Before the instructions for the envoys had been completed, the face of affairs in Europe had been so changed as to give the Federalists some fresh courage. Disasters to the French arms had been steadily growing more serious; Napoleon, the Directory's genius, was blocked up in Egypt or Syria; and in June, 1799, a new revolution displaced all but one of the Directory. The Government which had given the assurances of a kindly reception of the envoys was no longer in power; and the Federalists urged the President to stop their embarkation until new assurances should be given.

It may be that the revived Federalist spirit was also due to the ascertained fact that the new House of Representatives (1799-1801) would be Federalist as well as the Senate, a Southern re-enforcement having established a party majority there. October 16th, the President again chilled his party by directing, without consulting his Cabinet, the immediate embarkation of Ellsworth and Davie. This step was attributed at the time to the President's frantic jealousy of Hamilton, who had inopportunely made his appearance in Trenton (then the temporary seat of government) at the same time with the Cabinet and envoys, as if for consultation with them.

It is now well settled that Adams's motive was mainly the pacific policy which has been the almost invariable rule with American Presidents, and that his action in this case differed from Washington's action on Jay's treaty only in the difference of mode due to the different characters of the two men. Nevertheless, this new reason for distrusting the President, together with the impossibility of ignoring in the approaching election the representative of New England, the section from which most of the Federalist electoral votes were to come, left the party leaders in a quandary. Their only apparent road of



escape was in the effort to make C. C. Pinckney President and Adams Vice-President, and this road led straight to the overthrow of the party in 1800-1.

The envoys found that, by the new revolution of November 9, 1799, Napoleon, who had suddenly returned from Egypt the preceding month, had become First Consul. Three commissioners were appointed to treat with them, and a convention was signed September 30, 1800. It secured safety for American commerce for the future, until England and France in turn began to violate international decency in their attacks on neutral commerce<sup>1</sup>; but Napoleon was ingenious enough to obtain a mutual abandonment of claims for damages, by reason of the declaration of Congress in 1798, that the treaties with France were no longer in force. In this form it was finally ratified by both parties, and declared in force December 21, 1801.

See 1 Tucker's *United States*, 597 foll.; 2 *ibid.* (table of contents); 5 Hildreth's *United States* (table of contents); 1 von Holst's *United States*, 138 foll.; 1 Schouler's *United States*, 373; 2 Marshall's *Life of Washington*, 424; Monroe's *View of the Conduct of the Executive*, 34; Hamilton's *Public Conduct and Character of John Adams, Esq.*, 12; 2 Benton's *Debates of Congress*, 225 foll. (see index under "France"); 2 Wait's *State Papers* (2d edit.), 187-499 (complaints of France and of the United States); 3 *ibid.*, 456-499, and 4 *ibid.*, 1-137 (X Y Z dispatches in full); 1 *Statesman's Manual*, 116, 117 (messages of March 19 and December 8, 1798); 1 *Stat. at Large*, 552 foll. (war acts of 1798); 1 Lyman's *Diplomacy of the United States*; Trescot's *Diplomatic History of the Administrations of Washington and Adams*, 158 foll., 8 *Stat. at Large*, 178 (convention of 1800). The Democratic version of affairs will be found in 1 Randall's *Life of Jefferson*, 387 foll.;

<sup>1</sup> See Embargo.

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3 Jefferson's *Works* (edit. 1830), 384-422; the Adams version in 8 John Adams's *Works*, 546-681, 9 *ib.*, 10-307, and the numerous notes and references appended thereto; and the version of the Federalists opposed to Adams, in 2 Gibbs's *Administrations of Washington and Adams*, 15 foll.; Gordy's *Political History of the United States; Lives of Monroe, Washington, Adams*.

## CHAPTER X

### THE ALIEN AND SEDITION LAWS : THE VIRGINIA AND KENTUCKY RESOLUTIONS

IN 1792 Washington had been re-elected to the Presidency without opposition. John Adams had been continued in the Vice-Presidency. Fifteen States took part in the election. North Carolina and Rhode Island had ratified the Constitution, and Vermont had been admitted to the Union, March 4, 1791, and Kentucky in June, 1792. In 1796 Washington published his Farewell Address, and Adams being in line of promotion, was selected in a conference of Federalist members of Congress as the candidate of that party for the Presidency, with Pinckney as the candidate for Vice-President. In the same year Jefferson and Burr were chosen in a conference of Republican members of Congress as the candidates of the opposition. Adams was elected by the narrow margin of three votes (71 to 68), and Jefferson, since he received the next highest number of votes, became the Vice-President.

The Republican opposition was now fairly well organized and very well led. The Administration (the Cabinet) had now become distinctly and exclusively Federalist, though it was torn by factions within the party. In the midst of the excitement of '98, when it was thought that France was about to declare war on America, party opposition largely disappeared and the Republicans showed their willingness to rally loyally to the support of the

Government. But the Federalists, feeling sure of their power and distrusting the aliens and agitators in the Republican ranks, very unwisely placed upon the statute books a series of acts, that led to very important constitutional discussions and results. These acts resulted directly in displacing the Federalists from power and bringing the Jeffersonian Republicans into the control of the Government, and they were the occasion of bringing out from Jefferson and Madison a constitutional doctrine that has ever since been a subject of discussion, and that may be said to be the first party platform in the history of American parties. We refer to the Alien and Sedition Acts and the Virginia and Kentucky Resolutions.

*Alien and Sedition Laws* were two acts passed by the Federalist majority in the summer of 1798. The session opened in December, 1797, with a strong Federalist majority in the Senate, and a Democratic-Republican majority in the House, which for several months voted down every attempt to resist by force the aggressions of France upon American commerce. But the publication of the dispatches from the X Y Z Mission in April, 1798, erased party divisions for the time, silenced the Republican leaders, converted all the lukewarm Republicans to an intense hostility to France, and gave both Houses to Federalist control. The leading Republican journalists were mostly foreigners, Frenchmen, and refugee Scotchmen, Irishmen, and Englishmen, who had excited the warmest hatred of the Federalists by their scurrilous and intemperate language, and by their open advocacy of the extreme violence of French republicanism. One of the first objects of the Federalists, after providing for an increase of the army and navy, was to muzzle these aliens, and to this end the acts above mentioned were passed.

There were three alien laws.

The *first* was an amendment of the naturalization laws, extending the necessary previous residence to fourteen

years instead of five, and requiring five years' previous declaration of intention to become a citizen instead of three. Alien enemies could not become citizens at all. A register was to be kept of all aliens resident in the country, who were to enter their names under penalties in case of neglect; and in case of application to be naturalized the certificate of an entry in this register was to be the only proof of residence whenever residence began after the date of this act.

The *second*, passed June 25th, was limited by its terms to two years of operation. It authorized the President to order out of the country all such aliens as he might judge dangerous to the peace and safety of the United States, or might suspect to be concerned in any treasonable or secret machinations.

The *third* provided that, whenever any foreign nation declared war against or invaded the United States, all resident aliens, natives or citizens of the hostile nation, might, upon a proclamation to that effect, to be issued at the President's discretion, be apprehended and secured, or removed.

The first and third of these acts met no warm opposition, though the first was repealed when the Republicans gained power. The second is the one which is known pre-eminently as *the alien act*. It was opposed as an unconstitutional interference with the right secured to the existing States to permit until 1808 the importation or migration of any such persons as they might think proper; as an attempt to usurp undelegated powers over aliens who were legally under the jurisdiction and protection of the laws of the State wherein they lived; and as an unconstitutional interference with the right of trial by jury.

The first Alien Act, as to naturalization, was repealed by the act of April 14, 1802, which re-established the former requisites of time of residence. The second and third of these acts have no further history, for no

prosecutions or direct presidential action took place under or by virtue of them. They are important only as one moving cause of the Kentucky and Virginia Resolutions, and of the overthrow of the Federal party at the next presidential election.

According to Jefferson, a sedition law had been threatened in April, but no steps toward it were taken in Congress, until June 26th, when Lloyd, of Maryland, a Federalist Senator, introduced a bill in four sections, to define more precisely the crime of treason, and to define and punish the crime of sedition. The first section of Lloyd's bill declared the people of France enemies of the United States, and adherence to them, giving them aid or comfort, to be treason, punishable with death. The second section defined misprision of treason and prescribed its penalties. The third section made it a high misdemeanor, punishable by fine, not exceeding \$5000, imprisonment from six months to five years, and binding to good behavior at the discretion of the court, for any persons unlawfully to combine and conspire together, with intent to oppose any measures of the Government of the United States, directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding office under the Government of the United States from executing his trust, or with like intent to commit, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination. The fourth section provided that any person who, by writing, printing, publishing, or speaking, should attempt to justify the hostile conduct of the French, or to defame or weaken the Government or laws of the United States by any seditious or inflammatory declarations or expressions, tending to induce a belief that the Government or any of its officers were influenced by motives hostile to the Constitution, or to the liberties or happiness of the people, might be punished by fine or

imprisonment, the amount and time being left blank in the draft of the bill. The first and second sections were struck out, and the bill, having thus been razed to a bill of two sections, the third and fourth of Lloyd's draft, passed the Senate by a vote of 12 to 6. In the House it also passed, by a vote of 44 to 41, but with a very material change.

The extremely objectionable second section (the fourth of the draft above given), whose intentional looseness and vagueness of expression could have made criminal every form of party opposition to the Federalist majority, was struck out. In place of it was inserted a new second section which subjected to a fine not exceeding \$2000, and imprisonment not exceeding two years, the printing or publishing any false, scandalous, and malicious writings against the Government of the United States, or either House of the Congress, or the President, with intent to defame them, or to bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States, or to stir up sedition, or with intent to excite any unlawful combination for opposing or resisting any law of the United States, or any lawful act of the President, or to excite generally to oppose or to resist any such law or act, or to aid, abet, or encourage any hostile designs of any foreign nation against the United States. A third section was then added, providing that in all prosecutions under this section the truth of the matter stated might be given in evidence, as a good defence, the jury to be judges both of law and fact; and by a fourth section the act was to continue in force only until March 4, 1801. The credit of the last two sections is due to Bayard of Delaware. The bill as finally passed, therefore, consisted of four sections, the first being the third of Lloyd's draft, and the second, third, and fourth the ones just given. The objections to it are its evident intention to restrain freedom of speech and of the press,

both of which are guaranteed by the Constitution, and its attempt to enlarge the sphere of the Federal judiciary by impliedly recognizing its common-law jurisdiction in criminal matters. The first objection can hardly be met successfully; in this respect the law was patently unconstitutional, partisan, and dangerous, and the only precedents in justification of it are drawn from the action of State legislatures or the Federal Government during the Revolution or under the Confederation. The second requires further consideration.

In civil matters the rules of the common law have always been followed by Federal as by State courts. In criminal matters the State courts, in addition to the jurisdiction given them by statute, had always exercised a very extensive jurisdiction, which they still exercise, though to a less extent, over a class of offences which are so not by any statutory enactment, but by custom, that is, by common law. Any of these could of course, at any time, be taken out of the common law by statute, and made a statutory offence with strict bounds of punishment; and libel has since been so treated by all the States. But in 1798 libel was still a common-law offence, and the State courts claimed and exercised arbitrary power as to the extent of the punishment to be inflicted in case of conviction. It had never been decided whether the Federal courts possessed this common-law-criminal jurisdiction, but it was known that most of the Federal judges believed that they did possess it, and most of the Federalists were inclined to the same opinion. The Republicans, on the contrary, believed that the crimes expressly enumerated in the Constitution—treason, counterfeiting United States coin or securities, piracy, and offences against the laws of nations—were the only *crimes* over which Federal courts had jurisdiction.

If the doctrine of the Federalists was correct (and it was certainly never contradicted by the Federal courts



until fourteen years had passed, and the judiciary, with the other departments of Government, had fallen into Democratic hands) then the Sedition Law was a very salutary remedial modification of the common law, since it allowed the truth to be given in evidence, and laid down bounds of punishment, which the judges could not pass. If, on the other hand, the Republican doctrine was correct, the Sedition Law was a pernicious precedent, since, by making a common-law offence statutory, it implied a common-law-criminal jurisdiction in the Federal courts, wherever statutes did not interfere. The Republicans had little legal talent in their ranks in 1798, and had made little open opposition to the Federalist claims on this point.

But Jefferson at once perceived the limitless consequences which were entailed by the admission and permanent establishment of the principle implied in the Sedition Law. It was law, until overthrown by the Supreme Court, which was not at all likely while the Supreme Court was under Federalist control. Individuals were thus irrevocably brought under the operation of a law which, under the very general term of "opposing" the Government, made party opposition criminal. To prevent the extension to the State governments of the same prohibition of opposition, under some as yet unthought of product of Federalist legal ingenuity, the Virginia and Kentucky Resolutions were prepared and passed.

It is not a little characteristic, however, of the immature politics of 1798, that the Alien Law directed mainly against French refugees, provoked far more Republican rhetoric than the Sedition Law, directed against native-born citizens as well, though there were at least six prosecutions under the latter act and none at all under the former. Neither party had yet advanced far enough in political experience to learn that "the common-law offence of libelling a government is ignored in consti-

tutional systems, as inconsistent with the genius of free institutions." In the case of the Sedition Law the Republicans felt the blow rather because it was aimed at them as a party than because of any deep-seated aversion to such laws as legitimate weapons in party warfare; in the case of the Alien Law, its apparent enmity to France was the touchstone by which alone most of the Republicans judged of its iniquity.

*The Kentucky and Virginia Resolutions* were two series of resolutions adopted in 1798-9 by the legislatures of Kentucky and Virginia, for the purpose of defining the strict construction view, at that time, of the relative powers of the State and Federal Governments. The underlying reason for the preparation of these resolutions was the feeling which had been growing since 1791, that the Federal party, not satisfied with the powers given to the Federal Government by the Constitution, was endeavoring to obtain further and greater powers by strained and illegitimate interpretations of the powers which had been granted; the immediate moving cause was the passage of the Alien and Sedition Laws in 1798. Jefferson and Madison therefore prepared these two series of resolutions as a statement of the objections not only to these particular laws, but to broad construction in general.

Jefferson was unwilling to appear openly in the matter, either, as his enemies charge, because of the secretiveness and underhandedness which were natural to him, or, as his friends put it, because of his punctilious regard to the requirements of his position as Vice-President. He therefore intrusted the resolutions which he had prepared to George Nicholas, of the Kentucky Legislature, under a solemn assurance that "it should not be known from what quarter they came." Nicholas became the reputed father of the resolutions, and it was not until December, 1821, that his son obtained from Jefferson an acknowledgment of their real authorship.

The resolutions were passed by the Kentucky House November 10, 1798, and by the Senate November 13th, and were approved by the Governor November 19th. The Virginia Resolutions were prepared by Madison, who was then a member of the legislature, were introduced by John Taylor, of Caroline, were passed by the House December 21, 1798, and were passed by the Senate and approved by the Governor December 24th. The resolutions were transmitted by the governors of the two States to the governors of the other States, to be laid before their respective legislatures. The only responses, all warmly antagonistic to the resolutions, were made by Delaware, February 1, 1799, by Rhode Island in February, by Massachusetts February 9th, by New York March 5th, by Connecticut May 9th, by New Hampshire June 14th, by Vermont October 30th; that of Massachusetts is especially long and argumentative, and fully denies the competency of any State legislature "to judge of the acts and measures of the Federal Government." November 14, 1799, the Kentucky Legislature added another resolution to its series of 1798, thus forming the so-called Kentucky Resolutions of 1799. In the Virginia Legislature the unfavorable answers of the other States were referred to a committee, Madison being chairman, which made, January 7th, the celebrated "Report of 1800," explaining and defending the Resolutions of 1798.

With this report the formal history of the resolutions ends. They were renewed, however, in substance, by other States in later years, as by Pennsylvania in 1809, and by Massachusetts in 1814, and, oddly enough, one of the first and most emphatic repudiations of these later offsprings of the Virginia Resolutions came from the Virginia Legislature.

How far the later doctrines of nullification and secession are the legitimate outcome of the Kentucky and Virginia Resolutions will be considered after the substance of these

resolutions, and the exact language of the more important ones, have been given.

The Kentucky Resolutions (of 1798) are nine in number, as follows:

1. "That the several States composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a constitution for the United States, and of Amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

2. The second resolution denied the power of Congress to pass laws for the punishment of any crimes except those mentioned in the Constitution, and therefore declared the Sedition Law to be "void and of no force."

3. The third made the same declaration as to the same law on the ground of its abridgment of freedom of speech and of the press.

4. The fourth made the same declaration as to the Alien Law on the ground that no power over aliens had been given to the Federal Government by the Constitution.

5. The fifth made the same declaration as to the same law on the ground that it infringed the right of the States to permit the migration of such persons as they should think proper to admit until the year

1808. 6. The sixth made the same declaration as to the same law on the ground that it violated the amendments which secured "due process of law" and "public trial by an impartial jury" to accused persons, and also that it transferred the judicial power from the courts to the President. 7. The seventh complained of broad construction in general as "a fit and necessary subject for revision and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress." 8. The eighth directed the transmission of the resolutions to the State's Senators and Representatives in Congress for the purpose of securing a repeal of the obnoxious acts. 9. The ninth directed the transmission of the resolutions to the other States, with a warning that, "if the barriers of the Constitution were thus swept from us all" by an acknowledgment of the power of Congress to punish crimes not enumerated in the Constitution, "no rampart now remains against the passions and the power of a majority of Congress," nor any power to prevent Congress, which had banished the aliens, from banishing, also, "the minority of the same body, the legislatures, judges, governors, and counsellors of the States, nor their other peaceable inhabitants, who may be obnoxious to the view of the President or be thought dangerous to his election or other interests, public or personal"; and it closed by asking that "the co-States recurring to their natural rights not made Federal, will concur in declaring these void and of no force, and will each unite with this commonwealth in requesting their repeal at the next session of Congress."

The additional Kentucky Resolution of 1799, reiterated its definition of the Constitution as "a compact," and declared

"that the several states which formed that instrument, being sovereign and independent, have the unquestionable right to

judge of the infraction; that a nullification, by those sovereignties, of all unauthorized acts, done under color of that instrument, is the rightful remedy; that, although this commonwealth, as a party to the federal compact, will bow to the laws of the Union, yet it does, at the same time, declare that it will not now or ever hereafter cease to oppose, in a constitutional manner, every attempt, at what quarter soever offered, to violate that compact; and finally, in order that no pretext or arguments may be drawn from a supposed acquiescence, on the part of this commonwealth, in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the federal compact, this commonwealth does now enter against them its solemn protest."

The Virginia Resolutions were eight in number. 1. The first resolution expressed the determination of the legislature to defend the Constitutions of the United States and of the State. 2. The second expressed its warm attachment to the Union.

3. "That this assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, which are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them."

4. The fourth expressed the deep regret of the Assembly at the introduction of a broad construction of the Constitution as inevitably tending to change the American republican system into "at best a mixed monarchy." 5. The fifth protested against the Alien and Sedition Laws as unconstitutional. 6. The sixth called attention

to the amendment protecting liberty of speech and of the press as having been originally proposed by Virginia. 7. The seventh expressed the affection of Virginia for the other States, and concluded as follows: that

“ the general assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.”

8. The eighth requested the governor to transmit the resolutions to the governors of the other States, to be laid before their legislatures, and to the Virginia Senators and Representatives in Congress.

Hardly any problem in American political history offers so many difficulties as the effort to get at a fair estimate of these two series of resolutions. The evil and the good are so complicated that disentanglement sometimes seems hopeless. On the one hand, the general spirit of the resolutions, their insistence upon the absolute *illegality* of anything but a strict construction of the Constitution, has always been a fundamental feature of the party founded by Jefferson and Madison. Its doubtful utility is elsewhere considered; but, whether necessary or unnecessary, the doctrine is legitimate, and is one of the factors which have made up American political history to the present time. On the other hand, the illegitimate doctrine that the American Union is a “compact” between separate and sovereign States is so clearly, even “peremptorily,” laid down in both series of resolutions that it can not be mistaken or evaded.

The historical truth of this doctrine is elsewhere considered; it remains here only to consider the difference

between the State sovereignty of Jefferson and Madison, and that of the nullificationists and secessionists of later times. It is difficult to follow, at the best, and is still more obscured by the course of Benton and other later Jeffersonians in flatly denying that the sovereignty of States, *proprio vigore*, is asserted in the resolutions. By so doing, they made an issue on which Calhoun and Calhoun's disciples found no difficulty in overthrowing them. It does not seem to have occurred to them that the issue might perhaps have been fairly confessed and avoided.

Before considering the question whether the term "nullification," as used by Jefferson in the Kentucky Resolution of 1799, was identical with the same word as used by Calhoun, it is well to notice how carefully the Virginia Resolutions avoid any suggestion of action by a single State. They certainly maintain the doctrine that "each State acceded to the Union as a State, and is an integral party" to the "compact under the style and title of a Constitution for the United States"; and from this doctrine the Calhoun programme derives its justification. But, in the application of the doctrine by Jefferson and Madison, it is always "those sovereignties" which are to undo unconstitutional laws—"the States," not "a State"; and practically the Jeffersonian doctrine seems to have been that there were but two parties to the "compact," the States of the one part, and the Federal Government of the other, and that the former in national convention were to be frequently assembled to decide on the constitutionality of the latter's acts.

Webster, long afterward, ridiculed unsparingly the idea that the States could form a compact with another party which was only created by the compact, and non-existent before it; and Calhoun's theory that the "compact" was between the States themselves, and that the Federal Government was the result of it and not a party to it,



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seems more logical than Jefferson's. Logical or illogical, however, Jefferson's theory was infinitely less destructive than Calhoun's; was strictly in line of constitutional practice; and is perfectly in accord with the Constitution's provisions for its own amendment.

The State sovereignty preamble in the first Kentucky Resolution, and third Virginia Resolution, is not essential, and is, in fact, only a hindrance, to the spirit of the resolutions, which is simply that desire for a national convention of the States which has since been the first thought of all Jefferson's disciples in times of difficulty or danger. This Jeffersonian idea of the ultimate interpreter of doubtful constitutional questions cannot be more strongly put than in Jefferson's own words, in his letter of June 12, 1823, to Justice Johnson: "The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress, or of two thirds of the States. Let them decide to which they mean to give an authority claimed by two of their organs."

Though State sovereignty was by no means essential as a basis for the resolutions, it was the shortest and easiest way to justify them. It is therefore important to notice that in the hands of Jefferson and Madison State sovereignty, separate or collective, was to be a shield for the protection of the individual; in the hands of Calhoun it was to be a shield for a section and for slavery. The distinction is not trivial; it is vital, as can be seen most easily from its necessary results.

It is difficult to conceive of an act involving individual rights, which an American Congress could be induced to pass, so arbitrary and tyrannical as to lead a State, or even a group of States, beyond declamation and resolutions, and into open conflict with the Federal Government. Even the development of so-called "sections" would hardly have been likely to make even State sover-

eignty anything more than a check, and a very weak one, upon the Federal Government, so long as the country was reasonably homogeneous and each State had separate interests. But the development of slavery as a distinctive badge of a particular section made State sovereignty, for that section, really *sectional* sovereignty, since all its States were controlled by a common design. While each State tended to its own particular direction, the total force exerted was fairly balanced and comparatively harmless; when the force of a group of States became bound together by slavery, State sovereignty became an imminent peril to union. The Jackson and Benton school of Democrats seem to have had this distinction in mind when they so warmly denied that which seems so difficult to deny, the identity of Jefferson's and Calhoun's State sovereignty. It is apparent, however, that the distinction is one of purpose, not of substance.

It has been stated that the great object of State opposition to Federal enactments, in the minds of Jefferson and Madison, was to secure the meeting of a national convention of all the States, in which, as the highest exponent of national authority, the Federal enactment would be valid unless declared void, or "nullified," by an amendment which when ratified by three fourths of the States, should bind not only Congress and the Executive, but the Judiciary as well. Such a convention has been a desideratum with Jefferson's party at intervals since 1787, and, as it is provided for in the Constitution, it would be a perfectly legitimate mode of procedure; but the difficulty of uniting the necessary proportion (two thirds) of the States in the demand for it has as yet proved insuperable. This seems undoubtedly to have been the "nullification" intended by the Virginia Resolutions, 1, from the debates upon them in the Virginia Assembly which passed them, and 2, from the remarks of the "Report of 1800" upon the third Virginia Resolution.

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Jefferson, not being the avowed author of the Kentucky Resolutions, has left no defence or explanation of them, but a line of citations is given among the authorities at the end of this chapter, illustrative of his adherence to the general position that "the States" (in national convention) were the final interpreters of the Constitution. The objection to this statement of the main object of the resolutions is that, as such a convention is provided for in the Constitution, its defence by a State legislature was a work of supererogation.

In this respect it is well to compare the proceedings of the British Parliament in 1792-3, which the reader will find well stated by Yonge (see references). That body had passed an alien bill, a sedition bill (suspending the Habeas Corpus Act), and a bill authorizing magistrates to disperse by force any public meeting to petition the King or Parliament, or to discuss grievances, if the object or the language should to the magistrates seem dangerous. The American Congress had followed the first two steps of the British precedent (excepting the habeas corpus suspension): to follow it out in full nothing was needed but a temporary forgetfulness of the difference between the unlimited power of Parliament and the limited power of Congress.

To Madison and Jefferson the common Federalist claim that the Federal Government was the "final judge of its own powers" seemed to be a paving of the way for some such politic forgetfulness, and for a possibly indirect prohibition of any new national convention: hence the resolutions.

Their descendants have found that the small percentage of the voting population, which can, by a change of vote overturn the dominant party in Congress, is a better guaranty against Congressional usurpation than all the resolutions of our history: Madison and Jefferson, with only ten years' experience behind them, may fairly be held ex-

cusable for seeing no refuge from Congress but the State legislatures. It cannot, however, be doubted that Jefferson and his school would have looked upon forcible resistance by a single State to an oppressive Federal law with far less disapproval than their opponents would have done, though it is just as certain that they would have looked upon such resistance as a revolutionary right. It was so stated in 1829-30 by Edward Livingston, the devoted adherent of Jefferson in 1798 and of Jackson in 1833.<sup>1</sup>

In a constitutional point of view, this fundamental difference between the right of "the States" in national convention, and of a single State, *proprio vigore*, to "nullify" acts of Congress, and to interpret the Constitution, above and beyond the Federal Judiciary, is the essential difference between the "nullification" of Jefferson and that of Calhoun. The strongest evidence to the contrary is a sentence in Jefferson's original draft of the Kentucky Resolutions. It is as follows: "that every State has a natural right, in cases not within the compact, to nullify of their own authority all assumptions of power by others within their limits." This was struck out in the final copy of the resolutions, but by whom is not known. Various explanations of this sentence have been offered, the most plausible being that the inexcusable sentence was due only to heat of composition, and was struck out by Jefferson on his realizing the full force of what he had written. On the one hand, this sentence has arrayed against it a great mass of contemporary testimony; on the other, if it is to stand as Jefferson's perfected theory, every atom of Calhoun's theory finds in it a perfect antetype.

~ It is also fair and proper, in this connection, to call the reader's special attention to a letter of December 24, 1825, from Jefferson to Madison, which has never hitherto

<sup>1</sup> See Nullification.

received the prominence which it deserves. It is on the subject of internal improvements. He regards opposition to the new system as "desperate," but proposes a new series of resolutions, to be passed by the Virginia Legislature, as a protest against it. They are much like the Resolutions of 1798, but conclude by demanding an amendment to the Constitution, to grant the doubtful power,<sup>1</sup> and by promising for the State and imposing upon the citizens of the State an acquiescence in the acts "which we have declared to be usurpations" "*until the legislature shall otherwise and ultimately decide.*"

The above has been given, so far as possible, with a due regard to the standpoint and feelings of the Republicans of 1798. There remains now to be considered the opening assertion of both series of resolutions, that the American Union is a "compact" between the several States. No one, not the most unreasoning admirer of Jefferson or Madison, can now defend this assertion, which is the great political error of the resolutions.

Even if it were true, the doctrine of nullification would not necessarily or properly flow from it; but the doctrine of secession is too plainly based upon it to make it an easy or profitable task to attempt to separate the two.<sup>2</sup>

It is not meant that Jefferson and Madison were secessionists: the following considerations may perhaps make the meaning more clear: 1. The idea that the Union is a compact is not at all essential to either series of resolutions; but it is the sum and substance of secession. Its elimination could have had no effect upon the former, but would have made the latter an impossibility, except as a confessed revolution. 2. The date of the resolutions was less than ten years after the inauguration of the new form of government, and at a time when the idea of a "compact" was common in political language, in judicial decisions, and elsewhere. The term was a political weapon

<sup>1</sup> See Internal Improvements.

<sup>2</sup> See Nullification, Sécession.

ready for use by all political leaders of all sections, and was used without any great consideration of its full results. There is infinitely more excuse for such an error in the infancy of the nation than in 1860. 3. The belief in a real "compact" was rapidly and easily eliminated in the due course of nature during the following sixty years, as its utter uselessness became apparent, except in a single section, where the interests of slavery demanded its retention and extension to its complete logical results. Even where the word was used in other sections of the Union, it was used rather as a venerable formula, signifying a particularist feeling, than with any full sense of a meaning; and its users were as much shocked in 1860 as its earlier users would have been, when its complete consequences were forced upon them.

As a summary, it may be said that the resolutions of both series are a protest against a supposed intention of the Federalists to place some restrictions upon any attempt of State legislatures to demand a national convention to sit in judgment upon the acts of the Federal Government; that the belief in such an intention was fostered by the Federalists' use of the then novel word "sovereign," as applied to the Federal Government, and by their constant assertions that the Federal Government was the "final" judge of the extent of its own powers, thus seeming to exclude any such power in a new national convention; that both Jefferson and Madison intended, 1, to appeal to public opinion, and 2, to rouse the States for a prompt call for a national convention upon the first appearance of an attempt by Congress and the President to make such legislative action penal under a new sedition law; that the word "compact" in the resolutions, though unessential, is historically false and indefensible, if used in its full sense; that, as regards Madison, it is quite clear that the word was not used in its full sense; and that, as regards Jefferson, the case is much more

doubtful, but may fairly be summed up in the terms of his proposed Resolutions of 1825, before referred to—a theoretical acceptance of the idea of a compact in its full sense, coupled with an intense aversion to its practical enforcement.

On the Alien and Sedition Laws, see 2 Benton's *Debates of Congress*; 1 von Holst's *United States*, 142; 5 Hildreth's *United States*, 215–236; 1 Schouler's *United States*, 393. The Alien Acts of June 18th, June 25th, and July 6th, are in 1 *Stat. at Large*, 566, 570, 577. The Sedition Law of July 14th is in 1 *Stat. at Large*, 596. For the subsequent denial of common-law-criminal jurisdiction, by Federal courts, see 7 *Cranch*, 32; 1 *Wheat.*, 415; 8 *Pet.*, 658 (per McLean, *J.*). The argument in favor of such jurisdiction will be found in Story's *Commentaries*, § 158 (note), and authorities there cited; against it, in 1 Bishop's *Criminal Law*, §§ 16–18, and authorities there cited. Lyon's fine was refunded by act of July 4, 1840 (6 *Stat. at Large*), 802, and Cooper's by act of July 29, 1850 (9 *Stat. at Large*, 799), the money in both cases going to the heirs.

On the Kentucky and Virginia Resolutions, see 5 Hildreth's *United States*, 272; 1 von Holst's *United States*, 144; 2 Spencer's *United States*, 144; 1 Schouler's *United States*, 423, 424 (note); 4 Elliot's *Debates*, 528 (Va. Res.), 532 (answers of other States), 540 (Ky. Res.), 546 (Report of 1800); 3 Jefferson's *Works* (edit. 1829), 452, 4: 163, 306, 344, 374, 418 (Resolutions of 1825), 422; 9 Jefferson's *Works* (edit. 1853), 469; 2 Randall's *Life of Jefferson*, 449 and App. D.; 1 Benton's *Thirty Years' View*, 347; Hunt's *Life of Livingston*, 345; 2 Benton's *Debates of Congress*, 373; Nicholson's *Debates in the Virginia Assembly of 1798*; Yonge's *Constitutional History of England*, end of chapter iv.; 1 Stephens's *War between the States*, 441; Story's *Commentaries*,

§ 1289 (note); 3 Webster's *Works*, 448; Duer's *Constitutional Jurisprudence* (2d edit.), 412; 1 Adams's *Works of John Adams*, 561; and authorities under State Sovereignty; Nullification; Secession; Democratic-Republican Party; Constitution.

For convenient copies of the resolutions, see *American History Leaflets*, No. 15; MacDonald's *Select Documents Illustrative of American History*; Ford's edition of the *Federalist*. Note also E. D. Warfield's *Kentucky Resolutions of 1798*, and the review and discussion of this in the *Nation*, vol. xlv., p. 528, and vol. xlv., pp. 382-384, 468, 476, cited by MacDonald. Consult Gordy's *History of Political Parties*, vol. i., chapters 19 and 20; Ford's *Writings of Jefferson*, vii.; Johnston's *American Orations*, vol. i. For the replies of the several States see *State Documents on Federal Relations*, edited by Herman V. Ames, published by Department of History of the University of Pennsylvania.



## CHAPTER XI

### EARLY POLITICAL PARTIES, 1789-1801

*Anti-Federal Party.*—At the close of the Revolution there was but one party in the United States, the American Whigs. They had no organization and needed none, their former opponents, the Loyalists or Tories, having been banished, killed, or converted. The State legislatures had taken the opportunity offered by the confusion of the Revolution to seize, by the Articles of Confederation, upon the powers which the King had abandoned, and which the national popular will was not yet sufficiently educated to assume. In this interregnum and in this seizure all America had acquiesced, with the exception of a few advanced thinkers like Hamilton; and the mass of the population was entirely agricultural, democratic, particularist, devoted to the worship of their separate commonwealths, and disposed to look upon the Central or Federal Government very much as they had but recently looked upon the King.

The war practically ended in 1780, and a space of seven years is marked by great development in the United States. Before 1787, in spite of lawlessness and bad government, commerce and the commercial class had already reached respectable proportions, a distinct creditor class had been formed with capital to lend, and in the South property owners had learned their weakness and their needs. These three classes, uniting for the control of the Convention of 1787, had really split off into a new

party,<sup>1</sup> leaving the mass of the people to their particularist prejudices.

As the old government had been strictly federal, or league, in its nature, it would seem natural at first sight that those who favored its retention or modification should take the name of Federalist, and Gerry, of Massachusetts, and a few others, made some efforts to secure this party title, and give their opponents that of Anti-Federalists or Nationalists. But all parties were quick to perceive that the essence of the Constitution was its creation of a strong Federal Government; and all who were opposed to this new and portentous appearance in American politics, all who considered the Constitution fantastic, theoretical, and experimental, and a distant attempt to ape European monarchy, all the local magnates who feared to be overshadowed by the new central power, all the small farmers who dreaded the addition of Federal to State taxes, at once accepted the name of Anti-Federalists and opposed the ratification of the Constitution, in and out of the conventions.

In Rhode Island and North Carolina the opposition was successful, but in the other States it was overcome. In Pennsylvania the Anti-Federalists protested that they had been unfairly treated. In the Legislature, which was slightly Federalist, the resolution for a State convention gave but ten days for the choice of delegates, thus cutting off the Anti-Federalists of Western Pennsylvania from all chance to participate. To secure a longer interval of time, the opposition absented themselves, and left the House without a quorum, but two of their number were seized, carried into the House, and held in their seats while the quorum thus secured passed the resolution. In consequence, so the protest alleged, but thirteen thousand of the seventy thousand voters in the State were represented in the convention. September 5th,

<sup>1</sup> See Federal Party.

a separate Anti-Federalist convention at Harrisburg demanded a second Federal convention to revise the Constitution.

Had the Anti-Federalists followed the concerted plan of ratifying the Constitution *on condition* of its revision by a second Federal convention, their general success could hardly have been prevented. But they saw fit to oppose ratification altogether, and as the Federalists were wise enough to yield to ratification on the "Massachusetts plan" of *recommending* amendments, stiff-necked opposition to the plan endorsed by Washington and Franklin resulted only in general failure and utter demoralization, for the time, of the Anti-Federal party.

When the First Congress met, the active, energetic, and skilful Federalist leaders secured control of almost every department of the new government, yielding to their opponents only the Speakership of the House, the Attorney-Generalship, and the State Department.

But it must not be supposed that all who were classed as Federalists in 1787-8 were really wedded to Federalist doctrines as afterward developed by Hamilton. Every convention contained many delegates who, like Madison, Edmund Randolph, and R. R. Livingston, while opposed by nature to a strong Federal Government, were equally opposed by education and experience to the rickety rump which then figured as a Congress, and to the Articles of Confederation which had stamped upon it its peculiar character. It was natural that such delegates should urge ratification as an escape from present and pressing evils; Jefferson himself, who had at first pronounced against any constitution without a bill of rights, soon came to say, "It has my hearty prayers." But it was natural also that these men, when the Constitution had been adopted, should aim at a construction of its terms which should not give the new government extensive power.

The consequent divergence between real and temporary Federalists became evident about 1791-3, when the latter again coalesced with the former Anti-Federalists under a new name.<sup>1</sup> In 1793 Madison and Hamilton, who had made common cause in 1787-8, were already attacking one another in the newspapers, each significantly quoting his former associate's language in *The Federalist*.

Throughout the First Congress the Anti-Federalists made but two essays at party contest. Their opposition to Hamilton's plan for settling the public debt was defeated by Hamilton, assisted by Jefferson, and their opposition to his scheme of a national bank was equally unsuccessful. They also very generally opposed the imposition of any higher duties on imports for the benefit of manufactures, but their opposition was without concert and without success.

The first session of the Second Congress has many symptoms of the revival of the Anti-Federalists as a popular and strict construction party. Their opposition to bounties to the cod-fisheries, and to the Senate's proposition to put the head of the President for the time being upon the coins, took a fairly organized form, and by the end of the session the tone of discussion had so risen that allusions were made to the existence of a "corrupt faction" in Congress.

In the second session party organization took on unmistakable form. The debates on the increase of the army show that the Anti-Federalists had come to regard Hamilton as the arch-priest of broad construction, and themselves as his appointed adversaries. Toward the end of the session they attempted without success to censure his management of the Treasury and his language to the House. Their former party name was no longer entirely applicable, for they were not now opposed to the Federal Government or to the Constitution which had

<sup>1</sup> See Federal Party.

created it. On the contrary, by a process which was very natural, however odd at first sight, they, who had at first absolutely opposed the Constitution through their fear of a strong and tyrannical Federal Government, had now become, through the same fear, the most pronounced champions of the exact and literal language of the Constitution, and opponents of all attempts to extend its meaning by ingenious interpretations of its terms. In other words, they were now a strict construction, conservative party.

Jefferson had returned from France in 1789 wholly engrossed by the opening scenes of the French Revolution, and personally triumphant in the prospect of the coming success of the principles which he had formulated in the Declaration of Independence. Very soon after his return he seems to have become fixed in the belief that the conflict between government *by* the people and government *of* the people was to be transferred to America also, and that the Hamilton school, under the guise of broad construction, was aiming at monarchy. He soon impressed his belief upon others, and before the summer of 1792 he was able to refer in vague terms to the opposition to Hamilton as a "republican" party, in contrast to the "monarchical" Federalists. He was emphatic, at first, in excluding the Anti-Federalists from the "republican" party, acknowledging them only as allies; but Washington's neutrality proclamation in 1793 brought all the former Anti-Federalists so prominently forward as friends of the French Republic that Jefferson perforce accepted as political facts the death of the Anti-Federal party and the existence, for the future, of but two parties, the Federal party and the Republican, or, as it was soon enlarged, the Democratic-Republican party.

\* "We must be careful not to confuse the Anti-Federalists with the Republicans, or Democrats, who began to exist as a

party about 1791. The questions at issue between the two parties in 1791 were entirely different from the single question which divided the Federalists and the Anti-Federalists in 1787. Shall the Constitution be adopted?—that was the one question at issue in 1787. But the questions that divided the Federalists and the Republicans in the administrations of Washington and Adams related to matters of finance and foreign affairs, and the proper interpretation of the Constitution. Indeed, many eminent men, among them Jefferson, Madison, Edmund Randolph, Rutledge, and Dickinson, were Federalists in 1787 and Republicans in 1791. They were Federalists when to be a Federalist meant to believe in the adoption of the Constitution; they were Republicans when to be a Federalist meant to believe in Hamilton's financial policy and in an interpretation of the Constitution which tended, they thought, to the undue centralization of the government."<sup>1</sup>

*The Democratic-Republican Party*, as indicated in the preceding parts of this chapter was the political party whose theory has aimed at the increase of direct popular control over the Government, the widening of the right of suffrage, the limitation of the powers of the Federal Government, and the conservation of the powers reserved to the State governments by the Constitution. It is therefore a strict construction party and has always operated as a check upon the nationalization of the United States. It at first (in 1792-3) took the name of the Republican party, which more properly belongs to its present possessors, and was generally known by that name until about 1828-30. Upon its absorption of the French or Democratic faction, in 1793-6, it took the official title of the Democratic-Republican party. About 1828-30 its nationalizing portion having broken off and taken the name of "National Republican," the particularist residue assumed the name of "Democrats," which had been accepted since about 1810 as equivalent to "Republicans,"

<sup>1</sup> Gordy's *Political Parties in the United States*, vol. i., pp. 92, 93.

and by which they have since been known. Some little confusion, therefore, has always been occasioned by the similarity in name between the strict construction Republican party of 1793 and the broad construction Republican party of 1856.

I. 1789-93 (*Formative Period*).—Though the forces which have always tended to the complete nationalization of the American Union were in operation at the adoption of the Constitution, their influence was as yet by no means general. The mass of the people was thoroughly particularist, interested mainly in the fortunes of their State governments, and disposed to look upon the new Federal Government as a creature of convenience only, to be accepted under protest until the exercise of its functions should prove burdensome or unpleasant.

The convention of 1787 had wisely and skilfully evaded the popular feeling by couching the Constitution in very general terms, excepting only its one bold proviso that the Constitution, and laws and treaties made in pursuance of it, should be "the supreme law of the land," an idea which the people at large scarcely comprehended or took at its full measure. But, despite the convention's scrupulous care, despite the general influence of Washington and the Pennsylvania influence of Franklin in its favor, and despite the "grinding necessities" of the case, the final ratification of the Constitution was due more to the unskilfulness of the opposition than to any popular desire for an energetic Federal Government, and it left the principle of opposition overthrown but not eradicated. During the first session of the First Congress (March 4-September 29, 1789), however, those members who had been in principle Anti-Federalist were content to allow the organization of the new government by the Federalists to proceed with little opposition, and the results so clearly and so promptly demonstrated the *convenience* of the Federal Government that the late

Anti-Federal party were soon only anxious to drop their obnoxious name, and to allow their opposition to the Constitution to be forgotten.

The planters of the South, and particularly of Virginia, had generally supported the change of government and the early measures of the Federal party, induced partly by the influence of Madison and partly by the compromises by which the Constitution had been made acceptable to them. The general poverty and financial embarrassment, which in the North had produced Shays's Rebellion, had borne still more heavily upon the South. In both sections it had been the moving cause of stay laws, tender laws, and laws to hinder the collection of debts by British creditors; but in the South the certain revival of ancestral claims for debt, which before the Revolution had made British merchants practically owners of many of the Southern estates, but which had been suspended and almost forgotten during the Revolution and the Confederation, would have made almost any general settlement of debt by the Federal Government particularly unpopular, as a foreshadowing of individual settlements thereafter.

When Hamilton, early in 1790, finally, and almost from sheer necessity, fell back upon commercial interest as the stock upon which to graft his nationalizing measures, he necessarily alienated the whole South, which was not only particularist but exclusively agricultural, except in a few isolated spots on the seaboard. The difference between the two sections was as yet only in degree, not in kind. Both were mainly agricultural; both were particularist; neither possessed manufactures; but the South, which had far less banking and commerce than the North, and therefore, in Jefferson's words, "*owed* the debt while the North *owned* it," first felt the repulsion to the Hamiltonian policy. The opposition to his plan for settling the public debt was mainly to its commercial aspect; the



opposition to his project of a national bank in the following year was of a distinct party nature, and was based upon that strict construction of the Constitution which was always afterward to be the party's established theory.

In 1791-2, therefore, we may consider the Anti-Federal party, which had so warmly opposed the adoption of the Constitution, as rehabilitated into a party, as yet without a name, which was to maintain the binding force of the exact and literal language of the Constitution, and to oppose any enlargement of the Federal Government's powers by interpretation.

But the new party took no pride whatever in its descent, and at first disowned any kinship with its immediate ancestor of unpleasant memory. The first authoritative claim of the party name occurs in Jefferson's letter of May 13, 1792, to Washington, in which he says:

\* "The Republican party, who wish to preserve the government in its present form, are fewer in number [than the monarchical Federalists]. They are fewer even when joined by the two, three, or half-dozen Anti-Federalists, who, though they dare not avow it, are still opposed to any general government; but, being less so to a republican than to a monarchical one, they naturally join those whom they think pursuing the lesser evil." X

In this way Jefferson, who was already the extra-congressional leader of the new party, endeavored to account for his Anti-Federalist support by making the controversy out to be between republicanism and monarchy or aristocracy, between government *by* the people and government *of* the people.

In one sense Jefferson's charge against the Federalists was true, and as true in kind, though not in degree, against his own party as against the Federalists. In both parties the abler leaders assumed the direct initiative in party management to an extent which would be

intolerable, if openly asserted, at the present time; and the mass of the people, separated by distance, by slow and tedious communication, and by lack of national feeling, were content to exercise a power of revision, not of inception, in politics. In effect, "the people," in the broad sense which universal suffrage and nominating conventions have made familiar to us, was no original power in American politics until after 1820. We may, however, take Jefferson's charge in another sense, as implying that his party was more in unison with the feelings and prejudices of the people, and hence was a more popular party than the Federalists. In this sense he was right; from 1790 until his death there was probably hardly a day, with the exception of the year 1798, when Jefferson was not supported by a real majority of the American people.

Before the close of the year 1792 we must regard the Republican party as fairly formed. Its general basis was a dislike to the control exercised by any government not directly affected by the vote of the citizen on whom the laws operated; a disposition to regard the Federal Government, which could only indirectly and slowly be reached by dissatisfied citizens, as possibly a second avatar of royalty; and an opposition to the Federalist, or Hamiltonian, measures of a national bank, a national excise, a protective tariff, a funding system for the debt, and to all measures in general tending to benefit the commercial or creditor classes. But all these were local and temporary phases of opposition, from which circumstances might at any moment convert any or all the opposition; Jefferson and Madison alone labored assiduously to establish the doctrine of a strict construction of the Constitution as a more permanent and reliable basis of party organization.

II. 1793-1801.—Washington's proclamation of neutrality between France and her enemies had two important results in politics. It intensified the feeling of the Republicans that they were the only anti-monarchical party

in America, and that the Federalists, under whose influence Washington was supposed to be acting, were by nature and practice enemies of a republic, either in America or in France, of the people, and of liberty and the rights of man; and it thus obscured for the time the newly established basis of political difference. But it also brought to the surface a class of small politicians, more French than American, who undertook to ride into power solely by means of the wave of popular enthusiasm for the new French Republic, and without any reference whatever to American constitutional questions. For these the name of Republican was too tame. They assumed the name of Democrat, and modelled their organization upon that of the Jacobin club of Paris, from which, indeed, the Charleston Democrats claimed and received recognition as an affiliated branch.

*The Democratic Clubs* were a means of popular agitation and support in favor of the early Democratic-Republican party. They were American associations formed in imitation of the Jacobin and other clubs of France. The first was formed in Philadelphia, soon after Genet's arrival in 1793, but the movement spread into other States, the Charleston Club, on its own application, being recognized by the Jacobin Club of Paris as an affiliated branch. These clubs lived in an atmosphere of turmoil and denunciation. The western clubs of Pennsylvania and Kentucky were strongly suspected of a design to attack the Spanish possessions in America or to form a western confederacy. Their denunciations of the first excise law and its enforcement embarrassed the Government in the suppression of the Whiskey Insurrection in 1794, and brought down upon them the wrath of President Washington, who, in his message of November 19, 1794, referred to them as "certain self-created societies," "combinations of men, who, careless of consequences, and disregarding the unerring truth that those who rouse cannot always

appease a civil convulsion, have disseminated, from an ignorance or perversion of facts, suspicions, jealousies, and accusations of the whole government." In answer, the Senate echoed the President's warmth of language; and in the House, though the Republican leaders succeeded by very meagre majorities in avoiding any direct reference to the Democratic clubs, they were very careful to disclaim any connection or sympathy with them.

The clubs feebly attempted a reply, but no longer kept up the assumption of a right to speak for the people. They had already received their death-blow. Late in July, 1794, Robespierre had been guillotined, and the French Convention soon after abolished the Jacobin Club and its branches as dangerous to the public peace and order. The Republicans in America at once withdrew their countenance from the Democratic clubs, which rapidly thereafter disappeared.

Not all the members of the clubs, as given in the newspapers of the time, were hearty adherents of the principles they professed. Many Republicans were forced into them by a fear of being regarded as enemies of freedom and the rights of man; so that these short-lived associations were a paltry American imitation of the persecutions of the reign of terror, moral being substituted for physical duress.<sup>1</sup>

The Democratic clubs, assuming the right to speak for the people, began at once the familiar Jacobin process of branding every opponent and every indifferent spectator of events as an open or concealed enemy of "the people," and of elevating the whims and passions of associations of private citizens, disguised under the name of a devotion to liberty, to a rank higher than Constitution or laws.

To Federalists, whose theory had always been the

<sup>1</sup> See "Early Political Machinery in the United States," by Geo. D. Luetcher, thesis of Univ. of Pa., 1903.

supremacy of law even in the hours of the Revolution, the political antics of the Democratic clubs, their contempt for the constituted authorities, their fraternal banquets, their adoption of the modest French title of "citizen," their eccentricities in dress and manners, seemed rather horrible than ludicrous, and their mildest emotion, contempt, is well marked by Griswold's story of Mrs. Washington, who, finding a trace of dirt upon her wall after a reception, cried out angrily: "It was no Federalist: none but a filthy Democrat would mark a place on the wall with his good-for-nothing head in that manner."

Nor did the original Republicans feel much more real sympathy for the newly evolved Democrats; they accepted them as allies, as they had accepted the professed Anti-Federalists, but were careful to mark the distinction between the Republicans, who opposed Hamilton mainly because of his commercial and nationalizing tendencies, and the Democrats, who opposed him solely for love of France and of their vague idea of liberty. But the condescension of the Republicans was without reason; the Democratic faction brought with it that enthusiasm, that personal acquaintance with the prejudices of the people, and that tendency toward political intercourse with the people, which finally made the Republican *theory* the basis of a great and successful party. Jefferson and Madison did the thinking and theorizing; Bache, Callender, Freneau, and other Democratic leaders translated the theory into popular language.

The second presidential election (1792) can hardly be considered as a test of party strength. In 1789, as well as in 1792, Washington had been unanimously elected President. In 1789 John Adams, the Federalist representative, had been chosen Vice-President by the votes of New England and Pennsylvania, and part of Virginia's vote; in 1792 the votes of Vermont and Rhode Island, which States then first took part in the election, and of

New Jersey, Delaware, Maryland, and South Carolina, were added to the Federalist column.

From this time almost every political influence was enlisted in favor of the Republicans. When the Third Congress was organized in 1793, their candidate for Speaker of the House was elected by a majority of ten votes, and this initial success, and the temporary reverse which followed it, tended strongly to weld the Democrats and Republicans into one party, whose formal name was compounded as the Democratic-Republican party. This tendency was assisted by the disturbance in Pennsylvania in 1794. This outbreak was in reality only a symptomatic feature of the general lack of national feeling in the country at the time, brought to a head by border lawlessness and habitual freedom from restraint.

The Republicans, however, regarded it as an explosion designedly provoked by Hamilton in order to secure to himself and to his party the credit of suppressing it; and the Democratic clubs looked upon it with a general complacency, as a spirited example of the proper assertion of individual liberty, menaced by an oppressive law. Its suppression, Washington's indignant charge that it had been fomented by "self-created societies" inimical to the Federal Government, and still more the downfall of Robespierre and the original Jacobin Club of Paris, made the Democratic clubs unpopular and they soon disappeared. But their members, while subsiding into the mass of the Republican party, colored its policy for the next few years with a strong French cast; and the Federalists persisted in giving the name of Democrat, as a term of contempt, equivalent to Jacobin or revolutionist, to every Republican.

In the Fourth Congress (1795-7) the Senate was Federalist. The House was doubtful, but though Dayton, an anti-British Federalist, was chosen Speaker, the doubtful vote generally inclined to the Republican side. In

the first session came the debate upon the appropriations necessary for fulfilling Jay's treaty, in which the Republicans were defeated by a small majority. But the debate, and still more the course of discussion outside of Congress, showed the difference between Republican and Democratic methods. The Democrats attacked Washington personally with a virulence almost beyond quotation. The Republicans generally preserved a distinguished consideration for the President, while they evidently felt it to be a gross injustice that the sacred person of Washington should always be in their adversaries' end of the lists, and that they should always be compelled to reach around the President in order to attack Federalist men and measures. Their feelings were thus fairly expressed nearly forty years afterward, in 1830, by Edward Livingston, who had been a Republican Congressman from New York, 1795-1801: "As Washington was the head of the Government, one of their [the Federal party's] greatest objects was to cover all their proceedings with the popularity of his name, and to force the Republican party either to approve all their measures, or, by opposing them, incur the odium of being unfriendly to the father of his country."

This feeling was natural, and shows only that the time had passed when it was necessary for Washington to keep the political peace by interposing between the parties. Gross as were the attacks upon him, they came from Bache, Leib, Duane, and the other noisy and frequently silly leaders of the professed Democrats; and it is creditable to the Republicans proper that their opposition to Washington's Administration was legitimate, that their public utterances were decorous and affectionate to the President personally, and that even in their private correspondence we can find nothing worse than an impatience for his approaching retirement from politics, and for a free and hand-to-hand struggle with the Federal party.

The first disputed presidential election (1796) resulted in the election of John Adams as President and Thomas Jefferson as Vice-President; but the result was eminently encouraging to the Republicans. Adams was only elected by the whim of two Southern electors (one in North Carolina and one in Virginia) in voting for him as well as for Jefferson; the Republicans otherwise had complete control of the South, excepting Maryland and Delaware, which were usually opposed to the larger neighboring State of Virginia, and they had gained Pennsylvania in the North. They had only to persevere in opposition, with the certainty of a swift advance in the other Middle States. In this they were greatly assisted by the hostilities with France in 1798-9, which at first seemed fatal to all their prospects. The execution of the Alien and Sedition Laws could hardly have been better calculated for increasing the Republican and decreasing the Federalist vote in the all-important Middle States, and the general American indignation against France, together with the evident conversion of that country into a military dictatorship, closed the mouths even of the Democrats, and forced the Republicans back from their abnormal foreign dependence to their original theoretical position upon American constitutional questions.

It was an opportune moment for the thinkers of the party, and Jefferson and Madison seized it to formulate the Kentucky and Virginia Resolutions in 1798, whose spirit has always since been the basis of the party's existence. The spirit of the resolutions is, in brief, that the State governments are the foundation of the American political system; that their powers are unlimited, except by State constitutions and by the Constitution of the United States; that the Federal Government, on the contrary, has no powers except those which are granted by the Constitution; that, therefore, wherever there is a fair doubt as to the location of a power, the presumption



must be that it is in the State, not in the Federal Government; that the powers of the Federal Government are to be construed strictly according to the terms of the grant in the Constitution; that where the Federal Government assumes ungranted powers, its acts are unauthoritative and are to be opposed peaceably and lawfully by the legislative, executive, and judicial machinery of the State governments, which the people have retained for that purpose, and that as most of such assumptions of power are political in their nature, and beyond the purview of the Supreme Court, the proper remedy and safeguard is in frequent conventions of the States, such as formed the Constitution, as its most authoritative exponent. The great political error of the resolutions, the denial of the power of the Federal Government to define the boundaries of its powers, was the inevitable result of the particularist tendency of the time, and has been constantly modified since by the gradual nationalization of the country and its parties.

Aside from the general constitutional principles above enumerated, there were other Republican characteristics arising partly from them, and partly from the nature or agricultural prejudices of the men who held them. The Republicans were opposed to debt, to brilliant administrations and large expenditures of public moneys, and to a navy, which they commonly called "the great beast with the great belly," on account of its expense; they considered that government which was nearest to the citizen to be most worthy of his affection, and held every remove of government from popular control to be in some measure unrepugnant and mischievous; they wished that the judiciary, as well as most other public servants, should be elective for short terms and easily removable by the people; they wished that "every man who would fight or pay" should vote, and that the suffrage should no longer be limited by any money or property

qualification, as it then was in most of the States; they preferred direct to indirect taxes, as the surest means of compelling the citizen to watch the expenditures of government critically, and Jefferson even wished to deny to the Government the power of borrowing money; and, in general, they believed that the country should rely most upon individual enterprise, far less upon the powers of the State governments, and least of all upon the Federal Government.

The origin of the *Federal Party*, in the political segregation of the commercial and business elements from the mass of the people, is given above.<sup>1</sup> But though the mass of the party was thus commercial, it had many leaders and an important part of its own body who held very different views. These were most affected by the reflection that the Revolution, by taking the United States out of the British Empire, had practically taken them out of the family of nations. They desired a place in the civilized world, a recognized rank among nations—nationality—not a league of separate nations. They therefore wished for order, prosperity, and an energetic government, not, like the rest of their party, for the sake of commerce and business, but for the sake of the nation. This, the only valuable political element in the Federal party, and the precursor of two other and greater parties which were afterward to take part in the seventy-five years' (1790–1865) work of nationalizing the Government, was stronger in leaders than in following. The country, which had comparatively little real national feeling as yet, was not ready for it, and the commercial party, which had at first supported it, proved in the end a faithless ally.

The history of the party falls naturally into two periods, one (1789–1801) in which the alliance between its two elements, and its own hold upon power, grew

<sup>1</sup> See Anti-Federal Party.

yearly weaker, and a second (1801-20) in which it grew less and less influential until it disappeared, its nationalizing principle reviving again with stronger power of assertion in the Whig and Republican parties.

I. 1789-1801.—The process of the adoption of the Constitution was exceedingly complex. The underlying difficulty was in most cases that of overcoming the repulsive force not only of the two sections, North and South, each of which had many elements ready for separate nationality, but also of the thirteen distinct political units which composed those sections. But on the surface other causes were more actively apparent.

At first, while the idea of the former congressional structure governed the deliberations of the Convention of 1787, the "large States" pressed the national plan earnestly. After the new political factor, the Senate, was introduced, the large States became recalcitrant, and finally ratified the Constitution with great reluctance. When, however, the confusion of the conflict had cleared away, it was found that the advantages accruing to large and small States were fairly balanced, and that the substantial fruits of victory had been gathered by the commercial classes, including in that term all interests not agricultural, excepting manufactures, which were as yet of no great importance. \* It was to their behoof that the control over individual citizens, over the army, over the navy, over taxation for national purposes, over commercial regulations, was to be exercised in future by a Federal Government, not by a jarring congeries of State legislatures; and their activity, intelligence, influence, and hearty support of the Constitution secured to them in 1789 a control of the new Federal Government so complete that it would be difficult to specify a Federal office not then held by a Federalist, for even Jefferson and Randolph were professedly of that party.

This initial success of the commercial party was due to

a fortuitous combination of three assisting circumstances, none of which could fairly be relied upon as permanent.

1. Washington's experience of the Confederation during the Revolution had predisposed him to favor an energetic republican government, and he therefore became the central figure of the Federal party, in spite of his own efforts to stand outside of party. Throughout the Northern and Middle States the right of suffrage was then very generally restricted to freeholders, the small farmers being the controlling class. With these Washington's name was all powerful, and through its silent influence their support was secured for the ratification of the Constitution, and afterward for the Federal party. 2. In the South, where Washington's influence was by no means so potent, a weaker but still respectable element, very similar to the last, was brought to the support of the Constitution and the Federalists by the influence of Madison and others, who were actuated far more by contempt for the extreme weakness of the Confederation than by desire for a very energetic government in its place. 3. The opposition was utterly disorganized. Its natural leaders of the Madison class had gone over to the Federalists; its only principle of cohesion, opposition to the Constitution, had disappeared with the translation of the Government to a new form and those of its members who were chosen to the First Congress at first followed the prudent course of abstaining from open opposition to Federalist measures.

We are therefore indebted almost entirely to the Federal party, in which, however, the Madison element was as yet included, for all the work of the first session by which the administrative machinery of the Government was put into shape as it still remains. The excellent organization of the executive departments, of the Federal judiciary, and of the Territories, is always with us as a memorial of the administrative ability of the dead and almost forgotten Federal party.

The party had at first been satisfied with the obtaining of order and guarantees for commerce, foreign and domestic; but the remarkable and immediate contrast between the national results of the first or extra session of Congress (March 4-September 29, 1789) and the preceding chaos of the Confederation had a natural and constant tendency to convert it to nationalizing views.

The nationalization of the Government had for years been the ruling desire of Alexander Hamilton, Washington's Secretary of the Treasury, and he now proved his title to the leadership of a party which was but approaching the standard which he had long fixed upon. At the second session of this Congress (January 4-August 12, 1790) he offered to the House of Representatives his "plan for the settlement of the public debt," which contained several features certain to obtain the support of the party both in its commercial and in its newer nationalizing aspect. Its first recommendation, the payment of the foreign debt in full, was adopted unanimously. The second recommendation, the funding and payment at par of the domestic or "continental" debt, which had fallen far below par, was opposed by members from agricultural districts as a commercial measure which would only benefit speculators, who were busily buying the evidences of debt from holders ignorant of their value.

Madison here diverged from the Federalists, and urged payment in full to original holders and the market value to holders by purchase; but Hamilton's recommendation was finally adopted. The third recommendation, the assumption of State debts incurred in the Revolution, was opposed as a nationalizing measure, designed to degrade the States, to represent them as delinquent debtors, and to attract the permanent support of the capital of the country to the Federal Government. It was carried in committee of the whole, March 9th, by a vote of 31 to 26; but an Anti-Federalist reinforcement of seven

members from the new State of North Carolina turned the scale, and assumption, having been reconsidered, April 12th, was lost by a majority of two. It was, however, again introduced and carried by a bargain.<sup>1</sup>

Hamilton's first false step, however triumphant at first view, was in thus springing upon his supporters in Congress, without securing the acquiescence of their non-commercial leaders, this sweeping plan of financial reform, which he might easily have made acceptable both to them and to their commercial allies, and a new bond of union between the two. Confident in his own ability and in his own rectitude of intention, he demanded from the Madisonian element a blind support which it would not give, and the result was suspicion and alienation. For the next two years Madison, while supporting many isolated points of Hamilton's policy, is no longer the great Federal pillar of debate in the House.

At the third session of this Congress (December 6, 1790–March 3, 1791), two further items in Hamilton's policy were adopted. It is probable that his proposition to assume State debts had been intended to force, by an increase of debt, the prompt exercise of Federal powers, and particularly of the power to lay excises, which had hitherto been in the States and was unfamiliar as an appanage of the Federal Government, though expressly granted by the Constitution. On his recommendation an excise law, laying taxes on distilled spirits, was passed, March 3, 1791, and "The Bank of the United States" was chartered by acts of February 25 and March 2, 1791. This last measure met a strong opposition, led by Madison in the House, and by Jefferson and Randolph in the Cabinet. The arguments in its favor show that Ames, Sedgwick, and other Federalist leaders had now fully assimilated Hamilton's broad construction theory, which defended every attempt to increase the national, as dis-

<sup>1</sup>(See p. 113 *sq.*)

tinguished from the State, power and influence, on the ground of the power granted to Congress to pass all laws "necessary and proper for carrying into execution" the enumerated powers. Who was to judge of the necessity and propriety of a doubtful law? Congress itself, said Hamilton and his supporters, governed in the exercise of its discretion by its direct responsibility to the people, and secured from the evil effects of possible error by the conservative influence of the Federal judiciary.<sup>1</sup>

Within the limits of a single Congress, then, Hamilton had raised his party from the narrow basis of commercial interest to the broader foundations of nationalization, and he had done it almost unaided. { He had taught the commercial classes that their safety and prosperity were best secured by close alliance with the Federal Government, and they in their turn had so reacted on their Congressional representatives as to make them Hamilton's eager followers.

Before 1790 we find many half-uttered hopes for a more energetic central government than the Confederation; Hamilton and his measures first made "the nation" a political force. It was, indeed, but a blind and vague force as yet, and was destined soon to be rejected by the commercial selfishness which was at first its only available conservator; but the principle survived, and American politics has ever since felt the growing impulse which was first directly given by Hamilton's measures. Before the end of the First Congress, the Federal party was fairly committed to a support of his policy, which was in general as follows, though portions of it were never successfully carried out: I. With a reliance upon agriculture as a basis for exportations and foreign commerce, duties on imports were generally made high, with the view of encouraging infant American manufactures by prohibiting the importation of articles which could be manufactured

<sup>1</sup> See Construction, II.

here, and of drawing a larger revenue from articles whose importation was beyond control. 2. The power of internal taxation was at once asserted and enforced. 3. The superfluous revenue, after the payment of the debt which had originally compelled the adoption of the first two measures, was to be devoted to the formation of a strong navy which was to protect commerce; and to the increase of the army; and 4, the first opportunity was to be taken to convince ill-disposed States or ill-disposed individuals that both had at last found their master.

Such was the magnificent structure which the Federal party proposed to erect upon a soil which had been, but a few months before, the shifting quicksand of the Confederation. It is not wonderful that the more "high-flying" Federalists often regretted that the National Government had not been made still stronger and the States still weaker, and that they felt considerable distrust of their ability to carry out their plans to the end as the Government was then constituted. It is certain that their incautious utterances soon enabled their political enemies to charge them with a design of converting the Government into a monarchy or an oligarchy, under the guise of a "higher-toned" government.

During the Second Congress (October 24, 1791–March 2, 1793) the Federal party retained its majority in Congress and continued its work of organizing a national government. The post-office system was completely organized; the army and the tariff were increased; bounties were granted for the encouragement of fisheries; and the President was formally authorized to call out the State militia as a national instrument for enforcing the laws. But before the end of this Congress the reaction had begun under the lead of Jefferson, the Secretary of State, and his first auxiliaries were drawn from the Madison element which Hamilton had so unluckily estranged.

When resolutions censuring Hamilton's official conduct



were brought up in the House, late in February, 1793, Madison took an open stand in their favor, and was one of the small minority of seven who finally voted for them. He was now in close and confidential alliance with Jefferson. His loss, which was really the beginning of the end, was underestimated or contemptuously disregarded by Hamilton, who mistakenly relied upon the still Federalist States of South Carolina, Maryland, and Delaware to counterbalance Virginia and prevent the formation of a controlling Southern party.

In the Third Congress (December 2, 1793-March 3, 1795) the Federalists controlled the Senate by a small majority. By a party vote (14 to 12) the seat of Gallatin, of Pennsylvania, was vacated for ineligibility, and the new Federalist Legislature chose James Ross in his stead, thus making a reliable majority in the Senate. In the House the election of the Speaker was contested for the first time, and the Federalists were beaten by a majority of ten. In such a divided Congress it was sufficient success for the Federalists to maintain the ground they had already won, but they succeeded further in supporting the President in his proclamation of neutrality in the war between England and France, in his management of the French ambassador, and in his suppression of the Whiskey Insurrection.

In one important respect the prospect for the party was unpropitious. The long conflict between Great Britain and France had begun, in which it was inevitable that the former's most powerful weapon, her navy, would be used to the oppression of American commerce. Here, again, the assumption of the State debts worked for ill, for its increase of the national debt and interest gave the opposition a fair excuse for opposing successfully the formation of a navy which could compel respect, and even embarrassed the Federalists very apparently in their attempts to secure this corner-stone of a true national policy.

This failure to begin a navy in 1794-5 was the real death-warrant of the Federalists as a political party. Prevented from protecting commerce by force, they were constrained to resort to accommodation with Great Britain, and, though this policy of palliation was successful for the time, its inevitable and cumulative effect was to undo Hamilton's work of nationalization, and to degrade the party again to the position of a mere commercial association, dependent on the favor of Great Britain not only for prosperity, but even for existence.

This effect was not immediately apparent, however, and the power of the party never seemed greater, even in 1798, than at the close of the year 1796. It had then completely organized the Government after its own ideas, had very considerably established the broad construction of the Constitution, had compelled even the assurance of a French republican envoy of 1793 to respect the neutrality of the United States, had put down with the strong hand the first symptom of revolt against the Federal Government, had forced an unwilling House of Representatives to carry Jay's treaty with Great Britain into effect, and in the first contested election had seated its candidate, John Adams, in the Presidency. "Against us," said Jefferson, in his Mazzei letter of April 27, 1796, "are the executive, the judiciary, two out of three branches of the legislature, all the officers of the government, and all who want to be officers."

But the party's tenure of power was nevertheless weak. Jefferson had been but three electoral votes behind Adams, thus becoming Vice-President; and he alleges that the real vote was 70 to 69, instead of 71 to 68, one Republican elector in Pennsylvania having failed to vote, and a Federalist having been received in his place. But a far more ominous circumstance was the geographical character of the vote. The Federalists had lost South Carolina, and only received two chance votes in the whole

South, outside of Delaware and Maryland, while in the North they had lost all but one of Pennsylvania's votes. Jefferson's ability as a leader and organizer was fast depriving them of the assistance they had at first received from the disorganization of the opposition, and unless some new factor could be found to replace the influence of Washington, his approaching retirement would enable the opposition every year to make fresh inroads farther north, and finally to circumscribe the commercial interest within its own geographical limits.

Indications may be found in the debates that some of the Federalist leaders, particularly Fisher Ames, saw their proper course in a conjunction of internal improvements and an energetic naval policy; but the latter was barred by the necessity of providing for the interest of the debt, and the former alone would have demanded a wisdom of self-sacrifice to which the commercial party had not attained. Instead of both, they grasped eagerly at the possibility of war with France<sup>1</sup> in 1798, and used it as a makeshift. In the Senate they had a clear majority, and in the House the flame of popular anger, roused by the outrageous demands of the French Directory, either silenced or converted most of the Republicans, and gave the control of that body also to the Federalists. If they had now reduced all other expenses to the lowest possible limits, and put every available resource into the increase of the navy, it was not yet too late to change the course of history on two continents.

Party passion, however, and the treasured bitterness of past political struggles, hurried them further. A regular army was at once formed under cover of Washington's nominal command, ostensibly to guard against a mythical French invasion; the passage of the Alien and Sedition Laws was almost avowedly an attempt to suppress the few Republican newspapers, whose scurrilous attacks had

<sup>1</sup> See X. Y. Z. Mission.

long been a thorn to the dignity of the Federalist leaders; and these needless exhibitions of party zeal more than neutralized the increase of the navy to twenty-four vessels.

During the Sixth Congress (December 2, 1799–March 3, 1801), which had been elected in the very crisis of the war fever of 1798, the Federalists had a majority in both Houses, and yet the symptoms of disintegration in the party became steadily more apparent. Its two wings, the commercial and the nationalizing elements, which had been clamped together only by Hamilton's adroit use of Washington's authoritative influence, were already falling apart.

Hamilton was now a private citizen of New York, and was governed more by his hatred for President Adams than by political prudence. Adams, who disliked Great Britain and showed no officious subservience to commercial interests, was the embodiment of that nationalizing feeling afterward more strongly developed in the Whig and Republican parties. He had earned the distrust of the Hamilton faction by his willingness to make peace with France, when he found that nation earnestly anxious for peace, and the party's embarrassment at this loss of its only available stock in politics was made evident by the anxiety of some of the party leaders either to manoeuvre Pinckney into the Presidency in place of Adams, or to bring Washington back to the political arena and thus compel Adams to retire. "Believing the dearest interests of our country at stake," and "considering Mr. Adams unfit for the office he now holds," Gouverneur Morris had written to Washington, December 9, 1799, begging him to accept a third term; but Washington was dead before the letter reached him, and the only hope of union in the Federal party died with him. His death at this time was peculiarly unfortunate for the Federalists, for in this Congress a strong Federalist representation from the South appeared for the first and last time, John

Marshall being its most prominent member. They were rather of the Adams than of the Hamilton school, and if the crash could have been postponed for a few years might possibly have become the Southern wing of a real national party, very much like the Whigs of after years. But their appearance was too late, and after 1801 they soon fell into the all-embracing Republican party.

This Congress represented mainly the war feeling of 1798, and felt little sympathy with the popular discontent at the continued enforcement of the Sedition Law. The prosecutions under this act were few, but, by a perverse ingenuity, they were chiefly brought in those doubtful Middle States which only Washington's influence had ever made secure to Federalism. It seems difficult to see anything better than farce in proceedings against a "criminal" in New York, charged with the circulation of petitions against the Sedition Law, and against another in New Jersey, charged with the expression of a wish that the wadding of a cannon just firing might strike the President behind. But when it is remembered that only the whim of two Southern electors in 1796 had saved the Federal party from defeat in that year, and that the loss of either New York's or New Jersey's vote would ensure its defeat in 1800, the blindness of the prosecutors seems almost wilful.

All this time Burr, who was superior to Jefferson as an organizer, in the modern American sense of that political term, had been actively at work in the "pivotal" State of New York, and the result of his labors was seen in the spring elections, beginning April 28, 1800, for members of the Legislature which was to choose electors in the following autumn. A Republican majority was elected, and the hardly smothered ill-feeling in the Federal party at once broke out. Pickering and McHenry, who, while nominally the President's advisers, had kept up a close and confidential correspondence with Hamilton, were

contumeliously dismissed from the Cabinet, and Adams threw himself openly upon the anti-Hamilton element, taking Marshall into the Cabinet.

Hamilton endeavored to defeat this movement by printing, for circulation among Southern Federalists, a very savage pamphlet attack upon the President, which would certainly have come within the terms of the Sedition Law, if that act had ever been anything better than a party measure. Hamilton's rhetoric was needless, and the President himself was too late. The spark of nationalization, which had only begun to burn in the South after ten years of Federalist government, was not destined to come to a flame. The presidential election left the Federal party a wreck. The Middle States, except New Jersey and part of Pennsylvania's votes, joined the solid column of States south of the Potomac and Ohio, and gave the Republican candidates a majority.

It cannot be said that the party, at least its larger commercial element, surrendered the Federal Government with dignity. The whole session of Congress following the election was spent in efforts to save by intrigue something of what had been lost at the polls. The scheme to make Burr President, in order to establish a claim upon the person who was to dispense the offices, is elsewhere given. At a time when the Supreme Court had not sufficient business to fully employ it, twenty-three new judgeships were erected, each with its attendant suite of clerks, marshals, and deputies, and filled by the appointment of Federalists. And, as if to make the object of the law more apparent, the party endeavored, almost successfully, to renew the Sedition Law, which was to expire by limitation at the end of this session.

With all these schemes the non-commercial element of the party, the class represented by Marshall, Bayard, and Adams, had very little sympathy or connection, and Adams, while yielding to party demands so far as to ap-

point Federalists to office, seems to have done so with some contempt. After signing judicial appointments until after midnight of his last day of office, whence the angry epithet of "midnight judges," given to his appointees, the President left Washington early in the morning of March 4, 1801, and the control over the National Government which it had founded passed from the Federal party forever. It still retained control of the judiciary, but the next Congress, which was Republican, repealed the new judiciary law, in spite of the excited expostulations of the Federalists, and in face of the fact that the Constitution expressly gave all judges, when once appointed, a life tenure during good behavior.

During this period the three leading minds of the party, after Madison's defection were, Hamilton, John Adams, and John Jay, of New York. Hamilton's natural place was in the small nationalizing element, but he had the entire confidence of the commercial class also, and was apt to incline toward it because of his reliance upon it. Jay and Adams were entirely nationalist, and after 1801 ceased to act as party leaders. Other leaders of a lower rank were Samuel Livermore and William Plumer, of New Hampshire; Fisher Ames, Theodore Sedgwick, and Caleb Strong, of Massachusetts; Roger Sherman, Oliver Wolcott, Oliver Ellsworth, Uriah Tracy, and Jonathan Trumbull, of Connecticut; Rufus King and Gouverneur Morris, of New York; Thomas Fitz Simons, James Ross, and William Bradford, of Pennsylvania; Jonathan Dayton and Elias Boudinot, of New Jersey; James A. Bayard, of Delaware; John Marshall and Richard Henry Lee, of Virginia; Robert G. Harper (afterward of Maryland), Charles Cotesworth Pinckney, and William Smith, of South Carolina.

On Early Party History, see 1 Gordy, *Political History of the United States*; Stanwood, *History of the*

*Presidency*; McKee, *Party Platforms*; Hart, *Formation of the Union*; 2 McMaster, *History of the People of the United States*; 2 Randall, *Life of Jefferson*; 1, 2, Tucker, *Life of Jefferson*; Hunt, *Life of Madison*; 2 Morse, *Life of Hamilton*; 1 *Works of John Adams*; Marshall, *Life of Washington*; Garland, *Life of Randolph*; 1 Von Holst, *Constitutional History of the United States*; Morse, *Life of John Adams*; Woodburn, *Political Parties and Party Problems*; Pickering, *Life of Pickering*; Van Buren, *Political Parties*; Lodge, *Life of Hamilton*; Watson, *Life of Jefferson*; Magruder, *Life of Marshall*; William Jay, *Life of John Jay*.



# Growth of Nationality

1800-1832



# American Political History

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## CHAPTER XII

### THE SECOND PERIOD OF PARTY HISTORY; OR, THE DECLINE OF THE FEDERALISTS

**D**URING Jefferson's first term of office the crusade against the Federal party was carried on with vigor, ability, and success. No general eviction of officeholders was resorted to; indeed, such a step would have almost brought the operations of government to a stand, for the administrative skill and experience were mainly Federalist. Appointments were made, however, as often as vacancies occurred, with scrupulous attention to Republican party interests. Every effort was made to disparage the Federalists in the eyes of the people. For this purpose the old charge of monarchical tendencies was still brought against them, but it now showed more exactly the animus which really controlled it—the idea that Federalists generally had no sympathy with or respect for their constituents; that they claimed elective office on the score of their own innate ability, virtue, or assumed superior qualifications, rather than as representatives of those characteristics in their constituents; and that, in short, they “did not trust the people.”

Against this insidious method of attack the older Federalists, whose early training had been colored by the staid and dignified official life of colonial times, were unprepared to make an adequate defence by formulating a party creed for popular examination, and the case against them really went by default. Athens does not stand alone in her employment of ostracism: that penalty may be applied almost as rigorously with the ballot as with the oyster shell, and it was so thoroughly used at this time that only New England tenacity and commercial interest combined could have hindered its entire success. The older Federalist politicians were slowly driven out of politics, and younger men were sternly taught that any adoption of Federalist ideas would be an absolute bar or a great hindrance to their advancement.

The political action of the party was no wiser than its neglect to put its theory before the people. The opposition of the Federalists to the repeal of the judiciary law, above referred to, was generally creditable, but it is almost the last point in their party history to which praise can be awarded. They might have fairly claimed as their own almost every measure introduced by the new Administration; they preferred to follow a general course of factious opposition to every proposal to increase the strength of the Federal Government, thus alienating the little remnant of their nationalizing element, and intensifying the commercial character of the remainder of the party. In 1803 their opposition to the acquisition of Louisiana was not concurred in by several of their own party, such as John Quincy Adams in the Senate, and Purviance, of North Carolina, in the House, who were elected as Federalists, but who, perhaps for that reason, preferred to increase Federal power even for the benefit of their opponents. But the leaders generally confined the Federalist side of the debates to a recapitulation of former Republican arguments, a course certain to estrange

the most valuable elements of their own party, and to convince the popular mind that their present professions were no more based upon political principle than their professions in 1793, by their own present admission, had been.

Before the end of Jefferson's first term the fortunes of the Federal party had ebbed to the point at which they really always afterward remained, though the accession of temporary elements of opposition to the dominant party occasionally gave them a factitious increase of strength. In the presidential election of 1804, Federalist electors were chosen only by Connecticut and Delaware, with two from Maryland.

In February, 1806, the party received an unexpected reinforcement in the person of John Randolph, hitherto the Republican leader in the House. He now joined the Federalists in opposing the "restrictive system," which weighed heavily upon commerce, but his quarrel was rather with the President than with his former party, and he brought with him but a few personal adherents and no real party strength. From this time the general history of the party is made up of opposition to the embargo and kindred measures, and of efforts, which were now made earnestly, but unfortunately too late, to obtain a strong navy. The opposition to the embargo became so violent as to threaten a disruption of the Union, but it never was a party opposition; it was a revolt of those engaged in commerce, of their friends and of their dependents, against the attempts to shackle commerce and make the United States an agricultural country. In the presidential election of 1808 New Hampshire, Massachusetts, and Rhode Island, with three electors from North Carolina, were added to the Federalist list of 1804.

During Madison's first term (1809-13) the opposition to the restrictive system continued, and culminated in opposition to the war which followed the abandonment

of the restrictive system. By this time the Federal party had lost even the pretence of party principle. It had taken refuge in the last resort of a minority, State rights,<sup>1</sup> and all its arguments were amplifications and exaggerations of the strict construction theory of the Republicans. Since its principles were now taken at second-hand, it seemed well that its candidates should be selected in the same way, and accordingly, in 1812, the Federalists endeavored to take advantage of New York jealousy of Virginia by supporting De Witt Clinton, of New York, for President, and Jared Ingersoll, a Pennsylvania Federalist, for Vice-President. The basis of the alliance was opposition to the war with England, though Clinton cautiously abstained from committing himself personally, and after the election took an opportunity to approve the war; but in the presidential election of 1812 the alliance only failed of success because of the growth of the agricultural or backwoods population of the Middle States, and particularly of Pennsylvania. To the hitherto Federalist list were now added the votes of New York and New Jersey, and three additional votes from Delaware and Maryland; and, though Madison was elected by 128 votes to 89, the 25 votes of Pennsylvania, if that State had followed the lead of New York, would have made Clinton President by a vote of 114 to 103. Even in that event, it is difficult to see of what advantage the result would have been to the Federal party.<sup>2</sup>

The most prominent of the Federalist leaders during this period were C. C. Pinckney and Rufus King, the party's usual candidates for President and Vice-President. Of those who were prominent in the first decade, Ames, Hamilton, Bradford, and Tracy were, in 1815, dead; Plumer, John Adams, John Quincy Adams, and Bayard were either nominally or really in affiliation with the

<sup>1</sup> See State Sovereignty.

<sup>2</sup> For the party's further opposition to the war, see Hartford Convention.

Democratic (Republican) party; Marshall had retired to the Supreme Court; and the others began to confine their ambition to the service of their respective States. In the presidential election of 1816 Massachusetts, Connecticut, and Delaware were the only States which cast Federalist electoral votes; three Federalist electors, chosen by the "district system" in Maryland, did not take the trouble to vote. In Congress the few Federalists did not attempt even to cast a united vote any longer, and in national politics we may consider the party as dead after 1817. In 1820 it cast no electoral votes. In *State* politics it survived, though in a hopeless minority, in Maryland and North Carolina; in Delaware and Connecticut it usually controlled State elections until after 1820; in Massachusetts it controlled State elections until its great defeat of 1823, when the State, and even the county of Essex,<sup>1</sup> were carried by the Republicans.

The Federalist opposition to the war, which is commonly assigned as the reason for the party's final collapse after 1816, was undoubtedly of great weight; but a deeper influence had long been operating to give the *coup de grace* to the dying party, even in the State elections which were now its only dependence.

Until 1808 manufactures were hardly of any importance in American politics, but the "restrictive system," by keeping British manufactures out of the country, at once began the development of a great manufacturing interest in the United States. For seven years this interest was fostered by the embargo, by the non-intercourse law, and at length by open war, until in 1815 it represented a very considerable invested capital and a large influence in the very citadel of Federalism, New England. For a continuance of the restrictive system in the form of high tariffs this interest was dependent upon the favor of the

<sup>1</sup> See Essex Junto.

Republican party, and it was therefore directly antagonistic to the Federal party.

It is safe to say that the Federal party was finally destroyed by an alliance of agriculture and manufactures. This alliance, indeed, was not permanent. Agriculture was faithless to its new ally, and the manufacturing interest, after thirteen years of unavailing effort to obtain a protective tariff, went over to its old antagonist, and, in conjunction with commerce, and on a wiser political basis, founded a new party.<sup>1</sup> As a Federalist, Daniel Webster opposed a protective tariff in 1814 and 1824, and hoped that we would never have a Sheffield or a Birmingham in this country; as a Whig, he was as earnest in the opposite direction. But, during these thirteen years, Federalism tended more and more to become a social rather than a political cult in New England, Delaware, Maryland, and North Carolina, until it finally disappeared with the old age of its more persistent devotees.

As the small nationalizing element, which alone had ever given the Federalists a claim to the title of a political party, remained in, but not of, the Democratic-Republican party until about 1828-30, and then fell back again into the *National* Republican (afterward called Whig) party, it may be said that the principles of the Federal party thus survived it. But the irremediable fault of the original Federalist leaders, a fault avoided by their Whig and Republican successors, was, that they never formulated their cardinal party principles into a creed comprehensible by the mass of voters. He who searches the writings of Federalists for such a formulation will search in vain; the party, which was made up of the finest elements of American society, lived upon an instinct, a kind of spiritual recognition, rather than upon defined political principles. Nor can the neglect be properly ascribed to immaturity of political thought; Hamilton was as capable

<sup>1</sup> See Whig Party.



of such a work as Jefferson, if he had cared enough for popular conviction to strive for it.

After 1801 the ill-effects of this neglect were increasingly apparent, but they only drew from Federalist leaders angry railings at popular stupidity in not comprehending Federalist principles, though these had never been comprehensibly placed before the people. In 1814 a clearer insight seems to have come to some Federalists, though too late, and an extract from Barent Gardénier's *Examiner*, of March 19, 1814, might serve as an epitaph for his party: "See and feel? Aye, multitudes of the people can do much more. And if we would only talk to them more, and scold at them less, than we do, the good effects would very soon be apparent."

Holding the popular principles described in a previous chapter, the Republican party, in the election of 1800, at last gained the State of New York and the control of the Government, which it retained for twenty-four years. Not only were the President and Vice-President Republicans; the Seventh Congress was for the first time completely Republican, the Senate 18 to 14, and the House 69 to 36. The judiciary was still Federalist, but that department of the Government also was gradually transferred to the dominant party. Nor was the political revolution confined to the Federal Government; the first shock had shown how unsubstantial was the previous Federalist control of the Middle States, and had overthrown them as a party almost everywhere.

Before the close of the year 1801 every State in the Union had a Republican Governor and Legislature, excepting Vermont, New Hampshire, Massachusetts, and Connecticut, and of these Connecticut only was reliably firm in the Federalist faith. So overwhelming was the sudden Republican success that in several States divisions began to appear in their ranks. In New York the Livingstons and Clintons united against Burr and drove him and

his adherents out of the regular party fold. In Pennsylvania and Virginia radical and conservative Republicans began to make their appearance, the main object of the former being to limit the terms of office of the judiciary, an object which seems quite legitimate now, but in 1801-5 was considered revolutionary in the highest degree. The Federalists, however, were unable to reap any party advantage from these Republican dissensions, and before the close of Jefferson's first term they even lost, for the time, New Hampshire and Massachusetts.

The great event of Jefferson's first term was his acquisition of Louisiana. For this acquisition of foreign soil no warrant can be found in a strict construction of the Constitution, but Jefferson's excuse seems to have lain in the ultra-democratic idea of the power of the people to temporarily override even the organic law in a case of extreme necessity. His action was certainly ratified by almost universal popular approval, and, together with the reduction of governmental expenses, the steady payment of the public debt, and the great prosperity of the country, insured him a re-election in 1804. The only electoral votes against him were those of Connecticut and Delaware, with two from Maryland.

Jefferson's second term was by no means so brilliant. The party's determination to pay the national debt rapidly led to a systematic refusal to put the country into any posture of defence against the attacks upon its commerce by Great Britain. In 1803-4 the party adopted as its policy the building of small gunboats for coast defence, as a substitute for the more costly navy which was absolutely essential for the protection of American commerce all over the world; it thus deliberately committed itself to the dogma, on which it had always acted in reality, that ocean commerce deserved, and should receive, no protection at the hands of agricultural representatives; and from this point it advanced, when commerce

grew louder in its complaints, to a command, by act of Congress, that American commerce should quit the ocean altogether, and thus relieve the dominant party from anxiety or responsibility on its account.

A more false and foolish policy could hardly have been devised. It was the very error which had overthrown the Federal party in 1800, contempt for the interest of the Middle States, and it would have also overthrown the Republican party in 1812 but for the growth of the western or agricultural portions of those States, which saved Pennsylvania to the party and elected Madison in 1812.

During all the period from 1800 until 1812 the Republican party showed a constant disposition to exercise powers of the Federal Government which it had denied while the Government was under Federalist control. Its acquisition of Louisiana, its recognition of the legal existence of the national bank, and its summary prohibition of American commerce, were all alike unwarranted by a strict construction of the Constitution. Three distinct influences were at work in this direction. 1. The party's "strict construction" originally had a basis not visible on the surface. It had opposed the Hamiltonian broad construction mainly because this was designed for the benefit of a special interest, commerce, and where the supposed interests of agriculture were in question constitutional scruples ceased to apply. 2. It was impossible that all representatives from agricultural districts should be equally consistent in their adherence to strict construction; but the party name of Federalist had by this time come to be almost entirely equivalent to commercial, and all members not devoted to that interest were compelled to accept the name of Republican, no matter what their principles might be. The consequence was, particularly after a short experience of the embargo had shown its ruinous effects on agriculture as well as commerce, the

growth within the Republican party of an element which soon came to control the party, and which was prepared to assert the power of the Federal Government in national interests rather after the Hamiltonian than the Jeffersonian theory. Of this new element Henry Clay and Story (afterward Justice of the Supreme Court) were representatives. 3. Above all, twenty years' experience of the practical workings of the Constitution had raised the political standard of the country at large many degrees toward nationalization, as would be most plainly shown by a comparison of the management of the War of 1812 with that of the Revolution; and the Republican change of practice only reflected, as a popular party must, the altered feelings of the people.

During this period Randolph, of Virginia, and a small section of personal adherents, commonly called "quids," abandoned the dominant party. Their revolt, however, was rather against the "Virginia influence," which controlled the party, than against the party's principles. Their design was mainly to prevent Jefferson from securing the election of Madison as his successor, and for this purpose they at first endeavored to bring out Monroe, who was dissatisfied with his treatment while Minister to England by the Administration, as a competitor for the nomination in 1808. In 1812 they were more successful in obtaining a leader in the person of De Witt Clinton, of New York, a State whose politicians had long felt a jealousy of the Virginia influence. His defeat, and the close of the War of 1812, finally brought them back again to the Republican party.

The failure of the restrictive system in 1810 left the Republicans at a complete loss: their most trusted weapon had broken in their hands. The meeting of Congress in November, 1811, shows a remarkable change; the party, abandoning the Jeffersonian ground of peace at any price, had become a war party, under the lead of

Peter B. Porter, of New York, Langdon Cheves, William Lowndes, and John C. Calhoun, of South Carolina, Henry Clay, of Kentucky, and Felix Grundy, of Tennessee, in the House; and William H. Crawford, of Georgia, in the Senate. All these were comparatively new men, and but little in sympathy with Madison, who was averse to war; but Madison was coerced into heading the reorganized party, and war was declared, June 18, 1812.

It can hardly be seriously asserted that the war was unnecessary; it had been necessary for at least six years, and the hundredth part of the provocation for it would now bring war within six weeks. The error of the Republicans lay in the manner of its management; in their utter refusal, during the six years given them for preparation, to provide an adequate navy; in their obstinate attempt to carry the war into Canada; and in their endeavor, by relying upon loans almost exclusively, to use as a crutch the very commercial interest notoriously hostile to the war.

The result was the temporary but almost entire downfall of the national credit, and a forced peace which secured none of the objects for which war was declared, and which was only partially covered by the smoke of brilliant sea-fights and of Jackson's victory at New Orleans. But the war, and the six years of restriction which preceded it, gave an impetus to the common feeling of nationality from New York to New Orleans, and in politics, while it modified the dogma of strict construction, it insured to the Republican party the future control of the Government. At last Jefferson's prophecy of 1804, that "the Federalists, *eo nomine*, are gone forever," was fulfilled.

The force of the Republican party, strongest while confined, visibly decreased as it spread over a larger surface. In 1816 it established a new national bank, modelled closely after Hamilton's, and in the same year

imposed a slight protective duty upon woollen and cotton goods.

This last measure was entirely opposed to the strict construction of the Constitution, which holds that Congress has power to lay tariffs only to "pay the debts" of the United States, and "to provide for the common defence and *general* welfare" of the United States; and that any departure from this principle, for the benefit of a particular interest, is beyond the powers of Congress. But manufactures and manufacturers had now grown to be a power, though as yet a small one; they had given the *coup de grace* to Federalism in New England; they had grown upon the Republican restrictive system; and they now looked to the Republican party for its continuance. In 1819-20 the House passed a more protective tariff, which the Senate rejected, and in 1824 a still more pronouncedly protective tariff became law.

Only Massachusetts, Connecticut, and Delaware had voted against Monroe and Tompkins in 1816; in 1820 they also at last yielded and became nominally Republican States. A few inveterate Federalists still denounced the Republican party as managed by "John Holmes [a Congressman from Maine], Felix Grundy, and the devil"; the majority declared themselves satisfied with the "Washington - Monroe policy," professed themselves "Federal-Republicans," and proclaimed an "era of good feeling."

Of course this was only a surrender at discretion, not a conversion. Differences in human nature, which are at the root of party differences, are not so easily eradicated; and it soon appeared that the white flag had been raised with unnecessary haste, and that the all-powerful Republican party contained the elements of a new party which was to be more broad constructionist than the Federal party itself.

In 1819-20 occurred two events for which the dominant

party was responsible. One, the acquisition of Florida, was the necessary sequence to the purchase of Louisiana. The other, the admission of Missouri as a slave State, had a most important bearing on the party's history. 1. It proved that the dominant party was no homogeneous party at all, and that the "era of good feeling" was a sham; for the members from the two sections, North and South, differed on a fundamental constitutional question with an intensity which can only mark a party difference. 2. It was the first appearance of the error into which the strict construction party was finally entrapped—the half-way application of its doctrine of strict construction to the subject of slavery. In Missouri *territory* slavery was first localized by the very loosest possible construction of the Constitution, which nowhere authorizes any such violation of man's natural rights as the establishment of slavery, under Federal auspices, where it did not exist at the formation of the Constitution; when once localized, the strictest possible construction of the Constitution was applied to prevent Congress from interfering with slavery in the *State* of Missouri. This reversible process of construction, begun by accident in the case of Louisiana Territory, was applied with more design in the case of Missouri, and its success there encouraged its application to the Territories of Arkansas and Florida, and the State of Texas, until its failure in the case of Kansas. 3. The compromise of the Missouri case committed the Northern members of the strict construction party to the policy of ignoring the discussion of slavery, while it left the Southern members free to spread slavery by loose construction, as above stated. In this way the former element of the party was forced for forty years to cover the tracks of its Southern associate until its refusal to do so longer split the party in 1860. In this respect the party's history only shows the danger arising from a failure to apply its basic principle consistently.

*Era of Good Feeling.*—A period (1817–23) when the contests of national parties were practically suspended, partly through the exhaustion of one party (the Federal party), and partly through the extinction of the surface issues of the past. The termination of the War of 1812 had put an end to every question which had divided the parties since 1800; it left the Democrats a triumphant majority, and the Federalists a discredited minority; and the new policy of internal improvements and a protective tariff had not yet been developed so far as to form a party issue. Neither of these last projects was supported generally or with any interest by the Federalists, but both found their warmest supporters in the Northern section of the Democratic party.

The inaugural address of Monroe, in 1817, was exceedingly well calculated to soothe the feelings of the hopeless minority of Federalists. It spoke warmly of their peculiar interests, commerce and the fisheries; it congratulated the country on the restoration of "harmony"; and it promised the diligent efforts of the President to increase the harmony for the future. The inaugural was a harbinger of a tour which he made through New England during the year, and he was received with enthusiasm by a section which had not seen a President, or heard such conciliatory language from a President, since Washington. Party feeling was laid aside, and the leaders of both parties joined in receiving the President and in announcing the arrival of an "era of good feeling." The "good feeling" lasted long enough to give Monroe an almost unanimous re-election in 1820, Plumer of New Hampshire being the only elector to vote against him; but it did not induce Monroe to take any Federalists into his Cabinet, as Jackson advised and urged him to do. The era of good feeling was terminated by the election of John Quincy Adams to the Presidency in 1824, the opposition which was formed during his administration, and the de-



velopment of two opposing national parties.<sup>1</sup> During its existence no characteristic is more striking than the torpor which seemed to affect principle in politics and the extent to which personal feeling seemed for the time to have superseded it. The several factions which supported Jackson, Adams, Crawford, and Clay for the Presidency, in 1824, hardly pretended to assign to their candidates any distinctive political principles, and one of the candidates, Jackson, was most earnestly supported for his supposed liking for internal improvements and a protective tariff, to which, as President, he proved to be a consistent opponent.—The best medium for getting the spirit of the “era of good feeling” is 10–24 Niles’s *Weekly Register*; see also 6 Hildreth’s *United States*, 623; 3 Spencer’s *United States*, 309.

On Early Parties see Pitkin’s *Statistical View of American Commerce*; Randall’s *Life of Jefferson*; Jefferson’s *Ana* (in *Works*); Austin’s *Life of Gerry*; 1 Gibbs’s *Administrations of Washington and Adams*; 3, 4 Hildreth’s *United States*; 1 Benton’s *Debates of Congress*.

See Democratic-Republican Party; Embargo; Secession; Convention, Hartford; Whig Party; and the authorities there cited. See also, 4, 5, 6 Hildreth’s *United States*; 1 von Holst’s *United States*; Pitkin’s *United States*; J. C. Hamilton’s *History of the American Republic*; *American State Papers*; 1–4 Benton’s *Debates of Congress*; Hamilton’s *Works*; John Adams’s *Works*; Marshall’s *Life of Washington*; Washington’s *Writings*; Jay’s *Life and Writings of John Jay*; Sparks’s *Life and Letters of Gouverneur Morris*; Fisher Ames’s *Works*; Quincy’s *Life of F. Quincy*; Adams’s *Documents Relating to New England Federalism*; Garland’s *Life of Randolph*; Dwight’s *Hartford Convention*; Story’s *Life and Letters of Joseph Story*; 1 Webster’s *Works*; *Private Correspondence of Daniel Webster*; Hammond’s *Political History*

<sup>1</sup> See Democratic-Republican Party; Whig Party.

*of New York*; Hosack's *Memoir of De Witt Clinton*; Campbell's *Life and Writings of Clinton*; Gardénier's *Examiner*; Carey's *New Olive Branch*; Van Buren's *Political Partics*; Seybert's *Statistical Annals of the United States, 1789-1818*; Sullivan's *Letters*; Pickering's *Life and Correspondence of Pickering*; 24 Niles's *Register*,  
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## CHAPTER XIII

### JEFFERSONIAN DEMOCRACY AND EXPANSION; LOUISIANA AND FLORIDA

**I**N 1800 the Federalists were displaced from power to be restored no more. A united party might have re-elected Adams, but the party was hopelessly and bitterly divided; and this, together with their undue exercise of power in restraint of the people, led to the Federalist defeat. A party now came into power that was imbued with republican ideas, under the leadership of a man who believed that the people were capable of self-government, that all powers were derived from the people and should be exercised for their benefit and by their consent. This was radical democracy for that time, and the advent to power of such a party was looked upon as a "revolution" in politics.

Thomas Jefferson, the founder and leader of the new Democracy, was a man of liberal, humanitarian views. He was born in Virginia in 1743. He early committed himself to the cause of the American Revolution; he was the author of the Declaration of Independence, in which he announced the equality of all men in respect to their rights to life, liberty, and the pursuit of happiness. In helping to lay the foundations for the new government of Virginia during the Revolution he urged the repeal of the laws of entail; the abolition of primogeniture in favor of the equal partition of inheritances; the relief from taxation for the support of an established religion; a system

of general education; and gradual emancipation of the slaves. By such measures he hoped to eradicate every fibre of ancient or future aristocracy, and to lay a foundation for a government that would be truly republican. In the arena of national politics, in opposition to Hamilton and the Federalists, he organized and led to victory a body of voters whom he imbued with his own democratic spirit, and whose political faith he summed up in the immortal maxim of Democracy: "Equal rights for all, special privileges for none."

The programme and creed of the new Democracy as it came into power is well summarized in Jefferson's First Inaugural:

"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 of 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 our safety 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 there 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, till 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 its handmaid; the diffusion of information, and the arraignment of all abuses at the bar of public reason; freedom of religion, freedom of the press, and 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.”

Jefferson believed that Hamilton and his party tended toward monarchy and too much government; that they were seeking to bring republican government into disrepute, and that they wished to have it believed that man could be governed, not by free consent, but only by a rod of iron, and this would furnish an excuse for increasing armies and employing force; that it was dangerous to put too much confidence in those appointed to rule; that free government was founded in jealousy, not in confidence, and that it was only a wise and jealous care that would “prescribe limited constitutions to bind down those whom we are obliged to trust with power.” In harmony with these principles certain distinguishing policies are marked in Jefferson’s administration:

1. The abolition of internal taxes. The excise had always been odious in Democratic eyes. Jefferson said the first mistake was in permitting excises by the Constitution, the second was in acting upon that permission. This policy would reduce Federal patronage and lighten the burdens on the people.

2. Reduction of the national debt. In the reduction of taxes and debts “must be sought the foundation for Jefferson’s system of politics at home and abroad.”

3. Abolition of the new circuit courts, to restrain the sphere and power of the national Judiciary. Jefferson would have the Executive and the Legislature each to be independent of the Judiciary in the interpretation of the Constitution, and he did not allow that the Judiciary should be the final judge on the constitutionality of laws or the limits of power for the Federal Government.<sup>1</sup>

<sup>1</sup> See Judiciary.

4. Substitution of commercial restrictions for armaments and war, for purposes of national defence.

“As to everything except commerce we must divorce ourselves from the affairs of Europe. We must make the interest of every nation stand surety for their justice, their own loss to follow injury to us as night follows day.”<sup>1</sup>

Peace was Jefferson's passion. He would prevent war,—for war would bring armies, taxes, debts, and burdens on the people, over-government, abuses, extravagance. Democracy and the military are diametrically antagonistic; therefore, Jefferson would keep down the army. He would defend the nation against commercial restrictions by commercial restrictions in kind, making it to the interest of other nations to respect our rights.

5. Restraint of Executive power. Jefferson believed a strong Executive had a tendency toward monarchy, and he laid great stress on the necessity of reducing executive influence. He believed the Executive should defer to Congress in questions of public policy. He would inform the legislative judgment, so far as he could, and then faithfully carry out that judgment, thus allowing the people to govern through their representatives. Marshall believed that Jefferson wished to weaken the Presidential office in order to increase his personal power.

6. Strict construction of the Constitution in imposing limitations on the powers of the General Government.

Jefferson believed the State governments were the best guardians of the liberties of the people, and he would not have the General Government exercise even the powers conferred upon it if such exercise tended to increase national powers at the expense of the powers of the States. He would preserve the line drawn between the two governments, but he felt that encroachments were most to be feared from the General Government. “En-

<sup>1</sup> Jefferson, *Works*, iv., 189.

croachments from the State governments will tend to an excess of liberty which will correct itself, while those from the General Government will tend to monarchy, which will fortify itself from day to day instead of working its own cure, as all experience shows." He would risk too much liberty rather than too little, and he therefore favored constitutionally limited governments, close to the people within the States. He would

"let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage better the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very inexpensive one,—a few plain duties to be performed by a few servants."

Believing that the government was best which governed least, he would reduce government to a minimum in the belief that the people could be trusted to take care of themselves in their own way.

These principles Jefferson believed were in the interests of the people. He had constantly expounded them while he was in opposition. However, on his accession to power he did not hesitate to violate them when he thought the interests of the people and of the nation demanded it. This is best illustrated in Jefferson's influence on territorial expansion in the purchase of Louisiana,—the most significant event in Jefferson's administration, an event which made inevitable the growth of national prestige and power at the expense of the power and importance of the States. No other event in our history has had a greater influence in the promotion of American nationality, and it was accomplished by the leader of the States' rights school in disregard of his own principles of strict construction. This purchase led to

the admission of new States carved from territory outside of the original limits of the United States. It, therefore, led to the introduction of a new and more nationalizing principle into the Constitution, or to a disregard of the original intention of that instrument. The admission of the State of Louisiana in 1812 was regarded by Josiah Quincy and the strict-construction school of the New England Federalists, now in opposition, as such a perversion of the Constitution as would justify secession or revolution on the part of the Eastern States. It was looked upon as equivalent to a dissolution of the Union. The increase of power that came from the purchase and government of the Louisiana Territory was an important factor in promoting the national spirit. The government of the Territories erected from this purchase, and the determination of their institutions, whether they should be slave or free, led to a decisive phase of the slavery controversy and the final triumph of Congressional and national power and the final overthrow of the compact theory of the Constitution.—ED.

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#### By the Treaty of 1783

“His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts-Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent states; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claim to the government, proprietary, and territorial rights of the same, and every part thereof.”

The nominal boundaries of many of the States, as constituted by their charters, extended to the Pacific Ocean; but in practice they ceased at the Mississippi. Beyond



that river the sovereignty, by discovery, settlement, and active exercise, was vested in the King of Spain.

Before the end of the eighteenth century all the territory west of the present boundary of the States above named had been ceded by them to the United States, and the Union consisted of the thirteen original States, with Vermont, Kentucky, and Tennessee, afterward admitted, and the territory<sup>1</sup> comprised within the limits of the Atlantic Ocean, British America, the Mississippi River, Louisiana, the Gulf of Mexico, and Florida. For these States and this territory the Union had been made. The objections to the extension of the Union, without the unanimous consent of the "original partners," are elsewhere given<sup>2</sup>; only the successive processes by which the extension was accomplished will be considered at present.

I. LOUISIANA.—One of the earliest physical problems with which American statesmen were called to deal was found in the position and necessities of the emigrants who had crossed the Alleghanies and were beginning to fill the valley of the Mississippi. If they were to be permanently retained in the Union it was essential that some easier communication should be formed between them and the older States, and that they should not be annoyed by Spanish restrictions upon the free navigation of the Mississippi and its affluents.

All through the closing hours of the Revolution, Washington's attention was drawn to this question, and, in 1784, a tour to Pittsburgh and a personal examination of the Alleghanies convinced him that, by deepening the Potomac and the James on one side, and the headwaters of the Ohio on the other, canal communication between the East and the West was possible. This scheme, which would have offered engineering difficulties then almost insurmountable, had gone so far as incorporation

<sup>1</sup> See Ordinance of 1787.

<sup>2</sup> See Secession, I.

by Virginia and Maryland, when Washington reluctantly allowed himself to be withdrawn from it by the voice of the whole country to the presidency of the Convention of 1787, and afterward of the United States.

It had long been the fixed policy of Spain to exclude all foreign commerce from the Mississippi. She had refused, in 1780-2, to make a treaty with the United States, the main reason for her refusal being Minister Jay's demand for the free navigation of the Mississippi. She had then even designed, as appears from one of Dr. Franklin's letters to Congress, to confine the United States to the territory east of the Alleghanies, on the ground of a proclamation by the King of Great Britain in 1763, forbidding his North American governors to grant lands westward of the sources of the rivers falling into the Atlantic Ocean. In July, 1785, when Don Diego Guardoqui, a *chargé d'affaires*, arrived at Philadelphia, the claims of Spain had been finally modified to the Floridas, all the west bank of the Mississippi, the east bank to a point considerably north of the present southerly boundary of the State of Mississippi, and an exclusive navigation thence to the mouth of the river.

The commercial States of the North were anxious for a treaty of commerce with Spain even at the price of the abandonment of the interests of the Western settlers, and Guardoqui refused a treaty on any other terms. August 29, 1786, by a vote of seven Northern to five Southern States, the Congress of the Confederacy withdrew its demand for free navigation of the Mississippi, and before October 6th their Secretary of Foreign Affairs, Jay, had agreed upon an article by which the claim was suspended for twenty-five years, though not formally relinquished. But, while Congress had been deliberating, a nation had been forming in the Mississippi Valley; and the remonstrances, public and private, of its inhabitants were so emphatic, and in some instances so violent, that in

September, 1788, Congress in desperation relegated the whole subject to the new Federal Government, which was to assemble in March, 1789. Negotiations with Spain were dropped until February, 1793, when Messrs. Carmichael and Short again attempted, but in vain, to make a treaty.

The year 1795 was more auspicious. Spain was exhausted by war with the French Republic; her virtual ruler, Manuel Godoy, Prince of the Peace, was aware that hostile expeditions against New Orleans, under Genet's directions, had, in 1793, with difficulty been suppressed by the Federal Government,<sup>1</sup> and, October 27, 1795, Thomas Pinckney, Envoy Extraordinary, succeeded in negotiating a treaty of friendship, boundaries, and navigation. Its important features, in this connection, are in the fourth and twenty-second articles:

“Art. 4. . . . And his Catholic Majesty has likewise agreed that the navigation of the said river [Mississippi], in its whole breadth, from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention.”

“Art. 22. And, in consequence of the stipulations contained in the fourth article, his Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandises and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and his Majesty promises, either to continue this permission, if he finds during that time that it is not prejudicial to the interests of Spain, or, if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment.”

With this article, when it was, some three years later,

<sup>1</sup> See Genet.

honorably executed, the people of the West were fairly satisfied.

By the third article of the secret treaty of St. Ildefonso, October 1, 1800, in return for the erection of the kingdom of Etruria for the Prince of Parma, the King of Spain's son-in-law, Spain "retroceded" to France the vast province of Louisiana, stretching from the source to the mouth of the Mississippi, and thence west to the Pacific.<sup>1</sup> It had belonged to France until the peace of 1763, when it was ceded to Spain in compensation for her losses during the war. By its retrocession the United States were now to be hemmed in between the two professional belligerents of Europe; and a great fleet and army, which sailed toward the end of the year 1801, ostensibly against St. Domingo, but ultimately intended to take possession of New Orleans, showed Bonaparte's design to revive there the colonial glories of the former French monarchy.

April 18, 1802, President Jefferson wrote to Robert R. Livingston, Minister to France, as follows:

"The cession of Louisiana and the Floridas by Spain to France works most sorely on the United States. It completely reverses all the political relations of the United States, and will form a new epoch in our political course. There is on the globe one single spot the possessor of which is our natural and habitual enemy. It is New Orleans, through which the produce of three-eighths of our territory must pass to market. France, placing herself in that door, assumes to us the attitude of defiance, . . . [and] seals the union of two nations who, in conjunction, can maintain exclusive possession of the ocean. From that moment we must marry ourselves to the British fleet and nation, and make the first cannon which shall be fired in Europe the signal for tearing up any settlement she (France) may have made."

The ferment in the West, caused by the retrocession of

<sup>1</sup> See Oregon.

Louisiana, was increased by the orders of the Spanish *intendant*, Morales, issued October 2, 1802, abrogating the right of deposit, without substituting any other place for New Orleans, as the Treaty of 1795, above given, required. In Congress James Ross, Senator from Pennsylvania, introduced resolutions authorizing the President to call out fifty thousand militia and take possession of New Orleans. Instead of this, Congress appropriated \$2,000,000 for the purchase of New Orleans, and the President, January 10, 1803, sent James Monroe as Minister Extraordinary, with discretionary powers, to cooperate with Livingston in the proposed purchase.

Monroe found his work done to his hand. A new war between England and France was on the point of breaking out, and in such an event England's omnipotent navy would make Louisiana a worse than useless possession to France. April 11, 1803, Livingston, who had already begun a hesitating negotiation for the purchase of New Orleans alone, was suddenly invited by Napoleon to make an offer for the whole of Louisiana. On the following day Monroe arrived in Paris, and the two ministers decided to offer \$10,000,000. The price was finally fixed at \$15,000,000, one fourth of it to consist in the assumption by the United States of \$3,750,000 worth of claims of American citizens against France. The treaty was in three *conventions*, all signed the same day, April 30, 1803, by Livingston and Monroe on one part, and Barbé-Marbois for France on the other.

The first convention was to secure the cession, the second to ascertain the price, and the third to stipulate for the assumption by the United States of the claims above named. Its important articles in this connection are the first and third of the first convention, as follows:

“ Art. 1. *Whereas*, by article the third of the treaty concluded at St. Ildefonso, the 9th Vendémiaire, an. 9 [Oct. 1, 1800], between the First Consul of the French republic and

his Catholic Majesty, it was agreed as follows: His Catholic Majesty promises and engages on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states; and *whereas*, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory: The First Consul of the French republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above-mentioned treaty, concluded with his Catholic Majesty." "Art. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The annexation of Louisiana was the source of unbounded exultation to the President and his party. Its constitutionality was at once angrily attacked by the Federalists, and never defended by Jefferson. He says, in a private letter:

"The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our union. The executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the constitution. The legislature, in casting be-

hind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them, unauthorized, what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian, investing the money of his ward in purchasing an important adjacent territory, and saying to him when of age, 'I did this for your good; I pretend to no right to bind you; you may disavow me and I must get out of the scrape as I can; I thought it my duty to risk myself for you.' "

"The news of the transfer of Louisiana was like a thunder-stroke for the cabinet of Madrid, who then perceived the enormous fault it had committed in sacrificing the safety of Mexico. Florida, inclosed on both sides by the United States, was separated in the middle from the Spanish dominions, and would fall on the first occasion into the hands of its neighbors."

It is supposed that, in addition to the non-fulfilment by Napoleon of essential points of the Treaty of St. Ildefonso, that treaty had annexed a secret condition that France should not alienate Louisiana, and that Bonaparte had, as he frequently did in other cases, contemptuously disregarded it.

It is certain that Spain refused with indignation to believe the first news of its alienation, filed a formal protest against it, and only consented to it at last after a course of unfriendly conduct, which, according to a report of a House committee in January, 1806, fully justified a declaration of war against her.

Ratifications were to be exchanged within six months from the date of the treaty, that is, before October 30, 1803. The President, therefore, called an early session of Congress for October 17th, and in two days the treaty was confirmed by the Senate. In the House, October 25th, the resolution to carry the treaty into effect was passed, by a vote of 90 to 25, over the opposition of the

Federalists, who maintained the unconstitutionality of the annexation on the grounds assigned by Jefferson himself above.<sup>1</sup>

The province of Louisiana added 1,171,931 square miles to the area of the United States, comprising Alabama and Mississippi south of parallel 31°; all Louisiana, Arkansas, Missouri, Iowa, and Nebraska; the entire area of the two Dakotas, and nearly all of Montana; the State of Minnesota west of the Mississippi, and Kansas except the southwest part south of the Arkansas; Colorado and all of Wyoming east of the Rocky Mountains, and Indian Territory.

II. FLORIDA.—Until 1763 the eastern boundary of Louisiana was the river Perdido. When Great Britain in that year became the owner of that part of Louisiana east of the Mississippi she at once united it to Florida, and created two territories, East and West Florida, separated by the Appalachicola. By the fifth article of the Treaty of 1783, "his Britannic Majesty ceded and guaranteed to his Catholic Majesty eastern and western Florida." Spain therefore claimed, and not without considerable appearance of reason, that she could not retrocede to France what France had not ceded to her in 1763; that Louisiana east of the Mississippi had disappeared from the map in 1763 and become a part of Florida, and that, when she retroceded "Louisiana" to France in 1800, she had no intention of ceding with it the separate territory of West Florida, acquired by her, after 1763, from Great Britain. She had therefore retained Mobile, the key to the rivers of Alabama, and in its custom-house levied heavy duties on goods to or from the upper country.

The United States, however, claimed that, as Spain's retrocession and France's cession were, of "Louisiana, with the same extent that it had when France possessed

<sup>1</sup> See Secession.



it," Louisiana's eastern boundary was now again the Perdido. To avoid war with Spain the claim was not forcibly asserted until 1810, when, the King of Spain being dethroned, and the Cortes having been driven to the Isle of Leon and dissolved, the hereditary government had to all appearances disappeared, and a large part of the people of West Florida, having met in convention at Baton Rouge, declared themselves independent and assumed the lone star as a symbol for their flag.

Against the protests of the Spanish Governor and of the British *chargé d'affaires*, Governor Claiborne, of the Territory of Orleans, was sent by the President to take possession of West Florida, and accomplished it, with the exception of the city of Mobile, late in 1810. In 1812 the Pearl River was made the eastern boundary of the State of Louisiana, and the rest of West Florida was annexed to Mississippi Territory. In 1813 possession of the fort and city of Mobile, and of the whole of West Florida, was at last secured by General Wilkinson.

Through all this period the determination of the Southern States to gain East Florida also had been rapidly growing. Acts of Congress of January 15th and March 3, 1811, passed in secret, and first published in 1818, had authorized the President to take "temporary possession" of East Florida. The commissioners appointed under these acts, Matthews, and his successor, Mitchell, both of Georgia, had stirred up an insurrection in the coveted territory, and when the President refused to sustain the commissioners, the State of Georgia declared Florida necessary to its peace and welfare, and practically declared war on its own private account. Its expedition, however, resulted in nothing.

In 1814 General Andrew Jackson, then in command at Mobile, having, by a raid into Pensacola, driven out a British force which had settled there, restored the place to the Spanish authorities and retired. In 1818, during

the Seminole War, being annoyed by Spanish assistance afforded to the Indians, Jackson again raided East Florida, captured St. Mark's and Pensacola, hung Arbuthnot and Ambrister, two British subjects who had given aid and comfort to the Seminoles, as "outlaws and pirates," and again demonstrated the fact that Florida was completely at the mercy of the United States. The Spanish Minister at Washington, therefore, signed a treaty, February 22, 1819, by which Spain ceded Florida, 59,268 square miles, to the United States, in return for the payment by the latter country of claims of American citizens against Spain, amounting to \$5,000,000.

The ratification of Spain was only obtained in 1821, after an unsuccessful effort on her part to secure, as the price of it, the refusal of the United States to recognize the independence of the revolted Spanish-American colonies.

By this treaty the western boundary of Louisiana was fixed as follows:

"Beginning at the mouth of the Sabine in the Gulf of Mexico; up the west bank of the Sabine to the thirty-second degree of north latitude; thence north to the Red River; along the south bank of the Red River to the one hundredth degree of longitude east from Greenwich; thence north to the Arkansas; thence along the south bank of the Arkansas to its source; thence south or north, as the case might be, to the forty-second degree of north latitude, and along that parallel to the Pacific."

As the price of Florida, therefore, the United States gave up the claim to Texas and the Rio Grande as its western boundary.

See Adams's *History of the United States*, and MacMasters's, Hildreth's, and Schouler's; Gilman's *Monroe*, with Jameson's Bibliography; Morse's *Jefferson*; Randall's *Jefferson*; Adams's *Randolph*; *Treaties and Con-*

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*ventions of the U. S.*; McDonald's *Select Documents*; Hosmer's *History of the Louisiana Purchase*; Binger Hermann's *The Louisiana Purchase*; Marbois's *History of Louisiana*; Gayarré's *History of Louisiana*; C. F. Robertson's "The Louisiana Purchase," *Papers of the American Historical Association*, i., 253-290; Ogg's *Opening of the Mississippi*; "State Papers and Correspondence Bearing upon the Purchase of Louisiana, Fifty-seventh Congress, Second Session," House Doc. No. 431.

## CHAPTER XIV

### THE JUDICIARY

UNDER the colonial *régime* the judges held office at the King's pleasure. In Virginia, Maryland, and New England the assemblies were at first the final court on appeal, and the New England assemblies for this reason assumed the special title of "the great and general court," but the Crown ultimately succeeded in maintaining its right to appoint all the judges, though the assemblies retained the right to pay them.

When royal authority was overthrown, the control of the judiciary fell to the States. In Massachusetts, New York, and Maryland their appointment was given to the governor and council; in the other States, to the legislature. There was no Federal judiciary, and Congress was dependent upon State courts for the definitive interpretation even of the Articles of Confederation. In territorial disputes between the States Congress was itself a court,<sup>1</sup> and by the ordinance of April 5, 1781, Congress established courts for the trial of piracies and felonies on the high seas; but there was no power in either case to enforce decisions.

This lack of any general judicial power extending throughout the States and empowered to define the boundaries of Federal authority and to enforce its decisions by Federal power was one of the most serious evils of the Confederation, and there was hardly any

<sup>1</sup> See Confederation, Articles of, IX.

opposition in the convention to the proposition for supplying it by the creation of the judiciary system of the United States.

I. ORIGIN.—The “Virginia Plan,” as introduced, May 29, 1787, in the convention, proposed in its ninth resolution that “a national judiciary be established, to consist of one or more supreme tribunals and of inferior tribunals, to be chosen by the national legislature, to hold their offices during good behavior,” and to have jurisdiction over all “questions which may involve the national peace and harmony.”

In committee of the whole, June 4th, “the first clause, that a national judiciary be established, passed in the affirmative, *nem. con.*” June 13th the jurisdiction of Federal judges was limited to “cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony”; and their appointment was given to the Senate. July 18th, it was proposed to give the appointment to the Executive, with the advice and consent of the Senate, as was finally decided; but this was lost, July 21st, and the judiciary resolution went unchanged to the Committee of Detail, August 4th, except that Congress was to appoint inferior judges. The report of the committee, August 6th, did not essentially change the jurisdiction or constitution of the judiciary.

It was not until the report of the Committee of Eleven, September 4th, that the judiciary took its present form: the appointment of the judges was given to the President with the confirmation of the Senate; and the power of trying impeachments was taken from it and given to the Senate. Its jurisdiction had previously been settled, August 27th, and was perfected by the Committee on Revision, appointed September 8th. In their report it stands as it was finally adopted.<sup>1</sup>

<sup>1</sup> See Constitution, Art. III.

In the constitution of the Federal judiciary two points are to be specially noted, before considering its history and jurisdiction. 1. The Supreme Court itself was the only one which was imperatively called for by the Constitution; inferior courts were to be such as "Congress may from time to time ordain and establish"; but in all the courts the judges were to hold office during good behavior, and their salaries were not to be *diminished* during their continuance in office. Congress, by the judiciary act of 1789, organized the district and circuit court system of inferior tribunals from which scarcely any essential departure has since been made.<sup>1</sup> The territorial courts are not a part of the judiciary contemplated by the Constitution, but are organized under the sovereign power of the Federal Government over the Territories; their judges, therefore, hold office for a term of four years. There are also consular courts held by American consuls in foreign countries, such as Egypt and China, which have sometimes even acted as courts of probate; but these are entirely out of the scope of any constitutional view, and if defensible at all can only be defended under the treaty power. 2. To create a judiciary, and even to assign to it a jurisdiction, did not seem sufficient to bind down the State courts which had hitherto been sole possessors of judicial powers. The Constitution, therefore, further provides (in Article VI.) that the Constitution, and the laws and treaties made by virtue of it, shall be "the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." This, the most sweeping and energetic of the very few distinctly national features of the Constitution, seems hardly to have been taken at its full measure by the convention itself.

There was no such provision in the "Virginia" or

<sup>1</sup> See Federal Party, I.

nationalizing plan; it was first introduced in the "Jersey plan," June 15th; and when brought up, June 27th, by Luther Martin, then the most ultra of particularists, "was agreed to, *nem. con.*" Nor was there any more opposition to the two slight changes, August 23d and 25th, which brought the clause into exactly its present form. It seems to have been regarded mainly as a repetition of the *promise* of the States "that they shall abide by the determinations of the United States in Congress assembled," which had been the only guarantee for the faithful observance of the Articles of Confederation. It would probably have amounted to no more than this but for the coincident creation of the Federal judiciary.

The conjunction, accidental or purposed, of the two provisions had an effect that could hardly have been anticipated. By defining *law*, as well as law courts, it vested in the Federal judiciary the power to define the boundary line between Federal and State powers, and bound the State judges to acquiescence. When the consequences became apparent, an instant revulsion followed.

Jefferson and the whole Democratic party at once denied the "power of the Federal Government thus to define its authority"; and on their accession to power in 1801 the "supreme law" clause became a practical nullity until toward 1820, when the judiciary, under the lead of Chief Justice Marshall, again began its assertion. It met with renewed opposition, which was gradually weakened until the close of the Rebellion left the "supreme law" clause universally acknowledged as above stated.

However necessary it may be, it is certainly open to one criticism. The judiciary has always held that it cannot interfere with the *political* exercise of power by Congress or the President. It is evident, then, that there is a large class of cases in which the Supreme Court, by its own decisions, cannot and will not act as

the "interpreter of the Constitution,"<sup>1</sup> and in these cases Congress and the President must be the final judges of their own powers.

The United States is thus practically made a national democracy, limited only by its own desire for representative institutions and for the preservation of State lines. To some minds this has always seemed a national tyranny; to others, the surest method of encouraging the political self-control of Congress, the President, the State governments, and the national democracy itself.

II. HISTORY.—One of the first subjects which claimed the attention of Congress under the Constitution was the organization of the judiciary. A committee to prepare a bill for that purpose was appointed in the Senate, April 7, 1789, the day after the first permanent organization of that body. The first judiciary act became law September 24, 1789. It provided for a Supreme Court, to consist of a chief justice and five associate justices, and to hold two sessions annually, in February and August, at the seat of government; for district courts, each to cover within its jurisdiction a State, or some defined part of a State, as the district of Maine in Massachusetts, or the district of Kentucky in Virginia; for circuit courts, each to cover within its jurisdiction several districts, to hold two courts annually in each circuit, and to be presided over by one of the Supreme Court justices and the district judge of the district; for a marshal and an attorney for each district; for an attorney-general of the United States; and for forms of writ and process.

This organization, produced without any precedents as guides, has remained substantially unaltered to the present day. The number of Supreme Court justices has been gradually enlarged to nine, eight associate justices, and a chief justice; a distinct class of circuit judges has been created; the territorial limits of the circuits

<sup>1</sup> See State Sovereignty, Secession.



have been variously modified; the number of districts has been increased from fifteen to fifty-three; but the organization is still the same.

The only doubtful point in the organization of the judiciary was, whether the circuit courts, presided over by Supreme Court justices, were "inferior courts," such as Congress was authorized to establish. This, with other reasons, led to the passage of the act of February 13, 1801, which organized a distinct class of circuit courts, with sixteen justices to preside over them. The appointees were Federalists; their clerks and other officers were of the same party; and the whole bill was denounced by the Democrats as a Federalist scheme to provide offices for life for a number of Federalist politicians who were now to lose all hold on power. The story that President Adams was kept busy until midnight of his last day of office in signing commissions under the act seems to have given strength to the popular clamor for the removal of the "midnight judges."

It was difficult to find a way to the removal, for the Constitution distinctly provided that the term of all judges should be during good behavior. The Democratic majority, however, decided that the official existence of the judges was bound up with that of their courts, and the act of March 8, 1802, got rid of the judges by abolishing their courts and restoring the old circuit court system. The ousted judges petitioned Congress for employment or for pay, but were refused both.

Suits "between a State and citizens of another State" are placed by the Constitution under the jurisdiction of the Supreme Court. Suits were at once begun in the Supreme Court against various States, but it was not until February, 1793, in the case of *Chisholm vs. Georgia*, that the court decided that such suits would lie against a State as against any other corporation. Georgia protested, and refused to appear; judgment by default was

given for the plaintiff in February, 1794; but its execution was stopped by the adoption of the Eleventh Amendment. The jurisdiction of the court was thus limited to suits in which a State is plaintiff and a citizen or citizens of another State defendants.

Among the last appointments of President Adams were those of certain justices of the peace in the District of Columbia which the incoming President, Jefferson, refused to complete. An attempt was made through the Supreme Court to compel completion of the appointments. In this case, *Marbury vs. Madison* (the Secretary of State), the court laid down the rule, to which it has always adhered, that "questions in their nature political, or which are by the Constitution and laws submitted to the Executive, can never be made in this court." By observing this rule the judiciary has successfully avoided any clashing with the other departments of the Government.

For the first thirty years of its history the Federal judiciary came very little into contact or antagonism with State sovereignty or State courts. The first occasion of heart-burning was removed by the Eleventh Amendment, and thereafter the Supreme Court carefully avoided any conflict until 1806, when, for the first time in our history, a State law was "broken."

The War of 1812 increased the national feeling so widely that the Federal judiciary could not but reflect it. The first case which brought the change to clear view was that of *Martin vs. Hunter's Lessee*, in February, 1816. The 25th section of the act of 1789 had given a right of appeal to the Supreme Court from a final judgment of a *State* court in what are now often called "Federal questions," that is, in questions whose decision invalidates any law or treaty of the United States, or upholds a State law claimed to be repugnant to "the Constitution, treaties, or laws of the United States."

In February, 1813, the Virginia Court of Appeals refused to obey a mandate of the Supreme Court in an appeal of this kind, on the ground that no act of Congress could constitutionally give any such right of appeal. Story's opinion in the above case in 1816, and still more Marshall's in the case of *Cohen vs. Virginia*, in February, 1821, upheld the constitutionality of the 25th section, and in doing so brought out for the first time to full view the "supreme law" clause of the Constitution, with all its consequences. These, and the almost contemporary bank cases of *McCulloch vs. Maryland*, in February, 1819, and *Osborn vs. The Bank of the United States*, in February, 1824, roused immediate opposition. Their root doctrines were ably controverted by Judge Roane, of Virginia, in a series of articles in the *Richmond Enquirer*, May 10–July 13, 1821, over the signature of "Algernon Sidney"; were warmly dissented from by at least one of the Supreme Court justices; and organized opposition to them in several of the States was only checked by the overshadowing importance of the Missouri question.

Nevertheless the Federal judiciary swept on to the assumption of its full limits of power. In 1827, in the *Ogden* case, it overthrew the insolvency laws of the States; and in 1831 it brought the State of New York before it, at the suit of New Jersey, in order to decide a disputed question of boundary. In January, 1838, the *Democratic Review* thus angrily summed up the progress of the Federal judiciary since the beginning of the century:

"Nearly every State of the Union, in turn, had been brought up for sentence; Georgia, New Jersey, Virginia, New Hampshire, Vermont, Louisiana, Missouri, Kentucky, Ohio, Pennsylvania, Maryland, New York, Massachusetts, South Carolina (Delaware just escaped over Blackbird Creek), all passed through the Caudine forks of a subjugation which has more than revived the suability of States. Beginning with Madison's

case, there are nearly forty of these political fulminations from 1803 to 1834, viz.: one each in 1806, 1812, and 1813, two in 1815, one in 1816, four in 1819, three in 1820, two in 1821, two in 1823, two in 1824, one in 1825, four in 1827, five in 1829, three in 1830, two in 1832, two in 1833, and one in 1834; a great fabric of judicial architecture as stupendous as the pyramids and as inexplicable."

The development was undoubtedly checked by the failure of the Supreme Court to compel obedience by Georgia in 1832; but it was entirely arrested for a time by the political revolution in the court itself in 1835-7.

In this brief space the seats of two associate justices and the chief justice were vacated by death or resignation, two new justiceships were created, and the appointments by Jackson and Van Buren completely changed the complexion of the court. In 1845-6 three new vacancies occurred which were filled by Democratic appointments, and the court thereafter was rather a check than a provocative to the advance of the nationalizing spirit.<sup>1</sup>

The outbreak of the Rebellion in 1861 found the National Government divided in politics: Congress and the President were Republican; the Supreme Court was unanimously Democratic, and two of its members, Catron and Wayne, were from the seceding States of Tennessee and Georgia respectively. Nevertheless, except in one instance,<sup>2</sup> there was no sign of variance; the same court which had pronounced the Dred Scott decision unhesitatingly upheld the power of the National Government to prosecute war against the Rebellion.<sup>3</sup> The circuits in the seceding States were suspended during the war and after its close until (in 1867) martial law had ceased to operate, for the obvious reason, as given by Chief Justice

<sup>1</sup>See Dred Scott Case.

<sup>2</sup>See Habeas Corpus.

<sup>3</sup>See Insurrection, I.

Chase, that "members of the Supreme Court could not properly hold any court the proceedings or process of which was subject, in any degree, to military control." Circuit courts were held by various district judges in seceding States, but the Supreme Court declined to consider appeals from them.

The first reconstruction act, as originally introduced, February 6, 1867, prohibited the granting of writs of *habeas corpus* in the insurrectionary States without military permission; as passed, March 2, 1867, it contained no such provision, but reached much the same end by directing the punishment of disorders and violence to be by military commission.<sup>1</sup>

As the process of reconstruction went on, its leaders began to entertain more misgivings as to the possible action of the Supreme Court. One McArdle, in Mississippi, had obtained a writ of *habeas corpus* from a Federal circuit judge to the military commission which was trying him. The circuit court refusing to discharge him, he appealed to the Supreme Court, and it seemed likely that the fate of the whole scheme of reconstruction would be involved in the final decision of the court. An act of Congress was therefore passed repealing that section of the act of February 5, 1867, which authorized such appeals in *habeas corpus* cases. The bill was vetoed, March 25, 1868, and passed over the veto. A bill also passed the House to forbid a declaration of the unconstitutionality of any act of Congress by the Supreme Court, unless two thirds of the justices should concur; but it failed in the Senate.

The misgivings of Congressional leaders had been unfounded. In December, 1868, the court fully sustained reconstruction by Congress, in the case of *Texas vs. White*. It was already becoming Republican in its sympathies by new appointments, and the continued control

<sup>1</sup> See Reconstruction.

of the appointing power by the Republican party made it progressively more so; but since the realignment of parties within recent years the party complexion of the court is not clearly defined. The court is Republican or Conservative, the Radical Democracy having no place in its membership. In December, 1869, there was still some doubt as to the political leanings of the court. It then decided against the constitutionality of the action of Congress, in 1862, in giving a legal-tender character to the paper currency; but in March following, a new judgeship having been created by law and another new judge having been appointed to fill a vacancy, the legal-tender question was again introduced, and the previous decision was reversed by the votes of the two new judges. In 1873, in the Slaughter-House Cases, the court began its construction of the war amendments, and upheld the validity of Congressional action under them.

The powers and duties of the district and circuit courts are great, but not extraordinary. Those of the Supreme Court cannot be paralleled or approached by those of any other judicial body which has ever existed. The imagination of a lawyer of earlier times could hardly have soared to the ideal of a court empowered to wipe out at a touch the legislation not only of great States like New York, equal in population and wealth to at least a kingdom of the second class, but even of that which is now the most powerful republic, and will very soon be the most powerful nation, of the world. And the powers of the court are not based on its overmastering force, for it has always carefully avoided the use or even the suggestion of force. It is, said Marbois long ago, a power "which has no guards, palace, or treasures, no arms but truth and wisdom, and no splendor but its justice and the publicity of its judgments." Its controlling influence, nevertheless, is firmly established, though very charily used. Congress and the President would resort to almost any ex-

pedient rather than have the Supreme Court formally pronounce against them; a law which this court has finally declared unconstitutional can be disobeyed or set at defiance with impunity all over the country, for no other court would allow a conviction under it; and, apart from both these considerations, the popular reverence for the court's wisdom and discretion is so deeply fixed that its final decision has been sufficient, as in the case of the general election law in 1879, to control even the passionate feeling of a great national party. This influence is due not only to the distinguished ability of the members of the court, but to their invariable integrity, freedom from partisan feeling, and self-restraint. Throughout the whole history of the court there has never been the faintest suspicion upon the integrity of the Supreme Court justices; and this is equally true of the inferior courts, with the single exception of one district judge in Louisiana in 1872-3. Nearly every justice has been prominent in politics before his appointment, and some of them, as Taney, Barbour, Woodbury, and Chase, very actively; but all have dropped partisanship on entering the court. The drift of the court this way or that has been due to no desire for party advantage, but to the general cast of mind of its majority for the time being. Even the Dred Scott decision must fairly be ascribed to the honest conviction of the court. The self-restraint of the court has been equally conspicuous. Its greatest period of amplification, 1815-35, was not a usurpation, but a long-delayed assumption of its legitimate powers; and since that time it has not hesitated to decide, again and again, in favor of States and individuals and against the Federal Government or even against the jurisdiction of the Supreme Court itself.

III. SUPREME COURT.—No attempt is here made to give the practice of the Federal courts. For information under this head the reader is referred to the treatises

cited among the authorities. It is only intended to give a general idea of the jurisdiction of the court.

1. *Original Jurisdiction*.—According to the third article of the Constitution the court is to have original jurisdiction, that is, suits are to be *begun* in this court, in but two classes of cases, those which “affect” ambassadors, other public ministers, and consuls, and those in which a State shall be a party. Cases “affect” an ambassador only by personally concerning him. By the Eleventh Amendment the State can only be a party as plaintiff; but the power to issue writs of error to State courts often brings a State before the Supreme Court as defendant. The Judiciary Act of 1789 undertook to give the Supreme Court further original jurisdiction in the issue of writs of mandamus, but the court itself, in the case of *Marbury vs. Madison*, decided that Congress had no such power.

2. *Appellate Jurisdiction*.—This necessarily covers the original jurisdiction of the district and circuit courts, and cases under it come into the Supreme Court on appeal. It includes “all cases of admiralty and maritime jurisdiction; controversies to which the United States shall be a party; controversies between citizens of different States, and between citizens of the same State claiming lands under grants of different States”; and “Federal questions,” that is, “all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.” How far Congress may also give to inferior courts any part of the Supreme Court’s original jurisdiction, is an unsettled question.

The act of 1789 provided for the admiralty jurisdiction of the inferior courts; but it was long held that this extended no farther than the ebb and flow of the tide. The growth of inland navigation began to suggest the idea that the admiralty jurisdiction should properly extend to navigable rivers and lakes also. In 1825, in the case of



The Steamboat *Thomas Jefferson*, the Supreme Court, following English definitions, declined to assume any inland admiralty jurisdiction. The act of Congress of February 26, 1845, gave such jurisdiction, in cases of tort and contract, in the case of vessels of more than twenty tons engaged in commerce on lakes and navigable waters between different States or with a foreign nation. In 1851, in the case of *The Genesee Chief*, the court upheld the act, and Federal courts at once proceeded to act under it. Since that time, however, the court has swerved toward the opinion that the admiralty jurisdiction had never been limited to the ebb and flow of the tide; that neither the act of 1789 nor that of 1845 was intended as a restraining act; and that inland maritime jurisdiction is fully conferred by the Constitution itself. This has been the fixed doctrine of the court since 1866-8.

The idea that the Federal courts possessed a common law criminal jurisdiction was held by the first corps of Supreme Court justices, and was not formally disavowed for many years.<sup>1</sup>

Since 1810 the criminal jurisdiction of the judiciary has been limited to offences against acts passed under such powers of Congress as those to lay and collect taxes, etc., to regulate commerce, to punish counterfeiting and felonies committed on the high seas, and to govern the Territories. The Fourteenth and Fifteenth Amendments, which give Congress power to enforce them by appropriate legislation, have enlarged the criminal jurisdiction of the judiciary also.

IV. CIRCUIT COURTS.—The original jurisdiction of these courts comes under the appellate jurisdiction of the Supreme Court. From the final decision of the Circuit Court, when the matter in dispute exceeds the value of \$5000, an appeal lies to the Supreme Court. The amount was \$2000 until May 1, 1875, when it was increased by

<sup>1</sup> See Alien and Sedition Laws.

the act of February 16, 1875. Patent and revenue cases are not limited as to amount involved.

The number of associate justices was originally five; was increased to six in 1807; was increased to eight in 1837; was increased to nine in 1863; was decreased to eight in 1865, and to seven in 1867; and was increased to eight in 1870.

Besides the associate justices of the Supreme Court, who, with the district judges, were to hold circuit courts, there is now a distinct class of circuit judges, nine in number. In each circuit, court may be held by the associate justice alone, by the circuit judge alone, by the two together, or by either one with the district judge.

Each circuit is composed of several States; the process of the court, however, is not limited by circuit lines, but runs everywhere throughout the territory of the United States. Territorial arrangements have varied from time to time.

V. DISTRICT COURTS.—The territorial unit for these courts is in general still the State, but the growth of population, or other reasons, has caused the division of the following States into more than one district: Alabama, 3; Arkansas, 2; Florida, 2; Georgia, 2; Illinois, 2; Michigan, 2; Mississippi, 2; Missouri, 2; New York, 3; North Carolina, 2; Ohio, 2; Pennsylvania, 2; Tennessee, 2; Texas, 3; Virginia, 2; Wisconsin, 2. From these courts an appeal lies to the Circuit Court where the matter in dispute is of a greater value than \$500, and a "Federal question" is involved.<sup>1</sup>

VI. TERRITORIAL COURTS.—Though these courts are not strictly a part of the Federal judiciary, as provided for in the Constitution, an appeal lies from them to the Supreme Court. The history and practice of this class of judicial bodies will be found very fully treated in the case of *Clinton vs. Englebrecht*, cited among the authorities, to which the reader is referred.

<sup>1</sup> There are now more than eighty District Courts.

VII. PROPOSED AMENDMENTS.—Space will not allow any consideration of the various changes which have been proposed in judiciary legislation, with a view to relieving the Supreme Court of some portion of its rapidly accumulating business. It is only designed to notice the amendments to the Constitution which were proposed at various times in the first forty years of our history for the purpose of vitally altering the constitution of the judiciary. No such change has been seriously proposed since 1840.

1. The failure of the Chase impeachment brought out the following amendment, proposed in the House by John Randolph, March 1, 1805: "The judges of the supreme and all other courts of the United States shall be removed by the President, on the joint address of both Houses of Congress, requesting the same, anything in the Constitution of the United States to the contrary notwithstanding." It was postponed to the following session, was again introduced February 24, 1806, but was never brought to a final vote. It was reintroduced in the House, January 29, 1811, by Wright, of Maryland, but the House refused to consider it; again in the Senate, March 18, 1816, by Nathan Sanford, of New York, but without success.

2. The revival of the "supreme law" clause by the Supreme Court, heretofore referred to, caused the introduction in the Senate, January 14, 1822, by Richard M. Johnson, of Kentucky, of the following amendment:

"That in all controversies where the judicial power of the United States shall be so construed as to extend to any case in law or equity, arising under the constitution, the laws of the United States, or treaties made, or which shall be made, under their authority, and to which a State shall be a party; and in all controversies in which a State may desire to become a party, in consequence of having the constitution or laws of such State questioned, the Senate of the United States shall have appellate jurisdiction."

The amendment was not brought to a vote. Johnson's speech upon it, as cited among the authorities below, is a very convenient *résumé* of the cases up to its date in which the Federal judiciary had come into conflict with the States.

3. Propositions were made in the House, January 28, 1831, and January 24, 1835, to amend the Constitution by limiting the term of office of Federal judges; but the former was voted down, and the latter was not considered. These ended the attempts to change the basis of the existence of the Federal judiciary.<sup>1</sup>

See 1 *Stat. at Large* (Bioren and Duane's edit.), 67, 73, 670 (ordinance of April 5, 1781); I. 5 Elliot's *Debates*, 128, 131, 155, 192, 205, 380, 478, 507, 564; II. 1 *Stat. at Large*, 73 (act of September 24, 1789); 2 *Stat. at Large*, 89, 132 (act of February 13, 1801, and repealing act); 2 Bancroft's *History of the Constitution*, 195; 2 Benton's *Debates of Congress*, 427 (and see index under "Judiciary"); 2 *Dallas*, 419 (*Chisholm vs. Georgia*); 1 *Cranch*, 137 (*Marbury vs. Madison*); 1 *Wheat.*, 304 (*Martin vs. Hunter's Lessee*); 6 *Wheat.*, 264 (*Cohens vs. Virginia*); 4 *Wheat.*, 316 (*McCulloch vs. Maryland*); 9 *Wheat.*, 738 (*Osborn vs. Bank*); *Letters of Algernon Sidney* (collected); 4 Jefferson's *Works* (edit. 1829), 371; 12 *Wheat.*, 264 (*Ogden vs. Saunders*); 1 *Democratic Review*, 143; 4 Elliot's *Debates*, 523; Tyler's *Life of Tancy*, 432; Schuckers's *Life of Chase*, 533; 7 *Wall.*, 700 (*Texas vs. White*); authorities under Reconstruction; Flanders's *Lives of the Chief Justices*; Van Santvoord's *Lives of the Chief Justices*; III.-VI. *The Federalist*, 22, 77; Story's *Commentaries* (edit. 1833), § 1567; 2 Wilson's *Law Lectures*, 201; Sergeant's *Constitutional Law* (1822); Grimke's *Nature of Free Institutions*, 379; Duponceau's *Jurisdiction of U. S. Courts* (1824); Law's *Jurisdiction of U. S. Courts* (1852); G. T. Curtis's *Jurisdiction of U. S. Courts* (1854);

<sup>1</sup> See Construction, III.; State Sovereignty; Secession; Nullification. . .

A. Conkling's *Treatise on U. S. Courts* (1856); Murray's *Proceedings in U. S. Courts* (1868); Boyce's *Manual of Practice in U. S. Circuit Courts* (1868); Abbott's *Treatise on U. S. Courts* (1869); Phillips's *Statutory Jurisdiction and Practice of U. S. Courts* (1872); Miller's *Supreme Court of the United States* (1877); B. R. Curtis's *Jurisdiction of U. S. Courts* (1880); 13 *Wall.*, 434 (*Clinton vs. Englebrecht*); VII. 3 Benton's *Debates of Congress*, 553; 4 *ib.*, 351; 5 *ib.*, 468; 7 *ib.*, 145 (Johnson's speech); 11 *ib.*, 303.

## CHAPTER XV

### THE STRUGGLE FOR NEUTRAL RIGHTS : CAUSES AND RESULTS OF THE WAR OF 1812

THE opening of the French Revolution, the abolition of all feudal taxes, honors, and immunities, the emigration of those nobles not in sympathy with the new *régime*, and the practical dethronement of the King, were followed, in April, 1792, by a declaration of war by the French Republic against Austria and Prussia, whose troops were drawing menacingly near the French boundaries, and whose soil was permitted to be a basis of operations for hostile *émigrés*.

November 15, 1792, the French national convention declared its hostility to any people which should maintain a prince or a privileged order, and four days afterward the same authority offered assistance to every people desirous of recovering liberty. February 3, 1793, the French Republic declared war against Great Britain and Holland, and before the end of the year France "had but one enemy, and that was Europe." By land the French arms were steadily successful; by sea, in spite of every public and private exertion in France, Great Britain maintained her accustomed superiority. The rule that "he who is not with us is against us" became the only international law thoroughly respected in Europe, and the steady determination of both the great belligerents to enforce the rule upon the Western Continent also is the key to most of the difficulties of the United States during the next twenty years.

A French agent<sup>1</sup> was at once sent to the United States to rouse popular enthusiasm there, and thus compel the Government to engage in the war as an active or passive ally of France. May 9, 1793, in direct violation of the Treaty of 1778 between France and the United States, the national convention authorized French ships of war and privateers to stop and bring into French ports *all* neutral vessels loaded with "eatables" or with enemy's goods, which latter were declared good prize. The representations of Morris, the American Minister, only obtained a temporary and delusive suspension of the order.

I. ORDERS IN COUNCIL.—June 8, 1793, Great Britain, by orders in council to her navy, directed neutral vessels bound for France with breadstuffs to be seized and brought into British ports, where the cargoes were to be paid for by the government or bonded to be landed in countries at peace with Great Britain.

Another grievance, closely connected with the general embargo system, was the vexatious right of search and impressment claimed and exercised by British national vessels. American vessels were liable at any moment to be stopped, searched, and deprived of the services of any seamen whom a British lieutenant, backed by a file of marines, might decide to be Englishmen. Great Britain had always persistently denied the right of expatriation and change of allegiance by naturalization, and, now, that she was engaged in a life or death struggle with France, she claimed the services on shipboard of all her maritime citizens, at home or abroad, no matter what ceremonies of naturalization, unrecognized by English laws, they might have undergone in any foreign country. Of course, under color of natural resemblance to Englishmen, many native-born Americans were thus forced into the British navy.

<sup>1</sup> See Genet.

The right of expatriation was at that time acknowledged by hardly any nation except the United States; but, even in the case of naturalized citizens, the right of search and impressment, vexatious enough in itself, was aggravated by the rigorous and merciless manner of its exercise by British officers of all grades, unrestrained by any probability of the disapprobation of their own government.

Many of the American politicians who had taken part in the War of the Revolution retained a firm faith in the efficacy of restrictions upon British commerce as a means of compelling justice from Great Britain, and Madison introduced into Congress, January 4, 1794, a series of resolutions for the imposition of prohibitory duties upon importations from Great Britain.

These resolutions, though not finally adopted, laid the foundations of the "restrictive system," which was steadily followed out by the Republican party until it culminated in the War of 1812. The Republican leaders in 1794, Madison, Nicholas, and Giles, admitted that "our trade with Great Britain was one half our whole commerce, while Great Britain's trade with us was but one sixth of hers"; but they insisted that the exports from the United States were essentials, while the imports were luxuries, and that an embargo, or temporary stoppage of trade, would bear but lightly upon the United States, while it would promptly bring Great Britain to hear reason.

While the debates were in progress news was received of a supplementary order in council, which was dated November 6, 1793, but had been kept so secret at first that the American Minister was unable to obtain a copy until December 25th. By this order neutral ships trading with French colonies were to be seized and brought in for adjudication.

The news of this order, which annihilated a profitable



commerce at a blow, produced great excitement in the United States, and an embargo, the first of its kind, was laid, March 26, 1794, for thirty days, and soon afterward increased to sixty days. This had hardly been done when news was received of a modifying order in council, dated January 8, 1794, restricting seizures to vessels bound directly for France from her colonies, or carrying goods belonging to Frenchmen.

This modification could have had no possible connection with the embargo, and yet the receipt of the news so soon after the laying of the embargo seems to have unreasonably strengthened the popular faith in the efficacy of this substitute for war with Great Britain.

The embargo act was allowed to expire at the end of its limitation of sixty days, but, by the act of June 4th, the President was empowered generally to lay an embargo at any time during the recess of Congress until November.

In the meantime<sup>1</sup> the President had sent Chief Justice Jay as Minister to Great Britain to obtain redress of all the grievances alleged against that country, and, pending the results of his mission, debate on neutral rights was dropped during the next session of Congress, 1794-5. Jay's treaty of November 19, 1794, however objectionable in other points, as in its yielding the rights of search and impressment, at least secured some safeguards for neutral trade. Claims for damages for illegal seizures by British cruisers were to be passed upon by commissioners of arbitration; the seizure of an enemy's goods in a neutral vessel was not to forfeit the whole cargo; and provisions, when taken under peculiar necessity, were to be paid for at their full value.

These points in the treaty gave comparative security to American commerce while it remained in force, and for the next ten years the restrictive system was dropped.

<sup>1</sup> See Jay's Treaty.

During the troubles with France,<sup>1</sup> the Act of June 12, 1798, prohibited commercial intercourse with France or her colonies. This, however, was not an embargo, in the Jeffersonian sense of the term, but a preparation for war.

The articles in Jay's treaty which related to neutral commerce expired by limitation at the end of twelve years. The state of affairs at their expiration was even more unfortunate for the United States than in 1794. In 1805 almost the whole civilized world had been drawn into the whirlpool of the successive wars between Napoleon and Great Britain. Sweden, Denmark, the Hanse towns, and the United States were the only neutral maritime powers, and were growing rich so rapidly by their almost complete absorption of the carrying trade that their prosperity was a constant eyesore to British merchants and a temptation to belligerent cruisers. Commerce between France, Spain, Holland, and their respective colonies was carried on in great volume by American vessels, a landing having been formally made in the United States, in order to separate the voyages from the colony and to the mother country.

The King's advocate general, in March, 1801, had acknowledged to Rufus King, the American Minister to Great Britain, that "landing the goods and paying the duties in the neutral country breaks the continuity of the voyage and legalizes the trade between the mother country and the colony." This was a relaxation of the "rule of 1756," so called from its official promulgation in that year, though it had been practically enforced for twelve years previous. In its full vigor the rule of 1756 prohibited all trade by neutrals with the colonies of an enemy, and allowed British cruisers to capture all neutral vessels engaged in any such trade; the reasons for it were, in brief, that no mother country allowed such

<sup>1</sup> See X. Y. Z. Mission.

trade with its colonies in peace, and that in time of war such a trade was really an interposition in the war by the neutral, and the giving of aid to one of the belligerents.

In May, 1805, the British Court of Appeals, in the case of the American vessel *Essex*, suddenly reversed the former line of decisions, and held that transshipment in a neutral country, if evidently fraudulent, did not break the continuity of the voyage, but left the neutral vessel liable to capture and condemnation. This decision was a signal for a general attack on neutral commerce by British armed vessels, public and private, and in the United States it at once brought the restrictive system to the surface again.

April 18, 1806, after a debate of two months, a "non-importation act" was passed, which prohibited, after the following November, the importation of certain specified articles, the productions of Great Britain and her colonies. This measure seems to have been designed to strengthen the hands of William Pinkney and James Monroe, who were appointed in April joint ministers to Great Britain to negotiate a new treaty to succeed those parts of Jay's treaty which were to expire with this year. December 19, 1806, the non-importation act was suspended until July 1, 1807.

Monroe and Pinkney concluded a treaty, December 31, 1806, which confirmed the unexpired articles of Jay's treaty, secured the indirect neutral trade between a belligerent and its colonies by a landing in the neutral country, and exempted provisions from the list of contraband. It again yielded the rights of search and impressment, upon a verbal assurance that they would be exercised only under extraordinary circumstances; and for this reason President Jefferson declined to submit the treaty to the Senate for confirmation, and ordered a continuance of the negotiation. This decision, not so much in itself as in the refusal to back it by the instant and

industrious preparation of a strong naval force, laid the foundation for most of the difficulties of the following eight years. It confirmed the bent of the dominant party in the United States against the formation of a navy, and it furnished fresh reasons and excuses for the growing anti-neutral disposition of the British Government, which was not in the habit of paying any great attention to the remonstrances or arguments of a defenceless nation.

May 16, 1806, the British Government, by proclamation, declared a blockade of the coast of Germany, Holland, and France, from Brest to the Elbe, a distance of about eight hundred miles. Against warfare of this kind Napoleon was powerless; the British Islands were entirely beyond his reach, and there was no way to prevent the isolation of his European empire by the British fleets unless he could furnish those fleets with active occupation in some other quarter of the world. From this time, therefore, his consistent design seems to have been to irritate the British Government into fresh exhibitions of anti-neutral temper by extraordinary reprisals of his own, in order thus to force the United States at last to assume the burden of a naval warfare against Great Britain, while he should monopolize the glory and profit of the campaigns on land. The game was entertaining to the *torreador*, and probably to the bull also, but the United States certainly paid the expenses of the entertainment.

November 21, 1806, after the battle of Jena, Napoleon issued his *Berlin decree*, in which he, who hardly possessed a vessel of war in blue water, assumed to blockade the British Islands. The decree also ordered the seizure of all English property, persons, and letters found on the Continent. The whole decree, which began the so-called "continental system" of Napoleon, was alleged to be in retaliation for the English abuse of the right of blockade.

During the ensuing year, according to Mr. Baring and the American Minister to France, General Armstrong, no condemnations took place under the Berlin decree. It served its purpose better by drawing out the British orders in council of November 11, 1807.

This extraordinary document totally prohibited any direct trade from the United States to any port or country of Europe from which the British flag was excluded; it allowed direct trade, in American produce only, between the United States and Sweden; it ordered all articles of domestic or colonial production, exported by the United States to Europe, to be landed in England, whence their re-exportation, on paying duties, would be permitted and regulated; and it declared any vessel and cargo good prize if it carried a French consular certificate of the origin of the cargo.

Napoleon retorted by the *Milan decree*, December 7, 1807, in which he declared to be "denationalized" and good prize, whether found in continental ports or on the high seas, any vessel which should submit to search by a British vessel, or should touch at or set sail for or from Great Britain or her colonies.

With this, for a time, both parties paused, for neither could well do or say more. To quote Jefferson's subsequent expression: "England seemed to have become a den of pirates, and France a den of thieves." Both had helped to make neutrality ridiculous. By sea, a British fleet had lately, without declaring war, swooped on the Danish navy and carried it off to England; by land, a French army had lately converted Portugal from neutrality by driving the royal family to Brazil.

The United States and Sweden were the only civilized nations which were now permitted to enjoy a nominal neutrality; the latter was under the open protection of the fleets of Great Britain, and if the latest orders in council were to be submitted to, it was difficult to see, in

the matter of foreign commerce, any great difference between the situation of the United States and that of any British colony. Evidently, if the United States were to maintain rank as an independent nation, some measures of protection to their foreign commerce were imperatively demanded. The dominant party, however, was still opposed to a naval war, and Jefferson, who alone could have controlled his party, was silent; the result was a four years' effort to coerce Great Britain by the restrictive system, ending in the War of 1812.

II. THE EMBARGO.—An embargo is a prohibition of commerce by national authority, which was laid in various forms and at various times from 1794 until 1815. In case of a general embargo American vessels were forbidden to leave port, foreign vessels were required to sail in ballast, or with only such cargo as they had on board at the passage of the act, and coasting vessels were required to give bonds to land their cargoes in American ports only. An embargo aimed at a particular nation was a modification known as a non-intercourse law.

The possibility of such a suspension of commerce was certainly considered by the Convention of 1787 in framing the Constitution. Madison, in discussing the power to tax exports, August 21, 1787, spoke as follows: "An embargo may be of absolute necessity, and can only be effectuated by the general authority."

When Congress met in October, 1807, the exercise of the right of impressment by British officers had become almost intolerable. The number of Americans impressed was afterward officially reported by the State Department as 4579 for the period March 11, 1803–September 30, 1810, omitting the time from September 1, 1804, until March 31, 1806, for which the records did not account. Of this number 1361 were released. No estimate can be made of the number of impressments never reported to a State Department where no redress could be hoped for;

but the muster-books of H. B. M. ships *Moselle* and *Sappho*, captured in the packet *Swallow* by Commodore Rodgers in 1813, showed that one eighth of their crews were Americans; and in another ship, the *Ceres*, the proportion was one third, if we may trust the affidavits of released sailors. June 22, 1807, the British frigate *Leopard* had taken four men out of the United States frigate *Chesapeake*, after a shamefully feeble resistance.

October 19, 1807, the British Government by proclamation had called upon all its maritime subjects serving in foreign ships to return to the service of their own country, and had directed its cruisers to enforce their return.

The proclamation, and the retaliatory orders and decrees of the great belligerents, as far as they had been received, were communicated to Congress by President Jefferson in a special message of December 16th, as indicating the great and increasing dangers to American commerce, with the suggestion that an "inhibition of foreign commerce" would be of advantage.

The act known as "The Embargo" was at once introduced. It was passed after midnight of December 21st, after a consideration of four hours in the Senate and three days in the House, and became law December 22d. A supplementary act of January 9, 1808, provided that coasting vessels should not be allowed to go out without bonds to reland the cargo in some other port of the United States, and that foreign vessels should take out no specie or other cargo, except necessary sea stores. Another act, March 12, 1808, gave the Executive authority to grant permission to send vessels to foreign ports to bring home American property, but this was repealed January 9, 1809.

For a time the traditional belief in the efficacy of an embargo induced a sullen submission to it even by those upon whom it bore hardest, and it was formally approved by most of the State legislatures of the Republican

States. Within six months a great change had taken place. The suspension which the infant commerce of the United States had found tolerable for sixty days in 1794 was intolerable in 1808 to a commerce which had for fifteen years been fattening upon a dangerous but profitable neutrality. The exports, domestic and foreign, from the United States, which had risen from \$20,753,098 in 1792 to \$110,084,207 in 1807, fell in 1808 to \$22,430,960.

The change was too sudden; it injured not commerce alone, but every interest except domestic manufactures, and in May and June, 1808, Jefferson was constrained to admit that, unless Great Britain should speedily yield the principle of her orders in council, the embargo must be exchanged for open war. It was found that the embargo was quite satisfactory to both France and Great Britain. Napoleon praised it warmly, and even presumed to enforce it by the *Bayonne decree*, April 17, 1808, which ordered the seizure and sale of American vessels which should arrive in his ports in violation of it. Its surrender of the carrying trade to British merchants, and the consequent transfer of American capital to Canada and Nova Scotia, were equally pleasing to Great Britain.

In the New England States, in which the remnants of the Federal party were now concentrated, the embargo was believed to be unconstitutional, and was so decided by some of the State courts. The ground assigned was, that the unlimited extension of the embargo was an annihilation of commerce; and was therefore a usurpation of power by Congress, which was only authorized by the Constitution to regulate commerce; the real reason was evidently the belief that the fundamental basis of the Constitution had been violated by a factious and sectional combination of agricultural representatives for the passage of the embargo, which though it ruined Federalist New England, would save the rest of the Union the expense of war.

It was therefore increasingly difficult to enforce the



embargo in New England. The State legislatures, taking the ground of the Kentucky and Virginia Resolutions, "intervened" for the protection of their citizens by resolutions expressive of their emphatic condemnation of the embargo. Thus countenanced and emboldened, State judges took an attitude consistently hostile to the embargo, and the Federal courts in New England seldom succeeded in finding juries which would convict even for the most flagrant violations of its provisions. Smugglers crossed and recrossed the Canada border almost in organized armies, and defied Federal marshals; and, to encourage sea smuggling, an order in council of April 11, 1808, forbade interference by British cruisers with American vessels bound to British colonies, though without clearances. A supplementary embargo act of April 25, 1808, therefore placed lake, river, and bay commerce in the same category as sea-going vessels, and allowed the seizure of any merchandise which should in any way excite the suspicions of the collectors.

The second session of the Tenth Congress, which met November 7, 1808, was at first obstinate in its support of the restrictive system. Resolutions to repeal the embargo were voted down by heavier majorities than at the first session, and on January 9, 1809, an enforcing act was passed. By its terms any act done with intent to evade the embargo in any way worked a forfeiture of ship, boat, or vehicle and cargo or contents, besides a fine of four times the value of both; collectors were to seize all goods "apparently on their way" to a foreign country; bonds were increased to six times the value of vessel and cargo; and absolute authority to prohibit departure, even when full bonds should be filed, was given to the collectors or the President. The act was published in mourning columns by the Federalist newspapers in New England, with the motto "Liberty is dead!" Many collectors resigned, and seizures by others were met by the owners

of the goods with suits for damages in State courts. Even in the United States Senate a Federalist declaration was made that the people were not bound to submit to the embargo act and would not submit to it, and that blood would flow in the attempt to enforce it.

In February, 1809, John Quincy Adams, who had resigned his seat in the Senate because his support of the embargo was disapproved by his State legislature, gave Jefferson and the other Republican leaders an alarming account of the feeling in New England. He stated that the Federalist leaders had now finally decided to break the embargo, that if the Federal Government should attempt to use force the New England States would temporarily or permanently withdraw from the Union, and that unofficial negotiations had already been opened for British assistance. A sudden panic, attributable either to the statements of Adams, to those of Joseph Story, then a Republican Congressman from Massachusetts, or to both, seized the majority in Congress, and a House resolution was passed, February 3d, fixing March 4th for the termination of the embargo.

III. NON-INTERCOURSE SYSTEM.—During the month of February the majority recovered in some measure from its panic, and passed, March 1, 1809, the so-called non-intercourse law, to take the place of both the non-importation act and the embargo. It was to continue until the end of the next session, but was revived and continued by the acts of June 28, 1809, May 1, 1810, and March 2, 1811. It forbade the entrance to American ports of public or private British or French vessels, all commercial intercourse with France or Great Britain, and the importation, after May 20th, of goods grown or manufactured in France, Great Britain, or their colonies. Its eleventh section was as follows:

“ That the President of the United States be, and he hereby

is authorized, in case either France or Great Britain shall so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, to declare the same by proclamation; after which the trade of the United States, suspended by this act, and by the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, may be renewed with the nation so doing."

The coasting trade was thus set free, and the trade to other countries than France and Great Britain was allowed, but any naval protection to it was still denied.

From the end of November, 1808, D. M. Erskine, the British Minister at Washington, had satisfied himself, by repeated interviews with Jefferson's Cabinet, and particularly with Madison, that they were disposed to deal fairly with Great Britain. On his report, the British Foreign Office instructed him, January 23, 1809, to withdraw the objectionable orders in council, on three conditions: 1, that all non-intercourse and non-importation acts should be revoked as to Great Britain, and left in force as to France until France should revoke her edicts; 2, that the United States should abandon the trade with French colonies, which was not lawful even in peace, according to the rule of 1756; and, 3, that American vessels violating the last condition should be liable to seizure by British vessels.

To the first point the American negotiators agreed; the second, they said, rested with Congress, but would be completely covered by the non-intercourse law, as applied to France; and the third was unnecessary, as no American shipowner could complain of such a seizure without a confession that he had violated the non-intercourse law. Accepting these explanations, Erskine exchanged three pairs of formal notes, April 17th, 18th, and 19th, withdrawing the orders in council; and President Madison, who had been inaugurated March 4th, issued a proclama-

tion, April 19th, permitting the full renewal of trade with Great Britain after June 10th.

As this result placed the United States in just the same position as before the embargo, without any recall of the rights of search and imprisonment, and with the "rule of 1756" as to colonial trade still in force, the general satisfaction over the "Erskine arrangement" was a decided evidence of the lack of success of the restrictive system. But the satisfaction soon disappeared on the receipt of news that the British Government had recalled Erskine in disgrace and repudiated his agreement as made in contravention of his express instructions.

By proclamation of August 9, 1809, the President therefore re-established the non-intercourse law as against Great Britain.

The whole difficulty was ascribed by the Federalists to the President's trickiness in taking advantage of the youth and inexperience of Erskine, and the same assertion was repeated in substance by Erskine's successor, Jackson, until the Secretary of State refused to hold further communication with him.

During the whole period from 1800 until 1812 there is an unusual dearth of private correspondence or other similar materials for forming a judgment of the motives of the Democratic leaders. They have been charged with subservience to French policy, but their course with Erskine seems to go far to acquit them of a design to subserve any other interests than those of the United States. It is certain that the Erskine arrangement would not have received from accomplices of France the eager welcome which was given to it by Madison and his Cabinet. Napoleon was so far from considering the non-intercourse law, even in its first form of application to both belligerents, as offensive to Great Britain or beneficial to France, that he made it the ground of his *Rambouillet decree*, March 23, 1810, by which 132 American

vessels, valued at \$8,000,000, which had entered the ports of France or her allies, that is, nearly all the continent, since May 20, 1809, were condemned and sold.

The Democratic leaders seem to have been the victims, principally, of their own ignorance, and Napoleon's perception, of the naval powers of the United States.

IV. FAILURE OF THE RESTRICTIVE SYSTEM.—In January, 1810, Napoleon informed the American Minister that the repeal of his various decrees was dependent on the withdrawal by Great Britain of her "paper blockade" of the continent. Toward the end of this session of Congress, May 1, 1810, Congress passed a new bill to take the place of the non-intercourse act, which was to expire with the session. This bill, while excluding both French and British ships of war from American harbors, left commerce entirely unrestricted, but with the proviso that, if at any time before March 3, 1811, either belligerent should withdraw its objectionable measures, and the other should fail to do so within three months, the President by proclamation should restore the non-intercourse act as to the delinquent power.

This act was the first step to the War of 1812. In passing it Congress had set a trap for itself, which Napoleon hastened to bait. August 5th, he informed the American Minister that his decrees were revoked, and would cease to be in effect after November 1st, following, "it being understood that the English shall revoke their orders in council, or that the United States shall cause their rights to be respected by the English."

The President, November 2d, issued a proclamation which accepted this as an absolute revocation, and Great Britain was summoned to imitate it. But, as the French Emperor retained all the property confiscated under the Rambouillet Decree, as the French prize courts refused to consider the decrees revoked, or to release vessels seized by virtue of them, and as Napoleon's continental

system was enforced as rigidly as ever against both England and the United States, the British Government refused to admit that any *bona fide* revocation had taken place. March 2, 1811, the non-intercourse act was revived, by statute, against Great Britain.

Notwithstanding the long continuance of the restrictive system, the merchant marine under American colors was still large. Licenses to enter continental ports were freely sold by French consuls at high prices. In Great Britain 53,277 licenses to trade with the enemy were granted from 1802 until 1811, according to a statement in the House of Commons; and the fraudulent assumption of American papers and colors was so common as to furnish one of the excuses for Napoleon's general seizures of American ships. In Parliament Brougham read a circular from a Liverpool manufactory of forged American papers, the price of which was almost entitled to mention in the market reports. "Simulated papers and seals" were a matter of common newspaper advertisement, and in the courts of admiralty it was admitted that, "under present circumstances, it was necessary to wink at them."

V. WAR.—While the United States Government had been endeavoring by diplomacy, by embargoes, by non-importation laws, and by non-intercourse laws, to obtain liberty for its commerce to exist; while its mendicant ambassadors had been besieging the French and British courts with expostulations and entreaties; while its merchantmen, unarmed and unprotected, had been seized with impunity to the number of over 1500 (917 by England, 558 by France, 70 by Denmark, 47 by Naples, and an unreported number by Holland and Spain), the indignation of the people at large had been slowly gathering force until it was now past control.

When the new Congress met, November 4, 1811, it was found that the Federalists had but six Senators and thirty-six Representatives; that among the Democrats most of

the "submission men," who were anxious for peace at any price, had been defeated; and that the Congress was emphatically a war Congress. Its temper seems to have been equally a surprise to the Democratic administration, which had grown gray in efforts to shift off war, and to the Federalist leaders, who had declared that the Government "could not be kicked into a war," and "had no more idea of declaring war than my grandmother."

The first report of the House Committee on Foreign Relations sounded a note unusual in recent proceedings. It rehearsed the misdeeds of Great Britain in enslaving American seamen, and capturing every American vessel bound to or from any port at which her commerce was not favored; and declared that the time had come for choosing between tame submission, and resistance by all the means which God had placed within our reach.

Preparations for war were at once begun. Between December 24, 1811, and July 6, 1812, nineteen acts were passed, most of them for the increase of the army by the enlistment of 20,000 additional regulars and of 50,000 volunteers, and by drafting 100,000 militia into the United States service. All this was for the invasion of Canada, which was the prime object of the war. The fact that the war was to be carried on by land rather than by sea was marked by the appropriations, which amounted to \$12,000,000 for the army, and \$3,000,000 for the navy. April 4, 1812, an embargo was laid for ninety days, an act announced by its supporters to be an act preparatory to war. The President was brought to coincide with the majority, and June 18, 1812, war was declared against Great Britain.<sup>1</sup>

June 23d, the British orders in council were revoked, but the revocation was as delusive as the revocation of the French decrees had been, for it concluded with the proviso:

<sup>1</sup> See Convention, Hartford.

“ That nothing in this present order contained shall be understood to preclude H. R. H., the Prince Regent, if circumstances shall so require, from restoring, after reasonable notice, the orders of the 7th of January, 1807, and the 26th of April, 1809, or any part thereof, to their full effect, or from taking such other measures of retaliation against the enemy, as may appear to his Royal Highness to be just and necessary.”

On receipt of this news the British Admiral, Warren, proposed a suspension of hostilities, but, as he refused to suspend the right of impressment, and as the revocation did not appear to be complete, the United States rejected the offer, and the war was prosecuted to an end, though the final peace did not secure any formal abandonment by Great Britain of the rights of search and impressment, of the “rule of 1756,” or of the principle of the orders in council.

At first American commerce suffered little more from actual war than it had done from the decrees and the orders in council. But the commerce from the New England States, which was encouraged by the British fleets as a means of obtaining fresh provisions, was irritating to the Democratic leaders, who regarded it as an unpatriotic contribution to the support of the enemy.

When it was found that the British blockade, as formally declared, May 27 and November 4, 1813, extended only from Montauk Point to the Mississippi, leaving the New England coast free, the dominant party at once introduced a new embargo, December 17, 1813, to continue until January 1, 1815. It not only abolished foreign commerce, but imposed restrictions upon the coasting trade, which had, by collusive captures and ransoms, been made a means of commerce. April 14, 1814, this embargo was repealed, because of the downfall of Napoleon’s “continental system,” together with his empire.

The restrictive system disappeared with the repeal of



this last embargo. As a measure of offence the utility of an embargo was extremely doubtful at all times. Most historians have denied to it any utility whatever; but Brougham's speeches in Parliament in 1812, and the affidavits and memorials of English merchants, ascribe to it, perhaps from motives of self-interest, a remarkable efficacy. Merchants and manufacturers of Manchester, Birmingham, Sheffield, Rochdale, and Leeds, in their testimony before the House of Commons committee in 1812, painted a lively picture of the decrease of trade, the losses of owners, and the suffering of workmen, and charged the whole upon the American embargo. Their complaints extorted from an unwilling ministry the revocation of the orders in council before mentioned.

The patent object of these orders was to force the trade of the civilized world into British ports, that the duties paid upon them there might sustain the Government in its long struggle with Napoleon, and only a real and general English distress could have forced a change in this policy. But, whatever may have been the success of the embargo in inflicting injury upon Great Britain, the American Government, in enforcing it, was evidently holding the blade of the sword and striking the enemy with the hilt. It had its origin in the unwillingness of the Democratic members of Congress, and their agricultural constituents of the South, West, and western Middle States, to endure the expense of a navy for the protection of foreign commerce. Its final abandonment was due to the discovery that foreign commerce was as necessary to agriculture as agriculture was to foreign commerce.

One strong fleet would have been worth a dozen embargoes, but only experience could convince the non-commercial sections of the United States of the truth of this. As the market for breadstuffs, rice, and cotton disappeared, the value of an embargo was less perceptible. But, even when it was repealed in 1809, the belief that

Great Britain would "Copenhagenize" any American navy which might be formed was sufficient to deter the Democratic leaders from anything bolder than non-intercourse laws, until the idea of invading Canada took root and blossomed into a declaration of war. The navy then approved its value at its first opportunity, and its victories put an end to the possibility of any future embargoes.

VI. HENRY DOCUMENTS.—A correspondence, containing about twenty-six letters, between Sir James H. Craig, Governor of British North America, H. W. Ryland, his secretary, and Lord Liverpool, of one part, and John Henry of the other. Henry had been sent by Craig's order, in January, 1809, to report upon the state of affairs and political feeling in the New England States.<sup>1</sup> He remained until June, and, in order to magnify his office, painted the New England disaffection to the Union in very high colors throughout his reports to his principal. Disappointed of the reward he had expected, he returned to the United States, and, in February, 1812, sold the letters and documents to President Madison for \$50,000. March 9th, the President sent copies of the letters to Congress, accompanied by a special message, in which he declared that they proved an attempt by Great Britain to destroy the Union and annex the eastern part of it to British America. Henry's letters contained no evidence whatever of any design at secession in New England; they were merely very unpleasant reading for the Federalists of that section.<sup>2</sup>

VII. THE ESSEX JUNTO.—About 1781 this name was first applied by John Hancock to a group of leaders who were either residents of Essex County, Massachusetts, or were closely connected with it by ties of business or relationship. The great interests of the county were commercial and the "Essex Junto" was the personification of the commercial interest's desire for a stronger Federal

<sup>1</sup> See Embargo.

<sup>2</sup> See Federal Party, II.

Government. The ability and the ultraism of the junto made its members peculiarly objectionable to the Conservatives and Anti-Federalists of the State, but the name temporarily died out after the successful establishment of the Constitution.

Upon the first development of the Federal party the Essex Junto naturally fell into it, and ranked as the most ultra of the Federalists. They counted among their number such State leaders as Cabot, the Lowells, Pickering, Theophilus Parsons, Stephen Higginson, and Goodhue; and Fisher Ames, a Federalist of national reputation, was in warm sympathy with them until his retirement from politics.

So long as the Federal party was controlled by Washington and Hamilton, the junto's influence in it was very considerable; but when Adams succeeded Washington, its members followed Hamilton rather than the President.<sup>1</sup> In his own State the President at once revived the old name of "Essex Junto," threw upon its members most of the responsibility for the attempt to force a war upon France in 1798-9, and thus gave them a national notoriety as a "British faction," unworthy of recognition as an American party. After his retirement from office, in 1801, President Adams was very steadily engaged, for about seven years, in newspaper warfare against the junto and its open or secret allies in his own State.

The beginning of the "restrictive system," and of the New England opposition to it, deprived the name almost entirely of its local limitation, and made it a synonym for New England Federalism. Throughout the rest of the Union, which was almost entirely Republican in politics, it became convenient to attribute all the difficulties in New England, the resistance to the embargo, the alleged intention to secede in 1808, the open counsels and suspected designs of the Hartford Convention, and the

<sup>1</sup> See Federal Party.

stubborn opposition to the war, to the vague spirit of evil inherent in the "Essex Junto."

VIII. THE HARTFORD CONVENTION.—The success of the commercial party in extorting the Constitution from the agricultural party, the gradual consolidation of the latter party and its success in 1800, the union of the South and West against New England, and the division of the Middle States, are matters elsewhere dwelt upon.

The difference occasioned by the last-named coalition had grown inveterate through time and the heat of conflict, until in 1812 the dominant Democratic-Republican party administered the Government with as little reference as possible to the existence of the Federal party, or of New England, where alone the Federalists retained a party organization. The South and West, under Henry Clay and other leaders, whom the bitter Quincy described as "young politicians, fluttering and cackling on the floor of this House, half-hatched, the shell still on their heads and their pin-feathers not yet shed—politicians to whom reason, justice, pity, were nothing, revenge everything," had determined upon war and an invasion of Canada, as a means of compelling Great Britain to abandon the rights of impressment, search, and paper blockade, and had coerced the peace-loving President, Madison, into participation with them by a threat to deprive him of his second term.

A bill declaring war against Great Britain was passed in the House, June 4, 1812, by a vote of 79 (62 from Pennsylvania and the South, and 17 from the North) to 49 (32 from the North, and 17 from Pennsylvania and the South). A proposition to include France in the declaration received 10 votes. In the Senate, June 17th, the vote was 19 to 13, 4 Northern and 2 Southern Democratic Senators voting with the Federalists against the war. June 18th the act became law, under the nominal auspices of an Administration which had made no ade-

quate preparations in men or money, by land or sea, for a war which was to protect American commerce by invading Canada, and in which the navy was to be drawn up on shore and defended by the militia.

Against such a war so conducted the Federalists were unanimous, on the grounds (as stated in the address of the Federalist members of Congress in 1812) that French aggressions had never really ceased; that the British orders in council operated only against American trade with France, Holland, and northern Italy; that this deprivation, though burdensome, was not sufficiently so to justify the destruction of all remaining American commerce for the purpose of avenging it; that American commerce asked from the dominant party, not war, but protection in the form of an efficient navy or the power to arm and protect itself; and that the declaration of war was only designed by American Jacobins to draw off by a side attack the energies of Great Britain from its struggle with France. They denounced the invasion of Canada as "a cruel, wanton, senseless, and wicked attack, in which neither plunder nor glory was to be gained, upon an unoffending people, bound to us by ties of blood and good neighborhood, undertaken for the punishment over their shoulders of another people 3000 miles off."

When summoned, June 12th, to supply detachments of militia for garrison duty, the Governors of Massachusetts and Connecticut denied the power of the President to make such a draft except to execute the laws, suppress insurrections, or repel invasions. In this denial the Council and Legislature of Connecticut joined, and the popular approval of their action was shown by the election, immediately after, of 163 Federalists to 36 Democrats in the House. The difficulty was in part removed by allowing the militia to remain under its State officers, and by the general conciliatory measures of the Federal Government.

Nevertheless, the New England States continued in every debatable point to adopt the very strictest construction of the Federal Government's constitutional powers, and to do so in language which showed plainly their continued dislike for the war; and their action seemed to meet popular approval. In the spring of 1813 the Federalists showed a clear majority in every State election in New England. Their Massachusetts majority rose from 1370 in 1812 to 13,974; in Connecticut and Rhode Island the Democratic vote was much decreased; and even the hitherto doubtful or Democratic States, New Hampshire and Vermont, were carried by the Federalists. In the Thirteenth Congress, which met May 24th, the House contained 68 peace to 112 war members, the New York delegation having become largely Federalist.

Stimulated by success the party took a higher tone. The Massachusetts Legislature declared the whole war "impolitic and unjust," and refused votes of thanks for naval victories on the ground "that, in a war like the present, waged without justifiable cause, and prosecuted in a manner indicating that conquest and ambition were its real motives, it was not becoming a moral and religious people to express any approbation of military and naval exploits not immediately connected with the defence of our seacoast and soil." The State officers and leading Federalists even refused to attend the public funeral of Captain Lawrence of the *Chesapeake*. In November the newly elected Federalist Governor of Vermont recalled a brigade of militia which his Democratic predecessor had ordered out for garrison duty, and, when a proposition was made in Congress to direct the Attorney-General to prosecute the Governor, a counter proposition was at once brought into the Massachusetts Senate to aid Vermont with the whole power of the State.

New England, in short, presented a united Federalist front of opposition to the war; and the Administration,

ceasing its futile efforts at conciliation, practically abandoned the whole section and threw all its efforts into the invasion of Canada. For this purpose it was driven to attempts to raise men by conscription and impressment, measures to which submission could hardly have been expected from New England.

In the autumn of 1814 the difficulties of the Federal Government, the desperation of the Democratic leaders, and the exasperation of the New England Federalists, seemed to have reached their common climax. The propositions in Congress to enforce a draft and to enlist minors without the consent of their parents, the embargo which had been enacted to counteract the British exemption of the New England coast from blockade, the neglect of the Federal Government to provide for the defence of the New England coast or to prevent the advance of the British along the shores of Maine, which they now controlled up to the Penobscot River, the destruction of New England commerce and fisheries, for which privateering and infant manufactures were no substitute, and the complete nullity of New England in the councils of the nation, formed a mass of grievances which seemed to have become intolerable.

In February, 1814, a committee of the Massachusetts Legislature, while referring the question of a New England convention to the next legislature, had used the following strong language: "We believe that this war, so fertile in calamities and so threatening in its consequences, has been waged with the worst possible views, and carried on in the worst possible manner; forming a union of wickedness and weakness which defies, for a parallel, the annals of the world." It is significant of the temper of the times that this language was pronounced weak and inadequate by many Federalists who considered "action" to be the most urgent need.

October 18, 1814, the Massachusetts Legislature

adopted the proposal of a convention of the New England States to "lay the foundation of a radical reform in the national compact by inviting to a future convention a deputation from all the other States in the Union."

The proposal was promptly adopted by the legislatures of Rhode Island and Connecticut, which last-named body had just ordered its Governor to call a special session for the protection of its citizens if the Federal conscription bill should become a law. The object was cautiously limited in Massachusetts to matters "not repugnant to their obligations as members of the Union," in Connecticut to matters "consistent with our obligations to the United States," and in Rhode Island to "measures which it may be in the power of said States, consistently with their obligations, to adopt." In New Hampshire, where the Council was Democratic, and in Vermont, where the successful fight at Plattsburgh had wakened a new war feeling, the Federalists did not venture any State action upon the proposal, but the Federalist counties of Cheshire, Grafton, and Coos, in New Hampshire, and Windham, in Vermont, appointed delegates by town meetings.

That the recent disasters of the war, the depreciation of the public credit twenty-five per cent. below par, and the humiliating demands of the English commissioners as the price of peace, should now be supplemented by this portentous union among the New England Federalists, who had just succeeded in carrying every Congressional district in their section except three, in which there was no popular choice, brought the wrath, alarm, and suspicion of the Democratic party and the Administration to their highest point. Executive agents were scattered over New England to search for evidences of a secret plot to separate that section from the Union and form a grand duchy under an English prince of the blood; a regular officer was sent to Hartford, with assurances of support from the New York State troops and the "fighting



Democracy" of Connecticut, to oversee the deliberations of the twenty-six elderly gentlemen who were soon to meet there in convention; and the President, at the request of Congress, appointed January 17th following as a day of national fasting and prayer.

The convention met at Hartford, Connecticut, December 15, 1814, the delegates being as follows: *Massachusetts*—George Cabot, Nathan Dane, William Prescott, Harrison Gray Otis, Timothy Bigelow, Joshua Thomas, Samuel Sumner Wilde, Joseph Lyman, Stephen Longfellow, Jr., Daniel Waldo, Hodijah Baylies, George Bliss. *Connecticut*—Chauncey Goodrich, John Treadwell, James Hillhouse, Zephaniah Swift, Nathaniel Smith, Calvin Goddard, Roger Minot Sherman. *Rhode Island and Providence Plantations*—Daniel Lyman, Samuel Ward, Edward Manton, Benjamin Hazard. *New Hampshire*—Benjamin West, Mills Olcott. *Vermont*—William Hall, Jr. George Cabot was chosen president and Theodore Dwight, editor of the *Hartford Union*, secretary.

After a secret session of three weeks and the preparation of a report to their respective legislatures, the convention adjourned, January 5, 1815. The report denied any present intention to dissolve the Union, and admitted that, if a dissolution should be necessary, "by reason of the multiplied abuses of bad administrations, it should, if possible, be the work of peaceable times and deliberate consent." It enumerated the New England grievances above mentioned, with the addition of "the easy admission of naturalized foreigners to places of trust, honor and profit," and "the admission of new States formed at pleasure in the Western regions," as destroying the original balance of the sections. It proposed that Congress, paying in to the State treasuries a certain proportion of the taxes raised in the respective States, should confide to the States their own defence. It laid down the general principle that "it is as much the duty of the

State authorities to watch over the rights *reserved* as of the United States to exercise the powers which are *delegated*”; and proceeded from this standpoint to the narrowest particularism of the Kentucky Resolutions. It recommended the following changes in the Constitution: 1. That the Southern States should be deprived of the representation given them for three fifths of their slaves. 2. That a two-thirds vote of both Houses should be requisite for the admission of new States. 3. That embargoes should be limited to sixty days. 4. That a two-thirds vote of both Houses should be requisite to prohibit commercial intercourse; or, 5, to declare war, or authorize hostilities, except in case of invasion. 6. That naturalized foreigners should be debarred from membership in Congress and from all civil offices under the United States. 7. That the President should not be re-eligible, and should not be taken from the same State two terms in succession. It closed with a suggestion that if affairs should not change for the better, or if these amendments should be slighted, another convention should assemble in Boston, on the third Thursday of June following, “with such powers and instructions as the exigency of a crisis so momentous may require.”

The legislatures of Massachusetts and Connecticut adopted the suggestions of the report, and sent commissioners to Washington to urge the proposed amendments. Before they arrived the Administration had been relieved from all anxiety; England had agreed to an honorable peace; the rout of twelve thousand picked veterans from Wellington’s Peninsular army by Jackson and seven thousand raw Kentucky and Tennessee militia at New Orleans had closed the war in a blaze of glory; and the commissioners found themselves only the discredited agents of a meeting of secret conspirators against the unity of the Republic, and of States which had deserted their country in its hour of sorest need. No attention

was paid to their recommendations, nor was any renewal of the convention ever attempted. From the series of humiliations, of which the Hartford Convention was the close, New England learned thoroughly the necessity of carrying on struggles against the National Government *within* the Union, a lesson which it had occasion to rehearse often afterward. It would have been fortunate for her sister section of the South if the same lesson had been impressed upon her attention fifty years previous to 1861.

The Federalist politicians who fathered or composed the Hartford Convention never escaped from the popular odium which attended it. November 16, 1819, the president, Cabot, deposited its journal with the Secretary of State at Boston, that all men might see that its designs and debates were legitimate and not treasonable. In 1833 Theodore Dwight, the secretary, published his *History of the Hartford Convention*, but public opinion had even then become fixed, as it has since remained, against the convention.

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IX. TREATY OF GHENT.—In the negotiations at Ghent (1814) the British had the advantage in that late military events had gone in their favor in America, and that by the downfall of Napoleon and the conclusion of peace in Europe, England would be free to prosecute the American war. America was regarded as in the position of suing for peace. The British made the following extraordinary demands:

(1) As a *sine qua non*, a large tract of American territory—now occupied by Michigan, Illinois, Wisconsin, and most of Indiana, and one third of Ohio—should be set apart for the Indians, for Indian sovereignty under British guarantee, never to be purchased from the Indians by the United States, but to serve as a perpetual protection

of the British possessions against the American westward movement,—a kind of a “buffer state” to guard against American aggression.

(2) The United States to relinquish the right to keep any armed vessels on the Great Lakes. (See the Convention of 1817 allowing each of the two powers four 100-ton vessels, of one gun each.)

(3) Cession of a part of Maine, as a provision for a road from Halifax to Quebec.

(4) Renewal of the treaty provision of 1783, giving to the British the right to navigate the Mississippi.

Submission to these demands would, of course, have been like a humiliating surrender of American independence. On that basis the Americans had nothing to do but to break up the conference and leave for home. The war would then have become popular in America, and the British were not willing to have the negotiations broken off with such a result.

Clay believed that the British would soon recede from these demands, and this they soon did, and proposed to treat not upon the basis of *uti possidetis*, as first suggested, but upon the basis of *status quo ante bellum*. Affairs should be settled as they were before the war. But they would not listen to stipulations touching blockades, rights of neutrals, impressment, and right of search. On these subjects of the quarrel there was to be no agreement in the settlement. On these subjects further discussion seemed useless. The original instructions of the American commissioners had authorized them to break off and come home if they failed to get concessions on these points; but Madison had reconsidered and he now authorized them to treat on the basis of the *status ante bellum*. This was thought to be better than to go on with the war. If both parties agreed to this basis all differences were but matters of detail and peace was assured.

But dispute arose as to the definition of the *status ante bellum* on two points:

(1) With regard to the British right to navigate the Mississippi; (2) with regard to the American right to fish in British waters.

These had gone together in the treaty of 1783. The British now proposed to insist upon for themselves the right to the Mississippi, but to put an end to the American right to the fisheries. The altercations between Adams and Clay on these points taxed to the utmost Gallatin's resources as a peacemaker. Clay "lost his temper," and "waxed loud and warm" in "great heat and anger." To Clay the fisheries were a matter of trifling moment, while to allow the navigation of the Mississippi, as in 1783 and 1794 (when Spain held the west bank and its headwaters were supposed to be in British territory), would be granting an important privilege to which Britain had no title. To Adams the fisheries were of great value, while the Mississippi had never led to any trouble or inconvenience. After angry discussions word was received from London of a willingness to accept a treaty silent on both these subjects, and on that basis the treaty was finally arranged. The treaty then provided for:

- (1) Cessation of hostilities.
- (2) Mutual restoration of territory and property, and prisoners of war.
- (3) A commission to settle boundary questions.
- (4) Cessation of Indian hostilities, each party to restore the Indians to all rights and possessions of 1811.
- (5) Compensation for slaves abducted by British forces.
- (6) Co-operation of both governments to promote the entire abolition of the slave trade.

A war which was to have dictated peace in Quebec, or Halifax, and vindicate "free trade and sailors' rights," had resulted in a peace on the *status ante bellum* without even alluding to the things that had been fought for.

Such a treaty was very unsatisfactory to a war spirit like Clay, and he signed it with a heavy heart, calling it "a damned bad treaty."

The War of 1812 was most singular: (1) It had been begun over a cause (the orders in council) which had disappeared with its declaration, and which was left unmentioned in the treaty conclusions. (2) It had been supported by those parts of the country, the South and West, that had little to do with the sea, and had therefore suffered the least from the interruption of maritime trade; while it was most opposed by those parts of the country whose fortunes were on the sea. (3) In view of Napoleon's outrages it is a serious question whether war was not declared against the wrong nation. (4) The principal battle of the war was fought after peace had been declared and the treaty signed. If New Orleans had been fought before the peace it is questionable whether such a peace would have been made. Jackson saved American prestige and gave his countrymen some ground for claiming success and victory.

Although the Treaty of Ghent professed to restore affairs to the condition existing before the war began, there were certain notable results and changes which the war produced, to be seen from a study of conditions in American politics during the few years immediately following 1815.

(1) The War of 1812 resulted in the freedom of the seas for American trade and the cessation of impressment. These important objects were, after all, gained by the war. Great Britain knew that for these America would fight. She knew that if she impressed again there would be war again, and there has been no impressment since.

(2) The war put an end to all lingering colonial feeling and dependence. American parties no longer found their lines of division and demarkation on questions of European politics. Our political questions and divisions

became domestic; they were no longer determined by European conditions. There had been English parties and French parties, English interests and French interests, but now all parties and interests became American. This feeling of separateness, this divorcement from Europe, was soon to find voice in the Monroe Doctrine. To 1815 party issues had turned on matters of foreign relations. From 1815 to 1898 our political divisions were chiefly over matters of domestic concern. Out of the war and its deranged finances came the second United States Bank; out of the enforced manufacturing of the war came the policy of a protective tariff; and out of the lack of facilities for communication and transportation which the war revealed came increased demand for internal improvements. Following the "Second War for Independence" came an independent "American System" of laws and policies.

(3) The war encountered and destroyed the first serious disunion movement. Whatever secession and disunion spirit there was in the Hartford Convention and in the purposes and plans of its promoters was ever afterwards execrated and denounced. Sectionalism had been made more ugly and unpopular and the war had made the people feel that they were a real power, a consciously united nation. Clay and Calhoun and Crawford, who had come into the arena of national politics on the eve of the war (1811), brought with them the spirit of nationality and union; and Webster, who stepped into the arena in 1816, and Benton, in 1820, and Jackson, who became a commanding figure in politics as the result of the war, represented the feeling of nationalism that was destined to influence decisively the North, the South, and the West for the generation to come. [ED.]

On Neutral Rights and War of 1812 see, in general, 5 Elliot's *Debates*, 455; 5, 6 Hildreth's *United States* (and index); Dwight's *Hartford Convention*; *American*

*Register*, 1806-10; 3-5 Benton's *Debates of Congress*; 1, 4-6 Wait's *American State Papers*; 1 *Statesman's Manual*; 1, 2 *Stat. at Large*. (I.) See 1 Fyffe's *History of Modern Europe*, 53; Hamilton's *Letters of Pacificus*, and other authorities under Genet, Citizen; 2 Sparks's *Life of Gouverneur Morris*, 319; 2 Pitkin's *United States*, 398; Baring's *Orders in Council*; W. B. Lawrence's *Visitation and Search*, 4; Trescott's *Diplomatic History of the Administrations of Washington and Adams*, 91; 1 Benton's *Debates of Congress*, 458, 498; authorities under Jay's Treaty; 1 Lyman's *Diplomacy of the United States*, 224; Stephens's *War in Disguise*, 57; 2 Tucker's *Life of Jefferson*, 223; Dwight's *Hartford Convention*, 83; 4 Jefferson's *Works* (edit. 1829), 169. The act of March 26, 1794, is in 1 *Stat. at Large*, 400; the act of April 18, 1806, is in 2 *Stat. at Large*, 379. (II.) See authorities cited above, in general; 3 Benton's *Debates of Congress*, 640; 1 von Holst's *United States*, 200; 6 Hildreth's *United States*, 35; Carey's *Olive Branch*, 215; 1 Tucker's *United States*, 532, and 2: 307; *Massachusetts Memorial and Remonstrance to Congress* (1809); *Memorial of W. E. Channing*; 2 Rives's *Life of Madison*, 383, 410; 3 Randall's *Life of Jefferson*, 282; Quincy's *Life of Quincy*, 162; Clay's *Private Correspondence*, 46; 3 Webster's *Works*, 327; Story's *Life of J. Story*, 185; 4 Benton's *Debates of Congress*, 9. The acts of December 22, 1807, January 9, March 12, and April 25, 1808, are in 2 *Stat. at Large*, 451, 453, 473, 499 respectively. (III.) See (as to "Erskine arrangement") 6 Hildreth's *United States*, 168; Dwight's *Hartford Convention*, 101; Wait's *American State Papers* (1808-9), 461. The acts of March 1 and June 28, 1809, May 1, 1810, and March 2, 1811, are in 2 *Stat. at Large*, 528, 550, 605, 651. (IV., V.) See, of the works cited, under II. and III., Hildreth, von Holst, Benton, Rives, Quincy, and Carey; 1 Ingersoll's *Second War with Great Britain*; 2 Calhoun's *Works*,



2; authorities under Federal Party; Convention, Hartford; and Clinton, De Witt. The declaration of war is in 2 *Stat. at Large*, 755; the last embargo act, December 17, 1813, is in 3 *Stat. at Large*, 88.

6 Hildreth's *United States*, 284; Carey's *Olive Branch*, 156; 1 *Statesman's Manual* (ed. 1849), 291; Dwight's *Hartford Convention*, 195; 2 *Niles's Register*, 19; 4 Jefferson's *Works* (ed. 1829), 171; 1 von Holst's *United States*, 221.

On the Essex Junto see 4 Hildreth's *United States*, 375, and 5: 52, 81, 119; 1 Schouler's *United States*, 469; Lodge's *Life of Cabot*, 17; 4 Jefferson's *Works* (edit. 1829, letters of April 20, 1812, and January 13, 1813), 172, 184; 1 John Adams's *Works*, 286, and 9: 618.

On Hartford Convention, see Dwight's *Hartford Convention*; 6 Hildreth's *United States*, 545; 4, 5 Benton's *Debates of Congress*; 2 Ingersoll's *Second War with Great Britain*, 216, 248; 2 Holmes's *Annals*, 467; 2 Goodrich's *Recollections*, 9; 3 Spencer's *United States*, 286; Carey's *Olive Branch*; Adams's *Documents Relating to New England Federalism*; Sullivan's *Letters*; Quincy's *Life of Quincy*; 1 von Holst's *United States*, 263. The act recognizing the existence of war between the United States and Great Britain is in 2 *Stat. at Large*, 755.

On the Treaty of Ghent see, *Treaties and Conventions of the United States*; Gordy's *Political History of the United States*; Foster's *Century of American Diplomacy*; Schurz's *Life of Clay*; Lyman's *History of American Diplomacy*; Morse's *Life of F. Q. Adams*; Stevens's *Life of Gallatin*; J. Q. Adams's *Diary*.

## CHAPTER XVI

### THE MONROE DOCTRINE

THE so-called Monroe Doctrine consists of two doctrines. These two doctrines, or declarations, are found originally in Monroe's message to Congress of December 2, 1823. To express these two declarations in two words they may be said to assert, (1) *Non-colonization*, (2) *Non-Intervention*. These two ideas are separated in the message, they are separated in the circumstances from which they arose, they are separated in the things to which they apply, and they are separated in the principles of public law upon which they depend.

I. We shall consider, first, *Non-colonization*. What were the circumstances and the occasion leading to Monroe's declaration on this subject?

In 1823 the Northwest Territory on this continent beyond the Rocky Mountains was in dispute between three powers—Great Britain, Russia, and the United States. Spain had been a contestant previous to 1819; but in 1819 she retired from the field, and in our Florida treaty of that year with her she relinquished to the United States all her rights to territory west of the Rockies and north of 42° north latitude.

In 1821 the Czar of Russia by a ukase, or imperial proclamation, asserted territorial rights from the Polar Sea to the parallel of 51°. Great Britain and the United States united in opposition to this claim. The United States claimed as far north as 54°; Great Britain claimed

as far south as the mouth of the Columbia River, about 46°. In 1818 Great Britain and the United States agreed by treaty to a joint occupancy, for ten years, of all territory in dispute between them. All territory claimed by either was to be open to the other and mutual rights were to be respected. By this the two countries merely agreed to postpone the settlement of their boundaries. With Great Britain claiming as far south as the mouth of the Columbia River (46°), the United States claiming as far north as 54°, and Russia asserting her right to 51° the claims of all these countries seriously overlapped. Discovery, occupation, and exploration are the facts which, in international law, are taken to determine the question of original title—*i. e.*, the question of sovereign right in the soil. We had succeeded to Spain's rights in these respects in the Northwest. But the Nootka Sound Convention of 1790 between Spain and Great Britain had complicated these rights and had thus made the title as between the United States and Great Britain still more doubtful. The dispute was not settled between these two countries, Great Britain and the United States, until 1846, when our present northwest boundary was fixed by the Oregon Treaty. Russia and America stood against the claim of Great Britain; Great Britain and America stood against the claim of Russia; and Russia and Great Britain stood against the claim of the United States; and Great Britain especially resisted the general assertion which the American administration now put forth in this part of the Monroe Doctrine. England was exploring the Northwest country, and she was attempting original possession of a large part of it. It was this territorial dispute and the occasion that it offered in which the rights and interests of the United States were involved that led to Monroe's assertion on non-colonization. The declaration of the message is as follows:

“The American continents, by the free and independent

condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power." This means, in brief, that there was no more colonizable land in America for Europe.

July 2, 1823, five months before this message was submitted to Congress and published to the world, John Quincy Adams, then our Secretary of State, wrote to Richard Rush, our Minister at the Court of St. James, asserting that the continent of America "is occupied by civilized nations and is accessible to Europeans and to each other on that footing alone." "This letter," says Mr. Dana, "contains the germs of the Monroe Doctrine relating to non-colonization. Its paternity belongs to Mr. Adams." In 1848, May 15th, Mr. Calhoun, then the only surviving member of Monroe's Cabinet, said in the United States Senate that this part of the Monroe Doctrine was inserted in Monroe's message on the advice of Adams without being submitted to the Cabinet. No one was then living competent to dispute the word of Calhoun. He is corroborated by lack of any reference to the question of disputed boundary in the Monroe-Jefferson correspondence, which arose by Monroe's asking Jefferson's advice on the matter of intervention. It is clear that the meaning which Mr. Adams attached to this assertion is that the American continent should be considered, at that time, as in actual ownership. The American territory was all possessed; sovereign right to all the soil was vested in some one of the powers. The land was now occupied and owned, and there was no more unclaimed and undiscovered land which, from lack of discovery, or occupation and possession, could be entered and colonized by any foreign power. The British Cabinet denied this doctrine—*i. e.*, it denied that the assertion was in accordance with the fact, holding, rather, that there were unoccupied parts of America still open to original colonization, as heretofore. The question was

not so much a matter of principle, or doctrine, as it was a matter of fact. What was the fact as to the political geography of the American continent at that time? Was all the land under the sovereign possession of civilized states? Was the continent so occupied and held as to exclude any nation from hereafter acquiring sovereign title in the soil, not by treaty or purchase, which may at all times be done, but by discovery, and original occupation and colonization? It was Adams's desire to prevent any new European dependencies on this continent on account of trade restrictions to our detriment, and perhaps because of different political ideas.

We may be aided in understanding better what this part of the doctrine means by noticing what it does *not* mean:

1. It does not assert that one state shall not colonize the territory of another. That needed no assertion. It was true before. Of course, that would be a cause of war the world over, which international law already recognized. To have asserted that at so late a day would have made us ridiculous in the eyes of the world.

2. It does not assert that European powers may not gain by treaty, purchase, or conquest, any territory from any American state. The rights of any nation to conquer by justifiable war, or to purchase, or to treat for, territory with any other nation of the world was not touched, as these rights were then defined in international law. No new principle for the conduct of war and treaties was announced. The American states were to be left free to dispose of their own territory in their own way, and we did not propose by this declaration to become a party to the quarrels of all American states with the powers of Europe. Mr. Cass said in the Senate in January, 1856: "To colonization by purchase, treaty, or lawful conquest, the Monroe Doctrine was not intended to apply. To suppose that it was a pledge, promise, or

engagement, that the United States would guard from European encroachment the whole boundless continent is to misconstrue both Adams and Monroe."

3. It did not declare the peculiar position that the parts of this continent beyond the recognized limits of civilized states should be closed to all powers except those in America. All undiscovered, unoccupied land anywhere is open to the first comer among nations, who can establish the fact of possession. Mr. Adams merely held that no part of America was in that condition. It was all under the dominion of civilized states; it was all under cover; the dominion of recognized states embraced it all.

This is the first part of the Monroe Doctrine: *No more European colonization in America because the land was already occupied and owned.* Mr. Dana says:

"In this Mr. Monroe did not intend to establish a new system for America, but only to apply to the state of things in America a recognized principle of public law. The only question is, did the state of things at that time in America warrant the application of the principle? Was the continent so occupied and held as to exclude the acquisition of sovereign title by subsequent occupation? The question was one of political geography."<sup>1</sup>

II. The second part of the Monroe Doctrine, that relating to *Non-Intervention*, arose from the situation in European politics,—from the danger that the Holy Alliance would interfere on behalf of Spain to bring again into subjection to that country the revolted South American republics. The Holy Alliance had come to be a compact between sovereigns forming a perpetual system of intervention among the European states, to prevent any change in the form of their respective governments tending to endanger the existence of monarchical

<sup>1</sup> Wheaton's *International Law*.

institutions. This interference was applicable to every case of popular revolution, or to any proposed change of government which did not proceed from the voluntary concession of the sovereign, or to any revolutions which these sovereigns might consider dangerous.”<sup>1</sup> England dissented from this policy, on the ground that interference should not be the rule, but the exception. Great Britain acknowledged the right to interfere where the immediate security or essential interests of one state are endangered by another. But this right could not receive a general and indiscriminate application to all revolutionary governments. Each occasion and suggestion of interference must be decided on its merits. The Allied Powers had interfered with France in 1814, with Naples in 1820; and at Verona, in 1822, the Holy Alliance determined upon interference in Spain, to restrain the popular revolution there, and France, with the Alliance at her back, had carried out that policy. At this Congress of Verona the proposition was made and agitated that these powers, in conformity with the wishes of the absolutists of Spain, should go still further in their interference. *They should cross the ocean and apply their system of interference in America*; they should see that the Spanish colonies should be brought back to the Spanish Crown, colonies which had been in revolt, some of them, for twenty years, and whose independence we had already recognized. When this proposition was made in 1822 to bring back the Spanish colonies by the military arm of outside powers, the time for resistance had come. It was this crisis which brought out the second part of the Monroe Doctrine.

When this policy was announced in the councils of the Holy Alliance and became known to England, who was asked to co-operate, Canning wrote to Rush urging the United States to take decided ground against intervention

<sup>1</sup> Dana's Wheaton's *International Law*.

in South America by the Allied Powers. Rush wrote to his home government and Monroe submitted the papers to Jefferson for advice. Jefferson says in his celebrated letter to Monroe on this occasion :

“ This raises the most momentous question since independence. Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to allow Europe to intermeddle with cis-Atlantic affairs. America should have a system separate and apart from that of Europe. Now that England offers to come to our side in this opportunity we should improve the opportunity to protest against atrocious violations of the rights of nations by interference.”

The terms now used by Monroe in expressing this position differed only in form from the expressions of Jefferson's advice. The part of his message relating to non-intervention is as follows :

“ The political system of the Allied Powers is essentially different from that of America. Any attempt on their part to extend their system to any portion of this hemisphere is dangerous to our peace and safety. We could not view any interposition for the purpose of oppressing them [the Spanish-American states] or controlling in any manner their destiny by any European power, in any other light than as a manifestation of an unfriendly disposition toward the United States.”

This attitude of the American Government gave a decisive support to that of Great Britain and effectually put an end to the designs of the absolutist powers of the continent to interfere with the affairs of Spanish America. Those dynasties did not wish to hazard a war with Great Britain and the United States.

The principal applications of the Monroe Doctrine prior to 1876 (the subject has been voluminously discussed in



more recent years) were in (1) the Panama Congress, 1825-26, (2) the case of Yucatan, 1848, and (3) the French intervention in Mexico, 1861-65.

1. *The Panama Congress.*—Early in 1825 the new American states of Spanish origin invited the United States to a Pan-American Congress at Panama. We were to come to discuss questions of mutual concern. Mr. Clay, the Secretary of State, was anxious to help the new republics and to secure them against subjection. Mr. Adams, the President, was in sympathy with the Congress. Colombia, then the leading Spanish-American power, announced the following as among the measures to be considered :

“To take into consideration the means of making effectual the declaration of the President of the United States respecting any ulterior design of a foreign power to colonize any portion of this continent, and also the means of resisting all interference from abroad with the domestic concerns of the American governments.”

With the design of allaying a rising opposition in the United States to the Panama mission, Mr. Adams, in a special message to the Senate, December 26, 1825, said : “An agreement between all the parties represented at the meeting that *each will guard by its own means* against the establishment of any future European colony within its borders may be advisable.” In a special message to the House, March 26, 1826, Mr. Adams again expressed the doctrine as he understood it from Monroe :

“With the exception of the existing European colonies, which it was in no wise intended to disturb, the two continents consisted of several sovereign and independent nations whose territories covered their whole surface. Under this condition our trade might reach every part of their possession. For a European country to establish and control a colony would be

to usurp and monopolize a commercial intercourse which was the common possession of all."

It therefore seemed to be the purpose of the Congress for the national parties there represented to pledge themselves to maintain this principle and permit no new colonial lodgment or jurisdiction. The states calling the Congress seemed to think that the United States had pledged its support to them in maintaining this doctrine. Mr. John Sergeant, of Pennsylvania, and Mr. Richard C. Anderson, of Kentucky, were appointed by the President as our envoys. But one of them died and the other was delayed, and the United States was not represented at the first session of the Congress. A second session was never held, owing chiefly to disappointment at the attitude of the United States.

"The opposition to the Congress," says Mr. Dana, "successfully contended, that if the Panama meeting amounted to anything it would tend to establish on this continent, in the interests of republicanism, the same kind of a system (of interference) which had been established in Europe in the interest of despotism, and that the United States would necessarily be its protector and the party responsible to the world."

That is, the benefits would come to the states of South America, the burdens would come to the United States. In this view the House of Representatives resolved:

"The United States ought not to become parties with the Spanish-American Republics, or any of them, to any joint declaration for the purpose of preventing the interference of any European powers with their independence or form of government, or to any compact for the purpose of preventing colonization upon the continents of America."

The United States wished to be free to act in every

instance as our friendship, honor, and policy might demand.

2. *The Case of Yucatan.*—On April 29, 1848, at the close of the Mexican War, President Polk submitted a special message to Congress asking authority to take possession of Yucatan. The Mosquito Indians in that country were waging a war of extermination against the whites. The whites had appealed to us, offering to transfer to the United States the dominion and sovereignty of the peninsula if we should give them material aid in suppressing the insurrection. These Yucatan whites had also applied to England and Spain, and President Polk urged the opinion that if we did not accept the offer Yucatan might pass under the control of one of these powers. He then referred to the Monroe Doctrine, as recited in his regular message in December, 1845, as opposed to the transfer of American territory to any European power; he urged Congress to take steps to prevent Yucatan from becoming a European colony, which “in no event could be permitted by the United States.” President Polk, and those in Congress who sustained his proposals, held that the Monroe Doctrine should be asserted to oppose the further acquisition of any European dependency in America, and upon this ground we should resist the English possession of Yucatan.

A bill in the line of policy suggested by Mr. Polk was introduced into the Senate. The bill was amended on the theory of considering Yucatan as a part of Mexico, to be occupied by us as a war measure, while we were still in military possession of that country. This changed entirely the character of the movement. The administration party led by Cass and Hannegan favored the original bill on the ground of preventing a European dependency. It was on this occasion that Mr. Calhoun made his celebrated speech on the Monroe Doctrine, maintaining that the President was urging an entire mis-

conception of the original declaration. Calhoun treated the assertion of Monroe as limited to acquisitions of sovereignty over unoccupied regions, and claimed that it merely denied *that there were then any unoccupied regions*, and it had no reference to transfers of sovereignty in territory by coercion or agreement.

“Colonization in Monroe’s assertion had a specific meaning; it meant a settlement by emigrants from a parent state in an uninhabited country, or in one unpossessed. The occasion and the circumstances which called forth this declaration had passed away, and the declaration was made only for that occasion. The events which called it forth had passed away forever. Mr. Polk is changing its meaning entirely by separating it from its context, which referred it to the allied powers. The change has made the declaration so inconsistent and absurd that had it been made by Mr. Monroe it would have been the subject of the severest animadversion and ridicule instead of receiving, as it did, the applause and approbation of the whole country. It would have placed England against us in relation to the Holy Alliance; it would have placed us in the position of opposing Spain in her efforts to recover her dominion over those states; and, finally, it would have involved the absurdity of asserting that the attempt of any European state to extend its system of government to this continent, the smallest as well as the greatest, would endanger the peace and safety of our country.”

We were under no pledge to intervene against intervention. As suggested by the resolution of the House in 1825, policy and justice were to determine that in each case.

“In disavowing a principle,” says Calhoun, “which will compel us to resist every case of interposition of European powers on this continent, I would not wish to be understood as defending the opposite, *i. e.*, that we should *never* resist their interposition. This is a position which would be nearly

as dangerous and absurd as the other. *But no general rule can be laid down to guide us on such a question.* Every case must speak for itself; every case must be decided on its own merits. Whether you will resist or not, and the measure of your resistance,—whether it shall be by negotiation, remonstrance, or some intermediate measure, or by a resort to arms,—all this must be decided on the merits of the question itself.”

Calhoun opposed interference in Yucatan at this time because he thought the circumstances did not justify it. In this speech he has given one of the best definitions and explanations of the intent of the Monroe Doctrine as it was originally understood. It had been urged in the Senate that the declaration of Monroe was not only against intervention or future colonization, but against the acquisition of dominion on this continent by European powers, by whatever mode or however derived; the doctrine was considered as a pledge to resist by force, if necessary, such a result in any part of the continent. This denied Calhoun's definition and contended that the non-colonization clause of Monroe's message was intended to be, and was understood by England to be, a foreclosure of the whole continent against all future European dominion however derived. This is a very loose construction of the Monroe Doctrine rather than the doctrine itself.

3. *The Case of Mexico, 1861-65.*—On the 31st of October, 1861, a convention was held in London between England, France, and Spain, avowedly to consider how these nations might secure redress for their citizens in Mexico. Some of these citizens held Mexican bonds which that government was not willing, or not able, to pay. Complaint was also made that life and property were not safe in Mexico. The convention provided for such occupation of Mexico and “such other operations” as should be necessary or suitable to secure these objects.

Payment of debts might be secured under the then

existing government of Mexico, but to secure the other object,—*i. e.*, the permanent security of life and liberty,—the new Alliance of powers deemed a new government for Mexico was necessary. This meant a war of conquest upon that country, though it was asserted that the Mexicans themselves might determine of what form their new government should be. The United States were invited to become a party to this treaty after the terms of the treaty had been arranged and its execution begun. Secretary Seward undertook to remove the occasion for this interference by offering our aid to Mexico to help her pay her debt. Mexico consented to the arrangement, but when Mr. Seward gave information of such proposals to the allied powers the propositions for a peaceful settlement were rejected. The bald proposition of the European powers now was that they would make war on Mexico in order to change her form of government, upon the pretext that foreign residents were not safe in that country.

The motives behind the movement are seen from the letter of the French Emperor ordering his commander to march upon the capital of Mexico: "To redress grievances, to establish bounds to the extension of the United States farther south, to prevent that power from becoming the sole dispenser of the products of the new world." It was a movement for power and commercial influence, though the French Emperor disclaimed any design of forcing a government upon Mexico.

On April 9, 1862, at another conference between these three powers (at Orizaba), England and Spain objected that France had gone beyond the terms of the first convention in giving military aid in Mexico to the party favoring imperial government, and these two powers therefore withdrew from further co-operation.

"But France," says Dana, "whose pecuniary claims upon

Mexico were much smaller than those of the other powers, and more questionable, left to itself in Mexico, proceeded by military aid to the imperialist party, to establish that party in possession of the capital; and, under the protection of the French forces, an Assembly of Notables was called without even a pretence of a general vote of the Mexican people. The Assembly undertook to establish an imperial form of government and to offer the throne to the Archduke Maximilian of Austria."

The French Emperor acknowledged this government and entered into a treaty to give it support and security by military aid.

During these high-handed operations was the Monroe Doctrine not to be asserted? On April 4, 1864, the House of Representatives at Washington passed a resolution, by unanimous vote, denouncing the French intervention. Mr. Seward, in diplomatic correspondence with France, defined the position of the Administration: That we regarded France as a belligerent in Mexico; that we acknowledged the right of one nation to make war upon another for international objects; that one belligerent might secure military possession of the soil of the other, if she could; as between these belligerents we did not enter into the merits of the controversy.

"But France appears to us," says Mr. Seward, "to be lending her great influence to destroy the domestic republican government of Mexico and to establish there an imperial system under the sovereignty of a European Prince. This is the real cause of our national discontent, that the French army which is now in Mexico is invading a domestic republican government there for the avowed purpose of suppressing it and establishing upon its ruins a foreign monarchical government, whose presence there, so long as it should endure, could not but be regarded by the people of the United States as injurious, and menacing to their own chosen and endeared republican

institutions. We have constantly maintained, and still feel bound to maintain, that the people of every state on the American Continent have a right to secure for themselves a republican government if they choose; and that interference by foreign states to prevent the enjoyment of such institutions deliberately established is wrongful and in its effects antagonistical to the free and popular form of government existing in the United States.”

This was a very fair expression of the Monroe Doctrine, in the face of a clear, undisputed European “interposition for the purpose of controlling the destiny” of an American state. This was near the close of the Civil War, four years after intervention had begun. After the surrender of Lee, Grant sent Sheridan with a corps to the Rio Grande, to have him where he might aid Juarez in expelling the French from Mexico.<sup>1</sup> This demonstration, and further negotiations, led to the final withdrawal of the French and a successful vindication of the Monroe Doctrine.

Reviewing the Monroe Doctrine to the close of the Civil War, although it had been enlarged or more broadly construed by public messages and the utterances of public men, we may summarize it as follows:

1. The declaration on non-colonization was distinct from that on intervention, and related to original acquisition by immigration and settlement.

2. Intervention (on which Monroe consulted Jefferson) related to the interposition of European powers in the affairs of the American states, and the kind declared against was that made for controlling their political affairs, or for extending to America the system, or practice, of intervention by which the great powers exercise a control over the affairs of other European states.

3. No course of conduct on the part of the United

<sup>1</sup> See Grant's *Memoirs*.



States was declared for. Any intervention that might indicate "an unfriendly disposition" toward the United States, or that might be considered "dangerous to our peace and safety," would be met by whatever policy circumstances seemed to demand.

4. The declaration was only the opinion, or policy, of the administration of 1823, and it has acquired no legal (legislative) force or sanction since,—except in the case of Mexico.

5. The United States has never made any alliance with, or pledge to, any other American state on the subject covered by the declaration.

The Monroe Doctrine has been discussed much more since the Civil War than before. Recent literature on the subject is very extensive. Time and recent events may be said to have developed the Monroe Doctrine into something other than its original scope and intention, as we have here outlined it. It may reasonably be claimed that the present American conception of the doctrine was expressed in President Cleveland's notable message on Venezuela, December 17, 1895, when he said that it was "the traditional and established policy of this Government to oppose a forcible increase by any European power of its territorial possessions on this continent." Or, the national attitude is well voiced by Ex-Secretary Olney: "The vital feature of the Monroe Doctrine [of to-day] is that no European power shall forcibly possess itself of American soil and forcibly control the political fortunes and destinies of its people."<sup>1</sup>

References: 2 Richardson's *Messages of the Presidents*; Wharton's *Digest of International Law*; Ford's *John Quincy Adams: His Connection with the Monroe Doctrine*; J. Q. Adams's *Memoirs*; *Speeches of Calhoun*; Martens's *Nouveau Recueil de Traités*, edit. 1820, vol. iv.; *Writings of Monroe*; Dana's *Wharton's International*

<sup>1</sup> Harvard Address, March 2, 1894.

*Law*; Niles's *Register*, vol. v.; Henderson's *American Diplomatic Questions*; Snow's *American Diplomacy*; Tucker's *Monroe Doctrine*; Reddaway's *Monroe Doctrine*; Keasbey's *The Nicaragua Canal and the Monroe Doctrine*; Butler's *Treaty-Making Power*; McMaster's *With the Fathers*; Hart's *Foundations of American Policy*; Latane's *Diplomatic Relations of the United States and Spanish America*; Foster's *Century of American Diplomacy*; Burgess's *Middle Period*; Phillips's *Modern Europe*; Andrews's *Historical Development of Modern Europe*; Dyer's *Modern Europe*; Gordy's *Political History of the United States*; *North American Review*, October, 1823, August, 1881, February, 1903, May, 1903; *Harper's Weekly*, May 7, 1903; J. A. Kasson, *U. S. Constitution and History of the Monroe Doctrine*; T. B. Edgington, *The Monroe Doctrine*. Consult Poole's Index for Periodical Literature.

## CHAPTER XVII

### THE AMERICAN SYSTEM: INTERNAL IMPROVEMENTS AND THE TARIFF

**I**NTERNAL improvements were a party question in the United States from 1820 until 1860. There has been very little objection to internal improvements where the jurisdiction of the improved property passes to the United States, as in case of lighthouses, forts, etc. The opposition has been to improvements where the jurisdiction has remained in the States, as in case of canals, rivers, harbors, etc.

I. 1789-1820.—Under the Articles of Confederation each State exercised the right to control commerce, to levy duties, and to expend the proceeds at its discretion, with the proviso that the imposts or duties should not be levied upon the property “of the United States or either of them,” should not conflict with treaties of the United States already concluded or provided for, and should not prevent the transfer to other States of goods imported.

In the convention of 1787, September 15th, after the control of commerce had been given to the Federal Government, a provision was offered that “no State shall be restrained from laying duties of tonnage for the purpose of clearing harbors and erecting lighthouses.” It was at once suggested that there were other purposes for which tonnage duties might conveniently be levied by the States; and the provision was altered to the more general form, “no State shall, without the consent of Congress,

lay any duty of tonnage." It was then incorporated into article one, section ten, paragraph three of the Constitution as it now stands.

The intention of this provision is very evident, if we consider its original form, as above given, the geographical position of the States which then composed the Union, and the practice under it for thirty years. Every State, at the time, had seacoast, a seaport or seaports, and ocean commerce, more or less important. It was not until 1791 that Vermont, the first entirely inland State, was admitted. The original intention of the Constitution, then, was that each State should control entirely the improvement of its own seaports, levying for that purpose duties upon the commerce which should enter them; but that the consent of Congress should first be obtained, in order to guard against abuses.

This was for many years the invariable practice. Whenever a State wished to improve any of its seaports or navigable rivers, its Legislature passed an act to levy tonnage duties upon the commerce of the place to be improved; an act of Congress approved the levy, for a limited time, and gave it validity; and the proceeds were expended under the direction of the State. One act of this nature, passed by Maryland in 1790, was continued in force until 1850, by successive "assents" of Congress.

There is no instance during this period, nor, indeed, until the act of March 3, 1823, hereafter referred to, of the expenditure of the national revenues for the improvement of rivers and harbors. Two "assenting" acts of Congress are cited among the authorities, as instances of the practice during this period; the whole number (thirty-four) is too large for special reference to each. All the "internal improvements" provided for on the coast during this period were those in which the jurisdiction remained in the United States, such as "lighthouses, beacons, buoys, and public piers," for which Congress appropri-

ated money steadily after August 7, 1789. These appropriations required as a prerequisite that the States should cede the sites of lighthouses, etc.

Since the original thirteen States ratified the Constitution, no other States fronting on the ocean have been admitted, excepting Maine and Florida on the Atlantic, and California, Oregon, and Washington on the Pacific. During the remainder of this period nine new States were admitted, all of which were growing rapidly, and none of which touched the Atlantic. Three Gulf States, Louisiana, Mississippi, and Alabama, came in during this period.

This rapid influx of inland representation into Congress soon began to work a change in the original conception of the powers of that body as to internal improvements. It seemed unfair that States which possessed seaports should be allowed to provide for internal improvements by levying duties, to be paid ultimately by inland consumers, while inland States should be left to make their necessary internal improvements at their own expense. In 1806 this idea took shape in a provision for a great turnpike road, to be built at national expense. It was to penetrate the Western States and be the means of transmitting emigrants and mails in peace, and troops in war.

Its constitutionality was variously defended upon the ground of the powers of Congress "to provide for the common defence," "to establish post roads," and "to pass laws necessary and proper for carrying into execution" the foregoing powers; but the system found then, as it has always since found, a solidier justification in the idea of "an equal division of benefits." In this instance the division recognized both the Northwest and the Southwest, for the bill for the Cumberland Road was balanced by a bill for opening a road through Georgia on the route to New Orleans.

From this time for thirty years bills for the construction of roads through the various territories were passed in great abundance. In Congress it was first suggested by Henry Clay in the Senate, January 12, 1807, that a quantity of public land should be appropriated for the construction of a canal around the falls of the Ohio; and a bill for that purpose passed the Senate, February 28th, but was not considered in the House. March 2d, a Senate resolution called on the Secretary of the Treasury for a plan for opening roads, canals, etc., at national expense. April 4, 1808, Gallatin submitted a voluminous report recommending a system of roads to cost \$16,000,000. It was not acted upon.

From the beginning the constitutionality of appropriations for the construction of roads was warmly denied, and by none more steadily than by the successive Presidents, Jefferson, Madison, and Monroe. All of them refused to be convinced that the building of roads in different parts of the country was such a matter of "general welfare" as to justify the expenditure of the public moneys. All of them, however, approved the advisability of such measures, if they could be constitutionally effected, and urged an amendment to the Constitution, to give Congress the doubted power. But in deference to the scruples of the Presidents the roads were built through the Territories, or, where they passed through a State, were constructed under a compact with the State, and by its consent.

During the War of 1812 the American armies on the frontiers labored under great disadvantages, owing to the almost entire want of efficient means of transportation. One consequence was a great development of the idea of internal improvements, and its extension to include canals. In the great State of New York it took shape in the construction of the Erie Canal. In Congress a bill to set apart the bonus and government dividends of the

national bank as a fund "for constructing roads and canals and improving the navigation of watercourses" passed the House February 8th, and the Senate February 27, 1817.

Among its warmest advocates was Calhoun, who had introduced the proposition both in this and in the previous session, and who defended it on the broad ground that "whatever impedes the intercourse of the extremes with the centre of the republic weakens the Union," and that it was the duty of Congress to "bind the republic together with a perfect system of roads and canals." Henry Clay, however, had been the real father of the scheme, and he never deserted his offspring.

March 3, 1817, in the last moments of his official life, President Madison vetoed the bill, for the reason that Congress had no constitutional power to expend the public revenues for any such purpose. An effort to pass the bill over the veto failed. The new President, Monroe, in his first annual message, while admitting the great advantage to be derived from a good system of roads and canals, declared it to be the settled conviction of his mind that Congress did not possess the right to construct it. The attempt was therefore dropped temporarily, with the salvo of a House resolution, passed March 14, 1818, that Congress had power to appropriate money for the construction of roads and canals, and for the improvement of watercourses.

II. 1820-60.—The pronounced success of the Erie Canal, and its evident bearing upon the prosperity of the State of New York, gave a new impetus to the internal improvement idea. Appropriations had already been made by Congress for the preservation of exposed islands, and occasionally army officers had attended to the removal of annoying obstructions in navigable rivers.

March 3, 1823, the first act for harbor improvement at

the expense of the United States was passed by Congress. It seems to have been due, in great measure, to an expression in President Monroe's veto of the bill for the preservation of the Cumberland Road, May 4, 1822. He had vetoed it because of its attempt to assert jurisdiction by establishing turnpike gates, tolls, and penalties for their infringement; but he acknowledged a considerable modification of the opinions given in his first annual message. While his own opinion still was that an amendment to the Constitution was necessary to give Congress the power to construct a general system of internal improvements, he now held that Congress had the power to appropriate the public moneys at its discretion; and that though it was in duty bound to select objects of general importance, it was not the province of the President to sit in judgment upon its selections.

This idea was more fully exemplified in the act of April 30, 1824, appropriating \$30,000 for the survey of such roads and canals as the President should deem of national importance, and in the act of March 3, 1825, ordering a subscription of \$300,000 to the stock of the Delaware and Chesapeake Canal.

The inaugural address of the new President, John Quincy Adams, warmly commended Monroe's internal improvement policy, and promised an adherence to it. Through his term of office appropriations for this object increased in number very rapidly; the board of engineers appointed under the act of April 30, 1824, was steadily engaged in pushing forward the surveys for new improvements; and every annual message of the President laid special stress upon the importance of this feature of the Government's operations. This part of the "Adams and Clay policy" was one of the great moving causes which led to the new development of two opposing parties, and the overthrow of Adams at the election of 1828.<sup>1</sup>

<sup>1</sup> See Democratic Party; Whig Party.



In his first annual message President Jackson condemned the constitutionality of an internal improvement system, but advised the adoption of an amendment to allow Congress to apportion the surplus revenue among the States. The first session of Congress under his administration did not agree with his views. Internal improvement bills, aggregating \$106,000,000, were reported by the committees, and the probabilities were in favor of the passage of very many of them. The first important one which reached the President was the bill to authorize a government subscription to the stock of the Maysville and Lexington turnpike road, in Kentucky. May 27, 1830, the bill was vetoed in a message which summed up all the objections to the internal improvement system. The bill was not carried over the veto. May 29th, two similar bills were passed. The President got rid of these by a "pocket veto." The Maysville road veto ranged the President distinctly against the internal improvement system.

Throughout the remainder of his two terms of office few acts were passed for this object, and these were vetoed. But through that feature of the Presidential veto by which the President is compelled to sign or veto an entire bill in gross, without the privilege of vetoing particular provisions, appropriations for detached improvements in great number were every year included in the general appropriation bills.

The President was thus compelled either to approve the objectionable minor features of the bill, or, by vetoing the whole bill, begin a war of annoyances with Congress. This is the form which appropriations for internal improvements have ever since regularly taken.

This change in the method of appropriations should be remembered in connection with the following table of appropriations for internal improvements under different administrations, as collected by Wheeler, cited among

the authorities: Jefferson, \$48,400; Madison, \$250,800; Monroe, \$707,621; Adams, \$2,310,475; Jackson, \$10,582,882; Van Buren, \$2,222,544; Tyler, \$1,076,500.

The two new national parties at once began the system of nominating conventions which has ever since obtained. The first convention of the National Republicans' asserted, in one of its resolutions, that "a uniform system of internal improvements, sustained and supported by the General Government, is calculated to secure, in the highest degree, the harmony, the strength, and the permanency of the republic." In 1836, 1839, and 1848, the Whigs adopted no platform; in 1844 they approved the distribution scheme, hereafter referred to; in 1852 they finally approved the conjunction of protective tariffs and internal improvement known as the "American system."<sup>2</sup> Their opponents were not ready to formulate a platform until 1840; from that time until 1864 they quadrennially condemned the internal improvement system in every form.

Practically, however, "internal improvement," in its original form, died with the Maysville road veto. After that time the Whigs had but one opportunity, after the election of Harrison, to enforce their views, and then they chose the "distribution scheme," hereafter referred to, instead; and the Democrats, while condemning an internal improvement *system*, saw no objections to voting for isolated improvements in the general appropriation bill.

August 3, 1846, President Polk vetoed a river and harbor improvement bill which both Houses had passed, and it failed. March 3, 1847, the last day of the next session, a bill for certain improvements in Wisconsin was passed and disposed of by a "pocket veto"; but at the opening of the following session the President sent his reasons for refusing to sign it, in a special message.

<sup>1</sup> See Whig Party, I.

<sup>2</sup> See Whig Party, II.

The House, by resolution, declared that Congress possessed the power to appropriate money for internal improvements; and with that the matter slept again until 1854, excepting that the House, in March, 1849, passed a river and harbor bill, which was not acted upon by the Senate. In the session of 1853-4, President Pierce vetoed two bills, one for the appropriation of 10,000,000 acres of public lands to the States for the relief of insane paupers, and one for the improvement of rivers and harbors. December 30, 1854, he gave his reasons for the latter veto in a special message, whose arguments were those of President Polk in 1847. This phase of the question of internal improvements then slept until 1870.

*Distribution.*—In 1829 Jackson had suggested a distribution of surplus revenue among the States, provided an amendment for that purpose could be ratified. In the following session a House resolution was passed for the distribution of the proceeds of land sales among the States. When the project next appeared, it had become a Whig measure. April 16, 1832, Clay introduced a bill in the Senate to provide for the distribution of the proceeds of public land sales among the States. It passed the Senate, and failed in the House.

At the opening of the next session, the President's message advised the reduction of the price of public lands to a nominal amount, or the cession of the lands to the States in which they were situated. On the other hand, Clay again introduced his bill, December 12, 1832, which was debated, and passed both Houses, March 2, 1833. It was not signed, and a special message of December 4, 1833, assigned cogent reasons for the refusal to sign it. The bill appropriated  $12\frac{1}{2}$  per cent. of the proceeds of public land sales to the seven States last admitted (excluding Maine) for "objects of internal improvement or education," and  $87\frac{1}{2}$  per cent. to all the States according to population, to be distributed as the legislatures should

deem proper. The objections were, in brief, 1, that the bill violated the compacts by which the original States had ceded their claims to the United States; and 2, that Congress had no power to appropriate the public revenues, directly or indirectly, for internal improvements. The bill was not passed over the veto.

The sales of public lands grew suddenly and enormously after 1830. For the previous ten years they had averaged about \$3,000,000 annually; in 1836, they reached nearly \$25,000,000, and Calhoun estimated that at the end of the year the country would have \$66,000,000 surplus in the treasury. He therefore introduced, May 25, 1836, an amendment to a bill to regulate deposits of public moneys in State banks, providing that at the end of each year the money remaining in the treasury, reserving \$5,000,000, should be "deposited" with the several States, in proportion to their representation in Congress.

The act became a law June 23d. The President signed it with the greatest reluctance, and only in consideration of the amount of paper money already in the treasury; and his "specie circular" of the following month seems to have been his method of cutting the Gordian knot, wiping out a paper money surplus, and checkmating Calhoun's distribution bill and internal improvements together. It ultimately had greater consequences.

The first instalment of the "deposit" was paid in January, 1837; the second in April, both in specie or its equivalent; and the third in June, in paper. By that time the "panic of 1837" had burst upon the country, and the fourth instalment, in October, was never paid. The act of October 2, 1837, postponed it until 1839, when the treasury was in no better condition to pay it, and the law was repealed. The amount "deposited" was \$37,000,000, which has never been recalled.

The return of the Whigs to power with Harrison's election was marked by the passage of the act of Sep-

tember 4, 1841, to distribute the proceeds of public land sales among the States. In this case, however, the distribution was to be suspended as soon as, and as long as, the duties on imports should rise above the maximum fixed by the compromise tariff act of 1833, which was to expire in June, 1842. Before this last date arrived, the conflict between Tyler and the Whig party had become flagrant, and the majority in Congress were disposed to put a new pressure on the President. June 27, 1842, they passed an act for a provisional tariff, raising the duties above the compromise maximum, and yet retaining the distribution clause. Tyler had obtained the opinion of the attorney-general that the compromise duties would remain in force after July 1st, in default of the passage of a new tariff act; he therefore vetoed the bill, June 29th. August 5th, a tariff bill, still including the distribution clause, passed both Houses by narrow majorities, 25 to 23 in the Senate, and 116 to 112 in the House; and August 9th this bill was vetoed. August 27th Congress yielded, and passed the tariff bill without the distribution clause, and three days later it became law. Thereafter the distribution of public revenue or of proceeds of land sales among the States was no more heard of.

*In the States.*—Space will not permit any full treatment of this division of the subject, for which the reader is referred to the authorities cited below. The success of the Erie Canal in New York State had prompted other States to imitate its design. Most of the State constitutions adopted from 1830 until 1850 contain either directions or permissions to the legislatures “to encourage internal improvements within the State.” Where such enterprises were undertaken in States whose interests were agricultural, not commercial, and whose people were impatient of abstinence from the present enjoyment of capital for the prospect of possible future profit, the

State's irresponsibility in courts of law led to but one result, "repudiation," a term whose first application in this sense is ascribed to Governor McNutt, of Mississippi, in 1841.

European capital, tempted by high interest, and undeterred by any thought of "repudiation," flowed rapidly to the United States after 1830. The State debts, which were but \$13,000,000 in 1830, reached \$50,000,000 in 1836, and about \$100,000,000 in 1838. When, after the crash of 1837, foreign capitalists undertook to withdraw, they found it easier to get their capital into State securities than to get it out.

On one pretext or another, and sometimes on no pretext at all, a number of States repudiated, in whole or in part, their internal improvement debts, and, as they were irresponsible in their own courts, and, by Amendment XI., irresponsible in the Federal courts to citizens of other States, creditors were without recourse. The worst cases, at this period, were Maryland, Louisiana, and Mississippi in the South, and Pennsylvania, Indiana, Illinois, and Michigan in the North. Most of these have since paid or "accommodated" their debts.

The unwillingness to allow foreigners to brand all the States, separately or collectively, as "repudiators," was the parent of a proposition to assume the State debts for internal improvements. It was formally introduced in Congress in July, 1842, met with warm opposition, and fell through in the following year.

III. 1850-82. *Land Grants*.—A grant of five per cent. of the public land sales within the State had regularly been made to new States at their admission, the consideration being the exemption of the remainder of the public lands from taxation. Grants had been made also for State capitals and for universities. In 1850 began the system of grants of specified amounts of public lands to States for the encouragement of railroads.

The first grant of this nature was by the act of September 20, 1850, for the benefit of the Illinois Central Railroad, coupled with a grant for the Mobile and Ohio Railroad. Its inside history will be found in Cutts's work, as cited below. The number of acres, 2,595,053, was the largest granted by any single act until 1860.

The growth of the Pacific States, the difficulty of communication with them, and the vast extent of the intervening unsettled country, made very evident both the necessity of a Pacific railroad and the impossibility of constructing it by private capital. Before 1855 Government surveys had ascertained practicable passes through the Rocky Mountains; and in 1860 both political parties had declared, in their national platforms, in favor of the completion of the work by the Federal Government. The outbreak of the Rebellion, and the necessity of a closer military connection with the Pacific, made the need for the road immediate and imperative, and it was begun by act of July 1, 1862, in favor of the Central Pacific, Kansas Pacific, and Union Pacific railroads.

The number of acres granted to railroads in every part of the country has grown enormously since that date; they will be found in the land office report cited below. The largest grants to single corporations have been 47,000,000 acres to the Northern Pacific Railroad, and 42,000,000 acres to the Atlantic and Pacific Railroad. The amount of bonds issued to the various Pacific railroads, interest payable by the United States, was \$64,623,512. The grant of lands directly to corporations interested began with the act of July 1, 1862; before that date the grants were made to the States for the benefit of corporations.

*River and Harbor Bills.*—After the veto by President Pierce of the river and harbor bill which was passed in 1854, this species of appropriation lapsed until 1870. Improvements which were imperatively needed were

classed under "fortifications" and similar heads. The cessation of expenditures under this head, however, was far more than balanced by the appropriations for post-offices, custom houses, and other public buildings in various parts of the country. These increased until, in 1873-4, they amounted to \$12,341,944.

In 1870 a river and harbor appropriation was made, amounting to \$2,000,000. From this time appropriations of this nature were no longer covered up in other appropriation bills, but took distinct rank for themselves. In 1873 the appropriation rose to \$5,286,000, and they have since generally remained above that amount, as follows: 1873-4, \$7,352,900; 1874-5, \$5,228,000; 1875-6, \$6,648,517.50; 1876-7, \$5,015,000; 1877-8, — ; 1878-79, \$8,322,700; 1879-80, \$9,577,494.61; 1880-1, \$8,976,500; 1881-2, \$11,451,300; 1882-3, \$18,743,875. This last increase in the appropriations provoked a veto by President Arthur, August 1, 1882, but the bill was immediately passed over the veto.

In such a mass of appropriations it is impossible that there should not be very many objects well worth the care of the National Government; but, with every allowance, the amount of absolute plunder in the total must have been enormous. In debating one of these bills a member of Congress declared from personal knowledge that one "river," for which an appropriation had been inserted, could be fitted for commerce only by being paved or macadamized; and this instance was certainly not an isolated one. In many cases the coveted appropriation was only to "secure the work," and compel succeeding appropriations to eight or ten times the original amount to complete it. Many appropriations were inserted, not upon their merits, but by "log-rolling," by an understanding among a number of members that each would vote for the appropriation demanded by all his associates. In fact, most of these appropriations were



not for the public benefit at all, but for the personal interests of the legislators, for the re-election of a Congressman often depended upon his success in "bringing money into the district" through the river and harbor bill, or the erection of public buildings.

In this manner Congress probably squandered in twelve years money enough to have built a railroad from the Mississippi to the Atlantic, whose running expenses could be paid by the similar appropriations for the future. It is hard to say which of the two methods of getting rid of surplus revenue would be most demoralizing to the people.

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TARIFFS OF THE UNITED STATES.—The subject of the present article is merely what has been done in the way of tariff legislation in the United States; and mention can be made only of the more important acts, without any attempt to explain all the motives which led to their enactments, or the manifold results that have followed their adoption and administration. And, first, as to the power of Congress to impose tariffs. Under the Confederation the States retained the taxing power, and left the central body, the Congress of the Confederation, without any direct means of defraying whatever expenses the necessities of war compelled it to contract. Some attempts were made to secure for it an independent revenue, but they came to naught. On the return of peace, while still maintaining the form of a confederacy, the States, no longer united by a common danger, became, to a great extent, independent, and each managed its concerns with little regard to the interests of the others. Massachusetts had a navigation act, and levied import duties, and other States followed her example.

The restrictions and prohibitions imposed on American commerce were vexatious and destructive, and while the Congress had power to enter into treaties of reciprocity,

it could not retaliate in any way were its offers of trade refused. The power to do this rested in the States individually, but in spite of many propositions to this effect, no uniform or decisive action on their part could be brought about. From 1783 until the adoption of the Federal Constitution it was generally recognized that Congress should have the power to regulate commercial relations between the States and foreign powers, but the supposed interests of the different States presented an effectual bar against action.

“The agitators for the regulation of trade in Virginia belonged to that class of the community which in the Eastern and Middle States was most bitterly set against the measure. In Massachusetts and New York the merchants were the supporters, and the farmers the opponents. In Virginia the planters were to a man united in the opinion that some steps must be taken to mend commercial affairs, and the merchants quite disposed to let trade alone.

“The reason is obvious. The condition of things to the south of the Potomac was precisely the reverse of the condition of things to the north of the Potomac. Beyond the north bank of the river the farmers thrived, and the merchants did a losing business. Beyond the south bank the merchants were daily growing more prosperous, and the planters more impoverished.”<sup>1</sup>

The agitation over this question first assumed a definite form in Virginia, and led up to the national trade convention held at Annapolis in 1786, out of which movement arose the Federal Convention of 1787, which resulted in the framing of the Constitution, and the foundation of a central government possessing definite and important functions, and clothed with the power necessary to perform them.

It would, however, be an error to attribute this action

<sup>1</sup> McMaster, i., 272.

wholly to the commercial needs of the country. The States had just passed through an era of paper money madness, in which each State had vied with the others in excessive issues, with the intention of allowing their inhabitants deeply immersed in debt to free themselves from such burdens. This alone was sufficient to create general poverty, and armed rebellions did occur in many quarters. Manufactures were beginning to arise in New England, and served to turn attention to the development of the internal resources of the country. The jealousies existing among the States had only aggravated the evils arising from mismanaged finances, and in the general scramble for vantage the many restrictions and limitations imposed hindered that industrial growth which, it was confidently believed, would restore prosperity.

The folly of thus contending among themselves was seen by the clear-headed, and the remedy they believed adequate was an extension of the power of the Confederation. The debts contracted by the Congress were about to fall due, but the Confederation was without resources, and without credit. New York had expressed a willingness to grant to it power to levy duties on imports. Rufus King made a very able report to Congress, in which he concluded that the impost was an absolute necessity to the maintenance of the faith of the Federal Government. While thus agitating for an independent revenue, the Government did not cease to urge upon the States the disordered condition of trade and finances, and the advisableness of granting to Congress the power to regulate trade. But while commercial reasons were thus at the bottom of the movement, political reasons, quite as cogent, existed in favor of a new distribution of powers, and the action of these two forces, combined, produced the Constitution.

By this important instrument the new government was empowered to levy taxes of every description, and to

regulate commerce with foreign nations. In connection with our subject it will be important to bear these two powers in mind, as the one has been made an instrument of the other. The right to levy duties upon imported commodities was conceded, and the only limitation imposed upon its exercise was that the duties should be uniform throughout the land. The question then arises whether the Government ought to lay taxes for any other purpose than to raise revenue, which involves the question whether Congress may lay taxes to protect and encourage manufactures.

The arguments for and against this use of the taxing power will be found in Story's *Commentaries on the Constitution*, §§ 959-973, and are summed up as follows:

“So that, whichever construction of the power to lay taxes is adopted, the same conclusion is sustained, that the power to lay taxes is not by the Constitution confined to purposes of revenue. In point of fact, it has never been limited to such purposes by Congress; and all the great functionaries of the Government have constantly maintained the doctrine that it was not constitutionally so limited.”

It was customary to regulate trade by taxing imports, and this practice was acted upon by all nations at that time. Retaliatory duties were recognized as a proper exercise of power, even when they produced no revenue, and duties primarily intended for revenue purposes might incidentally afford protection to manufactures. The colonies always recognized the right of England to regulate their commerce; but when Parliament undertook to levy taxes for another end, they revolted.

It might further be said that every civilized nation at that time considered that the power to regulate commerce included the encouragement of manufactures, and acted upon this belief. Some of the States had already adopted regulations which were intended to give such encourage-

ment to their industries, although this encouragement was secured at the expense of the other States; and in ceding this power to make such laws to the general government, it was claimed that the States had expected a continuance of this recognized policy. So that the weight of opinion was in favor of the right to regulate commerce by import duties or other taxes, and chiefly on the ground that the power was generally exercised among nations.

From the very first, then, a tariff has been recognized as a measure for raising revenue, for protecting and encouraging domestic manufactures, and as an instrument for regulating commerce.<sup>1</sup>

But the conditions which favored these views at the time the Constitution was adopted no longer exist, and a very different set of circumstances has arisen to alter in a great measure the opinions on the taxing power of the Government. At the end of the eighteenth century it was not strange to find the power to regulate trade and commerce with foreign nations granted to Congress. Nothing was more natural; for at that time the fiscal and commercial policies of nations were governed by the maxim that no trading or commercial people could ever prosper without regulation of trade, and the more their transactions were regulated by law the higher would be the resulting economic well-being of the country.

Regulation, however, meant interference and restrictions. Innumerable laws are found on the statute books of nearly every nation that had any trade whatever which were intended to foster and develop domestic manufactures and domestic commerce. Loans and important immunities were granted by the state to encourage the investment of capital in industrial enterprises; premiums, bounties, and drawbacks were offered to producers and exporters; the importation of the raw materials

<sup>1</sup> Story, *Comm.*, §§ 1077-1095.

of industry, and the export of manufactured products were unnaturally encouraged; while the importation of such commodities as would come into competition with domestic articles was discouraged by high customs duties, or was even expressly prohibited; the exportation of machinery and the emigration of skilled labor were forbidden under severe penalties; and through discriminating and retaliatory duties a species of commercial war was waged among nations.

In fact, the whole system of trade was founded upon regulation, and was to that extent artificial and strained. And in no instance was this result more evident than in the commercial relations which subsisted between a parent country and her colonies, in which all the advantage lay on one side. The American Colonies had known no other trading system, and, therefore, believed that the adoption of the same illiberal laws was essential to their existence as an independent power. Their weakness invited insult and harsh laws from other nations; and while one of their first acts after the return of peace was to seek for commercial treaties with European powers, they also sought to protect their commerce with the instruments that were then everywhere employed.

All of this has changed. As the laws of trade were examined it was seen that they were natural laws, and that any interference with their free play was mischievous, and, instead of creating, destroyed commerce. The suicidal policy of taxing one's self in order to ward off an imaginary danger became clearer to practical statesmen; and the old theory, that what one nation gains must be at the expense of another, has given way to a more just and accurate view that believes in leaving trade alone, to be governed by an enlightened self-interest.

In spite, however, of this change of feeling, the United States has persisted in continuing along the old ruts, and has only two or three times shown any disposition to

accept the truths that modern political economy has enunciated and is enforcing in spite of human laws to the contrary. But the inevitable is being enforced at a fearful cost to the people who have not recognized the true principles of trade and adapted their transactions to them. And the high industrial position which the United States holds at this time (1883) is in spite of restrictions, and not in consequence of them.

No sooner had the first Congress met than a measure for taxing imports was introduced by Mr. Madison (April 8, 1789) for the purpose of giving some resources to the almost empty treasury. The measure proposed was extremely simple in its character, being intended as a temporary expedient, and enumerated rum and other spirituous liquors, wines, teas, coffee, sugar, molasses, and pepper, as subjects for specific duties, while *ad valorem* duties were to be levied upon all other articles.

The first debate at once disclosed a difference of opinion as to whether or not the tariff should be made protective in its character, but it was not for some years after this that the constitutional power of the government to lay duties for protection was called in question. The difference of opinion we have just noted has continued until to-day, and must always continue so long as a tariff is imposed. Those who favored a protective tariff could however point to existing industries, and claim that they were "infant" industries, requiring a protection against foreign competition. But at once the conflict of interests appeared. Massachusetts wished a duty on rum in order to protect her producers, but objected to one on molasses. Pennsylvania asked for protection to her iron and steel industries, but the Southern States, which were chiefly agricultural, were opposed to granting it. The duty on hemp was favored by the South but opposed by the North, and so on through the list, hardly one item of which was not opposed on sectional grounds, that the

benefits would accrue to certain States and at the cost of the other States.

The bill was finally completed, and adopted as a protective measure, but it was so only in name. The preamble read: "Whereas it is necessary for the support of the Government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid," etc.; and in the whole history of tariff legislation in this country it is the only law which was thus openly passed for protection to American industry. For prudential reasons this form of preamble was changed, and tariff enactments have on their face since been for the purposes of revenue only.

This tariff became a law on July 4, 1789, and was to remain in force until June, 1796. The average duty levied under it was equivalent to an *ad valorem* rate of  $8\frac{1}{2}$  per cent.; and it was thought that this was too high a general scale of taxation, and would result in encouraging smuggling.

As this act formed the foundation of our tariff system, we will give the duties imposed: distilled spirits, of Jamaica proof, 10 cents per gallon; other distilled spirits, 8 cents; molasses,  $2\frac{1}{2}$  cents; Madeira wine, 18 cents; other wines, 10 cents; beer, ale, and porter, in casks, 5 cents per gallon; in bottles, 20 cents per dozen; bottled cider, the same; malt, 10 cents per bushel; brown sugar, 1 cent per lb.; loaf sugar, 3 cents; other sugars,  $2\frac{1}{2}$  cents; coffee,  $2\frac{1}{2}$  cents; cocoa, 1 cent; teas from China and India, in American vessels, ranged from 6 to 20 cents per lb., and in foreign vessels somewhat higher; candles, from 2 to 6 cents per lb.; cheese, 4 cents; soap, 2 cents; boots, per pair, 50 cents; shoes, from 7 to 10 cents, according to material; cables and tarred cordage, 75 cents per cwt.; untarred cordage, 90 cents; twine and pack thread, \$2; unwrought steel, 50 cents per cwt.; nails and spikes, 1 cent per lb.; salt, 6 cents per bushel; manufactured to-



bacco, 6 cents per lb. ; indigo, 16 cents per lb. ; wool and cotton cards, 50 cents per dozen ; coal, 2 cents per bushel ; pickled fish, 75 cents per barrel ; dried fish, 50 cents per quintal ; playing cards, 10 cents per pack ; hemp, 60 cents per cwt. ; cotton, 3 cents per lb. In addition to these specific duties an *ad valorem* duty of 10 per cent. was imposed on glass of all kinds (black quart bottles excepted), china, stone, and earthenware, gunpowder, paints, shoe and knee buckles, and gold and silver lace and leaf ;  $7\frac{1}{2}$  per cent. *ad valorem* was charged upon blank books, paper, cabinet wares, leather, ready-made clothing, hats, gloves, millinery, canes, brushes, gold and silver and plated ware and jewelry, buttons, saddles, slit and rolled iron and castings of iron, anchors, tin and pewter ware. Upon all other articles, including manufactures of wool, cotton, and linen, 5 per cent. *ad valorem* was to be charged, except on saltpetre, tin, lead, old pewter, brass, iron and brass wire, copper in plates, wool, dyestuffs, hides and furs, to be free of duty.

Such was the first tariff, and such was the entering wedge of the protective system.

Between the tariff of 1789 and that of 1816, which marks the second important step in the tariff legislation of the country, there were passed upward of seventeen acts affecting the rate of duties, and the tendency was ever toward higher rates. The most important event of this period was the preparation of Hamilton's famous report upon manufactures, which contained the earliest formulation of protective principles that is to be met with in our legislative history, and still remains the source of protectionist argument.

It would be impossible even to briefly summarize in this place this important contribution to tariff history, but the conditions under which it was written were, as I have already stated, peculiar, and many of his doctrines, if not indeed the whole basis of his reasoning have been

swept away by subsequent events. For the protection he advocated was justified chiefly by the fiscal restrictions of other nations.

“The restrictive regulations,” he says, “which, in foreign markets, abridge the vent of the increasing surplus of our agricultural produce, serve to beget an earnest desire that a more extensive demand for the surplus may be created at home. . . . If the system of perfect liberty to industry and commerce were the prevailing system of nations, the arguments which dissuade a country in the predicament of the United States from the zealous pursuit of manufactures, would doubtless have great force. . . . But the system which has been mentioned is far from characterizing the general policy of nations. The prevalent one has been regulated by an opposite spirit. The consequence of it is, that the United States are, to a certain extent, in the situation of a country precluded from foreign commerce. They can, indeed, without difficulty, obtain from abroad the manufactured supplies of which they are in want; but they experience numerous and very injurious impediments to emission and vent of their own commodities. Nor is this the case in reference to a single foreign nation only. The regulations of several countries with which we have the most extensive intercourse, throw serious obstacles in the way of the principal staples of the United States. In such a position of things the United States cannot exchange with Europe on equal terms; and the want of reciprocity would render them the victim of a system which should induce them to confine their views to agriculture, and refrain from manufactures. A constant and increasing necessity, on their part, for the commodities of Europe, and only a partial and occasional demand for their own, in return, could not but expose them to a state of impoverishment, compared with the opulence to which their political and natural advantages authorize them to aspire.”

A tariff was thus, in Hamilton's view, an instrument of compensation and retaliation rather than a purely pro-

tective measure in the sense in which protection is viewed at the present day; and it is needless to add that Hamilton's view has little force now when the greater number of restrictions upon commerce that existed when he wrote have been removed. A like stand was taken by Jefferson in 1793, when he advocated countervailing foreign restrictions in case they could not be removed by negotiation.

The wars in Europe tended at first toward a more liberal system of commerce, and the merchants of this country benefited largely by it. Some moderate increases in the rates of duties were from time to time granted, but no real demand was made for protection until the return of peace in 1801, when the old restrictive system was re-enacted by Europe. This peace was, however, of short duration, and on the resumption of hostilities the commerce of this country was so seriously involved as to create a demand for retaliation. In 1805 the importation of British manufactures was prohibited; a few years later the Berlin decrees of Napoleon and the orders in council of England practically closed the ports of Europe to neutral vessels, and American shipowners suffered greatly. As a measure of retaliation an embargo law was passed in 1807, which was followed by non-intercourse laws.

The heroic remedy involved in these measures was equivalent to cutting off a leg to cure a corn, and, together with the commercial war which ensued, worked a revolution in American economy. Prevented from obtaining their usual supplies from Europe, our people began to manufacture on their own account, rendered sure of a market by the war, and also by a doubling in all tariff duties, which was done in 1812 as a war measure. But a return of peace threatened to do away with this artificial situation, in which many factors were combining to stimulate the beginnings of industry, and this the manufacturers clearly recognized.

In February, 1816, Mr. Dallas, the Secretary of the Treasury, made a report to Congress on the tariff, and the Committee on Commerce and Manufactures laid before the House a report in which a protective policy was strongly urged. One month later Mr. Lowndes reported a bill from the Committee of Ways and Means. Mr. Calhoun said in the course of debate that the capital formerly employed in commerce had by the war been turned into manufactures:

“ This, if things continue as they are, will be its direction. It will introduce a new era in our affairs, in many respects highly advantageous, and ought to be countenanced by the Government. . . . He then said, that war alone furnished sufficient stimulus, and perhaps too much, as it would make their growth unnaturally rapid; but that, on the return of peace, it would then be time for us to show our affection for them. But it will no doubt be said, if they are so far established, and if the situation of the country is so favorable to their growth, Where is the necessity of affording them protection? It is to put them beyond the reach of contingency. Besides, capital is not yet, and cannot for some time be, adjusted to the new state of things. There is, in fact, from the operation of temporary causes, a great pressure on these establishments. They had extended so rapidly during the late war that many, he feared, were without the requisite surplus of capital or skill to meet the present crisis. Should such prove to be the fact, it would give a backset, and might, to a great extent, endanger their ultimate success. Should the present owners be ruined, and the workmen dispersed and turned to other pursuits, the country would sustain a great loss. Such would, no doubt, be the fact to a considerable extent, if not protected.”<sup>1</sup>

This utterance is very significant as coming from a Southern man. In fact, in this instance it was the South

<sup>1</sup> *Works*, vol. ii., p. 169.

that favored, and the North that opposed, protection; and Webster always referred to the tariff of 1816 as a South Carolina measure.<sup>1</sup> Very little of the long debate that followed on the bill has been preserved; the measure passed the House by a vote of 88 to 54, and the Senate by one of 25 to 7. It became a law April 27, 1816.

This tariff not only marked the introduction of an entirely new principle, being intended as a protective tariff in fact as well as in name, but there was also a tendency to adopt, as far as possible, specific duties. There was also introduced what was called the minimum principle, which was in effect a specific duty. Thus, the duty upon cotton goods was 25 per cent., but all goods that cost less than twenty-five cents per yard were to be deemed to have cost twenty-five cents, on which the duty at 25 per cent. would amount to six and one fourth cents, so that the minimum duty which could be paid on cottons was six and one fourth cents per yard.

Still, little was accomplished by the measure. It was intended to break the fall of the manufacturers, taking them gradually down-stairs instead of throwing them out of the window. But the enormous importations even under the new rates of duties, while they filled the public treasury, produced a revulsion in the markets of a country already disturbed and impoverished by the effects of the war. A period of speculation was entered upon, and it was greatly aided and its results aggravated by the excessive issues of paper money.

“ The new tariff did not have the anticipated effect in aiding manufactures; on the other hand, by tempting larger investments in the hope of anticipated profits, it increased the competition, while it dilated the circle of manufacturing interests. The capital of New England went more decidedly into that branch of industry, so much so that the voice of New England

<sup>1</sup> *Works*, vol. iii., pp. 297, 502.

began now to be decidedly on the side of protection. There is no doubt but that competition had much to do with the continued alleged distress of the manufacturers,"

a distress that was augmented by depressed markets and the debilitating effects of the war.

The cry arose that more protection was needed, that British manufacturers were in league against American industry, and naturally ended in an organized movement for higher duties, in spite of the mass of evidence offered that they would, if granted, only produce more competition and a more complex but artificial condition of industry. The crisis of 1819 materially aided the protectionists, who may now be recognized as a party, and having an organ in Niles's *Weekly Register*. "National interests and domestic manufactures" were taken up as a war-cry, and societies for the promotion of domestic industry were formed in many States. These from time to time held conventions, and formulated long addresses to the people, in which the hard times, the fiendishness of the British government and of British manufacturers, and the necessity of higher duties and more protection, were set forth in terms calculated to make the blood of every American boil.

This led up to an attempt in 1820 to pass a high tariff measure, and to do away with the credit system, which then applied to imports, and was the forerunner of the modern warehouse system. Auctions, by which it was claimed that the country was flooded with foreign goods to the detriment of domestic manufactures, were to be taxed, in order that the number and transactions might be diminished. Had the national finances permitted such a reduction in revenue from customs, the tariff measure would have prohibited the importation of iron, cottons, and woollens, to such an extent had the protective sentiment grown among a very small but influential party.

The main support, however, for any further modification in rates lay in the maintenance by foreign nations of their restrictions upon trade. The most important increase applied to cottons and woollens. That on woollens was in retaliation of the higher duties which England imposed upon wools, and which threatened to entirely exclude American wools from the English markets. France heavily taxed our cotton. A further grievance lay in the high duties imposed by European nations upon wheat, which was an important article of export. Discriminating duties on cotton brought from beyond the Cape of Good Hope were favored, because it was claimed those countries consumed none of our raw materials, afforded no market for our produce, employed none of our labor, and exhausted our specie. No act, however, was passed, and no change was made until 1824, when a general tariff measure became a law.

The commercial and industrial condition had remained much depressed since the crisis of 1819, which had resulted from overtrading and reckless banking. According to Mr. Clay (speech, March, 1824), the general distress of the country was indicated

“by the diminished exports of native produce; by the depressed and reduced state of our foreign navigation; by our diminished commerce; by successive unthreshed crops of grain, perishing in our barns and barn-yards for the want of a market; by the alarming diminution of the circulating medium; by the numerous bankruptcies, not limited to the trading classes, but extending to all orders of society; by a universal complaint of the want of employment, and a consequent reduction of the wages of labor; by the ravenous pursuit after public situations, not for the sake of their honors and the performance of their public duties, but as a means of private subsistence; by the reluctant resort to the perilous use of paper money; by the intervention of legislation in the delicate relation between debtor and creditor; and, above all, by the

low and depressed state of the value of almost every description of the whole mass of the property of the nation.”

He therefore thought it a fitting time to introduce a “genuine American policy,” the object of which was to create a home market for the produce of American labor, and, it may be added, a policy that would directly afford relief to manufactures only.

Mr. Webster made a most masterly speech in reply, in the course of which he questioned the universal distress of the country as depicted by Mr. Clay, while admitting the depression, and said,

“when we talk, therefore, of protecting industry, let us remember that the first measure for that end is to secure it in its earnings; to assure it that it shall receive its own. Before we invent new modes of raising prices, let us take care that existing prices are not rendered wholly unavailable by making them capable of being paid in depreciated paper.”

As the presidential election was then depending, political matters were dragged into the debates, and now for the first time it was seriously questioned whether Congress had the constitutional power to pass a measure purely for protection, and not as a revenue act. The debates in the House lasted more than ten weeks, and then the bill passed by only a majority of five votes, several of the members being brought into the hall on their sick couches in order that their votes might not be lost. In the Senate it commanded a majority of four votes. It could not be regarded as a political measure, nor yet as a party question. Adams, Clay, and Jackson all voted for it; the Southern States were dissatisfied with the result, as was also New England. But as iron, wool, hemp, and sugar received protection, a combination of the Western and Middle States received sufficient



support to pass the bill. The average rate of duties under the law of May 22, 1824, was 37 per cent.

Those who supposed that the protectionists would be contented with their victory were much mistaken. No sooner was the tariff of 1824 gained, when an agitation for higher duties was begun, the general depression and the illiberal commercial policies of other nations being the main pretexts. A change, however, was taking place in England, which in a measure compelled the protectionists to seek new reasons for their movement. The trade between the United States and the West Indies had been the cause of much retaliatory legislation on the part of Great Britain and this country since 1815; but in spite of restrictions and prohibitions a profitable though illegal commerce was maintained by American merchants.

The measures adopted by the English Parliament had not only aroused our Congress, but had given rise to threats of retaliation on the part of other European nations. Mr. Huskisson, then president of the English board of trade, was wise enough to recognize the necessity of a change in commercial policy, and inaugurated his system of reciprocity in 1823, which was carried into effect in the following year. This marks the first breach made in England's protective system, and logically led up to the repeal of the corn laws and the abolition of all protective duties, so that at the very time that England was throwing open her ports and removing the restrictions that were imposed on her commerce, the United States was preparing to increase the tariff and raise higher the barriers which were intended to limit her foreign trade.

In 1825 a financial crisis occurred, which was caused by a great expansion in the paper circulation, and was precipitated by extensive failures in London. This gave the protectionists an opportunity to attribute the distress to the operation of the tariff of 1824. The importations

were large; and, owing to changes in the English customs by which important advantages were gained by the English manufacturers, it was argued that the woollen industry, which had grown enormously since the peace, encouraged by the Federal legislation, would be ruined unless further protection was afforded. This indicated a marked change in policy, as Professor Sumner points out. Formerly the "American system" meant retaliation to force a foreign nation to break down its protective system; it was now an instrument to countervail and offset any foreign legislation, even in the direction of freedom and reform or advance in civilization, if that legislation favored the American consumer.<sup>1</sup>

Another marked change of opinion was now seen. New England had heretofore opposed protection as hostile to her commercial interests. Manufactures were now springing up in those States, and had made such progress as to create a revulsion in public sentiment; and in 1826 a petition went up from Boston, praying for higher duties on woollens in order to protect this important industry in New England.

In 1827 a bill to increase the duties on woollens passed the House, but failed to become a law. Even Buchanan, of Pennsylvania, a good protectionist, was opposed to it, "as prohibitive in its nature, and in no shape one for revenue. He had voted for the protection upon woollens in 1824, but that was no reason why he should favor the prohibition now proposed."

"Politics ran very high on this bill. In fact, they quite superseded all the economic interests. . . . Passion began now to enter into tariff discussion, not only on the part of the Southerners, but also between the wool men and the woollen men, each of whom thought the other grasping, and that each was to be defeated in his purpose by the other."<sup>2</sup>

<sup>1</sup> *Life of Jackson*, pp. 196, 198.

<sup>2</sup> Sumner.

The rejection of the measure, however, only served to increase the efforts of its friends. A convention of wool growers and manufacturers was held in July, 1827, at Harrisburg, and the iron, glass, wool, woollen, hemp, and flax interests were represented, and asked to be recognized in any scheme of protection. The presidential election was to occur in the next year, and the tariff was made a leading issue. The sectional feeling was being strongly developed. The planting States of the South became more determined to resist a policy which they regarded as benefiting the North at their expense, and the North and East became more urgent in demanding a continuance of a system which, they alleged, had tempted their capital into investments that must inevitably be ruined, unless the protective policy was not only maintained, but extended. The Secretary of the Treasury, Mr. Rush, took up the question in his report, and claimed that, as the land laws of the country protected agriculture, at least a like amount of protection should be given to industry.

A tariff bill was drawn up by Silas Wright, of New York, and he defended its protective features on the ground that "it was intended to turn the manufacturing capital of the country to the working up of domestic raw material, and not foreign raw material." What followed can best be described in the words of Professor Sumner:

"Mallery tried to introduce those propositions [of the Harrisburg convention] as amendments on the floor of the House. All the interests, industrial and political, pounced upon the bill to try to amend it to their notions. New England and the Adams men wanted high duties on woollens and cottons, and low duties on wool, iron, hemp, salt, and molasses (the raw material of rum). Pennsylvania, Ohio, and Kentucky wanted high taxes on iron, wool, hemp, molasses (protection to whiskey,) and low taxes on woollens and cottons. The Southerners wanted low taxes on everything, but especially on

finished goods, and if there were to be heavy taxes on these latter they did not care how heavy the taxes on the raw materials were made. . . . The act which resulted from the scramble of selfish special interests was an economic monstrosity."

The Legislature of South Carolina protested against the bill, but it passed by a vote of 105 to 74. Mr. Wilde moved to amend the title by adding the words "and for the encouragement of domestic manufactures," a motion that was opposed by Mr. Randolph, because he said domestic manufactures were those carried on in the families of farmers, and "this bill was to rob and plunder one half of the Union for the benefit of the residue." Mr. Drayton also moved to change the title so that it might read "in order to increase the profits of certain manufactures."

The tariff of 1828 became known as the "tariff of abominations." It was the immediate cause of the nullification movement.<sup>1</sup>

In her protest against the tariff law of 1828 South Carolina spoke of it as

"in violation of State rights, and a usurpation by Congress of powers not granted to it by the Constitution; that the power to encourage domestic industry is inconsistent with the idea of any other than a consolidated government; that the power to protect manufactures is nowhere granted to Congress, but, on the other hand, is reserved to the States; that, if it had the power, yet a tariff grossly unequal and oppressive is such an abuse of that power as is incompatible with a free government; that the interests of South Carolina are agricultural, and to cut off her foreign market, and confine her products to an inadequate home market, is to reduce her to poverty. For these and other reasons the State protests against the tariff as unconstitutional, oppressive, and unjust."

North Carolina also protested against the law and Alabama and Georgia denied the power of Congress to lay

<sup>1</sup> See Nullification.

duties for protection. In 1829 the feeling in the Southern States was very strong against the tariff, and threats of nullification and secession were freely made.

In 1830 the tariff was more strictly enforced in spite of a movement looking to reductions in the rates of duties, and in the following year a free trade convention was convened at Philadelphia, and the protectionists met in New York. Addresses to Congress were issued by each faction, and the next session of Congress was full of the tariff. The President had recommended a revision in his message, and the discontent of the South became more and more apparent. Two bills were prepared by the Committee of Ways and Means, and a third was presented by the Committee on Manufactures; the Secretary of the Treasury had his bill, and the Senate compiled the fifth measure. The result was the passage of a bill which maintained all of the protective features of the tariff of 1828 while reducing or abolishing many of the revenue taxes. The tax on iron was reduced, that on cottons was unchanged, and that on woollens was increased, while some of the raw wools were made free of duty.

This measure was passed on July 14, 1832; in November a convention in South Carolina declared the acts of 1828 and 1832 null and void in that State. The President issued his proclamation against nullification, and in his annual message advocated as early a reduction of duties to the revenue standard as a just regard to the faith of the Government and to the preservation of the large capital invested in establishments of domestic industry might permit.

In January, 1833, a bill to enforce the revenue laws was reported to Congress. The State legislatures took a part in the controversy. Alabama, Georgia, and North Carolina condemned the tariff as unconstitutional, while New Hampshire passed resolutions in favor of reducing the tariff to the revenue standard. Massachusetts, Rhode

Island, Vermont, New Jersey, and Pennsylvania thought that the tariff ought not to be reduced. In February, Mr. Clay introduced a measure that was intended as a substitute for all tariff bills then pending, and looked toward a gradual reduction in duties: of all duties which were over 20 per cent. by the act of 1832, one tenth of the excess over 20 per cent. was to be struck off after January 1, 1834, and one tenth each alternate year thereafter until 1842.

As first drawn the preamble stated that, after March, 1840, all duties should be equal, "and solely for the purpose and with the intent of providing such revenue as may be necessary to an economical expenditure by the Government, without regard to the protection or encouragement of any branch of domestic industry whatever."

The enforcing and tariff acts were carried through together. This was the famous "compromise" tariff, and was followed by a repeal on the part of South Carolina of the nullification law.

"This tariff," says Sumner, in his *History of American Currency*, "was deceptive and complicated. It had no principle of economic science at its root—neither protection, nor free trade. It was patched up as a concession, although it really made very little, and its provisions were so intricate and contradictory that it produced little revenue. Specific duties were unaffected by it, and these included books, paper, glass, and sugar. It did not run its course without important modifications in favor of protection, for it could not bind future Congresses, and the doctrine of the horizontal rate of 20 per cent.—a doctrine which had no scientific basis—produced an increase on many articles."

Elsewhere the same writer speaks of it as a "pure political makeshift, in which the public and private interests had no consideration."<sup>1</sup>

<sup>1</sup> Mr. Benton, in his *Thirty Years in the United States Senate*, has several chapters on this measure, which should be consulted.

The four years after 1833 were marked by great speculation, which was chiefly directed toward schemes of internal improvement, and culminated in the crisis of 1837. The depression that naturally followed was made use of by protectionists, and hard times, produced by low duties and insufficient protection, was again a prominent cry. In spite of the fact that in 1836 the Government was in a position to distribute a large surplus revenue among the States, in 1838 it stood in need of a larger income. The compromise bill had guaranteed that after 1842 the highest duty levied should not exceed 20 per cent. except in case of war, and in order to maintain this guarantee a 20-per-cent. duty was levied upon many new commodities, but without producing the requisite increase of revenue.

In 1841 a home league was formed, the purpose of which was to agitate for high duties, and the President's message gave an opportunity for a general discussion of the subject in Congress. A provisional tariff bill, by which the operations of the existing tariff were to be continued until August, 1842, passed the House, but in the Senate was amended by a proviso postponing the distribution of the proceeds of the public lands until the same date. The President vetoed it, on the ground that it abrogated the provisions of the "compromise act," and for other reasons. Congress did not pass the measure over the President's veto, but incorporated the same proviso respecting distribution into a general tariff law, which suffered the same fate.

The President objected to it, first, on the ground that the bill united two subjects which, so far from having any affinity to one another, were wholly incongruous in their character, as it was both a revenue and an appropriation bill; secondly, the treasury being in a state of extreme embarrassment, the bill proposed to give away a fruitful source of revenue, a proceeding which he

regarded as being highly impolitic, if not unconstitutional; and thirdly, because it was also in violation of what was intended to be inviolable as a compromise in relation to the tariff system. A general tariff act was passed without the obnoxious clause, and was a return to protection. The average rate of duty levied upon dutiable imports was about 33 per cent., and the principle of "home valuations," which had been adopted in the compromise tariff, was dropped.

In 1844 Mr. Polk became President, and, as a Southern man, it was expected that he would advocate a policy other than protective as a basis for tariff revision.

It will now be convenient to note some of the changes in circumstances that had occurred since 1825. Up to that time, as has already been said, the main object of the tariff was to countervail the restrictive commercial policy of other nations. It was an instrument for retaliation, by which it was hoped that concessions could be wrung from those countries with which we might have commercial relations. "To all the powers that wish 'free trade,' we say, Let free trade be; to all that will restrict us, we say, Let restriction be." So wrote that ardent protectionist, Niles, in 1826.

Now, however, when England was preparing to mitigate the many limitations and restrictions that she had imposed upon her foreign commerce, it was claimed that her action would prove of injury to American interests, industrial and commercial, and that we must increase our restrictions in order that these interests might not suffer, but be amply protected. When Great Britain reduced the tariff on wools, a commodity that Congress had more highly taxed in 1824, Mr. Everett said: "Unless the American people think it just and fair that the laws passed by the American Congress for the protection of American industry should be repealed by the British Parliament, and that for the purpose of securing the



supply of our market to the British manufacturer to the end of time, it was the duty of Congress to counteract this movement," and again: "Believing, of course, that there is no wish to single it out [the manufacture of woollens] for unfriendly legislation at home, I cannot sit still, and see the gigantic arm of the British government stretched out across the Atlantic, avowedly to crush it."

In 1832 the doctrine that a high tariff meant low prices was prominently advanced, and somewhat later the balance-of-trade theory, the excess of imports over exports, causing a drain of specie to the manifest impoverishment of the country, was harped upon. But all through this period the expediency and necessity of protecting "infant industries" were constantly depended upon by the defenders of the "American policy," and as a corollary to this a home market for the agricultural productions of the country, now excluded from foreign markets, was to be created and maintained.

In 1839 the agitation against the corn laws was begun in England, and resulted in their repeal in 1846. In 1849 another important step was taken, in the repeal of the navigation laws. Meanwhile a change was occurring in the complexion of the tariff debates in this country.

"In the presidential campaign of 1840, protection was advocated, I believe for the first time, on the ground that American labor should be protected from the competition of less highly paid foreign labor. The pauper-labor argument appeared full-fledged in the tariff debates of 1842; and since that time it has remained the chief consideration impressed on the popular mind in connection with the tariff."<sup>1</sup>

Mr. Polk, in his inaugural address, was conservative.

"I have heretofore declared to my fellow-citizens, that in my judgment it is the duty of the Government to extend, as far as may be practicable to do so, by its revenue laws, and all

<sup>1</sup> Taussig.

other means within its power, fair and just protection to all the great interests of the whole Union, embracing agriculture, manufactures, the mechanic arts, to commerce, and navigation. I have also declared my opinion to be in favor of a tariff for revenue; and that, in adjusting the details of such a tariff, I have sanctioned such moderate discriminating duties as would produce the amount of revenue needed, and, at the same time, afford reasonable incidental protection to our home industry; and that I was opposed to a tariff for protection merely, and not for revenue."

While Mr. Polk thus confined himself to general phrases, his Secretary of the Treasury, Mr. Robert J. Walker, prepared a report in which his treatment of the tariff question deserves to be ranked with Hamilton's famous report on manufactures. It stamped Mr. Walker as an economist and practical financier of the highest order, and his utterances mark an important stage of tariff legislation in this country. He laid down the following general principles as a basis for revising the revenue laws: 1, that no more money should be collected than is necessary for the wants of the Government, economically administered; 2, that no duty be imposed on any article above the lowest rate which will yield the largest amount of revenue; 3, that below such rate discrimination may be made, descending in the scale of duties, or, for imperative reasons, the article may be placed in the list of those free from all duty; 4, that the maximum revenue duty should be imposed on luxuries; 5, that all minimums and all specific duties should be abolished, and *ad valorem* duties substituted in their place, care being taken to guard against fraudulent invoices and undervaluation, and to assess the duty upon the actual market value; 6, that the duty should be so imposed as to operate as equally as possible throughout the Union, discriminating neither for nor against any class or section.

In accordance with Mr. Walker's views, the tariff of 1846 was framed. He divided his classification into nine schedules, each of which had its own rate of duty (comprising many articles), running from 100 per cent. (distilled spirits and brandy), down to 5 per cent. (the raw materials of manufacture). This number of schedules was in the bill altered to eight, and the highest duty levied was 75 per cent. *ad valorem*. The bill also allowed the warehousing privilege for the first time.<sup>1</sup>

After a general debate the measure passed the House by a vote of 114 to 95, but was nearly killed in the Senate, being passed only by the casting vote of the president of the Senate. The average rate of duty under this act was 25 per cent. *ad valorem*, and it produced an average annual revenue of \$46,000,000, as against one of \$26,000,000 under the tariff of 1842.

Of the consequences of this "revenue tariff of 1846," Professor Sumner says:

"The period from 1846 to 1860 was our period of comparative free trade. The sub-treasury act of 1846 removed subjects of currency and banking from national legislation. Thus these two topics were for a time laid aside. For an industrial history of the United States, no period presents greater interest than this. It was a period of very great and very solid prosperity. The tariff was bad and vexatious in many ways, if we regard it from the standpoint either of free trade or revenue tariff, but its rates were low and its effects limited. It was called 'a revenue tariff with incidental protection.' The manufactures which it had been said would perish, did not perish, and did not gain sudden and exorbitant profits. They made steady and genuine progress. The repeal of the English corn laws in 1846 opened a large market for American agricultural products, and took away the old argument which Niles and Carey had used with such force, that England wanted other countries to have free trade, but would not take their

<sup>1</sup> See Warehouse System.

products. The effect on both countries was most happy. It seemed as if the old system was gone forever, and that these two great nations, with free industry and free trade, were to pour increased wealth upon each other. The fierce dogmatism of protection and its deeply rooted prejudices seemed to have undergone a fatal blow. Our shipping rapidly increased. Our cotton crop grew larger and larger. The discovery of gold in California added mightily to the expansion of prosperity. The States, indeed, repeated our old currency follies, and the panic of 1857 resulted, but it was only a stumble in a career of headlong prosperity. We recovered from it in a twelvemonth. Slavery agitation marked this period politically, and if people look back to it now they think most of that; but industrially and economically, and, I will add also, in the administration of the Government, the period from the Mexican to the Civil War is our golden age, if we have any. As far as the balance of trade is concerned, it never was more regular and equal than in this period.”<sup>1</sup>

The revenue collected under this tariff was so large that, in 1857, it became necessary to reduce it, as the circulating medium of the country was being locked up in the treasury. An attempt was made to pass a protective tariff, but it was defeated. The Secretary of the Treasury had recommended that raw materials should be made free of duty, and also salt, as a necessity for the Western packer. The Eastern manufacturers favored this measure, and wool was the most difficult commodity to rate, as the West wished it made dutiable and protected. The tariff of 1857 was denounced as the result of a “fraudulent combination of those who favored the protection of hemp, sugar, iron, and the woollen manufactures of Massachusetts. It was a blow at the wool grower.” By this act the average duty was lowered to about 20 per cent. *ad valorem*.

The crisis of 1857 was followed by deficits in the Gov-

<sup>1</sup> *Lectures on Protection*, p. 54.

ernment finances, and it became necessary to revise the tariff. In 1861 a measure known as the "Morrill Tariff" was passed, which was a decided step toward a protective measure, but it remained in force only a few months. The war created necessities which compelled the Government to seek every possible source of revenue, and while the dilatory and tentative tax methods applied in the first years of the war only complicated matters, and forced the Government to have recourse to that most dangerous of financial expedients, an irredeemable paper currency, the tax privilege was exercised as far as it could be before the end of the war. In these years the tariff was carried from a low and revenue rate of duty to one of extreme protection—not for the sake of protection, but in order to obtain revenue. An internal-revenue system that was all-pervading was imposed, and it was to counteract the high taxes levied under this system that many of the tariff duties were carried to such an excessive point. Measure after measure raising duties was adopted between the years 1861 and 1866, and it was inevitable that protective duties should creep in. Settled policy there was none, and while revenue was always the plea for action, the duties imposed often defeated that plea, by becoming prohibitive. Everything was taxed, and, under customs and excise laws, commodities might be taxed many times.

On the return of peace the important changes made applied chiefly to the internal revenue system, and the perpetual tinkering of the tariff had served to bring out in bold relief the many protective features it contained.

"With the termination of the war," writes Mr. David A. Wells when special commissioner of the revenues, "and with accruing receipts from the tariff in excess of the actual requirements of the treasury, the popular tendency, as expressed by legislation, accomplished or projected, has been to reverse

the order of importance of these two principles, and to make the idea of revenue subordinate to protection rather than protection subordinate to revenue. And in carrying out, furthermore, the idea of protection, but one rule for guidance would appear to have been adopted for legislation, viz., the assumption that whatever rate of duty could be shown to be for the advantage of any private interest, the same would prove equally advantageous to the interests of the whole country. The result has been a tariff based upon small issues rather than upon any great national principle; a tariff which is unjust and unequal; which needlessly enhances prices; which takes far more indirectly from the people than is received into the treasury; which renders an exchange of domestic for foreign commodities nearly impossible; which necessitates the continual exportation of obligations of national indebtedness and of the precious metals; and which, while professing to protect American industry, really, in many cases, discriminates against it. . . . One of the first things that an analysis [of the existing tariff] will show is, that every interest that has been strong enough or sufficiently persistent to secure efficient representation at Washington, has received a full measure of attention, while every other interest that has not had sufficient strength behind it to prompt to action has been imperfectly treated, or entirely neglected."

The effect of the commissioner's recommendations was to lead up to a general debate on taxation in 1870. A bill which originally proposed to touch only internal duties was gradually enlarged until it covered not only excise, but also customs duties.

Protection had now become a cardinal principle of the Republican party, the party in power, and most of the protective features of the tariff were retained under the new measure, which became a law July 14, 1870, and whatever reductions were made applied to commodities in common use, like tea, coffee, sugar, etc., or luxuries, like wine, spirits, brandy, etc.

The reduction in revenue by these changes was estimated to be about \$29,000,000, and at the same time internal taxes to the amount of \$55,000,000 were removed. The real burden of the tariff was hardly lightened, as the high duties on the necessaries of life remained. In 1871 an attempt was made to repeal the duty on coal, but it failed. The question of protection, however, came up, and to prevent further discussion the duties were removed from tea and coffee (1872), and in the same year a general tariff was passed, which still left the protective duties almost unchanged; admitting large classes of manufactures to a reduction of 10 per cent. without designating specifically the articles to which the reduction should apply. Between March 1, 1861, and March 4, 1873, fourteen principal statutes relating to classification and rates, besides twenty other acts or resolutions modifying tariff acts, had been passed, and parts of each were in force. To this must be added the laws passed prior to 1861, and under which customs were still collected.

This created great doubt as to what was the law, and the uncertainty gave much trouble to the Government, and involved the importers in costly litigation and imposed upon them vexatious delays.

“ Under these various enactments, questions relating to the proper assessment of duties constantly arise. There is often a direct conflict between different statutes, and occasionally between two or more provisions of the same statute, while single provisions are frequently held to embrace different meanings. These differences can be settled only by arbitrary interpretations or by adjudications in court. . . . The number of statutory appeals to the Secretary of the Treasury on tariff questions during the last fiscal year [1873] was 4731, exclusive of miscellaneous cases or applications for relief, numbering 5065.”

The financial crisis of 1873 naturally had some influence upon the revenues of the Government, and in 1874 the

cry was raised that the Government finances were embarrassed through too large reduction in taxes. This allowed the protectionists an opportunity to carry a measure through Congress restoring the 10-per-cent. duties upon commodities which had been taken off in 1872, and also to increase by one fourth the duties on sugar.

While these movements precluded all idea of revising the tariff so as to return to a revenue standard of duties, yet great dissatisfaction was expressed with the operation of the law. I have just noted one of the difficulties connected with its administration, that of being needlessly complex. Other objections to it consisted in the great stimulus it gave to smuggling and undervaluation of imports, practices which even the honest importer was forced, in self-defence, to adopt. Moreover, the law became each year more and more complicated. It consisted, first, of the act of Congress; second, of the decisions of the treasury officials interpreting the law, and these decisions had the force of law and were unchangeable; and, finally, of the decisions of the courts.

The expediency, and even the necessity, of a revision, now became more and more urgent.

“The revised tariff,” writes the Secretary in 1875, “contains thirteen schedules, embracing upward of 1500 dutiable articles which are either distinctly specified or included in general or special classifications. To these must be added nearly 1000 articles not enumerated, but which under the general provisions of two sections of the law, would be assigned a place as dutiable either by virtue of similitude to some enumerated article, or as articles, manufactured or unmanufactured, not otherwise provided for, making over 2500 in all. The free list contains an enumeration of over 600 articles, thus constituting a total aggregate of more than 3000 articles embraced by the tariff either as dutiable or free. Of the articles subject to duty, and either named in, or subject to, specific classification by schedule, 823 pay *ad valorem* rates



varying from 10 to 75 per cent.; 541 pay specific duties, according to quantity or weight; and 160 pay compound, or both specific and *ad valorem*, rates."

Not only was a sentiment against the tariff being created on account of its many unreasonable and exorbitant features, but a like feeling was engendered by a desire to reduce war taxation to the limits that an economical administration of the Government required. The largest sum collected from customs in any one year was in 1872, when it had attained the amount of \$216,370,286. During the years of depression that followed the crisis of 1873 the receipts from this source steadily dwindled, reaching their lowest point in 1878, when they were only \$130,170,680. An improvement then became manifest, and in the following years the increase was enormous, giving, in connection with other sources of revenue, a revenue largely in excess of the wants of the Government. In 1880 this surplus revenue was nearly \$66,000,000; in 1881, more than \$100,000,000; and in 1882, \$146,000,000.

An examination of the annual appropriation bills for these years will show that expenditure kept pace with revenue. While these bills do not take into account the permanent appropriations—providing for the debt, for the collection of customs, etc.—yet, as they are prepared by the executive departments of the Government, they give a better idea of the general tendencies of governmental expenditure than would the amounts actually expended. The total amounts appropriated by these bills vary from year to year, but they vary in a general way with the revenue of the Government—increasing when the revenue increases, and decreasing when it becomes less.

The ten years that followed 1873 gave a proof of this. The public income had hardly begun to be affected by the crash of 1873 when the appropriations for 1874 were

framed; but from that year until 1878 there was a steady decrease. Beginning with the bills for 1881, when the effects of the revival of trade and industry in 1879 were beginning to be felt, the appropriations greatly increased, and culminated in the notorious bills for 1883, which included two of the most notorious legislative swindles that could be perpetrated—the River and Harbor Bill and the Arrears of Pensions Act. As the surplus revenue in the treasury increased, the demands upon it became greater, and the greater the surplus the more questionable became the schemes for spending it. The accumulation of such a balance was a source of danger, and a constant temptation to jobbers and swindlers who originate and live upon superfluous public expenditure.

It was now seen that some changes in the tariff would become necessary, not only for the purpose of simplifying its provisions, but also as a means of removing tax burdens from the people. The old question of revenue or protective taxation was revived, and it became manifest that the battle was to be fought on that line. While all right-minded persons saw that taxes should be reduced, when it came to a discussion of methods, a hopeless disagreement arose. Those who favored protection were desirous of abolishing all internal taxes in order that the tariff might remain untouched. The other side wished to reduce the tariff, and take from it the many extravagant protective features.

Several measures of tariff reform were defeated in these years, and no final or decisive action was taken until 1882, when Congress turned the subject over to a commission of nine members, taken from civil life, for consideration. It was evident that here was an excellent opportunity offered for a satisfactory solution of the question. There was a general demand for reduced duties; even protectionists were willing to submit to such a reduction. The presidential campaign of 1880

had been fought on the issue of the tariff, but in that blind and unreasonable way that settled nothing, though awakening a spirit of inquiry. This had given strength to many movements in favor of revenue reform, especially in the Western States, and it was in answer to this feeling, which was developing into a political force, that the commission measure was adopted, because it was believed that such a plan would produce the best and speediest results.

The President, who had the appointment of the members of the commission, nullified whatever of benefit might be expected of it, for he took men who were directly interested in the maintenance of high protection. Of the nine men chosen there was not one who could pretend to be a student of economic principles, not one who could have explained the incidence of a tax. The influence of the lobby in framing tariff legislation had become notorious, but in this commission the lobby influence was maintained, and allowed even better opportunities for carrying its point than it enjoyed before.

The commission travelled over a part of the country taking testimony, and made its report to Congress. It was afterward developed that the schedules of duties presented with the report had been prepared by men who were themselves manufacturers and therefore interested in keeping intact protection. The report, while promising a reduction in duties, contained some of the most barefaced attempts to double and triple duties; while making a pretence to revise and reform the tariff, it was but a juggle and a sham. The members of the commission (with one honorable exception, Mr. McMahan, whose technical knowledge of the operation of the then existing tariff was of great service) were wholly unfitted for the work intrusted to them, and as a consequence the results of their labors were of little value. One year had thus been wasted.

Nor were the events that followed the presentation of this report calculated to increase the expectation that the subject of revenue reform would be adequately handled by Congress. The Senate, rejecting the commission schedules, prepared a bill of its own; and the House also framed a new bill for its own consideration.

The whole session of 1882-3 was given over to a discussion of these various measures, schedule by schedule, and line by line. Every possible difference of opinion was developed in these debates; but, as the high tariff party was in the majority, little toward a reduction of duties could be accomplished. A large number of *ad valorem* duties were made specific, though no change in the actual amount of tax was thus brought about. Owing to its being a short session, the House was unable to complete the consideration of its own bill, and took up that of the Senate. Some differences being developed, they were referred to a conference committee, in which the high protectionists had a large majority. Here many changes were made, some of which had been voted down in both Houses, and the resulting hybrid measure became a law one day before the session closed, no time being given for an examination of the recommendations of the conference committee.

Meagre as this outline is, it is enough to show that the United States has never had a tariff that was at all suited to its industrial and commercial interests since the first revenue tariff imposed before 1826. And as the average rate of the tariff has increased it has become more and more injurious to the interests involved, as no high tariff can be applied to such various conditions as are to be found in this country without doing as much mischief to one part as good to another.

On Tariff, see Prof. Wm. G. Sumner's *Lectures on the History of Protection*, *Life of Andrew Jackson*, and *His-*

*tory of American Currency*; the writings of Henry C. Carey and H. C. Baird. There is no good history of the finances of the country in the English language. The pretentious work of A. S. Bolles is unsatisfactory, and the facts are much distorted. Niles's *Weekly Register* contains much valuable material, and the writings of Condy Raquet, now quite scarce, should be carefully read. The public documents contain many exceedingly valuable reports on the tariff, and the proceedings of some early conventions (1819, 1831, etc.) throw much light upon the effects of tariff legislation. Mr. David A. Wells has contributed much to a proper understanding of the Civil War tariff, and stands well to the front in the great number of writers who have given attention to this subject. A special *Report on Customs-Tariff Legislation* was prepared by the Bureau of Statistics in 1873, and the provisions of the laws are fully given, as also in Heyl's and Williams's two *Manuals*.

See also Stanwood, *Tariff Controversies*, 2 vols.; Schurz's *Life of Clay*; 4 Johnston and Woodburn's *American Orations* and Taussig's *Tariff History of the United States*.

On Internal Improvements, see: I. Confederation, Articles of, VII., IX.; 5 Elliot's *Debates*, 548; 1 *Stat. at Large*, 184, 190 (assent of Congress to acts of Maryland Legislature); 1 *Stat. at Large*, 54 (first lighthouse act, August 7, 1789); authorities under Cumberland Road; Adams's *Life of Gallatin*, 351; 2 Adams's *Writings of Gallatin*, 72; Tanner's *Memoir on Internal Improvements* (1829); 5 Benton's *Debates of Congress*, 665, 711; 3 *Statesman's Manual* (edit. 1849), xxviii. (Madison's veto). II. For this period in general the best authority is 2 Wheeler's *History of Congress*, 109; 1 *Statesman's Manual*, 491 (Monroe's Cumberland road veto); 3 *Stat. at Large*, 781 (act of March 3, 1823); 4 *Stat. at Large*, 23 (act of April 30, 1824), 124 (March 3,

1825); 2 *Statesman's Manual*, 719 (Maysville road veto); 3 Parton's *Life of Jackson*, 285, 340; 3 *Statesman's Manual*, 1635, 1711 (Polk's vetoes); 1 Webster's *Works*, 169, 347; 2 *ib.*, 238; 4 *ib.*, 247, 252; 5 *Whig Review*, 537; 1 Colton's *Life and Times of Clay*, 428; 1 Benton's *Thirty Years' View*, 102, 130, 167, 275, 362; 2 *ib.*, 125, 171; Cluskey's *Political Text Book*, 540; Bradford's *History of the Federal Government* (see its index); Cutts's *Treatise on Party Questions*, 41; Gillet's *Democracy in the United States*, 132. *Distribution.*—12 Benton's *Debates of Congress*, 124, 765; 2 von Holst's *United States*, 181, 454; 2 Calhoun's *Works*, 620; 5 *Stat. at Large*, 52, 201, 453 (acts of June 23, 1836, October 2, 1837, and September 4, 1841); 2 Benton's *Thirty Years' View*, 36; 4 *Opinions of the Attorneys General*, 60, 63; 14 Benton's *Debates of Congress*, 443, 456. *In the States.*—The best authority is 2 B. R. Curtis's *Works*, 93, being his article "Debts of the States" from the *North American Review*, January 1844. III. Cutts's *Treatise on Party Questions*, 187; 9 *Stat. at Large*, 466 (act of September 20, 1850); *Reports of the General Land Office* (1873); the same in substance is more easily accessible in Spofford's *American Almanac* for 1878, 237, and in Appleton's *Annual Cyclopædia* for 1871, 674. The first Pacific Railroad act of July 1, 1862, will be found in 12 *Stat. at Large*, 489; a convenient summary of Pacific Railroad legislation is the long preamble to the act of May 7, 1878 (20 *Stat. at Large*, 56); *Report of the Secretary of the Treasury* (Dec. 5, 1881), 25; Major H. M. Robert's *Index to Reports on River and Harbor Improvements* (Art. "Appropriations"); Porter's *West in 1880*, 585 (and Map); *Report on Internal Improvements*, 7 *Congressional Debates*, 1830-31, Appendix, p. xxxv., 2d Sess. 21st Cong.

## CHAPTER XVIII

### JACKSON AND THE BANK

ANDREW JACKSON was one of the strongest personal forces that ever appeared in American politics. He was born in 1767, probably in North Carolina near the South Carolina border, of Scotch-Irish parentage. He became noted as an Indian fighter in the frontier life of early Tennessee and in the War of 1812. He was a member of Congress in 1796-7, and after his famous defeat of the British at New Orleans in 1815, he became a national character. In 1818 he ended the Indian troubles in Florida by summarily hanging Arbuthnot and Ambrister, two English subjects, on the ground that they were outlaws and pirates and were giving aid and comfort to our Indian enemies. This led to the annexation of Florida and to still greater popularity for Jackson. In 1824 Jackson was defeated for the Presidency by a combination of the friends of Adams and Clay in the House of Representatives, after Jackson had received a plurality of the electoral votes. When Adams appointed Clay Secretary of State a false charge was made that there had been a corrupt bargain between the two men; and the personal vindication of Jackson and right of the people to choose their rulers directly became the paramount issue in the four years from 1824 to 1828. Jackson was "brought forward by the masses," as Benton expressed it, and he was triumphantly elected in 1828, and re-elected by a

still greater triumph in 1832, against a combination of old Federalists and special classes, as the Jackson Democrats contended.

The "reign of Jackson" is marked by many notable contests. He magnified the Executive office, making it co-ordinate with the Legislative, and refusing to allow Congressional control to be established over his administration. He increased the power of removal and made himself master in his own Cabinet and the determiner of his own policy. He introduced, by this policy, the "spoils system," which he called "rotation in office," or the idea that public servants should be chosen for short terms and be made easily removable by the people. He increased the use of the veto, applying this legislative check on an entirely different principle from that used in the former administration. He stood for nationality and against the spirit of disunion and nullification, and his attitude toward South Carolina in 1832 did much to cultivate among the masses of Northern Democrats attachment and loyalty to the Union. He was constantly a "personal issue" in politics, but on this issue, as well as on all others raised by his administration, Jackson received triumphant vindication with the people.

Among the political contests that distinguished Jackson's administration none was more prominent than his "war against the Bank and the money power." This chapter will deal, first, with the second United States Bank and Jackson's opposition to the renewal of its charter. This will be followed by other topics relating to Jackson's and Van Buren's administrations.

The War of 1812, which almost immediately followed the failure to recharter the first bank, was principally supported by loans and the issue of treasury notes. Party spirit was enlisted against the loans, and the Federalist newspapers in New England denounced them so warmly that Government agents in that section of the country



were compelled to advertise that the names of subscribers to the loans would be kept secret.

This opposition, together with the downfall of the import trade, the consequent decrease in revenue, the constant drain of specie from the country in payment for smuggled goods, and the want of any convertible currency to take its place, not only increased the public debt from a total of \$45,209,737.90 in 1812, to a total of \$127,334,933.74 in 1816, but decreased the national credit so far that the treasury negotiated the last loans of the war at a discount of forty per cent.

In January, 1814, upon a petition from New York, a project for a new national bank was introduced in the House, but, as the dominant party still held it unconstitutional, it was dropped without action. In October, 1814, the plan was revived, backed this time by the recommendation of the Secretary of the Treasury, Dallas, and the influence of the Administration. Dallas's plan obliged the bank to lend the Government \$30,000,000, but gave it power to suspend specie payments. It was met by another plan, introduced by Calhoun of South Carolina, which neither obliged the bank to loan money to the Government, nor allowed it to suspend. The Federalists, by favoring Calhoun's plan, defeated Dallas's and then, by combining with the Dallas men, they defeated both plans. The Senate, December 9, 1814, then passed a bill for a bank on Dallas's plan, which was defeated in the House by the casting vote of the Speaker. A compromise plan then passed both Houses, Calhoun's two principles being retained, and was vetoed, January 30, 1815, by the President.

The veto message "waived the question of the bill's constitutionality," as having been already passed upon approvingly by the Legislative, Executive, and Judiciary, with the general concurrence of the people; but objected to the plan of this bill on the score of convenience, as not

being calculated to aid the Government or the people in their embarrassments. In February, 1815, after the arrival of the news of peace, the Senate again passed a bank bill on Dallas's plan, which was lost in the House by a single vote.

April 10, 1816, the act to establish *The Bank of the United States* became law. It followed Hamilton's plan closely. The charter was to run twenty years; the capital was to be \$35,000,000, one fifth in cash, the rest in United States six-per-cent. stocks; the Government was to have the appointment of five of the twenty-five directors; and the bank was to have the custody of the public funds.<sup>1</sup> The stock was at once subscribed; the principal office was opened at Philadelphia; and branches were soon established at Boston, New York, Baltimore, Portsmouth, Providence, Washington, Richmond, Charleston, Savannah, New Orleans, Cincinnati, and other cities.

Within three years the mismanagement, speculations, and frauds of the president and directors of the bank brought the institution to the verge of bankruptcy and helped to derange the whole business of the country. The efforts of a new president were successful in saving the bank, but only by a curtailment and recall of loans to other banks, which aided in bringing on the general stringency of 1818-21, and roused strong feeling against the bank. State legislatures began to arraign it as unconstitutionally chartered. The legislatures of Maryland and Ohio, in 1818, levied taxes upon the branch banks in their States, with the intention of forcing them to close; and, though the Supreme Court<sup>2</sup> decided in favor of the bank's constitutionality, and against a State's right to tax it, Ohio took the amount of her tax, \$100,000, from the vaults of the branch bank at Chillicothe by force, in defiance of an injunction from the Federal Circuit Court.

<sup>1</sup> See Deposits, Removal of.

<sup>2</sup> See *McCulloch vs. Maryland*, in 4 Wheaton, below.

The directors at once brought suit in the Federal courts against the agents of the levy for trespass, and the State in 1820 withdrew the use of its jails for the custody of prisoners in such suits, at the same time reducing its tax to \$10,000 a year, and refunding the over amount of \$90,000. Returning prosperity changed the current of feeling, and Ohio withdrew from her position.

Until 1829 the Bank of the United States seems to have had no connection whatever with national politics. In the Presidential elections of 1824 and 1828 we find no allusions to it. It was simply a very successful business enterprise, now numbering twenty-five branches, under the general control of the directors of the parent bank and their president, Nicholas Biddle. In Jackson's letters of March, 1829, there are some traces of an under-current of dislike for the bank and its directors, as "minions of Clay."

No symptoms appear, however, of any possibility of collision between the bank and the Administration until June, 1829, when the Jackson managers of the State of New Hampshire, Isaac Hill and Levi Woodbury, began to urge President Biddle to remove the president of the branch bank at Portsmouth, N. H., and to appoint a Jackson man in his place. Biddle refused on the ground that the incumbent was a man "of first-rate character and abilities," and not appointed for political reasons; and in October he finally, and so emphatically "as to leave no possibility of misconception," declared to the Secretary of the Treasury that neither the bank nor its branches "acknowledged the slightest responsibility of any description whatsoever to the Secretary of the Treasury touching the political opinions and conduct of their officers, that being a subject on which they never consult, and have no desire to know, the views of any administration."

Here the matter rested until the meeting of Congress, when, in his message of December 8, 1829, the President

for the first time personally entered the field by making the following reference to the bank:

“The charter of the Bank of the United States expires in 1836, and its stockholders will most probably apply for a renewal of their privileges. In order to avoid the evils resulting from precipitancy in a measure involving such important principles and such deep pecuniary interests, I feel that I cannot, in justice to the parties interested, too soon present it to the deliberate consideration of the legislature and the people. Both the constitutionality and the expediency of the law creating this bank are well questioned by a large portion of our fellow-citizens; and it must be admitted by all that it has failed in the great end of establishing a uniform and sound currency.”

The message also suggested the substitution of a bank which should be a part of, and under the direct control of, the treasury.<sup>1</sup> In the House this part of the message was referred to the Committee of Ways and Means, which reported strongly in favor of the bank and against the President; and when resolutions against the constitutionality and expediency of the bank, and against rechartering it, were introduced, they were at once laid on the table by a vote of 89 to 66.

It was thus evident that the President's party was not ready to support him in assailing the bank, and no further steps were taken against it, with the exception of articles in administration newspapers, until December 7, 1830, when the message, with a slight but evident increase of warmth, renewed the suggestions above given. In the Senate Benton, of Missouri, in February, 1831, attacked the bank from a point of view outside of its constitutionality, denouncing it as the possessor of needless and expensive privileges for which no return was ever made, and of irresponsible and dangerous power over local banks and the business interests of the country.

<sup>1</sup> See Independent Treasury.

Even with this attack no open struggle had yet begun, though the bank and its friends everywhere were being rapidly drawn into unofficial newspaper and pamphlet hostilities with the Administration. In his message of December 4, 1831, the President hinted broadly that, having several times called the attention of Congress to his views about the bank, he now left the matter to the people. The reference was evidently to the presidential election of 1832, for which political arrangements were already making.

Up to this time Jackson seems to have been willing to avoid open war upon the bank until his other enemies should be disposed of, but the suggestion conveyed in the message of 1831 was sufficient alone to drive the bank "into politics." Since the President intended to "appeal to the people," the bank felt compelled to imitate him; and from this time the conflict became flagrant.

The National Republican Convention, December 12, 1831, approved the bank as a great and beneficent institution maintaining a sound, ample, and healthy state of the currency; summoned the people to defend it in its peril by rejecting Jackson at the ensuing election; and nominated as its own candidates Henry Clay and John Sergeant, both pronounced bank men, and the latter a director in 1834. The Legislature of Pennsylvania, a Jackson State, had unanimously resolved in favor of the bank, and the Clay managers seem to have decided to force the fighting, in order, if possible, to deprive Jackson of Pennsylvania's large vote by compelling him to attack Philadelphia's chief institution. Clay's own private correspondence shows his belief that, all the circumstances considered, the bank would "act very unwisely if it did not apply" for a new charter at this session. The application was accordingly made, January 9, 1832, by Senator Dallas, of Pennsylvania, on behalf of the bank. The charge was often made that the bank really

endeavored to *buy* its charter; and its loans to Congressmen, mostly of the opposition to it, are stated by the report of a Senate committee in 1834 as \$322,199 to 59 Congressmen in 1831, \$478,069 to 54 Congressmen in 1832, and \$374,766 to 58 Congressmen in 1833.

A majority in both Houses was in favor of the charter, but in the House the Speaker was against it, and this circumstance controlled the operations of the opposition, guided by Benton. Vague and general charges of corruption were brought against the management of the bank, and the Speaker so constituted the committee of investigation that, though the charges were disproved, the majority report brought the bank in guilty.

Having thus obtained a basis for an "appeal to the people," the opposition allowed the bill to recharter the bank to come to a vote, and it passed the Senate June 11, 1832, 28 to 20, and the House July 3, 109 to 76. July 10th, it was vetoed in a message of great ability, which was mainly devoted to proving the bank, as then constituted, to be an unnecessary, useless, expensive, un-American monopoly, always hostile to the interests of the people and possibly dangerous to the Government as well. An attempt to pass the bill over the veto failed.

Time has shown that the application for a recharter at this session was a false step, and that the bank's only course was to wait patiently until a two-thirds majority in Congress could be obtained, pass the bill for the charter, if necessary, over the veto, and end the battle by one blow. For the bank only one victory was needed; the charter, once obtained, was secure. By impatience it succeeded only in implicating its quarrel with the Presidential election, which resulted not only in the President's triumphant re-election, but also in the choice of a House of Representatives, to meet in 1833, which was pledged to support the President against all his opponents, even against the bank.

The President now had the move, and he made it. A premonition of his purpose was given in his message of December 4, 1832, in which he announced a belief, which he had warmly taken up, that the bank was insolvent, and advised an investigation into its affairs and the sale of the Government stock in it. This Congress, however, the same which had recently passed the bill for a bank charter, was still opposed to the President, and the House voted that the deposits might safely be left in the bank. Before the meeting of the new Congress, elected in 1832, the President had removed the deposits of public moneys from the bank,<sup>1</sup> and his action was sustained by the new House. In the Senate the bank still had a majority which, standing alone, could only enjoy the poor satisfaction of censuring the President. For want of any other custodian of the public funds<sup>2</sup> they had been deposited in selected State banks, commonly called "pet banks." April 4, 1834, the House finally voted (1) that the bank ought not to be rechartered, 134 to 82; (2) that the deposits ought not to be restored, 118 to 103; (3) that they should be left in the State banks, 117 to 105; and (4) that the affairs of the bank should be investigated, 175 to 42. The investigation was begun; but the bank objected to its methods as partisan and unfair, and put so many impediments in the way of it that it resulted in nothing. It was very evident, however, that the President was master of the situation, and the bank finally obtained a charter from Pennsylvania. Within two years the Senate was opposed to the bank, and thereafter the Democratic party was committed against any such institution.

For over twenty years gold and silver, as a currency, had been practically unknown in the United States. Whatever may have been the evils connected with the free grant of the use of the public funds to a private

<sup>1</sup> See Deposits, Removal of.

<sup>2</sup> See Independent Treasury.

corporation, the Bank of the United States had at least provided a currency acceptable everywhere. What was to take its place? Benton's engrossing desire was to bring his party back to its original devotion to "hard money," gold and silver, but to this there was one insuperable obstacle: the State banks which were now the only available receptacle for the public funds, which had thrown the whole weight of their influence for the Government and against the bank, and which it was necessary to support, possessed the power of issuing notes to a more unlimited and dangerous extent than the Bank of the United States.

If the sub-treasury system<sup>1</sup> could have been introduced in 1835, when Congress reduced the ratio of gold and silver to 16:1, there would have been no further need to lean upon the State banks, and the "hard money" system might have been forced through without the dreadful spasm with which the laws of nature compelled its adoption in 1837-9. But for many months the State banks were allowed to engage in a race for the production of fictitious wealth which deluged the country with paper money, raised the nominal value of all property far beyond the real value, and increased the sales of public lands from \$5,000,000 in 1834 to \$24,800,000 in 1836.

July 11, 1836, the Secretary of the Treasury, by the President's order, and against the known wish of Congress, issued the so-called *specie circular*, which directed the land offices to reject paper money and receive only specie in payment for public lands. At the following session Congress did, indeed, pass a bill directing the reception of notes of specie-paying banks, but so late in the session that the President was able to dispose of it by a "pocket veto."<sup>2</sup>

The swelling tide of paper money was thus turned back from the West upon the East, and early in May a sus-

<sup>1</sup> See Independent Treasury.

<sup>2</sup> See Veto.



pension of specie payments, beginning in New York, began the panic of 1837, which, after a year's general suffering, violently substituted reality in business for fiction.

The Democratic party had by this time thoroughly learned the folly of the State bank, or "pet bank," system. The pet banks had gladly received the public revenues, but when called upon to refund them for distribution among the States,<sup>1</sup> they had promptly responded by suspending specie payments. Van Buren, the new President, therefore held manfully to the Democratic idea of a "divorce of bank and state," refused to countenance any governmental interference with the panic, and throughout his entire administration pressed vigorously the sub-treasury system, which was finally successful, after two failures, by the law of July 4, 1840.<sup>2</sup>

This was considered by the Whigs, and by the Government's rejected allies, the State banks, as an attack upon all banks. A subsidiary panic in 1839 lent force to their arguments, and when Harrison was chosen President in 1840, a majority of the Congress elected to meet in 1841 was also Whig, pledged to revive the past glories of a national bank and abolish the sub-treasury. But the majority was delusive; the Whigs had again and again during the campaign denied to the voters that the bank question was at issue, and had declared that the only issue to be decided by the election was the curtailment of the executive power<sup>3</sup>; Harrison himself had at least once pronounced against a national bank; and Tyler, the Vice-President-elect, had been unmistakably known to the leaders of the convention which nominated him as a confirmed opponent of such an institution.

President Harrison called Congress together in extra session for May 31, 1841. His early death raised to the

<sup>1</sup> See Internal Improvements.

<sup>2</sup> See Independent Treasury.

<sup>3</sup> See Whig Party.

Presidency a man who was obnoxious to Clay, the Whig leader, not more for his unreliability in the Whig faith than for his accidental elevation to a rank above his merits, and for his known desire to compass his election in 1844 to the position which Clay regarded as his own by every law of politics.

Tyler, though personally averse to any extra session of Congress, decided to follow out Harrison's action, and Congress assembled at the appointed time. In his message the President avowed his belief that Congress had the power to charter a national bank, but reserved the right to veto any plan which should contain unconstitutional or unwise provisions. The Whig leaders, however, and particularly those under Clay's influence, were more disposed to force Tyler to serve in the ranks than to recognize him as commander-in-chief. At the beginning of the session, on Clay's motion, the Secretary of the Treasury furnished a plan for a national bank, and a bill drawn up on his recommendations, "to incorporate the subscribers to the Fiscal Bank of the United States," passed both Houses, August 6th, by a vote of 26 to 23 in the Senate, and 123 to 98 in the House. The word "fiscal" was placed in the title by way of implication that there was some difference between this and the former Bank of the United States, though it is difficult to see any great difference; Tyler had even wished that it should be called fiscal institute, or fiscal corporation. August 9th, the House passed a Senate bill to repeal the sub-treasury law, and the repeal was signed by the President, August 13th.

The passage of this bill just at the time when the President was considering the bank bill, was very significant and unexpectedly momentous. The debates alone seem to show that it was intended to force the President to sign the bank bill by leaving him without a sub-treasury; its actual result was, by leaving the President master of

the treasury, unchecked by the limitations of any law, to enable him to dictate terms to his party. August 16th the President vetoed the bill on the ground that the permission given in it to establish branch banks in the different States was dangerous and unjust to the States; but the veto also contained an intimation, which may be construed as a call upon the Whigs to surrender with good quarter, that the President would be willing to sign a bank bill which should not be open to constitutional objections.

By this time the distinctive Clay portion of the Whig members of Congress were in a white heat of exasperation against the President. They justly considered him a mediocre man, shifty in belief and practice, and only settled in a determination to make himself head either of the Whig party or of a new third party of his own. They were with difficulty persuaded to restrain public exhibitions of their resentment while a new bill, to avoid the objections of the veto, was prepared and hurried through the House with indecent haste August 23d, and the Senate, September 3d, but their incautious private expressions, and particularly an angry letter of Botts, of Virginia, gave to Tyler an excuse, of which he availed himself, September 9th, to veto this bill also.

It is impossible to read the full details of Tyler's defeat of this last bill, as given in the authorities cited below, and acquit him of double dealing; the only excuse to be made for him is that his mind was too much beclouded by his Presidential aspirations to be able to estimate his own conduct impartially. His last veto, however, ended the list of attempts to grant to a private corporation the custody and emoluments of the national revenue.<sup>1</sup>

The present national banking system, begun by act of February 25, 1863, is without this plainly evil feature of

<sup>1</sup> See Independent Treasury, Whig Party.

the original national banks, is in general terms only an extension of the excellent New York State banking system of 1838 to the country at large, and therefore has nothing to do with the subject of this article.

DEPOSITS, REMOVAL OF.—In the course of his struggle with the Bank of the United States President Jackson, in his message of December 4, 1832, asked for an investigation into the truth of rumors which, if true, affected the safety of the government deposits in the bank. By section 16 of the act of April 10, 1816, creating the bank, the funds of the Federal Government were to be deposited in the bank or its branches, “unless the Secretary of the Treasury shall at any time otherwise order and direct; in which case the Secretary of the Treasury shall immediately lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reason of such order or direction.” As the charter was accepted by the bank with this proviso, it would seem that the Secretary of the Treasury had been accepted by both the contracting parties as a sort of arbiter to decide upon the possible future question of a removal of the deposits from the bank; and the only punishment for a misuse of the discretion by the Secretary would seem to be impeachment and removal, a punishment which the bank’s friends in Congress could not inflict in 1833 for want of a two-thirds majority in the Senate.

The question, then, lay, not in the right to remove the deposits, but in its necessity; and this necessity the President’s mind found in his belief that the bank was using the public funds for a large expansion of its discount business, under the irresponsible direction of a committee appointed by the president, Nicholas Biddle, from which the government directors were excluded; that a large share of these discounts were in favor of members of Congress or of their friends; and that, unless

the deposits were soon removed, the bank would thus, in this or the next Congress, secure to its support a majority sufficient to impeach and remove not only the Secretary, but the President himself, if necessary. In the President's opinion the warfare between himself and the bank had been the fundamental question of the Presidential election just ended, and his re-election was to him a certain proof that the people sustained him and condemned the bank. For these reasons he had made the suggestion above given in his message, and soon after seems to have decided to force the Secretary of the Treasury, McLane, either to remove the deposits or resign.

March 2, 1833, by the strong majority of 109 to 46, the House, which is always regarded as the special overseer of the treasury and its secretary, resolved that the deposits might be safely continued in the bank. On the following day Congress adjourned, and the President was left master of the field until the following December. In January, 1833, he had received from Wm. J. Duane an acceptance of the office of Secretary of the Treasury. June 1st Duane entered on the duties of his office, McLane having taken the State Department, from which Livingston had retired to accept a foreign mission.

During his first day of office the new Secretary was unofficially informed that the President had decided to remove the Federal deposits from the bank. To this Duane objected, and from his own statement his objection seems to have been made, first, to the impossible project, fathered by the President, of making deposits in future in State banks,<sup>1</sup> and, second, to the hasty method of removal without waiting for Congress to meet in December. He seems to have been no friend to the bank, and not anxious to have deposits made there, if Congress would relieve him of responsibility. To all his objections

<sup>1</sup> See Independent Treasury.

the President persistently replied by offering to "assume the responsibility" himself, and he seems to have been unable to understand Duane's feeling that he was sworn to exercise his own discretion, and not to shift his responsibility to the shoulders of the President. Late in July Duane incautiously promised that, if satisfactory State banks could be found in which to make the deposits, he would "either concur with the President or retire." At Cabinet meetings, September 10th and 17th, the President argued vehemently in favor of the removal, and, September 18th, he announced to the Cabinet that the removal was resolved upon for October 1st, and that he assumed the entire responsibility for it.

Under these circumstances Duane seems to have become satisfied that a resignation, for the purpose of making room for a secretary who would fulfil the President's wishes, would not be a fulfilment of the duty with which he stood charged by Congress. He therefore asked the President peremptorily "to favor him with a written declaration of desire that he should leave office," and the President, after long expostulation with the Secretary, for whom he had great liking, did so, September 23d. The same day, Roger B. Taney, the Attorney-General, was made Secretary, and three days afterward he gave the necessary orders. There was in reality no removal. The order directed government collecting officers to deposit their moneys in certain State banks, named in the order. The deposits already made in the bank were left there to be drawn upon, and fifteen months afterward nearly \$4,000,000 were still there on deposit.

Of the *economic* recklessness of the removal of the deposits, without the substitution of any efficient custodian for them, the panic of 1837 is a fair proof.<sup>1</sup> Of the strict *legality* of the removal there is less doubt than of the legality of the President's action. He was not, apart

<sup>1</sup> See Independent Treasury.

from Congress, a party to the contract between the bank and the Government; and yet, availing himself of the fact that one of his Cabinet had been appointed arbiter between the parties, he had used his power of removal to gain by indirection a control over the contract which he had not directly. But there is this to be said, and it applies to every phase of the struggle between the President and the bank: there was not room in the United States Government for both Andrew Jackson and the Bank of the United States.

Instead of following the simple and natural plan afterward adopted,<sup>1</sup> by which the whole fiscal business of the Federal Government was intrusted to the treasury, Congress had undertaken to graft a private corporation upon the treasury. The larger the fiscal business of the Government grew, the more powerful and dangerous grew this extra-governmental excrescence. The very even balance of the war between the President and the bank is of itself strong evidence of the power which the bank was able to exert in politics so early in our history as 1831-2. Had it continued to enjoy the use of the increasing revenues of the Federal Government it would have become more and more dangerous, either as the tool or as the master of a popular government, and the succeeding Administrations would have found it more and more difficult to shake off its weight.

Jackson showed more political wisdom than is usually credited to him in forcing the struggle so early. When the struggle was once begun, it became a struggle for existence, in which both parties were certain to strain every point of law in the charter and elsewhere. In such a conflict it is matter for thankfulness that the most exceptionable action on either side was a violation, not of the letter, but of the spirit and intent of the law of 1816.

December 4, 1833, Secretary Taney, as required by law,

<sup>1</sup> See Independent Treasury.

gave Congress his reasons for the removal of the deposits. Duane, who saw no reason for their removal, would have been unable to perform this office, even if the President's assumption of responsibility had been allowed by him, and this inability was the main cause of his obstinate refusal. Taney believed firmly that right and reason were conjoined in support of the removal, and he therefore argued the case, not as the mere mouthpiece of the President, but with perfect good faith. Debate upon the removal occupied the whole time of Congress, December 2, 1833—June 30, 1834. Petitions in great number were offered, most of them for the restoration of the deposits, but, beyond debate, the friends of the bank could do nothing. The President was impregnable against remonstrance or petition; the necessary majority to remove the President could not possibly be secured; and, after several months of almost constant debate, the only result was a vote of censure by the Senate. The nomination of Taney was deferred by the President until June 23d, and was then promptly rejected by the Senate. It was, therefore, a personal satisfaction to the President that, when Martin Van Buren, whose nomination as Minister to England had been rejected by the Senate in 1832, was inaugurated as President in 1837, the oath was administered by Chief Justice Taney, whose nomination as Secretary of the Treasury had been rejected by the Senate in 1834.

INDEPENDENT TREASURY.<sup>1</sup>—Until 1840 the United States Government never ventured to assume entire control of its own funds. These were left with the two corporations known as banks of the United States, 1791–1811 and 1816–36, and in other years with various State banks selected by the Secretary of the Treasury. The agreements with the State banks usually provided, 1, that they should receive all moneys collected by Federal

<sup>1</sup> In U. S. History.



receivers; 2, that they should pay at sight all drafts from the treasury; 3, that the treasury should maintain in each bank a sum, fixed by agreement in each case, as a permanent deposit, the use of which without interest should repay the bank for its trouble and responsibility. Such agreements were also made with State banks during the existence of a United States Bank but with the additional proviso that the State bank should, on request, transfer to the United States Bank, or one of its branches, any money received in excess of the amount of the permanent deposit.

These agreements were legal even during the existence of the second Bank of the United States under that clause which directed deposits to be made in the bank or its branches, "unless the Secretary of the Treasury shall at any time otherwise order and direct."<sup>1</sup> The permanent deposits amounted, in 1824, to about \$900,000 in twelve banks of the Western and Southwestern States. They were made for the convenience of the Government in localities where there was no branch of the national bank; and Jackson's "removal of the deposits" was an expansion of this temporary provision into a medium for the overthrow of the national bank itself.

The first annual message of President Jackson, in which the first vague menace to the recharter of the Bank of the United States was given, suggested the creation of a national bank whose functions and employees should be under the direct control of the Treasury Department; but this project, under the new system of dismissals from office for political reasons, would have only needlessly intensified the opposition to the Administration, and it was abandoned.

Just before the removal of the deposits in 1833, the President had suggested the employment of State banks as depositaries of revenue, and his idea was carried into

<sup>1</sup> See Deposits, Removal of.

effect by the act of June 23, 1836. It authorized the Secretary of the Treasury to select at least one bank in each State and Territory, and to order the revenue to be deposited therein. The deposit banks, or "pet banks," as they were commonly called, were to discharge all the duties heretofore performed by the Bank of the United States, were to pay in specie, and were not to issue small notes. The surplus revenue was to be "deposited" with the States, nominally as a loan.

During the whole of Jackson's second term economic changes were taking place, which were hurried by some of the results of his political warfare into a rapid and unhealthy development. The first 1200 miles of the American railway system had been built, and the steam navigation of Western waters had been begun; the number of immigrants reached 275,099 in the years 1831-7, as against 79,741 for the seven years previous; the sales of public lands had increased from \$2,329,356.14, in 1830, to \$24,877,179.86, in 1836; the payments for public lands gave employment to the notes of countless new banks, with and without capital; and the deposit of this sudden and enormous increase of Federal revenue in the pet banks stimulated them also to operations far beyond the limits of their legitimate capital. July 11, 1836, the Secretary of the Treasury issued his "specie circular," ordering Government agents to receive only gold and silver in payment for public lands.

This checked the stream of paper in its movement to the West, and turned it back upon the East; and the banks which had issued their notes so lavishly, unable to redeem them, suspended specie payments in May, 1837. The result was the panic of 1837.

As the Federal Government, whose entire resources were on deposit in the pet banks, was included among the creditors to whom payment was refused, President Van Buren, soon after his inauguration, found himself at

a loss to defray the Government's running expenses, and was compelled to call an extra session of Congress for September 4, 1837. His message at the opening of the session declared that the national bank and the State bank systems had both had a fair trial and both had failed, and that the people were now anxious to entirely separate the fiscal concerns of the Government from all banking corporations. To this end he suggested that the revenues of the Government should be left in the hands of the collecting officers, or assistant treasurers, throughout the country, to be disbursed, transferred, and accounted for to the Secretary of the Treasury, the fidelity of the agents to be secured by bonds.

This was the independent treasury or sub-treasury plan, which had been introduced into the House in 1834, by Gordon, of Virginia, and had then received but 33 votes, only one of these being given by a Democrat. President Van Buren now adopted it, against the wish of the great majority of his party, and almost the whole of his single term of office was devoted to the establishment of it.

Congress was nominally Democratic in both branches. In the Senate there were 33 Democrats to 19 Whigs (Calhoun being included in the latter), and in the House 125 Democrats to 116 Whigs. But a part of the Democrats (4 in the Senate and 14 in the House) called themselves conservatives, and opposed the adoption of the sub-treasury system as an attempt to ruin the State banks by depriving them of the funds of the Government; and in the House these conservatives held the balance of power. In the Senate Silas Wright, of New York, chairman of the finance committee, reported a sub-treasury bill which, as amended after its reception, prohibited the government agents from receiving anything but gold and silver.

This was the realization of the long cherished wish of Benton and other leading Democrats, to base the party

policy absolutely on "hard money," leaving paper entirely to the credit of State corporations and private citizens. In the States, furthermore, the advanced Democrats wished to prohibit charters for any such purpose, and to leave paper entirely to individual credit. The Whigs hoped to gain a new national bank out of the confusion; the conservatives merely desired the continuance of government support for the State banks.

The Wright bill passed the Senate by a vote of 26 to 20, and was tabled in the House by a vote of 119 to 107; evidently, excluding "pairs," which were just beginning to be recognized in Congress, the Conservative vote had been decisive in the House. In the first regular session, beginning December 4, 1837, and in the second regular session, beginning December 3, 1838, the same process was repeated, the Wright bill being passed by the Senate, and voted down by the House. The only attempts at remedial legislation by this Congress were the acts of October 16, 1837, ordering the public moneys to be withdrawn from the deposit banks, and mulcting delinquent banks in interest and damages, and of October 12, 1837, authorizing the issue of \$10,000,000 in transferable treasury notes, payable in one year with 6-per-cent. interest. The specie circular still controlled the agents of the Government, and a two-thirds majority was not available in Congress to override the veto which it was known would be laid upon any paper-money legislation. All parties were waiting for the country's decision in the Congressional elections of 1838, which proved to be the most closely contested in our history, but, while waiting, the Government, which had deposited \$37,000,000 with the States, and had claims for \$15,000,000 against banks and individuals, came so near insolvency that Congress was forced, May 21, 1838, to authorize the issue of fresh treasury notes in place of those cancelled.

In the Twenty-Sixth Congress, which met December 2,

1839, the nominal control of the House depended on the admission of the New Jersey members, and was given to the Democrats by the admission of their contestants. The balance of power, however, was now held by the few sub-treasury Whigs, whose importance was recognized by the election of one of their number Speaker, supported by the Democrats. The conservatives had almost entirely disappeared; only four of them had been re-elected to the new Congress, and these had nearly ceased their opposition to the sub-treasury.

The Wright bill was again introduced, was debated through the session, passed both Houses by votes of 24 to 18 in the Senate, and 124 to 107 in the House, and became a law, July 4, 1840, by the signature of the President. It directed rooms, vaults, and safes to be provided for the treasury, in which the public money was to be kept; it provided for four receivers-general, at New York, Boston, Charleston, and St. Louis, and made the United States mint and the branch mint at New Orleans places of deposit; it directed the treasurers of the United States and of the mints, the receivers-general, and all other officers charged with the custody of public money, to give proper bonds for its care and for its transfer when ordered by the Secretary of the Treasury or Postmaster-General; and enacted that after June 30, 1843, all payments to or by the United States should be in gold and silver exclusively.

The results of the first brief trial of the sub-treasury system, July 4, 1840–August 13, 1841, totally failed to verify the prophecies of the Whigs and conservatives. It inflicted no damage upon the State banks, or upon business at large; it did not increase the number of offices at the disposal of the President and his party, or the power of the President over the commercial interests of the country; it laid no "corner-stone of despotism"; its practical operation was much more smooth and

successful than might have been anticipated in a civil service already so far debased; and it plainly relieved the Government from any except indirect and remote consequences of suspension of specie payments by the banks, and the country from the difficulties and dangers incident to the control of a national bank by a representative body.

Its passage opened a hitherto unthought-of door of escape from a national bank so inviting that it would have been foolish for the dominant party not to have availed itself of it, and so convenient, when tried, that it would have been impossible on a fair test to induce the country to retrace its steps. Only the momentum of the Whig party proper, acquired by years of struggle for a national bank, compelled its leaders to keep up for a time a contest whose futility they were quick to perceive. The first successful execution of the independent treasury act made a national bank an impossibility with general popular consent, and completed the "divorce of bank and state," for which the President had for three years been exerting all his energy and influence.

The result must be accredited mainly to Van Buren; usually regarded as a shuffler and intriguer, he had in the midst of the most wide-spread panic yet known in America unshrinkingly and openly committed his political future to the then unpopular doctrine of non-interference by government, had forced his party to concur with him, and had finally, after three failures in as many sessions of Congress, been successful in establishing the independence of the treasury.

The election of Harrison in 1840 was accomplished by a union of all the heterogeneous elements of opposition, and by that double-faced promulgation of different policies for different sections which the Democrats imitated with equal success in 1844. Nevertheless it brought into the House a majority of Whigs whose party training

had predetermined them to one purpose, the renewal of the Bank of the United States. To this end the repeal of the independent treasury act was essential, and the repealing act was passed by votes of 29 to 18 in the Senate and 134 to 87 in the House, and became law, August 13, 1841.

The next Congress, 1843-5, although it had a Democratic majority in the House, had a sufficient Whig majority in the Senate to defeat any effort to renew the sub-treasury system. For five years after its repeal, therefore, the treasury was managed practically at the discretion of its Secretary, and with no adequate regulation by law. Where depositaries were absolutely necessary the banks of the different States were used, and the Secretary of the Treasury obtained collateral security for the deposits from such banks as were willing to give it.

Polk's election brought in a Congress Democratic in both branches. The sub-treasury system was again introduced, passed both Houses, and became law August 6, 1846. This act was essentially the same as that of July 4, 1840, and has remained in force almost unchanged. The act of February 25, 1863, creating a system of national banks, authorized the Secretary of the Treasury to make any of these associations depositaries of public money, except receipts from customs; the original sub-treasury act had provided but seven places of deposit: New York, Boston, Charleston, St. Louis, the mints at Philadelphia and New Orleans, and the treasury at Washington, the first four being under the control of assistant treasurers.

KITCHEN CABINET.—A coterie of intimate friends of President Jackson, who were popularly supposed to have more influence over his action than his official advisers. General Duff Green was a St. Louis editor, who in 1828 came to Washington and established the *United States*

*Telegraph*, which became the confidential organ of the Administration in 1829. Major Wm. B. Lewis, of Nashville, had long been Jackson's warm personal friend, and after his inauguration remained with him in Washington, as second auditor of the treasury. Isaac Hill,<sup>1</sup> editor of the *New Hampshire Patriot*, was second comptroller of the treasury. Amos Kendall, formerly editor of the *Georgetown Argus*, in Kentucky, was fourth auditor of the treasury, and became Postmaster-General in 1835. Others, besides these, were sometimes included under the name of "the Kitchen Cabinet," but these four were most generally recognized as its members.

In 1830-31 Green took the side of Calhoun against Jackson, and his newspaper was superseded as the Administration organ by the *Globe*, Francis P. Blair and John C. Rives being its editors. Blair thereafter took Green's place in the unofficial Cabinet.

The name of "Kitchen Cabinet" was also used in regard to certain less known advisers of Presidents John Tyler and Andrew Johnson, but, as commonly used, refers to the administration of Jackson. The best and most easily available description of Jackson's "Kitchen Cabinet" is in 3 Parton's *Life of Jackson*, 178.

See 6 Hildreth's *United States*, 463 foll. ; 1 von Holst's *United States*, 383; 5 Benton's *Debates of Congress*; 1 *Statesman's Manual*, 323; A. J. Dallas's *Writings*, 236 foll. ; 2 Calhoun's *Works*, 155; 3 Parton's *Life of Jackson*, 187, 272 foll. ; *Private Correspondence of Henry Clay*, 322 foll. ; Mackenzie's *Life and Times of Van Buren*, 133 foll. ; Holland's *Life of Van Buren*, 294; 2 *Statesman's Manual*, 863; Hunt's *Life of Livingston*, 370; 2 Sedgwick's *Political Writings of Leggett* ; 3 Webster's *Works*, 391, 416; 1 Benton's *Thirty Years' View* ; 11 Benton's *Debates of Congress*; the Act of April 10, 1816, is in 3

<sup>1</sup> See New Hampshire.



*Stat. at Large*, 266; the Acts to wind up the affairs of the bank are in 5 *Stat. at Large*, 8-297. See Sumner's *History of American Currency*, 160-163; 2 von Holst's *United States*, 406; 61 Niles's *Weekly Register*; 10, 11 Adams's *Memoirs of John Quincy Adams*; 2 Clay's *Speeches*; 2 Benton's *Thirty Years' View*; 14 Benton's *Debates of Congress*; 2 *Statesman's Manual*, 1345-1359; Peck's *Jacksonian Epoch*; 2 Gordy's *Political History of the U. S.*; 2 Schurz's *Life of Clay*; Sumner's *Life of Jackson*; Roosevelt's *Benton*; 5 McMaster; Meigs's *Life of Benton*.

On Removal of Deposits see H. F. Baker's *Banking in the United States*; Gilbert's *Banking in America*; Goddard's *Bank of the United States*; Gallatin's *Considerations on the Currency*; Hildreth's *Banks and Banking*; Clarke and Hall's *History of the Bank of the United States*; Moulton's *Constitutional Guide*; Gouge's *Short History of Money and Banking in the United States*; 2 von Holst's *United States*, 52; 1 Benton's *Thirty Years' View*, 373; 3 Parton's *Life of Jackson*, 498; 3 Webster's *Works*, 506, and 4: 3; 2 Colton's *Life and Times of Clay*; 2 Clay's *Speeches*; 2 *Statesman's Manual*; Tyler's *Life of Taney*; 2 Story's *Life of Story*; 11, 12 Benton's *Debates of Congress*. Duane's *Address to the People*, with his own and Jackson's letters, is in 2 Colton, 86; his *Narrative* is in 3 Parton, 509; the act of April 10, 1816, is in 3 *Stat. at Large*, 274.

On Independent Treasury see 26 Niles's *Register*, 291; 3 Parton's *Life of Jackson*, 272, 515; Sumner's *American Currency*, 114; 2 von Holst's *United States*, 174; Bromwell's *Immigration*, 174; 1 Colton's *Life and Times of Clay*, 456; 1 Benton's *Thirty Years' View*, 676; the act of June 23, 1836, is in 5 *Stat. at Large*, 52. 2 *Statesman's Manual* (Van Buren's Messages); 12 Benton's *Debates of Congress*, 506, and 13: 403; 4 Webster's *Works*, 402, 424; 3 *Whig Review*, 465; the acts of October 12

and 17, 1837, and the sub-treasury act of July 4, 1840, are in 5 *Stat. at Large*, 201, 206, and 385. Gillet's *Democracy in the United States*, 195; Schuckers's *Life of Chase*, 300; J. H. Walker's *Money, Trade, and Banking*, 81; the act of August 13, 1841, is in 5 *Stat. at Large*, 439, that of August 6, 1846, in 9 *Stat. at Large*, 59, and that of February 25, 1863, in 12 *Stat. at Large*, 696; Kinley, *The Independent Treasury of the United States*.

## CHAPTER XIX

### CALHOUN AND NULLIFICATION

**N**ULLIFICATION is the formal suspension by a State government of the operation of a law of the United States within the territory under the jurisdiction of the State. Such a suspension was attempted successfully by Georgia, 1825-30,<sup>1</sup> and unsuccessfully by South Carolina in 1832-3; but the two cases must be distinguished. In the former case, the refusal to obey the Federal law forbidding intrusion upon the Indian territory was hardly founded on any claim of right; it was rather a case of law-breaking than of nullification. In the latter case, the State power to nullify was claimed as an integral feature in American constitutional law. The success of the former attempt left the Federal Government still in a position to assert its functions in the future and to maintain them better as it gained more strength; the success of the latter would have radically altered the nature of the Union.

After the passage of the Kentucky and Virginia Resolutions in 1798-9,<sup>2</sup> the State governmental organizations were utilized as political weapons in several well-known instances of resistance to the Federal Government or its enactments. In 1809, in the Olmstead case, the State government of Pennsylvania had gone so far as to order out the State militia to oppose the mandate of a Federal

<sup>1</sup> See Cherokee Case.

<sup>2</sup> See Kentucky Resolutions.

Court; in 1809-10 the judges, governors, and legislatures of all the New England States had strained every point of law which ingenuity could suggest to thwart or hinder the restrictive system<sup>1</sup>; in 1820 Ohio had similarly opposed the operations of the branch of the United States Bank within its limits, but, in all these cases, the struggle between the State and Federal governments had been governed by the tacit understanding of both parties that in the end the State government must give way, unless relieved by some party change in the control of the Federal Government, or by the *laches* of the Federal Government in maintaining its position. In the language of John Taylor, of Caroline, the most intense of Jeffersonian nullifiers, "the appeal is to public opinion; if that is against us *we must yield.*"

The passage of the tariff of 1824<sup>2</sup> showed a disposition among Northern representatives of all parties to so arrange the duties on imports as to protect American manufactures, and this was followed by the still more protective tariff of 1828. Under a system of slave labor, in which workmen would have no incentives to skill, thoroughness, or economy, manufactures in the South were an impossibility; and Southern leaders naturally looked upon protection as a contrivance to benefit a Northern interest at the expense of the whole people.

The constitutional objections to the levying of protective duties by Congress were that, though the Constitution gives Congress power to lay and collect duties and imposts, the power is granted only for the purpose of raising revenue to "pay the debts and provide for the general welfare" of the country; that this was in its nature very different from the asserted power to impose protective or prohibitory duties, for the prohibitory system must end in destroying revenue from imports; that it was equally incompatible with the general welfare

<sup>1</sup> See Embargo.

<sup>2</sup> See Tariffs.

clause, being exercised for the benefit only of a particular interest; and that the passage of a protective system by a majority in Congress did not make it the less a violation of the Constitution.

The first to cast about for a remedy for the "tyranny of a majority" was John C. Calhoun, of South Carolina. It is strange that his failure to find the remedy in the Constitution did not lead him to suspect that the Southern labor system was at fault in the matter; on the contrary, he proceeded to coin the extraordinary and extra-constitutional remedy to which he gave the name of "nullification," borrowed from the Kentucky Resolutions of 1799, where it seems to be used in an entirely different sense. Jeffersonian nullification contemplated a concerted action of States which should, if three fourths of the States could be induced to agree in reprobating a Federal law, "nullify" it in national convention by constitutional amendment; Calhoun nullification contemplated a suspension of the law by any aggrieved State, until three fourths of the States, in national convention, should overrule the nullification.

Both ideas encouraged frequent national conventions; but it is obvious that under the latter, if one fourth of the States should support the recalcitrant State, the minority, having the initiative, would be enabled to veto any policy which should be disagreeable to it.

The substance of Calhoun's arguments for the propriety and expediency of nullification was as follows:

1. The basis of the whole was the dogma of State sovereignty.

"It is a gross error," said Calhoun, in February, 1833, "to confound the *exercise* of sovereign power with *sovereignty* itself, or the *delegation* of such powers with a *surrender* of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with

such limitations as he may impose; but to surrender any portion of his sovereignty to another is to annihilate the whole."

From this, thought Calhoun, it would fairly follow that, whenever a sovereign State became satisfied that her agent, the Federal Government, was misusing the powers delegated to it, it was the right of the State to suspend the exercise of the power delegated until it should be properly used.

A. H. Stephens thinks this use of State sovereignty, as a basis for nullification, "too subtle" for common comprehension, but the difficulty seems to have lain, for once, in a defect of Calhoun's logic. If his premise, the idea that the Union was a compact between sovereign States, were true, it might justify a State in regarding the compact as entirely at an end, if it believed the compact to have been violated or subverted by other States; but it could not justify a State in remaining in the Union, receiving all its benefits, and nullifying its laws at pleasure.

Many Southerners, in 1832-3, would have shown great respect for a direct secession by South Carolina, but regarded nullification with contempt and dislike.<sup>1</sup>

Another point in which both schemes of nullification failed to connect with that of State sovereignty was their usually tacit admission that the nullifying State should submit if its nullification failed to be supported by the national convention. In that event what was to become of the nullifying State's sovereignty?

2. Underlying all the doctrines of nullification, State sovereignty, and secession, was the notion that the Government of the United States was "one of love, not of force"; that obedience to its laws was rather voluntary than compulsory; and that general discontent with any law in any considerable section of the Union was proof

<sup>1</sup> See State Sovereignty, Secession.

positive that the law was wrong or unwise and must be altered or repealed. Of course such a system of government for human beings is an impossibility; but the idea was not confined to nullificationists, was fostered by loose expressions and by the almost imperceptible working of the national governmental machinery, and was quite general until it vanished in the fire of the Rebellion.

3. The propriety of leaving the final decision of disputed questions as to the powers of Congress to the Supreme Court was denied because the court was itself a part of the Federal Government, whose powers were in question; because very many cases were not capable of being put into form of a suit to be brought before the court; and because the court itself had taken distinct and aggressive ground against the States.<sup>1</sup>

4. The twofold *comitia* of the Roman Republic, each independent of the other and yet both uniting, by mutual forbearance and concession, in a concurrent authority, were instanced to demonstrate the innocuousness and even expediency of nullification. The instance might have been a fair one if there had been in question but a pair of States, instead of a Union; but with twenty-four States in 1830, and thirty-eight in 1883, it is not easy to calculate the geometrical progression of the difficulties which would have attended an attempt to govern twenty-five or thirty-nine co-ordinate *comitia*.

The first open assertion of nullification as a constitutional right of each individual State, that is, of Calhoun nullification, was in the adoption of the so-called "South Carolina Exposition" by the Legislature of that State. This was a report of a committee of that body, originally prepared by Calhoun during the summer of 1828.

In the following winter, 1829-30, Calhoun being president of the United States Senate, occurred the "great debate in the Senate," in the course of which Hayne, of

<sup>1</sup> See Judiciary.

South Carolina, first avowed and defended in Congress the right of a State to nullify a Federal law. His position was thus stated by Webster:

“ I understand the honorable gentleman from South Carolina to maintain that it is a right of the State legislature to interfere, whenever, in their judgment, this Government transcends its constitutional limits, and to arrest the operation of its laws. I understand him to maintain this right as a right existing under the Constitution; not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution. I understand him to maintain an authority, on the part of the States, thus to interfere for the purpose of correcting the exercise of power by the General Government, of checking it, and of compelling it to conform to their opinion of the extent of its powers. I understand him to maintain that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the General Government; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether in a given case the act of the General Government transcends its power. I understand him to insist that if the exigency of the case, in the opinion of any State government, require it, such State government may, by its own sovereign authority, annul an act of the General Government which it deems plainly and palpably unconstitutional.”

Webster's definition of nullification has been taken, rather than anything in Calhoun's or Hayne's speeches, because, though formulated by an enemy to nullification, it more exactly states it. It was not the object of the advocates of nullification to define it *exactly*; in the endeavor to establish a new feature in the American constitutional system, it would have been impolitic to lay down a limit beyond which they would not go, and to less than which they would not submit. In this instance Hayne neither accepted nor rejected Webster's definition,



but referred him to the third of the Virginia Resolutions, which claims the right for the States to "interpose." Hayne seems to have held that the legislature of a State might nullify; Calhoun held the slightly more tenable ground that nullification must be carried out by a State convention, as the highest exponent of the sovereignty of the State, and that the legislature had only to enforce the acts of the convention. It will be seen that South Carolina's nullification followed the theory of Calhoun, not that of Hayne.

That portion of the debate which related peculiarly to nullification, and which was confined to Webster and Hayne (Calhoun being the presiding officer, and not privileged to debate), took place January 20-26, 1830. Had the modern system of national conventions been in existence, the attempt would immediately have been made to secure control of a Democratic convention, and commit the party to the new doctrine, as was successfully done in the case of Texas annexation in 1844.<sup>1</sup> The best substitute known at the time was adopted; a dinner was given April 13, 1830, to commemorate Jefferson's birthday; all the leading Democrats in or near Washington were invited; and the twenty-four regular toasts were carefully drawn to suggest nullification as the inevitable result of Jefferson's political teachings.

Among the invited guests was President Jackson, who, at the end of the regular toasts, being invited to offer one, gave the since famous toast, "Our Federal Union; it must be preserved." Calhoun retorted with another: "The Union—next to our liberty the most dear: may we all remember that it can only be preserved by respecting the rights of the States, and distributing equally the benefit and burden of the Union."

Evidently, in Jackson nullification had found a lion in the way. Hitherto he had admired and liked Calhoun,

<sup>1</sup> See Democratic Party.

had regarded him as his zealous defender on several critical occasions, had given three of the six Cabinet positions to friends of Calhoun, and apparently would have had little objection to seeing Calhoun succeed him in the Presidency.

From this time he began to develop an antipathy to Calhoun, as the contriver of nullification, which other aspirants for the succession were interested in increasing. Proof was brought to the President that Calhoun had condemned, instead of defending, his course in the Seminole War. Calhoun, having been brought to account by the President, began the preparation of a pamphlet defending his own course in that affair, which was published in March, 1831; in the following month the President broke up his Cabinet, thus getting rid of the three Calhoun members of it; and from that time Calhoun, the opponent of Jackson, was regarded by the President's party very much as Burr, the opponent of Jefferson, had been in 1807.<sup>1</sup>

July 26, 1831, Calhoun published a treatise on nullification in a South Carolina newspaper, which was widely copied. It argued, as before, in favor of the constitutionality and expediency of nullification, and took the further ground that unless Congress, at the approaching session, should eliminate the protective features from the tariff, it would be advisable that South Carolina should force an issue by nullifying the law and forbidding the collection of the duties within the State. The national debt was being steadily decreased (in 1835 it amounted to only \$37,513); the total ordinary expenses of the Government were from twelve to thirteen millions of dollars (in 1831, \$13,864,067); the revenue from customs alone was about twenty-five millions (in 1831, \$24,224,441); what then, asked Calhoun, was the honest and proper course for the Federal Government to pursue upon

<sup>1</sup>See Kitchen Cabinet.

the approaching extinguishment of the debt? To continue to tax the non-manufacturing South, by high duties on imports, for the benefit of Northern manufacturers, and to expend the surplus of receipts over expenditures in a system of internal improvements which would demoralize and corrupt both Congress and its constituents? or to prevent the accumulation of the surplus by a timely and judicious reduction of the duties, and thereby to leave the money in the pockets of those who made it, from whom it cannot be honestly or constitutionally taken, unless required by the fair and legitimate wants of the Government? If the former course were persisted in, it would become an intolerable grievance, and South Carolina ought to cease to look to the General Government for relief, exercise her reserved right of nullification, and relieve herself by forbidding the collection of the obnoxious duties in her ports, and allow her citizens to supply themselves with foreign goods untaxed.

No attempt was ever made by any nullificationist to reconcile this programme with the plain direction of the Constitution that "all duties, imposts, and excises shall be uniform throughout the United States," and "that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another"; no human ingenuity could reconcile them.

Nearly all of the seven months of the following session was taken up by the consideration of Clay's tariff bill, which finally became law, July 14, 1832, the vote standing 132 to 65 in the House and 32 to 16 in the Senate. The act was to go into effect March 3, 1833. It reduced the duties on many of the articles on its list to twenty-five per cent., instead of thirty per cent., as before; but it recognized fully the principle of protection; the heavier duties were still designed for the protection of manufactures; every Southern Senator and Representative opposed to protection voted against the bill; and McDuffie,

of South Carolina, declared in debate that it increased the amount of protection to manufactures and also the burdens of the South.

In South Carolina, where this result of the winter's session of Congress had already been discounted in speculation, the next step was nullification. The Legislature was convened, October 22d, by the Governor, and passed an act calling a State convention, which met at Columbia, November 19, 1832, and passed an ordinance of nullification, November 24th.

This ordinance, 1, declared the tariff acts of 1828 and 1832 to be null, void, and no law, nor binding upon the State, its officers, or citizens; 2, prohibited the payment of duties under either act within the State after February 1, 1833; 3, made any appeal to the Supreme Court of the United States as to the validity of the ordinance a contempt of the State court from which the appeal was taken, punishable at the discretion of the latter; 4, ordered every office-holder and juror to be sworn to support the ordinance; and 5, gave warning that, if the Federal Government should attempt to enforce the tariff by the use of the army or navy, or by closing the ports of the State, or should in any way harass or obstruct the State's foreign commerce, South Carolina would no longer consider herself a member of the Union, but would forthwith proceed to organize a separate government.

The two points about the ordinance which are especially to be noted, in considering the success or failure of nullification, are, 1, that the ordinance, which was now a part of the organic law of the State, irreversible except by another convention, had declared positively that the existing duties should not be collected after February 1st following; and 2, that force in any form would be followed by secession.

A Union party, admitting the right of secession, but not that of nullification, existed in the State, but the

action of the convention was generally supported in and out of the Legislature. Simms, as cited among the authorities, gives the respective voting strength of the two parties at 30,000 and 15,000.

The new Legislature, which met in December, 1832, and was almost entirely made up of nullifiers, elected Hayne Governor, put the State in a position for war, and passed various acts reassuming powers which had been expressly prohibited to the States by the Constitution. Governor Hayne's message defended the doctrine of nullification, and declared the primary allegiance of every citizen to be due to the State. In January, 1833, the Legislature, having passed all the acts necessary to empower State officers to resist the levy of duties, to recover property seized for non-payment of duties, and to resist the mandates of Federal courts with the whole *posse comitatus*, adjourned and left the field clear for the struggle.

It is as well to group here the successive steps by which the Federal Government disregarded the convention's threats in case of the application of force, or of the harassing in any way of the State's foreign commerce. November 6, 1832, the President had instructed the Collector at Charleston to provide as many boats and inspectors as might be necessary, to seize every vessel entering the port and keep it in custody until the duties should be paid, "to retain and defend the custody of the said vessel against any forcible attempt," and to refuse to obey the legal process of State courts intended to remove the vessel from his custody. General Scott was ordered to Charleston to support the Collector, and a naval force was sent to the harbors of the State.

December 11th, the President issued his so-called "nullification proclamation." It declared the doctrine of nullification to be "incompatible with the existence of the Union, contradicted expressly by the letter of the

Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed"; but stronger than all its arguments was its warning to the people of the State:

"The dictates of a high duty oblige me solemnly to announce that you cannot succeed. The laws of the United States must be executed. I have no discretionary power on the subject—my duty is emphatically pronounced in the Constitution. Those who told you that you might peaceably prevent their execution deceived you—they could not have been deceived themselves. Their object is disunion, and disunion by armed force is treason. Are you ready to incur its guilt? If you are, on your unhappy State will fall all the evils of the conflict you force upon the government of your country."

Strong as was this language, the known character of its author added still more force to it; no man was so dull as not to understand that Andrew Jackson's "execution of the laws in the face of organized opposition" meant the utter destruction either of the President or of the opposition.

In the North the proclamation was received with almost unanimous enthusiasm; in the border States it was received more coolly, even Clay finding "many things in it too ultra" for his taste; in the other Southern States there was a certain feeling of neutrality, discontent with South Carolina, but determination that she should not be "coerced."

December 31st, Governor Hayne issued a counter-proclamation, warning the citizens of the State not to be seduced from their primary allegiance to the State by the "dangerous, pernicious, specious, and false" doctrines of the President's proclamation.

January 16, 1833, the President, in a special message, asked Congress to empower him to alter or abolish

revenue districts, to remove custom-houses, and to use the land and naval forces for the protection of the revenue officers against attempts to recover property by force. A bill to enforce the tariff was therefore at once introduced, was instantly nicknamed the "bloody bill"—sometimes the "force bill"; and the debate upon it not only overlapped the dreaded date, February 1, 1833, but lasted until the end of the month. It became law March 2, 1833.

On both of the issues which South Carolina had forced, the State had evidently been beaten. In spite of the solemn promulgation of the unrepealed ordinance of nullification, the duties had been collected as usual after February 1st; force had been applied, and yet the State had not seceded. A private "meeting of leading nullifiers" in Charleston had indeed decided, late in January, that the enforcement of the ordinance should be suspended until after the adjournment of Congress; but certainly it will not be pretended that a meeting of private citizens, even of "leading nullifiers," could have any authority to "suspend" a part of the organic law of the State. That would have been nullification in naked deformity—nullification even of State law by individual citizens. It is beyond a doubt that the ordinance would have been relentlessly enforced on the appointed day but for one consideration—the attitude of the Executive.

On the other hand, the tendency in Congress, from its first meeting in December, 1832, had been toward a modification of the tariff. Many distinct influences were at work in this direction. The rapid reduction of the debt and the probability of a surplus weighed heavily with some; many Democratic Representatives were by nature opposed to the principle of protection, had only taken it up because of their constituents' desire for it, and were now very willing to make "the crisis" an excuse for overthrowing it; the President's own influence had been

thrown heavily in favor of a revision of the tariff; and many even of those who were honest protectionists were disposed to lessen the magnitude of the crisis by sacrificing protection.

In the House the Committee of Ways and Means reported, December 27, 1832, the administration measure, usually called the Verplanck bill, which cut the duties down to the scale of 1816, giving up all the protective duties of 1824, 1828, and 1832. February 12, 1833, Clay asked permission in the Senate to introduce a compromise tariff bill. Its main features were that, after December 31, 1833, all *ad valorem* duties of more than twenty per cent. should be reduced one tenth every two years until June 1, 1842, at which date the rate of twenty per cent. should be the maximum. Calhoun, who was now in the Senate, agreed to the bill, assigning as a reason his desire not to injure manufactures by too sudden a reduction.

The bill, assured of the support of both protectionists and nullifiers, seemed certain of success, when Clay, February 21st, sprung upon the nullifiers an amendment by which duties were to be paid on the value of the goods in the American port, not in the foreign port of exportation. Up to this time the House was still debating the Verplanck bill; but, February 26th, by a vote of 119 to 81, the House passed the bill which Clay had introduced in the Senate.

Everything now rested with the Senate. The nullifiers there found Clay's amendment extremely distasteful, since the levying of duties on the higher American valuations was in itself protection, and on the last day but one of the session announced their final resolution to refuse to vote for it. The protectionists declared the nullification vote to be a *sine qua non*, and their leader, Clayton, of Delaware, moved to table the bill, acknowledging that it was his intention to kill it, and leave South Carolina and the President to decide the enforcement of



the existing tariff. Clayton was induced to withhold his motion until the next day; in the meantime he was importuned to release Calhoun at least from the necessity of voting for the Clay amendment; but he insisted upon either the whole nullification vote for the Clay amendment, or the failure of the entire bill. The next day Calhoun unwillingly voted for the whole bill, covering his retreat by an unmeaning declaration that his vote was only given on condition that some suitable method of appraisement should be adopted.

The whole bill passed the Senate by a vote of twenty-nine to sixteen, and was signed by the President March 2d. The South Carolina convention, March 16th, met and repealed the ordinance of nullification.

It cannot be doubted that the country lived for the next nine years under a progressively less protectionist tariff, nor that the reduction of the tariff was in great measure due to the attitude of South Carolina.

There is far more doubt as to whether it can be fairly said, as it has sometimes been said, that "nullification triumphed." On the contrary, it might be more fairly said that the explosion, while it stunned protection for the time, killed nullification forever. Calhoun's new constitutional scheme had aborted in every point: it had not been put in force at the appointed time; it had received no respectful recognition from the Federal Government; the President's "harassing of the State's commerce" had been followed, not by secession, but by an illegitimate and unofficial "suspension" of the ordinance; no convention of the States had been called to decide between the State and the Government; but Congress and the President, interpreting their own powers, had revised the tariff at their own discretion.

Nullification was evidently still-born, though the good nature of Congress gave an opportunity to perform the last rites of sepulture over it by formally repealing it. It

was so dead that its own parent never again ventured to hint a hope of its revivification; and when the protective tariff of 1842 was passed, neither Calhoun nor any one else suggested a nullification, but South Carolina, like other anti-protective States, quietly submitted until a change of parties brought the revenue tariff of 1846.

It is not at all certain that the final settlement of the question, however its immediate wisdom may be questioned, was not for the greatest ultimate good of the country. On the one hand, if Congress had forced the issue with the State, the question of State sovereignty and primary State allegiance would have been settled by Jackson in 1833 with the expenditure of far less blood and treasure than was expended in 1861-5. On this ground mainly, that it was not proper to yield great principles to faction, and that "the time had come to test the strength of the Constitution and the Government," Webster had refused to have any share in the remedy of a compromise tariff. On the other hand, it is equally certain that a conflict on such grounds would never have rid the South of the incubus of slavery. It was well that the conflict was postponed until State sovereignty and slavery, inextricably involved in a common purpose, should perish by a common disaster.<sup>1</sup>

See 1 von Holst's *United States*, 459; 3 Spencer's *United States*, 389; 43 Niles's *Register*; 10-12 Benton's *Debates of Congress*; 6 Calhoun's *Works*, 1 (South Carolina Exposition); Jenkins's *Life of Calhoun*, 161; 4 Elliot's *Debates*, 509; Appleton's *American Cyclopædia* (edit. 1858), art. "Calhoun"; 1 Stephens's *War Between the States*, 421; 1 Draper's *Civil War*, 453; 3 Parton's *Life of Jackson*, 433; 3 Webster's *Works*, 343; 1 Curtis's *Life of Webster*, 433; 1 Webster's *Private Correspondence*, 529;

<sup>1</sup> See, in general, Kentucky Resolutions, State Sovereignty, Secession, Slavery.

Simms's *History of South Carolina*, 420; J. A. Hamilton's *Reminiscences*, 243; 1 Benton's *Thirty Years' View*, 342; *Harper's Magazine*, August, 1862; Hunt's *Life of Livingston*, 371; 2 Colton's *Life and Times of Clay*, 223; Clay's *Private Correspondence*, 347; the tariff of 1832 and Clay's compromise tariff are in 4 *Stat. at Large*, 583, 632; the ordinance of nullification in 10 Benton's *Debates of Congress*, 30, 1 Benton's *Thirty Years' View*, 297, 43 Niles's *Register*, 219; the nullification proclamation in 4 Elliot's *Debates*, 582, 2 *Statesman's Manual*, 890; 43 Niles's *Register*, 231, 288; 2 Calhoun's *Works*, 197, 262; 3 *ib.*, 140; 5 Clay's *Works*, 392; Houston, *Nullification in South Carolina*; Burgess, *Middle Period*; Lodge's *Webster*; von Holst's *Calhoun*; Loring, *Nullification and Secession*; Schouler's *Hist. of U. S.*; McMaster's *Hist. of U. S.*; Peck, *Jacksonian Epoch*.



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