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The United States of America, Part 1

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THE UNITED STATES OF AMERICA

IN TWO PARTS

PART I

1783-1830

BY EDWIN ERLE SPARKS, PH. D.

PREFACE

The story of the United States has frequently been told. It has been told in the spirit of boasting, as a marvel of local accomplishment.

It has been told in the spirit of reverence, as the work of a chosen people under a special dispensation of Providence. Its glory has been ascribed now to one political party and now to another. Its success has been attributed to various statesmen and to different sections.

The Union has been viewed from one point as originally the creature of the States, whose powers it afterward ungratefully usurped and whose intent it wilfully perverted to its own aggrandisement. It has been regarded from another viewpoint as something inherent in the soil of a new world, manifest in various colonial functions, and brought fully to life and supremacy at the time of separation from England. An effort is made in this narrative to find truth in a medium ground; to trace the gradual evolution of a confederated republic under the laws of necessity; to acknowledge that radical departures have been made from first ideals as a result of progress; to take into constant consideration the underlying forces of heredity and environment. It will be necessary to omit many of the details commonly found in a history of the United States for the sake of considering only those centralising or decentralising factors which have aided or hindered the unification of the States. In brief, an attempt is made in these two volumes to tell the story of the *United States*; to show how the phrase "The United States is" has been slowly and unconsciously evolved in the process of time from the early practice of saying "The United States are."

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CHAPTER I

A UNION IN FORM ONLY

When did the sovereign nation of the United States begin? From one point of view, it was called into existence by the motion for Independence passed by the Continental Congress on the second day of July, 1776, when the people of the rebelling British colonies in America, by action of their representatives, assumed a free and independent position. But a motion is intangible. It is an act, of which the announcement is the visible result. "A decent respect to the opinions of mankind" prompted the Congress on July 4, 1776, to "declare the causes" which impelled it to separation. This date is accepted in the popular mind, as well as by official action, as the beginning of national existence. If recognition by other powers be assumed as the criterion, the sovereignty began in 1778, when treaties of alliance and commerce were signed with France. But if the actions indicated above were incidental steps to the commencement of sovereignty, if a general recognition by nations be necessary, together with the consent of the former owner, and a restoration of peace and order, then the real story of the United States begins on September 3, 1783. This conclusion is reached by considering fact as well as form.

[Illustration: SIGNATURES TO THE DEFINITIVE TREATY OF 1783. Original in the Department of State Washington. D. Hartey was given power by the King of England and Adams, Franklin, and Jay by the Congress of the United States. Individual seals were used.]

A few days after that date, John Adams, Benjamin Franklin, and John

Jay wrote from Paris to the president of the Continental Congress at

Philadelphia:

"On the 3d instant, definite treaties were concluded between all the late belligerent powers except the Dutch, who the day before settled and signed preliminary articles of peace with Britain. We most sincerely and cordially congratulate Congress and our country in general on this happy event; and we hope that the same kind Providence which has led us through a vigorous war to an honourable peace will enable us to make a wise and moderate use of that inestimable blessing."

Thus happily ended more than eight years of warfare and almost two years of negotiation. The disturbed conditions of war gave way rapidly to the normal condition of peace. The four European powers, which had been drawn into war by the American cause, adjusted their disturbed relations. The King of England, at the next opening of Parliament, acknowledged the loss of a portion of his American possessions. John Adams with his family crossed from France to England to represent the new nation. The archives of the republic showed treaties with France, the Netherlands, Great Britain, and Sweden, soon to be followed by similar acknowledgments from Prussia and Morocco. A national frame of government had been adopted by the new power. Peace prevailed throughout the land. Local government was established in every State. In external appearance as well as internal form the career of the independent republic of the United States had most auspiciously begun.

But the course of events was soon to dispel the illusion; to show that it was a union in form only and not in affection. Conversion from provincial colonists into liberal-minded unionists was not to be so easily effected. A feeling of true nationality must await years of growth. Confidence in each other had not yet replaced fear and suspicion. That the first attempt to come into a union could have been a success, that a sacrifice to the god Provincialism could have been avoided, seems in retrospect impossible.

This period of fear of centralisation, which began even before the close of the Revolutionary War, a time of mutual distrust, of paramount individualism, is little known and rarely dwelt upon at present. Perhaps the omission is due to a happy nature, which recalls only the pleasant events of the past. The school-texts dismiss it with a few paragraphs; statesmen rarely turn to its valuable lessons of experience; and to the larger number of the American people, the statement that we have lived since our independence under a national frame of government other than the Constitution is a matter of surprise. A writer of fiction somewhere describes two maiden sisters, one of whom had a happy and the other a melancholy disposition. In recalling the family history, one could remember all the marriages and the other all the deaths. To recall only national successes is undoubtedly most pleasant; but posterity sitting ever at the feet of History gains a more valuable lesson by including the failures of the past.

Criticism of the Confederation which our fathers framed to take the place of British rule must be tempered by the reflection that the action was taken while the land was in the chaos of war. Praise is due their genius for organisation,

inherited from the mother country, which enabled them to contemplate a new form of government while engaged in dissolving the old. The Government is dead; long live the Government. According to the intention, there was to be no interregnum in which Anarchy might rear his ugly head, and destroy existing forms and instincts of government. Unfortunately a genius for undertaking a beneficent enterprise may lack opportunity of carrying it out. The war to secure the permanence of the Government they were trying to establish produced a delay in completing the frame, and allowed the individual States to assume a headway and win the people to an allegiance, which the Union has not yet fully overcome.

In the form of British colonies, the States were well-recognised units before resistance to authority compelled the people to entrust the common defence to an irregularly formed Continental Congress. To the revolutionary central authority thus formed and acknowledged through necessity, colony after colony had turned for advice as their governors and other royal officials fled to escape popular vengeance. Over a year before national Independence was declared, the Congress had advised the colony of Massachusetts that she owed no fealty to a parliament attempting to change her charter, or to a governor who would not abide by the old compact. The people, therefore, were urged to select certain representatives. They in turn were to choose a council to act until a governor should be appointed by the King, who would consent to rule justly. Similar advice given to the other colonies resulted in the formation of State constitutions and the erection of State governments.

The States, in this peculiar manner, dated their existence from the suggestion of the Central Government, made at a time when it itself had not been regularly formed. In turn, the States were now to complete the Central Government by confederating themselves under a written document.

Great Britain, the mother country, had never possessed a written constitution, or frame of government; but the colonies were planted under written charters. Perhaps this precedent has produced the American predilection for written constitutions. Many statesmen of the colonial days had attempted a written plan of union for the colonies. Franklin had been one of these and, within three weeks after Washington took command of the American Army, Franklin presented to the Congress certain Articles of Confederation creating "The United Colonies of North America." The federation was intended to be temporary in case the colonial grievances were redressed, but otherwise permanent. The proposition was unheeded at the time but was recalled nearly a year later by one part of Richard Henry Lee's famous motion for Independence.

A committee was to be appointed "to prepare and digest the form of a confederation to be entered into between these colonies." The importance of the task was indicated by the fact that the committee was composed of one member from each of the colonies represented, while the committee, appointed at almost the same time, to draw up a declaration concerning independency, had only five members. On July 12th, the former committee brought in a draft of thirteen Articles of Confederation, by common consent ascribed to John Dickinson, but evidently based on Franklin's draft of a year before. This is indicated by the style and form, although the details differ in many particulars.

Eighty copies of these proposed Articles were ordered printed for the use of the members, extreme secrecy being enjoined upon all concerned.

These steps toward a national government were taken, it must be remembered, in the midst of a war. The nascent nation had never experienced the duties which peace places on a government; it was familiar only with the requirements of war. The main idea running through the Articles as reported by the committee was a "union for the common defence." The general welfare found no place. The activities of government were confined almost exclusively to conducting a foreign war. The Central Government was authorised to declare war, make peace, and send ambassadors. It had charge of appointing high officers of the State armies, of judging prizes in war, of trials for piracy, and of granting letters of marque. Its few peace functions embraced the postal service between the States, regulating Indian trade, issuing bills of credit, determining the national and State standard of coins, and assessing quotas of expense on the States. Conversely, the States were forbidden to perform these national acts.

Remembering that the Articles were framed to meet the exigencies of war, and considering the condition of public sentiment at the time, one finds it difficult to conceive how any other form of union could have been secured. Individualism was in the saddle. Engaging in war to resist the encroachments of a centralised government and smarting under the actions of a body in which they were not represented, the people would naturally resolve to retain the control which the rebellion had thrown into their hands. Distributed power must never be centralised again. Liberty was closely associated with individualism. A majority was no safeguard. Reaction from a centralised monarchy had evidently swung public sentiment to the other extreme, resulting in a decentralised confederacy.

As implied in the name, this Continental Congress had been called together originally as a consulting body for the thirteen distinct colonies. When the war forced the second session into making laws, the name should have been changed to "Parliament"; but, in the chaotic condition of affairs and the very gradual assumption of sovereignty, a change in name went by default. Although the Congress became a parliament in form, its members never so regarded it. They still served their sovereign States in a national body, consulting and providing for the common defence. They had no

desire to make a modern union at the time they formed the Confederation. This is evidenced by the preliminary statement of the Articles that each State retained its sovereignty, freedom, and independence. In this view, "a firm league of friendship," the phrase used to describe the nature of the Confederation, is exact and appropriate. It formed a league of individual units, such as the separate colonies had been, "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."

This individualistic tendency was manifest in the workings of the Articles. Franklin's plan provided for an executive council of twelve, appointed by Congress from its own numbers. Instead of this arrangement, the Articles allowed the consulting Congress to retain all the executive powers which it had gradually assumed. Fear of delegating authority to any kind of executive, lest the action might lead eventually to another king, was responsible for this mistake. Retaining also the legislative powers, which it had assumed, and such judicial powers as had arisen from the adjudication of prizes appeals, the Congress would monopolise all the functions of the National Government. It would probably continue to consult and recommend, and do nothing more. It had a president, chosen by itself from its own number; but he was simply an officer to preside over the sessions.

In voting in Congress, each State was given one vote, being considered a unit. In declaring assessments, Congress dealt with the individual States and not the people. Congress was authorised to make an estimate of the value of land and improvements in each State for proportioning expenses; but the matter was left to the States and never done. In an elaborate plan for adjudication between States in the numerous boundary disputes, Congress again dealt with the States as units. The central authority would nowhere come into contact with citizens of the States.

It had no way of gaining their respect, their gratitude, or their allegiance. It apparently dealt with them in the provision guaranteeing citizens of each State all their rights in the several States; but if a State transgressed on the rights of citizens of another State, the Confederation could only complain and protest. It had no power of punishment or coercion.

One of the chief disagreements over the Articles, as they were considered by Congress, arose from the conflicting claims to the land lying between the Alleghany Mountains and the Mississippi. The claims put forth by Massachusetts, Connecticut, Virginia, the Carolinas, and Georgia, that their charters extended interminably into the land, were resisted by New Hampshire, Rhode Island, New Jersey, Pennsylvania, and Maryland, whose western boundaries were distinctly defined. New York put forth a claim for the Ohio valley, based on an Indian treaty. It lay athwart the claims of some of the other States.

Virginia's assertion that the "South Sea" mentioned in her charter as her western limits entitled her to the land as far west as the Pacific, if British authority should ever extend so far, was declared preposterous by delegates from other States who looked upon the land between the Alleghanies and the Mississippi as a valuable common asset, if the war should terminate favourably to their cause.

"Every gentleman," said Wilson, of Pennsylvania, in debate, "has heard much of the claims to the South Sea. They are extravagant. The grants were made upon mistake. They were ignorant of geography. They thought the South Sea within one hundred miles of the Atlantic Ocean. It was not conceived they extended three thousand miles. Lord Camden considers the claims to the South Sea as what can never be reduced to practice.

Pennsylvania has no right to interfere in these claims, but she has a right to say that she will not confederate unless those claims were cut off."

On the other hand, Virginia and the States having these western claims had sufficient influence in the Congress to strike out every proposed clause attempting to restrict the western limits; but they could not prevent the regulation of trade with the Indians not inhabiting a State being handed over to the proposed Confederation. This was the initial step in national regulation of western affairs.

Since the Congress in this new form was to be the sole visible agency of the National Government, possessing the legislative, the executive, and even such judicial powers as the Confederation possessed, representation in it had to be most carefully considered. The committee had provided that in determining questions the present method should be continued which allowed each State to have one vote; and in vain did the advocates of representation according to population plead against it. Franklin pointed to the effects of unequal representation in England and begged that the new Government might be started aright.

"Let the smaller colonies give equal money and men," said he, "and then have an equal vote." His fellow-delegate from Pennsylvania, Dr.

Rush, added the voice of prophecy when he declared that the States ought to represent the whole people; and that each State retaining one vote would tend to keep up colonial distinctions.

"We are now a new nation," said he. "Our trade, language, customs, manners, don't differ more than they do in Great Britain. The more a man aims at serving America, the more he serves his colony. We have been too free with the word independence; we are dependent on each other, not independent States. I would not have it understood that I am pleading the cause of Pennsylvania. When I entered that door I considered myself a citizen of America."

Truly here was the voice of unionism crying in the wilderness of individualism. It is the sentiment of a century later.

The advocates of equal State representation had the advantage of precedent and of present practice. The large States had won in retaining their claims to the western lands. It was now the turn of the small States. In the final vote on representation, the four large States of Virginia, Massachusetts, Maryland, and Pennsylvania, containing over one-half the entire population of the thirteen States, were outvoted by the five small States of New Hampshire, Rhode Island, New Jersey, Delaware, and Georgia. The State and not individual voting was to continue in Congress. The medium-sized States of Connecticut, New York, and the two Carolinas, showed a "disinterested coolness" in the matter.

Few took so gloomy a view of such an arrangement as did John Adams, who predicted that within ten years the Articles would be found as weak as a rope of sand in holding the people together.

Being one of the chief causes of the Revolution, the power of direct taxation was a very sensitive point. To avoid this, the pernicious system of assessing quotas on the several States was continued. It was derived from the colonial custom, and might be expected to produce as little revenue and as much discord as it had done in those days. The Articles as adopted by the Congress were an improvement upon any effort of the kind previously attempted; but the results likely to follow the withdrawal of the pressure of war and the return of decentralising peace might easily be predicted.

Having at length been agreed to in the Congress, the Articles were sent to the several State Legislatures to be accepted or rejected.

Although popular conventions had come into use in forming the various State Constitutions, the Congress maintained its early diplomatic and consulting nature by dealing with the State Legislatures instead of popular conventions. The members of Congress were too well aware of the many defects in the new frame to hope that it would be speedily adopted. In the official letter which accompanied it to the State Legislatures, they confessed that the business of coming into the national agreement had been attended with uncommon embarrassment and delay.

"To form a permanent union," said the address, "accommodated to the opinion and wishes of the delegates of so many states, differing in habits, produce, commerce, and internal police, was found to be a work which nothing but time and reflection, conspiring with a disposition to conciliate, could mature and accomplish. Hardly is it to be expected that any plan, in the variety of provisions essential to our union, should exactly correspond with the maxims and political views of every particular State."

As rapidly as the State Legislatures adopted the proposed plan, they were to notify their delegates in Congress to sign the document, thus formally entering the Confederation. It was provided in the Articles that they should not go into effect until signed by every State. Neither could they be amended without unanimous consent. These unfortunate provisions were due to the tender regard which prevailed at the time for the rights of the individual. "Government proceeds from the consent of the governed" was interpreted by many enthusiasts to mean the consent of every individual and not simply the majority. These Article days mark not only the ultimate point of the fear of centralisation, but also the greatest solicitude for the individual. Even in Congress, where delay in legislation might be hazardous, no important action could be taken by a majority, but the consent of nine States must be had.

The required unanimity of ratification kept the Articles for nearly three years awaiting action by all the State Legislatures, while the people gradually lapsed into that lawlessness which a civil war always brings in its train. The war itself contributed in no small degree to the delay. When a State was invaded by the enemy, help was needed, and the confederation feeling ran high; but the civic machinery, disturbed by war, could not be made to serve the purpose of ratification. When the tide of war swept on, and the State was relieved from immediate danger, the old feeling of local importance returned, individualism revived, and the union feeling waned.

The Legislatures of seven States in ratifying thought they could improve the Articles in certain particulars. Some wanted a test oath applied to all national officers; others would have wealth as a basis of apportionment simply a trial arrangement; and still others would remove the requirement that nine States be represented in Congress for the consideration of certain matters. New Jersey had the clearest vision of all.

"We are of the opinion," said her Legislature, "that the sole and exclusive power of regulating the trade of the United States with foreign nations ought to be clearly vested in the Congress, and that the revenue arising from all duties and customs imposed thereon ought to be appropriated to the building, equipping, and manning a navy, for the protection of the trade and defence of the coasts, and to such other public and general purposes as to the Congress shall seem proper and for the common benefit of the states."

Neither this nor any of the forty-six amendments thus proposed by the States was adopted by the Congress. The Articles stood as first adopted until their overthrow.

Maryland, for reasons to be given hereafter, was the last State to consent to the Articles. On March 2, 1781, the legal government of the Articles of Confederation took the place of the illegal revolutionary government, which had existed by common consent since 1776. A few guns were fired, and flags displayed, but there was nothing to show the change. The United States Congress, as it came to be called, was the chief evidence of the Federation. Its actions were now justified by a written agreement among the States and its powers definitely prescribed. Otherwise affairs continued as before. The war was still the engrossing business.

The Articles were in reality only a general treaty between thirteen sovereign States occupying contiguous territory and pledging themselves mutually to resist any attacks made upon them. Such a plan might have been practicable, if the States had occupied thirteen islands, each using a different language, and each producing sufficient to satisfy its inhabitants, so that trade and communication need never have become necessary. As it was, the framers failed to appreciate the force of geographic contiguity. They believed that they could create and maintain a kind of central clearing-house for national needs, giving to it only the duties of declaring war and peace, managing ambassadors, making treaties, establishing prize courts, managing the post-office, and commanding such land and naval forces as might at any time be necessary.

Regardless of the expanding laws of growth, they thought the central authority could be confined to these stated activities.

[Illustration: TITLE-PAGE OF A COPY OF THE ARTICLES OF CONFEDERATION.

This copy was printed in 1777, the year the articles were proposed by the Continental Congress to the several States to be ratified.]

Compared with the present National Government, which a different plan and a liberal interpretation for a century have conspired to bring about, the Articles of Confederation presented some strange anomalies of administration. The Federal Government could declare war, but could not enlist soldiers. It could only call upon each State to furnish its proportion. If, as was likely to happen, any particular portion of the country was threatened by an enemy, Congress might call for an extra number of soldiers; but the State Legislature might judge how many could safely be spared from the service of the State. The National Government could not even appoint its own officers below the rank of colonel. It could make peace, but, in order to secure a successful end to a war, it could not collect a dollar for expense, except as each State graciously consented to pay its share. It could make a treaty with another sovereign, but could not compel its own subjects to obey the terms of the treaty. It could send an ambassador to a foreign Court, but had to turn to the States for money to pay his salary. It could regulate prizes and subdue piracies on the high seas, but had no control over goods entering its own ports. At the close of the war, it could gratefully vote a monument to General Washington to be erected at the seat of government, but could not secure enough money to erect it.

The National Government under the Articles of Confederation could destroy the commerce of an enemy, but could not retaliate upon the products of an unfriendly rival in time of peace. It could regulate the alloy and value of coins, but could not keep a State from issuing waggon-loads of paper money, destined to depreciate and to disturb its own finances. It could make laws within certain limits but could not enforce the least of its decrees. It pledged its faith to discharge all debts contracted by the Continental Congress, but it could not collect a sixpence with which to do it. The States entering the agreement promised to refrain from inter-alliances and foreign treaties, from making war except against Indians or pirates, and from keeping standing armies or vessels of war; yet if a State broke one of these stipulations, no provision was made for punishing it. Although any State could levy impost duties on goods coming into it from another State the same as from a foreign country, thereby engendering endless dispute, the Central Government had no court or other means of settling such contentions or of getting redress for individuals.

With such false conceptions of the relations between individualism and unionism, with a national frame foredoomed to failure, with the distracting situations of the war still upon them, the people of the United States attempted in 1783 to take that stand among the nations which they declared God had given them. At once they came into contact with the habits and precedents of old and well-established governments.

Diplomacy is not a game for amateurs. Fortunately a decade was to elapse before a European crisis would call attention to the new-comer as a possible pawn in the game. Their first introduction in the character of solicitors for aid had not been auspicious. The process of securing this aid had gained for them a treaty with France and indirectly with Holland; but Spain, more suspicious of the new nation because of the proximity of her Floridas and Louisiana to them, still dallied with their advances. England, compelled to make a treaty to close the war, refused to do more. Sweden, Prussia, and Morocco were of insufficient maritime importance to make the treaties with them a cause for rejoicing.

Admission to full membership and to an equal share in trade did not follow necessarily from these first greetings. They could be gained only by proof of fitness and even compulsion. The applicant must make a place for himself. Sentiment plays no part in the rivalry of nations.

Self-preservation is the prime law.

John Adams, conscious of his prominent part in the rebellion, militant in his ideas of republicanism, elbowed his way into the Court of St.

James as the first representative of the former British possessions.

He was distressed, as he wrote to Livingston, Secretary of Foreign Affairs, at being obliged to consume the labour of his fellow-citizens upon the foolish ostentation of a Court presentation. Anxious concerning the reception which he would meet from representatives of other nations, he was relieved to find that custom required them to call first upon a new-comer. "We shall now see," he wrote, "who will and who will not."

As a whole, his reception by both Court and diplomatic corps was satisfactory, especially the courtesies shown him by the King. But he was chagrined to find what a small impression the birth of his country had made on British memory and British policy. Political independence had been allowed, but commercial independence was denied. No treaty of commerce could he add to the existing treaty of peace. The West India ports remained closed to American trade. Pitt's bill to annul the Navigation Acts so far as they concerned the United States was dropped in Parliament. It was feared to put the Americans on the same footing as European nations, lest they might be able to retain the trade which they had enjoyed as British colonists. Certain additional restrictive measures were put into force. "Our trade was never more completely monopolised by Great Britain when it was under the direction of the British Parliament," Madison complained to Monroe.

Neither would Britain grant the new sovereign power the courtesy of sending a Minister in return for Adams.

"At present," Lord Sheffield advised in his book on *Observations on the Commerce of the American States*, which passed through several editions, "the only part Britain should take is most simple and perfectly sure. If the American States choose to send consuls, receive them, and send a consul to *each State*. Each State will soon enter into all the necessary regulations with the consul and this is the whole that is necessary."

This gentle insinuation that the Confederation had no force and the suggestion of uncertainty whether the new nation consisted of one or thirteen powers contained too much truth to be pleasant to the Americans.

Mrs. John Adams, exchanging the social station accorded her in Braintree, Massachusetts, for the diplomatic colony at London, found herself of little service in aiding her husband's social standing. She shared his Americanism. She wrote home that she had never seen an assembly room in America which did not exceed that at St. James in point of elegance and decoration, and that the women of the Court, in all their blaze of diamonds set off with Parisian rouge, could not match the blooming health, the sparkling eye, and modest deportment of the dear girls of her native land. When presented to the King, she declared that her reception stung her like an adder, although His Majesty was kind enough to salute her cheek. She thought Queen Charlotte rather embarrassed and Mrs. Adams confessed to a disagreeable feeling.

Yet the Queen simply inquired whether Mrs. Adams had gotten into her new house and how she liked it. Years after, Mrs. Adams confessed that the humiliation of Queen Charlotte was no sorrow for her. Three years of neglect could not be readily forgotten or forgiven.

"Nothing but retaliation, reciprocal prohibitions, and imposts, and putting ourselves in a posture of defence," the American Minister informed his Government, could make an impression on England. National action along any of these lines was impossible, because each State had control of its own commerce. Individual retaliation was a burlesque.

Virginia at one time placed a tonnage duty on British vessels four times that charged French and Dutch traders with whom the United States had treaty arrangements. British vessels simply avoided Virginia ports and sailed freely into those of other States. "When Massachusetts set on foot a retaliation of the policy of Great Britain," wrote Madison, sending the news to Jefferson in France, "Connecticut declared her ports free. New Jersey served New York the same way. And Delaware, I am told, has lately followed the example, in opposition to the commercial plans of Pennsylvania." Many similar cases might be cited.

Some wag likened such efforts to a man who plugged up most carefully the worm-holes in one end of a cask and knocked the whole head out at the other end.

Fully three-fourths of all shipping to be seen in American ports flew the British flag; yet American vessels could bring only

American goods into British ports. American ships were positively forbidden to trade in the British West Indies, and American vessels sold in England could not be used in British colonial trade. Under these circumstances, John Adams became convinced that nothing but a complete change in the form of the American National Government, giving over the control of commerce into the hands of the Confederation, would be of avail in bringing Britain to terms. As the end of her husband's mission drew nigh, Mrs.

Adams declared that she would quit Europe with more pleasure than she came to it, and uncontaminated, she hoped, with its manners and its vices. She attributed the ill success of her husband's efforts to the lack of concord at home; to the debts which her countrymen had contracted in Europe and were unable to pay; to the expectation in England that prohibitory acts and heavy duties would bring the Americans back to British allegiance; and to the calumnies circulated by the Tory refugees in England. Their departure was marked, in the opinion of John Adams, by a dry decency and a cold civility, which made him feel, in breathing the air of his own country again, as if he had just escaped from prison.

CHAPTER II

THE PROBLEMS OF THE BACK LANDS

The ease with which the American domain had been permitted to extend to the Mississippi in the peace negotiations with Great Britain did not mean a freedom from future anxiety concerning the "back lands,"

lying to the west of the thirteen States. The entire domain contained about 827,000 square miles, inhabited by about three million people, very unequally distributed. Population was most dense near the coast and gradually shaded off toward the interior. The front wave of civilisation may be located by an irregular line passing through central New Hampshire, skirting Lake Champlain, narrowing down to the Mohawk valley, and across north-western New Jersey, whence it turned due west across the mountains in a long arm reaching to Pittsburg. Retreating to the Shenandoah valley, it descended to central Georgia and thence to the sea. An "island" of people was to be found in central Kentucky and another in north-central Tennessee. A great tract of vacant but desirable land, comprising probably three-fourths of the domain, stretched from within two hundred miles of the seacoast to the distant Mississippi River. Barring a few French villagers, it was inhabited only by savage men and beasts.

The lack of co-operation among the colonies in managing the Indians had made a lasting impression. During the Revolutionary War, the Congress gradually assumed the management of the savages to keep them from serving the British forces. This was especially true of the tribes dwelling beyond the recognised limits of the thirteen States. The State Governments readily consented to allow the central body a large control in this matter, because it meant so much for the common defence. The British method of Indian agents and commissioners for different geographical departments was adopted by the Congress, the whole being placed under control of the Department of War. The National Government thus came into control of the savages who inhabited the vast trans-Alleghany region. The thought naturally followed that it should be given control of the land itself, if it were to manage the savages successfully.

Following the war, commissioners and agents complained that they could not get the confidence and trade of the Indians of the Northwest, because of the influence of the British troops remaining in the forts, in that quarter. According to the stipulations of the treaty of peace, the forts located on the American side of the boundary line were to be evacuated. There were some half-dozen of these posts, ranging along the international line from Michilimackinac at the head of Lake Huron, to Dutchman's Point, near Lake Champlain. The number of troops in each was not sufficient to cause any fear of invasion; but their presence produced an uncertainty in the Indian mind whether the control was still with the British or had passed to the United States. The fur trade, which should have passed through the States, was diverted to Canada along the old lines.

Instead of vacating, the troops went out from some of the forts and built additional new posts on American soil. "The Great Father across the Waters," said a chief, when returning an unsigned treaty to Col.

Harmar, "has not given this country over to the Thirteen Fires." Knowing the former predilection of the Indians for the French, the services of Lafayette were enlisted, prior to his return to France, in addressing a council on the frontier of New York to enlighten the natives concerning their new allegiance. It was felt that all efforts would be of no avail until the British were removed. To all American protests, the British Government replied that the posts would not be evacuated until the Americans had fulfilled their part of the treaty concerning the debts owed to British merchants.

[Illustration: THE OLD BLOCKHOUSE AT MACKINAC, 1780]

At the beginning of the Revolutionary War, large sums had been due British exporters and factors by American planters and traders, because of the commercial system in vogue at that time. The war gave excuse to unscrupulous debtors to withhold payment. Associations were formed in many communities to adopt this form of retaliation, although discountenanced by the better classes. At the close of the war, it was said that there was not sufficient money in circulation to discharge these long-due obligations. Jefferson estimated the debts due British merchants in Virginia alone at thirty times the amount of money in circulation in the State. Many States had passed stay laws against executions to recover such debts and had thrown other legal obstructions in the way of the British creditors. Claim was made not only for the original amount of the debts, but for back interest as well. The American merchants rejoined that they could pay neither principal nor interest until they had been compensated for their slaves carried away by the British Army and the Tories at the end of the war and contrary to the terms of the treaty of peace. The labour of these slaves, they said, would enable them to pay the debts.

Undoubtedly American statesmen wished to sustain inviolate the provisions of the treaty, not only by preventing the States from interfering with the collection of valid debts, but also by protecting the Loyalists or Tories, as the treaty

demand. The English negotiators, having small experience with a Confederation, supposed that the clause in the treaty binding Congress to recommend actions to the several State Legislatures was equivalent to a warrant. It was agreed that the privilege should be granted to any person to go into and remain twelve months in any part of the United States to regain his property by law. The treaty provided further that Congress would recommend to the States the restoration of all property to former owners upon payment of the bona fide price which the present possessors paid for it after confiscation. The treaty also implicitly promised that there should be no more confiscations or prosecutions. The several provisions for the alleviation of these Loyalists indicate slightly the misfortunes into which their action brought them. Their treatment both officially and by the mob has been described by some foreign writers as the darkest page in American history. But they had choice of sides in the issue. Granted that they supposed they were right in upholding government against rebellion; yet the law of consequences accepts no excuse for over-conservatism. He who fails to keep step with the march of events falls behind and suffers the consequences.

The Loyalists were on the losing side and suffered the common fate of the conquered.

War is abnormal. It undermines ideas of justice prevalent in time of peace. Thus it came about that the treatment of the Loyalists reacted unfortunately on the patriots. They had harried the royal sympathisers out of the land. They had grown accustomed to using force and could not readily return to law-abiding methods. They would not obey even the provisions of a national treaty. The Articles of Confederation, under which they were attempting to live in concord, kept a State from laying a duty which would interfere with the proposed treaties with France and Spain. Otherwise there was no compulsion aside from the moral obligation attached to a treaty. However, John Jay, Secretary of Foreign Affairs, acting in the capacity of an Attorney-General, rendered an opinion that no State according to the Articles could disobey or even interpret the provisions of a national treaty. Congress adopted resolutions to the same effect. But without coercive power, resolutions of Congress were idle as the wind. Jay confessed to Jefferson in France, his fears that "some of the States had gone so far in their deviations from the treaty that I fear they will not easily be persuaded to tread back their steps." He also stated his conviction after investigation that there had not been a single day since the treaty had been signed in which it had not been broken by some State. Washington also testified to the helplessness of Congress by saying, "If you tell the Legislatures that they have violated the treaty of peace, and invaded the prerogatives of the Confederacy, they will laugh in your face." In this manner, a series of unfortunate diplomatic complications turned upon the British possession of the American forts along the frontier.

Nor was the impotence of the new nation exhibited toward England only in the western country. Because it drained almost the whole of the great inland valley, forming with its tributaries a network of ready-made highways, the Mississippi River assumed an importance to the trans-Alleghanian settlers which is lost in these days of artificial means of transportation. As Madison once said, "It is the Hudson, the Delaware, the Potomac, and all the navigable waters of the Atlantic States formed into one stream." It is true that the freedom of navigating the Great Lakes and the St. Lawrence was secured to these western people by the Treaty of 1783, but these ways to the sea were closed by ice during a portion of the year and were impeded by falls.

The lower Mississippi, on the other hand, had neither of these obstructions to navigation. Near its mouth was the city of New Orleans, where ocean vessels lay ready to receive western products. The current made easy the voyage thither. For twenty years the traditionally easy-going Spaniard had held the mouth of the river, placing severe restrictions upon foreign traders, but too indolent to enforce them.

Great Britain and the United States had ignored Spain when they declared in the treaty of peace that the Mississippi, from its source to the Gulf, should remain for ever free and open to citizens of both countries. Perhaps because she was disappointed in not getting a portion of the middle valley away from the Americans in the course of the peace negotiations, Spain soon began to show that she was at least mistress of the lower part of the river. Just where her dominion began was uncertain. During the war, a Virginia captain raised his colours on the Mississippi a few miles above Natchez. A Spanish commandant buried a box near the same spot with the colours of his sovereign as a token of possession. After 1783, the flatboatmen, who adventured down the river with loads of tobacco, flour, or planks, seeking a market at New Orleans or adjacent settlements, found at the Walnut Bluffs, about ten miles below the mouth of the Yazoo River, a post of Spanish customs guards. These bade them lower their flag and put themselves under the protection of the governor of Natchez before proceeding. If the goods escaped paying a duty at this place, they were examined a second time when they reached the group of about one hundred houses, crowning the bluff, which constituted the city of Natchez. On a prominent point, commanding a view of the river for many miles, stood the governor's palace and the fort, at which were usually stationed about a score of Spanish troops.

The hardy frontiersmen, who escaped the perils of navigating the river as far as Natchez, bore the inspection and frequent seizure of their goods as a great hardship and unwarrantable action. Scarcely had trade opened after the war before Congress received a complaint from one Fowler that his flatboat loaded with produce for the New Orleans market had been seized for refusal to pay duties at Natchez. A few months later, Thomas Amis, a North Carolina trader, reported the seizure of his stock at the same point, consisting of 142 Dutch ovens, 53 pots and kettles, 34 skillets, 33 cast boxes, 3 pairs dog irons, a pair of flat irons, a spice mortar, a plough mould, and 50 barrels of flour.

Complaints of some of these seizures officially reached Congress.

Countless tales of other infringements upon American rights on the lower Mississippi were told among the settlers along the western slope of the Alleghenies, arousing them to the conviction that they were being sacrificed by the commercial interests of the Atlantic plain who wished to preserve a profitable trade with Spain. Gardoqui had arrived at the seat of government in 1785 as the first representative of the Spanish King. He was determined, as he said, to make the lower Mississippi a "bone of contention" in negotiating the long-delayed treaty with the United States. Not much agitation on his part was necessary. The western people were wrought up to the determination to take matters into their own hands, if necessary, to procure an outlet to Europe for their goods. The rumour that Jay, Secretary of Foreign Affairs, had approved to Congress the suggestion of Gardoqui, that the river be closed for ten years as the price of a commercial treaty, drove them to the point of forcible resistance. The Spanish also continued to occupy posts on the American side of the Florida boundary line, but this was a grievance only as they were accused of arousing the Indians to hostility against American settlers. In truth, these western pioneers formed a long arm of people thrust out between Indians under British dominance on the north and Indians under Spanish control on the south.

Believing themselves outside the pale of eastern protection, the western people entertained various projects for self-preservation. George Rogers Clark, whose daring Virginia expedition into the Illinois country had gained him fame in the Revolutionary days, placed himself at the head of a volunteer company which called itself the "Wabash regiment,"

and had been recruited in Kentucky for an expedition against the Shawnee Indians. Clark had degenerated through intemperance into a kind of border freebooter. Turning his troops from the original purpose, he seized the goods of the Spanish traders at Post Vincennes as a retaliation upon the Spanish, and prepared to descend upon New Orleans.

Congress was compelled to take strong measures for disbanding his followers and making amends to Spain. A short time after, another Kentuckian was at Vincennes organising men to drive out the Spanish and make a settlement at Natchez, presumably inside the limits of Georgia. "Ireland is a free country to what this will be when its navigation is entirely shut," he wrote to the governor of Georgia in unfolding his scheme. An emissary was sent through the Illinois French settlements to describe the Spanish outrages on the lower Mississippi.

Seditious papers were circulating in Kentucky and in the revolutionary State of Franklin. "In case we are not countenanced," said one of these documents, "and succoured by the United States, our allegiance will be thrown off and some other power applied to. Great Britain stands ready with open arms to receive and support us." One adventurer assured Gardoqui that fifty thousand men would be in arms in the western country to get their commercial rights.

Even a more efficient government than a Confederation would have experienced difficulty in overcoming these decentralising effects of the Allegheny Mountains, before improved methods of transportation had annihilated the barrier. The people along the Atlantic Ocean and those in the Mississippi valley lived really in two parallel north and south plains, having easier outlets through foreign countries and therefore more points of contact with them than with each other. Although obscured by the later north and south sectionalism, this east and west difference for many years caused a fear in the older portion that the newer or valley part would secede from it. This fear began with the troubles over the navigation of the Mississippi, it was renewed by Genet's intrigues, it reached its climax in Burr's expedition, and it subsided only when railways and canal transportation had levelled the mountains and thereby lessened the importance of waterways.

European strategists made ready use of the isolated condition of the western people, not always with the object of absorbing them, but rather of using them in the great game of territorial acquisition played so many times on the American board. For instance, in 1787, the French Minister to the United States forwarded to his Government a document presented to him, evidently by a native of France residing in America, which described the extent of the Mississippi valley and the dissatisfaction of its inhabitants. The paper asserted that the people beyond the mountains

"seek for a new support and offer to the power which will welcome them advantages which will before long effect those which America, as it now is, could promise.... It requires a protector; the first who will stretch out his arms to it will have made the greatest acquisition that could be desired in this new world. Fortunate my country if she does not let this moment escape, one of those not presented twice."

A year or two later, the British consul at Philadelphia was suggesting to his Government the use of the western settlements of the United States in an expedition to be made against Spanish New Orleans. These frontiersmen would co-operate, he thought, in any measure that might tend to secure them a free trade which the uninterrupted passage of the Mississippi would effectually establish. He pronounced them a hardy race, adventurers by profession, and ready to seize every opportunity of profit or employment. They were described in a project for using them presented at another time to the French Government as "hardy, enterprising, good marksmen, lovers of liberty, and always armed."

The extent to which the western people were prepared to go in the Confederation days was a matter of much dispute, and was aired fully in the course of time by controversies in Kentucky politics. But their hardihood and capacity for

achievement have never been questioned.

They were qualified by nature to insist upon their rights even if such insistence embarrassed the foreign negotiations of the home Government.

Bred in the rural districts of Virginia and the Carolinas, accustomed to solitude and privations, depending upon their rifles for food and largely for dress, they felt no ties binding them to home and the old life when once they had crossed the mountains. They were self-dependent in nearly every particular except arms and ammunition. Carrying the organising instinct of their English forefathers, they set up local government as rapidly as their numbers warranted. To be held as colonists by the States to the eastward of the mountains was contrary to that spirit of inherited freedom which had already made those States out of colonies. Just at the dawn of the Revolution the colonisation of the far-famed "blue grass" region of Kentucky had begun, when Daniel Boone led the Transylvania Company from North Carolina to found Boonesboro. Although the independent government which this company erected was suppressed by the governors of Virginia and North Carolina, the movement could not be stayed. A few years later, these Kentuckians, increased in numbers by the enormous migration thither, were holding secession conventions which Virginia thought wise not to resist. North Carolina repressed with some effort the independent State of Franklin, or "Frankland," the land of the free Franks, as it was first called, which John Sevier and other hardy spirits set up in what is now eastern Tennessee.

While these attempts to create independent States in the remote regions are now praised as evidences of the organising instinct of the American people, it must not be forgotten that at the time they were formed within the legitimate bounds of regular States and seriously threatened to impair their domains. The domain of a State is regarded as one of the most inviolable attributes of its sovereignty. The third Article of the Confederation bound the States to assist any of their number against attacks made upon its sovereignty. Not only were the States of Virginia and Kentucky threatened with the loss of territory through insurrection. The "Green Mountain boys," headed by Ethan Allen, had succeeded in setting up an independent State, with a popular innkeeper as governor, upon land claimed by New York. Against these infringements upon the integrity of the States, the Congress could do nothing more than draw up resolutions expressing "the highest disapprobation" of those who participated.

The experience of the National Government under the Articles of Confederation with the settlers on the frontier beyond the recognised limits of the thirteen States, although alarming at the time, was invaluable as a lesson. It taught thinking men not only that the Central Government must be given more power to protect the States themselves, but that these remote districts could be best governed by the central authorities. Every argument of this kind was timely since it might induce the States still holding out to yield their back lands as a common property. The beginning of ceding the western lands to the common stock is important as a precedent since it created ultimately the profit-sharing principle of the public domain. Mention has been made of the failure in Congress to place western bounds on certain States. When the Articles were sent to all the States for ratification before going into effect, individual State Legislatures had opportunity of making such boundary restriction the price of a national agreement.

Individualism in this instance proved a blessing. It is important to an appreciation of the times to note that the State whose persistence won the victory was not one of the largest or most influential. Maryland was the eighth in rank of territory and probably the sixth in number of population. Her powerful neighbour and ancient enemy, Virginia, upon assuming statehood, had reiterated her charter claims to full one-half the territory of British North America, magnanimously "ceding"

to the States of Pennsylvania, Maryland, and the two Carolinas the land of which they were already possessed.

As Virginia admitted, the British Government had always assumed that the Atlantic coast-plain was the seat of its thirteen American colonies, and had refused to acknowledge openly their claims much beyond the crest of the Alleghanies. The ownership of the vacant lands between the mountains and the Mississippi River was vested in the King under the name of "Crown lands." But no sooner had the struggle for independence begun than the colonies determined in case of success to claim the entire British possessions in those parts; that is, to the Mississippi. As early as 1776, Silas Deane, the commercial agent of the United States in Paris, suggested to Congress the sale of the vacant lands to French colonists as a means of paying the expenses of the war. The rich valley, when fully regarded as a possible spoil of war, became a golden apple of discord. It had been won, small States argued, "by the blood and treasure of all, and ought, therefore, to be a common estate."

Led more by the necessity for some kind of a national government to replace the rule of Britain thrown off in 1776 than by such appeals, the Legislature of New York in 1781 authorised her delegates in Congress to quitclaim all lands lying outside her present boundaries to the General Government for the benefit of present and future States of the Union.

Although the claim of New York, based upon a treaty with the Indians, had been regarded as shadowy by other States, yet her greatly lauded action led in the same year to propositions from Virginia and, a few years later, to advances from Massachusetts and Connecticut resulting eventually in their giving up all territory north of the Ohio and west of Pennsylvania and New York. Persuaded by these favourable indications, Maryland signed the Articles, as heretofore

described.

Whether the persistence of Maryland was due to her desire for the national good, to selfishness in wishing a share of the national spoils of war, or to animosity toward Virginia dating from their ancient boundary dispute, the result may well be pronounced the most important step toward union since the appointment of Washington to the head of a national army. The public domain was the first inheritance the needy National Government ever received aside from debts and disputes. Not that the pecuniary return from the sale of the public lands proved as large as at first imagined; but that this tangible asset gave some dignity to the intangible Union. The disposal of the land, as a profit-sharing enterprise, formed a business undertaking which concerned all the States. It could be managed only by the combined powers.

CHAPTER III

THE CARE OF THE PUBLIC LANDS

Having been entrusted with the responsibility of administering the back lands, Congress immediately entered upon the work of arranging a method for their survey and sale, and of devising a feasible government to be extended over them. The pressing need of securing a revenue from them, together with a realisation that prospective purchasers would require protection both from each other and from the savages, impelled the members to immediate action. Against the many failures with which the old Congress stands charged during the eight years of its national control, the ordinances for the disposition and government of the western lands form a most pleasant and redeeming contrast. The Congress faced an absolutely new task. There were many precedents in history for colonial holding, varying from the policy of Greece, which allowed complete severance of home ties, to that of Spain, which regarded colonies as existing solely for the benefit of the mother country. By adopting the one, the United States must have left the western emigrants to perish. The other was repugnant to a people who had just rebelled against even the moderate colonial system of Great Britain. Equality is the only standard for a republic. Congress had resolved in 1780 that the lands ceded to its jurisdiction should be "disposed of for the common benefit and be settled and formed into distinct republican States which shall become members of the Federal Union and have the same rights of sovereignty, freedom, and independence as the other States." Here was an action almost unprecedented. Instead of holding the outlying region as a colonial possession for the benefit of the older portion, or making it into an Indian hunting-ground as Britain had tried to do, the Confederation of States had voluntarily agreed to erect it into independent States upon perfect equality with themselves. It was a practical application of the principles of the Declaration of Independence, of no taxation without representation, and of the real equality of all portions of the domain. The action was taken for the very practical purpose of assuring the States that if they surrendered their claims to the western lands, their citizens who migrated thither would not lose their rights by changing from State to national sovereignty.

Jefferson is presumed to be the father of the ordinance which first collected these promises into a working model; but not even Jefferson, rejoicing in laying out imaginary states from the new national possession and giving classic names to them, could foresee that there was being called into existence a factor most dangerous to his beloved individualism. The people who would remove from the States and settle upon lands purchased from the National Government, would be under national protection, subject to national legislation, and eventually be admitted by the national power to national statehood. Their affection would be gradually won away from their native States to be centred on the Union. Yet the States had not been able to hold the lands individually. Thus was necessity silently making the Union.

The provisions of the Jefferson Ordinance of 1784 for the temporary government of the western territory have been almost lost sight of because, after it had been in operation for three years and little had been accomplished through difficulty of dealing with the Indians in possession of the land, circumstances arose which brought about a new ordinance superseding the old and changing it in its working details.

Yet the first ordinance embodied the main principles in creating States which have since been followed. The number of people in any given portion of the public lands was to be the determining factor.

Jefferson's ordinance would allow these settlers to establish a temporary government, to adopt the constitution of any one of the thirteen States, and to elect a legislature. When their number should reach twenty thousand, they would be allowed to call a convention and establish a permanent constitution and government. Upon attaining a population of free inhabitants equal to that of the least numerous of the thirteen original States (at this time probably Georgia, whose population was estimated at twenty-five thousand) they would be admitted on equal footing with the other States. Between the establishment of the temporary government and admission to statehood, the prospective state should be allowed a representative in Congress with a right of debating but not of voting. The well-known Ordinance of 1787, which replaced that of 1784, substituted for the temporary government to be erected by the settlers a ready-made administration of governor, secretary, and territorial judges, to be sent out by the National Government, and to continue until the free male population should number five thousand, when they were to be allowed to exercise home rule in setting up a territorial government. The standard for statehood was fixed definitely in the later ordinance at sixty thousand free inhabitants.

Jefferson, notwithstanding the supposedly aristocratic training of a Virginia environment, placed no qualification for suffrage or office in his ordinance. The Ordinance of 1787, presumably drafted under democratic New England ideas, placed a qualification of ownership of two hundred acres of land upon a representative in the territorial legislature and of fifty acres upon an elector for a representative.

Here was an illustration of that reversionary tendency in the sections which has maintained the national equilibrium.

Accumulated wealth in the North was beginning to level the levelling creed of the Puritan, while the economic loss resulting from slave labour in the South was reducing the colonial Cavalier class in the planter States. The exceedingly profitable cotton culture had not yet developed in the Gulf States to create the ante-bellum aristocracy of the lower South, nor had the stream of European immigration set in to the Northern States to restore the levelling tendency there.

The two ordinances were alike in precluding the separation of any part of the territory from the United States, requiring the inhabitants to pay a portion of the national debt, and forbidding new States, to interfere with the sale of or to tax the national public lands within their limits.

Two provisions in Jefferson's first draft of the Ordinance of 1784

were struck out by the Congress before adoption. One, which forbade granting of titles of nobility, was eliminated because, as Jefferson wrote to Madison, "it was thought an improper place to encounter them."

The contest against the introduction of aristocracy was unlikely to be precipitated in the backwoods bordering the Ohio River. Yet the provision would have been in keeping with the spirit of the times.

Congress had recently rejected a proposition made to Washington by the Polish Order of Knights of Divine Providence that their order should be officially extended to the United States. The other eliminated provision, forbidding slavery and involuntary servitude in the territory after the year 1800 except as a punishment for crime, is important not only as the first attempted restriction of the slavery system by the National Government, but also as furnishing an interesting comparison with the later sentiment on this unfortunate controversy which affected every phase of United States history for a century.

When he incorporated this provision in his draft of the ordinance, Jefferson was but little in advance of the opinion of the day on the effects of employing slave labour. Never until its death was the system so near dissolution as in the organising days between the birth of the republic and the invention of the cotton-gin. State after State in forming its constitution, or by special enactment, arranged for immediate abolition or gradual emancipation. Even in slaveholding Virginia and North Carolina, few could be found to defend the system from an economic standpoint, although they had to admit the necessity of its use in the rice swamps of South Carolina and Georgia.

Lafayette was urging Washington to employ his recently acquired leisure in transforming slaves into free tenants. "Such an example as yours,"

he wrote from Cadiz, "might render it a general practice."

"Would to God a like spirit might diffuse itself generally into the minds of the people of this country," replied the Virginia farmer, "but I despair of seeing it. To set the slaves afloat at once would, I really believe, be productive of much inconvenience and mischief, but by degrees it certainly might and assuredly ought to be effected; and that too by legislative authority."

At the same time he put himself on record as determined never to add another to the number of his slaves by purchase. A petition for emancipation had just been introduced into the Virginia House of Delegates and was "rejected without dissent; but not without an avowed patronage of its principles by sundry respectable members," as Madison informed Washington. "A motion was made to throw it under the table, which was treated with as much indignation on one side as the petition itself was on the other."

Jefferson had been disappointed at an earlier time because no emancipation provision had been incorporated in the Constitution of Virginia.

"What a stupendous, what an incomprehensible machine is man!" he wrote in this connection, "who can endure toil, famine, stripes, imprisonment, and death itself in vindication of his own liberty and the next moment be deaf to all those motives whose power supported him thro' his trial and inflict on his fellow men a bondage, one hour of which is fraught with more misery than ages of that which he rose in rebellion to oppose."

An interesting commentary on the industrial progress of the country is afforded by comparing these early views of Southern statesmen upon the slavery system with those held by a later generation.

Public sentiment in Virginia was not ready to follow the champions of individual freedom to the emancipation point, and it refused as strenuously to be coerced as it did in later years. When the Quakers of Philadelphia attempted to secure by law the freedom of a body-servant whom a neighbour of Washington had taken with him on a visit to that city, the General wrote to his friend, Robert Morris, the wealthy merchant of Philadelphia, "If the practice of this society, of which Mr. Dalby speaks, is not discountenanced, none of those whose misfortune it is to have slaves as attendants, will visit the city if they can possibly avoid it."

However, the clause which was struck from the Ordinance of 1784 was not intended to abolish slavery where it already existed, but to prevent the extension of the system to new territory. It was the forerunner of a similar controversy which attended every addition to the national territory as the people spread westwardly, and which eventually became a strong factor in precipitating the Civil War. The motion to cast out was made by Spaight, of North Carolina, but Williamson, his colleague, voted to retain the clause and thus divided the State. Jefferson was outvoted by his two colleagues who favoured no restriction on the people desiring to migrate to the new lands. Maryland and South Carolina were the only Southern States unanimously against the clause. Six States north of the Mason and Dixon line voted to retain the clause.

Jefferson took the defeat sorely.

"Seven States being requisite to decide the proposition affirmatively," he said, "it was lost. The voice of a single individual of the State which was divided or of one of those which were of the negative, would have prevented this abominable crime from spreading itself over the new country."

To Madison he reported, "South Carolina, Maryland, and! Virginia! voted against it. N. Carolina was divided as would have been Virginia had not one of its delegates been sick in bed." The absent member was young James Monroe, serving his first term in Congress.

The close vote, of which Jefferson complains, well illustrates the evils of voting by States in Congress. Seven affirmative State votes were necessary to retain the anti-slavery clause. Only eleven States were represented. One of these had but one delegate and his vote was cast out by the rule requiring a State to be represented by at least two delegates to participate in a vote. Of the ten States remaining, seven must have at least two delegates of an affirmative mind from each to retain the clause. Six of these States voted solidly to keep the restriction, but the seventh State could not be secured, as Jefferson stated. Considered by our present method of voting, sixteen of the twenty-three delegates present voted affirmatively and seven negatively; yet the motion was lost and the clause struck out. Rarely has the power of a minority been so great. The individual may be allowed to hide the mass by being held too close to the vision.

However, the defeat of Jefferson's plan of excluding slavery from the territory after the year 1800 must be considered fortunate by all in sympathy with the general purpose. By it, slavery would have been permitted in the western country for sixteen years. The large influx of migration into the territory within that period, especially from the Southern States, would have established the system too thoroughly to be eradicated. The difficulty with which slavery was permanently kept out, although expressly prohibited by the Ordinance of 1787, is a proof of this assertion. The clearing of the way for the later prohibitive action by striking out the clause tended to the ultimate good. On the other hand, it is pointed out that the Jefferson ordinance provided only for "a temporary government of the western territory"

and covered "so much of the territory ceded or to be ceded by the individual States to the United States as is already purchased or shall be purchased of the Indian inhabitants and offered for sale by Congress." Eulogists of Jefferson argue, consequently, that if his restricting clause had been allowed to remain it would have prohibited slavery in all the land west of the thirteen States, both north and south, after the year 1800, and thus the entire slavery system would have died through non-extension. But it must be remembered that the only land thus far ceded lay north of the Ohio and immediately west of the free States. It is not conceivable that such a restriction would have been permitted to hold south of the Ohio and west of the slaveholding States, directly in the line of migration. Indeed, when the time did arrive to create a government south of the Ohio, interference with slavery was distinctly prohibited. It is true, also, that Jefferson's ordinance as adopted solemnly declared its articles a charter of compact to stand as unalterable constitutions both before and after the sale of any part of the vacant land; but that a new ordinance should supersede it after three years, simply because a proposed purchaser demanded some additional guarantees, is a proof that none of its provisions could have withstood the pressure of slave territorial expansion.

However, at the time, there seemed small prospect that the National Government would ever be required to make regulations for any territory south of the Ohio. Congress had sent out appeal after appeal to North Carolina, citing the action of the other States, and begging her to yield her claim to what is now the State of Tennessee. But she resisted until 1790. South Carolina retained control of a long, narrow strip, south of the present Tennessee and extending to the Mississippi, until 1787. Georgia, claiming almost the whole of the present States of Alabama and Mississippi, remained deaf likewise to the entreaties of Congress until 1802. Virginia, having yielded so much of her original claim as lay north of the Ohio, was disposed to retain her claim to the Kentucky country. Jefferson wished to yield all lying west of the mouth of the Kanawha. Washington approved of this limit, seeing, as he said, "the impolicy of this State's grasping at more territory than they are competent to the government of." This liberal sentiment was never sufficiently general to be effective. Thus it came about that the Southwestern territory, which Congress ultimately created from all land ceded south of the Ohio, was never more than a temporary and passing arrangement compared with the Northwest territory.

[Illustration: MAP SHOWING THE PROPOSED WESTERN STATES. From Morse's

"American Gazetteer". The five States here outlined in the Northwest

Territory, with slightly changed boundaries, are to be found on the

map at present.]

After much study, Congress drew up the Ordinance of 1785 for the survey and sale of such land as might be given to its care. The details of this important arrangement in the story of the American people illustrate the advantages arising from instituting new governments at a stroke. The rectangular system of land surveys, like the decimal system of money, was devised and not inherited. Each has proved a blessing in its simplicity. The divisions of the land upon an even-number basis, the progressive numbering of the divisions, the elasticity of the system, and the subdivisions arranged to accommodate small purchasers, have conduced by their simplicity and adaptability to speedy disposition and settlement of the national domain and have minimised later litigation and discord. Since the history of the American people has been influenced so extensively and persistently by the disposal and peopling of the public lands, the simple survey system may be counted among the valuable parts of the national machinery.

Surveys were to be made by the "geographer" of the United States, assisted by a surveyor from each of the States. One-seventh of all lands surveyed was to be reserved for the land bounties promised to those who had served in the Continental army. An old handbill, frequently reproduced, shows that among the inducements to enlistment held out during the darkest period of the war were "Ease, affluence, and a good farm." The certificates issued to the soldiers at the close of the war in lieu of money were made receivable in payment for public land. A share in all gold, silver, lead, and copper mines was retained by the National Government. Lot number sixteen in every township was reserved for the maintenance of public schools. A provision for setting aside the section adjoining it for the support of religion was struck out, nor could a motion prevail to preserve it for "charitable uses."

The votes on this question seemed to be governed purely by individual opinion. The delegates from Virginia, whose Legislature had just dealt the Established Church in that State its death-blow, voted to retain the reservation of land for religious purposes, much like the old church glebe lands. But the separation of Church and State had become too complete to enter upon a scheme so suggestive of establishment.

For three years the Ordinance of 1784 awaited the migration of settlers to the territory who would be protected by it, and, at the same time, put it into effect. Thomas Hutchins, the national "geographer," and his assistants from the several States, laid off seven ranges of townships, in the eastern part of the present State of Ohio, according to the land Ordinance of 1785, before rumours of hostile Indians drove them back. The Secretary of War was instructed to draw by lot enough of the surveyed land to satisfy such bounty land certificates as might be presented and to advertise the remainder for sale. United States troops were employed to drive out the "squatters" on the public lands, to burn their cabins, and destroy their crops. But not an acre was sold in those three years, not a certificate of national indebtedness redeemed, and not a shilling received from the land sales for the needy treasury.

The Jefferson ordinance had been intended for such western lands as might from time to time be given to the National Government. But no land south of the Ohio was surrendered. Congress, therefore, determined to cast aside the old ordinance, and to form the portion yielded into a specific territory, with a new ordinance which would allow more leeway in forming the States and give Congress more control over the domain from its incipience. Accordingly, Johnson, of Maryland, offered a new ordinance in the spring of 1786, which passed to a second reading.

With the exception of the reforms noted above, it closely resembled the old ordinance. But in July following, after an interregnum of no quorum, the Congress passed, by an almost unanimous vote and after a consideration of only a few days, an entirely new law governing the territory north-west of the Ohio. It was the famous Ordinance of 1787.

Its sudden transformation, inexplicable to early investigators and solved only by later research, was the result of a business transaction connected with the bounty certificates given to the Revolutionary soldiers.

During the progress of the war, it had been necessary to secure enlistment by offering bounty lands. The desire to realise on these promises was shared by officers and privates alike. Doubtless around many a camp-fire, as the war drew to a close, the value of these land certificates was discussed, and plans made for "associating" to form colonies in the "back lands" to which the soldiers were winning both right and title. The danger-line in the future would be along the frontier, where the newly won empire must be guarded from invasion both from British Canada and the Spanish Floridas, and where the advancing line of pioneers must be protected from hostile Indians. Bands of these "associators" were organised to obtain their allotments in the new country and to settle upon them. They would "plant a brave, a hardy, and respectable race of people as our advanced post," wrote Washington in presenting the project to Congress. "A settlement formed by such men would give security to our frontiers; the very name of it would awe the Indians."

One body of men, styling themselves "The Ohio Company of Associators,"

composed of ex-Revolutionary officers and privates residing in and about Boston, sent a botanist-parson, the Reverend Manasseh Cutler, to the Congress in the summer of 1787, to urge a proposition they had advanced for the purchase of a

large tract on the Ohio River. These "adventurers," as they styled themselves, were desirous of driving a good bargain in a low price for the land and also of gaining certain guarantees from Congress which would give them as much personal liberty and protection in the new home and under the National Government as they enjoyed in their present residences under their State Governments.

Cutler, provided with forty-two letters of introduction to members of Congress and prominent citizens of New York city, reached the seat of government in due time. "At 11 o'clock," he wrote in his private journal, "I was introduced to a number of members on the floor of Congress Chamber, in the City Hall, by Colonel Carrington, member from Virginia. Delivered my petition for purchasing lands for the Ohio Company, and proposed terms and conditions of purchase." Fortunately there was a quorum in Congress, the first in nearly two months. A few days later, Cutler was sent a copy of the Johnson ordinance then pending. To this he proposed "several amendments." Three days afterward, the celebrated Ordinance of 1787, for the government of that portion of the territory north-west of the Ohio, was completed and adopted to Cutler's satisfaction. "It is in a degree remodelled," he wrote in his journal. "The amendments I proposed have all been made except one, and that is better qualified."

Nevertheless it took a week more of haggling and lobbying before acceptable terms of sale could be agreed upon. Another company composed of "principal characters" in the city had to be taken into the deal in a "profound secret." Arthur St. Clair, the president of the Congress, had to be accepted by the Associators as the governor of the territory, in order to gain his support. Cutler had to finesse by threatening to buy from some of the States which had land for sale within their borders. It is unfortunate for those who believe that our fathers were actuated entirely by disinterested motives and utterly devoid of political guile that the parson lobbyist kept such a candid diary. Day by day the business proceeded, Cutler even making a side visit to Philadelphia while his leaven was working. At last even "that stubborn mule of a Kearney," as the disgusted agent called him, was "left alone,"

a sufficient number of votes was secured, and Cutler was receiving congratulations on the prospects of the Ohio Company.

"By this Ordinance," he wrote, "we obtained the grant of near 5,000,000

of acres of land, amounting to three millions and a half of dollars; one million and a half of acres for the Ohio Company and the remainder for a private speculation in which many of the principal characters in America are concerned."

The importance of this transaction lies not only in the fact that it was the first sale of public lands in the United States, but that the government established for the territory formed many precedents for later Territories and States. Some of its provisions deserve a close examination. The changes made in the Johnson ordinance to satisfy the Ohio Company are found chiefly in the appended six articles of the Ordinance of 1787. These formed a guarantee that citizens in the territory deprived of the protection of their States would have the same personal rights which they enjoyed before leaving the States. The United States, later destined to become a protector, was feared lest it might be an oppressor. Such individual rights as *habeas corpus*, trial by jury, freedom of conscience, possession of property, and similar birthrights of Englishmen, had been secured in the States by incorporating them in the various State Constitutions under the general name of "declaration of rights" or "bill of rights." Without such specific title, they were placed in the Ordinance of 1787. The sixth article, no doubt also demanded by Cutler, incorporated the very wording of Jefferson's rejected anti-slavery clause of three years before, except making it immediate instead of after 1800. The New England Associators were unwilling to offer their free labour in competition with slave labour in their new home. The idea was general. "The total exclusion of slavery from the State" had been a prominent provision in a transitory association in Connecticut four years before.

[Illustration: NATHAN DANE'S DRAFT OF THE ANTI-SLAVERY CLAUSE IN THE

ORDINANCE OF 1787. The authorship of this article of the Ordinance has been in much dispute. Benton attributed it to a similar provision, drafted by Jefferson, which was struck out of the Ordinance of 1784.

Northern men gave the credit to Nathan Dane, a Massachusetts jurist, who was in Congress in 1787. During the sectional feeling aroused over the admission of Missouri in 1820, a dispute arose in Congress over the respective claims of Jefferson and of Dane. Of this, Dane himself said: "In April, 1820, search was made for the original manuscript of the Ordinance of 1787. Daniel Bent's answer was 'that no written draft could be found'; but there was found attached to the printed Ordinance in my handwriting the sixth article, as it now is, that is, the slave article." The original is now in the Library of Congress, Manuscript Division. The signature of Chas. Thomson, Jr., calls attention to the faithful secretary of the Continental Congress during its entire existence.]

The century contest over slavery in the United States made that factor so prominent in national history that it overshadows matters of equal importance in many transactions. The anti-slavery provision of the Ordinance of 1787 has been extravagantly praised ever since the oratory of Daniel Webster first called general attention to it. Sectional partisans have exhausted logic in trying to trace the authorship to Jefferson, a Southern man, or to Dane, a Northern

man. The North has credited it to the persistence of New England; the South, pointing to the five Southern affirmative votes out of the eight, has attributed it to the indulgence of their section. In recognising this first anti-slavery action of the National Government, Northern orators have overlooked an attendant clause, the first national fugitive slave law.

It paved the way for a similar provision in the Constitution and led to the obnoxious slave rendition laws of later years. In praising the indulgence of the South, the eulogists of that section have failed to consider the price the New England Associators paid in this first slavery compromise of the nation.

When the blinding passion of the slavery question is eliminated from a consideration of this ordinance some other beneficent provisions, added through the desire to satisfy the New England purchasers, begin to appear. They are taken largely from the "bill of rights" placed in the first constitution of the State of Virginia by George Mason, and copied in many of the later constitutions, including that of the United States. They seek to guarantee the rights of the individual against the encroachments of the Government; to embody the principles which the English barons secured at Runnymede; to secure the inheritances left to the English-speaking people by Hampden and Pym. Although many of the early State Constitutions contained a guarantee of religious freedom, *habeas corpus*, trial by jury, rights to property, and regard for contracts, as has just been stated, these principles had not been expressed in the Articles of Confederation and the General Government was not bound in any manner to grant them in the western territory.

But their incorporation in the ordinance gave assurance that their benefits were not to be confined to the original States.

Equally important is the clause providing for equal division of the property of people dying intestate. This first legislation of the National Government on the subject of real property dealt a death-blow to primogeniture, and to the last of the inherited feudal customs of the Middle Ages. It prevented the accumulation of large estates, and insured the individual ownership of thousands of homes. No system of foreign landlordism was possible under it. The people were to become their own lords paramount of all socage lands. Quit-rents were to be converted into bank accounts. The individual title derived from the National Government involves all the elements necessary for a transfer of the soil. Indeed, this principle of the Ordinance of 1787 not only became a pattern for future State Constitutions, but reacted in similar provisions for those already created.

Another clause of the ordinance has often been the subject of eulogy.

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall for ever be encouraged." Yet this is simply the statement of a principle and precisely such a principle as would be held by the New England Associators where learning had been almost a fetich and where education at the public expense had its inception in the guise of charity schools.

The principle only is expressed here, since the land ordinance of two years before promised an endowment for public education as long as enough land remained to lay out a county. The Associators carried out this principle in their own tract by donating lands for a university and for the support of the gospel.

Immediately following the bargain of Dr. Cutler with Congress, the Associators prepared to migrate *en masse* to their purchase. What the hardy spirits among the country people of the South Atlantic States had been able to accomplish by individual initiative and sheer endurance, the town-dwellers of the North Atlantic States did more systematically and rapidly by concerted action. Organisation and government protection saved the Ohio Associators from such experiments of colonisation as had frequently led to Indian captivities and abandoned settlements in Tennessee and Kentucky. The project of a line of forts along the frontier settlements, conceived during the Indian and Revolutionary wars, assumed shape after the first sale of public lands had really been consummated. Forts McIntosh, Steuben, Washington, Harmar, Vincennes and Massac, were speedily erected or garrisoned, thus guarding the length of the Ohio River, the pathway to the Northwest. By subsequent Indian treaties, additional reservations were secured and forts scattered throughout the territory at portages and along the river highways. Under this protection, the Ohio Company sent out its band of artificers to erect dwellings and a stockade for the first settlement. Scarcely a year was allowed to elapse after the purchase until Marietta was founded on the Ohio at the mouth of the Muskingum by the veterans of the Revolutionary War and their friends.

It was 170 miles down the Ohio beyond the outpost of civilisation at Pittsburg. Similar settlements were speedily founded on other purchases and on the military lands.

[Illustration: DR. CUTLER'S CHURCH AND PARSONAGE AT IPSWICH HAMLET, 1787.]

The rendezvous from which the first company started for the Ohio, December 3, 1787.]

The national governor and judges for the Northwest territory in due time created a set of laws, established courts, and erected local governments. The latter was effected by applying the county system, familiar to the people of the Central and Southern States, to the land survey county, and by giving to the township, a unit in the survey system, some of the

functions of the New England town. By this happy combination, settlers from any part of the old States would find a local government with whose forms they were to some extent familiar.

The Symmes purchase on the Ohio below the Ohio Company's grant was opened to settlement, as was the Virginia Military tract lying between the two. Through Pittsburg, "the gateway of the west," came a throng of pioneers to float down the Ohio to the land of promise. The United States forts protected them on the northern or "Indian side" of the river. In 1786, no less than 117 boats were counted passing Fort Harmar.

So rapidly did the people take possession of this heritage of the Revolutionary struggle that within fifteen years the eastern part was ready to claim the promise of statehood. Eight years later, this new State, Ohio, had passed in rank of population the older trans-Alleghanian States of Kentucky and Tennessee. Blessed with contiguous waterways lying in the line of travel, forming the gateway into the West by the down-thrusting arm of Canada, the first State to be created out of the public domain, with definite land surveys instead of tomahawk marks, with an endowed system of public schools, Ohio gained a political pre-eminence among the newer States and a national prestige which has scarcely yet been rivalled.

The solution of the problem of the frontier was thus so easily and permanently solved by the Central Government in its home-making policy that one scarcely appreciates the fear of Washington and others interested in the back country lest it become a refuge for outlaws and banditti. Mingling with the savages, it was feared that these outcasts would create a constant menace to the advance of civilisation. Colonial governors had much difficulty in controlling the "lawless banditti of the borders." The first settlers across the mountains were considered in England as "uncultivated banditti" and as "fanatical and hungry republicans" and the "overplus of Ireland's population." So late as 1835, De Tocqueville, the French commentator on America, declared that Americans who quit the posts of the Atlantic to plunge into the western wilderness were adventurers, impatient of restraint, greedy of wealth, and frequently men expelled from the State in which they were born.

But he had no doubt that in time society would assume as much stability and regularity in the remote West as it had done upon the coast of the Atlantic ocean.

At the time, the action of Congress called fresh attention to the attractiveness of the back country and the possibilities there when population should warrant the erection of States. Stanzas of Philip Freneau represent the feeling of the day:

"What wonders there shall Freedom show,

What mighty *States* successive grow.

What charming scenes attract the eye

On wild Ohio's savage stream.

Here Nature reigns, whose works outvie

The boldest pattern art can frame.

The *East* is half to slaves consigned,

And half to slavery more refined."

CHAPTER IV

FAILURE OF THE CONFEDERACY

Scarcely a failure of the Confederation Government can be found which does not lead in the last analysis to the financial situation both during and following the war. Suddenly plunged into the Revolutionary War, drained of ready money by the colonial system, possessed of no mines, mints, nor any resource for securing a medium of exchange except an undependable paper promise to pay, the people of the United States emerged from the war broken in purse and overwhelmed with debt.

According to Jefferson's estimate made at the time, they owed at least sixty-eight millions of dollars. To this fruit of the war he added the four hundred millions of paper money issued by the Federal and State Governments, estimated, in its depreciated condition, at about seventy-two millions more of debt. The ragged Continental soldiers, frequently reduced to seven-tenths of a pound rations, their arrearages of wages paid in Continental currency worth four pence on the dollar, were now about to be discharged to return to their needy families carrying only paper promises of the United States to pay. These certificates could be disposed of only to brokers and that at ruinous rates. What was to become of a veteran who was disabled? Congress had already authorised the several States to look up needy soldiers of the Continental service and pay them five dollars a month, such sums to be deducted from the quotas assessed on the several States to meet the general expenses. Seven States only had complied, and in these the lists of needy ex-soldiers had been incompletely compiled.

Some soldiers held certificates entitling them to bounty lands in the back country under the acts of 1776 and 1780, but had no means of journeying thither. Small wonder that mutiny threatened.

"Can you consent to be the only sufferers by this revolution," asked the insurrectionary Newburg addresses, the work of those unwilling to see the army disbanded before being assured of receiving justice, "and, retiring from the field, grow old in poverty, wretchedness, and contempt?"

If you can—go—and carry with you the jest of Tories and the scorn of Whigs—the ridicule and, what is worse, the pity of the world. Go—starve—and be forgotten."

Eulogy has exhausted itself in praise of these Revolutionary veterans, who eventually permitted their ranks to be disbanded, instead of joining themselves together illegally to obtain justice, or subsisting themselves upon the country at large. Praise has not been withheld from their general, the Virginia soldier-farmer, who, instead of taking advantage of the dissatisfaction to put himself at the head of an insurrectionary force, chose rather to quiet rebellion and to inspire confidence by his hopefulness.

No sooner had the war ceased and the army melted away, than it was found that peace had its dangers no less than war. Released from the menace of war, the States felt no necessity for paying their respective quotas of expenses to the Central Government, as they had done in varying degrees since the beginning of hostilities. The year following the peace, they paid less than a million and a half of the eleven million asked in previous assessments. Three States, it was claimed, had paid comparatively nothing. Rhode Island and New Jersey, as if to add insult to injury, attempted to pay their quotas in their paper money, which was not received at par outside the States. Congress had no power of coercion. According to the second of the Articles, each State in the Confederation retained its sovereignty, freedom, and independence. Congress could only make impotent appeals. Governor Randolph, of Virginia, pictured the Congress as saying to his State: "May it please your high mightinesses of Virginia to pay your just proportionate quota of the national debt; we humbly supplicate that it may please you to comply with your federal duties. We implore, we beg your obedience."

[Illustration: A PETITION FROM CONGRESS TO THE STATES. Many such appeals were issued at different times, begging the States in the Confederation to give more power to the Central Government.]

The financial confusion was increased because of the lack of a circulating medium. A mongrel collection of coins could be found, passing at varying rates in the different States—English pounds, shillings and pence, Spanish dollars, joes, half-joes, pistoles and moidores, French guineas, carolins and chequins—but no United States coins. Even this money was soon drawn off to Europe, because British exporters demanded cash until the Revolutionary debts had been settled.

That this cash would return to the States was unlikely if one judged from the first year of the peace, during which the United States purchased 1,700,000 pounds worth of goods in England and sent in return only 700,000 worth. In order to secure some kind of money to conduct business, seven of the States began to issue paper money. The troubles arising

from a depreciated paper during the war were neither ignored nor forgotten; but no other method presented itself. Congress had power to issue only "bills on the credit of the United States,"

which were not likely to be more acceptable than other kinds of paper.

The hopelessness of managing a bankrupt nation, no doubt, was largely responsible for the deterioration which the membership of Congress suffered. Names prominent at the inception of the rebellion had disappeared from the rolls, and mediocrity ruled. The members personally experienced the financial stringency in the failure of their State Legislatures to pay their salaries. Many were dependent upon the patriotic purse of Haym Salomon, "a Jew broker of Philadelphia," as Madison termed him. There should have been a higher standard of membership in the Confederation Congress than in later times, because it comprised not only the usual legislative functions of the nation, but the executive and judicial as well. The machinery itself was largely to blame. Like many of the devices, that governing the Congress was too strongly set against centralisation to allow free play of the parts. No delegate, for instance, was allowed to serve more than three years out of any six lest his influence grow too great or he become unduly attached to the central power. It frequently happened that good men were thus cast out of service just when their experience made them valuable. Certain States forbade a man to serve two consecutive terms in Congress. Madison was debarred by such a provision in 1784.

Delegates were appointed by the State Legislatures usually for a term of one year to begin with the session on the first Monday of the following November. The term would frequently expire when the State Legislature was not in session, and the State would thus go unrepresented for some time.

If a delegate pleaded the emergency of the case and asked that the rule be waived, as those from Rhode Island did at one time, Congress refused to sanction such a palpable infraction of the Articles. Cases actually occurred where delegates elect did not arrive at the seat of Government until after the expiration of their term of appointment.

Absenteeism was the drag paramount upon Congressional action. No State could be represented by less than two members and retain its power of voting. If only one representative were present, he had no vote. If only two were present, they might differ, in which case the State was counted as "divided," and the vote was lost. Congress once sent a plea to the States urging the necessity of having more than two delegates present. It showed that if each State had only two representatives in Congress, five out of the twenty-six delegates, being only one-fifth, could negative any vote requiring the consent of nine States. Eleven States were represented at the time, nine by two delegates only, and thus it was possible, continued the report, for three men out of the twenty-five, being only one-eighth, to block all action. If three attended from each State, it would require ten, or one-third of the whole, to have as much power.

The derelictness in attendance on some occasions was humiliating and even alarming. When Washington appeared at Annapolis to resign his commission as commander-in-chief, only seven States were represented by the least required number. He faced twenty-one delegates instead of the ninety-one from the thirteen States, who should have graced this memorable occasion. The definitive treaty of peace lay on the table at the time. Nine States were required by the Articles to be present when a treaty was ratified. Unless ratified within six months after it had been signed in Paris, it would be null and void. More than half the precious time had already elapsed. With the greatest difficulty, the required number was secured. Four years later, there was no quorum for a period of three months, the representation at times falling to two States. During the first eleven months of the year 1788, a quorum was present only 129 days. Much of this delinquency was due to the expense of maintaining the delegates which fell upon the individual States. To make the burden as light as possible, two delegates only were commonly sent. They were likely to disagree.

Manifestly the State in which the Congress sat avoided this difficulty, because it could maintain a larger number of delegates at less expense.

To avoid this draft upon the needy treasuries, some of the States adopted the expedient of choosing as representative a resident of the city wherein was located for the moment the seat of government, or some man who had the means and the willingness to serve without pay.

During quite a long period, Delaware was represented by three delegates, only one of whom was a resident of the State. This was in accord with the custom of British representation. It is interesting to imagine the results if it had ever become fixed in the United States.

It may be truly said that the framers of the Articles could not have expected a successful continuous sitting of so large a body of men.

They had not so planned it. The Articles provided that a Committee of States could be appointed at any time, whenever the Congress as a whole might wish to adjourn, by the delegates from each State naming one of their number to serve in this capacity. This was the method of forming a "grand committee" on any important business in Congress. The attempt to give over national affairs to a Committee of States was made in the spring of 1784, after the peace. One trial of the expedient was sufficient. Only eleven States were represented at the time. From these, eleven delegates were selected.

According to Monroe, "their powers are confined so that no injury can be effected." He referred to the manner in which the Articles restricted the Committee. The eleven celebrated the beginning of their administration by adjourning for three weeks, "for the benefit of the health of the members." At the end of this vacation, nearly two weeks were consumed in getting nine of the Committee together. A month of regular sessions followed, when suddenly the ever-present dissension concerning the place of meeting broke out. The Southern members of the committee wished to remain at Annapolis. The Northern members wished to adjourn to the cooler climate of New Jersey.

The strife increased until, at the end of two months, the members from New Hampshire, Massachusetts, and New Jersey withdrew. Being left without a quorum, the remaining members signed a manifesto, placing the blame on the seceders and departed for their several homes. Franklin compared the action of the Committee to two lighthouse keepers who quarrelled about the task of filling the lamp until the light went out. "There will be an entire interregnum of the federal government for some time against the intention of Congress, I apprehend, as well as against every rule of decorum," wrote the indignant Madison. During this interregnum, a chief clerk was acting as Secretary of Foreign Affairs and General Knox was serving as Secretary of War. They were the only visible parts of the National Government. Madison at first thought that the Committee of States should be censured when Congress reassembled, but, recognising discretion as the better part, suggested that "we had also better keep this affair out of sight." It was so done. The complete failure of this Committee of States scheme as an executive makeshift was in the end fortunate since it demonstrated clearly the need of a trustworthy and permanent head to the General Government. If it had been even a partial success, it might have been tried again and correction thereby delayed.

The provincialism of the day was well illustrated in the strife of the Committee over the place of sitting. A similar controversy characterised well-nigh the entire life of the Congress. Never a session could close or an adjournment be had without this Banquo's ghost appearing. It was feared that the State in which Congress met would in some way get an undue influence and ascendancy. At one time, to satisfy sectional jealousy, it was compelled to provide two places of meeting, Annapolis and Philadelphia, by turns. Cities were even projected in the country far removed from State capital influence. In this unsettled condition, the Congress wandered from place to place with insufficient accommodation. Van Berckel, arriving as minister from Holland, could find no house for rent at Princeton and was obliged to live at a tavern in Philadelphia. He contrasted his reception with that given by his Government to John Adams a few years previously. He reported that he hoped in time to locate the new Government and present his credentials. "Vagabondising from one paltry village to another," as Reed, one of their number, put it, the members became a legitimate prey of boarding-house keepers and stablemen. Small wonder that service in the State Governments was considered not only more dignified, but more agreeable in these days of paramount State rights.

[Illustration: SIGNATURES TO AN ADDRESS OF THE INHABITANTS OF PRINCETON,
NEW JERSEY.]

That the capital of the United States to-day occupies a territory independent of a State is the result of sad experience in these early days. When Congress, in 1783, was driven from Philadelphia by some rebellious State troops, who threatened force unless they received their back pay, the village of Princeton was the refuge to which the members fled. Some faithful Continental troops stationed there would protect them. The citizens of the village, grateful for this gift of the gods, prepared a list of families and the number of guests each could accommodate. They also adopted a long set of resolutions, deprecating the "gross indignities" offered to the Congress at Philadelphia, and pledging with the utmost cheerfulness their lives and fortunes to the Government of the United States. They promised to protect Congress "in whatever way our services may be required, whether in resisting Foreign Invasion or in quelling intestine Tumults." That the National Government of the United States of America should be offered protection by a small New Jersey village is indicative of the progress which nationality had thus far made. Sentiment would in time demand a permanent, independent home. Notwithstanding the prevalent financial depression, small tendency toward economy was manifest among the people or its officials. As long as credit held out, extravagance would prevail. The war had been successfully closed, political freedom had been won, and individual ease and affluence presumably secured.

Short-sighted fashion viewed her immediate gratification as the concomitant of independence. Even the members of Congress were not exempt from temptation. A Rhode Island delegate reported from Congress sitting at Annapolis to the governor of his State: "The horse races were attended here the week before last, and are all over, as are also the balls, routs, fandangoes, and plays. I assure you there has been a merry Winter in this place, according, at least, to accounts for I have seen but little of their diversions. I did not even look upon the horse races, although they were to be seen from the windows in the back room of the State House: nor have I attended a single play, although the theatre has been open twice a week the chief part of the Winter, and the playhouse adjoins the house where I lodge."

Despite this virtuous conduct he did not escape a challenge sent by a fellow-delegate from North Carolina and another from a Virginia delegate. He promptly laid both communications before Congress and was further ostracised.

The Congress was a close corporation. The public was not admitted to its sessions, the debates were never published, and the proceedings rarely appeared in the public prints. Its adjournment of both time and place was so frequent and the

beginning of new sessions so delayed that news concerning it rarely found a place in the newspapers. This was in marked contrast with its early history, when the assembling of delegates at Philadelphia was described in great detail for those days.

Internal dissensions marked the sessions, as indicated by the experience of Howell, of Rhode Island, described by himself above. Members bore their obligations lightly. It was said that at one time when a delegation of Indians arrived at Princeton to make a treaty, a member left for Philadelphia to be married, thus breaking the quorum, and almost precipitating an Indian war.

It is worthy of note that this experience with an executive-legislative-judicial combination of National Government was sufficient to last for all time. Amidst the many changes suggested for the Constitution of the United States since it has been in effect, none has ever been proposed which would hand over the powers of the president to a Congress. Even Jefferson, alarmed by the growth of the executive authority before 1800, never suggested a return to the method whereby the whole administration was at the mercy of a quorum of Congress. The Confederate States in 1861, exasperated into secession by the abuse of the central power, retained the tripartite form in the Government which they planned. Posterity learns by reading the lessons of history.

In the light of a later survey, one may discover many additional defects in the ill-devised Articles of Confederation. Madison once summed up their vices in the failure of the States to comply with the constitutional requirements, in State encroachments of Federal authority, in State violations of national law and treaties, in States trespassing on the rights of each other, in want of concerted action, in a lack of national guarantee against internal violence, in a want of coercive power in the National Government and the omission of the ratification of the Articles by the people. To these he added the multiplicity, the mutability, and the injustice of many of the State laws. Jefferson, separated by his residence at the court of France from actual contact with the worst days of the Confederation, thought the remaining States had a right to coerce a recalcitrant member "by a naval force, as being easy, less dangerous to liberty, and less likely to produce bloodshed." Yet a suggestion in 1781 for an amendment, giving power to Congress to employ force in compelling States to obey the Articles, met with no favour.

Monroe thought that the Articles were practicable and, with a few alterations, the best plan that could be devised. Hamilton, on the contrary, regarded them as hopeless. Even before they were adopted, he predicted a speedy failure. They were "neither fit for war nor peace," he declared. "They show chiefly a want of power in Congress."

Washington attributed the defects made in framing the Government to too good an opinion of human nature. "Experience has taught us," he said, "that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of a coercive power." He declared that requisitions made upon the States by the central power became a perfect nullity when thirteen sovereign, independent, disunited States were in the habit of discussing and refusing compliance with them at their option.

"To vest legislative, judicial and executive powers in one and the same body of men and that, too, in a body daily changing its members can never three great departments of sovereignty should be for ever separated and so distributed as to serve as checks on each other."

He would even go farther in giving power to the Central Government.

"As to the separate Legislatures, I would have them considered with relation to the Confederacy in the same light in which counties stand to the State of which they are parts, viz., merely as districts to facilitate the purposes of domestic order and good government." Hamilton shared with Jay a willingness to take such liberties with local rights to secure a more effective National Government.

Such sentiment among public men should have brought about a speedy amendment of the defective parts of the Articles. But, as Washington once said, the people were not yet sufficiently misled. Attempt after attempt was made to secure the necessary unanimous consent to an amendment. Congress begged the States to give over to it the collection of an impost or duty for a limited number of years or for a limited per cent.; to give to it authority to regulate foreign vessels in American ports; and to refrain from levying discriminating duties among themselves. The unanimous consent required by the Articles to make any amendment blocked these and all other proposed reforms. Sometimes twelve States would agree, but before the thirteenth could be won over, another would withdraw its consent. On one occasion, when Rhode Island alone held out, her delegates in Congress wrote to the governor of the State that their "reasonable and firm stand against the all-grasping hand of power in the case of duties had saved the United States!"

Connecticut protested that such an addition to the functions of Congress as the collection of an impost would at one stroke vest that body with the power of the sword and the purse, and leave nothing of the individual States but an empty name. Others argued that with 320 million acres of land, which would bring an average of at least one dollar an acre, the General Government needed no other source of revenue.

Unanimous consent to an amendment could never be secured. This was the lesson taught by the attempts.

Aside from the difficulties arising from the defects of the Confederation experiment, the disorders in the national body were simply reflections of the turbulent spirit prevalent at the time.

Suddenly emerged from the restraining hand of a mother country, misinterpreting the meaning of independence, confounding liberty with license, having lost the law-abiding sense in the treatment of the Tories, grown only too accustomed to the pleasures of mob law, the people were passing through the reassembling period which always follows a civil war. Peace is the normal condition of a people; war is the abnormal. Restraint, taxation, and obedience, it was supposed, had passed away with royalty and kingly prerogative. "Taxes and relaxed government agree but ill," observed the laconic Jay. From South Carolina, Edward Rutledge wrote to him, "It is really very curious to observe how the people of this world are made the dupes of a word.

'Liberty' is the motto; every attempt to restrain licentiousness or give efficacy to government is charged audaciously on the real advocates of freedom as an attack on liberty."

Visionists indulged their hopes of universal happiness. The rebellion which Captain Daniel Shays, officer in the late Revolutionary army, headed in Massachusetts was aimed directly at closing the courts and preventing the issuing of writs to sell mortgaged farms. But Knox wrote Washington that the creed of the insurgents was that the property of the United States had been saved from Britain by the exertions of all the people and therefore ought to be the common property of all; and that they were determined to annihilate all debts, public and private, and to have agrarian laws, which could be easily effected by the means of unfunded paper money; and that this money should be a legal tender in all cases whatever. The madness had spread to New Hampshire, Connecticut, and Rhode Island, according to Knox, embracing a total of twelve or fifteen thousand "desperate and unprincipled men."

Wild-eyed enthusiasts in Rhode Island secured the passage of an "iron-clad oath" to the effect that paper money was as good as gold or silver coin—"compelling people to embrace the doctrine of political transubstantiation of paper into gold and silver," as Jay put it. The militia had to be called out in New Hampshire to disperse a mob besieging the State Legislature at Exeter. "The mob clamoured," said a contemporary, "some for paper money, some equal distribution of property, some annihilation of debts, some rebate of all taxes, and all clamoured against law and government." The disorder spread to Virginia. "In several counties the prisons and court houses and clerks'

offices have been wilfully burnt. In Green Briar, the course of justice has been mutinously stopped and associations are entered into against the payment of taxes," wrote Madison to Jefferson in France.

Neither those who caused these troubles, nor those who wept over them, as did Mrs. John Adams in France when news of Shays's Rebellion reached her, could foresee the blessings which would follow; that these eight years of individualism were to form an argument for nationalism to be handed down by intuition to future generations. At the time it seemed that nothing but a miracle could save the Union. "Our affairs seem to lead to some crisis, some revolution—something I cannot foresee or conjecture—I am uneasy and apprehensive; more so than during the war."

Jay was never given to exaggeration of thought or expression; he must have been deeply impressed to write those words to Washington. "What a triumph for the advocates of despotism to find that we are incapable of governing ourselves," replied the equally conservative farmer of Mt. Vernon, "and that systems founded on the basis of equal liberty are merely ideal and fallacious." To Jefferson in France, Washington confessed that the General Government, if it could be called a government, was shaken to its foundation, and that unless a remedy were soon applied anarchy would inevitably ensue. "The question whether it be possible and worth while to preserve the union of the States must be speedily decided some way or other." said Madison. "If some strong props are not applied, it will quickly tumble to the ground."

He thought he detected a propensity to return to monarchy in some leading minds; but he thought that "the bulk of the people would probably prefer the lesser evil of a partition of the union into three more practicable and energetic governments." Monroe, always inclined to be suspicious of the Northern section, was "certain" that conferences were held in New York between New Englanders and New Yorkers upon the subject of the separation of the States east of the Hudson and their erection into a separate government.

Franklin, appearing in the midst of these disorders from his nine years' residence in France, felt the necessity of counteracting the despairing feeling among the friends of America in Europe and of checking the rejoicing among her enemies. He, therefore, filled his letters with descriptions of American prosperity, crops, prices, and happiness. "In short," he wrote, "all among us may be happy, who have happy dispositions, such being necessary to happiness even in Paradise."

At the same time, acting in his new station as president of the State of Pennsylvania, he was endeavouring to arrest "a number of disorderly people" who had collected near the line separating Pennsylvania and New York. "They are impatient of regular government," he wrote in seeking the co-operation of the governor of New York, "and seize upon and

presume to dispose of lands contrary to and in defiance of the laws. Their number is recruited daily by vagabonds from all quarters."

The disorder arose from the long-standing controversy between Pennsylvania and Connecticut over possession of the Wyoming valley—a dispute which the Federal Government had been unable to settle.

The general public had long since lost respect for the National Government and its Congress. Even Washington referred to it as the half-starved, limping Government, that appears always moving upon crutches and tottering at every step. The chief difficulty was not to ascertain the remedies needed, but how to apply them. As early as 1780, Hamilton had thought Congress had the right to reassume the powers of sovereignty it had appropriated with the silent consent of the States during the pressing times of the war; or, if the application must be external, that the people might meet in a convention of delegates empowered and instructed to conclude a new and effective federation.

Few were ready to go as far as the impetuous Hamilton in thus virtually overthrowing the "Articles of perpetual union" which were legally binding although inefficient. To amend them according to their own provisions would be legitimate if it could be accomplished.

[Illustration: SIGNATURES OF DELEGATES TO ANNAPOLIS CONVENTION.

Hamilton, Reed, Dickinson, Randolph, and Madison were the most prominent

members of this abortive meeting, which led eventually to the

Philadelphia Convention.]

This was considered by the majority of people the proper method; but when the experiment was tried at Annapolis in 1786 of a meeting of commissioners to devise a uniform regulation of trade and to report such an amendment to their States for ratification, only twelve delegates could be gotten together representing five States. Even the State of Maryland, in which the meeting was held, failed to send a representation. Each of the delinquent States had an excuse. The commissioners who did go to Annapolis, headed by Hamilton, Dickinson, and Madison, could only issue an appeal for another meeting of delegates from the several States the following year in the more central city of Philadelphia, empowered to consider not only the commercial troubles but to "devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

It can scarcely be said that the failure at Annapolis was either a surprise or a disappointment, because few had expected success. "The expedient is no doubt liable to objections," said Madison, one of the Virginia delegates, "and will probably miscarry. I think, however, it is better than nothing." The object was unfortunately limited to considering the commercial friction between the States and to regulating their foreign relations. The conviction had become general that only an extended amendment of the frame of National Government could correct the difficulties in the commercial functions and in many other needed particulars. The thought that the proposed convention, if the proposition should be generally taken up, would include such a revision of the Articles of Confederation, served also to soften the blow of the Annapolis failure.

CHAPTER V

REFORMING THE NATIONAL GOVERNMENT

The suggestion, emanating from the unsuccessful gathering at Annapolis, that a convention of delegates be called from the several States to meet at Philadelphia the following year to devise means for rendering the National Government adequate to its task, was supported most admirably by the condition of the times. The Shays Rebellion in Massachusetts, its support in the neighbouring States, and the disorder in Virginia and New Jersey, were moving arguments for immediate action.

Even Washington was forced to admit that the people were at last sufficiently misled. The National Government, helpless to invade a sovereign State to suppress domestic insurrection, was compelled to finesse in taking some steps to mobilise the militia by imagining an outbreak of Indians in Massachusetts.

Led by the alarming situation, Congress, with unusual dispatch, took up the Annapolis suggestion within five months after its receipt. But the feeling that the initiative should come from the Congress itself rather than from an irregular convention led to the substitution of a motion from the Massachusetts delegates in Congress that a convention of delegates should be held at Philadelphia on the second Monday of the following May "for the sole and express purpose of revising the Articles of Confederation" and reporting its suggestions to Congress and the several State Legislatures.

During the spring of 1787, State after State took up the idea of a convention of the people to correct the errors in the national frame.

With rare discrimination, they chose, through their State Legislatures, their leading men as delegates. All hope became centred in this apparently last resort. The convention "will either recover us from our present embarrassments or complete our ruin," said Monroe. That radical changes were necessary, many felt assured. Madison likened the Government at this time to a ship which Congress kept from sinking by standing constantly at the pumps instead of stopping the leaks which endangered her. He began to talk about "a new system" before the convention assembled. In sending to Washington an outline study of all prior confederated governments, he wrote, "Radical attempts, although unsuccessful, will at least justify the authors of them."

Such sentiments were found to prevail generally among the delegates when, on May 25, 1787, a majority of the States was represented and sessions begun in the Independence Hall in the city of Philadelphia.

Within five days it was decided to cast aside the deficient Articles, to exceed instructions, and to frame a new National Government with separate legislative, judiciary, and executive functions. To put new wine into old bottles was felt to be useless. No small task confronted the convention in carrying out this resolution. Independence and the other steps thus far leading toward nationality had been taken, as George Mason, of Virginia, said, under a certain enthusiasm which inspired and supported its advocates; but to sit down calmly to consider a project which might bring happiness or misery to millions yet unborn was an action, which, he confessed, absorbed and in a measure suspended the human understanding. Robert Morris, a delegate from Pennsylvania, begged his sons in France to offer a prayer for the success of the meeting since so much of their future happiness depended upon it.

The lack of information on the work of the convention, which sat from May 25 to September 17, 1787, is frequently deplored. The deficiency is due not to indifference on the part of those concerned, but largely to the lack of information given out to the public at the time and since. In apologising to Jefferson for not sending a full account of the proceedings during the sessions, Madison said: "It was thought expedient, in order to secure unbiassed discussion within doors, and to prevent misconceptions and misconstructions without, to establish some rules of caution." These rules, adopted early in the proceedings, forbade the inspection of the minutes by any one not a member, prohibited the copying of any part of them, and enjoined the members against disclosing anything said in the sessions. Dr. Manasseh Cutler, who visited Philadelphia during the summer, went to the State House, but found "sentries planted without and within—to prevent any person from approaching near—who appear to be very alert in the performance of their duty." When he went to pay his respects to Dr. Franklin, a member of the convention from Pennsylvania, the philosopher showed him a curiosity in the shape of a two-headed snake and fell to speculating upon what it would do if, on meeting the stem of a bush, the heads should choose to go one on each side of it. "He was then going to mention," wrote Cutler in his journal, "a humorous matter that had that day taken place in convention, in consequence of his comparing the snake to America; but the secrecy of the convention matters was suggested to him, which stopped him."

[Illustration: MANASSEH CUTLER]

This secrecy was felt to be binding perpetually by many of the members.

The secretary of the convention, Major Jackson, who came to Philadelphia as private secretary to General Washington, kept the official minutes.

This book, by one of the final motions of the convention, was entrusted to Washington, who had presided so conscientiously over the sessions that he did not allow himself even the privilege of debating. In 1796, he deposited it among the public archives. Until the year 1837, these minutes, with a few letters submitted by some of the seceding delegates justifying their action, and the gleanings from eighty-odd private letters written by members of the convention, constituted all public knowledge of the details of the meeting. But in the year mentioned above, Madison's papers were purchased by the National Government, and among them was found a number of little home-made books containing his priceless "Notes on the Convention." In the introductory pages, Madison tells how he carried out his determination to preserve a record of the debates for the benefit of posterity.

"I chose a seat," he says, "in front of the presiding member, with the other members on my right and left hands. In this favourable position for hearing all that passed, I noted, in terms legible and in abbreviations and marks intelligible to myself, what was read from the Chair or spoken by the members; and, losing not a moment unnecessarily between the adjournment and reassembling of the convention, I was enabled to write out my daily notes during the session or within a few finishing days after its close, in the extent and form preserved in my own hand on my files."

The changes made from day to day in the drafts of the Constitution, as recorded in the minutes, are cleared up by the light of Madison's notes and become a series of compromises. They were concessions made by superior to inferior factions, or sacrifices made by one section to satisfy and quiet another. That the equal State representation in the Continental Congress, for instance, had been one of the most pernicious parts of the Confederation machinery no one doubted. The practice had been inaugurated in the first Continental Congress, as the minutes under Sept. 6, 1774, explain, because the relative importance of the colonies represented could not be determined at the time. It was continued by default. But the arrangement bore no respect to proportional representation. New Hampshire, Rhode Island, New Jersey, Delaware, Maryland, South Carolina, and Georgia could combine and make a majority of the States and yet contain not one-third of the people.

New York and Connecticut might be added, making nine of the thirteen States, but representing less than one-half the total population.

Notwithstanding this inconsistency in the old method, so strong was the fear of the smaller States that their large neighbours would absorb or oppress them, that they took a decided stand in the convention against all propositions to change to proportional representation. The Delaware representatives were authorised to withdraw rather than submit to any arrangement depriving the State of an equal vote with the other States. On the other hand, the large States, especially Virginia, New York, and Massachusetts, insisted upon changing to representation based on wealth or population. As a way out of the deadlock, after weeks of debate, two branches of Congress were determined upon, in one of which membership and voting should be proportionate. Franklin then proposed as a compromise that in one branch all bills for revenue should originate and in the other branch the States should have equal vote.

This adjustment between the large and small States was considered the grand compromise, and its acceptance was a matter for common rejoicing.

The solution of this problem immediately raised another. What was meant by "population," which had been substituted for wealth as a basis of apportioning delegates in the popular branch? Did it include slaves?

The Continental Congress had long been accustomed in assessing the expenses of the war to add to the quotas of the States a sum equal to three-fifths of the number of slaves in each, on the ground that the labour of five slaves was equivalent to that of three free men. This proportion was now taken both for determining representatives in Congress and for assessing direct taxes. The States which continued to hold slaves would consequently have the benefits of three-fifths of their slaves represented by additional congressmen; but they must bear three-fifths additional of a direct tax, whenever one might be levied by the National Government.

The questionable value of slave labour had already divided the Southern States into two economic classes. Delaware, Maryland, and Virginia, because of the exhausting effects of tobacco upon the soil, had attempted to restrict its cultivation by forbidding more slaves to be brought in. The two Carolinas and Georgia, requiring fresh slave labour for their rice and indigo fields, would not consent to any diminution of the supply. A compromise was at last effected in the convention which permitted the importation of new slaves into the United States for the coming twenty years. This was done by the votes of the New England States, where the slave-trading vessels were generally built, added to those from the three Southern States. Against these were New Jersey, Pennsylvania, Delaware, and Virginia. For some reason, the Maryland delegates voted with the majority to keep the trade open.

This compromise was strongly opposed by Gouverneur Morris, a Northern man, who confessed that he would sooner submit himself to a tax for buying all the negroes in the United States than saddle posterity with such a slavery constitution, and by Madison, a Southerner, who declared that these twenty years would bring as much mischief as an unlimited trade could produce. In accord with the practice of the old Congress, the delegates decided to eliminate the word "slave" from the Constitution, lest it might cause offence and beget opposition toward the new government they were about to propose. Milder terms, like "such persons" or "persons legally held to service or labour," were substituted.

Many other adjustments were necessary to settle the Continental differences. By one of these, the nation was given full control of commerce. By another, the matter of choosing a chief executive was entrusted not to the people directly, because, as was said, they would be likely to be misled by designing men; nor to the national Congress, because of the inequality of the Senate and House representation; nor yet to the State Legislatures, because of the unequal sizes of the States; but to a set of electors to be chosen by the States, a kind of substitute for these various plans. The term of the presidential office was, after many debates, fixed at four years, although an urgent minority wanted him to serve seven years and not be eligible for a second term. In very truth it may be said that the entire document is made up of a series of compromises.

The twenty-three resolutions offered by Governor Randolph, of Virginia, are commonly considered as forming the groundwork of the Constitution.

With them were incorporated apparently six provisions taken from the plan devised in a conference of the small States and offered by Paterson, of New Jersey, together with twenty suggestions emanating from an individual member, Pinckney, of South Carolina. Even the Virginia resolutions, although commonly ascribed to Madison and winning for him the title, "Father of the Constitution," are modestly ascribed by him to the series of conferences held by the Virginia delegates during the ten days they waited for a quorum. "The resolutions," said he later, "were the result of a consultation among the deputies of the State; the whole number, seven, being present. Mr. Randolph was made the organ of the occasion, being the governor of the State, of distinguished talents, and in the habit of public speaking."

Turning over the pages of Madison's "Notes," one may follow through committee and general session, the slow evolution of the Constitution of the United States. The eager hands of the experienced workers turned over the materials of old forms, rejecting parts hitherto tried and found wanting, welding together familiar pieces brought from monarchical or colonial precedent, and constructing a machine noted for practicability rather than for novelty. They were forced to use careful workmanship because of the great variety of opinions. They were hindered constantly from rash action by inherited prejudices and climatic differences. And they were conscious at the end of having wrought, not perfectly, but as well as conditions would permit.

Experience was the fountain from which the Constitution-makers drew their "inspiration." A novel creation, as a certain narrow provincialism in the United States is sometimes fond of claiming for the Constitution, would have been an assembling of theoretical machinery, of untried experiments, which could not have met the shock of being suddenly put into motion to replace a broken down system. It could not have won back, solely on its merits, the confidence of the discouraged people.

If it had been "the most wonderful work ever struck off at a given time by the brain and purpose of man," it could scarcely have withstood the vicissitudes of a growing people for over a century, with amendment in four particulars only. More experiments and less experience might have required the adoption of more of the fifteen hundred amendments which have been proposed to the Constitution in these hundred years.

Experience is a safe ground upon which to build. Gouverneur Morris demolished a vast amount of eulogy when he wrote to a correspondent in France that some boasted the Constitution as a work from Heaven, while others gave it a less righteous origin. "I have many reasons to believe," said this matter-of-fact man, who bore such a large part in recasting the phraseology of the document, "that it was the work of plain, honest men."

As matter is not created in any of its forms, but simply assumes new combinations by its own laws or under the guidance of man, so apparently new models in statecraft may be resolved by analysis into old ideas in new combinations. The American Constitution is the English system of government adapted to American soil through the intervening colonial and state governments. The president is the king through the royal governor, but shorn of his prerogative, descent, and perpetuity in the transition. The Senate is the House of Lords, with its permanency changed into a long tenure of office by passing through the colonial council. To the same intermediate State is due the power of appointment to office and of treaty-making which the Senate shares with the executive, thus reviving the relation of the privy council, chosen from the House of Lords, to the King. The House of Representatives is copied directly from the popular assembly of the colonial government, which in turn was modelled after the British Commons. The right of originating bills of revenue, which the Representatives possess, was preserved in many a contest between colonial assemblies and royal governors. It is the birthright of Englishmen, dating from the Petition of Right granted by Charles I., which substituted fixed taxes for forced loans and gifts. The national supreme judiciary, the most novel of the three divisions of the National Government, embodies in its appellate principles the Privy Council of England, to which all colonists could appeal, and the later

admiralty committees of the Continental Congress, to which all cases of prizes seized in the war might be referred. The theory of a state court of last resort had already found place in nine of the State constitutions and the convention simply placed the capstone of a national Supreme Court on the top of the column. Some parts of the colonial government were rejected as unfitted to the national frame. An advisory council for the President, such as nearly every colony gave to its governor, was desired by many but finally omitted. The present Cabinet really takes its place.

In like manner, it is possible to find British and colonial precedent, tried and proved, for almost every provision of the National Government.

The ruling class at the time it was framed was composed of English and Scotch, trained in British forms of government. The Dutch in New York and the Germans of Pennsylvania took almost no part in the Philadelphia Convention. It is as useless to deny an English parentage for the American Constitution as to deny that there were English colonies in America. So did the heirs of the ages avoid the mistakes of the past by seeking the results of the law of the survival of the fittest. They form a strong contrast with another people, less fitted by inheritance for self-government, who were at about the same time entering upon the task of constitution-making. "It is somewhat singular that we should be engaged in the same project for the same purpose," Franklin wrote to Chastellux, referring to the Assembly of Notables in France and the Constitutional Convention in Philadelphia. "I hope both assemblies will be blessed with success and that their deliberations and councils may promote the happiness of both nations."

It so chanced that the very day the convention in Philadelphia had a quorum, the Assembly in France, initiatory of the French Revolution, was dismissed. Both had met in the spirit of reform; but to what different ends did the two movements eventually come! The Americans had in no case attempted the impossible; had not hoped for the immediate dawn of the millennium; had not even attempted to put into practice the loftiest sentiments of the Declaration of Independence; and had carefully distinguished between the State as an agency for political and for social rights. Very similar moderate sentiments on government had been carried to France by Lafayette, the Lameths, Viscount de Noailles, the Prince de Broglie, and others who came to America to take part in the Revolutionary War. Their influence produced the moderate French constitution of 1791, which shows a marked resemblance to the American frame. That these principles were suited to the American people is demonstrated by the rapidity with which peace and order were established under them. That they were ill qualified for the French people was shown by the early overthrow of the constitution of 1791.

The French constitution of 1793 and those which followed bore little resemblance to the American frame. The influence which the American Revolution exerted upon the French Revolution had passed, and the two movements bore no further resemblance to each other. The Americans had been content with a rebellion against authority and a revolution which substituted old forms, or combinations of forms, with new officials.

The French revolutionists were not satisfied until they had tried to change all existing forms and institutions. They would annihilate society, the church, Christianity, even Deity itself. Precedent became a crime. The accepted system of weights and measures, the calendar—nothing was too well tried to compete with innovation. In America, the rights of man were eventually tacked on to the tail of the American Constitution as an afterthought to conciliate the timorous, "a tub thrown to the whale," as the first ten amendments have been called. In France, the rights of man overshadowed the working part of the constitution, delaying essential details by their incorporation, and ultimately furnishing a pretext for interfering with other peoples.

When once the Americans had secured a constitution, they desired nothing so much as to be left alone to work out their own destiny. When once the French had evolved a system, with true propagandist spirit they wished to foist it on others. "With cannon for treaties and millions of freemen as ambassadors," they demanded that the feet of all nations should keep step with the march of what they deemed liberty. Hamilton, as usual, had proven a seer when he wrote to Lafayette in France at the very beginning of the French movement, "I fear much the final success of the attempt, for the fate of those I esteem who are engaged in it, and for the danger in case of success, of innovations greater than will consist with the felicity of your nation."

The people of America seemed to wait with bated breath the conclusion of the deliberations of the wise men of the nation met in convention at Philadelphia. Rebellion stood with hesitating step, and warring factions tacitly declared a truce. The crisis was at hand.

"The names of the members will satisfy you that the states have been serious in this matter," wrote Madison to Jefferson from Philadelphia.

"The attendance of General Washington is a proof of the light in which he regards it. The whole community is big with expectation and there can be no doubt that the result will in some way or other have a powerful effect on our destiny."

Even stronger conviction of the critical situation may be gleaned from the private correspondence of the other members, bound by the pledge of secrecy from describing the turbulent scenes attending the sessions.

Daily had they seen the difficulty of reconciling the inherited animosity between the Puritan and the Cavalier transplanted to America; between the Established Church and the Dissenter; between commercial and agricultural interests; between a slave system and free labour; between an urban population, accustomed to abide by majority rule, and a rural people, bred to individual freedom and absolute home rule.

They had to evolve a system satisfactory to people scattered through thirteen degrees of latitude, with climatic differences arising from a mean average temperature of forty degrees in the north and sixty degrees in the south. Such decentralising tendencies were met with nowhere in Europe save under the strong hand of a monarch in Russia.

These climatic differences produced the frugal Northerner, who had to provide in advance for the winter season, and the hospitable planter of the South, in whom prodigality was induced by the very lavishness of nature about him. It was not strange that by contrast, and seen through the haze of distance, the frugality of the North should appear to be avarice to the South; while the hospitality upon which that section prided itself should seem to be prodigality in Northern eyes.

These basic differences could be reconciled by compromise, and that only temporarily. Washington had summed up the situation when he declared that there must be reciprocity or no union; that the whole matter could be reduced to a single question—whether it was best for the States to unite.

Although Washington, as presiding officer, took no part in the debates, his influence in favour of effective government must have had weight in the convention. Madison and Gouverneur Morris bore the brunt of objections to a national system. Franklin, a victim of old age and ill health, was allowed to read his speeches from his seat. Hamilton pleaded for a more effective system early in the sessions, but his radical views undoubtedly militated against any plan he had to offer. Two of the most influential members from the Southern States, Randolph and Mason, of Virginia, refused to countenance the proceedings by their signatures to the document. Another member, Gerry, of Massachusetts, followed their example. Luther Martin, a prominent lawyer of Maryland, returned to his constituency to write a letter of protest against the assumption of power by the convention in framing a new government when called together solely for the purpose of correcting the old. Yates and Lansing, two of the three delegates from the prominent State of New York, went home for the same reason. The third, Alexander Hamilton, withdrew for a time in disgust because his efforts for an efficient central power produced apparently little results. The sessions had, for the most part, representatives from eleven States only, Rhode Island having failed to send delegates. Her refusal was caused by a conviction that the convention would recommend taking away from the States the power to issue money and to collect duties. Her fears proved true.

Outside the closed doors of the convention the public clamoured, declaring Star-Chamber sessions an insult to the American people. All kinds of rumours prevailed concerning the probable action of the convention. Some newspapers declared that three republics, an eastern, a middle, and a southern, had been agreed upon, under the conviction that so numerous a people and so large a territory could not be incorporated under one government. Still others passed the news that the plan of the royal electorate of Poland had been adopted, and the second son of George III., Bishop of Osnaburgh, had been chosen king of the United States. An unofficial denial of this rumour appeared in a Philadelphia paper. "We never once thought of a king," it said.

"Benny the Roofer" appeared in the prints in ridicule of Benjamin Franklin, who, it was said, was endeavouring to construct a roof over the entire United States.

At last the only body, which has ever been called together in the United States to consider a frame of national government, was ready to report and to adjourn. A new plan of government lay on the table signed by thirty-nine of the fifty-five men attending the convention.

They admitted its defects, but agreed that it was the best frame that could be obtained at the time, and resolved to throw themselves on the indulgence of their constituents. As much was confessed in the explanatory and conciliatory circular, which they prepared to accompany the document to the Congress and thence, they hoped, to the States.

"Individuals entering society," so the circular argued, "must give up a share of liberty to preserve the rest. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and, on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular rights. The Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable."

Here was the voice of compromise, and of that conciliatory spirit, which alone can make union possible. If the people at large would show the same indulgence toward each other, the experiment would be given a trial. Assuredly, the members of the convention set them a good example of toleration. "No man's ideas," said Hamilton, "are more remote from the plan than my own are known to be; but is it possible to deliberate between anarchy and convulsion on the one side and the chance of good to be expected from the plan on the other?" "I consent, sir, to this Constitution," said the aged Franklin, in a paper read by his confrere, Wilson, "because I expect no better, and because I am not sure it is not the best." He

advised that opinions on the errors of the document should never be carried beyond the walls of the convention.

"If every one of us here," said he, "in returning to our constituents, were to report the objections he has had to it, and endeavour to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favour among foreign nations as well as among ourselves, from our real or apparent unanimity."

Gouverneur Morris confessed that the present plan had many objections, but, considering it the best that could be obtained, he would take it with all its faults. The moment it went forth, the great question, in his opinion, would be whether there should be a national government, or not, and a negative reply would mean a general anarchy.

Washington, after his return to Mt. Vernon, sent a copy of the document to Patrick Henry, saying, "I wish the Constitution, which is offered, had been more perfect; but I sincerely believe it is the best that could be obtained at this time." The Revolutionary orator had refused to attend the convention as a delegate from Virginia. He preferred the Articles with their imperfections to an experiment. To Washington he replied that he could not bring his mind to accord with the proposed Constitution. He would prefer to bear the ills they had than fly to others that they knew not of. Harrison, a Virginia neighbour with whom Washington had also been associated since the Revolutionary times, replied to the General in acknowledging the receipt of a copy of the Constitution that he feared the remedy would be worse than the disease.

Such sentiments were not confined to these Virginia statesmen. It was evident that the victory for the new government had been only half won in its formation and adoption by the convention. It had yet to be accepted by the Congress and to be adopted by nine of the States before going into effect. Great opportunity for a renewal of insurrection and faction would be offered by undue delay.

CHAPTER VI

ADOPTING A NATIONAL CONSTITUTION

The statesmen who had won the fight for a new form of national government in the Philadelphia Convention lost no time in following it up through the various stages leading practically to a *plebiscite* of the people. Madison returned immediately to New York to resume his seat in Congress, where the first stand must be made. That body had been engaged during the summer with the Ordinance of 1787, and the question of the navigation of the lower Mississippi. It was feared that Richard Henry Lee, who had refused to be a delegate to the convention, might make the Congress hostile to the new plan, or delay it until after the fall meetings of the State Legislatures. Fortunately there was a quorum when Madison arrived from Philadelphia. Through his personal efforts and private letters from influential men, the Congress in little more than a week had accepted the report of the convention and transmitted it to the several State Legislatures for their consideration. The members of the Legislatures in each State were requested to call a popular convention to pass upon the new document, rather than to consider it themselves. The Legislature is created to make laws and not to judge of constitutions. The Articles had not observed this canon of political science, but had been adopted by the State Legislatures. Less haste and more regularity were to characterise the consideration of the Constitution.

During the nine months following the submission of the Constitution to the States, while the necessary nine ratifications were being obtained, hope and fear alternated in the minds of its friends. To Hamilton, success seemed so assured that he wished they had made the Constitution "higher toned." Yet the struggle was likely to be arduous enough under existing conditions. Since the word "Federal" had by common usage been applied to the national in contradistinction to the State governments, the new frame was known as "A plan for a new Federal Government," and those who favoured it styled themselves "Federalists."

Men were known as "warm Federalists" before the discussion was a month old. On the other hand, Richard Henry Lee had attacked the new idea under the pseudonym, "The Federal Farmer." His use of the word was entirely consistent with the desire of the opposition to continue a federated instead of running the risk of a consolidated government.

As Gerry, an Anti-Federalist, complained later, an injustice was done them by fastening upon them the word "Anti," when they were in favour of retaining the Federal Government and the others wished to cast it aside and to establish a National Government. The Federalists, in the light of the present day, would be called "Unionists"; but, being largely city dwellers and having control of the presses, they were able to assume the less alarming name of "Federalist," and to put upon their opponents the name "Anti-Federalist."

[Illustration: COPY OF THE ARTICLES OF CONFEDERATION AND THE CONSTITUTION IN PARALLEL COLUMNS. The foot-notes show that it is an Anti-Federal print.]

The war between the Federalists and Anti-Federalists was waged chiefly in the public press. Sixteen editions of the Constitution in pamphlet form have survived to this day, in addition to those officially struck off. An edition appeared in London. Another was printed in Albany, New York, in the Dutch language. Pamphlets without number poured from the presses. Correspondents occupied columns in the newspapers. When Governor Clinton, of New York, opened his opposition batteries under the pen name of "Cato," Hamilton replied vigorously in defence of the new proposition under the name "Caesar." When George Mason addressed his fellow-citizens of Virginia in a pamphlet against the Constitution, he was answered by James Iredell as "Marcus." In other publications, "Cassius," "Agrippa," "Sidney," and "Civis" filled columns, while "Plain Dealer," "A Columbian Patriot," and "An American Citizen"

withheld not their pens. Much of the rapid increase in the number of newspapers and the betterment of printing facilities in the United States near the close of the century may be attributed directly to these debates on the proposed Constitution. The religious controversial literature of colonial days had now been replaced by political composition.

Not only in the public press and in private letters did the Federalists further their cause, but they did not hesitate at more cogent arguments.

When seventeen country members of the Pennsylvania Legislature ran from the Assembly in order to break the quorum and so prevent the call for a State convention to consider the Constitution, the remaining members brought back two of them by force. "When perceiving the other side to have an advantage, they play truant," said Noah Webster, a New

England pedagogue, who had gone to Philadelphia at this time to lecture and to sell his new *Grammatical Institute*. "An officer or a mob hunts the absconding members in all the streets and alleys in town." To be held in their seats and counted as voting affirmatively, the recalcitrant members declared an outrage. The Federalists thought they deserved more punishment. When the State convention, thus called, met in Philadelphia, two of its members, Wilson and McKean, made such eloquent appeals for a trial of the new form that the auditors broke into applause. The Anti-Federalist papers said the incident was pre-arranged to influence the convention and reported that "the gallery was filled with a rabble, who shouted their applause; and these heroes of aristocracy were not ashamed, though modesty is their national virtue, to vindicate such a violation of decency." The final vote of the Pennsylvania State Convention, forty-six to twenty-three in favour of the Constitution, was looked upon by the Federalists as a vindication of their actions. In the Maryland Convention, a majority of sixty-three refused to hear any compulsory amendments proposed by a minority of eleven, on the grounds that they had been instructed by their constituents to ratify or reject a constitution, not to make one.

The "Antis" soon found out, as "Antis" are wont to do, that opposing a popular movement was an ungrateful, as well as an unpleasant task.

Pamphlets issued by the other side called them a junto of debtors, knaves, and worthless-moneyists. The Anti-Federalist members of the Massachusetts Convention complained that they were pointed out and abused upon the streets. They also charged that the moneyed interests of New York were trying to bribe the convention with large sums of money sent to Boston.

"These lawyers and men of learning and moneyed interests," cried a country delegate in the Boston Convention, "that talk so finely and gloss over matters so smoothly to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution and get all the power and the money into their own hands; and they will swallow up all of us little folk like the great Leviathan, Mr. President, yes, just as the whale swallowed up Jonah."

When four hundred mechanics, or tradesmen, of Boston, in a set of resolutions, demanded a favourable vote on the Constitution, and when Paul Revere marshalled them at the Green Dragon tavern to shout for the new frame, the Anti-Federalists called out "Intimidation!" but the Federalists disclaimed such intention.

Concerted action usually wins over individualism. The Anti-Federalists showed no such capacity for united efforts as the Federalists displayed.

For instance, Hamilton, with the aid of Madison and Jay, wrote a series of articles for the New York press, calculated to explain the new government, to enlighten the people, and to quiet their fears. Collected into the *Federalist*, they form the best commentary yet written on the Constitution. Copies of the numbers, as they appeared, were forwarded from city to city to be reprinted in Federal newspapers.

Nothing was omitted likely to impress the people favourably. Impressive ceremonies marked the ratification in each State as the news was received. In Baltimore, a vessel, fifteen feet long, representing the new frame, fully equipped and rigged, was drawn on wheels through the streets, then launched on Chesapeake Bay, and navigated to Mt. Vernon, where Washington received it "as a specimen of American ingenuity."

Even the muse of the Rev. Timothy Dwight was invoked to aid the Federal cause by begging that all petty views be lost in a national horizon.

Some of his couplets run:

"Each party-view, each private good, disclaim,

Each petty maxim, each colonial aim;

Let all Columbia's weal your views expand

A mighty system rule a mighty land;

Yourselves her genuine sons let Europe own

Not the small agents of a paltry town."

It was a unique warfare. Where a people of different inheritance might have appealed to arms, the appeal here was to intelligence, argument, and the ballot. For nine months the struggle went on among the citizens of the different States to determine whether they should abide by the National Government they had legally adopted seven years before, or whether they would exercise the right of peaceful revolution and cast it aside for another. It was a true revolutionary movement, a turning upside down, in comparison with which the Revolution of 1776 becomes a revolt against the King.

Recognising the revolutionary action of annulling one frame of national government by adopting another, a wag wrote this stanza:

"Here, too, I saw some mighty pretty shows,
A revolution, without blood or blows;
For as I understood the cunning elves,
The people all revolted—from themselves!"

The opposition to a change in the national form of government, as shown in the debates in the various State conventions, was based upon expediency among the masses and constitutionality among the few. In the light of the dangers which have confronted the people during a century of experience, some of the objections to the Constitution seem ridiculous. But the objectors were sincere in their apprehensions, being just emerged from a despotic government, and jealous of their hard-earned liberty. It was the old story of individualism fearing to trust its welfare to the general body. That liberty is gained by entrusting liberty to an efficient government is a truism which it has taken many years of self-rule to demonstrate.

There was a general cry among the opposition that the convention had exceeded its powers in casting aside the Articles which it had been called to correct. In examining the details of the new frame, some deprecated the large number of Federal officers thus created, who would form a body independent of the States and fattening on the general treasury. Others feared the concentration of power in the President, who would have control of the army, the navy, and the treasury; others thought the number of terms he could serve should be restricted. Still others criticised the six years allowed a senator. The saying was general among the opposition that the individual had no protection from the General Government; no assurance that his property might not be seized by it, his worship interfered with, and himself robbed of all those privileges for which his English forebears had contended.

The keener spirits among the opposition looked above these details and saw a threatened consolidation of the Central Government. "Give me leave to inquire," said Patrick Henry, in the Virginia Convention, "who authorised them to speak the language of 'We, the people,' instead of 'We, the States'? States are the characteristics and the soul of a confederation." "I stumble at the threshold," said Samuel Adams, on first reading the document. "I meet with a national government, instead of a federal union of sovereign States." Said a member of the first North Carolina Convention, "I am astonished that the servants of the Legislature of North Carolina should go to Philadelphia and, instead of speaking of the 'State' of North Carolina should speak of the 'people.'" In the Massachusetts Convention it was declared that "We, the people," created an actual consolidation of the States, and the moment it was adopted would mean the dissolution of the State governments.

A few advocates of the new Government did not hesitate to admit that it was intended to form an efficient government for the entire people of the United States, regardless of the States. One of the two must be superior. In the convention, Gouverneur Morris had made this laconic speech, "Mr. President, if the rod of Aaron do not swallow the rods of the magicians, the rods of the magicians will swallow the rod of Aaron." However, the more politic endeavoured to quiet the fears of the people by explaining that "We, the people," was simply the style or title of the new form; that the powers given to the Central Government were entirely national ones; that all the rest were reserved to the States; and that the people could easily change the Constitution by amending it if they experienced any danger at any time from the central authority.

These words of the preamble to the Constitution, so pregnant of future interpretation, were thus, from the beginning, a cause of alarm to a few minds. Patrick Henry seemed to feel presciently that the later theory of an indissoluble union would be based largely upon this phrase, and that the Civil War to preserve the Union would be justified by it.

Yet its incorporation in the document in that form was due purely to an accident. The Virginia plan contained no preamble. Pinckney's plan, as given by Madison, began, "We, the people of the States of New Hampshire, etc." When the first rough draft of the Constitution had been put together by the Committee on Detail, during the eleventh week of the convention, and secretly printed for the use of the members, the preamble began, "We, the people of the States of New Hampshire,"

etc. Six weeks later, the revised draft was reported with the preamble changed to "We, the people of the United States," *etc.* What caused the change to be made? Chiefly because the blank designating the number of States required to put the new form into execution had been filled with the word "nine." No one could tell which nine would ratify first and, therefore, no list of States could be put into the preamble. A phrase covering all the people of the United States was substituted.

What slight chances give rise to arguments justifying the making of a nation!

[Illustration: FIRST DRAFT OF THE CONSTITUTION OF THE UNITED STATES.

The form of the preamble in this draft is described in the text of this volume. It was printed for the benefit of the members of the Convention in making further changes.]

Two factors were potent in securing the final success of the new plan.

One was the provision in the last clause by which the new frame could be amended easily. The unanimity which the Articles required in order to correct a mistake had taught a valuable lesson. Three-fourths was to be the maximum requirement hereafter. It is interesting to note that a unanimous vote has never been obtained on any amendment thus far made to the Constitution. The other favourable circumstance was the tacit understanding that Washington would consent to serve as the first President, guaranteeing the perpetuity of the Republic by his past record. His fidelity had been tested at the close of the Revolutionary War, when a devoted army might have made him a Julius Caesar or an Oliver Cromwell in the chaotic condition of affairs. That he had returned to his Virginia farm to become an active citizen was an assurance that he could now be trusted with the vast powers conferred on the chief executive under the new plan.

The State conventions were not slow to take advantage of the privilege of proposing amendments, and these the promoters were too wise to resist. Proposals to make amendments were non-committal and harmless where the motto was "Anything to get the new plan in operation."

Massachusetts wished nine additions made, South Carolina four, Virginia twenty, New Hampshire twelve, New York thirty-two, and North Carolina twenty-six. Of the 103 propositions submitted to the consideration of Congress by the conventions, many were duplicates. Only ten were destined to survive. At the time, they served as a machine of the gods to avert the dangerous proposition that another convention be held to draw up a second constitution embracing the desired changes.

No one can read the acts of ratification in which these proposed amendments were incorporated or added without being impressed by the fear of the States that they were hazarding their hard-earned liberties in this experiment. It is easy to make light of them in the successful experience of a hundred years. It is clear now that whatever precautions the States took would be swept aside by the hand of necessity, and that later generations would repudiate some of the principles laid down in their manifestos. It is useless to demand consistency in a growing body. How futile for Virginia and Rhode Island, for instance, to declare that all power granted under the Constitution proceeds from the people of the United States and that, whenever the same is perverted, it may be resumed by them! Being adopted in State conventions and voicing the sentiment of the people in these established groups, is it unlikely that they meant the people of the United States as grouped into the several States precisely as they had formed and were now adopting their Constitution? Yet a generation or two later, Virginia was to be told that she meant the people of the entire United States, regardless of State lines, and in this opinion the people of Rhode Island in that generation would join.

How useless for South Carolina to make as part of her ratification the precautionary statement that no part of the Constitution should ever be construed so that the States might be deprived of any power not expressly relinquished by them! How fruitless for New Hampshire to stipulate that all powers not expressly delegated by the Constitution should be reserved to the several States to be exercised by them! How profitless fate was to make the stipulations of New York that Congress should never lay any kind of excise except on ardent spirits, and that the clauses in the Constitution forbidding Congress to do certain things should not be construed into a permission to do anything except that which was named in the document! Time was soon to demonstrate the folly of attempting to place these barriers in the path of progress.

Under such restrictions, the new Government would have been as helpless as the old, unless new powers had been added to it from time to time by the precarious method of amendment. Advancement must have been hindered constantly by waiting on the slow process of adding provisions to the Constitution. Such crises as the purchase of Louisiana, the suppression of domestic insurrection, and the adjustment of the national finances after the War of 1812 could never have been met because of constitutional limitations.

Several of the States incorporated in their acts of ratification a kind of political creed of the inalienable rights of the individual.

Although not intended as amendments or even as conditions of ratification, they were supposed to be a kind of perpetual compact between the State and the nation. They were modelled after the Bill or Declaration of Rights in some of the State constitutions. Rhode Island, for instance, declared that "the rights aforesaid cannot be abridged or violated and that the explanations aforesaid are consistent with the said Constitution." Time was to show in seasons of national aggrandisement, during the reconstruction period, for instance, how futile such State barriers would be in hedging about

the national powers. These sticklers for individualism and fearing souls could not see that the central clearing-house, which the people of the respective States were creating, could not be confined to a few expressed powers; that unseen situations and sudden emergencies would call for action not specified; that to make a list of allowable acts in advance was simply an impossibility. In their alarm, they failed to see that the individuals of which the States were composed would come in contact more closely with local than with national affairs; that they would participate more frequently in State than in Federal Government; and that this very participation for the regulation of local affairs would perpetuate a fealty to the State which would guarantee its perpetuity within its proper sphere. But, at the time, many agreed with Lowndes, who predicted in the South Carolina Convention that despite all precautions the State powers under the Constitution would soon be confined to the regulation of ferries and roads.

All anxiety about ratification ceased on the second day of July, the anniversary of the motion for independence, when the favourable act of New Hampshire, the ninth State necessary, reached Congress. The matter of arranging for putting the new Government into motion was referred to a committee. In taking this action, the old Congress was sealing its death-warrant. It would cease to exist, and be replaced by two houses of Congress under the Constitution. It had served well its purpose. Called into life by the necessity of colonial co-operation in 1774, the Continental Congress had gradually assumed sufficient power to bring a great war to a successful conclusion. Deprived of much of this power under the Articles, circumscribed by the suspicious bounds of State sovereignty, the Congress had become a thing of contempt. Not a member was now present who had been among those assembled at the hall of the Carpenters' Association in Philadelphia fourteen years before. Not a man now present was a signer of the Declaration of Independence.

Nevertheless the body assumed an unwonted activity in these, its last days. A quorum was had during several of the summer months of 1788.

The business of settling accounts between the Confederation and the several States was actively carried on, and further arrangement was made for selling the public lands in the North-West Territory. The form of levying quotas upon the States, amounting to a million and a half dollars, was again gone through with. Since it was unlikely that these assessments would be paid, John Adams borrowed one million guilders in Holland for ten years with which to inaugurate the new Government.

A petition for statehood from the settlers in Kentucky, the second in the long list of additions to the Union, reached Congress, accompanied by the consent of Virginia to the severance of her western district.

Since the time for the beginning of the new Government was so near at hand, the petition was returned with the suggestion that it be renewed after that event.

The principal item of domestic expenditure was found to be that for supporting the United States army of 595 officers and men scattered along the frontier. They were garrisoned in Fort Pitt, at the head of the Ohio River; Fort Franklin and Fort McIntosh, between Pitt and Lake Erie; Fort Harmar, at the mouth of the Muskingum; Fort Steuben, at the falls of the Ohio, now Louisville; and Fort Vincennes, on the Wabash, now in Indiana. Also a force consisting of an officer, one sergeant, and fifteen privates was stationed at West Point. To meet the expenses for these troops, and also those for Indians and pensions, there was available in the domestic treasury the sum total of \$22,000.

The committee of Congress to whom had been given the arrangement for putting the new Government into motion found that the election of senators and representatives was left by the Constitution to the States; that the creation of the Federal judiciary belonged to the new Congress; and that only the measures necessary for the election of a President were left to them. They therefore set the first Wednesdays of the first three months in the following year for the three steps of appointing presidential electors, having them cast their ballots, and for commencing proceedings under the Constitution. These dates were adjusted to the meetings of the State Legislatures, as Madison explained to a correspondent. No objection was found to this arrangement of time, but the selection of a place in which to begin the new Government aroused the old sectional fear and avarice, and precipitated a two-months'

contest, during which New York, Philadelphia, Baltimore, Wilmington, Lancaster, and Annapolis were considered. "The present seat of Congress"

was finally adopted largely through impossibility of agreeing on another.

[Illustration: LAST PAGE OF THE MINUTES OF THE OLD CONGRESS. Preserved in the archives of the Department of State. It shows that members appeared occasionally as late as March 2, two days before the new government was to be inaugurated; the printed journals differ, stating that members appeared until the first of November only.]

Having thus planned for its successor, having arranged the finances, the army, the post-office, the public land system, and other national affairs as best it could, the Continental or Confederation Congress slowly dwindled in membership until it lacked a quorum early in October, 1788. A few members attended at intervals until the beginning of the following March, when the thirty-nine foolscap volumes recording the birth of the United States were closed, to be deposited

among the archives of the United States under the Constitution. A successor was now ready to undertake the task for which the Confederation had been found inadequate.

CHAPTER VII

BEGINNING AN EFFICIENT GOVERNMENT

In the manner of its formation and adoption the Constitution was the product of a confederation. In these respects, it was little in advance of the rejected Articles. Its strength lay in the possibilities of its administration. But as a document in 1789, it was the product of federated States. If all the people of the United States could have assembled and formed a constitution to go into effect immediately, or even if delegates, chosen by the people of the United States as a whole, had drawn up such a document, which had been adopted by the entire people or their delegates in a ratifying body, there would have been a national sovereignty wholly independent of the States from the beginning. Such a procedure was impossible—the very best reason why it was not attempted. A pure democracy is possible only among a small number of people living in a small State. For a large population and an extensive territory representative government must be substituted.

If the idea of government in the British colonies in North America had been national instead of local from the beginning, the States would have disappeared under the Constitution, or have been kept only for selecting national representatives, and performing other national functions. An equipoise between the two could never have been reached.

But fate had ordained otherwise. In a new land, the settlers naturally gathered into little groups for mutual protection. Collecting about some harbour or along some navigable waterway in the Northern colonies, or assembling from the plantations at the centre of the parish in the Southern colonies, the people instituted local government. Clusters of these units under home rule formed larger divisions, and, in this way, union came as an afterthought resulting from contiguity and intercourse. The States as colonies existed long before the Union.

Individualism was born long before unity in America, and gained a prestige which aggregation has required nearly a century to overcome.

The ease with which the various States formed their first constitutions and the ease with which they corrected errors by substituting later frames, is an additional proof of their early efficiency. No State had as much difficulty as did the nation in reaching a workable basis. It is true that the national Congress first suggested State governments to the chaotic colonies, but they did not authorise them. The colonies looked to the nation for a uniform suggestion, but neither for sanction nor permission. Never for a moment did the members of the Continental Congress assume that they were working independently of their States, but considered themselves subordinate to the State assemblies. The States were always the last resort of Confederation days. The story of the United States is largely taken up with the struggle of the States to retain their early supremacy when that supremacy was menaced from time to time by new conditions.

Whatever destiny may have made of the later Union, whatever theories may now be indulged in concerning the abstract Union the fathers made in 1789, the concrete Union which was put into effect was the offspring of the States not only in the thoughts of the people, but it was even dependent upon them for aid in several particulars necessary for putting it into operation. Having no electoral machinery, the Union was compelled to ask the States to choose members of both branches of its Congress. In electing its chief executive, it was obliged to give the States sole charge of choosing electors for this purpose. A national election gradually came into existence because the Union took this control practically away from the States. The Federal Government was indebted to State agency for its first capitol, the Federal Hall, furnished it by the kindness of the City of New York. It had not a foot of soil independent of the States, State militia furnished the military escort for its President-elect, and a State governor, Clinton of New York, with his staff, gave him official welcome to the State and national capital combined. Even the oath given to the chief executive, an oath required by the national Constitution, was administered not by a national official, but by the chancellor of the State of New York.

An independent national government such as time has given us, and such as would be formed in the light of the present day, would not leave the method of choosing its presidential electors to the whims of the several States. At the time, no other method was possible. The State machinery was at hand and could be utilised. The national appliances had not yet been evolved. In some States the size of the precincts made voting well-nigh impossible. Residents of Luzerne County, Pennsylvania, must travel several hundred miles to the polls, according to Timothy Pickering. Although the Assembly of Virginia placed a fine upon every qualified voter who failed to perform his duty, and although the Federalists of Maryland offered a roasted ox at one polling-place to attract voters, it is estimated that not more than one-fourth the men entitled to vote availed themselves of the privilege. Many had been so recently enfranchised by the State constitutions that they did not appreciate the right. Independence having been won, the details of government failed to maintain civic zeal. In present-day elections, by contrast, as many as five-sixths of those qualified to vote at national elections avail themselves of the privilege.

It must also be noted that State qualifications for freemen determined who should vote in this first national election. In those States where the people voted, statistics show that only three men out of every hundred of population could vote in this first presidential election, where nowadays twenty men have that liberty. In some States, the people had no voice whatever in choosing the President, because the State Legislatures decided that they were the proper mediums to choose the presidential electors. The Constitution left the matter entirely in their hands. In some States, the people voted for electors in fixed districts; in other States they voted for a whole electoral ticket.

This system of choosing a President through a set of electors, borrowed from the method of electing a German emperor, was far removed from democracy. It showed the distrust which the Constitution-makers felt in the intelligence and discrimination of the masses. Irregularity marked the elections generally. Two factions in the New York Legislature fell into a dispute over the manner in which Senators and electors should be chosen. It resulted in that State being deprived of participation in the first election and in the first session of the Senate. Before the next presidential election, Congress began to make regulations governing the States in their conduct of this important matter, an innovation which grew until it culminated in the election "force laws" of reconstruction days following the Civil War.

"The first Wednesday in March next shall be the time and the present seat of government the place for commencing proceedings under the said Constitution." So accustomed had the people grown to delays in public affairs, that a strict compliance with these provisions of the old Congress would have been a surprise. The first Wednesday of March, 1789, fell upon the fourth day of the month. At noon of that day, when the members constituting the two branches of the first Congress under the Constitution assembled in the rooms arranged for their sessions in the reconstructed City Hall of New York, there was no quorum in either House. Since eleven States had adopted the new plan and each was entitled to two Senators, twelve members of that body would be necessary to constitute a quorum. But only eight were present. These sent out one circular letter after another to the delinquent members, begging their immediate attendance. The condition of the roads at that season of the year and the inadequate means of transportation can scarcely be imagined at present. Madison, because of poor roads between Montpelier and Baltimore, missed the stage and lost two whole days, as he complained. However, one by one the tardy Senators arrived, and on April 6th, over a month late, the Senate found itself with a quorum.

Even then there were only two members present from States south of Pennsylvania. Having read their credentials of election, they proceeded to elect a presiding officer "for the sole purpose" of opening the votes cast by the electors for President and Vice-President of the United States. The latter, according to the new plan of government, would be their permanent presiding officer. The choice for the temporary office fell upon Senator Langdon, of New Hampshire, a member of the convention which had framed the Constitution.

On the 4th day of March, the new House of Representatives had only thirteen members present. The Constitution required that they should be chosen by the people in the different States. The State Legislatures were unable to monopolise the elections as they did the presidential elections in certain States. Yet the people took little interest in this first congressional election. Out of 3,200,000 people, probably not more than one hundred thousand voted. Until some count of the number of people could be taken to secure a proportionate representation, the Constitution had set an arbitrary number of sixty-five, apportioning them among the States by a guess at the respective populations. Rhode Island and North Carolina not being in the Union deducted six from this total, making thirty necessary for a quorum. Day after day, the incomplete House adjourned. New members arrived at intervals until the first day of April, when a quorum was had, just four weeks late.

As first formed, the House consisted of the following members: New Hampshire, 1; Massachusetts, 5; Connecticut, 5; New Jersey, 2; Pennsylvania, 6; Maryland, 2; Virginia, 8; South Carolina, 1. Other members arrived from time to time. More or less irregularity had marked the elections in the various States. A protest soon reached the House from citizens of New Jersey claiming that the four members from that State had not been legally elected. The polls had been kept open in one district for two weeks, until closed by a proclamation from the governor. From South Carolina came charges against a member that he had not been a citizen of the United States the required seven years at the time of his election. Although a native of South Carolina, he was being educated in Europe during the Revolutionary period and had returned to the State after the close of the war, but before the adoption of the national Constitution. Contested elections here find early precedents. In both cases the House declared the elections valid and the members entitled to their seats.

[Illustration: HEADING OF THE FIRST LAW PASSED UNDER THE CONSTITUTION.]

Although the delay of nearly a month in securing a quorum in the new Congress was not alarming, it was most unfortunate. Never had the National Government come so near abdicating in favour of the State governments. There had been no sessions of the old Congress for the past six months, although straggling members appeared from time to time. There was a national Board of the Treasury wrestling with the problem of home and foreign creditors, but confronted with an empty coffer. Jay was acting as Secretary of Foreign Affairs, and Knox was Secretary of War. There was positively no other evidence of "The United States of America" except an "army" composed of a few soldiers scattered along the frontier. Jefferson, Minister to France, wished a leave of absence, which Jay thought reasonable. "But, my dear sir," he

said, "there is no Congress sitting, nor have any of their servants authority to interfere. As soon as the President shall be in office, I will, without delay, communicate your letters to him." Madison foresaw contentions, "first between federal and anti-federal parties, and then between northern and southern parties, which give an additional disagreeableness to the prospect." John Adams pronounced the nation united in nothing save the choice of Washington.

After quorums were secured, new problems confronted this National Government, feeling its way without precedent. Only eleven States had come into the new agreement. The North Carolina Convention had adjourned without action, and Rhode Island had rejected the Constitution by a popular vote of 2708 to 232. Had a Congress representing eleven States the right, even if it had the power, to legislate for thirteen sovereign States? Many felt that important questions like amendments to the Constitution should be postponed until the United States were united in fact as well as in name. Even eleven States were insufficiently represented. Delaware had only one Senator and no Representative at hand. South Carolina had but one Senator present. The influential State of New York, the home of Hamilton and Jay, the place of meeting of the new Congress, was in the throes of a political "dead lock."

There was also no precedent for the workings of two branches of the National Legislature. Some prophets of evil who recalled the difficulties in one House of the Continental Congress predicted a double portion of woe under the new arrangement. It must not be supposed that a bicameral system was entirely a novelty. The colonies generally had such a system and, on becoming States, had adopted, with one exception, that form. It was true, as many recalled, that contests had frequently arisen between the colonial council and the popular assembly, especially where the former was appointed by the colonial governor.

It was scarcely to be hoped that all friction could be avoided between the two branches of the United States Congress. They possessed to a large extent joint powers, and yet had individual initiative and control. A further difference might arise from the variation of the constituency which they represented. The Senate was appointed by and represented the States in their sovereign capacity, as the House of Lords represented the pleasure of the British sovereign. The House of Representatives was dependent upon and represented the direct interests of the people, as did the Commons under the British Constitution.

The Senate had the advantage of the prestige of the colonial council.

When the day arrived for opening the presidential ballots the Senate notified the House that it was ready, and the latter obediently mounted the stairs to the small Senate chamber, where the ballots were counted, disclosing a unanimous election for George Washington and a majority for John Adams. The Senate immediately despatched messengers to notify these men to attend and be inaugurated. This feeling of superiority on the part of the Senate was not diminished, as its members contemplated the power of ratifying treaties and confirming appointments which they shared with the Chief Executive, as well as the long tenure of office and permanent session with which the body had been endowed.

Because of this executive function, the Senate followed the example of the Continental Congress, and refused to admit the public to hear any of its deliberations during the first five sessions. It then yielded to public opinion and opened its doors when acting in its legislative capacity, going into secret session only when exercising its executive powers. To counterbalance these extraordinary functions, the House had only the exclusive right of originating revenue bills.

The necessary connection of the two Houses was recognised at the very beginning of the sessions by the appointment of joint committees to prepare rules for conference on bills upon which the two bodies might differ; to arrange for the transmission of papers; to dispose of the papers of the old Congress; to arrange for the inauguration of the first President; and to provide for the election of chaplains. Many of these matters common to both were easily adjusted. Two chaplains of different denominations were to be appointed, one by each House, and they were to interchange weekly. In this way Congress hoped to avoid the ever-recurring fear that one sect might be patronised until it became the established church. But upon the apparently minor point of the manner of transmitting papers from one body to the other a difference arose. The joint committee reported to each House an elaborate method whereby the Senate should send a bill or message to the House by its secretary. This official was to make an obeisance on entering the House, and another on delivering the paper to the Speaker, a third after it had left his hands and a fourth as he left the room.

When the House sent up a bill to the Senate, it was to be carried by two members, undoubtedly in imitation of the custom of members of the Commons carrying a bill to the Lords. Precisely as many bows and at corresponding places were demanded of these two members as the secretary of the Senate was required to make in the House. All messages except bills could be carried up by one member, who should make the four obeisances. As a return courtesy the entire Senate should rise when two members entered the room, or the President of the Senate only, in case one member appeared with a message.

This exhaustive ceremonial clearly gave such superior standing to the Senate that it was rejected by the House. Being recommitted to the joint committee, they reported a simple substitute whereby any message should be sent from either House to the other by "such persons as a sense of propriety in each House may determine to be proper." The messenger was to be announced at the door and should communicate his message to the presiding officer. This in turn

was rejected by the form-adoring Senate. Finally the Senate sent notice to the House that if their members should bring up a bill or message as originally provided, they would be received as first promised; but if they chose to send it by another agent he must hand the paper to the secretary of the Senate, who would deliver it to the President of the Senate.

The House chose a messenger as their agent; the Senate soon followed the plain example; and thus a simple custom was inaugurated which has held to the present day.

The wisdom of providing some arrangement for a conference in case of disagreement between the two Houses was manifest several times in the first session. Conferences were held on no less than nine of the ninety-five measures passed. It is impossible, in the absence of reported debates, to ascertain the attitude of the Senate toward the other branch. Maclay, the garrulous Senator from Pennsylvania, whose diary is invaluable during these closed-door sessions, mentions several instances in which the Senate coerced the House by threatening to hold up appropriation bills. "It was a trial of skill in the way of starvation," he declares. The temper of the House when contending for what it considered its prerogatives can be seen from the debates.

"I am an advocate for supporting the dignity of the House," said a member from New York, debating a disagreement with the Senate, "and to me it appears somewhat inconsistent that we should change our sentiments in order to conform to the amendments of the Senate.... If we are to follow the Senate in all the alterations they propose, without hearing reasons to induce a change, our time in deliberation is taken up unnecessarily."

On a similar occasion, when the tonnage bill was being worked out by compromise, a member from Delaware hoped that the House would not recede from its position, "otherwise it might be considered that the House was under the government of the Senate, and adopted their opinions without arguments being offered to convince their judgments." A Virginia member "would rather lose any bill than have the doctrine established that this House must submit to the Senate; yet, if it was done in this instance, it would serve as a precedent in future decisions." In this slow manner, and with frequent irritation, the two branches of the National Legislature adjusted themselves to each other and formed precedents which have held for a century. The first measure to pass both Houses, receive the President's assent, and become a law, defined the oath which every officer of the National Government was required by the Constitution to take. It became a law within two months after quorums were obtained.

The relations of the two branches to the Executive were not so close and, therefore, more easily adjusted. No little credit is due to the very cool and conservative man who became the executive head of the revived nation. Even the journey of the President-elect from his home to the seat of government had been a continued ovation. It can be compared only with his progress to Cambridge nearly a score of years before to take command of the Revolutionary army. In both instances he was regarded as the deliverer of the country from a great peril.

Possessed of probably the largest fortune in America, he could not be accused, as were many of his compatriots, of mercenary motives in his public actions. His freedom from personal ambition and selfish motive having been tested in the tempting days of the war, he could be relied upon by the people not to betray them in their extremity by any assumption of powers. Reputed to be a man of great self-control, almost cold-blooded in his self-guardedness, having dwelt far removed from the partisan strife pertaining naturally to populous centres, he would be careful in forming opinions, conservative in actions, and unlikely to yield to the influence of faction or partisanship. A moral man for that day, but neither a propagandist nor a zealot, he was unlikely to favour any sect or establishment of religion—a danger against which every possible precaution had been taken.

Even while the electors were being chosen and were holding their meetings in the several States, it was understood that Washington would undoubtedly be the choice for the first President. Indeed, before the Constitution had been fully formed, Hamilton and others were naming him. In the State conventions which considered the new form, speakers did not hesitate to predict his election. The assurance that the dreaded power would be first entrusted to his hands to form precedents persuaded many to try the change. John Adams, recently returned from representing his Government in Great Britain, and finding himself chosen to the second place, was said to be unable to comprehend how Washington's military experience had fitted him for this civic duty. Yet it was simply the first of many instances in which the gratitude of the people, backed by innate hero-worship, has singled out a war hero for the highest civic honours. Hence it came about that the very unanimity of election, for which all had hoped, defeated the purpose of the framers of the Constitution to have an unbiassed selection made by the presidential electors. This, or a like cause, has thwarted the purpose in every succeeding election of a President.

[Illustration: FEDERAL HALL, NEW YORK CITY. Upon the balcony between the pillars of the second story Washington was inaugurated President, April 30, 1789. Congress sat in this building in 1789 and 1790.]

Considering the descent of the American people at that time, it is not surprising that the inauguration of the first President was copied largely from the inauguration of a British sovereign. Our fathers were not attempting to experiment with novelties of government, but to adapt tried methods to their needs. The trappings of royalty to be seen in an ancient

kingdom were replaced in this Republic by a military display, significant of the means by which its birthright had been won. The royal procession from Buckingham Palace to the Abbey was reproduced in miniature in the escort of the President from the Osgood House, his temporary residence, to the Government chambers. The religious and civic rites observed at Westminster Abbey were here separated, the religious service being held at St. Paul's Chapel and the civic in the little recess or gallery between two pillars which had been made by the architect in transforming the New York City Hall into the National Federal Hall. The oath was taken upon a copy of the Bible by both monarch and President. The shouts from the crowd in front of the Federal Hall in Wall Street which followed Chancellor Livingston's cry of "Long live George Washington, President of the United States!" were no less sincere, although coming from fewer throats, than the cries of "Long live the King!" and "God save the King!" which proclaimed the homage of British subjects to their monarch. The cannon in old Fort George, down near the Battery, could greet a President as lustily as those in the Tower proclaimed a king.

But every departure from royal custom was in the direction of simplicity of detail. Instead of being surrounded by nobles and courtiers, the President was attended by the committees on inauguration from the Senate and House, by Vice-President Adams, Governor Clinton, and others.

The coronation feast in the palace was republicanised into a dinner at the residence of Governor Clinton. The rich robes of the sovereign, to make which the resources of an empire were drawn upon, were transformed into a suit of ordinary clothing made entirely in America.

Instead of being seated in an ancient chair endowed with kingly legend, the American President stood during the short ceremony. Instead of being administered by the Archbishop of Canterbury, the oath was given to him by the Chancellor of the State of New York. The fair and festivities which commonly ended the first day of a new monarch were changed into an illumination of the city of New York and a display of fireworks.

The ceremonies between the new President and the Congress bore an even closer resemblance to those accustomed to be seen at a coronation or upon the opening of a session of Parliament. The inauguration speech of the monarch took the shape of an inaugural address by the President, which confessed a lack of personal assurance and a reliance upon a Higher Power, called attention to the benefits of government, and begged the co-operation of all concerned in it. The speech from the throne at the opening of Parliament became a message to Congress at the opening of each session. Like the king's speech, it was divided into a general address to both Houses, and a special message to each.

The attention of the House of Representatives was called to various financial matters, as the English monarch had been compelled to do since the stormy Stuart period.

Early in Washington's administration the Senate showed conclusively, by refusing to hear the Secretary of War explain an Indian treaty, that the Cabinet was not to have the British privilege of initiating legislation. Washington was compelled, consequently, to recommend to each branch of Congress in his opening address such matters as he thought demanded legislation. It is the only form of influencing Congress which has ever been given to the President, barring patronage.

On these State occasions, when opening Congress, Washington was accustomed to ride down to the Federal Hall in the coach provided for him by Congress, with four instead of the two white horses usually driven, and outriders in advance as well as the two secretaries who rode habitually on horseback behind the coach. As was the custom in Parliament, a committee was appointed in each branch of Congress to draft a reply to the President's address. In due time this was carried by the Senators in solemn procession, headed by Vice-President Adams, to Washington's residence, where it was handed to him. The more democratic House of Representatives contented itself with presenting its reply to the President in a vacant room in the Federal building.

To each of these replies Washington was accustomed to make a counter-reply, thanking the members for their courtesy and promising his continued efforts to secure the objects they suggested.

These forms and ceremonials, although copied originally from Britain, had been used in the inauguration of colonial governors and in the opening of colonial assemblies. They furnish a further proof that the American nation has been a thing of growth, an imitation of existing conditions until such time as originality could be developed or imitations transformed to meet the new conditions. Local forms furnished the models. They would be changed only as national ideals were developed. The fact that most of these European ceremonials were lopped off within twelve years shows how rapidly originality was developed.

During the first session Congress took up "the principal officer in each of the executive departments," as authorised by the Constitution.

It was understood that these would be about the same as had been developed during the preceding years, viz., Foreign Affairs, Treasury, and War. It was not foreseen that they would become in time a "Cabinet."

To these three departments Congress added a fourth, Justice, for which an attorney-general was appointed. He was considered a head of an executive department and ranked with the other three among the President's advisers.

The wisdom of the framers of the Constitution in simply arranging outlines instead of filling in details was nowhere better shown than in the provisions for the national judiciary. Congress was bound only to establish "one superior court" and could add such inferior courts as necessity might demand from time to time. So essential was a national judiciary felt to be, that during the pressing business of the first session the United States was divided for this purpose into thirteen judicial districts, conforming generally to the eleven States in the Union, each to have a district court held by a Federal judge. These districts were then grouped into an eastern, a middle, and a southern circuit, in accord with the geographical grouping of the States. In these two circuit courts were to be held each year by one or more district judges and one or more justices of the Supreme Court. The latter, the final tribunal of appeal from these inferior courts, was to consist of a chief justice and five associate justices. Necessary officers, such as marshals and clerks, were given to these courts, rules were formulated for their procedure, and an act was passed at the next session defining crimes against the United States. A resident of any State was by these acts made the subject of a new sovereign,—the United States of America,—liable to be punished for treason committed not against his State, but against the nation; to be prosecuted for piracy on the seas; for counterfeiting money, altering records, committing perjury in the Federal courts, resisting a national official, or offering violence to a foreign representative.

The United States could now command some respect from the individual.

The Union would also assume a new dignity from being a judge instead of an arbiter between the States. No more would such long-continued warfare as the territorial dispute between Connecticut and Pennsylvania bring the Republic into ill-repute. This new judicial power extended to "controversies between citizens of different States." Never again would the cumbersome machinery of Federal commissioners to hear disputed claims to territory be called into service—a kind of Platonic lot-casting phantasy—because the new national judiciary system covered "controversies between two or more States." What powerful possibilities were given to the new Central Government in the provision that the Supreme Court should have "appellate jurisdiction from the courts of the several States in the cases hereinafter specially provided for."

It would be found as futile to restrict the cases in which the national court should have an appeal from the State courts as to attempt to reserve all the powers to the States not expressly granted to the Union. In the haste necessarily attendant upon suddenly putting the provisions of the new government into effect, no one had the leisure if any possessed the foresight to consider the limits to which the Federal courts might extend its authority in the light of interpretation. Even Jefferson later confessed that this member of the Federal Government was at first considered as the most harmless and helpless of all its organs.

[Illustration: THE PRESIDENTIAL MANSION, FRANKLIN SQUARE, NEW YORK

CITY 1789.]

The beginnings of the national judiciary were so modest that no one could have taken alarm. The day that he signed the judiciary bill, Washington nominated John Jay, of New York, to be chief justice of the court, Edmund Randolph, of Virginia, to be attorney-general, and John Rutledge, of South Carolina, James Wilson, of Pennsylvania, William Gushing, of Massachusetts, Robert H. Harrison, of Maryland, and John Blair, of Virginia, to be associate justices.

State distribution of patronage was not such a criterion as in later appointments; yet the department of Justice represented all parts of the country. Considered from a sectional point, there seemed at the time little likelihood that the court would prove hostile to Southern individualism, since it contained, counting the attorney-general, four Southern men and three Northern men. District judges, attorneys, and marshals for the eleven judicial districts were appointed at the same time. A joint resolution of Congress asked the States to give their jailers power to receive and hold United States prisoners.

"Many of your old acquaintances and friends," wrote Washington to Lafayette, "are concerned with me in the administration of this government. By having Mr. Jefferson at the head of the department of state, Mr. Jay of the judiciary, Hamilton of the treasury, and Knox that of war, I feel myself supported by able coadjutors, who harmonise extremely well together."

Randolph, the Attorney-General, had never come in contact with Lafayette and consequently was not mentioned by Washington. This list of the chief administrators of the new Government must have reassured Lafayette, as well as other friends of the experiment, who wished to see it given a fair trial. They feared that the first administration might be given over to its enemies, who would be inclined to decrease rather than to strengthen its powers. Before the elections, General Lincoln had confessed to his former companion in arms, General Washington, his apprehension lest "the Anti-Federalists would try to get into office men unfriendly to the Constitution and so break it down, or men who would change many of its provisions at an early date."

The attitude of the President and of most of his Cabinet, it was well known, was in favour of an efficient central power. John Adams, the Vice-President, had long been an advocate of a stronger frame, and now made good his words by casting the deciding vote in twenty ties in the Senate, every time in favour of centralised authority where there was any doubt involved. By one of these close votes authority was given the President to remove an official without the necessary consent of the Senate. The Constitution was silent on this point, and its decision favourable to the Executive greatly increased the prerogatives of that office.

This summer of 1789 was a time of anxiety for the friends of the new Government. They could scarcely hope that the new machinery had no flaw. At any moment an unforeseen defect might bring the whole to a standstill. Friction fatal to continued happiness might arise between the different departments of the General Government or between it and the component States. The people of some section might refuse to be bound by the General Government. During the heat of debate in the South Carolina Convention, a delegate had defiantly declared that his people would not take part in the new Government, if adopted, if not compelled to do so by force; unless a standing army which the new autocrat would possess should ram it down their throats with the points of bayonets, like the Turkish Janizaries enforcing despotic laws. As time went on and none of these calamities happened, a general confidence took possession of the people. At last they had come into a time of general agreement which would allow the experiment of self-government a fair test. Two States remained out of the Union, but time was expected to bring them in.

CHAPTER VIII

SUMMONING THE GENII OF THE IMPLIED POWERS

Even before the executive part of the new Government had been initiated, Congress attacked the most serious problem it had received from its predecessor. All were agreed that the chief difficulty in carrying on the Revolutionary War had been the lack of sufficient funds. The administration of the Articles of Confederation had been hampered constantly by the same need. The nation was even now millions upon millions of dollars in debt. In order to pay the interest on the French and Spanish loans it had been the custom for several years to borrow more money from the Dutch bankers. This was accomplished with no little difficulty. From the same source John Adams had secured funds with which to install the Government under the Constitution. The President-elect had been compelled to borrow money from a neighbour at Alexandria to meet the expenses of his journey to the capital to be inaugurated.

Public credit both at home and abroad was in ill-repute. To meet the foreign interest and installments due in 1789, over four million dollars must be raised. "Not worth a continental," sighed the merchant as he turned over a heap of depreciated Continental currency in a corner of his strong box. "Acknowledgment to pay by the 'untied States,'" said the owner of a pile of worthless United States certificates of indebtedness. His patriotic zeal in lending money to the National Government in her hour of need now bade fair to ruin him. The veteran of the Revolutionary War carried his half-pay certificate to the money-lender, glad to get even five shillings in the pound for it.

Holders of various forms of State indebtedness besieged their State authorities for payment, rapidly approaching a point where they would welcome any agency which would get them their due.

According to Madison, the Continental Congress had chosen such an unseasonable date as the first Wednesday in March for beginning the new Government in the hope of levying a duty at once which would catch the spring importations of goods from Europe. It was this purpose which brought him to his feet in the House of Representatives on the eighth day of the first session to introduce a subject which he declared to be of the first magnitude, and one that required their first attention and their united exertions. This was the deficiency in the national treasury. For a remedy, he had chosen an impost on certain imported goods.

Fortunately, an impost was not a novelty requiring time and instruction to secure. Imposts had been instituted generations before to obtain funds for clearing the seas of pirates and for making safe the merchant marine. Because of these laudable objects, impost was come to be regarded as a legitimate form of external taxation and as a means of raising a revenue to meet the expenses of government. The American people had been familiar with impost from colonial times; they had been commonly levied by individual States since independence; and they had been associated in thought with the National Government in the vain attempts to revise the Articles by giving it this method of raising a revenue. "To lay and collect impost" was indisputably stated in the Constitution as a power of the Federal Government. All that was necessary to do was to determine what goods should be liable to a duty and what the amount of duty should be.

Madison submitted for specific duties a fixed list of articles, which the Congress had determined upon in 1783, at the time it was requesting the States to allow it to collect a duty. The list was made up of rum, molasses, wine, tea, pepper, sugar, cocoa, and coffee. These were regarded at the time as luxuries likely to be consumed by those able to pay the duty. Other imported articles were to have an ad valorem duty. Madison had in mind, as he said, a productive tariff to secure money for the bankrupt national treasury. If more money was needed, the rates could be raised at any time. But early in the debate a member from Pennsylvania moved an amendment adding a number of articles to the specified list. They included beef, butter, candles, soap, boots, steel, cordage, nails, salt, tobacco, paper, hats, shoes, coaches, and spices. "Among these," said he, in explaining his motion, "are some calculated to encourage the productions of our country and protect our infant manufactures." At once, members from States which did not produce these articles protested that the addition of an impost would keep out foreign competition and make them pay higher prices for the goods.

Other members from States which produced articles in neither list were equally urgent in getting their special products added. The tradesmen, manufacturers, and others of Baltimore sent in a petition "to the supreme Legislature of the United States as the guardians of the whole empire," begging them to impose on all foreign articles, which were made in America, such duties as would give a just preference to their labours. The shipwrights of Charleston in a petition pictured their distress under the present condition of trade and begged relief by proper legislation. Petitions soon followed from coach-makers, soap-boilers, snuff-grinders, makers of mathematical instruments, manufacturers of sheepskin trousers—in fact, nearly every form of industry wished to take advantage of this opportunity to secure national where they had formerly been able to get only local protection. The members of Congress described in their letters to friends the fish battles, the salt battles, and other manifestations in legislative halls of the cupidity of mankind when opportunity is once

presented.

In this way it came about that the first revenue measure in the first session of the first efficient National Legislature brought the members face to face with the question of the purpose for which government exists. The Declaration of Independence had declared it to be the securing of certain inalienable rights with which men are endowed by their Creator. This French conception of certain abstract and general rights had taken in British and colonial minds the very concrete shape of property. It is scarcely just to say that even unconsciously the British people had instituted government for the protection of property and invested interests; but it is within the bounds of truth to say that a large part of the legislation of Parliament, in the formative days of the American colonies, had been inaugurated with this end in view. With the abuses of the monopolies granted by the mother country, the colonists were only too familiar. But the principle had been inherited, and it had been put into practice in the shape of legislative aid granted by colonial assemblies for the inauguration of various commercial and manufacturing enterprises. Sometimes this assistance had taken the form of money; at other times, of a patent or monopoly granted for a number of years. Petitions for such aid had been presented to the Continental Congress at various times. It was not strange that they should appear in the new Congress, as has just been described.

Political parties had not yet been developed, but the debates on this first tariff bill showed a strong tendency to sectionalism, arising from the varied interests of an extensive territory. It was a sectionalism which, if it prevailed, would tend to weaken the Central Government, but, if overcome by compromise or force, would strengthen the national authority by the very fact of the victory. At the time the differences of opinion arising from the various parts seemed so irreconcilable that Madison frequently confessed his despair of getting any tariff measure passed at the session; so early did the sectional interests appear, which were destined later to threaten seriously the very existence of the Union.

If the distillers of Philadelphia, for example, petitioned for a greater discrimination in the duties on rum and on molasses, the citizens of Portland, then in Massachusetts, assured Congress that any duty on the latter commodity would operate injuriously and be attended with pernicious consequences to all the New England States. Once entered upon, this protective policy could not be stopped. By mutually aiding each other, members could get articles added to the protected list more easily than the unorganised opposition could keep them out. By comparing such co-operation with the united efforts by which the first settlers had cleared their fields, the phrase "log-rolling" was invented. Thus it happened that the first import bill, intended by Madison as a measure for raising revenue, was turned virtually into a protective-tariff measure, and was so called in the preamble. Few realised the importance of the change at the time. Madison called it the "collective" bill, and wrote to a friend that it had cost much trouble to adjust its regulations to the varied geographical and other circumstances of the States. However unconsciously done, the principle of protective-tariff legislation by the National Government had been adopted.

It is prophetic of the future to note that in this first debate a difference of opinion was shown to exist concerning the proper function of government. One speaker cited the history of the ancient world to prove that the protection of industries and the establishment of manufactures was a very proper aim of government. Others held to a contrary opinion. Madison was among those who thought that business should be left to take its natural course without government interference. He said:

"I own myself the friend to a very free system of commerce and to hold it as a truth that commercial shackles are generally unjust, oppressive, and impolitic; it is also a truth that if industry and labour are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out."

This was the voice of the country member, unaccustomed to the fostering hand of government. It was also the voice of the minority. The Constitution had been framed and adopted by the commercial interests generally, who took quite an opposite view of the duty of government toward business.

No one at this time seemed to feel the potency of the protective principle in enlarging the power of the Union. It was unseen until fully developed some thirty years later. Yet to appreciate the full force of this tariff bill of July 4, 1789, with its protective preamble, as a sample of Union-making legislation, one need only consider the gratitude which the National Government has won through such protective measures; the attachment of leading men to the Union from guarding their interests; the accumulated strength of moneyed interests in time of danger to the Republic; the use made of the tariff in protecting workingmen; the revenue derived from high tariffs, which has been spent on public improvements; and the force of public opinion which has been frequently rallied by both employer and employee to the support of the execution of a national revenue law.

Above all members of the first administration, Hamilton stood for an efficient National Government. He saw opportunity in the administration and interpretation of the written document to correct the weak places which he had sought in vain to avoid when the frame was being made.

A constructive genius by birth, a financier by study, a leader of men by nature, Hamilton had, in the Treasury

Department, that function of the new Government which needed the most strengthening, and in its present condition the necessity which would support the strongest measures. Called upon by Congress at the time of its first adjournment to inform them of the exact financial condition of the country, he drew up an exhaustive report showing that the National and State governments together owed something like fifty-two millions of dollars.

The national obligation to-day is twenty times that sum. Its proportion to eighty millions of people is not much less than the fifty-two millions were to the three and a half millions of people who faced the debt of Hamilton's time. But the debt now is of fixed form and assured payment before it is incurred. The debt which Hamilton presented to Congress was heterogeneous in form and without means of payment. Arguing that a national debt properly funded had contributed largely to the prosperity of Great Britain, Hamilton proposed to collect all these evidences of debt into a national obligation, which would bring interest to its holders until paid. The faith of the United States toward its creditors must be redeemed. To secure a revenue with which to pay this interest and evidently to redeem the principal in addition to meeting the running expenses of the Government was the first task. Hamilton proposed to place additional duties on imported goods and to lay a tonnage on vessels using American ports, the latter of which he estimated would yield more than a million dollars. He would also put an excise on distilled spirits manufactured in the United States and on those imported, both bringing in nearly three million dollars. The profits of the post-office he estimated at almost a million dollars annually, to be applied also to the national expenses.

[Illustration: CERTIFICATE OF DEBT AGAINST THE UNITED STATES. From the Manuscript Division of the Library of Congress. This was one of the Revolutionary obligations assumed and paid under Hamilton's financial measures.]

The members of Congress, at the subsequent session, with remarkable unanimity, concurred in these recommendations of the Secretary of the Treasury for the redemption of the national obligations, including both the debt owed to foreign nations and that incurred to domestic holders during the exigencies of the war. But upon another proposition, that the United States should assume the debts incurred by the several States during the war, there was strong opposition. It was said that such action would lead to speculation and stock-jobbery in buying up these debts and converting them into new forms. The original holders had long since disposed of them to brokers, who would be enriched by national legislation. It was the old clash between the moneyed and the moneyless classes. Although the action would be a direct interference of the National Government with State affairs, the debates turned on economic rather than constitutional grounds. If Hamilton had the foresight with which he is credited by his admirers, if he saw that the allegiance of the people would gradually be won away from the States to the Central Government because the latter was redeeming promises which the States had long been endeavouring to meet, if he was taking advantage of the selfishness and cupidity of the deeply indebted States, there is no evidence to show that the States saw or appreciated the danger.

Virginia, whose representatives bore the brunt of the opposition, had a source of revenue in her western lands from which she could easily discharge her obligations, and naturally had no desire to share the liabilities of others. But her State Legislature, after Hamilton agreed with Jefferson to buy off the Virginia opposition in Congress by locating the national capital on the Potomac, protested in strong and exact terms against the State-debts-assumption proposition. These resolutions recited that the people of Virginia had adopted the Federal Constitution under the impression and upon positive condition that "every power not granted was retained," and that they had read the document in vain to find the right given to assume the debts of the States. Here, within two years after the adoption of the Constitution, was a State Legislature protesting against the usurpation of power under it. It was the first of many futile protests.

Hamilton, sending a copy of the Virginia resolutions to Jay, saw "the first symptom of a spirit which must either be killed or will kill the Constitution of the United States." He thought the collective weight of the different parts of the Government ought to be employed in exploding the principles they contained. Theoretically, the Legislature of Virginia may have been correct in its attitude; but no theoretical protest could avail against the worthy sentiment that the entire national credit must be restored, backed by the practical demands of the creditors, and by the desires of those who saw an opportunity of investment or speculation.

Those people, both officials and citizens, who took the stand in these formative days of political parties that the Federal Government should be restricted in its workings to the powers expressly given to it in the Constitution, a "strict construction" of that document, as they called it, were generally country bred, of the borrowing rather than the lending class, depending upon individual initiative rather than mass action, strangers to the paternal aspects and fostering hand of government, and inexperienced in the intricacies of finance. Gen. Henry Lee, of Virginia, complained to Madison of the complexity of Hamilton's plan. "It departs," replied Madison, "from that simplicity which ought to be preserved in finance more than anything else." Inability to comprehend naturally breeds suspicion.

Hamilton's followers were, for the most part, from the Northern and Middle States, city dwellers, money-lenders rather

than borrowers, business men, and manufacturers, who saw no wrong in having the Government promote the general welfare by legislation. The sudden revival of business which followed the adoption of Hamilton's plan to redeem all the debts seemed to them both natural and legitimate. The other group looked upon the entire matter as a corrupt transaction, contrived by Hamilton, and a prostitution of government from its legitimate purposes. Madison wrote that just before the report came out the value of the various forms of debt rose from a few shillings to eight or ten shillings in the pound, and that emissaries were still exploring the interior and distant parts of the Union in order to take advantage of the ignorance of the holders. To meet the occasion Jefferson invented the phrases, "corrupt squadron," "stock-jobbing herd," and "votaries of the treasury," upon which he rang the changes during a long lifetime.

To this indignation was added dismay when the effects of national assumption of State obligations began to be appreciated; when creditors who had besieged the State treasury for years found the Union satisfying their just demands; when the evidences of national government, which had heretofore been confined to a wandering Congress, began to appear at every hearthstone. A realisation of these results brought from Jefferson the complaint that he had been duped by Hamilton in the assumption-capital bargain; that he had been "most innocently and most ignorantly made to hold the candle for a wicked scheme."

A similar aggrandisement of the National Government was the motive, according to the eulogists of Hamilton, which prompted him to make a suggestion for another novelty, a United States bank. Ostensibly he claimed that it would have the effect of bringing immediate financial relief, as well as safeguarding the future. The arguments presented by him to Congress for the incorporation of a bank in which the National Government should be a stockholder were purely utilitarian. The bank would benefit the public by offering an opportunity for the investment of capital. It would benefit the Government by lending it money in an emergency and by collecting its revenues. Its notes would also form a circulating medium. The bill drawn by Hamilton incorporating such a bank passed the Senate without material change and without a division.

One Senator from Pennsylvania, suggesting amendments to his colleague, was informed that Hamilton's father-in-law, a Senator from New York, had said Hamilton did not wish the bill altered. The hopeless minority in the Senate claimed that the chances of subscribing to the proposed bank, guaranteeing an investment at six per cent, for twenty years, won many to its support. They also saw here another link in the chain which Hamilton was welding about the States. The debts having been assumed, the certificates would be accepted as subscriptions to bank stock. Thus one measure would be made to play into another.

In the House, the right of the Federal Government to found a bank was attacked by Madison, who here parted from Hamilton, with whom he had laboured in getting the Constitution adopted. The line-up of parties had begun. Madison found himself opposed to the way in which the Government was being perverted by Hamilton under the Constitution. His speech is the first extensive exposition of the doctrine of strict construction of the written instrument; that the central power must be held strictly to the powers numerated in the document. Strict construction exhibits the vice of a written Constitution—the impossibility of growth or even continued life within the bonds of the written word. Stagnation and death must result from binding the limbs of the body politic. Loosening by interpretation is the remedy. Madison was correct in saying that the right to incorporate bodies was proposed in the Philadelphia Convention and abandoned; that the power to incorporate a bank was nowhere given in the Constitution to the Federal Government; that banking was presumed to be a matter for State control; that in all the debates and papers written on the Constitution it was understood that "the powers not given were retained; and that those given were not to be extended by remote implications."

In reply, Boudinot did not deny that all powers, vested heretofore in any individual State, and not granted by this instrument, were still retained by the people of such State and could not be exercised by Congress. But he then showed that the power to incorporate the bank was "drawn by necessary implication" from those expressed. The preamble declared in general terms the objects of the Constitution; one of the expressed functions under it was "to borrow money"; and the circle was completed by the liberal clause to "make all laws necessary and proper for carrying into execution the foregoing powers." Now to provide for the general welfare it might be necessary to borrow money; a bank was essential to the borrowing of money in adequate sums; therefore the power to establish a bank was deduced by the strongest and most decisive implication.

Here was the first complete exposition of the doctrine of a loose construction for the wording of the Constitution. If that be correct reasoning, said the opposition, the Constitution may as well stop with the preamble, since there is no power under heaven which could not be exercised within its limits. It would mean the consolidation of all powers, and the practical extinction of local government. The attitude of the two sides in the debate may be shown by one illustration employed. Suppose the power to make a treaty or to raise an army had been omitted from the Constitution, asked the Hamiltonians, could the National Government in an emergency assume such rights from the preamble and the powers expressed? Must it hesitate and temporise while the blood of its citizens was being shed? Such an assumption of power, replied the strict interpreters, might be excusable in an emergency, but could be warranted as a practice only by an amendment to the Constitution made in the manner it prescribed.

The present situation and the compelling force which had produced it were manifest when those who favoured giving the Union such implied powers as would make it effective pointed out many instances of implication of which Congress had already been guilty; such as accepting land for lighthouses, defining crimes under power to establish courts, and even creating corporations in the shape of the NorthWest and the South-West territories. One of these lesions of the written word, that which interpreted a clause so as to give the President power over removals from office, Madison himself had favoured.

This first constitutional debate also outlined the geographical sectionalism which has penetrated and influenced every feature of American political as well as commercial and social life. The Northern and Middle States contained the cities, made up of the trading class, whose capital was chiefly in ready money. The capital of the rural dwellers of the South was in land and slaves, not easily converted into cash. The latter became the borrowing, the former the lending section. The spirit of unionism was engendered in the first by reason of their urban life, their commercial employment, and their frequent contact in business. The feeling of individualism was as naturally bred in the latter by their rural surroundings, their agricultural occupation, and the self-reliance induced by their solitary environment.

The opposition to the Constitution in Massachusetts, Rhode Island, New York, and Pennsylvania had been confined almost entirely to the country.

The rural States of Virginia, North Carolina, and South Carolina did not adopt the new frame without a struggle. Georgia was a Southern exception; but population dwelt so exclusively along the coast in the new State of Georgia that it was really a commercial State, settled largely by New Englanders.

The mercantile class of the Northern and Central States, after Anti-Federalism had been silenced by the success of the new Government, was ready to adopt the theory of loose construction or interpretation by inclusion, which would tend toward the realisation of a more potent union. At the same time, a bank, supported by the patronage of the National Government, with no danger of competition for twenty years, offered not only a security for capital against such dangers as it had previously known, but also, through its branches, an extended agency for transacting business. Many details of the bill, such as the advantages given to holders of national rather than State certificates in subscribing for stock, contributed to the sectional division. The national certificates were held in the commercial centres. The influence of the city of New York, where the Congress met, no doubt contributed to the passage of the bank and other commercial measures.

Precisely the opposite feelings held in the Southern States. Every vote cast in the House against the bank came from Maryland or a State to the south of it. There were a few scattering votes from the Southern States in favour of the measure, but as a whole political lines were here unconsciously drawn for a century to come, if not for the entire existence of the Republic. The "court and country" parties of colonial days had been born again.

Many of the members were surprised to find sentiment toward these financial measures assuming such a sectional trend. Sectional interests had been only too manifest in the convention, but compromises had settled them, presumably for ever. Compromise is only a relief; it is never a remedy. After each compromise in American history it has been a matter of surprise to the participants that others were needed. On the bank bill, a member wrote to a correspondent: "You may think it unaccountable, but so it is that the differences in climate seem to govern the opinions on this bill, and Potomac seems to be near the dividing line with few exceptions."

Virginia was the leader of the section south of the Potomac, and Jefferson was the leader of Virginia. Although debarred from the congressional debates by his Cabinet position, he filled his letters to his friends with warnings against the dangerous assumptions of the Hamilton measures. In response to Washington's inquiry to his Cabinet upon the constitutionality of the bank, Jefferson drew up a paper setting forth in strong terms his opinion that the Central Government had no power to engage in business. Hamilton presented an equally strong argument for the bank in his reply.

Madison, the leader of individualism in the House, could not agree with Hamilton's interpretation of the "general welfare" clause of the Constitution. The former co-labourers for efficient government parted at this point. Madison thought the adoption of such an interpretation would change the National Government from a limited one, possessing certain specified powers, to an indefinite one, subject only to particular exceptions. The phrase concerning "the general welfare" had been taken from the Articles, he said, where it was understood to be nothing more than a general caption to specified powers, and had been retained because it was less liable to misconstruction than any other.

Whatever had been the original intent, the spirit of the implied powers had been summoned from the vasty deep of uncertainty to aid in making a confederated republic from confederated States.

CHAPTER IX

NATIONAL CENTRALISATION

No one can accuse Hamilton of failing to take advantage of these formative years in giving the new Government a strong bias toward centralisation. Although opposed by Jefferson, Madison, and Richard Henry Lee, Hamilton had the assistance of Knox, and frequently of Randolph, in the Cabinet, as well as Fisher Ames and others in Congress.

He also possessed the esteem and confidence of the President, and the advantage which the commercial environment of New York as well as the influence of the Schuylcr family alliance could give him.

Among his numerous suggestions to Congress for cancelling eventually the eighty million dollars of the national debt, to which business men of the Northern States were subscribing freely, was an excise. Although this debt, the "Hamiltonian debt," as the Jeffersonians called it, was an iniquitous burden saddled upon the common people, an excise was to them a most offensive way of meeting it. Being for the most part agriculturists and country people, accustomed in regions far from markets to manufacture their grain into spirits, they were not likely to be persuaded that the consumer pays the tax in the end. It was a direct tax, and, although constitutional, in form the most obvious and objectionable. To have an inspector prying into your private affairs in this manner was in ill-accord with the freedom for which America stood. To put a tax on a still and its product was to them equivalent to taxing their hand-mills and the meal or flour thus produced.

Having secured the passage of the excise tax as a permanent source of income, Hamilton turned to meet the most pressing national obligations.

To pay the interest on the foreign debt, he had arranged a loan from Holland. To provide money for circulation at home he revived the oft-repeated project of a national mint, which should coin gold, silver, and copper coins of a decimal denomination, the gold bearing a ratio to the silver of one grain to fifteen grains. This ratio he arrived at by making a computation of the respective amounts of these two metals available in the world. It is interesting to note that the ratio has changed but little in a century. Hamilton also drew up an exhaustive report on the sources and conditions of American manufactures, with a strong plea for the encouragement, by a protective tariff, of such industries as had already been established.

The influence of Hamilton and the Federalist majority in both branches of Congress made possible the adoption of these so-called "Hamilton measures" as rapidly as they were suggested by him. They have been praised, and justly praised, because they restored the public credit of the National Government both at home and abroad. The receipts for the first time met the expenditures. Never before had the national resources been so adequately provided and so judiciously administered.

Hamilton's financial measures must also be praised because they first demonstrated the efficiency of the new Government over the old form.

They made the first serious inroads on the affection which the people had uniformly bestowed upon the individual States. They mark great steps toward the centralisation of the National Government at a time when they were most needed.

Nor did Hamilton, in his great constructive statesmanship, neglect the details of his department, although a complete organisation awaited the painstaking Gallatin a few years later. The States were divided into fifty-nine collection districts regardless of State lines except as they suited the purpose. Each district was supplied with all the machinery necessary for collecting the duties levied by Congress from time to time. Since the Treasury Department was so closely connected with foreign commerce, Congress placed under its control all lighthouses, beacons, buoys, and public piers, as soon as they might be ceded by the individual States in which they were located and which had constructed them. At the time, no other disposition was possible; but few foresaw the resulting effect upon the unification of the States.

By another act, the Treasury Department was given charge of the registration and clearing of vessels. A duty of six cents a ton was placed upon the carrying capacity of American vessels, and fifty cents a ton upon foreign vessels. The fondness for discriminating in favour of home interests was manifested so early and in so many different directions that it could scarcely have been generic; it must have been absorbed in the mother's milk of British colonialism in the eighteenth century.

The necessity for these measures was so manifest, and the popularity and the novelty of the new Government at first so attractive, that little resistance was met with in passing them and still less in enforcing them. Resistance to national measures and neglect of national duty were no longer a menace to national existence, because the nation now

possessed the power of compulsion in a Federal judiciary. Upon the day named in the judiciary act, the first Monday in February, 1790, the Supreme Court held its initial meeting in the court-room of the New York Exchange, which had been prepared for its use. According to the newspapers "the jury from the district court attended; some of the members of Congress, and a number of respectable citizens also." Several meetings of the Supreme and district courts were held at this session, a seal was adopted by the former, and several attorneys admitted to practice before it; but there were no cases to be heard. The term closed with a banquet given by the grand jury of the district court to the justices and officers of both courts at Fraunce's Tavern in Cortland Street. So gradually did appellate and original cases find their way into the Supreme Court that three sessions were held before it had a case on its docket. The legislative function of government was, at that time, the most important and formed the basis of popular hope. Time has gradually transferred this dignity and trust to the judiciary department, whilst the legislative—national, State, and municipal alike—has lost in public confidence and esteem.

The Federal judiciary, as the most novel feature, was apt, in making a place for itself, to come into conflict with older agencies. Within three years it gave a hearing to a citizen of South Carolina, who had sued the sovereign State of Georgia on a money claim for damages.

Although the Constitution implicitly gave jurisdiction to the Supreme Court over controversies between a State and citizens of another State, the Legislature of South Carolina refused to pay attention to the suit, insisting that the retained sovereignty of the State could not be impaired by a clause of the Constitution. By four to one, the justices of the Supreme Court held that South Carolina, by the act of entering the Federal Union, was bound by all provisions of the Constitution.

Justice Wilson, of Pennsylvania, thought the question involved even a higher point—do the people of the United States form a nation? Many commentators on the Constitution before its adoption, including even Hamilton himself, in commenting on this clause had assured the people that it was not rational to suppose a sovereign State could be dragged before the national tribunal. Yet it had been done within three years after being put in force.

It is indicative of the prevalence of State-sovereignty feeling at the time to note the general alarm caused by this decision. An eleventh amendment to the Constitution, forbidding a State to be sued before the Federal courts by non-residents, immediately passed the Senate by a vote of twenty-three to two and the House by eighty-one to nine. It was ratified by every State except New Jersey, Pennsylvania, and Tennessee. The speed with which this remedy was applied gave confidence in amendments for the future. But the number of amendments must be endless if each aggression of the judiciary was to be met in this manner.

The last toast at the judiciary banquet of 1790 was a wish that the convention of Rhode Island, called for the early spring, would "soon introduce the stray sister to her station in the happy national family of America." Rhode Island represented the extreme of selfishness resulting from State control of commerce. Through her ports passed not only her own imports and products, but those of the adjacent parts of Connecticut and Massachusetts. This geographical situation of the State magnified her commercial interests, and made her unwilling to surrender them to the Union. The country people were equally wedded to paper money, and opposed every suggestion of giving over the right of issuing money exclusively to the Central Government. The State fell into disrepute. "Rhode Island can be relied upon for nothing that is good,"

said Madison in his despair. "In rebellion against integrity, plundering all the world by her paper money, and notorious for her uniform opposition to every federal duty," was the character given her by Governor Randolph, of Virginia, when by popular vote she refused to come into the Union under the Constitution. Fables were composed which described twelve people desirous of building a new house and hanging a recalcitrant thirteenth man by his garter to a limb near his cabin.

A "Southern planter" was reported to have offered the services of his slaves to aid in shovelling Rhode Island into the sea.

North Carolina had also been late in assenting, but simply because her first convention was turned from immediate ratification by the temporary delusion of holding another constitutional convention to incorporate the proposed amendments in the Constitution. The general sentiment of the country had pronounced against running the risk of another convention which was unlikely to produce anything more acceptable.

Hence the favourable action of North Carolina was simply a question of time necessary to call another convention. This State was doubly assured to the Federalists after favourable action in Virginia, to which she was closely bound by family ties. The hope was well grounded, for the first act, passed by the second session of the new Congress, in the autumn of 1789, was to extend the impost, tonnage, and other acts of the first session over North Carolina, whose ratification, without amendments, reached New York during the adjournment. Rhode Island was now the only recalcitrant. She still held out for individualism and complete sovereignty. Had Congress a right or the power to coerce her into the Union? Whatever action Congress might take was destined to become important in the later discussions upon the right of a State to withdraw from the partnership now being formed.

Fortunately, the opinion of the House upon the point in question. In the middle of the first session a motion made by a member from New York to take up the case of the rebellious Rhode Island had been voted down because it threatened a "delicate situation" for the House and was best left to time and the State itself. Although the recalcitrant sister was a maritime State, "situated in the most convenient manner for the purpose of smuggling and defrauding our revenue," nevertheless, as Madison said, "it would be improper to express a desire on an occasion when a free agency ought to be employed, which would carry with it all the force of a command." One searches equally in vain through the correspondence of the men at the head of government for suggestions of coercion. President Washington, although exasperated to a point where his Virginia temper declared that the majority of the people of Rhode Island had bid adieu to every principle of honour, common-sense, and decency, refused to send any message to the friends of the Constitution in that State other than his hopes that the Legislature would call a convention.

Nevertheless, it was impossible long to continue such an anomalous thing as a foreign State surrounded by the United States. The governor of Rhode Island had become alarmed and early sent to the President and Congress of the "eleven United States of America" assurance of the steadfast adherence of his State to the principles of the Confederation formed in the hour of danger, and begged that they should not be considered altogether as foreigners. Although Rhode Island was speaking a past language in such words, Congress by special enactment relieved her from all duties except on rum, loaf-sugar, and chocolate until January, 1790. When that time arrived, the governor pleaded for a renewal of the privilege, stating that the Legislature had just called a convention to reconsider the Constitution. Waiting several months longer, the Senate passed a bill by a vote of thirteen to eight to treat the goods of Rhode Island as if coming from a foreign country and to demand from her a sum of money to be credited to her account with the Union. In the midst of the consideration of this measure by the House, further action was stopped by the arrival of the official ratification of the Constitution by Rhode Island in a regular convention at Newport by the narrow majority of two votes. "This event," wrote Washington to one of his European correspondents, "will enable us to make a fair experiment of a Constitution which was framed solely with a view to promote the happiness of a people. Its effects have hitherto equalled the expectations of its most sanguine friends." Rhode Island escaped being coerced into the Union by an act of Congress; but she was coerced by the higher law of self-preservation. Surrounded by States in the Union, cut off from the natural channels of trade with them, she must have perished of commercial starvation in the growing trade of the nation, if she had been subjected to the discriminations which Congress placed on the commerce of foreign nations.

The adoption of an efficient government and the institution of a central control produced an immediate effect on commerce. Interstate strife ceased. In eighteen months more than twenty million dollars' worth of goods had gone abroad. Great Britain and her dependencies bought almost one-half these American products and produce, with France a second.

Then came Spain, the Netherlands, Portugal, Germany, Denmark, Africa, the East Indies, and Sweden in decreasing order. Even the northwest coast of North America purchased some ten thousand dollars' worth of goods from the new republic. Tobacco, rice, flour, wheat, and corn were the chief articles of export. Manufactured articles were of minor value. The total amount of iron sent out was little over three thousand tons, as against three hundred thousand tons exported in 1900. Furniture to the value of \$8351 went abroad, of which \$30 worth went to Spain and the remainder to the West Indies.

During this same first fiscal year under the new Government, dutiable goods to the amount of nearly seventy-four million dollars came into the various ports of the United States. Brown sugar from the French West Indies led the list, molasses from the same source ranking second.

Tarred cordage from England came next, with coffee from the French West Indies, dried fish from Canada, distilled spirits from the British West Indies, in order. This revival of trade did much to quiet the predictions of those who still imagined the new Government must fail.

The second year gave them still less ground to stand on. It showed that the United States custom-houses had collected over three million dollars on imported goods, the largest collections being in the State of Pennsylvania, with New York second, and Massachusetts third. This was a larger sum than had been realised from all taxable sources for the eight years preceding the Constitution government. Nearly \$150,000

had been realised from charging tonnage upon vessels entering and leaving American ports. The future of the finances of the National Government was assured. Those who had so long begged that the power of collecting duties might be given to it now felt their judgment vindicated. The obligation incurred to France for loans and supplies amounting to over ten million dollars, a debt of honour especially pressing, was being paid so rapidly that by 1795 the entire balance was advanced and the obligation cancelled.

Prospects brightened for the future. "I sincerely rejoice in the prosperity of your country," wrote Hartley, from London, to Jay, with whom he had negotiated the peace of 1783. "You must not expect to find it otherwise than checkered with good and ill; such is the lot of human life. To be as happy as any people in the world is a lot you must not expect to exceed." In reply Jay said: "Whether the United States will be more or less happy than other nations, God only knows; I am inclined

to think they will be, because in my opinion more light and knowledge are diffused through the mass of the people of this country than any other." Brissot de Warville, a French traveller, was impressed by the American vessels venturing to the Northwest coast for furs and peltry.

Thinking that point not far from the head of the Mississippi, he predicted that Americans would soon find a short intracontinental way to the Pacific. He also predicted that these traders would soon open a new route between the Atlantic and the Pacific by the lake of Nicaragua. "No sea is impenetrable," he said, "to the navigating genius of the Americans. You see their flag everywhere displayed; you see them exploring all islands, studying their wants, and returning to supply them."

External commerce was not allowed to monopolise the attention of the Americans, now at peace with the world and themselves. The Constitution gave to the Central Government the exercise and care of several functions heretofore left to the States. As rapidly as possible, a mint was established to produce gold, silver, and copper coins. Laws punishing the counterfeiting of the coin were passed. The existing military system was recognised and the postal establishment with the routes and offices of the previous year adopted. The pensions paid to invalided veterans of the wars by the States were assumed by the nation.

Commissioners were appointed to treat with Indians in the United States territories. Provision for making a count of the people was made. Steps for the adequate protection of the frontier were taken. Commissioners were appointed to lay out the capital city on lands granted by Virginia and Maryland. The provisions of the Ordinance of 1787, modified to meet the new conditions, were re-enacted.

Of less importance than many of these functions bestowed by the Constitution on the Federal Government, but even farther-reaching, was the indefinite power to "promote the progress of science and useful arts" by encouraging authors and inventors. The right of an inventor to a protection on his product had been saved from the monopolies so freely granted to companies in the time of James I. It was one of the birthrights of Englishmen brought to the American colonies. The right of an author to the benefit of his productions was allowed in the common law. Colonial legislatures had been accustomed to encourage both authors and inventors by rewards of money as well as by exclusive rights for a limited term of years. The Legislatures of various States continued the practice after the Revolution, although there was no system of inter-recognition of patents between the States. Fitch, the steam-navigation experimenter, secured exclusive rights on his steamboat from Virginia, Maryland, Pennsylvania, New Jersey, and New York, and even then was unprotected in the remaining States. This power so evidently belonged to the national instead of State governments, that it was never questioned in the convention, although it had not been included in the Articles of Confederation. Indeed, so essential was the necessity for the development of home resources felt to be that at one time the convention had considered transferring from the States to the Federal Government the general practice of "establishing public institutions, rewards, and immunities for the promotion of agriculture, commerce, and manufactures."

This paternalism was eventually confined in the Constitution to patents and copyrights. Within a fortnight after the beginning of the House sessions, David Ramsey, the South Carolina historian, petitioned Congress for the sole right to sell his books for a limited term of years. He was followed by Hannah Adams, the Massachusetts writer, Jedediah Morse, the geographer, and others. Instead of granting such petitions by individual bills, as the State Legislatures had done, Congress enacted a general copyright law which gave to any applicant exclusive control of his writings for fourteen years.

Simultaneously with the petition from Ramsey, which led to the first copyright law, came one from John Churchman asking for exclusive right to sell spheres, maps, charts, and tables on the principles of magnetism which he had invented after "several years' labour, close application, and great expense." Soon after came requests for such rights from Fitch for a boat propelled by steam, from Rumsey for one propelled by setting poles, and from Stroebel for another to run on wheels without the use of oars. Other inventors asked for patents on a machine for raising water to run a waterwheel, on one for making nails, for producing power by using a weight, for curing the bite of a mad dog, for counting the revolutions of a wheel, for a reaper and thresher, and for a lightning-rod on an umbrella. In the second session Congress passed an act making the members of the Cabinet, except the busy Secretary of the Treasury, a board to hear petitions and to grant sole rights to inventors for fourteen years.

The necessity for uniform action deprived the States of both copyright and patent control and gave it to the central agency—powers trivial in themselves, but potent in the unforeseen work of transferring the trust and gratitude of men of learning and ability from their several States to the Union. "The encouragement of learning" is sufficiently indefinite to become a giant by interpretation. This was apparent in the very first session of Congress. To his petition concerning his magnetic maps and charts, Churchman had added a prayer for "the patronage of Congress" in undertaking a voyage to Baffin's Bay for studying the cause of the variation of the magnetic needle—a problem handed down from Columbus. The proposition was defeated in the House, although only five to eight hundred dollars was suggested, because of the deranged condition of the national finances. Only one member expressed a doubt as to the constitutional power of Congress to do more than reward inventors by patents. Although the Constitution explicitly confined the encouragement

to granting of exclusive rights to the use of the invention, the cause of defeat was not the lack of constitutional power, but the lack of means.

Washington, the friend in Virginia of every movement for the public benefit, showed no fear lest Government assume too much power in this particular. Years before, he had voted in the Legislature of his own State to give exclusive right to a stage-owner to carry passengers over a road because "he had expended a considerable sum of money in the purchase of carriages and horses ... which will be productive of considerable public convenience and utility ... and therefore it is reasonable that he should possess for a reasonable time any emoluments resulting therefrom." Once, in complaining to Jay that the Postmaster-General under the Confederation had delayed the Virginia mails by using horses and showing an antipathy to patronising the stages, Washington had said: "It has often been understood by wise politicians and enlightened patriots that giving a facility to the means of travelling for strangers and of intercourse for citizens was an object of legislative concern and a circumstance highly beneficial to any country." Now, in his message to the second session of the First Congress, he took occasion to suggest to the members "the advancement of agriculture, commerce, and manufactures," and "the promotion of science and literature." He advised them to consider whether these desirable objects could be "best promoted by affording aids to seminaries of learning already established, by the institution of a national university, or by any other expedient." These simple and, at the time, unsuspected phases of paternalism must not be ignored in an examination of the growth of the Union. The most rigid of the strict-construction Presidents became helpless before them, or never foresaw their possibilities. From such small beginnings came the various scientific expeditions, the investigations for the benefit of agriculture, the printing and distribution of books, the distribution of garden seeds, the vast donations of land and money for higher education, and the many other ways in which the Union has expanded under no other warrant than the simple requirement in the Constitution that Congress "promote the progress of science and useful arts by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries."

In his early messages to Congress, Washington was accustomed to call the attention of members to "facilitating the intercourse between distant parts of our country by a due attention to the post-offices and post roads." This was no new power given to the Central Government as was the right to encourage learning, but it had even more possibilities of extension through interpretation. The monopoly of carrying the mails, now generally claimed by all governments, may be traced to the assumed prerogatives of the Stuarts in England. A few attempts had been made in the dependent days by individual colonies to regulate the carriage of letters, but the provisions of an act of Parliament in Queen Anne's reign for appointing deputy postmasters-general in the colonies placed the posts directly under the care of the royal Government.

The use of the mails without government censorship was essential to the patriots in the American Revolution for carrying out their plans.

Nearly a year before independence, the Continental Congress set up a revolutionary postal system to replace the express riders which they had thus far used. Franklin, the colonial deputy for America, who had brought the posts to a high proficiency before he was dismissed for sympathising with his countrymen, was placed in charge. Gradually these "constitutional" post-riders and postmasters supplanted the royal officials, and Congress in time inherited the monopoly. The Articles sanctioned this assumption by giving Congress the sole and exclusive power over the transportation of the mails passing from one State to another, collecting sufficient postage to pay for the same, but tacitly leaving to each State the control of its internal postal system. So little did the postal system develop under this arrangement that, with the exception of an extension fortnightly to Pittsburg and the establishment of a few cross-lines, the main line in 1789, extending from Portland, in Maine, to Savannah, Georgia, had improved but little since Franklin established it years before. There were only seventy-five post-offices in the whole United States in 1789, and they collected less than \$40,000 a year.

So essential to the intelligence and happiness of the people did a well-regulated postal system appear, and so properly an interstate agency, that no opposition was heard in the convention to that clause of the Constitution which said: "Congress shall have power to establish post-offices." In the second and in the final draft of the document the words "and post roads" were added, by a vote of six States to five, without debate, according to Madison's notes. In the series of papers now known as the *Federalist*, Madison, when attempting to quiet the fears of the people upon the possibility of the Central Government securing too much power under the Constitution, said of this provision: "The power of establishing post-roads must, in every view, be a harmless power." Little could he foresee that within ten years he would be called upon by his great chief, Jefferson, to decide whether "to establish" meant to lay out a road, to construct it, or simply to adopt an existing one. "Does the power to *establish* post roads given you by the Constitution mean that you shall *make* the roads or only select from those already made, those on which there shall be a post?" wrote Jefferson, taking Madison to task for this fresh assumption of power in the Congress of which the latter was a member. "We have thought hitherto that the roads of a state could not be so well administered even by the state legislature as by the magistracy of the county on the spot. How will it be when a member from New Hampshire is to make out a road for Georgia?" Really, the carrying of the mails was a power not expressed, but deduced, if fine distinctions were to be made.

Still another power was expressly given to the Union which had not existed under the Confederation and had never been

exercised—the right to create new States from original soil; to speak into existence rivals of the agencies through which the Union itself had been created. When the States gave this right to the Central Government, they furnished a weapon most deadly to their continued supremacy. "No state shall be deprived of territory for the benefit of the United States," declared the Articles. It was to guard against this danger that the States in ceding their western land, and the Central Government in accepting it, had mutually agreed to convert it into States of a limited size as rapidly as population would warrant. As has been shown, unsuccessful steps had been taken under the Confederation to carry out this agreement, "without the least colour of constitutional authority," as Hamilton said in the *Federalist*.

The law of balance, if not of retribution, finds an illustration in the manner in which the fear of the States lest they give the Union too much power over the lands led eventually to a greater loss of power. Their jealousy of each other prevented the land being held by any one of them. They could not hold it severally, neither could they so dispose of it. When they thought of converting it in time into new States, no workable plan could be devised for such a disposition unless they acted jointly. The control had to be given to the Union. For these reasons, the Union became the parent of all the States except the original thirteen and Texas. It was inevitable that the sympathy of the people during the preliminary condition of a Territory should be weaned away from the original States and their allegiance gradually transferred to their benefactor, the Union. Unfortunately for State supremacy, the process did not end, as then seemed probable, with the Mississippi, but was prolonged for a century by new accessions of territory.

The new Congress had not long to wait for an opportunity of fulfilling the promise made almost ten years before. In his second message, the President sent to Congress a petition for statehood from an authorised convention of the people inhabiting the district of Kentucky, together with a permission to that end from the parent State, Virginia. Both papers had been inherited from the old Congress. As the President said, they contained "sentiments of warm attachment to the Union and its present government." Such a happy termination of the sixteen years'

contest between the trans-Alleghenians and their parent State, as well as such a final contradiction to the repeated rumours of the secession of Kentucky, caused the speedy enactment of a law "that upon the aforesaid first day of June, one thousand seven hundred and ninety-two, the said new state by the name and style of the state of Kentucky shall be received and admitted into this Union as a new and entire member of the United States of America." A few days later it was decreed in another simple law that Vermont should be admitted on March 4, 1791.

New York, the parent State, had agreed to release her on payment of thirty thousand dollars. Vermont secured the prior admission because her application named no day, as that of Kentucky did. In the creation of these two States, the nascent Union was not only adding to its strength, but was removing for ever two of the most alarming cases of possible secession which had thus far menaced it.

CHAPTER X

FIRST LESSONS IN NATIONAL OBEDIENCE

Although the first years under an efficient form of national control were remarkably successful, inspiring what was really the first confidence in the free government of America, it was not to be expected that all difficulties were to be avoided, especially if the new form assumed a vigorous and capable management. Heretofore domestic violence had threatened local government only, because the national administration was too inefficient to come in contact with disorder. If the National Government should now attempt to enforce its laws, the very action must sooner or later bring it into conflict with recalcitrants in some section, as well as with the naturally lawless. Even the understanding that local policing was to be left to local government would not restrain an efficient national administration from meeting such a crisis vigorously.

Indeed, the action of the nation in such an emergency would determine whether it was at the mercy of State aid and protection or whether it could care for itself.

If one were attempting to predict at what point of national administration rebellion would arise, he would no doubt choose taxation.

The hostility of the people toward taxation, possibly engendered in the Revolutionary days, and exaggerated by human nature, has been described in previous pages. One of the objections to the Constitution had been that the people could now be taxed by two agencies, State and nation, thereby involving double taxes. The resistance to the excise tax, which began to be manifest in a small way soon after its institution in 1791, bore a striking resemblance to the rebellion against the stamp-tax levied by Britain upon the colonists a generation before. A tax levied on imported goods, collected at the ports, quietly added to the original cost, and, therefore, a kind of external tax, is never so objectionable as one paid directly out of hand, and hence an internal tax. So little in evidence is an external tax that the people are sometimes beguiled into questioning whether the producer or the consumer pays the tax. An internal tax, levied on distilled liquors, whiskey, rum, brandy, and gin, was no more a novelty in the early days of the Constitution than was a stamp-tax in 1765. Being accustomed to having it levied by the local government in each instance, it became objectionable when laid by the superior power. Massachusetts, Connecticut, and Pennsylvania had used an excise as a means of raising revenue. The people in the western part of the latter State had several times resisted its imposition by the State Legislature, but the penalties imposed upon their lawlessness had generally been remitted by the governor, and the law had been finally repealed. "The Legislature has been obliged to wink at the violation of her excise laws in the western parts of the state ever since the Revolution," confessed a United States Senator from that State.

The Constitution clearly stated the power of Congress to lay and collect both imposts and excises. From the beginning of his reports upon available sources of revenue, Hamilton had suggested a special impost upon imported liquors and an excise upon those manufactured in the United States. He fully realised that the word "excise" was obnoxious to citizens who had migrated from Scotland and Ireland, where the tax was imposed by a superior force, and in England as well, where it had been known since Cromwell's day. To these people it meant not only a tax on liquors, but on candles, salt, vinegar, and other forms of domestic manufacture. It meant a license to own a gun, and to peddle small wares. Not many years had passed since Samuel Johnson in his dictionary had defined it as "a hateful tax levied upon commodities and adjudged not by the common judges of property but wretches hired by those to whom it is paid." Added to these inherited prejudices of the Irish and Scotch-Irish settlers in western Pennsylvania against the excise was a local complaint that they lacked roads for transporting their grain across the mountains to market and were prohibited from floating it down to New Orleans both by the distance and by the hostility of the Spanish. Their surplus produce must rot unless it could be manufactured into spirits which could be consumed at home or carried to a market. A horse, it was said, could carry only four bushels of grain across the mountains; but he could take twenty-four bushels when converted into liquor. In that day, before the later temperance movements had created a different sentiment, whiskey was regarded as a necessary article of food as much as beef or bread. The amount of strong liquor used in the United States was estimated at two and one-half gallons per year for every man, woman, and child.

Although the consumption of liquor in the uplands of North Carolina was almost equal to that in western Pennsylvania, there were no such geographical causes for resistance to the General Government's excise.

It was seen by the Administration that opposition would be most likely in the four western counties of Pennsylvania. That State had the most diverse elements of population. Its colonial history had been marked by racial and factional contests. It was now to have the unfortunate distinction of producing the first open resistance to the Federal Union. The disorder at first took the form of mobbing and intimidating collectors, destroying the property of distillers who complied with the law, and holding public meetings at which resolutions denouncing the laws of the Government were passed. During the two and a half years that the insurrectionary spirit increased, Congress twice modified the excise law in a vain attempt to

conciliate its Pennsylvania opponents, who demanded a total repeal of the tax. To check the General Government the leaders of the insurrection threatened to secede, thus setting an early pattern for this form of intimidation.

"I am induced to believe," wrote one of them, "the three Virginia counties this side the mountain will fall in. The first measure then will be the reorganization of a new government, comprehending the three Virginia counties and those of Pennsylvania to the westward, to what extent I know not... Being then on an equal footing with other parts of the Union, if they submit to the law, this country might also submit."

With such a spirit of combination against the Federal Government as these words indicated, the supporters of the national power cast about to find what provisions had been made for enforcing the national laws.

The Constitution gave the command of the army and navy to the President; but the peace establishment, on which the army had been put at the close of the war, placed at his service an inadequate force. The necessity for economising, as well as the fear of a standing army, had kept the army down to five regiments of infantry and one battalion of cavalry. This force was required constantly on the frontier and could not be spared to suppress domestic insurrection. In such a defenceless condition, the Union must turn to the militia of the various States.

The Constitution had provided for such an emergency in a general way by making the President the head "of the militia of the several states when called into the actual service of the United States." Here was opportunity in working out the details for the individualists to protect themselves against the unjust use of the militia by restricting the circumstances under which it could be called into the actual service of the Federal Government. Unfortunately for them, measures for the proper defence of the frontier were necessary from the beginning of the new Government. Since the frontier lay so largely in the United States territories, its defence belonged to that authority and not to any State. Under certain limits of time and distance, the President had been authorised in various laws to employ State militia on the frontier. The Secretary of War eventually drew up a plan for organising uniformly the militia of the States into a national defence, believing, as he said, that "an energetic militia is to be regarded as the capital security of a free republic, and not a standing army, forming a distinct class in the community."

In drafting the militia law of 1792, in accord with the recommendations of Knox, the President was authorised to call out the militia of any State "whenever the laws of the United States should be opposed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings." This efficient clause was productive of a prolonged debate in each branch and a conference between the two. Its opponents made various efforts to substitute the Legislature of a State as the agency for calling out the militia, to require a previous notice to the President from a justice that the laws could not be enforced, and to have a session of Congress intervene before the President could march the militia of one State into another. The fear of giving the central power an excuse for maintaining a standing army had led the framers of the Constitution to incorporate a clause placing the militia at national service only for the purpose of executing its laws, suppressing insurrection, and repelling invasion. Of these emergencies, Congress was to be the judge. Should the dangerous authority now be given over to the Executive? The long intermissions between sessions of Congress made such delegating imperative. The Shays rebellion had left its lesson. Yet, according to one speaker, the measure seemed to suppose that only the General Government possessed the power to suppress insurrections, whereas the States individually certainly possessed this power and would execute it. Another thought it an insult to the majesty of the people to hold out the idea that it may be necessary to execute the laws at the point of the bayonet. "If an old woman,"

cried a disgusted member of the minority, "was to strike an excise officer with a broomstick, forsooth the military is to be called out to suppress an insurrection."

Finally, by a close vote in each House, the United States was given power through its Chief Executive to call forth the militia of the several States. The action made a connecting ligament between the national body politic and the arm of a widespread and always prepared force. The militia proved most effective in preserving the sovereignty of the National Government in domestic affairs until the regular troops were relieved from the duty of guarding the frontier. Unquestionably, the measures pending at the same time for the protection of the frontier and the inquiry into the defeat of General St. Clair in the North-Western Territory did much to hasten the passage of the militia bill.

Being thus fortified against domestic insurrection and resistance to its laws, the decision whether the new Government would be more successful in these particulars than its predecessor depended entirely upon the attitude of its administrators. It was fortunate for the people of the United States and the growth of the Union that Hamilton was at the head of the department in which the first resistance to the laws occurred. A secretary less devoted to the aggrandisement of the central authority, more careful of the reserved rights of the individual, or more temporising by nature, might have attempted to check the well-known predilection of his chief for vigorous enforcement of the laws instead of constantly urging him thereto. If Hamilton and Jefferson had exchanged secretaryships, the story of the United States would have been vastly different. Hamilton had time to time notified the President that his departmental collectors were interfered with in the execution of their duties in the districts of western Pennsylvania. He wanted to use the full force of the Government against offenders. "Moderation enough has been shown," said he. "It is time to assume a different tone." The spirit was spreading to other parts.

The Federal officials of both North and South Carolina warned him that the disaffection was extending to those States.

From the standpoint of the Union it was also fortunate that a military man was President. Those who criticised the choice for the Presidency of a man with military experience but no civic training, and those who deplore a custom so frequently repeated since, may find here some benefits arising from having a man with such an education. "I have no hesitation in declaring," replied Washington to Secretary Hamilton, when notified of the resistance manifested in western Pennsylvania to the revenue officers, "that I shall, however reluctantly exercising them, exert all the legal powers with which the executive is invested to check so daring and unwarrantable a spirit. It is my duty to see the laws executed." Very carefully the soldier-President felt his way through his civic powers of coercion before using his military authority in this first of several cases of preserving the Union against insurrection. There was absolutely no precedent for the coercion of citizens by the National Government. The Federal courts had not yet come into conflict with any considerable number of citizens of a State.

But they extended as a judicial network over the whole national domain.

They covered every inhabitant. To them Washington turned first. Although Attorney-General Knox decided that the insurgent meetings were not illegal, several rioters were fined by the United States Circuit Court, special sessions of which were held in Pennsylvania.

The President showed his appreciation of the delicate adjustment between State and national authority by consulting the Governor of Pennsylvania at every step. If the State at this formative hour had possessed an executive confident in himself and in his ability to suppress the disorder, he might have done a lasting service to the preservation of the supremacy of the States and forestalled the prestige which the Central Government was bound to obtain from its leadership in this crisis. But Governor Mifflin was content to support the national authority, claiming that the militia of his State was inadequate to the emergency.

In the summer of 1794, the disorder broke out afresh, extending to the spoliation of the United States mail. The National Government dared hesitate no longer. Hamilton, by private letters and public reports, urged the President incessantly to action. His unusual foresight saw the opportunity for strengthening the nation. Weakness in the written Constitution might here be remedied by the precedent of strong action under it. At last a Federal judge of Pennsylvania notified the President that the laws could no longer be enforced in his district. Washington immediately issued the required proclamation of warning, which had been penned by Hamilton. Five weeks later, the Chief Executive called upon the governors of Pennsylvania, New Jersey, Maryland, and Virginia for militia and issued a second proclamation commanding peace. He based this action on the constitutional provision requiring the Executive to take care that the laws be faithfully executed.

The seat of the National Government being at Philadelphia, near the rendezvous of the militia, enabled the President to place himself at the head of the militia. No later President has interpreted so literally his office as commander-in-chief of the army. As he reached Bedford, Fort Cumberland, and other scenes of his campaigns against the French a half-century before, he must have compared that errand with his present one. Then he was saving helpless colonists from a foreign foe; now he was preserving a government from its own constituents.

"No citizens of the United States," he wrote to Governor Lee, of Virginia, when leaving him at the head of the militia in order to return to Philadelphia for the opening of Congress, "can ever be engaged in a service more important to their country. It is nothing less than to consolidate and to preserve the blessings of that revolution, which, at much expense of blood and treasure, constituted us a free and independent nation."

It was also fortunate that Washington had passed through some instructive experience in Revolutionary days on the disadvantages of an insufficient military force. To put down the small body of insurgents in the western borders of Pennsylvania he called for almost thirteen thousand militiamen. To a delegation of the insurgents who met him on the way to complain of such an armed force coming to conquer them, Washington replied that although we had made a republican form of government and enacted laws under it, yet we had given no testimony to the world of being able or willing to support our Government; that, this being the first instance of the kind since the commencement of the Government, he thought it his duty to bring out such a force as would not only be sufficient to subdue the insurgents if they made resistance, but to crush to atoms all opposition that might arise in any quarter.

Washington foresaw the effects of using the military power in behalf of the Union. "The most delicate and momentous duty the chief magistrate of a free people can have to perform," he called it. Early in the excise resistance he had declared that the Government must not use the regular troops if order could possibly be effected without this aid.

"Otherwise," said he, "there would be a cry at once, 'The cat is let out; we now see for what purpose an army was raised!'" But individualistic spirits who were alarmed at this new distortion of the Government toward centralisation feared the results of using even the militia. Jefferson, having resigned his secretaryship and seeing the unusually prominent part

assumed by Hamilton in the expedition from his retirement at Monticello against such "employment of military force for civil purposes." To his mind the disorder was simply a riot and not an insurrection. "Yet it answered the purpose,"

said he, "of strengthening the government and increasing public debt and therefore an insurrection was announced." To Madison he declared: "The excise law is an infernal one. The first error was to admit it to the Constitution; the second, to act on that admission; the third and last will be to make it the instrument of dismembering the Union."

Madison, who had at first looked upon the suppression of the insurrection as an electioneering scheme, thought it fortunate for the lovers of liberty that the movement was so easily crushed, since otherwise the principle would have been established that a standing army was necessary to enforce the Federal laws. "I am extremely sorry to remark," he wrote to Monroe during the ensuing session of Congress, "a growing apathy to the evil and danger of standing armies." This remark was brought out by the failure of the minority, with which Madison had now fully allied himself, to restrict the use hereafter of any militia to its own State. A "Federal army," the bugaboo of the opposition, had been brought into existence by this unwarranted use of the militia. Seven acts placing the military power of the United States on a permanent basis and giving the Central Government efficient control were passed at this session of 1795, the first fruits of the Western rebellion to be reaped by the Union. Madison accounted for this legislation by the influence of the Chief Executive and the confidence of the people that he would not abuse the power. What later Presidents might do could not be foreseen.

Outside the disaffected districts and with the exception of a few alarmed leaders like Jefferson and Madison, the people undoubtedly sustained Washington in his firm action against rebellion. An ode written for the birthday of the President in 1796 contains an allusion to his influence in suppressing the insurrection: "When o'er the western mountain's brow,

Sedition rear'd her impious head,
And Tumult wild his legions led,
Serenely great, the Patriot rose.—
Yet in his breast conflicting throes
Of mercy check'd the impending blows.
"He view'd them with a father's eye,
Dimmed by thy tear, Humanity!
Reluctant Justice half unsheathed the sword.
Scar'd at the awful Sight,
Sedition shrunk in realms of night,
And Order saw her peaceful reign restored."

Giving the Central Government sufficient military strength was not the only result of the first open attempt to oppose it. Individualism had received a telling blow. The State was no longer inviolate. Objection had been raised in the trivial matter of creating districts for collecting the revenue because they disregarded State boundaries. It was now seen that the National Government could and would march militia directly to a place of resistance regardless of State lines. The people of the States were no longer safe from invasion by the power which they had created. Not only a respect for the United States laws, taxes, courts, and officers was created by the incident, but the fidelity of the militia, residents of different States, to the central authority was assured. Jay was at this time on his celebrated mission to England to prevent war with that nation, if possible. To him Washington sent enthusiastic accounts of the people turning out to show their abhorrence of the insurrection. He said that some of the officers had disregarded rank and that others had gone as privates. He told of numbers of men, possessed of the first fortunes of the country, yet willing to stand in ranks, to carry knapsacks, and sleep on straw in soldiers' tents with a single blanket on frosty nights. Evidently the spirit of Valley Forge had not been lost. Five times the number could have been secured, he said, to preserve the peace of the country. He also hazarded a prediction that the failure of the insurrection would have a deterrent effect on the political clubs, which he blamed almost entirely for the inception of the insurgent spirit.

CHAPTER XI

NATIONAL PARTIES ON FOREIGN ISSUES

The Democratic clubs, which Washington scored so roundly, and so unjustly as Jefferson thought, were simply reflexes of one phase of the French Revolution. They serve to illustrate not only how dependent America was upon Europe for political guidance and how strong was European influence in America, but also that early parties were factions along social lines of cleavage rather than divisions on national policies.

Caste is always a relative thing. The patriots who inaugurated and led to success the American Revolution had been, generally speaking, of an inferior social rank to the Tories. Washington is regarded as a striking exception. Yet his fame rested solely upon his early military record. He was never a part of the gay life at Williamsburg. The royal governor was at the head of the Court and set the social standard. The patriots, being opposed to him, were placed in an inferior social position. But when once the governors had been driven out and the Tories had been subjugated or exiled, the patriots became the ruling or superior class. Immediately a new inferior class arose, hostile to the Administration. Thus it came about that Washington, Hamilton, Adams, and Jay, the former democrats, were changed into aristocrats in the eyes of Jefferson, Madison, and the present democrats.

The new democrats were in full sympathy with the effort made in France to abolish the nobility, and imitated the Democratic clubs which were established there on the basis of "liberty, equality, and fraternity."

Having no nobility to abolish in America, they declared war upon such titles as "His Excellency the President," or "His Honour the Mayor,"

and even "Reverend" and "Esquire." These they would replace by a uniform "Citizen." Record is to be found of some twenty-four of these local Democratic societies, scattered from Maine to South Carolina and westward to Kentucky. Their object, as set forth by a Vermont society, was "the promotion of real and genuine Republicanism, unsullied and uncontaminated with the smallest spark of monarchical or aristocratic principles." They pledged themselves to the "utmost exertions to support the rational and equal rights of man."

Like all movements depending upon enthusiasm, the Democratic societies went to the bounds of extravagance. Taking offence at a tavern sign in Philadelphia, they were not content until the proprietor had painted a red streak about the neck of Marie Antoinette to denote the work of the guillotine. A waxworks in the same city drew large crowds to witness a representation of the execution of Louis XVI. According to the advertisement, "The knife falls, the head drops, and the lips turn blue. The whole is performed to the life by an invisible machine, without any perceivable assistance." Children were admitted at half price. A bust of George III., which had stood through the intense feeling engendered by the Revolution, was now mutilated. At Democratic banquets, a boar's head, representing the head of Louis XVI., was passed about to be stabbed by the guests.

The resolutions adopted by the local societies frequently concerned local grievances. The Kentucky club protested against the Spanish claim to the exclusive control of the lower Mississippi, and a club in western Pennsylvania paid its respects to the collection of the excise tax.

Nevertheless, it should be said that many societies in other States deprecated the resistance to the National Government in that quarter.

In view of this fact, Jefferson thought Washington unjust in attributing the insurrection to the encouragement of the clubs.

There was a more practical aim in the associations than the adoption of resolutions. They hoped to unite the local bodies in a national association which should bring the State and eventually the nation into sympathy with France and her struggle for liberty. "France caught the divine fire of liberty from us," said one society. "Shall we now withhold ourselves from her?" The varying responses to this question brought about eventually the rise of political parties in the United States.

Three well-defined periods have marked political parties in the Republic. The first epoch turned, as indicated above, entirely upon the choice of sides in the war between France and England, which followed the proclamation of the French Republic, September 21, 1792.

The second period, following the close of the War of 1812, the end of foreign dominance, was produced by differences of opinion upon the constitutional powers of the National Government. It was foreshadowed by several constitutional debates in the first period. The Civil War, by an appeal to the sword, decided the majority of these constitutional doubts

in favour of the Union. Since that time, a third phase of party government has been developed, purely on grounds of expediency in domestic and foreign control.

Political parties, therefore, are peculiarly dependent upon public opinion. They are creatures of sentiment. They possess no power save that of persuasion as to the proper lines of conducting the administration.

Choosing positions on great questions largely from previous policy, they must appeal to the people for justification and support. They live by opposition. No party can exist alone. In their modern aspect, political parties were unknown in Revolutionary days. Whig and Tory were simply reflections from the parties in England supporting or opposing the Administration. There were divisions among men, largely of a social nature; "court and country" parties, as John Adams called them in reminiscence. The royal governor, surrounded by his place-men and followers, residing in the city and opposed by the rural element, represented the monarch. The opposition became the patriotic party of the Revolution. After a decade, the patriots themselves divided into Federalists and Anti-Federalists upon the advisability of changing from the Articles of Confederation to the Constitution. These divisions were not political parties in the modern sense. Neither developed any policy of administration or offered any candidate for office at the time.

When the Constitution was finally adopted, the Anti-Federalists ceased their opposition. Since the impetus of adopting the new Government was sufficient to place its supporters in power, its enemies held off and awaited the day of failure when they should have the pleasure of saying, "I told you so." In a few instances they made a demonstration, as when Patrick Henry, according to Madison's belief, had Virginia redistricted in order to keep him out of the Senate. After the new venture had passed beyond the experimental stage under the Federalist party, the name "Anti-Federalist" gradually passed from use. As policies of administration were developed, an opposition was bound to be formed, and thus modern political parties were born. A preliminary line-up was caused by Hamilton's measure for a government bank; but the real cleavage was produced by opposing opinions concerning the side which the United States should take in the war between France and England.

If Great Britain, toward whom the animosity of the recent war was still strong, had not been a monarchy, or if the revolution which changed our Revolutionary benefactress, France, into a republic, had happened in England, or if the French Revolution had not so closely followed in form the change in the United States from monarchy to republicanism, party animosity in America would have been checked instead of advanced by the Old World contest. The same end might have been reached if John Adams had been sent as Minister to France and Thomas Jefferson to England. But Britain being the token of centralisation, the general tendency of the United States toward unionism seemed to Jefferson to be the certain road to monarchism. This he conceived to be the ultimate aim of Hamilton, born in the British West Indies, and Adams, who had returned from Britain with his obnoxious theory that the "well-born"

ought to rule the remainder of the people.

The attempt of France, on the contrary, to secure the rights of man, with which Jefferson had grown familiar during his residence in that country, appealed to him both from a national and a personal standpoint.

"I still hope," he said in one of those periods of French excess which bade fair to ruin the whole, "that the French Revolution will issue happily. I feel that the permanence of our own leans in some degree on that, and that a failure there would be a powerful argument to prove that there must be a failure here." "A struggle for liberty is in itself respectable and glorious," said Hamilton, in giving a Cabinet opinion that the treaty made with France in 1778 had been annulled by the abrogation of the monarchy and the execution of Louis XVI. "But if sullied by crimes and extravagance it loses respectability. It appears, thus far, too probable that the pending Revolution in France has sustained some serious blemishes." In another place he voiced the sentiments of the anti-French by saying that thus far no proof had come to light sufficient to establish a belief that the execution of the King was an act of national justice. But the French sympathisers thought otherwise. "If he was a traitor he ought to be punished as well as another man," wrote Madison to Jefferson, quoting the sentiment among the plain people of Virginia.

Public sentiment in the United States was thus crystallising into political parties on the policy to be pursued toward the new French Republic. One faction was of the opinion that the people of the United States were bound to aid the new sister not only by the sympathy of a common struggle for liberty, but by the still stronger bonds of gratitude for assistance in gaining their own freedom. They considered the alliance of 1778, which France had signed at the expense of a war with England, as still binding upon the United States. It pledged the United States to guarantee France in the possession of her West Indies, to admit her ships with prizes to American ports, to keep out those of the enemy, and to prohibit the enemy from using American ports to fit out privateers. From this last provision, some friends of France deduced the opinion that it tacitly gave her permission to fit out privateers by denying the right to her enemies.

Hamilton and others, who thought the French movement, begun for the sake of liberty, was deteriorating into a frenzied propaganda destructive of rights and property, insisted that the change of government in France had abrogated all claims which the alliance gave to monarchical France; that, even if this were not so, the United States was pledged to aid her only in a defensive war, and this war with England was entirely offensive on her part; that to give aid to the

maddened revolutionists was to identify ourselves irrevocably with destructive fanatics, bloody regicides, and wild propagandists. These zealots, they said, had already pledged themselves to treat as enemies any people "who, refusing or renouncing liberty and equality, are desirous of preserving their prince or privileged castes, or of entering into an accommodation with them." Our forefathers had been satisfied with securing liberty for themselves without trying to impose it on all other nations. It was this proselyting spirit which caused their war against Britain. Hence, the anti-French element allied itself with England. That nation was rapidly being forced into a position where she alone would stand between French fanaticism and the disruption of all society. These pro-British were, in the eyes of the French sympathisers, base ingrates, as culpable as a nation would have been who sided with Great Britain during the Revolutionary War.

Divided into these hostile factions during this summer of 1792, the United States reached the first parting of the ways upon her foreign policy. Hitherto she had been of small moment to European nations, touching them only on boundary questions connected with the New World.

But in the mighty struggle between one people bursting the bands of centuries of repression and monarchical rule, and another nation in authority who saw prerogative, property, and person in danger from the deluge, the United States would become important as a place for fitting out and as a base of food-supply. Belligerents in the heat of war are not inclined to be over-regardful of the rights of non-combatants. To maintain a strict neutrality had been well-nigh impossible in the history of European nations. In nearly every war of the past, kingdom after kingdom had become involved. The "armed neutrality," headed by Russia during the American Revolutionary War, was formed by non-maritime nations ostensibly to protect their commerce from the belligerents; but in reality to gather up the fragments of trade as they were scattered by the warring sea powers.

The United States was fortunately located for announcing and maintaining a new idea of neutrality, a nationality based on individual development through peaceful methods. Time alone was needed in their isolated geographical condition to develop an industrial strength more efficient in Europe than an armed force at that time. As Washington said, just before issuing a proclamation warning all citizens of the United States neither to aid nor to carry contraband goods to either belligerent: "I believe it is the sincere wish of America to have nothing to do with the political intrigues or the squabbles of European nations; but, on the contrary, to exchange commodities and live in peace and amity with all the inhabitants of the earth." To another he made the prediction that "if we are permitted to improve without interruption the great advantages which nature and circumstances have placed within our reach, many years will not revolve before we may be ranked, not only among the most respectable, but among the happiest people on this globe." Notwithstanding the demands of the French sympathisers that the United States should anticipate the payments due on the French debt, should allow French privateers to be fitted out in American ports and prizes to be brought in and sold, and regardless of the insolent demands of the French Minister, Genet, and the haughty tone of the Republic he represented, President Washington issued the proclamation, April 22, 1793, warning the citizens of the United States to take no part in the war. He was aided in maintaining this neutrality by the continued trespass of each belligerent on American rights. If either had suddenly shown any regard for the neutral position of the young American Republic, sentiment would have demanded immediate war upon the other. But when England tried to cut off the supplies which France was receiving from America, France adopted similar tactics toward England. Each accused the other of instituting these war measures.

Between the two millstones, American commerce bade fair to be ground to powder. Britain, in order to recruit her navy, revived her practice of retaking her seamen who had deserted, wherever they might be found.

She took a large number of men from American vessels, some of whom claimed to be American citizens instead of British deserters. This system of impressment she continued until it resulted in the War of 1812. Her refusal to yield possession of the forts on the American side of the boundary line remained as an additional grievance.

So strong was the hostile feeling toward England, that if the French revolutionists had not plunged into such excesses as to compel their most ardent admirers to pause, the firm hand of Washington could scarcely have prevented a declaration of war against Britain instead of the temporary embargo which was adopted. As it was, a non-intercourse measure was killed in the Senate only by the deciding vote of Vice-President Adams. A war at this time, when the new Government had scarcely gotten upon its feet, when it was still obliged to borrow money from Holland to meet its expenses, when its borders were harassed by hostile savages and its forts occupied by the enemy, would have been ruinous if not suicidal. A foreign war would have been fatal to the adopted policy of a disinterested neutrality, not dependent upon force, and to an uninterrupted home development which was to continue for over a century. Neither the clamour nor defamation of the Democratic clubs, nor the insinuations of the opposition press that the President was biassed toward a monarchy because he wished eventually to transform his office into a kingship, could drive the cool Washington from his stand of neutrality. It was such self-control which drew from England's Minister, Canning, many years after, the tribute: "If I wished for a guide in a system of neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson."

Jefferson was worn out by the onerous duties of his office during this period of dominant foreign politics. He was

harassed by constant complaints of impressments and seizures. He was placed in an unfortunate position by the presumptions of Genet. Distressed by the license into which liberty in France was plunging he received small comfort in contemplating the British monarchical tendency in America. He was greatly disappointed because Washington, whom he had pronounced at first "purely and zealously republican," had been so frequently influenced by Hamilton and Knox in the Cabinet, by John Adams in the Senate, and by John Jay in the Supreme Court. These were all Northern men and all in favour of effective government. Most statesmen cling more closely to the vessel during a time of party danger, but Jefferson chose to withdraw, believing his continuance in office useless, and trusting, as he said, that the people could not be permanently led away from the true principles of government. After his withdrawal, this monarchical tendency seemed to him to have no check. The President, instead of advising war upon Great Britain both to avenge her insults upon us and to aid the French Republic, sent John Jay to England as a special envoy to try to secure some concessions from her. Jay eventually sent home a treaty, which provided for the evacuation of the Western forts, for a commission to consider payment for the slaves carried away upon the evacuation of New York, and for the withdrawal of the discriminating tax on American shipping; but it purchased commercial entrance to the British West Indies at the expense of Southern commodities. Above all, it made no mention of impressment, of the search of American vessels, and the hindrance of their neutral trade.

"Further concessions," wrote Jay to his friends in America, "on the part of Great Britain cannot, in my opinion, be attained. If this treaty fails, I despair of another. I knew and know that no attainable settlement or treaty would give universal satisfaction. Men are more apt to think of what they wish to have than of what is in their power to obtain."

Hamilton, who had followed Jefferson's example and retired from Washington's Cabinet, yet virtually remained at the head of the party, advised the acceptance of the Jay treaty. "It closes," said he, "and upon the whole as reasonably as could have been expected, the controverted points between the two countries. The terms are in no way inconsistent with national honor."

Jefferson, Madison, and their followers believed, on the contrary, that the adoption of the treaty would violate all national honour in practically dissolving the French alliance of 1778 and would bind the United States to monarchical England warring on republican France. The proclamation of neutrality from Washington had not been so hard to bear, since it took sides with neither belligerent; but the Jay treaty, it was said, would array America against the cause of liberty. The French and British factions were resolved to put the matter to the test in the Senate. From this time may be dated the beginning of political parties in the United States. Feeling ran high. Jay was burned in effigy in many cities and the treaty ridiculed and villified in the Republican prints. Hamilton was mobbed in New York, and Vice-President John Adams armed himself against personal violence.

The ratification of the Jay treaty by exactly the required two-thirds vote in the Senate showed the relative strength of the two parties at the time, although the Senate changes more slowly than the House. The success of the treaty advocates allowed Washington to close his eight years in peace with England. Pinckney, whom he had sent to Madrid at the same time he sent Jay to London, succeeded in securing a treaty with Spain. Nearly twenty years had been spent in gaining this first acknowledgment from the Castilian. It provided for establishing a permanent boundary-line between the United States and the Spanish Floridas, arranged a control over the troublesome Indians living near the line, and assured to American traders the privilege of using the port of New Orleans as a place of transshipment for their produce.

If the port of New Orleans should be closed, another port was to be opened to them. The Americans seemed to have succeeded, after more than ten years' effort, in getting the privilege of using the lower Mississippi.

This Treaty of 1795 with Spain, although overshadowed by the contemporaneous Jay Treaty, was extremely important in American diplomatic history. Not only did it quiet the discontent of the Western people and terminate foreign intrigue in that quarter, but it affected, strangely enough, the future history of the lower Mississippi. From the time of the Pinckney Treaty, France was unceasing in her efforts to persuade Spain to give over to her care the Louisiana province, which embraced New Orleans, insisting that she was the only power strong enough to check the advance of the United States and save the rest of the Spanish possessions in America. Three years later these arguments prevailed. Louisiana was transferred to France, and very soon fell into the hands of the Americans.

Washington had closed some of the most troublesome foreign questions which he had inherited from Confederation days. The new republic was beginning to make a place for itself among the nations. Treaties of amity and commerce had been made with all the maritime nations. American ministers were to be seen at the principal European Courts. Britain, France, Spain, and Holland had honoured the new power by sending representatives to Philadelphia. The entire diplomatic horizon was clear except in the French portion, where the Jay Treaty was bound to give offence. Under its tacit permission, as the French sympathisers claimed, more than three hundred American vessels were captured within the next twelvemonth, and over one thousand American seamen impressed by Britain. During the same period only three vessels and a few sailors were taken by France.

In its domestic relations, also, the United States, as the time of Washington's second term drew to a close, was exceedingly prosperous.

The new Government was in full operation. No one longer questioned its success or its fitness for the task before it. Fears for individual rights had been quieted by the adoption of ten amendments to the Constitution, guaranteeing the continuance of such birthrights as freedom of conscience, trial by jury, free possession of property, and habeas corpus. The Union had come off victorious in its first case of discipline. It had made practical demonstration that its laws would be enforced and that it could use State militia regardless of State lines in enforcing them. Its system of judges and marshals extended over the entire domain. Its Supreme Court had sustained the claim of a citizen of South Carolina against the State of Georgia. State sovereignty had received a blow and national supremacy an impulse. The Superior Court had also declared that a treaty of the United States predominated over a State law, and that no State could confiscate a debt owed to a British subject. According to another decision, the United States District Courts were sustained in their admiralty jurisdiction over the State courts. The validity and authority of a presidential proclamation was established by the prosecution in the circuit court at Richmond of an offender against Washington's neutrality proclamation. But the decision during Washington's administration which especially made for the Union was in the case of *Penhallow v. Doane's executors*, which sustained all the actions of the old Congress both during the Revolutionary period and under the Articles, and made its decisions final in cases of appeal from State tribunals. Thus was the national sovereignty, by a single decision, extended backward over local government to the very beginnings of independency and, at the same time, established for the future so long as the National Government should exist.

Not only in the intangible shape of Supreme Court decisions, but in a thousand practical particulars, the central agency was making itself manifest to the people and gaining friends among them. The general condition of the country was prosperous. Over ten million dollars had been paid on the national debt. A dependable revenue was being collected in scores of United States custom-houses scattered through the different States. During Washington's last year in office, their receipts had amounted to twelve and a half million dollars. The National Government was expending a part of this money in rendering commerce safe. It was purchasing lighthouses from the maritime States and erecting new ones.

Sites for these buildings were being ceded by the various States along the sea-coast. Beacons, buoys, and public piers were being established by the revenue service. Sixteen harbours within the several States were being fortified at national expense. Plans for the improvement of certain rivers were being considered. The Congress under the Confederation had declared navigable waterways in the Northwest Territory leading into the Mississippi and St. Lawrence to be free highways, and the new Congress extended this inestimable guarantee to all waters of the public domain. Its extension to the States would come later from a Supreme Court decision. The improvement of these rivers at national expense would result in time from the westward expansion of the people.

The domain under the complete control of the Federal Government had been increased by a cession from South Carolina. The States of Kentucky and Tennessee had been carved out of the "territory south of the Ohio,"

and, with the State of Vermont, had been admitted to equal membership in the Union by the sole action of the Federal Government. The national post-routes had been extended in eight years from three thousand to sixteen thousand miles, and the number of post-offices had been increased to seven hundred. By severe penalties, the Government had taught the people to respect as well as to be grateful for this branch of its activities. It had also regulated trade with Indians not residing within the jurisdiction of a State, and, by scattering its troops along the border, was attempting to protect the savage from the encroachments and debauchment of the white man, as well as to shield the white man from the barbarity of the savage.

The presidential election machinery had been tried a third time and had worked smoothly. Electors had been chosen in each State without the predicted revolution and bloodshed. They had cast seventy-one votes for John Adams and sixty-eight for Thomas Jefferson. The former, having received the highest number of votes, was declared President and the latter Vice-President. Perhaps some of those who had voted for Adams may have thought the Vice-Presidency a place of training for the higher office, and its incumbent in the line of promotion. But on examining the geographical distribution of the vote, one sees that sectionalism influenced the result of this third presidential election, as it did a majority of later ones. The vote for Adams came almost entirely from the Northern States; that for Jefferson from the Southern. Adams stood for Federalism, for centralisation, for a continuation of the policy of the present Administration. He and Hamilton were close friends.

They broke only when Hamilton found that he could not influence President Adams as he had President Washington. Electors who voted for Jefferson thought he stood for principles exactly opposite to those of Adams. His antipathy to Hamilton was the best guarantee against centralisation being continued under his management.

Those who had prophesied that the overwhelming majority of Washington would result in a series of re-elections during his life, or that the expiration of each term would find the country in some danger which would demand his continuance, had been silenced by a farewell address declaring his intention to retire. The pattern of two terms which he set no President has ever dared attempt to exceed. The opponents of his administration, those who had foreseen the coming royal reception in the simple levee which marked his social life, or who objected to the growing custom of celebrating his birthday as if he were a monarch, were compelled to cease their evil prophecies when he attended, as a spectator, the

inauguration of his successor in the room of the House of Representatives adjacent to old Independence Hall in Philadelphia on the fourth day of March, 1797. As the incoming President wrote to his wife, the multitude was as great as the space would contain and not a dry eye but Washington's. Like the formative influence of a good parent extending from generation to generation, the precedent of Washington's voluntary retirement from the Presidency has been a rich heritage to the American people. It may be safely said that it is largely the cause of the pleasing contrast which exists between the changes of administration in the United States and those in the other American republics.

CHAPTER XII

SUPPRESSING THE FRENCH SYMPATHISERS

The only cloud on the horizon the day that John Adams became President lay in the direction of France and was caused by the Jay Treaty. It seemed impossible to keep peace with both belligerents abroad or with their factions at home. Adams would probably be more scrupulous of the rights of the individual than Hamilton; yet drastic measures were likely to become necessary if the pro-British and the pro-French agitators were to be muzzled and their clamour hushed. Such a censorship of speech was a thing not to be lightly contemplated in America.

Freedom of speech and the press had been inherited as a privilege of Englishmen, wrested from those in authority by years of contest, and maintained only by constant vigilance. A guarantee that it should not be restricted by the State had been placed in many of the State constitutions. A similar prohibition formed the first amendment to the Federal Constitution. Freedom of movement is closely akin to freedom of speech. Not even in the heyday of State sovereignty had any serious attempt been made to prevent the movement of unobjectionable free people from one State to another. The Constitution guaranteed to citizens of each State all privileges and immunities of citizens of the several States. The same instrument allowed Congress to establish a uniform rule of naturalisation in making United States citizens out of foreign immigrants; but the right of declaring who should be citizens of the States, having been assumed by the State constitutions, was left to them individually. State and national citizenship were thus separate from the beginning. For these reasons it could happen, as pointed out in the Dred Scott decision many years later, that a State could make an alien into a citizen of the State, entitled to all its rights and privileges, but he might still be an alien in the United States and deprived of national citizenship.

The first Congress recognised its constitutional obligation to provide a uniform law for national citizenship by allowing an alien who had resided two years within its jurisdiction and one year within any State to take an oath before any court of common-law record to support the Constitution and thereby become a citizen. Five years later, Congress feared that the warring powers of Europe would send undesirable aliens to the United States. "Coming from a quarter of the world so full of disorder and corruption," said a speaker in the House, "they might contaminate the purity and simplicity of the American character." A new naturalisation law was passed, requiring an alien to give three years' notice of his intention to change his allegiance—a kind of period of repentance. The required time of residence was then raised to five years for the nation and one for the State. During that time he must maintain a good moral character, must abjure allegiance to all other sovereigns, and must renounce all hereditary titles and orders of nobility. In this way one speaker said he hoped to shut out those refugees from the twenty thousand French nobility, who might choose to fly to the United States. Another expected to see an equally large number of the peerage arrive from Britain, as soon as the correct principles of government should take root there.

Little alarm need have been felt about those members of the deposed nobility of France who did arrive. They were more concerned with getting daily bread than acquiring citizenship or retaining their titles.

Prince, marquis and marquise, vicomte, and bishop, alike must keep body and soul together by turning wig-maker, baker, or milliner, until the madness of the French people should pass. By and by, the changes of fortune in France began to send over Constitutionalists, Thermidorians, Fructidorians, and the like, to plot and intrigue. "They kept their eyes fixed on France," said a French volunteer, who had returned to America to secure the pay due him since Revolutionary days, "to which all expected to return sooner or later and recommence what each called his *great work*, for there were exactly the same number of political systems as there were refugees." The French sympathisers in America mingled with these *émigrés* and were more or less concerned with their plans. The press offered the opportunity to vent much of their spleen on Washington and to express their opinions of the "British United States Government," as they called it.

Added to these scribblers were certain other agitators, preachers, and writers, refugees from England and Scotland, driven out by the British Government in its effort to keep the sentiments of the French propagandists from taking root in British soil. More libel suits had been instituted in the courts of England during a single year of the French Revolution than in any two previous decades. Among those banished was Thomas Paine, who had returned to London, after lending his pen to the American cause, and had written the famous, or infamous, as some called it, *Rights of Man*. Many of these aliens in America were scribblers who had picked up a few current phrases and lofty sentiments about liberty and equality. They were of varying ability as writers, but uniform in their venomous abuse and hatred of England and all her sympathisers. In the rapid increase of newspapers, which marked this first period of prosperity and the birth of political parties, many of these writers found precarious employment; a few found remunerative occupations. Of the two hundred newspapers published in the United States when John Adams became President, it was estimated that at least twenty-five were edited by men of alien birth.

At few later periods have political parties brought out such scurrilous abuse in the press as in these early days. Although the number of newspapers has so increased that irresponsible and vulgar men are to be found among editors, although the restraints of law upon the press have been greatly loosened, yet the tone of the leading newspapers to-day is immeasurably better than it was a century ago. As the opposition to the Administration gradually crystallised into a party, few suffered more from the pens of its writers than did the first President. The abuse, which included such grave charges as that he had murdered a French envoy near Fort DuQuesne years before, that he had taken money illegally from the United States Treasury, and that he hoped to turn his Presidency into a monarchical reign, followed him to the end of his administration. Washington's replies to the numerous addresses of societies and public meetings which had greeted his entrance to office eight years before breathed a spirit of toleration.

It was his eminent desire, as he said in one reply, to have every association and community make such use of the auspicious years of peace, liberty, and free inquiry, as they should hereafter rejoice in having done.

At the same time, the mind of Washington, the exclusive Virginia gentleman, could easily make a distinction between liberty and license.

He attributed the insurrection against the excise almost entirely to the unbridled utterances of the Democratic clubs, their "first formidable fruits," as he put it. Nor did he fail, in reporting the suppression of the rebellion to the next Congress, to express his opinion of these "self-created societies" who disseminated suspicions, jealousies, and accusations of the whole Government. Jefferson, still believing in the original doctrine of the rights of man, called this allusion of the President "the greatest error of his political life."

The societies would have soon died out if left alone, he said. Coercion would make them thrive. "It is wonderful," continued Jefferson to Madison, "that the President should have permitted himself to be the organ of such an attack on the freedom of discussion, freedom of writing, printing, and publishing." He pronounced it almost incredible that the freedom of association and of the press should be attacked in the fifth year of the new Government, a step which England, fast advancing to an absolute monarchy, had not yet attempted.

There was small probability that this abuse from the Jacobin clubs and presses would cease with the retirement of Washington. When he gave out his farewell address, written by "the President's president," as they called Hamilton, a Vermont editor regretted that he had not retired four years before, which would have saved the country from having been so debauched by its mistress, England. The day of his departure for Mount Vernon was celebrated by a scurrilous attack in the *Aurora*, which a defender of his memory vindicated by an assault upon its editor.

John Adams, as Vice-President, had long been pilloried as "the dangerous Vice," for his theories upon inherited talent, a doctrine in direct contradiction to the tenets of democracy. He also appeared in the Jacobin prints as "President Crispin," the son of a shoemaker, and as "the President of three votes," alluding to the narrow majority of Adams over Jefferson in the recent election. Many went so far as to charge that the election of Adams had been accomplished by prematurely closing the polls in a Maryland election district and by the action of a Pennsylvania postmaster, who held back the returns. Franklin's recent death had plunged the people of two hemispheres into mourning.

His memory was not sacred enough to prevent an accusation that he had once pocketed the money for two hundred thousand stand of arms, which had been intended as a present to the United States from the King of France. The oft-repeated scandal of the lost million francs was freshly ventilated. Yet so precious was freedom of speech in America that even those attacked hesitated to follow British pattern in placing a censor over the press. Even Patrick Henry, being rapidly won to the support of the experiment which he had formerly opposed, declared: "Although I am a Democrat myself, I like not the late Democratic societies. As little do I like their suppression by law."

President Adams had years before placed himself on record concerning the freedom of the press. Long a fulsome contributor to the newspapers on political questions, he had said: "There is not in any nation of the world so unlimited a freedom of the press as is now established in every State of the American Union, both by law and practice. There is nothing that the people dislike that they do not attack."

Entertaining such liberal opinions, an unforgiving enemy to Britain, an admirer of the French people since first he came into contact with them, John Adams entered the Presidency prepared to save the press from the storm gathering about it. But the partisans would not stop their abuse long enough to examine his predilections or to forecast the attitude he was likely to assume in his conduct of foreign affairs.

They were enraged by the advantage apparently given to Britain in the Jay Treaty, disappointed in the continued repression of every effort to aid France, and emboldened by the high tone of the French Directory after the sympathetic Monroe had been ordered home to be replaced by the Federalist, Pinckney. They sneered at Adams's inaugural address where he admitted a personal esteem for the French nation, formed during seven years spent abroad and chiefly in Paris, and expressed a sincere desire to preserve the friendship which had been so much to the honour and interest of both nations.

Notwithstanding these cordial words, President Adams, within three months, was calling together the first extra session of Congress in the history of the Government, and informing them in vigorous language that Pinckney, an American Minister, had been refused cards of hospitality by the Executive Directory at the head of the Republic of France, had been threatened by the police, and had finally been practically ordered out of the country. The right to reject an ambassador was recognised by the law of nations. But "a refusal to receive him until we have acceded to their demands without discussion and without investigation," said the President, "is to treat us neither as allies nor as friends, nor as a sovereign state." The warlike message advised strengthening the army and navy, perfecting the coast defences, preventing further building of foreign cruisers in the United States, and the raising of revenue sufficient for these purposes. Although closing with a promise of continued effort toward neutrality, this hostile address from the first statesman-President forms a strong contrast with the mild messages of the first soldier-President. The granite rock of New England had been reached and it gave no evidence of yielding. The response to the defensive tone of the President varied according to foreign affiliations. Parties in America were as yet reflections of European wars. The pro-British faction, strong in all parts of the National Government except the executive, were as eager for a trial at arms with France as they had been reluctant for war with England two years before. Hamilton wrote columns for the daily press to prove that the assistance which France gave to us during our struggle for independence was based on purely selfish motives. We were bound by no ties of gratitude to yield to her pique at the Jay Treaty.

"Those who can justify displeasure in France on this account," said he, "are not Americans but Frenchmen. They are not fit for being members of an independent nation."

The opponents to this attitude—those whom Hamilton called "the servile minions of France, who have no sensibility to injury but when it comes from Great Britain, and who are unconscious of any rights to be protected against France," were equally clamorous for forbearance.

They asked Adams, in this crisis, to send a sympathetic man, say Jefferson, who would be acceptable to France and would soothe French pride and avert the threatened war. Although Jay had been taken by Washington from the Supreme Bench to be sent as envoy to England, Adams thought the Vice-President too dignified a person to be used in this manner. Such an action would also imperil the presidential succession.

Yet he was desirous of seeking some kind of an accommodation to preserve neutrality. Although France had "inflicted a wound in the American breast," as he put it in his message, he appointed three special envoys to renew negotiations. Their number would protect American interests and show to France the gravity of the situation. Pinckney, the rejected Minister, was made quite justly one of the three. John Marshall, the second member, like Pinckney, belonged to the anti-French faction.

Gerry, the third envoy, was a former Anti-Federalist and a sympathiser with France.

The treatment which these three envoys received in France caused the tempest in a teapot commonly known as "the X Y Z affair." By discrediting the French faction, it hastened the day of their attempted suppression by the Government of the United States. With the mysterious methods current during the days of the contemptible Directory then at the head of the Government of France, certain supposed go-betweens approached the American envoys with suggestions that "money, lots of money," would be necessary to heal the wounds inflicted on the French heart by the Jay Treaty and by the recent words of President Adams.

This gold, it was said, was necessary as a pre-requisite for opening negotiations. Part of it was to constitute a loan to carry on the war with England, and the rest was understood to be a *douceur* for the pockets of the members of the Directory. "We loaned you money in your hour of need," Pinckney was told by a mysterious Frenchwoman, who figured in the affair. "Why should not you lend to us?"

[Illustration: A HALF PAGE OF THE X Y Z DISPATCHES. From the original in the Department of State. A close inspection will show the brackets drawn around the name of Horttinguer and the letter "X" inserted in margin on left. This was done by order of Timothy Pickering, Secretary of State, before the dispatches were published.]

In the reports of these envoys which John Adams sent to Congress as rapidly as received, the name of Hubbard, who had introduced the three to the go-betweens, was indicated by the letter "W," Horttinguer by "X," Bellamy by "Y," and Hauteval, who acted as interpreter, by "Z."

It was useless for Jefferson, Madison, and the French sympathisers in America to point out that *douceur* meant a gift and not a bribe, and that the supposed go-betweens were discredited and their action disavowed by Talleyrand and the Directory. It was believed and is currently stated in America that an attempt was made to bribe these dignified representatives of the American people. The national spirit was aroused. Unionism received such an impulse as years of domestic relationship could not produce. The war microbe was loosed among the people. One of those sudden outbursts of national rage, as unexpected as violent, ran the length and breadth of the land. A broadside was circulated, with

stanzas beginning:

"At length the Envoys deign to tell us

They had to deal with scurvey fellows—

With Autun and the five-head beast

And half the alphabet, at least."

For perhaps the only time in his life, John Adams tasted the sweets of a widespread popularity. His birthday, like that of his predecessor, was generally celebrated. The sympathetic French following was swept off its feet. "Exultation on one side and a certainty of victory; while the other is petrified with astonishment," was Jefferson's admission.

In reporting to Congress that Pinckney and Marshall had indignantly withdrawn from France, and that Gerry, who lingered, had been officially notified by his Government that no loans of any kind would be made, President Adams used a sentence which immediately became current: "I will never send another minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful, and independent nation."

The British faction had at last an opportunity of crushing the French sympathisers, and they accepted it most willingly. In their intolerance, they went almost as far as the other side had gone a few years before.

A South Carolinian, visiting in New York, was assaulted in the circus because he refused to take off his hat when the President of the United States entered. A "reign of terror" was instituted against the pro-French office-holders. It was even claimed by them that a general massacre had been arranged for the Pennsylvania fast-day, and Bache, the editor of the *Aurora*, made a show of garrisoning his house with an armed body of his friends. A Senator in debate was reported to have declared his willingness to vote for a law punishing every citizen of America who educated his children in the study of the French language.

Hamilton and those who wished to give new precedent to the National Government along lines of its foreign relations where patriotism would support strong measures, were delighted with the response on the part of the people. Theatre crowds demanded encores of the *President's March* and hissed French airs when played. Merchants of New York and other seaports worked voluntarily on the neglected coast-defences. A song was put to the air of *True Hearts of Oak* in order to "cheer those unused to spade and barrow, who might tire of working on the several forts." It began:

"Ye friends of your country, the summons attend,
Be this your employment, your joy and your pride,
Your heav'n-granted rights to preserve and defend,
And the spirits of freemen your labors shall guide."

Chorus.

"Our country demands-her call we obey,
Let 's work and be merry,
We'll never be weary,
While freedom and glory our labors repay."

Hundreds of addresses reached the President, the larger number heartily endorsing his attitude toward the insulting Directory. Public opinion supported Congress at the time in passing many war measures at this special session of 1798 and the regular session which followed. Eighteen acts were added to the Statutes at Large during the special and seventy-five at the regular session, nearly double the number of laws enacted at any prior sitting. The exportation of arms was forbidden and their importation encouraged. The navy was separated from the army and a new department created for it. The three men-of-war which constituted the United States Navy were repaired and put into commission. The construction of others was begun. Frigates, galleys, and rowboats were ordered and regiments of artillerists and engineers authorised to be recruited. A quarter of a million dollars was appropriated to the coast-defences. Over a million was voted for increasing the number and for arming the regular troops. A provisional army of ten thousand men and a marine corps were placed at the disposal of the President. From his retirement at Mt. Vernon, ex-President Washington was summoned to assume command of the provisional army.

Not alone measures of defence, but actual war measures were passed.

The President was authorised to seize armed French vessels found near the American coast. Merchantmen were permitted to arm against the French. Thirty thousand stand of arms were distributed among the militia of the States. All treaties with France were formally dissolved, and all intercourse with her suspended until the next session of Congress.

To provide money for these unusual expenditures a loan of five million dollars for fifteen years was authorised, and a stamp-tax levied not unlike that of thirty years before, against which the colonists had rebelled.

As if they had not yet sufficiently endangered the party, the triumphant Federalist majority proceeded to vent its long accumulated wrath upon its critics, and thereby brought the story of the United States a long chapter forward. Those who had writhed under the attacks of Duane, a former resident of Ireland, but lately driven from India for violating the liberty allowed to the press, hoped for sweet revenge. Others wanted retribution against Callender, setting up at Richmond an abusive press such as had caused him to be driven from Scotland not long before.

The list of lesser offenders among the alien writers was long. As President Adams asked: "How many presses, how many newspapers have been directed by vagabonds, fugitives from a bailiff, a pillory, or a halter in Europe?"

Charges against these aliens were not confined to their political writings. The air was full of conspiracy. Some suspected a league between foreigners and the United Irishmen; others thought the aliens leagued with the Freemasons for the destruction of all social relations, private property, religion, and government. Emissaries of France were supposed to be in every republic plotting for her universal dominion.

Holland and Switzerland had already lost their liberty in this way.

Talleyrand, the French Minister of Foreign Affairs, who had spent his exile in America and had become a naturalised citizen, was in secret correspondence, so it was declared in Congress, with certain people in this country. Another Frenchman, it was said, "of a literary and intriguing character, formerly a member of the Club Breton, doubtless in the confidence of the Directory, who had for a long time lived in Pennsylvania, has recently taken flight." Should this menace be allowed to continue? Both France and England were exercising the right of self-preservation and banishing suspicious aliens. These fled to the United States and made it a common plotting-ground. They were described in the Congressional debate on this subject as "men endeavoring to spread sedition and discord; who had assisted in laying other countries prostrate; whose hands are reeking with blood and whose hearts rankle with hatred toward us. Have we not the power to shake off these firebrands?"

By a safe majority in the House and a vote of two to one in the Senate, the Federalists placed additional bars to the doors of the United States by raising the time required for national residence prior to naturalisation to fourteen years, with a residence of five years in some one State, and a declaration of intention made five years before admission. All white aliens were required to report to some official register, and get a certificate within forty-eight hours after arrival.

By a law, called the "Alien Friends act," Congress gave power to the President to order out of the United States all aliens whom he suspected of being concerned in any treasonable or secret machination against the Government. If he chose, he could give such an alien a license to remain under bond. The duration of the act was limited to two years.

A companion measure, called the "Alien Enemies act," contemplated the possibility of an immediate war with France and gave the President and the courts power to arrest, to punish, or remove natives of a hostile country after due proclamation. All courts were authorised to hear complaints against aliens, much in the style of the denunciation system of France a few years before.

The alien writers and the Republican press generally had not been afraid to attack the war measures and the bills for the restraint of foreigners as they were proposed and debated. Upon the sudden rage of naming vessels after the President, Duane in the *Aurora* sarcastically remarked that the name would be a host of strength in itself and completely protect our extensive commerce. He thought we outstripped the British in this instance.

"In the navy of England, there is only one royal George and one Charlotte; there is to be sure the Sovereign and the Queen; but we shall certainly have, The President, the Lady Adams, or the Lady President, with Squire Quincy and Squire Charley, otherwise the navy of Columbia will be incomplete."

In other papers, the President figured as "Johnny Molasses" from the rum manufacture of Massachusetts. The New York *Time-Piece* pronounced him "a person without patriotism, without philosophy, and a mock monarch who had been jostled into the chief magistracy by the ominous combination of old Tories with old opinions and old Whigs with new."

Addresses were printed begging aliens not to enlist in the provisional army if any laws should be passed against them.

All action taken thus far to ensure the perpetuity and safety of the Government against the strangers within its gates seemed to the Federalists incomplete while this seditious press remained unbridled.

The crowning measure of the session of 1798, therefore, took the shape of an addition to the early act defining crimes against the United States. It provided fine and imprisonment for conspiring to oppose measures of the Government, for advising insurrection, and for libelling the Government, either House of Congress, or the President. The duration of the act was limited to the end of the present Administration. As originally introduced into the Senate, this "sedition act" declared that giving aid or comfort to a Frenchman or to France was treason to the United States, punishable by death. It was toned down in this and several other particulars by moderate spirits before being enacted into a law.

The opposition in Congress, called "Republicans" by themselves and "Jacobins" by their enemies, had resisted these famous "alien and sedition laws" at every step. They pleaded that such police regulations had been left by the Constitution to the States; that national citizenship did not exist separate from State citizenship; that Congress could pass uniform laws of naturalisation, but could not control aliens resident in a State; that adequate punishment for sedition was already provided in the laws of the various States; that the crime of treason was taken care of by the Constitution and Federal laws; that existing treaties required notice to be given before foreigners could be sent away, and then only in case of war; and that a dangerous power was placed in the hands of the President. The constitutional amendments guaranteeing trial by jury and freedom of speech were also quoted in vain. When a member from New York declared that the people ought not to submit to such tyrannical legislation and would deserve the chains which these measures were forging for them if they did not resist, such language was declared treasonable by the other side and productive of the insurrectionary spirit they were trying to stamp out.

An analysis of the distribution of the vote on the Alien bill shows that these presses, although located in the Northern and Central States, were supported by the Southern people. Perhaps the sectional tendency of the vote should be considered as indicative of the loss of the Southern States to the Administration and prophetic of the support which individualism was to receive from that section. Not a Senator north of the Mason and Dixon line opposed the measure, and only one from south of the line supported it. Of the Southern members in the House, nine voted for and thirty against sending away dangerous aliens.

In the Northern section the vote stood thirty-seven to ten in favour of the punitive action.

Jefferson, presiding over the Senate while these measures, so obnoxious to him, were being passed, deprived of even the pleasure of casting an occasional deciding vote by the overwhelming Federal majority, quietly bided his time until this madness should die out. "War, land tax and stamp tax," said he, "are sedatives which must calm its ardour."

To his mind, the people were still essentially republican; they retained unadulterated the principles of '75; they needed only reflection and information to bring themselves and their affairs to rights.

"A little patience," he wrote to a correspondent in Virginia, who mentioned the possibility of separating that State and North Carolina from the tyrannical majority, "and we shall see the reign of the witches pass over, their spells dissolved, and the people recovering their true sight, restoring their government to its true principles. Better keep together as we are, haul off from Europe as soon as we can, and from all attachments to any portions of it."

At the same time, if war should come, he advised all to join for the defence of home on the principle that if one's house is on fire he must try to extinguish it without stopping to inquire whether it was fired from without or within.

The execution of the Alien and Sedition laws proved as unpopular and as futile as Jefferson had imagined. Callender escaped the Alien law by completing his naturalisation, but was fined and imprisoned for seditious publications. His counsel, Cooper, a lawyer-editor, suffered similar punishment. A chartered vessel carried back to France, now under more tolerant government, a large number of *émigrés* including Volney, the philosophical writer and former friend of Washington, suspected of being at the head of the conspirators in the United States.

The abusive *Time-Piece* was abandoned, one of the editors fleeing the country and the other being under arrest. Duane was assaulted in his office, his presses destroyed by a mob, and himself haled before Congress for criticising their actions. Lyon, a violent Republican who had come near being expelled from the House for assaulting a fellow-member, was fined and imprisoned for commenting on certain appointments made by the President. A half-dozen or more insignificant country editors were caught in the Federalist drag-net, serving only to make the law more ridiculous.

President Adams never found a dangerous alien friend to send out of the country. The war with France was averted and the Alien Enemies act consequently never enforced. Some new issue arose to attract popular attention. The war fever passed as quickly as it came. Only the extra taxes remained to remind the people that the French-war scare of 1798

had ever occurred. War measures are always popular at the time they are passed. National patriotism is aroused, excitement refuses to listen to conservatism, and judgment is replaced by impulse. Measures necessary to raise the extra

revenue are easily voted; but after the excitement has passed, the extra taxes become an extra burden. Those who yesterday clamoured most loudly for national defence and "patriotic"

measures will to-morrow seek to evade payment or turn and rend the party which imposed the levies. The war is soon over; the train of taxes which follows seems endless. A political party takes small risk in fathering a war; it faces a great danger in the reaction which follows.

The Federalists had not only authorised by their war measures a large addition to the national debt, but had imposed certain forms of direct taxes. Even more odious than either the stamp tax or the tax on slaves was that on "improvements" in property. In order to arrive at a fair conclusion of the value of dwellings, the number of windows in each was taken as a standard by the assessors. This method was not unknown to the Old World, but proved extremely obnoxious in the New. Resistance in eastern Pennsylvania took the form of the so-called "Fries Insurrection." It offered another opportunity to the National Government to assert its authority, but rendered President Adams still more unpopular, and increased public hostility toward the Federalists.

Although Adams pardoned the leader, John Fries, he did not appease the Republicans, and he angered the Hamiltonians, who would show no clemency toward the opponents of law and order. Like some mastodon of old, the party floundered deeper into the swamp, eventually to succumb, leaving only its bones as a warning to the danger of overconfidence.

CHAPTER XIII

THE FIRST STATE PROTESTS

The autumn of 1798 marked the extreme limits to which the leaders and party intentionally strengthening the Union were allowed to go at present. It was the culmination of Federalist power. The critical turning-point, the momentary pause before the backward swing of the pendulum, was marked by popular disorders. The first heat of party passion, the tendency toward centralisation in ten years of Federalism, and ignorance of the extent to which the party might go, had combined to bring the country to the verge of actual disruption. The black cockades (English) fought with the tricoloured cockades (French) on a public fast-day in the streets of Philadelphia. Republicans, attempting to nail up petitions for the repeal of the Alien and Sedition laws on the doors of Christ Church, were set upon by the Federalists and driven away. The President received anonymous letters threatening to burn Philadelphia. Citizens packed their valuables in readiness for flight. Numerous incipient riots occurred in New York and other cities.

While the people of the French faction were thus expressing their disapproval of the administration measures, their leaders were casting about to find the most potent remedy against such abuse of the national power. Even those who, like Madison, believed in the efficacy of the new Government had not expected to see it turned into an agency for the oppression of the individual. To their minds, a continuance of the present course must mean the complete loss of individual and State liberty, or the overthrow of the Union of States, which had been gained only after great effort. An appeal to the ballot was one remedy; but more than two years must elapse before a change of administration was possible. The States, in forming the Union, had thrown about themselves many safeguards. It was high time to test their efficiency.

In the debates on the Alien and kindred measures, the ratification acts of the different States had been quoted by Republican members to show that the States had granted certain powers to the Union, and that the States alone could judge when those powers had been transcended.

The State was the natural agency for the protection of the individual in this hour of danger. To an alarmed resident of Delaware, Jefferson offered an asylum in the State of Virginia, where the "laws of the land, administered by upright judges, would protect you from any exercise of power unauthorized by the Constitution of the United States.

The *habeas corpus* secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume."

Browbeaten, as Jefferson explained later, by a bold and overwhelming majority in Congress, the Republicans resolved to retire from that field, and to take a stand in their State Legislatures. The legislative, rather than the executive or judicial branch of the States, represented the people of the United States dwelling in the various States. The State Legislatures had sent delegates to form the Constitution, and the State Legislatures had called the State conventions which adopted it. In the State Legislatures the true friends of the Union, as the Jeffersonians called themselves, would endeavour to find an agency for protection against the unwarranted attack of the National Government.

Four members of Congress at this time actually withdrew, forming a striking precedent for sixty years later. Although sometimes charged with planning a forcible resistance to the central power, the Republicans as a whole contemplated nothing more than concerted action in resolutions to be adopted by the State Legislatures. "I would not do anything at this moment," advised Jefferson, who naturally assumed the leadership, "which should commit us further, but reserve ourselves to shape our future measures, or no measures, by the events which may happen."

Selecting North Carolina as a strong Republican State to take the lead, Jefferson drew up a set of resolutions setting forth the doctrine of protest. However, chancing to meet some Kentucky politicians visiting in Virginia, he gave the paper to them. Their State offered advantages superior to North Carolina for inaugurating the movement. Her history from infancy had been one continued struggle for political rights.

"Kentucky," said her governor in his message at the opening of the session of the State Legislature following the passage of the Alien and Sedition acts, "remote from the contaminating influences of European politics, is steady to the principles of pure Republicanism and will ever be the asylum of her persecuted votaries." The customary reply of the House took the shape of nine lengthy resolutions, rewritten from the set drawn up by Jefferson. They were adopted by both Houses of the State Legislature, signed by the governor, and sent as an appeal to the "co-states in the federal Union." Assuming that the States and the Union had made a compact whereby the latter had been given certain limited powers for definite purposes, the remaining powers being reserved to the States, the resolutions declared that whenever the General Government assumed undelegated powers, its acts were unauthoritative, void, and of no force; and that, as

in all cases of compact having no common judge, each party had a right to judge of infractions and redress. This hypothesis being assumed, the remainder of the resolutions supports it with arguments, using generally the ones employed by the opposition speakers in Congress to prove that the Alien and Sedition laws were unconstitutional.

In a comprehensive view of the history of the making of the Union, these resolutions are of great importance. They form the first note of individualistic protest against the growing power of the Union. To them one must look for the first suggestion of the means to be employed.

Unfortunately for this purpose, they are declamatory rather than constructive. They seek to arouse passion rather than to lay out a definite line of resistance. The only suggestion of immediate action is an instruction to the Kentucky Representatives to attempt to secure the repeal of the encroaching acts at the next session of Congress and an appeal to the other States to "concur in declaring these acts void and of no force."

Madison was no doubt in touch with the inception of the Kentucky Resolutions. To him was given the task of drawing up those to be adopted in the Virginia Legislature. So critical had the times become that he had resigned from Congress to accept a seat in his State Legislature.

Although he composed a set of resolutions, as Jefferson had requested, he thought the proper remedy lay in a convention of delegates from the States rather than in the State Legislatures. The Constitution had been formed by a convention and not by the Legislatures. Therefore, to avoid having the Legislature seem presumptuous, he had used only "general expressions," as he said, in his resolutions. "In case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the states, who are parties thereto," said his resolutions, "have the right and are in duty bound to interpose for arresting the progress of the evil." Upon this assumption, a protest was made against the Alien acts, which united unconstitutionally the legislative and judicial powers to those of the Executive; also against the Sedition law, which imposed a punishment expressly forbidden by one of the amendments to the Constitution.

Upon the question of a proper remedy, Madison went no farther than to beg that the other States would take "the necessary and proper measures"

to maintain the rights and liberties reserved to the State or the people. But he lived to see this protracted warfare between the States and the Union reach a critical point, when it was desirable to know precisely what early protestors had meant. Madison explained that the resolutions advised only interposition by all the States. The plural form was universally used, and resistance by no one of them planned.

No revolutionary action was contemplated. The legal remedies to be found in "interposition" he enumerated as remonstrances, instructions, elections, impeachment, amendment to the Constitution, and finally, if the usurpations became intolerable, a recourse to the right of revolution. Whatever hope Jefferson and Madison entertained of a united effort on the part of State Legislatures against the Alien and Sedition acts was dashed by the dissenting replies from all the New England States and by the lack of replies from the Southern States. They accounted for it by the tardiness with which State officials change, not always representing public opinion. The ease with which they carried all the States except seven in the ensuing election of 1800 enabled them to give the resolutions a large share of the credit for bringing about the victory.

In the midst of the war fever, Congress assembled in December, 1798, in the city of Philadelphia. No such glorious pomp and circumstance of war had ever been witnessed at the opening of a session. When President Adams read his address from the Speaker's platform to the assembled Houses, notifying them that France showed no inclination to yield, there sat at his right hand George Washington, summoned from Mount Vernon to become the Lieutenant-General and Commander-in-Chief of the provisional army against the Republic of France. Near him sat the new major-generals, Alexander Hamilton and Charles C. Pinckney, the latter one of the rejected envoys to France. Soon after the opening, Washington returned to his home, leaving Hamilton in command, an arrangement not consented to without reluctance by Adams, and destined to bear fruit later. The war measures were continued by the so-called "Logan act" providing punishment for any citizen of the United States who should, without authority, carry on communication with a foreign government with an intent to influence any action. It was brought out by Doctor Logan, a well-meaning Republican of Pennsylvania, who had unofficially gone to France in an effort to avert the threatened war and had held communication to this end with Talleyrand, Merlin, the First Director, and others. With the suspicion common to the times, the Federalists thought he was endeavouring to act as mediator or plotting some league with France in the event of war. This act marked the extreme limit, to the Republican mind, of the tyranny of the Central Government over citizens of a State.

It might have been fortunate if matters had been put to the test in 1798 and the following year. If resistance had assumed definite shape it would have been successful or it would have been overcome. The history of the Union would have been put forward more than half a century, or it would never have been written. For the time being, each side seemed inclined to go to the extreme point. The Federalists had taken their places in the Congress determined to ignore the scores of petitions for the repeal of the acts. They refused to debate motions to rescind, and came to successful votes as a "silent legislature."

Another provisional army was authorised and further additions made to the regular army and navy. On the other hand, the Legislature of Kentucky, rendered even more defiant by the timid assurance in the replies of a few legislatures to her appeal and the decidedly unfavourable answers of a large number, renewed her resolutions of the preceding year in even stronger language. One new phrase, that "a nullification by those sovereigns of all unauthorized acts done under color of that instrument is the rightful remedy," was important because of the later use made of it. Jefferson had used "nullification" in his draft of 1798. It was no stronger than other words and phrases, yet, thirty years later, the words "interpose" and "protest" were passed by as too feeble, and "nullification" adopted as the proper term for open resistance, But that Kentucky did not mean forcible resistance is proved by her accompanying statement that she would bow to the laws of the Union because she was a party to the Federal compact. The Virginia Assembly reaffirmed its principles in resolutions and an address to the people the following year.

In the midst of the warlike preparations, when the two republics seemed determined to test the patience of each other; when the Jeffersonians were bound hand and foot by the war craze; when Hamilton awaited the word which would at last league his country with England against French fanaticism and would also bring a realisation of his dream of a military command—in the midst of all this, President Adams, in February, suddenly sent to the Senate the nomination of the American Minister at The Hague to be an envoy to France! The Federalists were dumfounded at his change of position. If negotiations were renewed, peace might follow. Peace with France would mean hostility with England, if not a revival of the danger of absorption by French intrigue. Proud in their strength, the Federalists had assembled only to be undone and their warlike preparations made into an idle show by the actions of this headstrong John Adams, who insisted upon being the President of his own administration, and who would not take seasonable advice from his party. He had done what the members of his Cabinet had feared, although they now pretended to be surprised. For three months past he had invited suggestions for envoys in case France should yield, had drawn up a form of proposed treaty, and had ridiculed the idea of a French invasion of the United States. "There is no more prospect of seeing a French army here than in heaven," he said. Enforced by Hamilton, who "chanced to be present," the members of his Cabinet had wrestled with him for hours in a private conference at Trenton to turn him from his purpose of conciliation rather than war. He informed them, as he later informed Congress, that he had received assurance from Talleyrand that if another representative should be sent to France from the United States he would undoubtedly be received with the respect due to the representative of a free, independent, and powerful nation, thus using almost the precise words of Adams.

By the time the new envoys, whose appointment the Federalists did not dare openly to oppose, reached France, the Directory had fallen and Napoleon was First Consul. He saw the usefulness of the United States to his plans as a friend rather than an enemy, and was ready to bury all grievances in a treaty. The three envoys, Murray, Ellsworth, and Davie, had no difficulty in getting the United States relieved from the treaty obligation of 1778 and in arranging compensation for the damages inflicted on American commerce. Thus was closed by the Treaty of 1800 the series of events which came so near involving in war the two nations, the allies of a few years before.

Viewed as a part of the diplomatic history of the United States, this war of 1798 is simply an incident. In the story of the Union it plays a greater part. Regardless of its disastrous results to the Federalists, it undoubtedly first rallied the people to the standard of a union for the common defence against a foreign foe. The old Revolutionary spirit had been revived. A national respect had been created in the eyes of its constituents. This was essential to a proper respect in the eyes of other nations.

This national spirit, if the Administration had remained in the hands of the Federalists, might have grown too rapidly for the maintenance of a proper equilibrium. Hamilton, unhampered by an Adams, would have made the United States a party to European alliances, dangerous to American originality and American neutrality. Self-government would have assumed some form of European imitation. Drawn into the Napoleonic wars as allies of Britain, nothing but a miracle could have saved them from the legitimacy-restoring Congress of Vienna. What changes in American history might have followed! The desire of Britain for the Louisiana country, the claim of Spain to the Mississippi below the Ohio, silenced but not abandoned after 1783, the necessity for neutrality as a basis for the Monroe Doctrine, and the development of America free from the burden of a war-basis defence, must be considered in this connection. So many are the conditions and menaces that speculation pauses at predicting the results if the great law of reaction had not manifested itself at this juncture.

The decision of John Adams to renew negotiations with France thus became a turning-point in history, because it precipitated the threatened schism among the Federalists, led to the downfall of the party, and turned the National Government from centralisation toward decentralisation. Although Adams recognised all this, he nevertheless defended his decision as the most disinterested and meritorious action in his life. Years after, he said that he desired no other inscription on his gravestone than, "Here lies John Adams, who took upon himself the responsibility of the peace with France, in 1800." At the time he showed no spirit of yielding to his advisers, who declared his action "the great shade on the presidential escutcheon." They said they had been delivered to the enemy in the house of their friend. Hamilton confessed that the news of the mission would astonish him if anything from that quarter could astonish. Having complete mastery over the President's Cabinet and with a large following in Congress, Hamilton had become almost a dictator in

the party during the war craze and the enforcement of the Alien and Sedition laws. With the talent of a born leader, he assumed charge of the War Department during the two years that he was a major-general. Adams resented every assumption and attempt at dictation.

"If any one entertains the idea that because I am a President of three votes only I am in the power of a party," said he, "they shall find that I am no more so than the Constitution forces upon me. If combinations of senators, generals, and heads of departments shall be formed such as I cannot resist, and measures are demanded of me that I cannot adopt, my remedy is plain and certain."

Although not driven to resignation, as here hinted, Adams was from this time sentenced to be cut off with one term by Hamilton and the party. Meanwhile, Hamilton gave out what his policy would have been in executing the Alien and Sedition laws. He would have collected a "clever force" of the national militia and marched them toward Virginia.

There was an obvious excuse for this action in her resolutions, he said. Then he would have measures taken by the National Government to arrest some alien and so put Virginia to the test of resistance. To the Speaker of the House, he outlined the steps necessary to be taken if the Union was to be preserved. It was the swan song of extreme centralisation. He would make the national judiciary districts much smaller, greatly increasing the number and efficiency of the judges, and also have national justices of the peace in every county. He would give the Central Government power to construct roads and canals, would increase the taxes, build a powerful navy, and make permanent the provisional army. To reduce the dangerous power of the great States and to curb their rivalry with the nation, he would divide them into smaller States.

It was entirely too late for such unionising suggestions. They had gone out of fashion for sixty years to come. Reaction had set in.

Public sentiment, frequently reproached for its fickleness, but in reality protective in its vacillation, demanded a change. Federalism had lost prestige. Its leaders were at enmity. Washington, its unconscious mainstay, was dead.

"The irreparable loss of an estimable man removes a control which was felt and was very salutary," wrote Hamilton to a foreign correspondent.

"At home, everything is in the main well; except as to the perverseness and capriciousness of one and the spirit and faction of many. The leading friends of the government are in a sad dilemma."

The first reaction against an enlarged and all-powerful America had been reached in the history of parties. The drag on the chariot was now to be felt.

The Republicans were in correspondingly high spirits over the prospective downfall of the party which had so far perverted the administration of the National Government from the path which it should have taken. Republican rhyesters exhausted their wit in describing how "Brave Hamilton, our warrior bold,

Strove Adams in the chair to hold,

By mustering sense, and spleen, and wit,

To prove him totally unfit."

Madison thought a steady adherence to the principles of prudence all that was needed. "It would be doubly unwise," he wrote to the impatient Monroe, now Governor of Virginia, "to depart from this course at a moment when the party which has done the mischief is so industriously co-operating in its own destruction." If anything was wanting to assure the defeat of the Federalists, it was supplied in the publication of "A Letter from Alexander Hamilton Concerning the Public Conduct and Character of John Adams, Esq., President of the United States." The letter laid bare most mercilessly the weakness in the nature and the defects in the administration of John Adams. Material for the recital had been furnished Hamilton by his tools in the Cabinet. Hamilton had his revenge on Adams, but he paid dearly for it in the estimation of every non-partisan American. Simply because the national structure was not being built to his own plans he would endanger the fabric by giving it over to those whose theories tended to weakening instead of strengthening it.

CHAPTER XIV

THE ADVENT OF DEMOCRACY

The presidential election of 1800 was epoch-making in several meanings of the term. It was a reaction against the bold and defiant attitude of the party in power. It was a revolution of the people. Yet it was neither a dissolution of all government, as it appeared to the defeated, nor a permanent conversion of the people to democracy, as the victorious element was inclined to consider it. Sixty years later, the people would rise against the victorious party, grown to be a slave-truckling organisation, overscrupulous of the individual when the world was turning to aggregation, and would take the sceptre from them for a quarter of a century at least. The masses punish arrogance in a party as in an individual. Unlimited success is always fatal. No sooner has the party passed the safety-line in one direction than the tide of popular favour turns in the opposite way and leaves it stranded. Owing to such reaction, the National Government has never approximated anarchy on the individualistic side of Jeffersonianism, nor has it been in danger of monarchy under Hamiltonian centralising principles at the other extremity. To-day it is as far from the ideals of the one as the other. Controlled constantly by centrifugal and centripetal forces, the fixed orbit of the Union has been maintained.

The election of 1800 marked the first transfer of the national control from one party to another. So accustomed has time made us to these changes, that it is difficult to appreciate the anxiety with which the people of that day awaited the transition. Well-known party issues, announced in party platforms, now give a fair assurance of the policies to be pursued. Yet no serious suggestion emanated from the Federalists that they would not yield to the ballot. Fitness for self-government was again demonstrated, especially when contrasted with some other American nations, by the peaceful eviction of one party, yielding to no more warlike weapon in the hands of its opponents than the suffrage of citizens.

The anxiety of the hour was increased because the national machinery had suddenly come to a standstill. The defect predicted by its enemies and feared by its friends had suddenly appeared in the method of electing a President. According to the Constitution, each elector wrote two names upon his ballot. The man receiving the highest number, if a majority, was declared President, and the next highest, Vice-President.

Every Republican elector chosen in 1800 had written upon his ballot the names of Jefferson and Burr. Consequently neither was elected, because neither had a majority. The superiority of Hamilton over Jefferson as a party manager is manifest by the fact that Hamilton had feared a Federalist tie in the election of 1789 and had taken steps to prevent it.

The Republicans were now in a quandary. John Adams had received only sixty-five votes, cut off with one term, a vicarious sacrifice, as he thought himself; yet neither Jefferson nor Burr was elected, each having seventy-three votes. Various rumours disturbed the peace. It was said that Congress would appoint a President for the interim; that Adams would hold over; or that Hamilton, disappointed in not being made President, would turn dictator. Governor Monroe promised Jefferson that he would immediately re-convene the Virginia Assembly "should any plan of usurpation be attempted at the federal town." Monroe's remedy was an amendment which would correct the Constitution in this particular. The fathers had not foreseen this precise accident, but, in their wisdom, had provided a remedy for a defective election by casting a decision in the House of Representatives, the most popular body next to the electors.

Jefferson had undoubtedly been the choice of the people, and his selection had been the intention of the Republican electors. This was ultimately accomplished in the House. An amendment to the Constitution was adopted before the next election to prevent the recurrence of such an accident, and the Union had by good fortune passed a crisis in a presidential election second only to that of 1876.

The discomfited Federalists sought an explanation for their defeat in everything save their own actions. After only twelve years, and twelve years passed in creating an efficient from a deficient government, the people had turned against them. "No party ever existed knew itself so little," said John Adams, "or so vainly overrated its own influence and popularity as ours. None ever understood so ill the causes of its own power or so wantonly destroyed them." State debt assumption, the bank, the excise, the increased debt, the war expenditures, the direct taxes, and the Alien and Sedition laws would seem to furnish a sufficient list of reasons for the downfall of a party, which came into the Administration by only three votes. Yet, by common consent, the blame for the defeat was placed on the aliens and their presses.

"A group of foreign liars," was the forceful way in which the defeated President explained it, "encouraged by a few ambitious native gentlemen, have discomfited the education, the talents, the virtues, and the property of our country." Chagrined that Washington should have two terms and he cut off with one, smarting under the treacherous letter of Hamilton, to which he speedily framed a reply, the ex-President "trotted the bogs" back to Massachusetts, as he termed it, without paying his successor the courtesy of waiting to see him inaugurated.

Gadsden, the old Revolutionary leader of South Carolina, now relegated to the line of spectators, lamented the shortsightedness of early days in not sufficiently guarding American citizenship from the admission of foreign meddlers. "Our old-standers and independent men of long, well-tried patriotism, sound understanding, and good property,"

said he, "have now in general very little influence in our public matters." He wished the advice of John Rutledge had been taken. He would have admitted only the sons of aliens to citizenship.

The new President was to the manor born, but he held theories dangerously akin to those put forth by the foreign faction, against which the Alien and Sedition laws had been aimed. Speculative philosophy, however philanthropic in its intent, was heresy to the practical Federalists. Hamilton, in the midst of the uncertain election, was reported to have given in a toast his preference for "a dreamer rather than a Catiline," as between Jefferson and Burr. During the campaign, pamphlets appeared describing Jefferson as a wild philosopher, one who believed the savage more independent and happy than the civilised man; who preferred newspapers to government; who believed that a little rebellion now and then was a good thing; who esteemed property and obligations of so little value as to declare that the actions of one generation were not binding on the next; who justified the excesses of the French Revolution by saying that if only an Adam and an Eve were left in every country and left free, it would be better than it had been before. Memories of Tory confiscations and penalties were sufficiently fresh to give credence to a rumour that the President-elect contemplated such retributive measures toward his political opponents. Memories of the disunion sentiments contained in the Virginia and Kentucky Resolutions were still fresher, although Jefferson's close connection with the latter was not yet generally known.

Thomas Jefferson was an exponent of the democracy of his day, and with him democracy came into the National Administration. The "well-born"

were discomfited. Yet it was not the democracy of Andrew Jackson's time. It was a democracy reflected from Europe like everything else in America at the time. It was the democracy of Montesquieu and the encyclopædists. It was a democracy which could be led by a college graduate and lawyer, who was also a gentleman farmer and a large landholder, bound to his party by a country residence, by being a borrower, and by speculative theories. Only such aristocratic democracy was possible on the Atlantic coast-plain. Pure American democracy would be born only after advancing civilisation found a majority in the mid-valley of the continent, with the barrier of the Alleghenies at its back. It reached a crude form in Andrew Jackson, the Indian fighter, and a slightly higher type in Abraham Lincoln, the prairie lawyer.

Jefferson's democracy in the abstract was a kind of political millennium, in which the people collectively exhibited traits quite different from their individual components. The people, to Jefferson's mind, were unselfish, by nature good, and needing no restraining bonds.

They were their own censors. His democracy in the concrete took the shape of a great uprising of the people in 1800, temporarily led astray from the true principles of self-government by the undue influence of Alexander Hamilton acting through the moneyed interests, but returning joyously and regenerate to the path of constitutional rectitude. The election of 1800 he pronounced as real a revolution in the principles of government as was that of 1776 in its form; the material difference being that one was effected by the sword and the other by the rational and peaceable method of suffrage. Jefferson had no more conception of a modern political party than had Washington,—the latter because he saw in them only factions; the former because his party embraced the entire people.

For several years, it is true, Jefferson had been directing the pens of his lieutenants in the various States, circulating sound Republican literature, patronising Republican newspapers, and tabulating Federalist defeats as skilfully as a modern political manager. He encouraged the people to mass-meetings or county conventions of delegates. This was probably the beginning of the county political machinery. He lamented that the South had no towns, such as New England had, which would make smaller units for popular gatherings. The Federalists scorned this political machinery as too trivial and feared it as too popular. It would have a tendency to make the people less amenable to the control of their leaders. They preferred to continue the Revolutionary custom of committees of correspondence to manage party affairs.

All this herculean effort was felt by Jefferson to be necessary to win popular attention and support from the centralisation of Hamilton, which, to his myopic vision, was monarchism. Years after, he testified that nothing on earth was more certain than that if he, placed by his office of Vice-President at the head of the anti-monarchists, had given way and had withdrawn from his post, the people would have given up in despair and the cause of liberty have been lost. By his efforts, and the aid of the Virginia and Kentucky Resolutions, the Constitution and the Union had been saved when "at its last gasp."

As the time of Jefferson's inauguration approached, rumours of revolutionary action grew into a general alarm lest all the union-making of twelve years should be annihilated and the Federation days be brought back again. Jefferson's well-known antipathy to taxation and a national debt caused a rumour that he planned repudiation of the national obligation, perhaps an agrarian law, and even the distribution of all property. The vested interests were as much alarmed as ever they were in subsequent elections. "We have seen," cried one holder of national certificates and a subscriber to the

bank, "the French clergy stripped in a night. One vote of Congress would put our federal debt into the family tomb with the paper money of Revolutionary days." Among the measures supposed to be contemplated by the victorious "mobocrats,"

as the Federalists called them, were the abolition of the United States Senate, destruction of foreign commerce and public schools, the abolition of internal taxes, the annihilation of the bank, and the Europeanising of the country by French immigrants. "God is punishing the manifold sins of this nation by delivering it over to projectors and philosophists," said a New England clergyman. Governor Strong, of Massachusetts, appointed a day of fasting and prayer, that the first magistrate and other rulers of the nation might rise superior to private interests and the prejudice of party. The lower branch of Congress had gone over to the Jeffersonians, and the upper House would be lost after the next session. No check was possible upon the reformers.

Although neither partisans nor people were in such dangers as imagined by the Federalists, the National Government might have been seriously impaired by Jefferson and his followers, if necessity had not been most fortunately on the other side. The contest was very unequal, as well for Jefferson as for his successors who struggled conscientiously but vainly against natural laws. Jefferson was misjudged by those who pronounced him opposed to all union. He was always in favour of a limited union—an impossible union as it proved—with the unexpressed powers retained by the States. "The states," said he, "can best govern our home concerns and the general government our foreign ones." In later years he could remember but one instance of control vested in the Federal over the State authorities in a matter purely domestic, and that was the metallic tenders. Nor could he be said to be opposed to the Federalists as a whole, since he never recognised the party, but simply a few of its leaders. The latter were for the moment misleading the people. He expected in time to win all back except "the Coryphæi," or leaders, whom he pronounced incurables. One of the first unpleasant revelations to Jefferson as President was the fact that a sufficient number of the people to constitute a party would persist in remaining under the influence of Hamilton and his fellows in several of the States.

The man who depends thus upon the people and appeals to them as his monitor must risk the charge of demagogism. Every action differing from custom will be considered a bid for popular applause. "Jeffersonian simplicity" has been ridiculed as a masquerade for a purpose. Yet it was a protest against Old World imitation. Never was a salutation made or an address presented to Washington or Adams at an opening of Congress that Jefferson did not see in it a warning of imminent monarchy. He applauded the democratic firmness, called "stubbornness" by the Federalists, of Matthew Lyon, the only member of the House of Representatives who steadfastly refused to march in procession to the residence of President Adams in order to present to him the accustomed complimentary address and to partake of his refreshments. Clearly it was the duty of a President of the people to abolish these borrowed forms of royalty. When elected Vice-President, Jefferson requested that he might be notified by mail instead of by a messenger. No notification of his election to the Presidency was necessary since he was presiding over the Senate when elected by the House.

The embryonic city of Washington, surrounded by dense woods, was the scene of Jefferson's inauguration, and it afforded little for the ceremonies except democratic simplicity. It was announced in advance that no "white wands" would be carried, in the British style, at this inauguration. Republican papers had predicted that "Philosoph's reign the world will bless,

Join'd with religion's simpler dress.

Truth in homely garb shall shine,

On every state, in every clime."

The inauguration plans provided only a salute from the company of Alexandria riflemen who paraded before the lodgings of the President-elect, an escort of citizens and members of Congress to the Senate wing of the unfinished Capitol, and an inconsiderable illumination at night. At a later time, in an effort to magnify Jeffersonian simplicity, the story was invented that the President-elect rode unattended to Capitol hill and tied his horse to a tree near the spring.

Since Jefferson had been deprived of his wife by death many years before, the social problem was greatly simplified. Hospitable to extravagance in his home, as President he must reduce his entertainment to the simplicity becoming a republic. He soon formulated as part of his social program: "Levees are done away with. The first communication to the next Congress will be, like all subsequent ones, by message, to which no answer will be expected." In thus trimming away the useless ceremonials which had so far attended the beginning of each session of Congress, obviously copied, as previously said, from the opening of a session of Parliament, Jefferson was contributing to American individuality and common sense.

The task of restoring the Union to the form the fathers had meant for it and revoking the prerogatives unconstitutionally given to it was uppermost in Jefferson's mind. The bank had been chartered for twenty years and was beyond reach at present. The Sedition law and the Alien Friends act had expired by limitation before Jefferson came in. The Alien Enemies act was harmless because it rested entirely with the President for execution and was valid only during a foreign

war; since it might be useful later it was allowed to remain on the statute book.

But the odious excise, the stamp taxes, and carriage licenses could be repealed, the probationary period for naturalisation could be reduced to the former limit, work on the great war-ships could be stopped, the provisional army allowed to disband, and Hamilton and other generals cut off from the public treasury. The vast appropriations for the army and navy and the coast defences could be reduced, and the expense of the ornamental consular service cut down. As rapidly as possible, Congress carried out these reform suggestions of the new President.

The Federalists deplored his penny-wise economy, especially when fifteen ships, which had cost the Government nearly a million dollars, were sold for one-fourth that amount.

The work of reform did not stop here. Two branches of the National Government had been brought back to democratic principles by the will of the people. But the third branch, the Judiciary, remained in the control of the "monarchists." Jefferson first did justice, as he conceived it, to Lyon, the only prisoner remaining convicted under the Sedition law. No doubt some of the Federal judges had been overzealous in securing the conviction of offenders under this law. Holding life tenure under the Constitution, they could be reached only by impeachment. This remedy was attempted in order to punish Judge Chase, an Associate Justice of the Supreme Court, who had shown partiality, it was claimed, in the trial of Fries and Callender five years before.

The requisite two-thirds of the Senate did not vote him guilty, and this method of curbing the Judiciary failed. "Impeachment is not even a scarecrow," admitted the disappointed President. The enemy had retired into the stronghold of the Judiciary, as he said, to be fed from the treasury, and from thence to beat down Republicanism. "By a fraudulent use of the Constitution," he explained, "which has made judges irremovable, they have multiplied useless judges merely to strengthen their phalanx."

In this indictment, Jefferson referred to the act of the closing days of the Federalists, whereby the number of Federal courts had been increased to twenty-seven. It had been done by creating six circuit courts, with judges, marshals, and attorneys, instead of requiring the district judges and Supreme Court justices to make up these courts as had been done under the Judiciary Act of 1789. The excuse for the creation of these medium courts was that too much labour had been imposed upon the judges and justices by the old method. But the Republicans believed it had been done to make places for a large number of irremovable Federalist office-holders. By another act, a circuit court, with three judges, was created for the District of Columbia, with an elaborate system of justices' courts and justices of the peace.

To fill the large number of places thus created, the pen of John Adams had been kept busy up to the last hour of his administration. Hence the "midnight appointments," as they were commonly known. Some of the district judges were advanced to the new circuit judgeships, and their places filled by the district attorneys. These were "nominated for promotion," as the message to the Senate termed it.

Not only would this presumably hostile force be in Jefferson's camp, but their salaries would seriously interfere with his plans for retrenchment. The Constitution distinctly provided that "judges both of the supreme and inferior courts shall hold offices during good behavior." But before the first session of Congress under his administration was ended, Jefferson wrote that they had "lopped off a parasite limb, planted by our predecessors on the judiciary body for party purposes." How had it been done? By passing a new judiciary act, which abolished the whole system of circuit courts, with their judges and minor officials, and substituted the old practice of requiring the Supreme and district judges to perform the labours of the circuit courts. No life tenure would hold for an office which did not exist.

The anathemas of the "promoted" officials, thus fallen between stools, added to the pleasure of the Jeffersonians. The names of twenty-two unfortunates, whom the Senate failed to find time to ratify in the closing hours, were recalled by Jefferson, under the caption, "Nominated but not appointed."

Midnight of the 3rd of March had caught forty-one of the proposed Federal justices of the peace for the District of Columbia without their appointment having been fully made. Jefferson arbitrarily cut down their number to twenty-five, "having been thought too many," as he said. Among those dropped were four whose commissions had been made out and sealed by the acting Secretary of State, but had not been delivered. Madison, who became Secretary of State under Jefferson, refused to deliver the commissions, and the men, headed by one William Marbury, made a motion in the Federal court to obtain them. They had no recourse in the State courts. From this trivial circumstance, involving the least national judiciary office, came the case of Marbury vs. Madison, involving the right of the judiciary branch of the Federal Government to give an order to the executive.

One phase of the relation of these two branches had been established nearly ten years before, when President Washington attempted to get an interpretation from the Supreme Court upon the binding clauses of the vexatious treaty with France. He was told that the court was not an advisory body, but a tribunal established to adjudge specific cases brought before it. For this advisory service, the Executive must depend upon his Attorney-General. About the same time, the United States circuit courts protested against an act of Congress which made them recipients of pension applications

subject to the final decision of the War Department. Evidently the Judiciary intended to remain independent of both the other branches of the National Government.

One feature of the relationship between the Federal courts and the Congress had been presumed to exist by Hamilton and other commentators on the Constitution, viz., the power to adjudge of the rights of individuals under an act of Congress. This principle of passing on the constitutionality of a legislative act by the courts had been established in at least five States before the adoption of the Constitution. It had been exercised in several cases by the Federal courts before the case of *Marbury vs. Madison* arose. A new contention was involved by asking whether the request made to the Supreme Court to issue a mandamus would hold against the provisions of the Constitution, which did not include mandamus in the powers specifically given to the court.

It chanced that the case came before John Marshall, who had recently assumed the station of Chief Justice, to which John Adams appointed him in the closing months of his administration. The previous history of the court, with the exception of two or three cases, had been insignificant. Its decisions during the first ten years do not fill as many pages as do those for a single year at the present time. Jay had resigned its headship to undertake the mission to England, impressed with the belief, as he afterward said, that the court could never obtain the energy, weight, and dignity essential to affording due support to the National Government. He refused to return to the bench, and Marshall was appointed, with whom the second era of the court begins. Marshall was a Virginian, a school-fellow of Monroe, and co-worker with Madison in the Virginia Constitutional Convention. But the war acquaintance which he formed with Washington and Hamilton, added to his personal views, turned him toward Federalism. As a Virginian, he was cultivated by members of that party, office after office being placed at his option. Accepting the Chief-Justiceship under a life tenure, he was "saddled" on the Republicans, as they said.

The decision in the case of *Marbury vs. Madison* was one of many which emanated from Marshall, silently shoring up the fabric of the Union as it was erected by the hand of necessity. "The theory that an act of legislature repugnant to the Constitution is void," said the Chief Justice, in granting *Marbury* and others the withheld commissions, through the district court, "is essential to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society." We speak so easily now of declaring a law unconstitutional, thereby rendering it null and void, and we acquiesce so readily in these decisions that it is difficult to imagine the small beginnings of this great power exercised by one branch of the Federal Government over another. By holding that the mandamus must issue from the District and not the Supreme Court, the case might have been dismissed briefly. The Republicans thought the long disquisition on the powers of the court and its relation to the executive branch a kind of defiance and entirely unwarranted. It was the beginning of a long list of similar offences by Marshall.

Meanwhile the new Administration had continued its reform activities, "to restore the government to its principles, amend its defects, reform abuses, and introduce order and economy in the administration," as Monroe outlined it to President Jefferson. The latter summed up the reform work of the Republicans at the end of the first session: "They have reduced the army and navy to what is barely necessary. They are disarming executive patronage and preponderances by putting down one-half the offices of the United States which are no longer necessary.

These economies have enabled them to suppress all the internal taxes and still to make such provision for the payment of their public debt as to discharge that in eighteen years. They are opening the doors of hospitality to fugitives from the oppressions of other countries; and we have suppressed all those public forms and ceremonies which tended to familiarize the public eye to the harbingers of another form of government."

Thus had democracy, in Jefferson's opinion, at last come into its own.

CHAPTER XV

STRICT CONSTRUCTION AN IMPOSSIBILITY

Sixty years of almost uninterrupted Republican-Democratic administration were inaugurated with Thomas Jefferson in 1801. This period was auspiciously begun by correcting the abuses wrought in the National Government by the twelve years of Federalism. It was ended by the faithful adherence of the party to the slavery system, to which it was bound both by geographic strength and the principles of individualism.

The period was apparently long enough to allow the party to give the Union such a bias toward decentralisation that it could never recover its power and prestige. How the compelling laws of organised society, the needs of the people in their conquest of the wilderness, and the necessity of providing for the common defence and the general welfare prevented such an unfortunate consummation makes up the middle period of the story of the United States.

It was easy for the new administrators to show in theory how the Central Government should be restricted to certain actions; it was impossible to avoid entering upon certain new activities as progress demanded from time to time. Take such a simple matter as the national capital.

Suddenly transferred to the woods on the banks of the Potomac, the National Government found no such accommodations as the two cities in which it had previously been lodged had afforded. One completed and one incomplete wing of the Capitol building, an empty and bare President's mansion, one tavern, and a few houses, with streets indicated only by felled trees, formed the Athens of America, pronounced by Robert Morris the very best city in the world for a "future"

residence. Members of Congress who traversed the three miles of mud road to Georgetown, where the only comfortable lodgings were to be obtained, would willingly have reduced the scale upon which the capital was laid out. Very early it became the "City of Magnificent Distances."

However crude the city might be, the soil on which it rested belonged exclusively to the United States. It was the only spot of any magnitude which could be so claimed. It was due to the generosity of two neighbouring States, Virginia and Maryland. To the same charity was owed the money which had partly built the two wings of the Capitol and the President's mansion. Nevertheless, land and buildings do not make a city. Money for the construction of streets, it was at first supposed, would come from the sale of lots. "Pathways" were built from this resource under direction of members of the Cabinet before the Government was transferred from Philadelphia. Money was advanced on such expectation both by Congress and by the State of Maryland. Yet the advent of Government and the inauguration of Jefferson found the work incomplete. Members of Congress who stepped gingerly in their low shoes over the paths made of chips of stone from the new buildings, or who attempted the mile of cleared roadway between the two administration buildings, received an object lesson in the necessity for improvements which speedily overcame conscientious scruples.

[Illustration: THE CITY OF WASHINGTON. A drawing made about 1800 before the site was graded. The Capitol is seen at the left of the masts.]

Any expenditure for such purposes could find warrant in the Constitution only through the implied powers theory. "To exercise exclusive legislation" over the District might mean to construct sidewalks and to grade streets; but it was not so expressed. So urgent became the necessity, that in 1803 an appropriation for buildings was made to include the repair of the highway between the Capitol and the other public buildings. The expenditure of this money, as Jefferson afterwards boasted, was confined carefully to the avenue between the Capitol and Mansion hills and to the squares about them. As time went on and the city grew, specific appropriations had to be made for the construction of streets and roadways within the District. These were wrung annually from the reluctant party. To the disgust of people living in more remote parts of the District, the first of these sums was spent entirely in widening Pennsylvania Avenue, planting it with trees, in replacing its wooden culverts with brick, in repairing the public squares about the buildings, and in grading the slope in front of the War Office.

"It cannot be supposed," replied Jefferson to one protestant, "that Congress intended to tax the people of the United States at large for all avenues in Washington and roads in the District of Columbia."

Trivial as these incidents must appear in comparison with the present attitude of the Government toward the District, they serve to illustrate the law of compulsion. Numerous others might be introduced here. The Jeffersonians inherited from the Federalists a small collection of books and maps, which had been purchased for the use of the members of Congress deprived of the library facilities they had enjoyed in the cities of New York and Philadelphia. It was the beginning of the

present magnificent Library of Congress. Instead of casting aside the volumes and returning the unexpended balance to the treasury, the strict constructionists adopted the library and soon began to make direct appropriations for it, crowning the action in 1815 by expending twenty-three thousand dollars for the purchase of Jefferson's own library to be added to the collection.

Thus did the seat of government and its needs drive another wedge of loose construction into close-grained theory. To have exclusive control over a district not exceeding ten miles square meant not only police control, but it meant to make a home fit for the national seat of government, and to provide for the necessities of its representatives.

Nevertheless conscientious scruples and niggardly appropriations had sufficient weight for many years to make the home of the Union a disgrace to the nation and a thing of contempt in comparison with the capitals of other lands.

If the strict constructionists had inaugurated the National Government, their task of confining it within a certain limit would not have been so difficult. There is little doubt that the power to "regulate commerce" was intended originally to cover the collection of a national impost. But if United States custom-houses were to collect duties on imported goods, they must erect lighthouses, build piers, and dredge channels in order to get the goods into the harbours. The States, having surrendered the benefits of an impost to the National Government, were not likely to undertake or continue such works on an adequate scale. No permission to engage in such enterprises was to be found in the Constitution except as deduced from the power stated above. The encouragement of foreign commerce had been almost a fetich with the Federalists. They had freely granted appropriations for such purposes.

"I well remember," said Jefferson, on one occasion to Gallatin, under whose care these agencies of commerce must come, "the opposition on this very ground to the first act for building a light house. The utility of the thing has sanctioned the infraction."

But it was not possible to restrict the demand to lighthouses. Presently an appropriation was necessary for a dry dock to accommodate the little gunboats which the thrifty Administration had substituted for the Federal men-of-war. Jefferson got out of this in a way which would have done credit to his great rival. "Although the power to regulate commerce," said he, "does not give a power to build piers, wharves, open ports, clear the beds of rivers, dig canals, build warehouses, build manufacturing machines, set up manufactories, cultivate the earth, to all of which the power would go if it went to the first, yet a power to provide and maintain a navy is a power to provide receptacles for it and places to cover and preserve it." Here Jefferson had made out a list of proscribed actions, which the National Government dared not enter upon. But soon Gallatin reported a vessel sunk in the Delaware River, a menace to navigation, which neighbouring States showed no inclination to remove. Reluctantly the President gave permission to have the United States open the river. In quoting the powers of the National Government over commerce to justify the action, he added, "But we must take care not to go ahead of them and strain the meaning of the terms still further to the clearing out of the channels of all rivers, etc., of the United States. The removing of a sunken vessel is not the repairing of a pier." Nevertheless, soon after, an appropriation was made for erecting public piers in the Delaware River.

It is needless to continue citing the steps by which the Administration assumed a fostering care of these public improvements. To sum up during the last year of Jefferson's administration, appropriations aggregating almost one hundred thousand dollars were made, without opposition, for constructing lighthouses, for removing bars and shoals, and making safe the ways of ocean commerce. The extension of this paternalistic principle to internal commerce would come in time with the movement of the people inland.

[Illustration: WESTERN ARKS AT NEW ORLEANS. From Hall's "Etchings in America." In the foreground appear the flat boats which have brought down the produce of the western people and beyond the shipping, which is to carry the stuff to foreign markets. The sketch furnishes an illustration of the compulsion which caused the purchase of New Orleans.]

It may be said truthfully that these various measures, so inconsistent with the early avowed principles of the party, were inherited from the Federalists. But responsibility for the supreme act, the addition of foreign territory to the national domain, must be assumed solely by the Administration. Perhaps no action, until the decision to prevent certain States from leaving the Union, contributed so much to the central authority as the purchase of the Louisiana country by the Jeffersonians. If the decision had been negative, if conscientious scruples had been allowed to prevail, one hesitates to predict what would have been the fate of this "pent-up Utica." For forty years the ownership of Louisiana had been shifting and uncertain. For twenty years its possession had been a matter of scheming and intrigue by both Great Britain and France. Permanently in the hand of any foreign power, it would have completely blocked the path of progress. To possess one-half the drainage basin of the valley would have led to constant conflict with the owners of the other half. The insularity upon which the United States has depended so largely, the freedom from annoying neighbours, room for the westward expansion of the people, the unification of the Mississippi valley—all would have been lost if the original strict-construction theory had prevailed. Securing a domain extending to the Mississippi in the Peace of 1783 had been simply retaining what had been won largely by the colonists twenty years before when the French were driven from the valley. In the Louisiana question, the nation faced for the first time a national expansion.

To pronounce this the paramount action of the century in Union-making, one need only think of the precedent for acquiring new territory thus formed and which has been followed in no less than seven instances and confirmed by a decision of the Supreme Court. It seems strange that the framers of the Constitution did not foresee and provide for such an emergency. Perhaps the omission was due to the intuitive feeling that no nation in all history had hesitated to enlarge its domain when advantage offered or necessity demanded. Necessity was here the moving principle and it scattered to the winds party objection to using the implied powers, and forced the friends of government to take refuge in the preamble to the Constitution and in "all laws which are just and necessary," a position from which they had tried in vain to drive the Hamiltonians a few years before.

It was ordained by fate that the Jeffersonians should father a policy of national expansion which covered every addition of territory to that of Alaska. By nature they were opposed to giving such advantage to the central power. After the acquisition had been made, Jefferson was loud in his declaration that he would not "give one inch of the waters of the Mississippi to any nation"; but neither by nature nor party was he an expansionist. He would have been satisfied with the acquisition of the east bank of the river, including New Orleans.

During the negotiations he confessed his doubts of success. He thought trade would soon make Natchez a second New Orleans. Hamilton, on the contrary, was an expansionist by principle and party. Three years before the purchase of Louisiana he said of that country and the Floridas, "I have been long in the habit of considering the acquisition of those countries as essential to the permanency of the Union, which I consider as very important to the welfare of the whole."

Holding such aggressive opinions, Hamilton and his party, had they been in control during this long period, might have rashly entered upon an offensive policy which would have precipitated frequent wars and have endangered the Republic before its home strength had been developed. Looking to the happiness of the mass rather than the individual and devoid of scruples about the divine rights of man, the Federalists would not have hesitated to hold as subjects the inhabitants of acquired territory longer than the principle of self-government, for which a republic stands, would have permitted. On the other hand, by the time the "porcupine policy" of dealing with other nations on territorial questions, as the Federalists contemptuously called the early attitude of their opponents, had grown gradually into an aggressive policy, the Republic had become sufficiently strong to maintain whatever position might be taken.

It was not alone fear that the ambitious Napoleon might obtain a foothold in neighbouring territory which moved the Jeffersonians to this inconsistent step. Neither was the action due entirely to fear lest Britain might obtain possession of it in the renewed war with France. The law of compulsion showed in other particulars. The advance of the American pioneers across the continent could not be checked.

They had compelled the Atlantic-coast majority into making the Pinckney Treaty which opened the mouth of the Mississippi in 1795. Remembrance of their threatened secession compelled Jefferson to try to quiet their fears freshly aroused by the transfer of Louisiana to France, and the closing of the Mississippi. Ex-Governor Monroe, of Virginia, was chosen to assist Livingston, because his former executive position had put him in touch with the Western people.

In several ways Louisiana played havoc with strict-construction theories. So regardful of the rights of the individual had the Jeffersonians been in the early days that many had hesitated about creating Territories in the western vacant lands, lest the people migrating to them should not enjoy equal rights with their fellows in the States. When the inhabitants of the Mississippi Territory in 1799

petitioned for promotion to the second grade of territorial government, Jefferson denounced the first grade, which had been given to them by Congress a few years before, as "a despotic oligarchy without a rational object." Within five years, he and his party were facing the problem of establishing a status for some forty thousand white people, whom the United States had acquired with the Louisiana country. The problem was whether to violate the doctrine of the rights of man as well as the treaty and hold these people perpetually as colonists, or, by providing for their erection into States, further imperil the sectional balance of power, further endanger the sovereignty of the individual States, and contribute to the growing strength of the Central Government.

In his Ordinance of 1784, Jefferson had provided for eventual and not immediate statehood for the inhabitants of the Western territory.

Manifestly a State could not be made out of vacant land; it must await a sufficient number of inhabitants. But this excuse for holding citizens temporarily in a subordinate position was not valid in Louisiana, where the southern point of the great triangle already contained a sufficient number of inhabitants for statehood. Moreover, Napoleon had sufficient thought for these pawns in the game of diplomacy to insert in the treaty of cession a provision that statehood should be given them "as soon as possible." The Jeffersonians were compelled to resort to loose construction in interpreting this phrase. Louisiana contained a large non-English-speaking population, unaccustomed to the privileges and obligations of free government. Their deficiency was only partly supplied by a sprinkling of Americans, who always precede and bring about a demand for expansion of territory. "All men are created equal,"

was the doctrine of the Jeffersonian Declaration. But even the doctrinaire would not insist that it gave to each individual immediate and equal share in all government both national and local, whether or not he was prepared by inheritance or environment. During nine years the people of the Louisiana territory had to serve in preparation under the rule of the rights-of-man party, before the first portion was erected to statehood on an equality with the older States.

Being unable to admit the people of Louisiana to immediate statehood, and unwilling to hold them purely as colonists, the Jeffersonians divided the land into a territory and a district. This action prolonged for years the possibility that the people reside in territories, deprived of the privileges and protection of a State government. Suppose the "monarchists" should again come into national control and pass new Alien and Sedition laws? Where could these inhabitants of a territory find a protector? Under such conditions, the prestige of State citizenship was rapidly disappearing. The very fact that certain inhabitants of the United States were living solely under the protection of the national authority inspired a greater respect for that authority.

Likewise, when these people were admitted to statehood at the end of their period of probation, it would be done by an act of Congress, and not by the States.

Among the many constitutional dilemmas into which the party had been brought by this compulsory action, was a provision of the treaty that the port of New Orleans should enjoy certain favours for a number of years. To reconcile this exception with the Constitution, which says that "all duties, imposts, and excises shall be uniform throughout the states," it was declared that the territory had been purchased by the States in their confederated capacity and they could hold it like a colony. Therefore, the Congress could regulate it as a territory under the Constitution without reference to the provisions affecting the States. Thus did fate compel a virtual acknowledgment from the sticklers for individual rights, within four years after their accession to national control, that the Constitution did not follow in all its provisions the extension of sovereignty over new soil.

From a broad point of view, the placing of sixty years of territorial expansion in the hands of the party opposed to the practice by birth and nature is a strong evidence of the checks and balances which have made the nation. Under strict construction, territorial expansion became a potent factor in loosening the bonds in which the Government might have been confined. Under loose construction, expansion might have become a centrifugal force through foreign conquest and colonial holding which would have destroyed the free system it was intended to build up. The Jeffersonians were moved in later expansions by a desire to extend an economic system and to make party capital. They never sought national aggrandisement, as their opponents might have done had they been in power. Proud of the territorial growth of the Union as we now are, and seeing so clearly the wisdom of the final consummation, we forget that the domain might have been increased too rapidly or too extensively in more sympathetic hands.

In still another way was the fallacy of strict construction laid bare by the Louisiana question. The remedy of an amendment to the Constitution to bestow needed powers had been the one frequently suggested. Here was an early opportunity to test this constitutional preventive against central usurpation. But time was wanting. "From the moment that France takes possession of the mouth of the Mississippi,"

said Jefferson, "she becomes our mortal enemy." Amendment-making is necessarily a slow process. Months if not years are required. Jefferson was obliged reluctantly to abandon his first thought of an amendment to cover both the present case of Louisiana and the future affair of the Floridas, if they were not included in Louisiana. He was forced to suggest to members of Congress that the less said about any constitutional difficulty the better, and that it would be desirable for that body to do what was necessary in silence.

If the Jeffersonians had been driven from their first ground by this territorial acquisition, the Federalists had fared no better. They had first called into being the genii of the "implied powers," and now had the mortification of seeing it serve their enemies. Having swung in the change of 1801 from the "ins" to the "outs," they became the opposition party and were compelled to resist many measures and principles which they had formerly advocated. They had gradually lost State after State until they were confined to New England. The former great national party, the party of Hamilton, Jay, and Adams, the party to which Washington had leaned, was shrinking into a sectional faction.

Where it had once wished to give the Union every means of aggrandisement, it was now compelled to oppose almost doubling its domain, lest the balance of power between the different parts be lost.

It feared the ascendancy which Louisiana would give to the Southern interests, never foreseeing from the shape of the addition that the advantage would in time lie with the North. Professing devotion to the Union, they would now deprive it of the advantages resulting from prolonging indefinitely its holding of colonies. They must have seen the result if the domain had never extended beyond the Mississippi.

The territory both north and south of the Ohio would speedily be made into States according to existing arrangements. The great prestige inuring to the Union from territorial control would thereby cease. But with the addition of new provinces from time to time, the holding of territories preliminary to statehood must be indefinitely prolonged.

The functions of the Union would be multiplied instead of diminished.

By the acquisition of Louisiana, Jefferson effectually settled the twenty years of internal dispute over the navigation of the lower Mississippi. From source to mouth, it flowed presumably through American territory. Americans were to be found on both sides the great water highway. Those west of the river had crossed upon invitation of Spain, who hoped in this way to people her province without loss to her other possessions. The colonists taken across the river by Colonel Morgan and others had caused no little alarm to statesmen in the Confederation days, lest the population of the United States be drawn off to people a Spanish possession and so weaken the Republic. Among the thirty-five thousand or more people to be found about the city of New Orleans and along the lower Mississippi and the Red rivers was a small percentage of Americans; but a much larger proportion was to be found in the six thousand inhabitants of St. Louis and the small villages near by.

This leaven of Americans affected the whole. They had been accustomed to the fostering hand of the National Government in the matter of improving means of transportation and communication in the older States from which they had migrated, and they did not hesitate to demand such aid for their new localities. Thus the people in their westward movement, carrying with them remembrances of the benefits of government assistance enjoyed in their former homes, have extended the system of national improvements across the continent.

There was a pressing demand for assistance in the Louisiana country.

The province had been long neglected because of the frequent changes in ownership and the Latin method of colony holding. The task of Americanising this foreign element was imperative. The extent of territory to be brought under harmonious rule was extensive and varied.

It was impossible for the Administration, in providing for the welfare and defence of the acquisition, not to be drawn into measure after measure of that paternalistic nature for which the party had so roundly criticised the Federalists. The sole management of Territories was vested in the National Government. The individual States could have no part in providing for the inhabitants of the Louisiana Purchase.

[Illustration: TAKING POSSESSION OF THE LOUISIANA PURCHASE. Occupying presumably the same balcony in which Laussat, Wilkinson, and Claiborne stood on the front of the Spanish *cabildo* at New Orleans, in December, 1803, witnessing the replacing of the French flag by the American flag in the public square below, there stand, in the illustration, the Governor of Louisiana, with a descendant of Claiborne, the Archbishop and the Mayor of New Orleans, enacting the scene in December, 1903.]

Federalist precedent had paved the way for Republican action. Since the Revolutionary days, Congress had been accustomed to maintain troops on the border for the protection of settlers. The establishment of forts in distant parts made necessary the construction of roads between the posts and their connection with the settled parts for the conveyance of troops and supplies. The addition of the vast tract of Louisiana demanded an immediate extension of military posts and military roads.

The Federalists had been accustomed, as previously described, to construct new post-roads instead of confining the mails to roads already built by State or private funds. Some of these post-roads were nothing more than a "trace" cut through the woods, which permitted a man on horseback to pass, carrying a post-bag. Even this could not be done without some expenditure. Occasionally the expense was met by a donation of public lands through which the trace passed. In other instances, payment was made from the postal receipts and appropriations. The constitutionality of such action had been attacked occasionally by the Republicans before they came into power. But having assumed the national control, they were compelled to continue the construction of military and post-roads. Even the fear of a standing army and the desire to economise could not warrant a neglect of the inhabitants scattered through the new possession. Congress owed protection to them not only as an implied power, but as an implied duty.

Thus it came about that Jefferson, who a few years before was taking Madison to task for thinking that the power to establish post-roads meant to construct new ones rather than to establish post-routes on those already made, was engaged with his Cabinet in planning a vast system of new highways to and through Louisiana. Among other enterprises, they contemplated a great post-road to New Orleans through Georgia, instead of the long water route heretofore used by way of Nashville and Natchez. The new way, it was estimated, would shorten the journey five hundred miles. Branches were planned to St. Louis and to Detroit. The difficulties of frontier travel may be imagined from the fact that the surveyor-general, who was despatched to examine the feasibility of the Georgia route, was nearly three months in reaching New Orleans from Washington.

Interested in scientific knowledge and exploration, and desirous of keeping American ships off the seas by developing internal trade, Jefferson had anticipated the purchase of Louisiana by proposing confidentially to Congress the despatch of a few men on an investigating trip up the Missouri River. Trade with the Indians needed to be cultivated in this

manner, but no State was sufficiently concerned to undertake it. Jefferson found an easy way to warrant national action.

"The interests of commerce," said he, "place the principal object within the constitutional powers and care of Congress." Not even Randolph, who deplored every departure from old policies, could ever regret the expenditure of the \$2500 which sent the Lewis and Clark expedition across the continent and laid the claims for national addition nearly a half-century later. After this precedent, it was easy to send Lieutenant Pike to ascertain the true source of the Mississippi and to explore the vast plains on the south-west toward the Spanish possessions. Many expeditions for scientific purposes and for exploration have been sent by the National Government since that day; but it must be remembered that the practice was inaugurated under the strict constructionists, with no other warrant than "to regulate commerce."

The Lewis and Clark expedition called fresh attention to the possibilities of the great West, and justified the urgent demand of the Western people for national aid. The danger of Western secession had long since disappeared; but many plotters had shown a tendency to use the frontiersmen as allies in the European wars. Genet, over ten years before the Lewis and Clark expedition, contemplated the use of an American force against British Canada. Miranda proposed to use the same recruiting-ground for his movements on Spanish South America, and even Hamilton consented to the scheme, if he could be commander of the expedition. Now came Burr, planning an expedition of these hardy trans-Alleghenians into New Orleans and thence into the disintegrating Spanish possessions of the South-west. Napoleon's success seemed to have turned the heads of all ambitious men of the day toward foreign conquest and they proposed to use the Mississippi valley as a rallying-ground. To invade the territory of a nation with whom the United States was at peace was contrary to Federal law. Jefferson turned his attention toward punishing Burr on even more serious grounds; but Gallatin was keen enough to discover the cause for selecting the Western people as tools. It was not a novel idea to suggest better means of communication between the East and the West; but it was novel to attribute Western disaffection to a lack of touch and sympathy between the people of the two sections. Trade and intrigue with foreign neighbours, so Gallatin thought, could be suppressed more easily by kindness than by punishment. It was true that the National Government had permanently opened the Mississippi River as an outlet for the West.

But the journey down was long and tedious, delays might be encountered at New Orleans because of the limited number of ocean vessels on which produce could be transshipped, and only a limited cargo if any was possible on the return journey up-stream. The increase in population and the consequent increase in the size of crops to be transported to a market would speedily bring a demand for some means of taking the products directly to the Atlantic seaboard and of bringing manufactured goods in return.

Gallatin embodied some of these thoughts in his celebrated report on the topography of the United States, which he submitted to Congress in 1808. He first described the few attempts which had thus far been made by States and private companies toward constructing canals and turnpikes. Then he threw party theories to the wind and, with a constructive statesmanship second only to that of Hamilton, he suggested a vast system of national improvements on a worthy scale to be undertaken and carried to completion by the central authority. It would require not less than twenty million dollars. Since there would be an annual surplus of five million dollars because of the unredeemable form of the national debt, he would appropriate large sums to these "national objects." Not only would the distant parts be bound together, the mail better accommodated, and internal trade assisted, but, as Gallatin pointed out, it would be possible to transport troops hurriedly from place to place, adding to the national defence. Nature had interposed mountains, falls, and sandbars in the pathways of interstate communication. "The General Government alone," said he, "can remove these obstacles."

Gallatin was compelled to acknowledge, however, that the execution of his plan would be hampered because the National Government could not, under the limits of the Constitution, undertake the construction of a road or canal through a State without the express permission of that State. In the Territories alone would it be possible. State consent might be difficult to obtain, because so many States had inaugurated similar enterprises, which would be obliged to compete with the national roads and canals. Jefferson, in accord with his general theory, suggested an amendment to the Constitution, removing this objection.

He overlooked the fact that national post-roads and military roads had been already constructed within States. With such an amendment, he was willing to use the national income accruing above the national expenses for "the improvement of roads, canals, rivers, education, and other great foundations of prosperity and union," as he said in his last annual message.

Gallatin said in his report that the only work undertaken by the United States at their sole expense, and to which the consent of the States had been obtained, was the road from Cumberland to Brownsville. Further appropriations for that object were constitutional. As to other projects, he thought the National Government was empowered to do nothing more at present than to assist those undertaken by giving them loans or subscribing to their stock. Also the Federal engineers might be employed in making surveys for proposed improvements. It seems strange, in the light of modern Government initiative, to see statesmen blocked in a desired undertaking by constitutional quibbling. Having embarked in the work in the case of military and post-roads and in the Cumberland Road, they hesitated to go on.

[Illustration: WRITTEN LAW OF THE NORTH-WEST TERRITORY. A law passed at Vincennes, now in Indiana, against gambling. In the absence of printing-presses it is said the judges were accustomed to nail up copies of the laws on trees for the information of the public.]

This Cumberland National Turnpike is an excellent example of the constant menace to individualism and the irresistible tendency toward unionism resulting from the advance of population, the topography of the country, and the cupidity of the people. The portage across the watershed from the streams of the Atlantic plain to those of the Ohio valley had been a matter of concern from colonial times. Artificial waterways were impossible from lack of water-supply on the high levels.

The Union inherited this problem when the policy of creating national Territories out of the back lands was inaugurated. Lack of funds prevented any extensive attempt to solve the problem.

The State of Ohio was the first to be created out of the public domain.

The unsold public lands lying within its boundaries remained in the possession of the United States, although sovereignty over them passed to the State. By an agreement between the two powers, the State refrained from taxing the lands for five years, in return for which the Federal Government promised to spend five per cent, of the proceeds of the land sales within the State in the construction of public roads.

A portion of this was to be devoted to building a highway over the Allegheny Mountains to the State. Strict-construction scruples were satisfied by securing the consent of the States through which the road was to be built.

Consent having been given by the State Legislatures of Virginia, Maryland, and Pennsylvania, work was begun in 1808 at the eastern terminus of the portage, Fort Cumberland, Maryland, a name eventually given to the entire road. Grants of money were made from the land sales; but the proceeds accumulated so slowly that they were inadequate for carrying on the work. The demand for the completion of the road increased with growth of travel to the West. A way out of the difficulty was found by making appropriations directly from the national treasury "to be repaid out of the fund reserved for laying out and making roads to the state of Ohio." When this condition would be dropped and appropriations made openly for the road, the same as for the army, the navy, and other specified obligations of the National Government, would depend entirely upon the demands of the people. Every appropriation simply whetted the appetite for more.

As Gallatin said, the Cumberland Road is unique. It is a solitary example. It did not mean the adoption by the Jeffersonians of a party policy on such liberal principles. But it made easier the adoption of such a policy after the War of 1812 had demonstrated in a most unpleasant manner the absolute necessity for such action on the part of the General Government.

Jefferson had a most delightful manner of satisfying his conscience and adjusting himself to the inevitable by likening national to individual actions. In the case of the Louisiana purchase he had compared the National Administration to a guardian who adds a desirable bit of property to his ward's farm and then throws himself on the mercy of the ward for approval. He pardoned the assumption of a constitutional right to build the Cumberland Road by likening the Administration to a farmer who wishes to sell some distant and inaccessible portion of his land, and is compelled to spend part of the proceeds in constructing roads to it in order to sell the remainder. Regardless of the soundness or folly of such philosophy, the mischief was done. Insidiously the internal-improvement precedent had been allowed to creep into the strict-construction fold. How it grew until one veto after another was required to bring the people back to their senses remains to be described later.

During the latter portion of Jefferson's eight years of administration, the party was saved from being driven into more Union-making actions, because domestic matters were overshadowed by the hostile aspect of foreign affairs. Measures looking to the improvement of internal communication, development of interstate commerce, interior exploration and discovery, and the spread of intelligence had to be postponed from session to session to consider retaliation on the European foes to American commerce. Such aggressive acts as the attack of the *Leopard* on the *Chesapeake* could brook no delay. But it was inevitable that when the engrossing foreign questions should cease, the demand for paternalistic measures would be renewed with a zeal doubled by delay and by the new spirit of nationality. The important fact to be noted at this time is that the movement of the people across the continent went on steadily, whatever might be the aspect of affairs on the Atlantic coast.

The foreign relations of the United States were rapidly coming to a point which would terminate the predominance of European influence on American political parties. The struggle of the French people for liberty, which had appealed so powerfully to Jefferson and his followers, was now lost in the ambitions of Napoleon. "I had hoped,"

said Jefferson at a later time, "that he would have seen the difference between the example of a Cromwell and a Washington." Ten years before, Jefferson would willingly have seen his countrymen fighting side by side with the French patriots against monarchical England; but to be allied with Napoleon meant to further the ends of Napoleon. With the single exception of the Louisiana transaction, Jefferson's diplomatic administration is a story of European intrigue and imposition upon an impotent and helpless neutral. American commercial rights were lost sight of in the world-struggle between Napoleon and his enemies. The decrees of one belligerent were followed by checkmating orders in council of the other, and *vice versa*, with no regard for neutral rights, and no object save starving each other into submission.

It is true that the American traders sought every opportunity of evading these orders and decrees and continuing the most profitable trade America had ever known. For instance, Britain forbade all trading directly between France, Holland, Spain, and their colonies in order to cut off supplies. In order to evade this, an American captain would take a cargo in these colonies, sail to some American port, enter his cargo, and immediately clear with the same, without really unloading.

He was entitled to a drawback of the duties he had paid. Having now broken his voyage, as he claimed, he sailed to a French or Spanish port without danger of violating the British orders. The British admiralty courts soon declared that this was an evasion; that there had been in reality no "broken voyage." Then American traders began the practice of really landing the goods in some American port, while the vessel was overhauled and repaired, then continuing the voyage, after reloading. The British courts conceded this to be a broken voyage.

In 1805, so ample were the supplies furnished France and Spain by this method of evading the law, that the British court reversed its former opinion. A large number of seizures followed. To cover the entire continental coast, a paper blockade was declared by Britain about the same time. The Administration could no longer continue its policy of forbearance. Negotiation had failed. Retaliation was the only method left. Jefferson, the father of his people, was a warrior neither by nature nor practice. A foreign war meant to him the disarrangement of domestic affairs, interference with domestic development, and the accumulation of a debt which must fall in the last analysis upon the common people, the least able to bear it. To a correspondent he expressed his desire to avoid war until the national debt was discharged, when the regular income would meet the expense of a war and so prevent a new debt and increased taxes. His policy of retrenchment, dictated by his love of the people, had reduced the army and navy and left the land without adequate means of defence. He further realised that war might bring undue national aggrandisement. The common defence must be undertaken by the Central Government. In the haste and the necessities of war, measures might be taken oppressive to the people and destructive of their individual rights, which would never be passed in the calm contemplations of peace. Reluctantly he was compelled to advise Congress to enter upon a system of total embargo on foreign trade, which might possibly avoid war and preserve the pattern of neutrality which had been set by the first President.

Notwithstanding the pacific motives which impelled Jefferson to choose that form of retaliation, the embargo was a part of the old colonial idea of restriction. To avoid the capture of American goods and sailors, keep them at home. Committing suicide is one way to avoid being killed by your enemy. A more modern way is to arm yourself. If the commercial interests, ruined by the embargo, as they claimed, had belonged to the individualistic rural States, or if Jefferson had been from the trading States, sectional differences might not have been so prominent during the continuation of this policy, and the reactionary laws leading to unification might not have been so apparent. The chief protestor against marching a Federal army into the sovereign State of Pennsylvania a score of years before was now stationing gunboats off the coast of the sovereign States of New England, and on Lake Champlain in the sovereign State of New York, for the purpose of coercing the people into an obedience to national laws. The section which at that time had supported so vigorously the repressive measures of Washington was now opposing as forcibly such actions when taken toward themselves. The people of Pennsylvania, a part of whom were then resisting the central authority, now offered an armed force to the President "to cram the embargo down the throats of the Yankees."

The paralysing effects of the embargo became apparent gradually during the fifteen months of its existence and brought the commercial States to the verge of rebellion. Nearly one-half the population of Salem, it was claimed, had been compelled to ask public aid. Prices on imported goods rose to a fabulous height, while surplus products, formerly exported, fell to ruinous rates. Inland commerce was equally affected, since there was no demand for carrying goods to or from the coast.

Writers compared the embargo remedy to a snake biting itself with poisonous fang when surrounded by enemies; to a man cutting down his tree to rid it of caterpillars; or to the fool who cut off his head to rid himself of an aching tooth. The first anniversary of the embargo was observed throughout New England with tolling bells, flags at half-mast, and processions of unemployed seamen and artisans. The mayor of New York forbade riotous gatherings. When a number of men disguised as Indians retook a sloop caught by a man-of-war in forbidden trade, their action was compared to that of

the patriots who threw overboard the East India tea.

It was claimed in the commercial States that the power "to regulate"

commerce, bestowed by the Constitution, did not cover an embargo or prohibition of commerce. In advancing this argument, the New England people quoted the opinion of the Virginia and Kentucky Resolutions that "an unconstitutional law is not binding on the people." In reply to this point made by the loose constructionists, the strict constructionists could do nothing more than quote the implied power.

"To regulate" meant to keep the enemy from seizing. Time had wrought a strange transfer of doctrines.

Rhymesters exercised their wit in ridiculing both Jefferson and the embargo. Said one:

"Our ships all in motion once whitened the ocean,
They sailed and returned with a cargo;
Now doomed to decay, they have fallen a prey
To Jefferson, worms, and embargo."

Another paid his respects to the President in stanzas, one of which will suffice:

"Like the Tyrant of fame, he embargoes his ports,
And to measures that ruin his subjects resorts;
By fools he is flattered—by wise men accursed,
For "No trade" is the maxim of Thomas the First."

These squibs illustrate the dominance which politics held over the composition of the day. The discussion over the adoption of the Constitution had long since given way to newspaper and pamphlet writing on political issues. These writings, frequently scurrilous and abusive, were caused by the rise of parties and, in turn, aided in forming parties. None of the wretched stuff survived. *Peter Porcupine*, the *Aurora*, and the much loftier *Columbiad* are alike forgotten. Yet it is indicative of the extent to which politics ruled the day to note that in *Knickerbocker's History of New York*, Washington Irving turns aside from the ostensible object of a humorous sketch of early New York to ridicule President Jefferson. William the Testy, a dreamer, a speculative philosopher, an impractical inventor, with a smattering of all knowledge, was easily recognised as the President of the United States. His suggestion of windmills as a means of defence was a burlesque on Jefferson's little gunboats, and his government by proclamation a parody on the embargo and its proclamations.

[Illustration: PRESIDENT JEFFERSON'S SECOND INAUGURAL ADDRESS.]

This isolated work of Irving, written ten years before the beginning of his literary career, finds a counterpart in a long "poem" on the embargo, advertised extensively in the newspapers of New York and New England. It was composed by William Cullen Bryant, aged thirteen, no doubt gladly forgotten in later years and to be found in few editions of his works.

"Go, wretch! resign thy Presidential chair,
Disclose thy secret measures, foul or fair,"

was the gentle manner in which the young rhymester addressed the author of the hated embargo. The following orthographic puzzle went the rounds of the Federalist papers. By beginning at the central letter, the phrase "Embargo will ruin us" may be read in countless directions.

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UNIURLLIWOWILLRUINU

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The friends of the embargo attempted to rally the home spirit of the people in order to support the measure. President Jefferson ordered sufficient dark-blue cloth from Colonel Humphreys to make himself a coat, saying: "Homespun is become the spirit of the times. My idea is that we shall encourage home manufactures to the extent of our own consumption of everything of which we raise the raw material." The Legislatures of Virginia, North Carolina, Vermont, and Ohio fixed a day, after which no imported clothing should be worn by members.

Pennsylvania used the proceeds of a dog tax to introduce a better breed of sheep into the State. Clay, offering a resolution in the Kentucky Legislature to use only homespun, was denounced by a fellow-member as a demagogue, the affair ending, quite naturally, in a duel. A rally of Americanism which would support the embargo was denied to Jefferson, but Clay reaped the full benefit of these early efforts at a later time.

The closing days of Jefferson's administration were not the most pleasant he had to remember. Like the husband who, at his own request, assumes direction of the household expenditures with high ideas of reform, he found theory and practice far removed from each other. His policy of retrenchment, it was true, had scaled down the army, navy, and consular service nearly two million dollars a year, and the pension list had been reduced to the lowest point in the history of the nation.

The public debt was lowered from eighty-three million dollars to fifty-seven million, and could have been reduced still more if it had been redeemable. Whatever pleasure the retiring President might have derived from contemplating these facts was lost sight of in the demoralising effects of the embargo. The exports had been reduced to one-fifth their normal amount, the customs cut in half, and the entire income of the nation had decreased from seventeen to seven million dollars.

No American statesman before Greeley believed so confidently in the goodness of the people and none so much desired their happiness. Nor was ever altrurian more bitterly disappointed. The frustration of a high hope and the selfishness of interests alike find exemplification in the eight years of Jefferson. Assuming office with an aversion to coercion in any form, assuring the people that the energies of the nation should be used for the improvement of man and not wasted in his destruction, he had been forced before leaving office to exclaim: "Where is the patriotism of the people?" The individual had long since been lost sight of in compelling the whole people to obey the law. It was as impossible for Jefferson to carry the people to the thinly populated plains of individualism as it had been found impossible to transfer them to the elect city of centralisation. Defeated in his attempts to avert war by commercial restriction, disheartened by his failure to rally the patriotism of the people without recourse to war, he confessed on leaving the Presidency that no prisoner, on being released from his chains, felt such pleasure as he did in shaking off the shackles of power.

CHAPTER XVI

AMERICAN NEUTRALITY LOST IN WAR

The United States, as a maritime nation, could scarcely expect to escape the maelstrom of war induced by the task of suppressing the French Revolution and Napoleon, a task which occupied the legitimists of Europe for a quarter of a century, and involved every civilised nation of the Old World. President Washington had early laid the course of the ship of state on the medium way of neutrality. He maintained the course, although at the penalty of such abuse as we gladly forget at the present day. To continue that policy, President Adams wrecked his party, cut himself off with one term, and became a vicarious sacrifice when he chose negotiations with France instead of war.

President Jefferson spent eight unhappy years for the same object. He endured national humiliation, was forced into coercive measures from which his soul revolted, and brought his country to the verge of commercial ruin to avoid war. President Madison, during his first four years, was made the tool of British diplomatic equivocation and the plaything of Napoleonic strategy to maintain the position chosen nearly two decades before; so great was the task and so fearful the cost of founding a neutral nation.

This delay of war proved most fortunate in the end. Those twenty years allowed the American merchantmen to increase in numbers until they were able to work such devastation on British commerce as marked the course of the War of 1812. The period allowed the new nation to acquire the strategic mouth of the Mississippi, and to make such inroads of settlers in the debatable land of the Floridas that Britain was unable to secure a permanent footing in them during hostilities. Twenty years carried forward the Old World struggle to a point so near its close that the Americans were able in the end to make surprisingly good terms in the general European demand for a world-peace.

As if to put the strict constructionists to the test on every side, the twenty years for which the Hamilton bank had been chartered expired in the midst of a conviction that war was inevitable. The bank, as a means of securing loans, would be indispensable during a war. The liberal-minded Gallatin brought in a report to Congress advocating a re-charter of the bank for another term of years. His arguments were much like those of Hamilton twenty years before. Is it given to the departed to know such a mortal pleasure as vindication?

Gallatin's recommendation evoked a storm of dissent from those members of the party who adhered to early principles. They would not give a new lease of life to this monopoly, unconstitutional in its origin and abused in its administration. State banks, if given an opportunity, could care for the United States money as well as an aristocratic, exclusive institution, seven-tenths of whose stock was held in England.

This plea for the individual was the argument by which the opponents of re-charter met the predictions of financial ruin with which the advocates of Gallatin's suggestion filled the air. The withdrawal of twenty-four million dollars from circulation would mean a national panic, it was claimed. Arguments of expediency were heard where constitutionality had held twenty years before.

The unionising process which the former individualists had undergone in ten years of administration is illustrated by the speech of Crawford, of Georgia, a lifelong adherent to the principles of Jefferson in the main, but too liberal to be bound to a dead past. A rational analysis of the Constitution, he thought, would show that it was not perfect in language as commonly supposed, but that it occasionally gave a general power followed by a specific power.

"This analysis," said he, "may excite unpleasant sensations, it may assail honest prejudices; for there can be no doubt that honest prejudices frequently exist and are many times perfectly innocent. But when these prejudices tend to destroy even the object of their affection, it is ostensibly necessary that they should be eradicated."

In pleading that the Constitution should not be held down to a construction which would render it "wholly imbecile," he took as advanced ground on the implied powers as had any Federalist in the olden days. Ridiculing those who clung to the old restrictive theory, he cited numerous actions of the party during the ten years it had been in power which could be justified only by constitutional implication. Among these, he said, were laws for the punishment of counterfeiters, passed under the power to coin money; the erection of lighthouses under the power to regulate commerce; the prohibition of offences against the post-office department under the power to establish post-offices and post-roads; and the acceptance of sites for arsenals, forts, and dockyards under the power to control them. Even the acceptance of the District of Columbia depended upon the implied instead of the direct language of the Constitution. Nor did he fail to point out that in 1802, when removing the judges of the circuit courts established by the Federalists in their last hours, the party was proceeding entirely upon the assumption that the expressed power to create inferior courts contained the implied power to abolish them.

Petitions both for and against a re-charter of the Hamilton bank poured in from merchants in various cities and from branches of the bank.

Instructions against the bank came from the State Legislatures of Virginia, Pennsylvania, and Kentucky. So nearly was opinion divided that a new lease of life for the bank was prevented in the House by only one vote, and in the Senate by the deciding vote of Vice-President Gerry, of Massachusetts, who chose to abide by party principles rather than to listen to the voice of the majority of people in his own State.

The predicted extension of State banks and the disorder in the finances of the country were alike experienced after the expiration of the United States Bank in 1811. More than two hundred of these private institutions were chartered in the various States to take the place of the branches of the old bank. They were to be found especially in the newer portions of the country, where banking facilities had been previously unknown. Flooding the land with their bank-notes, they speedily drove coin out of circulation. The latter was hoarded. When the war began, banks found it impossible to secure this hoarded coin to redeem their notes and were compelled to suspend specie payment completely. The National Government, having made these banks depositaries for the revenue collectors, according to the individualistic demands, suffered loss and disarrangement of its funds.

The lesson was severe, especially in the face of an impending war.

In the final struggle of the giants, which began, near the close of Madison's first term, with Napoleon's preparations for the invasion of Russia, every offensive and defensive principle known to English commercial history (and few are abandoned) was revived in the attempt to starve out the French and prevent the long-anticipated invasion of England. The seizure of American goods on the high seas had long been a source of complaint from the commercial interests; but it never affected the masses or so aroused them to the point of fury as did the practice of taking seamen from American vessels. Britain was the worst offender in both forms of reprisal, not alone because she was the greatest maritime power, but also because a common speech characterised the sailors of Britain and the United States. Yet it was largely a matter of different views of citizenship. That a man should voluntarily exile himself from British protection and citizenship was as offensive to British pride as injurious to British strength. That an allegiance could exist better than that of England was incomprehensible to the British public; that a man deluded into so thinking should be set right was a natural duty. "Once a subject, always a subject," gave the sovereign a right to the services of every man born under the British flag or having sworn fealty thereto. The subject could be taken by a press-gang on shore or could be impressed from the deck of any vessel on which he had taken refuge. Such doctrine was especially objectionable to Americans, who depended largely upon aliens to people their vast domain, and who placed so much stress upon individual freedom of motion.

Perpetual allegiance of the subject was as obnoxious as perpetual ownership of the land to a people who were all aliens once, twice, or thrice removed.

On the other hand, the British complained that their seamen were seduced from their allegiance to fill up the American merchant marine. Formal naturalisation papers were said to be given to men who sailed two years from American ports. These deserters were engaged, for a large part, in the neutral trade. Thus the enemies of Britain were being served by British sailors. Not only was her trade injured and the enemy strengthened, but this was being done by the loss of blood from her own navy. Her writers called upon the Government to sacrifice even the good-will of the Americans rather than to submit to the imposition of neutrals on British trade and the loss of British sailors.

The Americans were forced by public sentiment to take a stand for national citizenship. A broad patriotism was rallied which overcame all scruples about the differences between national and State citizenship. The matter manifestly belonged to the central rather than the individual governments. When threatened by foreign powers, Federal citizenship assumed a new value in the eyes of the Jeffersonians, much akin to that which it had long borne in the opinion of the Federalists.

The party which ten years before was endeavouring to distinguish between State and national citizenship was now compelled to take action to protect sailors who were not residents of any State. Many of them had no homes. They could look to no protector except the Union, under whose flag they sailed.

It is questionable whether the Federalists, had they remained in power, could have avoided a war with Britain when once the people had become fully aroused by the continued attacks of Britain on American commerce and American citizenship. Long-suffering and patient toward British offence, that party had avoided war for at least ten years. Jefferson and Madison, more devoted to maintaining neutrality than restrained by love of Britain, postponed the inevitable war for twelve years more.

But Madison's was a gradually waning power. The end of his first administration marks the termination of the one-man era. Hamilton and Jefferson by turn had dominated national affairs. Perhaps no man could have continued the monopoly. The day of many counsellors was at hand.

Revolutionary statesmen and warriors alike were to be cast aside by a second generation, which knew not the horrors of war. The supremacy of the Atlantic coast in national affairs had begun to wane. Political power was moving westward with the people.

This war element, which practically took matters from Madison's hands, was composed of men who were to measure their careers by decades instead of years. Its constituents had been reared in the strenuous life of the frontier. Separated from Old World influence by the Allegheny barrier, they felt the first impulses of true Americanism. A continuation of dominant foreign influence under them was impossible.

Instead of seceding to a foreign power, as their fathers had threatened, these trans-Allegheny frontiersmen had now been absorbed by the Union and were to secure their long-delayed rights by controlling their own government, which had once been disposed to neglect them. They were, for the most part, country-bred lawyers, belonging to the agricultural and borrowing class rather than the bank-founding, lending Federalists.

In this respect, they would be in accord with Jefferson and Madison, but totally at variance with them in their inland attitude toward ocean commerce.

Like true Democrats, they breathed the air of the individual rather than the masses. Clay was the son of a dissenting clergyman in aristocratic Virginia, which was still under the spell of an establishment of religion. By removing to Kentucky, he not only exemplified the movement of national power, but freed himself from all disadvantages of caste. The only aristocracy on the frontier was that of worth. Calhoun came of equally humble birth and inherited his individualistic principles. His father had been a country member of the Virginia Convention and had opposed the adoption of the Federal Constitution. Much of Calhoun's bias toward democracy was derived, as he confessed, from an early conversation with the sage of Monticello.

Bred in the upland district of South Carolina, a region more akin to Tennessee than to the seaboard, Calhoun may have had in mind the massacre of his grandmother by the Indians as he arose in the war session of Congress to make his report as chairman of the important Committee of Foreign Affairs. He arraigned the British agents from Canada circulating among the American Indians, and charged them with the outrages committed on the American frontier. Members from the Ohio valley did not hesitate to attribute the recent outbreak, culminating in the battle of Tippecanoe, to intrigues of the British in Canada, whereby the profitable fur trade would be diverted to their posts. "If we are to be permanently free from this danger," said one speaker in the debate which followed the report, "we must drive the British from Canada. I, for one, am willing to receive the Canadians themselves as adopted brothers." Grundy, of Tennessee, who, like Clay, had been born on the Atlantic slope and had followed the advance of population across the Alleghenies, arose to declare that the whole Western country was eager to avenge their fallen heroes, and awaited but the word of Congress to march into Canada.

The frontiersmen, never free from the hostility of the savage, sought to explain it by every cause except the true one—their constant invasion of the lands reserved to him by the National Government in treaties made with him. Here lies at least one explanation of the long endurance of British commercial wrongs by the United States before war was declared. The West, with its grievance of Indian tampering, had not yet come into control of national affairs. The frontiersmen, by their conquests of nature, had come to despise the strength of all enemies. With no commerce to be endangered by a foreign war, safe in the almost roadless interior from the peril of invasion, the Western representatives were able to carry by storm in Congress their temporising, commercial brethren of the coast. When discussing the embargo bill as a preliminary war measure in 1812, Clay, made Speaker during his first session in the House, scorned the appeal of New York for peace, in her defenceless condition, as her representatives described her. "I do not wish to hear," said Clay, "of the opinion of Brockholst Livingston or any other man. I consider this a war measure, and approve of it because it is a direct precursor of war." Fourteen Legislatures of the South and West, he said, had put themselves on record as wishing to avenge the insults of Britain. The Legislature of his own State had supported Jefferson's embargo four years previously with such zeal that they almost passed a measure abolishing the English common law in Kentucky courts.

Perhaps it was an accident that this twelfth Congress was composed almost one-half of new members; but more likely it was the result of popular impatience with the compromising foreign attitude of the National Government. It was an incipient political revolution, without involving a change of administration, a form of rebuke not infrequent in the history of the Republic. The fact that these new and inexperienced members, known as "war-hawks," were able to secure the leadership may have been due to the accidental conjunction of natural leaders; but a larger view would see in it a shifting of political power with the advance of the people. The grievance of these Southern and Western people against the Indians could neither be appreciated nor believed by the New England and Middle Atlantic States, far removed from the frontier and the savages. To their minds, the broader accusation of preying upon American commerce was more real. Yet so profitable had grown the monopoly of trade secured by them as neutrals in the Napoleonic wars that they could well afford to lose occasionally by foreign orders and decrees for the sake of the profit as a whole.

The War of 1812 from a sectional standpoint presents, therefore, the unusual aspect of an inland, agricultural people forcing a war upon the country for the protection of a marine, commercial people, who were for the most part opposed to

it. When Clay, in the lofty style common to the time, declared the Americans unconquerable, and that if the enemy should lay in ashes New York, Philadelphia, and Boston, and should devastate the whole Atlantic coast, the people would retreat beyond the Alleghenies to live and flourish there, a member from New Jersey protested that this was too high a price for him; that he had no inclination to go beyond the Alleghenies; and that even the Mississippi valley would be a poor consolation to him after everything that was near and dear to him and his people had been destroyed.

The desire for commercial independence, which had been growing steadily since political independence had been gained, was responsible for some of this defiant attitude. Speaker after speaker described the spirit of our forefathers who used only homespun in the rising Revolutionary days. The career of the United States, if commercially independent of Europe, was compared with her present situation, a victim of foreign oppression on the highways of the world. One speaker thought we should never be true Americans so long as we had to go to Europe for our national airs. It was not admitted generally that England's restrictive measures were due to her desire to starve out Napoleon, but as prompted by jealousy of "her new commercial rival," the United States. "England sickens at your prosperity," said Clay, "and beholds in your growth the foundations of a power which at no distant day is to make her tremble for her naval superiority." A foolish pride, characteristic of youth, urged on the war spirit. It was said that a few years before we had resolved for war, retaliation, or submission. The retaliatory measures had been withdrawn; war or submission was the only choice left.

Beneath the hostility arising from Britain's war measures lay, in the American mind, the irritation caused by her patronising air. The Americans had chafed under British social as well as commercial intolerance ever since the birth of the Republic. In the British thought, the Americans were still colonists in that they were not to the manor born. The Declaration of Independence and the severance of political ties had left them still dependent upon Britain in the higher aspects of life.

"The Americans asserted their independence," said the *Edinburgh Review*, "upon principles which they derived from us. They are descended from our loins, they retain our usages and manners, they read our books, they have copied our freedom, they rival our courage, and yet they are less popular and esteemed among us than the base and bigoted Portuguese and the ferocious and ignorant Russians."

When an English statesman suggested that his Government would do well to cultivate the new Republic for the sake of trade if for no higher motive, Lord Brougham ridiculed the proposition of paying heed to "a people whose armies are as yet at the plough, or making awkward attempts at the loom, whose assembled navies could not lay siege to an English sloop of war." These sneers, although containing a large proportion of truth, exasperated the young nation beyond control. The provincialism of the day writhed under any suggestion that the New World was not the rival of the Old in every intellectual particular. A broader spirit would have confessed that time is required for the development of genius and the surroundings which conduce to a high development of intellectual and artistic life. Two decades later, Lowell satirised this American tendency in the *Fable for Critics* by saying that while the Old World has produced barely eight poets, the New World begets a whole crop each year.

"Why, there's scarcely a huddle of log-huts and shanties,
That has not brought forth its own Miltons and Dantes;
I myself know ten Byrons, one Coleridge, three Shelleys,
Two Raphaels, six Titians, (I think) one Apelles,
Leonardos and Rubenses plenty as lichens,
One (but that one is plenty) American Dickens,
A whole flock of Lambs, any number of Tennysons,—
In short, if a man has the luck to have any sons,
He may feel pretty certain that one out of twain
Will be some very great person over again."

These extravagant claims incited fresh attacks. One British writer insisted that Federal America had done nothing either to extend, diversify, or embellish the sphere of human knowledge, and could produce nothing to bring her intellectual efforts into any sort of comparison with those of Europe. "Noah Webster, we are afraid," said he, "still occupies the first place in criticism, Timothy Dwight and Joel Barlow in poetry, and Mr. Justice Marshall in history." Another pronounced the celebrated Philosophic Hall in Philadelphia a "meeting house" for the society, where its transactions were "scooped together" in the "genuine dialect of tradesmen." Not only the published papers of the Philosophic Society were held up to

ridicule, but also John Quincy Adams's *Letters from Silesia*, Marshall's *Life of Washington*, Barlow's *Columbiad*, Dwight's poetry, and Lewis and Clark's history of their expedition.

"But why should the Americans write books," asked the *Edinburgh Review*, "when a six weeks' passage brings them in their own tongue our sense, science, and genius in bales and hogsheads. Prairies, steamboats, grist-mills are their natural objects for centuries to come."

The crudity of American life and manners had been sarcastically described by Ashe, Fearon, Davis, and other European travellers.

American writers countered these attacks by comparing the treatment of the slaves in America with the condition of British paupers and East Indians. Charges of negro kidnapping were contrasted with child-stealing in England; our gouging the eyes in fisticuffs with their prize-fighting; the harshness of our slave code with their criminal laws; and the condition of our free clergy with the circumscribed established clergymen. A dispute arose between writers of the two countries over the responsibility of England for American slavery by having fostered it in the American colonies.

This war of words, which continued even after the close of hostilities with England, went so far as to involve discussions whether Godfrey or Hadley had invented the quadrant; whether Hulls or Fulton was the father of the steamboat; whether steamboats were first used in England or America; and whether Fulton should have offered his invention of the submarine torpedo to France as well as to England. One may easily say at the present time that the national spirit should have risen superior to such trivialities; but the national spirit was taking a most provincial cast. Originality was claimed for everything; inheritance counted as nothing.

A maritime war is peculiarly a commercial war in that it affects trade and consequently becomes a sectional war, since all portions of the land are not equally affected. The War of 1812 was a sectional war which arrayed the former friends of consolidated government against the Administration, and consequently made the former enemies of consolidation its most devoted supporters. The early attitude of the various sections toward the war, with due allowance for party allegiance, may be studied in the vote of the two houses of Congress on the measure entitled "An act declaring war between Great Britain and her dependencies and the United States and their Territories,"

which passed the House on June 4th, and the Senate on June 17, 1812.

VOTE OF CONGRESS DECLARING THE WAR OF 1812

|||

| HOUSE | SENATE |

STATES | _____ | _____ |

| For | Against | For | Against |

_____ | _____ | _____ | _____ | _____ |

Vermont.....| 3 | 1 | 1 | 0 |

New Hampshire.....| 3 | 2 | 1 | 1 |

Massachusetts.....| 6 | 8 | 1 | 1 |

Rhode Island.....| 0 | 2 | 0 | 2 |

Connecticut.....| 0 | 7 | 0 | 2 |

New York.....| 3 | 11 | 1 | 1 |

New Jersey.....| 2 | 4 | 1 | 1 |

Pennsylvania.....| 16 | 2 | 2 | 0 |

Delaware.....| 0 | 1 | 0 | 2 |

Maryland.....| 6 | 3 | 1 | 1 |

Virginia.....	14		5		2		0	
North Carolina.....	6		3		2		0	
South Carolina.....	8		0		2		0	
Georgia.....	3		0		2		0	
Kentucky.....	5		0		2		0	
Tennessee.....	3		0		1		1	
Ohio.....	1		0		0		1	

The unanimity of the inland and non-commercial States, with the exception of the party vote of the Ohio Senators, is manifest. They were secure from the ravages of maritime war. Massachusetts showed a stronger war sentiment than New York, although the course of the Administration in these States during the war reversed this condition.

The Massachusetts House of Representatives had passed resolutions against the proposed war. The New York opposition represented the commercial interests. Fifty-eight business men of New York City, headed by John Jacob Astor, protested against a war. Among these were sixteen Republicans. The opposition in Rhode Island and Connecticut, which assumed such a serious aspect during the war, is clearly indicated in this vote. Regarding the sections as North and South, a distinction most unfortunately emphasised during the progress of the war, the popularity of the war in the South may be seen by a table: House Senate

North of Mason and Dixon line <i>For</i>	34	7
>			
Against....	37	9
South of Mason and Dixon line <i>For</i>	45	13
>			
Against....	11	2

Possibly the spectacle of a war favoured by the Southern and Western people to protect Northern commerce and seamen, a kind of protection not desired by the people who were being imposed on, no less than the extraneous nature of these causes, has given rise to the saying current in the United States that she went to war after the causes were removed and did not secure anything for which she made war. The war message of President Madison, sent to Congress on the 1st day of June, 1812, cited a series of aggressive acts on the part of Great Britain dating from 1802. The most prominent were the seizure of American seamen and goods, and the pretended blockade under the orders in council. More recent and less manifest impositions were described in the disavowal of agreements made by an accredited minister, Erskine; in the attempt to dismember the American Union through a secret British agent in the United States; and the instigation of the Northwest Indians to hostility by British traders. The message acknowledged that France had also been guilty of some of these offensive acts, but intimated that they would be abandoned through negotiations now in progress with that power.

Of these five charges, that concerning the Indians and that charging intrigue were difficult to prove. Responsibility for Erskine's actions was easily disavowed through the explanation that he had exceeded his instructions. The blockades were really withdrawn before war was declared, although the news had not reached this country. The freedom of sailors and goods was finally guaranteed by the end of the Napoleonic wars and consequently were not mentioned in the treaty which closed the War of 1812. Thus the calendar was cleared, and the saying about the causes and results of the war substantiated. Sometimes it is called the "second war for independence." Undoubtedly the treatment which the United States received from European powers before and after the war formed a remarkable contrast. Yet the change was due to changed conditions in Europe rather than to any compulsion wrought by the hostilities. The most valuable independence gained in the war was in the national feeling of the people, as will be shown later in this story.

To the British mind, it must be confessed, this second war with the United States presented a different aspect. Napoleon had absorbed France and all her continental neighbours save Prussia, Austria, and Russia. These with difficulty held back his land forces. To England was left the duty of keeping him in check upon the sea. War was declared by the United States just when Napoleon's invasion of Russia demanded the strictest enforcement of the blockade. England would willingly have avoided a war with the United States at this time, but felt that she could surrender neither the blockade nor right of search so essential to the conquest of Napoleon. It seemed to the English people that they alone

stood between this man and the freedom of the world.

They thought it extremely ungrateful that the Americans should resent their Orders in Council and other measures considered essential to their naval supremacy over the French. Granted that these blockades cut off some of the trade which the Americans as neutrals had secured during the two decades of European war; they should be willing to suffer so much in the common cause of liberty against one-man aggression.

[Illustration: BLANK COMMISSION FOR PRIVATEER IN WAR OF 1812. Under these commissions, hundreds of private vessels armed themselves and preyed on the enemy, atoning for the ill success of the American arms on the land.]

Every resistance to England's coercive measures was considered by her as a tacit aid to Napoleon. To the English mind, the hostile attitude of the Americans was a return to the French-American alliance of the Revolutionary days. The Americans were repaying their debt of obligations, but with an important difference. Where a King of France had aided colonists struggling for freedom, the colonists, now grown to a nation, were aiding the greatest enemy to freedom the world had yet seen. It was said that it would be simply a just retribution on America if England should withdraw from the breach and allow Napoleon to turn his ambitious designs upon the Western Republic. He would not hesitate to retake Louisiana, according to British opinion, for his revived American Empire.

Clay had not been the only speaker to indulge in braggadocio and boasting. In all the debates in Congress, Canada was to be invaded on the northern boundary and rolled up at each end. In vain the conservatives showed the neglected condition of the national defences.

Jefferson's policy of economy had reduced the regular army to less than seven thousand men and had scaled down the navy to fifteen vessels, carrying a total of 352 guns, and 63 little gunboats, the offspring of Jefferson's speculative genius. Nor were all these parts of "the Liliputian navy" ready for commission. Six of the largest frigates, mounting 170 of the guns, had been allowed to become useless for lack of repairs. It would require six months' work and a half million dollars to put them in fighting order. Of the little "mosquito fleet," as Jefferson's gunboats were contemptuously styled by the Federalists, 102 were drawn up under sheds at the various navy-yards and few of them seaworthy. Notwithstanding these cold facts, one of the few war advocates in New England said we needed no regular army to take Canada; that the militia of his section needed only authority to do the business; simply give the word of command and the thing was done.

Another brushed aside even the fear of an invasion from Canada by boasting that even the army of Napoleon which had conquered at Austerlitz could not march through New England.

According to one speaker in the House, when the storm of war had been poured on Canada and Halifax, it would sweep through with the resistless impetuosity of Niagara. "The Author of Nature," cried another, "has marked our limits in the South by the Gulf of Mexico and on the North by the regions of eternal frost." This braggadocio, however deplorable from a present view, may be pardoned as characteristic of young men and a young nation. It may be charged to the account of European aggression and British sneers. But it is also significant as marking the dawn of a feeling of nationality. It showed an appreciation of the probable effects of new-world isolation, interdependence, and destiny.

It was not a far cry from this position to "America for the Americans,"

a few years later.

The new nation terminated the war into which their enthusiasm plunged them more fortunately than could have been hoped. On the land, it is true, where the "war-hawks" had placed their boasted strength, little was accomplished. Upon the high seas, where little dependence was placed, wonders were accomplished by privateers. No less than 1607

British merchantmen were captured, in addition to sixteen British war-ships. The Americans in turn lost heavily, a total of probably 1400 vessels of all kinds, but their financial loss was small compared with that of the enemy. As in many later instances, the genius of the American for individual initiative proved his salvation.

That an outburst of national pride should follow so many disasters by land is explicable only through the battle of New Orleans, whose crowning victory changed the aspect of prior engagements in the public memory, while it placed a new value on the marksmanship of the American soldiery. Charges made by veterans of Wellington and of Nelson were resisted by unorganised American forces, dependent upon individual initiative and upon skill in shooting. Jackson's motley army was symbolic of the race composition of America and suggestive of the recent acquisition of the land in which they were fighting. There were free negroes, San Domingans, Louisiana Creoles, regular troops, old French soldiers, and swarthy pirates, backed by the hunters of Tennessee in their homespun hunting-shirts, and the Kentuckians with their long knives. The latter boasted of their endurance of hardships and that they were not of woman born, but were half horse and half alligator.

One stanza of a popular song, much used in a later campaign where the hero of New Orleans was the main issue, runs:

"We raised a bank to hide our breasts,

Not that we thought of dying;

But then we always liked to rest,

Unless the game was flying.

Behind it stood our little force

None wished it to be greater,

For every man was half a horse,

And half an alligator."

Here were demonstrated again the difficulties under which trained battalions fought in the American backwoods. The experience of Braddock was repeated during the month consumed by Pakenham in getting his troops into position. The farmers, who waited at Bunker Hill until the whites of the enemy's eyes were visible in order to insure a good aim against troops firing in volleys, lived again in the hunters of the South at New Orleans. Small wonder that dwelling in memory on these facts aroused an intense American confidence and even undue self-esteem.

If the stimulating effects of war upon nationality are to be noted in all these details, the disintegrating effects on political parties are no less evident. By a reversal of position, both Republicans and Federalists were being drawn from extreme to medium grounds. Many conservatives among the Republicans deplored this shifting to the former views of their opponents. In the actual preparations for war, the passing of acts for an embargo, for a loan, for increasing the army and adding to the navy, John Randolph, the overtalented genius of Roanoke, raised his voice in both derision and prophecy.

"If a writ were to issue," said he, with an eloquence too erratic to be convincing, "against the Republican party of 1798, it would be impossible for a constable with a search-warrant to find it. Death, resignations, and desertions, have thinned its ranks. New men and new measures have succeeded."

He predicted that a standing army, being created by the Republicans, would be as fatal to them as it had been to their opponents in 1798.

In one of his frequent speeches, he summed up the principles of the party in olden days when it was opposed to an army, to burdensome taxation, and to excessive expenditures. "Such," said he, "were our opinions in 1798. What has produced the change I do not know, unless we were then *out* and now we are *in*." The whole philosophy of the compulsory force making for nationality through political parties is expressed in that sentence.

CHAPTER XVII

TRANSFER OF PARTY POLICIES

In predicting defeat as a result of the war measures, Randolph overlooked the facts of history. No party has ever failed to retain the affection of the people when making preparations for war; and the corollary is that no party has ever opposed war successfully. Reasons for this fact were advanced in describing the war scare of 1798. The Federalists, losing State after State during Jefferson's administration, had been temporarily revived in the New England opposition to his embargo. But the accusation of being unpatriotic, of placing commerce above love of country, and the suspicion of holding intercourse with the commercial enemy had driven many from their ranks. John Quincy Adams, the hope of his father's age, was not the only apostate of the day. A member from Kentucky taunted the remnant of Federalists in the House during the war debates with remembrance of New England patriotism.

Said he,

"During embargo days, when our domestic enemies were encouraged by a proclamation under authority of the King of England, these minions of royalty, concentrating in the east, talked of the violations of the laws as virtue; they demoralized the community by raising the floodgates of civil disorder; they gave absolution to felons and invited the commission of crime by the omission of duty."

From time to time instances were not wanting to prove that the remnant of the Federalists was being forced by opposing the Administration into the former attitude of the Republicans. The most frequently cited case is that of Josiah Quincy, a Massachusetts member of the House of Representatives, who became so alarmed over the effect which the admission of the State of Louisiana would have on the political balance of the sections that he declared such action virtually dissolved the Union and freed the States from their moral obligations. Regardless of the past theories of his party, he declared the Union a partnership of States into which no new member could be admitted from territory outside the original domain. He declared the whole question was "whether the proprietors of the good old United States should manage their own affairs in their own way, or whether they and their constitution and their political rights should be trampled under foot by foreigners, introduced through a breach in the Constitution." The Federal opposition to the proposed War of 1812 has been described. It was a result of the "low, grovelling parsimony of the counting-room," as Clay denounced it.

The reversal of party position on both sides was due not to choice, but to interchange of situation. The very act of conducting the government on the one hand and of opposing it on the other brought this exchange. Jefferson, the former advocate of peace, from his retirement now urged a vigorous policy which involved retaliation on England, if she burned American cities, by hiring discontented workmen in London to burn British buildings, by conquering Canada, and, after dictating terms of peace with Britain, by making war upon Napoleon.

The reversal of party brought consequent exchange of policy. Instead of Federal encroachment on individual rights, the Republicans must now become aggressors, and the Federalists protestants. Instead of the protests coming from Virginia and Kentucky they now emanated from the New England States. Instead of regarding the State Legislatures as the ultimate protectors of the States, the resisters now went beyond that agency and adopted the very expedient so frequently urged by Jefferson, and the one which Madison testified that he had contemplated in 1799—a convention of delegates from the States.

Some parts of the resolutions adopted by this convention of twenty-seven delegates from the five New England States which met at Hartford, Connecticut, in December, 1814, might easily be supposed to have been voiced by Virginia and Kentucky fifteen years before, so completely had parties and sections exchanged.

"It is as much a duty of the state authorities to watch over the rights reserved, as of the United States to exercise the powers which are *delegated*" was the voice of southern individualism speaking through a New England convention. "In cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a state and the liberties of the people, it is not only the right, but the duty of such a state to interpose its authority for their protection."

Thus was the doctrine of "interposition" transferred from South to North, equalising sections, and conducing to the ultimate making of the nation.

But the means to be employed were not the same in each case. Resistance in the Union to unconstitutional acts had been the Republican plan of 1798; withdrawal from a Union, whose government had been grossly and corruptly administered ever since the first twelve years of prosperity and happiness, was the Federalist thought of 1814. "Even at this late hour," said the Hartford Convention report, "let government leave to New England the remnant of her resources

and she is ready and able to defend her territory." The peaceful dissolution of the Union and the substitution of "a new form of confederacy among those states which shall intend to maintain a federal relation to each other" was declared to be a possibility. A severance of the Union by one or more States withdrawing against the will of the rest was justified only in case of absolute necessity. The immediate remedy was to perfect "an arrangement which may at once be consistent with the honor and interest of the national government and the security of the states." By the readjustment which they proposed to make between the States and the Union, the latter would practically withdraw from the Eastern States so far as revenue and defence, the two highest attributes of sovereignty, were concerned.

Ultimately the convention hoped for certain amendments to the Constitution, Jefferson's remedy again, "to strengthen and if possible to perpetuate the union of the states," and, incidentally, to curb the national strength of their opponents. To this end, the two-fifths negro representation which the slave States had been given in the Constitution was to be abolished; the extension of Southern power by creating more States from the Louisiana Purchase was to be curbed by requiring a two-thirds vote in each House for the admission of a new State into the Union; Northern commerce was to be protected from future annihilation by limiting embargoes to sixty days; a two-thirds vote of both Houses was to be required to declare war or non-intercourse with a nation; the pro-French element in national politics was to be curbed by forbidding naturalised persons to hold national office; future eight-year Jeffersons and Madisons were to be prevented, and the Virginia presidential trust broken by making a President ineligible for a second term, and by prohibiting two consecutive Presidents to be elected from the same State. A complete transition of the fear of presidential usurpation had been wrought by the burden of war falling more heavily on one section than the other.

[Illustration: DISLOYALTY OF NEW ENGLAND DURING THE WAR OF 1812. This cartoon represents Massachusetts, Connecticut, and Rhode Island contemplating jumping into the arms of John Bull, while Maine prays below for guidance. The King says "Oh 'tis my Yankee boys, jump in, my fine fellows, plenty molasses and codfish, plenty of goods to smuggle, honours, titles, and nobility into the bargain." Massachusetts, nearest the King, says "What a dangerous leap! but we must jump, Brother Conn." Connecticut, in the middle, says "I cannot, Brother Mass. Let me pray and fast some little longer Little Rhode Island will jump the first." Rhode Island says "Poor little !! What will become of me? This leap is of a frightful size. I sink into despondency."]

National finances were seriously impaired by the war. The lending section refused to support the Administration. Of the loan authorised in 1814, less than one-half was taken and that at a discount of twenty per cent. During the same year, the Government defaulted on the interest due on the national debt. Moneyed men claimed that business had been so impaired by the embargo and war as to prevent their coming to the relief of the nation. Unfortunately, strict-construction theory had cut off the bank which might otherwise have been a source of supply.

A glance at a table of statistics of the commerce and financial standing of the United States during the embargo and war period will show the effects of a maritime war and explain the causes of the complaints of commercial New England. The following sums are in round numbers of millions of dollars.

	Exports	Imports	National Debt
1807.....	138.....	69	108.....
1808.....	22.....	56.....	65
1811.....	61.....	53.....	48
1812.....	38.....	77.....	77
1813.....	27.....	22.....	55
1814.....	16.....	12.....	81
1815.....	52.....	113.....	99
1816.....	81.....	147.....	127

Almost annihilated by the embargo of 1808 and the War of 1812-15, the exports and imports, when relieved from such incumbrances, leaped to figures which caused anger and rebellion when contemplated. The prospect of wiping out the national debt was indefinitely postponed. Increased burdens of national taxation brought as loud a protest from the Federalists in 1814 as came from the Republicans in 1798.

Yet the chief grievance voiced by the Hartford Convention was neither the loss of commerce nor increased national debt. A question had arisen in the course of the war which brought out the old contention between the right of the State and the nation, although with parties and sections exactly reversed. Fear of the abuse of the military power in the hands of the central authority, which prompted the framers of the Constitution to limit all appropriation for the army to two years'

duration, had also persuaded them to restrict the national use of the State militia to three emergencies, viz., to execute the national laws, to suppress insurrection, and to repel invasion. Test had been made of the first two uses in suppressing the excise rebellion. The War of 1812 brought out the third. The contemplated invasion of Canada was the result of no one of these conditions. Objection to using the militia in carrying on a foreign war had been raised frequently in Congress during the debates on the war measures. A kindred dispute had arisen over the right of the national authorities to appoint officers of the State militia when called into national use. The old Revolutionary State jealousies over this question seemed to have come to life again.

Among the Federalists, now grown to be sticklers for State rights, was a representative in Congress from New York, who cried out in debate: "If it shall come to that, that militia officers are appointed by the President, I am a militia officer—I will never surrender the state's rights—I would not be commanded by them—and I say, so help me God, if I do. Militia were never intended for the United States, but for individual states, to defend their states' rights."

In the twenty years of peace administration, this question of employing the militia in a foreign war had never arisen. If the National Government in 1812 had been ready for war, either in force or finance; if the war had been favoured in the commercial States where the available wealth of the country was accumulated; or if the administration had not been embarrassed constantly by lack of soldiers and revenue, the resistance of New England to the Federal attempts to control her militia, to recruit her young men, and even to contemplate drafting her able-bodied citizens might never have arisen. But if the test had not come, the governors of Massachusetts and Connecticut would not have put themselves on record as resisting the call of the President for their quota of militia to serve both inside and outside the State, and the section would have missed committing itself to the former ground of its opponent. The creation of a "Federal army" out of the State militia was now criticised as violently in New England as it had been in the Southern States during the suppression of the whiskey insurrection a score of years before.

This refusal of the thickly populated Eastern States, which had been largely the source of supply in the Revolutionary War, to furnish their share of soldiery, threw the brunt of the Canadian expeditions upon the south-western sections, and thus contributed to the Union in another and less evident manner. The volunteers from those trans-Allegheny regions would never forget the hardships of their journeys through the roadless Northwest. Frontier militiamen, who hewed their way through pathless woods and subsisted on roots and berries because there were no roads on which to bring supplies; officers, who guided their commands to streams and found them too small in midsummer, when most needed, to transport their troops; artificers, who built boats on the Great Lakes and could not get armaments to them,—these men were unlikely to allow constitutional objections to lie in the way of future improvements in the Western Territories. They placed the blame for the failure of the campaigns in those parts to lack of means of communication. The freshly cut military roads were strewn with the ruins of flour-barrels, cordage, and various equipment, abandoned in transit. Fully two-thirds of the flour put down at Fort Meigs could not be used. The flour on the Harrison campaign cost the Government not less than eight dollars a barrel. Government commissaries claimed to have been ruined in their contracts by lack of roadways. Only eight hundred pack-horses survived of four thousand employed in the Detroit campaign. The extra expense of one of the northern campaigns would have built a good road to the inaccessible portion if the need could have been foreseen. The experience in the war demanded immediate action for the future public defence, regardless of party interpretation of powers.

Provision for necessary means of communication in the older portions might safely be left to the States; but for the more recently settled regions, especially the Territories, only the States united could provide highways and waterways. The fact that the Union had charge of the Indians in the Territories made the permission easier to grant. Also, during the war, many military roads had been constructed, whose constitutionality no one had time to question. During the intermissions of warfare, soldiers had been employed in constructing military roads between various posts on the frontier. John Randolph had several times aroused the wrath of the war-hawks in Congress by suggesting that the volunteer troops be employed, when not on campaigns, in building highways and digging canals. He thought the land forces would make some return in this way for the vast sum to be expended on them. After the close of hostilities, the regular troops continued to be employed in such work, receiving extra pay. In various parts of the United States one may still trace the old "military roads,"

many of them having been made into modern highways. As may be imagined, they were of great aid in extending another function of national activity—the postal system.

Waterways were as abundant in the western region during the War of 1812 as they were at any later time. That they were not more frequently employed as means of transportation was due to the fact that nature, in the process of time, had placed so many obstacles in them that they were practically useless. Sand-bars, sunken logs, accumulated driftwood, and hidden snags made water travel impossible except for light canoes.

During the summer season, when the campaigns were waged most vigorously, many of the streams were dried up and valueless for transportation purposes. But small imagination was required to see how man with proper resources could dredge channels, remove obstacles, and construct dams which would render these waterways useful during the larger

part of the year. Boats might be guided up the tedious channels, but the use of steam was impossible until improvements had been made.

Fulton and Livingston made a success of steam navigation on the majestic Hudson in 1807. Only five years later, hardy spirits were not wanting at Pittsburg to equip a vessel with steam and venture down the tortuous Ohio to New Orleans. But impediments to navigation made such attempts simply experiments. Three years after the close of the war, the *Walk in the Water* was launched on Lake Erie near Buffalo and eventually reached distant Mackinaw. The ship-building industry had been established on Lake Erie during the war and needed only the construction of harbours and placing of lights to open a vast inland commerce.

The strict constructionists were destined to spend many unpleasant hours over this question of inland commerce. That the Union had control of ocean or foreign commerce, no one denied. The ocean is common to all. But fresh water lies inland, among the States. Strict construction would not allow the central authority to undertake a public work in an individual State. Clearing waterways and constructing harbours might have been left to the respective States, if each stream and each lake had been located entirely within the confines of some State. Interstate commerce thus began early to play a part in making the Union. In former days, Congress had granted requests of Rhode Island, Maryland, and Georgia to be allowed to retain part of their imposts for completing their public works on rivers and harbours. The privilege was extended to other State at various times, the expenditures being withheld from the national revenues. The system was bad and produced frequent delay and abuse. It was really the Federal Government making the improvements indirectly. Evidently the work could be carried on more uniformly and systematically under central management.

Precedent had been established under the compulsion of war. The Carondelet canal was a private enterprise connecting Lake Pontchartrain with the city of New Orleans. Congress appropriated a sum of money, as the war came on, for making the canal navigable for the gunboats in order to protect New Orleans. Several similar instances might be cited during the progress of the war. Under such conditions, it was an easy matter to include in the Army Appropriation bill of 1819 a sum for making a complete survey of all watercourses tributary to the Mississippi on its western side, and on its eastern side north of the Ohio. There was in the same bill an appropriation for making surveys with maps and charts of the Ohio and Mississippi rivers, from the Falls of the Ohio to New Orleans, "for facilitating and ascertaining the most practical mode of improving the navigation of those rivers." No promise was made, but the ultimate purpose was to have the individual States or the Union improve the navigation of all these waterways. So insidiously was necessity making the Republicans commit themselves to the policies of their predecessors, that no one realised they were preparing by these actions to inaugurate the vast work of public improvement in the interior of the continent which characterised the middle period of American history.

Advocates of these national enterprises were encouraged by a clause in the Bank bill of 1816. In order to compel the State banks to resume specie payment and to rearrange the national finances after the war, the Republicans had been compelled to resort to the infamous Hamiltonian remedy of chartering a United States bank. Only financial desperation could warrant the adoption of a suggestion which the party had rejected five years before. Unconstitutionally scarcely had a mention in the debates on the bill. Republican speakers and writers advocated a bank as eagerly as they had opposed one in 1791 and 1811. Calhoun was in favour of a new bank and Webster was opposed to it.

This second bank was chartered, like the first, for twenty years. It had a similar plan of organisation, although with a larger capital.

It differed most in offering to the National Government, not only a share of stock, but a "bonus," or gift, of a million and a half dollars for the privilege of the charter. Visions of internal improvements made possible by such a handsome gift immediately arose in the minds of some, although suspicion was the strongest feeling in the minds of others. The proposition was precisely along the Federalist idea of invested interests purchasing a monopoly from the Government, and was viewed in that light by old Republicans. It was denounced as a bribe similar to that given Parliament by the East India Company. Such scruples were overcome by comparing the "bonus" to the fee paid the National Government for a patent, which gave to the holder a monopoly, or to the free passage granted troops over toll bridges in payment for a State charter. Undoubtedly the desire to use this money for public improvements aided in securing the passage of the Bank bill.

These hopes assumed shape in the next session in "An act to set apart and pledge certain funds for internal improvements," which pledged the proceeds of the "bonus" for constructing roads and canals, and improving the navigation of watercourses. It was passed by a close vote in each branch of Congress, after a long debate in the House upon the powers of the General Government. This debate showed Calhoun, the future spokesman of State rights, in favour of extended expenditures in the various States without constitutional restriction, and Timothy Pickering, former member of John Adams's Cabinet, in the attitude of denying the right of the National Government under the implied powers to expend a dollar without the consent of the State in which the improvement lay. Neither would he admit that the regulation of commerce included more than waterways. It was an additional evidence of the reversal of parties.

The Representatives from the Eastern States generally wished to use the money to relieve the ordinary burdens of taxation, realising that the larger part of these improvements would lie beyond the Alleghenies and, presumably, of no benefit to them. Individual members may have held great expectations of the gratitude to be gained from their constituents by securing a share of the bank money. Madison rudely shattered these in the closing hours of his administration by vetoing the bill. It was a heroic duty. To such a distance had the party gone from the confines of strict construction, so resistless had been the hand of compulsion in the sixteen years of Republican administration, so powerfully had this internal improvement system affected the cupidity of the people, so careless had Congress grown of the difference between the reserved and expressed powers, that Madison felt it necessary to recall his party to its first principles. In his veto message, he spoke the almost forgotten language of the old days when he said that the power to regulate commerce did not extend to enterprises conducted within the several States; that the efforts of the Union should be confined to foreign commerce; that any expenditure of the bonus proceeds under the plea of the common defence would be to give Congress a general power of legislation. It was the first reaction after the compelling days of the war. It was not an agreeable or popular task, but it was done heroically. It was love's labour lost, because it was impossible for Madison or his successor long to hold in check the demands of the people for means of communication as they spread toward the West over the inviting public lands.

Partisan newspapers denied that Madison's action was inconsistent with prior recommendations of Presidents, with the report of Gallatin, and with the appropriations for the Cumberland Road. Gallatin's report, they said, was only a recommendation. The Cumberland National Road was the result of a bargain between the Federal Government and the State of Ohio and involved no violence to the Constitution. As for prior messages, Jefferson, in 1806, had suggested an amendment to cover internal improvements, and Madison had been careful in 1816 to locate his proposed national university inside the District of Columbia, which was entirely under national control. Internal improvements, he had said in two different messages, should be authorised by an amendment.

At the same time, many of these papers lamented the fact that the hands of the Union were thus bound, while a few suggested that the obligation to "provide for the general welfare" would have been fulfilled better by building roads and canals than by creating a bank and placing upon the people the burdens of a protective tariff. Having engaged in the war, they must abide by the compulsion which the war produced.

The few conservative Republicans who clung to the old doctrines of the party realised with dismay that the financial adjustments following the war were bound to drag them still farther into the former field of the enemy. The Jeffersonian commercial war, which had begun with the embargo of eight years before, had practically cut off the United States from the European sources of supply. In a crude way her people began to set up manufactories to supply needed goods. The waterfalls distributed so abundantly over the Northern States were harnessed for this purpose. Unconsciously the United States was coming into a commercial independence even more valuable than the political or navigation right for which she had contended in two wars. The world's peace of 1815 released the carrying trade; European goods poured into America; and the infant manufactures were undersold and threatened with ruin. As many as twenty vessels arrived in New York during one day in 1815, hurrying British goods to the reopened American market.

[Illustration: THE PRESIDENT'S TEMPORARY RESIDENCE, 1815. This "octagon"

house in Washington was occupied by President Madison while the White House was being rebuilt after being burned by the British in the War of 1812. It is now used as a club house.]

Instantly the public thought turned to a protective tariff, not only to save the manufactures, but as a retributive measure against England.

"It is now a little more than a year," wrote a correspondent to Niles's Register, "since we closed a contest in arms with Great Britain in glory. A new struggle has already commenced with the same nation in the arts as connected with agriculture, commerce, and manufacture."

Another contributor urged the necessity of protecting and cherishing the manufacture of everything—from a toothpick to a ship, from a needle to a cannon, a thread of yarn to a bale of cloth—unless we could exchange some commodity for them. "You spread too much canvas,"

was the reason reported to have been given an American by an Englishman for certain restrictive measures on American commerce.

"Americanism" showed itself in the press as well as in congressional debates. Writers contrasted the probable happiness of an imaginary "Anglo-American province," located on the Atlantic coast-plain, dependent upon the Old World for its straw hats, boot, shoes, cotton, linen, and cloth, with an "Economic Republic," located as far inland as the banks of the Ohio, and depending entirely on home industries.

A rumour that the rebuilt Executive Mansion was to be furnished with articles from Europe brought an indignant denial

from the Administration. Only porcelain, mirror plate, carpets, and a few minor articles, such as were not produced in the United States, had been imported. It was announced that President Monroe had given orders to use home manufactures as far as possible in furnishing all public buildings in Washington. The American Society for the Advancement of Domestic Manufactures was favoured by ex-Presidents Adams, Jefferson, and Madison, as well as by President Monroe. The Philadelphia Society for the Promotion of Domestic Industry issued addresses to the people.

Under the influence of the embargo the census of 1810 had been made to include a survey of American manufactures. It showed that nearly two hundred million dollars' worth of goods were manufactured annually in the United States. Undoubtedly this sum had been greatly increased during the two years of war. Newspapers printed accounts of the large output of woollen mills in New England, of the starting of glass and iron factories, of new methods for weaving, of looms to be operated by steam power, of the discovery of lead, copper, asbestos, and other mines. The frontier city of Cincinnati reported the establishment of manufactories of tools, implements, ground mustard, and castor oil.

It was said in 1816 that not less than nineteen million dollars' worth of woollen goods alone were being produced in the United States, which must suffer from European competition unless protected. A steam vessel, so it was reported, built at New York, was about to attempt to cross the Atlantic to Russia, where Fulton had been given a monopoly of steam navigation for twenty-five years.

So completely had the New England States alienated themselves from the Administration by their conduct during the war that an appeal from them for protecting manufactures in which they were most largely interested would have had small influence, unless the general condition of the country had demanded action, as shown above. The Southern States, which dominated Government, could afford to be magnanimous. They had permanent protection in their cotton, tobacco, and sugar exports as the means of their commercial salvation. "Let us be charitable toward the Hartford conventionists; let us make them feel that they have a country," said a member of Congress, in discussing the impost bill of 1816, which partook somewhat of the nature of a tariff bill along Hamiltonian lines, although framed by Jeffersonians. Few speakers showed a tendency to discuss the proposition from a party standpoint.

"The duty of a paternal government" was referred to as freely as if the Hamilton days had come again.

As usual in a tariff debate, expediency and self-interest ruled. The difficulty of reconciling the varied interests in a common measure seemed at times insurmountable. The South wanted a high duty upon sugars and a low duty upon coarse cloth. The New England delegates insisted upon the contrary.

"The order of the day seems to be to catch and keep and huckster sectional interests without regarding the nation as a whole," wrote a disgusted member to one of his constituents. "We can unite, as you have seen, from Maine to Louisiana in favor of voting money into our own pockets; but I despair of seeing a united vote in favor of our constituents."

This tariff measure of 1816, the first after the war, was a protective action in form rather than by intention. The Republicans looked on it as corrective of the many acts which during the war had almost doubled the duties to secure revenue. It was a kind of transition from the tariff policy of the Hamiltonians, nearly twenty years before, to that of Clay, ten years later. That tariff issues were not yet developed and sectional interests appreciated is evidenced by the fact that Calhoun was an earnest advocate of this measure and that Webster voted against it. A comparison of the votes in House and Senate indicated slightly the sectional tendency which was to characterise the tariff question when fully developed.

VOTES OF APRIL 8 AND APRIL 19, 1816, ON REGULATING DUTIES

House Senate

North of Mason and Dixon line *For*.....63.....16

>

Against...14.....2

South of Mason and Dixon line *For*.....25.....9

>

Against...40.....5

The measure was passed by the vote of the Eastern or manufacturing States, aided by the South-western States, who were expecting some kind of paternalistic benefit to their hemp or other products. In the Senate, Kentucky, Tennessee, and Louisiana voted solidly for the tariff, and in the House these three States furnished nine affirmative to four negative votes. The five New England States, already strong advocates for increasing protection, gave in the House seventeen votes in favour to two against the experiment. Virginia and South Carolina furnished twenty-seven of the negative votes in the House. Strange to say, South Carolina, the opposition leader of a later day, gave a majority for the bill in both

branches of Congress.

It is scarcely just to call this tariff of 1816 a protective measure, since it was entitled "An act to regulate the duties on imports and tonnage." It was a natural result of the attitude of the "war-hawks,"

isolated from European influence and developing self-reliance and self-dependence. It was looked upon as reducing the tariff to a peace basis. The war duties on woollen and cotton goods, rating as high as thirty per cent., were to be gradually scaled down to half that amount.

But the discrimination in favour of certain goods made easier the demand for a greater discrimination a few years later, and divided the party upon the old Hamiltonian policy of protection.

CHAPTER XVIII

SECTIONAL DISCORD OVER TERRITORY

Before the addition of Louisiana, the American settlements west of the Alleghenies extended in a thin wedge to the Mississippi, having the British Canadians on the north and the Spanish in the Floridas to the southward. After Louisiana was added, these settlements constituted the ligament which bound the older to the newer part. Both British and Spanish had formerly been on the advance line; now they were on the American flank. Invasion from each direction had to be guarded against during the war. The strength of Britain and the fidelity of the Canadians prevented the conquest and addition of Canada during hostilities. But the disintegrating power of Spain in the New World held out hope that eventually the Floridas might be acquired and the American possessions be rounded out on the Gulf at least. It is safe to say that from the moment of taking possession of Louisiana the retention of the Floridas by any foreign power was felt to be an incongruity.

The Floridas, or the western portion at least, would have been annexed to the United States as part of the Louisiana Purchase in 1804 if the Jeffersonians had been expansionists at heart. Livingston, whose antecedents were more Federalistic than the majority of Jefferson's appointees, advised taking immediate possession of the Floridas upon the assumption that they were part of Louisiana. In this opinion Monroe concurred, although less ardently. Considering the uncertain boundaries of "Louisiana," and that such action might offend Britain or Spain in the critical situation of foreign affairs, Jefferson preferred to await the process of time and the restless nature of his countrymen.

"It is probable," said he, "that the inhabitants of Louisiana on the left bank of the Mississippi and inland eastwardly to a considerable extent will very soon be received under our jurisdiction, and that this end of West Florida will thus be peaceably gotten possession of. For Mobile and the eastern end, we must await favorable conjunctures."

Never was prophecy more accurately fulfilled. Spanish power in the New World disintegrated rapidly after Napoleon dispossessed King Ferdinand.

Americans settled with impunity between the Pearl and the Mississippi south of the line of thirty-one, which had been agreed upon in 1795

as the boundary between the United States and the Spanish Floridas.

Soon the invaders were in dispute with the Spanish commandant at Baton Rouge over smuggling and the runaway slaves. Complaints reached Congress that the commandant at Mobile was collecting toll and harassing American vessels carrying goods to and from the Tombigbee and Alabama rivers north of the boundary. The old controversy over the navigation of the Mississippi had come again on Mobile Bay. In 1810, the American settlers west of the Pearl set up an independent government at Buhler's Plains with John Mills and Dr. Steele as officials. The Spanish commandant and governor were soon after driven out, a petition sent to Congress, and by proclamation of October 27, 1810, President Madison extended the authority of the United States over the indefinite region known as West Florida. The action was based on the Louisiana claim, which had not been relinquished since the purchase, and on the danger to the adjacent parts of the United States in the present crisis.

A secret resolution of Congress at the same time authorised the President to take possession of the remaining Floridas, if England showed a disposition to seize the land as an aggressive act. Since Spain had come under the control of France, this action was not an improbability. But aside from temporarily occupying Pensacola, the British made no attempt to take the Floridas during the War of 1812, although rumours of that kind were frequent. Simultaneous with the end of the war came the restoration of Spanish authority in the Old World and its threatened restoration in the New. In this chaotic condition of Spanish affairs, President Monroe ordered a band of freebooters to be driven out of Amelia Island, in East Florida, at the mouth of the St. Mary's River, near the Georgia boundary.

The troops employed in this work remained on the island, notwithstanding Spanish protest. General Jackson, being ordered to subdue the Seminole Indians in Florida, who were harbouring fugitive slaves, invaded the Spanish territory, cleaned it up in the true Jacksonian manner, hanged two Englishmen, and "omitted nothing that characterises a haughty conqueror,"

as Onis, the Spanish Minister at Washington, protested. The embarrassed Administration, through its spokesman, John Quincy Adams, explained that Jackson intended only to restore order where Spanish authority had failed.

At the same time Adams reopened negotiations by which Spain eventually ceded the troublesome Floridas to the United

States for a money consideration.

The additions of territory to the national domain, strong Union-making elements as they are, have had a curious connection one with another.

The navigation of the Mississippi, left unsettled with Spain from the Peace of 1783, led directly to the attempt to purchase the "island"

of New Orleans, and consequently to the Louisiana acquisition. The uncertain boundary of Louisiana caused the annexation of West Florida, and that success made a final settlement of East Florida easier. The readiness with which the Americans could invade her territory, unchecked by other powers, made Spain, in her helplessness, consent to this treaty of 1819, by which the entire Gulf territory from the Atlantic Ocean to the Mexican province of Texas became American soil. The ethics of the entire transaction may be questionable. It smacks of invasion, stretching of claims, a show of force, and soothing balm of gold. What territorial conquest in the history of the world has been entirely free from criticism? However, the increase of national prestige and the stimulation of national pride which resulted are the factors to be considered in the story of the United States.

The Florida Purchase was a second instance of bringing national prestige to the Union by the party originally afraid of giving it too much power. The action brought in its train as many embarrassing questions and as many demands for the fostering care of government as did the Louisiana Purchase. Yet precedent made the questions easier to answer in favour of centralisation and made the steps easier to take by the scrupulous Jeffersonians.

It is worthy of notice that the people of the Floridas were promised, in the annexation treaty of 1819, incorporation into the Union "as soon as may be consistent with the principles of the Federal Constitution," no time being specified. The Louisianians had found, as stated heretofore, that the phrase "as soon as possible" in the treaty of 1803 was capable of a very loose interpretation at the hands of their new sovereign. They had to wait nine years before the first portion was admitted to statehood. Perhaps to avoid a deluge of petitions and protests, such as came from the inhabitants of the Louisiana Purchase when given a territorial standing, John Quincy Adams may have invented the new phrase "as soon as consistent." Under this provision, portions of the Florida Purchase were added to adjacent States and the residue compelled to wait twenty-five years before statehood was given to it. The rights of man and citizenship in the State had again been temporarily lost sight of by the party of which these were basic principles.

Having been converted into territories, the additions to domain came directly under the care of the National Government. Bound by national honour as well as by a regard for the sacredness of statehood to bestow upon this public land such protection and such improvements as might encourage migration to it, and thus hasten the time of full rights for its people, the Republicans might yet have pursued a parsimonious policy, if increasing migration to the United States had not impelled them to action to provide homes for the multitude. No such influx from the Old World had been seen as followed the close of the Napoleonic wars. It was small compared with the full tide of migration, which set in about 1845. But it seemed marvellous at the time. Fifteen hundred were counted in some weeks, mostly Irish and English, with a sprinkling of French and German. No record was kept of the number of arrivals until 1820, and statistics are simply approximate.

Viewing the Old World as again under the curse of monarchy, and the new-comers as refugees from oppression, the Republican party found itself ready to arrange for the easiest possible disposal of the public lands. "Let them come," said one writer. "Good and wholesome laws with the avenues to wealth and independence opened to honest industry will tame even Mr. Peel's 'Untamably ferocious' Irishmen! as well as suppress English mobs crying for employment and bread, without the use of the bayonet." Descriptions of the economic unrest in Europe following the close of the Napoleonic wars were fully circulated in American newspapers. The number of bankruptcies, the idle custom-house clerks, the labouring poor applying at the different sessions for certificates to migrate to America, the British vessels anticipating desertions by sailing for the New World with double crews, the steps taken by the British Government to prevent artisans from leaving, the ruse of coming through Canada to escape question and detention—all this was delightful reading for the American public.

Many of the emigrants passed the Allegheny barrier, notwithstanding the hardships of travel, to make homes in the new States and Territories of the West and South-west. Birkbeck and his colony of Englishmen came to southern Illinois. The Rappites planted the community of New Harmony on the Wabash in Indiana. Congress granted land to a colony of refugees in Alabama. Numerous towns were laid out on the upper Mississippi and the Missouri in the Louisiana Purchase. Protecting garrisons were established far up the Missouri River and at the Falls of St. Anthony, near the headwaters of the Mississippi, "two thousand miles from the sea." Buffalo and Erie, names not to be found upon the map before the war, were now busy ports with a thriving lake commerce. Semi-weekly posts were carried to Detroit, Green Bay, and far Michilimackinac.

These evidences of the vast extent of the national domain excited both pride and fear. Unless the distant parts could be more closely cemented, the days of Western unrest and foreign intrigue might come again. The demand for government

aid to public improvements sprang up anew. Colonel Johnson, attempting to take a small fleet of steamboats up the Missouri to the Yellowstone in 1819 to open a new route for trade with China by way of the Columbia River, was hindered by sand-bars and snags, or "planters." Various improvements in rivers and the construction of canals undertaken by different States were reported in Congress.

Government aid in the shape of subscriptions to stock was contemplated in some cases. Gallatin's report of 1809, recommending the expenditure of twenty million dollars on public works, was reprinted. The Cumberland Road was given over three hundred thousand dollars in a single appropriation. Two and a half million dollars were spent annually on the navy. Various arguments were used to harmonise these expenditures with the economic principles of the Republicans. Twenty ships-of-the-line could be built, it was said, for much less than the cost of drafting the militia and the losses in a single State during one year of the recent war. Ten thousand seamen afloat would be of more service than fifty thousand militia in preventing "a foreign enemy ever again polluting the shores of the United States." The only danger to this policy would be in putting such a power into the hands of the Chief Executive; but this could be averted, it was declared, by the ballot. National feeling ran high, as it usually does following a war, over both national defence and home development.

In the midst of this great impetus toward nationality came a sudden revelation of the sectional discord which it was hoped had been laid for ever. A vast extent of territory has its advantages in wealth and population; but it also has its dangers in the differences of climate, products, and labour thereby engendered. The United States could not hope to be free from this menace, common to all governments with extensive domains, until time had proved the necessity for union, and use had made its burdens appear lighter. Sectional jealousies had been quieted in the Convention of 1787 by establishing "balances" in representation and taxation. It was unfortunate to recognise the existence of sections and to perpetuate them in this manner; but compromise was the only way possible at the time.

[Illustration: View of the Capitol of the United States. THE CAPITOL
BURNED BY THE BRITISH ARMY. From Torrey's "American Slave Trader."

Justice looks from the sky in retribution upon a nation which permits
the slave trade to be carried on almost within the shadow of the
Capitol.]

Those who believed that compromises were curatives rather than means of temporary relief as we now see them, must have found hope for the future in the number of compromises in the convention caused by slavery.

As the years sped by under the Constitution, and the menace failed to renew its formidable shape, these hopes must have brightened into a belief that the spectre was laid for ever. The expiration of the twenty years demanded by South Carolina and Georgia in which to get their supply of slave labour from Africa drew nigh, and brought forth a prohibitory law to take effect the first day of the year 1808. The newer Gulf States in vain demanded an extension of the open door to place them upon an equal footing with the older States. Yet the law was never enforced, and it was always possible to get a fresh supply of slaves even to the time of the Civil War. The blame must be shared equally by the planters of the Gulf States, who purchased the new slaves, and by the ship-owners of the free States, whose vessels brought them from Africa for the profit of the trade. Cupidity will be found, in the last analysis, to be at the bottom of much of the law-breaking spirit so unfortunately characteristic of the American people.

The Friends kept up an unceasing petition to Congress to ameliorate the condition of the slaves or to emancipate them. It was said by some of the British advocates of emancipation, who began to let their voices be heard in the States, that the destruction of the public buildings at Washington during the War of 1812 was a judgment of God upon a people who permitted a slave market almost within the shadow of the Capitol. Slavery was always at base an economic question and was now awaiting some national economic issue before it would manifest its ugly self. The emancipation plans which had been adopted by the Northern States were emphasising slavery as a sectional issue. It would make even more difficult the task of balancing the two sections. So rapidly had public sentiment accepted the inevitable in the matter of sections, that by 1820 it was easy to repeat the fearful phrase, "preserving the balance between the two sections."

It had been possible to preserve this balance in the Senate, where State representation is equal, by admitting a Northern and a Southern State contemporaneously. Thus two Senators from each section were created. In the House of Representatives, where strength depends upon the distribution of population, no such balance could be maintained.

The attractiveness of the back lands as they were opened to settlement, the ease with which farms could be secured from the public domain, the rapid development of water-power, and the increasing immigration from Europe, caused a rapid growth of population in the trans-Alleghenian region. In 1800, only one settler had crossed the mountains to fourteen remaining on the coast-plain. Ten years later one had crossed for every six remaining behind, and in 1820 the proportion was one to four. There had been some alarm manifest in the older States in earlier times, because the power

and prestige which they had enjoyed must eventually be reduced if not lost through the rapidly growing West. But whatever danger of this nature was realised became of secondary importance by 1820 to the larger question of the unequal distribution of the migrants in the various parts of the West. Between 1810 and 1820, for instance, Ohio had increased in population 151.9 per cent. and Tennessee only 61.5 per cent. For every 319 people who sought homes in Illinois during that period, only 87 had settled in Mississippi. The two States had been admitted almost simultaneously and had equal attractions. Why should the one gain more population and have more political strength than the other? Although statistics for the sparsely populated territories were not so available, there was no doubt that the Northern section everywhere was being settled more rapidly than the Southern.

Under such conditions, the maintenance of the senatorial balance of States between the sections would be impossible. Portions of a Northern territory would be applying for admission before population had reached the required number in any Southern part. An additional alarm was felt because every Northern State admitted thus far, having been formed out of the Northwest Territory, had incorporated in its constitution the provision of the Ordinance of 1787 that "neither slavery nor involuntary servitude, otherwise than in the punishment of crimes," should ever be permitted. That kept the door of the Northern States closed against the Southern slavery system. Although such action might be held as mandatory on every State created out of the Northwest Territory, it could not be so held in States made out of the Louisiana Purchase.

Indeed, the treaty of 1803 promised the inhabitants "the free enjoyment of their liberty; property, and religion." So strongly was the Southern element entrenched in national affairs, and so slightly had the ethical views of the Pennsylvania Friends affected the country at large, that the word "property" was tacitly allowed to cover slaves. Louisiana, the first trans-Mississippi State, was admitted with a constitution not prohibiting, and hence permitting slavery. The act changing the Territory of Louisiana, which covered the remainder of the Louisiana Purchase, into the Missouri Territory, passed at the same time, left the Territory open to slavery in the same manner. Slaves could be legally held on the west of the Mississippi as far north as Canada.

This Territory of Missouri, extending from the southern boundary of the State of Arkansas to the Canadian line, received its share of Western migrants. It embraced the heart of the continent. It extended indefinitely up the Missouri River and the Yellowstone, where its traders and trappers came into competition with the outposts of the Hudson Bay and the Northwest fur-trading companies, under the protection of a vast system of British troops and outposts. Still farther to the north-west the Americans found the Russian Company, under protection of its Government, taking furs presumably from the Louisiana country to supply Euro-Asia. It is no wonder that American traders began to demand similar protection from their Government. Other industries arising from the rapidly increasing population also demanded attention.

When the United States took possession of the Louisiana country, the upper portion contained probably not more than six thousand inhabitants, about one thousand being slaves. In 1810, it had twenty thousand. A decade later, as the Territory of Missouri, it had grown to four times that number and was ready for division and statehood. A petition reached Congress in 1819, setting forth its claims. It was understood that the new State would centre about St. Louis, a thriving city of ten thousand inhabitants, situated just below the mouth of the Missouri, and that both the Northern and Southern extremes of the vast territory would be cut off. To make a proper line of demarcation, the Kentucky-Tennessee boundary of thirty-six degrees and thirty minutes was extended across the Mississippi; and the "Arkansas country," which lay to the south of it, was erected into a separate territory and given that name. A northern boundary for the proposed state was projected westwardly from near the mouth of the Des Moines River.

An attempt was made by a few radicals to apply the anti-slavery clause from the Northwest Territory Ordinance of 1787 to the Territory of Arkansas; but it would so manifestly destroy the balance between the sections that the project was abandoned. In time Arkansas would become a slave State. It was presumed by many Northern statesmen that the boundary line between Arkansas and Missouri would thus be accepted as a continuation of the line between the two sections, which had been extended across the continent with the movement of the people. It was begun when Pennsylvania and all States north adopted some form of emancipation for their slaves, and neither Maryland nor any State south thought best to do so. Hence the boundary line between the two States, run by the geographers, Mason and Dixon, in early days, became the first sectional line. The Ohio River was made a prolongation of the unfortunate line through the ordinance creating the Northwest Territory, which forbade slavery north of the river, and the ordinance, for the South-western Territory, which forbade interference with slavery south of the river. The westward movement of population now made it necessary to extend the line across the Louisiana Purchase.

It had been impossible to decide the slavery question when the Territory of Missouri was created, as was done for the land north of the Ohio, because it extended over so many degrees of latitude, covering land both favourable and hostile by climate to the system. It was thought that about one-fifth of the population was composed of slaves in 1820; but they were mostly in Arkansas Territory. From a geographical standpoint, the southern boundary of the proposed State was within half a degree of being a direct continuation of the Ohio River at its mouth. It seemed to the Northern people a most reasonable line to establish between the sections. But the Ohio pursues a south-west instead of a due west course. By following it, the South had lost two and a half degrees of territory. The Mason and Dixon line is about thirty-nine degrees and thirty minutes north latitude, while the mouth of the Ohio is at thirty-seven degrees. By extending the interstate

boundary line nearest the mouth—viz., that between Kentucky and Tennessee at thirty-six degrees and thirty minutes—the slavery section would lose a strip across the Louisiana Purchase as wide as the State of Kentucky at its greatest width. Thus even the natural features of the continent seemed to cry out against drawing sectional lines for a united people. For this reason the Southern element demanded that the continuation of the line between slavery and free soil should be drawn along the northern boundary of the proposed State, which was about one degree north of the old Mason and Dixon line.

The balance of power between the sections in the Senate, which had been maintained without difficulty thus far, was seriously threatened by this Missouri question. At the beginning of the Constitutional Union seven States were clearly destined by their climate and occupation for free labour, leaving six for slave labour. The latter thus lacked two senatorial votes of equalling the North from the beginning. The admission of Vermont and Kentucky, a Northern and a Southern State, maintained the ratio. It was continued farther by the admission of Tennessee and Ohio, Louisiana and Indiana, Mississippi and Illinois.

This balance had been thus far an accident, depending upon the time when a portion of land had sufficient population for statehood; but it had become such a tacit understanding, that the admission of Alabama in 1819, it was said, made the sections exactly equal in the number of Senators. At almost the same time Missouri and Maine were ready.

The latter because of climate must undoubtedly be admitted as a free State. The former must be given to slavery if the balance between the two sections was to be maintained. But the extension of the line of thirty-six thirty would make Missouri a free State. The location of States heretofore admitted had been so indisputably upon the one side or the other of the slavery-freedom line that uncertainty was impossible. Missouri, as has been shown, lay right athwart the extension.

There had been comparatively little anti-slavery agitation thus far, being confined to attacks upon the slave trade and an occasional petition from the Friends; yet the sentiment that slavery was an economic evil was firmly established in the overstocked border slave States, and that it was both an economic and moral evil was believed by a growing number in the Northern States. The "Lower South," or Gulf States, were thus left as the guardians of a system which the increasing cultivation of cotton in that region made unusually profitable and, as they thought, indispensable. Missouri lay far to the north of them, but the maintenance of political power in the Union was essential to their future if they read aright the growing hostile sentiment of the North. Immediate or gradual emancipation had been provided by every old State in the North, and slavery had been prohibited by the constitutions of the new Northern States. Feeling the approval of a good conscience, it was probable that the North would eventually demand a kindred movement in the South. There is no reformer likely to be so intolerant as the one who has left off what he considers a bad habit.

The slavery system had been so thoroughly rooted in colonial times and so freely recognised and protected in the Constitution, that few as yet contemplated interfering with it in any State where it already existed. Home rule and individual rights were too sacred for that.

Majority rule had not yet made sufficient headway against individualism.

But the Union had a kind of prenatal control which it could exercise over States created from Territories. Here was an opportunity to exercise it. An early attempt was made in Congress on the part of those hostile to the extension of slavery to make Missouri a free State by prohibiting "the further introduction of slavery or involuntary servitude." It was met by a counter amendment from the pro-slavery people jointly admitting Maine and Missouri with no such restrictions.

This would evidently throw Missouri open to slavery.

The ensuing debates in Congress, covering parts of two sessions, opened all the sectional dissensions, showed how weak were the ties of unionism thus far developed, cut sharp lines across political parties, and shifted the old East and West sectional danger to North and South. The phrase "Mason and Dixon line" was used to express the sectional demarcation, transformed to that use, it is said, by John Randolph.

Recrimination and abuse were common. Northern speakers drew insulting comparisons between the population, wealth, and prosperity of the free and slave States. They attributed the difference to the blight of slavery. Southern speakers explained that slavery was a thing of which a non-resident could not judge properly; that what appeared to an outsider as a lack of prosperity was the enjoyment of life by a people not devoted to the sordid aspects of existence; that slavery was a matter for home rule and did not concern the other half of the Union.

The Northern contingent replied that slavery was a menace to free labour and that their devotion to all parts of the Union, as well as their right of self-preservation, warranted their interference. Then the Southern speakers taunted them with Shays's Rebellion, the whiskey insurrection, and the Hartford Convention, as proofs of their devotion to the Union. The people of New York were reproached with wishing to deprive Southern people of their slave property, although they themselves still held more than ten thousand slaves and held them under protection of the State laws. One Southern speaker came very near the truth when he predicted that the census for 1820 would show fully twenty thousand slaves

still held in bondage in the Northern States.

A long discussion arose over the number of troops each section had furnished to the Revolutionary War and upon the number of distinguished men bred in each section. The Bible was quoted freely to attack or defend human bondage. Resolutions of State Legislatures added their weight to either side. Some debaters in Congress deplored the "poisoning of the national affection," seeing in it the revival of the sectional envy and dislike dormant for the past thirty years. Other hot-blooded speakers declared that this contest could be ended only by bloodshed.

Looking beneath the unfortunate sectionalism, which was to retard the growth of the Union for the coming half-century, one sees that the people faced a new question: had the United States a right to place an anti-slavery restriction on a sovereign State at the time of creating it from a Territory? The answer would greatly affect the relation of the States to the Union. Few States had been admitted without some conditions, such as the non-taxation of public lands and the perpetual freedom of navigable waters; but those were of national importance and different from slavery, which was claimed to be of local concern. In admitting Ohio, Indiana, and Illinois, formed from the Northwest Territory, Congress had provided that their constitutions should not be repugnant to the Ordinance of 1787. That this did not mean a rigid adherence to the anti-slavery provision was shown by the admission of Illinois in 1818 with an apprentice system, which made slavery possible in that State for twenty-two years to come. A motion to reject the application of Illinois on this ground was overwhelmingly defeated. The States of Kentucky, Tennessee, Mississippi, and Alabama, had been created out of the indefinite territory south of the Ohio River in which Congress had pledged itself to make no law emancipating slaves. No slavery conditions were placed upon their admission, which was considered equivalent to an agreement that they were to be slave States. Louisiana was created out of the Louisiana Purchase and Arkansas made into a Territory with the same tacit permission, as has been said.

Precedent consequently taught everything and nothing so far as Missouri was concerned.

The obligations of the Union toward a State were freely discussed; whether "new states may be admitted by the Congress" meant "must" be admitted. On a small scale the discussion rehearsed the Hayne-Webster debate a decade later. Occasional pleas were heard for "the old Republican doctrine which limited the general government to the expressed powers and prevented it from encroaching on the young states or on the free movement of personal property." Various phrases in the Constitution were quoted both to prove and disprove the power of Congress to prohibit slavery in a new State. "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," it was claimed, would permit the migration of slaveholders to Missouri with their property. "The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to 1808," was said to permit, conversely, such prohibition after that date. The other side claimed that the clause was intended to refer solely to slaves imported into the United States and not to interstate migration. Under the clause that the Congress shall guarantee a republican form of government to every State, the Declaration of Independence was quoted to prove that freedom is the natural condition of a republic and that slaves were held only pending their emancipation.

Such sentiments drew a sharp rebuke from the opposing side. Slaves might even then be in the gallery, it was said, to overhear such revolutionary doctrine.

So persistent were members in hunting up and interpreting various phrases of the Constitution, each to suit his own views, that one disgusted Republican protested against "a species of special pleading which hunts for powers in words and sentences taken here and there from the instrument and patched together forming something like a pretext for the exercise of power palpably interdicted by the plain sense and intention of the instrument." The cry of "home rule" for the State of Missouri on the slavery question was the forerunner of "squatter sovereignty" two decades later. Calhoun's later plea that any citizen had the right to migrate to any part of the cooperative public lands and to carry with him all his property found a first hearing in this debate on the admission of Missouri.

The equilibrium maintained so carefully in the Senate had long since disappeared in the House because of the varying distribution of population. Of the 180 members who considered the Missouri question in the more popular branch, 104 came from the free States and only 76

from the slave States. The vote of 87 to 76 by which the House finally forbade slavery in the new State was indicative to some extent of this proportion, although party lines influenced a few votes. Virginia stood solidly for slavery, and New York, with one exception, against it. Of the nineteen votes from Pennsylvania, only one was cast for slavery in Missouri. Massachusetts was almost as unanimous. North and South Carolina, Georgia and Mississippi, the future champions of the system, unanimously opposed placing such restriction on the new State. The Senate, more nearly balanced, refused to agree with the restrictive vote of the House. A counter-measure was proposed by the Southern interests to admit Maine and Missouri jointly, allowing home rule to each on the slavery question. The majority in the House opposed this method of evidently opening the new State to slavery. A deadlock between the two branches was imminent.

Meanwhile a bill had appeared in the Senate to draw the dividing-line between slavery and freedom across the Louisiana

Purchase along thirty-six degrees and thirty minutes north latitude, a continuation of the Kentucky-Tennessee boundary. This would make Missouri a free State. Considering the triangular shape of the purchase, with the bulk of land lying to the north of the proposed line, the division was manifestly unequal. Roughly estimated, the proportions would be about one to seven. That would mean in time fourteen Northern and two Southern Senators. It would mean seven times the chances of population for representation in the House. At last, Henry Clay, Speaker of the House, who had favoured slavery in Missouri, was able to effect a compromise whereby thirty-six degrees and thirty minutes was accepted as the dividing-line; but the State of Missouri, which lay to the north of it, was made an exception and admitted without any restriction and, consequently, open to slavery. In all the remainder of the vast tract north of the line slavery was forbidden, as it had been in the Northwest Territory.

This extension of the slavery-freedom line ran up the Mississippi from the mouth of the Ohio, passed about the State of Missouri, returned to her southern boundary, and ran thence to the summit of the Rocky Mountains. There were now twelve free and twelve slave States in the Union. The South had gained her point in throwing Missouri open to slavery and so maintaining the balance of power in the Senate. But she had paid a heavy penalty for it. That she would remain content with this unequal distribution; that the next generation would abide by the compromise when new States were created; that the free migration of the people with their property could be checked by a parallel of latitude; that the question of territorial slavery had been settled by a drawn battle, few could hope or expect.

This dissension over the simple matter of admitting a State to the Union was a temporary check to the national feeling engendered by the War of 1812. The spectre of sectionalism was disclosed at the banquet table. Jefferson compared it to an alarm-bell in the night, when writing from Monticello to John Adams. "The Missouri question," replied the retired statesman of Braintree, "I hope, will follow the other waves under the ship and do no harm." Yet he appreciated the dangers of sectionalism under unscrupulous leaders. "I am Cassandra enough to dream," he added, "that another Hamilton, another Burr, might rend this mighty fabric in twain ... and a few more choice spirits of the same stamp might produce as many nations in North America as there are in Europe." The third ex-President, Madison, deplored the "angry and unfortunate discussion" about Missouri. "Should a state of parties arise," he said, "founded on geographical boundaries and other physical and permanent distinctions which happen to coincide with them, what is to control those great repulsive masses from awful shocks against each other?" Time alone was needed to bring a sad answer to the inquiry.

CHAPTER XIX

ANNOUNCEMENT OF NATIONAL INDIVIDUALITY

The rebirth of nationalism, which followed the War of 1812 in the New World, was likely sooner or later to come into conflict with the rebirth of monarchy, which followed the Napoleonic wars in the Old World. The restoration of the European monarchs had been witnessed by the American people with a mingling of indignation and despair. Daily the conviction grew that free government must find a home in America if it survived.

American self-government and a free people were arrayed in popular thought against European monarchy and nobility. Commenting on the accumulated wealth of the British nobility, an American editor said: "Thanks be to Heaven! we have probably not one man in the United States whose settled income is equal to a half of the least of these. But in lieu of such great estates, we have a pleasing contrast to offer in the vast majority we possess of persons who earn or receive from \$1,000

to \$1,500 a year, and who are the bone and sinew of our country and the natural republicans of every clime." American newspapers lost no opportunity of ridiculing European royalty. The cost of maintaining the nobility was dwelt upon as a burden on the people. The attempt of George IV. to divorce his Queen furnished a text for many republican sermons. The coronation of the King in his "holy" and "sacred" vestments was declared to be ridiculous. "We plain republicans," said one writer, "cannot understand how there could be anything more like sacrilege in stealing that mantle than in stealing a sheep."

The Church was prominent in all phases of the restoration of legitimacy in Europe—a connection incomprehensible in America, where Church and State had been completely severed in the course of the political revolution. Disestablishment by statute in Virginia had been followed by similar action in all States where the Established Church held.

Local constitutions as formed by the States guaranteed not toleration, but absolute religious freedom. The first amendment to the Constitution of the United States made this freedom national. The Ordinance for the Northwest Territory extended it to States yet unborn. Washington, as President, gave assurance of non-interference in the replies which he framed to addresses from the leading sects. Indeed, it is difficult to imagine how a State church could have been maintained in the rapid shifting of the Chief Executive. President Washington was an Episcopalian, President Adams a Congregationalist, and President Jefferson a free-thinker, or Unitarian of later times. So thoroughly had Church and State been divorced in America that some suspicion was aroused over a manifesto signed at St. Petersburg, on "the day of the birth of our Saviour," 1816, by the monarchs of Austria, Russia, and Prussia. It announced that "in conformity with the words of the Holy Scripture, which commands all men to regard one another as brethren,"

the three agreed to lend each other assistance, aid, and support, and to govern their subjects in "a spirit of fraternity for the protection of religion, peace and justice." The exhortation of these monarchs to their people to fortify themselves in the principles of the Saviour, no less than the confession that they themselves ruled only by a delegation of power from Christ, was regarded by the Protestant Americans as religious cant. The power behind the throne was more likely force of arms. The provision that other nations professing these principles should be "received with as much readiness as affection in this holy alliance" was regarded as a bid and possible conspiracy for the extension of legitimacy not alone to Europe, but to the colonial holdings as well.

The United States, although sneering at the legitimacy of European monarchs and disappointed in seeing their high hopes in the French Revolution brought to such a defeat, had no vital interest in any restoration save within the Spanish colonies in America, which had revolted under Napoleonic interference. British Canada had made no attempt at revolution and France had no possessions on the American Continent. The United States had watched eagerly and sympathetically the spread of revolutionary principles from colony to colony in the Spanish-American possessions, and the resulting institution of self-government. Orators vied with each other in picturing the spread of freedom in the New World. Statesmen drew up constitutions for the new republics. Clay was given a vote of thanks by the Mexican Congress for his sentiments expressed for their welfare. Ministers had been sent to them as rapidly as they showed ability to govern themselves and to maintain a stable government. Should all this good work be undone and the hands turned backward on the dial of liberty by conspiring European monarchs? Should legitimacy cast its blight again on the New World as it had already done on the Old? Should the Holy Alliance be allowed to extend its monarchical compulsion to the Spanish-American republics under the sacred garb of religion?

Speculation was rife in both British and American newspapers concerning the objects of this holy league, or Holy Alliance, as it began to be called. To some it smacked of Inquisition days. To others it suggested a crusade on all republican principles. In the House of Commons Castlereagh explained that it contemplated no hostility to States outside

the Church and that it was couched in the mildest spirit of Christian toleration. He confessed that it was drawn up in an unusual manner, but that it nevertheless gave no grounds whatever for entertaining the slightest jealousy.

England had assisted in the restoration of monarchy. Would Protestant England join the Holy Alliance? Would the Alliance turn its attention to the Spanish-American republics after it had carried out its evident determination to replace Ferdinand on the Spanish throne? These were questions asked by the people of the United States. If Europe was to become the champion of monarchy and legitimacy, why should not America become the guardian of freedom and republicanism? Undoubtedly the tendency of Russia to creep quietly down the Pacific coast from her north-west possessions contributed to the conviction that the offices of the Holy Alliance could be called into service in that quarter also if necessary. It is just as true that the struggle for autonomy which the Greeks were instituting attracted sympathy in America and added to the conviction that a world struggle was imminent between monarchy and republicanism.

That destiny had marked the United States for an unparalleled career had been a common saying since the days of Patrick Henry. But that isolation from European entanglements was necessary to fulfil it was equally appreciated. Washington had expressed this conviction in his farewell address. Jefferson had been goaded into the wish that an ocean of fire separated the two hemispheres. Madison in 1811, fearing that Great Britain intended interfering in Florida affairs, questioned whether the United States should not announce that it could not see, "without serious inquietude," neighbouring territory pass from Spain to any other foreign power. "The provinces belonging to this hemisphere are our neighbors," said President Monroe in a special message to Congress in 1822. "The foothold which the nations of Europe had in either America is slipping from under them," wrote ex-President Jefferson to Monroe, "so that we shall soon be rid of their neighborhood." "The American continents are no longer subjects for any new European colonial establishments," said Secretary of State John Quincy Adams to the Russian Minister, in discussing the proper limits of Russian America on the north-west coast. The United States representative to England was authorised by Adams to announce the fact that the American continents would be no longer subject to European colonisation. Occupied by civilised, independent nations, they would be accessible to Europeans and to each other on that footing alone.

The United States "should therefore have a system of her own separate and apart from that of Europe," replied Jefferson to President Monroe, who had consulted him in the autumn of 1823 concerning the various topics to be treated in his annual message to Congress. "While the last is laboring to become the domicile of despotism, our endeavor should surely be to make our hemisphere that of freedom." He agreed upon the advisability of some public notice. "Its object is to introduce and establish the American system of keeping out of our land all foreign powers, of never permitting those of Europe to intermeddle with the affairs of our nation." Since such a stand might bring war, he advised Monroe to present the matter to Congress at the coming session in the shape of a declaration of principles.

These utterances of public men backed by the increasing feeling of nationality among the people assumed final shape in the announcement by Monroe in his seventh annual message to Congress, December, 1823, of the famous "doctrine" which bears his name. It strongly hinted that the United States would interpose against any European attempt to interfere with the freedom of the South American republics or to extend farther the monarchical system to the New World. At the same time, it denied any intention on the part of the United States of interfering with European affairs. It meant the future separation of the two hemispheres so far as control was concerned. The only exceptions at the time were England in Canada, Spain in the West Indies, and Russia on the north-west coast. It meant self-preservation for the present and proper precautions for the future.

The announcement created little comment at home. The people generally are not in touch with presidential messages unless some concrete case is involved. The Holy Alliance had taken as yet no overt action toward the New World. In Europe the announcement attracted more attention.

Before this time, it had been said in the British Commons that the Congress of Vienna should have seen to the balance of power in the New as well as the Old World. Another speaker had called attention to the fact that two German princes could not exchange meadows without attracting European attention in a congress, but that the United States was allowed to take any stand or acquire any territory in a vast continent. But British sentiment had now turned against the Holy Alliance, and the British press pronounced the Monroe doctrine "noble and firm, yet temperate and pacific." They contrasted its "manly plainness" with the Machiavellism and hypocrisy of the European manifestos. "Intervention in South American affairs," said one writer, "may now be considered as at rest. The United States would resist by war and no power is willing to affront both the United States and Great Britain." The French press belittled the announcement as the personal expression of "a temporary president of a republic only forty years old." It also called attention to the fact that this republic, which was so boldly proclaiming the severance of the Western world, was bounded on the north by the possessions of the king of England and on the south by those of the king of Spain—a pretty situation for the self-appointed protector of the two Americas!

The Monroe doctrine, or "policy" as it should be called, spoke the sentiment of nationality engendered by the late war and augmented until it had assumed the cry of "America for Americans!" The acquisition of Louisiana and the Floridas, the absence of political parties, and the appreciation of republican blessings were the prime causes. The announcement

marked the climax of unionism for the time. The sectional fears aroused by the slavery issue in Missouri three years before had been quieted by a compromise and were now forgotten in a national alliance against foreign menace. The announcement inaugurated a period of isolation for the United States, during which she could gain strength to meet her European rivals on equal ground instead of becoming a tool for them. Never again would she be caught in an entangling alliance such as that with France in 1778.

If American national feeling had diminished after the announcement, the doctrine of American individuality and of American destiny would have waned and disappeared. That the policy has been expanded until it covers nearly every phase of foreign relationship in the New World, that a simple announcement which grew out of a condition has been made into an expression of American paramount interest, that it has become a national fetich although unrecognised as a part of international law,—all this is a fresh indication of the steady growth of national sentiment and activity.

Just in the full flush of the announcement, a more zealous race with a more fiery temperament than the Americans might have gone too far.

The temptation was presented most attractively. The South Americans, the antipodals of the North Americans, saw in the Monroe announcement a protection from European interference. Several of the republics planned a congress at the central city of Panama, "to settle a general system of American policy in relation to Europe, leaving to each section of the country a perfect liberty of independent self-government." They hoped for a gathering of "the powers of America" to offset the powers of Europe. An alliance against an Alliance was the thought. Among the objects to be considered was "the manner in which all the colonization of European powers on the American continent shall be resisted, and their interference in the present contest between Spain and her former colonies prevented." Since this was simply a re-statement of the Monroe doctrine, it was presumed that the United States would take a leading part; but because the abolition of slavery was another point to be considered, the pro-slavery element in Congress overruled the wish of President Adams to take part in the meeting. It was also feared that a participation might involve the United States in the prevailing war between Spain and the South American republics.

The interesting but profitless field of speculation might be exhausted in imagining the result if the United States had thus linked herself to the Spanish Americas in an American alliance. The problem of securing the trade of those republics, which has occupied the attention of many statesmen since that day, might have yielded to this solution; but that any permanent alliance could have been made between peoples of antagonistic temperament and varying ideals of self-government is far from likely. Many times since then the growing American spirit has demanded that Uncle Sam should become the policeman of America; but the narrow escape in this instance from incurring such an undesirable task leads to the hope that it will never be assumed.

Leadership in the "let us alone" policy was taken by the United States as the result of her geographic isolation, as well as her centrality of location. She was nearest to the new republics and had most to lose.

Eliminating Canada as a British possession and Brazil with an enervating climate and Latin leadership, the United States was the only power whose size and resources entitled her to speak with authority on the question of European interference. The Monroe doctrine was primarily intracontinental and for immediate self-preservation; secondarily it was extracontinental and for ultimate self-preservation. England, the only European New World power remaining of the six whose discoveries originally entitled them to that distinction, was equally interested in the preservation of Canada and the freedom of trade which the independence of the Spanish-American republics made possible. She rejected the Holy Alliance to support the Monroe doctrine. Without British cooperation it is doubtful whether the stand could have been maintained and the Holy Alliance held in check. This cooperation brought about a speedy *rapprochement* between the two recent enemies. It was hastened by the diplomatic skill of Gallatin in arranging for a joint occupation of the region west of the Rocky Mountains commonly known as the Oregon country. By the treaties of 1818 and 1827, final decision was delayed until increasing population should aid in deciding ownership.

Nationality had been breeding constantly in directions aside from foreign policy, protective tariffs, and internal improvements. A literary independence was manifesting itself, although in a crude form.

The sneers of Britain that the Americans were dependent upon Europe for their literature, although indignantly denied, were largely true.

American publishers had been long accustomed to reprint English works, upon which, in the absence of an international copyright law, they paid no royalties. Byron, Wordsworth, Scott, Coleridge, Keats, Moore, Hallam, Maria Edgeworth, and Miss Austen were made available to American readers in this way. In any parlour a young woman would be found who could sing *Bonnie Doon* or recite from *The Lady of the Lake*. A review of *Don Juan* appeared in a magazine published in central Kentucky within six weeks after it was first printed in England.

Democracy and nature were the subjects mostly adopted by these English writers, and they appealed quite naturally to New World readers. As Lowell, at a later time, said of the Americans of this period: "They stole Englishmen's books and

thought Englishmen's thoughts;

With English salt on her tail, our wild Eagle was caught."

[Illustration: WASHINGTON IRVING. From the etching by Jacques Reich.]

So dependent were the States, that a publisher who dared to bring out a native work did so at a financial peril. The first edition of Trumbull's *Poems* lost one thousand dollars. Morse's Geography, text-books, and the classics were the only remunerative publications.

But soon after the War of 1812, evidences of a change were manifest.

The attention of American writers heretofore had been occupied largely with the rights of man and other political theories borrowed from the Old World. Democracy had now adjusted itself to the conditions of the New World and had become practical. Wild-eyed theory had given way to plain fact. Economic questions, begotten of the new domestic conditions, were beginning to occupy public attention. Abstract political rights became secondary to the price and production of cotton, the encouragement of manufactures, the invention of machinery, means of transportation, the employment of emigrants, and the economic value of the slavery system. In 1819, Irving refused a remunerative offer to contribute to the *London Quarterly*, because it had been unremitting in its abuse of his countrymen. He preferred to patronise a home publication.

This declaration of literary independence was indicative of the times.

Between the close of the war and the end of Jackson's second administration, probably one hundred and fifty periodicals, entirely separate from the newspapers, were established in the United States.

About one-third of them was of a religious character, and as many more devoted to some kind of philanthropic purpose, like temperance, African colonisation, and missionary work. Their nature may be indicated by such titles as *The New York Mirror*, *The Casket*, *The Evangelical Guardian*, *The Portico*, *The Lady Book*, *The Boston Pearl*, *The Cincinnati Mirror*, and *The Family Lyceum*. Many of these lived only a year or two, yet they show a desire among the people for a native literature, however crude and sentimental it might be. During this period also came the evanescent "Annual," a species of vapid literature borrowed from Germany through England. Upon the centre-table, near the case of stuffed birds, you could find *The Token* or *The Pearl*.

Perhaps the giver had preferred *The Casket* or *The Western Souvenir*.

Symptoms of a more advanced regard were denoted by the choice of the Remember Me.

The largest number of these ephemeral periodicals appeared in New York, and the next largest in Philadelphia. Boston ranked third. Philadelphia, the home of Franklin, of Hopkinson, and of Rittenhouse, had been the literary head of America before the War of 1812. So long as the Ohio River remained the natural highway to the West, her literary products found a market which no competitor could take away. But with the development of other ways, and especially with the opening of the Erie Canal, New York and Boston gradually won these laurels from her.

Indeed, the West began to supply its own wants. Of these transitory publications, no less than seventeen were established west of the Alleghenies. As early as 1803, a literary magazine had been founded at Lexington, Kentucky, the seat of the Transylvania University and the centre of culture for the Ohio valley. Even villages aspired to be "the Athens of the West." Mt. Pleasant and Oxford in the State of Ohio vied with Rogersville, Tennessee, and Vandalia, Illinois, in establishing literary magazines and fostering literary pursuits.

All this marks simply a stage in the development of American literature, as it shows a step in the growth of American nationality. Permanent literature awaited better printing facilities, larger patronage of letters, improved postal accommodations, the growth of cities, and more leisure and more refinement. Prophecies of a true national awakening are to be sought not alone in the Monroe doctrine, the tariff and bank issues, and the spread of internal improvements,—political events which commonly eclipse the intellectual aspects of nationality; but also in the Unitarian revolt of 1815, led by Channing, which loosed New England from the stiffening bonds of Calvinism, the Quaker schism in the Middle States, and the birth of the Campbellites in the West.

The goodness of man was beginning to attract more attention than the total depravity of man. The *North American Review* was founded in 1815. Four years later, Irving published the *Sketch-Book*. Bryant's first volume of poems, treating generally of local themes, appeared in 1820. During the ensuing ten years Cooper gave out eleven novels, the scenes of which were laid almost exclusively in America. Only the world-reform movement of 1830 was needed to develop fully an American literature.

Although not so immediately connected with the people, this story must not lose sight of another function of the

government of the States which was steadily making for their unification. The Federal Judiciary, the one branch of the national frame which the Republicans in their twenty years of national control had not been able to curb or get possession of, was following the bias which John Marshall's first decisions gave to it. Abuses in the Legislative and Executive branches could be corrected by an appeal to the ballot. Substantial proof of the efficacy of this corrective was to be found in the Alien and Sedition laws, according to the Republicans. They claimed to have appealed to the people in the Virginia and Kentucky Resolutions, and the people had cast the offending party from power. But the Judiciary was entrenched in life tenure and not susceptible to this remedy. It was a constant regret to Jefferson to the end of his life that the corrective measures taken by him and his party against the national courts had not included an amendment changing the life tenure of the judges to a definite period of years. The idea of a permanent Judiciary had been one of the results of the political struggle with Great Britain preceding the Revolution. Jefferson also regretted that no one in the Convention of 1787 had thought of changing the vote necessary for removing a judge by impeachment from two-thirds to a majority.

Year after year, during the Republican administrations, the national Judiciary had been quietly shoring up by its decisions the fabric of the Union, as fate compelled the Jeffersonians to erect it. The "formative decisions" of John Marshall, during his thirty-four years on the Supreme bench, maintained constantly the rights of the Federal courts and added to the prerogatives of the Central Government against the States. Scarcely a decision favoured the reserved rights theory.

By the opinion in *Marbury vs. Madison*, already quoted, the Executive branch, presumably entirely divorced from the Judiciary, was found to be under a certain control. The case of *Cohens vs. Virginia* sustained the power of the Federal court over an appeal from a State court. It often happened that in a decision, as in the case of *Insurance Company vs. Canter*, Marshall took occasion to bring out deductions remotely germane to the pending case, but tending to broaden the scope of the Federal power. In this instance, he declared that the constitutional power to make a treaty carried the implied power to acquire territory.

This really gave authority to unauthorised acts of the Republicans in purchasing Louisiana; but their remedy was an amendment and not a decision which made the legislative and executive powers still more dependent upon the judiciary.

Jefferson complained of these "obiter dissertations," which suggested consolidating actions to other parts of the Federal Government. In the trial of Aaron Burr for treason, Justice Marshall held that, according to the Constitution, some overt act was necessary to constitute treason.

This practical release of his former political opponent was to Jefferson as sore a grievance as Marshall's action in sending to him for certain papers connected with the case. He declared the latter act a presumptuous infringement upon the dignity of the Chief Executive.

The case of *McCulloch vs. Maryland*, in 1819, denying the right of a State to tax a branch of the United States bank, afforded the court an opportunity of dwelling upon the implied powers in the Constitution and of giving judicial sanction to the various legislative acts already done under them. To charter a bank was not among the powers given to the National Government, but was "implied," as Marshall held. The decision gave great offence to the particularists and called general attention to this silent Union-making factor. Various Southern writers took up pens against this new menace to individual rights. Some State Legislatures adopted protests. Madison alluded sarcastically to the "projectile capacity" of the court, whereby it extended the power of Congress from the exclusive jurisdiction reserve of ten miles square constituting the District, even to the uttermost parts of the country.

The "twistifications" of Marshall, said Jefferson, showed how dexterously he could reconcile law to his personal biases. Indeed, Jefferson confessed that he did not look for unbiassed opinions between the National Government, of which the court was so eminent a part, and individual States, from which they had nothing to fear. "They are then in fact the corps of sappers and miners," said he, "steadily working to undermine the independent rights of the States, and to consolidate all powers in the hands of that Government in which they have so important a freehold estate." He could see no hope for the future.

Even more would he have despaired if he could have known that this silent factor in making the Union was to continue until the eighty years of John Marshall's life were ended, before a strict constructionist could be appointed to the head of the court and bring its decisions back to the confines of individualism.

[Illustration: JOHN MARSHALL Chief Justice of the United States, 1801-1836.]

CHAPTER XX

FULL FRUITS OF AMERICANISM

It is simply a deduction from facts given in the preceding pages to say that by 1825 the trans-Alleghenian region had come into its own.

It was sufficient to itself in population, resources, and leadership.

The premiership of the Atlantic plain had passed. Foreign relations were secondary to domestic concerns. The Monroe doctrine was called out by foreign menace. It was voiced by Eastern statesmen; but it was based upon the support of the inland people, who had nerved the Administration to the War of 1812.

The fidelity of the Western people was no longer questioned. The Union cherished their interests and they supported the Union. Their dealings were almost exclusively with the Federal Government and not with the States. The public land, from which their homes had been secured and their States largely formed, was administered by the central power and entirely for their accommodation. The land policy of the Government was unselfish to a marked degree.

The original two million acres of public lands sold to the Ohio Company was reduced to less than a million. Soon after, another million was sold to John Cleves Symmes, of New Jersey, on a speculation, of which about one-fourth was eventually taken. The State of Pennsylvania purchased the "Erie triangle," in order to get a north-west frontage on Lake Erie. These three sales were accomplished under the Confederation. The price averaged about seventy-five cents an acre.

The care of the public lands had been given to the Treasury Department.

Hamilton, in 1790, presented to Congress an elaborate plan for their disposal. Under this plan, individuals were to be dealt with as well as companies. Lots of one square mile, containing 640 acres, were to be placed upon sale at two dollars per acre. Public offerings were to be made at Cincinnati, Pittsburg, and Philadelphia. But the hostility of the Indians reduced the number of purchasers. Prior to 1800, only a million acres had been disposed of in this manner. A law of that year provided a system of registers and receivers, to be stationed at land offices scattered through the Northwest Territory. A credit system was also established, whereby so small a portion as a half-section could be purchased on instalment payments, with interest at six per cent. This law made the lands very attractive, as credit propositions always are. Prospective landholders rushed across the mountains and stood in line before the register's doors. The saying, "Doing a land-office business," brings the scene to the imagination.

As the embargo and the War of 1812 cut off men from employment on the sea and along the coast, their attention was directed to the possibilities of the public lands. Between 1800 and 1820, nearly twenty million acres were sold, bringing in cash receipts of over forty-five million dollars. After 1806, the old certificates and other forms of government paper were no longer received in payment for lands. The credit system had been adopted to allow poor men to purchase farms and pay for them from the products of the land. But it tempted many to purchase more land than they could pay for. In order to relieve these creditors, Congress passed no less than fourteen acts. One of these reduced the price for future purchasers to \$1.25 an acre and made it possible to purchase so small a quantity as eighty acres. This clemency brought further demands and paved the way for the later pre-emption acts.

The Ordinance of 1787 had declared that schools and the means of education should be for ever encouraged, while the Land Ordinance of 1785 provided funds by setting aside a section of land in every township of the public domain. Endowments had also been made for religious purposes from the Ohio Company lands and from the Symmes purchase; but the practice was discontinued thereafter, probably owing to the difficulty of administering the land without recognising some sect.

After much discussion, Congress decided not to retain the management of the school lands, but to hand them over to the inhabitants of the township, the State acting as trustee. This provision was incorporated in the formative act of every State and Territory until the organisation of the Oregon Territory. It was a tribute to home rule. Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, and Louisiana were the States benefited in this way before 1825. The States which contained no public lands were obviously deprived of this resource. The income from the school lands has been small in each State compared with the sum raised by local taxation for educational purposes; but the gratitude inuring to the Central Government for its charity toward what has become almost a fetich, free education, must be noticed in describing the unification of the American people.

Mention has been made of the share of land sale receipts under which the Cumberland Road was begun. The original purpose was to cross the watershed from the Potomac to the Ohio. In 1820, the great work was completed to Wheeling, on the Ohio. Three waggons could be drawn abreast over the greater part of its length. Solid stone bridges arched the watercourses. The well-paved surface greatly reduced the length of time required for carrying the mails across the mountains. Rapid stage lines and freight waggons of large capacity passed to and fro. Drove of cattle and hogs were frequently met, passing over it to an Eastern market. More than \$1,800,000 had already been spent by the National Government on its construction, being "advanced" in anticipation of the land sales.

Here the hand of compulsion showed itself. The States of Indiana, Illinois, and Missouri, with whom bargains had been made for spending part of the proceeds of the land sales in building roads to their borders, complained that a road to the Ohio did not fulfill the contract. Hence the road was extended through the capitals of these States, committing the Federal Government for many years to come to one form at least of internal improvement. The farce of "advancing"

the money was continued a while longer.

Of the four great highways over the Allegheny watershed, contemplated by Gallatin in his report in 1808, the Cumberland Road was the only one realised. No excuse similar to the one under which it was begun ever presented itself, and the party vision was not sufficiently national to undertake public improvements unless in disguise. The strict-construction theory that these works should be built by the individual States threw upon the newer States a burden which they could ill afford to bear. The West was almost ready to revolt against the hidebound policy of the Administrations.

Individualism was characteristic of the Southern States as a whole, but this improvement question broke the ranks of individualism by allying the newer Southern States with the newer Northern States for the benefits of national paternalism. To illustrate: a proposition in 1824 to employ the army engineers in making surveys for roads and canals passed the House without a negative vote from Ohio, Indiana, Illinois, Kentucky, Tennessee, Missouri, Louisiana, or Alabama. Of the older States, Maryland and Pennsylvania, interested in opening up the western parts of their respective domains in this manner, joined themselves to the Western States and made possible the passage of the bill. Different speakers deplored this tendency to arouse sectional animosities; to array the older States, which had made such improvements from their own resources, against the new States, which would presumably be the sole gainers by government aid.

Clay was the leader of the Western section. He saw in the situation possibilities of building up a great following for this American idea.

He declared that the power of Congress to control commerce meant inland as well as ocean commerce; that the construction of harbours upon the Great Lakes was as much a duty as the building of harbours along the seacoast; that dredging a Western river was as constitutional as clearing an ocean channel. He once said that to make a distinction between these two kinds of commerce would require an analysis of the water for each appropriation; if salt, the measure was constitutional; if fresh water, unconstitutional.

"Two years ago," said he, in pleading for a system of canals for the western people, "a sea wall, in other words, a marine canal, was authorized by an act of Congress in New Hampshire, and I doubt not that many voted for it who have now constitutional scruples on this bill.

Yes, everything may be done for foreign commerce; anything, everything, on the margin of the ocean. But nothing for domestic trade; nothing for the great interior of the country."

With his growing Western following, Clay was becoming a thorn in the side of strict construction. He refused to be bound by theories which had held at the beginning of the national history. "A new world," said he, "has come into being since the Constitution was adopted. Are the narrow, limited necessities of the old thirteen States, indeed, of parts only of the old thirteen States as they existed at foundation of the Constitution, for ever to remain a rule of its interpretation?"

He had little patience with the Republican theory of adding amendments to the Constitution to bestow the implied powers. "Man and his language," said he, "are both defective. We cannot foresee and provide specifically for all contingencies. If you amend the constitution a thousand times, the same imperfection of our nature and our language will attend our new words."

Jefferson complained that Clay had banded the Western and Northern States together under his banner of national benefits. "The Western States," said he, "have especially been bribed by local considerations to abandon their ancient brethren and enlist under banners alien to them in principle and interest." So rapidly did the demand for paternalistic measures take possession of the people, that Monroe felt called upon to re-state the early principles of the party, as Madison had done a few years before. The former dependencies of the National Government bade fair to overthrow parental policies. The Cumberland Road was a bright and shining mark. Appropriations for it could not be stopped without a confession of inconsistency if not a revolt of the people. But in 1822 a bill passed both Houses of Congress to

collect tolls on the road for its repair. Monroe vetoed the bill and presented a long exposition of the Republican policy toward public improvements.

It was the most exhaustive document written on this persistent Union-making factor. Monroe found a beginning of the reserved power of the States in the Colonial governments which reserved all powers not expressly given to the king. The colonies kept those rights when transforming themselves into States. When creating the Articles of Confederation, the States gave to them certain of these rights, carefully specified, and reserved all the rest. The same plan was followed in framing the Constitution.

"Had the people of the several States," said Monroe, "thought proper to incorporate themselves into one community, under one government, they might have done it. They wisely stopped, however, at a certain point, extending the incorporation to that point, making the national government thus far a consolidated government, and preserving the state governments without that limit perfectly sovereign and independent of the national government."

From an unprejudiced standpoint, this presentation of the historic facts in the case is difficult to answer. "There were two separate and independent governments," continued the President, "established over our union, one for local purposes over each state by the people of the state, the other for national purposes over all the states by the people of the United States."

He next proceeded to examine the six powers given to the National Government, which had been so distorted and incorrectly interpreted in justifying national expenditures for public improvements that, in his opinion, they threatened the very existence of the States. These six enumerated powers and their distortions may be summed up: 1. To establish post-roads; consequently to construct highways for commerce.

2. To declare war; consequently to provide means for moving troops and supplies. 3. To regulate commerce; consequently to improve rivers and build harbours for inland commerce. 4. To pay the debts and provide for the common defence and general welfare; consequently, to make appropriations for anything which would benefit the people and contribute to their defence or welfare. 5. To make all laws necessary and proper for carrying into effective execution the foregoing powers; consequently to extend the expressed powers to an unlimited degree by adding corollaries to them. 6. To dispose of and make all needful rules and regulations concerning the territory of the United States; consequently, to appropriate money for public improvements in them.

At the same time that he was attempting to prove that no general system of improvements was justified by any of these expressed powers, Monroe was demonstrating the absurdity of the policy of hesitation. The justice of a toll system no one questioned. Those who use an improvement should pay for its repair. A toll was sanctioned by generations of practice and was in use on many State and corporate turnpikes and bridges.

Monroe had travelled the National Road and had seen numerous evidences of the manner in which the highway was abused by the users and could fully appreciate the necessity for its protection and repair. Yet his conscientious scruples could not allow the agency which built the road to care for it properly by collecting money simply because it must be done inside the sacred precincts of some State. Neither would he admit that the States individually could give permission to collect a toll, although they could and did allow money from the national treasury to be spent within their limits in constructing the highway originally.

Into what a constitutional maze had strict construction, driven by the needs of the people, brought the Administration of the United States!

[Illustration: WESTERN END OF THE GREAT ERIE CANAL. Drawn with the Camera Lucida for Hall's "Etchings of the West." Niagara River appears in the distance and a lock in the canal nearer at hand. The lack of natural attractiveness in this scene is an illustration of the interest in internal improvements.]

A sufficient number of partisans were won by Monroe's exposition to change their votes and so prevent the passage of the measure over his veto. But the "toll-gate question" remained for several years to perplex statesmen and cause long debates, while Congress made appropriations directly for the repair of the Cumberland Road. Monroe had made public improvements the fruit of Tantalus to the hungry people by suggesting in his veto message that he would have no objection to such enterprises being undertaken by the National Government provided an amendment were added to the Constitution permitting such action. It was not a new suggestion. Jefferson, in various presidential messages, had suggested this way of meeting the demand for these paternalistic benefits. Madison twice at least followed his example. In the sessions of 1813 and the following year, two amendments were considered, one giving Congress power to make roads, and the other to make canals in any State, with the consent of the State; but no action followed. President Monroe, in his first message, called attention to the desirability of such an amendment and a week later a bill to that effect was introduced. It was unique in providing that appropriations were to be distributed among the States according to population, a prophecy of the Confederate States constitution decades later. No less than six attempts to secure such an amendment followed Monroe's "exposition" and suggestion. Not one succeeded in passing either House.

The failure to secure this constitutional remedy for the public improvement fever was a cause of anxiety to Jefferson in the closing days of his life. In 1824, an amendment of this kind was pending, together with others limiting the term of the Presidency and abolishing the electoral system. "If I can see these three great amendments prevail," said the aged statesman, "I shall consider it as a renewed extension of the time of the lease, shall live in more confidence, and die in more hope." He complained of the "irresistible torrent of general opinion"; thought national appropriations for constructing roads and canals such a breach of the national compact as would warrant withdrawal from it; and wrote out for the Virginia Legislature a protest, as he had done for Kentucky during the Alien and Sedition laws a quarter of a century before. He also drew a general law to be passed by all State Legislatures rendering legitimate all national money previously spent within the State. Its adoption would have been a singular confession of unconstitutional action. Several State Legislatures in the South resolved to protest. Their representatives in Congress were resisting national appropriations, while the Northern and Western States were getting the advantage of them. Thus did political theory supplement the work of nature in directing the larger portion of these appropriations to the northern part of the country. Years after, this unequal distribution was to constitute a Southern grievance.

This internal improvement contention, arraying the Eastern and Western States against each other, partly nullified the permanent sectionalism between the North and the South, and so made for unionism. Louisiana and Ohio, uniting for improvement appropriations, forgot their differences of opinion upon constitutional powers, upon home rule or nationalism, upon freedom or slavery. South Carolina and Massachusetts, joining hands to prevent these drains upon the treasury for public works far removed from their borders, forgot for the nonce their differences upon the question of a tariff. But all such affiliations and truces were only temporary. Sooner or later the combat was bound to be renewed between North and South, between peoples alienated by inheritance, temperament, and products.

Contemporaneous with the debate on national surveys for improvements, a spirited debate arose on the tariff. It soon showed an unfortunate tendency to North and South sectional lines, especially when compared with the post-war-tariff debate of eight years before. Protection in those intervening years had begun to assume a sectional aspect, although as yet only in a formative state. The Southern people had begun to realise that their slave labour was not applicable to factories, and that they must depend for their goods upon Europe and upon the Northern States. Under the theory that the consumer pays the duty, the burden was thought to fall equally upon all parts of the country, unless the duty should grow into a discrimination upon one kind of goods or those consumed exclusively in one section. Massachusetts was singular among Northern States, being opposed to this tariff measure of 1824 because of the high duty on canvas and other ship-building materials. Some Southern speakers thought that the duties on cheap dry goods used by their slaves rather discriminated against them. They pointed to the fact that New England manufacturers scarcely needed protective legislation, when the stock in their cotton mills was selling at sixty-five per cent. above par and was paying heavy dividends. This conviction grew steadily among certain Southern States for four years, until a change in the tariff schedule brought one of them to open revolt.

A comparison of the votes on the tariff measures of 1816 and 1824

exhibits this sectional tendency. In 1816, a protective tariff in the House gained sixty-three Northern votes to fourteen against it. Eight years later there were eighty-eight votes for a higher tariff and nineteen opposed to it. If it had not been for the duty on canvas, Massachusetts would have viewed the measure favourably and would have made the vote one hundred to seven. The North was evidently beginning to appreciate the value of protection. The Southern members in the House, in 1816, stood less than two to one as opposed to protection.

In 1824, they stood nearly four to one against the policy. The South was beginning to see that a tariff benefits the manufacturer of goods more than the producer of raw materials. The Senate shows this sectional bias even more clearly. The reversal of the vote of the Southern senators is particularly noticeable.

SENATE VOTES ON THE TARIFF MEASURES

1816 1824

Northern Senators *For*.....16.....19

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\Against.....2.....6

Southern Senators *For*.....9.....4

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\Against.....5.....17

The advocates of the measure in the second debate made use of the national spirit as they had in the first. Clay's

"American system,"

as the protective policy began to be called, was declared a remedy for the commercial depression under which the country suddenly found itself suffering. Petitions, asking such relief, poured into Congress. The economic conditions of Europe had become adjusted to peace, a condition which had not existed since the Constitution had been first put into execution. The United States began to realise the force of competition.

The distress which prevailed in European countries a few years before was suddenly transferred to the United States. A barrier to keep out European goods and secure American interdependence seemed necessary.

Clay came down from the Speaker's chair to the floor of the House to plead his policy of home production and home consumption, a principle for which he had fought a duel in his early Kentucky days, when he had been pronounced a demagogue for advocating dressing in homespun. He was now accused by the opposition of aiming at a total prohibition of foreign goods regardless of the resulting distress to the consumer.

"Protection in 1816 has grown to prohibition in 1824," exclaimed a speaker. "This is the consummation of the 'American policy,'" said Robert Y. Hayne, of South Carolina, whose brilliant oratory was making him the rival of Calhoun as the Southern spokesman. "A policy foreign in all its features, confessedly borrowed from Great Britain, and Chinese in its character, the policy of kings and tyrants, of restriction and monopoly." If Britain has at any time since complained of American protective policy, she must remember that it was inherited by British colonies, and was fostered by a desire to retaliate on her with her own methods before she became a freetrader.

The debates on tariff and public improvements of 1824 indicated a speedy termination of the era of good feeling and a return to some kind of political parties. This was to be accomplished not by a revival of the old Federalists and Republicans, but by a division in the ranks of the leaders. The Republicans, as has been pointed out in preceding pages, were so transformed as to be scarcely recognisable. Only an occasional veto and a conservative minority stood between old party principles and the desires of an expanding people and the demands of growing industries. The old Republicans were bewildered by the onward march of events under the hand of compulsion. Familiar landmarks had disappeared.

"We have our bank," complained one writer, "our standing army, our permanent navy, with all the officers, sub-officers, and their connections, ramified throughout the whole nation, all of which appears to me to be of a piece and in direct hostility with the liberties of the people. The people seem contented with the government's pursuing a policy which in 1800 caused a complete revolution."

The announcement of the Monroe doctrine and the culmination of "Americanism" were contemporary with the cessation of party spirit.

The "era of good feeling," the millennium described by Washington in his farewell address, was at last realised. Monroe's second election had come within one electoral vote of being unanimous.

Such unanimity could not continue. Those who believe that parties are absolutely necessary; that men must have some means of alignment; that individual following will immediately take the place of dormant national issues, will find an excellent argument in this "era of good feeling,"

as well as in the ward "boss" of municipal politics. Strict construction was practically dead, destroyed by its impracticability. But individualism was still alive. In due time, when the commercial power of the Gulf States, or "lower South," should become dominant, it would reappear in the guise of "State rights," a doctrine dimly foreshadowed by the Virginia and Kentucky Resolutions, but not brought to a fruition by those border States.

On the other hand, it was equally true that Clay and the advocates of his system could never return to the close confines of a limited or individualistic government. A protective tariff and internal improvements supplemented each other. Clay's companion in measures, John Quincy Adams, was an apostate from Federalism, and never at ease in the strict-construction ranks. Inheritance and early training cannot be so readily overcome. These two statesmen, representing the old and the new, the North-east and the South-west, the college-bred lawyer and the country-bred orator, formed as strange a partnership under the banner of nationalism as has ever been witnessed.

In using the people to further his American system, Clay was following the tactics of his former chief, Jefferson, in the early days. But the Republicans maintained their way as stubbornly and ignored the people as persistently as the Federalists had done. If Clay had been Monroe's successor in 1824, a return toward centralisation must have inevitably followed. Supported by the people, he would have brought unification a long step forward. Unfortunately, when it came to political strength, Clay's people were confined to the Western section, where his efforts in their behalf had made him an idol. He was a legislative hero, so to speak. But there was a war hero, whose popularity was not measured so much by a section.

The battle of New Orleans had been the redeeming feature of the War of 1812, as has been stated. Jackson's popularity had been increased by his highhanded actions in the Floridas. Popular thought turned to him as a relief from the professional officeholders, such as Crawford, Clay, Adams, and Calhoun. Newspapers called attention to the fact that Jackson had once refused the governorship of East Florida. What offices had these other candidates for the Presidency ever refused? Jackson's friends rejoiced when Tennessee made him a Senator in 1824, since his residence in Washington would enable him to compete with his rivals, the professional officeholders.

The candidacy of Jackson for the Presidency in 1824 may truly be regarded as evidence of a coming revolt of the people of the West. It would have been strange if all this spirit of Americanism had not brought about a demand for more share in the Government. It was a part of that general movement for an extension of the suffrage which characterised the middle period, culminating in the Dorr Rebellion.

In both the Carolinas and Maryland, a freehold of fifty acres of land or town lots was still required for complete suffrage. Rhode Island still admitted only a freeholder or his eldest son to citizenship. New York had only three years before abandoned property qualification for white men to vote and still demanded from negroes an estate of \$250

for this inestimable privilege; so slowly did we slough off the inherited idea and ancient custom of being admitted to freemen's rights instead of being born into them.

The revolt of the people also showed itself in a demand for the right to nominate candidates and to choose electors for the presidential elections. Since the beginning of the Constitutional Government, many State Legislatures had assumed that right to themselves. "Each State shall appoint," says the Constitution, "in such manner as the Legislature thereof may direct, a number of electors." So late as 1820, six States still refused to allow the people to choose the electors and, consequently, the President. In five of the States where they were chosen by the people, voting was done by districts and in the remainder by a general ticket. Ever since the change in the manner of casting the electoral votes was made in 1804, attempts had been made either by an amendment to the Constitution or by national legislation, to secure a direct and unrestricted vote for the people. It was not fully accomplished until after the Civil War.

In selecting the candidates to be voted for, the people had still less power. After Washington's term, candidates had been selected by a caucus of members of Congress of each party called together at the seat of government. Since 1800, each President had been influential in bequeathing the office to his Secretary of State. Virginia, it was said, had thus been able to retain the Presidency for twenty out of the twenty-four years during which the Government under the Constitution had existed. Some claimed that Jefferson, Madison, and Monroe in the beginning held a conference and agreed upon a protracted retention of the chief executive position. New York was said to have assisted in this monopoly of the "mother of Presidents." It had been accomplished mainly through the caucus system and legislative election. Men like Hezekiah Niles, editor of the *Register*, now led a revolt against the "regency at Richmond," and the subordinate "regency at Albany." Niles claimed that the State Legislatures were created for the purpose of making laws and not for choosing presidential electors; that in some cases members were elected far in advance of the presidential election and could not possibly represent the present wish of the people. These reformers were unable to secure a popular nomination for presidential candidates in the election of 1824. Precedent and the officeholders were too strong. Nominations were made as before by congressional caucus and State Legislatures; but this agitation, dating directly from the rebirth of Americanism, bore full fruit within a score of years.

The case of the people against the politicians was aided by the peculiar circumstances attending this election of 1824. At the preceding election, there had been but one candidate. At this election, there were so many that no one of them had the required majority. Electors had been pledged in advance, so that it was not a return to the original idea of a free choice of the best man. Fortunately, the framers of the Constitution had provided against this contingency by allowing the House of Representatives, voting by States, to choose the President from the three candidates having received the highest number of electoral votes. Jackson, the war hero, headed the list in both popular and electoral votes. John Quincy Adams, "the secretarial successor,"

had the second highest number of electoral votes, and Crawford, the candidate of the caucus, the next. With his usual ill-fortune, Clay had the least and must be dropped. He had carried the three States of Kentucky, Ohio, and Missouri. It was to be presumed that he would throw his influence in these States to Jackson, his fellow of the South-west.

But the Representatives from these three States gave a total of eleven votes to Adams, six to Jackson, and two to Crawford. This gave the States to Adams and made him President. That Clay should have immediately afterward accepted the first place in Adams's Cabinet is not strange. Presidents have frequently honoured their rivals in convention in this way in later times. But it gave the people the impression that these two politicians had made a "corrupt bargain,"

and this story hampered the entire administration of Adams. No Administration had met with as much opposition since the stormy four years of his father.

The strict Republicans asserted that Adams was a "consolidationist,"

and Clay's views of the paternalistic duty of the National Government, no less than his association with Adams, placed him in the same category. The new President gave out his political creed in his inaugural address.

"Whatsoever is of domestic concernment," said he, "unconnected with the other members of the Union, or with foreign lands, belongs exclusively to the administration of the State governments. Whatsoever directly involves the rights and interests of the federative fraternity, or of foreign powers, is of the resort of this General Government."

At the same time, he expressly stated the various formative actions of the General Government which had been allowed by the States. He expressed the hope that "by the same process of friendly, patient, and persevering deliberation all constitutional objections will ultimately be removed."

Every annual message of President Adams pleaded for a liberal interpretation of the powers of Government. Now he advocated more generous appropriations for the Cumberland Road, now the endowment of a national university, or the erection of a national monument to Washington. He suggested the founding of national observatories, the increase of the navy, the extension of the pensions, the establishing of a naval academy, the equipping of scientific exploring expeditions, provisions for civilising the Indians, and a reform in the method of taking the census.

Every message bore the full imprint of Henry Clay's national improvement policy, a sentiment in which Adams could readily join. The attention of Congress was called from time to time to the reports of surveys made by the engineers under the act of April, 1824. These reports contemplated roads and canals, river and harbour improvements, "needing the assistance of means and resources more comprehensive than individual enterprise can command," as Adams said. He called especial attention to the fact that from three to four million dollars were being spent annually on the public works without intrenching upon the necessities of the Treasury, adding to the public debt, or stopping its gradual discharge. When the State of New York, grown weary of soliciting national aid, constructed a canal from the tide-water of the Hudson to Lake Erie, really around the northern end of the Allegheny Mountains, Adams seized the opportunity of asking whether the representative authorities of the whole Union should fall behind the single members of the confederation in exercising the trust imposed by the people.

Whatever another President might have accomplished by his personal influence in these appeals was denied to Adams because of his lack of mingling qualities, and because of the hostility aroused by the manner of his election. The impression prevailed among the former supporters of Monroe and among the people of the South-west that "the will of the people" had been thwarted in some manner and could be vindicated only by the election of Jackson in 1828. This faction also imagined that Adams stood for aristocratic New England and Jackson for the democratic South-west. They were opposed to the protective principle, to internal improvements, and the continuance in power of the Atlantic coast regime.

Rallying under the standard of Andrew Jackson, "the man of the people,"

they began to call themselves Democratic Republicans, or simply "Jackson men." Their opponents, embracing Adams and Clay and such minor leaders as the Administration had been able to collect, considered themselves as good Republicans as their opponents; but, taking into account their nationalistic tendencies, called themselves "National Republicans,"

or "Adams men." Unconsciously and even unwillingly, political parties had been revived.

As the election of 1828 approached, national affairs gave every indication of the end of an epoch. Those formative events, which seem to culminate regardless of the wish or will of man, indicated a great change. The determination to overthrow the Adams-Clay combination turned the election into a political revolution not unlike that of 1800. Economic conditions assumed a new aspect because of the advent of "King Cotton," and the sudden ascendancy of the "lower South." The election for two consecutive terms of Calhoun to the Vice-Presidency showed that Southern leadership had passed from Virginia to South Carolina. Successful experiments with steam transportation on land predicted a revolution in the history of internal communication and, consequently, of internal improvements. The clear diplomatic horizon, the universal peace except in turbulent South America, and the successful negotiations in recent treaties foretold an era of insularity and full fruition of individuality. Political parties had been revived, but on such divergent lines that they might soon be expected to develop national policies. Fortunate would the Republic have been if such legitimate divisions had been the only lines of difference as the great middle period came on. But sectionalism had yet to run its course, commercially and territorially, before a true union of interests, ideals, and affections could be secured.

END OF PART I